Food and Agriculture Organization of the United Nations

Extraterritorial investments in agriculture in Africa:

the perspectives of China and South Africa

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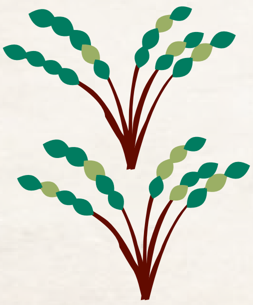

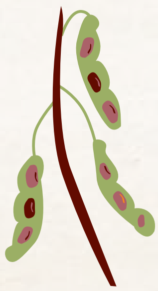

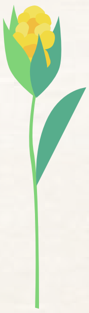

Foreword

When discussing land-based investment deals in agriculture, what is the area of land actually involved? In-country research tends to underestimate the areas covered by land-based investments in agriculture, whether international or domestic, while media reports tend to overestimate the areas concerned. Figures vary widely in the literature, as do the perspectives on these investments.

The context of these land-based investments differs greatly. There is diversity in farming systems, in tenure rights, and government policies. Especially when investors are seeking land already being used by local communities, land acquisitions may impinge substantially on the legitimate tenure rights of the local communities, their food security and livelihoods. The purpose of these land-based investment deals varies widely because they fulfil a range of interests from food, feed or bio fuel production, to collection of forestry products, or the non-productive use of land for financial speculation.

Land-based investments in agriculture involve a complex interlocking global system of interests reflecting different perspectives. National governments in both home and host countries play a pivotal role. In host countries, national governments have identified the amount and location of land available for investments in agriculture, and promotion agencies have been set up acting as a 'one-stop-shop'. However, governments have also sought to limit investments by protecting certain areas (e.g., for biodiversity reasons, to protect indigenous peoples, to ensure food security). The implications of these land-based investments vary widely for people in local communities as there is diversity in local interests (personal or community), wealth, power, status and gender. National government's decisions concerning the allocation of land and natural resources to investors will affect large numbers of people not only at the time of investment, but for generations to come. In home countries, national governments have adopted policies that have an impact elsewhere in the world. Thus, national governments in both home and host countries have a central role to play to balance the various interests.

Given the likely increase of future investments in agriculture that are essential for food security and nutrition, it is vital to analyse how the tenure rights and interests are balanced in both home and host countries, by local communities and investors. All forms of transactions in tenure rights as a result of the investments in agriculture should do no harm, safeguard against dispossession of legitimate tenure right holders and environmental damage, and should respect human rights. Therefore, in accordance with existing obligations under both national and international laws, the home countries of investors, and the nations supporting investments in other nations, must ensure that their actions respect and protect human rights and meet environmental standards in the host country according to existing obligations under national and international law, and with due regard to voluntary commitments under applicable regional and international instruments. It is advised that before any investment begins, host countries should have consultations with local affected communities and all other parties. By doing this, all of those concerned will gain a better understanding of how this investment could affect the land and natural resources where these communities depend on for their livelihood as well as social, and cultural activities. Responsible investment is encouraged by practising responsible governance of land tenure and natural resources, thereby promoting sustainable social and economic development, and encouraging food security and nutrition.

Acknowledgements

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Abbreviations and acronyms

AaA	Agri-SA's Agri All Africa Platform
ABSL	Addax Bioenergy Sierra Leone
ADB	Asian Development Bank
Agri-Vie	Africa Food and Agribusiness Investment Fund
API	Malian Investment Promotion Agency
AU	African Union
BIT	Bilateral Investment Treaty
BBB-EE	Broad-Based Black Economic Empowerment
BOT	Build-Operate-Transfer
CAADP	Comprehensive Africa Agriculture Development Programme
CDB	Chinese Development Bank
CFS	Committee on World Food Security
CFS-HLPE	Committee on World Food Security's High Level Panel of Experts on Food Security and Nutrition
CFS-RAI	Principles for Responsible Investment in Agriculture and Food Systems
CNY	Chinese Yuan Renminbi
CSO	Civil Society Organization
CSR	Corporate Social Responsibility
DADTCO	Dutch Agricultural Development and Trading Company
DAFF	Department of Agriculture, Forestry and Fisheries (in South Africa)
DFI	Development Finance Institution
DIRCO	Department of International Relations and Cooperation (in South Africa)
DFID	Department for International Development
DRC	Democratic Republic of Congo
DRDLR	Department of Rural Development and Land Reform (in South Africa)
DBSA	Development Bank of South Africa
DTI	Department of Trade and Industry (in South Africa)
ECIC	Export Credit Insurance Corporation
EDD	Economic Development Department
EUR	Euro (official currency in 19 of the 27 member states of the European Union)
EXIM	Export-Import
FAO	Food and Agriculture Organization of the United Nations
FECC	Foreign Economic Cooperation Center (of the Ministry of Agriculture in China)
FEMA	Foreign Exchange Management Act
FERA	Foreign Exchange Regulation Act
FDI	Foreign Direct Investment
F&G	Framework and Guidelines on Land Policy in Africa
FPIC	Free, Prior and Informed Consent

IDC	Industrial Development Corporation
IFAD	International Fund for Agricultural Development
IFI	International Finance Institution
IFPRI	International Food Policy Research Institute
IIA	International Investment Treaty
IIED	International Institute for Environment and Development
ILC	International Land Coalition
ILO	International Labour Organization
IPAP	Industrial Policy Action Plan
ITED	International Trade and Economic Development Division
LPI	Land Policy Initiative of the African Union
LSLBIA	Large-Scale Land-Based Investments in Agriculture
MoU	Memorandum of Understanding
NABARD	National Bank for Agriculture and Rural Development
NBD	NEPAD Business Foundation
NDP	National Development Plan
NEDLAC	National Economic Development and Labour Council
NEPAD	New Partnership for Africa's Development of the African Union
NGO	Non-Governmental Organization
NIPF	National Industrial Policy Framework
OECD	Organisation for Economic Co-operation and Development
OFDI	Outward Foreign Direct Investment
PAFO	Pan African Farmers' Organization
PIC	Public Investment Corporation
PPIB	Promotion and Protection of Investment Bill, 2015
PPP	Public-Private Partnership
PPPP	Public-Private People Partnership
PRAI	Principles on Responsible Agricultural Investment
RDC Moz	Regional Development Company Mozambique
SACAU	Southern African Confederation of Agricultural Unions
SACU	Southern African Customs Union
SADC	South African Development Community
SCO	Shanghai Cooperation Organization
SOE	State-Owned Enterprise
SRI	Socially Responsible Investment
SSC	South-South Cooperation
TAU	Transvaal Agricultural Union
TIC	Tanzania Investment Centre
TISA	Trade and Investment South Africa of the DTI

UNCTAD	United Nations Conference on Trade and Development
USAID	United States Agency for International Development
USD	United States Dollar
VGGT	Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security
WFP	World Food Programme
ZAR	South African Rand
ZDA	Zambia Development Agency

Executive summary

The 2008 global food price crisis, and the resurgence of food prices in 2010–2011, caused both widespread concern and expectations. On the one hand, countries whose food supply depends on procuring food from international markets saw food price spikes as threats to their national food security. On the other hand, investors saw in these price spikes an opportunity to make profitable investments in agriculture. Either as threat or opportunity, food price spikes raised interest in Africa, whose lands are fertile and have unrealised potential. Concerns of a possible land acquisitions in Africa, and in particular the impacts of Large-Scale Land-Based Investments in Agriculture (LSLBIA) on local communities, became prominent policy and academic themes. Unfortunately, quantifying the phenomenon has proved hard due to the difficulty of finding empirical evidence. As a result, debates are either theoretical or based on anecdotal evidence. This publication thus explores a different path, and explores the reasons why entities from China and South Africa were interested in investing African agriculture.

This publication examines the reasons why investors were interested in Africa, and the relationship that these bear to *The Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security* (the 'Voluntary Guidelines' or 'VGGT'). The VGGT, endorsed by the UN Committee on World Food Security in May 2012, were created to help countries improve their governance of tenure for the benefit of all, with an emphasis on vulnerable and marginalized people, with the goals of food security and progressive realisation of the right to adequate food, poverty eradication, sustainable livelihoods, social stability, housing security, rural development, environmental protection and sustainable social and economic development.

While primarily aimed at governments, the Voluntary Guidelines also contain important provisions that are applicable to the private sector. They focus on helping investors pursue their projects in ways that recognise and respect legitimate tenure rights and human rights. In addition, the Voluntary Guidelines also contain provisions and encourages good practices for responsible investment in land, forests and fisheries. The Voluntary Guidelines are a valuable tool for helping investors minimise risk while also safeguarding the rights of local communities.

China and South Africa represent important sources of LSLBIA in Africa, although the bulk of such investment comes from western countries (Table 1). Their investment may intensify in the future for a variety of reasons. First, China has the third largest land area in the world but its expansion through additional land use is limited. Second, the dual agricultural economy of South Africa is preventing commercial farming located in well-endowed areas from expanding into remote, resource-poor areas where small-scale subsistence-based production is prevalent.

This publication assesses the extent to which selected investors from China and South Africa and the governments of those countries have adopted the best practices represented by the Voluntary Guidelines in relation to LSLBIA in Africa. It incorporates the findings of two individual studies (one for each country),the main research questions for which were:

- What is the nature, extent and scale of extraterritorial LSLBIA in Africa from investors from each country?
- What role does each government play in extraterritorial LSLBIA in Africa, and have any policies and/or laws been introduced to regulate and manage these investments?
- Does LSLBIA in Africa from these countries comply with international and regional guidelines developed to promote responsible investments and sustainable and equitable development; and
- What can be done to influence more responsible investments in Africa from those countries?

Government policies

Chinese companies have invested less in LSLBIA in Africa than companies from South Africa. However, of the two governments, China's has been the most active in adopting legal provisions that either require or strongly encourage domestic companies to be responsible investors in several respects. While the formal legal effect of these provisions is unclear, the authors of the Chinese paper strongly suggest that Chinese companies are required to comply with them. While none of these provisions refer explicitly to the Voluntary Guidelines, several address substantive issues covered by them.

The South African government does not appear to have laws or policies that expressly require its companies to be responsible investors. The South African government regulates extraterritorial direct investment by its companies, but it lacks laws or policies requiring its firms to adopt responsible investment practices. While the government has embraced policies that encourage investment in agriculture, it has not adopted regulations on responsible investment practices. The South African Department of Trade and Industry (DTI) has published a set of voluntary guidelines that are generally consistent with some responsible investment practices although they are silent on the issues of respect for land rights, consultation and participation and other key components of the Voluntary Guidelines.

Overview of investors and investments

Most investors described in the China chapter are state-owned enterprises along with a few small privately-owned firms. The investments by South African companies reviewed in the South Africa chapter mostly involve private companies.

Investors from China and South Africa have engaged in large-scale acquisitions by purchase or lease, sometimes directly from the host government. Chinese and South African companies described in the country case studies also employed several other models, some of which involve engaging directly with local farmers without acquiring rights to land.

South African companies report a high rate of failure in their LSLBIA elsewhere in Africa and have thus become more reluctant to engage in such activities. The authors of the China chapter did not directly discuss the financial results of the investments they studied. The China authors noted that Chinese companies face several significant challenges in their LSLBIA in Africa. Other reports indicate that generally Chinese companies have not fared well in LSLBIA both in Africa and other developing countries – which could possibly cause Chinese investors to look elsewhere to invest in agriculture.

Policies and practices of investors from China and South Africa concerning responsible investment

Overall, it appears that investors from the two countries lack awareness of the Voluntary Guidelines. However, some South African investors, seem to have a general understanding of principles for responsible investment. Indeed, South African companies appear to have a greater awareness of the importance of respecting legitimate tenure rights and working cooperatively with local communities. Some of the Chinese companies involved in the case studies stated that they sought to respect local tenure rights but their efforts to do so were undermined by relying solely on official land records and their apparent lack of understanding of customary tenure rights – which rarely appear in official records.

Recommendations

In the country chapters, the authors laid out recommendations for home governments and investors in relation to LSLBIA in Africa and the Voluntary Guidelines. The South African authors stress the need for access to better information about the nature and extent of LSLBIA transactions in Africa, suggesting that the government could require companies to provide such information.

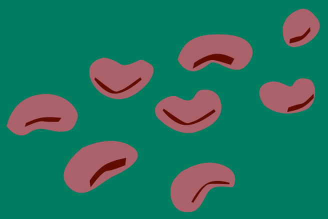
With respect to compliance with the applicable provisions of the Voluntary Guidelines, authors from South Africa and China support a more rules-based approach, with China favouring reliance on international rules and treaties while the South African study suggests more rigorous regulation by the South African government. Each country must decide whether to require or simply encourage its companies to invest responsibly.

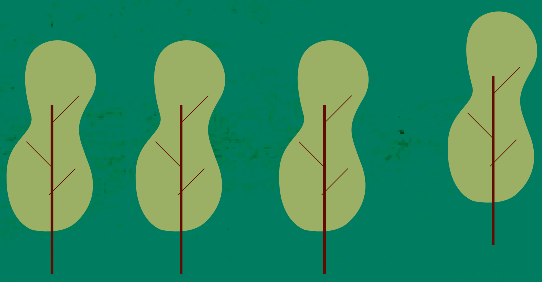
The recommendations for South African companies are consistent with the letter and spirit of the Voluntary Guidelines. It would be helpful to have the perspectives of investor representatives on these recommendations, especially in terms of feasibility, cost of compliance and how much additional capacity and tools they would need for implementation.

The recommendations for Chinese investors are more general and less closely linked to the content of the Voluntary Guidelines. While the authors advise investors to become more familiar with the content of responsible investment instruments (including the Voluntary Guidelines), many of the Chinese guidelines and instructions comprise elements of the VGGT without making explicit reference to them. In any case, Chinese investors in LSLBIA in Africa would benefit from adopting policies and practices that incorporate the essential principles set forth in the Voluntary Guidelines.

In sum, the case studies indicate that both the Chinese and South African investors in LSLBIA in Africa need to have a greater awareness of and the capacity to operationalise the relevant provisions of the Voluntary Guidelines. Acting in accordance with the Voluntary Guidelines can help investors to better understand and manage the substantial financial, legal, operational and reputational risks inherent in investing in land-based assets in many developing countries. The governments of China and South Africa can provide support to their companies as can the wider global community, multi-stakeholder partnerships and industry trade associations. Doing so can lead to investments where everyone – investors, local communities and governments – benefit.

Introduction





1. Introduction

Chapter prepared by: Louisa J.M. Jansen, Land Tenure Unit, Food and Agriculture Organization of the United Nations (FAO); Pedro M. Arias, Trade and Markets Division, FAO; and Darryl Vhugen, Senior VGGT and Investments Consultant, FAO.

1.1. Background and rationale: the need for more responsible investments in agriculture

Substantive additional investments are needed to achieve the UN 2030 Sustainable Development Agenda's goals of ending poverty and hunger worldwide (Sustainable Development Goals [SGDs] 1 and 2). Projections indicate that an average of USD 265 billion per year between 2016–2030 is required to fund both an additional investment in social protection and pro-poor productive activities – of which USD 140 billion would need to be targeted in investments in rural development and agriculture. Notably, such investments are needed from both public and private sources (FAO, IFAD and WFP, 2015).

In many countries, low productivity and stagnant production can be traced to decades of neglect or low levels of investment in agriculture. (FAO, 2015). Furthermore, a convergence of factors has heightened awareness of the global issues of food security, agricultural development paths and land governance (FAO, 2012a). Such factors as the decline in agricultural productivity caused by climate change; shortages of fertile land and water due to the increased agricultural production; the growing competition for fertile land for bio fuel crops instead of food crops; the decrease of agricultural areas due to biodiversity conservation or carbon sequestration schemes; and the increase in demand for food in fast-growing urban areas are all factors threatening food security. (CFS-HLPE, 2011; Cheru and Modi, 2013; FAO, 2014). Other factors, such as the volatility in commodity prices (German *et al*., 2013; Minot, 2014) and population growth projections whereby more than 9 billion people will occupy the earth in 2050 also play a major role in increased instability (FAO, 2009). It is projected that food production will have to increase as much as 70 percent by 2050 in order to feed a larger, more urbanised and increasingly prosperous global population. Rising population pressure also contributes to the shrinking size of most smallholder farms over time (Jayne *et al.*, 2014).

Fortunately, the anticipated future demand for food, water and energy, has conspired to make land-based investments increasingly attractive (Cheru and Modi, 2013). However, while investment is paramount to face the above mentioned challenges, investments should be done in a responsible manner in order to avoid negative social and environmental consequences such as disruption of local productive systems and livelihoods of rural communities, environmental degradation and water scarcity (FAO, 2019). Responsible investment in agriculture and food systems are defined as the creation of productive assets and capital formation oriented to support the realization of food security, nutrition and sustainable development. Importantly, responsible investments require respecting, protecting and promoting human rights, including the right to food, as well as reliable, coherent and transparent legal frameworks (CFS, 2014).

Lately, LSLBIA are receiving increased attention. Lands that, until recently, seemed to be of little interest or value are now sought for investment by a variety of stakeholders. The representation of agricultural land as being either 'unused', 'idle' or 'abundant' allows commercial investments to be seen as development opportunities that would make better use of such lands than their current use, and include job opportunities, knowledge and technology transfers, infrastructure, schools, etc. (Schultz, 2016). The ability to use agricultural land translates into the ability to benefit from the produce obtained, and the land management actions carried out by people to produce products and benefits (FAO, 1999). This ability is related to (hierarchical) power dynamics in society. Hence a central requirement to use land in order to benefit from its resources is *land access*. These benefits are often framed as who will be able to generate the most capital from the resource, thereby ignoring value dimensions that cannot be expressed in monetary terms or ignoring land uses deemed less efficient in capital returns. As documented by the Committee on World Food Security's High Level Panel of Experts on food security and nutrition (CFS-HLPE, 2011), LSLBIA have stimulated heated debates and have profound implications for the future of agriculture, food security and the environment. The international dimension of LSLBIA is especially important because of the unequal access to land and natural resources at global level. Such investments can have a major impact not only on those with legitimate tenure rights but on the future generations too (Jansen and Hilton, 2016). Therefore, the role of central government is crucial in managing and negotiating investments in agriculture. Central governments set the terms and conditions for the proper balance of interests between local land users, communities and investors.

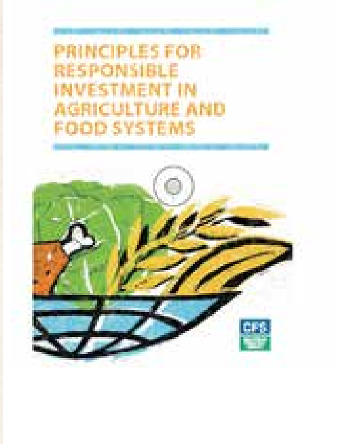
Land tenure and its governance are crucial factors in the eradication of hunger and poverty. Sustainable use of the environment, and responsible investments in agriculture all rely on good governance and secure tenure rights. The livelihoods of many, particularly the rural poor, depend on access to and control over land and other natural resources. These natural resources are the source of food and shelter; the basis for social, cultural and religious practices; and a central factor in economic growth (Munro-Faure and Palmer, 2012). Secure tenure rights provide the basis for economic growth, enhanced food and nutrition security, reduced conflict, and improved natural resource management. Safeguarding tenure rights improves the overall investment environment, thereby fostering increased investment (FAO, 2012a).

To assess whether investments in agriculture are responsible, assessing the investment models that are or may be utilised to make such investments, as well as how land tenure is perceived and dealt with in this process, is key to determine their impact on affected stakeholders.

1.2. An enabling environment for responsible investments: the VGGT and the RAI Principles

Many responsible investors currently find that the agricultural investment environment of the host countries to be unfavourable. Weak tenure governance combined with weak institutional, policy, social and legal frameworks make it very difficult for countries to attract the kind of investment necessary for national development. For the investors the risks out-weigh the opportunities. Moreover, investors often lack guidance on how to responsibly act, being unaware of international standards and which good practices to follow.

To steer investments into more responsible and sustainable models, international guidance is available to support investors, stakeholders, home country and host country governments. These practices include efforts to regulate and manage investment through improved tenure governance. In 2010, the Committee on World Food Security (CFS; see Box 1) considered tenure and responsible investment in agriculture at its 36th Session. The CFS agreed that, while these areas overlap, two separate guidance documents should be prepared as not all tenure and investment issues are related to each other. The CFS formally endorsed the *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security* (hereafter, 'Voluntary Guidelines' or 'VGGT') on 11 May 2012 (FAO, 2012c), and the *Principles for Responsible*



Investment in Agriculture and Food Systems (hereafter 'CFS-RAI') on 15 October 2014 (CFS, 2014).

The Voluntary Guidelines represent a global consensus on internationally accepted principles and standards for responsible practices for the governance of tenure. (Palmer *et al.,* 2012). They promote food security and sustainable development by encouraging transparent, equitable, secure access to and control over land, fisheries and forests and by protecting the legitimate tenure rights, whether formal or informal, of millions of people, many of whom are poor and food insecure. It should be noted that while voluntary in nature, the Voluntary Guidelines are based on and contribute to the achievement of international binding agreements, principles and standards on areas such as human rights, and are intended to contribute to global efforts towards the eradication of hunger and poverty, as well as the promotion of sustainable development. States and other stakeholders can use the Voluntary Guidelines when developing their own strategies, policies, legislation, programmes and activities to improve their governance of tenure. The Guidelines support governments, civil society, private sector entities and citizens to judge whether their proposed actions and the actions of others constitute acceptable practices.

Box 1. What is the CFS and what was its role in the VGGT?

The Committee on World Food Security (CFS) is the foremost inclusive international and intergovernmental platform for all stakeholders to work together to ensure food security and nutrition for all. The Committee reports to the UN General Assembly through the Economic and Social Council (ECOSOC) and to the FAO Conference. CFS is made up of Members, Participants and Observers. The membership of the Committee is open to all Member States of the Food and Agriculture Organization (FAO), the International Fund for Agriculture Development (IFAD) or The World Food Programme (WFP) and non-Member States of FAO that are Member States of the United Nations.

Using a multi-stakeholder, inclusive approach, CFS develops and endorses policy recommendations and guidance on a wide range of food security and nutrition topics. These are developed starting from scientific and evidence-based reports produced by the High Level Panel of Experts on Food Security and Nutrition (HLPE) and/or through work supported technically by the FAO, the International Fund for Agricultural Development (IFAD), World Food Programme (WFP) and representatives of the CFS Advisory Group.

The Voluntary Guidelines are based on an inclusive process of consultation that was led by FAO. During 2009–2011, government officials, civil society organizations, private sector representatives and academics identified and assessed issues and actions to be included in the Voluntary Guidelines. The Voluntary Guidelines were finalised through the CFS-led intergovernmental negotiations that took place during 2011–2012, and which included the participation of international agencies, civil society organizations, farmers' associations, private sector representatives and research institutions.

Source: CFS (see http://www.fao.org/cfs/en/).

At the heart of addressing challenges and opportunities associated with responsible land-based agricultural investments is the responsible governance of tenure. Addressing agricultural investments from a food security and tenure rights perspective is critical, as it can:

- Protect legitimate tenure rights over land and natural resources, including rights of smallholders and local communities that are based on customary practices;

- Facilitate investors' access to genuinely available land, minimizing risks; and
- Create incentives for inclusive and sustainable business models that share value with local farmers and do not imply land transfers, while generating benefits for local societies and promoting environmental sustainability.

While national governments are the primary target of the Voluntary Guidelines, several of their key provisions are addressed to other non-governmental actors, including businesses and private sector investors. Governments in the investors' home countries, as well as of recipient countries, can encourage companies to embed the provisions of the Voluntary Guidelines into their policies and practices, including the following:

i. Respecting legitimate tenure rights

Under the Voluntary Guidelines, "*(n)on-state actors including business enterprises have a responsibility to respect human rights and legitimate tenure rights. Business enterprises should act with due diligence to avoid infringing on the human rights and legitimate tenure rights of others. They should include appropriate risk management systems to prevent and address adverse impacts on human rights and legitimate tenure rights*" (Voluntary Guidelines paragraph 3.2).

To engage in such due diligence and manage risk, the Voluntary Guidelines advise investors to "*identify and assess any actual or potential impacts on* […] *legitimate tenure rights in which they may be involved*" (Voluntary Guidelines paragraph 3.2).

Box 2. Legitimate tenure rights

The VGGT consider as '*legitimate*' not only those tenure rights formally recognised by national law, but also those rights that, while not currently protected by law, are considered to be socially legitimate in local societies (see VGGT paragraphs 4.4, 5.3, and 7.1).

The Voluntary Guidelines also state that "[r]*esponsible investments should do no harm, safeguard against dispossession of legitimate tenure right holders and environmental damage, and should respect human rights*" (VGGT paragraph 12.4). Investors are advised that they "*have the responsibility to respect national law and legislation and recognise and respect tenure rights of others and the rule of law* […]" (VGGT paragraph 12.4).

An essential goal of the Voluntary Guidelines is gender equality. Agricultural investments often have a substantially different and greater impact on women (for more guidance on gender-equitable tenure governance, see FAO, 2013). Accordingly, the Voluntary Guidelines instruct parties to agricultural investment contracts to see to it that the "*negotiation process should be non-discriminatory and gender-sensitive*" (VGGT paragraph 12.11).

ii. Consultation and participation

The Voluntary Guidelines promote effective consultation with and participation by all those affected by a proposed investment (VGGT paragraph 3B6). They urge governments and other parties (including investors) to consult effectively with all stakeholders, including "*Indigenous peoples and other communities with customary tenure systems, smallholders and anyone else who could be affected* […]" (VGGT paragraph 7.3)[1]. Indigenous peoples are afforded particular attention

[1] See, also, Voluntary Guidelines paragraph 8.6 calling for consultation with "anyone who could be affected" by policies affecting tenure rights, and Voluntary Guidelines paragraph 9.9 providing for consultation with indigenous communities and other communities with customary tenure rights.

as investment projects affecting their land tenure rights require their Free, Prior and Informed Consent (FPIC) before they may proceed (VGGT paragraph 9.9). Other communities are entitled to consultation and participation (VGGT paragraph 12.7).

iii. Grievances and dispute resolution

The Voluntary Guidelines recognise that governments have the primary responsibility for developing and implementing mechanisms to resolve disputes over tenure rights. Governments are advised to *(p)rovide access to justice to deal with infringements of legitimate tenure rights. They should provide effective and accessible means to everyone, through judicial authorities or other approaches, to resolve disputes over tenure rights; and to provide affordable and prompt enforcement of outcomes* (VGGT paragraph 3.1 (4), *including alternative means of resolving such disputes* […]" (Voluntary Guidelines paragraph 4.9 and 21.1). Such mechanisms should be "*accessible to all, women and men, in terms of location, language and procedures*" (VGGT paragraph 21.1).

iv. Transparency and corruption

In several sections, the Voluntary Guidelines emphasise the importance of transparency and avoiding corruption on the part of all parties involved in or affected by investments in land (VGGT paragraphs 10.5, 11.4, 11.7, 12.3, and 12.11). Other sections promote transparency and urge stakeholders to avoid corruption relating to expropriation and compensation, information on tenure rights, valuing such rights and dispute resolution processes (VGGT paragraphs 16.6, 17.5, 18.3, 18.5 and 21.5).

v. Food security

Ensuring food security for all is at the heart of the Voluntary Guidelines. They seek to provide a pathway to "*the overarching goal of achieving food security for all and to support the progressive realization of the right to adequate food in the context of national food security*" (VGGT preface).

The Voluntary Guidelines note that "*responsible public and private investments are essential to improve food security*" (VGGT paragraph 21.1), and that responsible investments should actively strive to improve food security (VGGT paragraph 12.4). There is a particular emphasis on the importance of supporting smallholder farmers because of the important role they play in ensuring food security in much of the world (VGGT paragraph 12.2). Investors are also told that their investments "*should not contribute to food insecurity*" (VGGT paragraph 12.12).[2]

vi. Human rights

The Voluntary Guidelines emphasise that investors and businesses have a duty to respect and avoid infringing on human rights and to identify, assess and remedy any negative impacts they have on such rights (VGGT paragraph 3.2). Thus, a 'responsible investment' is one that respects and does no harm to human rights (VGGT paragraph 12.4). It should be emphasised that human rights related to tenure include, among others, the right to food, the right to adequate housing and the right to own property.

vii. Environment and sustainability

According to the Voluntary Guidelines, one of the characteristics of a responsible investment is that it does no harm to the environment (VGGT paragraphs 12.4 and 12.12). Governments are advised to "*promote the sustainable use of land, fisheries and forests and conservation of the environment*" (VGGT paragraph 11.2). The Voluntary Guidelines recognise the important role that smallholders play in

[2] Note that CFS-RAI Principle number 1 provides further guidance.

environmental resilience (VGGT paragraph 12.2). And they instruct governments to adopt tenure-related policies that address climate change and include all affected parties in consultations and implementation of climate change mitigation strategies and mechanisms (VGGT chapter 23).

viii. Monitoring

The Voluntary Guidelines stress the importance of monitoring the impact of large-scale investments affecting tenure rights. While governments have the primary responsibility for monitoring the overall impact of investments in their countries, all parties have a responsibility to track the effect of particular projects:

States and affected parties should contribute to the effective monitoring of the implementation and impacts of agreements involving large-scale transactions in tenure rights, including acquisitions and partnership agreements (VGGT paragraph 12.14).

This provision complements another section that calls for all parties, including businesses, to monitor the implementation of ethical standards to help prevent corruption (VGGT paragraph 11.7).[3]

Thus, the Voluntary Guidelines provide a framework for achieving a win-win-win scenario for the investor, the local community and the government to ensure that investments benefit everyone. The governments of the investor's home countries can play a significant role in prompting their investors to act in accordance with the core principles of the Voluntary Guidelines. While host country governments bear much of the responsibility of regulating investment in their countries (FAO, 2019)[4], foreign investors and their home country governments can also turn to the Voluntary Guidelines and promote responsible investments, to help decrease risks and increase predictability on their returns. In fact, many investors have stated that they are more attracted to stable and well-developed investment environments than by the offer of 'cheap' land (Deininger, 2011). State actors (e.g., State-Owned Enterprises and credit entities including International Financial Institutions such as the New Development Bank) are increasingly recognising their responsibility to respect human rights and legitimate tenure rights. In short, the Voluntary Guidelines are increasingly seen internationally as establishing a standard for good practices for investment in land, fisheries and forests.

Complementing the Voluntary Guidelines, the Principles for Responsible Investment in Agriculture and Food Systems (the CFS-RAI Principles) establish a set of fundamental principles in relation to such investments. The CFS RAI Principles are also based on international frameworks such as international human rights treaties, as well as soft law instruments such as the UN Guiding Principles on Business and Human Rights. The Principles also fully incorporate the Voluntary Guidelines on all areas related to land tenure, while also addressing other non-tenure related issues that are relevant to investment throughout the food system. The CFS RAI principles urge stakeholders to, among other matters, respect all legitimate land tenure rights and to use the principles as a checklist to be applied in the development of investment models.

Together, the Voluntary Guidelines and CFS RAI Principles are complementary tools for addressing responsible investment in agriculture and food systems. Emerging market governments, supported by donor countries, are moving towards incorporating the Voluntary Guidelines into their national legal frameworks, while land tenure rights holders are becoming increasingly aware of the value of their land. This should create a safer and more stable environment for investment in countries that

[3] See, also, CFS-RAI Principle number 10.

[4] Host country government measures include investment models that should ideally be prioritised by reducing or avoiding the large-scale transfer of tenure rights in an overall strategy that safeguards tenure rights while encouraging investment in inclusive business models. When the priorities and principles have been identified, they should be defined in a strategy. The latter is important for coordinating government policies and roles and allocating resources, but also in communicating to investors the priority areas for investment and the incentives for directing investments to those areas. Another aspect of the enabling environment is the provision of supportive legal and administrative frameworks for agricultural investments in the context of existing tenure rights.

incorporate the Voluntary Guidelines into their land governance laws and practices, but it will also require investors to change and improve their practices. Incorporating the Voluntary Guidelines into their policies and procedures, ideally with the support and encouragement of their home governments, can help them to do so (FAO, 2016).

Addressing land tenure issues and equipping investment entities with the means to navigate such issues is paramount to seize opportunities and minimise risks associated with investments in agriculture and food systems: a 'win-win' result where both investors and affected local communities benefit. Accomplishing this requires host countries, investors and investor home country governments to ensure that all stakeholders act in accordance with the principles of the Voluntary Guidelines.

1.3. Focus of the study: extraterritorial investments in African agriculture by Chinese and South African investors

The potential for expansion of agricultural areas in North America, Europe and most of Asia is very limited (Deininger *et al*., 2011). For this reason, Africa is increasingly seen by many as a potential source of global food and commodities. African countries are viewed by many as not having realised their full agricultural potential (Cheru and Modi, 2013; Deininger *et al*., 2014). Furthermore, African countries have an increasingly liberalised trade and investment regime. This is especially true in Sub-Saharan Africa where most countries have gone through structural adjustment programmes and policy reforms aimed at liberalizing the land market since the 1990s (UNCTAD, 2009). Investors seeking higher returns have increased their engagement in Africa, where land prices are much lower (CFS-HLPE, 2011).

As foreign investment in African agriculture increased, concerns about its impact grew as the scramble for Africa's fertile lands intensified. The UN Special Rapporteur on the Right to Food warned that the poorest farmers may be priced out of emerging markets for land and that the interests of those depending on the commons may be ignored (De Schutter, 2011). With a significant share of the rural population dependent on land for their livelihoods and high percentages of young people, investments in African agricultural land can have a huge effect – either positive or negative – on poverty reduction and overall economic development.

Two of the world's emerging markets – China and South Africa – have become important sources of finance, technology and infrastructure, all of which are critical for boosting the productivity of African agriculture. These two countries represent important current and future sources of LSLBIA in Africa, even though the bulk of such investment has come from western countries (Table 1). While China has the third largest land area in the world, its agricultural resources are limited. Total agricultural production in China in the period 2007–2012 increased by 3.4 percent and food production by 3.5 percent (FAO, 2017). China feeds 20 percent of the global population with about 5 percent of the Earth's water resources and 7 percent of its arable land. With such limited conditions, sustaining food security has always been one of the most important goals for governments at all levels in China. The 'No. 1 Central Document', jointly released by the Central Committee of the Communist Party of China and the State Council in February 2017, emphasises agriculture and rural reform for the 14th year in a row. This has prompted the Chinese government to encourage its state-owned and private companies to invest in agriculture overseas, including in several African countries.

Table 1. Major national sources of LSLBIA in Africa (2011–12) (Moyo 2015)

Investor regions	No. of countries	No. of firms	Area (ha)	Percentage
Western countries	17	132	6 625 119	46.6
Emerging power countries	5	43	3 319 108	23.3
Others semi-periphery	9	21	2 257 217	15.9
African countries	22	85	2 024 928	14.2
Total			14 226 372	100.0

South Africa has a dual agricultural economy, with both a well-developed commercial farming and a more subsistence-based production in the more remote rural areas. The country is not endowed with many large tracts of fertile land and water resources are especially limited. Through the introduction of tenure reforms, the national government carries out interventions to correct historical and social injustices, although these reforms have not been completed. For these and other reasons, South African companies have looked to other parts of Africa in search of profitable agricultural investment opportunities. From 2007–2014, South Africa was one of the larger sources of investment in African agriculture, accounting for more than 9 percent of the total.

Table 2. LSLBIA from emerging powers (2011–12) (Moyo, 2015)

Investor country	Number of firms	Hectares	Percent	Percent of total	Target countries
South Africa	13	1 340 617	40.4	9.3	Benin; Mozambique; Ethiopia; Angola; Congo; Zambia; South Africa; Madagascar; Zimbabwe
China	6	162 171	4.9	1.2	Zimbabwe; Mali; Sierra Leone; Benin; Ethiopia; Cameroon
Brazil	2	28 000	0.8	0.2	Ethiopia; Mozambique
Turkey	1	3 500	0.1	0.02	Tanzania
Total	43	3 319 108	100	23.1	

Furthermore, the agriculture investments from these countries can also be seen in light of South-South Cooperation. With the United Nations 2030 Sustainable Development Agenda in September 2015, the objective of development is shifting from poverty eradication to sustainable development – emphasizing the balance between economy, society and environment. Sustainable Development Goal 17, in particular, highlights the importance of South-South cooperation and development assistance. The 2030 Sustainable Development Agenda also means global recognition of the critical importance of tenure, access to resources and their governance to achieving sustainable development has been secured within a broad, comprehensive framework (Munro-Faure and Hilton, 2016).

Since the beginning of the 21st century, the rise of the emerging BRICS (Brazil, Russia, India, China and South Africa) economies has provided a new impetus for the promotion of South-South cooperation (Huang *et al*., 2019). South-South Cooperation is described as "*a common endeavour of peoples and countries from the South, born out of shared experiences and sympathies, based on their common objectives and solidarity, and guided by inter alia, the principles of respect for national sovereignty and ownership, free from any conditionalities*" (United National General Assembly Resolution A/RES/64/222)[5]. The BRICS see themselves as the backbone of South-South development assistance. Engaging in LSLBIA in Africa allows them to improve domestic food security and export more to world markets. For many years, private enterprises and state-owned companies from these countries have invested in the African agricultural sector, ranging from agricultural inputs and irrigation services to farming, food processing and distribution (Cheru and Modi, 2013).

Considering the issues discussed above, this publication assesses the extent to which selected investors from China and South Africa and the governments of those countries have adopted the principles and recommendations of the Voluntary Guidelines and the RAI Principles in relation to LSLBIA in Africa, with a view to understand how land tenure and responsible investments are perceived from the perspective of investors from these countries. The publication builds on a set of selected cases (11 per home country) and incorporates the findings of these studies, which focused on answering the following research question:

- What is the nature, extent and scale of extraterritorial LSLBIA in Africa from investors from each country?
- What role does each government play in extraterritorial LSLBIA in Africa, and have any policies and/or laws been introduced to regulate and manage these investments?
- Does LSLBIA in Africa from these countries comply with international and regional guidelines developed to promote responsible investments and sustainable and equitable development; and
- What can be done to influence more responsible investments in Africa from those countries?

The initial findings of these studies were presented at two workshops in Beijing, China, in November 2016. The workshops facilitated dialogue among participants (including the authors of the various chapters), representatives of Chinese investors in Africa, government officials, academics and tenure experts. Authors of the studies subsequently prepared edited versions that incorporate some of the content of that dialogue.

The edited versions of the original research reports of the studies of outbound investments in agricultural land by China and South Africa are presented in chapters 2 and 3, respectively. These chapters serve as an evidence-based starting point among stakeholders holding different viewpoints. This is followed by a comparative analysis and commentary on the findings of the studies in chapter 4 and the way forward on how to promote more responsible investment models, including responsible governance of land tenure.

[5] Nairobi outcome document of the High-level United Nations Conference on South-South Cooperation. Available at http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/64/222.

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Agricultural investments in Africa by entities from China

2. Agricultural investments in Africa by entities from China

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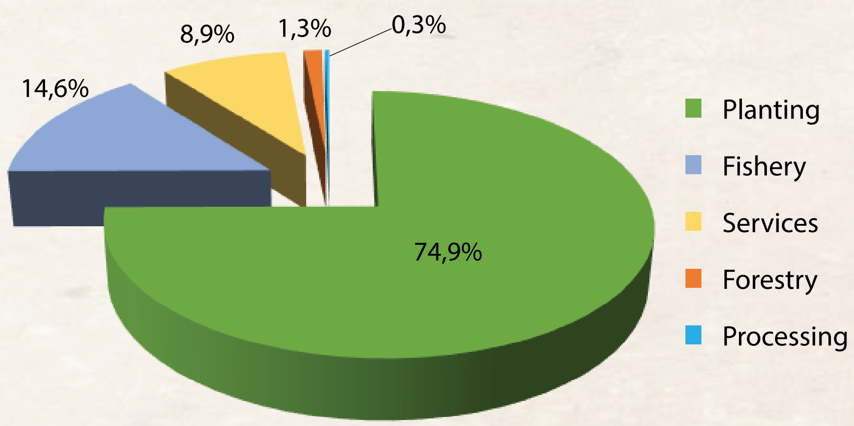
2.1. Introduction

Chinese agricultural investment in Africa started in the 1950s. According to China's Agricultural Foreign Investment Cooperation 2014 report, released by the Department of International Cooperation of the Ministry of Agriculture (DICMOA) and the Foreign Economic Cooperation Center (FECC) of the Ministry of Agriculture, China's accumulated agricultural foreign investment capital in Africa in 2014 amounted to USD 684 million, and consisted of some 80 agricultural enterprises located in 31 African countries. Two-thirds of the capital invested was allocated to cash crops, 15 percent to fisheries and 9 percent to support services (forestry played an marginal contribution – see Figure 1). China's agricultural investment in Africa has shown an upward trend in recent years, but the volume remains relatively small compared to other industries such as finance, mining and construction. Basically, Chinese investments in agriculture in Africa responds either to commercial interests or to South-South Cooperation (development assistance).

Figure 1. China's agricultural investments in Africa through 2014



Source: DICMOA/FECC, 2014.

The main research questions guiding this study are:

- What is the nature, extent and scale of agricultural investments by Chinese companies in Africa?
- What role does the Chinese Government play in these investments, and have any policies and/or laws been introduced to regulate and manage these investments?
- Does Chinese agricultural investment in Africa comply with international and regional guidelines developed to promote responsible investments and sustainable and equitable development; and
- What can be done to attract more responsible extraterritorial investments in Africa by Chinese companies?

[6] This chapter is an edited version of an original research report produced by: Professor Haisen Zhang of the Center for International Development and Innovation Studies of the UIBE; Professor Xiande Li of the Institute of Agricultural Economics and Development of CAAS; Cheng Fang, Trade and Market Division of FAO; with contributions by Professor Xiuli Xu of China Agricultural University (CAU); Dongya Ye, UIBE; Shuren Chen, UIBE; Huihui Deng, UIBE; Yan Jia, Foreign Economic Cooperation Centre (FECC) of the Ministry of Agriculture; Lu Qin, FECC; Danni Yang, Nankai University; and Zhilu Sun, Institute of Agricultural Economics and Development, CAAS.

2.2. Research methodology

The study was carried out by combining desk research with field work. It consisted of a literature review of applicable regulatory frameworks, and semi-structured interviews with relevant stakeholders both in China and in Africa. In China, the team interviewed CAI in Wuhan, Hubei Province regarding its investment in Hubei Agricultural Reclamation Group in Mozambique; Wanjing Agricultural Development, Ltd in Hefei, Anhui Province to discuss the company's investment in Anhui Agricultural Reclamation Group in Zimbabwe; Ke Hong Group in Chengdu, Sichuan Province regarding the Sino-Uganda Agricultural Industrial Park; the Sichuan Province Agriculture Department; China-Africa Cotton Development, LTD regarding cotton investment in Malawi, Zambia, Zimbabwe and a planned project in Mali; China Shandong International Economic & Technical Cooperation Group, which has an agricultural project in Sudan; SINOLIGHT Group to discuss their sugar farm in Mali; CITIC Construction Co., Ltd about CITIC's Contract and Transfer Pattern in Angola; and China-Africa Agricultural Investment LTD about their engagement in Zambia.

In Africa, several Chinese agricultural investments were examined as detailed in Table 1, which presents interviews held with stakeholders. During their visits the team also collected annual reports, papers and reports on land tenure and investment, as well as policy documents pertaining to land tenure. The companies were selected on the basis of their relevance to agriculture, business model, and their geographical location and research potential. The goal was to obtain original data and first hand information to assess the strengths and weaknesses of each project in relation to the Voluntary Guidelines.

Table 1. Selected cases of Chinese agricultural enterprises in Africa

Host country	Company name	Agriculture activities
Malawi	China-Africa Cotton Development Co., Ltd	Cotton purchasing and ginning (contract farming 100 000 ha)
Tanzania	China-Africa Agricultural Investment Company	Sisal Hemp (7 000 ha; planting 2 000 ha of 7 000 ha land rented)
Mozambique	Hubei Hefeng Grain & Oil Group	Rice planting (1 000 ha)
Nigeria	China Geology Overseas Agricultural Company (CGCOC)	Rice planting (2 000 ha)
Angola	China Credit Construction Group	Corn and soy bean planting (8 450 ha); rice planting and beef cattle raising (7 272 ha)
Zambia	China-Africa Agricultural Investment Company	Eggs raising, wheat and corn planting (1 000 ha); rented 4 000 ha
Mali	China Light Industry Company	Sugarcane (10 000 ha)
Uganda	Sino Uganda Agricultural Industrial Park	Seeds and crop cultivation, poultry farming, horticulture, oil & food processing; renting 947 acres
Zimbabwe	Anhui Agricultural Reclamation	Wheat, corn, soybean, tobacco planting (5 000 ha)
Sudan	Shandong Foreign Economic Group	Cotton planting (900 ha)

2.3. Chinese laws and policies and their relation to VGGT provisions

China's policy framework for responsible investment abroad consists of a vast number of documents issued by the Chinese Government, both at Central and Provincial levels. They are continuously being issued and reviewed, and provide guidance for foreign investment and business operations overseas by state-owned and private entities. Today, the framework seeks to align foreign investment with China's national strategy of "Going Global in Agriculture," and this research finds that by the beginning of 2017 the most relevant and influential among Chinese agricultural investors in Africa were the following:

Convention on Sound Operation and Social Responsibility of Overseas Agricultural Investment

In 2014, the China Agricultural Association for International Exchange of the Ministry of Agriculture issued the 'Convention on Sound Operation and Social Responsibility of Overseas Agricultural Investment' (CAAIE, 2014), which is both broad and comprehensive. It requires companies to:

- comply with all of China's laws and regulations on extraterritorial investment[7];
- comply with relevant laws, regulations and policies of host countries;
- respect the religious beliefs and customs of local residents and avoid conflicts with local government, enterprises and people;
- shoulder social responsibility in the areas of education, health and poverty reduction in the host country;
- uphold the principle of mutual benefits while conducting overseas agricultural investment and operation, protecting the ecological balance and natural environment and promoting sustainable agricultural development in the host country; and
- enhance cooperation, fair competition, mutual benefits and concerted development among Chinese enterprises engaging in overseas agricultural investment in the spirit of solidarity and mutual help so as to maintain their good reputation in the international community.

Guidelines for Environmental Protection in Foreign Investment and Cooperation

In 2013, the Ministries of Commerce and Environmental Protection had co-issued the 'Guidelines for Environmental Protection in Foreign Investment and Cooperation' (MoC, MoEP, 2013), stipulating that enterprises shall:

- respect the religious beliefs, cultural traditions and national customs of community residents of the host country, safeguard legitimate labour rights, offer training and employment opportunities to local residents, promote harmonious development of the local economy and environment, and carry out cooperation on the basis of mutual benefits;
- adhere to the concept of environmental sustainability and resource conservation, develop low-carbon and green economy strategies, and implement sustainable development strategies, so as to realise a 'win-win' situation of corporate self-interests and environmental protection, and understand and observe the environmental protection laws of the host country;
- establish a sound environmental protection training system to provide employees with proper education and training with respect to the environment, health and production safety practices and relevant laws and regulations of the host country;
- conduct environmental impact assessments of their investment projects in accordance with the laws and regulations of the host country, and take reasonable measures to reduce possible adverse environmental impacts; and

[7] These include the *Foreign Trade Law of the People's Republic of China* and regulations formulated and released by relevant organs on overseas business operation and investment, finance and taxation, foreign exchange management as well as customs clearance and inspection.

- consider and take reasonable steps to reduce adverse impacts of their activities on the social environment of the host country, including historical and cultural heritage, scenic spots and folk customs.

Guidelines for the Management of Employees of Overseas Chinese-funded Enterprises (institutions)

The 'Guidelines for the Management of Employees of Overseas Chinese-funded Enterprises (institutions)' were co-issued in 2011 by the Ministry of Commerce, the Ministry of Foreign Affairs, State-owned Assets Supervision and Administration Commission of the State Council and All-China Federation of Industry and Commerce. These Guidelines require enterprises to:

- in the course of overseas investment and cooperation, foster a business philosophy of "*mutual benefits and common development*", actively conduct localised operations, send expatriates based on practical needs and create as many employment opportunities as possible for local communities;
- learn about and strictly comply with laws and regulations of China and the host country, especially laws, policies and rules on labour and employment;
- educate expatriate staff on the differences in culture, customs and traditions between China and the host country, educate them to respect local customs and traditions and cause expatriates to treat local employees equally and respect their religious beliefs and life style; and
- pay attention to employment equality and avoid discrimination based on race, tribe, religion, gender and other factors.

Several Opinions on Cultural Development in Chinese Overseas Enterprises

In 2012, several government institutions[8] co-released the 'Several Opinions on Cultural Development in Chinese Overseas Enterprises' (MoC, et al., 2011). Among others, this document requires companies to:

- strictly comply with laws and regulations of the host country and region, including an explicit prohibition of corruption, bid rigging and other unfair competitive practices;
- fulfil social responsibility obligations by benefiting local communities, and maintain the transparency of their business operations; and
- strive to integrate the business into local society, respect religious and cultural customs, deepen mutual understanding and attempt to localise the operations through local hiring and building awareness of local culture among Chinese expatriate staff.

The **Guiding Opinions on Promoting International Production Capacity and Equipment Manufacturing Cooperation**[9] issued by the State Council in 2015 reinforces many of the requirements set forth in the policies reviewed above, and based on them many provinces, have issued their own policies to guide overseas investment.

According to the authors, these policies and guidelines, which for Chinese companies working in Africa constitute the framework for responsible overseas investment, are related to provisions of the Voluntary Guidelines as summarised in Table 2.

The VGGT were endorsed in 2012, therefore some of these documents are prior, while others are post the VGGT. The importance of the VGGT and land tenure governance has been widely publicised and accepted in China through workshops involving government officials, researchers, corporate

[8] The Ministry of Commerce, the International Communication Office of the CPC Central Committee, the Ministry of Foreign Affairs, National Development and Reform Commission, State-owned Assets Supervision and Administration Commission of the State Council, the National Bureau of Corruption Prevention and the All-China Federation of Industry and Commerce.
[9] Available at: http://www.mofcom.gov.cn/article/b/g/201507/20150701061179.shtml.

representatives and other relevant stakeholders of foreign investment. For example, with the support of the Ministry of Agriculture of China and FAO, two National Workshops on the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security and on Rural Land Registration were held in Beijing in 2014. Nearly 200 participants attended these two workshops – with wide representation from the Chinese society and international community that included relevant international organizations (such as FAO, International Food Policy Research Institute [IFPRI], Asian Development Bank [ADB]), main central government departments of China, local governments, private sector entities, relevant civil society organizations, research institutions and universities, producer organizations, and women's organizations.

Table 2. Principles of the Voluntary Guidelines and corresponding articles in Chinese government laws and policies regarding extraterritorial investment

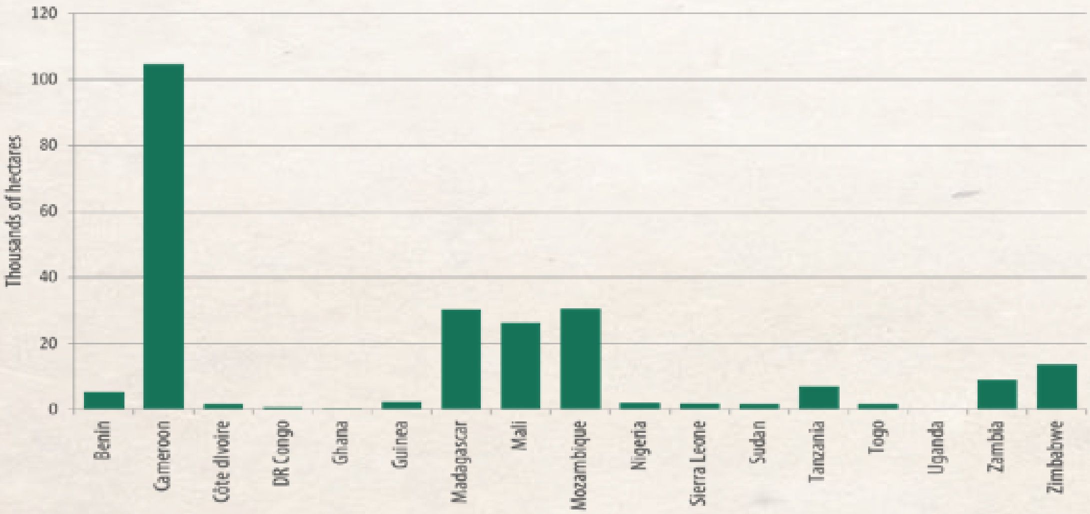
VGGT principles	Corresponding articles in government documents
General principles	Article 20 of Measures for the Administration of Overseas Investment (2014) Article 15 of Guidelines for Environmental Protection in Foreign Investment and Cooperation (2013)
Human dignity	Article 23 of Guiding Opinions on Promoting International Production Capacity and Equipment Manufacturing Cooperation (2015) Article 9 of Guidelines for Environmental Protection in Foreign Investment and Cooperation (2013)
Non-discrimination	Article 3 of Convention on Sound Operation and Social Responsibility of Overseas Agricultural Investment (2014) Article 8 of Guidelines for the Management of Employees of Overseas Chinese-funded Enterprises (Institutions) (2011)
Equity and justice	Article 3 of Convention on Sound Operation and Social Responsibility of Overseas Agricultural Investment (2014) Article 5 of Several Opinions on Cultural Development in Chinese Overseas Enterprises (2012)
Gender equality	Article 8 of Guidelines for the Management of Employees of Overseas Chinese-funded Enterprises (Institutions) (2011)
Holistic and sustainable approach	Article 9 and 25 of Several Opinions on Building a New and Open Economic System (2015) Article 3 of Guidelines for Environmental Protection in Foreign Investment and Cooperation (2013)
Consultation and participation	Article 30 of Measures for the Administration of Overseas Investment (2014) Article 8 of Guidelines for Environmental Protection in Foreign Investment and Cooperation (2013)
Rule of law	Article 5 of Several Opinions on Building a New and Open Economic System (2015) Article 19, 20 and 21 of Measures for the Administration of Overseas Investment (2014)
Transparency	Article 13,14 and 18 of Guidelines for Environmental Protection in Foreign Investment and Cooperation (2013) Article 5 and 8 of Several Opinions on Cultural Development in Chinese Overseas Enterprises (2012)
Accountability	Article 8,11, 12 and19 of Guidelines for Environmental Protection in Foreign Investment and Cooperation (2013) Article 14 of Several Opinions on Cultural Development in Chinese Overseas Enterprises (2012)
Continuous improvement	Article 20 of Guidelines for Environmental Protection in Foreign Investment and Cooperation (2013) Article 11, 13 and 14 of Guidelines for the Management of Employees of Overseas Chinese-funded Enterprises (Institutions) (2011)

2.4. Scale and geographic location of investments

The recipients of Chinese foreign agricultural investment are mostly sub-Saharan African countries that have strong diplomatic relations with China. In the beginning, China's agricultural investment in Africa grew out of Chinese aid programmes related to agriculture, such as those that improved rural infrastructure, funded agricultural research centres or helped in the construction of farms. With the continuous development of Chinese-African agricultural cooperation, Chinese investors have gradually become aware of the business opportunities that are emerging in African agriculture, and year after year an increasing number of enterprises and individuals are interested in investing for commercial purposes.

In general, accurate and comprehensive data on foreign agricultural investment in Africa are difficult to obtain, and those on Chinese land-based investment are no exception. In addition, different sources give different statistics, notably in relation to the amount of land that is used by Chinese companies. According to the Land Matrix database, Chinese investment in African land focuses on Western, Southern and Eastern Africa with Mozambique, Zimbabwe, Madagascar, Mali, Democratic Republic of the Congo, Ethiopia and Sudan (see Table 3 for details). However, a database compiled by the China Africa Research Initiative led by the Johns Hopkins University shows that land acquired by Chinese Companies in Africa is also concentrated in Cameroon, Zambia and Benin (Figure 2). The Tanzanian government reported 11 Chinese agricultural projects between 1990 and 2014 – a much larger number than the one extracted from the Land Matrix (Sutton, J. and Olomi, D. ,2012). Finally, Brautigam and Zhang (2013) concluded that the extent of Chinese agricultural investment in Africa is much smaller than originally thought, and that databases in the public domain tend to overestimate its real dimension.

Figure 2. Land acquired by Chinese companies in Africa 1987–2014



China-Africa Research Initiative, John Hopkins University, 2015

Table 3. Chinese land leases in Africa 2003–2016

Region of Africa	Country	Intention	Intended size	Contract size (ha)	Crop
Western	Benin	Bio fuels, Food crops, Renewable Energy	20 000	1 000	Sugar cane, oil palm
	Nigeria	Food crop	8 325	2 325	Rice (hybrid), seed production
	Mali	Bio fuels, Food crops, Renewable Energy	20 000	20 000	Sugar cane
	Sierra Leone	Food crop, bio fuels	143 500	7 345	Corn (maize), sweet potatoes, cassava, fig-nut, sugar cane, rice, rubber
	Ghana	Food crop	500	500	Soya beans
Total			192 325	40 170	
Southern	Zimbabwe	Food crop, livestock, non-food agriculture	90 685	13 913	Maize, soya beans, wheat, tobacco, cotton
	Zambia	Food crop	4 012	1 012	Maize, wheat, vegetables, soya beans
	Namibia	Food crop	10 000	0	Maize, potatoes
	Mozambique	Livestock, unspecified food crops	33 674	31 674	Peanut, sesame, maize, rice (hybrid), soya beans, rice, tea, cotton
	Madagascar	Bio fuels, food crops, renewable energy	28 964	23 964	Rice, sugar cane
Total			167 335	70 563	
Northern	Sudan	Food crop, non-food crop	16 667	11 667	Bean, maize, potatoes, sesame, sorghum, vegetables, wheat, cotton
Eastern	Ethiopia	Bio fuels, food crops, renewable energy	77 000	27 000	Sugar cane, oleaginous plant
	Uganda	Food crop	47 879	464	Maize, fruit, vegetables, cotton, rice
	Tanzania	Bio fuels, food crops	1 029	324	
Total			125 908	27 788	

Source: The Land Matrix, 2017.

2.5. Investment drivers

The provisions contained in the official documents by the Chinese government, and the responses given by Chinese investors in Africa during the interviews, give an idea of the depth and breath of the objectives being pursued in their foreign ventures. These can be summarised as follows:

- **To promote responsible investment in agriculture.** China plays an active role in the Committee on World Food Security (CFS), which developed and endorsed both the VGGT and the CFS-RAI. Their implementation is expected to enhance the global agricultural investment environment, promote and expand agricultural investment in developing countries and regions, and achieve 'win-win-win' outcomes among investors, host countries and their communities (G20, 2016).
- **To expand China's macro development goal of all-round opening up.** Accelerating agricultural cooperation is a must for enhancing China's international competitiveness in agriculture, serving national diplomacy and implementing the Belt and Road Initiative.[10]

[10] Han Changfu (Minister of Agriculture and Rural affairs) stressed, during the national agricultural cooperation work conference, the coordination of the two markets and two resources to improve the level of agricultural foreign cooperation. See http://cpc.people.com.cn/n1/2016/0803/c64102-28607813.html (in Chinese).

- **To secure domestic needs.** To ensure food security, China seeks to make use of both domestic and international markets and resources, optimise the domestic agricultural structure, ease the pressure on resources and the environment, strengthen agricultural cooperation with other countries, and upgrade agricultural opening up (State Council of China, 2016a). Now that China has over 1 000 enterprises involved in agricultural production overseas and more than USD 10 billion of cumulative overseas investment in agriculture, the nation believes it possesses the strength to carry out investment cooperation overseas[11] (State Council Information Office, 2013a).
- "*Starting from the micro-goals for the development of China's agricultural enterprises,* **actively carry out overseas agricultural cooperation and development***, establish large-scale overseas production, processing, storage and transportation bases, and cultivate internationally competitive agricultural multinationals" (State Council of China, 2016c). "To support the agricultural enterprises in transnational operations, countries and regions along the Silk Road are the focus. Setting up overseas production bases and processing, warehousing and logistic facilities is also needed to cultivate internationally competitive large enterprises and groups"* (CCCP and State Council of China, 2017).
- **To promote sustainability of foreign aid**. "*Agriculture matters for sustainable development and poverty alleviation in Africa. It is a pillar industry and a priority for most African countries. China and Africa have good cooperation in agriculture and China is helping African countries to turn its advantages in resources into development advantages and achieve agricultural sustainable development through mutually beneficial cooperation in the agricultural sector"* (State Council Information Office of China, 2013b).
- "*Because of political and diplomatic friendship as well as the adaptability of China's agricultural technology, African governments have invited Chinese government and enterprises to help develop their agricultural resources. For example, in March 2008, Peter Mutharika, President of Malawi, had visited China and proposed to General Secretary Mr Hu Jintao that Chinese enterprises in Malawi invest basically in agriculture, including building cotton processing enterprises, to promote pragmatic economic cooperation*" (State Council Information Office of China, 2013b).
- "*Moreover, in the 1960s and 1970s, the Chinese government supported Mali in building two sugar mills which were subsequently turned over to the Mali government with periodic technical support from Chinese experts. However, the Mali government failed to manage them well. So, in 1996, the Mali government and Sinolight Corporation set up a joint venture:* Complexe sucrier de Kala supérieur SA du Mali (SUKALA-SA). *The firm has become the best performing national industry in Mali with the largest scale. The project has gone through several stages to become what it is today: foreign aid project, technical cooperation, cooperative management, co-management through joint venture and overall expansion*" (State Council Information Office of China, 2013b).
- **To take advantage of lower production costs in Africa.** The cost of agriculture production in Africa is usually lower than in China. The nominal growing cost of rice, wheat and maize in China increased by 153, 157 and 170 percent respectively, from 2004–2013. Land and labour costs account for 60 percent of the total, and this percentage is increasing (Chen *et al*., 2017). By contrast, many countries in Africa lease land to foreign investors for periods of up to 99 years at very low rental rates. For example, in Mozambique, the rent is USD 1/ha per year[12]. At the same time, wages in Africa are relatively low. Africa's local agricultural industry chain lacks development, and the competitiveness of local companies is relatively weak. These conditions are attractive to Chinese agricultural enterprises who wish to carry out cross-border investment in agricultural production, processing, warehousing, port and logistics, and carry out international production capacity cooperation in producing farming machines, pesticides, seeds and chemical fertilisers (State Council of China,

[11] See also CCCP and State Council of China (2016) and State Council of China (2016a).
[12] According to the interview with Mr. Zhiwen Cai, Director of the Economic and Trade Office of Hubei Farm Administration on October 9, 2016.

2016). The Chinese government has also adjusted foreign aid policies, and introduced the 'going global' strategy and other measures related to agriculture, promoting and supporting Chinese enterprises' investment in Africa.

- **To cater for expanding African and foreign markets**. Demand for African agricultural products is growing quickly, not only in Africa, but also in China , and many agriculture products from African countries enjoy tariff concessions when exported to European and American countries (Zhang and Xie, 2014).
- **To develop agriculture supply chains in Africa** (Ministry of Agriculture, 2016b). The Chinese government seeks to help in the development of agricultural supply chains in African countries. For example, the China-Africa Cotton Co. Ltd, Malawi launched the Sino-Africa cotton processing projects, established ginning mills and oil processing factories. The investment involves all steps in the value chain from cotton growing to processing. This objective also has been supported by non-agricultural industrial firms in China who are investing in supply chain development. For example, Kehong (Uganda) Industrial Development Co., Ltd is set to invest USD 220 million in Sino-Uganda agricultural industrial park. Its parent company, Kehong Group, runs diversified businesses including real estate development and building materials.

2.6. Investment typology

From the above list of drivers it is clear that any characterization of the agricultural profile of Chinese companies in Africa will have blurred lines and overlaps. According to the interviews that were carried out in this research, more than half of the companies invest in crop production as diverse as cereals, vegetables, natural fibres, and rare medicinal plants. Many also diversify into livestock, or engage in downstream activities such as product processing, transportation, marketing and international trade. Some companies engage in upstream support services, including trade in agricultural machinery and farm inputs. In addition, they invest at different points of the supply chain, even simultaneously in different countries. An example of their complexity is the China-African Cotton Development Company, Ltd, originally established in 2003 in Malawi, and is today a multi-faceted investment present in Zambia, Mozambique and Zimbabwe. In Malawi, the company has nearly 1 000 local employees, and has contract agreements with 50 000 farmers. The company provides seeds, pesticides and other inputs, directly purchases their cotton, and is involved in research to improve cotton cultivation and processing techniques.

Examples of crop production companies include JohnKen Farm in Zambia, with over 2 000 hectares of wheat and corn, and the Sisal Farm in Tanzania that cultivates more than 1 300 hectares. Most of these farms use what, in the local context, can often be described as advanced technologies, such as the use of hybrid rice and high-yielding varieties, and they consistently obtain high productivity.

Livestock is also an important area for Chinese agricultural enterprises. Africa has extensive, high quality grasslands that are suitable for livestock rearing. And Africa also has a growing middle-class that demands meat and dairy products. China has extensive know-how on feed production, cattle breeding, disease prevention and feed management which can be transferred to improve the livestock industry in Africa, and then can thus contribute to an increase in demand. In fact, some Chinese agricultural enterprises have established vertically integrated technologies that incorporate 'grass, water, agriculture and machinery' for the production of meat products for domestic markets.

African governments provide land for joint investments

This typology combines elements of lease with those of joint ventures. Normally, an African government provides land that counts as capital contribution, and a Chinese company provides funding, technology and managerial expertise. A typical example is the SUKALA-SA sugar project in Mali, [13] which originated from two sugar factories that were built by China in the 1960s and

[13] The discussion of SUKALA-SA in Mali is based on an interview with Enumerator Shuren Cheng, Professor, Centre for International Development and Innovation Studies, University of International Business and Economics.

1970s. In 1996, Sinolight Cooperation and the Mali government set up SUKALA-SA, a new business model that resembles a joint venture, but that at the same time includes the payment of rent over long time horizons. SUKALA-SA is the largest industry-agriculture-commerce venture in Mali, holding 20 000 ha of land under a 50-year lease contract. It is the only sugar production operational in the country, and it has a capacity of 60 000 tons which satisfies 40 percent of domestic demand for sugar.

When the venture was formalised, a small number of farmers were using the land. According to the agreement, the government and the farmers engaged, consulted and negotiated a compensation package, with the settlement paid for by the government. Farmers received compensation and were relocated, (although a small number of herdsmen later complained that they had to bring their sheep to graze far away). In some cases, the joint venture helped the government pay for advanced compensation, at a cost that was borne by SUKALA-SA (i.e. at a cost to the company). In addition to compensation, some resettlement cases involved privileged recruitment, which included the right to live in the villages that were built by SUKALA-SA for its employees.

From this experience SUKALA-SA advises the following good practices:

- When leasing state-owned land, investors should ensure that documentation is in order, and is in full compliance with laws and regulations;
- in order to reduce government relocation costs of residents living within the leased land area, the company should build accommodations for those relocated;
- when recruiting employees, give priority to those who were relocated and are residents in these accommodations;
- the government should be responsible for providing compensation for relocation. However, in case of need, the company should assist the government.

Acquiring private property

A second approach to land use is for the Chinese entity to simply buy or lease private property (a farm). This approach does not involve business relationships with small farmers, such as contract farming arrangements, or government intervention of any sort. As example of this model, [14] China National Agricultural Development Group Co., Ltd, bought two farms in Tanzania in 1999, which then became the China-Africa Agriculture Investment Co., Ltd. (CAAIC).[15] The two farms, which cover a total of 6 900 hectares, have cultivated sisal since the British colonial period and include processing plants, repair shops, staff quarters, roads, ditches and other facilities. After Tanzania's independence, the farms were first returned to the state, then in 1986 they were acquired by a local entrepreneur, and then bought by China State Farms Agribusiness (Group) Corporation which wanted to produce sisal.

To ensure that property rights were clear, the Chinese enterprise employed local lawyers to investigate, an operation that involved both government agencies and banks. Though land titles were clear, the operation was not exempt from conflict with local communities. In fact, ongoing disputes still exist between the company and villagers over the boundaries of the farm, and on who has legal rights to some of the land. These occupations stem from a period of decline in the sisal industry, in which idle land was occupied by villagers. During that period, the state-owned

[14] Much of the description of this example is derived from: an interview of Mr Shanyuan GUAN, General Manager, Department of Project Development, China-Africa Agricultural Investment LTD conducted by Professor Xiuli XU of China Agricultural University in Beijing on 3rd July, 2016; and an interview of Mr Lushen WANG, manager of China State Farms Agribusiness Cooperation Zanzania Ltd, conducted by Professor Haisen ZHANG of University of International Business and Economic in Morogoro, Tanzania on 27 August 2016.

[15] China-Africa Agriculture Investment Co., Ltd. (CAAIC) is a joint venture between China National Agricultural Development Group Corporation and China-Africa Development Fund, with registered capital of 1 billion RMB (USD161 million). CAAIC is the largest Chinese platform for agricultural investment and operational management in Africa. See www.caaic.com.cn.

farm allowed families to establish their villages and cultivate those lands. Some of those occupants are still present day; semi-subsistence smallholders growing corn, rice, beans and other food crops.

Box 3. JohnKen Estate in Zambia

JohnKen Estate is a wholly owned subsidiary of China-Africa Agriculture Investment Co., Ltd. (CAAIC), a joint venture between China National Agricultural Development Group Corporation and China-Africa Development Fund, which was established in April 1994. It covers a land area of 5 400 hectares, and consists one large central farm and three smaller sub-farms.

The land is owned by the State, and has traditionally been cultivated by either foreign investors and local people. The company acquired the four farms through lease agreements, in negotiations that involved local governments, and did not encounter any land dispute. According to the agreement, JohnKen Estate pays Zambian land authority CNY 1 500 to 2 000 every year for the four farms in return for the use rights of the farmlands for 99 years.

At present, JohnKen Estate is run by a Chinese management team of eight people, and employs more than 200 local employees. An important component of this venture has been the addition of 1 200 hectares through land reclamation, which are currently allocated for growing wheat, corn, soybeans, and rearing livestock. According to its management team, the company is fully integrated with the local community, provides technical advise and support to local farmers, complies with local laws and regulations, and has contributed to the sustainable development of Zambia.

Source: Interview with Mr. Canglong Duan, General Manager, Department of Project Development, China-Africa Agricultural Investment LTD by Professor Xiuli Xu of China Agricultural University on 18th October 2016. Information on the company is available at http://www.caaic.com.cn/en/index.aspx.

In 2015, CAAIC (Tanzania) cultivated less than 2 000 hectares, for most of the land was occupied by residents. The Chinese company reached an understanding with the villagers in which legal rights of the company are recognised for the entire 6 900 hectares, and the villagers are allowed to cultivate some of the land for a nominal rent. Since it took over the farms in March 2000, the Chinese company has invested USD 8 million into the project, becoming the third largest sisal producer in Tanzania. It produces thousands of tons of sisal fibre annually, generating export revenue of nearly USD 2 million and creating over 1 000 local jobs.

Agricultural processing facilities and contract farming (no direct land control)

A third model used by Chinese companies in Africa is 'Company + Farmers', which leaves farmland in the hands of the farmers. It consists of constructing or acquiring processing plants, and contracting local farmers for the provision of raw materials. For example in Malawi, China-Africa Cotton Ltd. has two cotton ginning factories, an oil-pressing plant and a seed processing plant. It sells and distributes seeds, fertilisers, pesticides, provides technical assistance, and buys, processes and sells the cotton. The company applies a principle known as 'six uniform', whereby seeds, materials, technical guidance, product recycling, processing and sales are all conducted in a single "package." It is a large-scale operation that involves more than 300 transport vehicles and substantial training of local managers. Given its size, the company ensures that the contracts with local farmers are in consultation with local chiefs.

Mr. Wang Chuanyuan, Chairman of China-Africa Cotton, Ltd (CACD)[16], advises against buying or leasing land in Africa from local farmers. Land acquisition is a risky venture for it requires a large capital expenditure that is likely to be accompanied by conflicts with local communities. Instead, CADC adopts an 'asset-light' strategy that creates a better environment for building a friendly relationship with local communities.

[16] The description of the activities of China-Africa Cotton Development, Ltd., in Malawi is based on an interview with Wang Chuanyuan, Chairman of the Board of CACD, conducted by Associate Professor Danni YANG of Nankai University on 15 October 2016.

When CACD first came to Malawi in 2009, it sought 30 hectares from the local government to build a new cotton ginning factory. The local community clearly understood that the designated land belongs to the government although the local people were using it as pastureland for their livestock. CACD committed to hire more than 80 persons from nearby villages as compensation for acquiring the rights to use the pastureland. Ultimately, CACD hired more than 100 local villagers, who benefited more from employment by CACD than from grazing their livestock. A few years later, CACD decided to acquire a second factory in Malawi, an existing ginning factory owned by Cargill. There were no land tenure disputes associated with the acquisition of the Cargill facility, which had legitimate land documents and a clean record of conforming to Malawian laws and local customs.

By 2016 more than 50 000 farmers had contracts with CACD and were delivering 18 000 tons of raw cotton. All the ginned cotton and yarn has been exported to China and other destinations, and generated substantial tax revenue and foreign currency flowing into Malawi. Farmers received (1) cotton seeds from CACD's seed workshop and high-quality chemical fertiliser, the cost of which was deducted from the price of the cotton they sold to the company; (2) free technical extension services from more than 300 technicians and from 1-hour daily radio broadcasts paid for by CACD; and (3) a premium price for the cotton they sold to the company. CADC management firmly believes that these arrangement make CACD more competitive than other cotton enterprises in Malawi.

The China-Africa Cotton Development Co. Ltd also established, in 2014, a branch in Zimbabwe through the acquisition of a state-owned ginning factory and a Cargill ginning factory. Some 70 000 farmers have 'Company + Farmers' contracts, and the planting area is about 1 million hectares.

Farm rental

In this model a Chinese company, or a joint venture in which a Chinese company is a member, rents a farm for shorter periods of time than those that would qualify as lease. A typical example of this is the Zim-China Wanjin Company in Zimbabwe. In 2010, Anhui Agricultural Reclamation Company and the Zimbabwean government agreed to establish in a joint venture, known as the Wanjin Agricultural Development Company ('Wanjin Company').[17] Wanjin Company rents farms in Mashonaland West Province, both state-owned and private. The rents, which extend over a period of 10 to 15 years, are negotiated by Zimbabwean partners with land owners or government departments in charge of state-owned farms. The Company started in 2011 with two farms covering an area of 1 800 hectares, and by 2016 it had incorporated 10 farms covering an area of 12 000 hectares. That year half of the land was under cultivation, growing corn, wheat, soybean, vegetables, potatoes and tobacco. Farms have two to three Chinese staff, while the majority of personnel is locally recruited, including managers. The operations are large scale. For example, more than 2 000 temporary workers are regularly hired for planting tobacco, and 60 percent are women. The farms have good technical performances and make a significant contribution to domestic output. Grain yields are higher than the local average, and aggregate grain production reaches 20 000 tons, which is equivalent to one percent of Zimbabwe's total grain supply. All the food produced is sold to the National Foods Ltd. company.

Wanjin Company's investments have made it possible to convert farms and lands that were idle back into operation, and it has introduced novel agricultural technologies and farm management methods – all of which have contributed to the recovery and development of Zimbabwean agriculture.

[17] The joint stock company is sponsored by the Chinese side (Anhui Agricultural Reclamation Group) and the affiliates of the Zimbabwe government. It is registered in Zimbabwe, with 50% of the shares held by each party.

Another example is the New Era Agricultural Development Co., Ltd, formed in Sudan in 2012 by China Shandong International Economic & Technical Cooperation Group and Shandong Lumian Group[18]. The company engages in cotton seed development, plantation and production, lint processing and textile trading and other activities in the cotton value chain (China Shandong International Economic & Technical Cooperation Group, 2017). In 2015 the Company rented 2 667 hectares of land from local farmers, primarily for cotton seed breeding activities, for a ten-year term with rent payable every five years. The parties to the agreement are the New Era Company, Rahad Irrigated Area Management Committee, and representatives of local farmers. To obtain the lease, New Era negotiated with leaders from Rahad Agriculture Company, the Chair of Rahad Irrigated Area Agriculture Association and representatives of the local village and farmer groups. Negotiations covered the demarcation of the leased area and the rental fee, the latter based on local lease rates. The parties agreed to refer any disputes over land rights during the implementation of the project first to mediation by the Rahad Irrigated Area Management Committee with the right to appeal unresolved cases to the Khartoum Court of Arbitration. By the end of 2016, the company had built a complete cotton supply chain from cotton planting to trade, and had invested tens of millions of dollars in building a quality cotton seed breeding base covering the 2 667 hectares of land plus cotton processing, stripping, seed processing workshops, warehousing, living quarters, offices, maintenance workshop and other supporting facilities.

This example is interesting for it combines rent with contract farming. To scale up and ensure an adequate supply of raw cotton for processing, New Era has contract arrangements with local farmers which in Phase One covered an area of 4 000 hectares. Local farmers provide land, labour and administration, while the company provides inputs like fertilisers and seeds. After harvest, New Era purchases the cotton for the agreed contractual price, and pays producers in cash after deducting the cost of the inputs supplied. In times of major market fluctuations the two sides can re-negotiate prices, and, during poor harvest years, when local farmers are unable to repay the New Era company, the financial deficit is often covered by the company.

Build-Operate-Transfer (BOT)

In the BOT model, Chinese companies collaborate with Governments to revamp or rebuild farms. In this case, the land often belongs to the State. Chinese companies are called on for land reclamation, building infrastructure and processing facilities, and for running a farm that when it is fully operational, it is then transferred to the State. For example in Angola, the Pedras Negras Farm in Malanje and Sanza Pombo Farm in Uige were jointly developed by CITIC Construction Co. Ltd and Xinjian Beixin Agricultural Group. The farms were owned and managed by Gesterra Co., a state-owned company representing the Angolan Ministry of Agriculture, but it required revamping. Thus, a Chinese company was contracted to implement a project to make the farms fully operational.[19]

In this example, China Development Bank provided loans to Angola's Ministry of Agriculture, and through the bid tendering, Gesterra commissioned CITIC Construction Co. Ltd to develop two farms on idle state-owned lands controlled by Gesterra. The planning was done jointly by the Ministry of Agriculture of Angola and the Chinese company. Over a period of five years, while the project was executed, all the crops harvested were transferred to the Angolan government. In the first three years the Chinese were responsible for land reclamation, the construction of infrastructure and farm facilities, including irrigation, drying, storage and processing plants, offices and staff quarters, the purchase of farming equipment, and seeds and crop technology testing. The next two years consisted of farming and training personnel, and combining the progressive operation of storage and

[18] The discussion of the New Era project described here is based on an interview of Mr Xin Zhou, Vice General Manager, China Shandong International Economic & Technical Cooperation Group Ltd by Miss Yan JIA, Foreign Economic Cooperation Center of Ministry of Agriculture of China, in Jinan, Shandong, China on 16 October 2016.
[19] The discussion of the projects on Gesterra land described here is based on an interview of with Guozhen Li, General Manager, Department of Agriculture Development of CITIC Construction Co. Ltd, conducted by Associate Professor Danni YANG of Nankai University in Beijing on 19 October 2016.

processing. After five years, once the complex was fully operational, all equipment and managerial responsibilities were transferred to Gesterra Co. The crops planted in this example included rice, corn, soybeans, and livestock, and the farm size ranges between 1 500 and 12 000 hectares.

In Angola, all farmlands under the Chinese reclamation and construction projects belonged to Gesterra Co., and were state-owned, idle or abandoned. There were no land disputes between Chinese enterprises and villagers, partly because the process was transparent. Before land reclamation, the Chinese enterprises visited the location and met with local officials, teachers and neighbouring farmers to introduce their plan. There was only one case involving relocation, a small village of six people occupying state-owned land, which was relocated to a larger village of 20 people where a new farm was constructed. The people were familiar with the new village, so relocation went smoothly. All the costs of the relocation were covered by the project.

The interviews revealed that most Chinese companies (private or state-owned) operating in the agricultural projects in Angola have little or no knowledge of the Voluntary Guidelines. However, Chinese investors are well aware that land issues are sensitive and that if not managed properly can result in conflict, with negative consequences that jeopardise the viability of those investments. Many Chinese companies, having had bad experiences in the past, pay close attention to complying with laws, regulations, customs and traditions, especially those related to land. Many companies prefer to hire local lawyers at an early stage, to anticipate any potential conflict related to land that would become, eventually, very expensive to solve.

Most land in Angola is state-owned, and Chinese companies prefer to work directly with central and provincial governments. Support and cooperation from government means for Chinese companies a strategy to minimise risk, especially if collaborating in these projects, is done through Gesterra. Indeed, the terms of the China Development Bank loan agreement states that if Gesterra is involved, Gesterra is expected to resolve land issues before the project becomes operational in the field. Chinese companies have declared during the interviews that if the decision was theirs, they would rather work in projects that are far from communities, on idle land, and on land that is solely provided by Gesterra for reclamation.

Technology-intensive agricultural parks

Some Chinese companies have leased land to establish agricultural parks where farming techniques and inputs can be developed, tested, assessed, and shared with local farmers. An example of this approach is the Sino-Uganda Agricultural Industrial Park (SUAIP) in Uganda,[20] developed and run by Sichuan Youhao Hengyuan Company Limited, based in China. Affiliated investors include Kehong Group, Zoeve Seed, Green Tech Poultry, and Huinong Agro-machinery. The first site, which has 947 acres, is located in Luwero district.

The overall goal of the SUAIP project is to increase China-Uganda cooperation through the promotion of agriculture modernization via integrated farm models. SUAIP supplies high quality planting material, such as hybrid rice seeds, provides technical support and carries out regular field inspections. It employs over 360 Ugandans including technicians, agricultural experts and casual workers, and concentrates on poultry and rice production. It also provides training opportunities for farmers on improved farming technologies.

[20] The information presented here in Sino-Uganda Industrial Park is based on an interview with Gaoning TANG, General Manager of Sichuan Youhao Hengyuan Company Limited conducted by Professor Dongya Ye, University of International Business and Economics, in Chengdu, Sichuan on 13 October 2016.

Box 4. GAWAL in Nigeria[21]

In 2006, CGC Nigeria Limited Company set up Green Agriculture West Africa, Ltd. After negotiation with the Nigerian government and local community, Green Agriculture secured, from Kebbi State, a 99-year lease of 2 025 hectares of land in WARA farm. In 2008, CGC Nigeria signed a cooperation agreement with Longping High-Tech, pursuant to which Green Agriculture Development in Nigeria was reorganised into Green Agriculture West Africa Co., Ltd (GAWAC). GAWAC entered into a 99-year lease of land near Abuja in 2012, after negotiation with the Nigerian government and local community, to build the ABUJA Agricultural High-tech Industrial Park. WARA Farm and ABUJA Agricultural High-tech Industrial Park cover a total land area of 2,079 hectares. The leased land, which is state-owned, is legally registered and documented. The rental amount is regulated by the Nigerian government. Since most of the project land was occupied by local farmers, the company paid compensation for local houses, crops and resettlement of the farmers as required by the government. The specific compensation was first proposed by local farmers according to local market values, and then negotiated between the company, the local tribal chief and communities. The initial proposal was relatively high, but after several rounds of negotiation the two sides reached an agreement on the nature and amount of compensation.

Before GAWAC entered into the leases, the government conducted a land and environment assessment, and the results were satisfactory for the Nigerian authorities to proceed. Currently, WARA Farm is mainly engaged in promoting cultivation techniques that suit Nigeria's local conditions, and the well-cultivated crop varieties developed by it have occupied an important share in Nigerian agricultural market. The ABUJA Agricultural High-tech Industrial Park has evolved to be an agricultural promotion and services platform that incorporates seed R&D and nurturing, demonstration of supporting cultivation technologies and agricultural materials, equipment sales and supporting services, ecological agriculture, water and soil utilization, agri-technological training, horticulture and recreational agriculture. GAWAC has boosted agricultural production in the surrounding areas by introducing Chinese technology and quality seeds. Together, the two farms have worked with over 5 000 local farmers to build seed producers' cooperatives, creating nearly 10 000 jobs and helping 500 000 farmers increase grain output.

SUAIP is an agricultural park fully integrated with its surroundings, that focuses on agricultural production and value-addition, and that covers the whole agricultural value chain, from production to marketing, and that promotes modern mechanisation and irrigation methods. The initial investment is 100 million USD (see Box 4 for another example).

When these different typologies are put together, it appears that Chinese investors generally seek to meet the requirements of the VGGT, though through different strategies depending on the business model. Managers of these Chinese companies were mostly unaware of the VGGT, but their action and intentions are in general aligned with the VGGT provisions. For example, they seek to respect land tenure rights and the rights of indigenous peoples, and avoid harm to the environment and improve food security. Before investing, they seek and abide by advice from local lawyers to clarify local land rights and to respect the law. From the guidance of the Chinese Central Government, foreign investors also choose technologies that manage natural resources in a sustainable manner, that increase resilience and reduce disaster risks, and that promote safe and healthy agriculture and food systems. They are also expected to maintain good relationships with local communities, actively take up corporate social responsibility, and promote the sustainable development of the local economy and society. Finally, and in terms of CFS-RAI, the interviews indicate that Chinese companies in Africa seek to make responsible investments in agriculture and food systems.

The case studies in this report have shown that Chinese overseas investment enterprises in Africa in the past decades have made significant contributions to promote agricultural and rural development

[21] The contents of Box 4 are derived from an interview of Jun Wang, General Manager of Green Agriculture West Africa Ltd conducted by Professor Haisen Zhang of University of International Business and Economics in Abuja, Nigeria on 20 August 2016.

of the local communities. For example, SUKALA-SA Sugar Factories in Mali provides employment for more than 4 000 local people (including about 1 000 regular employee and 3 000 seasonal and temporary workers); and carries out social public welfare as feedback to local community, such as investing 20 million FCFA in drilling freely in deep wells, and donating 415 million FCFA to the Malian Women and Children Fund. China State Farms Agribusiness (Group) Corporation (Tanzania) Limited employs over 1 000 local people, and initiates several social development programmes with local communities, such as village-based poverty reduction learning centre, medical centre development, and disaster relief project, which have contributed much to the local livelihood improvement, gender equality, youth employment, as well as environment protection. The JohnKen Farm in Zambia supplies all agricultural production on local market to contribute to local food security and nutrition, and protects female employees' rights to maternity leave as enshrined in the collective agreement with the workers. China-Africa Cotton Development Ltd (CACD) hires many local people, including 98 full-time Malawian technicians and workers with social & medical insurance, and more than 7 000 part-time workers per year, and 60 percent of part-time workers are women.

2.7. Challenges facing Chinese investors in Africa

Chinese companies have declared that they face significant challenges in their efforts to invest in agriculture in Africa in a responsible manner. These are discussed in this section.

Limited capacity of African partners

In Africa, farmers lack access to modern farming techniques, extension services, good quality inputs and credit to help them improve productivity. Agricultural education, assistance from professional technicians or extension organizations, and cooperative exchange programmes are often unavailable. Most African governments have been unable or unwilling to provide adequate government funding for agriculture. These limitations represent challenges to Chinese companies seeking to work in partnership with local farmers.

Poor enabling environment

Investment in agriculture is known as "slow capital" because of its long time-horizons and low profits. Agriculture is also vulnerable to natural, economic, social and environmental shocks. These characteristics imply that agriculture requires a supporting environment and yet, Chinese investors in Africa have faced significant problems such as a depreciating Yuan, frequent natural disasters, lack of an adequate supply of water and electricity, and high transportation costs. In some countries, these problems have been exacerbated by fighting among political factions during elections. In general, the enabling environment for investment in Africa has not improved in recent years.

Limited Chinese overseas experience

Large transnational Chinese companies, with an advantage in management and access to technology and transnational investment experience, have generally not invested in African agriculture. Conversely, the firms studied in this research are relatively small for Chinese standards, they lack experience abroad, and are less skilled in risk management, operations and problem solving. These limitations are magnified the moment that they engage in the complex and challenging environment of rural Africa. Thus, Chinese investors in Africa would require substantial support if their performances were expected to improve considerably in the short and medium term.

2.8. Preliminary conclusions

A survey of overseas Chinese-funded agricultural enterprises, including Zhongken Industrial Co., Ltd., found that most enterprises know little about the VGGT. Clearly, most of them invested in Africa between 1950s and 2000, long before the VGGT were issued, and therefore need awareness of their existence. Equally so, awareness raising is also due with government and other local stakeholders that obtained similar findings. It thus appears that all sides need to be aligned with the VGGT, but their attempts will face various challenges.

First, the VGGT are a voluntary instrument. Second, the VGGT do not clearly set forth concrete rules and actions for different stakeholders, which complicates the development of indicators for monitoring compliance. Third, Chinese enterprises are generally not aware that their actions comply with many of the provisions of the VGGT, and to the extent that compliance carries costs, Chinese businesses run at a disadvantage vis-à-vis its purely commercial competitors. Finally, African countries may write legislation to this effect, but implementation of laws is often a challenge due to budget constraints. Awareness of VGGT in the host countries is also important.

2.9. Recommendations

Recommendations for the Chinese government

Strengthen guidance for overseas agricultural investment. Some of China's extraterritorial agricultural investment in Africa have long history, but most are at its initial stage, and face many problems which stem from the small scale of most projects, lack of experience abroad, and vulnerability to economic, social and environmental hazards. Investors need guidance and support from the government, both in the short and in the long run. The Chinese government should formulate, as soon as possible, an overall strategy and development plan for responsible extraterritorial agricultural investment. These should provide profiles of existing legal and policy regulations for foreign investors in specific countries, and provide guidance for the key geographic areas and ongoing projects in Africa, including a detailed introduction about the relevant policies and measures that specifically support agricultural investment. At the same time, the government should improve the alignment and consistency of its system of laws, regulations and policies governing responsible extraterritorial agricultural investment, and request that all foreign investors abide by them.

Optimise the platform for overseas agricultural investment. The Chinese government has rich experience in South-South Cooperation (SSC) and is promoting the 'Belt and Road' Initiative. It is suggested that the Chinese government boost overseas investment through these instruments. A favourable political environment can also be fostered and economic uncertainties reduced through multilateral or bilateral agreements that encourage economic and trade cooperation between the Chinese government and host country governments. Finally, advantage should be taken of the 'Three Banks and One Fund' (Asia Infrastructure Investment Bank, BRIC Development Bank, Shanghai Cooperation Organization Development Bank and the Silk Road Fund) that coordinates and provides strong financial support for enterprises investing overseas.

Strengthen information services for overseas agricultural investment. Relevant departments of the Chinese government should keep Chinese foreign investors informed of the political, economic, social and legal changes of host countries, their regions, and the international community. They should also strengthen the collection, evaluation and sharing of investment information; regularly develop and release guiding documents like the Voluntary Guidelines for

Overseas Agricultural Investment; strengthen investment services, provide training, alert on risks. Currently, it is the companies that engage in these activities, but the overall cost of information collection and investment risks of single enterprises will be reduced if such information is instead made available from the Chinese government.

Promote and disseminate international rules/guidance related to responsible agricultural investment. Relevant international guiding instruments, like the VGGT and CFS-RAI, have been fully and broadly negotiated, and therefore reflect a consensual view of the concerns that countries and key stakeholders share in terms of agriculture and food security. They argue, for example, that both agricultural investment and the host country's economic growth can benefit if enterprises follow the laws and regulations of the host country and respect local customs. These instruments also represent a concerted worldview of the strategies that agricultural investment should follow to enhance global food security. It is therefore within the spirit of South-South Cooperation that the Authors recommended that relevant departments of the Chinese government continue to strengthen the dissemination and promotion of these internationally agreed upon rules and guidance among agricultural enterprises involved in extraterritorial investment, including through websites, training courses, associations and other means and fora of communication.

Implicit in this recommendation is the need for the FAO to encourage and support all governments to conduct trainings for Chinese and host country leaders who are responsible for developing policies about agricultural investment and natural resources development. This is particularly important for government departments to be able to make (policy and legal) revisions in line with the international guidance and explicitly make linkages to the VGGT recommendations on land, forests and fisheries tenure in the future. It is equally important to provide training to Chinese companies.

Recommendations for Chinese enterprises investing in agriculture overseas

Initial evaluations and business plans. Before investing in any particular foreign country, Chinese enterprises should thoroughly study the political, economic, social, legal and industrial policies of the host country, choose an appropriate investment mode pertaining to local conditions and markets, and formulate a reasonable agricultural investment development strategy. The strategy should link the VGGT and CFS-RAI with the company's strategy and development road map, and shall involve a clear investment vision, focus or direction, and a business plan (for example technology development, the construction of farms, or production of agricultural raw materials).

Invest throughout the value chain. While engaging in planting, breeding and other businesses, enterprises in a host country should focus on value chains. This may involve supporting or extending their activities to other parts of the supply chain, to downstream activities such as trade, transportation, logistics, processing, storage and sales, infrastructure, marketplaces, warehouses and docks, or to upstream activities such as input provision. A focus on the value chain can improve the efficiency and management of specific Chinese investments and can also promote the establishment and improvement of horizontal and vertical linkages in the host country, to the benefit of the company, the local community and the host government.

Strengthen cooperation and communication. Cooperation and the sharing of resources and information between Chinese agriculture-related State-Owned Enterprises (SOE) and private enterprises should be encouraged to help them operationalise the Voluntary Guidelines when investing in agricultural land abroad. The same holds true for relevant enterprises both upstream and downstream in the value chain. Together they can jointly carry out extraterritorial agricultural investment and improve the comprehensive management ability of enterprises doing business overseas. Communication with the governments, societies and intermediaries of host countries will be strengthened to attract talented local people to join in the enterprises, and to protect and safeguard corporate interests and the national image.

Fulfil social responsibilities. Clearly, enterprises should strictly abide by the laws and regulations of the host country and protect and preserve the natural environment. In addition, and in accordance to Chinese law, enterprises should also properly handle relationships with, and contribute to, the development of local communities; they should respect cultural heritage, customs, traditions, and the rights to resources including land. Ultimately, each and every extraterritorial investment decision should be guided by a "localised" corporate strategy in which employment, technology and output contribute to local agriculture and food security.

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Agricultural investments in Africa by entities from South Africa

3. Agricultural investments in Africa by entities from South Africa

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3.1. Introduction

South African agricultural investors have a strong presence across Africa (Mlumbi-Peter, 2015; African Centre for Biosafety, 2014). Although they are among the largest foreign investors, their expansion into the continent has received relatively little attention in the "literature rush" (Ikegami, 2015) that accompanied the so called "land rush" (Warner *et al*., 2012). This research attempts to fill this gap, by making a contribution to our knowledge of South Africa's role in the surge of Foreign Direct Investment (FDI) into African agriculture. It focuses on large-scale land-based investments in agriculture (LSLBIA) – also referred to hereafter as extraterritorial, cross-border or transnational South African legal entities.

The main research questions guiding this study are:

- What is the nature, extent and scale of extraterritorial LSLBIA in Africa from South African legal entities?
- What role does the South African Government play in extraterritorial LSLBIA in Africa, and have any policies and/or laws been introduced to regulate and manage these investments?
- Does South African extraterritorial LSLBIA in Africa comply with international and regional guidelines developed to promote responsible investments and sustainable and equitable development; and
- What can be done to influence more responsible extraterritorial investments in Africa from South Africa?

3.2. Research methodology

This study followed a four-pronged and sequential approach. First, a comprehensive literature review was undertaken. This helped to establish the global and national context of the rise in extraterritorial LSLBIA from South Africa. Also, intelligence on large-scale land deals involving South African investors was collated from the Land Matrix website, followed by quantitative analysis and cross-checking of this data with information gathered from the literature review.

Second, all relevant South African policy and strategy documents, legislative acts and statistical reports were identified and reviewed, together with host government policies and laws, the Voluntary Guidelines, and other international and regional regulatory instruments pertaining to LSLBIA. This helped to determine where regulation existed and could be improved to promote responsible transnational agricultural investment in Africa.

Third, based on data collected from the detailed literature review and the Land Matrix website, different instances of South Africa extraterritorial LSLBIA were selected for in-depth case study analysis. To ensure representativeness and thus general usefulness of the study's findings, the selected case studies cover different commodity sectors, investors, host countries and model types and sizes. These case studies revealed important aspects and issues concerning LSLBIA in Africa that provide insights into what is occurring on the ground. Fourth, semi-structured interviews were conducted with key informants including representatives of the South African government, commercial farmers' organizations and investors themselves. These interviews were based on the main evaluation questions guiding this research yet tailored to the specific person being interviewed.

[22] This chapter is an edited version of an original research report by Professor Samuel Kariuki, Development Research Specialist, South Africa, for NEPAD Business Foundation.

Finally, data collated from the first four phases of the study described above was evaluated against the codes of conduct, standards and principles encompassed in the Voluntary Guidelines and other regionally and internationally accepted guidelines. This analysis sought to determine the extent to which South African extraterritorial investments and government policies/laws are in line with internationally recognised principles and best practices on responsible investment in agricultural land. Following analysis of the information gathered from the above research methods, the study's findings and conclusions were assembled. From these, specific recommendations have been made on how to promote more responsible investment in Africa's agricultural land.

Complemented by the interviews and case studies, documentary analysis formed the primary research method employed by this study. Sources of data were selected based on purposive sampling, and obtained from individuals and organizations within the following four groups:[23]

- International and regional policymakers, advisors and donors;
- Civil society, social movements and non-governmental organizations (NGOs);
- The South African Government; and,
- Private investors including South African commercial farmers, farmer organizations and agribusinesses undertaking operations in other African countries.

As highlighted by many researchers of the phenomenon, studying contemporary large-scale land acquisitions is an extremely challenging task because of: the multifaceted drivers underlying LSLBIA; the multitude of actors involved and complexity of investment processes; the many forms and models of investments; the interdisciplinary nature of research on the subject; the non-transparency of the details of specific investments; and increasingly polarised debates, surrounding transnational LSLBIA in Africa (Anseeuw *et al.,* 2014). This explains the absence of reliable empirical evidence on extraterritorial LSLBIA from South Africa. Most LSLBIA are concluded in private, and both firms and government officials are often reluctant to reveal details and documents due to the commercial and the politically sensitive nature of the investments. It is rare for comprehensive and disaggregated data on LSLBIA to be made publicly available. The lack of any centralised South African government database of extraterritorial LSLBIA made it difficult to obtain accurate information on the South African government's stakes in such investments. As a result, it was not possible to ascertain the total financial value of extraterritorial South African LSLBIA in Africa and certain transnational LSLBIA projects from South Africa probably are not captured in this study.

Much of the data analysed by this study originates from the Land Matrix and NGO (and some media) reports. While the Land Matrix Partnership has "*invested considerable resources to improve the dataset's reliability and breadth*" in response to criticisms of the website presenting unverified information, its data is still likely to contain certain biases (Anseeuw *et al*., 2012)[24]. Data derived from media reports, particularly the number of hectares involved in land deals, is often exaggerated and inaccurate. In this regard, the accuracy of reports on certain extraterritorial LSLBIA from South Africa was difficult to verify.

Moreover, the very recent nature of the rise in extraterritorial LSLBIA and the development of instruments to guide such investments poses challenges for determining their impacts as well as the level of adherence by South African firms with the Voluntary Guidelines principles and other related international, regional and national instruments. This short timeframe and the scope of this research as primarily a desk study must be considered when interpreting the findings of this study.

Lastly, it is important to mention that the study is subject to potential biases, which should be considered in drawing conclusions. For example, the selection of data sources and case studies

[23] These have been adapted from the categorization of materials analyzed in: Scoones, I. , Smalley, R. , Hall, R. , Tsikata, D., 2014. Narratives of scarcity: understanding the 'global resource grab. PLAAS Working Paper 076, Future Agricultures. www.future-agricultures.org. p. 3.

[24] However, it must be noted that the Land Matrix Global Observatory is still widely considered the most accurate estimate of large-scale transactions land transactions currently. For a detailed discussion of the Land Matrix and potential biases.

was based on purposive sampling. Factors such as relevance, research feasibility and potential for adding value to final research insights were considered when choosing documents to review and investment projects for in-depth case study analysis. Thus, while attempts were made to ensure diversity of scale, commodity sectors, geographies, actors involved and forms of investments, the results of case studies are not generalizable to all LSLBIA from South Africa.

3.3. South African policies and their relation to VGGT provisions

Despite the recent spate of LSLBIA into Africa by South African entities, no official statements or explicit references to this trend are available from the South African government. South Africa's key policy and strategy documents do not acknowledge this trend, and instead allude to agriculture as a key focal area of 'exportable investment' within the broader national imperative to deepen economic engagement throughout the continent. While certain policies have been put in place to guide South African overseas direct foreign investment (ODFI), no policy or legislative framework has been introduced specifically to manage or regulate cross-border LSLBIA (EDIP, 2013)[25].

Cross-border engagement in LSLBIA by South African capital is not a new phenomenon. The origins of the country's northward economic expansion of agrarian capital can be located mainly in the confluence of two major historical events: the simultaneous fall of the apartheid regime in 1994, which brought an end to political and economic isolation; and, the ascendancy of the neoliberal development paradigm of the 'Washington Consensus', which opened the door for South African capital as African countries liberalised their economies under structural adjustment programmes (Draper *et al*., 2010). Alongside many other African countries, South Africa implemented far-reaching reforms. Agricultural trade was liberalised, markets were deregulated and opened to global competition, numerous parastatals were privatised, and the elongated period of extensive state support and expenditure on the predominantly white commercial farming sector came to an end. Following these reforms, major pieces of land reform and labour reform legislation were introduced in the mid- to late-1990s.

The Department of Trade and Industry (DTI) is the lead department responsible for South Africa's economic and trade engagements with the rest of the world. In 2015, DTI published the Guidelines for Good Business Practice by South African Companies Operating in the Rest of Africa as a guiding framework for promoting sustainable economic growth throughout the continent. The 2015 Guidelines consist of 12 principles (see Box 7) aimed at encouraging South African firms doing business in Africa to "align their involvement and practices with… Government's integration and development objectives in Africa and to build mutual confidence, trust and benefit for the companies and the societies in which they operate" (DTI, 2015). They seek to support the private sector by providing "a guiding framework for South African companies operating in the rest of the African continent" to ensure "sound business practices for South African businesses that are consistent with South African law, the law of host countries and internationally standards" (DTI Compliance with the Voluntary Guidelines is recognised as voluntary).

[25] In fact, no formal regulatory framework currently exists for South African ODFI in general, with legislation dealing almost exclusively with inward foreign investment (for example see the Promotion and Protection of Investment Bill (PPIB), which was endorsed by the South African Cabinet in June 2015, and deals primarily with inward investment).

Box 7. The DTI Guidelines: the 12 principles

1. Comply with domestic legislation and fair business practices, including all applicable relevant South African laws, regulations and policies, and in the absence of these, relevant international standards and best practices;
2. Adhere to the UN Global Compact;
3. Respect human rights, in which firms should not be involved in any human rights abuses as a result of their operations or civil conflicts;
4. Apply fair labour practice;
5. Promote good corporate governance, including ensuring ethical business practices, good corporate governance, accountability and transparency in compliance with the Companies Act and the 2009 King III report;
6. Promote environmental responsibility and sustainable business practices;
7. Ensure occupational health and safety;
8. Develop regional markets and regional value chains, including by implementing programmes that result in the empowerment of local communities;
9. Promote corporate social responsibility for the benefit of local communities by demonstrating the firm's sense of responsibility to the host community and environment;
10. Promote employment of local labour, skills development and technology transfer;
11. Avoid engaging in corrupt and illegal activities; and,
12. Comply with tax laws and regulations of the host countries.

Source: DTI, 2015.

The government has not adopted policies, enacted legislation or promulgated regulations to govern extraterritorial LSLBIA into the rest Africa. Some analysts believe that this may be related to its active support of (and involvement in) northward expansion of corporate capital. Extraterritorial LSLBIA may be viewed as critical to achieving national development objectives, particularly those related to securing national food, water and fuel supplies, as these entail "*using the water and land resources of foreign countries…*" (Ferrando, 2014, p. 164). As such, regulating cross-border LSLBIA may be seen by the government as a potential deterrent to such investments. Discussions held as part of this study revealed similar views including the fear of potentially decreasing the international competitiveness of South African firms, thus impeding their expansion northward[26].

Another explanation for the lack of regulation by the South African government of extraterritorial agricultural investments into Africa relates to extraterritorial law enforcement. DTI Officials indicated that the option to give legislative effect to its *Guidelines* had been seriously considered, with representatives of organised labour especially championing this approach. However, this option was ruled out because South Africa lacks extraterritorial jurisdiction in other African countries, thus making it difficult to enforce compliance with the *Guidelines* by South African firms. As stated by one representative of the DTI, "*the host country will have to deal with transgressions*". However, DTI does recognise the need to manage and improve perceptions of South African firms investing abroad[27]. In short, the state's time, energy and resources have been devoted to encouraging ODFI by reducing legal and bureaucratic barriers to these investments rather than focus on managing and regulating outflows (Miller *et al*., 2008; Hall and Cousins, 2015; Matlala, 2014; EDIP, 2013; Hall, 2011a; Boche and Anseeuw, 2013).

[26] Discussions held at a meeting with the Department of Trade and Industry (DTI) officials and officials of NEPAD Business Foundation, 23 February 2016 in Rivonia.
[27] Ibid.

Overall, regional integration is being pursued within the context of the Comprehensive Africa Agriculture Development Programme (CAADP) and the African Union's regional integration imperatives (UN Office of Special Advisor, 2010). Regional economic integration (i.e. through market integration, infrastructure development and enhanced inter-regional connectivity) is viewed by the South African government as key to accelerating the country's economic and social development (DTI, 2010; NPC, 2012). The central national strategy of fostering regional integration features prominently in all recent policy and legislative instruments dealing with trade and investment, as well as with key national policy and strategy documents such as South Africa's National Development Plan (NDP), Industrial Policy Action Plan (IPAP), the 2010 South African Trade and Investment Policy Framework, and the National Industrial Policy Framework (NIPF).

South Africa's core long-term strategy document, the 2012 NDP outlines the broad vision and strategic direction of the South African government. The NDP states "*South Africa can benefit from rapid growth in developing countries that leads to increased demand for commodities and expanding consumer markets*" (NPC, 2012, p. 31). Expansion of trade and investment throughout Africa is explicitly named as a key national imperative. The Plan highlights infrastructural obstacles to African development and remarks that such challenges can only be addressed through 'regional cooperation'. It calls for increased investment in extraterritorial infrastructure projects, including transport, energy and port infrastructure, to enable deeper regional integration. One of the NDP's focal points is further developing South Africa's agribusiness sector, especially to expand its exporter base (NPC, 2012).

DTI is responsible for overseeing implementation of the Industrial Policy Action Plan (IPAP), which is a government-wide initiative in the form of 3-year rolling plan (updated annually) with a decade-long outlook on national economic objectives. IPAP emphasises on developing regional infrastructure for regional value chains, diversification away from traditional commodities, and capitalizing on growing consumer markets in Africa. It highlights the deepening of cross-country agricultural value chains as an important area for regional industrial integration (DTI, 2014).

Another key national policy document regarding promotion of the transnational LSLBIA is the DTI's 2010 *South African Trade Policy and Strategy Framework*, which introduced a new policy on investment (Mlumbi-Peter, 2015). Again, the central thrust is on strategic economic integration of South Africa with the rest of Africa and the wider world through cross-border infrastructural development, and diversification of value chains, particularly agricultural values chains across the continent (Disenyana and Sogoni, 2013). While the new approach to investment concentrates mostly on inward flows, the framework also highlights the important role South Africa must play "*on the African continent… in strengthening continental processes that seek to diversify and build agriculture and industrial production in line with the objectives set out in NEPAD*" (DTI, 2010).

Another example of SA government support for extraterritorial LSLBIA in Africa is the Joint Agribusiness Department of Agriculture Forestry and Fisheries Forum for Africa (JADAFA), a partnership between the Department of Agriculture, Forest and Fisheries and South Africa's agribusiness sector. JADAFA's overarching aim is to "*promote agricultural trade and agro-industrial investment partnerships in Africa*" through the provision of market information "*meant to guide agribusinesses and government in the facilitation of engagements with stakeholders in target countries*" (JADAFA, 2016; African Centre for Biosafety, 2014).

The enabling role of government. The government's promotion of extraterritorial LSLBIA is also readily visible in various mechanisms that have been introduced to facilitate capital outflows into the continent. The main mechanisms include: introduction of various economic reforms that reduce the cost of doing business in Africa; provision of direct state funding for cross-border agricultural, infrastructural and other kinds of projects; and, the negotiation and establishment of numerous bilateral investment treaties with several African counterparts.

With regional integration high on the political agenda, several economic reforms were introduced in South Africa that incentivised extraterritorial LSLBIA and other forms of investments. These include relaxation of foreign exchange controls, tax requirements (especially for certain imported goods) and other financial regulations to reduce the cost of doing business across the border. For example, regional investment limits have been increased significantly since the late 1990s years (from ZAR 50 million per project in 1997 to ZAR 2 billion per individual projects in Africa by 2004) (Miller, 2008).

The South African government has also provided direct and indirect funding to commercial farmers, agribusinesses and other enterprises to invest in agricultural projects throughout the rest of Africa. In 2010, Tina Joemat-Petterson, the then Minister of the Department of Agriculture, Forestry and Fisheries (DAFF) and now the Minister of Energy, revealed that half of a ZAR 6 billion fund created to support South African farmers would go towards cross-border agricultural projects (African Centre for Biosafety, 2014; Hall, 2011b; Ferrando, 2014; Hall and Cousins, 2015). Other state entities involved in transnational LSLBIA include South African development finance institutions (DFIs) such as the Industrial Development Corporation (IDC) and the Development Bank of Southern Africa (DBSA). Additionally, the clear majority of South African agricultural firms engaged in projects throughout the rest of Africa are backed by the state-owned Public Investment Corporation (PIC). Responsible for managing the South African government's large pension and unemployment funds, the PIC has acquired significant shares in agro-food corporations (African Centre for Biosafety, 2014).

In addition to DAFF and the DTI, South Africa's Economic Development Department (EDD) and National Treasury have SOEs (specifically government-owned DFIs) that are either directly or indirectly involved in LSLBIA projects in Africa. For example, the EDD supervises the IDC, which provides loans to companies for the establishment of new manufacturing industries and the expansion, modernization or relocation of the existing industries (CUTS, 2003). The IDC has recently allocated R 6.2 billion of state funding for investment in 41 ongoing or planned mineral, energy and agro-processing projects in Africa (Hall, n.d.). The Development Bank of Southern Africa (DBSA), nested within the National Treasury, also provides state funding for South African firms engaging in LSLBIA projects (Disenyana and Sogoni, 2013).

International investment agreements (IIAs), often in the form of bilateral investment treaties, also play a key role in government facilitation of South African extraterritorial LSLBIA into Africa (Ferrando, 2014)[28]. Since 2008, the South African government has negotiated and concluded IIAs with at least 13 African countries which often involve agriculture (Hall, 2011b). South African investors are either involved in or are negotiating LSLBIA projects located within at least 8 of these 13 countries.

A central objective of this study was to assess alignment (and evaluate implementation) of South African national policies/regulatory instruments on cross-border LSLBIA with principles

[28] The explosion of transnational LSLBIA throughout the continent in the past decade was accompanied by drastic increases in the prevalence of IIAs, which (mostly in the form of BITs) are the central vehicle through which transnational investment is regulated.

and best practices advanced by the Voluntary Guidelines and the other relevant national, international and regional instruments. Fulfilling this objective was hampered by the lack of any South African policies or laws designed specifically to ensure that South African LSLBIA is done responsibly. However, assessment of other more general investment policies, such as the DTI's *Guidelines for Good Business Practice by South African Companies Operating in the Rest of Africa* and key strategy documents such as the NDP, permit some conclusions to be drawn.

The DTI's *Guidelines* clearly indicate that South African investors should adhere to the "*values underpinning the South African Constitution*" in their cross-border business engagements (DTI 2015). The application of high standards of corporate governance and corporate responsibility, sound business practices and international best practices are emphasised throughout the Voluntary Guidelines. Companies are called on to comply not only with all relevant South African regulatory frameworks, but also with the "*laws of the host country and internationally recognised standards*" (DTI, 2015).

It is also important to highlight areas of the NDP and the NIPF that are aligned to the Voluntary Guidelines and related international/regional instruments. For example, the NDP asserts that foreign relations and regional integration must be driven by "*regional, continental and global obligations*", which entails meeting five main goals (NPC, 2012). The second of these goals is to "*improve human security through effective transnational natural-resource management*" partially through "*improving livelihoods in countries that are dependent on agriculture and agro-processing by supporting efforts to improve productivity and include an increasing proportion of African producers in global value chains*" (NPC, 2012, at p. 237). The NDP also emphasises the need to include civil society in integration planning, especially labour and community organizations from neighbouring countries. The NIPF, in turn, notes the powerful influence of investment decisions on the economy, pointing out the "*complex process of horizontal unbundling of conglomerates being replaced by vertical 're-bundling' in a range of sectors*" in the post-independence era (NIPF, n.d.). Acknowledging the high levels of concentration characterizing the many sectors across the South African economy, and consequent uncompetitive outcomes, the NIPF stresses that "*regulation must be effective at all three spheres of government particularly with respect to matters related to small enterprises and major investments*". Each of these imperatives contained in the NDP and NIPF are directly in line with principles advanced by international principles on transnational LSLBIA (NIPF, n.d.).

3.4. Scale and geographical location of investments

Extraterritorial LSLBIA from South Africa come in all different forms and span the entire African continent. South African investors are brokering or have concluded LSLBIA deals in at least 28 African countries[29]. While such investments have traditionally been concentrated in the Southern African Development Community (SADC) region, South African firms are making land-based investment agreements in West, East and Central African countries as well. These include actual transnational land acquisitions (through lease, concessions or outright purchases) and partnerships, mergers and acquisitions of agricultural firms operating on African farmland (e.g., in the food processing and retail sectors). It is estimated that 21.7 percent of the mergers and acquisitions taking place in Africa over the past ten years have been initiated by South African agribusinesses (African Centre for Biosafety, 2014).

[29] These include Angola, Benin, Botswana, Cameroon, Congo, the DRC, Egypt, Ethiopia, Gabon, Ghana, Guinea, Kenya, Lesotho, Libya, Madagascar, Malawi, Mali, Mauritius, Mozambique, Namibia, Nigeria, Senegal, Sierra Leone, South Sudan, Swaziland, Tanzania, Uganda, Zambia and Zimbabwe.

According to the Land Matrix database, South African investors are responsible for 38 concluded transnational land acquisitions in Africa since 2000. Subtracting other forms of investments (i.e. those intended solely for forestry extraction and tourism development), 31 of these transactions – covering an intended area of 1 241 550 ha and a contracted area of 376 708 ha of African farmland – are intended for production of agricultural commodities (sometimes also including forest products). The deals covered by the Land Matrix stretch across at least eleven countries (Land Matrix, 2017).

However, many extraterritorial LSLBIA from South Africa are not included in the Land Matrix (African Centre for Biosafety, 2014; Hall, 2011b). Many of the projects reported in the media reports were either incorrectly described (exaggerated to demonstrate the severity of the phenomenon) or the deals did not materialise (Schoneveld, 2011). Basing their data on studies undertaken by the ILC, Hall and Paradza (Hall and Paradza ,2012) reported that South African firms are investing in a total area of 1 416 000 across the continent, but the authors also noted that some of these extraterritorial LSLBIA had not been verified (Hall and Paradza, 2012). The Transnational Institute reported a similar figure (Vanaik, 2014). Because other sources have reached different conclusions on the size of the land area implicated, it is difficult to know exactly how much African land is being invested in by South African enterprises. What is certain is that the area involved in extraterritorial LSLBIA from South Africa is significant, the investors are many and differentiated, and the trend is continuing.

Data from the Land Matrix Global Observatory shows that countries in Africa are targeted by investors world-wide more than any other continent (Land Matrix, 2016). South African investors of LSLBIA projects are undertaking operations in many of these countries. However, as indicated above, the recent rise in extraterritorial LSLBIA from South Africa is a continent-wide phenomenon.

Farmland in Sub-Saharan Africa is particularly targeted for acquisition by South African farmers. Of the 31 concluded large-scale cross-border land deals involving South African firms recorded by the Land Matrix, the greatest number of land acquisitions have occurred in Mozambique (12) and Zambia (7) (Land Matrix, 2017). Also important to note is Agri-SA's Congo-Brazzaville deal, which, although cited as only one land acquisition, involves 50,000 ha or more of land being cultivated by several South African farmers (see Box 8) (Matlala, 2014; Boche and Anseeuw, 2013; Hall and Paradza, 2012). Other countries that seem to be especially favoured by South African commercial farmers include Botswana, Tanzania, Malawi and Zimbabwe (Nolte *et al*., 2014; Hall, 2011b; Hall and Paradza, 2012).

As discussed above, South African commercial farmers and agribusinesses have been acquiring land in Sub-Saharan Africa for decades for obvious reasons such as geographical proximity, availability of low-priced, high-potential agricultural land and cheap labour, good climatic conditions, and cultural connectivity (Hall, 2011a; Hall, 2011b; Navas-Aleman, 2015). Certain recent developments offer additional insights into the significant rise in extraterritorial LSLBIA from South Africa into this region of late. Foremost amongst these developments is Agri-SA's[30] formation of its 'Africa Policy Committee' in 2010 and its successor committee. The Committee facilitates land acquisitions by South African farmers who are interested in extending their operations northward by negotiating favourable investment terms (and land deals) with African governments and securing financing for farmers (Hall, 2011b; African Centre for Biosafety 2014, footnote 254). It helped to establish the Congo Farmer's Union and AgriSAMoz, organizations that represent the interests of South African farmers operating in Congo-Brazzaville and Mozambique, respectively (Agri-SA, 2014), and is in the process of establishing similar associations in Zambia, the DRC, Malawi, Tanzania and Angola

[30] Agri-SA is a South African agricultural industry association. See http://www.agrisa.co.za/.

(African Centre for Biosafety, 2014; Agri-SA, 2014). These Agri-SA-initiated structures provide financing options and significantly enhance the prospects for success and increased profitability of South African cross-border farming projects, their development helps to explain why certain sub-Saharan countries are particularly targeted by South African agricultural firms. Agri-SA also advocates agricultural investment in more politically stable countries such as Botswana[31].

African countries targeted for extraterritorial LSLBIA from South Africa also tend to be those that offer preferential investment terms. Many of South Africa's immediate neighbours are openly inviting South African investment, often through Agri-SA, by presenting attractive incentives such as tax breaks, inexpensive land, public-financed improvements in infrastructure and low-interest loans. For example, Zambia has offered exemption from certain import tariffs, as well as increased public investments in roads and extension of power grids. The country also made available significant portions of 150,000 ha 'farm blocks' for acquisition by South African firms (see Box 9 below) (Hall, 2011b). Another example is the Mozambican government's 2011 pledge to spend 10 percent of its GDP on increasing agricultural production and productivity (in line with CAADP requirements) (República de Moçambique, 2011). In addition, Mozambique recently took measures to facilitate access by South African investors to conveniently located land in proximity to major corridor development projects involving several supported by international financial institutions (IFIs) as well as some South African and development finance institutions (DFIs) (Ikegami, 2015).

As demonstrated in cases of Mozambique and Tanzania, South African investors also tend to target Sub-Saharan countries in which the state is the legal owner of all land, with individuals and firms having only use rights to the land they occupy. Investors perceive that such legal frameworks open doors for investors who can successfully negotiate long-term leaseholds directly with government officials. Based on claims that large areas of public land are lying 'idle', 'unoccupied' or 'under-utilised' (Hall, 2011; Hall and Paradza, 2012; Vermeulen and Cotula, 2010)[32], certain African governments (e.g., Mozambique, Zambia, the Congo-Brazzaville and Tanzania) have allocated vast expanses of prime agricultural land to foreign investors in the name of national development. It is widely reported, however, that such land is rarely unoccupied and is held by local rural communities (often under customary tenure) who rely heavily on the land to sustain their livelihoods. As is discussed further below, allocation of this land to investors often results in displacement of existing land rights holders and conversion of land use from local-livelihood enhancing purposes to production of bio fuels or expensive food that is unaffordable to local people. Despite the majority of the aforementioned countries having introduced comprehensive legal reforms aiming at protecting existing land rights, land governance systems are often too weak and power imbalances too great to ensure that local communities benefit from these South African cross-border LSLBIA projects. (Hall, 2011b; Cotula *et al*,. 2009; von Maltitz and Setzkorn, 2012).

3.5. Investment drivers

On the one hand, the government position on extraterritorial LSLBIA is seen by some as aligned to the four pillars of South Africa's current approach to foreign policy: promoting an 'African agenda'; South-South co-operation and North-South dialogue; multilateral and economic diplomacy; and bilateral relations with individual countries (Gumede, 2014). Such investments have played a significant role in South Africa positioning itself as the 'Gateway to Africa', especially for the BRICS[33], as is exhibited in the introduction of various outward investment reforms that "*aim to boost South Africa's position as a base for investment into the rest of Africa and further afield*"[34].

[31] Interviews held with AGRI SA Official on 8 March 2016 in Centurion.
[32] Many have used these terms and made this observation.
[33] The acronym BRICS refers to Brazil, Russia, India, China and South Africa.
[34] Interview held with LSLBIA investor on 10 March 2016, in Potchefstroom, North-West Province.

On the other hand, commercial interests also guide South African LSLBIA in the rest of Africa. These respond to stagnant profit margins from domestic activities, insecurity over land ownership in South Africa due to land reform initiatives, and increasingly attractive opportunities abroad (Bachke and Haug, 2014; African Centre for Biosafety, 2014). This expansion has continued since independence, yet has accelerated dramatically since 2008 with extraterritorial agricultural investments now taking on new shapes and forms. More recently, interest in Africa by investors is reportedly losing momentum as return ratios are not what they were previously projected to be[35].

Diminishing profits at home

Commercial farming in South Africa has progressively become a more challenging undertaking in terms of optimal production and profitability. As noted by Hall (2011b), "*a combination of pressures has put… farmers – once a primary political constituency of the National Party apartheid government – into new difficulties*" (Hall, 2011b, at p. 2). Neoliberal restructuring of the sector entailed closure of state-controlled marketing boards, privatisation of cooperatives, removal of subsidies and cheap credit, and abolishment of tax concessions, increased exposure to international competition and hikes in the costs of farming inputs (e.g., diesel, electricity, etc.). Costs of labour grew due to the introduction of agricultural labour regulation and establishment of a minimum wage by the new democratic administration. Frequent worker strikes also contributed to the rising cost of labour. Additionally, farmers faced increasing water scarcity, depleted soils and harsh climatic conditions, lower domestic demand, and depressed consumer spending related to massive structural unemployment and poverty.

Such challenges have significantly diminished profitability of the sector (Hall, 2011b; Bernstein, 2013), as evidenced in its steadily declining contribution to the GDP and employment, and substantial debt with new lows and highs observed in 2012 and 2013. Agricultural exports, net trade imbalances and outputs have also decreased in recent years. As a response to these challenges, South African agricultural firms have developed various strategies for coping including diversifying their geographical and commodity base, and vertical integration into value chains across the border (Hall, 2011b)[36].

As observed by Hall (2011b), most South African firms involved in extraterritorial LSLBIA maintain their operations within South Africa, while investing in new business endeavours elsewhere on the continent. Information gathered from interviews conducted as part of this study supported this observation. South Africa is seen as congested in terms of opportunities to expand farming operations and agribusinesses. Land is becoming scarcer and more expensive. A successful commercial farmer or agribusiness wanting to expand operations may no longer have the option of purchasing weaker neighbouring farms as these are now often owned by strong counterparts, and therefore may be tempted to seek land across the border (which is frequently cheaper and easier to acquire than South African agricultural land)[37].

Thus, South Africa has "*reached the tipping point*"[38] insofar as agribusiness is concerned. In other words, mergers and acquisitions of other South African firms has become less of an option for agribusinesses who want to expand. The entire South African commercial food chain has matured, with extremely low margins left for increasing profits on the domestic front. To escape congestion on the supply side of the value chain, agribusinesses and other actors are expanding operations northwards[39].

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[35] Interviews held with AGRI SA Official on 8 March 2016, and in addition with other LSLBIA investor on 10 March 2016 in Potchefstroom, North-West Province.
[36] See also interview held with LSLBIA investor on 10 March 2016 in Potchefstroom, North-West Province.
[37] Interview held with LSLBIA investor on 10 March 2016 in Potchefstroom, North-West Province.
[38] Ibid.
[39] Ibid.

Land reform in South Africa

Since 1994, successive democratic governments have attempted to address past racial injustices and the bi-modal nature of the South African agricultural sector through land reform, rural development and agricultural support programmes (as well as broad-based black economic empowerment). While significant progress has been achieved, land redistribution targets have not been reached, and entrenched inequalities, tenure insecurity, unemployment and poverty persist (NPC, 2012; Bachke and Haug, 2014). Land reforms have been cited as a major 'push' factor underlying the most recent wave of extraterritorial LSLBIA from South Africa (Matlala, 2014; Hall, 2011b; Hall and Paradza, 2012). Some of the most prominent champions of commercial agriculture, including the general manager of the Transvaal Agricultural Union (TAU), Bennie van Zyl, and the deputy president of Agri-SA, Theo de Jager (who is also the president of both Pan African Farmers' Organization (PAFO) and Southern African Confederation of Agricultural Unions [SACAU]), have publicly said that the Government's new policies of land redistribution is pushing South African agricultural capital north (Child, 2012; GRAIN, 2012)[40].

However, as highlighted by Hall (Hall, 2011b), the rise in contemporary LSLBIA from South Africa into the rest of Africa cannot be simply explained as a reaction to newly introduced redistribution policies and other reforms (i.e. raised minimum wages, higher taxes etc.). Instead, the entire agricultural value chain is involved in this northward expansion, with an assorted range of factors at play. These various motivating factors weigh in differently for each investor, and are closely linked with the intention, location and status of the investment, all of which can change rapidly (Hall, 2011b; African Centre for Biosafety, 2014; Cotula and Blackmore, 2014; Land Matrix, 2015; Boche and Anseeuw, 2013; Hall, 2011a). Other random factors are also at play. For example, the quest to invest elsewhere in Africa has driven some commercial farmers to pioneer expansion into the rest of Africa as they seek economic power and the accompanying high status of one who owns farms in other countries[41].

Adding to the complexity of factors motivating extraterritorial LSLBIA from South Africa is the overlap between the introduction of significant land reforms and the "*multiple-food-energy-climate-financial crisis*" of 2008-10 (Margulis in Boche and Anseeuw, 2013). The restructuring of the Department of Land Affairs into the Department of Rural Development and Land Reform (DRDLR) in 2009, closely followed the global 'food price crisis' of 2007–2008, which drastically increased commodity prices. This price rise is often cited as one of the key drivers of the rise in LSLBIA that began at around that time. The year 2008 was also the year of severe global financial crisis, followed by the onset of a world-wide economic recession in 2009–2010 and the 32 percent rise in the food price index rose from June to December 2010 (Smaller, 2011). These developments have contributed to the sharp increase in transnational LSLBIA in Africa by multi-national corporations in recent years. Therefore, it is difficult to disentangle the influence of land reforms from other key factors that have motivated South African farmers, agribusinesses and other investors to engage in cross-border LSLBIA.

Better investment opportunities elsewhere in Africa

Of course, a core driver of South African agricultural firms engaging in business north of the border is the desire to increase profits (Vermeulen and Cotula, 2010; Hall and Cousins, 2015; Ducastel and Anseeuw, 2013; Hall, 2011a; Ikegami, 2015; Hall, 2011b; Miller, 2008; DEIP, 2013; Mulumbi-Peter, 2015; Disenyana and Sogoni, 2013). Several 'pull' factors are at play here. First, cheaper land, labour and water can be found outside of South Africa, translating into relatively lower marginal production costs and higher returns[42]. Second, less developed countries across the continent offer lower levels of competition together with growing consumer demand. Africa's increasing

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[40] De Jager, who recently lost land himself in the redistribution process, is quoted as saying that "uncertainty about the reconstitution of land" has motivated farmers to invest elsewhere. This sentiment was further echoed by van Zyl, who stated that "threats to farmer safety, strict labour legislation and a proposed land ceiling" motivated the exit of farmers from South Africa.

[41] Interview held with LSLBIA investor on 10 March 2016 in Potchefstroom, North-West Province.

[42] Interview held with LSLBIA investor on 10 March 2016 in Potchefstroom, North-West Province.

urban population and emerging consumer market offer significantly higher potential profits for South African farmers and agribusinesses (especially next to saturated domestic markets) (Boche and Anseeuw, 2013; EDIP, 2013; Mlumbi-Peter, 2015; Hall, 2011a). The African Development Bank estimated that the number of African middle-class consumers grew by 60 percent to 313 million in the past decade, with the UNDP predicting that Africa's middle-class population will surpass India's by 2020 (Disenyana and Sogoni, 2013; Thomas, 2012; African Centre for Biosafety, 2014). Projected increases in returns are also linked to rising commodity prices (particularly after the 2007–2008 food price shocks mentioned above) and the growing global demand for non-food commodities, especially bio fuels (Hall 2011a; African Centre for Biosafety 2014; Vermeulen and Cotula 2010).

Furthermore, many global companies partner with South African firms for their LSLBIA activities in Africa. Without such partnerships, many South African countries would not invest across the border. These deals provide massive opportunities for increased trade and profit as, in the words of one interviewee, "*you can optimise your logistical value chain if you play in the bigger pool within Africa – the magic of size, trade, scale is a driving force*" of LSLBIA on the continent. In turn, local businesses in host countries often take advantage of opportunities for partnerships with SA firms to increase access to capital, enhance their marketing strategy and maximise profits[43].

Box 8. Congo Agriculture in Congo-Brazzavile

Arguably the most widely publicised extraterritorial LSLBIA involving South African investors is the acquisition of 80,000 ha of land by Congo Agriculture in Congo-Brazzaville in 2011. In 2009, Agri-SA was contacted by the Congo-Brazzaville government seeking South African commercial farmers (and the investment that would accompany them) to cultivate land formerly consisting of state-owned farms in the fertile Nyari Valley. By the end of the year, an agreement was signed between the Congolese government and Agri-SA for the allocation of 200,000 ha of land to a group of at least 15 South African farmers, who have since formed a company called Congo Agriculture. The initial agreement gave Agri-SA the option to acquire an additional 9.8 million ha in the future. However, only 80,000 ha of this prime farmland is currently held under a 30-year renewable lease by Congo Agriculture through pro forma 'Government to Farmer' contracts drafted by Agri-SA and the Congolese Government.

As incentives, Congo Agriculture received tax exemptions on imports, no constraints on export of produce, a five-year tax holiday, unlimited repatriation of profits, and heritable leasehold rights. Moreover, a new Bilateral Investment Treaty between South Africa and Congo-Brazzaville protects farmers from expropriation of the land, providing for full compensation not only for the land but also for infrastructure and any losses occurred due to stalled production.

The land in question is extremely fertile, with estimates that a "single dry-land hectare in the Congo can yield 10 tons of maize as opposed to 3 tons in South Africa". In 2012, South African farmers brought in their first harvest on 0.6 percent of the 80,000 ha under their leasehold. By 2015 only a small amount of the land was reportedly under cultivation, and many South African farmers had backed out of their contracts due to various unforeseen technical problems, such as damage caused by tropical pests, resulting in much lower productivity than expected.

Although categorised as under-utilised and unoccupied by the Congolese government, local farmers' organizations, a Congolese human rights organization and certain local government officials assert that the land was held under customary tenure by long-term residents who used it intensively. These groups claim that the existing land rights holders were not adequately consulted or compensated, nor were they aware of the details and duration of the lease agreements, only becoming informed the South African farmers' contracts many months after their conclusion. This contradicts the Congo's Land Law Number 10/2004, which established democratic general principles governing land allocation and acquisition and formally recognised customary land rights.

Sources: Hall, 2011b; Boche and Anseeuw, 2013; Hall and Cousins, 2015; African Centre for Biosafety, 2014; Hall and Paradza, 2012; Matlala, 2014; Agri-SA, 2014.

43 Interview held with LSLBIA investor on 10 March 2016 in Potchefstroom, North-West Province.

Additional 'pull' factors for South African investors include:

- projected land price increases in the target countries leading investors to expect a return derived solely from the appreciation of farmland over time (reflecting the commodification of African land and explaining the tendency of stalled production as examined later);
- ability to earn profits in foreign currencies that can be retained outside of the country's borders;
- increased financing opportunities for development projects and regional integration initiatives of the South African government and the broader African community against the backdrop of the New Partnership for Africa's Development of the African Union (NEPAD), SADC- Free Trade Area and Southern African Customs Union (SACU);
- favourable foreign investment incentives offered by host governments (e.g., lenient taxation policies and low land rents); lack of enforcement of consultation and Environmental and Social Impact Assessment requirements; increasing emphasis on investment-led development in Africa as opposed to development aid within the framework of international cooperation;
- recent bilateral investment agreements between the South African government and several African countries; and, the facilitation of these investments by national (and regional) commercial farmers' associations (Boche and Anseeuw, 2013; United Nations Special Adviser on Africa, 2010; Hall and Cousins, 2015; Hall, 2011b; Ikegami, 2015)[44].

Box 9. Zambia's 'Farm Blocks'

In recent years, the Zambian Government designated approximately 100,000 ha of land for agricultural and industrial development in each of its ten provinces. The government has actively solicited private foreign investment, in which the so-called 'farm blocks' are to be developed through public-private partnerships (PPPs). The Zambian government waived import taxes and VAT, promised extensive infrastructural development (roads, power and water), as well as facilitated access to land by offering 99-year leaseholds. The 'farm blocks' consist mostly of what was previously customary land that has been transformed into state land and then allocated to foreign investors by the Zambia Development Agency (ZDA). According to the ZDA's records, 34 private South African entities (whose identity is not revealed) had pledged to invest in Zambia land between 2000 and 2010, nine of which were planned for PPPs.

While not yet confirmed, sources indicate that as many as 300 South African commercial farmers are operating in Zambia on some of this land. One October 2015 media report indicated plans for investment of around USD 100 million (spread over ten years) by South African farmers into the Zambian agricultural sector. The farmers were being coordinated by Agri Zambia, a platform recently created by Agri-SA's Agri All Africa Platform (AaA), and had plans to produce a wide range of commodities including sugar cane, maize, soya, wheat, cotton, groundnuts, macadamia nuts, cattle, goats, and fisheries.

Available evidence on South African investment in Zambia's 'farming blocks' points to these projects having serious negative consequences on local communities. While the Zambian government has claimed that an enormous amount of agricultural land across the country is lying idle and unused, studies reveal otherwise. The allocation of farmland to foreign investors has meant dispossession of tenure rights of customary communities. In particular, rural women have been affected most acutely, especially widows and single women. Although the country's land laws require consultation with local communities about any land alienation, government officials and traditional leaders are reported to bypass this requirement.

Sources: Zambia Development Agency website: http://www.zda.org.zm/; Hall, 2011; Hall and Cousins, 2015; Boche and Anseeuw, 2013; Mutopo, 2015; Zambian High Commission in South Africa, 2015; Nolte, K., 2013.

[44] See also interview held with LSLBIA investor on 10 March 2016 in Potchefstroom, North-West Province.

3.6. Investment typology

There is a multiplicity of actors entangled in the expansion of the country's agrarian capital, and the many different sources of investment that characterise these projects (Buxton *et al.*, 2012 and Ducastel, 2013). Consistent with the broader wave of transnational LSLBIA occurring throughout the world, it is becoming clear that a single South African extraterritorial LSLBIA project most often has multiple investors (rather than consisting solely of an independent farmer acquiring and cultivating the farmland) and frequently involves the entire agricultural value chain (Cotula and Blackmore, 2014; Hall, 2011a; Ikegami, 2015; Hall and Cousins, 2015).

In addition to independent South African producers (whose role in the recent rise in extraterritorial LSLBIA is much less than in former years), the various types of South African investors engaging in cross-border LSLBIA projects in Africa include: commercial farmers organizations (e.g., Agri-SA); almost all of South Africa's major agribusinesses throughout the entire value chain – from those specializing in farm inputs (seeds, pesticides, fertilisers, tractors etc.), to processing, packaging and logistics, to supermarkets and other retailers, to integrated service providers[45]; and, financial institutions such as SOEs (including DFIs), private banks, and investment funds (also referred to 'farmland funds') (Boche and Anseeuw, 2013; African Centre for Biosafety, 2014; Hall, 2011b; Hall and Cousins, 2015).

Investment funds – often labelled 'farmland funds' – represent the financialization of the South African (and African) agricultural sector, involving "*a growing cast of actors through whom transnational private capital is being brought into Africa's agriculture, ranging from pension funds, hedge funds, sovereign wealth funds, banking institutions and agribusinesses and private equity funds*" (Hall and Cousins 2015, at p. 4). Investment funds amass capital on financial markets and invest this money into agricultural enterprises with projected high investment returns. Branching into the agricultural sector enables the funds' shareholders to diversity their asset portfolios, which helps to spread risks and increase profits (EAML, 2010; Hall, 2011b).

The African Centre for Biosafety's 2014 study on South African agribusiness expansion throughout the continent reports that over 25 transnational international investment funds became involved in LSLBIA in Africa in 2014. The study also found that private equity investment into the African agriculture had grown to an estimated USD 5 billion by 2014 (African Centre for Biosafety, 2014). These investment funds are overtaking more traditional vehicles for financing cross-border LSLBIA, although the latter (i.e. private banks such as Standard Bank and ABSA, DFIs such as the DBSA and other state-owned finance institutions) are still playing a major role in LSLBIA and often hold shares in the farmland funds.

One notable example is the African Land Fund created by the UK/South African management firm, Emergent Asset Management. The African Land Fund partnered with Grainvest to subsequently establish the Emvest Agricultural Corporation (see Box 10), which serves as an instrument for South African investors (and others) to channel capital into LSLBIA projects in several African countries including Angola, Botswana, DRC, Kenya, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe. Other examples of South African farmland funds are the UFF Agri Asset Management Fund (an arm of Old Mutual's African Agricultural Fund, established under the auspices of the African Agricultural Fund), and the Africa Food and Agribusiness Investment Fund (Hall and Cousins, 2015).

[45] A non-exhaustive list includes AFGRI, Grainvest, Illovo Sugar, Tongaat-Hulett, Rainbow Chicken (RCL Foods), Clover Holdings and Oceano Group, Astral Foods, Tiger Brands, Pioneer, Premier, FoodCorp, Shoprite, Spar, Checkers Group, Woolworths, Pick & Pay and Anglovaal Industries (now AVI Ltd).

Several South African governmental entities hold stakes in extraterritorial LSLBIA across the continent. South Africa's Economic Development Department (EDD) and National Treasury have established Development Finance Institutions that are either directly or indirectly involved in LSLBIA projects in Africa. For example, the EDD supervises the Industrial Development Corporation (IDC), which has recently allocated R 6.2 billion of state funding for investment in 41 ongoing or planned mineral, energy and agro-processing projects in Africa (Hall n.d.). The Development Bank of Southern Africa (DBSA), nested within the National Treasury, also provides state funding for South African firms engaging in LSLBIA projects (Disenyana and Sogoni, 2013).

Another South African government entity involved in extraterritorial LSLBIA in Africa is the Public Investment Corporation (PIC), which oversees the South African Government Employees Pension Fund, Unemployment Insurance Fund and the Compensation Commissioner's Fund, and which backs seven of the ten largest agribusinesses in Africa (Tiger Foods, Pioneer Food Group, AFGRI, Ltd, Illovo Sugar, Astral Foods, Clover Group and Tongaat Hulett) (African Centre for Biosafety, 2014).

Box 10. Emvest in Zambia

The UK-South African owned Emergent Asset Management formed the African Agricultural Land Fund in 2008 and then partnered with the South African company Grainvest to create the Emvest Agricultural Corporation. Emvest serves as a major "*vehicle for South African, UK and other investors to diversify their investments into African agriculture*". It targets at least 14 African countries for LSLBIA and was valued at more the USD 500 million in 2012. Its core aim is to "*bring together key themes of agriculture/food security, Africa… SRI and economic sustainability, purchasing and managing a wide spectrum of agricultural properties across the sub-Saharan region, with investments diversified across both geographically and across agricultural sectors*". The fund requires minimum investments of EUR 500 000 from private investors and EUR 5m from institutional investors, and advertises itself as an ideal financial instrument to profit from 'undervalued' African land. Emvest has established four group companies: Emvest Limpopo, Emvest EEV, Deep Water Produce in Mozambique, and Emvest Livingstone in Zambia.

Emvest Livingstone acquired its Kalonga Estates from the Zambian government in 2009, by leasing 2 513 ha of high quality agricultural land adjoining the Zambezi river, only 30 kilometres from Victoria Falls, for 99 years. Only 513 ha of the land are currently under production, consisting of a 110-ha banana plantation and 460 ha on which irrigation systems are to be developed. The firm also plans to grow wheat, maize, groundnuts and possibly other 'higher-value' crops in the future. Emvest maintains that the "*remaining 2 000 ha of land presents a prime opportunity for further farming activities such as livestock ranching or commercial crops, or, as tourism is booming in the area, development of tourism-related facilities such as a game reserve and hotel*". Thus, it is difficult to determine whether the land will be used to cultivate food or other crops, or whether it is being held for speculative purposes. Emvest estimated that investors can earn a 30 percent annual return through speculative holding of African land, explicitly informing potential investors that the "*cost of arable land in Africa is a fraction of that of comparable land in Europe, South America and North America*".

Sources: White *et al*., 2012; Hall and Cousins, 2015; African Centre for Biosafety, 2014; EAML, 2010, in Hall ,2011b; Emvest Livingstone website; Hall, 2011b; Emvest website.

LSLBIA from South Africa are very diverse in their modes of entry, size, duration, tenure arrangements, land uses and business models. They take the form of large-scale land transactions and mergers and acquisitions of the host country and these African agricultural firms utilize significant amounts of farmland. While some South African companies purchase land outright, more often extraterritorial LSLBIA involves leasing of agricultural land. The amount of land leased or purchased can range from a few hundred to tens of thousands of hectares. The intended length of projects also varies widely, with some South African investors expecting to see returns after only two to three years, while others enter into 15–99 year (often renewable) lease agreements. Moreover, a vast range of commodities are produced, stored, processed and sold on the land in question depending on the type of farming operation or agribusiness involved.

Hall (Hall, 2011a) describes the wide variation amongst South African cross-border LSLBIA, stating "*making sense of the diversity of deals … requires addressing the size, duration and source of the investments; the commodities and the business models through which they are implemented; the tenure arrangements and resources accessed; the terms of leases and compensation; the degree of displacement; labour regimes and employment creation; and changes in settlement and infrastructure*" (Hall, 2011a).

A typology that is especially helpful in disentangling the complexity of extraterritorial LSLBIA from South Africa was developed by Boche and Anseeuw's (Boche and Anseeuw, 2013). The authors identify six different models of transnational large-scale farmland acquisitions, based on three variables: (1) the set-up and organizational characteristics of these investments; (2) the results, outcome and sustainability of the different forms of cross-border LSLBIA; and (3) the inclusiveness and direct implications for local populations and development. Their investment models are largely based on South African cross-border projects in Mozambique, Malawi, Zambia and the Congo-Brazzaville, and thus have particular relevance for this study (Boche and Anseeuw, 2013).

Boche and Anseeuw's six investment models are:

- The **Independent Farming model**, which emulates South Africa's large-scale commercial farms and involves independent producers acquiring different amounts of farmland (from a few hundred to a few thousand hectares);
- The **Cooperative model**, where farmers' associations (such as the AgriSA-initiated AgriMoz and Congo Agriculture) are established in the host country to represent farmers engaged in production abroad by facilitating access to finance, negotiating land access (usually involving upwards of 10 000 ha) and favourable investment terms, providing technical and institutional support and coordinating farming activities (see Box 8);
- The '**1 000 day model**', where about 5 000 to 10 000 ha of land is secured by a developer with both strong local and foreign connections, with financing from major foreign agribusinesses, investment funds or private equity investors seeking to establish a successful farming operation (usually in bio fuels or other exportable produce) within three years;
- The **Asset Management Companies** model, where investment funds employ either an asset management company or, less frequently, a general manager to acquire land and oversee all start-up and operational activities involved in the production of different commodities such as rice and sugarcane (as shown in Box 10);
- The **Contracting model**, in which agribusinesses establish contractual arrangements (e.g., contract farming) with local and/or foreign farmers to access land or primary production with the aim of supplying the processing facilities they have invested in (as shown in Box 12; and
- The **Agribusiness Estate**, which involves major foreign transnational firms (e.g., agribusiness giants and parastatals) acquiring vast expanses of land (often in excess of 10 000 ha) to expand and diversify their portfolios with the aim of integrating fully into different segments of the value chain (Boche and Anseeuw, 2013).

A summary of these six models, together with their prevailing characteristics, different chances of success, and varying levels of inclusiveness and development is in Annex 1.

3.7. Challenges facing South African investors

One of the most striking conclusions of Boche and Anseeuw's assessment of transnational LSLBIA from South Africa (and elsewhere) is that, while certain models can bring major benefits for local populations (i.e. the Contracting Model) and/or advance national development goals of host countries (i.e. the Agribusiness Estate), "*all the models reflect three common tendencies: a high investment failure rate, a tendency to increased value-chain integration and little inclusiveness of local populations*" (Boche and Anseeuw, 2013).

Investment failure or success can be attributed to many factors. One interviewee observed that the 'investment rush' into Africa meant that people invested too much too fast and often failed due to a lack of proper planning, assessments and consideration of local conditions and potential costs/challenges to be factored in. He went on to say that South African firms have been confronted by several specific challenges[46]:

- Intervention by host governments, particularly market disturbances in the form of government subsidies for seed and fertilisers for small-scale farmers. This led to production surpluses on the supply side and thus a fall in prices which reduced profits for both foreign investors and local producers alike.
- Uncertainty and movement of foreign currencies against the Rand which exposes investors to greater risk, especially where there are no opportunities to hedge.
- Higher costs (e.g., renting offices, accommodation, hiring expert consultants and managers, becoming familiar and meeting regulatory requirements, etc.) associated with establishing operations in multiple countries; it is necessary to start over each time. This translates into a critical mass production quota to meet, and requirements for large amounts of financing.
- Lack of infrastructure in the host country.
- Strict enforcement of regulations by host country regulators.

Also, independent South African commercial farming operations occurring north of the border sometimes fail due to lack of access to external finance, technical challenges, managerial difficulties and institutional uncertainties related to operating under adverse ecological, political, bureaucratic and socio-economic environments in host countries. Even when supported by an overarching organization such as Agri-SA, these challenges can drive farmers to withdraw from projects, often before the first harvest takes place (Boche and Anseeuw, 2013; Hall, 2011b).

However, South African commercial farmers have also developed strategies to overcome the obstacles faced in other African countries and several have sustained successful operations. The most successful are those that have established auxiliary farming activities in host countries as expansion of their home-based operations (see, for example, Macs-in-Moz in Box 11), or commercial producers who develop associations with other farmers and agricultural firms to pool resources and/or benefit from economies of scale. One such organization is the FrutiCentro association, which consists of foreign independent farmers and up-and-coming domestic farmers in the Manica province in Mozambique (Boche and Anseeuw, 2013).

While also prone to the above vulnerabilities, investments that can be classified under the Cooperative Model often enjoy higher rates of success due to facilitated access to finance, favourable contractual arrangements (including off-take of production agreements and BITs between the host and home governments), and other forms of support provided by the umbrella organization. For example, some farming operations undertaken in Congo-Brazzaville by members of Congo Agriculture are experiencing increases in production, which has resulted in substantial employment creation (Boche and Anseeuw, 2013).

[46] Interview held with LSLBIA investor on 10 March 2016 in Potchefstroom, North-West Province.

In collaboration with USAID, the NEPAD Business Foundation (NBF) has conducted extensive research on how to facilitate meaningful and sustainable public and private investment in African agriculture. The most significant constraint, in this regard, was found to be insufficient and ineffective communication, collaboration, cooperation and coordination between local communities, private and public actors and other key stakeholders. The NBF paper emphasises that "*mitigating the constraints to Africa's development requires gaining the trust of the African people and their buy-in of the development process*" (SAADP, 2014 at 7). Local ownership of challenges and locally devised practical solutions are required for successful investments. Transformation of "*subsistence farmers into viable businesses by supporting and linking them to commercial farms or opportunities*", together with establishment of locally owned small and medium enterprises that add value to agriculture products is the only way for African agriculture to develop and prosper in an equitable and sustainable manner (SAADP, 2014, p. 7).

It follows, then, that the least successful cross-border LSLBIA from South Africa tend to be projects that have focused on making fast and high short-term returns on investments, do not engage comprehensively with and hold few benefits for local communities, have low levels of inclusivity, create few linkages with local businesses and do not advance national development goals of the host country. They are also projects that involve large expanses of land (most often occupied by local people lacking secure tenure rights), and that neglect to dedicate some land for production of affordable food for local consumption. According to one representative of a major agribusiness, such mega farms mostly fail, at least in part, because they tend to extinguish smallholder production, which the majority of rural African relies on forsurvival[47].

Box 11. Macs-in-Moz and Moz Avos Limitada

Classified under Boche and Anseeuw's (Boche and Anseeuw, 2013) Independent Farmer Investment Model, the Mozambican registered agricultural companies Macs-in Moz and Moz Avos are owned by the South African farmers Howard Blight and Christo Breytenbach, with an unnamed European investor also listed as a shareholder. Although Breytenbach resides on a neighbouring farm and oversees management of Macs-in Moz and Moz Avos Limitada, this example of extraterritorial LSLBIA is a case of expansion (rather than exodus) of South African farming operations. Blight is also the second- generation owner of Amorentia Estates in the Limpopo Province of South Africa.

In 2010, Blight signed a long-term lease with the Mozambican government for 1 500 ha of land located in the Manica Province of Central Mozambique. The land is not only well-located –bordering a large dam in the Beira Corridor (where there is relatively well developed road and railway infrastructure, and proximity to the Beira harbour is especially convenient to export markets produce) – but also in an area with "suitable climate conditions, an abundance of water and magnificent deep red soils". While the Macs-in-Moz farm is used predominantly as a Satellite to Amorentia Nursery, as well as to produce high-value fruit and nuts (Macadamia nuts, litchis and citrus), Moz Avos is intended for development of orchards of various species of avocado trees (one of which the company holds exclusive propagation rights over in Mozambique). By the end of 2014, 300 ha of both farms were under cultivation, with the companies indicating that the remaining 1 200 ha were either under development or planned for expanded irrigation by the end of 2016. In the meantime, Blight reports that they are producing vegetables to help pay for the establishment of the fruit and nut tree orchards.

The companies express strong commitments to sustainable and environmentally sound development of the region and empowerment of the local communities, particularly through training, employment, partnerships with public and private institutions and by assisting in the development and financial security of small-scale local farmers…

Sources: Amorentia Estates website; Macs-in-Moz website (Mission Statement); Moz Avos; Aabø and Kring, 2012.

[47] Interviews held with AFGRI Officials on 18 March 2016, Centurion.

Projects that can be categorised within the '1 000 Day Investment Model' are a prime example of projects exhibit that have the likely-to-fail characteristics, and thus ultimately headed for failure from the beginning. These investors focus primarily on rapid land transformation (usually to produce bio fuels) or holding land for speculative purposes (and selling when land values appreciate) (Boche and Anseeuw, 2013).

The most successful South African extraterritorial LSLBIA projects involve well-established and highly organised investors (e.g., previously existing agribusinesses or large commercial farming firms) that enter into agreements with local farmers (as opposed to acquiring large areas of land and disruption existing tenure arrangements and production systems), and build close relations with affected land users and local communities who are positively affected. Another key success factor is the expansion of local value chains in an inclusive manner that integrates both small-scale producers and other local businesses. This creates a 'win-win' situation vis-à-vis investment performance for all stakeholders. By coordinating with other domestic and foreign agricultural firms, local farmer organizations, NGOs and both host and home governments, these investors achieve high levels of integration within the host community and surrounding areas, leading to wider positive socio-economic and environmental impacts for the host country (Navas-Aleman, 2015; Boche and Anseeuw, 2013).

All stakeholders need to work together to comprehensively address the needs of these farmers, offering a complete package – entailing round-the-clock training, inputs, mechanization and improved technology, financing, reliable markets, linkages to different areas of the value chain etc. – in order to make sustainable investments and become a 'catalyst for a new breed of farmers in Africa'[48]. The majority of successful South African LSLBIA investors openly acknowledge the importance of support for small-scale producers and communities and corporate investment in ensuring their sustainability, all based on comprehensive consultations in which local people have a voice in what projects to pursue, and how funds will be spent (Navas-Alemán, 2015; World Bank, 2014)[49]. These mostly fall under Boche and Anseeuw's (Boche and Anseeuw , 2013) Contracting and Agribusiness Estate investment models. Notable examples include Illovo's out grower farming activities in Mozambique (see Box 12), SABMiller's inclusive business strategies that rest on contracting farming and outsourcing to small local enterprises, and AFGRI's diversified initiatives in supporting small-scale farmers across Africa (these include provision of finance, agricultural inputs, guaranteed markets, and storage and processing facilities) (Hall and Cousins, 2015)[50].

3.8. Preliminary conclusions

Cross-border engagement in LSLBIA by South African capital is not a new phenomenon. Extraterritorial LSLBIA from South Africa come in all different forms and span the entire African continent. It is estimated that over the past ten years, 22% of the mergers and acquisitions that have taken place in Africa have been initiated by South African agribusinesses (African Centre for Biosafety, 2014).

When it comes to land investments, South African investors, (notably farmers), are brokering or have concluded LSLBIA deals in at least 28 African countries. These investors prefer countries which offer preferential investment terms in the Sub-Saharan African region. It should also be noted that all of the South African extraterritorial investments in agriculture identified in this report obey purely market fundamentals; i.e. commercial interests.

[48] Interviews held with AFGRI Officials on 18 March 2016, Centurion.
[49] Ibid.
[50] Ibid.

Regional integration is one of South Africa's national strategies for economic growth. This strategy is embedded in many official documents such as South Africa's National Development Plan (NDP), Industrial Policy Action Plan (IPAP), the 2010 South African Trade and Investment Policy Framework, and the National Industrial Policy Framework (NIPF). While some of the provisions of the NDP and the NIPF are aligned to the Voluntary Guidelines, both lack enforcement mechanisms for cross border investments. In fact, no legislative framework has ever been introduced in South Africa to manage or regulate cross-border LSLBIA.

3.9. Recommendations

It is now widely acknowledged within the international community that Africa's agricultural sector requires substantial investment to achieve the Sustainable Development Goals. Realizing these goals means that agricultural investments must be made in an inclusive and responsible manner, through a consistent and comprehensive application of the principles and following best practices advanced by the various international and regional instruments discussed herein. LSLBIA involve complex relations between private sector institutions, governments and local communities which "*offer numerous pressure points for public action*" to increase uptake of these internationally accepted principles and best practices (Cotula and Blackmore, 2014, at p. 54). In that spirit and based on this study's analysis, the South African government, South African investors and host governments should adopt the following measures:

South African government:

- Facilitate transparency and accountability in implementation of projects, with compulsory annual reporting by investors;
- Put in place legal requirements to make parent companies more transparent about and accountable for the actions of their subsidiaries;
- Establish mechanisms to build capacity for and rigorous monitoring of compliance with, and sanctioning of non-compliance with host country laws on tenure and investments, international principles on responsible investment (such as the Voluntary Guidelines) and South African policy on responsible outward investment;
- Establish a register of South African extraterritorial LSLBIA, with compulsory registration and disclosure of investment contracts by all South African investors. This register should include details such as how much land is involved, duration of the project, intended use of land, land rents to be paid, rights and obligations of host governments and investors, rights of the affected communities, dispute resolution processes, etc.;
- Discourage investments that involve transfers of land rights; and,
- Collaborate with civil society organizations and private sector representatives in South Africa and host countries to design and implement a public awareness campaign to ensure that state officials, local communities, private investors and CSOs are cognizant of the principles encompassed in the Voluntary Guidelines and other instruments, as well as new reforms adopted to promote more responsible agricultural investments.

South African LSLBIA investors:

- Conduct a stakeholder analysis and through this, engage with the affected communities prior to closing negotiations of the investment;
- Avoid the destabilization of indigenous tenure systems, thus avoiding infringing on the human rights and legitimate tenure rights of others;

- Incorporate inclusive and transparent governance structures, processes, decision-making, and grievance mechanisms, accessible to all, in their business models;
- Apply business models that integrate existing local smallholder farmers, particularly by entering into arrangements (such as contract farming and outsourcing) that engender yield increases that benefit local communities and host countries;
- Promote participation of other local enterprises and facilitate technological transfer and enhanced capacity of local economies to manufacture value-added agricultural goods;
- Prioritise women, children, youth, the elderly, indigenous people, subsistence farmers and other existing land users as target beneficiaries of LSLBIA projects or, at a minimum ensure that they are not harmed by such projects;
- Avoid speculative landholding and ensure that some production is aimed at the local market for domestic consumption, particularly production of affordable food commodities;
- Include effective risk management systems;
- Establish a strategy for dispute resolution that builds on local mechanisms; and,
- To obtain government support and buy-in, engage in public private partnerships in undertaking extraterritorial agriculture projects.

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Comparative analysis of country case studies

4. Comparative analysis of country case studies

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Do Chinese and South African investors face differences in the factors that affect their investment decisions? Do they respond to different drivers and do their investments pursue different objectives? Are their investments different in scale and approach? This section explores some of these questions, looks for similarities and differences between these countries, and puts forward a number of suggestions for future research avenues on extraterritorial LSLBIA in Africa.

4.1. Normative frameworks

This research concerns large scale investments, and therefore concentrates on large investors. When large investors engage in a country, they raise the attention of both the public and private sectors, notably if (as applicable to this research) these include land-based deals. From the Government's perspective, legal compliance by investors with existing normative frameworks is critical and relevant. Equally so, normative frameworks matter for foreign investors: intentionally or not, they can encourage or discourage FDI.

The normative framework of a country is made up of a vast number of institutions, laws and policy instruments, some of which pertain to the home country, some to the host country, and some others to both the host and home countries.

a. Investment treaties

This section begins by exploring the existing legal frameworks that regulate cross border investment. Where these exist, they are embedded in investment treaties and protocols. No global investment treaty exists today which may be equivalent to that of WTO for regulating international trade. Though trade agreements may occasionally include investment provisions, this section concentrates on investment treaties, which can either be bilateral and regional (BITs and RITs). Though none of the cross border investment treaties reviewed had provisions that are akin to those to be found in the VGGT, these instruments are unquestionably relevant, for they are designed to encourage, facilitate and protect foreign investors, and their investments.

China and South Africa have signed a large and similar number of investment treaties with African countries. China has signed 34 BITs and South Africa 23. However, South Africa is also a signature of the Southern Africa Development Community (SADC) Protocol on Finance and Investment, which has provisions similar to those of BITS and therefore expands the number of investment agreements to 32 African countries.

Geographical coverage of investment treaties matters for the Chinese, but not for South Africans whose investors from South Africa have ventured in countries where no BITs exist, such as Kenya, Lesotho, Cameroon and Benin. For China, agricultural investors engaged only in countries where BITs have been signed. This suggests that Chinese investors, at least as far as agriculture is concerned, concentrate in countries where the governments have officially declared to protect both their personnel and their investments. Doing similar research, Cotula *et al*. (2016) found that, notably among small and medium scale companies, larger Chinese investors are relatively unaware of the existence of BITs. This lack of awareness should not lead to the conclusion that BITs are ineffective – at home, Chinese campaigns promoting foreign agricultural investments lobby in favour of BIT signatory countries.

While all BITs identified are differently, the bulk of their provisions belong to the so called "first generation" of investment agreements. These investment agreements were characterised by narrow objectives (for example economic growth), and included broad definitions of investment that were most favourable to foreign investors (against host countries). They also included Most Favoured Nation (MFN) provisions (access to incentives that may have been originally designed to favour investors from developing countries) which are now in need of reform (UNCTAD, 2018). The South African cross border investment in the Southern Africa Development Community (SADC), however, is regulated by a more modern set of regulations – the SADC Protocol on Finance and Investment, which has supranational status. The provisions of the Protocol move beyond the first generation of investment agreements by, *inter-alia,* including sustainable development in its three social, economic and environmental dimensions, by narrowing down the definition of investment to an enterprise–based approach, and by restricting the agreement to the bilateral relation itself (omissions to MFN) rather than having the Protocol interfere with third parties. Countries in SADC where South African investors engage and where no BIT is in force include Botswana, Eswatini, Malawi, Namibia and Zambia.

b. Home country measures

China and South Africa have different approaches for guiding their foreign investors. From an institutional perspective, it should be recalled that most investment from China is by State-owned companies, by enterprises that benefit from funding support by the State, or by companies whose portfolio is partly owned by the State, while those from South Africa are mostly privately owned.

Chinese companies operating abroad are subject to Chinese laws. Moreover, the Chinese government has also issued further provisions for their investments abroad that are mandatory, and that are conceived under its national strategy of "Going Global in Agriculture", the "Belt and Road Initiative", and "South-South Cooperation." In Africa, China seeks to portray an image of both a responsible foreign investor in its commercial enterprises, and of a benevolent donor for countries in need. Thus, as Africa is a net-food importer, China can, at the same time, endorse a large LBLS investment that produces sisal for export back to China, but veto an investment that produces food to be imported back to China. South Africa also has an "African Agenda", and "South-South Cooperation," but virtually all its companies investing abroad are privately owned, and not subject to domestic South-African law in operations that are carried out outside of its territory. The (only existing) instrument that guides their operations abroad is voluntary, and therefore its approach to its foreign investors is *laissez-faire*.

China has a substantial number of legal provisions that are applicable to, or aimed directly at, domestic companies investing abroad (the earliest from 2008). These are labelled 'Conventions', 'Guidelines', 'Measures', and 'Opinions', and are issued by various offices such as the State Council, the Ministry of Agriculture, the Ministry of Foreign Affairs, the Ministry of Commerce, the Ministry of Environmental Protection. This research has found that several documents implicitly address VGGT provisions. For example, the Convention on Sound Operation and Social Responsibility of Overseas Agricultural Investment requires Chinese companies to comply with and respect local laws and cultural practices, to improve health and education, to reduce poverty, to avoid harm to the environment and to strive for mutually beneficial investment outcomes.

In South Africa, multi-and-bilateral investment treaties, and trade agreements, seek to position the country as a "Gateway to Africa", not only for domestic investors but also those from outside of the continent. In addition to promoting an "African Agenda" and South-South Cooperation and North-South Dialogue, the South African government has also adopted policies encouraging investment in agriculture, including funding agricultural enterprises abroad. Nevertheless, the government has tended not to favour regulations on responsible investment practices abroad, arguing that such instruments are the responsibility of host governments. The only normative instrument the government of South Africa has published for its foreign investors are *Guidelines for Good Business Practice by South African Companies Operating in the Rest of Africa* (DTI Guidelines – South African Department of Trade and Industry), which are voluntary. While some of the provisions echo many of the provisions of the VGGT, references to land tenure, or the need for companies to engage in effective and meaningful consultation with indigenous peoples, are conspicuously absent.

4.2. Drivers and investors and investment typologies

The main driver of agricultural FDI outflows from South Africa is business. As noted in this chapter, land, water and labour costs have increased and eroded profitability. Relative to other African countries, South Africa has a highly educated population (including know-how and technology) and an abundance of financial assets that could also be profitably utilised elsewhere in Africa. The primary type of investors are private companies, and investment and pension funds, which invest along agricultural supply chains. These are direct purchase, lease or rental of farms, nucleus farms, and upstream (input provision) and downstream (transport, processing and distribution) activities. Occasionally, South African farms have ventured in joint ventures and public-private partnerships, both through private companies and state owned enterprises, but these are exceptions rather than the rule.

In China, the core drivers stem from the public sector, though the Chinese government is also making efforts to encourage private Chinese companies to invest in African agriculture. Like South Africa, the scarcity of land and water, and higher income levels are pushing production costs upwards in China, therefore they are eager to channel their abundant capital and qualified personnel into African agriculture. In addition, Chinese enterprises are also seeking to develop agricultural supply chains; natural resources; and to tap into the increasing demand for agricultural products of Africa's rapid income and population growth. Commercial interests are part of China's equation, even under its South-South Cooperation strategy. China attaches major importance to agricultural knowledge transfer with a focus on technology. Thus, the Chinese investor rarely invests in pension funds whose main driver is profit making, and they are reluctant to buy or rent land. The most common methods of investment by Chinese companies are joint ventures with African governments or SOEs, Build-Operate-Transfer of farms, Nucleus Farms, and Industrial Parks.

4.3. Investor Challenges

Foreign investors from both China and South Africa believe unequivocally that investing in Africa is "challenging". They face difficulties that are shared by any foreign investors, including macroeconomic instability, bureaucracy and interventionist states (most notably in agricultural and commodity markets). Nevertheless, some challenges were specified by the Chinese investors and omitted by the South Africans. These included: the limited technical capacity of partners; the high opportunity cost of labour leisure; cultural differences; political instability; and their (own) experience of investing abroad. Omission by South African investors of these challenges, however, does not preclude that these were not relevant. Rather, they imply that South African companies have a better understanding of what is required of investors that seek to engage in the challenging investment environment of rural Africa.

4.4. Tentative conclusions and way forward

The last section suggests that if China wants to invest more in Africa, they will need to enhance their understanding of Africa. How can governments help out?

In the case of China, most investors interviewed reported limited or no knowledge of the Voluntary Guidelines. However, there is substantial awareness among the investors of the potential for conflict that arises from purchasing or leasing land in a manner which is opposed by local land users. For example, China-Africa Cotton Development Ltd.´s policy is to avoid buying or leasing farmland due to the risk of conflict. Similarly, CITIC Construction Co. Ltd and Xinjian Beixin Agricultural Group recognises the potential for land disputes with local communities in Angola and, therefore, seeks to establish their reclamation operations far from local villages.

The case studies also suggest that some companies, notably those from China, tend to rely on government records and support from local lawyers to determine who has legitimate tenure rights over a specific piece of land. However, in many low-income countries land records are out of date, inaccurate, or non-existent, and where they exist, the identification of legitimate right holders is not always straightforward. Clearly, the latter depends on how "legitimate" is to be understood. For example, customary rights are qualified as "legitimate" under the Voluntary Guidelines and may be valid for local communities, but these may not necessarily qualify as "legitimate" under national legislation. Companies should be aware that by abiding by local and national formal laws and regulations it does not necessarily mean that the customary land rights have been taken into consideration.

Some of the business models utilised by Chinese companies appear to be at least somewhat inclusive as they involve cooperative arrangements with local farmers. The China-Africa Cotton Development, Ltd. Project in Malawi provides technology, seeds, fertiliser and pesticides to the farmers and buys and processes their raw cotton. The New Era Company in Sudan has a similar operation.

Overall, investors seem unaware of many of the provisions of the Voluntary Guidelines. Among these, however, it appears that the South Africans have a greater awareness of the importance of respecting legitimate tenure rights and working cooperatively with local communities. In addition, their investors seem to be familiar with the CFS Principles for Responsible Investment in Agriculture and Food Systems. As for China, representatives of companies involved in the case studies stated that they seek to respect local tenure rights. However, lack of official land records, and lack of awareness of the various possible interpretations that could be given to "legitimacy" may not be conducive to building the climate of trust, transparency and understanding that is vital for negotiating the transfer of land tenure rights.

Chinese enterprises working in Africa are making concerted efforts to engage in responsible agriculture. These follow official guidelines issued by the Chinese Central and Provincial Governments, many of which contain provisions that are aligned with international voluntary standards, including the VGGT. Tenure is a major concern. This research also found that a roadblock for responsible investment is, on the one hand, how legitimate tenure rights are being understood by investors, and on the other hand a lack of data on legitimate tenure rights in host countries. This failure compromises the possibility of sustainable economic growth in host countries, for it affects the amount, manner and quality of foreign direct investment flowing into African agriculture.

In the second phase of this research, the focus will be on Chinese enterprises investing in Tanzania and Mozambique. Its key objectives are first, to deepen our understanding of the manner in which land tenure rights are legitimised by the various stakeholders and, second, to provide guidance for the Chinese government and investors on how to strengthen their work on land tenure. The conceptual framework that guides this work is defined by provisions of the VGGT.

FAO is working in close collaboration with African governments and local communities, as well as Chinese authorities, commercial enterprise and research institutions (e.g., the Chinese Academy of Agricultural Sciences and the University of International Business and Economics). The project is fully aligned with the spirit and objectives of the China International Development Cooperation Agency, which formulates strategic guidelines, plans and policies for foreign aid, coordinates and offers advice on major foreign aid issues. It is also aligned with the objectives of South-South Cooperation, with the Chinese Ministry of Agriculture and Rural Affairs, and with the China Council for the Promotion of International Trade. The second phase of this research will contribute to China's collaborative efforts to improve its agricultural foreign cooperation policies and regulations, including the provision of a package of services for Chinese agricultural enterprises to go global, the provision of overseas information services, and development-related capacity development work.[51]

Conceptually, the second phase of this research will generate inputs for examining roles and responsibilities related to land tenure, both of which are essential for conducting due diligence, and risk assessment processes of extraterritorial agricultural investments. The activities are thus implemented through a twin-track approach. A first track consists of research that identifies and explores conceptual, institutional and legal aspects and instruments that define legitimate tenure rights, both by Chinese enterprises and by stakeholders in Tanzania and Mozambique. A second track explores and assesses the problems that stem from a lack of clarity on land tenure, and the manner in which these are being addressed and, eventually, resolved. The results of the two tracks will enhance evidence-based dialogue in home and host countries on responsibly balancing tenure governance and land-based investments in agriculture.

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