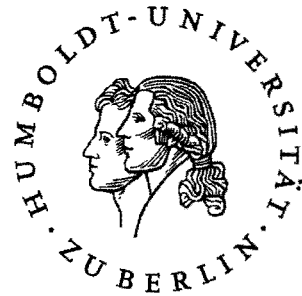


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**“Agricultural Foreign Direct Investment,
Water Rights and Conflict –
an Institutional Analysis from Ethiopia”**

Master-Arbeit zur Erlangung des akademischen Grades:
„M.Sc. Integrated Natural Resource Management“

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Berlin, den 8. 2. 2011

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7 Conclusion and Recommendations

This study focused on institutional change and conflict due to agricultural foreign direct investment. For the case study, the study disclosed a change in the overall institutional arrangement in water management, a change in water rights, and the eruption of conflict. The institutional arrangement of water management before the investors settled in the area can be regarded as common-pool resource management. The study found that this arrangement changed in several regards, but as no direct governmental involvement took place, it can still be characterised as a common-pool arrangement, but with highly unequal users. As water rights are determined and shaped by the institutional arrangement present, water rights in the case study changed as well when the investment farms settled in the area. This change in water rights was described using three different pathways of changing water rights. These were (1), a direct and explicit change in water rights, (2), a change in water rights due to a change in land rights, and (3), a change in the execution of water rights because of hydrological and social factors. The study found that both *blue* and *green* water rights were intrinsically tied to land rights and changed accordingly, while *blue* water withdrawal rights changed explicitly and partly shifted from local farmers to the investors. While hydrological factors assumed beforehand did not apply, social factors in terms of bribery did occur and restricted the previously unconstrained execution of local farmers' water rights.

The change of the overall institutional setting was explained by the distributive bargaining theory of institutional change, and conflicts were explained as the by-product of the institutional change that occurred to the common-property water allocation regime of local farmers. Ultimately, the new institutional setting proved to distributionally favour the investors. The reasons that such an agreement came into existence was explained by the relative power asymmetries between local farmers and investors, particularly regarding the three aspects *resource dependence*, *education and knowledge*, and *governmental support*. Those three power resources enabled the investment farms, with indirect support of the government, to establish an organisation that was meant as a platform for conflict-resolution, but practically served as a mean to justify the re-allocation of water rights to the investment farms' benefit.

As the whole resource setting and the traits of the actors in terms of their power resources are characteristics of agricultural foreign direct investment in a low-income country, the dynamics are likely to be repeated in other settings. Therefore, the study is

highly relevant when investigating the possible consequences of agricultural FDI on the local water situation.

The following section presents *recommendations*. First, recommendations for the specific case study site are discussed, followed by further propositions that aim at contributing to the current debate on standards or codes-of-conducts for agricultural FDI. Both types of recommendations complement one another, as those for the case study site serve as an empirical example of how the coarser codes of conduct can be implemented in one specific case. The recommendations presented here are intended to provide some basis for further thinking, both for the case study area and the governance of FDI in general. Presenting a thoroughly elaborated concept for the further procedure or development in the case study is however beyond the scope of this study. As this section takes a normative approach, the Millenium Development Goals (MDGs) and the IAASTD (International Assessment of Agricultural Knowledge, Science and Technology for Development)¹⁰ serve as a point of reference.

Recommendations for the case study area

For the case study area, the most important question is “*How can the conflict be resolved?*”. This is closely related to the question of which institutional arrangement may be best suited or work best for the actor constellation and the resource setting. The following recommendations are proposals of important characteristics of a new arrangement, while the details of the arrangement should be elaborated by the actors themselves on equal terms, given that only they are able to design locally adapted rules. Ostrom's eight design principles discussed in chapter 2.3.3 can be a point of reference.

Given the heterogeneity of the investment farms and local farmers, it can be contested that a fully working common-pool resource *user group management* system can be re-established as it existed before. At the same time, the former user group system among farmers was a well-working arrangement. I therefore propose a nested institutional arrangement (see figure 19).

10 IAASTD combines five UN bodies (FAO, UNEP, UNDP, UNESCO, WHO), the World Bank and the Global Environment Facility. In 2009, the IAASTD released a landmark document termed “Agriculture at a Crossroads”, which analyses pathways into a sustainable agricultural future.

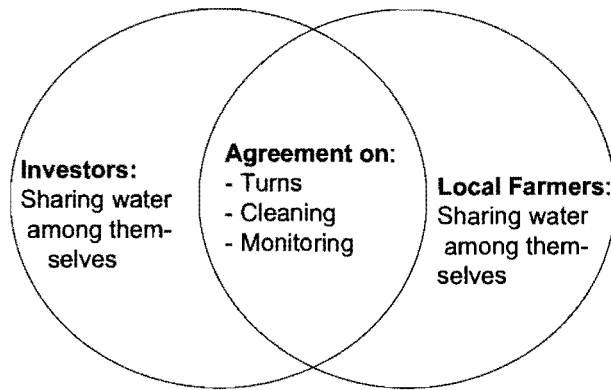


Figure 19: A nested institutional arrangement for the case study region

This arrangement in fact resembles the setting that was established as an initiative of the investment farms (the “new association”). However, this arrangement was characterised by many shortcomings which eventually led to inefficiency and conflict. The nested institutional arrangement as proposed here is characterised by the fact that within clearly defined boundaries, both investment farms and local farmers have their own agreements on water management. These include questions such as how to share water among the members of the group, how to solve conflict among them and how to sanction non-compliance. Regarding questions that concern both actors, a common agreement regulates interactions between those two management systems. This agreement should primarily include the question of water turns, canal cleaning (sharing of rights) and a platform for monitoring and enforcement, including what to do in case one of the actors does not respect the agreement (enforcement of rights). In order to delimit it sharper from the agreement of the “new association”, the following aspects should apply in the new arrangement:

- (1) *The details of the arrangement are negotiated among both actors on equal terms.*
The whole process of decision making is characterised by transparency and knowledge sharing – every participant knows exactly who the other actors are and has at least a vague idea about their preferences. All decision-making powers between local farmers and investors are clearly defined and everyone is aware of them.
- (2) *Resource priority is given to local farmers, concerning the turn-taking system for water operating between investment farms and local farmers.*
- (3) *Measures to save water are implemented.*
- (4) *Local customary land and water rights have to be fully acknowledged in any new envisaged extension of the investment farms' area.*

Regarding the first recommendation, exchange of information could be facilitated by mutual visits to the production sites, or the meetings taking place at the farm houses of local farmers in place of the investment farms' sites. However, as discussed in this study, even if actors have improved knowledge on the other's preferences, asymmetric power resources can lead to asymmetric bargaining outcomes. Therefore, the bargaining position of local farmers has to be strengthened. Bruns (2007) presents several ways of aiding community participation in basin governance, which can be transferred to irrigation scheme governance. One important tool is *legislative reform*, where legal frameworks help to back water rights in case they are harmed. A first step is the recognition of customary water rights and the development of a mechanism by which local farmers can enforce them. As discussed in this study, a green/blue water component in legislation is also necessary to consider that vegetation changes upstream have an effect on downstream water availability. Legislative reform, however, is a long process and may take a long time from the community's point of view. *Legal empowerment* aims at improving the capacity of people to understand and use legal systems (Bruns 2007: 38). Legal aid may, for instance, be provided by non-governmental organisations. Given the fact that Ethiopia has no specific legislation on smallholder water rights, legal empowerment is connected with legislative reform and may become important in the long run. *Advocacy* and *networking* stands for establishing links or alliances with third parties, who may draw public attention to the farmers' situation and thereby provide necessary support and strengthen their position. *Technical advice* can aid understanding of the underlying mechanism of resource use. A technical analysis can help clarify how much water is available and how it is being used (Bruns 2007: 39). Lastly, *participatory planning* and *platforms* are means to improve community participation. In combination, these measures can be seen as a strategy to improve farmers' bargaining potential by improving their bargaining power resources such as information, network and positional power.

The second recommendation, giving resource priority to local farmers, is based on the following considerations. Local farmers depend on the resource to a much larger degree than do the investment farms, as they produce food for their own consumption as well as for the local market. While investment farms use the water for export of non-food products, local farmers' water use directly contributes to their own and their region's food security. Additionally, farmers benefit from fertile soil in the area. In case water priority is given to the investment farms, many farmers will produce much less, become food-insecure during the dry season and eventually give up farming and migrate to the towns.

Also, working on the investment farms instead of on the family's plot can only act as an additional source of income, as the average wage of 10 Birr¹¹ a day is, even in rural Ethiopia, not enough to meet a family's basic needs. Giving resource priority to local farmers is in concordance with the MDG's goal number one, namely to halve the number of people who suffer from hunger. Also, it goes in line with the IIASTD that stresses the important role of smallholders with regard to providing food security and improving rural livelihood. The Ethiopian Water Resource Management Policy states as well that to "satisfy basic human needs", access to water shall be granted to all Ethiopians (MoWR 1999).

Regarding recommendation number three, there is much potential to save water in the case study area. Technical advice for local farmers can be helpful to make their water use more efficient. Also, investment farms can still improve water recycling, for example by feeding rainwater run-off from the greenhouses into their water system. Furthermore, the dam and the canal are in a desolate state. Heavy siltage compromises much of their capacity for water storage and transport. Therefore, both the dam and the canal should undergo thorough cleaning. Also, large parts of the canal are made out of mud, and many of the concrete parts are broken, leaving much room for improvement.

Concerning the fourth recommendation, both customary water and land rights need to be fully acknowledged in the process of allotting water or land rights to new users such as foreign investors. The study confirmed the intrinsic linkage of green and blue water rights to land, which makes land rights as important as water rights when considering their customary dimension. The major challenge of this recommendation is the geographic distance between decision makers and the site where the investment will be placed: governmental decision-makers in the capital city are rarely aware of customary land and water rights in the respective region when issuing an investment permit and allotting potential areas for investment. Prioritising local farmers regarding resource use is only possible when customary resource use and their institutional arrangements are known. As recommendation number two, this recommendation is also in line with the MDGs and the IIASTD, as well as with Ethiopian national policy documents, such as the provisions for Environmental Impact Assessment (EPA 1997).

11 10 Birr = 0,45 Euro (*rate from December 2010*)

Recommendations for a code of conduct for agricultural investment

Agricultural foreign direct investments are likely to increase in the years to come, both in scale and capital intensity. In the last years, calls for internationally accepted and implemented codes of conducts for such investments have increasingly been proposed (BMZ 2009, IFPRI 2009, FAO/IFAD/UNCTAD/World Bank Group 2010). The question is whether these codes of conduct will be the optimal solution in settling resource conflicts regarding land and water potentially brought about by these new investments. According to Ostrom (2005a), there is no one-fits-all solution to questions of resource overuse, degradation and resource conflict. Unless adapted to local conditions, designed by all stakeholders at equal shares entailing self-designed and binding rules for all involved at the local scale, internationally designed codes of conducts can only be a first attempt to grasp and delimit the potential consequences of a foreign direct investment project on the local community.

Water is a specific resource – it is key for food security and basic human drinking water needs. Therefore, it must hold a prominent place in any code of conduct relating to the impacts of agricultural investment projects on the local setting. Nevertheless, recently developed codes of conduct mainly focus on the food security aspect, without explicitly touching on the water issue. One of the first proposed ideas on a code for FDI stems from IFPRI (2009), whose main ideas are summarised in table 11. Under the point “environmental sustainability”, the proposal states “significant diversion of water from other human or environmental uses” should be avoided.

Table 11: Proposed Key Elements of a Code of Conduct (IFPRI 2009)

- | |
|--|
| <ul style="list-style-type: none"> • Transparency in negotiations. • Respect for existing land rights, including customary and common property rights. • Sharing of benefits. • Environmental sustainability. • Adherence to national trade policies. |
|--|

Since these key elements have been published, considerations on codes of conduct have been further elaborated. Another recently published note on agricultural investments by FAO, IFAD, UNCTAD and the World Bank Group (2010) proposes seven key principles as part of a possible code of conduct (see table 12).

Table 12: Key Principles for Agricultural FDI (FAO, IFAD, UNCTAD and the World Bank Group 2010)

1. Existing rights to land and associated natural resources are recognized and respected.
2. Investments do not jeopardize food security but rather strengthen it.
3. Processes for accessing land and other resources and then making associated investments are transparent, monitored, and ensure accountability by all stakeholders, within a proper business, legal, and regulatory environment.
4. All those materially affected are consulted, and agreements from consultations are recorded and enforced.
5. Investors ensure that projects respect the rule of law, reflect industry best practice, are viable economically, and result in durable shared value.
6. Investments generate desirable social and distributional impacts and do not increase vulnerability.
7. Environmental impacts due to a project are quantified and measures taken to encourage sustainable resource use while minimizing the risk/magnitude of negative impacts and mitigating them.

This code takes the issue of water more into consideration than the key elements presented by IFPRI, but nonetheless lacks some of the major issues that could be substantiated with this case study. The recommendations presented here only refer to the issue of water, but any code of conduct should also include the aspects of environment, labour, and other social affairs. While the four recommendations for the case study area given above are equally suitable to be included in any code of conduct for agricultural investment, the following minimum principles rather present the *process* of how important aspects should be taken into consideration. They can both be part of an ex-ante impact assessment, as well as of a code of conduct of already established investments.

1. *Transparency and active stakeholder inclusion* in the negotiation facilitates information sharing and participation in planning and implementation of the project.
2. *An inventory of both customary blue and green water rights*, as well as land rights, clarifies existing water rights, as well as the linkage of green water rights to land.
3. *An assessment of how the investment activities will use water resources*, both blue and green water, sheds light onto the impacts of the investment on local water resources. Here, vegetation changes and their consequences on

downstream water use must also be taken into consideration.

4. *Impact assessment:* The outcomes of the assessment are analysed in terms of how these will interact with existing local water rights.
5. *Prioritise food security, including green and blue water needs of the local population.* Decide if investment should go ahead (for ex-ante assessment), or how the situation can be alleviated (for implemented investments).