Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH

2022

RESEARCH REPORT

Assessment on Hindering Factors on Implementation of Free, Prior, and Informed Consent Principles and Impacts around Agricultural Investment

Prepared for:

Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH, Ethiopia

Submitted by:

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Final Report, March 2022

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ACKNOWLEDGEMENT

NISIR Consulting gratefully acknowledges the invaluable support and assistance of the fruit of a partnership between NISIR Consulting and GIZ. This report was coordinated and compiled by the NISIR Research Team. We would like to express our sincere gratitude to the GIZ team – Addis Ababa Office and regional field coordinators for their continuous support by responding to our questions throughout the research process. We are thankful to all key informants, focus group discussants, and survey participants for the successful completion of the data collection for this research project.

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ACRONYMS

AILAA	Agricultural Investment Land Administration Agency
AISD	Agricultural Investment Support Directorate
BoA	Bureau of Agriculture
EHAIA	Ethiopian Horticulture and Agricultural Investment Authority
EPA	Environmental Protection Agency
FGDs	Focus Group Discussions
FPIC	Free, Prior, and Informed Consent
GIZ	Deutsche Gesellschaft für Internationale Zusammenarbeit GmbH
GoE	Government of Ethiopia
KIIs	Key Informant Interviews
LSAIs	large-scale agricultural investments
MoARD	Ministry of Agriculture and Rural Development

EXECUTIVE SUMMARY

This report presents the main findings and recommendations based on research on the awareness level of stakeholders about Free, Prior, and Informed Consent (FPIC) and the processes and strategies put in place by various government entities to implement FPIC. The research utilized primary and secondary data sources. A more in-depth analysis was conducted using primary qualitative and quantitative data from three regions of Ethiopia, namely, Amhara, Benishangul-Gumuz and Gambella. Primary qualitative data were collected using key informant interviews and focus group discussion with relevant stakeholders, which mainly include community members affected by large-scale agricultural investments (LSAIs); community leaders; vulnerable groups in the community (such as women and youth); investors; and federal, regional and woreda government offices. A perception survey was also conducted to assess views and beliefs of sample respondents from community members about the extent to which the processes of identifying and licensing LSAIs take into account the principles of FPIC. The findings from our desk review and analyses of qualitative and perception survey data are summarized as follows.

Awareness level on FPIC:

Respondents from community members affected by LSAIs, various government entities (such as woreda and regional agricultural offices, land administration offices, and investment bureaus) ascertain the low levels of community members', government officers', and investors' awareness about FPIC.

Approaches to identify and license LSAI: Based on the responses from affected farmers, members of women and youth associations, community leaders, and government officials at woreda and regional levels, similar responses are obtained with the inference that the underlying processes in approving LSAIs do not consider the principles of FPIC.

Strategies of government organizations that facilitate/hinder the implementation of FPIC:

The process of land transfer to LSAIs follows a top-down approach. The relationship that the state structure builds with the community members is based on the presumption that the government is the sole owner of the land in the country, downplaying the community members as "right holders". This would contribute to community members' denial of their rights to FPIC.

Responsibilities and opportunities of government organizations in implementing FPIC:

The ministries at the federal government level, mainly the Ministry of Agriculture, Investment, and Land Administration, should play the main role in the implementation of FPIC through building the capacity of the regional government entities by providing them with the necessary training and making regulations/guidelines that should be cascaded down to *woreda*-level government entities, who would finally be responsible for implementing FPIC. However, our results show that the role of the ministries in the implementation of FPIC at *woreda* level through regional bureaus is not effective and unrecognizable.

Inclusiveness:

The results on the extent to which the most vulnerable groups of the community are treated equally in terms of being able to participate in the process of approving or declining LSAIs in the community are mixed. While some respondents say women, the elderly, and persons with disabilities equally participate in decision-making during LSAIs approval process, others say that this is not the case. Particularly, all respondents over the age of 65 perceive that they are not equally participating in making decisions on LSAIs.

Implications of FPIC for sustainable land governance and agricultural investment system:

Farm investors recognized that FPIC has a role to play in bringing positive attitudes of community members towards LSAIs, which in turn determine the success and sustainability of LSAIs. However, the existing processes of granting licenses and

permits to LSAIs are not in accordance with the principles of FPIC, and thus farm investors perceive that their relationship with community members is weak.

Based on the key research findings, this report identifies relevant recommendations to make FPIC principles at the heart of the administrative processes during feasibility assessments of LSAI project proposals prior to granting them investment permits and land.

1 INTRODUCTION

1.1 Background

Ethiopian economy heavily depends on agriculture which contributes nearly half of the GDP, 85 percent of exports, and 85 percent of total employment (BoA, 2018). This sector is dominated by smallholder farmers who earn their livelihood primarily from subsistence rain-fed agriculture with only limited use of modern inputs. The Growth and Transformation Plan of Ethiopia aspires to make the country a lower-middle-income country by 2025. It considers large-scale land investments (LSLIs) to be a vital tool for developing pastoral areas (Keeley, 2014; Mekuyie et al., 2018).

Large-scale land investments may positively affect the livelihoods of the local community by generating employment opportunities, access to irrigation, and technologies. However, they may also aggravate the access to grazing lands by displacing rural farmers (often pastoralists, at least in, the Ethiopian context) from their pastures or preventing their access to dry season grazing, resulting in a negative impact on livelihoods (Mekuyie et al., 2018). If people directly lose their land without compensation or adequate resettlement, they will likely become worse off and more impoverished (Keeley 2014). Most importantly, if people are displaced without proper implementation of their right to FPIC, which is known as a key principle of international human rights law, the consequential problem will be for both host communities and the investor. Overall, large-scale agricultural projects may bring opportunities for citizens of the nations where the resources are being developed. However, the poorest and most marginalized people are often excluded from potential project benefits.

Existing evidence shows that 100–200 million people were displaced worldwide since the 1980s due to development interventions such as large agricultural investments (Agrawal and Redford, 2009). Sources also indicate that 10–15 million people have been displaced annually because of large-scale land acquisitions for development purposes globally (Patil et al., 2017). According to IFC (2012), displaced smallholders or farmers refer to those that have lost their farmland due to land acquisition for LSAIs. Globally, 83 million hectares of land under LSAIs were reported from developing countries by 2010 (Deininger et al., 2011). Of this, 69% LSAIs are in Africa, 22% in Asia, and 9% in Latin America. From Africa, 28 countries have been

prioritized for LSAIs since 2000 including Ethiopia, Madagascar, Mozambique, Sudan, Tanzania, and Uganda (Anseeuw et al., 2012; Richards, 2013; Davis et al., 2014). In Ethiopia, available data indicated that about three million hectares in lowland regions have been leased to private and state-owned commercial agricultural interests since January 2005 (Keeley 2014). Seemingly sparsely populated, the country's lowland regions are the major areas where much of the current land acquisitions in Ethiopia are taking place.

Increasingly, however, indigenous peoples and local communities have called on governments and companies to enable them to give or withhold their FPIC before the start of extractive industry projects that have the potential to affect their lands and natural resources. However, this FPIC is the principle that indigenous peoples and local communities must be adequately informed about projects on time and allowed to approve (or reject) a project before operations begin. This includes participation in setting the terms and conditions that address the economic, social, and environmental impacts of all phases of project implementation and operations.

In general terms, the right to FPIC is a fundamental that should be in place, as stated in international human rights law. In addition to protecting legal and customary rights of Indigenous Peoples, increasingly, it is also seen as a right that enables local communities to protect themselves against significant adverse impacts on the resources and territories for which they can make a justified claim of long and established use. However, with large-scale land acquisition, in Ethiopia studies show that indigenous and local communities hosted by LSAI suffer from resource restriction, loss of grazing land, competition on the arable land, and sometimes even farmers and pastoralists face displacement from their land where their livelihood depends upon. Hence, all these negative consequences of LSAI are mainly the result of the absence of implementing FPIC principles that would have the potential to create a win-win situation for both host communities and the investor.

1.2 Overview of FPIC Project

FPIC has emerged as an international human rights standard that derives from the collective rights of indigenous peoples to self-determination and their lands, territories, and other

properties. For this report, it should be considered as a collective right of indigenous peoples to make decisions through their own freely chosen representatives and customary or other institutions and to give or withhold their consent before the approval by government, industry, or another outside party of any project that may affect the lands, territories, and resources that they customarily own, occupy or otherwise use. It is thus not a stand-alone right but an expression of a wider set of human rights protections that secure indigenous peoples' rights to control their lives, livelihoods, lands, and other rights and freedoms. FPIC has been described as a standard that supplements and is a means of effectuating these substantive rights. It thus needs to be respected alongside other rights, including rights relating to self-governance, participation, representation, culture, identity, property, and, crucially, lands and territories. Not only should FPIC be respected, but in addition, no measure should undermine indigenous peoples' enjoyment of human rights, even in instances where their FPIC has been obtained.

The concept of FPIC is widely seen as the most appropriate approach for seeking the views of indigenous peoples on activities that affect them and their land and for ensuring that their rights are respected. Although the concept of FPIC originally evolved in relation to indigenous peoples, in principle it is a social safeguard that respects the rights of any community whose livelihoods, access or rights to land will be affected by an external initiative or interest. FPIC consultations allow for an exchange of views and a mutually satisfactory agreement to be reached. That said, FPIC is not a one-off event, nor is it a procedural checklist, but a process wherein affected people are given full information prior to actions being taken, which may or may not lead to consent. FPIC is based on the following principles:

Free	There is no coercion, intimidation or manipulation
Prior	Must happen sufficiently in advance of any official approval or action
Informed	Affected peoples should receive clear and enough information—in a way they can understand—about the proposed action to make an informed decision

Consent	An agreement of affected people to go ahead with the proposed action based on a documented process of consultation and participation

FPIC thus requires the state, companies or local authorities to negotiate in good faith with legitimate representatives of local communities to obtain their un-coerced agreement made with a full understanding of what is being proposed before any actions are taken that affect their land, livelihoods, or wellbeing. It also implies that affected people are compensated for the impacts of these decisions. From global experiences, the term "FPIC" is often avoided in government policy documents, and talking about FPIC in some national contexts might be sensitive.

Applying safeguards and standards, and adhering to corporate social responsibilities, will be beneficial for any company. Finally, adherence to business standards can help host countries to promote a standing of supporting sustainable investments and development which will attract more responsible investors.

Therefore, this study aims to investigate the perception of different Ethiopian responsible agencies and government officials, and examine the community's awareness level, assess the overall implementation status of FPIC in selected three regions of the country. In the next sections, we present the specific purpose of this study, methodology, findings, and conclusions as well as recommendations.

1.3 Purpose

The primary purpose of this particular assignment is to assess the level of awareness, the extent of implementation of the FPIC principle, and identify hindering factors to improve land governance and contribute to the creation of a responsible agricultural investment system. Briefly, this study examines the hindering factors on the implementation of FPIC principles and impacts around agricultural investment in the Benishangul-Gumuz, Gambella, and Amhara Regions of selected districts.

More specifically, the assignment is expected to:

- Identify and document the existing (if any) underlying FPIC processes that the Government of Ethiopia (GoE) has been practicing; and assess the level of awareness of different responsible actors (including government bodies, investors, and community level) towards FPIC,
- Identify relevant institutions/entities/actors in implementing FPIC and their roles in promoting agricultural investment,
- Analyze and document the implementation level of FPIC and the successes and challenges/hindering factors while implementing, and
- Propose possible implementable recommendations - consists of clearly formulated standardized processes to ensure that FPIC is considered within the actions of GoE entities.

1.4 Scope of the Assignments

Table 1: Scope of the study	
Geographical scope	• FPIC Principles & Impact project (S2RAI II)[1] has been implemented partly to create awareness on FPIC principles for different Ethiopian responsible agencies and government officials, and community affected and or potentially affected farmers, youth, and women in LSAI sites. • Amhara, Benishangul-Gumuz, and Gambella Regions. Specific study sites are woredas that host LSAI in the regions.
Target Groups	• Groups (e.g., youth, women, farmers affected by LSAI, and community leaders) who are affected by LSAI and impacted by the project; and Stakeholders (e.g., GoE entities)

[1] The Support to Responsible Agricultural Investments II (S2RAI II) in Ethiopia Project is co-financed by the German Federal Ministry for Economic Cooperation and Development (BMZ) and the European Union (EU). Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH in partnership with the Ethiopian Ministry of Agriculture (MoA) aims to strengthen the institutional frameworks and coordination structures at federal and regional levels in relations to responsible agricultural investment in the country.

2 METHODOLOGY

2.1 General approach and design

This study follows a mixed-method participatory approach. This approach is relevant in that all responsible government bodies, investors, CSOs, and the rural local community (particularly vulnerable groups) can be fully involved in the assessment process. Fundamentally, the participatory approach is about sharing knowledge among various actors who have direct involvement in the process of implementation of FPIC principles in relation to the large-scale agricultural investment activities.

The research is descriptive where both qualitative and quantitative data was used. Data obtained through a combination of data methods such as key informant interviews, focus group discussion and perception survey were triangulated to increase the validity and reliability of the results by comparing the data obtained from one source with the other sources.

2.2 Data Sources and Methods of Data Collection

Both primary and secondary sources of information are used to generate the required quantitative and qualitative data needed for this paper.

In this study, both primary and secondary data were used. The primary data were collected from farming households of the seven Woredas, owners of the farms (investors), and experts of agriculture (*at all levels: kebele, woreda, region, and federal*) by using appropriate tools developed for this purpose. The secondary data were collected through reviewing relevant literature that includes project documents, publications, and policy documents were utilized. All confidential data are collected electronically through tablets using KoBo collect software for quantitative data and recording devices for qualitative data. The main data collection methods included the following:

- **Qualitative Data** – Key Informant Interviews (KIIs) have been conducted using open-ended and semi-structured questionnaires. Key informants involved in this study include relevant stakeholders, community members affected by large-scale agricultural investment, investors, vulnerable groups in the community like women and youth, federal and regional government offices, etc. were part of the KII samples. Likewise, Focus Group Discussions (FGDs) were conducted with various stakeholders, farmers affected by LSAI, community leaders, youth and women to collect qualitative data related to project activities to complement and triangulate the findings of the desk review, farmers' survey and KIIs. Experienced modulators who are fluent in local languages have facilitated the interviews and discussions.
- **Desk review** – extensive review of available documents such as national and regional reports on the involvement of local communities to provide consents on large scale agricultural investment projects, as well as policy and legal documents related to FPIC have been done.
- **Quantitative Data** – Perception survey data were collected from the local community members who are either affected by LSAI and impacted by such projects and members of women and youth associations in those communities.

2.3 Sampling design

Sampling method used for this study was both purposive (for KIIs and FGD) and random (for the survey) sampling. This is an appropriate method, given the nature of this study, to include respondents from a wide range of stakeholders. The respondents for KIIs and FGDs were selected from the list of stakeholders in FPIC and LSAI projects, mainly by considering the criteria like representations in terms of stakeholders' groups, gender, age (youth), social inclusion and knowledge on the subject under study. The respondents selected were from various fields such as the federal, regional, and local government – BoA officials and investors from each LSAI sites of the Amhara, Benishangul-Gumuz, and Gambella Regions. In total, 210 respondents were surveyed, and about 60 Key informants were interviewed. Table 2 below summarizes sample observations per each target group.

Table 2: Summary of sample size by target group				
Participant	**Target group**	**Data collection Method**	**No. of activity**	**Remark**
Affected	Community leaders	KII	7	1 per woreda
	Farmers directly affected by LSAI	KII	14	2 per woreda
		FGD	7	1 per woreda
		Survey	140	
	Youth & women members	KII	14	2 per woreda
		Survey	70	
Stakeholders and implementing partners	Ministry of Agriculture	KII	1	
	Investment commission	KII		
	Regional Agriculture Bureau	KII	3	
	Regional Investment bureau	KII	3	
	Woreda agriculture office	KII	7	
	Farm managers/investors	KII	7	

2.4 Ethical Considerations

The study was carried out adhering to the principles outlined in the International Ethical Guidelines for Human Centered Research. The research process was conducted considering the principle of 'do no harm'. All respondents were informed about the objective of the study and asked for their voluntary participation. Identity of the respondents was not disclosed in the report keeping the name and specific address confidential. Similarly, all data and information pertinent to the study will not be used and shared outside without the permission of the GIZ.

2.5 Data Analysis

Data analysis was carried out using the thematic method drawing from the notes from document reviews, interviews' notes, and audio recordings. The themes were based on the objectives of this study. Data analysis was carried out regularly from the beginning of the

data collection process. Validity and reliability of the data were ensured through triangulation of the data collected from multiple sources and diverse respondents.

Both, the positive and critical perceptions of the respondents were considered to explain the findings of the study. This study was carried out following the qualitative and quantitative research process in a transparent manner as presented above. Findings are presented based on the evidence derived from the data collected through surveys, interviews, and documents review.

3. LEGAL AND INSTITUTIONAL PLURALISM AND LSAI

3.1 LSAI governance and policy at global, national, and local levels

Overview

Land is a key resource that configures human property relations. It is a valuable object of property and a base for livelihood strategies - pastoralism, agro-pastoralism, and farming. The way land is conceived as property could vary depending on these livelihoods and the social organization of society as a whole. In Gambella and Benishangul Gumuz regional states, the land is generally embedded in the social structures. In addition to this, land rights are largely communal in which individual use rights also prevail. Clan land is perceived as a determinant factor for the existence of a clan itself - thus it is associated with clan identity. In the Amhara region, where farming livelihood is practiced, the land is widely held at the individual or family level. Land transfer is based on various means of land acquisition such as inheritance, redistribution, land lease and sharecropping. In principle, a body of laws (including the international law, the constitution, federal land policy of Ethiopia and regional states land proclamations) have given recognition for the respect of local people's land rights and their FPIC in case of dispossession. Practically, however, violations of such rights are observed in regional states such as Gambella, Benishangul Gumuz and Amhara in Ethiopia.

Indigenous people's rights to land: a global overview

International law has specific provisions for the protection of the land rights of the indigenous communities across the globe. Article 8 of the United Nations Declaration on the Rights of Indigenous Peoples indicates that States are required to provide effective mechanisms for prevention of [...] "[a]ny action which has the aim or effect of dispossessing indigenous peoples of their lands, territories or resources." Also, Article 10 of the Declaration shows that indigenous groups of people are guaranteed the right "not to be forcibly removed from their lands or territories [...] [,] [n]o relocation shall take place without the free, prior and informed consent" and any relocation could only be effected after agreement on just and fair compensation.[2] Accordingly, States are required to give legal recognition and protection to the people's rights to lands, territories, and resources. This means that due respect is needed to the customs, traditions, and land tenure systems of the indigenous peoples under consideration. Moreover, Article 32 of the Declaration embodies the principle of free, prior, and informed consent before any action is taken that affects the interests of indigenous communities. Article 32 further reiterates that "States shall consult and cooperate in good faith with the indigenous peoples concerned through their representative institutions to obtain their free and informed consent before the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources."[3] Despite the availability of such diverse international human rights instruments, agricultural investment ventures of multinational companies continue to undermine the livelihood of indigenous communities.[4]

[2] United Nations Declaration on the Rights of Indigenous Peoples, Art. 8 (2) (b), GA Res. 61/295 annex, UN Doc A/RES/61/295, 13 September 2007, 5.

[3] Ibid., 7-8.

[4] Semahagn Gashu Abebe. 2012. The Need to Alleviate the Human Rights Implications of Large-scale Land Acquisitions in Sub-Saharan Africa. *Goettingen Journal of International Law* 4 (3).

Federal land laws, policy, and governance

Land law and policy

Ethiopia's land tenure system presents many features; any proper understanding of the tenure system could be approached from three angles:

- *The regulatory regime*: tenure is constitutionally/legally governed - while the workings of informal and customary systems also influence access to land;
- *The category of owners/users*: which features private holding, communal holding, and state holding;
- Tenure duration: the period of holding rights is defined differently concerning various classes of persons having landholding or lease holding.

Article 40 of the constitution on the 'right to property' establishes the legal foundation of rural and urban land right/tenure, the ownership and use of other properties by four specifically designated classes of persons: 'Ethiopian citizens', 'Ethiopian peasants', 'Ethiopian pastoralists', and 'private investors'. The constitution starts on a conceptual level, guaranteeing that 'every Ethiopian citizen has the right to the ownership of private property - which includes 'the right to acquire, to use and, in a manner compatible with the rights of other citizens, to dispose of such property by sale or bequest or to transfer it otherwise'.[5] On the other hand, Article 40 (3) establishes a cardinal principle pronouncing that: the right to ownership of rural and urban land is exclusively vested in the State and the peoples of Ethiopia (as a common property of Nations, Nationalities, and Peoples of Ethiopia), and that land shall not be subject to sale or to other means of exchange. As per Article 40(4)-(5), 'Ethiopian peasants' and 'Ethiopian pastoralists' are guaranteed, respectively: 1) the right to obtain land without payment and protection against eviction from their possession, and 2) the right to free land for grazing and cultivation as well as the right not to be displaced from their own lands. As pertains to *investments*, Article 40 (6) of the constitution laid that the government shall 'ensure the right of private investors' without prejudice to the right of the state to ownership of land.

[5] Constitution of Federal Democratic Republic of Ethiopia (hereinafter FDRE Constitution). 1995: 40(1)

Another federal law of interest to the understanding of land rights is the federal rural land administration and land use proclamation.[6] Article 5 established the cardinal principles in relation to the entitlement (acquisition and use) of rural land by different sections of the society. It reads:

- Any citizen of the country who is 18 years of age or above and wants to engage in agriculture for a living shall have the right to use rural land;
- Government being the owner of rural land, communal rural landholdings can be changed to private holdings as may be necessary;
- Private investors that engage in agricultural activities shall have the right to use rural land in accordance with the *investment policies and laws* at federal and regional levels, and any holder of rural land shall be given a *holding certificate* prepared by the competent authority which indicates the size of land, land use type and cover, level of fertility and borders, as well as the rights and obligations of the holder.[7]

LSAI related land governance and practice

At the federal level, institutions that oversee the LSAI were established by the government at different times. In 2009, the directorate called "Agricultural Investment Support Directorate (AISD)" was established by Proclamation 29/2001 and it worked under the Ministry of Agriculture and Rural Development (MoARD). This directorate was given the authority to manage all investment land (at least 5,000 hectares) in all regions of the country (Proclamation 29/2001). Before its establishment, these responsibilities were carried out by the local government structures (including regional, zonal, and *woreda* governments), the Ethiopian Investment Agency; and the Environmental Protection Agency (EPA).[8] In this respect, in previous years, to make rural public land available/accessible for land lease and centralize land administration, the Council of Ministers had issued a law authorizing that plots of land over 5,000 ha should be administered by federal authorities. This change in approach which ended up including lands in the federal land bank was meant to facilitate

[6] Rural Land Administration and Land Use Proclamation No.456/2005. 11th Year, No.44. July 15, 2005.
[7] Ibid. Article 6(3).
[8] Amanuel Kussia et al. 2020. A Crisis of the Green Gold: A Case Study of Large Scale Agricultural Investment in Gambella Region, Ethiopia. Eastern Africa Social Science Research Review 36 (2): 53-94.

effective land provision for investments; the inefficiency and incompetence of regional states is believed to have led to such development. In 2013, the Agricultural Investment Land Administration Agency (AILAA) was established by the Council of Ministers replacing the previous directorate to administer public and large-scale agricultural investment-related lands.[9] AILAA is authorized to administer all large-scale land deals above 5,000 ha in the country, while regional states manage agricultural investment lands provisions below such limit. This means AILAA is responsible for federal-level land management and lease of state holdings from the federal land bank.[10] In 2017/18, the agency was promoted to authority level and renamed the Ethiopian Horticulture and Agricultural Investment Authority (EHAIA).

In just five years, AILAA had transferred 2.4 million ha of land for investments pursued by nationals and foreigners.[11] The government claimed to have put over 3.3 million ha of land in the land bank for public land lease, especially foreign direct investment. Out of this figure, 2.3 million ha of land was leased to over 86 national and foreign companies.[12] AILAA plays a key role in making rural land available/accessible for lease from a land bank. The responsibility of AILAA is fixing land deals with investors who received business licenses from the federal investment agency. AILAA's major roles include:

- identifying potential land for agriculture, receiving land from regional states, putting same in the federal land bank, and transferring land to investors;
- monitoring activities of investors, providing them with technical/administrative support;
- creating a conducive environment for investors to invest in the agricultural sector.[13]

Regional land governance and land lease process

The governance structures working on public land leases at regional states levels are plural. Each regional state has a land governance structure from the regional bureau level to the

[9] Zerfu. 2016. *Land Governance Assessment Framework*…(n 81).
[10] Ibid. p. 8
[11] Ibid.
[12] Daniel. 2015. ´Large-Scale Land Acquisition in Ethiopia´. pp. 279-295
[13] Ibid. p.287

local *kebele*, to deal with public land leases. In some regional states, investors identify the land and inform the regional investment commission to begin the process of availing land lease. In the Benishangul-Gumuz region, for instance, the Investment Bureau used to lease out land directly to investors. Now, the role of the bureau is limited to granting licenses to investors who would then apply to the regional Bureau for Environmental Protection, Land Use, and Administration. Yet, a final decision of the deal is taken by the regional investment board chaired by the president of the region.[14]

Gambella regional state government approved some general proclamations and regulations which are linked to the investment land administration. These include Gambella People's National Regional State Investment Administration Establishment Proclamation No. 12/1998, Gambella People's National Regional State Investment Activities and Rural Land Fee Regulation No. 1998, Gambella People's National Regional State Rural Land Administration and Use Proclamation No. 52/2006, Gambella People's National Regional State Revenue Tax Proclamation No. 53/2006. Even though the region has approved such broad proclamations and regulations, it does not have regulations and decrees that show detailed procedures and requirements of land transfer and investment project administration.[15] The level of stakeholders' awareness (mainly at the district and community levels) about these laws and their enforcement is very low.[16]

In the Gambella region, plural institutions regulate LSAI land deals. The regional investment agency has been given the mandate to administer LSAI in the region, while the Regional Agricultural Bureau, Regional Natural Resource and Climate Change Bureau, Regional Revenue Bureau, and the Regional Administration Council are also among the key public organizations meant to promote and facilitate the proper functioning of LSAI and ensure the realization of the benefits expected from the investment projects. Yet, an overlap of role and responsibilities between these organizations, mainly the regional investment agency and regional agricultural bureau, and lack of coordination among them result in weakness and ineffectiveness at governing LSAI land.[17] Similarly, the relations,

[14] Keeley *et al*. 2014. *Large-scale land deals in Ethiopia…* (159): 19.

[15] OPM. 2017. Report on the Assessment of Large-scale Agricultural Investment Achievements and Challenges in Gambella Regional State. Addis Ababa, Ethiopia.

[16] Amanuel Kussia et al. 2020. A Crisis of the Green Gold…36 (2): 53-94.

[17] Ibid.

coordination, and information sharing practices between the regional investment agency and the federal investment commission are found to be very fragile. This is clear evidence for poor data recording and management, regrettable weak coordination and integration, poor monitoring and evaluation system, and so pervasiveness of the guesswork.[18]

3.2 Context: LSAI land transfer - processes involved, consultation and FPIC

In many cases, neither the local government structures (e.g., district and *kebele*) nor the landholding communities were consulted and participated in the decision-making of land transfer to investors. The decision makings for the LSAI land deals are made at the federal and/or regional states levels with little or no knowledge and participation of the local government and the community. Indeed, the land governance system was also designed in such a way that excludes the local government (mainly *woreda* and *kebele*) and community participation from the decision-making process regarding land lease issues. Evidence from the Gambella region shows that the district level officials know 'the arrival of the investors to their areas after everything had been completed at federal and/or regional levels and when they are urged by higher-level officials to show land to be transferred to the investors.'

Similarly, the *kebele* administrators and local people become aware of the arrival of the investors after the actual land and forest clearance had commenced by the investors.[19] This is a clear indication of the violation of the FPIC of the local people concerning their land rights and the top-down approach employed that leaves the local government with no say on the land deal of the LSAI.

The violation of people's right to land and the local government's inability to protect people's rights continued even after the investment had started on the land. Exploiting the weak structure of the local government, some investors moved beyond their original landholding borderline and illegally cleared forest. On the one hand, in about five districts in Gambella, about 152 investors went outside their farmlands and plowed about 4844.76 ha of land. This

[18]OPM. 2017. Report on the Assessment of Large-scale Agricultural Investment Achievements and Challenges in Gambella Regional State. Addis Ababa, Ethiopia.

[19] Amanuel Kussia et al. 2020. A Crisis of the Green Gold…36 (2): 53-94. P.70

shows the existing power imbalance between investors, local government, and the community.[20] The case also demonstrates the illegal intrusion of investors into the communities' land and their interest to control the local government and the community. On the other hand, some investors went to the extent of insulting and dishonoring the local people whose land was expropriated and taken away. A study found out that in Gambella "some investors insult the local people who are already angry about the resources that are taken from them without their knowledge and consent. The issue became serious and even reached the Prime Minister's Office; because the woreda and region could not manage to settle the case".[21] These practices sharply contradict with the UN provision of local peoples' protected rights to their land (including free, prior, and informed consent) and the respect they deserve concerning their land as well as the federal constitution and land policy of Ethiopia.

In wrap up, the LSAI is governed at the federal and regional levels. The federal government authorities are given the mandate to administer investment projects being undertaken on land exceeding 5,000 ha while the region is mandated to govern the plot of land below 5,000 ha. The focus of the federal agencies is on foreign investment and that of the region is on the domestic ones. However, a clear, transparent, and accessible land governance system and transfer legal framework that would ensure accountability is absent at both federal and regional levels. As a result, the land is allocated to investors hastily without enough preparation and consultation with concerned stakeholders, mainly the local government and the local people.[22] Land governance system is characterized by unresponsiveness to the voices, concerns, and benefits of the local people; non-transparent and unaccountable structures; rent-seeking and corruption; rule of man; and absence of supervision and evaluation mechanisms. Consequently, the majority of the investors are found as speculators, ghosts, or pseudo ones given that they focused on their short-term interest at the expense of the natural resources and livelihoods of the local people.[23]

[20] Ibid.

[21] Ibid.

[22] OPM 2017.

[23] Amanuel Kussia et al. 2020. A Crisis of the Green Gold: A Case Study of Large Scale Agricultural Investment in Gambella Region, Ethiopia. Eastern Africa Social Science Research Review. 36 (2): 53-94.

4. MAIN FINDINGS FROM PRIMARY DATA

The main findings are presented in conformity with the study's objectives, based on which the thematic areas of the qualitative and quantitative data are set.

4.1 Awareness level on FPIC

This section presents stakeholders' awareness about the rights of community members to FPIC. Accordingly, the vast majority of the responses from the KIIs and FGDs show that community members have not been made aware of FPIC. A participant in an FGD with farmers that are directly affected by LSAIs state that:

> *There were no efforts to create awareness about the right of community members to be informed whether to approve or decline LSAI projects on time.*

Respondents from various government entities, such as woreda and regional agricultural offices, land administration offices, and investment bureau ascertain the low levels of community members', government officers', and investors' awareness about FPIC. Some of the quotes respondents from government entities include;

> *To tell the truth, the community participation was very low because society awareness is very low about the implementation of FPIC and currently we are starting to support the investor and aware communities about large-scale agricultural investment.*

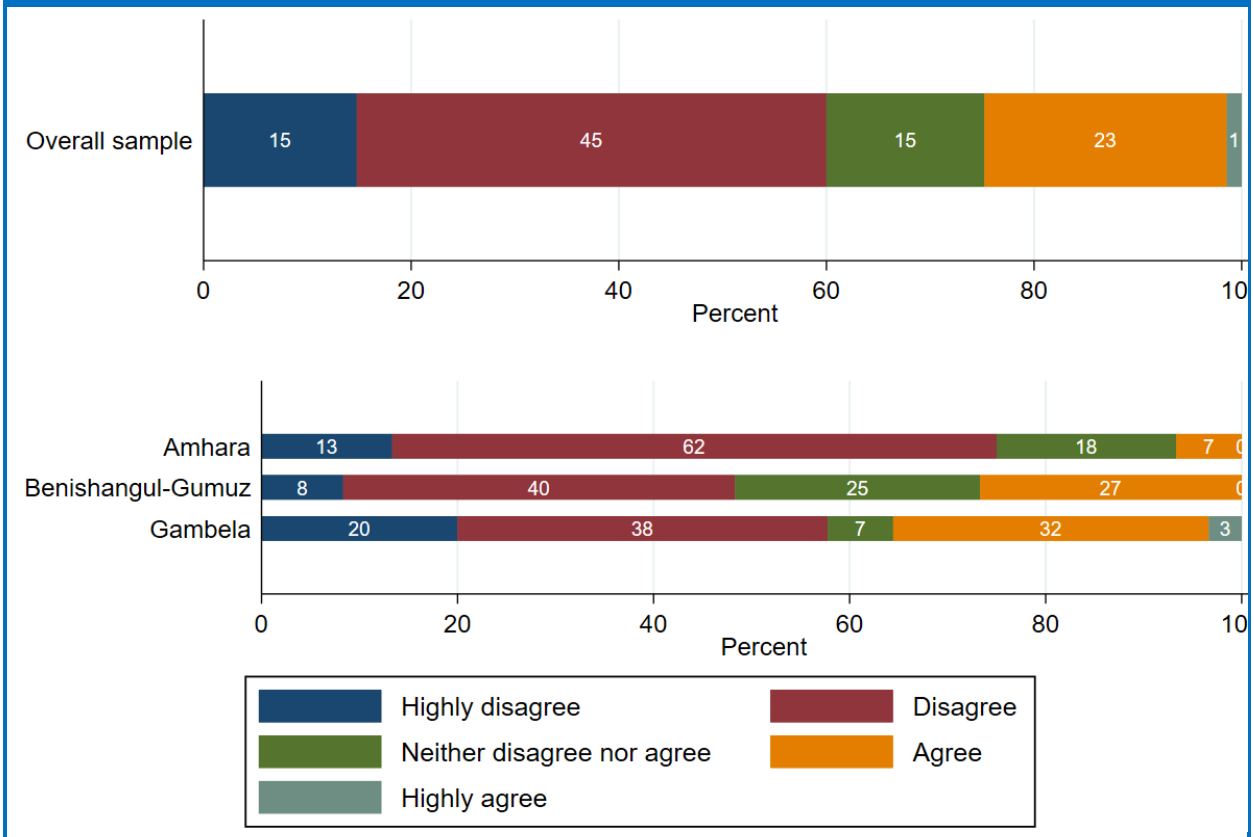
> *In the sector of large-scale investment, efforts have been undertaken to implement FPIC principles. When land is transferred to an investor and the transfer is used for the intended purpose, awareness is created.*

> *Most investors focus on [economic] development, not on the environment and the community.*

There are few respondents for government entities who claimed awareness creation activities have been done by their offices. A KII from the regional land administration office stated that awareness creation is among the activities that have been done by their office to implement the FPIC principles. A KII from the regional investment bureau noted that a lot of work has been done to create awareness on FPIC, such as providing detailed information and training

to the community. However, results from the perception survey show that three-quarters of the respondents are either against or do not have an opinion about the idea of participating community members in the LSAI approval process. This is the case regardless of gender of survey respondents (Appendix Figure 1).

Figure 1: Local/regional government entities participate community members in the LSAI approval process



Note: Perception survey respondents are farmers directly affected by LSAIs and members of youth & women associations.

4.2 Approaches to Identify and License LSAIs

The most common responses from affected farmers, members of women and youth associations, community leaders, and government officials at woreda and region levels lead to the conclusion that the underlying processes in approving LSAIs do not take into account the principles of FPIC.

The FGDs with the affected farmers and members of women and youth associations reveal that the concerns and questions of community members are disregarded, as participants in the FGDs state:

> *The community is asking why the land is being taken away at various meetings due to the confiscation of our land. The government marks down our questions but will not respond.*
>
> *When we went to the government office after the land was measured, they rejected our claim [stating] that the land belonged to the government.*
>
> *The community members did not participate in the process of approving and deciding on LSAI projects at the time prior to the commencement of the project. We didn't participate in the process of approving or declining LSAI projects before they were implemented.*
>
> *We did not have the opportunity to decide because we only hear rumors about LSAIs, but are not invited to make comments, criticize or share their opinions on the LSAI projects.*
>
> *The government has not been discussing with the community members about their priorities and opinions prior to the implementation of LSAI projects.*
>
> *The information flow was directly forwarded from the woreda government office to community leaders and the community leaders discussed with the other concerned community members about LSAI projects.*
>
> *[We] did not know the existence of a feedback mechanism to obtain [our] opinion on LSAIs.*

Similarly, community leaders also state that.

> *No, the government departments do not identify our priorities and opinions. This procedure has not been implemented.*
>
> *The LSAI (projects) start work after the acceptance of information by community members comes from government offices concerning the benefits and externalities. There was full information flow between government departments and community members.*

We regularly make comments and ask questions regarding the investment process to the government, yet we receive no response.

While private investors come to the kebele, it has its advantages and disadvantages. The benefits of the investment will create jobs for unemployed youth. The disadvantages are, forest fires, they carry out deforestation and expansion beyond the allotted land.

We received the information from the woreda government office and we, the community leaders, shared the information with the community but still, there is a gap between the government office and the community about information flow.

No, attempts to include community leaders, directly affected farmers, women and members in the process of approving LSAI have not yet been attempted in our kebele.

Personally, my involvement in approving LSAI is to ensure that there is no overlapping of maps for investors who come with a letter of support from Our woreda, and we will notify the investor when there is enough land in our kebele but there is no way of getting feedback from community members.

The responses from government officials affirm that FPIC has not been considered during LSAI approval processes. With regard to licensing of/issuing permits to LSAIs, regional and local governmental entities do not set FPIC as an integral part of land (including forest resource) governance and managing the agricultural investment.

We are discussing with community members but still, we are not discussing in great detail.

As an organization, if the investor has completed the required documents, our job is to issue a license. We did not discuss it with the community.

There was no discussion with the community before or after the investor took the land. When investors were given land, it was a forest, free land that the community did not use.

though woreda investment board members have discussed with investors about FPIC principles, we are not discussed with community members in detail.

However, responses from farm investors are mixed and in sharp contrast to the responses presented above, which reflect that FPIC is neither considered nor required in the strategies and underlying processes in approving LSAIs. Farm investors stated that the process of their land acquisition conformed with FPIC principles. In their words,

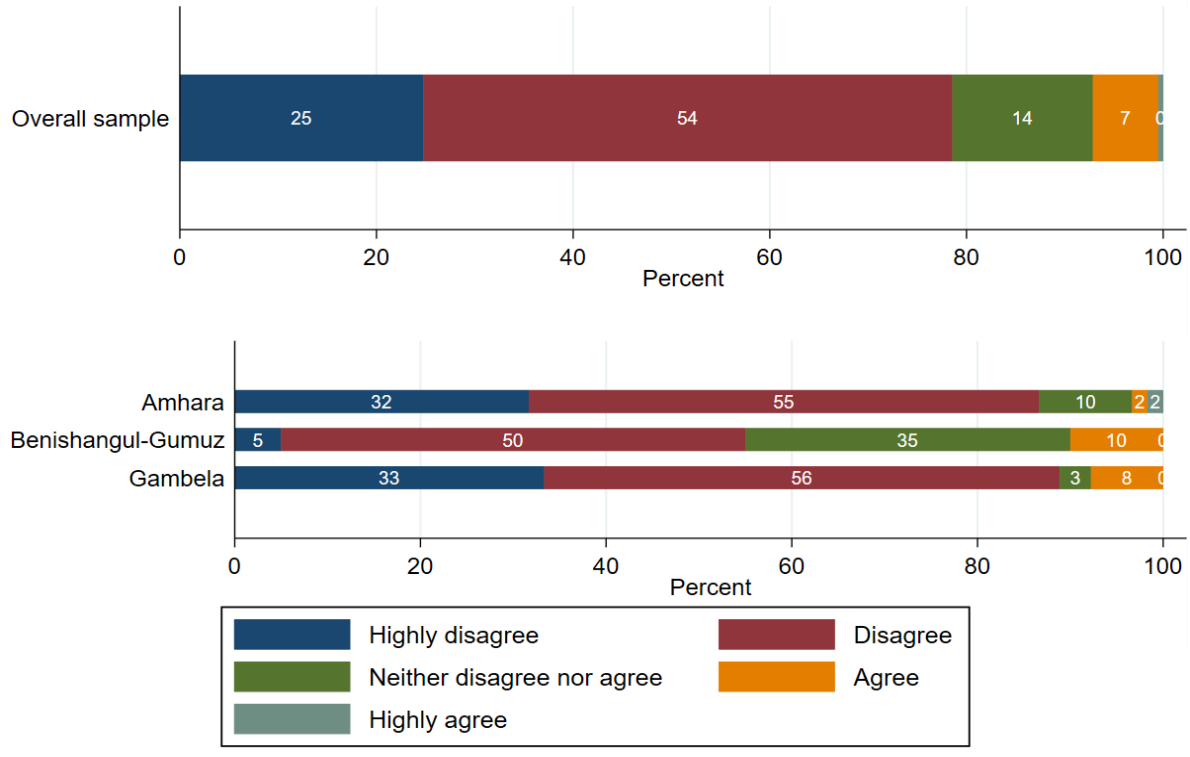
Yes, we discussed with community members and woreda investment board members about LSAI and FPIC principles.

Yes, we were discussing with the government department the implementation of LSAI projects.

To ensure the implementation of FPIC, there was good and smooth involvement between community members, governments, investors, and other stakeholders.

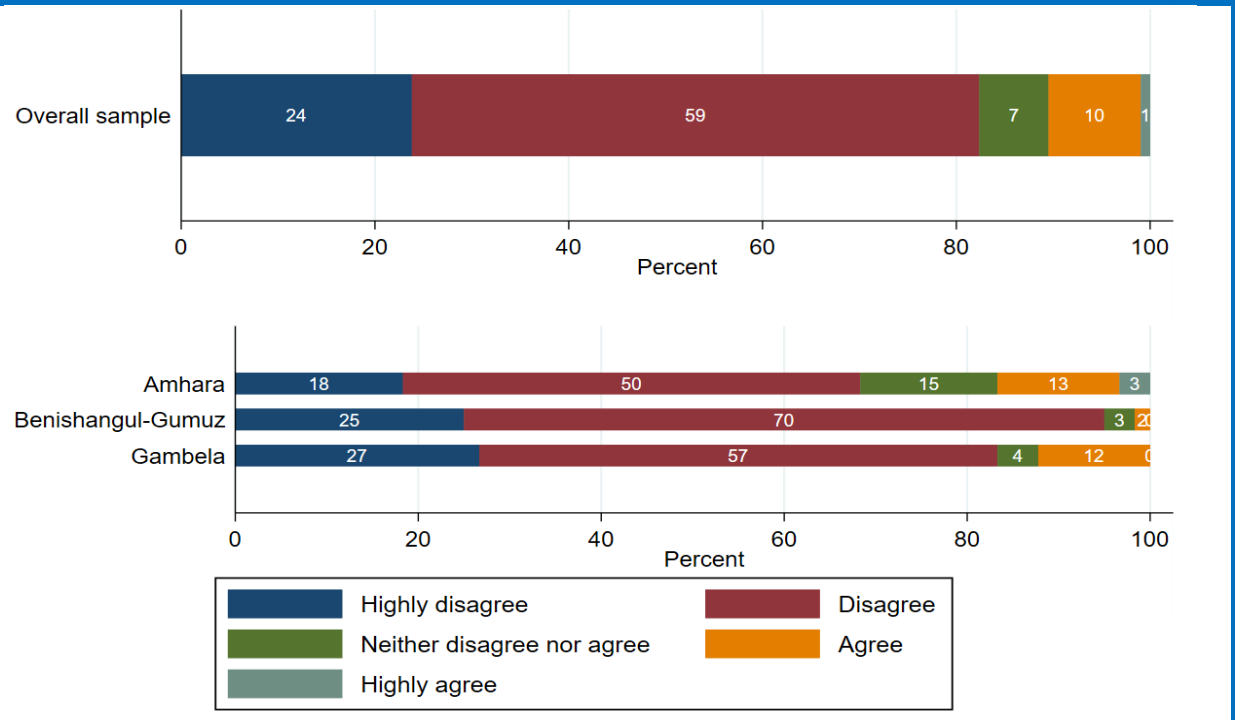
However, the perception survey shows that FPIC is not considered during LSAI approval. In this respect, more than 80% of our sample respondents perceive that a community feedback mechanism is not in place, the process of approving or declining LSAIs is not based on community feedback and needs, and there is no monitoring and accountability in LSAI approval status. We do not find clear gender and age related differences in perceptions about whether or not FPIC is considered during LSAI approval (Appendix Figures 2-5).

Figure 2: Licenses are provided only to those LSAIs that appropriately identify community needs



Note: Perception survey respondents are farmers directly affected by LSAIs and members of youth & women associations.

Figure 3: A community feedback mechanism was put in place by government entities



Note: Perception survey respondents are farmers directly affected by LSAIs and members of youth & women associations.

Figure 4: Government entities approve/decline LSAIs based on community feedback

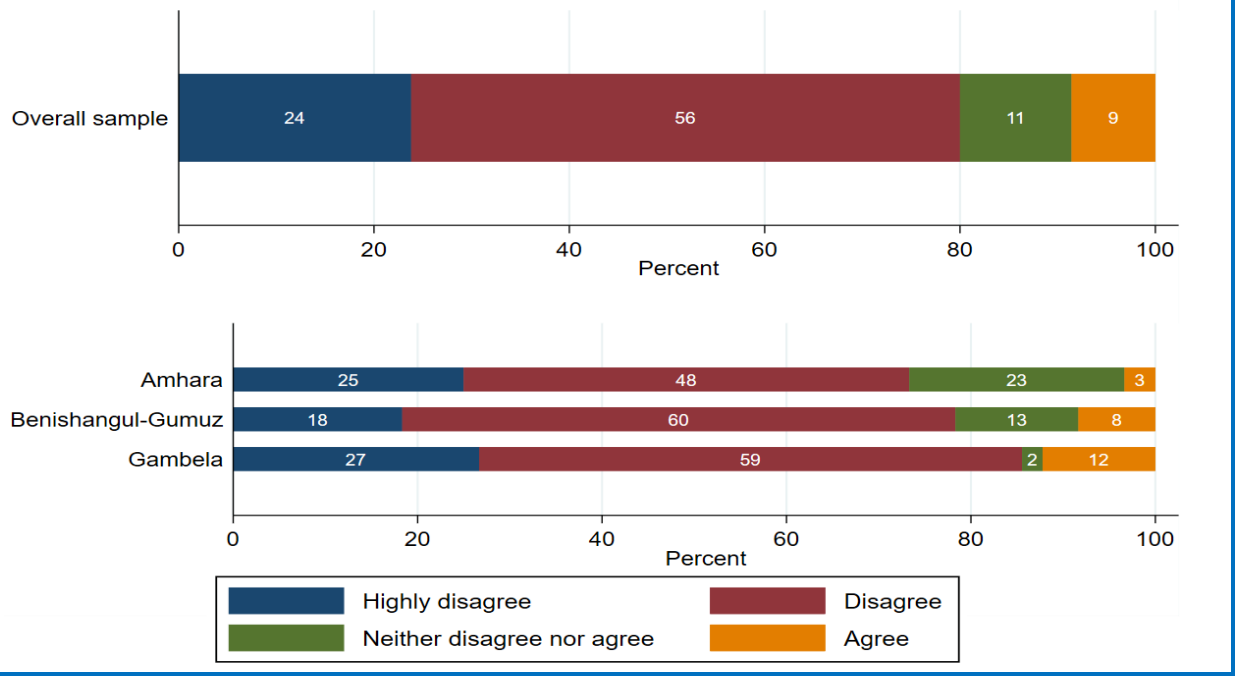
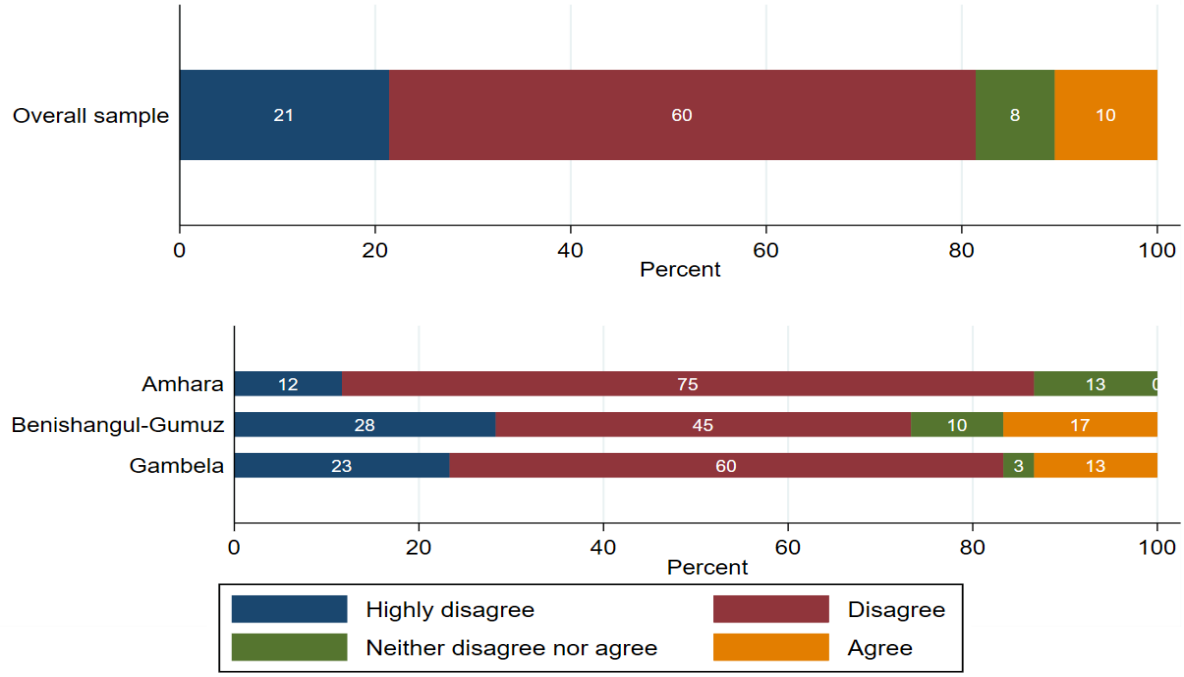


Figure 5: Monitoring and accountability to inform community members about LSAIs



Note: Perception survey respondents are farmers directly affected by LSAIs and members of youth & women associations.

4.3 Organizational-Level Implementation of FPIC

4.3.1 Strategies of government organizations that facilitate/hinder the implementation of FPIC

There is a glimpse of information that the *woreda* level investment office managed to discuss on the implementation of the process of FPIC. KI from the woreda agriculture office said,

> *There were strategies adopted in the department to implement FPIC, which include creation of awareness to community members, discussing with investors and avoiding the gap, and advancing their relationship of community members and investors.*

In this respect, some evidence mined from the investors shows that investors had a good relationship with the community members. The key informant also said,

> *We had no problems with the community. Everyone was happy. Because the organization benefits them in education and various ways.*

However, most investors interviewed mention that they communicated with the government agents at different levels instead of direct consultation with the farmers in the process of FPIC. One of the informants said,

> *There is no strategy implemented in my organization […] we didn't have communication with the community members.*

The lack of policies that facilitate the implementation of the FPIC can be seen from the evidence obtained from the regional bureau level. KI from the regional land administration mentioned one of the key requirements for land acquisition is to provide an environmental impact assessment and community impact assessment study before an investment is implemented. After the study is presented, the land will be handed over to the investor if it has a positive impact on the environment and the community. This shows that decision is made at the regional level with respect to land transfer, which in turn interrogates the FPIC of the local landholding community.

A number of issues can downplay the process of FPIC. Key informants from the government office said that lack of policies or strategy documents hinders the process of FPIC. Also, after the investors took over the land, there would be problems with the land being used for its intended purpose. Moreover, the local government doesn't have information about the incoming investment but is expected to cooperate in the implementation of the investment activities. KI from *the Woreda* agriculture office said,

> *We are not discussing with investors, community members or other key stakeholders before implementations of LSAI projects.*

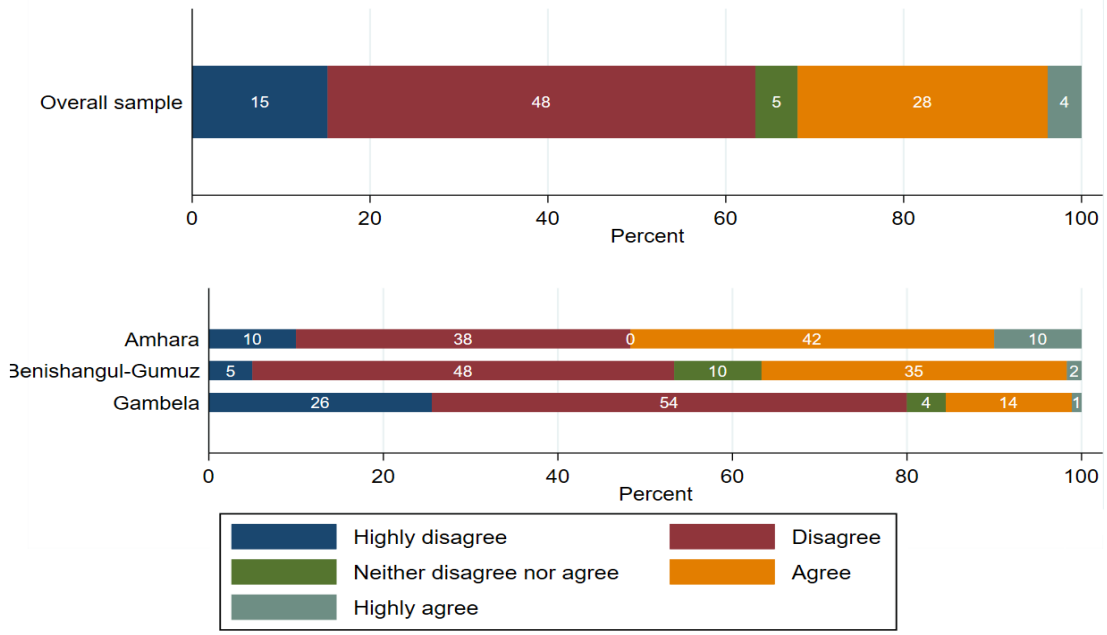
Therefore, the major hindering factor for the implementation of FPIC is that community members were denied FPIC due to the presumption that the government is the sole owner of the land in the country, which undermines the need for close consultation with community members during allocating land for LSAIs. As most KIIs with directly affected farmers show

the government does not involve them to participate in the project approval or rejection process. Government entities decided on their own and gave the land to the investors without the consent of community members. After land transfer happens, dispute usually erupts between the community members and investors which further hinders the success of LSAIs and the persistent implementation of the FPIC. As shown in Figures 6 and 7, the majority of the perception survey respondents feel that government entities are not coordinating the participation of community members in the process of approving LSAIs. This remains true regardless of gender and age of respondents (Appendix Figures 6 and 7). Thus, community members do not have influence over the decision-making and practice of government entities related to the approval of LSAIs.

The relations between investors and farmers continue to deteriorate after land transfer. KI from the regional bureau level said the following with regard to lack of strategy to govern the relations between different stakeholders with respect to a particular investment land,

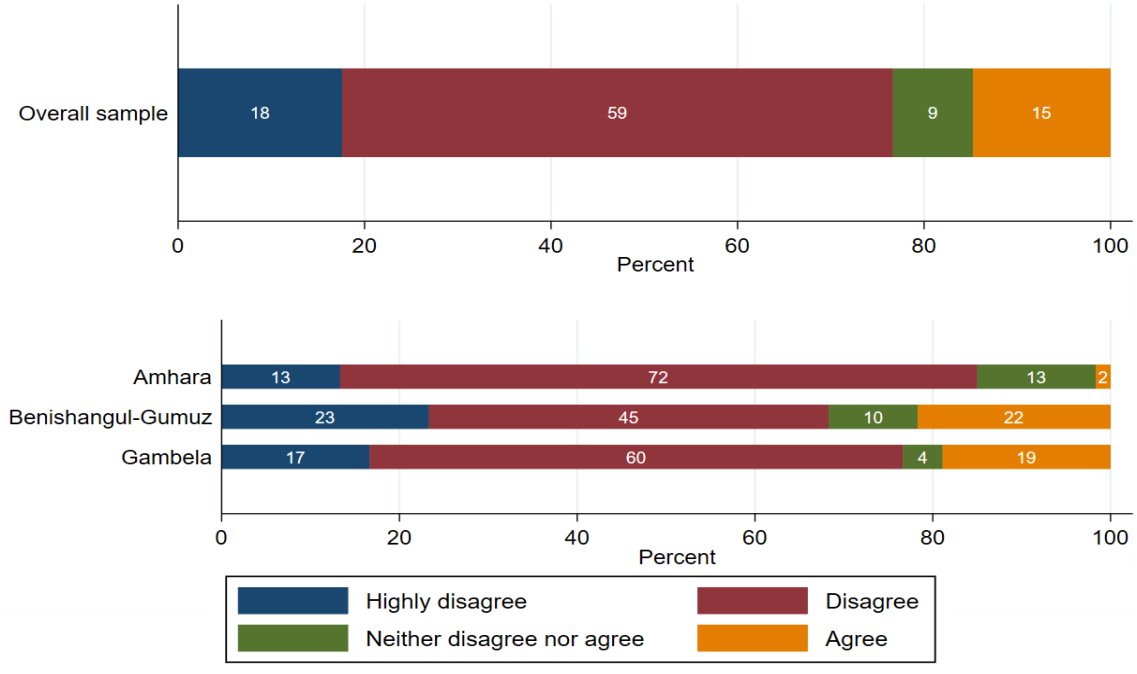
> *The community and the investor have no agreement. The community steals, plunders the investor. For example, during our visit, I saw that the land of the investor was taken over by individuals. But investors say we have built a bridge, a church […] Due to the gap in the policy, only technical support is provided by the land administration.*

Figure 6: Government entities coordinate participation of community members to approve/decline LSAIs



In summary, the KIIs and FGDs illustrated that once the investor got investment permission from the regional investment bureau, they were sent to the *woreda* to sign a lease contractual agreement and receive the land. This shows that the process of land transfer follows a top-down approach. The actual land transfer requires interaction between the *woreda* and *kebele* or community leaders. Data obtained from the community leaders show that the *woreda* and *kebele* administrations work in a coordinated fashion to make land transfer to investors. The chairperson of the *kebele* will inform the *woreda* if there is not enough land. Community engagement for the land deal was less visible. The relations that the state structure builds with the community members are not good across all the areas studied. KI said, "The government had taken our land and given land to investors without (our) consent." Another informant from a woman and youth group mentioned the relations between government structures and farmers on a particular land appear only after the government leased or appropriated farmers' land to investors without their knowledge or consent. From the investors' adequate information, documents and strategies were not organized, monitored, and shared to improve the implementation of FPIC.

Figure 7: Participation of community members influence decision-making and practice among gov't entities



Note: Perception survey respondents are farmers directly affected by LSAIs and members of youth & women associations.

4.3.2 Responsibilities and opportunities of government organizations in implementing FPIC

Learning and experience sharing opportunities are found to be a critical concern in the area studied. The evidence from the woreda shows that some trainings were organized at their respective regions but there was no opportunity for the woreda officials/experts to go beyond their region to acquire investment-related experience and issues related to FPIC from other regions. The learning and experience sharing opportunities among stakeholders' have recently increased since the advent of the GIZ project. Some investors gained experience in Addis Ababa and Bako in Oromia via the invitation made by GIZ. Moreover, stakeholders at the regional bureau level also gained experience from the Oromia region through the facilitation made by the federal government. Moreover, GIZ also facilitated a forum for the exchange of experiences for the regional level stakeholders, mainly the investment bureau, at different regional capitals such as Bahir Dar, Gambella and Assosa.

Evidence from the regional investment bureau shows that ministries at the federal government level play an important role in the implementation of FPIC through making regulations and guides, identifying the needs of investors and community as well as the relationship between community, investors, and government structures. The ministries at the federal government level, mainly the Ministry of Agriculture, Investment and Land Administration, also work at building the capacity of the regional stakeholders through providing them with necessary training. However, evidence from the woreda shows the role of the ministries in the implementation of FPIC at the *woreda* levels is low as their direct line of contact is the regional bureau. Similarly, farm investors have not experienced supervision from any of the federal state bodies. Some farm investors said they don't know the role of different ministries at federal level in the implementation of FPIC, while others responded that there is no relations and communications between the investors and ministries of the federal government level in the implementation of FPIC.

4.4 Inclusiveness

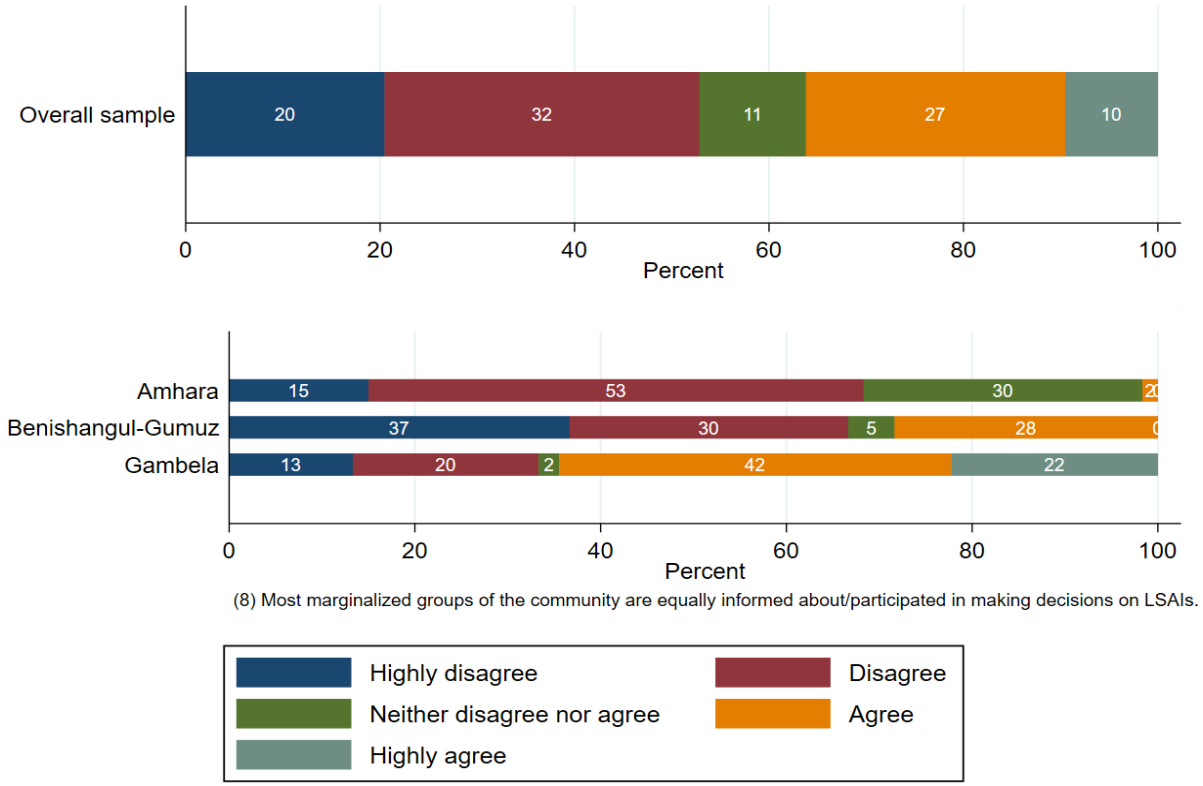
This subsection explores the extent to which the most vulnerable groups of the community are treated equally in terms of being able to participate in the process of approving or

declining LSAIs in the community. In this regard, the results from our qualitative data sources are mixed; some respondents say, women, the elderly and persons with disabilities equally participate in decision-making during LSAIs approval process, others say they are not given equal opportunity in the decision-making process. Some of the mixed responses concerning inclusiveness are:

> *Women are not included in the process of approving LSAI.*
>
> *During decision making to LSAI, community leaders and directly affected community members and women were participating.*
>
> *In the process of approving LSAI, there was no equal engagement for community leaders, directly affected farmers and women, and their family members. Government departments made the decisions and implemented the projects in the community without asking the consent of the community members.*
>
> *The entire population of the kebele is directly involved in the process of approving LSAIs; But investors do not keep their promises.*
>
> *After receiving the LSAI project letter of permission, the kebele administration convenes a discussion with community members, youth, women, elders, and disabled people to discuss the approval process. The discussion is inclusive.*
>
> *Even local people with disabilities are not allowed to work with them. They only hire someone from another area.*

Similarly, around 50% of the perception survey respondents stated that most marginalized groups of the community (such as women, the elderly, and persons with disabilities) are not equally participating in making decisions on LSAIs (Figure 8). Particularly, all respondents over the age of 65 perceive that they are not equally participating in making decisions on LSAIs (Appendix Figure 8).

Figure 8: Most marginalized groups of the community equally participated in making-decisions on LSAIs



Note: Perception survey respondents are farmers directly affected by LSAIs and members of youth & women associations.

4.5 Implications of FPIC for sustainable land governance and agricultural investment system

Farm investors recognized that FPIC has a role to play in bringing positive attitudes of community members towards LSAIs. As such, FPIC ensures that community members would feel a sense of ownership of the LSAIs and strive towards their success. However, the existing process of granting licenses and permits to LSAIs are not in accordance with the principles of FPIC, and thus farm investors perceived that their relationship with community members is not strong, as one investor put it:

> *The relationship between the community and us is weak. Government institutions have not brought us and the community closer together.*

Another farm investor highlighted that there are no mechanisms to assess how the implementation of FPIC (or lack thereof) affects the sustainability of LSAIs, saying:

> *There was no systematic follow-up with the consequences of FPIC on the success or failure of LSAI projects.*

As shown in Figure 9, results from the perception survey also show that 44% of sample community members highly disagree or disagree with the statement that states current FPIC efforts created improvements in land governance and responsible agricultural investment system, while 7% do not have an opinion about it. Therefore, more than half of the community members in our sample perceive that the FPIC has not been adequately implemented, and thus poses a challenge on realizing desirable and sustainable change in land governance and agricultural investment system. However, as shown in Figure 10, more than 60% of the respondents are optimistic about the role of the present FPIC efforts to build the resilience of communities for sustainable FPIC implementation, and this optimistic perception of respondents is observed among both gender and across various age groups (Appendix Figure 10). A plausible explanation for this result is that community members already acknowledge that though present FPIC efforts are nonexistent or incomplete, these efforts provide the basis for future comprehensively adequate implementation of FPIC.

Figure 9: FPIC created improvements in land governance and responsible agri. Investment system

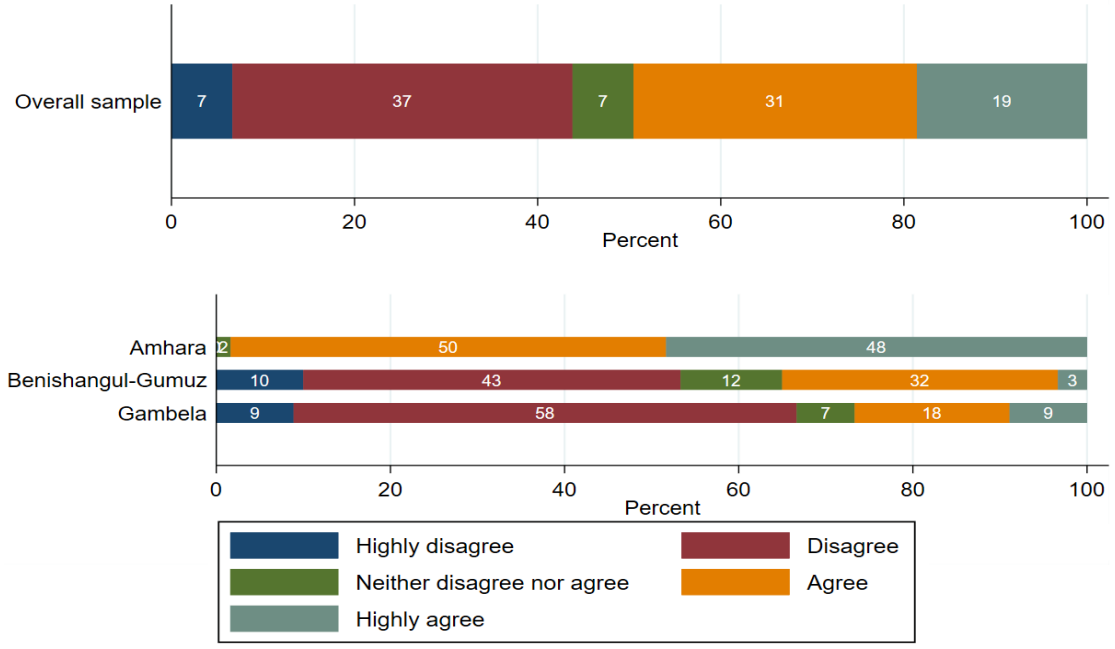
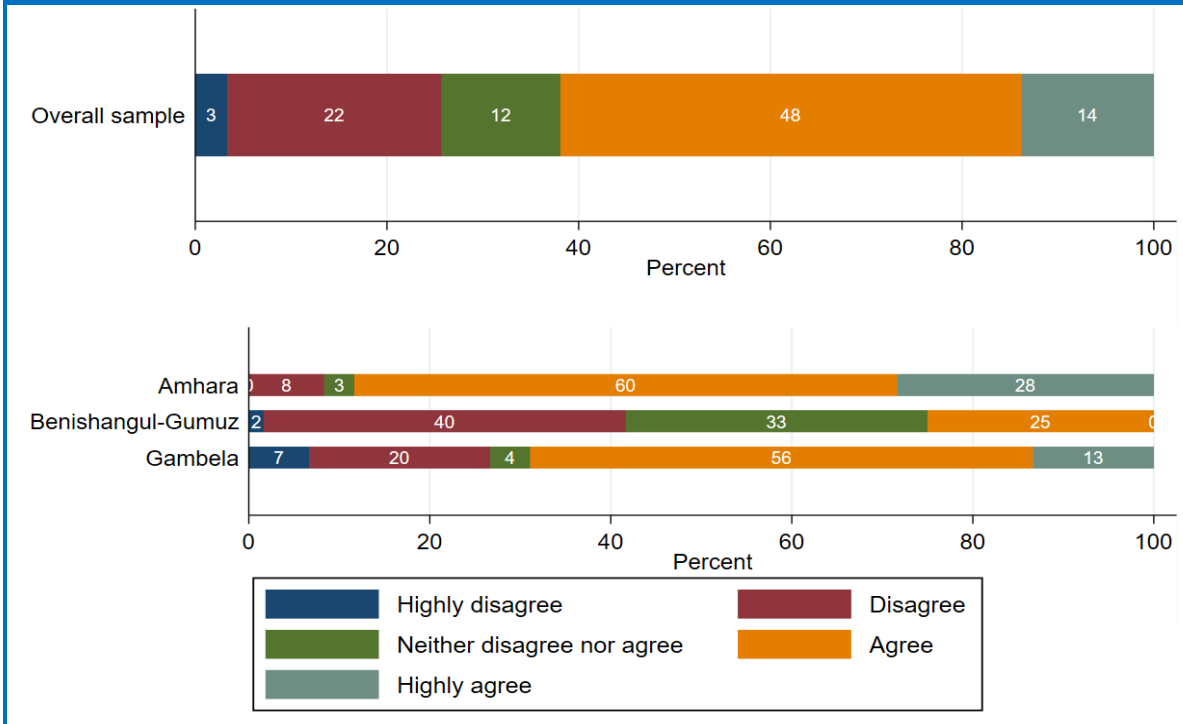


Figure 10: Present FPIC efforts to build the resilience of communities for sustainable FPIC implementation



Note: Perception survey respondents are farmers directly affected by LSAIs and members of youth & women associations.

5 SUMMARY AND CONCLUSION

The principles of FPIC are in line with fostering community participation for designing and implementing LSAIs. This study examines the awareness level of government officials, investors, and community members (including community leaders, affected farmers, and women and youth members) about FPIC. The study also examines processes and strategies put in place by various government entities to implement FPIC, and the extent to which existing efforts to involve community members in the process of approving or declining LSAIs are inclusive in terms of taking into account the interests of the most vulnerable groups of the community.

The key findings from our desk review and qualitative and quantitative data analysis can be summarized as follows:

- The principles of FPIC are not among the major issues in the feasibility analysis of LSAIs, based on which investment licenses/permits are issued. Therefore, more weight is given to the economic benefits of LSAIs (such as promoting employment opportunities, agricultural production, market access, foreign currency generation, etc). Community members might have different opinions about the overall consequences of LSAIs including the effects of LSAIs on their livelihoods through the effects on their access and utilization of land, water, forest, and other natural resources. Without having the process to hear these opinions, LSAIs would be considered as unwelcome competitions against the natural resources of the community.

- Most investors have the feeling that they went through all the processes to ensure FPIC before they get the land for their investments. Their understanding of FPIC seems to be identical to passing through the bureaucratic processes of approving their investment permits and land acquisition. However, government entities do not follow the principles of FPIC to grant investors their permits and investment land for their operation.

- LSAIs that downplay the FPIC of the community violate indigenous rights to land and related benefits. Since the narrative of the vacant land approach was widely followed by the government at the higher level and the investors, consultation with the local peasantry and even the local government were unheard of. This means that the making of decisions for land transfer happened either at the federal level or at the regional bureau level. This act not only ignored consultation with people for their consent, but also deprived people of their indigenous rights to land and beyond. This has generated hostilities between those who say they are investors and those local people who feel their land was snatched by force without their FPIC. Involving the whole concerned stakeholders, including the farmers and the local people, would help to ensure the proper applicability of the FPIC and make the investment benefit the smallholder farmers as well.

6 RECOMMENDATIONS

Based on the key findings, this study proposes the following recommendations.

- Incorporating the principles of FPIC in the guidelines of land administration and agricultural investment offices: these offices should incorporate FPIC as one of the major requirements and formalities that investors need to fulfill during their request for investment permits and land. This can be done by governmental offices arranging public meetings, preferably in the presence of investors, held for the main purpose of hearing the voices and opinions of community members about a LSAI under consideration. The concluding remarks in the minutes (along with other evaluation criteria) should therefore guide the decision of whether or not the responsible regional and *woreda*-level government office should grant investment permits and land.

- There is an observed complex dis-satisfaction created due to LSAF investments, which could have undesirable consequences at least in the long run. On one hand, investors are complaining about less receptivity of the local communities; and on the other hand, some vulnerable localities feel deprived for being neglected, and not contacted for

some substantial conversations about the LSAI to be implemented in their area and related issues. Therefore, a preceding mutual agreement among relevant parties (including local community, investors, federal, regional and *woreda*-level governments) is needed and shall be effected sensibly, before it creates some inner frustration or disputes between them.

- The local community-centered approach is required to make the principle of FPIC at work. The evidence establishes that although the local people have used the land for various livelihood activities, including communal grazing and use of forest resources, the process of granting land by the government at various levels to the investors without the proper consultation with the local people and compensation contradicts with the principle of FPIC. Thus, inclusive participation of all the stakeholders, including the local farmers and local government, would help to ensure the practical applicability of the FPIC and related benefits.

- GIZ or government ministries/regional bureaus can use perception surveys as a tool to communicate views and attitudes of internal and external stakeholders on issues related to strategies and processes that are in place to implement FPIC. Similar perception surveys could be repeated to allow for trend mapping - temporal changes (i.e., to measure changes within the same respondents or respondent types over time) in perceptions about the implementation of FPIC in the study areas.

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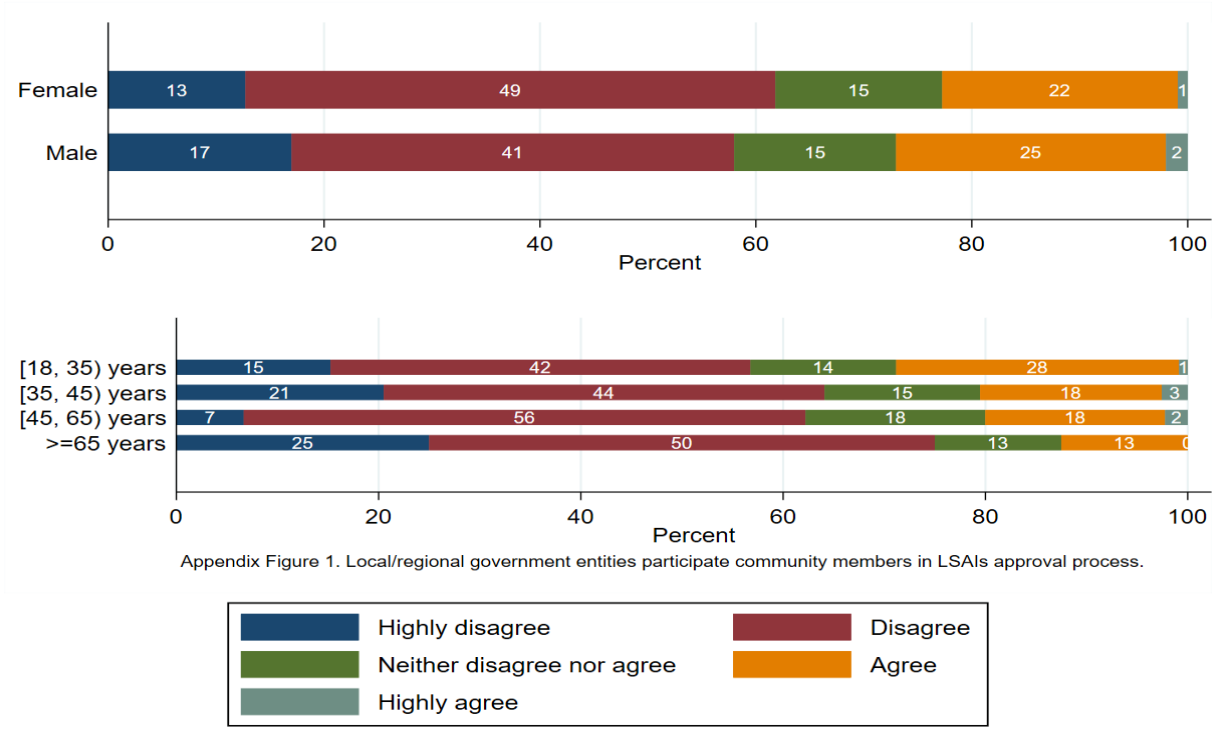
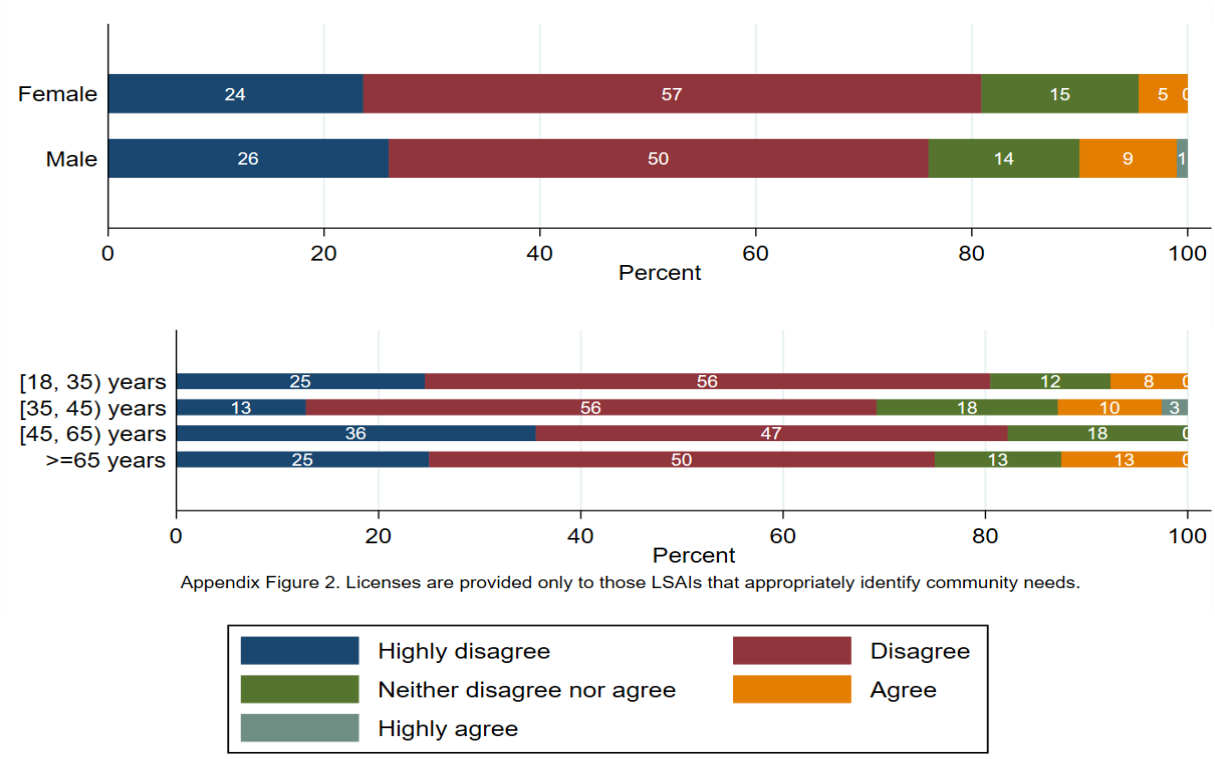
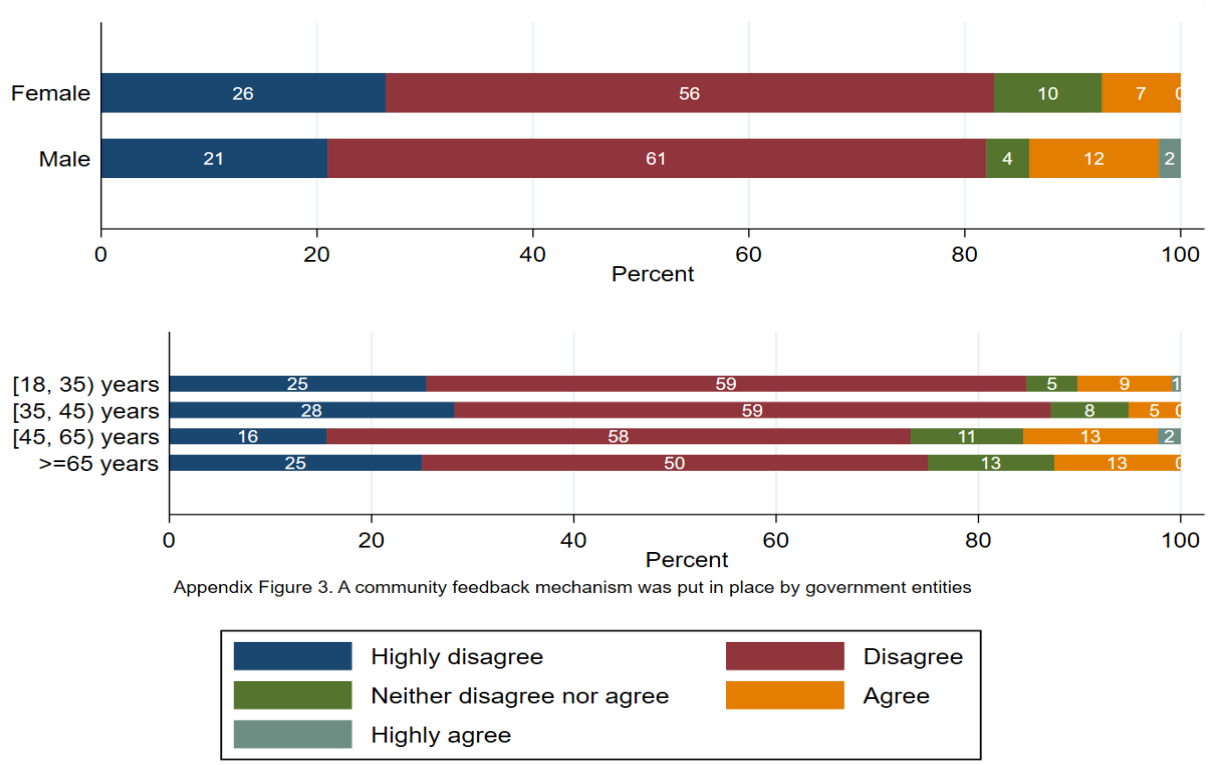
Appendix Figures



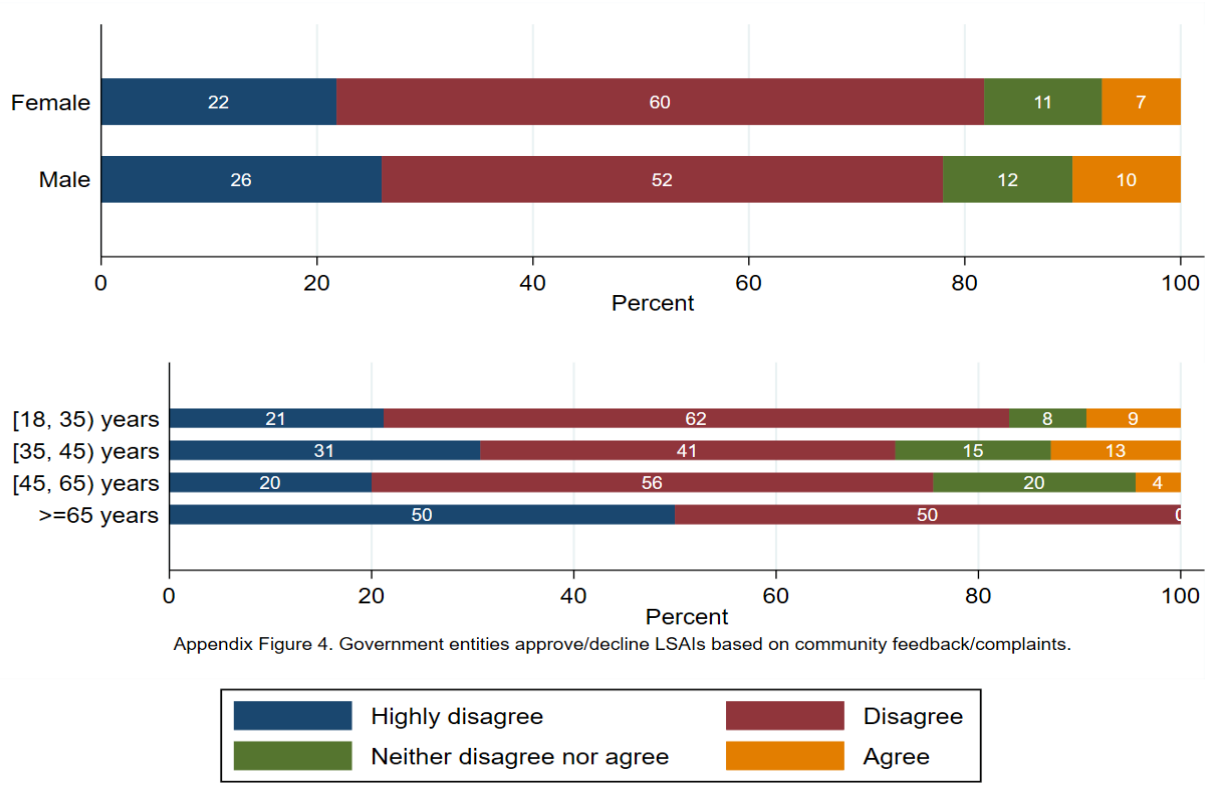
Appendix Figure 1. Local/regional government entities participate community members in LSAIs approval process.



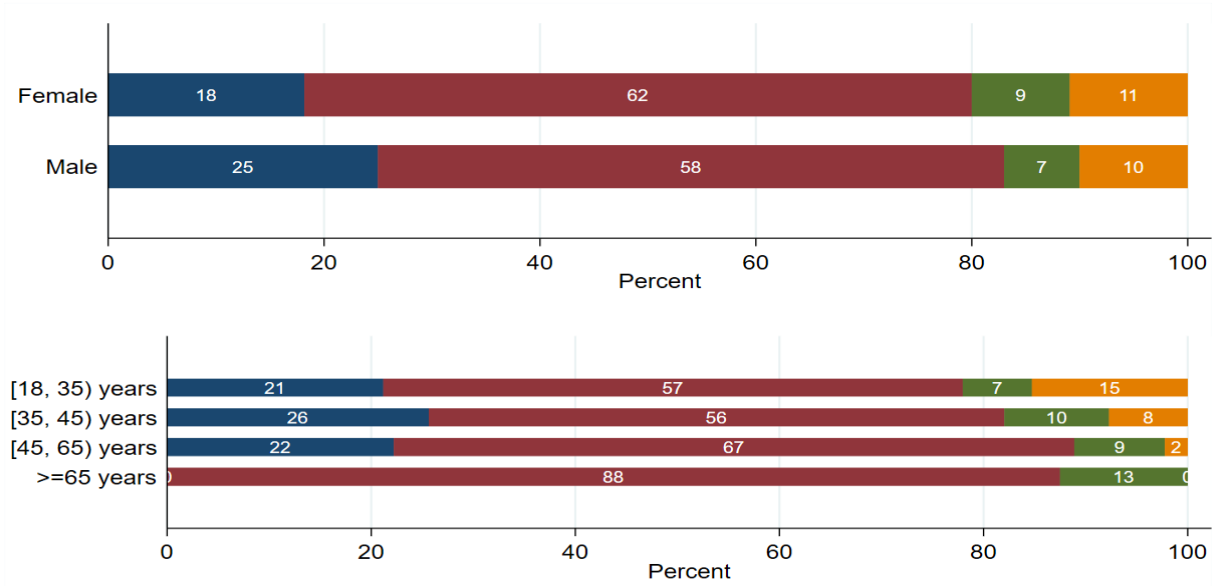
Appendix Figure 2. Licenses are provided only to those LSAIs that appropriately identify community needs.



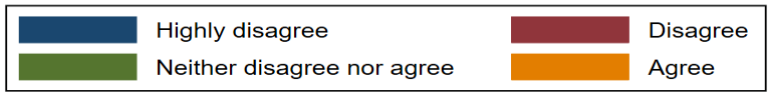
Appendix Figure 3. A community feedback mechanism was put in place by government entities

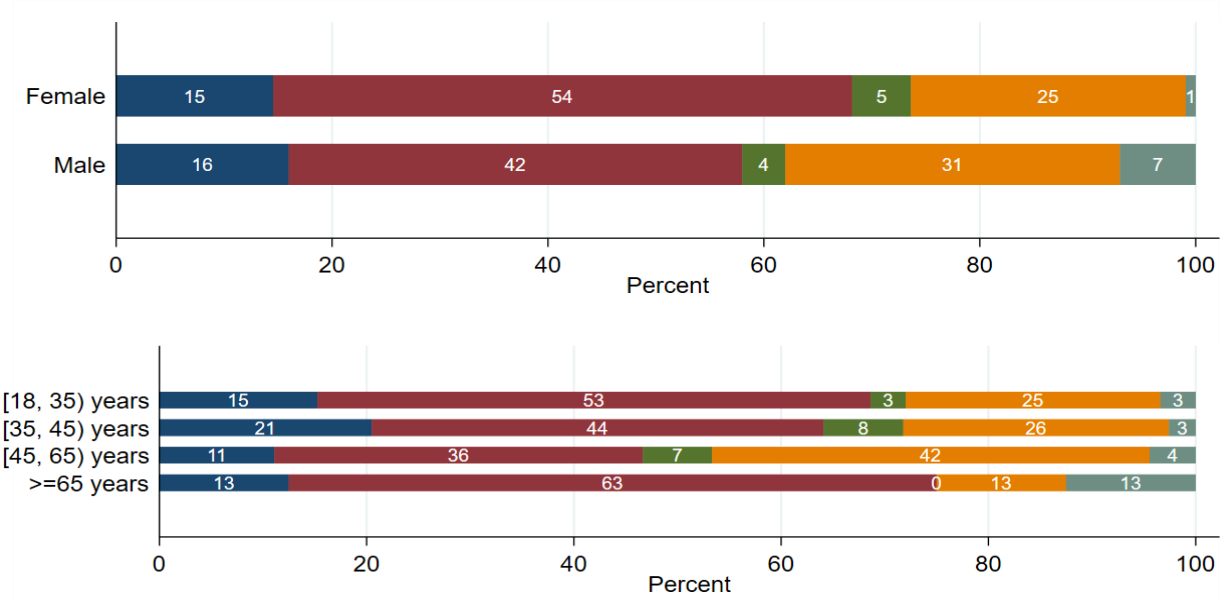


Appendix Figure 4. Government entities approve/decline LSAIs based on community feedback/complaints.

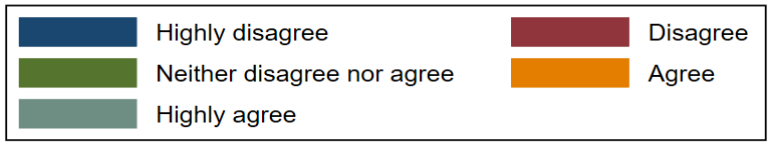


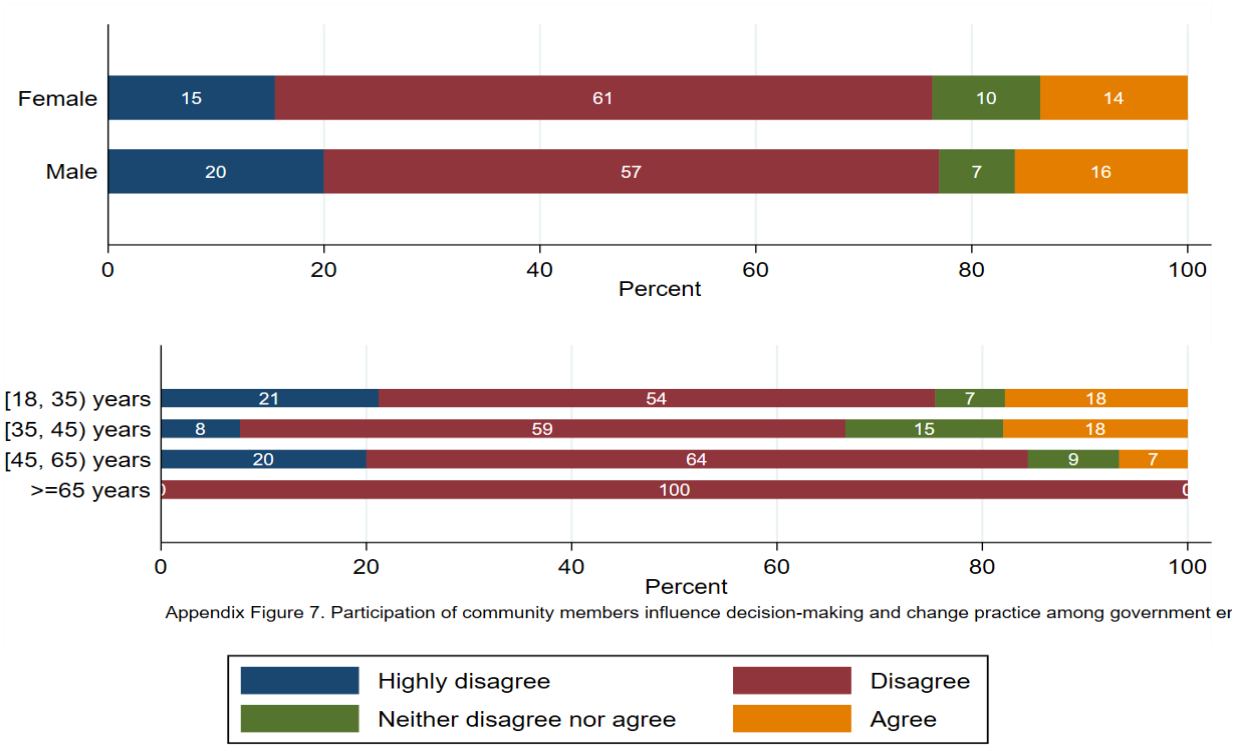
Appendix Figure 5. Monitoring and accountability mechanisms timely inform community members about LSAIs approval status



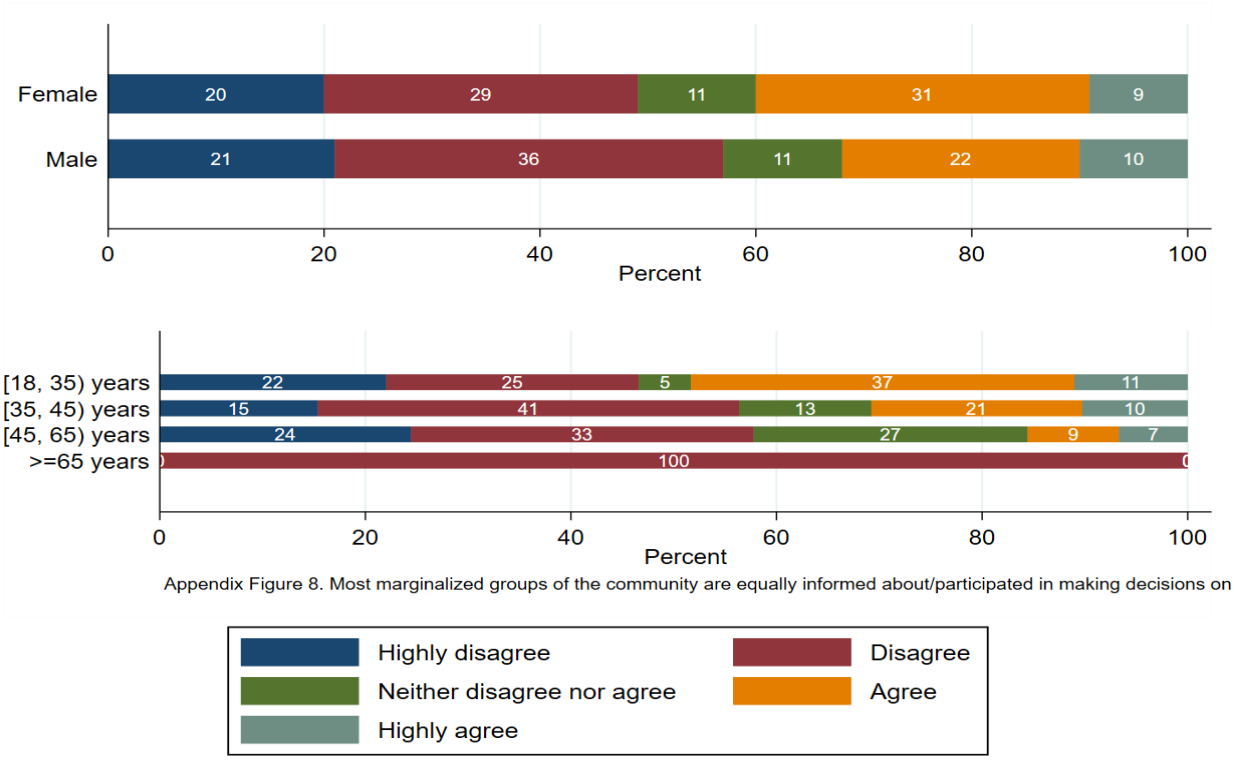


Appendix Figure 6. Government entities coordinate participation of community members to approve/decline LSAIs before their ir

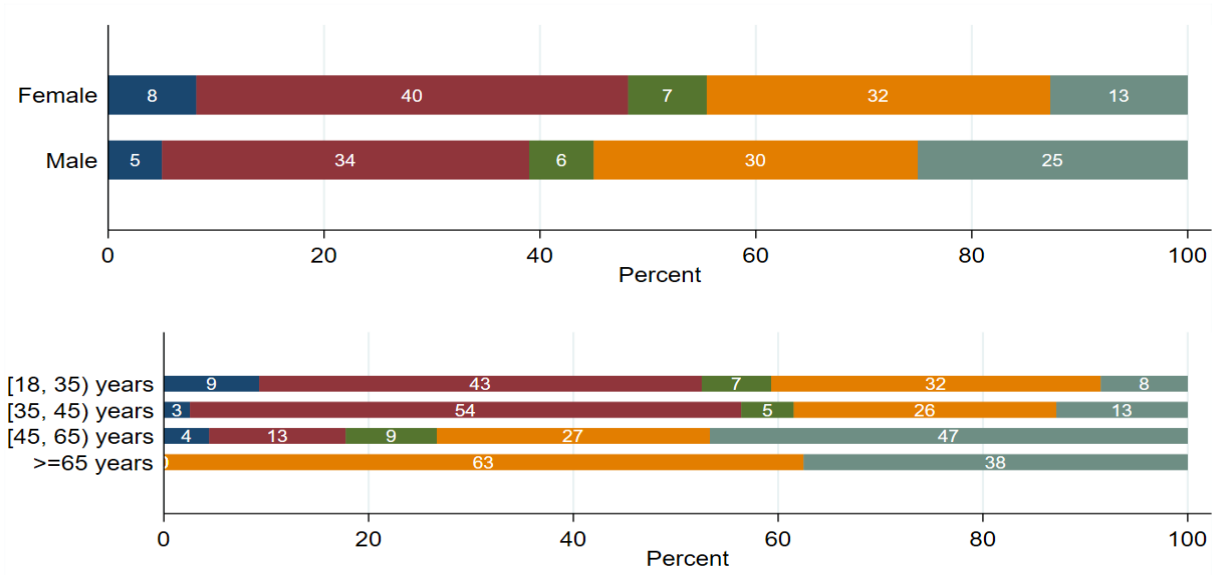




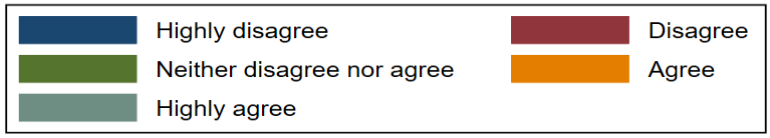
Appendix Figure 7. Participation of community members influence decision-making and change practice among government er

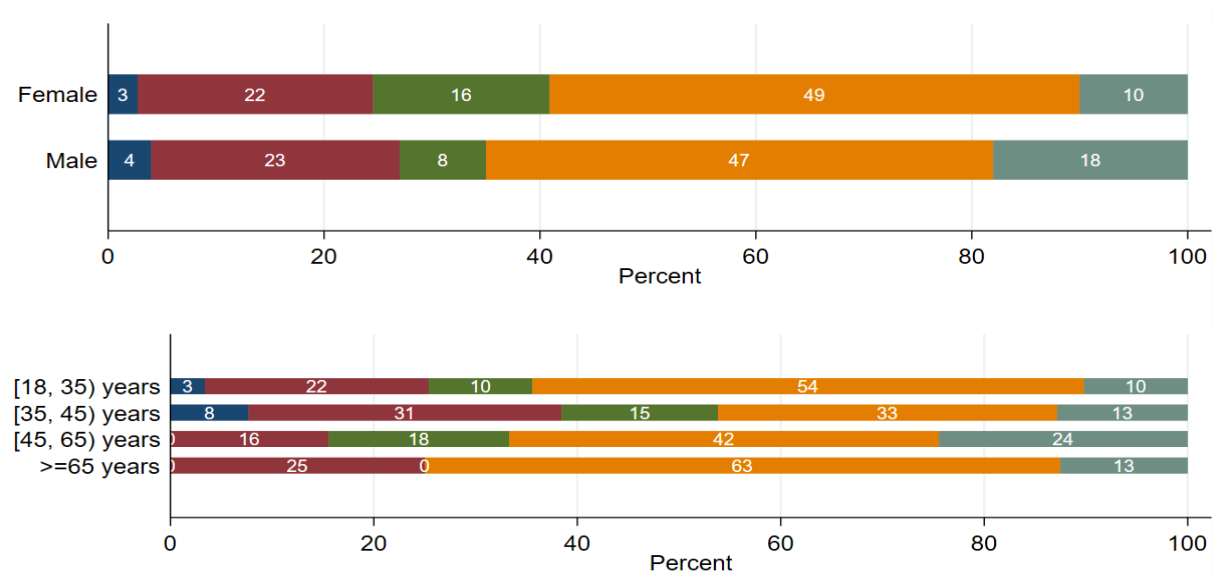


Appendix Figure 8. Most marginalized groups of the community are equally informed about/participated in making decisions on



Appendix Figure 9. FPIC created an improve land governance and a responsible agricultural investment system in the commu





Appendix Figure 10. Present FPIC efforts build the resilience of communities and/or systems to the implementation of FPIC.

