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## Large-scale land acquisitions and foreign direct investments: a challenge for international law

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## AGRICULTURE IN DEVELOPING COUNTRIES BETWEEN LOCAL RURAL DEVELOPMENT POLICIES AND INTERNATIONAL MODELS OF “LAND GRABBING”

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The papers presented in this panel focus on large-scale acquisitions of lands for agricultural or agriculture-related uses in developing countries. ‘Land grabbing’ is an issue that cuts across all these papers, as they try to shed more light on a controversial phenomenon that has attracted considerable attention in recent years. Each paper addresses the issue from a different disciplinary angle, offering a different analytical perspective.

More in general, the papers build on the ongoing debate – which sees the active participation of academic scholars, international development agencies and civil society’s representatives – on agriculture and rural development in developing countries. This debate touches upon focuses on a number of key issues. First, the role of agriculture that, although long neglected by public policies, can be an engine for development and economic growth. Secondly, the need for greater support for small-scale producers, increasing their productivity and strengthening their focus on the global market. Thirdly, the need to solve all the issues concerning land property/access, especially with regard to women, and local population’s customary land rights.

These issues have a profound impact on food security, which is threatened by global phenomena that put in jeopardy the survival of people living in the poorest areas of the world (Sub-Saharan Africa is one of the most hit areas). These countries host large-scale land investments by other States and transnational or local private actors, driven by many factors such as raw materials and food rising prices, growing demand for biofuels and timber, mineral extraction, speculation and so on. The data and evidence available are still scanty and often contradictory, but it appears that in the majority of cases land deals can be considered as a form of land grabbing rather than land investments. They reproduce, under new clothes, old solutions that have already showed their inability to provide any meaningful response to food scarcity. These solutions are primarily geared toward gaining control over strategic natural resources and they are, thus, inconsistent with the cooperation paradigm. Therefore, an intense debate has developed on their efficacy as a way to promote development in the host countries.

This panel aims at contributing to the debate on the developmental role of agriculture and large-scale land acquisitions, by adopting a multidisciplinary approach and combining micro and macro analysis that take into account both the local and the global dimensions.

The paper of Hans Holmén seeks to shed more light on the notion of ‘land grabbing’, by challenging some commonly-held convictions about the scale of phenomenon, its causes and consequences. In so doing, it starts from observing the huge surge in attention that characterized the phenomenon in recent years. Quite surprisingly, this surge rests on an uncertain definition of the phenomenon, as the notion of ‘land grabbing’ is often used to describe a diverse array of situations just to hit the headlines. Furthermore, the paper highlights the lack of reliable data on the magnitude of land acquisitions, as estimates about land grabbing tend to diverge one from another in a quite sensitive manner. Lastly, the author critically points to the ‘politicization’ of the analysis on land grabbing, which often leads to overemphasize the role of foreign enterprises and States in this sector, as well as inflate the impact of the phenomenon on the population. This is not to deny that land deals may constitute a problem in some cases. However, this phenomenon needs to be better assessed and to be placed in a much wider context, taking into account all the problems that affect agriculture in Africa. Low productivity is the main one, at least according to Holmén’s paper. African governments have a huge responsibility in this regard, as their policies have been often misdirected and ineffective. The role of African governments has been much discussed during the panel, as many participants argued with Holmén’s position that this emphasis on foreignization tends to obscure the active involvement of African élites in the adoption of land policies that are far from serving the public interest.

The paper of Davide Cirillo offers a different perspective on the definition of the phenomenon, by trying to locate land acquisition on a continuum between a development opportunity, on the one end, and land grabbing, on the other. In so doing, it highlights, as done by Holmén, the lack of reliable sources and data. In any case, it tries to define land grabbing by seeking to go beyond the dichotomy cost-opportunity that lies at the core of the definition elaborated by many international institutions. To this end, he relies on the concept of ‘food regime’ elaborated by McMichael, which tries to explain the strategic role of agriculture by making reference to specific power configurations. Moving from these theoretical premises, the paper examines the neo-liberal approach, highlighting its contradictions and its negative impact on the sustainability of the land regime. The second part of the paper looks at the role of transnational peasants’ movements and other civil society’s organization in shaping and resisting this phenomenon. The analysis focuses on the evolution and main features of Via Campesina, which has been created in 1993 to bring together several instances of resistance against the commodification of food. Moreover, it also looks at the *International Planning Committee on Food Sovereignty*, which is a network composed by transnational peasant movements, agricultural commercial entities and NGOs.

The paper of Stefano Montaldo keeps the attention on the actors that participate to what may loosely be defined as land governance, by approaching the issue from an international law perspective. In particular, the analysis takes into consideration the attempts by some international actors, such as international organizations or other informal *fora*, to establish a more coherent legal framework governing large-scale land acquisitions. The paper looks at FAO, which has been actively involved in trying to establish a more coherent international legal framework for land since the *World Conference on Agrarian Reform* held in Rome in 1979. More recently, it has adopted the *Voluntary Guidelines on the responsible governance of tenure of land, fisheries and forests*, a non-binding document that should represent a framework for natural resources-related policies. The World Bank has adopted an equally active stance on the matter and in 2003 it has contributed to the launch of the so-called *Equator Principles*. This instrument is defined as a credit risk management framework for determining, assessing, and managing environmental and social risk in project finance transactions. The 2012 reform of the Principles has led to the insertion of a specific reference to land access and, in particular, one of the Principles recognizes the impact of land acquisitions of local communities. The paper also takes into consideration the *Roundtable on sustainable biofuels*, which is a platform composed by UN agencies, oil companies and other multinational enterprises. The initiative has a voluntary character and it should contribute to the adoption of more socially-sensitive policies by the actors involved. Voluntarism, and the lack of credible enforcement mechanisms, is the issue that took the centre stage during the debate. This feature, which is common to most of the initiatives taken at international level so far, is one of the main causes of the perceived inadequacy of the response offered to the phenomenon of land grabbing and to the threats it poses to food security.

The third paper, by Astrig Tasgian, focuses on the case of Mali, by building on the results of a field survey in the region of Ségou. The paper starts from the assumption that the agricultural sector is crucial for economic growth and development and it purports to assess the socio-economic impact of large-scale land investments in this regard. To do so, it considers the experience of large-scale acquisitions in an irrigable zone of one million hectares in the inlands of the delta of the Niger River after the call issued by the Malian Government in 2005, under pressure from various international organizations, to attract big investors in the region. The results of the call are far from satisfactory, as the field survey reveals that large-scale investments have had an overall negative impact, by failing to live up to the expectations. The reasons for such a poor performance are manifold and touch upon several different aspects. For instance, the paper highlights that the principles for sustainable agricultural investment elaborated by FAO and the World Bank, and analyzed above by Stefano Montaldo, have been disregarded. At the end of her work, Astrig Tasgian puts forward a number of suggestions that may help to devise and implement more effective land acquisition projects.

The last paper, by Raffaele Bertini, offers yet another perspective on the phenomenon, by depicting land grabbing as a strategic game. This work complements the papers seen above, by providing a simplified analytical framework to assess the behavior of different actors in a complex situation. The paper takes into consideration three players – the investor, the receiving State and local communities – and it takes into account the institutional framework where the players act, by distinguishing between formal and informal institutions. The paper considers three levels of play, by presenting them in term of the reached equilibriums.

## THE ROLE OF AFRICAN GOVERNMENTS IN THE LAND GRABBING BUSINESS

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### ABSTRACT

During the last few years the number of publications on the theme of “land grabbing” has virtually exploded. The phenomenon – i.e. the appropriation of (mostly) agricultural land by the powerful, with subsequent dispossession and dislocation of the poor and powerless is real. Reports about land grabbing tend to follow a rather stereotyped pattern saying that the phenomenon is immense, that Africa is the main target and that the continent is under heavy attack by greedy outsiders in a neo-colonial struggle for land. However, a careful reading of land grabbing literature reveals that while this message fits well certain prefabricated “explanatory” models, it may be misleading. Contrary to this privileged explanation, the magnitude of land grabbing may be exaggerated, drivers behind it tend to be others than those repeatedly mentioned, and the principal agents domestic elites rather than outsiders. Hence, the issue needs to be tackled in a way quite different from what is most often proposed.

### A CONTROVERSIAL ISSUE

Recent years have seen a veritable explosion of writings about “land grabbing”. From having been virtually unheard of ten years ago, a search on Google in August 2013 gave more than 36 million hits! To many, this a welcome attention, not least because land grabbing is seen to have far-reaching – even disastrous – consequences for those who lose or risk losing access to basic life-sustaining resources on which they depend. This paper is based on a thorough scrutiny of this mass of recent writings about “land grabbing”. Crisis narratives are commonplace. While there is reason to be concerned about the meaning, magnitude and consequences of land grabbing, much of what is being published is less clarifying than the issue deserves. In part this is because while “land grabbing” often fits certain ready-made agendas and apparently is “effective in activist terminology” [1] much is written before proper investigations have been made. Hence, many assertions have been based on assumptions rather than facts and much is agitating rather than analytical. This is the case whether we speak of the meaning of the concept, its drivers, magnitude, consequences, or its principal actors.

By “land grabbing” I here understand enclosure or privatization of commons. Implicit in much writing about land grabbing is that is illegal. Generally, this is a misunderstanding. Contemporary land acquisitions in Africa are in the form of lease contracts, generally between the leaser and the state. Hence, they are legal. Whether enclosure of the commons also is legitimate is, however, debatable [2]. In its simplest form, it means a “concentration of decision-making about how land is to be used [3]. Consequently, someone has to lose access to land or influence over its use. In Africa that would be the semi-subsistence oriented smallholder peasant. This has triggered massive campaigns against land grabbing. Ambiental & UNDC define it as “crafty or violent appropriation of something which is legitimately owned by someone else” [4]. Echoing the words of 19<sup>th</sup> century utopian socialist Prudhon (“property is theft”), the Via Campesina says it is “nothing short of theft” – which the popularized phrase also implies [5]. Less critical voices speak of “acquisitions” or “large-scale investments in land” [6] [7] which by many are seen as necessary for modernizing African agriculture, [e.g. 8]. Land grabbing is frequently also seen to represent a “capitalist restructuring of global agriculture” [9] and there also appears to be a near-consensus that it is mainly foreigners who acquire land in the global south, particularly in Africa. Hence, land grabbing has been labeled “foreignization of land” [10] and likened to a neo-colonial scramble for Africa [11] [12] [13]. In an environment where private land-titles are rare and the common farm-size is one hectare or less, the transfer of use-rights from the many to a few – especially if these are foreigners – is bound to arouse protests, not least because it is assumed to have severe social consequences.

Behind this apparently new-found and allegedly northern appetite for southern lands are usually mentioned the three combined elements of food, fuel and financial crises from 2008/9 and onwards. Declining investment opportunities in the global north together with internationally rising food prices and demand for bio-fuels are commonly presented as the driving forces behind land grabbing. In some cases, the intention behind land acquisitions is obviously to produce something (bio-fuels for export to Europe, for example) whereas in other cases mere speculation is believed to be a prominent driving force (cheap lease contracts now that can be sold profitably at a later stage when the investment market ‘normalizes’). This, allegedly, leads to a situation where large amounts of African farmland are taken over by ‘investors’ who have neither knowledge about nor interest in farming. Such ‘investments’ are unlikely to have any developmental effects. Also, is frequently mentioned, populous ‘emerging economies’ like China, India and Arab Gulf states with high demand for food but limited opportunities to produce it at home. They, therefore, opt for ‘off-

shore' production in order to escape the volatile world market [14] [15] [16]. Also here investments represent resource-mining and are geared to satisfy external demands, not towards African needs. Others object that foreign governments are only minor investors and that the major culprits are financial institutions, international agribusiness and transnational corporations [17] [18] [19] [20]. Foreignization it is, nevertheless.

Reading about land grabbing, one easily gets the impression that Africa is under heavy attack from a large number of external real or potential grabbers. Djurfeldt, thus, writes about "an epidemic of land deals" [2]. Some writers, however, claim that the grabbers are few [20]. They "operate out of the big financial centers of the world and often get together at farmland investors meetings" (ibid). This, it is further maintained, is done with the consent of the G8, the World Bank and the EU. While northern governments and IFIs are not directly involved, their policies "play a crucial role in supporting agribusiness-led acquisitions" [19]. Hence, land grabbing is often depicted, not only as a northern project, but more or less explicitly as a conspiracy.

This is all the more serious as the magnitude of land grabbing is widely believed to be enormous. Oxfam thus claims that, on a global scale, "in the past decade an area of land eight times the size of the UK has been sold off as land sales rapidly increase" [16]. Africa, it is claimed, receives more than half of all foreign investments in land [21]. Hence, it has lost "millions of hectares" to outside grabbers [22]. Estimations vary about the African land area affected. Oxfam claims that, in the last ten years, an area "almost the size of Germany" has been acquired by foreigners [23]. The Oakland Institute asserts that "in 2009 alone ... an area the size of France was purchased or leased in Africa" [18] (emphasis added). Implicit in such claims is also that Africa presently is flooded with FDI aimed for land purchases or leases.

Critics claim "foreign countries and companies and wealthy foreigners are rapidly taking over the productive lands in Africa and turning Africans into refugees and slave laborers in their own homeland" [24]. Not surprisingly, the numbers of adversely affected people are presented as enormous, with millions of African smallholder farmers being evicted, cheated on compensations and losing access to vital sources of livelihood [25] [26] [27]. Some ask whether this means "the end of the African farmer" [28]. Others go a few steps further and envision a future where smallholders either must migrate to city-slums or eke out a meager living "on tribal communal 'holding grounds', akin to the Bantustans of the apartheid period of South African history" [29]. We should ask ourselves whether this is a realistic assumption.

In fact, we must ask ourselves whether the above sketched message is realistic at all. For one thing, the land grabbing issue is permeated by a multitude of uncertainties. Hence, quite different stories can be told. Below, a different perspective will be briefly presented, based in part on the same sources as those used above but supplemented with information that alarmists tend to overlook.

## UNCERTAINTIES

Due in part to its recent 'discovery', the phenomenon of land grabbing suffers from a lack of empirically reliable foundations and methodological discrepancies which has allowed a wide range of interpretations, assumptions and speculations. Hence, it has been possible to squeeze tales of land grabbing into prefabricated theoretical straight-jackets and give it ideologically suitable 'explanations'. The political role of land grabbing 'research' is often apparent and sometimes explicit. The campaigning – and often referenced – organization GRAIN, for example, recently declared "Let us state this plainly: GRAIN's aim is not to do neutral research" [13]. Not surprisingly, the term 'land grabbing' often obscures more than it reveals [1]. Still, after five years of intensive publishing about land grabbing, the question "what is a 'land grab'?" remains unresolved [30]. Below, an effort is made to remedy preferential biases by offering a different – not opposite but complementary – perspective on the debated issue. But first, some words about uncertainties.

First hand information about land grabbing is hard to come by. Data are fragmentary [31] and statements are often based on assumptions and shaky foundations [32] – "different sources report different figures for the same land deal" [22]. Even if the number of field research has increased, "most reports offer very few insights into overall impacts, either positive or negative" [30]. Statements about the magnitude of land grabbing tend to be highly inflated. For example, Deininger et al found that actual farming had started on only 20 percent of the announced deals [7]. In Mali, Cotula found that only ten percent of intended deals led to actual leases [19]. This is because what is reported is often intended deals and/or expressions of interest, not completed contracts. Moreover, in reports about land grabbing, multiple interpretations of what a 'grab' is make generalizations difficult [30]. While there are (questionable) figures available about acreage transferred, "very little is known about the terms of the land deals" [19]. Their consequences may therefore differ widely.

Hence, "the actual impacts on the ground of many recent projects still remain to be seen" [14]. Nevertheless, because the term "land grabbing" sounds inherently harmful, we are warned that land deals imply a "potential competition with other important land uses" [33] and about "possible negative impacts" of land investments [34] [7]. Others are more certain about magnitude and consequences. Hence, it has been suggested that land deals are "likely to lead to massive enclosure and dispossession" [36]. The NGO Friends of the Earth asserts that "all sizes and types of land will be taken by TNCs, there will be no place for peasants" [37]. While such worries may be well-founded, alarmists may deplore findings of only "limited ... evidence of evictions" [21]. Often, such stories have, "at best been

supported by anecdotal evidence, and at worst, been speculative” [36].

## AN ALTERNATIVE STORY

The frequently presented view, that Africa is besieged by greedy foreigners eager to lay their hands on as much land as possible, bears little resemblance with reality. So far, foreign investments in land have been limited. For external investors, Africa has long been deemed a high-risk environment due *inter alia* to political instability, lack of infrastructure, undeveloped markets and low purchasing power [37]. The assumption that the “global rush for land” has changed this [38] appears to be ill-founded. Our knowledge about FDI in agriculture is limited and even less is known about FDI in Africa [39]. Some figures are available, however. In 2011, the continent’s share of total FDI was a mere 2.8 percent and of this only one-seventh was in the primary sector, primarily oil, gas and minerals whereas agriculture is hardly mentioned [40] [41] [39].

But it is not only foreigners who have been hesitant about investing in Africa. Mafeje notes: “[r]uling African elites accumulate a great deal of ill-gotten revenues but are not noted for their propensity to invest. At the other extreme, African small producers, contrary to neoclassical assumptions, save but do not mobilize their savings. Instead, they keep them as assurance against hard times” [42]. For various reasons, Africa has long suffered from an investment deficit [43].

One reason could be lack of land titles. Customary access to land is permeated by overlapping rights and a plurality of systems and institutions which leave room for contested claims and corrupt practices [44]. This makes investments in land a risky undertaking. Also, about half the population lives under the poverty line [45] and even if they would, their capacity to invest is extremely limited. Contributing factors are corruption and the inability of many governments to protect citizens’ rights [46] [47].

At the same time, agriculture is home to some 70 percent of the labor force but productivity is low, population growth is rapid, and farm sizes have been shrinking for decades [48]. Africa definitely needs investments in agriculture. But if domestic propensity to invest is low, where would investments come from? From abroad, there are few other options. But also foreigners have shown a lack of enthusiasm in this matter.

They apparently need encouragement. Thus, African governments, rather than being the hesitant target for (and victims of) powerful foreigners encroaching upon African soil, are actively inviting foreigners to bring much sought for capital to the continent. Hence, contrary to widespread beliefs, “in many cases it is not a global ‘land grab’ driven by the private sector, but a supply-driven process in which governments are playing an active role” [49]. Governments actively compete for investors [71] and offer them lease contracts on highly preferential terms [50], for example zero or next to zero lease costs.

In general, this policy has apparently not been successful. Most writings on land grabbing in Africa give the impression that this is a continent-wide phenomenon. Reality tells a different story. Two-thirds of all registered land deals are found in only seven countries [33]. As mentioned above, incoming FDI is less than expected. And estimations indicate that only some ten to twenty percent of intended deals actually materialize into on-the-ground investments – in spite of the preferential terms offered. Africa is still perceived as a high-risk environment. Some would-be investors obviously are deterred by unexpected difficulties of creating and running plantations in complex contexts [21]. The low or zero lease fees offered are motivated by the expectation that those who acquire land also invest in land clearance, soil preparation, build infrastructure (roads, electricity, irrigation), etc. – not only on the land directly farmed but also for the benefit of local communities. When potential investors realize how high such additional costs will be and how slow returns on money spent, they back off [51].

Apart from actively trying to attract foreign investors, African governments are key players in land grabbing also in other ways. Land in Africa is usually not under private ownership. Various ‘communal’ systems dominate and the state has assumed the role as custodian but direct power over land-use normally rest with traditional institutions and local chiefs. People enjoy varying and overlapping use rights but seldom own the land they farm.<sup>1</sup> In order to make large land leases possible, land usually has to be transferred from communal to state land. Hence, potential foreign investors must make contracts with the state. On the one hand, this leaves ample room for corrupt practices. On the other hand, governments must first “grab” – i.e. confiscate – communal land before lease deals with foreigners can be signed.

Not only the ‘state’ but domestic elites at all levels – governments, politicians, public servants and local chiefs – are active grabbers also in other respects. Deininger et al found that domestic investors are more prevalent than foreign ones [7]. Also Mosley found that, in Ethiopia, domestically sourced projects out-numbered foreign projects [52].<sup>2</sup> Domestic elites in a number of countries grab land and enrich themselves by registering former communal land as their own private property and by turning previously ‘free’ peasants into migrants, tenants or sharecroppers [53] [54] [55] [56]. It is no coincidence that the largest landowner in Kenya is the Kenyatta family [57].

On the one hand, this reflects the greed of the political elites. On the other it also reflects the “longstanding and ongoing struggles between chiefs and states” [48] [58]. Competition over land and land-use in Africa has many dimensions. In Africa, nation-building is still an unfinished project [59]. And nation-building is in large degree a matter

<sup>1</sup> Whereas citizens can obtain private land titles (but seldom do), foreigners cannot own land. Hence, they must lease.

<sup>2</sup> However, since foreigners acquire larger land areas, it is still to some extent motivated to talk about foreignization.

of control over land [58]. In general the state's outreach in rural areas is limited and African politics continue to be governed by the logic of patronage [60]. Hence, access to land has been – and still is – a “major instrument of patronage favoring the political elite” [48]. It is thus not only foreigners who acquire land at (seemingly) heavily discounted prices. Patronage is a sign both of the weakness and of the fragile legitimacy of African governments.

This fragility and the as yet unresolved conflict over authority have been accentuated by recent misfiring attempts to attract foreign investments in land. One such confrontation occurred in Mali in 2011. An alliance of “peasants and indigenous people” challenged the Malian government's decision to lease 800.000 hectares to foreign investors, pointing out that “communities had occupied land for generations; how could a Mali state which had ‘only existed since the 1960s’ claim sovereignty?” [61]. Similarly, in 2009, the government in Madagascar provoked mass protests and was actually toppled after having, in the previous year, attempted to lease 1.3 million hectares of farmland to the South Korean company Daewoo logistics [62].

These examples show that there are risks involved, not only for the leaser but also for the provider – at least when deals are large-scale. This, to judge from the literature, has not discouraged governments from searching external solutions. It is sometimes argued that African politicians (and donors) “hold a widespread belief that large-scale plantations are needed to ‘modernize’ agriculture” [50] [19] [2] and therefore flirt with transnational agribusiness. As suggested elsewhere [56], we do not know what African politicians believe. A more based explanation, that better reflects a stern reality, would be that they believe they have no other choice. With widespread rural poverty, hunger riots and after decades of being squeezed economically and having been rolled back under structural adjustment, and with considerably reduced development aid since the 1990s – especially for agriculture – governments apparently see no other options.

## SUMMING UP SO FAR

Our understanding of the issue of “land grabbing” remains incomplete. The issue is much more complex than most writings account for. Above, I have suggested that the drivers behind land grabbing in Africa are others than those most commonly mentioned (population prospects, rural poverty and limited domestic investment potential rather than contemporary global food- fuel and financial crises). The recent food- fuel and financial crises may have aroused an interest among northern companies to look elsewhere for resources and investment opportunities. However, the magnitude of “land grabbing” appears to be exaggerated in most writings (inflow of FDI apparently insignificant, limited geographical spread, only a small share of intended deals actually materialize as on-the-ground investments). Even though local inhabitants sometimes suffer from dispossessions and unfulfilled promises, and even though some foreign investors perform in less than desirable ways, worries about negative consequences of foreign investments in land seem to be exaggerated as well (only few cases of evictions found). In most cases, the actual impact remains to be seen. And I contend that the principal actors are not those that they were supposed to be. In my interpretation, the prime grabbers (the principal agents) are African governments – not external actors – who register communal land as state land and then use it for self-enrichment, for patronage purposes and/or to attract foreign investors (so far with limited success).

It can, of course, be argued that there is a conspiracy after all. By way of aid-conditionalities and other arm twisting measures, the World Bank, the WTO and donors have forced African governments to put in place legislation that opens borders for foreign investors, thereby preparing the ground for massive invasion of transnational agribusiness [17] [15] [18] [16] [56]. But, as indicated above, we are not there yet.

Different stories can thus be told. Notwithstanding the role played by transnational agribusiness, tales of a massive onslaught on Africa from outside are too simplistic. It is therefore sobering that “the crucial mediating role played by the host state and domestic elites” [63] are increasingly being acknowledged. The often mediated claims that contemporary land grabbing leads to new inequalities likewise needs to be nuanced. Sometimes they do but on many occasions it seems rather to be the case that “pre-existing domestic inequality conditions the outcomes of these deals” (ibid). This, however, is not to say that all is well. While debates about land grabbing may become more realistic and less ideologically biased, crucial real-life problems remain unsolved.

## AN UNSOLVED DILEMMA

Africa needs to boost agricultural productivity. Estimates claim that sub-Saharan Africa only realizes 20 percent of its potential production [35]. Boosting productivity cannot be done without investments. We are back at square one. With insufficient tax-base [64], low domestic propensity to invest, and with a “hostility of African governments to domestic capital” [43], only foreign capital remains...

But even if investments can be mobilized, the question remains: what kind of agriculture will it promote – mechanized or labor-intensive, big farming or peasant-based? Transnational corporations tend to prefer big units where they can benefit from economies of scale. This has also been suggested as a solution to Africa's persistent inability feed itself [8]. However, there is little evidence to back up the idea that large-scale plantations would be a solution in Africa [50]. Deininger and Beyerlee remark: “If property rights are well defined, technology is available, markets work well,

and nonfarm sectors lead economic growth and employment generation, investment in large-scale farming can lead to positive social outcomes” [35]. In most of rural Africa, all this is missing.

Instead, a policy based on smallholders has been suggested [51] [65] [2] [66]. This is easier said than done. Previous attempts to promote smallholder agriculture in Africa have not been successful. They led to ‘spurts of production’ [66] but were not sustainable. The same non-availabilities as those hampering large-scale farming also negatively impact on a development policy from below. Moreover, African governments often do not hold smallholders in high esteem. For example, the Malawi Ministry of Agriculture has accused peasants for “not taking farming seriously” and recommends smallholders to “look at farming as a business and not just as a hobby” [67]. Some African governments have recently become more active in promoting rural and agricultural development. However, these policies have not been smallholder based [68]. Instead, politicians have opted for external solutions.

Promoting smallholder agriculture – and basing development on domestic resources – sounds immediately appealing. I use to be in favor. But how small can smallholdings become before it is useless to support them? Whichever strategy donors, governments and investors opt for, “[a]n important policy question is how the current generation of adults in the high population density areas with one hectare of land or less are going to subdivide their land among their children when they reach their old age ... and whether farming can still provide a viable livelihood for those remaining on the land” [48].

Against this background, to define ‘land grabbing’ as “controlling a scale of land which is disproportionate in size in comparison to average holdings in the region” [3] [14], is plain nonsense. African farms obviously need to become larger – and therefore fewer – and many contemporary smallholders will, in time, have to abandon agriculture and seek other sources of livelihood. A perhaps unwelcome reminder is further that the enclosures in 18<sup>th</sup> century England were not only an important part of industrialization and modern development. Some contend they were a precondition.

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## THE COMMODITIZATION OF COMMONS: THE ROLE OF CIVIL SOCIETY AND ACADEMIC ORGANIZATIONS IN GLOBAL LAND GRABBING

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### ABSTRACT

Traditional societies always treated land as a common good, a fundamental resource. Land is related to almost all the productive activities vital to human livelihood. Thus the peasant and the dynamics of agrarian change become subjects of reflections and studies. It is necessary to include the figure of peasants and the agrarian question to carry out a spatial analysis linked to land. Nowadays, in the context of neoliberalism, land represents a key asset. It is facing a commoditization process due to global dynamics of capital accumulation. By analyzing theoretical and methodological issues, the present article aims firstly to ontologically present land grab and land acquisitions. By deconstructing the dichotomist cost-opportunity approach used by mainstream institutions and scholars the paper aims to answer the question posed by them. Secondly, in line with the McMichael food regime theory I point out that the current increase of land acquisitions during the last years is neither a new nor an isolated phenomena. Rather it is an uncontrolled acceleration of the historical process of commoditization and accumulation of the commons reshaping the global geography of capitalism. Thirdly, the article presents the effectiveness of the *human right based approach* used as framework by transnational agrarian movements and civil society organizations coordinating their interdependent global – local action. They propose an alternative to market economy based on the Food Sovereignty principle. Finally, according to the Italian territorialist school, I argue some remarks highlighting the negative impact of land acquisitions as growing processes of tenure concentrations and the competitive global territoriality of transnational agrarian movements using the *human right based approach* as a mediator to challenge the neoliberal globalization hegemony.

### INTRODUCTION

Traditional societies always treated land as a common good, a fundamental resource. Land was considered a continuity symbol which linked clans to their ancestors. To preserve it has been their priority to guarantee social and environmental sustainability [1] [2].

Generally, a fundamental value has been attributed to land, related to almost all the productive activities crucial to human livelihood. Moreover, the figure of the peasant is emblematic because it not only symbolizes the bond between man and land, but it has always survived through the centuries in spite of tremendous industrial innovations. Products of agricultural work, and in particular foods, become elements of expression laden with cultural and identity-making factors. Thus, the peasant and the dynamics of agrarian change emerge as subjects of reflections and studies, protagonists of the narrative related to the rural field. Therefore it is necessary to include the figure of peasants and the agrarian question to carry out a spatial analysis linked to land (land management, land tenure system and land use changes).

Nowadays, in the context of the neoliberal model, land represents a key asset. Like other resources, it is facing an increasing commoditization process due to several players committed in capital accumulation. Indeed, in recent years a new wave of investments in land by states, companies, and investments and pension funds targeted not only the Global South – which captures the attention of the literature and the activists – but almost the whole world.

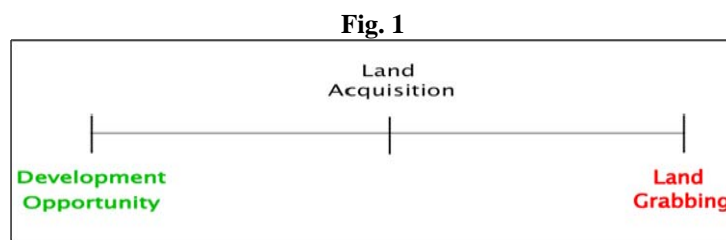
The escalation of these acquisitions was firstly reported in terms of *land grab* by Grain's Report *Seized* [3], where the appendix contained a list of one hundred cases. Events confirmed the organization's complaint since that same year the Daewoo case took place in Madagascar: an acquisition attempt that has had serious consequences not only on the internal political level of the African country but also on a global scale. This case was reported by different newspapers [4];[5], who started describing the event in terms of neocolonialism and agro-imperialism. The term *land grab* was then absorbed in a mainstream trend. It was gradually depoliticized into a dialogue about development and the valuable opportunities of land acquisitions in the appreciation of the industrial large scale agriculture [6]. Even the main international institutions have studied the subject by introducing the most neutral phrase *land acquisitions* and discussing it in terms of cost opportunity, as expressed by the question: "Are the large-scale land acquisitions a risk or an opportunity for local populations?" [7] [8]. The academic community has started investigating the phenomenon

through a variety of multi-disciplinary approaches<sup>1</sup> with the intent of clarifying the dynamics, relationships and causality related to land acquisitions, encountering a number of issues that will be the subject of the next paragraph.

## THEORETICAL AND METHODOLOGICAL ISSUES: DEFINING AND RECORDING LAND GRAB AND LAND ACQUISITION.

Some methodological and epistemological issues emerge in studying land grab, both on the practical and the theoretical level, which could make research rather difficult. During the last years, after a thriving development of specialized literature, the scientific debate is questioning some issues related to this set of problems, some of which will be analyzed in this paper. As mentioned in a previous essay, the first key issue – of ontological nature – results from the lack of *consensus* on the definition of land grab [9]. Although this issue could enrich the debate, it also makes difficult data collection and comparisons - already complicated by the lack of transparency and availability of information in the field as well as by the lack of standard criteria for classifying and reporting the acquisitions [10].

Is it really possible to define as land grab all investments in agriculture involving land acquisitions? Which determinants allow us to do this? In response to these issues, we should start from the question posed by the international institutions' reports [11] [12], that is if land investments are a risk or a development opportunity. Considering the land acquisition and its *continuum* – from "land grab" to "development opportunity" (fig.1) - what kind of parameters should we consider to place the land acquisition? Looking at the figure, on the one hand, given the substantial amount of studies about local development, it will be quite easy to understand criteria usable for the evaluation of an investment project; on the other hand, it will be necessary to establish some specific criteria about the land grabbing, before proceeding.



With reference to the analysis of both the current academic literature and the international institutions' and organizations' reports, it was decided to use the term 'external actor (outside local community)' to define the agent, since the acquisitions are often carried out not only by foreign entities but also by domestic entities – sometimes these are companies or funds made *ad hoc* in order to elude rules or inquiry. According to the parameters, it is useless to refer to quantitative data (for example, the size of the estate), while qualitative criteria are preferable<sup>2</sup>. Therefore, it is possible to refer to the transnational peasant movements' actions oriented towards the so called *human right based approach* - introduction of their claims on the basis of the international law -: the right to the land becomes essential within human rights together with fairness and transparency thanks to the *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests* [13]. Along with other contributions, such as La Via Campesina's Act Proceeding in Mali [14] and the Tirana Declaration [15], they give the possibility to formulate the following definition:

*Land Grab are all the investments and acquisitions of land made by external players (outside local community) belonging to private/public sector (firms, states, investments and pension funds, state owned enterprises) focusing on the Global South during the last years. Such deals happen with a lack of transparency and in violation of the human rights of local populations excluded, marginalized by the negotiation process and sometimes even evicted with violence. Land ownership is transferred by means of various transactions forms (grant, lease or purchase) and for long period of time (from 50 up to 99 years).*

Far from being exhaustive, this definition would be a starting point in stimulating the academic debate. Hoping to see it criticized, integrated and enriched, to get to a definition with a broad consensus is desired, which could facilitate the identification and census of the records<sup>3</sup>. At this point, it is possible to argue that the term land acquisition could be

<sup>1</sup> For further information on the international debate, see Borrás et al 2012 and Cirillo 2012.

<sup>2</sup> According to land grabbing and land acquisition studies, qualitative criteria are mainly used into the advocacy organizations' reports, but they become a reference for academic researches by reflex (see Rulli et al.[16], who refers to 200 hectares as parameter to define the *land grab*, with reference to the ILC's criterion to define the large-scale acquisition). A spatial criterion only referred to the large-scale would be easily eluded and it could reduce the attention or just create some tangles which should be gradually restricted. Moreover, it seems more appropriate to pay attention to the modalities and the dynamics behind these processes.

<sup>3</sup> It is necessary to point out that during the International Academic Conference on Global Land Grabbing II, organized by the Land Deals Politics Initiative (LDPI) at the Cornell University, 17th–19th October 2012 it emerged that the problematic nature of the definition is related to its ideological characterization. The term *land rush* has been indicated as the most appropriate despite the activists keep on preferring the term land grab [17].

referred to the act, while land grab is the way these actions could be managed if certain rights or conditions are not respected.

The definition proposed allows to introduce the second methodological problem of epistemological nature, which is the inadequate data availability caused by the difficulties of data retrieval and classification. This aspect needs a careful consideration on the direction that the research should take about it. In the last years' debate on land acquisitions and land grab, the numbers have great relevance. There are huge economic and political interests at stake and the millions hectares reported are useful in media communications and in political debates at all scales [20]. How do scholars have to proceed, in this regard, in the scientific field? Who posted this data? Have they been verified? How? Do they represent the main factor toward addressing the research?

These sources are characterized by a level of unreliability that affects their use for academic and scientific studies. Recent research on land acquisitions indeed refer to enormous amounts of hectares dealt without paying particular attention to empirical evidence or consideration of the scale rather than of the area [21].

At the moment almost all the quantitative data come from reports provided by investors [22] or from the newspapers whose aim is to grab credits [23].

Without a doubt we are facing an accumulation process that often passes through the eviction and expropriation of local communities; however, the publication of quantitative data could have different strategic aims depending on who collects, uses, and divulges them. Moreover, ambiguous and unreliable data could not only reduce the activists' and researchers' legitimacy and credibility, but also divert the attention from less publicized cases, players and social dynamics put at risk by the effects of this phenomenon [24]. A methodological discussion on these evidences should go beyond the big numbers and *dataset* and set a critical reflection on what it is reported, published and on which references and methods [25]. References should be always verified and be subject to a reflection, considering that:

*Every dataset has an implicit epistemology behind it. Different kinds of datasets are created for different administrative, bureaucratic, political or other purposes and always contain systematic biases [...] Who created it and why? What were the circumstances and context of its production? What accounts for its preservation, its location in an archive or its diffusion? What does it say and what are its silences? [...] one might interrogate in these ways sources as diverse as the articles in the business press that often constitute the first reports on particular grabs, or the crowd sourcing reports that lead investigators to highlight new grabs or to 'verify' unconfirmed reports. [26]*

## FROM FOOD TO LAND REGIME? A LAND GRAB ONTOLOGICAL ANALYSIS.

Drivers of this new land rush have been usually related to temporary events of the last years (food and oil prices hikes, energy substitution and emission reduction policies, global economic crises, investments diversification). In many instances it has been studied from a perspective that, in addition to not allowing the full understanding of its meaning, can offer neither an interpretative paradigm nor an exhaustive explanation for a critical analysis. In the light of a deeper study, and by observing the phenomenon from a wider perspective, we can try to deconstruct the debate on land grab and land acquisition releasing it from the dichotomy risk-opportunity introduced by the international institutions, typical of a neoliberal logic. In this way it is possible to identify those elements that relate the land rush and the modality of grabbing not only to some historical events but also to the dynamics of agrarian changes both on the global and the local scale.

Thus, new causality could emerge, linked to the economic policies of the current hegemonic market model. The land rush could be considered as the acceleration of ongoing processes but with new players and manners which have contributed to the redefinition of the historical geography of capitalism.

As stated before, a reflection on the land rush, without considering the terms in which it leads to reformulate the agrarian question, is unavoidable. From an economic and social point of view, land deals could be connected to the alienation of the workers from their means of production that turn the social instruments of subsistence into capital and the workers into wage laborers; to be more precise, land deals could be connected to construct of primitive accumulation [27]. According to the eurocentered Marxist theory, focused on the land exclusion process related to the enclosures phenomenon in Great Britain [28], the primitive accumulation was linked to that historical-geographical period; consequently, it was considered as the leading process of the extended reproduction, from which it would be replaced at a later stage [29]. The geographer David Harvey [30] revisits the Marxist concept. He points out that primitive accumulation practices persist also in historical and geographical context different from the one analyzed by Marx and keep on characterizing the long historical geography of capitalism not only as a primitive process. Harvey introduces the concept of "accumulation by dispossession" for the "primitive" one, in order to shift the attention to its coercive – and sometimes violent – ways.

Considering land acquisitions as a kind of accumulation by dispossession, we can relate these, on the historical level, not only to phenomena such as the British enclosures but also to the big colonial plantations, and put them on the

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However, land rush could define a tendency which could be barely adapted to a specific case that could happen throughout the course of this tendency but which could not be classified and distinguished in that way. For further information about this debate, see Borrás et al. [18], Li [19].

time axis that examines the commoditization process and the privatization of resources such as water and land indeed (*enclosing the commons*). In White et al. [31] and Catherine Corson's studies [32], who analyses the land acquisitions in Madagascar, they are defined as the new enclosures. Therefore, it is possible to state that land acquisitions, as commoditization and accumulation processes, are strictly related to the contemporary rural crisis. Indeed, it is interesting to note that the majority of starved people in the world are not urban consumers and buyers of food, but peasants who produce and sell agricultural products. Their number is not a legacy of the past but the result of a process that is leading to poverty hundreds of millions of farmers deprived of land [33].

The McMichael's concept of *food regime*<sup>4</sup> [34] could be useful in this analysis because it allow us to connect all this phenomena. McMichael studied food system focusing on the strategic role of agriculture and food in the capitalistic global economy development and in relation to specific configurations of geopolitical power. Thanks to its historical analytical approach, the food regime theory allows us not only to identify different phases of capital accumulation. It also allows us to figure out how transnational peasants organizations reacted and thus reshaped the agrarian question in all these periods. They established indeed a political discussion space and proposed an alternative modernity.

According to neoliberal view, one principal issue in agricultural and land tenure system policies was the central role of the state. It caused market distortions like uncertainties in formal property right and agricultural investments. On this basis the needs for more formal private property right has been justified. Another element of failure was related to land acquisitions ways. At that time it was characterized by coercive expropriation and resisted by landlords. The neoliberal model identified in the 'free market forces' the fundamental mechanism to redistribution of land resources through a process of privatization and decentralization. In order to do that, barriers posed by a state centred approach should be eradicated and landlord resistance should be avoided [35].

While the '80s, which were characterized by the introduction of the structural adjustment funds and by the disillusionment of the agriculture as driving force of the development, experienced a total carelessness about land tenure reforms [36]; at the beginning of the 90s the so-called Market Led Agrarian Reforms (MLAR) started to gain attention as an alternative to the state centred approach. Such reforms became part of the neoliberal paradigm which identified the economic growth and the global market economy as the unfailing vehicle to prosperity. The MLARs were largely promoted by the International Financial Institutions and in particular by the World Bank, aiming to globally implement policies of formal private land property rights and voluntary transactions between willing sellers and willing buyers. Nevertheless empirical evidences from countries which accepted to try to adopt such a framework showed that these policies were not able to face the political power of great landlords. They not only fostered land concentration and social disorder, but unlikely could encounter the needs of and of local population and landless peasants [37] [38].

Finally, I argue the current increasing of land acquisitions during the last years is neither a new nor an isolated phenomena. Rather it is an uncontrolled acceleration of the historical process of commoditization and accumulation of the commons reshaping the global geography of capitalism. Such a MLARs implementation in a changing global geopolitical scenario, which is facing a systemic crisis let to consider the beginning of a new phase of the global neoliberal agenda that could be defined as *the land regime*. McMichael himself [39] some years ago questioned about the effects of food prices hikes catapulting the whole world toward a *post food surplus era* [40] through a food scarcity socially constructed, and commented as follow:

*As an expression of food regime restructuring, the land grab reveals a new threshold in the conversion of farming and farm land into a source of food, feed, agrofuels and general biomass to serve the needs of a (minority) global class of consumers distributed across an increasingly multi-centric global food system. [41]*

The scholar highlighted new elements from the past accumulation processes like the energetic and carbon emissions reduction questions. Nevertheless it is necessary to complement this reference by adding the speculation to the analysis. In many cases land acquisitions do not involve any productive activity nor generate labour. Land is often acquired by taking advantage of lower prices and scarcely defined governances, counting on a future price increase. Such a strategy indeed is used as an investments portfolio diversification by financial players. This new phase and acceleration in land concentration are characterized by deep technological innovations which allow huge flows of financial capital to move all around the world without any precedent in history. Volumes of financial economy largely exceeded the real economy. The land rush may be considered as a way to convert this overaccumulated unreal capital into a real one. All these elements impact on agrarian question today:

*The land-grab is forcing us to reformulate the agrarian question once again, this time "not only as a food question, but as a food and energy question", with agriculture positioned on both ends of the energetic equation. [43]*

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<sup>4</sup> According to the *food regime* the following phases can be identified. Firstly, a state-centric period between the XIV and the XX centuries. It carried on around the Second World War. Such a period of economic nationalism was characterized by industrial capitalism and its resulting global reorganization of land tenures and property rights and by a struggle to a colonial global land grab [42]. In the aftermath, mercantilism and cold war have been trends of the postwar developmentalist interlude. During this period both blocks did state collectivization and reforms resulting in expropriations. A huge number of people moved away from rural to urban areas increasing proletariat. Since '80s/'90s the economic nationalism was replaced by the neoliberal globalization project. Such a phase of *corporate food regime* is characterized by an increasingly reduced state presence in agriculture and a consequent privatization. The transnational corporations supremacy push toward market oriented land tenure reforms.

Nevertheless, during the '90s the effects of the neoliberal model rise and the MLARs have already been noticed by peasants. They started a grassroots movement at global scale which played - and still plays - a fundamental role by opposing, studying and denouncing land grab and land acquisitions. Such a movement will be object of the following section.

## THE ROLE OF TRANSNATIONAL AGRARIAN MOVEMENTS (TAM) AND CIVIL SOCIETY ORGANIZATIONS (CSOS)

As showed in the previous sections, the new land rush and land grab are some relevant symptoms of the neoliberal globalization process. In line with several studies, it is possible to argue that during the last twenty years nation states in developing countries have been transformed by some dynamics: globalization, partial decentralization and increasingly privatization [44] [45] [46]. Such pressures on the one hand reshaped linkages between different scales -global, national and local- making them more interconnected; on the other hand they restructured terms on which people accept or resist to global neoliberal political economies (Borras 2008). Moreover these changes did not save the agricultural sector and have been challenged by many organizations and movements been transformed as well [47]. On the one hand they have been pushed to further localize – as an answer to decentralization-, on the other hand they organized toward a higher level of internationalization -in response to globalization - [48].

For rural populations to defend their access to land is relevant. It has been crucial indeed in encouraging a strong mobilization. They organized in network and coalitions from a local to a global scale going through the breach opened by systemic crisis (food, financial, energetic and climatic). Such a resistance let them call into question the hegemonic economic paradigm at a level without any precedent. In the last twenty-five years indeed peasant movements and civil society organizations (CSOs) have been able to open and occupy a political space in the global institutional arena. They finally had a voice in the decision making process about governances in food and agriculture by proposing their alternative in terms of the so called Food Sovereignty principle [49]. Borras [50] studying Transnational Agrarian Movements (TAM) like La Via Campesina defined such a space as new – due to a previous lack of representation in institutional meetings open only to officially recognized NGO and rich agricultures representatives- and distinct - because it has been defined, occupied and used by and for poor peasants and all players related to land-. Such a space anyway needs to be continuously defended, increased and redefined.

Why and how TAM have been able to succeed in their advocacy where others failed? Harvey [51] analysing social movement resisting neoliberal globalization classified them in movements against accumulation by dispossession – opposing to primitive accumulation dividing peasants from their land- and movements against extended reproduction - resisting against exploitation of wage labour and the conditions defining social salary. The author highlighted the practical and theoretical urgency to find an organic connection between these two forms. McMichael [52] pointed out how the politics of La Via Campesina unifies these two components:

*Arguably, Via Campesina's politics unites these resistances, organically, in linking the accelerated movement of food with the accelerated dispossession of the peasantry. Neoliberal industrialization of agriculture on a world scale simultaneously generates casual labour and reduces capital's wage costs.*

*Via Campesina dereifies the euphemism of 'free trade', revealing its corporate/state origins and its unequal and devastating consequences. Further, to show that the expanded reproduction of capital depends upon the generation of an expendable global wage-labour force, also shows that corporate agriculture, as such, is not simply about producing cheap food, it is also about securing new conditions for accumulation by lowering the cost of labour worldwide. It is in this sense that agriculture is central to the solution.*

*In building an organic link between movements against dispossession and against the relations of expanded reproduction, Via Campesina importunes us to recognize that accumulation is [...] about dispossessing alternative practices and foreclosing options for alternative futures. In particular, the ontology of capitalist modernity, [...] rules out a place for peasants, physically expelling them from the land, and epistemologically removing them from history. Conversely, the ontology of the food sovereignty movement critiques the reductionism and false promises of neoliberalism, positing a practice and a future beyond the liberal development subject, and the science of profit. This emerging ontology is grounded in a process of revaluing agriculture, rurality and food as essential to general social and ecological sustainability, beginning with a recharged peasantry.*

Among the reasons which touched off the emergence of La Via Campesina in 1993 indeed it is possible to recognize the establishment of the World Trade Organization (WTO) and the acknowledgement that agricultural policies will be decided globally. It became crucial for peasants to be able to defend their interests in the institutional arena at that scale. It is useful to notice that in all debates and negotiations about agricultural policies inside international institutions the voice of peasant movements never pronounced any judgement. They have always been absent. Paul Nicholson, European represent of La Via Campesina *International Coordinating Committee* confirmed such an absence by affirming "The principal reason of the existence of La Via Campesina is to be that voice to the creation of a more just society [53]". In fact the presence of non-state actors at the first *World Conference on Agrarian*

*Reform and Rural Development*, held in Rome in 1979, has been limited only to international officially recognized NGO and specifically to the *International Federation of Agricultural Producers* (IFAP)<sup>5</sup>. Nevertheless IFAP was only representing the interests of large scale market oriented agricultures [57]. The official debut of La Via Campesina in the international political arena was in 1996 at the Forum of Civil Society held in conjunction with *World Food Summit* organized by FAO. On that occasion La Via Campesina started to lay the foundation for what internationally has been known as its most important international campaign: the declaration of the *Food Sovereignty*<sup>6</sup> principle. The Food Sovereignty indeed was not only the key concept of the *Global Campaign on Agrarian Reform* (GCAR) launched in 1999 in opposition to MLARs, but the centre of the alternative model proposed by the most part of TAM using the so called *Human Rights Based Approach*. A common significance of the concept of 'land' indeed has developed inside GCAR during the years and it has finally been deeply connected with the right to food. In fact in the Food First International and Action Network (FIAN)'s view the right to land represent the fundamental precondition to the right to food. FIAN's allied with La Via Campesina in 1999. It actively worked with the movement about GCAR development and promotion. The aggressive promotion of MLAR by the WB has thus actively contributed to strengthen such broadly shared right oriented meaning significance of land.

Although several differences in terms of ideology and classes, almost all activists of La Via Campesina agree on the idea that 'land is crucial for peasant survival'. Nevertheless, the effective control of resources has always been monopolized by landlords and this shows the need to redistribute land to landless peasants. MLAR will not be able to do that, on the contrary it risks to frustrate any effort [60]. Such a strong opposition to MLAR constituted a key element facilitating not only the acknowledgement of a common principle but even the progressive affirmation of GCAR. At the same way, identification of WB – main MLAR financier and promoter - as a common opponent helped to face such high diversities inside La Via Campesina [61].

The innovation of the approach used by the movement lies not only in the connection between food and land with human rights, but also in the introduction of an alternative model of rights: the collective dimension above the individualistic one -prerogative of the utilitarian neoliberal model-. In the movements' view indeed problems in governance related to food and agriculture should be considered at all scales as they are interdependent.

The need to develop and to implement such a strategy led to the establishment of another organization: the *International Planning Committee on Food Sovereignty* (IPC). Such a broad network grouping not only TAM as La Via Campesina but also commercial agricultural unions and other NGOs – member at the same time of other organizations as the International Land Coalition (ILC) - count around 500 rural organizations all around the world. IPC consist of a space of representation and comparison for millions of food producers. Although as other movements and organizations it has inevitably to face strong internal ideological and class differences of the several members, IPC is a platform allowing active participation to decision making processes about food and agricultural policies through facilitations between NGO and peasant movements and international institutions as FAO [62]. Since 2003 IPC assisted participation of more than 2000 small scale food producers and indigenous populations representatives in FAO conferences. IPC served as mouthpiece of the will of an alternative model to free market and agribusiness [63]. Finally it led an ideological diversification in this political space [64].

A first interaction opportunity with international institutions arrived in March 2006 during the *Conference on Agrarian Reform and Rural Development* (ICARRD). The IPC refused to participate at the official conference and preferred a parallel civil society forum with opportunity to interact with official deliberations. During that conference the right to land and its importance - not only in economical but also in cultural socio-political and historical terms- have been officially recognized [65]. The final ICARRD declaration was the base for the FAO's initiative launched in 2009. The main aim was the development of a practical code of conduct for governments to improve governance on natural resources according to the shared recognition that clear tenure systems and fair access to land, fishery and forests are crucial to reach food security and the right to food. Thanks to an inclusive process with strong participation of international organizations and peasant movements to a long series of meetings, the civil society elaborated its proposal presented and negotiated with member states. The result has been the document *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests* ratified and came into force in 2012. Despite being voluntary the code clearly refers to some human right obligations and links them to natural resources. Moreover it contains a guide section about the practical implementation. Arguably the *Voluntary Guidelines* have some weaknesses.

Firstly they did not obtain inclusion of water as a resource linked to land, secondly they have been too weak in giving priority to small scale food producers and finally to protect indigenous populations – although they are already recognized by others international codes; nevertheless the *Voluntary Guidelines* doubtless represent an almost unheard-

<sup>5</sup> L'IFAP is one of the oldest transnational agrarian movements. It has been founded in 1946 by commercial oriented associations of agricultures mostly from industrialized countries which led the organization up to 2008. IFAP became the agricultural sector principal organization and obtained the status of official representative during international intergovernmental institutions meetings [54]. IFAP policy is almost related to the interests of its most economic powerful members [55]. In IFAP's view neoliberalism is an opportunity and it always approved it [56].

<sup>6</sup> The *Food Sovereignty* principle first appearance was during the '80s in Central America. It was the answer to the structural adjustment programs which cancelled public support to agriculture and included food imports from the United States. At that time food sovereignty was mainly thought as 'national food security' and linked to the right to continue produce locally [58]. *Food Sovereignty* has been internationally stated in 1996 at the NGO forum of the *World Food Summit* as: "the right of every nation to preserve and develop its own capacity to produce food in regards of cultural and productive diversity [59]. The principle evolved during the following years and lies today on 6 pillars as stated in the 2007 "Nyéléni Declaration" for more info: <http://www.foodsovereignty.org/FOOTER/Highlights.aspx>.



of step forward not only in the application of the *human rights based approach* but also in making good use of circumstances and results of the collective struggle.

## FINAL REMARKS

In the present paper we highlighted some methodological and theoretical issues emerging while studying the recent land rush and land grab. It is possible now to try to answer the upcoming questions raised by the close examination done in this text.

By deconstructing the land grab and land acquisitions discourse - which, as previously pointed out, a neoliberal trend has gradually de-politicized and brought on a dichotomist cost/opportunity level -, it has been possible to highlight the social dynamics presiding over the changes in land use pertaining to the phenomenon in point. Focusing on spatial analysis it is possible to recognize this wave of land acquisitions as the effects of a neoliberal political economy at a global scale. From a geographic perspective, such land use changes could be considered as what Turco [66] defines widespread deterritorialization and reterritorialization processes. In land acquisition processes territory is structured by a growing privatization and reified by a intensive use or speculation on land. Moreover I also pointed out that by assuming the definition of land grab proposed in the first section, it would be possible to distinguish it from land acquisitions and consider it as a way they are done. Finally I argue that land acquisitions are processes of commoditization and progressive resources accumulation. Land deals are often realized by means of predatory practices which lead us to talk about grab which in turn could degenerate in conflicts. Anyway, may they be acquisitions, or may they present features of land grabbing, the increasingly land tenure concentration toward a reduced number of owners implies a growing competition which collides with concepts like cooperation, sustainable development and common good, but will profit few people at the expense of many. *Rebus sic stantibus*, I argue that land acquisitions could neither be useful to achieve target like poverty eradication and food security nor be considered a development opportunity. According to a critical approach to neoliberalism, land acquisitions should be avoided because they are part of this unsustainable economic model. Such a model in fact considers economy as absolute: free from any tie with social and environmental spheres. On the contrary, these three aspects should never be neither divided nor differentiated. They are part of a whole and can't be separated in any kind of political economy or territorial planning analysis aiming to achieve sustainability.

In this background TAM and other kind of CSOs try to resist to what Raffestin [67] would define neoliberal exclusive territoriality<sup>7</sup> by reshaping capitalism geography through the achievement of a new territoriality using the human right based approach as main mediator to reduce relations asymmetry in the global political arena. TAMs in fact chose to propose their alternative to the 'market' basing on the food sovereignty principle which considers land and food as fundamental rights. The achievement of the *Voluntary Guidelines* represent an unprecedented turning point. It was not the conclusion but the beginning toward the establishment of a new *modus operandi* in decision making processes related to global policies. Moreover, despite maybe not being the most effective one, it demonstrated that an alternative perspective to market economy is possible. The political space once opened, should be continuously renegotiated and redefined in order to face internal and external issues due to the strong heterogeneity which characterizes TAM and CSO.

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<sup>7</sup> Raffestin reflected on the concepts of space, territory, and territoriality. After having elaborated a relational problematic, the authors understood the necessity of deriving these concepts from each other, privileging, naturally, the activity of the actors (Raffestin, 1980). The territoriality is simultaneously a system of relations with material and immaterial realities and a system of the representation of these realities.

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## LARGE-SCALE LAND ACQUISITIONS AND FOREIGN DIRECT INVESTMENTS: A CHALLENGE FOR INTERNATIONAL LAW

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### ABSTRACT

Foreign acquisitions of land for agricultural use in developing countries caught the increasing attention of the international community in the last years. Several factors such as the generally large size of the deals, the lack of transparency and incompleteness of contracts and the risk for local communities' rights led to fears of land grabbing. Indeed, large-scale land allocations mainly affect high-value lands, due to their agricultural production capacities or to the availability of abundant waters for irrigation. After the season of nationalizations boosted by the decolonization process, this modern rush to the conquest of foreign agricultural lands is often led by private actors, namely multinational companies, which on their part benefit from the support of some governments fostering international direct investments in farmable lands. As far as the legal perspective is concerned, large-scale land acquisitions raise remarkable questions on the need for a tougher regulation of multinational companies' activity, as well as on the role that international institutions and civil society are (or should be) called to play. To this regard, the paper briefly analyses recent agricultural land acquisition trends, then focusing on the main reactions to this phenomenon and to its shortcomings. In particular, the paper aims at considering the efforts that international actors have put in place in order to set up principles and guidelines allowing for a proper balance between foreign investors' interests and local needs. To this regard, the analysis is centred on three aspects: the effectiveness of multinational companies' self-regulatory solutions; the role of international law instruments; the debate on the adoption of an international code on large-scale land acquisitions: the analysis highlights the absence of specific binding *ad hoc* international instruments, thereby claiming for the adoption of hard-law rules to properly address the phenomenon.

### INTRODUCTORY REMARKS: BACKGROUND AND INCIDENCE OF LARGE-SCALE LAND ACQUISITIONS

As a complex global phenomenon, land grabbing raises several and highly debated economic, sociological and political questions, which would require an extensive and continuous study. The analysis proposed in the present brief paper is therefore limited to some rapid glances to a selection of issues that large-scale land acquisitions pose on the international stage [1].

The last few years have been characterized by a surge of interest in foreign acquisitions of land in developing countries. This trend led to fears of land grabbing, especially because of the generally large size of the deals, the lack of transparency and completeness of contracts and the peculiar features of the lands at stake. Indeed, large-scale land allocations mainly affect high-value assets, due their high agricultural production capacities or to the availability of abundant waters for irrigation. Land acquisitions involve both private multinational companies and foreign governments and have to be defined broadly, including purchase of ownership rights as well as use rights, e.g. through leases or concessions.

Taking the sociologist Sigmund Bauman's words, land grabbing has been described as a liquid phenomenon [2], which takes different shapes depending on the geographical areas and is further modelled in various forms by the interests of the subjects involved, such as food production and supply or biofuel processing [3].

Some notes on the factual background of large-scale land acquisitions can be useful to understand the importance and the incidence of the subject under consideration. As a matter of fact, the convergence of different global crises - namely the enduring financial earthquake, the 2007-2008 food prices crisis, the increasing need for sources of energy and the environmental detrimental consequences of climate change - in recent years has contributed to the revaluation of land and to the subsequent rush to control extensive areas in developing countries.

Productive lands are therefore targets for international investments, but this trend has to be paired with the situation of local communities and balanced with their needs. In fact, according to FAO reports [4], the incidence of future population increase is expected to affect mainly developing countries, where the majority of world rural poor live. Moreover, in order to meet the world growing needs - primarily rooted in developing countries - food production would have to double by 2050. FAO also estimated that an additional 120 million hectares - an area twice the size of France or one-third that of India - will be needed to support this growth in food production, without considering the compensation required for what are certain to be losses resulting from unsustainable forms of agricultural production and the losses of

agricultural soils destined to urban sprawl [5]. Almost paradoxically, the impetuous rush to farmable lands is a process of re-territorialization, but generates de-territorialization, since host States surrender them to foreign investors [6].

In this context, the collection of precise and comprehensive data is hampered by several factors, such as the variety of the actors on the stage and of the areas at stake. The absence of an overall official record on the volume of cross-border large-scale deals has been partially obviated by journalistic inquiries [7] and by the studies developed by NGOs and international organizations in the last years. According to an estimate from the International Food Policy Research Institute (IFPRI), between 15 and 20 million hectares of farmland in developing countries were subject of transactions or negotiations involving foreign investors as from 2006 to 2011, an area which equals to a fifth of all the farmland of the European Union. More recently, Oxfam estimated that downright 227 million hectares of agricultural areas in a way or another changed hands in the last decade [8]. Still, these impressive data show huge variations and lack a clear and objective scientific basis, so that it is very hard to assess the true range of the phenomenon.

Among the main target areas, sub-Saharan African countries, Latin America, South-Eastern Asia and Caucasian States attract the most significant amount of foreign investments. Remarkable examples are the Democratic Republic of Congo, where China has acquired extensive areas in order to establish the world largest oil palm plantation, and Sudan, where huge extensions of farmable lands have been acquired or leased by South Korea, The United Arab Emirates and Egypt.

In principle, this trend presents interesting opportunities. Indeed, in the last decades, despite its economic and social potentialities, agriculture proved to be quite a neglected subject, failing to attract foreign direct investments and lacking comprehensive and far-reaching policies and reforms [9]. Injection of increasing investments by multinational corporations and foreign governments could derive in employment, transfer of technologies, increased public revenues, improved processing chains, more affordable prices, less dependence on international markets and their fluctuations to meet local and foreign communities' food supply needs.

At the same time, however, several possible shortcomings and risks can be identified, in terms of abuse of power by foreign investors or infringement of local communities' fundamental right to property and the access to adequate quantity and quality of foodstuff and freshwaters. The current wave of investments often takes place in contexts where local communities have insecure land rights and are therefore vulnerable to dispossession. Such risks are often exacerbated by the economic and political feebleness of target countries [10].

## **SHAPING A NEW WORLD ORDER: LAND GRABBING, INTERNATIONAL GOVERNANCE AND THE ACTORS ON THE STAGE**

Land grabs today are influenced by past practices and historical legacies. They exhibit continuities from the past, but also diverge in significant ways and are riddled with contradictions and tensions. The emerging approach of investors to foreign farmable lands, in fact, recalls the early involvement of multinational companies in developing countries' agriculture during colonialism [11]: at that time, international investors sought the internalization of land assets, through forms of direct control over vast areas, mainly exploited for exportation purposes. This solution allowed for neutralized negotiation costs and for stable and secured food supply, which current investors on many occasions pursue as well.

After the Second World War, however, the decolonization process boosted an opposite trend, resulting in massive expropriations and nationalizations [12]. The current scenario, above briefly outlined, is now favouring the resort to the early schemes, with some peculiar features [13]. First of all, unlike in the past, land grabbing occurs in independent States, which to a different extent exercise their sovereign powers on their territories. Secondly, investors nowadays come from very different parts of the world, being Arab Gulf States, China and South Korea particularly active in this field. Thirdly, the priority of the actors on the stage is to seek for new resources to be exploited, while in the past multinational companies aimed at gaining access to new markets. Finally, the current scenario represents a large-scale and long-term process, which appears to involve higher amounts of lands than past experiences [14].

In this context, the described transboundary process goes through multiple layers of international governance mechanisms, where a constellation of public and private actors is involved.

Before considering the international scenario, it is worth briefly focusing on the traditional concept of land governance at national level. Indeed, both the international and local dimensions are opposite but complementary elements of the same phenomenon, considered from radically different perspectives.

From a general point of view, land governance traditionally refers to the rules, processes and structures through which decisions are made about the use of and control over land, the manner in which the decisions are implemented and enforced, and how competing interests in land are managed [15]. Good governance in land therefore implies the principles of universality of tenure security, equitable participation, adherence to the rule of law, sustainability, effectiveness and efficiency in the administration of land. Also, due to the extremely different local legal traditions in land tenure, it often implies the protection of land customary rights, since traditional tenure, vested in family, community or tribe, is widely accepted in many developing countries [16]. Indeed, considering that land constitutes a source of livelihoods and social security, rights concerning its use, control and transfer are not purely technical issues. Land rights are closely interlinked with the identity, history and culture of communities, a factor which makes land reforms a highly sensitive issue [17]. National land governance is deeply intertwined with the phenomenon of large-

scale crossborder farmland deals. In fact, anywhere land tenure and land administration are not effective and formalized, individuals suffer from the risk of dispossession, so that the intervention of foreign investors may negatively affect entire local communities.

On the contrary, documented rights and proper land administration offer to holders the possibility to enact legal remedies and to see their rights being upheld by a court, or even to become negotiators in the deals concerning their lands. To this regard, the World Bank estimates that, across Africa, only between 2 and 10% of the land, mainly urban, is held under formal land tenure and the extent to which national legal frameworks protect local land claims is variable but often limited. The World Bank itself concludes that countries with poorer records of formally recognized rural land tenure have attracted greater interest [18]. This is why the rising awareness on the international phenomenon of land grabbing led several developing countries to revise and reform local land planning and tenure laws, as well as their bilateral/multilateral trade, investment, and development cooperation agreements, in order to either facilitate [19] or limit land deals promoted by foreign investors and their effects on local populations [21]. Ultimately, from a national point of view, the possibility to benefit from the opportunities of economic development brought by foreign land investments highly depends on governments' capacity to guide them in the interest of their populations, for instance as far as the terms and conditions of the contracts and the supervision of their effective implementation. However, according to several scholars, both government capacity and the transparency and completeness of contracts for these recent large land deals are very problematic [22].

At global level, the notion of international governance usually refers to all the hard or - more often - soft procedures, mechanisms and institutional arrangements which the various actors involved put in place to address crossborder issues. To this respect, land grabbing is causing a major shift in the perception of natural resources, from elements under national sovereignty to meet individual and collective essential needs to commodities for the global market. Such change involves new balances at global level, which the international community, thanks to the early efforts of the FAO UN Agency, has been trying to address as from the late seventies. That early commitment was the first step of a longer path, which is worth briefly resuming and which led to an increasing awareness on land-related issues on the supranational stage.

In fact, the first attempts to establish formal international governance for land occurred on the occasion of the FAO World Conference on Agrarian Reform and Rural Development (WCARRD), which was held in Rome in 1979. The conference was intended to set up an international legal and institutional framework to foster rural development and land reforms, especially in developing countries [23]. However, the objectives underpinned during the Conference were soon abandoned, mainly due to the lack of political support and to the strong faith in industrialization as a motor for development.

During the nineties, the issue of agricultural lands management was listed among the key-issues to be dealt with by the Bretton Woods international organizations, and in particular by the World Bank, which, from then on, played a continuous and active role in this field. The market-led reform process upheld by the World Bank was soon flanked – or, better, opposed - by civil society commitment, claiming for justice-oriented redistributive land policies. The main outcome of this rising awareness was the Global Campaign for Agrarian Reform, promoted by the international peasant movement Via Campesina [24], which was intended to call for comprehensive agrarian reforms at the global level. In 2006, this initiative eventually led FAO to convene in Porto Alegre, in Brazil, another International Conference on Agrarian Reform and Rural Development (ICARRD). The representatives of the States and civil society organizations gathering in Porto Alegre stressed the importance of collective rights and acknowledged of the multi-faceted social dimension of land as leading principles for the next steps to be taken. The ICARRD paved the way for a season of reforms towards a more attentive approach to land deals of foreign investors in developing countries and an improved regime of land tenure in those areas [25]. In particular, the newly favourable environment brought to the adoption of the World Bank Principles for Responsible Agricultural Investments (PRAI), to incisive revisions of the 1998 Equator Principles on the proper management of the projects finance by the World Bank and to the early debate on FAO Voluntary Guidelines on Land Tenure. Moreover, the 2008 food crisis imposed the adoption of several initiatives by other supranational actors, such as the G8, the G20 Forums and the Doha World Economic Forum, the former launching a New Alliance for Food Security and Nutrition [26]. In the meanwhile, civil society and NGOs have been spreading awareness on the possible shortcomings of the current wave of crossborder investments in agricultural lands.

In general terms, this entangled scenario marks some significant changes in the world order, which can be summed up in the concepts of multipolarity and fragmentation. Indeed, land grabbing is a key-example of the emergence of new protagonists on the international stage, willing and able to flank and even overcome traditional sovereign States. First of all, the phenomenon under consideration marks the transition to a new political and economic balance, mainly due to the raise of the BRICs and the strengthened influence of new OECD countries, such as South Korea and Arab Gulf States. Multipolarity and fragmentation are also testified by the shift of authority from States to an increasing number of international organizations [27], often highly specialized and endowed with significant political or even deliberative powers. As far as the policies on arable lands are concerned, a key-role is played by the World Bank, whose development strategy supports large-scale investments, the FAO and the UN Committee on World Food Security (CWFS), which carried out several studies on the subject and adopted important soft-law international instruments. Another remarkable calibration of traditional balances regards the role of private actors in global land governance: NGOs, transnational business lobbies, multinational companies, media and several other subjects take active part in this mechanism, often supporting opposing interests [28]. On the one hand, on many occasions, they are involved as

stakeholders in State projects and practices; on the other hand, they often launch their own initiatives, which can be of a great significance for the evolution of large-scale land deals. The first case can be exemplified by referring to the International Standards Organization (ISO), a formerly public network of national bodies which adopts common global technical standards often able to influence and orient national and international regulatory choices or judicial decision-making [29]. The second can be represented by self-imposed codes of conduct, which sometimes multinational companies adopt in order to orient their investment campaigns and to highlight to consumers and to the public opinion their efforts to avoid any violation of local communities rights through their activity [30].

Many further examples could be listed, but it is worth considering more in-depth some of the outcomes of the described multipolar and fragmented global land governance, namely the main soft law and hard law instruments concerning investments in land and land-related rights.

### **THE WORLD BANK PRINCIPLES FOR RESPONSIBLE AGRICULTURAL INVESTMENTS (PRAI) AND THE EQUATOR PRINCIPLES (EPS)**

Many large-scale investment projects are made possible thanks to long-term loans or insurance and financial guarantees, often provided by banks and international financial institutions. In the past decades, many of these projects were put under scrutiny by the international community, due to the detrimental effects that their implementation had on the environment and to the massive human rights violations that some of them caused. This is the main reason why in 1998 the World Bank adopted the Safeguard Policies and Performance Standards. Such set of standards was aimed at selecting the projects to be financed by the World Bank and its subsidiary - the International Financial Corporation (IFC) - thus trying to avoid any adverse consequence. This initiative was welcomed by the international community, but its effects were formally confined to the projects financed by that international organization [31].

However, the Safeguard Policies paved the way for more extensive and effective instruments and worked as examples for all public and private financial actors. As a matter of fact, in 2002, nine international banks and the IFC started to negotiate the adoption of a more comprehensive document, which was launched in 2003 under the name of Equator Principles (EPs) [32]. The content of the EPs highly reflected the 1998 World Bank Performance Standards and was later on updated in 2006 and 2012.

According to the preamble of the Principles, the EPs are to be defined as a credit risk management framework for determining, assessing, and managing environmental and social risk in project finance transactions. Accordingly, the main objective of the Principles is to ensure that large-scale projects and their implementation meet specified social and environmental requirements, thereby reducing the risk of operations in developing and non-high income OECD countries where adequate state regulation is not in place [33].

The EPs apply to all projects whose capital cost exceeds 10 million US dollars and which are promoted by any of the 77 financial institutions that nowadays adhere to them. The actual number of EP-compliant debt offerings is in fact significantly higher than the formal number of participant institutions, because the EPs apply to all loans involving one of them among multiple non-member parties [34].

From a formal point of view, the EPs system is an international private association, headed by a steering committee composed by 13 elected members, which oversees the development of the Principles and issues periodical guidelines. Even if the daily implementation of the Principles is left to each member individually, every year a report on financed projects is published, in order to underline best practices and align the waves of investments to the EPs.

At present, the core Principles are ten and include the review and update of social and environmental risks; a social and environmental impact assessment for every project; the development of management plans to address assessed risks; the independent review of projects and risk assessments; grievance mechanisms that ensure the good social and environmental performance of the project; compliance with host country laws and regular reporting to local authorities.

EPs are increasingly relevant for land grabbing, since most of the investments in this field are long-term and large-scale loans, requiring project financing and multiple international investors, cases which the EPs primarily address. Moreover, on the occasion of the 2012 reform of the Principles, the members agreed to insert specific references to land uses and access. In particular, Performance Standard 5 on land acquisitions and involuntary resettlement recognizes that project-related land acquisition and restrictions on land use can have adverse impacts on communities and persons that use this land. Involuntary resettlement therefore has to be in principle avoided and in case it proves to be unavoidable it should be minimized through carefully planned and implemented economic and asocial measures, capable of mitigating its impact. Performance Standard 7 on indigenous peoples and natural resources subject to traditional ownership or under customary use imposes the principle of free, prior and informed consent of local communities involved on projects with potential significant adverse impacts on their lives; instead, Performance Standard 8 focuses on the need to protect the cultural heritage of the areas at stake.

Some authors criticize the EPs, since they never take a truly restrictive stance on potentially dangerous projects, instead applying mitigation, compensation and negotiation strategies to reduce the negative repercussions [35]. Others criticize the vagueness of the Principles and the extensive discretionary power conferred to each member in the operation of the system, which lacks a clear and strict guidance. Moreover, from a substantive perspective and despite the high-sounding goals of the Principles, the system lacks transparency and disclosure requirements, so that its external accountability is weak. At the same time, members are in most cases market operators, which are inevitably more

attentive to their clients' interests than civil society or local communities claims [36].

In conclusion, the EPs mingle the efforts put in place by international financial institutions and the search for increasing reliability by financial operators, but are to a large extent deprived of the necessary tools and instruments to effectively and individually bind each adhering member.

## **THE FAO VOLUNTARY GUIDELINES ON THE RESPONSIBLE GOVERNANCE OF TENURE OF LAND, FISHERIES AND FORESTS**

As already mentioned, in 2006 many FAO members gathering at the ICARRD agreed on the need to put in place adequate efforts to ensure secure and sustainable access to land and other natural resources, as an elective means to fight against widespread rural poverty. In particular, the final acts of the ICARRD stressed the importance of an improved land tenure, in order to formalize and clarify existing land rights.

In 2009, stemming from this shared commitment and inspired by the similar experience of the 2004 Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security, the FAO launched the negotiations for the adoption of Voluntary Guidelines on land and other natural resources tenure.

The negotiation process took more than three years and was highly participatory, since it involved several public and private stakeholders at national, regional and global level. In particular, negotiations took several subsequent steps, at each stage of which the drafts of the final Guidelines were publicly submitted to any interested actor, for proposals of alternative formulations or amendments. The text was finally adopted by the CWFS during a special session, in May 2012, as a comprehensive guide to governments to improve land, forests and fisheries governance [37].

As the official title suggests, the Voluntary Guidelines are not intended to establish new legally binding obligations, nor replace existing international treaties and principles. However, they explicitly and continuously refer to existing binding international human rights obligations and provide interpretation and guidance on how to implement these obligations in the specific field of land and further scarce natural resources.

The document constitutes a framework for natural resources-related policies and is divided into seven parts: responsible governance of tenure; the legal recognition and allocation of tenure rights; transfers and other changes to tenure rights, such as restitution and redistributive reforms; administration of tenure; responses to climate change, natural disasters, conflicts and other emergencies; the promotion, implementation, monitoring, and evaluation of the Guidelines [38].

Despite the ambition to adopt a comprehensive document, given the fact that land and natural resource tenure issues vary considerably across the world, each part of the document does not apply in the same way to every State. This also derives from the principle of common but differentiated responsibilities, a cornerstone of international environmental law, according to which developed States bear major burdens in the international pursuit of sustainable development, due to the high pressure that their societies place on the global environment. An essential aspect of the implementation process proposed by the Guidelines is the setting up of national roundtables and platforms for dialogue with the stakeholders. These *fora* are intended to identify the main problems and possible solutions when implementing the Voluntary Guidelines at the national level. At the global level, the Guidelines are an accepted standard set by the CWFS in the field of food security and nutrition, so that all relevant UN agencies are asked to support their implementation [39].

As to monitoring processes on the global situation, States and other CWFS participants are currently discussing the potential design of a CWFS-based monitoring mechanism, with several proposals under consideration. One option is an independent body endowed with the duty to record progress in improving governance of tenure; according to a second option, States would present reports on their efforts to implement the Voluntary Guidelines, that would be peer-reviewed by other CFS participants.

## **THE ROUNDTABLE ON SUSTAINABLE BIOFUELS (RSB)**

The RSB was established in 2007 as a reaction to the widespread criticism on the sustainability of extensive production of biofuels. Besides environmental concerns, the economic and social impact of biofuel projects poses severe challenges, mainly due to the vast areas needed, the adverse effects on wildlife habitat and local food production and the insufficient impact on local employment rates [40]. The RSB is a platform which highly reflects the multipolar and fragmented essence of global land governance, since it involves multinational companies, organizations from civil society and public actors interested in the field at stake. Among the others, the World Wide Fund for Nature (WWF), the United Nations Environment Program (UNEP), Royal Dutch Shell, British Petroleum, Toyota and several national governments are actively involved in the Roundtable, whose main goals are to establish criteria for sustainable biofuel production and a voluntary certification scheme for produced and processed biofuels based on these criteria.

The participation in the RSB decision-making and revision process is organized in a chamber system. The core deliberative power is conferred to the steering committee, an elective body, to which applications to join the platform have to be addressed. Candidate stakeholders can apply to join one of seven chambers, depending on their legal nature:



farmers and growers of biofuel feedstock; industrial biofuel producers; retail/blenders, transportation industry, bank/investors; rights-based NGOs and trade unions; rural development or food security organizations and smallholder farmer or indigenous people organizations; environment conservation and climate change organizations; and intergovernmental organizations, specialist agencies, governments. The Roundtable adopted twelve principles and criteria for sustainable biofuel production, such as legality, respect for land and labor rights, decrease of greenhouse gas emissions, local food security, conservation of biodiversity, protection of soil and freshwaters quality and availability, minimization of air pollution. Some of these standards and principles have been specifically applied to projects of acquisition of extensive agricultural areas, to grow crops for biofuel processing.

Despite its soft-law nature, the RSB principles were adopted taking into account the existing international legislation on biofuel production and their formulation is much more stringent than other similar instruments. For instance, according to principle 12 on land rights, no involuntary resettlement shall be allowed for biofuel operations and also in cases of unresolved land tenure disputes biofuel operations shall not be approved. One of the core- aspects of the Roundtable is a system of certification, a complex process through which interested stakeholders obtain from an independent third party the issuing of a certificate to confirm the respect of every RSB principle and standard. However, the reliability of this certification system is under criticism, mainly due to the lack of transparency of the evaluation process [41].

### **NATURAL RESOURCES GRABBING AND FUNDAMENTAL RIGHTS: INTERNATIONAL SOURCES ON THE RIGHT TO FOOD AND WATER**

In June 2009, Olivier De Schutter, the UN Special Rapporteur on the right to food, issued a report on a set of principles to address ‘the human rights challenge’ of large-scale acquisitions and leases of land. The document highly reflected the ongoing scholarly and social debate on the legal status of the right to individual access to adequate quality and quantity of food and freshwater resources [42]. In the context of further initiatives at global level, such as the adoption of guidelines on land policies and governance by international and regional organizations, which the principles fostered, the report was intended to ensure that negotiations leading to land acquisitions and leases complied with a number of procedural requirements, including the informed participation of local communities. They also sought to ensure that such transactions should allow for adequate benefit-sharing, and should under no circumstance trump the human rights obligations of States. To this regard, the document is the result of the independent work of the Special Rapporteur and did not undertake an international negotiation process, but they can be seen as summarizing and aggregating the relevant and applicable existing human rights obligations of States. In this perspective, they differ from other soft-law instruments such as the CWFS guidelines, since they do not provide for new implementation mechanisms and are limited to the indication of the (in general pre-existing) international obligations of the States.

The report puts forward several proposals on four main human rights focuses: the right to food; the rights of local communities, with a particular accent on self-determination; the right of indigenous peoples; the right to social and economic development of land users and agricultural workers.

As far as the right to food is concerned, the international legal background clearly binds each State to ensure sufficient, nutritionally adequate, and safe food to anyone under its jurisdiction. According to article 11 of the International Covenant on Economic, Social and Cultural Rights, this obligation entails the access to the minimum essential food, so that everyone can be free from hunger. The State is also obliged to refrain from infringing on the ability of individuals and groups to feed themselves, where such an ability exists, and to prevent third parties from encroaching on that ability. As a third aspect, the State is called upon to actively strengthen the ability of individuals to feed themselves.

According to many authors, similar obligations refer to freshwater resources, despite no international binding provision expressly acknowledging the right to water can be detected so far. To this regard, the UN Under-Commission on Human Rights remarked in the Preamble of the Resolution 2002/6 “*the urgent and persistent need for increased attention and commitment by all decision-makers to the right of everyone to drinking water supply and sanitation*”. At the same time, the UN Committee on Economic, Social and Cultural Rights launched the General Comment No. 15, wholly devoted to the right to water, according to which States are under the duty to adopt all the measures necessary to grant the access to water resources without any kind of discrimination: “*States have a constant and continuing duty to move as expeditiously and effectively as possible towards the full realization of the right to water*”.

Grounds for a possible right to water could be found out among the several inter-state rights and duties concerning environment and shared natural resources, the largest part of which was mentioned in the UN Convention on Non-Navigational Uses of International Rivers and Lakes [43]. A notable contribution comes from several conventions on the duties of States with reference to particularly “weak categories” of people: while asserting the rights to life and health, they often mention the importance of sufficient quantity and quality of water resources. For instance, article 14, paragraph 2, of the UN Convention on Elimination of Discriminations against Women (1979) declares that every woman would have to benefit from adequate standards of living, there included the water supply for domestic and hygienic uses. A similar provision can be found in the UN Convention on the Rights of the Child as well, thanks to which States are bound to the protection of children’s health, even by the means of the higher quality of freshwaters they consume (article 24, paragraph 2). Other potentially relevant instruments are those regulating armed conflicts,

which entails the necessity to protect civilians, to discipline occupied areas and prisoners of war's treatment. Among the others, a special attention can be devoted to the Geneva Convention relative to the Protection of Civilian Persons in Time of War, which prohibits to attack or damage any kind of facility necessary to civilians' survival, such as water distribution networks and sewage treatment facilities.

As to land users and indigenous peoples' rights, the report highlights the importance of the principle of self-determination, as described in article 1, paragraph 2, of both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, according to which all peoples are entitled to freely dispose of their natural wealth and resources and may not be deprived of its own means of subsistence.

To this respect, the document first of all focuses on the possible adverse effects of land evictions, quite a spread and neglected problem in many developing countries. As clarified in general comment No. 7 (1997) of the Committee on Economic, Social and Cultural Rights on the right to adequate housing (article 11, paragraph 1 of the Covenant), the protection against forced unlawful evictions is a component of the right to an adequate standard of living. The document makes reference to the 2007 UN Special Rapporteur on the right to adequate housing, according to which evictions must be authorized by law only in exceptional situations, when mandatory general interests have to be pursued, and in any case they have to be regulated so as to ensure full and fair compensation and rehabilitation.

Moreover, access to land for indigenous peoples has been given specific forms of protection under international law. Articles 13 to 19 of ILO Convention No. 169 (1989) concerning Indigenous and Tribal Peoples in Independent Countries relate to land rights. Under article 8, paragraph 2 (b), of the United Nations Declaration on the Rights of Indigenous Peoples, "States shall provide effective mechanisms for prevention of, and redress for, ... any action which has the aim or effect of dispossessing [indigenous peoples] of their lands, territories or resources." Article 10 of the Declaration guarantees the right not to be forcibly removed from their lands or territories, and no relocation shall take place without their free, prior and informed consent and after agreement on just and fair compensation and, where possible, with the option of return. Articles 25 and 26 of the Declaration, in addition, recognize the distinctive spiritual relationship of indigenous peoples with their traditionally owned or otherwise occupied and used lands, and that they have the right to own, use, develop and control these lands. States must therefore give legal recognition and protection to these lands, territories and resources, with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned. Furthermore, article 32 of the Declaration embodies the principle of good faith, free, prior and informed consent, which the Special Rapporteur includes in his report as an essential requirement for any large-scale land deal.

In conclusion, in order to address such challenges, Principle 1 suggests the negotiations leading to investment agreements be conducted in a fully transparent manner, and with the participation of the local communities whose access to land and other productive resources may be affected as a result of the investment agreement. 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 more conducive to the long-term needs of the local population concerned and the full realization of their human rights.

## **CONCLUDING REMARKS.**

The proposed brief analysis leads some conclusive remarks, which are intended to search for some common trends in the fragmented and multipolar phenomenon of land grabbing, through the eyes of a traditionalist legal observer. Indeed, we would like to apply to the several efforts to face agricultural lands acquisitions-related challenges the views expressed by Carl Schmitt in his well-known 1942 essay *Land und Meer*. In his book, Schmitt travels through the history of humanity, searching for the core it is based on and trying to link the key-concepts of land and space to the fundamental rules of any legal order. According to Schmitt, the essence of a legal order lays on territorial borders and on the involvement of a certain portion of land. The reason for this assertion comes from the ancient Greek noun "*nomos*", which appears to be rooted on the verb "*neimen*", whose meaning is recalled by the German verb "*nehmen*", standing for "to conquer, to appropriate". As a consequence, "*nomos*" first of all should be linked to the concepts of "conquest and appropriation". More specifically, the ancient Greek verb "*neimen*" has three main meanings: to appropriate, to divide and split each portion and, finally, to graze. The third meaning, in particular, entails the use, farming and productivity of the conquered lands, eventually till their consumption. Any passage from one phase to the other of this chain of appropriation, in Schmitt's prophetic view, is caused by the change of global political balances and the subsequent rush to the conquest of new lands to be partitioned, ruled and exploited. Such traditional and land-centred vision of legal orders appears to be a good description of the current rush to new lands and helps to clarify some points on the role which law is asked to play in such a highly controversial and politically influenced context. First of all, due to the particular economic and social conditions of host States, national legal orders appear to be inadequate to provide sufficient protection to local communities and their interests and needs. The imbalances between the actors on the stage must be addressed by international human rights law and international trade and foreign investments law. To this regard, on the one hand, the mechanisms of agricultural lands global governance benefit from the active participation of each category of stakeholders, ranging from multinational corporations to civil society and international organizations. Such complex network reflects the multitude of the soft-law instruments aimed at orienting the behaviour

of foreign public and private investors. On the other hand, this paradigm is neither universally accepted nor effective, since the references to internationally recognized fundamental rights are most of times deprived of any true enforcement mechanism. Therefore, compliance with guidelines, codes of conduct and self-imposed principles is left to the sole responsibility of investors, while local land owners and users have no effective additional remedies to resort to in case of violation of their rights.

## NOMENCLATURE

BRICs	Brazil, Russia, India, China
CWFS	Committee on World Food Security
EPs	Equator Principles
FAO	Food and Agriculture Organization of the United Nations
ICARRD	International Conference on Agrarian Reform and Rural Development
IFC	International Financial Corporation
ILO	International Labour Organization
ISO	International Standardization Organization
NGO	Non-Governmental Organization
OECD	Organization for Economic Cooperation and Development
PRAI	Principles for Responsible Agricultural Investments
RSB	Roundtable on Sustainable Biofuels
UN	United Nations
WCARRD	World Conference on Agrarian Reform and Rural Development
WTO	World Trade Organization

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## THE SOCIO-ECONOMIC IMPACT OF LARGE-SCALE LAND INVESTMENTS: THE CASE OF MALI

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### ABSTRACT

Starting from the assumption that the agricultural sector, long neglected by development models and policies, is crucial for economic growth and development, the paper intends to contribute to the debate on the efficacy of large-scale land investments as a way to promote rural development. Based on the results of a field survey conducted in Mali in the area managed by the Office du Niger in the region of Ségou on 5 case studies of large-scale land investments by national and foreign investors, the paper aims at estimating the impacts of these projects on local populations. Despite the limits indicated in the methodology, the survey suggests some conclusions: weak creation of temporary and low paid jobs, deterioration of livelihoods of affected population as a result of the loss of land and land resources and the absence of adequate compensation, reduced economic independence of expropriated women farmers, environmental harm (destruction of trees, risks of water grabbing by large investors and of biodiversity loss), lack of transparency and consultation with affected communities, insufficient coordination between various levels of government and inadequate monitoring by the authorities of land investments' realization.

### INTRODUCTION

Agriculture has been long neglected by development models (starting from the Lewis model in the late 1950s where capital accumulation had to take place in the industrial sector and the agricultural sector was conceived as a pure provider of labour) and by public policies. First of all, the development strategies of most developing countries have followed the Lewis model and, secondly, after the debt crisis of the 1980s the structural adjustment programs imposed on indebted countries have forced them to implement tight fiscal policies with cuts of all subsidies to agricultural inputs (seeds and fertilizers) and liberalization policies that dismantled the state marketing boards (which supplied smallholders with inputs and guaranteed them safe markets even if at low prices) in favour of private commercialization systems. However, since 2005 there has been a growing interest in investing in agriculture in developing countries and the attractiveness of land as an economic resource has increased. Most of these land investments by national and foreign actors are large-scale and are driven by various factors, such as: a) rising food prices in 2007 and 2008, due to little investment in agriculture for decades, low public food stocks, and growing food demand by emerging countries such as China and India, because of population and economic growth (which induces a change in the diet), b) the ensuing food security concerns of food importing countries with a limited amount of arable land, such as the Gulf States, South Korea, etc., that pushed them to outsource food production in developing countries, c) increasing demand for biofuel production (due to the rise in oil prices and the developed countries' policies to reduce greenhouse gas emissions associated with fossil fuels), timber and mineral extraction, d) land speculation due to expectations of rising land values and financial speculation (after the collapse of the U.S. housing and subprime mortgages bubbles in 2007- 2008 investment funds and hedge funds shifted a vast amount of money into the land market and future contracts for food commodities), etc. According to the Land Matrix data coordinated by the International Land Coalition, Africa, erroneously perceived as a region abundant in unused land, is the main target of these investments [1].

Starting from the assumption that the agricultural sector is crucial for economic growth and development, the present paper aims at contributing to the debate on the efficacy of large-scale land investments as a way to promote rural development. The debate is very intense (see among others [2-6]) and is often biased by ideological standpoints and conflicting models for agricultural development, due to the scarcity of data and evidence. This paper analyses the results of a field research conducted in Mali in the region of Ségou on 5 case studies of large-scale land investments by national and foreign investors. Section 2 examines the state of large-scale land deals in Mali and its legal domestic environment. Section 3 describes the methodology of the survey, while section 4 discusses the main impacts of the five case study large-scale investments. Finally, section 5 presents the conclusions of the study and some policy recommendations.

## THE STATE OF LARGE-SCALE LAND DEALS AND LAND GOVERNANCE IN MALI

In Mali most of the large-scale land acquisitions have taken place in the irrigable zone managed by the Office du Niger (ON), with the headquarters in the town of Ségou. Officially established in 1932 under French colonial rule to develop export crops such as cotton, needed by French textile industry, and rice for Western Africa, the ON was restructured in 1994 as a semi-autonomous government agency with authority over more than one million hectares of irrigable land in the inland delta of the Niger River from the Markala dam, inaugurated in 1947, up to Mopti and beyond. The zone population can be estimated at about half a million people and the number of small-scale family farms at over 30,000. Traditionally, with respect to the irrigated land, the ON has given a *contrat d'exploitation* for one renewable year to smallholder farmers who do not pay a rent but only a water fee (*redevance eau*) of 65,300 fcfa/ha/season. The *contrat d'exploitation* can become a safer *permis d'exploitation agricole* if the farmer is punctual with the water fee payments. The access to the not yet irrigated (non *aménagée*) land, starting from 10 hectares, takes place through ordinary and emphyteutic leases (*bail*) for 30 and 50 years respectively, renewable as many times as the two parties agree to.

In 2005 there was a call from the Malian government to big investors to invest in the ON area which has “a gravity-fed irrigation potential unique in the world”. The main reasons behind the call are the following: 1. To increase the pace of investment and extend the irrigation system in the area (due to shortage of public funds, the ON has managed to develop (*aménager*) only 100,000 ha out of a potential of 1,4 million hectares); 2. To increase rice productivity in the area, thanks to the introduction of modern technology (demographic growth has reduced the average size of the plots to 0.5-2 ha for a family of 11 members and, as a consequence, the average yield of paddy rice is of only 3.5-4 tons per hectare and the annual rice production of the area is insufficient – about 600,000 tons, i.e. half of total domestic production); 3. The pressures from multilateral organizations, like the World Bank, to open up to the private sector and foreign direct investments, starting from the structural adjustment programs in the 1980s to the IDA's Growth Support Project for Mali of 36 million \$ in 2005 extended until 2012 “to create the conditions for increased private sector investment”: the Malian Investment Promotion Agency (API) was created in 2005 as a “one-stop-shop” for business creation; 4. The political ambitions of the Malian government to modernize agriculture: Mali aims at becoming self-sufficient, and even exporter, in rice and sugar; in 2007 President Amadou Toumani Touré, during the Presidential election campaign, was emphasizing the improvement of primary production, with a predominant role of the private sector and the promotion of foreign investments in the agro-industry sector.

As a result of the call, there was a surge in large-scale land acquisitions, especially in 2008-2010. However, their estimate is rather problematic, due to the lack of transparency and the fact that the contracts of lease are not available to the public. On the basis of the documents collected (see among others [7] and [8]) and the meetings held during the research, the total land area allocated to national and foreign investors, as of March 2012, can be estimated at around 860,000 hectares, of which 70,000 and 500,000 by the ON respectively as leases and provisional *lettre d'accord de principe* (that will become a lease after approval of the necessary environmental and social impact studies) and 290,000 directly by the Malian state through a *convention* (signed between two states and preceding the signature of a lease, under condition of the realization by the investor of the feasibility studies). The number of domestic investors is greater than that of foreign ones, but over 50% of the allocated area is controlled by foreigners, due to the much larger size of their project land. Foreign investors are from various countries (Libya, China, U.S., South Africa, Saudi Arabia, France, U.K., Canada, West African countries). With respect to the main investment purposes, it can be estimated that 50% of allocations are for rice production, sometimes combined with horticulture in the dry season and livestock, 8.5% for sugar cane, 1% for wheat and 40% for biofuel production (including 7% for jatropha).

It is important to notice that the largest land allocations to foreign investors or to foreign-Malian state partnerships have been approved so far not by the ON as a lease but in Bamako by various state authorities (President, Ministry of Agriculture, Ministry of Industry and trade, Ministry in charge of the Office du Niger, Ministry of Housing, land issues and urban planning) in the form of a *convention*. This allows the investors to obtain special advantages (fiscal incentives, exemptions from duties, privileges in the access to and costs of water, and in the land utilization), which are sometimes greater than those envisaged by the Investment Code of Mali and which are not available to domestic investors. However, due to the lack of communication and coordination among the different Ministries and between them and the ON, the allocated land area is much larger than the national objectives set out in the *Schéma Directeur de Développement pour la Zone de l'Office du Niger* in 2004 (120,000 ha of additional development by the year 2020) [9].

According to the Vice-Director of the ON, Boubacar Sow, the ON has decided to slow down future concession of leases, due to the low implementation of the projects so far approved (only 15,000 ha have been put into production) and probably also because of the protests by local communities and the mobilization of local and international civil society organizations.

### Land policy and tenure

Land tenure in Mali is very complex and pervaded by ambiguities, consisting of modern law (*Code Domaniale et Foncier* and other codes as well as the *Loi d'Orientation Agricole* of 2006), which essentially confers ownership of the land to the state, and customary rights in which traditional chiefs manage the land and its use [10]. There is no security of tenure for smallholders. Although the Constitution states that “la terre est à celui qui la met en valeur” and the *Code*

*Domanial et Foncier* recognizes customary rights, they are only use rights and the state has the right to expropriate, with compensation, for reasons of common public interest. In case of compensation, usually what is compensated is not the land but only constructions, trees, crops, etc. Women farmers have the most difficult access to land and are not entitled to inherit land. A holder of a customary right can obtain a formal land title only through a long and expensive procedure.

## METHODOLOGY

### Case studies

To analyze the socio-economic impacts of large-scale land acquisitions, the following case studies were selected:

1. COVEC, a Chinese company of the construction sector, which in 1998 obtained in M'Bewani a lease of 1,050 ha to experiment high-yielding seeds in food crops and modern methods of production. The area has been developed but the initial objective has been abandoned and COVEC sublets plots to small rice producers. They pay a rent of 75,000 fcfa/ha/season including the cost of water, as against the 65,300 fcfa for the water fee paid by the farmers who cultivate rice on the ON land. Only one family lost land as a result of the COVEC project and thus the farmers' associations do not consider it a case of land grabbing.
2. N'Sukala, a partnership between the Malian government (40%) and the Chinese. The Sukala company from the '60s has invested in the production of sugar cane (10,000 ha) with hired labour and in two sugar factories. A third factory is opening in M'Bewani zone and in 2009 N'Sukala has signed a *convention* (which will become a lease when the feasibility studies have been completed) for 50 yrs. to cultivate sugar cane on other 18,300 ha. It has negotiated a water fee of only 2,038 billion fcfa for 50 yrs, i.e. about 2,000 fcfa/ha/2 seasons, which is half of what the local producers pay. This investment will cause to many old villages the loss of the land where millet has traditionally been cultivated.
3. Sosumar (Société Sucrière de Markala), a public-private partnership: the Malian government found a strategic private partner, the South-African Illovo Holdings Ltd. (70% of the capital) and a financial partner (African Development Bank). It is a *convention*, on the way to become a lease, on 39,000 ha, of which 20,000 ha for sugar cane cultivation to produce sugar (to secure self-sufficiency) and ethanol. Because of the Malian government's pressures, only 60% of the land will be cultivated by wage labourers, while 40% will be allocated to smallholders who will produce under an outgrower scheme. The state has granted for the water fee a flat rate of only 2,050 billion fcfa for 50 years. The project has been delayed by financial difficulties and the resistance of the population of 30-40 villages in the communes of Sansanding and Sibila (whose mayors support the project) who will lose the land on which they have cultivated millet for centuries. It is not ON land, but customary land. So far there is only an experimental field of 140 ha to test sugar cane varieties.
4. Complexe Agropastoral Industrial (CAI), part of the Group Moulin Moderne du Mali of the rich Malian businessman Modibo Keita. On 31 May 2010 it obtained a 30 years renewable lease of 7,400 ha in the M'Bewani zone to produce mainly wheat. Land was granted free by the government and the water charge is 2,470 fcfa/ha/year for spraying and 67,000 fcfa/ha/year for gravity irrigation. So far, some secondary canals starting from the ON primary canal have been dug and 250 ha have been developed (3 large plots each with a center pivot for spray irrigation) and wheat, maize, potatoes and rice have been produced. Also buildings for the offices of the management and technical staff and for storage have already been constructed. A total of one billion fcfa has been invested so far. *L'aménagement* has subtracted land for centuries cultivated with millet by the villagers of Diado, Sanamadougou Bamana and Sanamadougou Marka.
5. Malibya, subsidiary of the sovereign fund Libya Africa Investment Portfolio, in 2008 obtained through a *convention* 100,000 ha for 50 renewable years for production of hybrid rice, livestock and tomato processing for the regional market and for exports to Lybia. Land is granted free by the Malian government who will also finance the compensation to the affected population, and the water is charged at the same rate as CAI and can be used "without restriction" from June to December, while from January to May, when the river is low, less water intensive crops should be cultivated. Furthermore, Malibya will benefit of generous tax breaks and exemptions from duties. There has already been the construction in 2 years of a road and an irrigation canal, 40 Km long and 100 meters wide, that has caused massive destruction (see paragraphs on loss of land, trees and houses).

### Methods of the field survey

The research conducted in Mali in January-February 2012 is based on the following methods: a) collection of documents and reports; b) meetings with key informants; c) collective (focus groups) and individual interviews to a sample of the population affected by large-scale land acquisitions; d) observation of project areas and of how people live in the villages.

In Bamako I had discussions with agricultural specialists in research institutes, with Adama Coulibaly, *conseiller*

*téchnique* in the Ministry of Agriculture, with Souleymane Sidibé, *chargé de mission* in the *Ministère Délégué auprès du Premier Ministre Chargé du Développement Intégré de la Zone Office du Niger* (who talked about the prospects of foreign and national land investments in Mali), with the national coordinator of AOPP (Association of Professional Smallholder Organizations), M. Bréhima Dembélé, and its land specialists and with Chantal Jacovetti, coordinator of CNOP/LaVia Campesina. In Ségou I discussed the main research issues with prof. Souleymane Kouyaté, agricultural economist and vice-rector of the University of Ségou and with prof. Aliou Badara Ba, agronomist. I also had several meetings at the ON with the vice-Director, Boubacar Sow, and with Bakui Koné, *chef de service de l'Amenagement et Gestion du Foncier*, and I interviewed Amadou Ouedrago, accountant of the Complexe Agropastoral (CAI) and Henri Coulibaly, coordinator of AOPP in Ségou region. In Niono I discussed with representatives of the trade-union SEXAGON (Union of Agricultural Operators in the Office du Niger) and with Yacouba Coulibaly, Director of the research institute Nyeta Conseils. In Kolongo I benefited from the talks with Charlotte Sama, militant of SEXAGON and President of the association Sigitémason whose members are women who lost land as a result of the Malibya project.

I organized 9 focus groups with village chiefs and elders and representatives of the affected households in the following villages: Sissako, Welendiatigila, Sansanding, Goma Koro, Ouela, Diado, Sanamadougou Bamana and Sanamadougou Marka.

The individual interviews were conducted in 13 villages in the region of Ségou. The total number of interviews to people affected by the large land projects is 42 (20 to women). The sample is small because of financial, logistic and time constraints, but it was carefully chosen using the stratified sampling method, where the strata are males and females, different types of cultivation and the various villages of the case studies. The lists of farmers, from which the sample was randomly selected for each stratum, was provided by village chiefs and local farmers' organizations. In a few cases, it was necessary to use snowball sampling.

It was decided to give an important representation in the sample to women, since they are a particularly poor and vulnerable group. Being discriminated in the access to land, it is very difficult for them to acquire new land if they are expropriated and they are likely to benefit less from possible new jobs created by the projects, due to gender inequalities in the local community and their exclusion from decision-making processes. The case studies Malibya, CAI and COVEC are more represented in the sample, because these projects are the most advanced in the realisation phase.

The survey has utilised a semi-structured questionnaire divided into 3 sections: a) socio-demographic characteristics of the farmer interviewed and of his/her family, b) characteristics of his/her productive activity before and after the large investor's intervention (n° of hectares and type of crops cultivated, n° of months of production and of persons involved, land tenure system, total quantity produced for each crop and % sold, inputs and tools used, unit price for each crop, total costs, revenues and profit per hectare or season, assets owned, place of marketing), c) characteristics and total impact of the investor's investment (level of information, consultation and compensation of the local population, jobs and infrastructure created, productive and environmental losses).

### **Difficulties and limitations of the field survey**

The research was made particularly difficult by the fact that land acquisitions by large investors is a very sensitive topic at the political level in Mali. I found little collaboration from the ON officials, who feel under siege by international pressure groups and tend to view any foreign researcher as a dangerous no-global activist. It is a subject characterized by ideological positions: both the authorities and the big investors, on one side, and the affected small farmers, on the other side, tend to make their points of view too extreme, the former amplifying the possible benefits of the projects and the latter exaggerating their pre-intervention situation. Therefore, it was not easy to evaluate the conflicting information received.

The evaluation of the results is partially biased by the fact that the negative impacts of large-scale investments are concentrated in the early stage of implementation while potential benefits might materialise only in the long term. The case projects analysed are still in the initial stages with little or zero production.

## **RESULTS OF THE FIELD SURVEY AND DISCUSSION**

### **Characteristics of the sample**

The average age of the people interviewed is 51 years (83% of them are more than 40 years old); 81% of them are illiterate and on average they have 6 children, of whom 2 went to school. Their main activities were millet production (33.3%), rice production (9.5%), both rice and millet production (21.4%), horticulture (28.6%) and wage labour for investors (7.1%); 46% of them had a secondary activity (such as fishing, petty trade, de-husking and milling, tailoring or, in the case of women, working free on the husband's field). The major part of millet production is for family consumption, while most of rice production is sold to cover water fees, fertilizer costs and family expenses. Fruit and vegetables are partly sold in the market and partly consumed by the family. The average number of people working on the farm is 7, all family members. Given the small size of the plots (on average 2.5 ha per household), the average yield per hectare of the rice producers interviewed is of only of 4 tons per ha (as against the 6 t/ha indicated by the vice-



Director of the ON as average yield). Their average profit is of 400,000 fcfa/ha/season. For millet the average yield of my sample is very low (0.32 t/ha), notwithstanding the large size of the plots.

### Negative impacts of large-scale land investments

#### Loss of land

Out of 42 persons interviewed, 76% have been already dispossessed of some land, while others are going to lose it in the near future. The farmers who have been traditionally cultivating millet have experienced the largest loss of land in terms of number of hectares (on average 29.9 ha), but the women producing fruit and vegetables are the most affected, if the loss is measured as a percentage of the land held before the project intervention (they have lost 93.8% of their original land) (table 1). The majority of our sample have been expropriated either by the CAI project (11 persons) or by the Malibya one (19 persons). The land lost in some cases (28.6% of the sample) belongs to the ON (like the land taken away from the women of Kolongo) but in most cases (71.4%) is customary land, that has belonged for centuries to villages 800 years old and is not irrigated by ON canals. On this land millet is cultivated in the rainy season. This second case applies to the village of Sanamadougou Bamana - where 2,000 ha have been already appropriated by the CAI project and many more will be in the future-, the villages of Diado and Sanamadougou Marka-also affected by CAI-, all the villages outside Kolongo affected by the Malibya project, and the 30-40 villages in the communes of Sansanding and Sibila that have started an association - Association des villages de Sana (ADVS) - to fight against the Sosumar project.

**Tab. 1** - Average and median number of hectares lost and in % of the hectares held before the large-scale investors intervention by type of crop and by case study.

Type of crop	Case study	Average n. ha lost	Median n. ha lost	Average n. ha lost as % of ha originally possessed
Millet	CAI	30.0	30.0	89.1
	COVEC	11.0	11.0	100.0
	MALIBYA	30.6	20.0	78.7
	SOSUMAR	42.0	42.0	100.0
	Total	29.9	30.0	86.6
Fruit and vegetables	MALIBYA	0.73	0.75	93.8
Total	CAI	30.0	30.0	89.1
	COVEC	11.0	11.0	100.0
	MALIBYA	11.7	0.75	88.2
	SOSUMAR	42.0	42.0	100.0
	Total	18.9	18.5	89.3

The village chiefs and the populations argue that customary rights are recognized by the Constitution and the *Loi d'Orientation Agricole* and that the authorities cannot justify the land expropriation on the basis of reasons of public interest, since the investment projects are private. In reality, this is true in the CAI case while the Sosumar project is a public-private partnership. Furthermore, ON officials argue that the state mission of modernizing agriculture is in the public interest.

#### Loss of trees

The *aménagement* (development) works cleared the land of all the trees, so that modern mechanized techniques of cultivation and irrigation could be applied. In the case of the CAI project this resulted in the eradication of more than 1,000 trees (baobab, neré, karité, balanzan and tamarind), in some cases sacred, with a high economic and environmental value. They had contributed to family food security and were an important economic resource for the women, since from their leaves, fruits and nuts it was possible to obtain valuable goods such as oils, condiments, medicines, fuel wood, etc. In the case of Malibya investment, the construction of the 40 km long irrigation canal and adjacent road resulted in the destruction of the gardens of women farmers, who lost all their harvest and source of livelihood. The 12 affected women of our sample have experienced a loss of fruit trees (mango, guava, papaya, tamarind, palm, lemon, banana, custard apple, baobab, karité, balanzan) ranging between 230 and 10 per woman, with an average of 64 trees. In some cases the trees had belonged to the woman's father, before his death. Their average income from the sale of fruit and vegetables had been 370,000 fcfa per year.

#### Loss of houses, obstruction of transhumance trails

The Malibya investors, who had been granted by the state land defined in the *convention* as “*libre, vacante et sans maître*”, in building the canal and road did not take into account the presence of populations along the project perimeter, so that many houses and even a cemetery were destroyed by bulldozers in Kolongo. This commune was cut in half and no bridge was built. Traditional animal trails and grazing areas were obstructed, as the *Plan d'aménagement des espaces agropastoraux* prepared by local authorities was not considered, and alternative trails for the animals were

not prepared. Also the Sosumar project will block transhumance routes.

### *Cultural loss*

The large-scale land investments analyzed in this study threaten the traditional culture and diet of millet, which has been cultivated and eaten for centuries in the villages I visited. Although the yield is low, the farmers who had been producing millet claimed that, before being expropriated of their land by the investor, the harvest had guaranteed food security to an extended family (they were eating 2-3 times a day) and could even sell part of the production to cover taxes and family expenses. Millet cultivation has the advantage of being very sustainable for the fragile local environment and its costs of production are low (no need to pay for seeds, fertilizers or water). It can grow in dry poor soil. The opinions of the rural specialists I met in Mali are divergent: some of them declared that rice, maize and potatoes cultivation should be preferred to millet due to the much higher yields, others that Mali should not make the mistake of India, that after abandoning millet for the green revolution crops (such as rice and maize) now suffers from water shortage. In any case, all the small farmers interviewed reaffirmed emphatically that they and their children wanted to continue to cultivate millet as their ancestors had done and that they would refuse to cultivate sugar cane, since it was not part of their tradition and could not be eaten. They showed a strong attachment to their traditional millet diet (even those who were cultivating rice, after losing the millet land, were selling rice to be able to buy millet and continue with their diet). As a village chief explained to me, “mil est bon pour la consommation et riz pour la vente”. According to them, the diet based on millet is cheap: millet can be pounded manually in the villages and the accompanying sauce uses freely available baobab leaves, while the rice sauce needs more expensive ingredients, like tomatoes, onions, meat or fish.

Furthermore, the possible resettlement of villages 800-900 years old, like Sanamadougou Bamana or Goma Koro, where the ancestors are buried, the sacred trees, the animist shrines with the fetishes and the chiefs' old palaces are located, produces serious wounds to traditions.

### *Threats to human rights and to village cohesion*

To weaken the resistance of the community to the project, CAI investor used threats, the police, the judiciary system, bribes and the creation of divisions. As I was told during the focus group in Sanamadougou Bamana, 120 gendarmes on 18 June 2010 attacked the villagers who were protesting for the cutting of their trees, beating also old people and two pregnant women, one of whom later miscarried. About 35 people, including 14 women, were arrested, most of whom released without charge after 2-5 months. With respect to my sample, 3 smallholders from Sanamadougou Bamana had been in prison for 2 months (one of them accused of being the revolt leader), one had been summoned 3 times by the police for cultivating expropriated land and a farmer from Sansanding protesting against the Sosumar project had been imprisoned for 1 month.

The CAI investment created divisions and tensions between nearby villages and even within the same village: the villages of Diado (17 households of up to 100 members each) and Sanamadougou Marka (31 households) and 7 households out of a total of 120 in Sanamadougou Bamana accepted an agreement with the investor, obtaining gifts such as de-husking machines, motorcycles and even soccer balls and shirts for the youth, compensations in nature (1 ha to produce rice in exchange for 10 ha where millet was cultivated), money or access to credit and temporary jobs for the sons in the construction works (about 40,000 fcfa/month for a year) and for the women in the fields (about 1,000 fcfa/day). The other families in the village declared to me that they were ready to fight until death for their land and customary rights.

### *Environmental impacts*

On the basis of my investigation, it appears that, contrary to the required procedure, large-scale investors started developing the land immediately after acquiring it and before completing the necessary environmental impact study. This can explain the tremendous destruction of valuable trees. For the future the main worries concern the impact of large land deals on water resources. Considering that in the dry season the water level of the Niger river is already low, that climate change will worsen the situation, that the large investors have been granted priority in water access by the state (without consultation with ON agents and consideration for the *Schéma Directeur de Développement Intégré de la Zone Office du Niger*) and that a large area of future investments will be dedicated to the cultivation 12 months a year of a very water intensive crop like sugar cane, there is the danger of scarcity of water for the small producers especially for the second harvest during the dry season [11]. The ON officials interviewed argued that it will be necessary to reduce the present large loss of water in secondary and tertiary canals, extend the use of more efficient methods of irrigation, such as spraying, and cultivate in the dry season less water intensive crops.

Furthermore, the increased utilization of fertilizers and pesticides might cause water pollution and the transformation process from sugar cane to ethanol will use and pollute large quantities of water [12]. Finally, there is the risk that biodiversity will be eroded by the introduction of monoculture by N'Sukala and Sosumar projects and of imported (mainly from China) hybrid rice varieties in Malybia, COVEC and CAI projects. Smallholder associations believe that the use of hybrid seeds will extend to small farmers who now often produce their own seeds, increasing their dependency on imported seeds and their debts [13]. There is also the risk that local millet biodiversity sustained through local knowledge will disappear.

### Positive impacts on employment, infrastructure and production

The impact on job creation is so far small, because large-scale land investments in Mali are still in the early stage of realization. According to the accountant, CAI project had created 290-300 jobs. I interviewed a young man with two wives and two children, working in the Sukala sugar cane factory and earning 36,000 fcfa/month for 10 months a year. He seemed quite satisfied with his job, but he could count on his father's and brother's production for his family food needs. The expropriated millet producers told me that they did not want to become wage workers, claiming that they used to earn much more than 36,000 fcfa/month and that such a wage was not enough to nourish a family of 4-5 people. Nor they wanted to produce sugar cane under an outgrower scheme that would make them dependent on the price fixed by the sugar factory and force them to buy food. I also interviewed some women working for 3 months in CAI fields in transplanting and weeding (about 1,000 fcfa /day). They were working as well on the family field.

The canals and roads built have so far benefited exclusively the investors. There was a limited positive impact on social infrastructure in the CAI project (see next par.). Four respondents had been able to increase rice production thanks to the access to the land that COVEC had irrigated.

### Compensation for communities

From our study findings either there was no compensation for the population whose land was taken, because their customary rights were not recognized or the compensation was delayed or it was inadequate to restore the previous standard of living. It was never discussed with the population. Also, it is not clear whether the compensation payments should be financed by the state or by the investor. The ON told me that it is at the investor's charge. In practice it varies case by case. In the Malibya and Sosumar projects it should be the Malian state that pays the compensation in exchange for the investments made (canal, road, sugar factory), while in the N'Sukala case the *convention* states that it is the responsibility of the Chinese investor. About 40% of the sample respondents had received a compensation. The smallholder producers expropriated by Sosumar seven years ago began receiving a compensation only after three years (50,000 fcfa/ha/year which is barely enough to feed with millet a family of 10 persons for three months). The villages outside Kolongo affected by Malibya investment were not compensated, while in Kolongo the commune, supporting the project, had distributed compensation payments for the loss of trees and houses in an arbitrary way (*"selon leur visage"*, as a woman said), often based on patronage, favouring its supporters. All the Kolongo affected women in my sample had received compensation payments, ranging between 40,000 and 641,000 fcfa (on average 253,250 fcfa per woman). These payments did not even cover the income that the women were receiving from the fruit trees in one year and were certainly insufficient for investment in a new activity (only one woman used the compensation to rent a plot for rice and another one to start rice trading); in most cases they had been used to feed the family. As a sign of their inferior status, the women farmers reported that a male family member (husband, son, brother) had gone to the commune to receive the compensation.

In the case of CAI project, only few households accepted the unfair exchange of 1 ha of irrigated land to produce rice for 10 ha where millet was cultivated (see par. on threats to human rights and village cohesion). According to the farmers opposing the project, even the ON vice-director had told them that the exchange should be 3 ha of rice land for 10 ha of millet land. With respect to cash compensation, the company accountant claimed that payments of 100,000 fcfa per hectare of expropriated land were given to affected households, for a total of 20 million fcfa. However, it appears from my survey that only the 7 households of Sanamadougou Bamana were compensated. In fact, the village chief of Diado maintained that the village had so far received only a total of 10 ha to produce rice and had renounced cash compensation, being satisfied with the jobs created by the investment for their young people. The investor had promised to develop some plots where women could grow vegetables. In Sanamadougou Marka they had not yet received cash payments. As part of the compensation package, a school, a health center and a cereal bank were being built or planned in Diado and Sanamadougou Marka. The CAI accountant also pointed out that there was a compensation in trees, since every week more than 1,000 eucalyptus trees were planted together with fruit trees. However, as the villagers argued, this could not be classified as compensation, being an investment in timber production that would benefit the investor and certainly not the local community.

### Lack of transparency and of consultation, corruption, false promises

From my focus group and individual interviews it results that communities living on the land leased were not informed of the details of the projects nor asked for their consent and had not been shown any environmental and social impact study. Although ON officials claimed that local communities had been widely consulted, according to the villagers interviewed they simply had been visited in the village by a representative of the ON or of the investor or of local authorities who had announced: "the state is taking back his belongings, his property" or "this investor will work on your land", etc. Only 19% of the sample respondents (from the two villages in favour of CAI project and from the ones affected by COVEC) admitted some consultation.

As examples of corruption, I was told that in the Sosumar case the investor gained the support of the mayors of Sansanding and Sibila by financing their electoral campaign and that part of the compensation payments for the Kolongo affected farmers were appropriated by the mayor.

Furthermore, it was reported that ON officials or the investor (especially in CAI case) made promises of compensation or of alternative plots for rice and vegetables production that were not kept.

### **Impact on livelihoods**

The survey tried to look at how producers' lives and livelihoods had changed after the investors' intervention. For 72.5% of the respondents there was a deterioration of livelihoods as a result of the loss of land and land resources and the absence of adequate compensation, for 15% no change and for only 12.5% an improvement (thanks to COVEC project or a job at the sugar factory). Out of the few respondents who could quantify the loss of income, 33% had experienced an income reduction of 80-90% (the average was 56%). Thus, in most cases, the large-scale land investments produced food insecurity: the affected people, who all claimed not to have experienced it before, were nourishing themselves much worse, due to the impossibility to exercise their traditional income-generating activities and to the large size of their household (15 members on average, with the median value at 10). They were surviving thanks to "*entraide*", help of relatives and not yet affected villagers, cultivating small plots of relatives land in far away villages or renting a small parcel to grow rice or vegetables. Some of the affected Kolongo women were trying to survive collecting wood, washing clothes or pounding millet in other people's homes. All Kolongo women, after losing the income from the fruit trees, had experienced a reduction in economic independence from their husband and were often obliged to cultivate onions on a small plot of their husband's land.

### **CONCLUSIONS AND RECOMMENDATIONS**

The findings discussed above suggest some conclusions that must be treated with caution, due to the low realization stage of the investments and the fact that it is difficult to evaluate at a single time point projects evolving over time. First of all, the increase in land deals in the ON zone has certainly been excessive (even if a lot of them are still provisional allocations) and the "principles for responsible agricultural investment" [2] [12] formulated by FAO, IFAD and World Bank have not been respected.

Customary land rights have been ignored. Land acquisitions were not negotiated with local communities. Investors could exploit the ignorance of village chiefs and populations, due to the secrecy of the land alienation process and the asymmetry of power between the two opposite sides, particularly considering that local authorities usually supported the large investors. The large-scale deals were often negotiated at central level directly by Malian and foreign ministers or heads of state. The lack of transparency and of participation of local communities increase the risk of corruption and of appropriation of part of the project's benefits by the national and local political class at the expense of poor farmers. It was alleged by sample respondents that behind CAI project there was President Amadou Toumani Touré himself.

Second, the most dangerous potential impact of large-scale land acquisitions in the ON zone is water grabbing by large investors with environmental and food security consequences, especially if a large area is devoted to a non food crop like sugar cane and if part of the food crops is going to be exported (Malibya and Sosumar cases).

Third, the positive impact on employment is likely to be limited, because they are capital intensive investments. They tend to be more labour intensive in the initial phase of construction works and become increasingly mechanized later on. There is also the risk that part of the labour will come from outside, as in the past in the ON area starting from the colonial period. In any case, a monthly wage of 36,000-40,000 fcfa can be a useful addition to family income if it is earned by a son or a wife while the rest of the family continue to cultivate their land, but cannot be the only source of income of a large family.

Fourth, the project affected people showed an attitude of refusal to change and a great will to fight "until death" against large-scale land projects. They perceived their user rights as legitimate despite the lack of formal property titles. With the help of farmer organizations and civil society groups, they filed petitions to the prefect, the governor, the Minister of Agriculture, members of the National Assembly. In November 2010 Kolongo forum was held to discuss land grabbing and in February 2012 they took their case to Markala court against Sosumar and CAI projects. ON officials, during our meetings, minimized these protests, claiming that they were instigated by old conservative village chiefs or by villagers now living in Bamako and that in the future the farmers will appreciate the benefits received by the projects. However, the protest movement has been successful against Sosumar project (with the withdrawal on June 2012 of the main shareholder, the South African sugar giant Illovo, due also to financial difficulties and the political-military situation in Mali), while the trial against Modibo Keita is slowly going on at Markala court.

Finally, the implementation of land acquisitions has been characterized by many failures: lack of coordination between authorities at the micro, local, regional and national level, inadequate monitoring of the process by the ON or collusion with investors. In many cases the investors started development works before the approval of the environmental and social impact study or on a land different from the one assigned by the deal.

Based on these considerations, the following recommendations can be suggested:

- there should be a careful selection of the investors, taking into account their technical and financial capacities, in order to reduce the amount of approved but not implemented investments.
- Authorities and public administration must be able to negotiate a contract that maximizes the investment

benefits for the country and local community. Lease contracts tend to be very short and simple (I managed to see two of them). On the contrary, the lease contract should clearly indicate the type of production, its impact on water and food sovereignty, minimum requirements for job and infrastructure creation; it should take into account the investment impact on the population living on the allocated land, indicating the investor's obligations with respect to compensation.

- Mechanism to monitor and enforce investor's compliance with the contract clauses should be developed.
- Civil society and producers' associations can educate communities on their rights and provide assistance in negotiation and monitoring of the projects.
- A potential role in regulating large investments can be played by the codes of conduct for land deals, proposed by international organizations. While their enforcement is problematic [14], they might offer useful guidelines to governments and investors and some investors might have a self interest in respecting self-imposed codes of corporate social responsibility to avoid conflicts with local populations that harm the investment.
- Land governance must be improved. Collective registration of community lands can be a tool for protecting existing local land rights. Processes for land acquisition should be transparent.
- The Malian state must invest part of the revenues from the mining sector in the modernization of household farming through appropriate public support (temporary subsidized access to good quality seeds and fertilizers, access to credit, improved equipment, storage facilities and extension services, strengthening of farmer organizations to support crop marketing, appropriate pricing policies with respect to inputs and output, consolidation of land plots to reach a minimum size of 5 ha per family farm), in order to raise smallholders' productivity.
- In the ON zone the peaceful, and possibly fruitful, coexistence of family farms and large-scale investors, which is probably inevitable due to the insufficiency of public funds for the irrigation works, must be assured by a precise agro-ecological zoning, taking into account soil, water and social constraints. A limit to the size of large farms should probably be set and the small farmers must feel secure in their investments. The farmer trade-union SEXAGON intends to reach an agreement with the ON, according to which a more secure contract (a type of lease) can be given also to a smallholder, if, alone or in association with others, he contributes to part of the *aménagement* costs, which amount to 4 million fcfa per hectare.

This set of policy recommendations aims at ensuring that large-scale land investments present an opportunity to stimulate local development and not at the expense of existing smallholders.

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## LAND GRABBING AS A STRATEGIC GAME: A THREE LEVEL APPROACH

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### ABSTRACT

Large land acquisitions in poor and developing countries implemented by international investors can be considered as a strategic game where involved actors – three are considered in this stylized model - act in a framework where several factors are presents. This paper aims at looking at this phenomenon in a simplified way with some special focus on the most relevant and central issues. Moreover, this paper considers the possible instruments to explain the large land acquisitions in SSA countries by international investors through a strategic game model. The game strategy – even if used as a narration of the analyzed phenomenon - is a new and, in our opinion, interesting method to explain the large land acquisition in developing countries because of some of the most relevant characteristics of this complex phenomenon considered in this game. Three actors- two player acting in each level-, payoffs of the game, a framework wherein the process is implemented and many other characteristics reported in the following parts of the model are the most relevant issues studies in this three-level games. The structure of the paper starts with the theoretical points and its main implementations of this model in social and international economic issues. The second part presents the three level model. In the entire paper, some further issues are presented in order to observe the main characteristics presented in each level in particular the commons - land and water resources –, general rules in the players behavior and the institutional framework.

### INTRODUCTION

Large land acquisitions in poor and developing countries implemented by international investors can be considered as a strategic game where involved actors act in a framework where several factors are presents. This paper aims at look at this phenomenon in a simplified way with some special focus on some of the most relevant issues. The process of increasing investments in land by international investors in developing countries as reported in the large literature on this during the last years takes into account all the issues related to this rising phenomenon from the international to the local policies and conditions in terms of natural resources availability. From the theoretical point of view, this model is based on the theoretical approach reported in a recent paper [1]. The paper supposes the existence of a two step equilibrium where there are two institutional frameworks based on the levels analyzed in this scenario. A sort of two level analysis is implemented in the paper of Gambetta, Origgi while some further steps, can be done in order to implement a further step in analyzing the phenomenon studied in this paper. This step can represent a new approach in implementing the analysis of the phenomenon of large land acquisitions and to give further developments of the debate on the LL equilibrium. This paper aims to use the models reported in Gambetta Origgi to explain the phenomenon of large land acquisition and to develop some points of the considered paper.

### STRATEGIC GAME BACKGROUNDS AND MODEL HYPOTHESES

The strategic game implemented in the following sections is a 2X2 game [2] played simultaneously by the actors that are considered central in the process of large land acquisition and the frame wherein this game takes place and in particular the institutional frameworks at international and local level [3]. Moreover, some relevant concepts taken from the literature relative to the game theory in particular the contribution reported in Gambetta Origgi is considered in the model implementation.

The players in the three levels considered in the model are:

- **I** is the investor and it is an international company operating in the international market, producing, selling and buying in several countries and with the headquarter generally in a developed or emerging country, the international company aims at producing agricultural goods in the receiving country in order to invest resources in the same or in a different branch of the company;
- **R** is a receiving country in a poor continent, for instance Sub Sahara Africa, that wanted to attract international investors especially in rural areas generally underdeveloped and lacking in investments, this country is generally a poor and unstable country;

- **P** considers the receiving country people and local communities that is the direct recipient of the international investment and it is linked to the local and national economic and political authorities and they represent all the players acting in the local and regional framework.

Another important aspect to take into account is the institutional frameworks wherein the players act in a contest of rules, regulations and institutional structures in the international, national and local systems. These frames are summed below:

- **Formal institutions:** this system collects all the international and domestic rules, regulations and structures leading the behavior of actors in large parts of their actions,
- **Informal institutions:** they are a group of behaviors, rules, relationships and common laws leading the behaviors of individual and collective actors.

The three actors presented above play in three levels and the following sections present each one in details. The three levels are briefly resumed below:

- **First Level:** the two actors R and I are involved in a cooperative game within a formal institutional systems,
- **Second Level:** the two actors R and I reach a LL equilibrium within an informal institutional framework and a series of norms,
- **Third Level:** two actors I and P can be considered as a hegemonic equilibrium and within a frame of the asymmetry power between the R and the local population. This actor is forced to implement the largest efforts for the project effective realization in a classical hegemony game.

At the end of the introduction, it is important to explain the payoffs at the end of the game and of the final equilibrium reported at the end of the three levels. Each player has its own interests and outcomes derived from the implementation of the project and the payoffs reported in the table reflect this interests and expected outcomes.

**FIRST LEVEL: SECOND BEST GAME SOLUTION**

In the first level of the game each actor - player I and R - involved in the bargaining process declares to implement all its efforts to reach the best results for the receiving country people and for the resources exploitations in the receiving countries and for the maximization of its gains where the involved part in the bargaining process would gain the higher results with cooperation than adopting free riding behaviors. The players act in a formal international and national framework and rules and, moreover, the national authorities care to the domestic audience. Investor and receiving country declare to implement the maximum of their efforts to obtain the best results for both and for the receiving country, while, as second step they change their real behavior in adopting practices and actions to maximize its own gains with a free rider approach with the emergence of a LL equilibrium. This result can be considered a second best in the game structure at this stage of the process within a two players and two levels game showing that the actors in pursuing their interest reduce the potential benefits of the investment in land by international companies.

**Fig. 1** - First Level Game.

	Player R	
Player I	C	D
C	1,4	2, 2
D	4,1	3,3

In the scheme proposed above, the final result shows how H declaration is replaced by the effective behavior of the players. The final equilibrium represents a situation where each player gains three instead of four if they would adopt a free riding behavior with which they would have gained 4 and the other 1 for player I and 2 and 2 for the receiving country. Moreover, with a HH behavior I would gain only 1 while player R would gain 4 in the bargaining process. There is a common convenience in declaring to implement the maximum of efforts in implementing the project in the interested contests and the possible explanation of these behaviors are reported in the previous sections as the L norms and the H declarations. Player I is interested in implementing less efforts is in the project implementation and this can be easily observed in several real case where the investor does not respect the contract points. They are linked to the respect of the local communities' rights, job creation, infrastructures constructions especially those related to the social services as schools, hospitals, streets and other physical infrastructures and the respect of the exploitation limits of natural resources in the project implementation and in other several issues. The international investor is supposed to be not interested in respecting the signed contract and in the respect of local communities' interests and on the well being of these people and on the environment and natural resources in the receiving country. One important point in the entire model but especially in this level is the timing of the contract that is generally not an acquisition but a deal for a short or

medium period from 33 to 99 years. This fact reduces, especially for shorter times, the efforts of the international investor that aims at looking at the largest investment gains through the exploitation of the local resources and to produce the largest gains of this project. On the other hand, the R player has several interests in declaring to implement its largest efforts to create a positive environment for the investments and all the conditions from a social, political and economical point of view for the best environment in receiving international investments. Despite this, receiving country is generally not capable to reduce the contrasts with the local population; to build the necessary material and not material structures for the best results of the investments therefore a D approach can be expected.

**SECOND LEVEL: LL GAME**

The model presented at this level is based on the L norm that has been presented in the previous section. Given the characteristics of the informal institutional systems that is central in this level of analysis, the equilibrium reported below is a “double defeat” - DD - where both actors choice their D with less efforts implemented in the process. This behavior by both the players is due to the mutual convenience in acting in the conviction of the L choice reported below. Despite the expected choices, the players adopt a LL solution instead of a classical LH strategy. This can be considered as a ‘paradox’ where each player seems to reduce its gains by choosing the defeat strategy of the other instead to look for the other cooperation strategy. The expected prevalence in terms of each player gains is not effective given the conditions analyzed at this level and the two players choice their effective first best solution that is based on the LL solution. This can be considered as a solution driving to the stall in the worst situations where both the players adopt a low profile approach in order to gain as more as possible from the bargaining process. The LL solution can be explained only from the existence of informal rules driving towards this equilibrium and furthermore to the existence of other levels in this simultaneous game making us able to explain these unexpected results [4].

**Fig. 2 - Second Level Game – LL.**

	Player R	
Player I	C	D
C	2,2	1,3
D	3,1	4,4

The land acquisitions in certain unaffordable and corruptible countries are related to the institutions that can be considered as informal in terms of classical definitions of formal- written law, common law, constitutions and the other forms of respected and formal rules- that regulates the public and private affairs in the social, political and economic spheres and of informal law that can be collect all the rules leading the behavior of domestic and international players not considered in the formal law and commonly acting in several areas. Gambetta, Origgi paper poses the so-called L norms as the groups of political, social and economic factors that aim at reduce the possible availability of choices as H for the players in the game considered. In the model proposed by the two authors, moreover, some groups of social norms acting in this way nine possible explanations and justifications of the LL equilibrium. In this Section, in order to observe the possible explanations of the reaching the reported results in the game equilibrium the focus of our analysis is in on the systems of informal institutions leading the behaviors of the involved actors. Political, economic, cultural and historical linkages are at the base of the analyzed phenomenon and this informal link gives the dimension of the phenomenon where the L norms or informal norms prevail in the game solution. An international investor interested in acquiring land to produce agricultural good to be imported in the global market can implement some investment strategy as corruption to obtain the necessary land overturning the official and formal law where naturally this “investment strategy” is punished. On the other hand, country R creates the conditions to attract international investments by reducing the law contingency in the exploitation resources creating a sort of *vulnus* in the formal system and can be considered another example of overturning of formal law. These examples of ‘tacit’ pact between the two players in order to reduce the space to H choice and make the situation to mutual convenience for them to reach the equilibrium.

**THIRD LEVEL: HEGEMONY GAME**

The third level of the analysis is the last step in the model implementation and it can be considered as the base of the model solution. In this level of the analysis, the most important factor to observe is the introduction of the asymmetry of power between the two actors. The analyzed phenomenon has to be considered in the real frames of the existence of asymmetric relationships between the involved actors - player I and P - and the different positions that these actors have in several aspects of the analyzed phenomenon and especially in the bargaining process for the large land acquisition. Moreover, different levels of asymmetry of powers exist and are briefly reported in this section. The first one is the relationship in the bargaining process between investor company and the receiving country as a whole considered with the political and economical elites – those supposed to be the counterpart in the acquisition process in



the previous steps - and the local populations living in the areas- playing in this level of the game. This kind of relationship is supposed to be a symmetric in the two first levels of the analysis while it can be observed in the effective phenomenon that the international investors and a poor and investment lacking country is an asymmetric one where the first player has the economical and economical power to impose its decisions to the receiving country considered as a whole and especially as local communities. Moreover, in the domestic relationship there is another important level of power asymmetry that can be easily represented by the behavior of a central political and economical elites that decided to invest in the acquisition of a large land area and the local population and communities and the local interested areas in terms of natural resources considered as commons that is not considered in this model.

To sum up: the first player is the international investor company that can be considered as the dominant player in the strategic asymmetric game. This player can impose its decision to the other player and the asymmetric game drive to an equilibrium that is more favorable to this player. The second player is the local population touched by the land deals but it can be considered all the parts of the social, economical and political lives of these communities and the local area environment. From the strategic point of view, this player dominates the other because they do not any power to reduce the expected decisions on its land and it has moreover to implement all the efforts to final project realization. This level of the analysis can be considered as a sort of formalization of the “Zamagni Paradox” presented in the Gambetta Origgi 2012 because the local population- player P- is compared to the black slave that have to implement all the efforts for the real effectiveness of the project.

In the next figure the hegemony game is reported and in the next Section the final equilibrium of the strategic game to explain the phenomenon of large land investments in developing countries during the last decade.

**Fig. 3 - Third Level - Hegemony Game.**

	Player P	
Player I	C	D
C	3,4	2, 3
D	<b>4, 2</b>	1, 1

All in all, the presented model is the last step of the analysis and in particular of the model and in this model there are the model solutions. This level shows how the previous levels can find their equilibrium and the model presented in this section showing that the there are several aspects in the narration of the large land acquisitions that have to be analyzed as the asymmetry of powers between the interested actors and players of this strategic game.

**MODEL LEVELS INTEGRATED IN A FINAL MODEL**

This final equilibrium of the process is a second interesting part of the model considered in terms of the general results of the model and represents moreover the final attempt to categorize the different steps of the general theoretical model reported in this section. In order to observe the integrated results, some authors implemented a series of integration techniques as the one reported in Inohara, Takashi, Nagano [5] 1997 that shows how several games and hyper games can be integrated in a single model with added gains and results. The first two levels are integrated in a single game and the third game in order to use the integration as used in the paper cited above.

The final model results can be represented with a possible example applicable in this case considering an international and powerful company acting in the international market. On the other hand, the receiving country as a whole with the ruling classes in terms of political, economical and social elites and the local populations that have to take all the bad consequences of the project implementations. The international investor adopts a three level equilibrium choosing an L strategy in the first level declaring to implement all its efforts to implement a project in agricultural areas to produce goods to import these products. Moreover, all the relative positive outcomes as buildings and physical infrastructures that can be useful for the local populations and for the receiving country that can reduce its gaps in the agricultural investment gap and in external balance for the incoming investments in dollars. In the second step the international company acquiring land effectively does not implement large investments and moving in an informal framework the same behavior is expected by the receiving countries authority that plays at the level and choice the same behavior. In the third level the international investor can utilize all its power and reducing its efforts and the largest part of the efforts to implement the investment in land. This situation is the most profitable for the international investor to obtain all the gains of the project implementation. On the other hand, the receiving country faces to different aspects of the acquisition or dealing land areas in terms of the positive and negative consequences of the this fact. In the first step, the second best equilibrium represents a good position for the receiving country that can exploit the positive consequences of the bargaining process especially in terms of the investments that the international company has to implement to reach its targets and the amount of positive effects of the investment in terms of the reduction of external balance gap, the building of some infrastructures as streets, railroads and other functional to the investment implementation. In the second level and the equilibrium at the end of the two first games, the receiving country seems to prefer to play L in both the games. The second game gives the largest gains to the receiving country and, even if the informal institutional framework make easier the free riding behaviors of both the players, the final LL equilibrium is

the first best solution where the player acts reducing its efforts to implement the investment knowing the behavior of the international investor. The third level reproduces the real situation on the ground and all the efforts of the project implementation are on the shoulders of the receiving countries and, in particular, on the local populations and communities. They are forced to leave their lands and their lives in terms of economic and social environments and moreover they have to face to shortages give by this new condition. On the other hand, these solutions give us the opportunity to analyze the phenomenon. All in all, the entire narration of the phenomenon is reported and it is interesting to observe the entire model gains measuring all the levels considered and reported in the previous sections.

This last table below represents the final results of all the game played above and the final results showing the equilibrium considered in the three presented levels. The final equilibrium is a DDC, where according to the narration presented above, player I - international investor - defeats in the three games while R and P defeat and cooperate respectively. I gains the maximum from this set of strategy and the same can be said for what concerns R while for P the final equilibrium is the worst position and results where it has to implement the main efforts in the project implementation.

**Tab. 4 - Integration of Levels.**

		Player P				
		C		D		
Pl. R		C	D			
				C	D	
Player I	C, D	7, 6, 2	7,5, 2	C, D	4, 6,1	4 ,5,1
	D, C	10, 2, 4	10,7, 4	D, C	9, 2, 3	9 ,7 ,3
	D,D	11, 2, 2	<b>11, 7, 2</b>	D,D	8, 2,1	8, 7 ,1
	C, C	6, 6, 4	8, 5, 4	C, C	5, 6 ,3	5 ,5 ,3

## CONCLUSIONS

This paper presents a theoretical approach of the phenomenon of large land investments by international companies in developing and poor countries rich in terms of natural resources. This theoretical model implemented to study this phenomenon is based on the paper presented by Gambetta Origgi in 2012 and, more generally, on the rational choice approach and especially on the three level model that is a sort of extension of the cited paper. The model presents some interesting peculiarities relative to the phenomenon analyzed and some aspects of the phenomenon relative to the conditions presents in the receiving countries and the international scenario as the institutional systems and on the commons as land and water resources. Another important issue to be considered relative to natural resources exploitation is the timing of the investments that is linked to the choices implemented by the different players. The first player is the international investor in land that where this can be a transnational company and other public and private companies and, as the other player, acts to maximize the gains of their strategies and choices. The second player is a poor or developing country generally a Sub Saharan African country aiming at receiving investments in its agricultural sector generally lacking in the agricultural sector. The two players act in different frames both formal and informal institutional systems and in the first two levels they have the same power in relative terms. In the third level, a hegemonic power is presented by the role played by the international investor that has the economic and political power while in the side there is the receiving country in the presence of local population and communities. The models are presented especially in terms of the reached equilibriums:

- first level: the receiving country is a classical developing country especially a Sub Saharan African country with a large amount of resources in terms of natural resources and with a series of lacks in the rural areas especially in the agricultural sectors. The second player is an international company acting in the global market of agricultural and interested in acquiring large arable land areas in order to produce agricultural items to be sold in the international markets. Given their characteristics, they declare to implement all their efforts to reach the best gains from each player's point of view but they act differently. The final equilibrium in this step is the defeat-defeat game that is due to behavior of the two players acting in order to optimize their gains. The institutional framework where the two players act in a formal frame where international and local rules and codes.
- Second level: the same two actors act in an informal framework and exploit all the resources that are available for them and make the minimum efforts and expect that the other player make them and cover with the efforts implemented in the game. This step final equilibrium is a typical LL equilibrium as that presented in the Gambetta Origgi paper where both the players implement their minimum efforts to reach their results that give the optimum results for both in the second steps of this game step.

- Third level: in this last step of the model implementation, some different considerations have to be done especially in terms of the power and strategic relationship between the receiving country and international investor are presented and analyzed. In the previous steps there was a peer relationship between the players with a special regards to the decision of project implementation and on the efforts considered in that. At this respect, a sort of hegemony by the powerful actor- namely the international company acquiring land in the poor and institutional fragile SSA country- play a sort of golden share of the game through different aspects of the relationship as the financial, economical and political power utilized by this player in the attempt to take the largest as possible gains from the project implementation.

This model, with the opportune modifications and developments, can be applied in different situations where two or more actors have the same targets than those observed in this case and where some power relationships are reported. Some interesting cases can be those similar relative to the acquisitions of land or other natural resources by an actor - international or domestic - in a hegemonic conditions face to the bargaining partner as the investment receiving parts. Other cases can be find into several historical and actual situations especially in the post colonial areas in many former colonies in large part of the so-called developing world [6]. In the end, this model can be an instrument to try to observe the behavior of international investors in land and it can be useful for the explanation of the phenomenon.

## NOMENCLATURE

LL	low-low
DD	defeat- defeat

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