

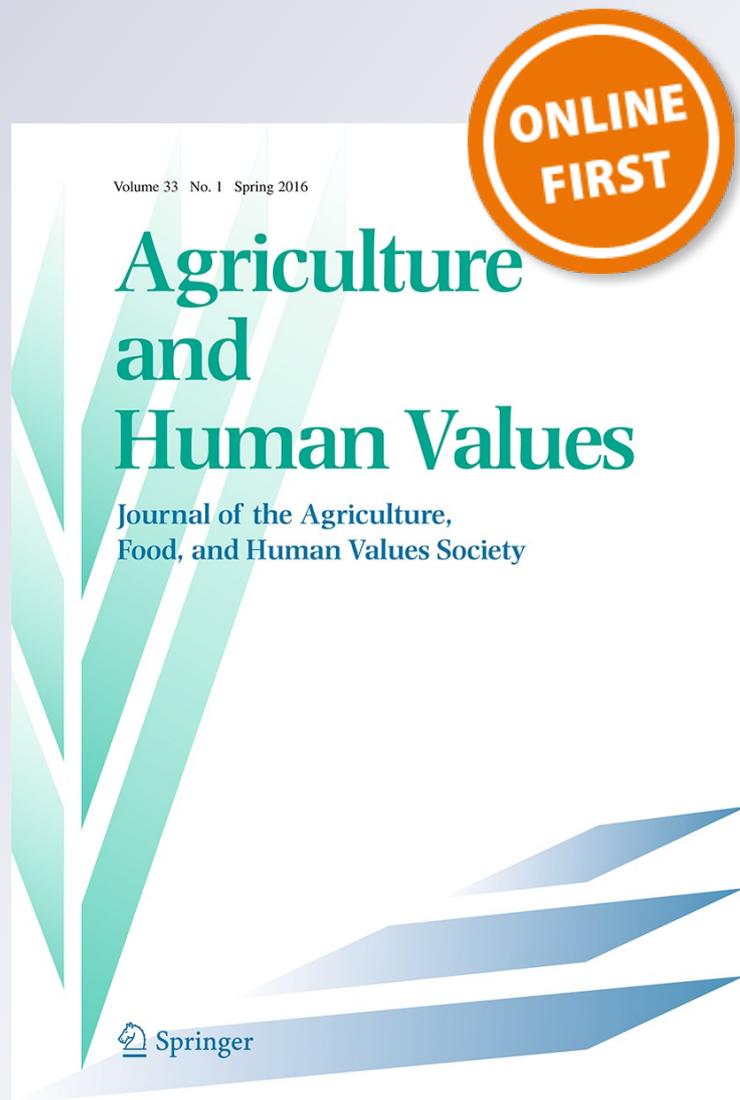
# *Grabbing or investment? On judging large-scale land acquisitions*

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# Grabbing or investment? On judging large-scale land acquisitions

Stefan Mann<sup>1</sup> · Elisabeth Bürgi Bonanomi<sup>2</sup>

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**Abstract** Although analyses of large-scale land acquisitions (LSLA) often contain an explicit or implicit normative judgment about such projects, they rarely deduce such judgment from a nuanced balancing of pros and cons. This paper uses assessments about a well-researched LSLA in Sierra Leone to show that a utilitarian approach tends to lead to the conclusion that positive effects prevail, whereas deontological approaches lead to an emphasis on negative aspects. LSLA are probably the most radical land-use change in the history of humankind. This process of radical transformation poses a challenge for balanced evaluations. Thus, we line out a framework that focuses on the options of local residents but sets boundaries of acceptability through the core contents of human rights. In addition, systemic implications of a project need to be regarded.

**Keywords** Sierra Leone · Land grabbing · Ethics

## Introduction

Few phenomena produce judgments among stakeholders that are so diverging that opponents cannot even agree on a common denomination of the phenomenon. Different terms have been coined for the fact that large companies, mostly

from Asian, North American or European countries (Schoneveld 2011), invest in the direct management of large agricultural areas, a process involving multiple stages of negotiations on different levels, land deals, and employment and reimbursement (Behrman et al. 2012). Persons stressing the utilitarian potentiality of such agricultural investment call “land investments” (Place 2009) what critics (Diega 2014) concerned with local land access and food security call “land grabbing” (Borras and Franco 2012a, b). As this paper does not intend to support any position a priori, we subscribe to the term “large scale land acquisitions” (Brüntrup 2011)) as a relatively neutral term.

The strongly opposing views surely raise the question about the underlying normative framework for the judgments in question, as discussing the suitability and soundness of different frameworks may be one step towards a societal consensus. In publications about LSLA where a normative framework is made explicit, deontological approaches dominate: Wisborg (2013), for example, applies a human rights framework, which leads to an emphasis on negative aspects of a Norwegian investment in Ghana, and Montilla Fernández and Schwarze (2013) use John Rawl’s Theory of Justice as their normative base for evaluating LSLA in Sub-Saharan Africa. On the other hand, scholars demanding investments in rural areas because they consider development outside of urban centers as priority often use an implicit utilitarian framework (see Jones and Corbridge 2010 for a review).

Høyer Toft (2013) made an important step by identifying different perspectives in evaluating LSLA. This paper intends to go one step further by comparing the often implicit ethical framework behind the normative approaches. To build our comparisons on empirical evidence, we focus on a specific case study, using one of the best documented sites of LSLA with a strong claim of ethical

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integrity—the Addax investment in Sierra Leone. Using the well documented Addax case supposedly illustrates several points about utilitarian versus deontological analyses. By describing the additional challenges of evaluations that arise through the strongly transformative nature of each LSLA and by critically evaluating both purely utilitarian and purely deontological approaches, we agree with Wisborg (2014) who argues that the strengths of both approaches should be combined. Following this suggestion, we consider both the work of Amartya Sen and Olivier De Schutter as promising starting points for such a holistic approach, particularly with respect to Sen's focus on capabilities and De Schutter's focus on human rights. This will be justified and elaborated below.

### The Addax case and its evaluation

Addax bioenergy is a company with its headquarters in Switzerland. In 2010, it finalized a memorandum of understanding with the government of Sierra Leone about a bioethanol project in the Makeni area (Fielding et al. 2015;

see Fig. 1). Addax also finalized contracts with the landowners in the whole area about leasing 54,000 ha, of which around 30,000 ha have been meanwhile relinquished. Approximately 10,000 ha are now effectively used for sugarcane pivots. Two thousand hectares are used for a farmer development program in which local smallholders are taught to grow rice in a semi-mechanized production system, and some 1800 ha have been converted into ecological corridors and buffer areas to protect existing pockets of biodiversity. On the remaining land, farmers are growing their own crops as they used to do. The traditional agricultural system rests mostly on slash-and-burn farming, where land is used only periodically for production, mostly for growing several crops (groundnuts, cassava, maize, and rice as the most typical ones) on one plot. Many farmers are now walking longer distances to their fields than before due to the sugarcane pivots. Farmers also cultivated permanent rice lands, and these were partly used for the development of sugar cane pivots, too (Kamara 2015).

Addax has set up a rather complex reimbursement scheme under which both local chiefs and the landowning

**Fig. 1** The Addax investment in Sierra Leone



families benefit from the land rent, whereas the land users were not directly included in the schemes. In several cases, agreements had to be made about municipal boundaries before contracts could be set up. In addition, Addax acted as an employer for several hundred locals and immigrants for production, security, driving, construction of the bioethanol plant and others. Several NGO's in the region took the role of unions, representing the interests of employees, landowners and peasants, while particularly the employment of locals happened to be quite conflictive.

The reason why there are comparatively many studies on the Addax case is that the company's communication strategy is quite different from that of most other investors. Market access to the EU biofuel market is increasingly depending on compliance with sustainability standards, so that only suppliers considered as 'sustainable' will have a long-term chance of remaining in the market. Therefore, Addax is interested in actively promoting the impression of a sustainable project and therefore is trying to collaborate with a considerable number of independent scientists, many of whom produced the literature cited below. Addax also engaged with the Roundtable of Sustainable Biofuels (RSB), by which the respective investment has been labelled "sustainable". The company also commissioned its own studies to actively support its claim that "private investment can lead to responsible and sustainable development" in Africa (Addax 2013).

One prominent example for such a study is an impact assessment carried out by the African Development Bank Group (2009) that illustrates the changes in income generation, social structures, and the environment. After observing a large range of likely positive effects of the investment on the livelihoods of locals, the study concludes: "This project will result in environmental, social and health impacts that can be managed to levels of significance that would be regarded as acceptable to society and the natural environment" (p. 19). Several independent studies also acknowledge positive effects of the investment in the region, such as "a significant amount of infrastructure" and "new income sources" (Fielding et al. 2015, p. ix) or transfers to land owners and local governments (Bottazzi 2014).

Millar (2013a), one of the scientists who collaborated with Addax in the early phase of his work, comes to a radically different conclusion. After having conducted many interviews with local residents, he finds that the wage paid to most local employees is lower than what they need to buy sufficient food from the market. He diagnoses "the failure of those economic resources, at least in this case, to produce the restorative effects most people might hope for" (p. 16). A very similar reasoning can be found by ActionAid (2013). The report also focuses on the prevalent hunger in the region and criticizes the low wages in an

environment of rising costs. It concludes that the public should "change the damaging EU policies that drive the rush for land grabs from companies such as Addax" (p. 3). Additional support for this argument stems from Baxter and Schäfter (2013), who criticize the environmental management of Addax because the responsible actors "fail to take into account the crucial importance of agro-biodiversity for local populations and their impact on biodiversity, or to examine the full range of uses of the land and water resources that are affected by the plantations."

The criticism is also related to the development of institutional and social structures. Anane and Abiwu (2011) criticize "the absence of an effective grievance or conflict resolution mechanism that could be accessed easily by community members and that could provide prompt and fair solutions to the problems unleashed on them by Addax's operations" (p. 43). Another publication by Millar (2013b) specifically puts the issue of gender relations into focus and concludes that "the supposedly gender blind or neutral policies Addax is following actually privilege male heads of household with both decision making power and with the vast majority of the benefits of the project" (p. 24).

In addition, it was found that—in the absence of well-balanced public procedures—investments may have undesired side-effects on land tenure systems, if they do not very carefully deal with ownership structures including customary land tenure. Although the company tried to be respectful of national law and international guidelines that protect customary land systems, the formalization procedure, required to secure the land lease, emphasized traditional class-based inequalities, which led to the potential for new conflict amongst local land owners and users (Bottazzi and Goguen 2016). Marfurt et al. (2016) who undertook a comprehensive anthropological study on the site revealed that societal dynamics were triggered by the process. The loss of natural resources and only modest employment possibilities had a negative impact on previously vulnerable groups (such as specific groups of women) whose strategies of resistance at the same time negatively affected project implementation.

It is likely that the contradicting results originate from different perspectives. Of course, the entrepreneurial research is not solely driven by ethical integrity, so that studies commissioned or carried cannot be expected to be neutral. The same applies to the African Development Bank, being a founder of the project. In addition, even the most unbiased scientists are prone to methodological weaknesses and lacking rigor, a point that has been explored by Purdon (2013). It should be mentioned that all the Addax studies cited above rely on qualitative analysis and one point in time.

However, the underlying ethical frameworks are also of importance. The investor and the African Development

Bank Group emphasize the development aspect of the investment. The bioenergy project brings roads as well as jobs into the region. The investor spends millions of dollars, of which a considerable share remains with wage earners and farmers in the region. From an economic perspective, the net transfers into the region seem to more than outweigh the loss of certain areas in which local farmers may not grow their crops anymore. This assessment is mainly utilitarian.

The numerous opponents of the Addax project argue differently. They often refer to standards which are implicitly derived from the human rights framework without applying this legal framework in a nuanced way. They do not adequately consider that the human rights perspective is a lens on effects and consequences, necessarily including the temporal dimension and presuming empirical knowledge about the impact of the investment on different human rights in the short and long term (Kälin and Künzli 2005; see “[Human rights theory: respect the boundaries](#)” section). Accordingly, these opponents tend to avoid a careful balancing of interests. Instead, they identify a large number of human rights related standards that they consider as being damaged by the investment. Among these rights directly or implicitly referred to is the right to adequate food, which apparently cannot be provided by the wages paid. Another example is the right of women to be treated equally to men. It is observed that Addax representatives adapt to the local habits of keeping the economic and political power in the hands of men.

Often, evaluations do not make their normative framework explicit. However, without too much simplification, it can be said that the arguments supporting the Addax project are largely made on a utilitarian base, whereas the criticism of the project mostly originates from deontological rationale. The African Development Bank Group and the company itself stress the development aspect, expressing that there is a positive net benefit from the project. Simultaneously, the critics focus on certain human rights that they consider as being violated in the course of the investment. By doing so, they tend to neglect the need to adequately balance positive and negative impacts on the ability to realize human rights.

### The problem of revolutionary system change

In many if not all regions of the world, the agricultural system has changed over time. In the vast majority of cases, these changes have emerged slowly and in an evolutionary way. One example is the gradual transmission from the three-field crop rotation to an annual cultivation of land in Europe in the nineteenth century as described by Abel (1978), another the emergence of large-scale

commercial agriculture in the United States throughout the twentieth century (Gardner 2002). Even agricultural change in the former colonies of European powers in the South—parallel to LSLA in terms of mixed state and private initiatives—occurred in a largely gradual way (Masefield 1950; Brockway 1979), as the system of plantations still needed time to evolve. Two of the very few exceptions from the rule of gradual system transformation occurred in the twentieth century through changes from family farming systems to socialist collective farming and vice versa. These revolutionary system changes were always connected with hardships and suffering. This applies to Stalin’s collectivization efforts in the USSR 1929–1932 (Conquest 1987; Ertz 2005), but also to the rapid privatization of the farming sector in post-socialist transition countries during the late twentieth century (Schmieding 1993; Hanisch 2000).

The underlying reason for the problematic nature of revolutionary transformations has been explored by institutional economists, who concluded that “the dictum that ‘old rules are good rules’ has considerable weight, because widespread, quasi-automatic rule-compliance reduces coordination costs” (Kasper and Streit 1999; p. 391). Radical transformations produce many distributional and organizational issues that have to be resolved, causing many potential conflicts.

It is an important observation that most cases of LSLA are probably even more revolutionary (i.e., less evolutionary) than the socialist and post-socialist transformations in the Eastern Europe of the twentieth century. In the case of the latter, it was mainly the ownership structure that changed. This is an important aspect of LSLA as well. However, illustrated by the example of the Addax case, there are many more basic system parameters that rapidly change due to LSLA:

- While land management decisions had been taken by local peasants before, it’s now foreign agronomists who decide;
- the production system has switched from an extremely extensive slash-and-burn agriculture to an industrialized system with massive use of artificial fertilizers, pesticides and irrigation;
- a very diversified cropping system has been replaced by a sugar cane monoculture;
- self-employed labor has been replaced by wage labor.

When comparing these changes to the systemic changes cited above, it can be concluded that LSLA has resulted in one of the most radical system change that the world’s agriculture has ever seen.

This observation has important implications for any ethical considerations, if combined with the knowledge about the systemic disadvantage of system changes. The

literature on the Addax case makes it clear that “old rules” lead not only to “quasi-automatic rule-compliance” but also to a (very implicit and tacit) acceptance of these rules. This acceptance ends abruptly as soon as the rules change. The criticism that the wage that workers in the Addax area receive is not high enough to buy sufficient food is probably justified. However, the agricultural production realized before may or may not have been sufficient for feeding local families—this issue has never been addressed in the papers by Millar (2013a, b) or ActionAid (2013). It is certainly true that the reimbursements paid by Addax benefitted men rather than women. But while there is a need to discuss gender discrepancies, the gender bias in the region (or, in fact, everywhere) benefitted men and disadvantaged women for many years, regardless of the transaction character.

### Conceptual framework

Applications of ethical theories are not always doing justice to the underlying theoretical framework. It is therefore worthwhile to step back for a brief look at the normative frames which have been employed, mostly implicitly.

Deontological evaluations refer to a rule or a set of rules and judge their object according to the adherence to these rules, ranging from Kant's categorical imperative (Kant 1785) to Kamm's (2006) principle of permissible harm. Any action can only be acceptable if rules are obeyed. References to deontological ethics have been shown to be most influential regarding LSLA, probably because revolutionary system change draws increasing attention to the most basic rights of the participating parties. If the international human rights framework—in particular the social, economic, and cultural rights as codified by the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR)—is chosen for the normative assessment and applied correctly, the temporal dimension must necessarily be part of the assessment. According to Article 2 of the ICESCR, each State Party has to undertake “steps [...] to the maximum of its available resources, with a view to achieving progressively the full realization of the rights” (ICESCR 1966). This principle of progressive realization of social, economic, and cultural rights is well recognized and requires that the situations before and during project realization are compared for impact assessment.<sup>1</sup> If stakeholders or researchers are not sufficiently familiar with the

principles shaping the legal concepts to which they refer, they risk that these concepts are applied incorrectly.

If a foreign direct investment in land is found to have violated or to still violate certain human rights—be it that the consultation process has not been undertaken in an equitable and inclusive way; be it that the project does not improve but rather worsen the food situation of the directly affected people; be it that gender relations are becoming less and not more equitable—the time dimension must be used to carry out the ethical judgement of the case. At this stage, we already come closer to a classic utilitarian perspective in which the balance between benefits and losses is the only relevant criterion. According to a utilitarian perspective, if benefits outweigh losses, one may come to the conclusion that the project is basically “good” and that political efforts should be targeted at improving the project. Otherwise, the project is deemed to be “bad” and should be abandoned.

A nuanced perspective such as required by human rights theory can also be taken if the starting point is a utilitarian evaluation. The underlying principle of utilitarian ethics is that, among a set of options, the one with the highest sum of utility should be chosen. Based on the traditional (Mill 1863) and modern (Hare 1981) approaches which more or less reduce ethical judgment to the pure sum of generated utility, utilitarianism has often been criticized for lacking a sense of justice (Raphael 1951; Rawls 1958; Jensen 2013), and the significant inequalities between the different involved parties make LSLA a good case in point for this criticism. For example, a loss in utility of a starving Sierra Leonean would not easily be outweighed through the gain of a Swiss investor. However, issues of fairness and justice have been discussed since the early days of utilitarianism (Mill 1863), and Gesang (1998) explored and extended the potential of utilitarian considerations to include such issues through his concept of “fairness utilitarianism.”

Sen (2007) has gone further to liberate utilitarianism of a pure focus on indulgence and to shift the attention towards the capabilities of actors. His deep knowledge of relevant parameters in development processors makes him a credible advocate of the interests of the poor (see “Option-based approach” section). His approach has been set into relation to the concept of sustainable development where it has been shown that “justice is probably inextricably linked to some notions about what it means to live a human life and to have a good human life” (Voget-Kleschin 2013, p. 495). Apparently, the lines between deontological and utilitarian approaches become increasingly blurred. “Despite contrasts and tensions between them, both utilitarian and human rights will likely be used in justifying, critiquing, and governing transnational land deals.” This proposition by Wisborg (2014, p. 42) seems to be a suitable starting point for any ethical framework.

<sup>1</sup> It is, of course, very important *how* local impacts are assessed. The way how data are generated can strongly affect such an evaluation. Socio-anthropological research can play a vital role in this regard, as it provides tools for carefully assessing and comparing the previous and current situation of affected people. See, for instance, Marfurt et al. (2016).

## How to judge the overall project?

### Focus on local population

In the ethical discourse on LSLA, there is a certain consensus that any evaluation should focus primarily on the situation of the local population, that is, the people directly affected by the investment, rather than on all actors including investors from abroad. This premise can be valid only if spillover effects in the country, for example to urban dwellers, are negligible. Moreover, it cannot be met from a purely utilitarian standpoint. However, paying respect to a social contract (Rawls 1971), implies paying particular respect to the weakest members of society (and, again, there can be no doubt that the position of the local population in recipient countries is inferior to that of people in charge of investing companies). Such focus on the local (rural) population, who most often also is the most vulnerable party, is required by the international human rights framework by which both home and host countries of investors are bound (see Heri 2011) and is also requested by co-funding development banks. With this in mind, we follow Wisborg (2014) in his suggestion to combine a deontological and utilitarian framework. However, by combining the boundary approach of De Schutter with an option-based approach based on Sen, we claim to be more precise and more adapted to the specific circumstances of LSLA.

### *Human rights theory: respect the boundaries*

In cases of conflicting human rights situations—when a project improves certain human rights and restricts others—human rights theory requires a careful balancing of interests and the evaluation of effective complementary measures. The former representative of UN secretary-general on internally displaced persons, for instance, explicitly recognized that large-scale development projects may be important for the realization of human rights (Kälin 2008). However, given that such projects may infringe upon human rights, they must be placed within a human rights framework and need to be in the public interest. Accordingly, a development project that leads to displacement (or territory loss) “is permissible only when compelling and overriding public interests justify such projects, that is, when the requirements of necessity and proportionality are met” (Kälin 2008). This, however, requires that territory loss is adequately compensated.

Human rights scholars further argue that the core contents of human rights must never be violated. This sets limits to the balancing power of trade-offs. There have, however, been few attempts to precisely define these limits,

not least because human rights are deemed to be “universal, indivisible and interdependent and interrelated” (UN General Assembly 1993; Art. 5) with the consequence that the balancing of human rights is a challenging task.

A prominent attempt to define such limits posed by core contents of human rights is included in De Schutter’s Guiding Principles on Human Rights Impact Assessment of Trade and Investment Agreements (De Schutter 2011a; chapter 6). The guidelines recognize that each development project comes with winners and losers, and that “delicate choices will have to be made about the priorities that the State seeks to pursue.” It is argued that States should use human rights impact assessments to identify positive and negative impacts of project-relevant policies—or the project itself—on human rights.<sup>2</sup> This is to ensure that the project “contributes to the overall protection of human rights” (De Schutter 2011a; chapter 6). It is further argued that the question of what trade-offs are acceptable “is to be decided at the level of each country, through open and democratic processes.” It is suggested that involved actors “should prioritize those economic and social benefits that will be sustainable in the long term [...] over short-term economic and/or political gains,” that “solutions should be found under which losses and gains are shared across groups, rather than concentrated on one group,” and that a “retrogressive level of protection of a human right” should be avoided (ibid.). Similar benchmarks—the degree of influence and the degree on inclusion of locals—have also been put forward by Nolte and Voget-Kleschin (2014).

By balancing trade-offs, however, certain absolute boundaries must be respected. While the discussion about the extent of these boundaries is ongoing, the Guiding Principles suggest respecting the following ones: The poorest and most vulnerable segments of the population must be included in the process; trade-offs that would exacerbate discriminatory outcomes<sup>3</sup> must be ruled out; and trade-offs “must never result in a deprivation of the ability of people to enjoy the essential content of their human rights” (De Schutter 2011a). If any of these conditions is not met, projects violate the core of human rights and cannot be deemed as “good” even if net benefits may exist. The end cannot justify the means if they lie outside the acceptable.

<sup>2</sup> The Guiding Principles are primarily guidelines for assessing policies. But they can also be applied in an analogue way for assessing projects.

<sup>3</sup> “For example, giving priority to providing health and education services to the more affluent parts of society, rather than to the most disadvantaged and marginalized groups” (De Schutter 2011a).

*Option-based approach*

Given the focus on the local population, a missing brick is still a “broad normative framework for the evaluation and assessment of individual well-being and social arrangements”, a description that Robeyns’ (2005, p. 94) description of Sen’s capability approach. Sen (1985, p. 69f.) has claimed that “the quality of life a person enjoys is not merely a matter of what he or she achieves, but also of what options the person has had the opportunity to choose from.” Sen criticizes the reliance on what he calls opulence of traditional utilitarianism, particularly among economists. He argues that the utility approach of traditional welfare economics neglects both our physical condition and the value that we assign to our environment. While taking into account the importance of endowments, which often transform into entitlements, Sen (1981) emphasizes the importance of the opportunities we have. This certainly applies to the case of LSLA. It can well be argued that the most significant change that an LSLA brings about is the change in people’s options, and therefore there is a good reason to take this aspect into account.

The most important choice that most people have to make in their life is the design of their livelihood as a whole. This includes the determination of their workplace (or, in worse cases, the location of their unemployment), which will, in turn, have major impacts on the set of consumption possibilities that people have. For many decades, many rural farmers mainly have had the choice of either sticking to the traditional exercise of agricultural production or immigrating, for example, to the nearest city (Williamson 1988; Lucas 2004). More formally speaking, the option vector of such a situation could be put as

$$O_1(i) = (At_i, E_i),$$

where  $At$  is the pursuit of traditional agriculture and  $E$  stands for emigration. This option set contains a certain value for each individual, which is given by the value of the best element in that set:

$$V(O) = \max_{x \in O} v(x)$$

In any case, an LSLA will change the option set of most if not all rural residents. Coming back to the case of the Addax investment in Sierra Leone, people may choose to continue with their traditional farming, but often will have to travel further distances to their fields ( $At_d$ ). An additional option is to enter the farmer development program (FDP), where residents are assisted with more productive modes of agricultural production. In addition, Addax has employed many locals as wage laborers ( $W$ ), so that the new set of options may look like

$$O_2(i) = (At_d_i, FDP_i, W_i, E_i).$$

The fact that the vector  $O_2$  contains more options than  $O_1$  does not mean that the vector  $O_2$  provides more utility than  $O_1$ . The option  $At$  has been lost, and it may well be that this loss will not be outweighed by the additional options in the eyes of the local population. Only thorough empirical evaluation among local residents—including women and men, land users and land owners, young and elder people—may answer this question.

Such empirical material is not available in the quality that would be needed, particularly not from the time before the Addax investment which would serve as an appropriate reference. However, some evidence can be obtained from comparing the Addax project area to adjacent areas. Fielding et al. (2015), for example, show that hunger in the less sensitive time between November to May is more prevalent outside the Addax area than within, while there are no differences in the more sensitive times of the year. This indicates that the possibilities to secure food supplies may have been simplified by the Addax investment.

Things are simpler in cases where the range of options is barely decreased. Siciliano (2012), for example, documents a case of domestic LSLA in China where emigration became the usual option for local residents, so that the option vector was reduced to

$$O_3(i) = (E_i).$$

In this case, it is clear that  $V(O_1) \geq V(O_3)$ . This LSLA is extremely likely to decrease the utility of local residents.

However, to get an overall picture, options cannot just be added or subtracted. Sen (1981) emphasizes that the relative weight of options and their importance in a given context should be identified. It should be assessed to what extent a certain ability is realized or violated in a specific context:

“[...] The weighting must be contingent on circumstances. We may have to give priority to the ability to be well-nourished when people are dying of hunger in their homes, whereas the freedom to be sheltered may rightly receive more weight when people are in general well-fed, but lack shelter and protection from the elements” (p. 158).

In the context of the Addax case, this raises the issue of the effectiveness of the company’s initiatives, be it the farmer development program or the employment opportunities.

This comes close to the human rights method of careful balancing in order to assess a situation as a whole. Sen (2004) argues that the ability approach is very close to the set of substantive human rights such as freedom of religion or the right to food, and Nussbaum (1997) even

understands human rights as the basis for realizing abilities. Contrary to a human rights approach, however, the option-based approach comes in a language that is accessible to scientists and stakeholders being trained in utilitarian thinking.

The option-based approach does, however, not set any limits to option weighting even if “the means to get to the end” are drastic and outside of the acceptable. We therefore suggest complementing the context-specific weighting of options with human rights related boundaries. This approach will lead to the exclusion of projects from the list of basically acceptable projects if core contents of human rights are violated.

### **Caveat: Contribution to overall sustainable development by systemic implications?**

From a sustainable development perspective, it is not enough to assess if the local population is better or worse off after the project has been implemented, in order to deem the project sustainable. The systemic implications of the project also need to be regarded (De Schutter 2011b; Bürgi Bonanomi 2011). Questions such as the following need to be addressed: Does the project contribute to a sustainable development of the domestic agricultural economy by contributing to inclusive markets for small-scale farmers and by using the natural resources carefully? Does it contribute to setting up effective research and development services for the farming sector? Does it strengthen democratic deliberation of agricultural policies (Rist 2016)? Does it make use of natural resources in an appropriate way? Or does it promote an innovative and sustainable shaping of investment policies (Cotula 2014)? And does it—in the way it deals with land use—promote innovative land governance schemes that are inclusive and equitable?

In order to tackle such systemic implications effectively, responsibility must be shared among host states, home states, the international community and the private actors. Bürgi Bonanomi (2015) has illustrated how private-driven certification schemes—such as the RSB scheme—tend to be fragmented, while not sufficiently assigning responsibility. In addition, if soil and land resources were understood as a common concern, international law would need to be shaped in such a way as to enable local government to comply with the duties they hold over natural resources. International law in the fields of human rights and environmental law already fulfil this function to a certain degree. But their effectiveness must be improved, not least by strengthening the requirements of home States aimed towards the investors domiciled in their territory. In addition, remaining gaps regarding the protection of land tenure and soil resources must be filled, by *inter alia* emphasizing

instruments of spatial planning. Equally important is, however, that both international and national economic laws and policies—including investment, trade and tax policies—are brought in line with sustainability goals. It is in this area where there is the largest persistent deficit. Here, taking a ‘policy coherence for sustainable law’ perspective assists in capturing the full picture.

Indirect effects of an LSLA are more difficult to assess than local implications and the margin error will be greater. While systemic implications may be very relevant, the high vulnerability which the local population usually has in regions in which LSLA take place makes it necessary to prioritize the direct effects of LSLA on vulnerable populations in the assessment.

### **Mental model**

In the relatively recent discussion about LSLA, rights-based approaches have dominated the methodological toolbox with the benefit that the evaluation has been focused on local residents rather than on international investors. However, the rights-based approach—if applied in a non-nuanced way—tends to neglect the balancing of pros and cons of. In addition, in cases where the situation before the investment is not adequately considered, the reference to human rights is made incorrectly.

Many human rights are still ignored in large parts of the world, particularly in developing countries. Many people, even scientists, have become used to the infringements. A radical transformation, which LSLA always are, changes this habit of ignorance. Raising awareness about violations of human rights is a key merit of taking a human rights perspective. However, if the assessment focuses on specific human rights violations—which may have occurred during the negotiation process or by the way the project is run—without a careful balancing of pros and cons, only part of the reality tends to be taken into account. This may lead (often implicitly) to a systematic bias in the evaluation of an investment. A proper utilitarian evaluation is less likely to fall in this trap, but it is vulnerable to other traps such as an over-emphasis on the utility of investors or the usual reliance on variables like wealth or income.

Sen (1981, 1985, 2004), based on his experience in developing countries, has provided a fruitful track with his focus on abilities. This option-based approach allows focusing any assessment of LSLA on the different livelihood options between which locals may choose. It makes use of a language that is more accessible to social scientists than a human rights framework, and makes sure that the balancing of pros and cons is undertaken. It is certainly desirable to find appropriate operationalizations for such an option-based approach, particularly in the many cases

where some options vanish and new ones appear, where options are more or less intense, or where major trade-offs between different groups in society are involved. However, the growing number of LSLAs of very different quality requires an appropriate balancing of interests that must not justify situations where core contents of human rights are violated. In other words, means that lie outside of the acceptable cannot justify the end. Finally, besides the impact on the local population, systemic implications of the project are also relevant.

All this would lead to a normative framework as depicted in Fig. 2. The ethical acceptance of LSLA would rest on two pillars. One would be a positive impact on the options available to the local population on average, another would be the respect of strict human rights boundaries. If these two conditions are met, an LSLA could be termed acceptable.

There will be many cases, where the application of these two criteria will lead to ambiguous results. The impact on options may often diverge widely among locals, or the long-term effects on basic human rights is too difficult to estimate. For this, it will be helpful to take macro-implications into account as well, to explore effects on the economy, on ongoing policy reviews or on the societal structures as a whole.

The Addax case is a good case in point to justify such a framework. Due to the broad investments made, classic utilitarianism will soon be able to justify the project; which will not find a broad consensus unless several additional questions are answered: Only if the option to farm locally is sustained while gaining the option to work on the sugar cane fields or the bioethanol plants, and only if no local inhabitants are deprived of their right to food, the project

can be considered as added value to the region. Even more questions have to be posed about the effect of the investment in the rest of the country, both concerning spillovers and justice, questions on which empirical research has not been carried out yet.

## Conclusions

Based on the framework developed above, the Addax investment is a convenient example to show the dialectics between deontological and utilitarian judgements which need some integration. It is clear that the company could have done better in its interaction with all parts of local society, be it employees, land owners or tenants. Particularly vulnerable parts of the population like women were not always benefitting from the huge societal changes which the investment has caused; their situation was rather worsened. The rise of opportunities for a large number of local residents can certainly provide some justification for the bioethanol project, but in order to cope with the framework presented in this paper, the most vulnerable groups should also be better off as a result of the investment. Regarding local implications, it is here where most questions remain at the moment, whereby a longer term assessment might again provide for a different picture, since the project has just started operation. The same is true for the systemic implications of the project. All in all, the Addax project is better than nothing, but not 'good enough'.

In the broad debate on LSLA, a fruitful communication between defendants and contesters may only emerge if the ethical foundations on which judgments are based are made explicit. It could be shown that balanced judgments are hard to obtain if they are too focused on either utilitarian or deontological schools. We perceive a need for innovative linkages between deontological and utilitarian approaches, proposing a framework in which both options and basic needs are put into the center.

This framework is certainly not the end of research on the ethics of LSLA. It needs to be contested, to be discussed, and even if it proves to be acceptable as such, it still needs to be operationalized.

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**Fig. 2** A normative framework for evaluating LSLA

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