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Sahel and West Africa Club (SWAC/OECD)

“Pressures on West African land:  
Reconciling development and investment policies”

9 December 2009

Bamako, Hotel Azalaï Salam

## Recent studies and declarations

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*draft*



**Pressures on West African land  
Reconciling development and investment policies  
Bamako (Mali), 9 December 2009**

**Recent studies and declarations**

— Working document —

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*We invite participants to complement this document which will be redistributed after the meeting.  
The summaries have been produced by the SWAC/OECD.*

# **I. Studies**



## I.1. Increasing commercial pressure on land: Building a coordinated response, Discussion paper, Michael Taylor and Tim Bending (ILC Secretariat, July 2009)

### Summary

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The ILC recognizes the recent wave of large-scale land acquisitions in which governments and government-backed institutions play a large role. To dispel popular “myths” surrounding land acquisitions, the report is careful to point out that the term “land grabbing” is misleading because it implies illegal or illegitimate means of procuring land by investors, when it is oftentimes a failure of domestic policies to recognize customary use rights. Also, land investment is not a new phenomenon; what is new is the size of acquisitions, different motivations (from economies of scale of large-scale production to food and energy security), a considerable lack of transparency and public consultation, and an increased involvement of governments. Due to these policy failures and changing motivations, special considerations are needed when developing new standards to protect the rights of the poor and ensure that investment is fair and has no adverse effect on local populations. Six ways forward are outlined by the report:

- 1) *Continued research and monitoring to enable an evidence-based response:* Currently, the monitoring of trends and impacts of land acquisitions is being done by the media. These responsibilities should be incorporated into a wider land-monitoring initiative such as the World Bank’s Land Governance Assessment Framework or civil society organizations such as the Andean Land Observatory. Greater coherence of research and monitoring is needed in order to ensure evidence-based responses in the future.
  - 2) *A code of conduct for investors and host governments:* Not only is a code of conduct or set of standards needed that adhere to obligations under international law and human rights covenants, but a global regime that encourages adherence to them. Two possible starting points for a code of conduct are the Framework and Guidelines for Land Policies in Africa under the African Union, or the Voluntary Guidelines for Responsible Governance of Land and Other Natural Resources led by the FAO. It is crucial that the formulation of standards is as inclusive as possible to ensure that it is accepted and effective.
  - 3) *Developing guidelines and tools for good decision-making by investors, governments and local communities:* While a code of conduct needs to be as simple as possible in order to make sure that compliance is verifiable, guidelines should also be developed that are more detailed and extensive, which should aid in the balancing of investment goals with broader food security concerns (e.g. poverty reduction, environmental issues, etc.). Methodologies to facilitate consultation of and cooperation with local communities are an integral part of guidelines.
  - 4) *Improving, documenting and promoting alternative models of agricultural investment that do not involve transfers of land ownership:* Local people should be viewed as valuable partners in investments, not obstacles. Community-investor partnerships should be made with the goal of enhancing the negotiation powers of local people, who bring to the table the land resources under their tenure and the local agricultural and resource management know-how.
  - 5) *Assisting in securing the land rights of the poor:* Due to the fact that governments in Africa own or control a large percentage of the land, most users of common land are legally tenants of the state and therefore have limited legal protection of their land rights. Collective registration of land rights should therefore be a “strategic focus” of policy-makers.
  - 6) *Building the capacity for collective action and negotiation of local land users:* The unionization of plantation workers and building of organizations of farmers and landless people is an essential step in ensuring that local communities are represented in negotiation processes.
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## Introduction

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The food price crisis of 2007-2008 brought to public attention a wave of large-scale acquisitions of land in developing and transition countries by foreign investors. The predominant investors in these deals have been governments and government-backed institutions; the dominant rationale to secure national food and energy supplies. The food price spike in 2007-2008 is said to have been a “wake-up call” for many food importing, capital-rich countries, provoking attempts by such countries to circumvent the open world market and to secure dedicated sources of imports.<sup>1</sup> At the same time, there are reports that farmland ownership is increasingly being seen as a vehicle for investment by agribusiness, and also by the financial industry.<sup>2</sup>

Investment in farmland for offshore food production (often in food insecure countries) is one face of a much wider trend of increasing demand for land for not only food, but also fuel, fibre, tourism, mining and ecosystem services such as carbon sequestration. Expected long-term trends in all of these sectors are promoting investor interest in land that was previously marginal to economic interest, driving rising land prices globally. Increasing competition over such land between investors, local communities and others carries high risks of conflict, as the recent clashes over resource concessions in indigenous territories in Peru have demonstrated.

Investors interested in exploiting the commercial potential of land and natural resources are more and more coming into direct competition with local populations, for whom such resources are a critical source of livelihoods. The current wave of large-scale land acquisitions is seen as posing both threats and opportunities. It is suggested that they pose a threat to the land rights of the poor, particularly to customary and common-property rights-holders; to the food security of the host countries; and to the environment. Alternatively, these acquisitions may be seen as bringing investment into a sector and into regions that badly need it, perhaps helping to achieve poverty reduction and development goals, and to meet the world's food needs.

The global rush for land has prompted renewed attention at a global scale on questions of rights to land and natural resources and their place in efforts to overcome hunger and poverty. This attention is welcomed by many members of the International Land Coalition (ILC), who formed the coalition in 1995 at a time when land issues had to a large extent fallen off the development agenda, despite the ongoing – and largely invisible – struggles of millions of poor women and men over rights to land. The challenge is to build an adequate response to large-scale transnational investments in land, whilst not losing sight of the everyday struggles of millions of poor land users, in the face of a wide variety of pressures, to retain secure access to land and to the natural resources on which their livelihoods depend.

Since 2007, when members decided that ILC's engagement in the 16<sup>th</sup> and 17<sup>th</sup> sessions of the Commission on Sustainable Development (2008-9) should focus on the implications of rising commercial pressures on land, ILC's members have increasingly expressed their concern that such pressures threaten to accelerate the displacement of poor land users, and that the manner in which many investments are taking place is likely to exclude poor land users from taking advantage of possible opportunities. At ILC's global assembly in Kathmandu in April 2009, members and partners declared that:

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<sup>1</sup> « Cornering foreign fields », The Economist, May 21, 2009.

<sup>2</sup> O'Keefe, B. « Betting the farm », Fortune/CCN, June 10, 2009.  
[www.money.cnn.com/2009/06/08/retirement/betting\\_the\\_farm.fortune/](http://www.money.cnn.com/2009/06/08/retirement/betting_the_farm.fortune/)

*'Land is becoming an increasingly globalised commodity, fuelled by rising demand for food and agrofuels, for minerals, for tourism, and for ecosystem services including carbon sequestration. Resource-poor land users are facing increased competition for land with other land users, national elites and global investors. We call for urgent action to ensure transparency and disclosure in large-scale land transactions by governments and corporations. There should be full consultation of all stakeholders, particularly local land-users, in such transactions'.<sup>3</sup>*

This paper takes stock of current understandings of, and responses to, commercial pressures on land by organisations within and beyond ILC's membership. It outlines key current initiatives to engage with the phenomenon; comments on recent trends in land transactions; discusses ten myths that are commonly associated with 'land grabbing'; outlines key emerging concerns that responses to the phenomenon should address; and puts forward some key considerations and questions for building a coordinated response.

## **Current initiatives**

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The recent rise in commercial pressures on land has prompted the involvement of a wide variety of organisations concerned with rural development, including farmer's organisations and social movements such as ROPPA and La Via Campesina, International Financial Institutions such as the World Bank and IFAD, the UN system including FAO and the Special Rapporteur on the Right to Food, research organisations such as IFPRI, CIRAD, AGTER, and IIED, academic institutions such as the Universities of Utrecht, Groningen and St Johns, trade policy organisations such as IISD and 3D, advocacy organisations such as FIAN and GRAIN, donors including most members of the Global Donor Platform,<sup>4</sup> and civil society organisations including DWHH, Oxfam-Novib and a wide variety of organisations in countries where processes of land concentration are taking place. Political parties in a number of investor countries, including USA and Germany, have also attempted to introduce motions to regulate transnational investment in land.<sup>5</sup>

Specific initiatives relating to commercial pressures on land include:

### **1. Tracking of land-based investments**

- GRAIN's recently re-launched website [www.farmlandgrab.org](http://www.farmlandgrab.org), which documents over 180 reports of land-related investments for food production.
- ILC's blog [www.landcoalition.org/cpl-blog](http://www.landcoalition.org/cpl-blog), which documents reports on wider land-related investments, categorised by keywords.

### **2. Desk-based research papers**

- IIED/FAO study on the 'Biofuels Boom and Poor People's Access to Land', released in June 2008 to coincide with the High-Level Conference on World Food Security.
- AGTER/ILC conceptual framework for commercial pressures on land, released in April 2009.

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<sup>3</sup> [www.landcoalition.org/](http://www.landcoalition.org/)

<sup>4</sup> Transnational investments in land are to be the focus of a seminar on 14<sup>th</sup> July by the Global Donor Platform.

<sup>5</sup> In June 2009 a motion was introduced to the 16<sup>th</sup> electoral term of the Bundestag by the Greens Parliamentary Group on Strengthening land rights – preventing land grabbing in developing countries. The motion was defeated. Similar issues are being introduced by congress members in USA into debates on the Global Food Security Act.



- Global study on Commercial Pressures on Land, being undertaken by over twenty members and partners of ILC, with both desk-based and empirical components, due to be released in April 2010.

### **3. Empirical research**

- IIED/FAO/IFAD study on 'Land grab or development opportunity? Agricultural investment and international land deals in Africa' involving empirical research in five African countries, released in June 2009.
- World Bank 30-country study on 'Large-scale acquisition of land rights for agricultural or natural resource-based use, due to be completed in December 2009.
- GTZ case-studies of foreign investment in land in four countries in Asia and Africa, due to be completed in August 2009.
- OECD secretariat/Club du Sahel West Africa planned regional study on land-based investment, to be undertaken as part of the ILC Commercial Pressures on Land study, due to be released in April 2010.
- Case studies of commercial pressures on land by members of the Asia and Latin America regional platforms of ILC, due to be released in April 2010.
- FIAN country-case studies with selected in-country partners.

### **4. Briefing notes/position papers/statements**

- IISD brief on 'A Thirst for Distant Lands: Foreign investment in agricultural land and water', released May 2009.
- IFPRI brief on "'Land Grabbing" by Foreign Investors in Developing Countries: Risks and Opportunities', released April 2009.
- Special Rapporteur on the Right to Food statement on 'Large-scale land acquisitions and leases: A set of core principles and measures to address the human rights challenge', released June 2009.
- DWHH brief on 'Land Grabbing: "The land is pulled away from under the poor's feet"', released April 2009.

### **5. Initiatives to provide guidelines on land-related development**

- The IFPRI April 2009 study calls for a code of conduct on foreign land acquisition, and outlines key elements that such a code should address, although it does not elaborate such a code.
- FAO Voluntary Guidelines for responsible governance of tenure of land and other natural resources. The consultation process to prepare the Guidelines began in 2009. They are intended to provide practical guidance to States, civil society and the private sector on the responsible governance of tenure as a means of alleviating hunger and poverty, enhancing the environment, supporting national and local economic development, and reforming public administration.
- African Union/Economic Commission for Africa/African Development Bank Framework and Guidelines for Land Policy in Africa. These are expected to be adopted at the July Summit of African Heads of State, and address the full range of land policy issues, including foreign investment in land.

- The Government of Japan has announced an initiative at the July G8 summit to develop “a global platform to agree on principles and compile good practice”. It has outlined a number of points that “non-binding principles” might include.<sup>6</sup>

These initiatives represent an important contribution to the growing body of information and analysis on commercial pressures on land, and provide a foundation for informing the consideration of options that could be pursued by stakeholders to mitigate potential negative consequences and enhance opportunities for local stakeholders in land-related investments.

## **2009: Recent trends in land-based investments**

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ILC's Commercial Pressures on Land blog has been tracking studies and media reports on the issue of international land acquisitions since the start of 2009. A preliminary analysis of the 450 articles and papers on the blog suggests that foreign investment in land is continuing apace, perhaps intensifying, although there are signs of increasing caution on the part of African governments.

The blog reveals a continuing media focus on the activities of Sovereign Wealth Funds (which have proved highly controversial in a number of countries), despite evidence from the IIED/FAO/IFAD study that the private sector may be playing a larger role, and that domestic “land grabs” may also be significant. The Gulf states and Libya continue to feature prominently. Perhaps in response to the high profile of the issue, some countries have been openly inviting investment, including Turkey, Pakistan and Brazil.<sup>7</sup> In recent months, the main target of Gulf interest is less apparently Africa, more Southeast Asian countries such as Thailand and the Philippines.

After the collapse of the Daewoo-Madagascar deal, China and South Korea have been less in the spotlight. Indian investments in Africa, by contrast, are continuing to draw attention.<sup>8</sup> There has also been continued reporting of investment by Western financial institutions in farmland (“agricultural real-estate” being treated as an “investment vehicle”). This is reported to be a growing trend, with a major conference focused on agricultural investment being held in June.<sup>9</sup> The focus of such investments is mostly on developed, transition and Latin American emerging economies such as Canada, US, Australia, New Zealand, Ukraine and Argentina and Brazil.

There are increasing signs of wariness among African governments. The new military-backed president of Madagascar has promised to review all foreign land acquisitions,<sup>10</sup> while the 10 million hectare, 99 year lease of land to South African farmers by the Republic of Congo has been put on hold until after the forthcoming presidential election.<sup>11</sup> The president of the Alliance for a Green Revolution in Africa has been quoted as saying that there is a de-facto moratorium on large-scale

<sup>6</sup> Taro Aso, “The world must learn to live and farm sustainably”, Financial Times, 5 July 2009.

[www.ft.com/cms/s/0/d6e93cf6-6995-11de-bc9f-00144feabdc0.html](http://www.ft.com/cms/s/0/d6e93cf6-6995-11de-bc9f-00144feabdc0.html)

<sup>7</sup> Choose and take what you want,” Cumhuriyet, 13 June 2009. <http://haber.turk.net/ENG/2288097/Turkey-PressScan—2-;> “Pakistan opens more farmland to foreigners”, Reuters, 18 May 2009.

<http://in.reuters.com/article/southAsiaNews/idINIndia-39682520090517?sp=true>; “Brazil's Lula urges closer Saudi economic ties”, 17 May 2009.

[www.google.com/hostednews/afp/article/ALeqM5hyA8iSL23OZ2O8WuZqk5mb273YIQ](http://www.google.com/hostednews/afp/article/ALeqM5hyA8iSL23OZ2O8WuZqk5mb273YIQ); ed refs for all!!

<sup>8</sup> “India cultivates Africa”, Mail Today, 25 June 2009. <http://epaper.mailtoday.in/epaperhome.aspx?issue=2562009>

<sup>9</sup> “Flow of investment dollars to farms seen growing”, Reuters, 23 June 2009. <http://epaper.mailtoday.in/epaperhome.aspx?issue=2562009>

<sup>10</sup> “Rajoelina orders foreign contracts review”, Daily Nation, 31 March 2009. <http://www.landcoalition.org/cpl-blog/?p=1454>

<sup>11</sup> “Congo Republic delays finalising S. Africa farm deal”, Reuters Africa, 31 May 2009. [www.landcoalition.org/cpl-blog/?p=2160](http://www.landcoalition.org/cpl-blog/?p=2160)

land deals.<sup>12</sup> In Asia, a very public rejection of land acquisition by foreigners by the Government of Thailand was, however, according to one editorial, empty posturing.<sup>13</sup>

Investors have also taken note of the widespread backlash. The Indian Yes Bank, which has invested in Tanzania and is considering investments in Mozambique, Malawi, Madagascar, Angola and Namibia, has denied it is involved in land grabbing, stating that it does not acquire land but works with local farmers as outgrowers.<sup>14</sup> Japan, after first announcing its interest in supporting the purchase and lease of overseas farmland to enhance its food security, then stated that its products will be sold on the world market, and then that it will spearhead a move at the G8 to promote responsible investment in agriculture, in the face of 'land-grabbing'.<sup>15</sup>

## **Ten myths concerning commercial pressures on land**

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The emotive and ideological nature of debates on land rights and 'land grabbing' in an era of increasing landlessness, hunger and global trade have encouraged widespread interest, with the media playing a prominent role in informing debate. There is consensus that commercial interest in land and natural resources has risen considerably in the past few years. However, prevailing viewpoints are liable to a number of misconceptions, in part due to the low levels of transparency that characterise many large-scale land acquisitions. The nascent but growing body of empirical research that is emerging provides an important contribution to a more accurate conceptualisation of the current wave of land-based investment. This research allows the debunking of a number of commonly-held myths that need to be overcome when considering adequate responses to the 'global land grab'.

### ***1. Abundant 'unused' land is available for agricultural investment***

The assumption that agricultural land is available that is 'empty', 'unused', 'idle', or 'wasteland' is an underlying factor in much investor interest in acquiring land. It is a myth often driven by host governments, such as those of Mozambique, Tanzania and Indonesia, who have attempted to quantify such land available within their borders in an effort to attract investors.

This myth has, however, been challenged in all empirical studies of the phenomenon, noting that all usable land is very likely to be already occupied or used by local communities in a variety of ways important to livelihoods and food security, if not cultural identity. In particular, local populations who use the land for non-arable uses such as pastoralism or hunting and gathering are liable to be ignored. In addition to direct local usage, the ecosystem services provided by such lands to the wider population appear often to have been ignored.

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<sup>12</sup> "Africa becoming wary of farm deals – land activist", Reuters, 9 June 2009. [www.reuters.com/article/homepageCrisis/idUSL9584860.CH\\_2400](http://www.reuters.com/article/homepageCrisis/idUSL9584860.CH_2400)

<sup>13</sup> Supanida Sakulthangphaisal, "Thailand says no to farm investment by foreigners", Reuters, 23 June 2009. [www.landcoalition.org/cpl-blog/?p=2400](http://www.landcoalition.org/cpl-blog/?p=2400); Sanitsuda Ekachai, "Our fear of the foreigner on the farm", Bangkok Post 25 June 2009. [www.bangkokpost.com/opinion/opinion/19078/our-fear-of-the-foreigner-on-the-farm](http://www.bangkokpost.com/opinion/opinion/19078/our-fear-of-the-foreigner-on-the-farm)

<sup>14</sup> Wendell Roelf, "INTERVIEW – India Yes Bank sees first Africa farm project start 2011", Reuters, 15 June 2009. [www.landcoalition.org/cpl-blog/?p=2290](http://www.landcoalition.org/cpl-blog/?p=2290)

<sup>15</sup> "Japan to promote farm investment overseas for food security", Bloomberg, 27 April 2009. [www.bloomberg.com/apps/news?pid=20601012&sid=akj4F3JyDUrI](http://www.bloomberg.com/apps/news?pid=20601012&sid=akj4F3JyDUrI); "Japanese jitters grow over food security", Financial Times, 28 April 2009. [www.landcoalition.org/cpl-blog/?p=1862](http://www.landcoalition.org/cpl-blog/?p=1862); "G8 move to halt 'farmland grabbing'", Financial Times, 26 May 2009. [www.landcoalition.org/cpl-blog/?p=2124](http://www.landcoalition.org/cpl-blog/?p=2124)

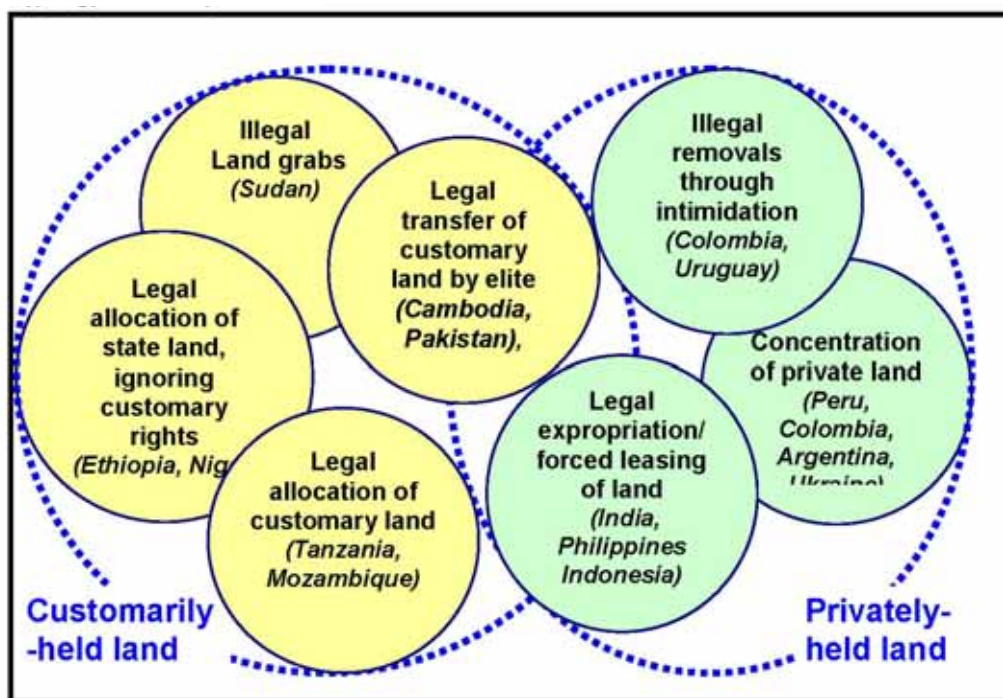
Virtually no large-scale land allocations can take place without displacing or affecting local populations.

## 2. Investors are involved in ‘Land Grabbing’

“Land Grabbing” has become the term most commonly used to characterise the current wave of large-scale land transactions. “Land grabbing” implies accumulation of landholdings through illegal and/or illegitimate means. In some cases, “land grabs” are clearly illegal, such as the reported acquisition by Jarch Capital of 400,000Ha in southern Sudan from an SPLA General,<sup>16</sup> or reported paramilitary seizures of privately-held land in Colombia.<sup>17</sup> In most cases, however, land allocations do not violate domestic legal systems. Most large-scale land leases are of state land, which is administered by government according to statute, including the right to lease it to tenants. Where the customary rights of local land users are ignored, this is a function of land legislation not recognising customary use rights, rather than outright illegal allocation or acquisition.

In addition, significant land purchases by agribusiness companies from small and medium-scale landowners are occurring on privately-held land, particularly in transitional countries and in Latin America. Widespread processes of concentration through market mechanisms are resulting in high inequalities of land ownership, documented, for example, in Peru by ILC member CEPES, where inequality in land-holding in the coastal region is now higher than before the land reform of the mid-1970s.<sup>18</sup>

Typology of land acquisitions



<sup>16</sup> [www.sudantribune.com/spip.php?article30891](http://www.sudantribune.com/spip.php?article30891).

<sup>17</sup> <http://rainforestportal.net/shared/reader/welcome.aspx?linkid=77259&keybold=biofuel%20policy%20Congress>.

<sup>18</sup> “Cuarenta años despues de la reforma agraria, la concentración de la propiedad de la tierra reaparece”, La Revista Agraria, n. 107, May 2009. [www.cepes.org.pe/revista/r-agra107/portada.htm](http://www.cepes.org.pe/revista/r-agra107/portada.htm)

The typology below provides examples of the different forms of land acquisition, illustrating the diversity of land tenure regimes and transactions involved.

“Land Grabbing” is misleading in characterising the wide variety of ways in which investors are acquiring land, many of which do not explicitly violate land policies or laws.

### **3. ‘100 land deals’**

A number of attempts have been made to quantify the extent of land globally that is under consideration for investment, including visual illustrations of source and host countries. A source of much media information has been GRAIN’s catalogue of over 100 land deals under consideration.<sup>19</sup>

This figure is probably accurate for what it claims to be – reports of deals under consideration. However, interpreting these as reliable figures of land transactions, as has been implied in a number of media reports, would be erroneous. In reality, the lack of transparency that characterises most land deals means that it is virtually impossible to arrive at an accurate figure. Evidence indicates that many of the deals that are under consideration in fact do not reach completion, and also the large number of smaller-scale land acquisitions – particularly by domestic investors – are not taken into account in such estimates. The recent IIED/FAO/IFAD study in five African countries (documenting 2,492,684 Ha of acquisitions over 1,000 Ha each), and the ongoing World Bank study in thirty countries, provide two important examples of verified – though incomplete – data on land transactions for investment.

Although a body of verified data on investment-related land transactions in particular countries is growing, the true extent of the phenomena remains unknown.

### **4. Transnational investment in land is a new phenomenon**

Foreign investment in agricultural land is not a new phenomenon, as noted in a number of recent studies on the current phenomenon. During the colonial period and early post-colonial period, large foreign-owned plantations were set up in many parts of Africa, Asia and Latin America. These were used to produce crops such as bananas, sugar, tea, groundnuts and cocoa. The lull in the 1980s and 1990s signified a shift towards contract farming and investment in other aspects of agricultural production—including seeds, fertilizers, machinery, processing, manufacturing and retail.<sup>20</sup> However, increasing investment opportunities in the fuel and food sectors over the last five years, combined with a general decrease in trade and investment barriers, have prompted a renewed interest in transnational land-based investments. In some cases, investors report that land acquisition for its speculative value is an important aspect of their wider agricultural investment strategy. While transnational investments in land are therefore not a new phenomenon, the current wave can be characterised by:

- The size of land acquisitions, in many cases over 100,000Ha;
- Food and energy security as a key driver, and not necessarily economies of scale from large-scale production;
- A severe lack of transparency and low levels of public consultation; and
- The increasing involvement of governments, or government-related agencies, in negotiations for land.

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<sup>19</sup> [www.grain.org/front\\_files/landgrab-2008-en-annex.pdf](http://www.grain.org/front_files/landgrab-2008-en-annex.pdf)

<sup>20</sup> Smaller, C. and Mann, H., “A Thirst for Distant Lands: Foreign investment in agricultural land and water”, IISD, May 2009.

Although the current phenomenon has particular characteristics, large-scale transnational investment in land is not new.

### ***5. Agricultural land is the main focus of investment interest***

The main focus of attention has been on the acquisition of land for agricultural production; for food and agrofuels. Undoubtedly, these have been key drivers of the upsurge in land-related investments. They have also provoked most public interest due to the questionable ethics of exporting agricultural commodities from food insecure countries. However, agricultural investments should not be seen in isolation from wider commercial pressures on lands previously seen as “marginal”. The Rights and Resources Initiative has warned that new markets in carbon, such as those proposed under REDD initiatives, are likely to lead to large-scale disenfranchisement of forest-dwellers, driven by private sector and government capture of forests for their carbon sequestration value.<sup>21</sup> This is an aspect of the wider trend of commoditisation of environmental services, giving a market value to standing biomass resources that were not previously subject to rent or profit-seeking behaviour. In addition, investor interest in land for tourism, mineral extraction and timber are reported by ILC members as significant drivers at the local level of investor interest in land.

The ‘rush for the world’s farmland’ is one component of a wider convergence of investment-related opportunities on land and natural resources that is attracting interest in waagricultural, forest, mineral-rich, and tourism-related lands.

### ***6. Large-scale mechanised agriculture is the most efficient***

Many large-scale investments in agriculture are driven by the assumption that large-scale mechanised agricultural production will be more efficient than the small-scale production it may replace. While economies of scale can be achieved in processing and marketing, this is less common in production, particularly for perennial crops. Family-operated farms are widely accepted to be economically much more efficient than plantations operated by wage labour; in many cases outgrowing has historically been chosen as a preferred method of production by agribusiness firms. Family farming is also known to have a much larger employment effect – creating more jobs -than large-scale mechanised agriculture; an important consideration for government poverty reduction strategies. Notably, this is an increasingly clear message from the World Bank, in both the 2008 World Development Report, and in two briefs issued in 2009 on investment in agriculture.<sup>22</sup> It is in investors' interests to consider alternative forms of production to large-scale mechanised agriculture, over and above the environmental and local-livelihood concerns that such production models present. The International Assessment of Agricultural Knowledge, Science and Technology for Development (IAASTD) report,<sup>23</sup> launched in April 2008 by 64 governments and authored by 400 scientists from 100 countries, provides a clear rationale and framework for supporting family farming as a central pillar of future agricultural production.

Large-scale mechanised agriculture is often not the most efficient form of production, over and above the significant social, environmental and political risks it poses.

### ***7. Foreign investors are the primary “land grabbers”***

The most visible large-scale land acquisitions involve foreign investors. However, foreign investors often act in partnership with domestic investors, in a relationship where the land acquisition aspect

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<sup>21</sup> Rights and Resources Initiative (RRI) 2009. From Exclusion to Ownership? Challenges and opportunities in advancing forest tenure reform

<sup>22</sup> World bank Agriculture and Rural Development Notes, Issue 45, January 2009 and Issue 48, June 2009.

<sup>23</sup> [www.agassessment.org](http://www.agassessment.org)

of the investment may be led by the domestic partners. The IIED/FAO/IFAD study, for example, notes that the majority of agricultural investments in Ethiopia are by domestic investors. Speculative accumulation of land by local elites, particularly through the privatisation of previously commonly-held land, is noted by many ILC members working at the local level in Africa, Asia and Latin America as the main driver of land alienation from local land-users. Such speculation by domestic elites may be in anticipation of possible partnerships with foreign investors, or it may be for direct investment by elites themselves. Speculative land acquisition by domestic investors is commonly for smaller land parcels, but the scale at which it is occurring makes it a significant factor at the local level in comparison with foreign direct investment.

Land acquisitions by domestic investors appear to be a significant contributor to the alienation of land from local land users, while domestic partners are also often integral to “foreign investment”.

### ***8. Transnational investment in land was driven by the food price crisis, and will decline with the financial crisis***

The surge of transnational investments in land has been associated with the food price spike of 2008. It has thus been assumed that the easing of food prices, in conjunction with the decline in availability of investment capital caused by the financial crisis, will lead to a decline in land-based investment. These factors may indeed lead to an easing of the pace of investment, as may more realistic assessments of the political and social risks involved, yet predictions of demand for food and fuel over the longer-term indicate that there is likely to be sustained demand for land for investment in food, fuel, fibre and environmental services. The FAO Food Outlook predicts that global food demand will double by 2050.<sup>24</sup> While fuel demands will also increase, the demand for land for agrofuel feedstock production is more uncertain, as the profitability of agrofuels are significantly influenced by subsidy and policy regimes. Moreover ‘third generation’ agrofuels may be produced from biomass such as algae which could require significantly less land for production.

Long-term predictions of trends in demand for food, fuel, fibre and environmental services indicate that while there might be short-term fluctuations in investor demand for land, commercial pressures on land will continue to increase over the long term.

### ***9. Investment in land is a sovereign issue, under the sole jurisdiction of host countries***

Host States have jurisdiction over investor activities within their borders. In exercising this jurisdiction they nonetheless have obligations under the international human rights instruments to which they are Party. The UN Special Rapporteur on the Right to Food has outlined how large-scale land acquisitions and leases relate to the right to food; the rights to freedom from forced eviction; the rights of indigenous peoples; the rights of self-determination and to development; and the rights of agricultural workers.<sup>25</sup> He also notes that these rights imply obligations not just for host States but also for investors and for the home States of investing firms. Likewise, the IIED/FAO/IFAD study notes that business entities are interpreted as having direct responsibilities, “to respect human rights, including through carrying out due diligence about possible adverse human rights impacts, in addition to compliance with national laws.”<sup>26</sup> Recognising the responsibilities of investors is perhaps all the more important in a context in which investment contracts, agreements and treaties, complete with stability clauses and other protections for investors, are increasingly taking de facto

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<sup>24</sup> [www.fao.org/docrep/011/ai474e/ai474e13.htm](http://www.fao.org/docrep/011/ai474e/ai474e13.htm)

<sup>25</sup> Olivier de Schutter, “Large-scale land acquisitions and leases: A set of core principles and measures to address the human rights challenge,” Report of the Special Rapporteur on the Right to Food, 11 June 2009.

<sup>26</sup> Reference is made to Ruggie, J., “Protect, Respect, and Remedy: A Framework for Business and Human Rights”, Report of the Special Representative of the Secretary-General on Human Rights and Transnational Corporations and Other Business Enterprises, 7 April 2008, A/HRC/8/5. [http://www2.ohchr.org/english/issues/trans\\_corporations/reports.htm](http://www2.ohchr.org/english/issues/trans_corporations/reports.htm).

precedence over domestic law, giving investors “hard”, enforceable rights in countries where local people's rights may be poorly defined and weakly enforced.<sup>27</sup>

Not only host States but also private investors and their home countries have an obligation to respect a range of human rights in connection with foreign direct investment in land.

### ***10. Land is the main resource of investor interest***

Where sale or lease agreements have been examined in detail, such as by the IIED/FAO/IIED study, it is clear that land has been the focus of the transaction. Water requirements for agricultural production are generally not explicitly considered, even though high levels of water extraction for irrigation may be required. Increasingly, the value of water (received for free) may exceed the value of the land. As such, hidden behind the rush for land may be a significant rush for water. Not only is the value of the water to be used not taken into account in the drafting of agreements, but its potential impact on water-users downstream can become a source of conflict. In addition to water extraction, opportunities to profit from timber extraction on forest land granted for agricultural investments may be a significant factor in investor interest in acquiring land. This was apparent in the failed attempt by the Sugar Corporation of Uganda to acquire a portion of the Mabira Forest for sugar cane production in 2007. It has also been reported by the Norwegian Centre for Human Rights that companies acquiring leases of forest land for palm oil production in Indonesia have cleared the land for timber extraction, and then failed to invest in agricultural production.<sup>28</sup>

Allocations of land for investment may legitimise extraction of other renewable and non-renewable natural resources, especially water, whose significant value may not be taken into account in investment agreements.

## **Emerging key concerns for mitigating risks and promoting opportunities**

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### ***1. Ensuring the fair sharing of benefits, particularly opportunities to benefit from growing economic rents***

In the work done so far on international land acquisitions, it has been quite common to suggest that a “fair sharing of benefits” is essential if projects are to avoid stirring up local resentment and manage the considerable political risks involved. Yet this begs a question: What is a fair share? In fact the problem of how to allocate returns from land-based production has a long history in economics as an important policy question. It centres on the concept of “economic rent”.

The IIED/FAO/IFAD study of land deals in selected African countries indicates that the primary motivation of host countries has been the economic development promised by the projects, including the creation of new jobs and infrastructure. They appear to be receiving little or no fees for the lease or sale of land. This is not necessarily unreasonable. Profit-seeking investment can create win-win scenarios benefiting both investors and local populations, metaphorically creating a larger cake so that all can get a larger slice.

However, projections of rising agricultural commodity prices, reversing the dominant trend of the last half century, imply a market that may generate massive “economic rents”. The scope for rent-

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<sup>27</sup> See the recent IISD report, Smaller, C. and Mann, H., “A Thirst for Distant Lands: Foreign investment in agricultural land and water”, IISD, May 2009.

<sup>28</sup> Presentation by Norwegian Centre for Human Rights at ‘The Global Land Grab: a Human Rights Approach’ seminar, Geneva, 16<sup>th</sup> May 2009.



seeking behaviour is magnified when one considers the role of agricultural investment in transforming land from a virtually free commodity held for the common good to a privately-held and marketable commodity. Indeed, this is arguably what is driving much investor interest. Economic rent refers to income earned by the producer above the amount that is theoretically needed in order to make the production happen. In the example of Ricardian “differential rent”, when marginal agricultural costs rise (e.g. through expansion into less fertile or more distant lands), world food prices will rise and intramarginal producers (those on more fertile, less marginal lands) will gain extra income, even though they were prepared to produce for lower returns. The “unearned” extra income is “rent”. The concept of “scarcity rent” applies where a product price rises above marginal costs because of natural scarcity (sometimes a factor in land markets, e.g. urban real estate), or because of artificial scarcity created by market manipulation (e.g. the OPEC cartel, all monopolistic and monopsonistic behaviour).<sup>29</sup> In general, market manipulation can be seen as “rent-seeking”.

Large-scale foreign investment in agriculture may create opportunities to capture rent in the following ways:

- Excess profits attained by individuals and firms directly engaged in farming, attributable to high farm gate prices;
- Income received by land-owners from tenants (contractual rent, share of crops, etc.);
- Speculative gains from buying land and selling it at a higher price;
- Excess profits attained by agricultural suppliers (e.g. of seed of patented crop varieties) because of monopoly or oligopoly conditions;
- Excess profits attained by buyers of agricultural commodities because of monopsony or oligopsony (e.g. supermarket chains, estates using smallholders as out-growers);
- Food or fuel importing countries attaining below-world-market prices because of control land resources in other countries, giving them monopsonistic power over the price of produce from that land; and
- Decision-makers or public officials attaining income through corruption relating to planning decisions or the sale or lease of public lands (in effect, an exercise of monopoly power).

The classical analysis of rent is generally used to argue that taxation should seek to capture rents because such taxation should, by definition, create no disincentive for work or the investment of capital, unlike a tax on income or wealth. A pro-poor policy should, by extension, ensure either that rents are captured by the state on behalf of the poor, or that they are directly captured by the poor themselves.

While profit-seeking investment can, as was said, create a win-win situation, a competition for economic rent is a zero-sum game creating opposing interests; a bigger slice of the cake for one actor means a smaller slice for another. This is important when assessing the impacts of foreign land acquisitions. It may be possible to demonstrate benefits for local populations (e.g. jobs, infrastructure), yet at the same time, any capture of rent by investing firms or countries will represent a loss – an opportunity cost – for local populations who might have captured these rents under a different scenario. It is thus not enough to say that “everyone is now better off”; where economic rents are generated, it is important to know how they are shared.

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<sup>29</sup> Neoclassical economics has sought to generalise the concept of economic rent as the difference between actual income and the opportunity cost of not pursuing the next best use of the labour and capital employed. In another variation, rent may be conceptualised also as the difference between an actual price and the price that would occur under conditions of perfect competition.

## **2. Ensuring that foreign investment in land does not adversely impact on host country food security**

Many organisations have raised the issue of how the outsourcing of food production by capital-rich, food-importing countries will affect the food security of the host countries, particularly when the hosts themselves are, as in many cases, dependent on food imports if not food aid, and particularly in the context of possible future food price fluctuations. The Special Rapporteur on the Right to Food has recommended that investment agreements include “a clause providing that a certain minimum percentage of the crops produced shall be sold on local markets, and that this percentage may increase, in proportions to be agreed in advance, if the prices of food commodities on international markets reach certain levels.”<sup>30</sup>

The economic and food security effects of “export home” provisions can be investigated further. From an economic perspective, securing supplies of food is simply a matter of paying what the market demands; investor countries are therefore seeking to secure supplies that they can afford, or that are simply cheap. The interest of investor countries can be re-stated as an interest in capturing rent through paying less than they would have pay on the open market. Any rent captured in this way is an opportunity cost for the host country; in the worse case, the host country might end up importing at world market prices and exporting below them. From a global perspective, such arrangements could have the perverse effect of giving wealthier countries access to cheaper food supplies than poorer ones, something that could decrease global food security by decreasing the efficiency with which agricultural commodities are distributed and with which land is employed.<sup>31</sup> Such a situation would clearly seem to contravene Article 11, 2 (b) of the International Covenant on Economic, Social and Cultural Rights: “Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.”

## **3. Recognising the land rights of the poor as a starting point when considering land-based investments**

The most widespread concern is that large-scale land acquisitions could lead to the wholesale dispossession of the rural poor of the land resources they use under customary, common property, or otherwise not-formally recognised tenure systems. Even individuals and communities with legally recognised rights are seen as at risk because of inaccessible, ineffective or corrupt land administration systems. The basis for the consultation, participation and empowerment of local land users within investment decision-making is therefore the recognition of their legitimate rights to land and natural resources.

Of course, securing tenure over land resources, particularly for women and marginal groups such as pastoralists, indigenous people and common-property users is a huge challenge, requiring an array of strategies and actions. The IIED/FAO/IFAD study suggests that the collective registration of community lands can be a powerful tool for protecting local land rights in this situation. Securing the land rights of the poor should be central from both a human rights perspective (freedom from eviction, right to food) and from a pro-poor perspective that seeks to maximise the benefits poor producers obtain from any economic rents generated by future market conditions. Helping the poor to hold onto their land should be a priority.

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<sup>30</sup> de Schutter, *ibid.*, p.15.

<sup>31</sup> The ability of low income countries to restrict exports in times of domestic food insecurity can, however, be expected to have a net positive effect on global food security, being likely to reduce the price of food paid by the poor domestic consumers and to increase the efficiency with which food supplies meet nutritional needs.

In this context, we also need to be concerned about direct the negotiations between communities and investors. The World Bank has suggested such negotiations are preferable to government involvement. A variety of factors may induce the rural poor to enter into sale or lease contracts at prices that significantly undervalue both the speculative and productive value of their land. These include:

- Capital availability: The poor may lack the capital (including credit) to take advantage of market opportunities, or indeed to overcome economic distress without selling.<sup>32</sup>
- Policy bias towards large-scale producers: Small-scale farmers may realistically predict low returns from their holdings, but this may have less to do with the intrinsic efficiency of their farms than with policy (as regards credit, extension services, rural infrastructure, land administration, etc.) and whether this favours large or small-scale producers;
- Market manipulation in the supply chain: monopoly or monopsony tactics by suppliers, processors or marketers may reduce the returns of smallholders, inducing them to sell for low prices to large-scale investors that may not face such constraints;
- Access to information: large-scale investors are likely to have privileged access to information (e.g. on future trends and infrastructure development);
- Lack of negotiating capacity: the rural poor may lack individual and collective negotiating capacity, as well as capacity in legal affairs; and
- “Arm-twisting”: force, intimidation, misinformation and false promises.

The risk is that even where the land rights of small-scale producers are formally recognised, direct negotiations with investors may still lead to a bad deal for the former, leading to the undervaluation of smallholders' lands, land concentration, and the capture of very substantial rents by the new owners or leaseholders. Helping small-scale producers benefit from rising demand for land-related commodities thus also implies a positively supportive policy environment for smallholder production and for collective strategies to enhance their negotiating capacity and bargaining power.

In fact, given the current uncertainty about future price trends, but the strong possibility that food and land prices will rise considerably in the future, the sale and simple, long-term leasing of land may be generally problematic. Communities and host governments should seek to capture rents that arise, yet investors cannot be expected to pay high fees for land that does not, today, offer corresponding rates of return. On the other hand, retaining the ability to capture rents in the future, through taxation or flexible contractual rent, creates political risks for investors and may be rendered impossible by investment agreements and treaties. There is a need for a more flexible form of leasehold or investment contract which could describe at the outset an appropriate formula for benefit sharing. Such a contract could, for example, stipulate a profit threshold, above which the state or local communities would be entitled to a large share of profits, allowing the latter to capture what might be regarded as “rent” or “excess profit”, whilst also enshrining the right of the investor to a rate of return necessary as an incentive for investment.

#### ***4. Ensuring more inclusive and transparent processes for decision-making***

Another, more or less universal, area of concern is the lack of information about major land acquisitions, the opacity of the processes through which they are decided, and the related issue that they rarely include direct consultation with the local people who will be affected. At the national level, the secrecy with which many deals are shrouded is seen as preventing much-needed public debate and scrutiny. It is the exclusion of local affected peoples, however, on which studies have

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<sup>32</sup> On this point, see also the report of the Special Rapporteur on the Right to Food, Olivier de Schutter, *ibid.*, p. 8.

focused. The IIED/FAO/IFAD study notes that, “Even in the minority of countries where legal requirements for community consultation are in place, processes to negotiate land access with communities remain unsatisfactory. Lack of transparency and of checks and balances in contract negotiations creates a breeding ground for corruption and deals that do not maximise the public interest.”<sup>33</sup> The authors suggest that principles and procedures for free, prior and informed consent should provide guidance (a point echoed by IFPRI), particularly as developed in the forestry and extractive sectors. The World Bank publications have focused on the centralisation of the planning and negotiation process by host states and calls for decentralisation to improve transparency and land governance in general, preferring direct negotiations between investors and communities (the latter needing training and support).

The IFPRI policy brief warns that smallholders are often in a very weak bargaining position -especially when investors' aspirations are supported by a host state or local elite. DWHH notes how compensation payments in such contexts can often function more as a way of splitting communities and neutralising resistance than as a way of achieving a fair sharing of benefits. In response to the difficulties faced by communities, IFPRI emphasises the role that collective action plays in improving the negotiating capabilities of smallholders, e.g. in collective marketing structures. They also emphasise the role of civil society organisations in providing support. The IIED/FAO/IFAD paper calls for civil society legal support to communities in this context, ranging from, “legal literacy training, para-legal programmes, legal clinics, legal advice and representation in negotiations with government and investors, training on negotiating skills, through to public interest litigation.”<sup>34</sup>

The IIED/FAO/IFAD, DWHH and World Bank publications also share a perception that deals are being entered into without proper assessment of the options, of the viability of the proposals, or of their costs and benefits. DWHH calls for economic, social and ecological cost benefit assessments to take place, and with the participation of affected people and the civil society organisations that represent them. The World Bank policy note suggests the need for basing investment upon local land use plans – developed locally but possibly building on satellite imagery -that would allow for informed decision-making by all sides and could prevent land being held for purely speculative purposes. The IIED/FAO/IFAD paper calls for effective monitoring of land deals by the development community using tools such as maps, inventories and databases, to enhance public scrutiny as well as the access to information of investors and host countries.

### ***5. Developing and promoting alternative models for agricultural investments***

A final key concern of a wide range of organisations like IFPRI and DWHH is that foreign land acquisitions are promoting a model of large-scale agriculture that is unsustainable, displaces former land users and generates little employment. The World Bank policy note suggests that investors may mistakenly assume that large-scale farms and plantations are more efficient than smallholdings, and therefore that acquiring large tracts of land is necessary. It suggests that implicit subsidies such as low land prices and tax exemptions may thus be a mistake.

The alternatives proposed by IFAD, IIED, IFPRI and others are forms of partnerships between external investors and smallholders including contract farming or 'outgrowing', securing the land rights of smallholders and avoiding possible conflicts through benefit-sharing. DWHH, on the other hand, has suggested that contract farmers are often worse off than they were before. Indeed, land ownership is not enough on its own to ensure that smallholders retain any increased benefit from rising land-related commodity prices; rents will be captured by which ever actors in the supply chain are able to

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<sup>33</sup> Lorenzo Cotula et al., “Land grab or development opportunity? Agricultural investment and international land deals in Africa”, IIED, FAO and IFAD, 2009, p. 7.

<sup>34</sup> Ibid., p. 11.

exert 'market power' or negotiating power. As noted above, such power can be exerted by firms with monopoly or oligopoly control over inputs (such as patented seed varieties, agro-chemicals) or by firms with monopsony or oligopsony control of processing facilities or market access, including firms that outsource production to smallholders. Research by Sawit Watch and Forest Peoples Programme into the conditions of some of Indonesia's 4-4.5 million oil palm smallholders has revealed that they are often effectively forced to sell to a particular company. As a consequence they often receive below market prices and suffer from practices such as questionable product grading and late payment.<sup>35</sup>

### **The way forward: Key elements of a coordinated response by the development community**

Where production is of crops that do not favour outgrowing schemes, such as some cereals, other alternatives such as leasing of land by smallholders to investors, or granting smallholders equity in the company on the basis of land provision, could be considered. Again, even under such arrangements smallholders may find themselves worse off unless they are empowered to negotiate a more favourable share of benefits. As noted in the IFPRI policy brief, the ability of the rural poor to do so is greatly enhanced through forms of collective action, including through civil society organisations.

#### ***1. Continued research and monitoring to enable an evidence-based response***

Recent and ongoing research into the scale and nature of the investment that is taking place provides an important starting point for informing an evidence-based response. Looking forward, research will need to expand its focus to analyse further the social and environmental impacts of land acquisitions. It will also need to focus on learning lessons from successful examples of socially and environmentally responsible land-based investments.

Monitoring of trends and impacts is currently taking place primarily through media reports and scattered field studies. Increasingly, monitoring will need to be systematised to provide a coherent picture of impacts. To some degree this could be incorporated into wider land-monitoring initiatives, such as the World Bank's ambitious Land Governance Assessment Framework, currently in piloting phase. It can also be integrated into regional civil society initiatives to monitor land trends, such as Landwatch Asia and the Andean land Observatory, initiatives of ILC members under the Land Reporting Initiative of ILC. However, in the longer term there may be a need to develop a dedicated monitoring mechanism that will focus specifically on investment-related processes, including adherence of investors to contractual and other commitments and standards of conduct.

#### **Considerations:**

- How can the expanding number of diverse research and monitoring initiatives on land transactions develop greater coherence that allows comparability, without compromising on the legitimate differences in priority or focus?
- Is an empirically-based global monitor on investment-related land transactions and their impacts feasible?

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<sup>35</sup> Ghosts on our own land: Oil palm smallholders in Indonesia and the Rountable on Sustainable Palm Oil", Forest Peoples Programme and Sawit Watch, November 2006.  
[http://www.forestpeoples.org/documents/prv\\_sector/bases/oil\\_palm.shtml](http://www.forestpeoples.org/documents/prv_sector/bases/oil_palm.shtml)

## **2. A code of conduct for investors and host governments**

There is widespread support for the idea of developing guidelines, standards or a code of conduct for investors and host governments. These actors need guidance that sets out their existing obligations under international law and human rights covenants in relation to foreign investment in agriculture. A code of conduct or standards would embody the key points of these obligations, but also go further in enshrining best practices and in creating a global regime which encouraged adherence to them.

Several existing initiatives have been put forward as possible models or starting points for a new code of conduct. The IIED/FAO/IFAD report suggests that the ongoing processes to produce Voluntary Guidelines for Responsible Governance of Land and Other Natural Resources, led by FAO, and the Framework and Guidelines for Land Policies in Africa being developed under the leadership of the African Union, the UN Economic Commission for Africa and the African Development Bank, could be useful starting points. IFPRI emphasises that a code of conduct must have 'teeth'; it refers to Transparency International's success in making bribery a legal issue not just in the country where a bribe is paid, but in the bribe paying corporation's home country. The World Bank policy note puts forward the governance framework of the Extractive Industries Transparency Initiative, or the IFC's Equator Principles on good practice in project finance as possible models. It suggests that adherence to a code of conduct could be used to establish eligibility for MIGA insurance against political risk (including export bans).

Based on the statements of IFPRI, the Special Rapporteur on the Right to Food and the Government of Japan, elements of a code of conduct placing (non-binding) obligations on investors and governments might include: transparency in negotiations; respect for existing land rights, including customary and common property rights; sharing of benefits; promotion of socially and environmentally appropriate farming systems; adherence to national trade policies; and protection of labour rights.

Yet while suggestions are being put forward on the content of a code of conduct, less attention has been given to ensuring that a code is accepted and effective. It has been suggested that a good code is a negotiated code. For a code of conduct to have any chance of being accepted/implemented, it may be absolutely necessary that its formulation be as inclusive as possible.

### Considerations:

- Will current initiatives on land and development, particularly FAO's Voluntary Guidelines for Responsible Governance of Land and Other Natural Resources, and AU/UNECA/AfDB's Land Policy Framework and Guidelines provide an adequate code, or are these a starting point for a more targeted code of conduct?
- Do existing investment-related codes of conduct, such as the Equator Principles, existing international investment law, and existing international conventions provide clear and adequate guidance for land-related investments?
- How can we ensure that a code of conduct attracts adequate adherence and support from all key stakeholders, including investors, home and host governments and civil society?

## **3. Developing guidelines and tools for good decision-making by investors, governments and local communities**

There is a further role for broader, advisory guidance and information tools that could help governments, investors and communities make good decisions when faced with investment options. It is a common concern that host governments are dealing with investment proposals on an ad hoc basis, without an overall strategy, with little consideration of poverty reduction and food security

issues, and without needed national debate and due process. The IIED/FAO/IFAD study on land deals in five African countries notes that important strategic issues, like the balancing of investment goals with broader food security concerns, have been hardly touched upon in most agreements. DWHH has suggested the need to link decisions on foreign investment in agriculture into national strategies for poverty reduction and the processes for developing PRSPs.

While a code of conduct should, at best, be relatively simple in order to make compliance verifiable, guidance can be more detailed and extensive. It can be linked in to capacity building strategies for the staff of host governments, for local communities and for the civil society organisations that represent them. The recommendations made in the IIED/FAO/IFAD study are a step in this direction. Tools for good decision-making also means enhancing the quality and quantity of information that all sides can access. The World Bank Policy note has drawn attention to the interest of investors in having reliable information both about land resources and about existing claims to the land. It has suggested the usefulness of satellite imagery-based systems in supporting the development of both local land registries and local land-use plans. This is one area in which development agencies could provide input. In addition, methodologies to facilitate consultations with local communities to establish Free, Prior and Informed Consent could be developed for voluntary use by investors and governments, as a means of enabling informed decisions on land-based investment to be made by affected communities.

#### Considerations:

- If Japan's proposal at the G8 to develop a global platform to agree on the principles and compile relevant information and good practices is realised, how could civil society stakeholders best engage with the process?
- What kind of decision-making tools could be developed for investors, governments and local communities, and how can they be developed in a manner that maximises the likelihood of their use? Is it a feasible proposition to apply the principle of Free, Prior and Informed Consent to all local communities (including non-indigenous) before land is converted to new uses? If so, how could it be facilitated?

#### ***4. Improving, documenting and promoting alternative models of agricultural investment that do not involve transfers of land ownership***

There is growing concern in the development community that the large-scale, capital intensive, mechanised model of agriculture implied by most foreign investment in agriculture is unsustainable and ill-suited to meeting the needs of the world's poor. Instead of being seen as obstacles to investment in agriculture, local people should be seen as valuable investment partners, bringing with them the land resources under their tenure and the local agricultural and resource management knowhow that they possess.

Increased investment in agriculture, particularly in regions like Africa, is absolutely needed. A key aim should be to harness the current wave of investor interest to the goal of enabling small-scale producers to sustainably enhance productivity and capture benefits from rising agricultural commodity prices. The development community can play a particularly valuable role in achieving this in helping to develop, pilot and promote models of investor-community partnership, including contract farming and other forms of joint venture. As was noted above, however, particular attention must be paid to enhancing the negotiating power of local people, including wage labourers and contract farmers, both at the outset of an investment project and throughout its lifespan.

Guidance can be provided on how to minimise political risks through a fairer sharing of benefits, thereby increasing the probability of sustainable returns, as opposed to seeking to maximise possible

economic returns in a manner that maximises political risks, thus rendering investments highly speculative.

Considerations:

- How can private and state-backed investors be encouraged to act as partners in developing and piloting forms of community-investor partnership?
- How can the commercial viability of these partnerships be ensured and demonstrated? How do you put a price on reduced political risk?
- How can small-scale producers be empowered in relation to global markets, beyond the lifespan of pilot projects?

**5. Assisting in securing the land rights of the poor**

In providing input to the 17<sup>th</sup> session of the Commission on Sustainable Development, ILC members, on the basis of their experiences in working towards secure tenure for the poor, defined seven key policy options and practical measures to secure access to land and natural resources.<sup>36</sup> Considering the vastness of the challenge, a strategic focus among these would be on the collective registration of land rights. This is because the most vulnerable to loss of land through investment projects are the estimated 1-2 billion people<sup>37</sup> dependent on Common-Pool Resources. Most users of common land are, in land law, tenants of the state and thus have little legal protection of their land rights. The lack of existing legal claims to much common-land means that it is often perceived by investors as available freely or cheaply through non-market mechanisms. Formal registration of land rights should be accompanied by empowerment processes to ensure that formal titling, combined with a poor understanding of legal issues, does not in fact enhance the vulnerability of poor land users.

Innovative, bottom-up approaches and low-cost methodologies for collective land registration have been developed and tested in countries such as Mozambique, Tanzania, and Philippines, whose legal systems are supportive of collective tenure rights. A challenge in rapid up-scaling of collective tenure rights is to meet the required urgency without compromising on the need for adequate participation and without thus risking the further marginalisation and dispossession of groups such as mobile resource users.

Considerations:

- How up-scalable are current approaches to low-cost collective land titling, particularly to countries whose land law may not explicitly support collective registration of land rights?
- How can intergovernmental and regional agencies, who advise and support governments on land law and its implementation, promote a rapid scaling up of tenure registration? What role can bilateral donors and civil society organisations play in this?
- How could initiatives for tenure registration of local land users be targeted strategically to the people and areas most vulnerable to dispossession?

**6. Building the capacity for collective action and negotiation of local land users**

For community-investor partnerships to be successful in 'sharing benefits', small scale producers need to be well informed and organised in order to be able to negotiate successfully. In the context of agricultural supply chains, poor producers may be able to counter rent-seeking activity by other actors particularly through the formation of processing and marketing cooperatives. Within

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<sup>36</sup> [www.landcoalition.org/pdf/09\\_01\\_ILC\\_Workshop\\_Bangkok.pdf](http://www.landcoalition.org/pdf/09_01_ILC_Workshop_Bangkok.pdf)

<sup>37</sup> Making the Law Work for Everyone, Report of the Commission on Legal Empowerment of the Poor 2008.



plantation systems, unionisation enhances opportunities for collective bargaining. The building of organisations of farmers, landless people and other interest groups is a vital step in enabling and strengthening collective action. There is nonetheless an urgent need for targeted capacity building for particular communities who face investor interest in land that they use. Preliminary experiences are, for example, emerging from an initiative by FAO, IFAD and other partners in Mozambique to strengthen community capacities for more equitable negotiations with investors.

Considerations:

- How can civil society organisations, especially trade unions, producer federations, indigenous people's organisations and social movements play a leading role in building the capacity of local stakeholders for collective action?
- How can intergovernmental agencies and donors provide targeted support to capacity building and promote the up-scaling of positive experiences?

**Conclusion: Beyond the headline-grabbing "land grabs"**

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A series of very large-scale land acquisitions in developing countries by capital-rich countries has caught the world's attention and focused interest on the land rights of the rural poor in a way that is unprecedented. But problems of insecure land rights, landlessness and disadvantaged smallholder agriculture are not limited to spectacular instances of agricultural FDI. These deals are not a cause but a symptom of the wider issue of increasing commercial pressures on land. Global trends are creating markets for land and land-related commodities that have the potential to generate massive rents.

Attention is needed to all the ways in which various actors can attempt to capture these rents, and to the more general problem of how these increasing commercial pressures can become an opportunity for the rural poor, and not just a driver of marginalisation, unsustainable resource use and social conflict.

Thus there is a need for coordinated action to develop, agree and enforce a global code of conduct governing transnational land acquisitions, but this should also draw our attention to wider issues of domestic investment in land, land concentration and smaller-scale 'land grabbing' that are driven by the same trends. The 'land grabbing' phenomena can be used as a springboard for coordinated efforts to scale up and advance efforts at land rights registration, particularly of collective rights, but this should go beyond the immediate contexts of high profile investment projects. Attention needs to be given to all the ways in which land resources are alienated from the poor, including through domestic land markets.

Agricultural investment projects may provide a unique opportunity to pilot models of agricultural production that provide win-win benefits to investors and smallholders, but it is also necessary not to lose sight of all the ways in which small-scale producers may be disadvantaged in competitions for land-based revenues and rents, including through monopsonistic outgrowing practices. The issues brought to light by large-scale land deals are illustrative of the need to build the capacity of poor land users for collective action and effective negotiation.

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## List of acronyms

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AfDB	African Development Bank
AGTER	Association pour l'Amélioration de la Gouvernance de la Terre, de l'Eau et des Ressources naturelles
AU	African Union
CEPES	Centro Peruano de Estudios Sociales
CIRAD	Centre de Coopération Internationale en Recherche pour le Développement
CSD	Commission on Sustainable Development
DWHH	Deutsche Welthungerhilfe
FAO	Food and Agriculture Organisation
FDI	Foreign Direct Investment
FIAN	FoodFirst Information and Action Network
GTZ	Gesellschaft für Technische Zusammenarbeit
IAASTD	International Assessment of Agricultural Knowledge, Science and Technology for Development
IFAD	International Fund for Agricultural Development
IFC	International Finance Corporation
IFPRI	International Food Policy Research Institute
IIED	International Institute for Environment and Development
IISD	International Institute for Sustainable Development
ILC	International Land Coalition
MIGA	Multilateral Investment Guarantee Agency
OECD	Organisation for Economic Co-operation and Development
OPEC	Organization of the Petroleum Exporting Countries
PRSP	Poverty Reduction Strategy Paper
REDD	Reducing Emissions from Deforestation and Degradation
ROPPA	Réseau des Organisations Paysannes et de Producteurs de l'Afrique de l'Ouest
RRI	Rights and Resources Initiative
SPLA	Sudanese People's Liberation Army
UNCCPR	United Nations Covenant on Civil and Political Rights
UNECA	United Nations Economic Commission for Africa

## I.2. 'Land grabs' in Africa: can the deals work for development? (IIED, September 2009)

### *Summary*

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Due to Africa's natural resource endowments, there has been a cumulative increase in foreign land investment in the past five years across the continent. In sub-Saharan Africa, for example, foreign direct investment has increased from US\$ 17 billion in 2005 to US\$ 22 billion and US\$ 30 billion in 2006 and 2007, respectively. This study specifically covers Ethiopia, Ghana, Madagascar and Mali. These countries were chosen for several reasons, including availability of data, although the government sources used do not take into account many pending large land investments. Among the driving forces of these investments are food security concerns, an expansion in biofuel production, an expected increase in food prices and land values and demand for agricultural products in industry.

Some figures:

- Allocations in the above countries total around 2 million hectares (ha), with 1.4 million ha to foreign investors (mainly European, Middle Eastern and East Asian)
- Allocations account for a relatively small share of total arable land, ranging from 0.60% in Mali to 2.29% in Madagascar although many deals have not yet been recorded
- Single acquisitions can be large, including 452,000 ha (for biofuels) in Madagascar, 150,000 ha (for livestock) in Ethiopia and 100,000 ha (for irrigation) in Mali
- Private sector deals account for about 90% of allocated land area

Investments can be beneficial for host countries (by bringing capital, technology, infrastructure, etc.), as long as the rights of local populations are ensured by the proper terms and conditions of projects. Land rights of local peoples are particularly important in Africa, as land in several countries is nationalized or controlled by the state and even when private ownership is allowed (e.g. in Kenya, Madagascar and Mali), only an estimated 2-10% of land is held under formal land tenure. Therefore, host governments play a large role in investment deals (primarily long-term leases in Africa) and although some countries (e.g. Mozambique and Tanzania) have laws in place to provide for the consultation and cooperation with local communities, more legislative action is urgently needed to ensure that communities are informed and consulted before governments enter into negotiations with investors. A further consideration to protect host countries, is the contracts with investors, which need to include clear and specific wording so that they are enforceable and can hold investors to account when obligations are not fulfilled. Carefully negotiated deals should benefit local populations, host governments and investors and can avoid problems such as the South Korean firm Daewoo experienced in Madagascar. An impending 1.3 million ha deal was cancelled by the new government in Madagascar due to strong public opposition in the form of riots after the deal was announced by Daewoo in November 2008.

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## Introduction

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For many millions in the developing world, land is central to livelihoods, food security, even identity — the natural result of a direct dependence on agriculture and natural resources. It is not surprising, then, that a recent wave of large-scale land acquisitions in poorer countries has sparked a major debate. Through these acquisitions, interests in richer countries are buying or leasing large tracts of farmland for agricultural investment in Africa, Central and Southeast Asia, Latin America and Eastern Europe. With some deals involving hundreds of thousands of hectares, these investments have been dubbed ‘land grabs’ by the media. But this is too simplistic. Depending on the way they are structured, these investments can either create new opportunities to improve local living standards, or further marginalise the poor. An analysis of this complex and shifting situation, focusing on Africa, lays out key trends, drivers and main features, and outlines how to make the renewed momentum in agricultural investment work for local development and livelihoods.<sup>38</sup>

### International land acquisition: trends and drivers

Large-scale, international land acquisitions have been much in the news over the past few months. But quantifications of the phenomenon, such as its scale and whether it is in fact on the rise, are still thin on the ground. Some aggregate estimates of scale, based on media reports of land deals, are available; but a high level of uncertainty and the limited reliability of some media reports mean these figures must be treated with caution.

Quantitative inventories of documented, approved land allocations in Ethiopia, Ghana, Madagascar and Mali are helping to shape an accurate picture of trends via the following findings.

- Levels of activity are significant. Allocations in the four countries from 2004 to early 2009 total some 2 million hectares (ha), including allocations to foreign investors for over 1.4 million ha (an area somewhat less than the size of Swaziland or Kuwait). This excludes allocations below 1,000 ha and those pending negotiation. Allocations account for relatively small shares of total land suitable for agriculture in any given country (ranging from 0.60 per cent in Mali to 2.29 per cent in Madagascar). But some approved deals may not have been recorded, and figures on allocations are therefore conservative; they are much higher if deals still under negotiation are considered. Many approved deals have not yet been implemented on the ground.

#### Policy pointers

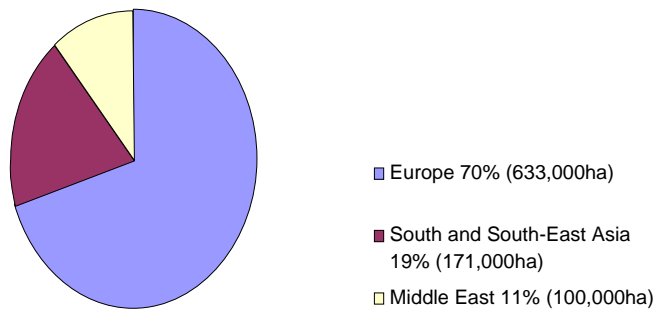
- Large land acquisitions have a deep, lasting effect on livelihoods, food security and the future of agriculture, so recipient countries need to foster strategic thinking, vigorous public debate and government responsiveness to public concerns.
- Effective safeguards in national law, and skillfully and transparently negotiated contracts, are key to ensure secure local land and water rights, inclusive business models, specific and enforceable investment commitments, robust social and environmental safeguards, and local food security.
- Development agencies can help by creating space for public debate, strengthening host government capacity to negotiate and civil society capacity to scrutinise, supporting efforts to improve land governance, and ensuring that international rules establish robust safeguards and are accompanied by effective monitoring and enforcement.

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<sup>38</sup> This briefing draws on a collaborative study undertaken by IIED with the Food and Agriculture Organization of the UN (FAO) and the International Fund for Agricultural Development (IFAD). The study involved analysing a small sample of contracts, undertaking in-depth case studies in two African countries, and carrying out national inventories of agricultural land acquisitions over 1000 hectares from 2004 to March 2009 in four African countries. The inventories relied primarily on host government sources (such as investment promotion agencies, ministries for agriculture) cross-checked through multi-stakeholder interviews. The full report, *Land Grab or Development Opportunity? Agricultural investment and international land deals in Africa*, is available at [www.iied.org/pubs/display.php?o=12561IIED](http://www.iied.org/pubs/display.php?o=12561IIED)

- There has been a cumulative increase in land investment. The past five years have seen an upward trend in both project numbers and allocated land areas in the four countries. Further growth is anticipated. For example, in July 2009 the government of Ethiopia marked out 1.6 million ha of land, extendable to 2.7 million, for investors willing to develop commercial farms.
- The size of single acquisitions can be very large. Allocations include a 452,500ha biofuel project in Madagascar, a 150,000ha livestock project in Ethiopia, and a 100,000ha irrigation project in Mali.
- Private sector deals account for about 90 per cent of allocated land areas. Government-owned investments make up the remainder. The home country governments of investors may play a major supportive role, providing diplomatic, financial and other support to private deals. Equity participations in investment projects by home country governments, through state-owned enterprises, development funds or sovereign wealth funds, may also be growing.
- Foreign investment accounts for the bulk of the deals. While media reports have focused on acquisitions by Middle Eastern and East Asian investors, the quantitative inventories suggest that key investor countries are in Europe and Africa as well as the Gulf and South and East Asia (as illustrated by the breakdown for Madagascar in Figure 1). Land acquisitions by domestic investors are also significant.

Figure 1. **International land allocations over 5000ha in Madagascar, by region of origin**  
(as % of allocated land area)



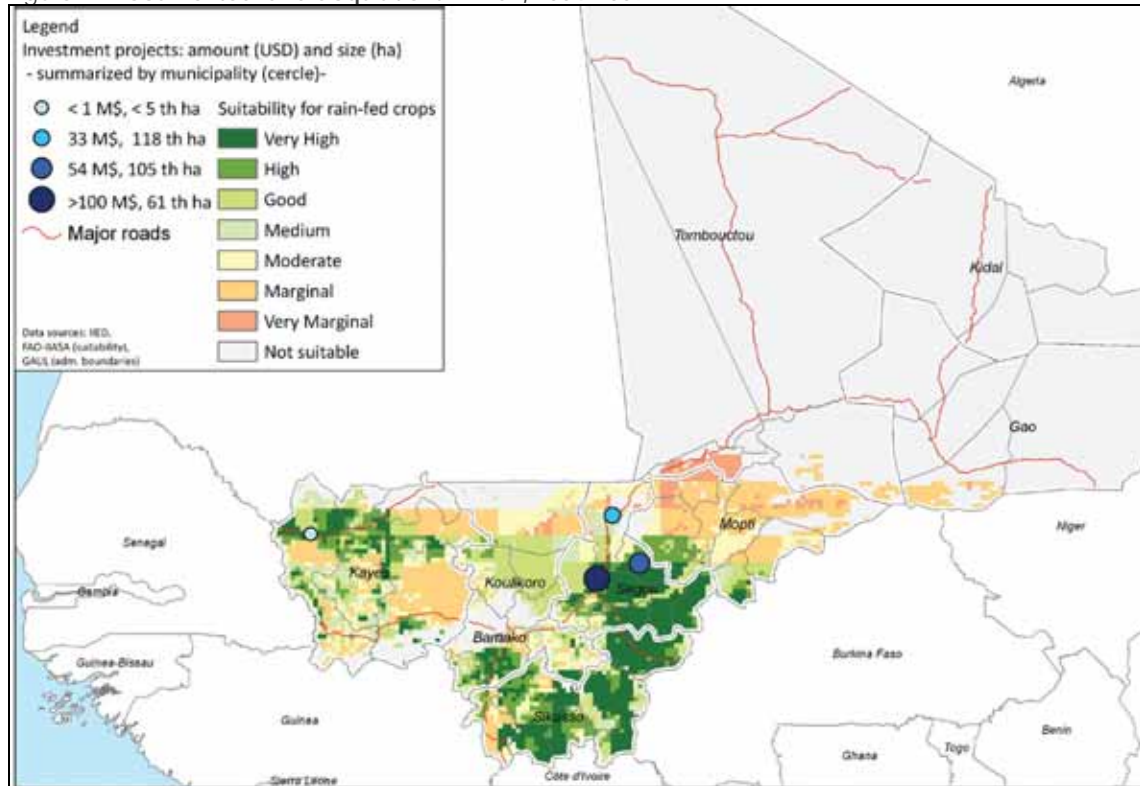
What is driving these investments? A key driver in investor countries is concern over food security, which burgeoned during the food price hikes of 2007/8. Another is the biofuels boom of the last few years. Related factors include business opportunities linked to expectations of rising food prices and land values, industrial demand for agricultural commodities, water shortages and climate change impacts in home countries and, in recipient countries, policy reforms aimed at attracting foreign direct investment.

### Mitigating risks, seizing opportunities

For countries on the receiving end, increased investment may bring macro-level benefits (GDP growth, greater government revenues), and create opportunities for raising local living standards. Investors may bring capital, technology, know-how, infrastructure and market access, and may therefore play an important role in catalysing economic development in rural areas.

But as outside interest rises, and as governments or markets make land available to prospecting investors, local people could lose access to the resources on which they depend – not just land, but also water, wood and grazing. While there is a perception that farmland is abundant in certain countries, these claims are not always substantiated. In many cases land is already being used or claimed – yet existing land uses and claims go unrecognised because people using the land have no formal land rights or access to the relevant law and institutions. In Ethiopia, for example, all land allocations recorded at the national investment promotion agency are classified as involving “wastelands” with no pre-existing users; but evidence suggests that some of these lands were used for shifting cultivation and dry-season grazing. Even where some land is available, large-scale allocations may result in people’s displacement as demand focuses on higher-value lands (for example, those with greater irrigation potential or proximity to markets). In Mali, for instance, where only a relatively small area of suitable land has so far been allocated, investor interest has focused on the more fertile lands of the Office du Niger area (see Figure 2). Water may also be a constraint, and priority in water use may prove a source of conflict.

Figure 2. Documented land acquisitions in Mali, 2004-2009



Source: IIED/FAO.

Ultimately, if international land deals are to boost opportunities and mitigate risks, each project will need to be properly scrutinised, and have the right terms and conditions. These will have to consider how risks are assessed and mitigated (for instance, with regard to project location), what business models are used (from plantations to contract farming, through to local people having an equity stake in the project), how costs and benefits (including food produced) are shared, and who decides

on these issues and how. So it is important to 'unpack' details on specific deals to examine how they tackle these issues.

### **Unpacking the contracts: the challenges to fair deals**

Land deals are embodied in one, or several, contracts. These need to be examined along with other legal texts defining their broader legal context, including national and international law. Contracts are complex and differ hugely among countries and even projects. More work is needed to identify trends in contractual practice and compare contractual options. But the analysis of a small number of contracts from Africa highlights a number of challenges that can threaten the balance of a deal.

Safeguarding local interests Land leases, rather than purchases, predominate in Africa, with durations ranging from short terms to 99 years. Host governments tend to play a key role in allocating land leases, not least because they formally own all or much of the land in many African countries. Therefore, the extent to which governments take account of local interests in land, water and other natural resources is key.

An important problem in this regard is that host governments may contractually commit themselves to providing land before any consultation with local land users has taken place. Also, lack of transparency and of checks and balances in contract negotiations encourages corruption and benefits ending up with the rich and powerful. In Mozambique and other countries, national law does require investors to consult local people before land allocations are made. In Ghana, deals with local leaders are common. But even in these cases, shortcomings in implementing legal requirements and in the accountability of local leaders are a recurrent problem.

Security of local land rights is also key – both to protect people from arbitrary dispossession, and to give them an asset to negotiate with. National laws vary, but some recurrent features undermine the position of local people. These include insecure use rights on state-owned land, inaccessible registration procedures, vaguely defined productive use requirements, legislative gaps, compensation only for loss of improvements such as crops rather than land, and often outdated compensation rates. As a result, local people may lose out, and investors that aim for good practice suffer from a lack of clear government procedures and guidelines.

### **Maximising local benefits**

Another area of concern relates to the economic equilibrium of the deal. Land fees and other monetary transfers are generally absent or small, due to efforts to attract investment, perceived low opportunity costs and a lack of well-established land markets. This alone does not mean the deal is unbalanced: benefits to host countries may include investor commitments on levels of investment and development of infrastructure such as irrigation systems.

The 'land grab' emphasised by some media outlets is therefore only part of the story. But given the prominence of investment commitments in the economic equilibrium of land deals, enforceability of such commitments is particularly important. Government land allocations are usually subject to the investor's compliance with investment plans for the first few years of the project, after which the allocation is confirmed. But in the past African governments have rarely used this lever to hold investors to account. Also, the wording of contracts may not be specific enough to be enforceable. And one-off assessments at an early stage of implementation do not enable continued monitoring and sanctioning of investment performance over a project's lifespan.

In several key respects affecting economic equilibrium, the contracts reviewed tend towards the unspecific, particularly compared to contracts in other sectors, such as mining and petroleum. With considerable variation among cases, the contracts tend to lack robust mechanisms to monitor or enforce compliance with investor commitments, guarantee benefits to local people, promote

smallholder participation in production activities, maximise government revenues, and balance food security concerns in both home and host countries.

### **The role of international law**

International treaties may compound imbalances in individual deals. For example, investment treaties between home and host states usually protect investment against adverse host government action (expropriation, broadly defined unfair treatment); strengthen the legal value of individual contracts by making their violation a breach of international law; and give investors direct access to international arbitration in case of disputes with the host government. Over the past few decades, these mechanisms have proved effective at holding governments to account for the way they treat investors. Rulings issued by international arbitrators have granted investors substantial compensation for host state breaches of contracts or treaties; and investors can enforce these rulings internationally, for instance by seizing assets held by the government overseas.

These international legal devices tend to be much more effective than those available to local people for protecting their land rights, for instance under human rights treaties. So when local people challenge government land allocations and seek protection for 'customary' rights, national and international institutions will probably offer little comfort, while the investor may rely on much more effective legal protection to discourage adverse changes to the land acquisition.

### **Not just any investment: promoting good deals**

The land investment story currently unfolding in a number of developing countries reflects deep global economic and social transformations with profound implications for the future of world agriculture. Decisions taken now will have major repercussions on the livelihoods and food security of many people for decades to come. Today's choices must be based on strategic thinking about the future of agriculture, the place of large and small-scale farming within it, and the role and nature of outside investment — bearing in mind that in many parts of the world, small-scale farming has proved economically competitive and able to respond to changing challenges. Therefore, while land deal negotiations are unfolding fast, there is a need for vigorous public debate and government responsiveness to public concerns in recipient countries. The risks of not doing this are high for both investors and host governments. The experience of Daewoo in Madagascar is a case in point. In November 2008, the South Korean firm announced that it had secured a 99-year lease for some 1.3 million ha of land in Madagascar. Public opposition to the deal contributed to riots that culminated in a change in government. When the new government came to power in March 2009, the incoming president cancelled the deal.

### **Roles for host governments**

Where international land deals are seen as a useful element of strategies to promote national and local development, a number of factors need to be in place: greater transparency, effective regulation, skilfully negotiated contracts, and robust social and environmental impact assessments and management systems. Some recent, very large investments seem unrealistic, and host governments should carefully scrutinise investors' capacity to deliver on very ambitious projects.

Rather than uncritically endorsing large plantations, host governments should use policy incentives to promote inclusive business models that share value with local enterprises, including small-scale farmers, processors and service providers. This may include equitably structured contract farming, and joint ventures where local people contribute land in exchange for a stake in the project.

Governments should also seek more specific and enforceable investor commitments on investment levels, job creation, infrastructure development and public revenues; and effective mechanisms to hold investors to account, for instance through contractual provisions that empower the host government to impose penalties or terminate the deal in case of non-compliance. Some recipient



countries are themselves food insecure, and workable arrangements must protect local food security, particularly in times of food crisis. These improvements can be achieved, and experience with improving transparency and contractual terms in other sectors such as oil can provide useful lessons.

Apart from carefully negotiating individual deals, recipient governments should ensure that their national legal frameworks are geared towards minimising risks and maximising benefits for local people. As interest in land grows, many countries should step up efforts to secure local land rights. Measures may include stronger legal recognition of local (including customary) rights; collective land registration where appropriate; ensuring the principle of free, prior and informed consent; providing legal aid and assistance; and improving governance of land and related resources. Adequate representation and protection of local interests in water allocation decisions are also key.

### **Roles for the international community**

Development agencies can play a useful role by engaging with the governments of both investor and recipient countries, private sector and civil society to ensure that land deals maximise the investment's contribution to sustainable development. The international community can:

- create space for public debate and support policy reform to maximise positive outcomes (for example, through greater local participation in and public oversight of negotiations)
- given the major power asymmetries in contract negotiations, strengthen host government capacity to negotiate and civil society capacity to scrutinise
- accompany efforts to secure local land rights, and support local groups in their negotiations with government and investors
- share lessons from international experience, for instance on tackling issues of food security, the balance of large and small-scale agriculture, robust contracts and equitable business plans
- review the lending conditions of governmental development funds available to private sector investors, to predicate lending on better practice in land acquisition
- ensure that international rules establish robust safeguards and are backed by effective monitoring and enforcement.

Lorenzo Cotula and Sonja Vermeulen

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### I.3. From Land Grab to Win-Win Seizing the Opportunities of International Investments in Agriculture (FAO, June 2009)

#### *Summary*

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Decades of low investment in the agricultural sector of developing countries has led to stagnant productivity and production levels, thereby creating a pressing need for more capital. The FAO has calculated that a minimum of US\$ 30 billion of additional funds are needed annually in order to achieve the goal of halving the world's hungry by 2015 (as set by the 1996 World Food Summit). Recent trends show that private investors and, to a smaller extent, wealthier countries with water and land constraints are starting to invest in land in Africa and Latin America for the purpose of growing basic foods and animal feed. Investors and resource-constrained countries should explore other mechanisms that can provide as much as or more food security (e.g. contract farming and out-grower schemes, bilateral agreements including counter-trade, investment in infrastructure and institutions in developing countries, etc.) but because land acquisitions are a current reality, care needs to be taken to ensure that deals are *mutually beneficial*.

Possible benefits to host countries include technology transfer, quality improvements, employment creation and multiplier effects through the use of local labor and other inputs. To guarantee that these are concurrent with investor benefits, governments in host countries urgently need to implement better land rights systems and need to make sure that investments do not become enclaves of advanced agriculture that are separated from local communities, thereby preventing the transfer of benefits. International investors, in order to minimize risks, need to take into account labor, social and environmental standards that will impact local communities. To assist both host countries and investors, the international community should: 1) develop a binding code of conduct that, while difficult to enforce, will at least provide a framework for those involved and 2) continue to monitor and evaluate land acquisition deals so that best practices can be catalogued and used in law and policy.

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Foreign acquisitions of farmland in Africa and elsewhere have become the focus of concern. Many observers consider them a new form of colonialism that threatens food security of the poor. However, investments could be good news if the objectives of land purchasers are reconciled with the investment needs of developing countries.

#### **Alarming capital gaps**

The agricultural sector in developing countries is in urgent need of capital. Decades of low investment have meant stagnating productivity and production levels. In order to halve the world's hungry by 2015, as targeted by the 1996 World Food Summit, FAO calculations show that at least US\$ 30 billion of additional funds are required annually.

Developing countries' capacity to fill this gap is limited and official development assistance (ODA) offers no real alternative. In fact, the share of aid going to agriculture has been on a downward trend to below 5 percent. The question is not whether international investments should provide a supplement to other capital inflows, but how their impact can be optimized.

#### **What do we know?**

Information about international investments in agriculture is scarce and mostly based on anecdotal evidence. From what limited information is available, three observations stand out: (i) international investments into agriculture have increased, but land under foreign control remains a small portion in developing countries; (ii) though investments are mostly private, governments are heavily involved, especially in recipient countries; and (iii) the focus of investments has shifted from cash crops to the production of basic foods.

These observations hint at the main driving force behind the current wave of investments. Many deals are stimulated by food security concerns, especially those coming from wealthier countries with land and water constraints. High food prices and policy-induced supply shocks evidently created fears that dependence on world markets to satisfy domestic demand has become risky.

Seizing opportunities through partnerships The sale of farmland to international investors is not without risks for developing countries. Experiences show that they can cause land expropriation or lead to an unsustainable use of resources, thereby undermining the livelihoods of local populations.

They also promise several opportunities, including a technology transfer to stimulate innovation and productivity increases; quality improvements; employment creation; backward and forward linkages and multiplier effects through local sourcing of labour and other inputs. Even an increase in food supplies for the domestic market and for export is possible. However, these benefits will not come automatically, and it will take efforts of both investors and recipients of investments to realize the full potential of land deals. Above all, it requires an understanding that collaboration promises mutual benefits.

### **Making investments work**

Host countries hold the prime responsibility for attracting investments to where strategic needs are greatest and ensuring that these needs are met. Many land deals seem to have been settled between the investor and the government in host countries, with little concern for whether benefits would trickle down to the local population. Insufficient documentation of smallholders' rights prevented them from making any claims. While much land in developing countries is currently not fully utilized, apparently 'surplus' land does not mean that it is unused or unoccupied. Better systems to recognize land rights are thus urgently needed. Similarly, governments should try to avoid that investments create enclaves of advanced agriculture that are detached from local realities. These will do little to improve smallholder production or generate additional incomes and employment opportunities.

International investors are equally called to action. They should recognize the local consequences of their investments and consider labour, social and environmental standards; stakeholder involvement; and food security concerns – not because they are obliged to do so, but because it minimizes their investment risks. Madagascar is a case in point. Public unrest stopped a deal after it became known that the government tried to lease 1.3 million hectares of land to South Korean investors. Similar events prevented investments in Indonesia (500 thousand hectares to Saudi Arabian investors) and the Philippines (1.2 million hectares to China). More inclusive strategies would have offered a solution.

### **Exploring alternative strategies**

Apart from improving the conditions of land deals, investment partners should also consider looser contractual arrangements. In fact, the purchase and direct use of land resources is only one strategic response to the food security concerns of countries with limited land and water. A variety of other mechanisms can offer just as much – or even higher – security of supply, e.g. contract farming and out-grower schemes, bilateral agreements including counter-trade, and improvement of international food market information systems. Investments could furthermore be in much-needed infrastructure and institutions that currently constrain agriculture in developing countries. This, together with efforts to improve the efficiency and reliability of world markets as sources of food could raise food security for all through an expansion of production and trade possibilities.

**Ways forward**

The risks attached to international investments have led to calls for a binding code of conduct. While its enforcement is likely to be problematic, it might nevertheless offer a framework to which national regulations could refer, especially if parties realize that compliance with common standards is in their mutual self interest.

More importantly, international investments in agriculture other than land acquisition should be evaluated and promoted. To this end, the extent, nature and impact of international investments going to developing countries needs to be better understood and monitored. Best practices should be catalogued in law and policy to better inform both host and investing countries. An international experts meeting, to be organized by FAO in July of 2009, will offer important insights in this regard.

#### I.4. Land reform processes in West Africa (SWAC/OECD, 2006)

*This analysis coordinated* by the SWAC/OECD aims to feed into regional debate on West Africa's rural development promoted, *inter alia*, by the CILSS, the WAEMU and ECOWAS. This debate has received renewed attention on the global development agenda – e.g. the 2005 World Summit Outcome identifies “rural and agricultural development” among a core list of priority areas for action to achieve the Millennium Development Goals. Other examples are the NEPAD's Comprehensive Africa Agriculture Development Programme (CAADP) and the recently launched AfDB/AU/UNECA process (see below).

Over the last five decades, West African countries have experienced steady demographic growth and dramatic political, economic, cultural and social changes. This complex change process accelerated during the 1990s and had significant impact on the way land resources are socially perceived and used. Land regimes<sup>39</sup> have proven to be only somewhat evolving. They are strongly influenced by the colonial legacy and combine customary and statutory systems in order to govern ownership, access, control and use of natural resources; address (local) conflict; and support agricultural development.

Land is a major economic, political, social and cultural asset in Africa. Controlling land resources, nationally and/or locally is also a means to accumulate political, economic and social power. Thus, land reform is a highly politicised process that can be seen as a threat to the interests of certain actors. However, land reform can also be seen as an opportunity to change the social and political relations particularly with reference to inequality based on gender, group membership, age, etc. The need for reform is widely acknowledged to address problems related to competing land rights and uses and the exploitation of economic opportunities associated with increasing land value or more productive land uses in rural and urban settings. Land reform processes have been initiated in several West African countries over the last twenty years, with varying degrees of success.

While the land reform agenda gains momentum domestically, an interest in considering land policy issues with a regional perspective also seems to emerge. Phenomena that go beyond national borders could be best addressed through collective or concerted action, e.g. the management of shared natural resources including watershed resources; transhumance pastoralism; desertification; migration; displaced population movements; and the spread of violent conflict. All have significant land dimensions which is one reason why recent legal instruments for regional cooperation and integration<sup>40</sup> make reference to land issues. These instruments foreshadow the importance of identifying regionally common principles for land tenure to address cross-border and inter-State land issues.

With a view to examining the issues above, this document is organised as follows:

- The first section describes the major legislation, policies and achievements in recent decades of ECOWAS, the WAEMU, the CILSS and AfDB on land, natural resource management, conflict and reconstruction issues.
- The second section presents an insight on national land reform processes in West Africa to enable a comparative analysis and begin identifying regional synergies.
- The third section introduces approaches to land reform as supported by development partners in Africa.
- The final section highlights key issues and a series of questions for regional debate.

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<sup>39</sup> Land regimes in West Africa encompass full sets of norms, rules, decision-making procedures and institutions that regulate land management, administration and use in any specific context.

<sup>40</sup> The ECOWAS' Mechanism for Conflict Prevention, Management and Resolution, Peacekeeping and Security; the ECOWAS and WAEMU's agricultural policies; the ECOWAS' protocol on settlement rights, etc.

The following issues and questions emerge from this review of regional, national and international initiatives on land reform in West Africa.

There is general acceptance of the need to reform land tenure systems across West Africa. However, it has been difficult to pursue land reforms within the broader framework of agricultural policies at the national and regional levels. Many divergent, communitarian interests appear at the national and local levels when trying to address existing land regimes that can heighten tension and at times trigger violence. *Is it possible to develop a regional vision in such a context and what could be its value added? Who are the most active supporters of the land reform agenda in West Africa? What room for manoeuvre do they have in the medium term?*

- Reform processes tend to be long and involve a wide range of actors. The challenge is to integrate different authorities at various levels throughout the process. Drafting clear land policy documents through a participatory approach is increasingly considered as an appropriate way to develop successful land reforms, linked with the long-term commitment of most governments to reduce poverty and in line with the objective of economic growth. *How might lessons learned from stakeholders' participation in national land policy formulation processes be used to facilitate regional consultation? What necessary steps should be taken to successfully incorporate land issues in MDG and PRSP processes?*
- Recognition of customary land rights and the survival of state land monopoly are still key issues that need to be properly addressed by land reform processes in most West African countries. Legal pluralism in Africa (i.e. co-existence of customary, Islamic and statutory arrangements) renders land tenure more complex. Past reforms pointed out the problem with replacing legal pluralism and the need to accommodate the complexity in any new reform. *How can the complexity in current and future reforms be managed? What kind of lessons can be drawn from external reforms for such a process?*
- Decentralisation of land management is seen as a promising perspective to strengthen land tenure security and prevent land-related conflicts in rural areas. However the extent to which West African governments are willing to effectively transfer powers and resources to local governments remains unclear. It is acknowledged that decentralisation does not represent a solution to all problems on the ground. The risk of abuse of power and authority is great at every level. Power relations exist across levels of governance. Despite their relevance to the success of land reform, they are often under emphasised. *What approaches and tools have been devised to guarantee inclusion and equity in land reform at the local level? Are there any regional lessons that could inform ongoing national processes?*
- Privatisation of land and land allocation to agri-business are likely to increase over the medium-term. This situation has raised discontent among family farmers – the majority of farmers in the region – and increased their sense of vulnerability. Under certain conditions, this can contribute to political instability. *What policy options and interventions are best suited to promote complementarity rather than opposition between agri-business and family farming in West Africa?*
- Competition for land, exacerbated by demographic growth and migration, the dynamics of conflict in the region, the process of agricultural transformation and agrarian change, are of great concern for both national and regional institutions. Deepening the understanding of the relationship between land, agricultural transformation and conflict at all levels is seen as fundamental to improving human security in the region. *How might regional organisations such as ECOWAS, the CILSS and the WAEMU contribute to promoting land access security for vulnerable user groups in emerging from conflict contexts?*

- The land issue is more often approached separately without taking into account its link with other natural resources. For example, large and small watercourse planning raises property value, competition and conflict. Many shared watercourses exist for which planning for agricultural development will increase the risks of national or regional conflicts around land. *How can this aspect be better taken into account in strategic thinking on policies and land reform?*
- West African regional organisations have been pioneers in advocating for a regional land agenda. They have made significant progress in setting an agenda for land reform under the CILSS' leadership. They have launched a debate on the reform's core goals, and priority actions in consultation with regional stakeholders. However, it is unclear how far local stakeholders are involved in this process, how long it will take to implement this agenda in the coming years and how it will be done. The legitimacy of regional organisations to address land issues is questioned by some stakeholders. *What are the opportunities and constraints for the CILSS, in partnership with ECOWAS and the WAEMU, to implement the Praia+9 Declaration in the coming years? How can the regional and continental initiatives such as the AfDB/AU/UNECA process be articulated so as to foster complementarity and increased impact? What regional trends in land issues have emerged in West Africa that could be useful to inform analysis and action elsewhere?*
- Given the high sensitivity of the land tenure issue for national governments, West Africa's land reforms have not taken into account the cross-border or the regional dimensions of land management, access and use. They also have not adequately addressed demographic issues and historic patterns of mobility to farm and use natural resources in the context of progress of sub regional integration. Such reforms have not attained the expected results, largely because they have not been fully implemented. Their application has also had a number of intended and unintended consequences with regards to security of tenure for specific groups. *What cross-border management experiences related to common property resources exist in West Africa? What are the advantages and disadvantages of integrating land issues in the ongoing regional debate on free movement of people in West Africa?*
- Although attempts have been made to address land reform issues at the national and the regional levels, no work has yet been done to assess the appropriate degree of subsidiarity between regional, national and local land regimes and policies. *How can issues of subsidiarity and diversity of land tenure systems and contexts be fully recognised and intrinsic to land access analysis and frameworks for action?*
- Many development partners express a growing interest in integrating land issues in their overall strategies toward sustainable development and security for all in Africa. There is awareness on the limits and opportunities associated with ongoing intervention on land issues. *What new tools would be needed in order to increase the relevance of support to the land reform process?*

## **II. Declarations**





## II.1. Large-scale land acquisitions and leases: A set of core principles and measures to address the human rights challenge (extract)

Mr. Olivier De Schutter, Special Rapporteur on the right to food, 11 June 2009

### Summary

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- 1) Negotiations should be made in full transparency and in cooperation with local communities. Host governments should strive to balance the advantages of entering into an agreement with investors with the opportunity costs (especially to local populations) involved with such an agreement.
  - 2) Any changes in land use should come with the “free, prior and informed consent” of local (especially indigenous) communities concerned. Forced evictions by states should be used as a last resort; they are legal under international law *only* when they are in conformity with locally applicable legislation, when they are justifiably essential for the general welfare and when displaced peoples are provided with adequate compensation or alternative access to productive land.
  - 3) States should adopt legislation detailing the conditions under which changes in land use and forced evictions are acceptable and the procedures to be followed in such cases. In addition, states should assist local populations in the collective registration of land so that they can be provided with full judicial protection in the case of disputes.
  - 4) Revenues from investment agreements should be used to benefit local populations. These benefits may be more fully realized by the provision of access to credit and to improved technologies for contract farming, for example, than by the long-term leasing or purchasing of land.
  - 5) Host states and investors should institute and promote farming systems that are labor intensive as these systems help create employment and can be highly productive.
  - 6) Host states and investors should cooperate to ensure the use of sustainable farming methods.
  - 7) Obligations of investors must be clearly defined and enforceable. These obligations should not be limited to the payment of rent or a monetary sum but should include commitments to the long-term sustainability of the investment and compliance with human and labor rights.
  - 8) Investment agreements should include a clause ensuring that a certain minimum percentage of crops produced by investors should be sold on local markets so as not to increase food insecurity for local populations.
  - 9) Impact assessments of investments should be conducted before negotiations in order to ensure that the lease or sale of land will equally benefit local communities, the host state and the investor.
  - 10) Host states must consult and cooperate in good faith with indigenous peoples specifically in order to obtain their free, informed and prior consent of any project concerning their lands or other resources.
  - 11) Legislation should provide for the protection of the human and labor rights of agricultural waged workers and enforced in practice.
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### Recommendations

None of the above is to suggest that large-scale land leases or purchases cannot be beneficial for all parties – the investor, the host State, and the local population concerned. Large-scale investments in farmland can work for the benefit of all parties concerned. But that presupposes that an appropriate institutional framework is in place – and if it is not at the time of the investment, the arrival of large investors may in fact make it less likely, not more, that it will be set up in the future. It is therefore

vital that the negotiations leading to such agreements comply with a number of procedural requirements ensuring informed participation of the local communities and therefore adequate benefit-sharing, and that the agreements themselves take into account the human rights which could be negatively impacted by such investment. Agreements to lease or cede large areas of land in no circumstance should be allowed to trump the human rights obligations of the States concerned. It is a joint responsibility of both the host State and the investor to respect the human rights involved. Where the investor is a private entity, it is the responsibility of its home State to ensure that these obligations are complied with.

The Special Rapporteur wishes to make the following recommendations:

1. The negotiations leading to investment agreements should be conducted in full transparency, and with the participation of the local communities whose access to land and other productive resources may be affected as a result of the arrival of an investor. In considering whether or not to conclude an agreement with an investor, the host government should always balance the advantages of entering into such an agreement against the opportunity costs involved, in particular when other uses could be made of the land available, which could be better conducive of the long-term needs of the local population concerned and with the full realization of their human rights.
2. In principle, any shifts in land use can only take place with the free, prior and informed consent of the local communities concerned. This is particularly important for indigenous communities, in view of the discrimination and marginalization they have been historically subjected to. Forced evictions should only be allowed to occur in the most exceptional circumstances. They are only allowable under international law when they are in accordance with the locally applicable legislation, when they are justified as necessary for the general welfare, and when they are accompanied by adequate compensation and alternative resettlement or access to productive land. States should ensure, prior to carrying out any evictions or shifts in land use which could result in depriving individuals from access to their productive resources, that all feasible alternatives are explored in consultation with the affected persons, with a view to avoiding, or at least minimizing, the need to resort to forced evictions. In all cases, effective legal remedies or procedures should be provided to those who are affected by eviction orders.
3. In order to ensure that the rights of the local communities will be safeguarded at all times, States should adopt legislation protecting these and specifying in detail the conditions according to which shifts in land use, or evictions, may take place, as well as the procedure to be followed. Moreover, States should assist local communities in obtaining collective registration of the land they use, in order to ensure that their rights will be enjoy full judicial protection. Such legislation should be designed in accordance with the Basic Principles and Guidelines on Development-based Evictions and Displacement presented in 2007 by the former Special Rapporteur on the right to adequate housing (A/HRC/4/18, annex I), as well as with General Comment No. 7 (1997) of the Committee on Economic, Social and Cultural Rights on the right to adequate housing (article 11.1): forced evictions (E/1998/22, annex IV).
4. Investment agreement revenues should be used for the benefit of the local population. Investment contracts should prioritize the development needs of the local population and seek to achieve solutions which represent an adequate balance between the interests of all parties. Depending on the circumstances, arrangements under which the foreign investor provides access to credit and to improved technologies for contract farming, or against the possibility to buy at predefined prices a portion of the crops produced, may be preferable to long-term leases of land or land purchases.

5. Host States and investors should establish and promote farming systems that are sufficiently labour intensive to contribute to employment creation. Labor-intensive modes of production can be highly productive per hectare. Investment agreements should contribute to the fullest extent possible to reinforcing local livelihood options and in particular provide access to a living wage for the local population involved, which is a key component of the human right to food.
6. Host States and investors should cooperate in identifying ways to ensure that the modes of agricultural production shall respect the environment, and shall not accelerate climate change, soil depletion, and the exhaustion of freshwater reserves. Depending on the local conditions, they may have to explore low external input farming practices as a means to meet this challenge.
7. Whichever the content of the arrangement, it is essential that the obligations of the investor be defined in clear terms, and that these obligations are enforceable, for instance by the inclusion of pre-defined sanctions in cases of non-compliance. For this mechanism to be effective, independent and participatory ex post impact assessments should be made at predefined intervals. The obligations of the investor should not be limited to the payment of rents, or – in the case of land purchases – to a monetary sum. They should include clear and verifiable commitments related to a number of issues which are relevant to the long-term sustainability of the investment and to its compliance with human rights. In particular, such commitments may relate to the generation of local employment and compliance with labor rights, including living wages, as far as waged employment is concerned, or to the inclusion of smallholders through properly negotiated outgrower schemes, joint ventures or other forms of collaborative production models ; and to the need to make investments in order to ensure that a larger portion of the value chain can be captured by the local communities, for instance by the building of local processing plants.
8. In order to ensure that they will not result increase food insecurity for the local population, particularly as the result of increased dependence on international markets or food aid in a context of higher prices for agricultural commodities, investment agreements should include a clause providing that a certain minimum percentage of the crops produced shall be sold on local markets, and that this percentage may increase, in proportions to be agreed in advance, if the prices of food commodities on international markets reach certain levels.
9. Impact assessments should be conducted prior to the completion of the negotiations, in order to highlight the consequences of the investment on the enjoyment of the right to food through (a) local employment and incomes, disaggregated by gender and, where applicable, by ethnic group ; (b) access to productive resources of the local communities, including pastoralists or itinerant farmers ; (c) the arrival of new technologies and investments in infrastructure ; (d) the environment, including soil depletion, the use of water resources and genetic erosion; (e) access, availability and adequacy of food. Only through such impact assessments, which should include a participatory dimension, can it be ensured that the contracts providing for the lease or sale of land will distribute their benefits equitably between the local communities, the host State, and the investor.
10. Indigenous peoples have been granted specific forms of protection of their rights on land under international law. States shall consult and cooperate in good faith with the indigenous peoples concerned in order to obtain their free and informed consent prior to 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.

11. Agricultural waged workers should be provided with adequate protection and their fundamental human and labour rights should be stipulated in legislation and enforced in practice, consistent with the applicable ILO instruments. Increasing protection of this category of workers would contribute to enhancing their ability and that of their families to procure access to sufficient and adequate food.

The debate on large-scale land acquisitions or leases, which this statement seeks to inform, should not distract us from acknowledging that, to a large extent, the rush towards farmland in developing countries is the result of our own failures. We have failed in the past to adequately invest into agriculture and rural development in developing countries, particularly sub-Saharan Africa. We have failed to promote means of agricultural production which do not deplete the soils and exhaust groundwater reserves. And we are failing today to establish well-functioning and more reliable global markets for agricultural commodities. It would be unjustifiable to seek to better regulate agreements on large-scale land acquisitions or leases, without addressing also, as a matter of urgency, these circumstances which make such agreements look like a desirable option.

## II.2 Promoting Responsible International Investment in Agriculture (Government of Japan, World Bank, FAO, IFAD and UNCTAD)

Roundtable concurrent with the 64th United Nations General Assembly

### *Summary*

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The Roundtable took place in New York on 23 September 2009 and was co-chaired by the Government of Japan, World Bank, FAO, IFAD and UNCTAD with representatives from 31 governments and 13 organizations. The participants recognized the potentially profound impact the recent surge in foreign investment in agriculture can have on global food security and world agriculture, as well as the controversy surrounding specifically the acquisition of rights to land, water and other natural resources by foreign investors. There was an overall consensus that an increase in agricultural investment is crucial to achieve higher productivity and greater production levels and can benefit host countries through additional farm and firm income, employment opportunities, infrastructure, technology transfer, etc. Unintended negative impacts (in terms of political stability, social cohesion, sustainable food production, environmental protection, etc.) need to be mitigated, however, through the careful governance of investments.

In order to allow for such governance, participants concluded that it is necessary to develop principles concerning investments as well as an international framework that is meant to translate the principles into action. The majority view was that the principles should be non-binding and should use as their basis the following key tenets: 1) the respect of existing land and resource rights, 2) the strengthening of food security, 3) the transparency, monitoring and accountability of procedures concerning land investment, 4) the consultation and participation of the parties affected by investments, 5) the economic viability and the responsibility (in terms of the respect of rule of law, industry best practice, etc.) of investment, 6) the social sustainability of investments, and 7) the environmental sustainability of investments. The principles and framework developed and agreed upon must also be based on “vigorous and evidence-based” public debate as well as create a “win-win-win” situation where host countries, local communities and investors all benefit. Participants expressed a desire to join the efforts of the World Bank, FAO, IFAD and UNCTAD to cultivate a broader consultative process to facilitate agreement on principles and framework. Progress made by the above-mentioned organizations will be reviewed around March of 2010.

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1. The Roundtable “Promoting Responsible International Investment in Agriculture” was convened in New York on 23 September 2009. The Government of Japan, World Bank, FAO, IFAD and UNCTAD co-chaired the event, which took place in a context of growing trend of major agricultural investment associated with acquisition of rights to land and related resources. Representative stakeholders from 31 Governments and 13 organizations attended the meeting, marking the first step towards framing a coordinated response to the issue, and developing principles and an international framework to promote responsible investment in agriculture. The following is a brief summary of the Chair’s assessment on the main thrusts of the deliberations at the event.

#### **Opportunities and risks incurred in the recent trend**

2. Participants recognized that the recent surge of interest in foreign investment in agriculture, particularly in the developing world, has profound implications for the future of global food security and world agriculture. The acquisition of rights to land, water and other natural resources by foreign investors has been particularly controversial. Participants underlined the need for further research and analysis on the extent, nature and impact of such investments.

3. Participants all agreed that increasing investment in agriculture is vital to achieving higher productivity and greater food production, thereby ensuring global food security and poverty reduction. Investment, whether foreign or domestic, private or government-backed, plays a key role in financing agricultural growth. Participants from developing countries emphasized their efforts to attract investment in and for their agriculture sectors, with a view toward improving food security, yields, output, and value added, while benefiting from additional farm and firm income, direct and indirect employment, productive infrastructure, technology transfer, new product development, and better access to attractive markets.

4. Many participants underlined, on the other hand, the complexity of issues related to land and other resources, and pointed out that poorly conceived or executed investments, particularly those involving large tracts of land in developing countries, could have unintended negative impacts in terms of political stability, social cohesion, human security, sustainable food production, household food security or environmental protection for the receiving country. Local people could lose access to the resources on which they depend. There was a view expressed that measures to mitigate negative impacts associated with large-scale international investments in developing countries are urgently needed.

5. Participants were aware of calls by various stakeholders to develop principles, guidelines or codes of conduct to govern such investments. Some participants stressed the need for prompt actions, as a year has already passed since the phenomenon first gained attention, but progress remains limited. Consensus emerged after discussions that all the constituencies which the participants represent, i.e. governments, the private sector, civil society and international organizations, should work together to develop principles and an international framework which translates the principles into action.

#### **Developing consensus around principles and international framework**

6. Participants discussed the following key tenets and reached a broad agreement that they could be a basis for the principles around which the international framework is designed. The overwhelming view was that the principles should be legally non-binding but have a flexible mechanism for monitoring, taking into account country-specific circumstances.

- Land and Resource Rights: Existing rights to land and natural resources are recognized and respected.
- Food Security: Investments do not jeopardize food security, but rather strengthen it.
- Transparency, Good Governance and Enabling Environment: Processes for accessing land and making associated investments are transparent, monitored, and ensure accountability.
- Consultation and Participation: Those materially affected are consulted and agreements from consultations are recorded and enforced.
- Economic viability and responsible agro-enterprise investing: Projects are viable economically, respect the rule of law, reflect industry best practice, and result in durable shared value.
- Social Sustainability: Investments generate desirable social and distributional impacts and do not increase vulnerability.
- Environmental Sustainability: Environmental impacts are quantified and measures taken to encourage sustainable resource use, while minimizing and mitigating their negative impact.

7. Participants emphasized that the process of agreeing on principles and developing international framework must be based on vigorous and evidence-based public debate and broad consultations, thereby providing voice to all stakeholders, then reconciling and supporting the interests of receiving countries, local communities, and investors. The overriding objective is to create a “win-win-win” situation and promote responsible investment in agriculture, which optimizes the impact of increased investment to maximize the benefits and to minimize the inherent risks for all involved, thereby achieving sustainable and inclusive agricultural development in receiving countries.

8. Participants recognized that the efforts in this regard should draw on the past good practices and experience gained and, where appropriate, content already developed by relevant guidelines, standard schemes or codes of conduct, whether public or private. Examples include the Equator Principles, the Extractive Industry Transparency Initiative (EITI), Santiago Principles, OECD Guidelines for Multinational Enterprises, and numerous commodity or theme specific schemes. The process of formulating the international framework should also be in line and compliment with other food security initiatives.

9. Participants also discussed the way to facilitate the formulation of more equitable investment contracts and selection of suitable business models including joint ventures, contract farming and outgrower schemes, as well as appropriate legislative and policy frameworks in receiving countries.

10. It was proposed that the international framework should also facilitate compilation and sharing of relevant data and information, lessons learned and good practices, creation of analytical and operational tools. In this regard, participants welcomed a joint proposal by a group of international organizations to create a knowledge platform and toolkit for addressing questions of international investment in development country agriculture.

### **The way forward**

11. Participants expressed general support to the joint efforts by the World Bank, FAO, IFAD and UNCTAD to contribute to a broader consultative process that will lead to agreement on the principles and framework. The consultative process will be initiated by these organizations with close coordination with key investing/ receiving countries, private sector, civil society and other international organizations. The process should be as inclusive as possible, and with a clear time frame.

12. Participants were determined to follow up the above discussions and bring forward the agenda, taking advantage of events such as the World Bank Annual Meeting in early October, European Development Days later in October, the FAO World Summit on Food Security in November, the OECD-UNCTAD Global Forum on International Investment in December, and beyond into 2010. Progress will be reviewed in the course of six months.

*The Roundtable was attended by over 70 people from 31 countries and 12 organizations. The participants included representatives from the Governments of Australia, Republic of Belarus, Federative Republic of Brazil, Republic of Bulgaria, Republic of Cameroon, Canada, Central African Republic, Union of Comoros, Kingdom of Denmark, Arab Republic of Egypt, French Republic, Federative Republic of Germany, Republic of Ghana, Holy See, India, Republic of Indonesia, Republic of Italy, Japan, Grand Duchy of Luxembourg, Republic of Moldova, Islamic Republic of Pakistan, Independent State of Papua New Guinea, Democratic Republic of Sao Tome and Principe, Kingdom of Saudi Arabia, Republic of South Africa, Republic of Korea, Kingdom of Sweden, Swiss Confederation, United Republic of Tanzania, United Kingdom of Great Britain and Northern Ireland, United States of*



*America, European Union, Food and Agriculture Organization of the United Nations (FAO), International Fund for Agricultural Development (IFAD), International Food Policy Research Institute (IFPRI), Organisation for Economic Co-operation and Development (OECD), United Nations Conference on Trade and Development (UNCTAD), World Bank, United Nations World Food Programme (WFP), International Institute for Sustainable Development, International Land Coalition, Rabobank International and Yara International.*

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### II.3. Parliamentary Action to ensure Global Food Security. Resolution adopted by consensus by the 121st IPU Assembly (UIP Geneva, 21 October 2009)

#### *Summary*

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The 121<sup>st</sup> IPU Assembly took place in Geneva on 21 October 2009 to discuss global food security. Several international articles and agreements on the *right to food*, hunger mitigation and sustainable development provide the framework for the meeting, including but not limited to: 1) Article 25(1) of the Universal Declaration of Human Rights (1948), 2) Article 11 of the International Covenant on Economic, Social and Cultural Rights (1966), 3) the 1996 Rome Declaration on World Food Security and the World Food Summit Plan of Action, and 4) the Millennium Development Goal 1, Target 3. Participants of the meeting recognized the various issues affecting global food security such as poverty, the global economic crisis, volatile food prices and a growing demand for food that is constrained by many factors (urbanization, water scarcity and the *decline in investment in agriculture*). Because food security is closely related to so many other global issues, a comprehensive approach is needed that includes economic, environmental and social policy that will increase the availability and accessibility of food.

Calls to action by the assembly to address the above-mentioned issues include: 1) increasing investment in agricultural technology, means of increasing agricultural productivity, and rural development, 2) making the knowledge and know-how in agriculture (technology, innovation systems, etc.) more accessible, particularly to rural poor, 3) properly regulating private investment, which is recognized to play an important role in development, and 4) facilitating greater cooperation between international, regional and non-government organizations, governments, and farmers' representatives. Parliaments involved are expected to submit an annual report to the IPU Secretariat detailing national progress in addressing the food crisis; the IPU looks to create a "permanent mechanism" to address food security in the future.

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The 121st Assembly of the Inter-Parliamentary Union,

*Recalling* that under Article 25(1) of the Universal Declaration of Human Rights (1948), "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food ...",

*Also recalling* Article 11 of the International Covenant on Economic, Social and Cultural Rights (1966), in which the fundamental right of every person to be free from hunger is recognized,

*Further recalling the* commitment made by parliamentarians under the United Nations Convention to Combat Desertification (UNCCD) to establish, under the auspices of the IPU, a parliamentary network on the UNCCD to promote information and interaction aimed at increasing parliamentary involvement and efficiency in combating desertification, soil erosion and land degradation,

*Taking into consideration* the cooperation agreement of 24 July 1996 (A/51/402) between the United Nations and the IPU, which laid the foundation for cooperation between the two organizations,

*Noting*, in that regard, United Nations General Assembly Resolution 63/24 of 22 January 2009 on cooperation between the United Nations and the Inter-Parliamentary Union,

*Welcoming* the IPU's contribution to shaping the agenda and work of the Development Cooperation Forum (DCF), recently established by the United Nations Economic and Social Council,

*Taking note* of the resolution adopted by the 96th Inter-Parliamentary Conference in Beijing (China) on 20 September 1996 on "Policies and strategies to ensure the right to food in this time of globalization of the economy and trade liberalization",

*Also taking note* of the 1996 Rome Declaration on World Food Security and the World Food Summit Plan of Action, which pledged to reduce the proportion of undernourished people to half their 1996 level by no later than 2015,

*Further taking note* that under Millennium Development Goal (MDG) 1, Target 3 aims to halve, between 1990 and 2015, the proportion of people who suffer from hunger,

*Recalling* Articles 61, 62 and 65 of the United Nations Convention on the Law of the Sea (1982), which deal with aspects of overfishing,

*Recalling* the recommendations of the 17th Session of the UN Commission on Sustainable Development, adopted in May 2009, on the importance of promoting agriculture and development in a sustainable way,

*Welcoming* the establishment by the UN Secretary-General of the UN High-Level Taskforce on the Global Food Security Crisis and the Task Force's Comprehensive Framework for Action, released in July 2008,

*Bearing in mind* the June 2008 Declaration of the FAO High-Level Conference on World Food Security, which called for greater international efforts to address the challenge of global food security,

*Welcoming* the G8 Statement on Global Food Security, adopted at the G8 Outreach Session on Food Security in L'Aquila, Italy, in July 2009, in which the leaders of 40 countries and international organizations emphasized five basic principles to govern cooperation related to food security and agreed to act; *also welcoming* all multilateral and regional commitments to tackle the issue of food security,

*Realizing* that climate change will affect developing countries the most and will pose a threat to food security,

*Recognizing* that the world is experiencing various natural and man-made disasters, ranging from drought, famine and floods to locust invasions, which have had either a direct or indirect impact on agricultural productivity and consequently on the macroeconomic status of countries, particularly developing ones, and which have led in the long run to low agricultural productivity, starvation and even death in some cases,

*Realizing* that severe weather patterns, droughts and floods have become so common globally that they have led inter alia to the loss of life and property and the destruction of farmlands and transport infrastructure,

*Reaffirming* that although each country has the primary responsibility for its own sustainable development and poverty eradication, concerted and concrete measures are required at all levels to enable developing countries to achieve their sustainable development goals as they relate to the internationally agreed poverty-related targets and goals, including those that arise out of the relevant UN conferences and the United Nations Millennium Declaration,

*Deeply concerned* that despite the progress made by the international community in recent years towards eradicating hunger, the number of malnourished people in developing countries has increased to more than one billion,

*Also concerned* that the global economic crisis is leading to increased poverty, thereby further reducing the food security of the poor, and is widening the gap between rich and poor,

*Further concerned* that while food prices have fallen from their recent peaks, they remain volatile, due among other things to speculative trade in the futures markets in food grains, and are expected to remain relatively high in the foreseeable future,

*Remaining concerned* at situations of armed conflict, which cause a steep decline of socioeconomic conditions, particularly on food security,

*Concerned* that the international community's capacity to respond to the growing demand for food is constrained by increasing urbanization, water scarcity, the decline in investment in agricultural research and development, distortions in global food markets, increasing energy prices, environmental degradation and climate change,

*Recognizing* that appropriate, affordable and sustainable investment in research and scientific advancements to boost agricultural productivity and combat drought-induced famine, severe weather patterns and floods can play an important role in helping States alleviate poverty and eradicate hunger,

*Noting* the importance of sufficient food storage facilities and an adequate transport infrastructure to facilitate both the storage of food and its transportation to markets,

*Recognizing* that food security and poverty are fundamentally interrelated and must be addressed within a broad framework that encompasses social concerns and economic growth,

*Also recognizing* the negative effects that distortionary agricultural policies have on agricultural production, investment, trade and food security,

*Acknowledging* the importance of fair and efficient markets and trade flows in promoting economic growth and food security,

*Also acknowledging* the importance of sustainable development and real progress in tackling environmental challenges, such as the increase in greenhouse gas emissions, to achieving global food security,

*Believing* that the fulfilment of the right to food requires the adoption of economic, environmental and social policies aimed at increasing both the availability and the accessibility of food,

*Recognizing* the importance of global action to address inadequate food security and the need for a timely process for reporting on progress,

*Believing* that agriculture can be a part of the solution in combating climate change and *calling on* the international community to put agriculture on the agenda at the UN Climate Change Conference Copenhagen 2009 (COP15),

1. *Calls on* parliaments to take urgent and decisive action to achieve the Millennium Development Goal of halving the number of people suffering from hunger by 2015;

2. *Stresses* the critical need for increased investment in rural development in developing countries in order to improve food security;
3. *Urges* donor countries to honour their commitments and mobilize additional resources to help achieve global food security;
4. *Urges* States, parliaments and relevant UN agencies to make greater efforts to promote investment in research and scientific progress in order to boost agricultural productivity and combat drought-induced famine, floods, coastal erosion and other natural disasters under fair, transparent and mutually agreed terms;
5. *Calls upon* parliaments to promote investment in research and scientific progress on issues such as tree planting, wetland and dryland conservation, afforestation and deforestation that will reverse the effects of climate change, which in turn affect other interventions in this area;
6. *Urges* all parliaments to make greater efforts to stop the continuous overfishing of many marine species that has occurred in recent years in several regions of the globe, and which affects the food security of many countries;
7. *Calls for* support for national efforts to foster the effective use of local know-how and technology and promote agricultural research and technologies to enable poor rural men and women to increase agricultural productivity and enhance food security;
8. *Encourages* States to make knowledge and know-how in the field of agricultural technology and agricultural innovation systems more accessible, in particular to the poor, subject to appropriate arrangements;
9. *Urges* the relevant bodies of the United Nations system to support the efforts of States, in particular developing countries, to take full advantage of new knowledge in agricultural technology, innovation, research and development with a view to achieving the relevant MDGs, in particular the eradication of poverty and hunger;
10. *Recognizes* the important role of the private sector in the development of modern and efficient agricultural and food systems, while *stressing* the need for proper regulations to limit potential abuses by the private sector;
11. *Calls for* the empowerment of farmers' organizations in the decision-making process;
12. *Urges* parliaments, relevant UN agencies, non-governmental organizations and donors to invest in improved transport infrastructure, including road and rail networks, as well as adequate food storage facilities, all of which have an important role to play in bringing available food production to markets and areas of immediate need;
13. *Calls upon* public and private institutions to further develop improved crop varieties that are suitable to various regions, especially those challenged by environmental factors, including climate change, and to develop and manage these crops in a sustainable manner; *calls for* further efforts by all stakeholders to ensure that improved crop varieties are made available and affordable to small farmers, especially those in developing countries, in a manner consistent with national regulations and the relevant international agreements;
14. *Encourages* parliaments to exchange information on technological development and international cooperation in the area of agricultural productivity;
15. *Stresses* the need for greater coordination between parliaments, international and regional organizations, non-governmental organizations and farmers' and fishermen's associations in their efforts to improve global food security;

16. *Calls for* the implementation of national and regional agricultural strategies to improve food security through country-led coordination processes, as called for in the Comprehensive Framework for Action developed by the UN High-Level Task Force on Global Food Security;
17. *Encourages* parliaments to expand national social protection systems in order to shield the poor in developing countries from future food price rises and crises and loss of livelihood;
18. *Stresses* the critical need for affected populations to have free access to food and other essentials in areas of armed conflict in order to alleviate the humanitarian situation and improve food security;
19. *Urges* parliaments to take measures, in addition to actions to improve global food security, to adapt to and mitigate climate change as well as strengthen the sustainable management of water, land, soil and other natural resources, including the protection of biodiversity;
20. *Calls on* governments to show renewed commitment to a balanced outcome of the Doha Round of multilateral trade negotiations under the World Trade Organization, and to conclude the negotiations by the end of 2010;
21. *Urges* governments to refrain from erecting barriers to trade and investment in agriculture and to take measures to foster a well-functioning banking system, including microfinance schemes that give access to women and guarantee them a minimum of 50 per cent of available funds;
22. *Encourages* world leaders to agree effective measures to tackle food security at the forthcoming World Summit on Food Security;
23. *Calls on* developed countries to make a renewed commitment to cut greenhouse gas emissions during the COP15 meeting so as to reduce the adverse effects of climate change on food supply;
24. *Calls on* all parliaments to submit an annual report to the IPU Secretariat on national progress in addressing the food crisis and *calls on* the IPU to explore the possibility of creating a permanent mechanism to address the subject of food security.

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\* *The delegation of India expressed a reservation on operative paragraph 21.*

## II.4. Declaration on land issues and challenges in Africa (Union africaine), Assembly/AU/Decl.1(XIII)

### *Summary*

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Heads of States and the Government of the African Union (AU) met in Sirte, Libya from 1-3 July 2009 for the 13th Ordinary Session, where the issue of land challenges was brought into discussion. Within the context of their commitment to the eradication of poverty, the participants recognized the need for “strong systems of land governance” that take into account the sustainability of land use. Although steady progress is being made in the development of land policies, the participants welcomed the initiative that has been taken up by the African Union Commission, the United Nations Economic Commission for Africa (UNECA), the African Development Bank (AfDB) and other supporting development organizations, to draft and implement a continental framework and set out guidelines that can be used by AU member states when drafting national policies.

The establishment of an institutional framework to provide assistance in the development of policy and its implementation and to coordinate follow-up and learning activities is highly sought after by participants. Within the nations themselves, there is an expressed commitment to including all stakeholders (including civil society, private stakeholders, etc.) in the policy development and implementation process, and to ensuring that laws provide equal access to land and related resources to all land users. Regional Economic Communities are called upon to meet in periodical regional platforms to discuss and share experiences, lessons learned and disseminate best practices in land policy.

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**WE**, the Heads of States and Government of the African Union, meeting at our Thirteenth Ordinary Session in Sirte, Libya, from 1 to 3 July 2009;

**REAFFIRMING** the commitments we have made to poverty eradication with the view to raising the living standards of our peoples and the wellbeing of our future generations;

**RECOGNISING** the centrality of land to sustainable socio-economic growth, development and the security of the social, economic and cultural livelihoods of our people;

**AWARE** of the rich heritage of Africa’s land and related resources especially its unique natural ecosystems;

**FURTHER AWARE** of the diversity and complexity of the systems under which land and related resources are held, managed and used;

**NOTING** the diversity of issues and challenges facing access to, use and management of land resources; and the threat relating to land and related resources including those arising from changes in the global, political and economic environment;

**CONSCIOUS** of the need for strong systems of land governance rooted in principles of sustainability in an effort to ensure preservation, protection and renewability of Africa’s land and related resources;

**FURTHER NOTING** the steady progress which our countries have made in the initiation, review, revision or comprehensive development of land policies and their implementation in order to ensure that their various land sectors play an important role in development;

**WELCOMING** the joint initiative which has been taken up by the consortium of the African Union Commission, the United Nations Economic Commission for Africa (UNECA) and the African Development Bank (AfDB) with support from development partner organisations, in drafting a continental framework and guidelines on land policy development and implementation for use as a resource by AU member states in their efforts to improve the performance of their various land sectors;

**ACKNOWLEDGING** the comprehensive consultations and discussions that have been conducted and the experts inputs made in the course of the preparation of the continental Framework and Guidelines on land policy in all the five regions of Africa;

**CONSIDERING** the Report of the African Union Joint Conference of Ministers responsible for Agriculture, Land and Livestock held in (city, town) from 22 to 24 April 2009, and the recommendations therein endorsed by the Executive Council;

**UNDERTAKE TO:**

1. prioritise, initiate and lead land policy development and implementation processes in our countries, notwithstanding the extent of multi-stakeholder contribution to such processes involving civil society, private sector and other stakeholders;
2. support the emergence of the institutional framework required for the effective development and implementation of land policy and implementation;
3. allocate adequate budgetary resources for land policy development and implementation processes, including the monitoring of progress.

- RESOLVE TO:**
1. ensure that land laws provide for equitable access to land and related resources among all land users including the youth and other landless and vulnerable groups such as displaced persons;
  2. strengthen security of land tenure for women which merits special attention.

**REQUESTS** the Commission in collaboration with the Regional Economic Communities, UNECA, AfDB and other partners to:

1. endeavour to work towards establishment of an appropriate institutional framework to provide coordination of follow up activities and facilitate mutual learning by member states as they develop/review their land policies in accordance with the Framework and Guidelines;
2. take measures for the establishment of a fund to support follow up activities to promote land policy development and implementation;
3. undertake measures for the establishment of mechanisms for progress tracking and periodic member states reporting on progress achieved.

**INVITES** the Regional Economic Communities to:

1. convene periodic regional platforms to facilitate experiences sharing, lessons learning and dissemination of best practices in land policy **Assembly/AU/Decl.1(XIII) Page 3** formulation, implementation and monitoring based on members states experiences;
2. appropriately capture and address issues of land policies within their respective common agricultural policy framework.

**URGES** Member States to:

1. review their land sectors with a view to developing comprehensive policies which take into account their peculiar needs;
2. build adequate human, financial, technical capacities to support land policy development and implementation;



**3.** take note of the iterative steps outlined in the Framework and Guidelines on Land Policy in Africa for their land policy development and implementation strategies.

**REQUESTS** the Commission, in collaboration with UNECA and AfDB, to carry out studies on the establishment of an appropriate institutional framework that can support Member States in their efforts towards reviewing, developing and implementing land policies including mechanisms for progress tracking and reporting, as well as for the establishment of an African Fund for Land Policy, and report thereon to the ordinary session of the Assembly in June/July 2010.

## II.5. EU Task Force on Land Tenure. “EU Land Policy Guidelines: Guidelines for support to land policy design and land policy reform in developing countries” (November 2004)

### *Summary*

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In 2004, the EU developed a set of guidelines to assist EU donors in the “design of their support for interventions in land policy and administration in developing countries” (Preface). Though the guidelines were written specifically for EU donors before the recent wave of land acquisitions in Africa, they do provide a comprehensive overview of land tenure and land policy issues and suggest some pertinent ways for those currently involved in land policy reform in Africa to proceed.

Before any changes can be made, it is first necessary to compile background information in order to assess the interrelatedness of land policy with other broader development issues. An important question to ask is: how are land tenure and poverty related? Some relevant assessments would include (but would certainly not be limited to): 1) how land issues relate to productivity investment and employment (e.g. what changes in policy could improve productivity and investment), 2) how land is connected to social justice and poverty (in terms of forced evictions, access by minority groups such as women, pastoralists, indigenous peoples, etc.), and 3) the role of land policy in environmental sustainability. Strengths and weaknesses of current policy, legislation and institutional frameworks should also be evaluated (in terms of the actual structure of current national policy, content and process, how this protects the rights of the governed, and how the law is actually applied). Land policy should be integrated into the further democratization of governance at national and local levels.

Once the relationships between land policy and other issues are accounted for, the EU donor/interested party should identify current possible “entry points” through which opportunities for change can be utilized. This can be done by evaluating: 1) ongoing reform processes, 2) stakeholder participation (who are the interested parties and who is leading current reform process?), 3) emerging pressures (what are the positions/perspectives of the main interested parties, particularly farmers/herders’ organizations?), 4) political factors, i.e. political climate and government commitment, and 5) available research, etc. Proposed reforms should be economically, financially, institutionally, socially and environmentally sustainable.

After opportunities have been assessed, the EU donors and other actors involved can choose a suitable intervention, which can include one or a combination of the following possibilities: research and analysis, legislation, land administration (e.g. registration and titling), land management (e.g. land redistribution and resettlement), the development of a land-based tax system, the performance of environmental impact assessments, and the development of monitoring and evaluation systems. The significance of monitoring and evaluating systems should not be underestimated; they are powerful tools to measure the success of interventions so that appropriate changes can be made if required. “Outcome indicators” provide information on how a policy is performing and are preferable to “input indicators” which detail inputs such as finances and human resources.

## **II.6. Atelier de validation de l'étude sur « la question foncière rurale face aux défis de l'intégration régionale au sein de l'espace UEMOA (octobre 2009) »**

### **Introduction**

Du 27 au 29 Octobre 2009, s'est tenu à Dakar Sénégal, l'atelier régional de validation de l'étude sur « la question foncière rurale face aux défis de l'intégration régionale dans l'espace UEMOA ». Cette étude a été initiée par l'UEMOA en collaboration avec la Banque mondiale. Elle a bénéficié de l'appui technique du Hub Rural.

Les principaux objectifs de l'atelier sont ceux-ci-après :

- partager les réflexions et préoccupations de l'UEMOA en matière foncière ;
- obtenir une information actualisée sur les processus fonciers nationaux en cours au sein de l'espace UEMOA ;
- mieux prendre en considération les préoccupations spécifiques des États membres en matière foncière ;
- dégager et approfondir les perspectives utiles et opportunes d'action de l'UEMOA pour appuyer les processus nationaux en cours en croisant les points de vue des États membres et autres parties prenantes.

Ont pris part à l'atelier une cinquantaine de participants représentant :

- les États membres de l'Union,
- la société civile,
- le secteur privé,
- les organisations régionales et internationales.

L'atelier s'est déroulé en séances plénières et en travaux de groupes. Les principales conclusions et recommandations de l'atelier sont synthétisées dans les points ci-dessous.

### **1- Importance de la question foncière dans la sous-région**

La terre constitue la première richesse pour les pays africains. Bien gérée et mise en valeur, elle permet de contribuer à la croissance économique et de lutter contre la pauvreté. En particulier, la sécurisation foncière est considérée comme une condition importante pour assurer l'intensification de l'agriculture et garantir la sécurité alimentaire. Cependant la gestion foncière dans la plupart des États membres de l'UEMOA, fait face à de nombreuses contraintes. Il s'agit notamment :

- de l'inadaptation et de l'absence d'application effective des textes législatifs et réglementaires relatifs au foncier ;
- de l'insécurité des producteurs ruraux, particulièrement les exploitants familiaux ;
- des difficultés d'accès à la terre et à la propriété foncière pour les groupes vulnérables tels que les femmes et les jeunes.

La gestion du foncier est rendue plus complexe par les transformations rapides et profondes qui affectent l'environnement socio-économique. C'est le cas notamment :

- de l'accroissement rapide de la population ;
- des déplacements volontaires ou forcés de populations ;
- des progrès rapides de l'urbanisation et des phénomènes liés à la globalisation et au marché international.

Il faut également souligner l'inquiétude grandissante des États, de la société civile et des populations de la région devant le phénomène d'accaparement des terres. Enfin, les études les plus récentes indiquent que l'Afrique sera la région la plus durement touchée par les effets des changements climatiques, et que ses capacités productives en seront affectées de manière négative.

Les questions foncières sont importantes non seulement pour les politiques nationales mais aussi dans le cadre des grands chantiers de l'intégration régionale. C'est le cas en ce qui concerne la Politique Agricole de l'Union (PAU), la Politique d'Aménagement du Territoire Communautaire (PATC) et la construction du marché commun au sein de l'espace UEMOA.

Les principes de libre circulation des personnes, des biens et des capitaux, ainsi que le principe du droit d'établissement supposent un environnement d'accès sécurisé à la terre au sein de l'espace de l'Union. La bonne gestion du foncier contribue également à la préservation de la paix dans la région.

## **2- Etat des lieux des initiatives en cours**

Pour faire face à cette situation, de nombreuses initiatives sont développées par les États, mais aussi par la société civile ainsi que par les organisations régionales. Certaines initiatives sont convergentes dans tous les États de l'espace de l'Union, pendant que certaines sont spécifiques. Ainsi on soulignera que tous les États ont mis en place des législations foncières cadres à des périodes différentes. Certains États ont entrepris des actions de mise en œuvre de ces législations avec plus ou moins de succès, mais tous se heurtent à des contraintes de capacités limitées et de manque de moyens financiers. D'autres États sont actuellement en train de s'engager dans la reformulation de leurs cadres de politiques et législations foncières nationales. Les questions de financement durable des réformes foncières, notamment la mise en place d'une fiscalité foncière juste et adaptée constitue également un problème commun auquel sont confrontés l'ensemble des États.

Les organisations régionales manifestent de plus en plus un intérêt à soutenir les efforts des États en matière foncière, à travers notamment différentes rencontres régionales de concertation et des projets d'élaboration d'instruments régionaux.

Au niveau de la société civile, des efforts sont déployés pour participer aux processus nationaux de réformes foncières et engager des actions de lobbying en faveur notamment de la sécurisation foncière des exploitations familiales.

## **3. Quel rôle pour l'UEMOA et quelles actions possibles ?**

L'atelier reconnaît que les questions foncières relèvent en priorité de la responsabilité des États. Ces États formulent leurs politiques et législations nationales en fonction de leurs contextes historique, social et culturel spécifiques ainsi que des engagements internationaux qu'ils ont souscrits. Cependant l'Union, en considération de ses objectifs, se voit de plus en plus interpellée sur le sujet. Le rôle approprié de l'UEMOA consiste surtout à soutenir et faciliter les processus nationaux engagés

par les États. L'UEMOA doit également encourager les États à mettre leurs politiques foncières en cohérence avec les principes de l'intégration régionale, notamment avec le droit d'établissement au sein de l'espace de l'Union, les principes et orientations de la PAU et de la PATC.

Dans cette perspective, les directions d'action ci-après proposées par l'étude de base ont été jugées pertinentes :

- a. L'appropriation par les États de l'initiative communautaire naissante en matière foncière
- b. La mise en place d'un Observatoire régional du foncier
- c. Le renforcement des capacités des États en matière de gestion foncière ;
- d. L'Assistance aux États en matière de promotion et de régulation des marchés fonciers

L'atelier a souligné que la bonne gouvernance en matière foncière doit être prise en compte dans la mise en œuvre de ces quatre axes.

Au terme de ses travaux, l'atelier a approuvé le rapport de l'étude sur « la question foncière rurale face aux défis de l'intégration régionale dans l'espace UEMOA ». L'atelier a fait des amendements qui devront être intégrés dans le rapport final et a formulé des recommandations sur les points suivants :

- l'accapement des terres
- la mise en place d'un Observatoire du foncier en Afrique de l'Ouest
- le renforcement des capacités en matière de gestion foncière
- la synergie des initiatives sur le foncier en Afrique de l'Ouest

#### **4- Recommandations**

##### **4.1- Recommandations sur l'accapement des terres**

- Considérant l'inquiétude croissante des populations de l'espace de l'Union en ce qui concerne le phénomène grandissant d'accapement des terres ;
- Considérant le manque d'informations claires relatives aux attributions de terres rurales au profit firmes étrangères ;
- Considérant les questionnements sur les avantages et risques potentiels liés à ce type de pratique.

L'atelier recommande aux Etats

- d'assurer la préservation des intérêts de leurs populations, particulièrement les exploitants familiaux, en renforçant leurs capacités ;
- de consulter les populations locales concernées avant toute attribution de terres relevant de leur terroir et les associer dans les prises de décision ;
- de veiller à la préservation de leurs intérêts nationaux dans une perspective de long terme.

L'atelier recommande à l'UEMOA, en concertation avec la CEDEAO et les autres organisations régionales :

- d'engager des initiatives communes visant à approfondir leur connaissance du phénomène ;
- de favoriser la concertation entre États membres de l'espace de l'Union en ce qui concerne le phénomène ;

- de favoriser des approches de réponse concertée pour faire efficacement face à ce phénomène ;
- de renforcer les capacités de négociation des États pour faire face au phénomène

#### **4.2- Recommandation sur l'Observatoire du foncier**

- Considérant les besoins des États en matière d'informations foncières ;
- Considérant l'importance d'une capitalisation et diffusion des bonnes pratiques en matière de gestion foncière ;
- Considérant la nécessité d'un suivi et évaluation des expériences de mise en œuvre des politiques et législations foncières nationales

L'atelier recommande à l'UEMOA :

- d'engager des concertations avec les autres organisations régionales et avec les partenaires au développement autour de l'observatoire régional sur le foncier en Afrique de l'Ouest ;
- d'approfondir la réflexion sur la faisabilité et les contours institutionnels d'un observatoire ouest-africain du foncier, y compris les leçons sur les expériences passées ;
- de prendre les mesures appropriées pour une mise en place effective de l'observatoire dans des délais raisonnables.

#### **4.3- Recommandation sur le renforcement des capacités en matière de gestion foncière**

- Considérant la situation d'insécurité persistante des populations particulièrement des exploitants familiaux ;
- Considérant les difficultés rencontrées par les États dans la mise en œuvre de leur réforme foncière nationale
- Considérant les nouveaux enjeux liés à la globalisation tels que l'accaparement des terres.

L'atelier recommande à l'UEMOA :

- de soutenir le développement des échanges d'expériences en matière foncière entre États membres de l'espace de l'Union, notamment à travers des voyages d'études ;
- de contribuer à l'amélioration des compétences de gestion foncière au niveau des institutions nationales et locales ;
- d'œuvrer à la mise en place au niveau régional d'un cycle de formation sur le foncier, en partenariat avec des institutions d'enseignement et de recherche reconnue en la matière de prendre en compte le financement des réformes foncières dans les mécanismes régionaux de financement existants

#### **4.4- Recommandation sur la synergie des actions**

- Considérant l'intérêt général pour les questions foncières en Afrique de l'Ouest
- Considérant la multiplicité des initiatives en matière foncière au niveau national, régional et international
- Considérant les risques liés à une dispersion des efforts ;

L'atelier recommande à l'UEMOA de :

- bien s'imprégner des processus en cours au niveau des Etats ;
- faire le point des initiatives engagées par les autres partenaires au niveau régional et
- veiller à un partage de l'information sur ces initiatives ;
- œuvrer à assurer la synergie et complémentarité des actions en fonction des avantages comparatifs respectifs des différentes institutions.

L'atelier

Dakar le 29 Octobre 2009

## GLOSSARY<sup>41</sup>

The work on this glossary has been greatly assisted by the earlier publication of the French lexique and bibliography which was the work of Meliça Cubrilo, Catherine Goislard and their advisory team of Jean-Pierre Chauveau, Jacques Gastaldi, Michel Kasser, Philippe Lavigne Delville, Etienne Le Roy and Camilla Toulmin. We would also like to thank Vincent Basserie of the French Ministry of Foreign Affairs and Christèle Riou in IIED's Edinburgh office, for their painstaking review of many translations from English into French. Philippe Lavigne Delville of GRET has been particularly helpful in reviewing translations throughout our joint work together. Various professional translators have been consulted for this and other associated work on land tenure: Ros Schwartz, Wendy Allatson, Jean Lubbock, Claude Karnif and Simon Knight. Our thanks are also due to Brigitte Thébaud who commented on an early version and to Christian Lund whose encouragement and instructive comments have been extremely helpful in revising and reviewing key definitions. Finally, we would like to thank Camilla Toulmin for all her work in reviewing the text through several versions and helping to provide examples and references for many of the terms included.

### **Access right - Droit d'accès**

An access right is a locally or legally recognised right to enter a defined physical area. In many parts of Africa, rights of access to land stems from membership of a particular social group. The nature and strength of the access rights held by a given member of society are determined by his or her participation in a network of social relations (Okoth-Ogendo, in Raintree, 1987: 226). For example, an incoming settler will hope to gain access to land by establishing a social link with a patron in the community concerned. Conversely, a woman will frequently lose access to land following divorce. **See also: *Common property resources, Open access resources, Property rights, Servitude***

### **Land chief - Chef de terre**

The land chief is generally a descendant of the first occupant of an area and, therefore, the guarantor that the original pact with spiritual and terrestrial powers of the earth will be respected. Local names for the *chef de terre* translate literally as “master of the land”, “child of the land” or even “owner of the land”. The land chief holds substantial powers over land in customary societies and is an institution which is both socio-political and socio-religious. There may be different hierarchies of chiefs for war, sacred purposes, dispute settlement and land administration. French West African literature on land tenure pinpoints the importance of the *chef de terre* as opposed to other apparently more eminent functionaries (Bruce, 1988).

He is responsible for the sacrifices which are necessary from time to time to the mythical spirits who own the place, and it is through this mediation that the chief derives his power over the land. He is, traditionally, the highest authority on all issues concerning the land under his responsibility, but the land does not belong to him. His powers include: dividing the land between the clans making up the group, granting permission to settle to subsequent groups, guaranteeing the boundaries of the group's land, and acting as arbiter in tenure disputes. Where population pressure on land is heavy, chiefs or elders sometimes have the right to take land from their own holdings for new households to cultivate, without involving the land chief, though this is unusual (ibid.). Once all arable land has been allocated and holdings become so small that reallocation loses its point, land passes from generation to generation in accordance with the customary rules of succession so that the land authorities' role is increasingly limited to dispute resolution.

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<sup>41</sup> Land Tenure Lexicon. A glossary of terms from English and French speaking West Africa. Compiled by Rebeca Leonard and Judy Longbottom, IIED, London, March 2000.



However, the land chief does not necessarily have to be indigenous and the role can be acquired by political or diplomatic means, or even by conquest. The British colonial authorities induced chiefs to become part of the colonial administration system, and where someone other than the land chief was appointed, the position of the latter tended to atrophy (Bruce, 1988). After Independence, in rural areas, the *de facto* power of land chiefs was preserved, but it is becoming more limited, especially in the resolution of tenure disputes. Despite this, the local government structures introduced under the relatively recent wave of decentralisation programmes are still likely to have to contend with the customary authorities to acquire local legitimacy, unless innovative ways of bringing together the old and new can be fostered. **See also: *Droit de hache, Droit de feu, First occupancy (rights of), Indigenous tenure systems***

#### **Compulsory acquisition - Expropriation des terres**

Compulsory acquisition describes the acquisition of land or property by the State for the purposes of redevelopment in the public interest, for example to enable the construction of roads, hospitals, schools, etc. The valuation of the lands to be expropriated is often a matter of contention between the landholders (or their customary authorities) and the State. This valuation forms the basis of the compensation payable for the loss of the land. Where this only takes into account market values, it fails to recognise the importance of land in terms of social identity, religious and cultural significance, and of farming as the landholder's main livelihood strategy. Another problem is that, since land users often lack firmly recognised ownership rights, the State usually negotiates with customary authorities or representatives, who themselves may not be accountable to individual farmers using the land in question. Often the state acquires more land than is strictly necessary for the intended development and excess lands may lie unused for years or be sold or leased at low rates to developers or speculators who stand to make a substantial private profit (see Kotey, forthcoming). **See also: *Eminent domain, Expropriation***

#### **Custom / Customary law - Coutume / Droit coutumier**

Customary law in the African context refers to the body of past and current indigenous laws and customs. The terms 'traditional' and 'customary', though still commonly used, are often avoided in recent literature when describing contemporary African tenure systems. Use of the term 'traditional', in particular, conveys a contrast with modernity and capacity to evolve, and conceals the fact that indigenous systems are, in fact, dynamic - constantly changing and being renegotiated by group members. The term 'customary' is perhaps best used to describe the derivation of authority under indigenous systems, rather than the nature of the rights themselves.

The French sought to obtain definitive consolidated records of local customs with the publication of *Grands Coutumiers de l'Afrique Occidentale Française* in 1939. The British also attempted to gather such knowledge but were less interested in codification. In the 1950s, A.N. Allot led a project to record systematically the customary laws in English speaking areas of Africa and their harmonisation with modern legal ideas and institutions. A number of writers have questioned the validity of such laws and customs, and argue that the laws recorded by colonial administrators were often reconstructions, and even fabrications by customary chiefs, in a bid by them to gain colonial recognition of powers greater than existed in the pre-colonial setting (Allott, 1960; Berry, 1993; Oliver de Sardan, 1984; McAuslan, 2000). **See also: *Codification, Indigenous tenure systems***

#### **Ground rent - Canon emphytéotique**

A perpetual rent reserved to the grantor of land in feu and his heirs (Campbell-Black, 1979). In some jurisdictions (eg Scotland) this obligation to pay feudal superiors on an annual basis has been all but extinguished. Elsewhere, such a rent may be paid for a long term lease (e.g. 99 year lease). **See also: *Feudal system, Long lease, Rente foncière***

### **Land reform - Réforme foncière / Réforme agraire**

Land reform may refer either to land redistribution (also known as agrarian reform - *réforme agraire*) or to tenure reform (*réforme foncière*). **See: Land redistribution, Tenure reform**

### **Land tenure - Foncier**

The English term 'tenure' is derived from the Latin term which means 'holding' or 'possessing'. However, land tenure is a legal term which refers to the right to hold land, rather than the fact of possession. The word 'tenure', used by itself, often refers to land tenure, but may have other meanings e.g. job security. Bohannan stresses the social nature of land access and control, a recurring theme in recent studies. He urges scholars to view land tenure in terms of relations not only between people and the land but also between different groups of people (Basset and Crummev, 1993: 12).

The term *foncier* in French comes from the Latin word *fundus* meaning foundation. As a noun it is used to describe land tenure relations and the structure of land ownership. As an adjective it may be translated as 'pertaining to the land'. In both cases, however, it has a wider scope than its usual English translation. The *foncier* can cover flora, fauna, and water systems, in so far as they are associated with an area of land (de Zeeuw, 1995: 7). In this sense, *le foncier* can be better equated with the term 'resource tenure'.

Legally speaking, *foncier* is used to refer to the status of the land, which is by nature immovable. Thus, the ground and its fixed nature are the basic attributes of the *foncier*. In economics, *foncier* refers to the possibility of extracting value from the land in the form of rent. Fréchou uses it in its geographical sense to refer to the human inter-relationships implied by the organisation and use of physical space (Le Roy in Le Bris et al, 1982: 11). According to Le Bris et al (1991: 13), the multi-disciplinary definition of *le foncier* refers to a complete social system that connects all the components of a society. The term *tenure* is also used in French-speaking West African countries to refer to land tenure rights.

The concept of *maîtrises foncières* has an archaic meaning which is general, and a recent more precise meaning developed within Le Roy's model of tenure relations (see Le Roy, 1996c). The general concept of *maîtrises foncières* is used in anthropology in an all-embracing sense, to describe all forms of appropriation, powers of management and social control over land, including customary or contractual forms, and not only private ownership, as recognised under official law.

Le Roy's model is founded on his observation of the 'new law of practice' which is based on a mixture of the different tenure regulation systems that exist. Traditional systems are no more than partially operational, whilst modern property-based systems resulting from colonisation have only a marginal influence. His model goes beyond a simple polarisation between tradition and modernity and recognises the pluralistic strategies being pursued by different actors. Le Roy's model is partly inspired by the work of Schlager and Ostrom (1992) and takes into account traditional African conceptions of land rights as well as modern legal thinking. **See also: Evolutionary theories of land tenure, Ownership, Property, Property rights**

### **Land use - Utilisation des terres**

Analysis of the way land is used according to a system of classification. The UN Food and Agriculture Organisation categorises land into cropland (over one-tenth of total world land surface area); permanent pasture (a quarter); forest and woodland (under a third); and other, including built-on areas, wetlands and (one-third) including land not used for cultivation or pasture (OIE, 1998). **See also: Zone/zoning**

### Lease - Bail / Contrat de location

In legal terms, a lease is a contract according to which one party, the lessor (*bailleur*), agrees to allow the other party, the lessee (*preneur*), enjoyment of the use of a property (movable or immovable) for a specified period in return for a payment referred to as rent (*loyer*). In English, this may also be referred to as a let. Note that the term 'lease' can also be used as a verb, meaning to make a contract of lease.

### Mise en valeur - Productive use / development

In economics, land that is *mise en valeur* (literally - "put to valuable use") is land transformed into a means of production, and establishes a claim over the land for the person who has rendered the land productive.

This concept was introduced initially by colonial administrations as a means to bring more land into production, by encouraging investment in land development, and was subsequently adopted by governments after independence. It stands in opposition to the traditional understanding of people's rights to land which requires the creation and maintenance of a special link between a group and an area of land. Thus, the cornerstone of the traditional relationship between people and land is eliminated by the concept of *mise en valeur*: customary norms are replaced by the state and by the ability to invest in land improvement. From a legal point of view, whether the land has been developed *mise en valeur* is a question of fact and can be ascertained by referring to the list of activities which are considered to constitute such a proof.

French colonial legislation held that any land not developed (*mise en valeur*) after 10 years may be claimed by the state. However, this presented problems for farmers in areas of land abundance in which fields may be left fallow for more than ten years, and created incentives to keep land in more intensive cultivation than was environmentally sound. A further problem is faced by herders in the extensive rangelands of the Sahel region. The implementation of the *mise en valeur* principle fails to recognise grazing as a productive use of land. In this way, large expanses of grazing land have been appropriated by the state and pastoral rights have often been systematically marginalised. In cases of dispute between herders and farmers, it is usually the latter who win, given their more secure tenure rights over a particular stretch of land due to their cultivation rights. **See also: Appropriation, Pastoral resources, Terres vacantes et sans maître**

### Ownership of land - Propriété foncière

Whereas English has two words to describe the distinct concepts of 'ownership' (specific rights to land) and 'property' (an item capable of being owned), it should be noted that French has only the single term *propriété*, which can refer to either the body of rights and obligations relating to a particular thing, or the thing itself. However, in many English texts and in common colloquial usage, 'property' is used synonymously with 'ownership'. Below, we describe the term as far as it relates to the rights of an owner.

"Ownership is a concept within European law which represents the appropriation of all rights of use, abuse and disposition of specific parcels of land" (Okoth-Ogendo, 1987: 226). Through this definition of land ownership, land is considered an asset that can be exploited and turned to profit. The three prerogatives conveyed in the real right of property are the right to use, to dispose of and to enjoy the fruits obtained from the property. The characteristic which usually distinguishes full ownership from other rights to property, is the right to transfer it, including the right to alienate it to non-relatives or non-group members. Okoth-Ogendo explains that "therein lies the fundamental distinction between African and imposed English property law. For, not only does English property law admit to ownership of resources, such ownership is conceived of basically in nucleated (or individualised) terms. To own is to exclude any possibility of others having simultaneous rights" (1987: 227).

The concept of exclusive land ownership was introduced into West Africa in 1830, by the French in Senegal. Observing that the concept of ownership did not exist in the endogenous land regime, the colonial state attempted to promote the concept of private ownership through the introduction of a public property regime, granting concessions and the establishment of land registration. However, the impact of such policies has been very limited. While structural adjustment programmes in the 1980s and 90s have vigorously promoted privatisation and many still advocate private property regimes as the only remedy against the degradation of natural resources, today in Senegal, less than 3% of the land is privately owned. A similarly low figure for formal ownership applies throughout West Africa.

A further distinction between European and 'African law' is that for the former, ownership of natural resources above and below ground generally depends on the ownership of that part of land which is used for agriculture - the ground or the solum (*le fonds*). Exceptions to this rule are mining and fishing rights which may be acquired separately. Such ownership of the above-, below-, and ground-level resources, runs counter to the African "topocentric" system which allows the exercise of several rights to a single area of land with uses that are considered complementary (Le Roy et al, 1996: 26). For example, under several endogenous legal systems, a particular piece of land may be subject to rights of herders once the crops have been harvested, while different members of the family may be entitled to exercise rights to pick produce from trees on someone else's farm land. **See also: Alienation, Appropriation, Common property, Concession, Domaine/Domanialité, Good/thing, Land markets, Land register, Land tenure, Multiple rights, Property, Property rights, Real rights, Terres vacantes et sans maître, Tree tenure, Usufruct**

#### **Overlapping rights - Droits multiples**

In many legal systems, rights of ownership are subject to the exercise of rights by others. However, the French civil law accords a particularly strong emphasis to reducing the number of different rights that can apply to a piece of land, and to the unity of ownership whose "essence" according to the French revolutionary politician Mirabeau is "to belong to a single person" (Cubrilo and Goislard, 1998: 353). Under European law as derived from the Roman civil legal system, the owner of land is deemed to own not just the ground level but all property within its boundaries *a coelo usque ad centrum* (from the heavens to the centre of the earth) subject to rights to minerals and fishing rights etc.

In Africa, most indigenous systems recognise multiple rights over a parcel of land whether it is held by different levels of rights-holders or by different groups at different times. Thus, at any one time the chief, the lineage, the landholder, the tenant, sharecropper, or borrower, their wives, relations, and neighbours may have coexisting rights over a particular piece of land. Moreover, these rights may be limited to a particular period of time such that a different set of people may have rights to use the land once the cropping season is over, or when the trees begin to bear fruit, etc. **See also: Indigenous land tenure system, Ownership, Solum, Tree tenure**

#### **Possession right - Droit de jouissance**

**See: Ownership, Property rights, Usufruct**

#### **Smallholder - Petit exploitant / petit agriculteur**

**See: Landholding**

#### **State property - Propriété de l'État**

In Africa, the state property regime established by the colonial powers 'by right of conquest' and later 'in the general interest', incorporated unregistered land, *terres vacantes et sans maître*, as well as land considered to be illegally occupied into private ownership. In the French colonies, this resulted in a state monopoly ownership of land which was renewed by most African countries after

Independence. The British colonial authorities on the other hand, developed territorial alliances to acquire land. State or crown property was also acquired through compulsory acquisition procedures. **See: *Compulsory acquisition, Domaine/Domanialité, Expropriation, Terres vacantes et sans maître***

#### **Statutory law - Droit moderne / Droit positif**

Statutory law refers to legislation (or other legal instruments also referred to as statutes) promulgated by the state. The term is used to denote law as made by the state, in contrast with customary law, which derives from the customary institutions specific to a particular locality. The prevailing existence and legitimacy of indigenous legal systems in Africa mean that in practice, statutory laws have very limited application in rural areas. Statutory laws, designed and enacted by central government, are therefore often not recognised, understood or even known about by local communities (Bruce, 1988). Their formulation and the language in which they are expressed both serve to distance statutory legislation from local people. **See also: *Colonial land tenure system, Indigenous tenure systems***

#### **Tenant farming - Fermage**

This is a contract entered into by a rural landowner (the lessor) and the tenant farmer (the lessee), according to which the latter agrees to cultivate a certain piece of land for a specified period and subject to the payment of rent, the amount of which is fixed in advance by mutual agreement. **See also: *Sharecropping***

#### **Tenure - Foncier**

**See: *Land tenure***

#### **Tenure reform - Réforme foncière**

Tenure reform (*réforme foncière*) is a process aimed at modifying the nature of land tenure rights. The term should be distinguished from land redistribution (*réforme agraire, redistribution des terres*) which aims at reform of the agrarian structure to arrive at greater equality in size of landholding among producers.

Tenure reform in sub-Saharan Africa has mainly focused on improving security of tenure with a view to increase investment in land based assets, mobilise credit facilities and activate land markets, in the hopes of encouraging agricultural development and growth. Strong pressure has been placed on countries, particularly those undergoing structural adjustment programmes, to encourage private ownership and introduce a title registration programme as a means to increase tenure security. This stems from a misplaced belief that only systems of formally registered land rights can offer real security for landholders, potential investors and credit suppliers. However, more recent analyses confirm that many indigenous tenure systems do in fact confer secure rights of tenure to landholders, which are sufficient to stimulate investment and longer term land improvements (Platteau, 2000).

The legal duality that exists in many countries in which statutory law at national level stands in contradiction to local customary law, and where neither is entirely authoritative, is a more significant factor in bringing about tenure insecurity. Thus, tenure reform programmes could usefully seek to clarify the position of landholding rights held under customary legal systems vis à vis national property laws. Several countries in sub-Saharan Africa are currently engaged in such reform programmes (Toulmin and Quan, 2000). **See also: *Collateral security, Land redistribution, Tenure security***

#### **Title deed - Titre foncier**

A title deed is the contract document that transfers ownership in land. Registration of this deed is, in many Western jurisdictions, sufficient to prove right to ownership. **See: *Land registration***

### **Use rights - Droits d'usage**

Under French civil law, a use right is the right to use a thing in accordance with its designated purpose. More specifically, according to Cornu (1994: 830), it is a limited form of usufruct which is temporary, non-transferrable and cannot be expropriated. It entitles the holder to use something belonging to somebody else.

With respect to African land tenure regimes, however, the term 'use' right is more broadly interpreted. According to Gastellu (1982: 276), it is linked to membership of the resident community and perpetuated by stable and continuous occupation, confirmed by the work carried out by a family of farmers. The planting of crops, trees and shrubs, or gathering fruits and bark is sufficient proof of the existence of a use right in the eyes of the local village community. Use is established by the work invested in the land by an individual and his or her ancestors.

According to Le Roy (1996c: 65), the status of an area can change as a result of its use. Barrière and Barrière (1996b: 9) point out that successive or multiple uses of a particular environment change according to the resource or area concerned. For example, a flood plain constitutes a resource which is used both for grazing between low and high water, and for fishing and hunting. Furthermore, according to Do Felli (in Crousse et al, 1986: 44-5), the use right may be direct (exercised by the descendants of the first occupier), or granted in the form of a loan, possibly subject to conditions.

**See also: *Indigenous tenure systems, Usufruct***

*The right to adequate food is recognized in specific instruments such as the Convention on the Rights of the Child (Art. 24(2)(c) and 27(3)), the Convention on the Elimination of All Forms of Discrimination against Women (Art. 12(2)), or the Convention on the Rights of Persons with Disabilities (Art. 25(f) and 28(1)). However, it is stated most explicitly, at a more general level, under Article 25 of the Universal Declaration of Human Rights adopted by G.A. Res. 217 A (III) of 10 December 1948 and under Article 11 of the International Covenant on Economic, Social and Cultural Rights, adopted on 16 December 1966.*

> Find out more at: [www.oecd.org/swac/land](http://www.oecd.org/swac/land)



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