Reciprocal Implications of Water and Land Acquisitions for Investments in Ethiopia: Risks of Water Insecurities and Regulatory Responses in *Tigray* Region

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Abstract

The multiple forms of land acquisitions could show direct and indirect implications on water. The motive to utilize, control or to grab water is devised through acquiring land. There are embedded water issues in almost all land acquisitions. Practical challenges are explored especially in keeping the balance of water securities as a risk for insecurities. This study was premised with the objective of analyzing the water implications, balance, priority and extent of security given to users (especially the powerless actors) and by seeing in lieu of the indicators of water security and then examined against the regulatory frameworks and responses. The assessment framework, the data from respondents and literatures, and the laws were intersected and triangulated for making holistic analyses. The extent of coherence, coordination, and integration among the relevant laws and policies are examined. The research is important since it creates cognizance of the problem by assuring informed decisions. The scope of the study was limited to analyze domestic issues and limited to water intensive economic activities. There were limitations in finding the updated data. The findings are delimited to the case studies but they can be inferable to show commonalities of similar cases.

1. Introduction:

The demand on natural resources is showing higher dynamism. The actors are also making use of different strategies of acquisition. The global statistics shows an imbalance between the demand and the natural resources. As there is higher dependency syndrome in land and water, it will be a cause for conflicts. World water crisis is associated first with the crisis of governance. (Manzungu E., 2014) In 2008-2009, 70-75% of the land acquisitions were in Africa. This is connoted as the new form of colonialism. (Lorenzo Cotula*, 2013*) In much of sub-Saharan Africa, there is a dominant narrative that underutilized land and water resources require investments to 'unlock' their potential and drive the engine of development.

Water as key resource to land should be sought as a driver in defining the today's land grabbing beyond the scale, size or capital based definitions. (Mehta, L *et al.*, 2012) Land investment is about water investment and water is often presumed to be included without explicitly being mentioned in land lease agreements.(Jägerskog A. *et al.*, 2012) Land acquisitions are in most cases about water acquisitions. Small-scale land acquisitions may also bring large-scale implications. (Cecilie Friis and Jonas Ostergaard Nielsena, 2016) Domestic land acquisitions can also have an impact on trans-boundary water management.(Jägerskog A. *et al.*, 2012) Land security is about water security. Both are also meant to be for food security. However, there are circumstances in which people can be water insecure though they are land secure. It is better to approach first issues of water.

In Ethiopia and Tigray region in particular, local communities and individuals lose their access and use rights to land-water resources for capital intensive investments. The

embedded problems are depicted as water insecurity, crisis, stress, and/or crisis of governance. There are also human rights violations on the right to food, water and the right to development. This research answers the following research questions. What are the existing implications of land acquisitions to water rights and water insecurities in Tigray? What are the regulatory responses and the embedded challenges? The research assures the following objectives. *First,* it shows the water implications of land acquisitions and the risks of water insecurities for individuals and communities in the tripartite and beyond relations. *Second,* it explores the manifest and latent goals of the acquirers (may be powerful actors-economic and political elites*). Finally,* it also analyzes the regulatory responses.

The methodology in securing the research results is done through qualitative research approach. The target groups were government officials from the regional water bureau, environmental protection authority, investment promotion department, water users, community members, and investors. The key informants and respondents for interview were selected through purposive sampling. The data collection method is accompanied through interviews, document assessments, and observations. Necessary data gathering tools were used to get reliable data. The acquired data is analyzed in triangulation of methods, tools and participants.

The topic is important, *first*, to create cognizance of water implications on land acquisitions and again the implications to the ecological, social, economic and political dimension of land (as intercepted system). It helps to think out of the box (beyond land acquisitions), think beyond scale (large), foreign element, and take pluralistic concerns on the specificity of investments and implications. It is to sensitize water insecurities and put water lens in consideration of all dimensions.

2. Conceptual Framework: Crosscutting Issues and the Assessment Framework

Perspectives on water have wider implications. There are economic, social, political and environmental perspectives. The perspectives also bring their own values on water. There characterization of water and land as 'virtual' resource has aggravated the volume and manner of resource trading.(Allan, J.A. 2001) It is also an issue whether a state policy should create enabling mechanisms favorable to acquire resources or introduce controlling conditions.

Land acquisitions or grabbing are the causes concerns of food security or food sovereignty in water and land governance frameworks. The study is premised with the following conceptual framework. In one of the OECD documents, the *risk framework* is taken as a unifying or linking framework for issues of water security.(OECD, 2013) It is on the basis of *'risk society'* and the modern society is responsible in causing risks such as "….water pollution, closed river basins and groundwater over-abstraction, beyond or amplifying 'natural risks' of floods or droughts." (Global Water Partnership, *herein* after GWP, 2014) An increase in *risks of water security* can be a cause for a change in a policy.

The tenure security on water of individuals may be hampered by acquisitions for investments. Water security is defined in terms of its objective to maintain the *'risk of shortage', 'risk of inadequate quality'*, '*risk of excess',* and the *'risk of undermining the resilience of freshwater systems'*. In assessing the implications of water and land

acquisitions, there are a *minimum of triangular interests from triangular* actors the *state, investors*, and individuals and communities.

As objective assessment framework, the Global Water Partnership as a pioneer network offers indicators of water security. (GWP, 2014) It is underlined that *water security index* has five indicators. *First,* it is the *household water security* connoting for issues of access to domestic water and sanitation. *Second,* the *economic water security* bringing together for agriculture, industry and energy is also another indicator. *Third,* the *urban water security* questions for water supply, wastewater treatment, and urban flooding based on the concept of *'water sensitive cities'. Fourth*, the *'environmental water security'* also addresses issues of river basin health. *Fifth,* the *'resilience to water-related disasters'* addresses issues of "risk, vulnerability, and the capacity to cope". For this purpose, the household, economic and environmental water security is used to test the cases at hand as minimum standards. The other two indicators are beyond scope of this research. The findings are also delimited to the case at hand and assessed by the three indicators.

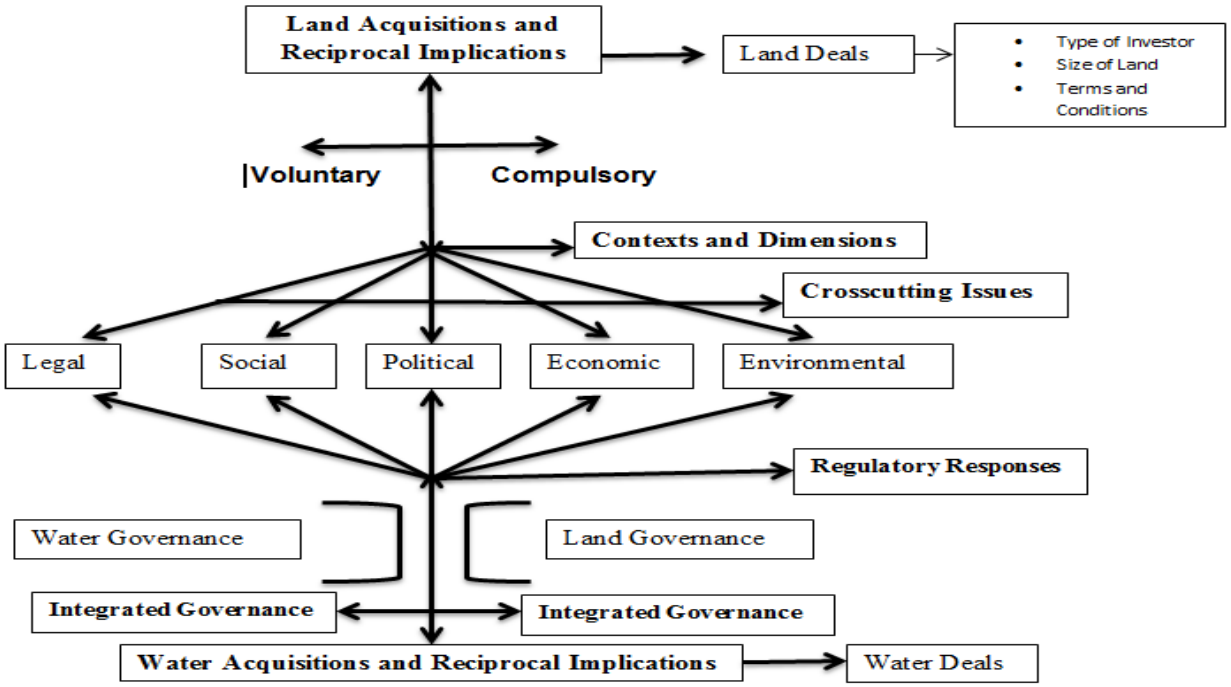


Figure 1, Framework developed by the author by adapting different concepts

This diagrammatic representation shows the analytical framework. It underlines on how the implications may be seen in terms of the contexts and dimensions. The legal and political dimensions including the policy frameworks enshrine the enablers and controllers to mitigate the implications. The need of integrating the frameworks is the overwhelming policy option but reducing into the elements is mandatory.

3. Legal and Institutional Framework:

The international human rights instruments have indicated on the definition of the right to water and the elements. The right to water is different from the general water rights

framework. The Right to Development includes the right to water among other rights. Article 12 of the Resolution affirms that "in the full realization of the right to development inter alia: (a) the rights to food and clean water are fundamental human rights and their promotion constitutes moral imperatives.

With this relevance, the 2002's *General Comment No. 15* on the right to water provides the guidelines on how to interpret the right to water. The comment interprets the 1966 International Covenant on Economic, Social and Cultural Rights confirming the right to water in international law. The comment interprets the right to water. Article 11, the right to an adequate standard of living, and Article 12, the right to the highest attainable standard of health are the manifestations. The Comment clearly outlines States parties' obligations to the right and defines what actions would constitute as a violation.

Ethiopia is a federal country having two tiers of government and both governments have exclusive and concurrent powers. Nine of the regional states have also a power to administer their natural resource in accordance with the Federal utilization legal frameworks. According to the FDRE Constitution, Article 13(2) and others, land ownership is given to the nation, nationalities and peoples and the state. Besides, According to Ethiopia's Water Resources Management Proclamation 197/2000, all water resources are vested in "public ownership". Furthermore, Ethiopian Water Resource Management Policy (*MoWR* 1999) states that basic human needs shall have the highest priority. The Water Management Proclamations and Regulations, and rural land administration and use, FDRE expropriation proclamation environmental laws, and other investment laws, land deals and land contracts and Code of Conducts are the most pertinent legal and institutional frameworks.

4. Result on the Status of the Risks and Regulatory Responses:

The Wereda administration responds upon the request of the BoWR (Bureau of Water Resources) through the personal application of the investor at the Wereda administration. Respondents from both sides have stated that direct public consultations were not carried out before acquiring permit and the resources. The *water use permit certificate* is also given after all certificates and licenses including land are acquired except for EIA study report. The EIA report is considered to be conducted and presented after everything is finalized. The pressure on the experts and the possibility of giving environmental-social clearance is likely since investments are operating. The *'water use permit'* certificate requires the following details: it has to state the body of water, the quantities of water permitted to be abstracted, methods of measurement of abstracted water, and means of abstraction. The maximum period in which the certificate will be valid is five years. However, the Bureau may terminate it if there is water shortage.

4.1 Status of the Risks:

First, the status of households' water security is assessed by interviewing the nearby households to the investments. According the respondents, they have stated that they fetch water from the community based water pumps on daily basis. Most of the respondents don't feel fully secured but it is described as it is boosted from the previous status. They feel insecure about the future since intensified abstraction of the water by the investors may cause depletion of the water resource. The Water management proclamation assures

priority of use right to domestic households. The WRM policy also gives a priority to instances of food production but it does not make an explicit statement on the manner and type of food production. This is a good example of contrast between local framer irrigators and intensive irrigators. Some types of uses are exempted from the requirement of permit.

Second, there is economic water security and the water demand for fulfilling the economic activities such as agriculture and industry is not sufficient. The economic security of the available water resource may not be guaranteeing to future uses. The lower riparian who use water for small scale irrigations have conflict of interest with the commercial use of water. The regulatory framework requires first to make sure whether there is no adverse impact through issuance of EIA clearance documents. The regulatory organs are also undertaking other facilitative tasks to assure the water security of *Mercy P.L.C*.

According the data from the investment promotion department of the regional state, in between 2001-2010, there were a total of 26 water enterprises that has taken investment permits. Among such enterprises, ten enterprises are in a pre-implementation though permit was acquired before three years. Six of them are also in the operation stage but there is no clear data on the opportunity of employment created by the enterprises to the local people. Two of them are also in an inactive status. Five of them are also in an implementation stage. This can be the challenge because most land-water related investments are approved with their benefit in terms of creating employment opportunity. There is no data on the size of land taken by the remaining twelve water enterprises. There is no description on the nature of water that will be utilized by the intended investment projects. It can be inferred from the data that the nature of the economic-subsector is on "spring water" except two investments are recorded as *"soft drinks and water packing"* investment.

Some supporting letters written by the Wereda or district administration to the investors are also self-explanatory evidences indicating the implications. This has two dimensions. *First,* it is either to give supportive letter witnessing the feasibility for water bottling investment. *Second,* it is to give supportive letter that proves the Wereda administration has not a capacity to provide water supply for investments. The Wereda administration responds upon the request of the *BoWR* through the personal application of the investor.

Third, there is environmental water insecurity. The issue of environmental water security is also sensitive in the area. The river that was flowing from the spring water is almost depleted. The health of the river basin is almost in danger. Wet land and grass land types are preferred for acquisitions. After these, the Bureau conducts the 'water resource investigation' or the geophysical investigation of what is stated in the proposal on the ground. Primarily, the water feasibility study report is prepared by consultants. As minimum standard, first, the proposal is expected to state the pump test (water discharge) of the water resource. This includes the drilling report including of the water discharge. Second, it has to state also the water quality of the water resource. The investigation is carried based on these two themes.

The experts and the community members indicated there is over-abstraction of ground water without recharging strategies. This can cause permanent depletion. The role of

experts is not impactful. It can be said that the role of the expert in the Regional Bureau of Water Resources (the geophysicist) is to confirm what is stated in the proposal but not without an actual and deep rooted investigation. He investigates the location through GPS, the exact location and name of the site selected for investment.

4.2 Status of the Laws:

The general legal frameworks regulating on the acquisition of water are the Federal laws (The 197/2000 and 115/2002). However, these proclamations delegate each respective regional state to promulgate its own laws. In explicit terms, the Federal laws are too general and it is hard to find the intention of each provision and apply to specific contexts. However, there is a draft directive of the regional state indicating such specificity but it is not approved yet. The Bureau uses it as a standard. In general, it should be noted that the first failure is attached with the absence of EIA clearance requirements. The law has stated that there are certain conditions under which any investor who wants to acquire land-water should request through the proposal.

There are instances from the *Mehoni* agricultural farms. Some investors have taken a maximum of 50,000 hectare of land (as agricultural PLC and corporates) through lease arrangements. The allocating organs measure the size of the land not the water implication of such acquired land. The most water resource which is utilized by the investors is underground water by drilling maximum of *200 meters* depth. The discourse on the 'untapped narrative of the land' or 'ample land' has massively provoked the rate and manner of land acquisitions.

The regulation in extension of the proclamation states any application permit should indicate the location of the water resources and the intended place of use; the intended use of the water resources; the volume of water required monthly and annually; the intended method and manner of use of the water resources; where appropriate, investment certificate; feasibility studies and maps. This provokes to question how was the permit to use the water resource could be given to the water spring investors. This connotes that an investor should get investment certificate before acquiring permit. This shows that acquiring land is acquiring water. The laws are insufficient but they are not also observed in implantation.

4.3 Status on the Implementation of the Standards, Monitoring, and Taking Measures

According to the EIA case team leader, he has stated that the "new investors" have already taken EIA clearance while the previous ones (those who have started operation before 4 years) have not taken any EIA clearance but they are operating by preparing EMP (environmental management plan) and the Wereda Administration also prepare and conduct periodical supervisions by using EMP (environmental monitoring plans) as regulatory tools while the law is far reached. The legality of these regulatory tools is not well supported by the laws. They don't have recognition under the Federal laws. The law has stipulated that the use of false information and evidence, permanent depletion of the water resource, a finding that the usage of the water resources causes a negative impact on

the environment based on the Provisions of EIA Proclamation No, 299/2002 may be the reasons for terminating the permit by the supervising body.

The other challenge is also that EMP (environmental management plan) is submitted, processed and supervised by Wereda administration without a higher review. The EIA laws are not also applied or they put more focus to mitigate pollution and other environmental problems. Conducting impact assessment on acquiring water resources is uncommon or rare. This is attributed to lack of awareness or the sided commitment to give priority for economic concessions.

Besides, the modes of land acquisitions under the different laws do not consider the water implications or securities. The policy coherence (prioritizing water securities) between water laws and other laws is not as such integrated and mutually supporting. They refer to the EIA laws while there are embedded challenges in the EIA laws. There are no as such well-grounded complementarities and integrations.

The officials perceive to attract investment without restrictions. Due to this, the status on taking corrective and suspending measures is not common. Yet, there is one revoked investment permit for drilling a deep hole without water use permit. However, there are no frequent follow-ups and supervision whether the investors are abstracting water based on the permitted volume of water based on the pump test standard.

1. **Conclusion and Recommendation:**

There is water-land grabbing beyond the common scale or size based definitions. The current land acquisitions have negative implications on water, water security and in most cases the balance on all the indicators of water securities are not examined. Temporarily, there is an imbalance in assuring water securities. There is an entrenched threat on the depletion of water resources and massive risk on all the indicators. There is a clear practice of giving priority to economic terms or priority to economic concessions. There is a misunderstanding that small-scale land acquisitions will not have water implications. There are two way implications that water acquisitions have land implications and land acquisitions have also water implications. Issues of sustainability and equitable allocation of land-water are discretionary upon the *Wereda* or district and regional organs. This is also partially attributed to the lack of comprehensive standards. In general, there is an embedded risk of water insecurity in all forms, processes, and ends of land acquisitions.

There are embedded challenges. Most of the investors in irrigation and some water spring investors have acquired land-water via management plan without EIA clearance. Land and all its resources are frequently expropriated for the name of investments and the use of the water lens in conducting environmental impact assessment and deciding for acquisitions can be said almost absent. This also evades the water security of individuals and local communities.

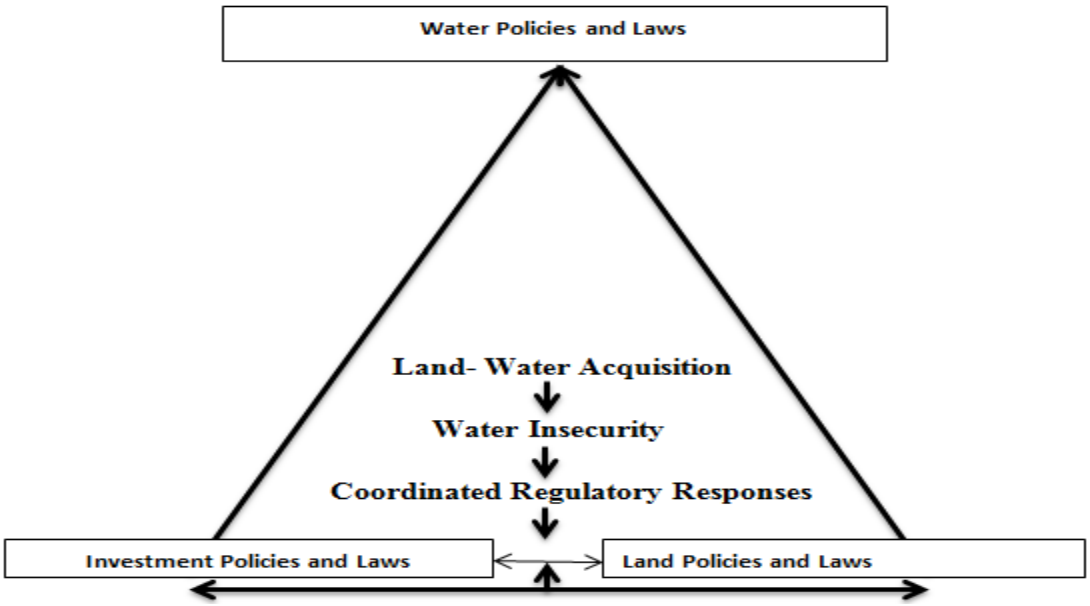
The lion share power is given to respective offices at Wereda level. It is open for discretion and pervades issues of transparency and accountability. Corruption and other abuses are pervasive in the existing structure. There is lack of clarity and comprehensiveness in allocating land-water resources, lack of integrated and coordinated governance, and lack of coherence and complementarity among relevant policies and laws. There are legal lacunas

and institutional inconsistences among the regional and Wereda organs. There are no adequate and effective laws or standards. The allocation of power is almost fragmented and overlapping among different organs. The regional bureaus and agencies are not structured with the purpose to synchronize efforts into productive implementation. The Impact assessment laws and the water management laws in giving permit are not dealt in depth and the laws don't consider the implications to water rights and water security of the communities. The long term and dimensional repercussions of the current land-water acquisitions are not considered in the process. The risks of water insecurities are embedded in all land-water investments. The regulatory frameworks are not adequate and effective to curtail such long term risks.

As a way forward, the tendency of giving priority to economic water security should be investigated and interests should be balanced. The human rights based acquisition systems should promote water securities. The environmental water security should be maintained in sustainable way. The human rights instruments should be enforced. The water implications (risks and insecurities) of land acquisitions should be accommodated through different tools and mechanisms of the regulatory responses. The EIA law (beyond standards, commitments,), investment law, land law, water laws, etc. has to be synchronized and integrated. The level of integration and coordination should be scaled up beyond the intercepted or interlinked governance framework. It is better to approach first *water issues before land acquisitions*. There should be a need to use a water lens in land governance frameworks (especially in irrigation investments).

Policy interventions and political commitment are pre-requisites to avoid the risks. The investment related codes of conducts have to be applied in a way they curtail the aggravating circumstances of land-water implications. The executives especially the EIA and other organs should be cognizant of the water implications. All the concerned organs should formulate and mainstream water and environmental related standards. They have The Environmental management plan shouldn't be given equivalent value with EIA. EIA clearance should be conducted before operations and among all operating investors. The law makers should accommodate the risks of water insecurities and put stringent corrective and suspending measures among irresponsible actors.

There should be an actual effort to bring coordinated (integrated) governance in such resources.



The dissected (because of specializations) or fragmented regulatory responses and bring them to an intercepted nature of governance. The laws have to enforce the priorities on water security. There should be sensitization of the problem in the legislative, executive and judiciary branches of the government.

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