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MINISTRY OF AGRICULTURE



Procedures, Practices and Issues Related to Leasing of Land for Large Scale Agricultural Investments

Policy and Legal Review against the Background of International
Best Practices



BVVG

giz Deutsche Gesellschaft
für Internationale
Zusammenarbeit (GIZ) GmbH



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List of Abbreviations

Art.	Article
BoEPLAU	Environmental Protection, Land Administration and Use Bureau
EAILAA	Ethiopian Agricultural Investment and Land Administration Agency
EHAIA	Ethiopian Horticulture and Agricultural Investment Authority
EIA	Environmental Impact Assessment
EMP	Environmental Management Plan
EMS	Environmental Monitoring System
EU	European Union
FAO	Food and Agriculture Organization of the United Nations
FCoM	Federal Council of Ministers
FPIC	Free, Prior and Informed Consent
F.P.	Federal Proclamation
GDP	Gross Domestic Product
GTP	Growth and Transformation Plan
ILO	International Labor Organization
LSAI	Large Scale Agricultural Investments
MoA	Ministry of Agriculture
RAI	Principles for Responsible Investment in Agriculture and Food Systems
RLAUD	Rural Land Administration and Use Directorate
S2RAI	Support to Responsible Agricultural Investment Rural Land Administration and Use Directorate
VGGT	Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security



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1. Executive Summary

Large-scale agricultural investments (LSAI) in Ethiopia are expected to provide input for the processing industry and to bring foreign currency as well as technology transfer to the country, while the local communities will benefit from employment and infrastructure improvements related to these investments. But the results of investment projects have been rather limited so far.

In order to support agricultural investments in a responsible way, the project “Support to Responsible Agricultural Investments in Ethiopia” was set up. Funded by the European Union and Germany and implemented by the GIZ, the objective of this project – referred to as S2RAI project- is to “contribute to improved food and nutrition security, incomes and resilience of local populations especially of those living in rural areas by facilitating responsible agricultural investments”. The project aims at supporting the Government of Ethiopia in establishing a conducive and transparent environment for responsible agricultural investments, while securing the rights of the resident population. In this context, the project inter alia will develop i) a guideline for the process of land identification (and verification) for LSAI with special emphasis on a truly participatory approach, ii) a standard operational procedure in the context of assessing Environmental Impact Assessments, which are mandatory for any investment project, iii) model contracts for LSAI, iv) a monitoring scheme for LSAI and v) an initial valuation concept for compensation in the framework of expropriation. This desk study provides a review of relevant literature, documents and laws, as basis for the development of the mentioned products.

The Ethiopian Government’s policy regarding LSAI has been criticized by different groups. Main points of criticism center on social and environmental issues. Recently, a reorganization of the Ethiopian Agricultural Investment and Land Administration Agency (EAILAA) has taken place. The Agency merged with the Ethiopian Horticulture Agency into the newly created Ethiopian Horticulture and Agricultural Investment Authority (EHAIA) and, inter alia, is responsible for preparing policies, laws and strategies for LSAI, for land identification for LSAI and to evaluate and monitor LSAI. Whereas EAILAA had the mandate to give out land to investors for LSAI, this mandate has been transferred to the regions, leaving EHAIA with the mandate to give out relatively small amounts of land for horticulture purposes. Nevertheless, the new authority is responsible for all aspects of commercial agriculture.

In the past, the land identification (and verification) process for LSAI, due to various reasons, was not implemented with the required accuracy, which often resulted in environmental and social problems. A future land identification procedure should include land use planning elements, facilitate formalized stakeholder participation and should explicitly focus on respecting existing tenure and use rights. Since the government currently is drafting a road map for national integrated land use planning, which includes local-level land use planning, this roadmap has to be considered within the land identification procedure.

EIAs are an integral part of every investment project, including LSAI. Every project - prior to project implementation - has to be authorized by the Environmental Protection Authority or the responsible body on regional level. The authorization (or refusal) is based on the assessment of the EIA handed in by the investor. Therefore, the determination of a clear and comprehensive procedure, also referred to as standard operational procedure (SOP), of assessing the EIA is crucial. In order to do so, the roles and responsibilities on the federal and regional level have to be determined.



Model contracts to lease out land for LSAI need special attention in the context of LSAI. A detailed description of the rights and responsibilities provide security for both parties lays the foundation for enforcement measures and is a precondition for monitoring of the investor's performance on farm level. Current model contracts that are used on the federal and the regional level in Ethiopia are not extensive and require revision. A new template has to govern rights and responsibilities regarding economic, environmental and social issues. International best practices give guidance regarding the necessary content of such a contract, in order to facilitate positive outcomes of farmland investments.

A monitoring regime for LSAI is needed in order to supervise and control the impacts of LSAI on farm as well as on country level. Corrective measures can only be taken when data is available that describes the economic, environmental and social impact of LSAI. Presently, a comprehensive monitoring system is not in place. A monitoring scheme should be installed at EHAIA. Data for such a monitoring scheme will have to be collected in the framework of farm inspections and from other involved institutions that are obliged to carry out monitoring based on relevant legislation (for example environmental legislation).

In order to improve the expropriation regime, amendments on the legal, institutional and implementation level are necessary. The elaboration of an initial valuation concept for commensurate compensation can help to improve the expropriation regime and can also serve as orientation for compensation measures in the case of voluntary resettlement in the scope of LSAI. The latter should only be an option, when affected persons have given their consent and compensation measures have been negotiated on an equal footing.

By supporting the development of the mentioned products, S2RAI contributes to the implementation of more responsible and sustainable agricultural investments. In the long run, additional sub-processes belonging to the procedure of leasing out land for LSAI, such as for example the procedure of selecting investors should be reviewed and revised.



2. Introduction

Ethiopia's government continues to promote a rapid transformation of its agricultural sector in the framework of its overall attempt to “realize the national vision of becoming a low middle-income country by 2025, through sustaining the rapid, broad based and inclusive economic growth, which accelerates economic transformation and the journey towards the country's renaissance” (GTP II). The strategy of the government, described in the country's first Growth and Transformation Plan (GTP I), already resulted in a real agricultural GDP growth rate of 6.6% per annum (GTP II¹). The GTP II that focusses on the period 2015/16 – 2019/20 aims at further increasing production, productivity, markets and employment by supporting the development of small-holder farming schemes in the highlands and large-scale commercial farming in spatially large lowland regions.

According to World Bank estimations, approx. 1.4 m ha of land in Ethiopia has been transferred for (large scale) farmland investments in the period between 2004 and 2008 (Deininger et al., 2011). Currently, an estimated 3.5 m ha of land are contained in the so-called federal land bank and are potentially available for leasing out to investors. Large-scale agricultural investments (LSAI) are expected to provide input for the processing industry and to bring foreign currency as well as technology transfer to the country, while the local communities will benefit from employment and infrastructure improvements related to these investments (GTP II). But the results of investment projects have been rather limited so far. Out of the land transferred, only a fraction has actually been developed by investors. An overall consistent and transparent framework for managing such large-scale land based agricultural investments with all its potential social and environmental impacts is lacking. Severe human and institutional capacity constraints add to the problem. There is an urgent need to improve this situation, so that the country and local communities can actually benefit from the investment projects.

In order to support agricultural investments in a responsible way, the project “Support to Responsible Agricultural Investments in Ethiopia” was set up. Funded by the European Union and Germany and implemented by the GIZ, the objective of this project – referred to as S2RAI project- is to “contribute to improved food and nutrition security, incomes and resilience of local populations especially of those living in rural areas by facilitating responsible agricultural investments” The project aims at supporting the Government of Ethiopia in establishing a conducive and transparent environment for responsible agricultural investments, while securing the rights of the resident population. It will particularly address existing institutional and capacity constraints and help to ensure that the LSAI are based on experience with best practices in accordance with national and international standards of responsible land governance and agricultural investments, as laid down in the “Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security” (VGGT)² and the “Principles for Responsible Investment in Agriculture and Food Systems” (RAI).

¹ http://dagethiopia.org/new/images/DAG_DOCS/GTP2_English_Translation_Final_June_21_2016.pdf

² The VGGT were officially endorsed by the Committee on World Food Security on 11 May 2012



Against the background of this project concept, an initial fact-finding mission of an interdisciplinary expert group took place in 2016. In that mission the following issues, which need revision have been identified:

- i) The process of land identification and verification for LSAI
- ii) Environmental and Social Impact Assessments (EIA) – role and procedures
- iii) Model contracts – role and regulatory content
- iv) Monitoring framework – criteria and set-up

Based on these findings, the project aims at developing i) a guideline for the process of land identification and verification with special emphasis on a truly participatory approach, ii) standard operational procedures in the context of assessing EIA, iii) model contracts for LSAI and iv) a monitoring scheme for LSAI.

In various publications, the loss of access to land and resources and even forced eviction of the local population in the context of LSAI is strongly criticized. Therefore, the question of adequate compensation measures in the framework of expropriations also plays a role when looking at these investment projects, even though officially land designated for agricultural investments is supposed to be free from any competing land use. However, the question of compensation in the framework of expropriations is beyond the scope of this project. Still, an attempt will be made to contribute to solving this issue by suggesting an initial conceptual model for valuation in the framework of compensation when resettling right-holders or land users in the context of LSAI.

This desk study provides a review of relevant literature, documents and laws as basis for the development of the mentioned products. Chapter 2 of this study will summarize main issues related to LSAI in Ethiopia. Chapters 3 to 6 closely examine the above-mentioned topics (i-iv) against the background of international best practices. Chapter seven deals with the topic of compensation and valuation in the framework of expropriation and / or resettlement. Chapter eight summarizes the findings of the study and shows the implications they have with respect to developing the above-mentioned products.



3. Large Scale Investment into Agriculture in Ethiopia - main issues

As mentioned, the Ethiopian government aims at increasing agricultural production by promoting LSAI in the lowland regions of Ethiopia. According to the government, vast areas of potential agricultural land and comparatively low population densities predestine these areas for large scale farming. Investments are expected to facilitate technology transfer and to bring foreign currency into the country. It has been reported that approx. 2.4 m ha of land have already been allocated to approx. 6.000 private foreign and domestic investors. Most of this land (i.e. 1.7 m ha) was leased out by the regional governments. With the aim to make land available for large scale investments, around 3.5 m ha were transferred from the regions to the so-called federal land bank. Only about 0.5 m ha of this land is currently leased out.

The government's policy regarding LSAI is being criticized from different sides. Main points of criticism center on social and environmental issues. Public authorities are accused to have expropriated peasants in order to lease land out to private investors (Rahmato, 2011). The Oakland Institute, a policy think tank based in the United States, reports about forced evictions, false promises of the government towards local communities regarding the supply of public facilities such as schools and hospitals, and large-scale environmental destruction (The Oakland Institute, 2015).

The government is accused of implementing its policy regarding LSAI too rapidly, without making adequate assessments and ensuring proper monitoring. Land-use rights of pastoralists and shifting cultivation systems (often by minority ethnic groups) are not taken into consideration adequately and possible negative effects of the so called "villagization" programs (resettlement programs) are feared (Keeley 2014).

In the year 2013 the Ethiopian Agricultural Investment and Land Administration Agency (EAILAA) was established with the purpose to promote farmland investments on land plots bigger than 5.000 ha. The agency was assigned to support investors, develop policies and strategies for LSAI and to allocate land to investors via lease agreements. Recently a reorganization of the agency took place and its responsibilities were altered. The task of actually leasing out land to investors was reassigned to the regional level, while (former) EAILAA, renamed into EHAIA, is now also responsible for horticulture. Beyond that, EHAIA also has supervising and monitoring responsibilities and rather works on the strategic and policy level. Table 1 summarizes EHAIA's objectives and assignments as governed in the "Ethiopian Horticulture and Agricultural Investment Authority Establishment Council of Ministers Regulation No. 396/2017".

Currently some issues related to the administration of LSAI are still open. For instance, the question if the regions will delegate the administration of land for LSAI back to EHAIA or not, is not yet solved. Further, it has to be clarified, whether guidelines developed by EHAIA (with support of S2RAI), will have binding or only advisory character for the regions.



Table 1: EHAIA’s objectives and assignments

EHAIA’s Objectives	EHAIA’s Assignments
<p>1. Identification of land for agricultural investments in cooperation with the regional states suitable for the production of horticulture, commercial farms, livestock and commercial forest plantations</p> <ul style="list-style-type: none"> • Supply of investment land • Providing of suitability documents • Support land transfer to investors <p>2. Provide comprehensive support to agricultural investors, ensure maximum utilization of land transferred for investment, enhance production and productivity to strengthen adequate supply with raw materials to the industry, enhance foreign earnings from horticulture products</p> <p>3. In collaboration with the relevant bodies facilitate and integrate logistic services as well as alternative new market destinations and encourage horticulture export, supply of raw material, demand for agro-industries and growth of foreign currency</p>	<ul style="list-style-type: none"> • Prepare policies, strategies and laws for LSAI and monitor implementation • Prepare short, medium, long term plans to foster horticulture and LSAI and Follow up implementation • In cooperation with the regions identify land for horticulture and LSAI free from third party possessions <ul style="list-style-type: none"> ○ Suitability studies ○ Soil information data ○ Establish land bank ○ Compile basic geo data • In cooperation with the regions prepare suitability documents of identified land, promote for investments, support transfer to investors and follow up implementation • Conduct studies to identify horticulture corridors and agricultural investment zones • Build capacity of the sector in cooperation with research and higher education institutions and follow up implementation • Conduct benchmarking of local and foreign best practices and improved technologies for horticulture and agricultural investment <ul style="list-style-type: none"> ○ Support implementation ○ Participate in international exhibitions in cooperation with producers and exporters • Conduct studies on supply chain, develop strategies to resolve constraints • Support outgrower schemes and contract farming systems • Follow up adequate supply and required quality pre and postharvest technologies and services and monitor that the investment incentives are used for the intended purposes • In coordination with regional states and relevant bodies, monitor and evaluate agricultural investment land (in line with investment plan and land lease agreement), provide expertise advise and technical support and take corrective measures when necessary • Encourage creation of domestic private sector, youths and experts associations based on their interest provide entrepreneurship trainings, facilitate agricultural investment land provision and loans • Enforce preparation and implementation of environmental protection plans in the project areas of horticulture and agricultural investment; promote environmental code of practices and food safety and quality standards in horticulture and agricultural investment sector • Ensure competitiveness of agricultural products (mainly horticulture export commodities) through capacity building and advisory service on improved farm management; quality standards, food safety issues and product handling; develop and implement local investors technology and extension packages and manuals • Ensure effectiveness of horticulture and agricultural investors consultation forum with stakeholders to provide better support in the sector and implementation of joint decision making



	<ul style="list-style-type: none"> Collect, analyze and avail domestic and international market and other relevant trends in horticulture and agricultural investment and follow up implementation
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This will have certain implications on the effectivity of developed documents with regard to implementation. Close cooperation with the regional level will be necessary to develop a joint vision of LSAI related issues.

4. Land Identification and verification – Identifying land suitable for LSAI

Leasing out land for LSAI in Ethiopia follows a determined procedure, whereby its first step is the process referred to as land identification and verification. This chapter shortly illustrates the current procedure of land identification and shows how the consideration of participatory planning elements can lead to a more inclusive procedure.

Table 2 shows the main procedural steps of the process of land identification and verification on the federal level, as followed by EAILAA until its reorganization to EHAIA. The regions have determined their own land identification procedure that may differ from the procedure shown below.

Table 2: Procedural steps of land identification and verification		
Procedural steps	Sub steps	Actions and outputs
1.		Forming of land identification committee (federal level)
2.		Identification of potential search areas for LSAI
3.		Consensus meeting for confirmation of potentially suitable areas between land identification committee and regional administration
4.		Forming of technical expert team with expertise on land administration, environmental and social-economic issues
5.	Land identification	Exclusion of areas with contrasting land use <ul style="list-style-type: none"> Forest land Farm land used by local community “Free of third party possession” Environmental protection (wild life, sanctuaries etc.) Social, religious, community purposes
6.		Memorandum of understanding between federal and regional level on land transfer to federal land bank
7.	Land verification	Suitability analysis for strategic crops Output: complete profile of each land-lot including GIS-map

Source: Author’s illustration based on project internal document



Although the illustrated procedure in theory includes important steps, it seems that former land identification for farmland investment was not implemented with the required accuracy. This especially counts for the identification of contrasting land uses and the exclusion of such land for investment purposes. As described in chapter 2, in practice LSAI often have severe negative social and environmental impacts.

Shortcomings are also reported with regard to the determination of land suitability for certain crops. Public authorities are accused of not having carried out an accurate and credible land suitability assessment (Rahmato, 2011). A private investor³ mentioned that the area he had leased for his investment to grow cotton was actually not suitable for the crop, because humidity at the site was too high. Regional government officials reported that capacity to carry out sophisticated land suitability examination is lacking. Financial means, human resources and equipment (such as for example) vehicles available for this assignment are limited.

This calls for a more complex and inclusive procedure of land identification and verification that explicitly focuses on i) respecting existing tenure and use-rights, may they be formal or informal, ii) the delineation of nature protection as well as religious sites or sites needed and used by the community and iii) stakeholder participation of affected communities and individuals. At the same time the government has to make capacity available, in order to implement and monitor such a procedure.

To facilitate a more inclusive procedure of land identification, land use planning schemes and tools can help as orientation (see Box 1).

Box. 1: Land use planning in the scope of LSAI

“The extreme increase of land sales and land leases in developing countries illustrates that the global competition for scarce land resources has gained a new dimension. State actors and private investors from developed countries and newly industrialized countries capture huge agricultural areas – generally with access to ample water – in developing countries through purchase or long-term leases to grow food, agro-fuel or other cash crops for export. In general, quick benefits from large investments in industries, mining, agro-industries etc. for the sake of increasing GDPs create pressure to rural land uses with less economic contributions leading to an often irreversible conversion of traditional land uses. In addition, agricultural funds investing in agricultural lands have become a current trend product in financial markets, thus participating in the rising value of land, which was already valuable due to its growing scarcity. The scarce resource land increasingly becomes a venture. Accordingly, there is a high demand for concepts and tools that help find a balance among the interests of all stakeholders. Land use planning has proven to be such an approach”

Land use planning facilitates a balanced land use that fulfills all social, ecological and economic requirements. It can prevent land use conflicts, ensure that land uses are adapted to physical and ecological conditions and therefore contribute to sustainable land use.

Source: GIZ Handbook: Land Use Planning –Concept, Tools and Applications (Wehrmann, 2012)

³ Verbal information received during the project expert mission in 2016.



However, it must be noted that land use planning is a sophisticated discipline in itself, which as a whole is far more complex than the issue of LSAI. The latter can rather be seen as a sector related planning issue, which on the one hand contributes to land use planning and on the other hand should be coordinated within the framework of comprehensive land use planning. Box 2 provides a definition for land use planning.

Box 2: Definition of Land Use Planning

“Land use planning is a systematic and iterative procedure carried out in order to create an enabling environment for sustainable development of land resources which meets people’s needs and demands. It assesses the physical, socio-economic, institutional and legal potentials and constraints with respect to an optimal and sustainable use of land resources, and empowers people to make decisions about how to allocate those resources”

Source: GIZ Handbook: Land Use Planning –Concepts, Tools and Applications (Wehrmann, 2012, quoted from *FAO/UNEP1999*)

The importance of land use planning has long been recognized in Ethiopia. The Rural Land Administration and Land Use Proclamation of 2005 (F.P. 456/2005) acknowledges the importance to “sustainably conserve and develop natural resources through the development and implementation of sustainable land use planning based on different agro-ecological zones of the country” and moreover states that “a guiding land use master plan, which takes into account soil type, landform, weather condition, plant cover and socio-economic conditions and which is based on a watershed approach, shall be developed by the competent authority and implemented”.

FAO supported the development of such a master plan and also reports about additional planning projects dealing with land use planning on the different levels (FAO unpublished). The Rural Land Administration and Use Directorate (RLAUD) of the Ministry of Agriculture (MoA) has published a complex ‘Local Level Participatory Land Use Planning Manual’, which describes concepts and steps of local level land use planning (Negash, 2012). Yet, it is unclear to what extent these planning schemes have actually been implemented on the different planning levels. It goes beyond the scope of this study to determine at which state of implementation Ethiopia and its regions presently is. However, it should be kept in mind that if such planning documents exist, they should be considered and respected in the context of land identification for LSAI. This especially counts in the case that the plans have been officially endorsed.



Where no land use plans exist, the procedure of land identification can draw back on land use planning principles and elements. This especially counts for the tasks of identifying potential search areas (see table 2, step 2 of the land identification procedure) and for the exclusion of areas not to be used for large scale agriculture (see table 2, step 5 of the land identification procedure).

The following possible steps, based on land use planning elements, can serve as orientation for the procedure of identifying land potentially suitable for large scale investments (step 5 of the land identification procedure) by excluding areas with contrasting land uses (e. g. valuable ecosystems) or land not suitable for large scale agricultural production (e.g. hilly / mountainous areas, remote areas, marginal sites):

- Determining the planning area
- Data collection
 - Determine data needed
 - Determine data sources
 - Determine methods for data collection
- Data analysis
 - Determine methods for data analysis
 - Determine methods for data presentation
 - Process description
- Plan formulation
 - Balancing of competing and/or contrasting uses (including documentation of the process and decisions)
 - Preparation of a first draft
 - delineate “no go areas”
 - illustrate areas with use restrictions
 - illustrate land tenure situation
 - illustrate potentially suitable land for LSAI
 - Review and discussion of the draft with relevant stakeholders
 - Preparation of final draft

In the process of data analysis land use zoning (i.e. the delimitation of zones with similar characteristics such as topography, soil, vegetation, land cover, eco-systems or functions, current and potential land use and ecological value) is an important measure. The different zones can be visualized in a GIS map, further non-spatial information can be added by attribute tables or databases linked to the GIS.

When identifying potentially suitable land for LSAI, it should be considered to identify so called “no-go areas” (Wehrmann, 2012). This refers to areas that are so valuable in terms of their ecological, economic and social value, so that their conversion to agricultural use would lead to overall negative impacts. No go areas can be areas with a high biodiversity, complex and valuable ecosystems, areas that provide important ecosystem services, such as water flows, areas that facilitate high levels of carbon sequestration, areas with high cultural value and identity.



Areas that have a touristic value or are important for the generation of groundwater could be determined as no go areas since their conversion into agricultural land could have a negative impact on the overall economic development of the region.

As basis for the delineation of areas that should not be considered for LSAI it is important to define the criteria according to which this exclusion is made.

With reference to the above listed, it must be mentioned that the two elements data collection and data analysis should not be underestimated regarding their importance on the one hand, and the required effort in terms of necessary financial means, capacity and time on the other hand. Data has to be collected from different sector and territorial authorities as well as civil society organizations. Sector related, spatial and informal data (for example gained in interviews) has to be surveyed and analyzed.

Furthermore, data collection and analysis are just preparatory steps. The by far more important step is the consideration and weighting of different interrelated or contradicting interests. The different interests (e.g. prevention of erosion versus agriculture) have to be documented and related decisions have to be taken in a transparent and traceable way.

Special focus has to lie on the participation of affected communities and individuals. On the one hand, their knowledge of the area in question is a valuable source of information and on the other hand, their rights, needs and expectations have to be considered and will have a major influence on the determination of “exclusion areas”. Therefore, participation of local stakeholders should be considered as formalized process within the land identification procedure.

FAO's *Governance of Tenure Technical Guide no. 3* “Respecting free prior informed consent” (FPIC) - a publication intending to support the use of the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests (VGGT) – provides guidance for governments (and others) to respect the right of indigenous people or communities “to self-determination, to their lands, territories and other properties, to make decisions through their freely chosen representatives and to give or withhold their consent prior to the approval by government of any project that might affect the land and resources that they customarily own or use” (FAO, 2014). In the context of LSAI, FPIC's underlying principle is that such projects and land deals should be subject to (prior) consent given by the local and affected communities.

Table 3 illustrates the procedural steps that FAO's technical guide on FPIC suggests and where these steps should find recognition in the context of LSAI. It must be mentioned that the steps for FPIC do not necessarily follow a timely sequence. Steps no. 4 to 6, for example, are relevant throughout the whole procedure. As shown, the steps 1 to 7 could be a formalized sub-process of the land identification procedure, while the steps 8 and 10 should be considered when establishing a monitoring scheme (see chapter 6). Facilitating grievance mechanisms (step 9) should be considered already in the process of land identification but is equally relevant in the monitoring phase of a LSAI project.



Table 3: Consideration of FPIC in the context of LSAI	
FPIC – Respecting free, prior and informed consent	Consider in the process of
1. Identifying right-holders 2. Ascertaining the legal status of the land 3. Mapping claims to and uses of land 4. Identifying decision-making institutions and representatives 5. Carrying out iterative consultations and information sharing 6. Providing access to independent sources of information and advice 7. Reaching agreement and making it effective	Land identification for LSAI
8. Monitoring and verifying agreements	Monitoring of LSAI
9. Establishing a grievance process	Land identification for LSAI Monitoring of LSAI
10. Providing access to remedy and conflict resolution	Monitoring of LSAI

Source: Authors illustration based on FAO Technical Guide No. 3 (RFPIC)

When determining and formalizing the procedure of land identification, it is important to consider that all data and information that lead to the actual selection of the land for LSAI is well documented. Public accountability is the key word in this context. This means that not only a map that depicts areas for LSAI is the end product of land identification, but also accompanying written statements, analyses, reports, formal agreements etc. that reflect the decision-making process of the ones in charge for land identification. All related data has to be stored to allow revision by independent parties. This data collection then also supports the establishing of a monitoring scheme.

5. Environmental and Social Impact Assessment – Current practice

Large scale land acquisition in Ethiopia reportedly has led to environmental devastation inter alia caused by forest clearing and the draining of wetland. In fact, land has even been allocated to foreign investors within National Parks such as the Gambella National Park. The rush on land, water and other natural resources has negatively impacted the livelihood of rural communities. Smallholders have been displaced and pastoralists have lost their grazing land which lead to increasing food insecurity (Degife, 2017). Wildlife



habitats are destroyed, and rivers have been even redirected from their natural course and biodiversity has been diminished. Some investors have used leased land opposite to the agreed purpose, for example engaging in charcoal production instead of developing the land for agricultural production (Behailu, 2015).

This calls for a review of the current regulations and practices to safeguard environmental and social damages in the context of LSAI, most prominent being the Environmental Impact Assessment (EIA) that is mandatory for any investment project including agricultural investments into land. This chapter shortly summarizes the existing regulations with regard to EIA and provides a brief assessment.

5.1. Regulations

The Federal Proclamation (F.P.) “Environmental Impact Assessment Proclamation No. 299/2002” sets the frame for assessing the impacts of a project with regard to the environment, which aside of the bio-physical environment also includes the socio-economic and cultural environment. According to the proclamation, the assessment of possible impacts by a written EIA is necessary prior to the approval of a project. The EIA⁴ is supposed to facilitate the involving of “the public and in particular communities in the planning of and decision making on developments which may affect them and their environment”.

No project that requires an EIA may be implemented without authorization from the Environmental Protection Agency or the relevant regional environmental agency (Art. 3(1)). The authorization expires if the project is not implemented according to the time frame set by the authorizing body (Art. 10(1)). Prior to issuing an investment permit for a project, licensing agencies shall make sure that the mentioned authorities have approved the project based on a respective EIA (Art. 3.3).

The drafting of an EIA has to be assigned and paid by the investor (Art. 7(1,3)). The EIA is carried out by experts that meet the requirement specified by directive of the Environmental Protection Authority (Art. 7(2)).

⁴ In order to be clear that the environmental impact assessment includes a social impact assessment it should be considered to change the used term in the F.P. and related documents to “Environmental and Social Impact Assessment”.



Box 3 illustrates the minimum requirements of an EIA study report.

Box 3: Minimum requirements for description in an EIA study report according to Art. 8(2) F.P. No. 299/2002

- (a) the nature of the project, including the technology and processes to be used;
- (b) the content and amount of pollutant that will be released during implementation as well as during operation;
- (c) source and amount of energy required for operation;
- (d) information on likely trans-regional impacts;
- (e) characteristics and duration of all the estimated direct or indirect, positive or negative impacts.
- (f) measures proposed to eliminate, minimize, or mitigate negative impacts;
- (h) contingency plan in case of accident
- (i) procedures of self-auditing and monitoring during implementation and operation.

Source: F.P. No. 299/2002

While the timeframe for evaluation of an EIA study report by the Environmental Protection Authority is not determined, the authority after completion of the evaluation has either to approve, approve with certain conditions or refuse the implementation of the project within 15 working days.

The Environmental Protection Authority (or regional equivalent) is obliged to monitor the implementation of a project in order to evaluate “compliance with all commitments made and obligations imposed on the proponent during authorization” (Art. 12 (1)). In the case that the investor does not comply with the set obligations, licenses such as investment permits or operating licenses should be withdrawn by the respective agency in cooperation with the responsible environmental agency / authority (Art. 12(3)).

An important provision of the proclamation is Art. 15(1,2) that governs public participation. The EIA study report has to be made publicly available and concerns or comments raised by the public, in particular by affected communities, are to be incorporated in the EIA study report and considered in the evaluation.

According to the proclamation (Article 18) in the case that any person makes false statements in the EIA study report, operates a project without authorization from the respective environmental authority or fails to implement the conditions under which the authorization was given, penalties between 5.000 and 100.000 Ethiopian Birr are charged.



In 2014, the MoA issued a guideline for preparing an EIA for LSAI. The guideline determines in detail the required structure and content of the EIA, which includes the following:

- Detailed project description
 - establishing of the project, farming practice, market situation
- The legal framework
- Description of the environment
 - bio-physical environment and socio-economic environment
- Information about the EIA method
- Impacts and mitigation options
 - beneficial and adverse impacts
- Information about public consultations
 - on project benefits, community fears, attitude of the community
- Consideration of project alternatives
- Environmental management plan
- Environmental monitoring plan
- Environmental budget
- Environmental reporting
- Conclusions and recommendations
- References
- Appendices
- List of consulted groups, Minutes of meetings with local community, licenses, EIA study team members, site plan.

In 2013, the Environmental Protection, Land Administration and Use Bureau (BoEPLAU) of Benishangul-Gumuz has issued a guideline and determined criteria for the review of an Environmental Impact Assessment (EIA) / Environmental Management Plan (EMP⁵) report. This guideline is not restricted to agricultural investments but functions as a general guideline for all possible investment projects. The guideline, aside of determining a procedure for reviewing and assessing EIA, aims at giving guidance for the formulation and implementation of EIA, arguing that the description of concrete management actions illustrated in EIAs / EMPs are often vague, impractical and not formulated as measures to be incorporated in the project design. BoEPLAU's guideline requests a similar content in the EIA as the guideline of the MoA (described above), but lists some additional chapters that should be covered, for example, information about:

⁵ The EMP is an integral part of the EIA



- Institutional arrangements
 - roles and responsibilities of key parties implementing the EIA
- Environmental management policies and commitments
 - of the investment project proponents
- Training and environmental awareness
 - for example, on the job training of staff and management team regarding internal environmental monitoring
- Auditing requirements
 - internal and external auditing
- Documentation and record keeping
 - updating of EMP documents
 - training records
 - site inspection reports

For assessing an EIA handed in by a proponent (investor) in the scope of a planned investment project, the guideline of Benishangul-Gumuz provides a scoring system as basis for decision on the acceptance of an EIA. According to the described system, the EIA will receive approval when receiving more than 75 points out of 100. When receiving only 50 – 75 points, an approval will be contingent on amendments made according to the requirements set by the review committee. An EIA receiving less than 50 points will be rejected.

5.2. Assessment

The Environmental Impact Assessment Proclamation serves as good framework law for governing the main issues in the context of EIA. The provisions governing public participation and the clear determination of responsibilities for authorizing EIA and monitoring its implementation are of special importance. According to the F.P., the Federal Environmental Protection Authority or the respective regional environmental agency is responsible for authorization and monitoring of EIA. However, the fact that guidelines for drafting EIA in the context of agricultural investment projects were issued by the MoA may indicate that the Environmental Protection Authority has delegated some of its responsibilities to respective line ministries. Therefore, in the context of implementing a standard operational procedure for the assessment of EIA, handed in by investors, the actual responsibilities of each involved body and its legitimization will need to be reviewed. This requires a determination of roles and responsibilities on the federal (including the Environmental Protection Authority, the MoA (RLAUD and EHAIA) and regional level.

According to the proclamation (Art. 3.3), licensing agencies prior to issuing an investment permit for a project shall make sure that the mentioned authorities have approved the project based on a respective EIA. In practice, however, the holding of an investment license is a precondition for investors to apply for land to lease, while the handing in of an EIA is requested at a later stage of the land lease procedure, shortly before contract conclusion or even after contract conclusion.



The fact that the proclamation has considered the payment of penalties in the case of making false statements, operating without an authorization of the environmental authority or failing to implement the measures of the EIA /EMP in theory is a good sign as it reflects the high priority given to environmental issues. But, it has to be verified if this provision in practice is being applied.

A challenge arises from the fact that the investor / proponent himself has to carry the costs for an EIA. It may be questioned if the study team of experts drafting the EIA is acting fully independently and objectively, since the investor is in fact their client. Therefore, an independent and thorough checking of the EIA by the responsible authority is of utmost importance.

International best practice examples determine the EIA process by illustrating the following process steps:

- Screening
- Scoping
- Baseline studies
- Impact prediction and evaluation
- Mitigation
- Consideration of alternatives
- Social and environmental management plan
- Environmental Impact Statement (report)

Furthermore, public consultation as complementing process step is considered at various stages of the process (IFC, n.d.).

MoA's guideline for preparing an EIA and BoEPLAU's (Benishangul-Gumuz) guideline consider these elements and give a good indication about the contents and requirements for an EIA. However, regarding the concrete content that is expected to be documented in an EIA, they are lacking a detailed description. On the basis of such a detailed description an evaluation grid for evaluating EIAs could be developed as basis for approval, approval with certain conditions or rejection of the EIA. BoEPLAU's guideline gives an indication how such an evaluation could look like, however, the evaluation has to be tailored to agricultural commercial farm investments and the whole evaluation procedure requires a detailed process description. Special emphasis has to lie on the evaluation of the environmental management plan in relation to the identified environmental and social impacts. Listed measures for mitigating negative impacts have to be in line with the detected repercussions of the investment project and the allocated financial means for each measure.



6. Model (lease) contracts for agricultural investments in land

Once land for LSAI is identified and an investor is found, the use of the land has to be formalized by a lease agreement. This chapter provides a review of legal regulations concerning (rural) land lease for investment purposes, critically examines model contracts for LSAI used on the federal and regional level and illustrates international principles, standards and recommendations regarding contracts for LSAI.

6.1. Review of relevant legal regulations and model contracts

Legal regulations

While the F.P. 721/2011 governs the lease of urban land, there is no such proclamation for rural land. The legal regulations regarding lease of rural land to investors are limited to some basic provisions, mainly contained in the Rural Land Administration and Land Use Proclamation 456/2005. Art. 5(4a) of F.P. 456/2005 mentions that investors engaging in agricultural development activities can “use” rural land in line with the investment policies and laws. The Ethiopian Investment Proclamation (F.P. 769/2012) does not explicitly state that land for investments is allocated on the basis of lease contracts, but Art. 18(2c) refers to a land lease agreement so, it can be assumed that land for (any) investment is granted by concluding lease contracts. Art. 6(6) of F.P. 456/2005 governs that land held through lease should be registered as such by the competent authority. Art. 8(1) determines that landholders can lease their land to investors, and Art. 8(4) mentions that investors are entitled to use their lease right as collateral.

An interesting point with regard to leasing out state-land to investors is, if interpreted correctly, that priority should be given to peasant farmers / semi pastoralists and pastoralist⁶. This implies that necessary access to land to the above-mentioned groups should be facilitated before land is given to investors. In practice, this provision is not followed. In contrary, there is evidence of forced evictions in favor of agricultural investment projects (see chapter 2).

The lease rate, charged for agricultural land, is determined in the land laws of each region (Rahmato:2011; pg. 15). Investment permits for agricultural investments are issued by the Ethiopian Investment Authority (EIC). A valid investment permit is a precondition to lease land for the investment project from the government.

As mentioned above, the former Federal Agency EAILAA was renamed into *Ethiopian Horticulture and Agricultural Investment Authority* (EHAIA) and its assignments and responsibilities were amended. According to the new Regulation, the responsibility of leasing out land to investors now lies in the responsibility of the regions⁷. So, while EAILAA itself was responsible for leasing out land, EHAIA now rather has support, guidance and monitoring functions in regard to agricultural investments and is responsible for preparing respective policies, strategies and laws.

⁶ Art. 4, F.P. 456/2005: “ Subject to giving priority to peasant farmers/semi pastoralists and pastoralists:
a) Private investors that engage in agricultural development activities shall have the right to use rural land
....”

⁷ But, the regions can delegate this assignment to EHAIA (email information Bayeh Tirnuneh, 03.03.2017)



Art 3 of the Regulation 396/2017⁸ states that land identified and transferred for agricultural investment should be “free from third party possession”. Since Regulation 396/2017 in contrast to the former Regulation No. 283/2013 refers to land transferred by the regions and by EHAIA (when delegated to the agency by the regions) this means that all land transferred for agricultural investment purposes in Ethiopia has to be free from third party possession. Alleging that the term “possession” includes individual land use rights, this implies that only land not used by third parties (on the basis of customary or formalized land-use rights) can be transferred for agricultural investment purposes. However, the unclear formulation leaves room for interpretation.

Model Lease Contracts

Until 2016, EAILAA was responsible for leasing out large land areas (>5.000 ha) for investment purposes. The size of land leased out by EAILAA ranged from 5.000 to > 100.000 ha per contract⁹ EAILAA used a model contract as basis for all land lease agreements issued for agricultural investment purposes. Amendments were only done in Art. 1 (Scope of Agreement) that determines the size and purpose of the lease object, and in Art. 2 that determines the lease period and payment rate. All other articles are standard clauses, contained in all lease contracts between EAILAA and investors and not altered¹⁰.

In total, the contract has eight pages. Although containing articles determining the rights and obligations of lessee and lessor, grounds for contract termination and settlement of disputes, the model contract is not exhaustive and rather vague regarding the regulatory content. Basic information such as the recipient/address/bank account to which the lease payments should be directed are missing. Also, a map determining the exact location of the lease object is not attached to the contract. It is drafted by the lessor and handed over to the lessee within 30 days after contract signing (Art. 7.1).

Regulations are not always defined clearly and unambiguously, expressions used like “as the need may arise” (Art. 2.2.5) referring to changes of the lease height or “upon justified good cause” (Art. 3.6) and “for better public interest” (Art. 5.4) referring to reasons for contract termination are not clear regarding their legal implications and consequences. Also, the structure of the model contract is not consistent and sometimes misleading. For example, development obligations - such as the building of hospitals - are regulated under “rights of the lessee”. Regulations regarding the consequences of contract termination are found in various articles but, in fact should be regulated in one Article.

Article 1.2 grants “full and exclusive use of the lease object” to the lessee, which could lead to misunderstandings. Restrictions in use, for example exclusion of mining should be formulated. Article 8.1 governs the renewal of the lease agreement “on the same terms and conditions”. Bearing in mind that the lease agreements are concluded for very long time periods (30 years or more), it would be advisable to allow for renegotiation of the terms and conditions.

⁸ Art. 6 determines powers and duties of EHAIA. Under 6(3) it reads: “...identify and verify horticulture and commercial agricultural investment lands, **make sure land is free from third party possessions...**”

⁹ <http://www.moa.gov.et/land-leased>

¹⁰ Oral information from EAILAA legal Dept.: 2016



According to Article 9.4 the contract can be terminated when the lessee has not paid rent in two consecutive years. This seems quite a long time-span, it could be considered to change the payment mode to quarterly or six months payments and allow for contract termination when two consecutive lease rates have not been paid.

In the model lease agreement, a crucial obligation of the lessee is to “start to develop” the land within six months and to develop the whole lease plot within three years. However, the agreement does not specify any minimum criteria to proof that development has actually started and in general what the term “development” comprises. A breach of contract can hardly be punished when the obligations are not clearly defined. Art. 4.4 governs that the lessee has to execute all development activities as per the agreed business plan. It is very good that the contract refers to the business plan. However, the business plan then should also be an integral part of the agreement and annexed to it. Also, it must be guaranteed that the business plan describes all development activities including a time line so that clear reference can be made to the lessee’s obligations. If this is not the case it would make sense to (in detail) determine the required development activities in the lease agreement itself.

It can be regarded as positive that environmental protection issues are considered in the model contract and the lessee is obliged to take over conservation measures on the land leased (Art. 4 .1). But, a major deficit regarding the regulatory content of the model lease contract is the fact that an Environmental Impact Assessment (EIA) has to be drafted only three months after the conclusion of the contract (Art. 4.1(d)), whereby – by law¹¹- it should actually be in place before. The EIA just as the business plan are key documents for assessing if an investment is socially and environmentally sound and economically viable. This assessment should be done before signing a lease contract. Both documents should be an integral part of the lease contract and annexed to the contract. Currently, this is not the case (see Art. 16). Also, the model lease contract is lacking provisions regarding social obligations of the lessee such as expected job creation, creation of community benefits and respecting of (customary or formalized) land use rights. Reference should also be made to existing labor rights and/or to International Labor Organization (ILO) standards.

The regions, when leasing out land for investment, up until now are using their own lease contract templates. Even more than the EAILAA template, they lack specification of important arrangements.

The model contract used in Benishangul-Gumuz, for example, does not relate lease payment to a timeframe, i. e. yearly payments (Art. 4(2)) and also does not list where payments should be directed to. Article 3 refers to an “approved land use plan”. It is not clear whether this is a plan to be handed in by the lessee, that shows how the lease object is to be used, or a general land use plan of the region /Kebele. Article 5(4) also refers to an “approved plan” whereby it is not clear if this refers to the land use plan or an additional plan that is subject to approval by the lessor. Article 5 (under lessee’s obligations No. 5) refers to a “plan of action” without further explanation regarding the content and implication of that plan. Since the agreement makes reference to the mentioned plans, they should be an integral part of the contract and annexed to it, which is not the case.

¹¹ See chapter 4.



The model contract of Benishangul-Gumuz describes the social and environmental obligations of the lessee. But, again these are quite general considering that the agreement is made for (large scale) investment projects. No reference is made to a required EIA. Art.5(7) referring to the ‘lessee’s obligations’ obliges the lessee not to “cause gross damage on the society and environment directly or indirectly”. The wording leaves room for ample interpretation. A qualitative and quantitative description of the term “gross damage” is lacking.

A critical clause in the contract of Benishangul-Gumuz can be found under Art.6(2), which allows that the leased land can be taken away from the lessee for “public purpose”. This has to be seen in the context of expropriation procedures for “public purposes” (compare chapter 7). According to Art. 11(7) of the model contract, termination of the contract by the lessor (with six months prior written notice) is even allowed, when the land is needed “for another purpose”. Although the Article includes compensation measures (substitute land and compensation for built structures) the clause poses a risk for the investor and his investments made.

Gambella’s contract template, with in total four pages, is insufficient regarding its regulatory content. Articles dealing with the rights and obligations of lessor and lessee require more details. Contract termination is possible “when the lessee used the land in a way that could harm the rights and benefits of the lessor” (Art.11(F)). The formulation leaves ample space for interpretation and gives extensive power to the lessor. This can result in arbitrary decision making and attempts of corruption. The contract does not provide for a clause that governs compensation after termination of the contract for improvements and facilities done by the lessee. Art. 13(2) empowers the lessor to claim compensation for “anything that could damage the land” but does not specify this qualitatively (what kind of damages) or quantitatively (amount of compensation to be paid by the lessee). This, just as all the other vaguely formulated clauses, can lead to disputes between lessee and lessor during duration of the contract and when terminating it.

6.2. Assessment

The review of laws and regulations concerning land lease for agricultural investments shows that the legal regulations lack clarity. This especially counts for the questions if i) peasants, pastoralists and semi pastoralists should be given preference in land acquisition before use rights (by lease agreements) are given to investors and ii) if land given to investors has to be free from any other holding and use rights (“third party possessions”). Since numerous publications report about forced evictions in the context of agricultural investments, this can only mean that either the legal regulations can be interpreted differently than summarized in chapter 5.1 or expropriations and forced evictions for agricultural investments into land are lacking a legal basis. Also, as shown the regulatory content regarding lease for rural land is weak. However, it is possible that general provisions governing the issue of contracts in general are contained in the Ethiopian civil code which has not been subject of this review.

As shown, F.P. 456/2005 governs that the lease right can be used as collateral. However, it is questionable if banks are willing to accept a lease right (in rural areas) as security for loans. This certainly depends on the marketability of such a right.



The review of the model contracts reveals that the templates are not exhaustive. The government through promoting LSAI into land expects sustainable economic development of the country. At the same time the government rightly demands compatibility of the investment project with ecological and social requirements. This also reflects in the model contracts. However, the contained provisions are too vague to ensure that the mentioned government objectives are actually met. An agreement determining in detail what is expected from each contracting party and what happens when one party does not adhere to the contract provides security for both parties and creates trust. Since the objectives of the government as lessor focus on i) the economic viability of the investment project, ii) the mitigation of environmental damages and iii) the avoidance of negative impact on the livelihood of affected communities or individuals, special focus has to lie on governing these aspects in the lease agreement. Again, against this background, the business plan and the EIA are important documents.

For monitoring and enforcement of the contractual obligations, it is essential that the contract also contains clauses that govern how to deal with non-compliance. Such regulations can range from i) the obligation to inform the lessor in written describing the reasons and including a suggestion for solving the issue, ii) monetary penalties that have to be paid, and iii) termination of contract.

Concluding, the existing model contracts require revision. It is recommended to consider international experience regarding the role of contract negotiation and contractual agreements for LSAI. Numerous publications have summarized principles and standards to be followed in this regard.

6.3. International principles, standards and recommendations

The concluding of a contract for farmland investment is often seen as completion of a negotiation process, while in fact it is “simply the starting point of establishing a long-term relationship between the state, investor and community” (iisd, 2014). Therefore, before entering into negotiations with investors, it is important that the government conducts due diligence in order to assess the social, environmental and economic viability of the investment project. This is crucial against the background that there is a high rate of failure of LSAI. Such an assessment of the investors would include the checking of their financial capacity, the agricultural, technical and managerial experience of the investor, the suitability and viability of the investor’s business plan and the investors experience in dealing with social and environmental issues (iisd, 2014).



Box 4: Points to consider by government before and during negotiation with investors

- Rents from agricultural operations
- Employment creation
- Training of local persons
- Training for higher skills employments
- Ensuring new technologies are used and transferred to local persons
- Economic linkages for the purchase of goods and services by the investor
- Creation of processing industries and value addition
- Gender equity issues and opportunities
- Health considerations in the community
- Education considerations in the community
- Water management, reviews and allocation
- Environmental protection
- Other social and economic benefits (housing, sanitation etc.) for local community

Source: authors compilation based on iisd, 2014

Farmland investments can generate positive and or negative outcomes for host countries and local communities (World Bank 2015). The table below shows the major possible positive outcomes and downsides to farmland investments.

Table 4: Positive outcomes and downsides of/to farmland investment

Positive outcomes of farmland investment	Downsides to farmland investment
Employment creation	Loss of land and poor resettlement plan
Integration of local farmers	Lack of openness and engagement with local communities
Expansion of market opportunities	Weak assessment of commercial viability
Establishment of community development programs	Poor management of environmental and social impacts
Increased incomes improve food security	Insufficient mechanisms to raise grievances

Source: authors compilation based on World Bank, 2015

With the aim to let the positive outcome prevail, special emphasis is required when drafting the agreement with a potential investor. An UNCTAD¹²-World Bank study from 2014 revealed that employment creation can be a top outcome from LSAI. In order to manifest employment creation, a respective employment provision can be inserted in the contract, including specific targets for job creation, requirements to employ local citizens, to fill management positions with nationals and to invest a certain amount of money for vocational trainings of employees. When the business plan envisages housing, education and health

¹² United Nations Conference on Trade and Development (UNCTAD)



benefits for employees this should reflect in contractual obligations including time line, budgets to be used and standards for construction (World Bank, 2015, iisd, 2014).

In general, it is already common practice to make social and environmental impact assessments mandatory for investment projects. Findings of the assessment should reflect in the agreement between government and investor (iisd, 2014). The measures determined in an environmental management plan that is part of the EIA should be turned into binding obligations for the investor in the agreement. Moreover, additional provisions referring to environmental obligations can be added. Also, reference to domestic environmental laws should not be lacking in the agreement (iisd, 2014).

Special regulations are required to consider gender issues and for example to prevent the use of forced labor or child labor. Also, specific provisions on labor standards, health care and safety should not be lacking in the contract. Where applicable, reference to domestic labor law should be made (World Bank, 2015).

A successful way to integrate local farmers could be to make use of outgrower schemes that are sometimes part of the investor's business model. Such business models – if well implemented - facilitate the transfer of technology and know-how, they allow peasants to retain control over their land and to create more employment (World Bank, 2015). However, there are also downsides to outgrower schemes. From the smallholders' perspective information asymmetries pose a risk. Smallholders are often lacking necessary market information to negotiate good conditions with the involved investor (company). From the investors perspective high(er) transaction costs when dealing with a large number of smallholders (instead of few larger commercial farmers) pose a challenge (AGWATER solutions 2011¹³). Despite the fact that outgrower schemes require separate contracts between the investor and the farmer, which is not linked to the investment contract, a provision in the investment contract determining that such outgrower schemes should be established is necessary. Such a provision should provide the framework for governing the outgrower scheme. For example, special emphasis could be given to involving women. It could also be governed that outgrowers receive input supply like seeds or fertilizers from the investor and / or provide for price setting mechanisms (World Bank, 2015).

A method to expand market opportunities and add value to primary production is to create processing facilities. A respective clause for establishing such facilities could be included in the investment contract if fitting to the business model. The contract should oblige the investor to built such facilities in a negotiated time frame and specify the investment sum as well as technical data (e.g. processing capacity, employees to be hired) (World Bank, 2015).

Investments prove to be more economically viable when investors partner with the community and provide social and economic development programs. A possibility is to pay a certain share of the revenues into a community trust. Another option is to build medical centers, schools or community infrastructure like rural roads. In order to effectively involve the community, the concluding of a so-called enforceable Community Development Agreement could be included in the contract. The respective provision in the contract should determine i) process and parameters, ii) who should be included, iii) financial means

¹³ IWMI Project: <http://awm-solutions.iwmi.org/>



needed and iv) grievance mechanisms. To make such a provision enforceable, the contract could include a provision that the noncompliance with the terms of the Community Development Agreement is considered a breach of contract and can lead to termination (World Bank, 2015).

Farmland investments can have a positive influence on food security by food production for the host country market and through direct employment or outgrower schemes resulting in rising purchasing power (World Bank, 2015). However, investment can also have negative impacts on food security, for example when land users who traditionally used the investment land (collectors, hunters, nomads) are deprived from accessing the land after the investment project starts. Also, the introduction of new crops, production methods or scales production of monocultures can cause the spread of pests and a decline in commodity prices which can have a negative effect on local production (iisd, 2014). Such issues need to be identified already in the contract preparation and negotiation phase and respective clauses to protect such land users have to be included in the contract).

The respecting of legitimate land tenure in the project area is a key precondition for long term success and sustainable engagement. “Companies that ignore preexisting or customary local land rights in the land acquisition process may incur financial damages ranging from a 29 folds increase in operating costs to outright abandonment of operations” (Boudreaux, 2015). Against the background that a growing number of cases is reported where local communities have been evicted from their land and resettled without compensation (iisd, 2014), land tenure issues have to be closely examined already in the preparatory phase of an investment project. The obligation to respect existing legitimate land tenure rights, no matter if customary or formalized, should reflect in the agreements made between governments and investors (iisd, 2014). Any resettlements should be made in agreement with the local community and subject to commensurate compensation (Boudreaux, 2015).

An important issue aside of the consideration of land tenure rights is the clarification and regulation of water-use rights. Keeping in mind that land lease contracts for farmland investment are often concluded for periods of up to 30 years or more, the water use regime has to be regulated in order to ensure its sustainable use and to avoid conflicts with other users (iisd, 2014).

As mentioned above, financial viability of farmland investments is crucial to ensure sustainability of the investment project. Therefore, it might be feasible to include provisions governing auditing rights for the government in the contract in order to be able to monitor performance data (iisd, 2014).

Discourse: Outgrower schemes at a glance

Although not directly related to investment contracts for LSAI (that govern the contractual relationship between governments and investors) the topic of integrating outgrower schemes into investment models receives more and more attention. As shown above, governments that want investors to engage in outgrower schemes can insert a respective provision in the investment/lease contract which obliges the investor to do so. Aside of that, governments can actively promote outgrower schemes by developing tailor made concepts for outgrower schemes that consider the country specific situation and needs.

In literature, the term outgrower scheme is often used as synonym of contract farming: “outgrower schemes, also known as contract farming, are broadly defined as binding arrangements through which a



firm ensures its supply of agricultural products by individual or groups of farmers. In other words, *ad hoc* trade agreements are being replaced by coordinated commercial relations between producers, processors, and traders leading to a vertical integration of the agricultural value chain. Under this umbrella, a variety of arrangements exists, which differs in the partner's input and management (Felgenhauer and Wolter, n.d.).

Other sources distinguish between different models of contract farming, whereby only the so-called Nucleus Estate Model – where a big farm or agricultural company partners with smallholders - is referred to as outgrower scheme. Literature research has revealed that it is almost impossible to find the one fitting definition.

In fact, “outgrower schemes are incredibly diverse, not only with regard to the products grown but also in the myriad ways in which they can be structured and managed. The one element that all models have in common, however, is that they are founded on linkage-dependent relationships through which companies provide inputs and technical support to farmers in return for access to the produce” (TechnoServe and IFAD, 2011).

Smallholder farmers often have limited abilities to increase production and to make the transition from subsistence farming to market-oriented production. They often lack access to credit required to finance inputs such as seeds, fertilizers, water and machinery. Their production volume and quality of produce is usually low and marketing opportunities are limited (TechnoServe and IFAD, 2011). Outgrower schemes give them the possibility to access inputs and know-how. Typical services that companies offer to outgrowers are the provision of inputs on credit, extension advice, packaging materials, transport of produce, ploughing and spraying (van Gent, n. d.).¹⁴

Private companies show an increasing interest in partnerships with small holder farmers via outgrower schemes because they gain an improved control over supply. This is especially the case when a product is not easily available or quality standards are poor. Through direct involvement by transferring management know-how and technology companies can enable smallholder farmers to meet future supply requirements and make sure that quality standards can be met (Felgenhauer and Wolter, n. d.).

Table 5 illustrates the major benefits of outgrower schemes.

¹⁴ http://www.fao.org/fileadmin/user_upload/contract_farming/presentations/Contract_farming_van_Gent.pdf



Table 5: Major benefits of outgrower schemes

For the buyer	For the outgrower
<ul style="list-style-type: none"> • Reduced capital investment in centralized production (land, infrastructure, equipment etc.) • For processors, enhanced control over sourcing (variety, quality control, timing, food safety, traceability) • Potential for improved product quality • Enhanced flexibility to target new market segments with specific qualitative specifications (e.g. fair trade, organic) • Diversifying production risks (e.g. crop disease) via smaller, geographically-diverse production areas • Greater flexibility in responding to market signals • Reduced labor costs (and conformity to labor laws) through subcontracting • Favorable public relations with government and the wider public • Potential for enhanced transactional efficiencies and reduced procurement costs via direct-sourcing linkages 	<ul style="list-style-type: none"> • Improved access to credit for purchase of inputs, or direct provision of inputs by the buyer • Guaranteed access to new, higher-value markets (e.g. processing, export, niche) • Improved access to extension services and post-harvest technical assistance • Better access to new technical and management skills required to satisfy market requirements • Improved access to information and enhanced market transparency • Reduced fixed (e.g. equipment) and/or variable costs (e.g. inputs, transport) • Higher income due to increased yields and/or quality-related price premiums • Potential for higher farm gate prices via direct linkages to buyers

Source: TechnoServe and IFAD, 2011

However, there are also downsides to outgrower schemes. Unequal power relationship between companies and small holder farmers result in situations where the small holder farmers provide land and cheap labour while at the same time carrying most of the risks. The poorest small holders, among them often women, are often not considered in outgrower schemes. Sometimes contracts between companies and outgrowers only provide basic details and “are unlikely to promote the interest of small farmers”. The production arrangements often focus on crops for export or large urban markets and “therefore tend to consolidate and promote the role of large corporations in global agriculture supply chains” (ActionAid, n.d.).



Box 5: Key minimum requirements for appropriate contract schemes

The project must:

- not result in farmers' overspecialization in certain crops to the detriment of building resilience and contributing to local food security;
- promote sustainable farming practices and not promote reliance on chemicals or expensive seeds, or lead to excessive debts;
- lead to higher incomes for farmers than they would otherwise earn, and compared to alternative models;
- substantially include women farmers and promote their rights;
- promote the land rights of farmers;
- apply free, prior and informed consent of those affected in terms of project design and implementation.
- be negotiated transparently and fairly among the parties, providing adequate information at all times on the financial aspects of the project and the risks and likely impacts;
- consider alternative contract farming models;
- be regulated by a written contract spelling out the details and obligations of both the company and the outgrowers.

Source: ActionAid, n. d¹⁵.

Key aspects that form part of the outgrowing model are: 1. Access to inputs; 2. Extension services; 3. Use of contracts, 4. Farmer grouping, 5. Grower management, 6. Centralized production/processing, 7. Post-harvest logistics (including packaging, cooling and transport) (TechnoServe and IFAD, 2011).

Aside of these key aspects, every single scheme "calls for a situation specific design according to market opportunities, product features, suppliers' and buyers', capabilities, capacities of business development services as well as local, national, regional and international framework conditions for private investments into agri-food business development along the entire value chain" (Will, 2013).

Governments can play a crucial role in providing favorable conditions for outgrower schemes. On the regulatory, enabling and development level they can appropriate laws and an efficient legal system, provide for arbitration or dispute resolution methods, provide training in technological and managerial skills, initiate and facilitate research activities into the products under contract, provide for agricultural extension services and research stations. Governments can actively promote outgrower schemes (and contract farming) by bringing together agribusiness and interested farmers / farmer groups. They can disseminate market information regarding the demand of products and strengthen the managerial skills of farmer's organizations (van Gent, see footnote 14).

Governments could also support the implementation of outgrower schemes by providing model contracts to be used for the agreements between agricultural companies and (small holder) farmers. However, as already mentioned, the schemes are manifold, and each single scheme requires a tailor made contractual

¹⁵ http://www.actionaid.org/sites/files/actionaid/contract_farming.pdf



arrangement. A model contract or guide that determines standard clauses to safeguard necessary social and environmental standards and facilitate dispute resolution mechanisms but at the same time leaves room for individual contractual arrangements as the specific production model requires could provide an orientation for agricultural companies and (small holder) farmers.



7. Monitoring of large-scale agricultural investments into land

So far, the expectation of the Ethiopian government regarding benefits resulting from large LSAI, such as yield increase on smallholder level, technology transfer and employment creation, have not been met.

This chapter points out the importance of a monitoring scheme for monitoring LSAI. It shortly summarizes the main issues with regard to a lacking monitoring regime, illustrates how monitoring is integrated in the process of leasing land for LSAI, and points out how monitoring on different levels can feed into a country wide monitoring scheme for LSAI.

A recent study of the World Bank revealed that although some spill-over effects could be observed with regard to increasing yields and input use for maize production on small-holder farms, such spill-over effects could not be verified for other crops. Furthermore, the expected positive impact of large farms on labor demand could not be verified in the study. “This supports the notion that large mechanized farms may be good at increasing the intensity of land use but not at generating local employment” (Ali et al. 2016).

Aside of the limited success regarding spill overs, severe negative impacts are associated with LSAI. EIA, that are mandatory for investment projects are sometimes ignored, EIA reports are not taken seriously and participation of the local communities is neglected. Control mechanisms that monitor and enforce contractual obligations of the investors are not in place. This often leads to breach of contract by the investor, for example by engaging in activities contrary to the terms and conditions of the lease contract. Apparently, investors have even used chemicals prohibited by the world community that affected the local communities and the natural environment (Behailu, 2015).

A recent survey in Benishangul-Gumuz region has shown that many investors do not perform as expected. In Gambella, contracts lately have been terminated because of non-compliance with the lease contract¹⁶. It was even reported that investors have not developed the land leased for agricultural investment but nevertheless requested and received a loan of the Ethiopian Development Bank, using the leased land as collateral.¹⁷

In order to supervise and control the impacts of LSAI, a monitoring system has to be in place. Monitoring is a precondition for taking government actions, as it delivers the required information needed. When monitoring reveals that investment projects do not deliver the expected results, or negative impacts exceed the positive outcomes, corrective measures on the policy level have to be applied. This in theory could even result in revising the current agricultural strategy.

The issues that demand monitoring have to be determined against the country specific background and formulated government policies.

¹⁶ Verbal information from Gambella and Benishangul-Gumuz officials, 2017.

¹⁷ The granting of loans on the basis of leased land (governed in the federal lease template formerly used by EAILAA but apparently also possible for investors with lease contracts of the regional administration is a practice the government should abolish as soon as possible as it contains unpredictable risks for the Ethiopian Development Bank.



Based on policy formulation of the Ethiopian government and problem statement of Ethiopian authorities dealing with LSAI, the following issues should inter alia be subject to monitoring:

- General framework data
 - Amount of land allocated for LSAI
 - Amount cultivated
 - Production line
 - Performance data
- Investors profiles
 - Foreign
 - Local
 - Joint venture
 - Natural or legal person
- Impacts
 - Economic
 - Social
 - Environmental (bio-physical)

The establishing of a system, which monitors the above-mentioned parameters requires extensive data from different sectoral institutions, for example the Ethiopian Central Statistical Agency, Investment agencies, EHAIA, regional land administration and environmental authorities.

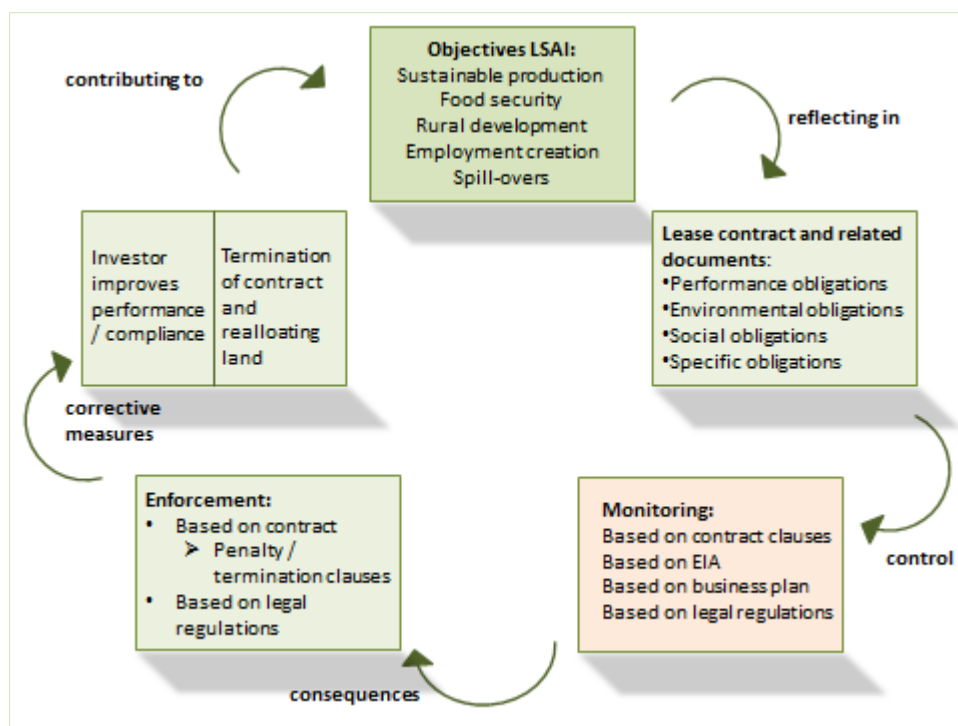
Aside of the above-mentioned requirements for monitoring LSAI on country level, a monitoring system is also needed in order to control the factual obligations the investor has committed to by entering into a lease agreement. This not only refers to obligations and duties governed in the lease agreement itself but also to the documents forming an integral part of the agreement, i.e. the EIA and the investor's business plan. Both documents together with the lease contract have binding character for the investor. Without a monitoring regime in place at the institution responsible for leasing out the land for investments, the contractual obligations cannot be enforced. Verbal information gained from responsible officials on federal as well as on regional level indicates that monitoring of the investor's obligations is not well established. Although checklists have been developed for on-site visits, the authorities lack capacity to implement control measures. This refers to human capacity as well as to transport, i.e. available vehicles. Therefore, the arrangements made in lease contracts often remain a "toothless tiger".

Additionally, the regulations concerning contractual obligations of the lessee in the model contracts used on the federal and the regional level are rather vague and unclear regarding their regulatory content and legal implication (compare chapter 5). Therefore, a precondition to make monitoring effective in regard to the objectives followed is to design comprehensive and legally binding agreements and documents that clearly determine what the investor has to do and what consequences can be expected in case of non-compliance. Monitoring in this respect is only effective when the monitoring criteria (investor's obligations) are clearly stated in the agreements with the investor and when the agreements contain means for enforcement (penalty and termination clauses). Otherwise, monitoring will only serve for recording the current status of investment projects without practical consequences for the investor.



Box 6 shows the relationship between the objectives followed with leasing out land for LSAI, the lease contracts with investors, monitoring and enforcement. It hence illustrates how monitoring integrates in the process of leasing out land for LSAI.

Box 6: Integration of monitoring in the lease process



Source: Author's illustration

As illustrated, monitoring by the authority responsible for leasing out land for investment is an integral part of the lease procedure and should be one of the core assignments of the respective authority. This requires the allocation of adequate financial means to finance the capacity needs for such a monitoring scheme. Results, recorded in the scope of monitoring cycles, need to be stored in databases for statistical processing. Such statistical data can then also be used to take corrective measures on government policy level.

A monitoring scheme on authority level should focus on the following:

1. Environmental issues
2. Social issues
3. Investment performance issues
4. Contractual issues

Whereby, as already mentioned, ideally the issues listed under 1-3 are governed in the lease contract, so that a certain overlap between points 1-3 and 4 can be expected.

The monitoring of environmental impacts, resulting from LSAI in general and environmental obligations of the investor in specific is crucial since negative impacts of investment projects can be considerable. An



environmental¹⁸ monitoring will need to focus on monitoring the obligations investors have committed themselves to. It concerns all regulations laid down in the lease contract, including the compliance with environmental and labor legislation and all assignments listed in the EIA. The implementation of the EMP, belonging to the EIA, is of special importance, since it precisely lists measures that have to be taken in order to mitigate negative impacts. As basis for a comprehensive environmental monitoring, the EIA ideally points out environmental and social management tasks as precisely as possible. This includes for example measures to engage in local community development, to safeguard worker's health and safety, to mitigate hazards evolving from the application of pesticides and to protect indigenous flora and fauna.

Another important document that is relevant in the context of environmental monitoring is the Social and Environmental Code of Practice (SECoP). The SECoP was updated in 2016 and is currently still in a drafting stage, however, it is envisaged to make the described minimum (bronze) level for social and environmental compliance in Ethiopia legally binding in future¹⁹.

For the monitoring of the investor's performance, the business plan serves as basis to check the planned business concept against the real situation. In the cases that existing business plans have not been well developed additional performance indicators will have to be determined that will be checked during on-site visits and/or on the basis of the investor's reporting requirements. For instance, some important performance indicators are i) the stage of land development (cleared and cultivated to what extent), ii) establishment of farm buildings and facilities, iii) average yields (quintals / ha), iv) set-up of accounting system, v) existence of processing facilities, vi) contribution margin / ha.

All contractual issues not relating to the investor's performance or his social and environmental obligations, such as for example timely lease payments, general reporting requirements, and limitations in using the land will also have to be monitored. However, this data might only partly be relevant for the monitoring of LSAI on country level.

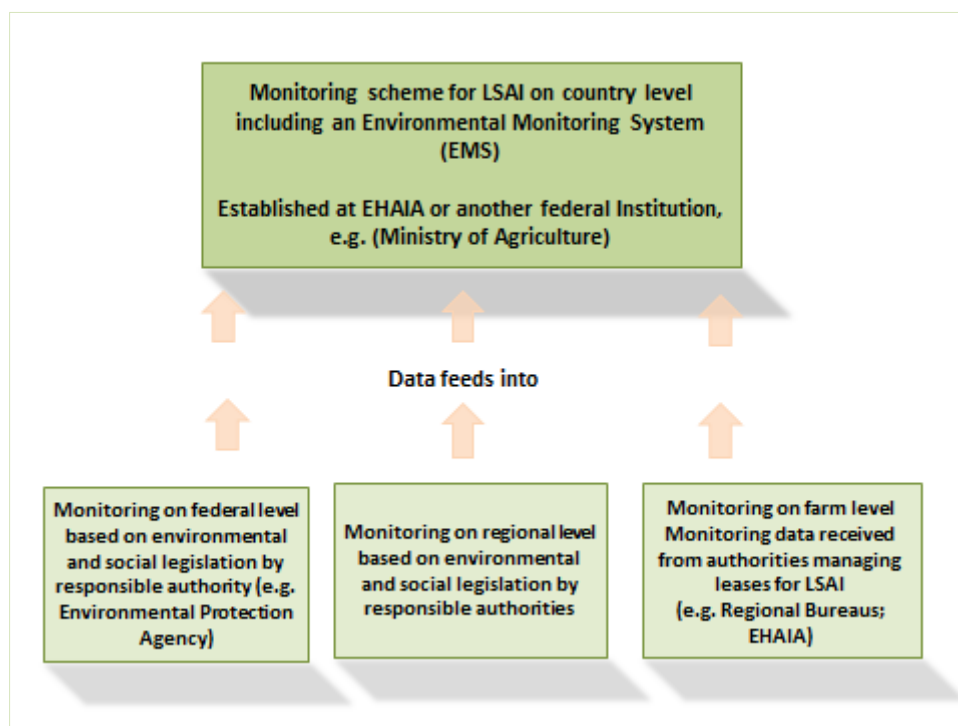
The actual aim of monitoring by authorities responsible for allocating land to investors for LSAI is to control the compliance of the investor with the agreements made in the lease contract as well as related documents and to take action in case of non-compliance. But, at the same time all data collected in the framework of such a monitoring on farm level together with data from other authorities or ministries feeds into the monitoring scheme on country level (see Box 7).

¹⁸ Note: according to the F.P. 299/2002 : "Environment" means the totality of all materials whether in their natural state or modified or changed by human; their external spaces and the interactions which affect their quality or quantity and the welfare of human or other living beings, including but not restricted to, land atmosphere, whether and climate, water, living things, sound, odor, taste, social factors, and aesthetics.

¹⁹ Information contained in internal project document "Information management system for agricultural investment land administration and utilization in Ethiopia"



Box 7: Data flow for monitoring on country level



Source: Author's illustration

A monitoring scheme (no matter on what level) has to clearly determine the following points:

- What is going to be monitored
- How is monitoring going to be implemented (method)
- How often will monitoring take place (monitoring cycles)
- How is monitoring going to be documented
- What consequences arise from the results of monitoring

An important tool for implementing a monitoring scheme is a comprehensive IT-system, ideally combining GIS with a database to facilitate the recording of spatial and non-spatial information. An important aspect for successfully designing a monitoring scheme is the consideration of available capacity. It will be unrewarded to design a sophisticated monitoring regime when implementation fails due to the lack of financial means, skilled staff and transportation means for carrying out monitoring in the field. So, on the one hand, when deciding for implementing a comprehensive monitoring scheme, the readiness to allocate necessary funds has to be in place. On the other hand, a monitoring scheme should be designed fit for purpose without losing sight of eventual capacity limitations.



8. Expropriation, Compensation and Valuation Issues

This chapter provides a discourse to the topic of expropriation and compensation in Ethiopia. It starts with a brief legal review and provides an assessment with regard to the legal framework. It then looks at implementation issues based on a literature research made. In the subsequent subchapters the findings are assessed and first ideas for an approach regarding the development of a conceptual model for valuation to determine compensation in the scope of expropriation are summarized.

8.1. Legal review

The legal basis for expropriation, compensation and valuation is found in the Ethiopian Constitution, the civil code, the “Expropriation of Landholdings for Public Purposes and Payment of Compensation Proclamation” (F.P. 455/2005) and the regulation 135/2007 (based on F.P. 455/2005). Furthermore, various other proclamations, such as the Federal Proclamation 456/2005 on Rural Land Administration as well as regional laws and directives contain respective regulations (Alemu 2013).

According to the Ethiopian constitution (Art. 40(3)) land is common property of the people of Ethiopia and should not be subject to sale. Immovable property built by a landholder and improvements made are considered private property. It can be alienated by the landholder and be subject to compensation payment in the case of expropriation. The government has the power to expropriate private property for public purposes. Compensation payments have to be commensurate to the value of the property and be paid in advance (prior to expropriation) (Art. 40(8)).

In Art. 44 (environmental rights) of the constitution the sub article 2 states that “All persons who have been displaced or whose livelihoods have been adversely affected as a result of state programs have the right to commensurate monetary or alternative means of compensation, including relocation with adequate State assistance”.

F.P. no. 455/2005 governs expropriation and compensation in Ethiopia. The law distinguishes between compensation for property of a landholder situated on the land and displacement compensation. The rationale behind this apparently is that land is not considered private property and therefore compensation is not paid for the land itself but rather to make up for impacts caused by displacement. The proclamation distinguishes between expropriation and compensation in urban and in rural areas as well as between compensation for property situated on the land (including improvements made) and displacement compensation.

Urban landholders - when expropriated - are entitled for the following compensations:

- For property situated on the land based on replacement costs for buildings and facilities including e. g. fences, whereby compensation payments may not be less than “the current costs of constructing a single room low cost house...” (Art. 7(1-3)).
- Permanent improvements (Art. 7(1)) of the land equal to the value of capital and labor expended on the land (Art. 7(4)).



- In the case of property relocation: costs of removing, transporting and erecting property (Art. 7(5)).²⁰

-

Additionally, as displacement compensation:

- A substitute plot of urban land (size determined by the urban administration) for constructing a dwelling house (Art. 8(4a)).
- Cash payment equivalent to the estimated annual rent of expropriated building or alternatively the right to live in a comparable property belonging to the urban administration without paying rent (Art. 8(4b)).
- When expropriation concerns a business house article 8(4a and b) apply accordingly.
- In the case of expropriation of a lease holding (the term lease holding implies that the lease holder is an investor) the leaseholder is entitled for a similar plot of land to use for the remaining lease period.

Rural landholders are entitled for the following compensations:

- Property situated on the land based on replacement costs (Art. 7(1-2)).²¹
- Permanent improvements (Art. 7(1)) equal to the value of capital and labor expended on the land (Art. 7(4)).
- In the case of property relocation: costs of removing, transporting and erecting property (Art. 7(5)).

Additionally, as displacement compensation:

- When no alternative land plot can be provided: 10 times the average annual income generated by the landholder (determined by average of the last 5 years) (Art.8(1) or
- in the case of provisional expropriation: average annual income (per year) generated by the landholder until repossession of land (max. amount as stipulated under Art 8(1)) (Art. 8(2)) or
- In the case that substitute land generating comparable income is provided: one average annual income generated by the landholder (Art. 8 3).

The Regulation No. 135/2007 provides details regarding the implementation of the F.P. 455/2005 and was issued by the Federal Council of Ministers (FCoM) on the basis of No. 455/2005 (Art. 14).

²⁰ Although not explicitly stated in the F.P. it can be assumed that when Art. 7(5) applies, compensation according to Art. 7(1) is not paid.

²¹ It can be assumed that the term „property on the land” not only includes buildings and facilities but also annual and perennial crops trees, shrubs and grass/pasture. This also reflects in the regulation 137/2007 where in part 2(no. 5-9) the calculation for such compensation is defined.



Part two of the regulation No. 135/2007 provides details regarding the valuation of property on landholdings²² (including crops and trees)²³.

Part three of the regulation deals with replacement compensation. Art. 16 governs that the compensation, referred to as annual income in the proclamation, will be determined by the monetary annual average yield obtained from the land. Art. 16 b specifies that for perennial plants the “annual average yield...multiplied by the number of years required to attain the level of growth of the perennial crops” should be compensated. This in fact is not in line with the proclamation 455/2005 which only refers to compensation equal to one annual income (in the case that substitute land is available). But, it actually solves the problem that compensation for the growing period for perennial crops, when no yields are generated, was not considered in the proclamation. For whatever reason though, this logic is not followed in the case when no substitute land can be provided. Art. 17 of the regulation deals with the topic of displacement compensation for protected grass or grazing land. When determining the “compensation equivalent to the annual average income obtained from the land” only the monetary yield of grass is considered. Potential monetary yields generated by animal production are not regarded.

The Regulation 135/2007 also claims to be issued “with a purpose of not only paying compensation but also to assist displaced persons to restore their livelihoods”. However, respective articles governing such a support can’t be found in the regulation.

Aside of these two federal legal documents, F.P. 456/2005 that governs rural land administration, also refers to eviction for public purposes (Art. 7(3)). It states that the landholder should receive compensation on the grounds of the development he/she has made on the land and the property acquired or should be given substitute land. The same article distinguishes between evictions by federal government, where compensation will be determined based on the Federal Land Administration Law, and regional governments, where compensation will be determined based on the Rural Land Administration Law of the regions. This regulation is not in line with clauses in F.P. 455/2005. According to Art. 15(2) of this F.P., laws that are inconsistent with its regulations are not applicable. However, it can be doubted that officials and authorities dealing with compensation issues, including courts are always aware of this. Regulations regarding expropriation and compensation issues are apparently governed in different Federal and Regional Laws, which leads to inconsistencies in the legal framework, varying compensation procedures and unequal treatment of citizens in the different Regional States (Alemu 2013: 83f).

²² The compensation for property on the landholding according to the F.P. 455/2005 and regulation 137/2007 is determined by calculating the replacement costs (this method is similar to what is known as Cost Approach or Depreciated Replacement Cost Method, although these methods also consider depreciation, further adjustments and the land value, which are not considered in the above mentioned regulation).

²³ This fulfills the requirements according to Art. 7(6) of the F.P. 455/2005



With regard to proclamation 455/2007 and the regulation 135/2007 the main issues can be summarized as follows:

I. The term “**public purposes**” is not well defined. Article 2(5) of the proclamation reads:

“Public purpose” means the use of land defined as such by the decision of the appropriate body in conformity with urban structure plan or development plan in order to ensure the interest of the people to acquire direct or indirect benefits from the use of the land and to consolidate sustainable social-economic development.

The definition gives extensive power to the appropriate body to decide whether a measure is in the interest of the people. The only limitation is the conformity with an urban structure or development plan²⁴. But a plan itself (maybe often not even existing, especially in rural areas) can only illustrate the spatial expansion of the (planned) public purpose but does not provide proof that an expropriation purpose exists.

Article 3(1) deals with the power of expropriation of land holdings and gives urban and woreda administrations (or higher regional federal government organs) extensive power to expropriate “where it believes that it should be used for a better development project”.

With regard to expropriation principles that need to be followed and should be subject to proof are:

- Expropriation only in public interest and for the public good.
- Expropriation on the basis of a law that determines the expropriation purpose (for example road construction, utility lines, electricity and other infrastructure, mining, etc.).
- Expropriation is necessary (in other words no other means can lead to the same result).
- Preference should be given to voluntary purchase of the required immobile rather than to compulsory expropriation.
- The least possible intervention is to be examined before expropriation (for example easements, servitude rights).
- Balancing of public and private interests.

The following three issues should be clearly determined by law:

- Expropriation purpose (“why”);
- Object subject to expropriation (“what”)²⁵;
- Legitimacy of expropriation (“legitimate if”).

As an example, a survey by the FAO of both developed and developing countries revealed the following commonly accepted (public) purposes or needs as in the overall interest of the public²⁶:

²⁴ Regarding the term “development plan” it is not quite clear if this refers to a spatial plan or rather to policy documents such as for example the Growth and Transformation Plan in Ethiopia (compare Ambaye 2013: pg. 204)

²⁵ For example: in Germany for expropriation in the field of agriculture the following items count as agricultural property and are compensated: Rights, mineral resources, buildings and facilities, perennial crops, annual crops, losses in earnings, additional effort when holding (farm) is cut into parts.

²⁶ FAO Land Tenure Studies 10 “Compulsory acquisition of land and compensation”, Section 2.13.



- Transportation uses including roads, canals, highways, railways, bridges, wharves and airports;
- Public buildings including schools, libraries, hospitals, factories, religious institutions and public housing;
- Public utilities for water, sewage, electricity, gas, communication, irrigation and drainage, dams and reservoirs;
- Public parks, playgrounds, gardens, sports facilities and cemeteries;
- Defense purposes.

II. Lacking clarity regarding private investments in the context of public purpose

The fact that the term “public purpose” is not clearly defined, allows for ample interpretation. Private investment projects can easily be declared as public purpose²⁷. This for example includes LSAI and investments into commercial buildings in urban areas. In fact, it can be questioned if such projects are of public interest and for the public good. Respective projects should be subject to detailed proof before expropriations are admitted. Especially alternative measures to acquire land for investments and the question of balancing public and private interest (private in this case refers to the landholders who would suffer eviction and not to the investor) should be carefully examined. It also has to be kept in mind that private investment projects often fail. This then leads to a “lose-lose” rather than a “win-win” situation as people have been evicted and at the same time the assumed (economic) development didn’t materialize.

III. Unequal compensation of rural landholders depending on availability of substitute land

Landholders that can be provided with substitute land are compensated a) with land capable of generating comparable income, b) for their property on the land (including crops) or for moving their property to another site, and c) receive a compensation equal to an annual income (generated from their land).

Landholders that cannot be provided with substitute land, get compensated for lost property and as displacement compensation are paid an equivalent of 10 x the annual income (generated from their landholding). So, landholders receiving land get a perspective to continue farming and make a living for themselves and their families, while landholders (only) compensated in cash, are burdened with finding alternative options to generate income, finding a place to live and to make a living for themselves and their family. Since no land could be provided in the scope of the state project (that led to expropriation) it is questionable if the landholder himself manages to obtain a new piece of land, especially since there is a limited market for land (only option being leasing from other landholders). The formula of multiplying the annual income by ten to compensate displacement is arbitrary. It can be questioned if this amount of money compensates the lost livelihood, since the assuring of livelihood in rural areas of Ethiopia largely depends on the access to land.

²⁷ “As F.P. No.455/2005, Article 7, that the government (a Woreda5 or an Urban administration) may expropriate private property for public purposes where it believes that it should be used for a better development project to be carried out by public entities, private investors, cooperatives, societies or other organs with payment of compensation” (Alemu, 2013)



IV. Unequal treatment of landholders with and without property on the land

According to Art. 4(3) landholders, who have received an expropriation order, have to hand over his/her land 90 days after receiving compensation payment (or if he/she refuses to accept the payment 90 days from the date of deposit of this money on a blocked bank account). Landholders who do not have any crop or property on the land have to hand over the land within 30 days from the date of receipt of the expropriation order.

This regulation is not comprehensible. For example, in the case that a landholder has recently harvested and sold its crops, he/she has no property on the land and would have to vacate the land two months earlier than landholders that have crops on the land. Further, the regulation implies that no compensation has to be paid to the landholder with no property on the land. This however, is not correct as he/she is still entitled for displacement compensation. So, the regulation “90 days after receiving compensation payment” should also count for landholders not having property on the land.

This incoherency of the law also reflects in the definition of compensation under Art. 2(1), which limits compensation to payments for property situated on the landholding, while compensation (see Art. 8) factually also comprises displacement compensation. In practice, this can lead to arbitrarily setting the date for asset inventory after harvest time. In this case, landholders, if engaged in annual cropping, don't have property on the land and can be evicted easily and quickly without compensation payment.

V. Compensation of pastoralists is not sufficiently considered

The proclamation and regulation do not make explicit reference to compensation of landholding engaged in animal production. The regulations regarding displacement compensation do not consider the fact that landholders who are expropriated and are not compensated by substitute land will be forced to sell their livestock and thereby aside of the land loose an additional source of maintaining their livelihood. The only reference the regulations make is compensation of grass yields. But, this does not seem sufficient for considering losses occurring to pastoralists. Compensation of nomadic pastoralists is not regulated at all.

VI. Compensation regulations only refer to landholders “that have lawful possession over the land”

Unless other legal regulations recognize customary landholdings or land-use as lawful possession, compensation payments are restricted to landholders having an official land-use title. Against the background that even landholders that have received a piece of land by the authorities still often do not hold official land title certificates (three major donors are currently implementing projects in Ethiopia dealing with land title certification), this regulation can be seen critically. In the Ethiopian context where various land-uses are not recognized by law but are traditionally tolerated, compensation for displacement has to be considered.

VII. Certified private or public institutions or individuals for valuation are missing

Art. 9 of F.P. 455/2005 stipulates that valuation of property should be carried out by certified institutions or individuals and - as long as such experts are not available - by committees. Article 10 rules that the



members of the committee (of max. 5 experts) should have the relevant qualification and be designated by the woreda administration. No further definition is given on what the “respective qualification” comprises of. This requires further definition.

Apparently²⁸, until today, capacity for publicly certified valuers to engage in valuation for compensation of expropriations is not in place, so that the interim solution of forming valuation committees has become permanent. It should be one of the top priorities to facilitate certification of publicly appointed valuers. Until then, standards concerning the qualification of committee members as well as unified valuation standards should be drafted and implemented.

VIII. Appeal procedures are not in place

Article 11 governs where complaints can be submitted to. However, it does not specify a standardized appeal procedure that gives guidance for decision making. In the case that the landholder appeals directly to court (Art. 11(1)) this might not be necessary. But, when “administrative organs to hear grievances” (Art. 11(2)) are responsible, such (“pre-court”) appeals should be guided by clearly determining the procedure. The fact that appeal only refers to the amount of compensation (Art. 11(2)), shows that apparently a complaint questioning the expropriation as such is currently not admitted.

IX. The implementation of expropriation measures requires detailed guidelines regarding the procedure of expropriation, compensation and valuation

Although the law provides a framework for expropriation and compensation, detailed guidelines for its implementation are necessary to guarantee that a) compensation measures are implemented equally throughout the country and b) transparency and accountability of government actions are guaranteed. The regulation 135/2007 gives first guidance regarding valuation for compensation. But, more detailed guidelines determining inter alia the use of comparison data and quantification of improvements made are needed. The necessity of expropriation should be subject to proof. This proof should be provided in the scope of the project development.

8.2. Implementation issues

According to existing literature, Ethiopia is facing several difficulties in the context of expropriation and compensation. It is reported, that certified private or public individuals to carry out valuation (appraisal reports) are not in place. Valuations are done by ad hoc (sometimes unqualified) committees established by the woreda administrations and no standard procedures for selecting the committee members exist (Alemu, 2013). Although Regulation 135/2007 provides some guidance, no directives / guidelines for valuation (including preparatory work such as inventory of assets) and no specified valuation methods for land expropriated are available. This often leads to subjectivity and inconsistencies in valuation and compensation assessments, even when comparing similar compensation cases (ELAP 2012).

²⁸ Concluding from the literature research done, has to be verified



In rural areas compensation, if possible, is made by providing alternative land. However, providing substitute land is becoming more and more difficult (ELAP, 2012) and the equal value, which is stipulated by the constitution and F.P. 455/2005 (commensurate compensation), reflecting in size, fertility, distance to next settlement etc. is often not guaranteed (ELAP, 2012). The process of property inventory, valuation and determination of the compensation amount is not transparent and landholder-friendly. Valuation methods and compensation practices for rural land vary greatly depending on the purpose, place, circumstances and institutions involved (ELAP, 2012).

Some study examples show that significant errors were made when recording perennial crops and the value of indigenous trees was underestimated. In a woreda in SNNPR compensation was only paid for perennial not for annual crops. The method to value residential structures is not standardized (ELAP, 2012).

The source of finance (depending on nature of development program, project, initiators and financing institutions) has an influence on the determination of the compensation rate or amount. In regional development projects the compensation budget for compensation in cash is often not available or sufficient. Community based projects (e.g. hospitals, schools) are often on community or individual land, providing the holder of the latter substitute land. In federal projects, compensation is usually built into the project costs and paid out on the woreda level (ELAP, 2012).

The valuation methods and compensation procedures vary intra-, inter and regionally sometimes even within the same woreda depending on different expropriation reasons (ELAP, 2012; Alemu, 2013). A critical issue is the procedure of “inventory of assets” as basis for valuation and compensation. By law, the valuation committees are responsible for the valuation and should be counting, measuring and valuating the assets subject to expropriation. However, often this is done by so called inventory committees while the actual valuation is done by valuation committees based on the data provided by the inventory committee (Ambaye, 2013). This in fact means that the valuers have not seen the assets subject to valuation.

Also, a cut-off date is missing which determines that improvements made after this date are not considered in the compensation paid (Ambaye, 2013). Awareness regarding responsibilities of public authorities and implementing agencies is often lacking. Courts do not take responsibility in terms of acknowledging the legal regulations according to F.P. 455/2005. Partly, the F.P. is not even known on the regional level. Inconsistencies with regional laws add to the problem. (ELAP, 2012). At the same time landholders have little understanding of compensation issues and their legal rights (Alemu, 2013).

Studies show that in case of community development projects, Kebeles or communities could not compensate expropriated landholders by providing land and/or cash because of lack of financial means (ELAP, 2012). Also, compensation of landholders with a land title certificate and without differs extremely.

Urban expansion causes special difficulties. The municipalities are often not well prepared, expropriation and forced evictions happen without commensurate compensation payments. (Alemu, 2013). By law, formal written notifications of expropriation orders have to be given by the respective authorities, but field surveys revealed that this often does not happen (Alemu, 2013).



Apparently often so-called public discussions are initiated. However, these discussions are not equal to public hearings where the public gets the chance to raise its concerns and issues. These public discussions are rather information events where persons are informed about the amount of compensation they can expect and the timeframe within which he/she has to vacate his/her land (Ambaye, 2013).

Landholders who lost their landholding are often frustrated and discontent with the compensation payment of ten times the annual income (see under chapter 7.1) as it is not enough to maintain their original living standard and no additional support mechanisms are in place (Alemu, 2013). In comparison, “in China, farmers receive a maximum of thirty years value of produce as compensation for loss of land and compensation for displacement” (Ambaye, 2013).

Difficulties also occur when local farmers receive onetime cash payments as compensation. They are often overstrained with handling such amounts which often leads to wrong spending or investment decisions and eventually leads to impoverishment (Alemu 2013; Ambaye, 2013).

8.3. Assessment

Since F.P. no. 455/2005 explicitly governs expropriation and compensation in Ethiopia, it should serve as framework law for these issues. Together with the Regulation No. 135/2007 it should determine basic principles in the context of expropriation or eviction such as for example a clear definition and scope of the terms “public purpose” and “commensurate compensation”, clear responsibilities of different involved authorities on the regional and national level, detailed procedures to be followed in the framework of expropriation and compensation for public purposes including valuation approaches, and documentation of the complete process to facilitate accountability. Wherever additional legal regulations are required on the federal or regional level, reference should be made to the guiding federal proclamation and regulation. Against this background the F.P. lacks clarity and requires revision. The regulation 135/2007 should be extended by articles determining, for example, the procedure of inventory of assets (that will be expropriated), and comparison data (for example for the replacement cost method). Also, additional regulations that facilitate implementation of the proclamation would be required for example to determine procedures regarding the expropriation procedure.

Some of the manifold issues with regard to the implementation of expropriation measures were already described in chapter 7.2. These issues refer to legal, institutional, capacity and financial problems that need to be tackled in order to limit expropriations and forced evictions to the minimum necessary and to facilitate fair and just compensation.

Based on the findings summarized in chapter 7.1 and 7.2 the following topics need special attention:

- Clear definitions regarding the terms “public purpose” and “commensurate compensation²⁹” as well as definition and limitation of the expropriation purpose.

²⁹ Commensurate compensation payment in case of evictions /expropriations is a constitutionally guaranteed right of the Ethiopian people. Different approaches in the procedures that lead to different amounts of



- Special issue of expropriation for investment purposes other than for public services (for example business centers in urban areas / large scale investment into agriculture).
- Cost-benefit analysis, to weigh the costs borne by the affected populations and environments against potential public benefits.
- Unequal compensation and treatment of landholders by legal regulations.
- Adequate compensation of losses in livelihood in the case of not providing substitute land.
- Compensation mechanisms of pastoralists including nomadic pastoralists and other traditional land users (such as hunters and collectors).
- Consideration of customary land rights in compensation procedures.
- Mapping of legitimate landholders (whether with or without land use certificate).
- Examination of project plans (e.g. financial costs, schedules, and monitoring capacity).
- Implementation of standard valuation methods, qualified (publicly appointed) valuers and valuation institutions.
- Standards and procedures for grievance mechanisms (appeal / complaints) and installing of respective boards / organs.
- Participatory procedures / public hearings as standard (mandatory) step in the expropriation procedure.
- Survey of affected persons as (mandatory) step in the expropriation procedure.
- Unified guidelines for expropriation, compensation, valuation.
- Payment modes of compensation payments.
- Alternative procedures when administrative organs responsible for compensation payment do not have the financial means required.

The World Resource Institute in its working paper titled “Encroaching on land and livelihoods: How national expropriations laws measure up against international standards” (Tagliarino, 2016) summarizes the main points that should be considered in the context of expropriation, compensation, and resettlement:

1. Provide a clear conceptualization of public purpose to allow for judicial review
2. Limit the amount and types of land that governments can expropriate.
3. Establish transparent and participatory processes for the expropriation of land
4. Respect legitimate tenure rights by ensuring that customary tenure rights holders are compensated when their lands are expropriated
5. Ensure that governments follow a comprehensive and gender-sensitive approach to compensating affected populations
6. Minimize forced evictions and, if evictions are unavoidable, provide displaced persons with a relocation allowance, alternative housing, or access to productive alternative land

compensation payments or non-monetary compensations in comparable cases deprive Ethiopians from this constitutional right.



The paper also provides a list of expropriation indicators that can be used as check list to determine if expropriation regulations and practices meet international standards as listed in Box 8.

Box 8: Expropriation indicators

1. Is “public purpose” clearly defined to allow for judicial review?
2. Must the government expropriate only the minimum amount of land necessary to achieve a public purpose?
3. Are areas of cultural, religious, and environmental significance given special protection?
4. Is land held by poor and vulnerable groups given special protection?
5. Must the government grant reacquisition rights when the land is no longer needed for a public purpose?
6. Must the government identify all affected populations prior to the expropriation?
7. Prior to expropriation, must the government inform affected populations about the acquisition plan, including the reasons for expropriation?
8. Prior to expropriation, must the government consult affected populations?
9. Are customary tenure holders with formally recognized tenure rights entitled to compensation?
10. Are customary tenure holders without formally recognized tenure rights entitled to compensation?
11. Are users of undeveloped land (land used for hunting, grazing, and other purposes) entitled to compensation?
12. Must the government follow a gender-sensitive approach to calculating compensation?
13. Must compensation reflect the economic activity associated with the land?
14. Must compensation reflect the improvements on the land?
15. Must compensation reflect the historical/cultural connections associated with the land?
16. Is compensation payable in alternative land as an alternative or in addition to cash?
17. Must compensation be afforded prior to the taking of possession or within a specified timeframe?
18. Can affected populations negotiate compensation levels?
19. Can affected populations challenge compensation in court or through a tribunal?
20. Are displaced persons legally entitled to a relocation allowance?
21. Are displaced persons granted alternative land and housing?
22. Must the alternative land granted to displaced persons be “productive” land?
23. Must the government consult displaced persons during the resettlement process?
24. Must the government avoid or minimize forced evictions?

Source: Tagliarino, 2016

8.4. Approach for a conceptual model

In order to develop a conceptual model for compensation and valuation that guarantees fair and just compensation as well as equal treatment, amendments are required on three levels, namely the legal framework, the institutional level and the implementation level.

The assessment made in chapter 7.3 shows that the legal basis has to be revised and extended. For example, without regulations concerning the compensation of pastoralists (other than by determining the monetary yield of grass), nomads or other land users (with customary rights), it will be difficult to consider these land users as eligible for compensation because a respective legal basis is lacking. The same counts for the question if displacement compensation of ten times the annual income (in the case that no substitute land is available) makes up for “the loss of livelihood” and loss of land-use rights (formal or customary) granted for an unlimited time. If a new conceptual model envisages higher compensations (for example thirty times the annual income), this can only be implemented when the legal regulations are amended accordingly.



Such a legal revision concerns i) F.P. 455/2005, ii) regional laws that contain clauses ruling expropriation and compensation and that need to be coherent with F.P. 455/2005, and iii) the regulation 135/2007. Also, additional regulations specifying implementation issues in line with F.P. 455/2007 might be necessary.

When focusing on the institutional level, a close look has to be taken at the mandates, power and responsibilities of authorities involved in expropriation against the background of their capacities. As shown, the authorities (on the rural level the Woreda administration) have extensive power to decide on expropriation measures but very little capacity – with regard to financial means as well as available human resources – to implement them properly. The introduction of checks and balances concerning expropriation decisions are as important as well qualified staff to conduct inventories and valuation in order to determine compensation for individuals that will be expropriated.

Regarding the practical approach of determining the amount of compensation, a more participatory approach should be envisaged. This requires adequate mapping of the affected population and existing land rights (certified or customary) as well as public information events. The expropriation procedure should also include formalized public hearings and grievance mechanisms, the latter not only for complaints regarding the height of compensation but also for complaints regarding the expropriation as such. Last but not least, tailor made valuation and compensation measures based on determined cases must be developed. The procedure “valuation for the determination of compensation” should be understood as a possibility and chance to solve current/individual cases in a structured, participative and time and cost-saving approach. Affected persons should not be burdened with any direct or indirect costs, for example registration fees for substitute land or transport costs for attending public hearings.



The following steps for such a procedure could serve as orientation:

- **Step one:** Explain the goals of the expropriation, rights and duties of all partners and who has to bear which cost or alternatively that no costs will arise (public information event)
 - Recommendation: meetings on-site with enough time to discuss all issues and to build up an understanding of the overall goal and a general acceptance.
- **Step two:** Identify in a structured way all claims for the current/individual expropriation case which arise from formal or informal rights or ownership (maybe with the assistance of mapping-tools) and implement a formalized public hearing.
 - Recommendation: use a nation-wide standardized form of a written catalog based on interviews.
- **Step three:** Identify other circumstances, which are important in order to reach an acceptable solution for concerned persons (for example expected losses of income because costs of transport from a new location will be much higher and time-consuming and the risk of losing the current job could arise in the future. Sometimes gender related issues will be important, for example the male part of a family will be the formal holder of land or a traditional use-right while the female part burdens the main work and responsibility for the children).
 - All these different circumstances can only be identified inclusively by discussion and inspection on-site by an experienced valuation-expert. It should be clarified if the current legal regulations allow flexibility to give individual solutions way and acceptance.
- **Step four:** Make valuation (for all individual cases) and draft an inclusive compensation plan. In this regard only writing down sums of money shouldn't be the only possible measure for compensation. Also – and probably more important – other ways to solve current problems which arise from the process of resettlement should be explained and fixed in written including a respective timeline.
- **Step five:** Seek for „finalization and approval of the developed expropriation and compensation agreement/plan” with other involved administrations and the concerned persons that will be expropriated. In this context it must be regulated which administration should assist the concerned individuals in the process of restoring their livelihoods.

Following these steps in the procedure of “valuation for the determination of compensation” would contribute to the enforcement of the “Principles of Equity and Equivalence” recommended by the FAO for the managing of compulsory acquisition of land and compensation³⁰. However, as stated above any alternative procedure for fair and equal compensation that is not in line with the current legal framework will require legal amendments before it can be enforced. This also counts when - for example - determining an approach for the valuation of losses experienced by temporary land users such as nomads.

³⁰ FAO Land Tenure Studies 10 „Compulsory Land Acquisition and Compensation“: pages 23-24, Box 6.



9. Conclusions

Until present, the high expectations of the Ethiopian government regarding positive impacts of LSAI have not been met. Expected spill-overs and employment creation have not or only moderately materialized. Various sources report about negative impacts and question the legitimacy of government actions concerning LSAI. In order to let the positive outcomes of LSAI prevail, the procedure of leasing out land for LSAI has to be revised. The previous chapters have illustrated the major issues that require attention.

In the past, the land identification process was not implemented with the required accuracy, which often resulted in environmental and social damages. Therefore, a future process of land identification should explicitly focus on respecting the existing tenure and use rights, the definition of criteria to determine exclusion areas not suitable for LSAI and formalized stakeholder participation of affected communities and individuals. Regarding the latter, process steps described in FAO's technical guide No. 3 (FPIC) provide an orientation. As shown in chapter 3, land use planning concepts in Ethiopia are well known and have partly been implemented in the past. Recently, the government has initiated the drafting of a road map for national integrated land use planning, which includes local-level land use planning. A future land identification procedure should on the one hand include land use planning elements and on the other hand comply with existing land use plans. The drafting of a written guideline determining principles, approach and process steps in the land identification procedure will support responsible authorities in identifying land for LSAI and will facilitate an equal approach within the country, provided that the guideline has binding character for all involved authorities.

EIAs are an integral part of every investment project, including LSAI. As described in chapter 4, every project - prior to project implementation - has to be authorized by the Environmental Protection Authority or the responsible body on regional level. The authorization (or refusal) is based on the assessment of the EIA handed in by the investor. Therefore, the determination of a clear and comprehensive procedure, also referred to as standard operational procedure (SOP), of assessing the EIA is crucial. However, although by law the above-mentioned authorities are responsible, it has to be clarified whether some responsibilities have been delegated to other (line) ministries or agencies. In other words, the roles and responsibilities on the federal and regional level have to be determined in order to be considered in the SOP for assessing the EIA. As the EIA mandatorily includes an EMP, the assessment procedure will also include an assessment of the EMP.

Model contracts for leasing out land for LSAI need special attention in the context of LSAI. The contract governs the relation between lessee (investor) and lessor (government). A detailed description of the rights and responsibilities provide security for both parties, lays the foundation for enforcement measures and is a precondition for monitoring of the investor's performance on farm level. Objectives of the government, such as employment creation, increase in agricultural production, increased processing of agricultural goods, engagement in outgrower schemes, and environmentally sustainable production should reflect in the lease agreement and manifest itself in the contractual obligations of the lessee. As illustrated in chapter 5, the current model contracts used on the federal and the regional level in Ethiopia are not extensive. A new template that can be used by the federal as well as the regional level has to govern rights and responsibilities regarding economic, environmental and social issues as detailed as



possible, but at the same time should allow for individual adjustments that might be necessary for the specific investment project.

As shown in chapter 6, a monitoring regime for LSAI is needed in order to supervise and control the impacts of LSAI on farm as well as on country level. Corrective measures can only be taken when data is available that describes the economic, environmental and social impact of LSAI. Presently, a comprehensive monitoring system is not in place. One of EHAIA's assignments, as illustrated in chapter 2, is to monitor and evaluate agricultural investment into land and to take corrective measures when necessary. Therefore, a monitoring scheme should be installed at EHAIA. Data for such a monitoring scheme will have to be collected in the framework of farm inspections (checking of compliance with the lease contract) and from other involved institutions that are obliged to carry out monitoring in order to safeguard that LSAI-projects comply with relevant legal regulations (for example RLAUD, the environmental protection agency and the regional Bureaus for Land Use and Environmental Protection).

In chapter 7, the problems arising with regard to expropriation for (so called) public purposes have been listed. In order to improve the expropriation regime, amendments on the legal, institutional and implementation level are necessary. As mentioned in chapter 1, the project S2RAI aims at contributing to an improvement of the expropriation regime by elaborating an initial valuation concept for commensurate compensation. Recently, RLAUD got involved in a government working group dealing with the shortcomings of the current expropriation regime. Therefore, S2RAI's activities in this respect should be closely coordinated with RLAUD.

Though, it must be clearly stated that promoting of LSAI under no circumstances justifies expropriation or forced evictions of individuals. Therefore, resettlements of individuals in the scope of LSAI should only be an option, when affected persons have given their consent and compensation measures have been negotiated on an equal footing. Nevertheless, the above-mentioned valuation concept can give orientation for negotiating the amount of compensation in such a situation.

Concluding, S2RAI by supporting the development of an improved lease procedure for LSAI contributes to the implementation of more responsible and sustainable agricultural investments. In the long run, additional sub-processes of the lease procedure, such as for example the procedure of selecting investors, should be reviewed and revised.



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