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**Land and Africa's Development Future: Governing
the Risks and Opportunities of Large-scale Land-
based Investments**

Issues Paper 2



African Union



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Economic Commission for Africa

I. INTRODUCTION

1. The renewed demand for land in Africa by local and foreign investors, especially for agriculture, has the prospect of unleashing Africa's potential by increasing much needed investments and realizing productivity gains that have long eluded the sector. In its quest to harness this new interest in land investments however, Africa must seek a balance that maximizes gains and minimizes the risks associated with large-scale acquisitions, to ensure that the expected equitable economic growth occurs, community livelihoods are protected or enhanced and environmental impacts minimized.

2. In view of the limited data and evidence on large-scale land deals, the Africa Union (AU)-Economic Commission for Africa (ECA)-African Development Bank (AfDB) Land Policy Initiative (LPI)¹ recently launched an assessment of large-scale land-based investments (LSLBIs) in Africa as part of implementing the Nairobi Action Plan on Large-scale Land-based Investments². The study, which will be finalized in early 2013, is a response to a call by African Governments and other stakeholders to build empirical evidence and disseminate promising practices and models for governing large-scale land-based investments.

II. OBJECTIVE AND SCOPE

3. This issues paper on land is one among four (the others are on mining, forestry and fisheries) that will form the basis for discussions at the eight African Development Forum ADF-VIII under the theme, "Governing and Harnessing Natural Resources for Africa's Development". The paper examines the opportunities and risks of governing large-scale land-based investments in Africa, with a view to providing guidance on policy options and mechanisms for engaging in land investments that lead to win-win outcomes for African Governments and local communities on the one hand, and private investors on the other. The Issues Paper should be read along with the ADF-VIII Concept Paper, which articulates Africa's challenges, opportunities and options for improving governance of its natural resources, in particular land, minerals, forestry, and fisheries, to promote development.

4. While LSLBIs cover a wide range of land-based sectors, including, mining and forestry, this paper is limited to discussion on investments that focus on the agricultural sector. This is because first, the mining and forestry sectors are also sub-themes for ADF-VIII and have issues papers that are specific to the sectors. These papers highlight many of the issues and options related to LSLBIs in these sectors. Secondly, the agricultural sector is the main focus of the new wave of large-scale land acquisitions in Africa for agriculture and biofuels. Thirdly, the inadequate legal and regulatory framework surrounding land governance in general, and LSLBIs in particular, is well recognized and has been the cause for debate that does not always rely on solid evidence. Lastly, African member States and stakeholders recognized LSLBIs as an area that needs urgent attention in their adoption of the Nairobi Action Plan in October 2011. With work having started, led by the LPI, to implement that Plan, ADF-VIII will provide a unique forum to widen dialogue that could lead to consensus and policy options critical to the governance of LSLBIs for development.

¹ For more on the AU-ECA-AfDB Land Policy Initiative, visit <http://new.uneca.org/lpi/WhatisLPI.aspx>

² AU (2011).

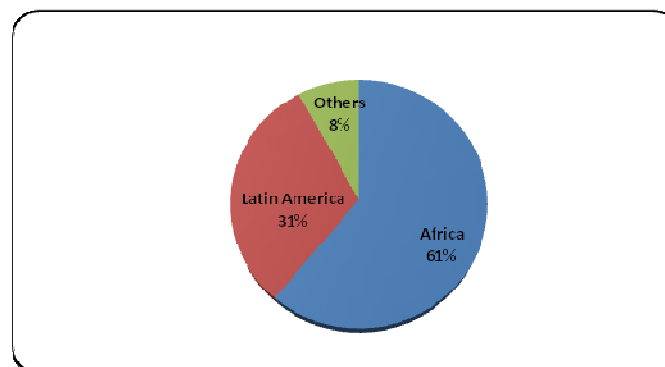
5. The issues paper encourages the reader to prepare for discussions and dialogue with dynamic participants drawn from a wide range of stakeholder groups and disciplines. In this regard, the paper highlights key issues, opportunities and challenges and then classifies them along five main categories for ease of presentation and analysis as follows: (a) policy, legal and regulations; (b) economic; (c) local governance, equity and social issues; (d) environmental; and (e) knowledge base, human and institutional capabilities. The paper then concludes by highlighting some options for promoting governance of land and LSLBIs and examining the potential for the LPI as a viable institutional mechanism in this regard.

III. KEY ISSUES, OPPORTUNITIES AND CHALLENGES

Does Africa have abundant agricultural land?

6. Reliable data on available uncultivated land that could be used for new forms of large-scale investments in Africa is still scanty. Satellite imagery by the Global agro-ecological assessment for agriculture in the 21st century³, conducted in 1996, on the availability of land suitable for agricultural production, indicates that about 80 per cent of the total available agricultural land in the world is in Africa and South America. More recent analysis⁴ indicates that Africa holds about 61 per cent of the 440 billion hectares of non-cultivated land area, which is suitable for cropping, yet is non-forested, non-protected, and has low density population (less than 25 persons per km²).

Figure 1: Suitable agriculture land available



7. Six African countries (Chad, the Democratic Republic of the Congo, Madagascar, Mozambique, the Sudan and Zambia) are among the 10 countries that hold one-third of this cropland. The opportunity to bring this land into cultivation is not lost on African Governments seeking to boost economic growth, increase employment and incomes and reduce poverty. Similarly, it is no wonder that demand for Africa's agricultural land is higher than elsewhere in the world, especially after the 2007-2008 food and energy crises.

³ Fischer and others (2002).

⁴ Wourtese and others (2011).

Is Africa's abundant agricultural land "available"?

8. One major challenge that faces Governments, traditional leaders and private citizens seeking to engage in land deals, is inadequate data to identify and quantify all land under the "available land" category. Yet, such land lies fallow under shifting or similar traditional cultivation methods or is used for seasonal pastoral grazing. In addition, there is so far no clear mapping and documentation of rights, interests and claims by individuals or communities on this "available land".

9. It is for this and other similar reasons that caution is needed in classifying African land as "available", based purely on ecological and agricultural suitability maps. Rather, additional mapping of land use and claims that present the reality of the dynamics relating to non-conventional land uses and claims on the land, are needed. Failure to have complementary mapping of land use and land rights can often lead to contesting of deals and even cancelation by communities and Governments and abandonment of the venture altogether by the investor. This happens when the real costs of the deal become apparent in the form of re-negotiated claims/compensation, lease periods and even costs surrounding dispute and conflict.

Do LSLBIs present opportunities for closing the yield gap?

10. In addition to having more productive land than other continents, Africa has the highest agricultural yield gap compared to other parts of the world⁵. The yield gap is partly due to low investments in the agricultural sector, as a result of decades of unsupportive macro policies that are biased against agriculture, and inconsistent sectoral policies that resulted in the neglect of smallholder farmers, who constitute the majority of Africa's agricultural producers. An assessment of the potential for rain-fed cultivation of five key crops (sugarcane, wheat, maize, oil palm and soybean) vis-a-vis actual production potential shows that substantial increase in output can be achieved with increased investments to support improved land management and application of modern production technologies.

11. Much is being achieved to reverse the rudimentary nature of Africa's agriculture, with progress being made to adhere to the target set in the Maputo Declaration of 2003, which calls for a 10-per cent allocation of public expenditures to agriculture, in the context of the Comprehensive African Agriculture Development Programme (CAADP). To boost investments even further, Governments are increasingly seeking partnerships with large-scale investors to increase domestic and foreign investments to agriculture and related sectors. The aim is to substantially increase private investment in technology, infrastructure and access to finance and markets, in both small- and large-scale agricultural sectors.

12. Figure 2 below summarizes the discussion above by highlighting the two-pronged opportunity that African countries have with regard to LSLBIs: (a) large amounts of productive agricultural land that could be brought to production; and (b) a yield gap that could be closed, boosting agricultural production through investments in inputs such as irrigation, mechanization, improved seed and fertilizer.

⁵ Deininger and others (2011a).

Figure 2: Land suitability and the yield gap

Yield Gap	<p>Type 3: Little land available for area expansion, high yield gap: Many densely populated developing countries, including countries in Eastern Europe</p>	<p>Type 4: Suitable land for area expansion available, high yield gap: African countries with large tracts of suitable land but also a large proportion of smallholders with very low productivity</p>
	<p>Type 1: Little land available for area expansion, low yield gap: Countries in Asia, Western Europe, and the Middle East with high population density and limited land suitable for rain-fed cultivation</p>	<p>Type 2: Suitable land available, low yield gap: Countries (mainly in Latin America) where land is fairly abundant and technology is advanced, often as a result of past investment in technology, and infrastructure human capital</p>
	Land Availability	

Source: Deininger and others, 2011.

13. Good intentions by Government, traditional leaders and others who seek to increase investments in agriculture by attracting LSLBIs in agriculture are often hampered by inadequate (and sometimes erroneous) information on land use and land availability at the national, meso and micro levels. For instance, decisions surrounding land deals are made without a mapping of where available uncultivated land is located, how much it is, and what underlying rights, interests and claims (to land, water and pasture etc.) prevail. This problem of inadequate data, information and evidence is compounded by land laws and institutions that are weak, limiting the scope for market operation, not to mention low institutional and human resource capacities that prevent adequate screening and monitoring of investments. The resulting scenario is lack of knowledge of whether the land deals are achieving intended economic and social benefits, while reducing unintended negative consequences to the environment and the social and cultural rights of local communities.

Who is investing in Africa's agricultural land and why?

14. Large-scale land investments in agriculture are not new. While land was mainly acquired by foreign companies, such as Lonrho (for rice production) and Firestone (rubber), increasingly it is now being acquired or facilitated by foreign Governments. Domestically, it is well known that South African farmers have been acquiring land in Zambia, Mozambique and Tanzania for decades. Large domestic players have also been acquiring large tracts of land in their own countries.

15. Contributing factors for the new wave of land acquisitions in Africa include the global search for alternatives to fossil fuels, especially in the face of the dramatic increase in the price of crude oil from 2008. An additional contributing factor is food security concerns resulting

from constraints in agricultural production in investor countries, which culminated in the food price hikes of 2007 and 2008⁶.

16. The food and fuel concerns responsible for the 2008 hikes were both caused by short- and longer-term structural considerations which outlasted the 2008 crisis. In the case of the food crisis, some of the factors contributing to reduced food stocks included limited availability of water and arable land in investor countries; bottlenecks in storage and distribution; and the expansion of biofuel production in competition with crop production. The long-term nature of some of the contributing causes raises concern in investor countries and ongoing foreign direct investment interests in Africa by investor countries.

17. Another reason for the new wave of land investments is investment opportunities rather than food security or energy concerns. Expectations of rising rates of return on agriculture and land values are key factors driving new patterns of land investment⁷. Land fees are either very low or missing altogether, making African countries attractive investment destinations. For instance, the land fees are in the range of \$4.8- 7.1/ ha in the Sudan, \$6-12/ha in Mali, and \$6.5-10 /ha in Ethiopia, which is very low, compared to other parts of the world⁸.

18. In response to these and other drivers for investments, national Governments, private companies (both local and international) and investment funds are buying up access to agricultural land to grow crops for food and fuel, resulting in the observed surge in land-based investments or land deals. However, there is not much official or validated data on the origin of investors and amount of land transferred. Most of the research that has been carried out so far has relied on data from media sources and internet blogs kept mainly by non-governmental organizations, making it difficult to reach consensus on the amount of land acquired and the source of investors. As a result, little is known of the amount of land that has actually been transferred, much less what has come under full utilization or production, once transferred. There is an urgent need to gather and validate information on land deals in Africa. For instance, some data indicate that almost 50 per cent of arable land in the Democratic Republic of the Congo is reported to be either leased to foreign companies or under negotiation for leasing.⁹

19. Figure 3 shows some of the data available on land acquisition in Africa. As mentioned above, validation of the data is needed to paint the true picture of land deals in Africa.

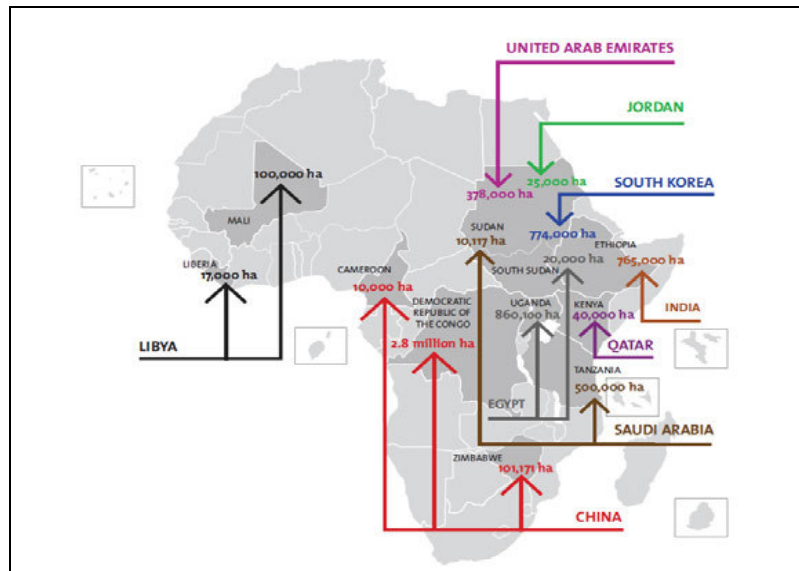
⁶ The term "investor" countries is used here in preference to "developed" countries because not all investors are developed countries. Some Asian and even African countries (e.g. Libya) are financiers of LSLBI.

⁷Cotula, 2009.

⁸Gurara, and Birhanu 2012.

⁹Gurara, and Birhanu2012.

Figure 3: International acquisition of agricultural land in Africa



Source: Mo Ibrahim Foundation 2011.

20. Land acquisition occurs over a long period that includes: (a) negotiation of the deal; (b) transfer of land rights; and (c) agricultural production, which itself is often phased so that initial production may only involve a small per cent of the land acquired. There is often a time lag from the time of transfer of land to the achievement of full production. There are also cases where plans may change because of risks, causing cancellation of the deals or changes in the amount of land transferred. From the investor's standpoint, insecurities associated with: non-fulfillment of agreed terms on the part of Governments; inadequate contract enforcement; and political risks are some of the challenges surrounding investments. Demonstrable security of land rights is essential for investments.

How can Africa address the risks, and benefit from better harnessing the opportunities of large-scale land-based investments? What are the prerequisites?

21. African countries are now realizing that addressing some of the underlying land governance and management issues summarized in table 2 below is a precondition for successful LSLBIs and essential to mitigating the "resource curse" associated with large-scale land deals.

Table 2: Opportunities and risks of large-scale commercial land acquisitions

Opportunities	Risks
Access to capital and technology for increased agricultural production	Restricting or denying local community access to strategic resources, engendering conflicts and jeopardizing livelihood security
Development of infrastructure in rural areas	Undermining production for local consumption and food security
Employment opportunities (on and off the farm)	Undermining local genetic resources and environment through monoculture and use of pesticides
Improvement of food security	
Stabilization of global food prices	

Source: Odhiambo 2011.

22. Urgent attention is needed to: (a) entrench and recognize the land rights of local communities in land laws and facilitate security of all bundles of land rights, interests and claims, especially so for women and other marginalized groups; (b) strengthen land institutions; and (c) monitor mechanisms for LSLBIs. Failure to address land tenure governance will turn Africa’s productive LSLBIs into another “resource curse”.

23. To assess the potential for land expansion or increases in productivity of currently cultivated land, spatially referenced information on land use and potential is invaluable. It can be used for planning at different levels, from local natural resource management to country-level strategies for agricultural development. Modalities for participatory mapping of potentially suitable land by Governments and communities are essential in the context of land use planning and helping to identify the amount and location of available suitable land.

24. Weak land institutions in Africa have been an impediment to securing the land rights of individuals, local communities and private investors. Building institutions to improve land governance can improve local land rights¹⁰. This includes instituting transparent contractual arrangements and modalities for their enforcement, to ensure that land deals reach their economic, social and environmental potential. Well-functioning land markets that facilitate transfers of valuable land to its most productive use are much needed to help reduce the yield gap and provide the basis for a structural economic transformation that allows the farming population to move into non-farm employment.

¹⁰ Arezki and others (2011).

IV. SPECIFIC ISSUES RELATED TO GOVERNANCE OF LARGE-SCALE LAND-BASED INVESTMENTS

A. Policy, legal and regulatory issues

What policy frameworks, guidelines and principles should Africa adopt to harness the benefits of LSLBIs?

25. Though challenges relating to large-scale land transactions are not new, intensified domestic and, especially, foreign demand on African land, in an environment of increasing demand for accountable land governance and human rights, has put a spotlight on the issue. Land governance and management challenges, including limited policy guidelines, legal and regulatory frameworks for appropriate large-scale transactions, have resulted in perception by local communities that their property rights are being eroded. Within the context of land-development linkages, the importance of regulatory and legal clarity, as well as development and application of appropriate land policies are of critical importance. In the quest to implement the Nairobi Action Plan on LSLBIs the LPI has an opportunity to lead African stakeholders in efforts that closely and critically examine the policy frameworks, guidelines and principles needed to manage the risks posed by large-scale land investments in order to enhance the potential beneficial effects on development.

B. Economic issues

What investment models offer opportunity for efficient economic outcomes for both large and smallholder farmers?

26. While there are concerns that continue to influence the debate on land deals in Africa, there is also recognition of the potential opportunities that link land to economic transformation. There is an urgent need to clarify if, indeed, FDI and domestic investments in Africa's land resources can enhance agricultural productivity, offer employment opportunities, enhance human capital in agriculture, and even potentially enhance food availability locally, if such deals are properly structured.

27. A number of economic issues and challenges surround LSLBIs and their perceived developmental dividends. These include: the associated risks and opportunities; the impact of large-scale land leases on the well-being of smallholder farms and food security; FDI in Africa's land and its role in rural development; optimal structuring of land deals; and land leases, community participation and a sense of ownership.

28. With regard to the risks and opportunities of large-scale land transactions, issues that need closer examination include: the potential costs and developmental benefits of large-scale land investment; the motivation for countries, foreign Governments, investors, speculators and individuals to engage in large-scale land deals, and how this information can help design

business models that lead to win-win outcomes; and ways in which large-scale land investments can be connected to broader development goals.

29. Domestic and foreign direct investments on Africa's rural lands should ideally be designed not to undermine the welfare of smallholder farmers, to safeguard food security and contribute to rural development. Key relevant policy issues that need special attention in this regard include: the long-term food security implications of leasing Africa's lands; how investment flows to Africa's land resources can be optimized to create employment and income opportunities for rural populations; and what opportunities exist to diffuse technology, facilitate finance and market access and transfer knowledge and expertise on production, processing and management to smallholder farmers and small- and medium-sized actors along the agricultural product value chain.

30. Facilitating optimal structuring of land deals is essential and requires that those involved in decision-making and negotiations surrounding these deals examine ways to ensure: transparency of land deals, including their potential and actual costs and benefits; consultative and evidence-based determination of the land lease period and payments; clarity of the terms of the negotiations and the sharing of benefits, providing for models that allow for some production to be locally retained to tackle food security; and provisions and mechanisms for enforcement.

C. Local governance, social and equity issues

31. Governing LSLBIs calls for participation of stakeholders who are affected by decisions surrounding land deals. This is especially true for communities on whose land the acquisitions occur. Community participation, along with transparency of the land deals, instills a sense of ownership rather than creates the impression of an attack on property rights. Some of the relevant policy issues that arise include examining promising practices for land deals that engender community participation and buy-in and avenues for empowering communities to ensure that they have a stake and develop a sense of ownership.

How can Africa strengthen property rights, especially customary land rights jurisdictions under which most of the continent's abundant land lies?

32. The link between large-scale land investments on Africa's land and the economic transformation that member States seek is largely dependent on governance of land and land transactions. Dialogue and analysis would be useful to examine governance barriers in the land sector in Africa, and how they undermine the role of the sector in economic transformation. The Framework and Guidelines on Land Policy in Africa (F&G) provides a useful guide for African member States to design land policies that facilitate security of land rights for investors and local communities alike. It is important to also examine matters related to human rights for local communities and social equity in policy development and land governance. Issues that pertain to customary rights and related governance institutions require special attention, especially since African Governments are still in their early stages of implementing land policies that better recognize rights of communities in customary land rights jurisdictions. It may be useful to examine models, such as regional or national "land banks" and their viability as ones that can facilitate win-win LSLBI models.

D. Environmental sustainability and stewardship issues

What environmental codes and standards are needed to reduce the adverse effects of LSLBIs on environmental sustainability?

33. LSLBIs that do not give due consideration to environmental sustainability and climate change concerns pose serious problems. LSLBI deals ought to ascertain that: (a) environmental stewardship is the central component of large-scale land deals in Africa; (b) social and environmental standards and/or principles and codes of conduct are developed and adhered to; (c) effective monitoring and enforcement of environmental standards on leased lands is ensured.

E. Knowledge base, human and institutional capabilities

What knowledge, human and institutional capacities are needed to facilitate LSLBIs. Can the benefits from LSLBI, especially FDIs, facilitate knowledge sharing, agricultural research and capacity development?

34. The institutional arrangements surrounding international land transactions in Africa are often unclear, with limited transparency. There are also concerns about human capital in the negotiation and implementation of land transactions, as well as in post-award monitoring. In this regard, the issue of availability and authenticity of data regarding large-scale land investments in Africa is a key challenge. African Governments and stakeholders should examine: the human and institutional capacities and initiatives in this regard; how benefits from LSLBI in agriculture can be utilized to enhance research, the knowledge base and human capital in Africa's agricultural sector; what institutional arrangements can be utilized to limit the potential negative impacts of international land transactions in Africa and enhance positive contributions; and the infrastructure and mechanisms needed to facilitate knowledge generation (databases, analysis, validation) and monitoring of large-scale land investments in Africa.

V. CONCLUSIONS: OPTIONS FOR IMPROVING GOVERNANCE OF LAND-BASED LARGE-SCALE INVESTMENTS

35. It is expected that demand for Africa's agricultural land will remain high, as structural factors, such as population growth that led to rising food prices, remain unchanged. Domestic investments and FDI in agriculture, as is the case in other productive sectors, could offer opportunities to link excess capital to production resources. With potential positive impacts such as increasing productivity, total output and income through interventions that facilitate access to productivity enhancing inputs, value adding agro-processing and market access. With regard to the achievement of poverty-related goals in Africa, these gains will depend on how well Africa can address challenges related to securing land rights, especially for rural communities, to prevent landlessness, which is often a cause of extreme poverty for rural Africans. Contracts that provide access to land for investors, while safeguarding the rights of local communities are much

needed, including options for contract farming, out-grower schemes and similar public-private partnerships that form the basis for win-win models in LSLBIs.¹¹

36. While most of the discussion surrounding LSBIs is at the international and regional level, the solutions are most probably going to be national and local, facilitated by international law and Government policies developed in close consultation with all stakeholders, especially local communities and civil society, including the media. Examples of international tools that Africa can draw on to design its own home-grown tools in this regard include the five key elements of the International Food Policy Research Institute, for a foreign land acquisition code of conduct.¹² The code of conduct highlights issues of: (a) transparency in negotiations; (b) recognition of all land rights including those in customary land rights jurisdictions; (c) modalities to ensure gains of LSLBIs to local communities; (d) adherence to national trade policies; and (e) environmental sustainability.

How can the LPI be mainstreamed at the continental, regional and national levels to play a meaningful role in implementing the African Union Declaration on Land and the Nairobi Action Plan on LSLBI

37. The African Union Framework and Guidelines¹³ espouses a continental land regime which prioritizes security of tenure for all categories of land rights. However, studies indicate that even the best constructed laws in the region largely fail to safeguard some categories of land rights, in particular communally held rights over what is traditionally referred to as “the commons”.¹⁴ A priority action for States is to review their land laws and regulations to ensure that all categories of land rights enjoy comparable protection.

38. Several priority actions have emerged and will be taken up by the AU-ECA-AfDB Land Policy in the context of promoting the implementation of the AU Declaration on Land Issues and Challenges in Africa¹⁵. These include: knowledge generation (including a study assessing land deals in Africa) and dissemination (through the establishment of an information portal on land, including land deals in Africa); capacity-building in land policy development, including training on themes related to LSLBI; tracking progress on the implementation of the AU declaration and the Nairobi Action Plan; and promoting policy formulation and implementation based on lessons learnt and emerging issues.

39. The LPI seeks to support LSLBI models that are beneficial in terms of both job creation and revenue generation. This is only possible under a set of institutional reforms that foster accountability, proper valuation of land, equitable compensation for the displaced and guarantees to the social and environmental sustainability of the investments. These reforms are in line with the principles espoused by the F&G and may be regarded as a way of operationalizing the principles of the F&G in as much as LSLBIs are concerned. The LPI will be examining various tools and options in this regard, including:¹⁶

¹¹ Wouterse and others (2011).

¹² von Braun and Meinzen-Dick 2009.

¹³ AU-ECA-AfDB Consortium (2010).

¹⁴ Alden Wily, 2012.

¹⁵ AU-ECA-AfDB Consortium (2010 b).

¹⁶ Gurara and Birhanu, 2012.

- *Tailoring the model of a “land board” to the rural sector*, to facilitate investments in land;
- *A land auction system*: to help set reasonable land rental prices and to promote transparency of the land deals;
- *Effective contract negotiations and transparency*;
- *Negotiating food security agreements*;
- *Policy coordination*: a facility to ensure that land fees are not set too low and to possibly establish floor prices for tracts of land of differing quality.

40. Implementation of the Nairobi Action Plan would position African States and regional institutions to address many of the issues raised in this paper. For instance, the Plan calls for a set of principles to encourage sustainable large-scale investments in land, similar to principles established at the global level.

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