

Large-Scale Agricultural Investments under Poor Land Governance in Zambia¹

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*Prepared for ECAS 2013, 27-29 June, Lisbon
5th European Conference on African Studies
African dynamics in a multipolar world
Panel on Large-scale land acquisitions and related resource conflicts in Africa*

Abstract

This paper reveals how the outcomes of the large-scale land acquisitions made by foreign investors in Zambia are determined by the characteristics of the land governance system there. Proposing a conceptual framework adapted from Williamson (1998), and using evidence constituted by expert interviews and focus group discussions, we scrutinize the nature and evolution of the Zambian land governance system, the steps that an investor has to go through in order to attain land and the actors shaping the acquisition process.

Shedding light on the acquisition process for land, we find that enforcement of formal rules is currently weak. Depending on how the actors “play the game,” land acquisitions can feature aspects of both “land grabs” and of “development opportunities.” If customary land is targeted, consultation, displacements and compensations become especially problematic issues. Moreover, we find that the power balance between actors has been altered by the presence of these investors. In particular, local authorities have gained greater power and influence.

Keywords:

Large-scale land acquisitions, Zambia, land governance, institutions, land grab

JEL classification:

K42, O13, O17, P48, Q15

¹ Field research would not have been possible without the support of various people. I would like to thank Melinda Lukungu Chipango, Kelvin Chibuye and Setareh Khallilian for conducting the field research with me. Moreover, I would like to express my gratitude to Susanne Neubert and Nadine Tatge for advising me on particularities of field research in the agricultural sector in Zambia, qualitative methods and linking me up with important stakeholders. I acknowledge funding provided by the Federal Ministry of Education and Research (Germany). I thank Jann Lay for valuable comments and suggestions for this paper.

1. Introduction

In the last decade, a surge in worldwide demand for agricultural land² in developing countries has grabbed the headlines, and recently has also aroused the interest of academics (Deininger & Byerlee (2011) or Kugelman & Levenstein (2009)). While large-scale land acquisitions are not a completely new phenomenon, we can assert that land deals are indeed a reality – and furthermore are taking place to a considerable extent (Anseeuw et al., 2012). Even though the body of research on them is growing, for example on the nature of land deals and the drivers thereof, the evidence for the impacts of such deals and the nature of the actual process of acquiring land remains limited.³ Scholars and policymakers often assume that a state's land governance system determines what type of investor chooses to invest in that particular country. For instance, the World Bank (2010) suggests that countries with weak land governance systems are particularly targeted. This fuels the fear of “land grabbing” occurring as weak land governance systems threaten to undermine the ownership and access rights of the local population (Grain 2008; FIAN 2010; Makutsa 2010).

In this vein, we argue that it is the land governance system which determines whether large-scale land acquisitions turn out to be “a land grab” or a “development opportunity” (Cotula, Vermeulen, Leonard, & Keeley, 2009). On this basis we examine how the characteristics of the land governance system in Zambia shape the outcomes of the large-scale land acquisitions made by foreign investors. This study proposes a conceptual framework – refined from Williamson (1998) – that is capable of capturing the complexities of land governance systems and which is thus suitable for the analysis of large-scale land acquisitions. For the case of Zambia, we analyze the formal and informal institutions of land governance that determine the way in which the “game is played.”⁴ We then investigate the role of different actors in the process of land acquisition there, in order to arrive at some tentative conclusions about whether or not these deals should indeed be regarded as land grabs. Our empirical analysis relies on two primary data sources: First, we conducted semi-structured expert interviews with members of governmental institutions and civil society, as well as with legal experts and foreign investors (34 interviews in total).⁵ Second, we

² In this paper we concentrate specifically on external interest in the agricultural land of developing countries. Accordingly, we focus exclusively on agricultural investors. However, it is not only such investors who increase the demand for land – mining investments, for example, also play an important role in Zambia.

³ See for example Anseeuw, Wily, Cotula, and Taylor (2011); Cotula and Vermeulen (2009); Arezki, Deininger, and Selod (2011) and Montemayor (2009).

⁴ The notions of institutions as “rules in a game” and as actors “playing this game” were introduced by North (1990).

⁵ Among others, these organizations include: the District Agricultural Coordinator's Office (DACO), the Environmental Council of Zambia (ECZ), the Ministry of Agriculture and Cooperatives (MACO), the

convened nine focus group discussions (FGDs) with affected smallholder farmers and with employees of investors in three investment regions.⁶

We have organized this paper into six sections. In the next one, we introduce the conceptual framework that structures the remainder of the paper. In Section 3, we examine the land governance system that is currently in operation. Section 4 investigates the actual process of acquiring land, while Section 5 analyzes the outcomes of the process – taking a close look at the actors involved. Finally, Section 6 draws conclusions and also offers some pointers for future research.

2. Conceptual Framework

Before introducing the conceptual framework it is necessary to define some key terms that will be used throughout this study. One such term is “land governance.” While governance is used in slightly different ways elsewhere, an established definition is followed here: “governance consists of the traditions and institutions by which authority in a country is exercised” (World Bank, 2012). Land governance thus focuses on authority over land. We understand land governance⁷ as “the rules, processes and structures through which decisions are made about access to land and its use, the manner in which the decisions are implemented and enforced and the way that competing interests in land are managed” (Palmer, Friciska, & Wehrmann, 2009). Land governance is thus the set of institutions by which land is administered. Furthermore, we adopt the definition of “institutions” advocated by North (2005, p. 48): “all organized activity by humans entails a structure to define the “way the game is played” [...]. That structure is made up of institutions – formal rules, informal norms, and their enforcement characteristics.” Consequently, land governance encompasses all of the formal rules, informal norms, and enforcement characteristics administering land.

The idea that “institutions matter” (North, 1990) has long been recognized as of central importance in economic and political thinking, and is today considered commonplace (Voigt, 2012). However, the process of institutional change (or the absence of it) is currently much less understood (Brousseau, Garrouste, & Raynaud, 2011). For instance, Prado & Trebilcock (2009) claim that path dependence can explain why the reform of dysfunctional institutions works in

Ministry of Lands (MoL), the Provincial Agricultural Coordinator’s Office (PACO), the Zambia Development Agency (ZDA), the Zambia Land Alliance (ZLA) and the Zambia National Farmers’ Union (ZNFU).

⁶ A full list of all FGDs and interviews conducted can be found in the Appendix. In order to guarantee anonymity, we reveal only the organization of the interviewee but not his or her name and position.

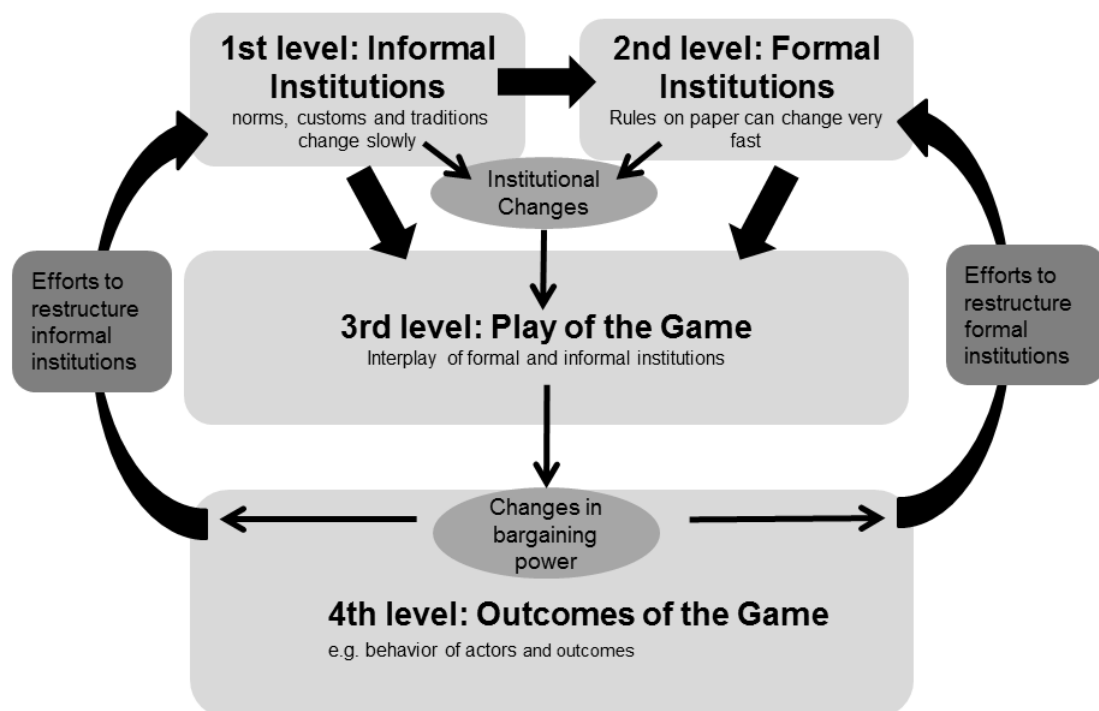
⁷ For more detailed information on governance with regard to land, please refer to Palmer (2007).

some cases but fails in others. Path dependence⁸ assumes that institutions are shaped over time (North, 1990, pp. 92–104). Today’s institutions are thus determined by yesterday’s formal and informal institutions and the decisions previously taken by political and economic actors. Accordingly, the situation faced in Zambia today results from the complex land governance system that has evolved in the country over time.

In order to structure our analysis of the Zambian land governance system, institutional changes in this system, the process of land acquisition, the behavior of actors and the outcomes of all of these interactions, we adapt Williamson’s (1998, pp. 25–29) four levels of social analysis as a conceptual framework (see figure 1 below). We present these levels and illustrate them with examples from the literature in the following.

Figure 1

Williamson's Four Levels of Social Analysis.



Source: Author’s compilation based on Williamson (1998, pp. 25–29).

The first level is constituted of informal institutions. These institutions, norms, customs and traditions change very slowly over time. By way of example, Segers et al. (2010) examine

⁸ Path dependence as a broad idea claims that “history matters.” North (1990, p. 104) specifies that “long-run economic change is the cumulative consequence of innumerable short-run decisions by political and economic entrepreneurs that both directly and indirectly (via external effects) shape performance.”

informal land markets in Tigray, Ethiopia where – despite the land reform of 1990 – informal land rental practices persist.

The second level comprises formal rules on paper, for example laws. These can change much quicker (North, 1990, p. 6). Empirical evidence for changes in formal land institutions focuses on the formalization of land rights (Benjaminsen, Holden, Lund, & Sjaastad, 2009; Deininger, Ali, & Yamano, 2008). Formalization is considered a necessary step in development (de Soto, 2001), leading to greater tenure security, the individualization of land rights and the opening up of land markets (Deininger & Feder, 2001).⁹ Such changes in formal institutions can be caused by shifts in relative prices, as well as by changes in preferences (North, 1990, p. 83). While progressive changes cannot be planned, “rare windows of opportunity” can induce changes in formal institutions. Triggers for such windows of opportunity can originate from either within the system – for example through civil wars or military coups – or from outside of it – for example foreign occupations or economic crises. However, such defining moments are the exception rather than the rule (Williamson, 1998). Meinzen-Dick & Mwangi (2009) observe that “land tenure reform has resurfaced in development policy” which hints at a strong role being played by development organizations in such reforms. Other studies have confirmed that tenure reforms in African countries¹⁰ are being predominantly driven by the World Bank and other international donors (Benjaminsen et al., 2009; Boone, 2007) – for example through the Structural Adjustment Programmes (SAPs) that are today continued through the Poverty Reduction Strategy Paper (PRSP). These policies are having significant impacts on developing countries because they enforce liberalization policies by making their enactment a conditionality for loans (Fortin, 2005). These two levels – formal and informal institutions – govern land and thus determine the third level, the “play of the game” – in other words, the governance structures. That is, the third level is the result of the interplay of formal and informal institutions. Maganga (2002) provides an example of how resource conflicts related to land and water in Tanzania are governed by formal and informal institutions. While he finds that access to land and water is regulated predominantly according to customary laws, more and more actors are attempting to formalize rights – which is leading to increased social tensions and conflicts. Such conflicts occur on different levels and are settled through the interplay of formal and informal laws. Similarly, Kombe & Kreibich (2000) examine urban land management in Tanzania and find that formal and informal regulations should be combined in order to efficiently govern land.

One important aspect of the third level is the enforcement of formal rules: often the *de facto* system – that is the actual way the system works – and the *de jure* system – that is the formal rules – differ. This is rooted in the weak enforcement of formal rules and can be explained by a variety

⁹ Formalization has increasingly been criticized with some scholars warning against one-size-fits-all solutions that neglect local institutions and exclude vulnerable groups. See Bromley (2009); Meinzen-Dick and Mwangi (2009); Sjaastad and Cousins (2009) and Toulmin (2009).

¹⁰ Boone (2007, p. 569) provides an overview of tenure reforms in several African countries.

of structural factors. First, “enforcement is costly” (Stigler, 1970) – the government incurs costs in enforcing laws – for example as a result of penalties – as do those individuals who have, for example, to go to court to defend their rights as stipulated by law. A law is only effective if it is expected to be enforced.¹¹ Lange (2011) shows that legal provisions are poorly enforced regarding mining issues in Tanzania. While legislation in general is incoherent, a lack of capabilities and resources on the part of central and local government is a major obstacle to law enforcement. Second, weak enforcement can be rooted in conflicting informal institutions; de facto institutional arrangements might not change despite changes occurring in formal institutions, as informal institutions constrain their enforcement (Acemoglu & Robinson, 2008). This is evident in Bennett, Ainslie, & Davis’s (2013) study on South African attempts to develop civil society institutions. The persistence of traditional authorities hampers the implementation of any such new institutions. Similarly, Cramb & Wills (1990) show for the case of Sarawak, Malaysia that traditional institutions have to be the foundation for modern institutions if the latter are to work. In a study on Côte d’Ivoire, Colin (2013) examines how informal land transactions can be formalized so that tenure insecurity and land conflicts can be reduced and formal laws enforced. As traditional rules are deeply engrained in the culture of the country, formal rules imposed by the state will only be poorly enforced if the former are not taken into consideration.

A third reason for limited enforcement is the differing behavior of actors, as analyzed on the fourth level of Williamson’s model.¹² This level moves away from a structural and rather descriptive analysis and looks into outcomes of the “game.” That is, in light of the first three levels outcomes can differ. Both the choice of actors that participate in the process and their respective behavior provide explanations for deviations in institutional outcomes under similar context conditions (Brousseau et al., 2011, pp. 4–9). Accordingly, we first analyze actors involved in the land acquisition process, and then, scrutinize its outcomes.

Starting the analysis of actors, we ask what drives human behavior from a theoretical viewpoint: Human behavior is determined, firstly, by motivation – including not only utility-maximizing but also altruistic goals – and, secondly, by the person’s ability to “decipher the environment” (North, 1990, p. 20). The motivations for human decisions are manifold. For our purpose here, it is sufficient to state that political actors have the choice to either act in the public interest or alternatively use their power to maximize personal gains or to advance special interests. The idea of “rent-seeking” was introduced by Tullock (1967) and has been coined by Krueger (1974). Rent-seeking is “the notion that economic actors actively use the political process to further

¹¹ See for example Voigt and Gutmann (2012) who measure the de facto and de jure judicial independence of property rights, finding that it is the actual implementation of institutions that matters – and not government promises as laid out in the law.

¹² Williamson himself refers to the fourth level as the “resource allocation and employment level” where marginal analysis takes place; namely, neoclassical analysis and agency theory. We follow Williamson in that we move away from a structural analysis; however, we concentrate on the study of outcomes of the system and refrain from a strict neoclassical analysis.

narrow private interests” (Cairns, 1985). For instance, Mathieu (1996, pp. 80–81) concludes, on the basis of African cases, that benefits from land tenure are unevenly distributed – some actors gain, others lose. More specifically, Bennett et al. (2013, p. 36) find that traditional authorities in South Africa retain revenues from grazing fines for themselves rather than investing them in the community at large. Another problem is regulatory capture, which describes a situation in which political actors use their power to advance special interests (Levine & Forrence, 1990). For instance, Lange (2011) demonstrates, by way of several examples from the mining sector in Tanzania, how powerful decision-makers take the side of mining companies and thus circumvent official laws; fraud and corruption in connection with displacements and compensation are thus commonplace. In particular, this applies to cases where “pastoralists [...] are ‘represented’ by local authorities that are often dominated by non-pastoralist immigrants” (Lange, 2011, p. 251). As to the human being’s capability to decipher their environment, people draw on incomplete and complex information – it is on this that they base their choices (North, 1990, pp. 22–24). What is widely referred to as bounded rationality describes the human’s limited cognitive competence (Williamson, 2000, p. 600). Furthermore, not every actor has the same access to information, and not every actor has the same degree of power. Thus, information asymmetries, bounded rationality and power imbalances largely determine the actor’s capability to take decisions. Daniel (2012) finds that information asymmetries can lead to inequitable contract negotiations and irresponsible land investments.

Taking a closer look at institutional change, actors not only have an important impact on the outcome of institutional settings – their behavior might also lead to institutional change, which in turn leads to changes in the amount of bargaining power that these actors possess. This development affects the power balance within institutional settings (North, 1990, p. 84). Put differently, if we encounter institutional change, we also have to ask how this in turn changes the power balance between actors. According to North (1990, p. 84) a change in bargaining power leads to efforts being made to restructure contracts. While Williamson (1998, pp. 596–600) neglects the interconnectedness of the system – he instead limits his analysis to the interactions between two levels (i.e. one level determines the subsequent one, which can in turn feedback into the previous one) — we take feedbacks across all levels into account. This means that institutional change leads to changes in the bargaining power which in turn can influence informal and formal institutions (first and second levels). This is in line with Lecoutere (2011), who studies resource governance institutions in Tanzania. She finds that institutions are not static, but rather result from ongoing social processes – and hence that actors “make and remake institutions.”

3. Formal and Informal Institutions of Land Governance in Zambia

Commencing the analysis, this section discusses the Zambian land governance system. This refers to the first and second level of the conceptual framework. Both levels are jointly presented as formal and informal rules are difficult to disentangle from each other (Benjaminsen & Lund, 2002, p. 3). Acknowledging the importance of path dependence for institutional development, we provide a brief historical overview of how the Zambian land governance system has evolved since colonial times. A concise overview of how the Zambian land governance system has developed over time is meaningful for our analysis and has – to the best of our knowledge – thus far not been undertaken. This is not, however, meant to be a comprehensive account but rather constitutes an analysis of the crucial events that have taken place.¹³

As in most sub-Saharan African countries, Zambia has a dual land tenure system reflecting the customary land tenure arrangements (communal land) as well as the colonial legacy of statutory laws (privately titled) (on Zambia, see Subramanian (1998); Brown (2005); Chizyuka, Kamona, Ufwenuka, & Phiri (2006); Metcalfe & Kepe (2008). On sub-Saharan Africa see Benjaminsen & Lund (2002); Deininger & Castagnini (2006, p. 324). More generally, see Platteau (2009, pp. 678–679) on legal dualism in Africa).

All land is formally owned by the state (vested in the president), but land can be leased for 99 years (with the lease being renewable).¹⁴ Land can either be state land,¹⁵ which is titled, or customary land held in trust by traditional authorities. Typically, agricultural activities are divided along the lines of these two different types of land: commercial agriculture is concentrated on state land while smallholder agriculture is carried out in customary areas.¹⁶ The majority of the Zambian population relies on land in customary areas, being administered by chiefs.¹⁷ According

¹³ For a more comprehensive account of the land tenure system, please refer to Adams (2003). Abanda, Ng'ombe, Tah, and Keivani (2011) provide not only an overview of the Zambian land tenure system, but also on land transfers.

¹⁴ Only if the land has been cadastre-surveyed are leases granted for 99 years. Without a rigorous boundary survey, a lease of 14 years can be obtained on the basis of a sketch plan – but it can be extended to a lease of 99 years once the cadastre survey has been done. However, there is currently a shortage of land surveyors, which can occasionally cause a serious bottleneck (Adams (2003, p. 14)).

¹⁵ State land is defined as “land which is not situated in a customary area” GRZ (1995).

¹⁶ It is important to make a distinction between the trends in rural and urban areas of Zambia. Whereas most farmland near Lusaka (e.g. Chongwe or Lusaka West) and in the Copperbelt is state land, this is not the case in rural areas. This also reflects the fact that the pressure for land access is highest in urban areas. In such areas booming cities and farmland are in direct competition with each other.

¹⁷ While the de facto authority of chiefs varies considerably between different regions of Zambia, they all have the legal authority to oversee customary land and to care for the welfare of their subjects. Often, they are assisted by village headmen Brown (2005). A profound study of the – extremely complex – role of Zambian chiefs is provided in van Binsbergen (1987). A recent study by Acemoglu, Reed, and Robinson (2013) investigates the chiefs' power regarding economic development in Sierra Leone. They find that the more powerful chiefs are, the worse development outcomes tend to be – while at the same time more powerful chiefs command greater respect from their subjects. They interpret this as an indication that rural people are “locked into relationships of dependence on the traditional authorities” and invest in patron–client relationships. The authors claim that their findings might have validity elsewhere too, in particular in other former British colonies (such as Zambia).

to customs (informal rules) and official laws (formal rules) chiefs have strong authority over the land (Metcalf & Kepe, 2008). Even though customary rights are officially recognized (GRZ, 1995), pressure on customary areas is increasing and conversions to state land have become frequent. This was confirmed in FGDs, where participants expressed that the land they are able to access was becoming scarcer. For instance in a FGD held near Mkushi, one female participant reported that,

The only bad thing is that these investors were initially allocated state land and farming blocks and are now migrating from the state land to the chief's land where we live. The question now is where are we going to stay? Where are we going to look for firewood because these people are getting all the land – even our forests and wooded lands. [...] But the chief keeps telling us not to go to certain areas because it now belongs to these investors (FGD Z2, 2011).

Another participant added “I even stopped going to my field alone because I am scared that I will meet these men again. Their boundaries of their land are very close to mine.” (FGD Z2, 2011).

The roots of informal institutions go back to before colonial times, when land ownership and use was governed by traditional leaders. The remnants of this system are today called “customary tenure” (Mulolwa, 2002; Sichone, 2008). However, customary tenure systems were not fixed: they were also influenced by colonial authorities (Benjaminsen & Lund, 2002, p. 20; Draft Land Administration and Management Policy, 2006).

As was the practice in other British colonies, colonial rulers retained the traditional customs in rural areas (for native reserves and trust land), whereas in urban areas modern civil law and private property – through free- and leasehold – practices were introduced on so-called “crown land” (Brown, 2005). This also marked the introduction of formal institutions. Zambia thus adopted during colonial times a dual land tenure system, wherein the means of administration for it differed between urban and rural areas.

In 1964 Zambia became independent. The Zambian land tenure policy post-independence has been characterized by economic socialism and nationalism. The Kaunda regime retained the colonial (dual) land tenure system and maintained the distinction between trust, reserve and state (formerly crown) land. In 1975 freehold tenure was abolished, to be replaced by statutory leasehold. In 1985 alienation of land through foreign investors was restricted, with only certified investors and charitable organizations being able to obtain land (Brown, 2005).

A key event for formal institutional change was the 1995 Lands Act (Metcalf & Kepe, 2008, pp. 241–242).¹⁸ With the political changes that came in the wake of market liberalization and the rise to power of the Movement for Multi-party Democracy (MMD), the land tenure system underwent market-based reforms that had been “requested by donors” as Brown (2005, p. 80) puts

¹⁸ More details on the 1995 Lands Act can be found in Brown (2005).

it. Not only were the previous restrictions on foreign investors eased, but the conversion from customary to state land was also made possible. Before 1995, only 6 per cent of the country's land was tradable – the remainder was administered by traditional chiefs and could not be sold or exchanged. After the 1995 act, the conversion of land became possible and therewith all land, in theory at least, entered the marketplace. The amount of customary land in existence has since greatly diminished, as a result of having been made available to foreign investors. Official figures dating back to 1964 are still in use and note that only 6 percent of Zambia's land is state land, with the remaining 94 percent being held under customary tenure (Abanda, Ng'ombe, Tah, & Keivani, 2011). However, the conversion of titles must have changed this ratio considerably – predominantly in urban areas and those prone to commercial agriculture and tourism. Yet, it is hard to obtain exact figures on this. Estimations range from 10 percent state versus 90 percent customary land to 20 percent state versus 80 percent customary land (Interview Z17, 2011 (official from MoL) and Interview Z32, 2011 (official from MoL)). Not surprisingly, those groups who have secured access to a land title are comprised mainly of foreign investors and Zambian elites (Brown, 2005).¹⁹

Examining the importance of the formal policy change, it is beyond dispute that land acquisitions have been facilitated by the Lands Act 1995 opening the country up to foreign investors. In fact, the number of conversions from customary to state land considerably increased after 1995 (Brown, 2005, p. 88). However, a new peak in interest in land acquisition has been experienced only recently in Zambia – coming in light of changed context conditions. One of the drivers for the new surge in demand for agricultural land has been the price boom for food, and, therewith, a relative increase in prices for agricultural land (Arezki, Deininger, & Selod, 2011).²⁰ These rising food prices have been caused by, among other factors, growing world populations, especially in poorer parts of the world, desertification, urbanization and changing dietary preferences (Cotula et al., 2009; Deininger & Byerlee, 2011; Kugelman, 2009, pp. 2–3). As a result, agricultural strategies might come to change too – for example with the commercialization of agriculture or the cultivation of cash crops, including agrofuels. At the same time, the Zambian government continues to encourage foreign investment, especially in agriculture (ZDA, 2011, Interview Z20, 2011 (official from MACO) and Z27, 2011 (official from PACO)). There is a widely-held

¹⁹ There are several reasons why local farmers do not make greater use of these possibilities: first, they lack knowledge on the land policy; second, transaction costs are high (Brown (2005, p. 90)). For instance, landless farmers in Lusaka West complained about the difficulties for local farmers in acquiring land. A participant jokingly said “These day's you cannot get the land, you might even die before an interview” (FGD Z9, 2011). Similarly, a participant in a FGD in Chongwe states “The government wants people with money and us we do not have that much money” (FGD Z1, 2011).

²⁰ There are no official figures available on either land prices or their development in Zambia. However, during interviews and FGDs “tremendously increasing land prices” were mentioned (Interview Z20 (official from MACO), 2011). This was confirmed by DACO staff in Lusaka (Interview Z19 (official from DACO), 2011), and in Mkushi (Interview Z11 (official from DACO), 2011) as well as by participants in a FGD in Lusaka West (FGD Z9, 2011).

perception that Zambia is not tapping its great agricultural potential, with enormous amounts of land lying unused²¹ – as such, investments are seen as a development opportunity (Interview Z21, 2011 (official from MACO)). Investors in Zambia thus enjoy a number of incentives, for example through the benefits offered by the investment license²² (Interview Z18, 2011 (representative from the African Conservation Tillage Network) or ZDA, 2010).

The Lands Act 1995 can be seen as an example of a change in formal rules being introduced from the outside. But it has only been with further pressures placed on the system that actual changes have been seen: different context conditions stemming from rising food prices have resulted in a greater demand for agricultural land. This is reflected in the new actor “investor” entering the Zambian “land game,” which has been historically rather static. The formal change of 1995 (which happened overnight, so to speak) has only led to an actual change on the ground as a result of the growth in demand for agricultural land.

Recently, Zambia has made quite a number of unsuccessful efforts to reform its constitution (Stroh & von Soest, 2011). The most comprehensive recent attempt, made by the National Constitutional Conference (NCC) between 2007 and 2010, contained a significant section on land policy. Among the eleven committees appointed, the Lands and Environment Committee was put in charge of land issues (Interview Z34, 2011 (judge at Lusaka High Court)). The most debated issues herein were: 1) land tenure arrangements, more specifically the setting of limits on both the amount of land and the duration for which it could be held as leasehold; 2) land administration, in particular the power of an individual official as the Commissioner of Lands; and, 3) land registry, so as to know the exact repartition of state and customary land (Interview Z26, 2011 (former secretary of the Land Commission of the NCC)).

However, the NCC failed to enact a constitution in the Zambian parliament in April 2011 (Nsingo, 2011; Stroh & von Soest, 2011). Nonetheless, the proposals of the NCC were precise and addressed popular dissatisfaction with the outcomes from the land system. The outcome of the most recent attempt to enact a new constitution is still pending: on 30 April 2012 the Technical Committee on Drafting the Zambian Constitution (TCDZC) (appointed by the new government under President Sata) picked up on the constitutional reform process and released a first draft of a new Zambian constitution (TCDZC, 2012). So far there have been no final results from this deliberation,²³ but even by their very occurrence the necessity to change the current land

²¹ Chizyuka, Kamona, Ufwenuka, and Phiri (2006) state that only 14 per cent of Zambia’s arable land is currently under cultivation. However, most arable land is located far away from infrastructure.

²² Investors can apply to the Zambia Development Authority (ZDA) for an investment license, which stipulates some priority sectors – for example, processed food or horticulture. Benefits of such a license are both fiscal and non-fiscal (e.g. protection against state nationalization or the cost-free facilitation of land acquisition), and can be seen as an instrument used by the Zambian government to attract investors (Procedures and Guidelines for Obtaining Investment Certificate, 2011).

²³ Initially, the TCDZC envisaged a 40-day period for the informal public consultative process – it has since been extended to 90 days. For those who relied on a version of the draft constitution (relied on it for what?) the process was meant to close on 19 September 2012. A final draft and a referendum were expected to have

governance system has clearly been recognized. These developments can be interpreted as a first attempt to restructure (formal) institutions.

4. Play of the Game: The Process of Acquiring Land

We will now further examine how the land governance system in Zambia operates. More specifically, we concentrate on the process of acquiring land – as the interplay of formal and informal rules. This complies with Williamson’s (1998) third level of social analysis, the “play of the game.”

Investors have the possibility to obtain leaseholds for 99 years.²⁴ As leaseholds can only be taken on state land, customary land has to first be converted to state land. Thereby, it receives an official title. Once such land has been transformed into state land it can never be converted back into customary land, and is thus forever excluded from the chieftdom and lost to communal use. Titles are given out by the Commissioner of Lands, who is based within the Ministry of Lands (MoL).²⁵ The Commissioner is the direct delegate of the president (Abanda et al., 2011, p. 10898; Adams, 2003, p. 9), and is thus not subject to parliamentary scrutiny (Interview Z26, 2011 (former secretary of the Land Commission of the NCC) & Z34, 2011 (judge at Lusaka High Court)).²⁶

Investors in Zambia have different points of entry: First, they can contact the ZDA who guide investors through the whole investment process in the country. They point to available land – for instance land within one of the government-established farm blocks, more information on which will be given in due course. Second, the owners of state land can be approached directly by investors. Lastly, investors can make direct contact with village headmen or chiefs²⁷ in their quest for land.

Figure 2 provides a simplified illustration of the acquisition process in the cases of state land and customary land.²⁸ It is hard to estimate how important state and customary land are respectively for investors in search of land. However, evidence from the interviews and FGDs suggests that customary land is being increasingly targeted (e.g. Interviews Z11, 2011 (official from DACO);

been completed by the end of 2012. However, the TCDZC gives only patchy updates on the progress made, and as such further information on these developments was unavailable at the time of writing (TCDZC, 2012).

²⁴ Strictly speaking, leased land still belongs to the president. The GRZ (1995) states that “all land in Zambia shall vest absolutely in the President and shall be held by him in perpetuity for and on behalf of the people of Zambia.”

²⁵ For more information on the MoL and its different departments please refer to the Draft Land Administration and Management Policy, 2006.

²⁶ Only if the area concerned exceeds 250 hectares does the Commissioner of Lands have to seek clearance from the Minister of Lands.

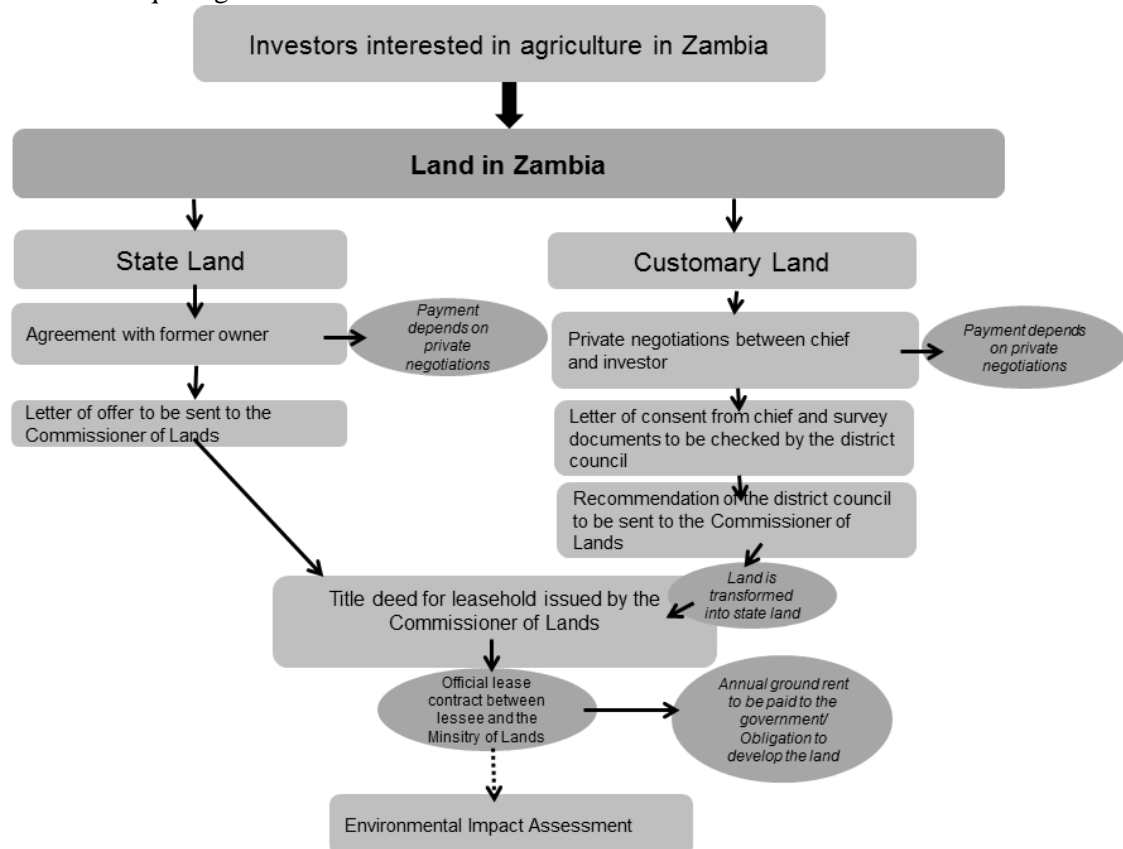
²⁷ For the sake of simplicity, we only speak of chiefs henceforth. This always also includes the option that the investor contacts a village headman, who then contacts the relevant chief.

²⁸ See Abanda, et al. (2011, pp. 10897–10898) for a more complex and comprehensive explanation of the land transfer process (as regards state and customary land).

Z24, 2011 (Extension Officer in MACO) & Z29, 2011 (Lawyer at International Justice Mission); FGD Z1, 2011 & Z2, 2011). For instance, an official in the District Agricultural Coordinator's Office in Mkushi admitted that, “first investors go out to traditional land and ask for land from the chiefs” (Interview Z11, 2011 (official from DACO)).

Figure 2

Process of Acquiring Land in Zambia.



Source: Author's compilation.

State land is, among other purposes, designated for commercial agriculture. Investors targeting state land undergo a shorter acquisition process as compared to the one for customary land, as for the former the land is already titled. An investor has to come to an agreement with the former owner. A contract is concluded between the new and old owners. The former owner writes a “letter of offer” that is sent to the Commissioner of Lands. The Commissioner then issues a title deed in the name of the investor (Interview Z22, 2011 (official from DACO)). In case the owner(s) of state land wants to give only part of their land away a surveyor has to propose how

the land might be subdivided. Afterwards, the Agricultural Land Husbandry Office²⁹ in the respective region then has to approve and certify the subdivision decided upon.

As mentioned above, the conversion of customary to state land has only been possible since the Lands Act 1995. Thereby, greater land resources have been made accessible to investors. If customary land is targeted as part of this, chiefs are obliged to consult the local community. De jure, local people have to be consulted (GRZ, 1995); de facto, enforcement is not monitored (Brown (2005, pp. 98–100); Interview Z8 and Z29). Whether the local population is consulted about a land acquisition thus solely depends on the discretion of the chief.

There are two ways to access customary land: first, through government-established farm blocks and, second, through traditional authorities. With regard to so-called “farm blocks,” the Zambian government creates these and allocates them to foreign investors.³⁰ A team led by the Ministry of Agriculture and Cooperatives (MACO),³¹ and that includes representatives from local authorities and the MoL, identifies customary land suitable for the establishment of a farm block and then negotiates with the chief responsible for it. Once the chief has agreed, he/she then writes a “letter of consent,” and the government can thus proceed with the establishment of the farm block. The government then sets up infrastructure services and the land within the farm block is tendered. One major investor (core venture) taking 10,000 hectares is meant to be attracted for each farm block. This investor has to set up an outgrower scheme and build a processing plant. Outgrowers are recruited from farmers living in the vicinity of the farm block. In addition, several commercial farmers are invited to purchase areas of about 1,000 hectares each. They are also meant to engage in outgrower schemes. Moreover, local farmers can apply for a piece of land – of a size between 30 and 300 hectares – in the area surrounding the farm block (Interview Z22, 2011 (official from MACO) and Z28, 2011 (official from ZDA) and ZDA (2011)).

Coming to the second option for converting customary land, private investors can also contact chiefs directly in their search for land. The investor and chief negotiate privately by themselves – a situation that is not always well received, as illustrated by one statement that was made by an official from the ZDA. “Within the group of investors there are tricky guys who negotiate under the carpet with the chiefs” (Interview Z30, 2011 (official from ZDA)). An investor can pay any

²⁹ The Land Husbandry Section within the MACO is responsible for identifying, planning, demarcating and recommending land that could be used for agricultural purposes (Draft Land Administration and Management Policy, 2006).

³⁰ This applies mainly to governmental investors, relating, for example, to investments made within the scope of bilateral investment treaties (Interview Z17 (official in MoL), 2011). The acting body is the MoL. In 2002, the government started developing farm blocks under President Mwanawasa. The idea was to commercialize agricultural land, open up rural areas and attract investors. It was envisaged that one farm block would be established in each of Zambia’s nine provinces. OECD and NEPAD (2011, p. 5) provides a list of all farm blocks identified as of December 2010.

³¹ More information on the MACO and other actors in the agricultural sector can be found in Neubert (2011, pp. 42–50).

amount they like for the land – as long as the chief agrees. For instance, the investor can offer any payment in cash and in kind or any investment in local infrastructure (Interview Z11, 2011 (official from DACO); Z12, 2011 (local chief); Z13, 2011 (representative from the ZLA) and Z14, 2011 (representative from the Biofuels Civil Society Forum)). To clarify this point, a traditional chief explained how these negotiations between him and the investors and him are were concluded, mentioning as well all of those who might benefit as a consequence:

You see when we talk of agreeing upon, [...] we've been to areas where we are lacking of schools, we are lacking of clinics, we are lacking of roads, and everything. We have to sit down and agree. If [...] you were given land of more than 250 hectares, what are you going to do for the community, what are you going to do for the chief, what are you also going to do for the village headman?. [...] We have to enter into a memorandum of understanding. And our memorandum of understanding does not even involve the government (Interview Z12, 2011 (local chief)).

The chief has to verify that the land is available and that the investor's interest does not conflict with the needs of local land users. Once investor and chief have agreed on the conditions of the land transfer, they conclude a private contract or a "memorandum of understanding."³² Furthermore, the land has to be surveyed; survey documents have to be sent to the district council along with a letter of consent from the chief. The district council is supposed to check whether there are any conflicting claims, but this is rarely done (Interview Z34, 2011 (judge at Lusaka High Court)). The district council then makes a recommendation to the Commissioner of Lands within the MoL. The Commissioner gives out an official title for the land which is thereby transformed from customary land into state land. Once the title is given out, the private investor is legal lessee of the land and the traditional ruler's chieftom has shrunk. The only official contract in place is the one between the MoL and the lessee – in other words, the lease contract for the title deed (Interview Z12 (local chief). 2011; Z20, 2011 (official from MACO) and Z34, 2011 (judge at Lusaka High Court)).

Subsequent to any successful lease contract being concluded – no matter whether the land was initially state or customary – and before the implementation of a project, the carrying out of an Environmental Impact Assessment (EIA) is mandatory for all commercial agricultural projects (ECZ, 2010). Those who apply for an investor's license with the ZDA are obliged to make such an assessment, but the MoL does not systematically inform investors about their duty to do this. An EIA includes field visits and consultations with the local chief and the community at large; a public hearing takes place and is advertised in the media beforehand. After a year, an audit is du

³² This can be a written contract or memorandum of understanding, as well as an oral agreement. There are currently no legal regulations in existence.

(Interview Z33, 2011 (official from ECZ)). However, because of poor enforcement and monitoring not all investors actually undertake an EIA, despite the formal obligation to do so.

Investors have two major obligations: First, after the land has been transformed into state land, an annual ground rent³³ has to be paid to the government. The amount payable is subject to review, according to the size and location of the lease (Interview Z12, 2011 (local chief); Z17, 2011 (official from MoL); Z18, 2011 (representative from African Conservation Tillage Network) and Z32, 2011 (official from MoL)). Second, the investor is required to develop the land. Upon the issuance of the title, lessees must state how they intend to cultivate the land. Initial steps must be taken within the first nine months of the lease, and substantial development is to be completed within 18 months. Progress in this regard has to be checked by the MoL. If the investor does not meet the aforementioned development requirements, the Commissioner of Lands can repossess the land. Notwithstanding these formal obligations, enforcement is, though, weak. For example, a participant in a FGD in Nyama explained that, “these investors do not follow the rules and regulations imposed by the state” (FGD Z5, 2011), and thus in reality only rarely is development progress actually monitored (Interview Z17, 2011 (official from MoL)).

Aligned with the theoretical considerations presented in the conceptual framework, the reasons for weak enforcement are many. First, monitoring of land acquisitions – especially in rural areas – demands financial resources. For instance, the ECZ is meant to monitor EIAs; however, it is acutely understaffed and thus cannot keep up with the great number of projects arising. The lack of communication between the different institutions involved in the process further adds to poor monitoring – for example, the MoL could inform the ECZ about concluded lease contracts. Second, formal institutions are not properly enforced if they conflict with informal institutions. In Zambia, both of the two forms of rule require traditional authorities to consult the local population. However, the socially deep-rooted acceptance of the traditional authority’s absolute claim to power leads to reluctance with regard to questioning a chief’s decision. Even if the formal law asks the district council and the Commissioner of Lands to investigate any land alienation, informal constraints (e.g. the chief’s unquestioned power) lead to limited enforcement. While the costliness of enforcement and conflicting formal and informal rules can be considered structural problems, they still fail to explain why land deals happen differently under the same land governance system. Thus, ultimately whether the enforcement of formal rules works or not seems to depend on the behavior of the actors involved, which the next section will shed further light on.

³³ The annual ground rent depends on the location and intended use of the land. Farmland is different to land used for mining, and land in Lusaka is different to land in Kitwe, for example. The rent is subject to review, which happens approximately every four years.

5. Actors and Outcomes

Turning towards the fourth level of our conceptual framework, we first scrutinize the different actors – identified as responsible for the differing outcomes – involved in the process of acquiring land, and then discuss the outcomes from the current land system.

5.1. Actors

According to Grandori (2001, pp. 19–20), actors dispose of resources in order to meet their preferences, thus resulting in decisions. We therefore ask what resources actors dispose of, what their preferences are and what their strategy to push through their interests is – in other words, how they decide. A brief overview of this is provided in Table 1.

Table 1

Group of Actors Involved in the Land Acquisition Process

Group of Actors	Resources	Preferences	Strategy
Investors	Financial means, know-how, support (sometimes) from foreign governments, legal expertise	Return on investment through land use, speculation	Offer monetary payments or use connections to access land
Community/Local Land Users	No resources, lack of information	Land to sustain livelihood/increase welfare Employment or other benefits through investment projects	Either oppose investments or collaborate with investors
Local Authorities	Powerful position in administering land	Personal gain of officials and regulatory capture/ protect local interests (e.g. increase welfare of local community, secure access to land)	Either be particularly welcoming to investors to successfully compete with other regions or oppose investments
Government	Owner of land, political power	Personal gain of officials and regulatory capture/ protect national interests (e.g. increase tax income, reduce poverty, develop rural areas)	Attract investors by offering incentives

Source: Author's compilation.

We can pool the actors into four different groups. First, there is the actor “investor” who is new to the land game.³⁴ Investors have resources and know-how to offer. Sometimes, foreign investors are supported by their governments, which may result in them receiving preferential treatment from the host country. This was confirmed by an official from the ZDA: “everyone is treated the same but if they have an official letter from their government they are considered much quicker” (Interview Z30, 2011 official from ZDA)). An investor uses these resources or connections to obtain land – preferably cheap, fertile and close to infrastructure – to make a profit from. Often, speculation is seen as an important investor strategy (Cotula et al., 2009, p. 57). The ways in which investors implement projects vary: while some investors coexist with local land users peacefully, others run into conflict. For instance, one farmer stated during a FGD in Fitete, “Us we are in the chiefs land [...]. These people are found behind the hill and there is a demarcation. [...] they all stay in the state land” (FGD Z4, 2011). Meanwhile another farmer in Chongwe narrated that,

investors started buying farms in that area and us the local people refused to move out of that area until the investors hired these so called “call-boys” who started breaking house after house and burnt all the villages. They did that in all the villages and left the people outside (FGD Z1, 2011).

Second, there are “local land users.” In contrast to investors, they have no resources and no power to safeguard their interests. Often, rural populations lack basic education and are thus – due to information asymmetries – in a disadvantaged negotiation position and can easily be influenced. Their preferences are ambiguous. On the one hand, they need land to sustain their livelihood and thus are in direct conflict with investors. On the other, they can benefit from investment projects through, for example, employment opportunities. Thus, they have a mixed approach: they oscillate between either opposing the investment projects or collaborating with investors.

Third, there are “local authorities” including the district council, chiefs and village headmen. Regarding the power of local authorities, chiefs – and to a limited extent village headmen too – traditionally have had control over land ownership and usage. They allocate land within their chiefdom to families in the area. By giving out land to investors, their chiefdoms are shrinking as a result of its irrevocable transformation into state land (Interview Z12, 2011 (local chief) and Z13, 2011 (representative from ZLA)). Chiefs can gain a lot of personal advantages or advance

³⁴ It is impossible to make a definite statement concerning the origin of investors, as there are no official records for those of them involved in agricultural projects. This uncertainty is also a consequence of the obscure land tenure system. Among the general population, the predominant perception is that these investors are Chinese (FGD Z9, 2011). Aside from that, people also named Europeans, Indians, Malaysians, and Zimbabweans (FGD Z5, 2011 and Interview Z31 (representative from ZNFU), 2011 & Z22 (official from MACO), 2011). An important wave of South African and Zimbabwean investors came as a consequence of Mugabe’s land reform. For instance, one participant in a FGD in Chongwe stated that “when Mugabe was throwing them out of Zimbabwe, they just came in like water flowing downstream” (FGD Z1, 2011).

interests of specific groups in dealing with the investors and by not consulting with locals (Brown, 2005, pp. 98–100). It depends entirely on the chief whether negotiations for communal benefits will take place or whether – relying on rent-seeking mechanisms – they act simply for their own benefit. As an official in the District Agricultural Coordinator's Office in Lusaka put it: “The chiefs have a lot of bargaining power. If they are selfish, they bargain for themselves, and then the locals are pushed out, or they can bargain for their community” (Interview Z19, 2011 (official from DACO)). Or, as according to a representative from the Zambia Land Alliance:

sometimes chiefs give away land where people already live and use it, because the chief wanted the money or a new Land Rover, so they can give away that land, the investor gets the title and the council is too occupied to check whether that land is really free (Interview Z13, 2011 (representative from ZLA)).

The preferences of local authorities are manifold: officials can further personal gains or protect local interests. To name just a few, local interests can be to increase the welfare of the local community, to secure access to land for smallholder farmers and to bring infrastructural development to the region. The strategy of local authorities is again mixed: either they can be particularly welcoming in order to attract investors to their region, and thus compete successfully with other regions, or they can oppose investors so as to secure land access for their local communities.

Last, there are “governmental actors on the national level.” This encompasses all actors and institutions that are involved in the process of acquiring land – most importantly, the MoL. The MACO plays an important role in identifying and opening up land suitable for agricultural purposes. The ZDA is an important consultant for investors, whereas the ECZ has to be consulted for EIAs. The government obviously has great power as all land is vested in the president. Within this, special acknowledgement has to be given to the influence of the Commissioner of Lands; he is the “kingpin” in the whole process and holds a great deal of power (Interview Z33, 2011 (official from ECZ)). The final stage in each land conversion process has to pass by the Commissioner. The government protects national interest, for example to. increase income from tax, reduce poverty and develop infrastructure. Again, individual governmental actors might also pursue personal interests (rent-seeking) or advance the interests of specific groups (regulatory capture). The strategy of the government – if it does not oppose investments in agriculture at large, which is certainly not the case in Zambia – is to attract investors. Through the conversion of customary land the government gains easier access to what has now become state land.

In line with North (1990, p. 84), we further ask how the bargaining power of actors has been affected by the changes that have occurred in the institutional setting. As analyzed in the previous section, investors have emerged as a new actor in the “play of the land game” in Zambia as a result of the Lands Act 1995 coupled with the increased demand for land worldwide. The actors

governing the tenure system were not at all prepared to be able to deal with this new demand for land coming from commercial farmers. Especially for traditional chiefs, who are usually as poor as their subjects are (Brown, 2005, p. 98), the immense increase in the value of land has changed their position in this land game. Before 1995 chiefs reigned over wide areas of land that were typically used solely for subsistence agriculture. Suddenly, however, rich investors began to offer significant monetary payments and valuable assets to these chiefs. As land cannot be given away without his/ her consent, the chief's role is prone to fraud and corruption. Similarly, government authorities gain power from their involvement in land administration. At the same time, local land users have been increasingly marginalized. Their claims are now valued less as compared to those of investors. One farmer claimed during a FGD in Fitete that,

I think the government has concentrated on the people that are coming from other countries leaving the indigenous Zambians to suffer at the expense of the investors. (...)

Acquiring land for a Zambian is more difficult than for a foreigner (FGD Z4, 2011).

We further scrutinize any efforts to restructure formal or informal institutions. As outlined in Section 3, recent reform attempts can be interpreted as the first efforts to restructure (formal) contracts, undertaken without success thus far however. One could also ask whether this change in bargaining power has led to any restructuring on the informal level. Judging from the FGDs, the chief's claim to power is still uncontested by local land users. For instance, even though he is not happy with the current situation, during a FGD in Kasokota this farmer did not question the chief's authority: "If an investor talks to the Chief then we have no say. (...) Since he is the chief he has the final say" (FGD Z2, 2011). However, chiefs themselves seem to feel threatened by the prospect that their power might diminish, as illustrated by an official in the Provincial Agricultural Coordinator's Office in Lusaka. "There even is a chief in the Copperbelt who got his own land titled to secure ownership" (Interview Z27, 2011 (official from PACO)).

5.2. Outcomes

Coming back to the original question of whether the events that are occurring in Zambia constitute a "land grab or development opportunity," we shed light on the outcomes of investment projects there. As the term "land grab" is more a "catch-all framework" (Borras & Franco, 2010) than a concise definition, we thus need to clarify how we distinguish land grabs from development opportunities. Following the Tirana Declaration (2011) – one of the rare legal definitions made of "land grab" –, we place an emphasis on the outcomes for local land users (ILC, 2011). This is in line with the actor analysis conducted above: local land users have no leverage, while all other groups involved have differing degrees of influence on the acquisition process. Thus, a "land grab" case is characterized by adverse outcomes for local land users.

The most obvious outcome from a land acquisition process is that land changes hands – most importantly in the case of customary land, where it is transformed into state land and is thus lost to community use forever. As noted, outcomes of the acquisition process for local land users depend largely on the agreement concluded between chief and investor. In densely populated areas (e.g. close to Lusaka) the pressure on land is high and competition between investors and local land users fierce. One farmer in Chongwe, close to Lusaka, explained that, “the feeling we have is of insecurity, when these people come, we all know that they have money so we fear we can be thrown out at anytime” (FGD Z1, 2011). Consultation of local land users is often overlooked, for example farmers in Chongwe told how the chiefs do not inform local communities about new investors (FGD Z1, 2011). Farmers close to Mkushi explained that most investors target state land, but whenever customary land is targeted consultation is problematic: “as long as they went to see the Chief it is fine, they can do whatever they want” and “we only get to hear that there are new investors after they have already moved in” (FGD Z2, 2011). While we have some evidence on displacements (FGD Z1, 2011, Interview Z3, 2010 (official from MACO); Z8, 2010 (representative of ZLA) and Z34, 2011 (judge at Lusaka High Court)) evidence on compensation for losses is scarce. One female farmer near Mkushi lamented that, “they do not mind about our fields or mango trees, they just cut everything down and they do not even compensate you” (FGD Z2, 2011).

The potential “development opportunities” provided by the investor are far from being obvious; and demand more research – especially on longer-term impacts.³⁵ Insights from the FGD give, however, an impression of the perceptions held by local farmers. For instance, participants of a FGD near Mkushi farmblock discussed how some investors “are very good-hearted” — taking care of their employees, giving bonuses, and lending agricultural equipment – while others do not do any of these things (FGD Z2, 2011). In another FGD near Mkushi farmblock, participants criticized those commercial investors who “flood markets,” thus driving down prices for agricultural produce (FGD Z4, 2011). In Chongwe, farmers claimed that investors “fence off” their land and restrict development to their own land alone (FGD Z1, 2011). Concerning employment opportunities, farmers near Mkushi farmblock admitted that “jobs are readily available” (FGD Z4, 2011), which was also confirmed by farmers near Kabwe (FGD Z5, 2011). However, the working environment was seen as hostile, because investors disrespect labor laws: only short-term contracts with low wages and no protection are offered (FGD Z1, 2011; FGD Z5, 2011 and FGD Z9, 2011). A farmer in Chongwe puts it this way: “We ask for employment from them and when they employ you it is like you become a slave” (FGD Z1, 2011).

³⁵ (Mujenja & Wonani, 2012) conduct two case studies on long-term outcomes in Zambia.

In the “land grab” debate, large-scale land acquisitions are often required to be a “win-win” investment with benefits for both the investor *and* the host country (Da Via, 2011; Daniel & Mittal, 2009; FAO, 2009).³⁶ Accordingly, we further investigate (possible) outcomes on the national level: these include tax yields, the development of the agricultural sector through foreign investments (Interview Z3, 2010 (official from MACO) and Z22, 2011 (official from MACO)) and, potentially, personal gains for state officials. However, the limited enforcement of formal laws might lead to minimal or even no tax payments being made and exploitation rather than development. One ZDA official was, as such, rather skeptical.

At the moment we are (...) not seeing the effects of investments and I do not know yet whether these investors are really serious about their projects. Zambia is giving investors a level playing ground. Some people want to abuse the friendly environment (Interview Z30, 2011 (official from ZDA)).

Possible outcomes for local land users and the host country in a broader sense are displayed in Table 2.

Table 2
Possible Outcomes of Land Deals

	Land Grab	Development Opportunity
Outcomes for Local Land Users	Loss of land without adequate compensation, loss of livelihood	Employment opportunities, improvements of infrastructure, knowledge on agricultural techniques
Outcomes on the National Level	Zero taxes paid, personal gains for state officials	Investments in/development of agricultural sector, tax yields

Source: Author’s compilation.

Whether a land investment turns out to be a “land grab” or “development opportunity” depends on several factors: predominantly, the land governance system with its formal and informal rules as well as the behavior of individual actors. In areas where land is scarce, customary land starts being targeted – in this case, investors and local land users come into direct competition with each other over land. This is a worrisome tendency as evidence suggests that the consultation of local land users is neglected, displacements do take place and compensation – though evidence either way on this is currently extremely scarce – is not sufficient.

³⁶ However, the “win-win” discourse is far from being common sense. For instance, Daniel and Mittal (2009) questions its viability.

Evidence from the FGDs and interviews held suggests that the impacts are neither completely positive nor altogether negative. They range from adverse effects such as the loss of land and livelihood without adequate compensation (FGD Z1, 2011 and Z9, 2011, Interview Z8, 2010 (representative of ZLA)) to positive developments such as greater employment opportunities (FGD Z2, 2011; Z4, 2011 and Z5, 2011), improved infrastructure and enhanced knowledge on agricultural techniques (FGD Z2, 2011). In sum, large-scale land acquisitions are far too complex and diverse phenomena to classify them simply as being either a “land grab” or “development opportunity.” However, it can be reasonably asserted that those cases where customary land is targeted are liable to be land grabs, as they exclude local land users from the decision-making processes.

6. Conclusion

This paper has analyzed how the characteristics of the land governance system in Zambia shape the outcomes from large-scale land acquisitions made by foreign investors in the country. Proposing a conceptual framework adapted from Williamson (1998), and using evidence constituted by expert interviews and focus group discussions, we have scrutinized the Zambian land governance system and its evolution, the process that an investor has to go through in order to acquire land and the actors who are responsible for shaping this process.

The Zambian land governance system is marked by the coexistence of statutory and customary laws. The most important formal change, the Lands Act 1995, paved the way for foreign investors to acquire Zambian land. However, this formal change only translated to actual changes once prices for agricultural land began to rise in the wake of the 2007-2008 food price crisis. As a result, investing in agriculture in Zambia became an attractive proposition for overseas investors, and the new actor “investor” thus entered the scene.

Shedding light on the process of acquiring land, we have found that currently the enforcement of formal rules is weak. The land governance system thus leaves scope for discretion, and actors thus determine how land deals are implemented and how they affect the host regions. Due to the varying resources available to these actors, some strongly shape the process of land acquisition while others are left out of it altogether. The current power balance is such that investors, local authorities and government officials have strong leverage and negotiate land deals while local land users have come to play an increasingly negligible role. Depending on the actors “playing the game,” land acquisitions can have the characteristics of “development opportunities” in cases where investors are willing to comply with regulations such as environmental and labor laws, and where government representatives and local authorities take local land users’ needs into account and thus consult with them prior to an investment. However, a “land grab” is likely to occur in situations where investors bypass regulations and government officials or local authorities act in a rent-seeking manner, which leads to the marginalization of local land users. In this vein, whenever

customary land is targeted land acquisitions are particularly liable to feature characteristics of what can be designated as “land grabs.” However, the evidence accumulated thus far suggests that the reality is more complex than a simple land grab versus development opportunity dichotomy: positive and negative outcomes from land deals often go hand-in-hand with each other.

Moreover, we have found that the power balance between actors has been altered by the presence of the new actor “investor.” In particular, local authorities –namely, chiefs – have gained in influence. As a result of this change in bargaining power, we have been able to detect feedbacks in formal and informal institutions: in light of the increased interest in agricultural land, the Zambian land governance system has proved incapable of handling the new actor “investor.” The necessity to change the current land governance system has clearly been recognized in Zambia itself; so far, however, there have been neither any successful reforms of formal laws nor any significant changes in informal laws in the country.

In order to discourage unscrupulous investors, we recommend the following steps being taken: 1) to make decisions based on fact, better and updated information on the land tenure system is indispensable. This includes figures on the repartition of state and customary land and the amount of land that has been allocated to investors. Transparency regarding the acquisitions of customary land also has to be increased; 2) the enforcement of formal rules has to be strengthened.

In this regard, two structural issues will need to be addressed: First, enforcement is costly, while, institutions in charge of monitoring land transactions are understaffed. More financial resources will thus have to be allocated to those institutions responsible for monitoring land deals. Second, even though formal laws demand the monitoring of the critical steps to be taken in the process of acquiring land, the informal constraints that persist can hinder their actual enforcement. For instance, a chief’s claim to power is perceived as absolute and thus is barely questioned. This challenge has to be acknowledged in any attempt to reform formal institutions.

Aside from these structural issues, too much leverage is granted to certain actors. Some of them hold an enormous amount of personal power and thus the system is prone to rent-seeking and regulatory capture. More checks and balances will thus have to be implemented. Similar issues were raised by the NCC, and should be given serious consideration in the near future. Finally, evidence on the long-term effects of these large-scale land acquisitions remains scarce. We thus strongly encourage the undertaking of further research on the effects of land deals, both on the local and the national levels.

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A Expert Interviews in Zambia

We conducted expert interviews with actors involved in the process of land acquisition, such as officials in ministries or from the Zambia Development Agency, as well as investors themselves. Moreover, we consulted those who while not directly involved in this process are still highly knowledgeable about it, such as representatives from the Zambia Land Alliance or other nongovernmental organizations. Interviews followed a semi-structured format. Thus, certain aspects were definitely covered but a level of openness was also maintained in order to allow the interviewee to touch upon aspects that we had not included in the guidelines. All interviewees were informed about the purpose of the interviews and how the data would be used. Due to reservations on the part of most of the interviewees and the sensitiveness of the topic, interviews were not recorded (with rare exceptions, e.g. Interview Z12). However, most interviews were carried out by a two-person team – so that one could ask questions and the other could take detailed notes (which were typed up later the same day).

Table A 1:

Conducted Interviews in between October 2010 and April 2011 in Zambia

Code	Date	Gender	Position/ Organization	Location
Z1	23.10.2010	M	Staff Member/ China Zambia Friendship Farm	Lusaka West
Z2	26.10.2010	M	Official A/ MACO ^a	Lusaka
Z3	27.10.2010	M	Official B/ MACO	Lusaka
Z4	1.11.2010	M	Local Supervisor/Zhongua Farms	Kabwe
Z5	1.11.2010	M	Owner/ Amajuba Farm	Mkushi Farmblock
Z6	2.11.2010	M	Owner/ Munshiwemba Farms	Mkushi Farmblock
Z7	2.11.2010	F	General Manager/ Johnken Estates	Near Chisamba
Z8	3.11.2010	M	Representative A/ ZLA ^b	Lusaka
Z9	3.11.2010	M	Official/Agricultural Consultative Forum	Lusaka
Z10	22.03.2011	M	Agricultural Specialist/ World Bank	Lusaka
Z11	25.03.2011	M	Official/ DACO ^c	Mkushi
Z12	25.03.2011	M	Local Chief	Near Mkushi

^a Ministry of Agriculture and Cooperatives.

^b Zambia Land Alliance.

^c District Agricultural Coordinator's Office.

Z13	29.03.2011	M	Representative B/ ZLA	Lusaka
Z14	30.03.2011	M	Representative/ Biofuels Civil Society Forum	Lusaka
Z15	30.03.2011	M	Representative/ Oxfam	Lusaka
Z16	01.04.2011	F	Representative/ International Justice Mission	Lusaka
Z17	04.04.2011	M	Official A/ MoL ^d	Lusaka
Z18	05.04.2011	M	Representative/ African Conservation Tillage Network	Lusaka
Z19	05.04.2011	M	Official/ DACO	Lusaka
Z20	05.04.2011	M	Official B/ MACO	Lusaka
Z21	06.04.2011	M	Official C/ MACO	Lusaka
Z22	06.04.2011	M	Official D/ MACO	Lusaka
Z23	07.04.2011	M	Manager/ China Zambia Friendship Farm	Lusaka West
Z24	07.04.2011	F	Extension Officer/ MACO	Lusaka West
Z25	08.04.2011	F	Representative/ Zambian Women in Agriculture	Lusaka
Z26	08.04.2011	F	Former secretary/ Land Commission of the NCC	Lusaka
Z27	08.04.2011	M	Official/ PACO ^e	Lusaka
Z28	08.04.2011	M	Official A/ ZDA	Lusaka
Z29	11.04.2011	M	Lawyer/ International Justice Mission	Lusaka
Z30	11.04.2011	M	Official B/ ZDA	Lusaka
Z31	12.04.2011	M	Representative/ Zambian National Farmers Union	Lusaka
Z32	12.04.2011	M	Official B/ MoL	Lusaka
Z33	13.04.2011	M	Official/ ECZ ^f	Lusaka
Z34	18.04.2011	M	Judge/ Lusaka High Court	Lusaka

Source: Author's compilation.

^d Ministry of Lands.

^e Provincial Agricultural Coordinator's Office.

^f Environmental Council of Zambia.

B Focus Group Discussions in Zambia

FGDs were targeted at three regions in which investments have taken place: Lusaka West, Mkushi Farmblock and the area around Chisamba/Kabwe. Also, one pilot was carried out in Chongwe. Each group aimed to have between 7 and 15 participants, comprised of both men and women. In each of these regions it was envisaged to have one FGD with smallholder farmers, one with landless smallholder farmers and one with farm employees. In practice, group sizes varied and people would join in discussions and then leave again. Due to limited resource availability there are no gender-differentiated group discussions in our sample. In order to compensate for this weakness, the facilitators of the FGDs – in most cases a female moderator and a male assistant – were specially trained in how to encourage women's participation.

Discussions were held in local languages (Njanya and Bemba), recorded and then transcribed into English. All participants were informed about the purpose of the FGDs and how the data would be used. Before recording, we obtained consent from the participants.

Table B 1

Conducted Focus Group Discussions between March and April 2011 in Zambia

Number	Date	Group	Place	Investment Region
Z1	17.03.2011	Smallholder farmers	Chongwe	
Z2	24.03.2011	Smallholder farmers	Kasokota	Mkushi Farmblock
Z3	24.03.2011	Farm employees	Mkushi Farmblock	Mkushi Farmblock
Z4	25.03.2011	Landless smallholder farmers	Fitete	Mkushi Farmblock
Z5	26.03.2011	Smallholder farmers	Nyama	Chisamba/ Kabwe
Z6	26.03.2011	Farm employees	near Chisamba	Chisamba/ Kabwe
Z7	07.04.2013	Farm employees	Lusaka West	Lusaka West
Z8	07.04.2012	Smallholder farmers	Lusaka West	Lusaka West
Z9	07.04.2011	Landless smallholder farmers	Lusaka West	Lusaka West

Source: Author's compilation.