

Smallholder Farming, Civil Society, and Land Investment in Developing Countries

Coordination SUD

(Solidarity - Relief - Development)

Coordination SUD (Solidarité - Urgence - Développement) is the French national platform of international solidarity NGOs. Founded in 1994, it now has more than 130 member NGOs working in the field of international relief and development. In its support to advocacy and international relations, Coordination Sud has set up working committees, allowing NGOs to put in synergy their positions and join their efforts for advocacy.

Chaired by GRET, Coordination Sud's Agriculture and Food Committee (C2A) brings together international solidarity NGOs that act to ensure that the right to food is fulfilled, and support for small farmers strengthened, in policies which have an impact on world food security.

The committee aims to coordinate work by its participants, ensure consultation among member NGOs and advocate for them to social stakeholders and international policy makers. It agrees on the positions held in the name of Coordination Sud in a number of arenas (Concord Europe, FAO, WTO, UNCTAD) and exchanges information on current international issues. It has been mandated by Coordination Sud to take positions in the name of the group during the major international meetings on agriculture and food.

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- Union nationale des Maisons familiales rurales
- 4D (Dossiers et débats pour le développement durable)
- Inter-réseaux Développement rural and AGTER are observer members of the committee

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• JULY 2010

Published and Distributed by:

Coordination SUD

14 passage Dubail 75010 Paris

www.coordinationsud.org

Translated from French by Lara Andahazy-Colo

Layout: Hélène Gay (GRET)

Printed by: XL-Print (Saint-Etienne, France)

Copyright: March 2011

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Acronyms and Abbreviations

AGTER	Association pour Contribuer à Améliorer la Gouvernance de la Terre, l'Eau et des Ressources Naturelles (association to help improve governance of land, water and natural resources)
AMPBAO	Association de Micro-Producteurs de Bananes Biologiques Rive Gauche (left bank organic banana micro-farmers' association)
AVSF	Agronomes et Vétérinaires Sans Frontières (agronomists and veterinarians without borders)
BMZ	German Ministry of Cooperation
C2A	Coordination SUD's Agriculture and Food Commission
CAS	Centre d'Analyse Stratégique (center for strategic analysis)
CCFD	Comité Catholique Contre la Faim et pour le Développement (Catholic committee against hunger and for development)
CEPIBO	Centrale Piuranaise de Petits Producteurs de Banane Biologique (Piuran organic banana small farmers' union)
CEPRI	Comité de Promotion de l'Investissement Privé (private investment promotion committee)
EITI	Extractive Industries Transparency Initiative
FAO	United Nations Food and Agriculture Organization
FIAN	International Food First Information and Action Network
FO	Farmers' Organization
FONTIERRAS	Fondo de Tierras (land fund)
FTM/MFC	Firaisankinan'ny Tantsaha eto Madagasikara / Madagascar Farmers' Coalition
FTN	Franja Transversal del Norte
FTT	Free Trade Treaty
GDP	Gross Domestic Product
GISA	Groupe Interministériel sur la Sécurité Alimentaire (interministerial group on food security)
GMO	Genetically Modified Organism
GRET	Professionals for Fair Development
ICESCR	International Covenant on Civil and Political Rights
IFAD	International Fund for Agricultural Development
IFPRI	International Food Policy Research Institute

IIED	International Institute for Environment and Development
IISD	International Institute for Sustainable Development
ILC	International Land Coalition
ILO	International Labour Organization
MCA	Millennium Challenge Account
MDG	Millennium Development Goal
NGO	Non-Governmental Organization
OECD	Organisation for Economic Cooperation and Development
PEIH	Upper Piura Hydro-Energy Special Project
PFNOSCM	Malagasy National Platform of Civil Society Organizations
PNF	National Land Program (Madagascar)
PNOPPA	Plate-forme Nationale des Organisations Paysannes et des Producteurs Agricoles (national platform of farmers' and agricultural producers' organizations)
PSRSA	Plan Stratégique de Relance du Secteur Agricole (agriculture sector strategic revival plan)
QTA	Qana' Tzultaq'a Association
RDPB	Rural Development Policy Blueprint
RDPD	Rural Development Policy Declaration
REPEBAN	Réseau de Petits Producteurs de Banane Biologique (organic banana small farmers' network)
RLP	Rural Land Plan
SANK	Sa Q'a Chol Nimla Kalebaal (Harmony in our Community)
SEFAFI	Sehatra Fanarahamaso ny Fiainam-Pirenena (civil company for the observation of public life in Madagascar)
SYNPA	Synergie Paysanne
UNCTAD	United Nations Conference on Trade and Development
UNO	United Nations Organization
WB	World Bank

Introduction

Foreign investments in land are not a new phenomenon. However, while they had been dropping off since 1980, replaced by investments in contract farming or the various agribusiness sectors (inputs, machinery, processing, etc.), they have taken on a new magnitude and different nature since 2008. With the exception of instances of pure speculation, investment strategies are entirely new: these investments are no longer motivated by the comparative advantages of large-scale tropical crops, but by investor countries' search for food, water and energy security.

The rapid rise in large-scale land acquisition and rental, the commoditization of land resources, and the size of the tracts of land concerned also give these foreign investments a new dimension. This phenomenon has recently drawn considerable attention because of the risks and challenges it raises. Diverse actors and international bodies¹ have produced or are finalizing studies and position papers on the subject.

Nevertheless, the phenomenon remains impossible to quantify because of the inaccessible nature of the contracts. An inventory of five African countries (Ethiopia, Ghana, Madagascar, Mali and Sudan) conducted by the IIED, FAO and IFAD documented foreign investments involving nearly 2.5 million hectares of land from 2004 to early 2009.² According to Olivier de Schutter, UN Special Rapporteur for the Right to Food, fifteen to twenty million hectares of farmland have been the subject of transactions or negotiations between developing countries and foreign investors since 2006.³ GRAIN, an NGO based in Spain that is very active in monitoring the media on this subject, has identified more than 530 articles in the press and documented more than 180 land transactions since June 2008.⁴ In an article published in the journal *Études foncières*,⁵ the author, director of the French NGO AGTER, stated that, "in the space of one year, tens of millions of hectares have fallen into the hands of a few large groups." In addition, a report by BMZ (the German Ministry of Cooperation) states that "the reports available to the public have only addressed the tip of the iceberg."⁶

Faced with the major challenges for the future of food security and world agriculture, large-scale land acquisition and rental is a very controversial subject garnering strong interest from the media and public opinion.

¹ The World Bank (WB), the International Land Coalition (ILC), the International Institute for Environment and Development (IIED), the International Institute for Sustainable Development (IISD), the Food and Agriculture Organisation (FAO), the International Fund for Agricultural Development (IFAD), the International Food Policy Research Institute (IFPRI), the United Nations Conference on Trade and Development (UNCTAD), French Cooperation's "Land and Development" Technical Committee, the Groupe Interministériel sur la Sécurité Alimentaire (GISA, interministerial group on food security), the Centre d'Analyse Stratégique (CAS, center for strategic analysis), the Sahel Club, the European Union (EU), etc.

² Cotula, 2009.

³ De Schutter, December 2009.

⁴ GRAIN, *Seized! The 2008 land grab for food and financial security*, October 2008.

⁵ Merlet, "Les phénomènes d'appropriation à grande échelle des terres agricoles dans les pays du Sud et de l'Est", *Études foncières*, No. 142, Nov.-Dec. 2009.

⁶ BMZ, *Development Policy Stance on the Topic of Land Grabbing: The Purchase and Leasing of Large Areas of Land in Developing Countries*, August, 2009.

To fuel the discussions on the subject, Coordination SUD's Agriculture and Food Commission (C2A), already active in advocating for the defense of smallholder farming, therefore decided to conduct an original study on massive investment in land from the as-yet little documented angle of the mobilization of civil society actors.

The present document contains the English version of the first section of the document "Agricultures familiales et sociétés civiles face aux investissements dans les terres dans les pays du Sud", published in French.

It provides an overview of the subject. Based on six case studies of massive investments in land in Africa, Asia and Latin America, it aims to:

- describe specificities and cross-cutting characteristics, notably in regard to the nature of the investments, investors and policies of recipient countries;
- identify and highlight the risks generated by these massive investments in land for local populations and the sovereignty of recipient countries;
- analyze civil society's mobilization in response to large-scale land grabbing: civil society's goals and means of action, and the impact that its mobilization has had on the investment processes underway; and
- propose potential actions and lines of reflection to respond to the challenges facing civil society actors in order to regulate massive investment projects and defend alternative models that take into better account the rights and practices of local populations.

The second section of the original document, that has not been translated in English, contains the six case studies and sheds light on civil society actors' perceptions of these investments, their risks and their opportunities. Each case study was produced in partnership with a C2A member organization and a civil society actor from a developing country based on field surveys and communicated here in the form of testimony.

Continent	Country	Partners
Africa	Benin	Synergie Paysanne - SYNPA CCFD - Terre solidaire
	Madagascar	Peuples solidaires Collectif pour la Défense des Terres Malgaches - TANY
Latin America	Guatemala	SANK AVSF
	Peru	CEPIBO and PROGRESO AVSF
Asia	China	Rural Development Institute of the Chinese Academy of Social Sciences AGTER
	India	Ekta Parishad AGTER

This document aims to help civil society actors in developed and developing countries position themselves in relation to the investment phenomenon and provide fuel for future lines of advocacy. ●

CHAPTER 1

What Investments in what Context?

Multi-Faceted Investments and Investors

Investment Diversity

In the six case studies, large-scale cessions of land involved investors of diverse types and origins. The study conducted by Synergie Paysanne in Benin, in the commune of Djidja in the Zou Region in the center of the country, highlights a diversity of investors in a multitude of forms. Indeed, behind any given investment project, there may be a State, a foreign public or private company, domestic actors, or domestic local subsidiaries in the country.

● *Powerful Companies from Emerging Countries*

These investors seem to have drawn the most attention from international public opinion. They are regularly accused of being the main parties responsible for land grabs around the world. The Malagasy case study is a good illustration of this, with the massive investments initially planned by Daewoo Logistics, a local subsidiary of the powerful South Korean conglomerate Daewoo (1.3 million hectares). Another example is provided by Varun, the Indian steel giant (232,000 hectares).

● *Big Companies from Developed Countries*

Big companies from emerging countries are obviously not the only ones opting for this type of investment: many companies from Western countries are looking for large tracts of land to develop agrofuel and food products destined for export.

In the case study in Peru, Maple Ethanol SRL (a subsidiary of The Maple Companies, an American company focusing on energy projects), acquired nearly 11,000 hectares of land to grow sugar cane.

● *Big Domestic Companies and Local Elites*

These should not be ignored in large-scale land acquisition phenomena as shown by the case studies in Latin America, among other things. The Peru case study reveals the interventions of Camposol, one of the largest agribusiness companies in the country, and the Romero Group, a Peruvian equity group that is very influential in the region. In the Guatemalan case study, four large national families, each organized in the form of a trading group, produce palm oil on large plantations.

● *Investor States*

States may also conduct investment projects directly or indirectly, in their own territories as shown by the case study in China where the government approved the construction of an industrial and economic zone in Huaming, on the outskirts of the Port of Tianjin agglomeration. However, with investor States, the most frequent case is States that invest in foreign countries through bilateral agreements, the use of sovereign funds, or by encouraging their companies to invest, with the proclaimed goal of food security for the country of origin. Our panel of case studies unfortunately does not include an example of the last situation, which accounts for a large share of the investments by Arab and Gulf countries.

Trends in Investor Origins and Types, Destinations, and Investment Types

The investors in these large-scale agricultural projects no longer come exclusively from developed countries as they did in the past.

Densely populated East Asian countries with strong economic growth (China, South Korea, Japan) are investing in Africa and Asia with the aim of food production, animal feed and agrofuels. Arab and Gulf countries—food importers that have little in the way of land and water resources although they have oil rents—also invest in priority in culturally similar and geographically nearby countries with the aim of food production. For all these countries, the priority destination for the products generated by these investments is the investor's country of origin.

The private sector in Europe, the United States and Japan seeks to invest around the world, for food production, animal feed and agrofuels. Product decisions and destinations depend mainly on market opportunities.

Investors may be States or sovereign funds. In these cases, the country of origin depends heavily on food imports and has monetary resources. These investments increasingly take place in the framework of agreements between governments, through public funds or by companies in which the State is the majority shareholder. What is more, the State may also encourage investments by private companies through various instruments.

Nevertheless, with the emergence of investment funds, private sector actors are in the majority compared to agribusiness companies that previously acted alone.

Although these land investments are mostly of foreign origin, domestic investors also exist. These companies and local elites may act as intermediaries, or invest in land themselves either alone or in partnership with other local actors.

A Multitude of Investment Goals

The case studies show that the goals pursued by these investments are fairly diverse when it comes to destination and type of production:

- cereal production for export to the investor country;
- agrofuel production for export and/or the domestic market;
- fruit and vegetable production for export;
- food crops for the domestic market;
- land speculation: buy to sell at a higher price later;
- mining; and
- the development of industrial and economic zones.

Nevertheless, one can note the predominance of agricultural export crops, which often require large amounts of land and water to be productive.

The Many Factors Driving the “Thirst for Land”

The rise in foodstuff prices in 2007 and 2008 greatly contributed to speeding up large-scale land acquisitions and rentals. Countries that have considerable monetary wealth but are heavily dependent on food imports set up sovereign funds and encouraged their companies to invest in food production projects abroad, with the primary aim of their own food security.

The search for substitutes to fossil fuel consumption, set out in the regulatory frameworks of developed countries’ governments (the United States and European Union), have also encouraged foreign investments in land to produce agrofuels by guaranteeing a long-term market and providing financial incentives (subsidies and tax exemptions) to the private sector (processing companies). World policies to fight global warming and the remuneration planned in this framework for carbon sequestration also encourage land acquisitions based on anticipated results.

Water is also a crucial driver—one that is too frequently ignored—in this race for land. Seventy percent of the freshwater suitable for human consumption is used in farming. The Gulf countries use 80% of their water resources in the agricultural sector. With water becoming scarcer, some countries have decided to limit irrigation. For instance, Saudi Arabia decided to suspend wheat production within its borders by 2016, and set up a foreign agricultural investment fund in 2008. Africa, which expends only 2% of its water resources on agriculture, is therefore a favored target for such investments.

Convinced of the interest of foreign investment for agricultural development (new technology transfer, job creation, expansion of production potential, food production, economic diversification, simplified access to certain markets, tax exemptions, etc.), the governments of host countries play a preponderant role in facilitating foreign actors’ land investments. They establish true incentive policies (investment agreements, and legislative reform in regard to land tenure, taxation, the banking sector, etc.) to attract foreign investors.

The financial crisis that was triggered at the end of August 2008 has probably also facilitated the movement of capital toward land. These investments are dictated by short-term speculation, or by more or less long-term returns on investments, in a context of inexpensive land resources when the risk of rising prices for agricultural products, including non-food commodities (cotton, rubber) is high.

Type of Investor	Investors’ Motives	Examples of Investments’ Countries of Origin
Public Sector (through public-private partnerships)	Food Security	South Korea, Gulf countries, Japan, Egypt, etc.
	Economic Development Projects with IFIs	United States, Libya, etc.
	Investment of National Funds	Gulf countries, China, Malaysia, India, etc.
Private Sector	Portfolio and Investment Management	United States, United Kingdom, Sweden, Gulf countries, etc.
	New Market Creation	

A Favorable Political Context for Foreign Investors

The investment projects we studied are characterized by government authorities' strong support for foreign investments. This support is often provided to the detriment of support for smallholder farmers who earn their living from the land targeted by the investment projects. The lack of land tenure policies or their limited application works in investors' favor. Lacking land titles or certificates backed by the authorities, local populations do indeed have serious difficulties asserting their rights to the land coveted by investors.⁷ They are often included in neither policy elaboration nor the negotiation of agreements between investors and States. The policies that are favorable for foreign investors are not always explicit either. Foreign investors very often take advantage of local or national governance problems more than they take advantage of an adequate institutional and legislative framework.

Investors Driving Development

The experiences of developed countries and many emerging countries have shown the potential and advantages of models based on smallholder farms in terms of job creation and preservation, poverty alleviation, the reduction of inequalities, economic efficiency, food security, environmental preservation, sustainable natural resource management, and the structuring of the rural world.⁸

Nevertheless, the development strategies initiated by certain States give priority to the promotion of large farms for intensive farming, with the priority goal being to set up agro-industrial and bioenergetic commodity chains. From this perspective, foreign investors are seen as levers to rapidly implement these national strategies.

The principles defined in the strategic guidelines of numerous countries are taking the concrete form of a growing number of measures and reforms that suit the interests of foreign investors. These measures intervene in various sectors (land tenure, foreign trade, taxation, infrastructures, etc.) and, in many cases, are supported by international organizations such as the World Bank that see them as a way of laying the foundations for "win-win" investments.

Even though they already pay particularly low—sometimes even no—rent, most foreign investors receive tax breaks. When this is case, one can question the impact on public finances of such projects that make it possible to collect neither rent nor taxes, and wonder about the real motivations of States and their agents, as well as about the benefits they really receive from such agreements. Inversely, we better understand the financial interest in making such investments for these companies.

Moreover, governments' meager budgetary resources are also called on to help facilitate investment. In Peru, the State financed the construction of a dam and diversion tunnels to irrigate vast tracts of land destined for investors, simultaneously depriving smallholder farmers of their access to irrigation water. In Tanzania, the government is about to make developments to enable the irrigation of new tracts of land to extend the area farmed by a European investor although this investor pays no fees or taxes and exports most of its sugar cane crops

⁷ On the stakes behind land tenure policies, see the work by the "Land and Development" Technical Committee: "Land Governance and Security of Tenure in Developing Countries: White Paper on Land Tenure by French Cooperation Actors", 2009. <http://www.foncier-developpement.org/vie-des-reseaux/le-projet-appui-a-lelaboration-des-politiques-foncieres/le-livre-blanc-sur-les-politiques-foncieres-des-acteurs-francais-de-la-cooperation>.

⁸ Alpha and Castellat, "Défendre les agricultures familiales ; lesquelles, pourquoi ?", Coordination SUD, 2008.

Benin's and Madagascar's Pro-Agribusiness Policies

In Benin, the government elaborated the Plan Stratégique de Relance du Secteur Agricole (PSRSA, agriculture sector strategic revival plan) to improve agricultural sector intervention coherence. In its first public version of June 2008, the PSRSA took a very liberal view of agricultural development, in line with the general policy carried by the new elected president, Yayi Boni. The PSRSA aimed to "make Benin a dynamic agricultural power by 2015, that would be competitive and environmentally-friendly, and generate wealth in response to the population's economic and social development needs." To improve yields, the Government clearly opted for large farms based on intensive, motorized (using tractors) and "chemicalized" (using improved seeds and fertilizer) agriculture on large tracts of land and gave great importance to agro-industrial and bioenergetic commodity chains. To attract private investors to agriculture, and with the support of the Millennium Challenge Account (MCA⁹), the Government initiated land tenure reform and speed up the process of issuing land titles provided for in the new law on land tenure that had been passed in 2007.

In Madagascar, the agricultural development strategy is marked by the promotion of agribusiness and by the almost unconditional opening of the country to foreign investments of all sorts. The type of rural development targeted is clearly described in the Madagascar Action Plan, the 2007-2012 roadmap established under the presidency of Marc Ravalomanana. It plans the implementation of a "green revolution" destined to speed up the growth of agricultural production by relying on mechanization and the promotion of market-oriented operators. For the chair of the National Platform of Civil Society Organizations, an organization whose proposals were not all included in the Madagascar Action Plan, "the emphasis [in this plan] is placed in particular on agribusiness and not on farmers although we really know how important small farmers are to developing agriculture in Madagascar."¹⁰

to the EU. Furthermore, these exports pay no customs duties on entry into Europe because Tanzania pays no customs duties to the EU.¹¹

The case studied in Guatemala also clearly shows the importance of bilateral free trade agreements (signed with the United States in 2005 and under negotiation with the EU) in stimulating foreign investments as these agreements allow investors to export their products to their countries of origin.

Land Policies that Serve Investors' Interests

Land policies, or the lack of land policies, often facilitate foreign investors' access to land, and do so to the detriment of rural populations. While laws tend to acknowledge local rights in many contexts, these rights are not for all that legally secure everywhere. Among other things, some land policies are clearly destined to facilitate massive land acquisition by outside investors by giving priority to individual, private property titles whose obtention procedures are beyond the reach of a large majority of the population in developing countries.

⁹ MCA: the development aid fund announced by G. Bush in 2002 and established by the American government in 2004.

¹⁰ Interview in the Consortium de Solidarité avec Madagascar's *La Lettre newsletter*, www.madagasconsortium.org/spip.php?article29, pg. 2.

¹¹ In the framework of the Everything But Arms (EBA) program that grants the least advanced countries duty free and quota free access to the European market. Yet, in this example, it is clear that European investors are the ones who really benefit since African producers are rarely able to attain the European market, notably because of overly restrictive product entry criteria.

● *Between Populations' Land Tenure Security and Investment Security*

In developing countries, land status depends on several rights registries: so-called customary or neo-customary rights that depend on unwritten local consensus according to evolutive rules, and written rights inherited from the colonial period defining top-down administrative procedures creating private ownership. This legal dualism plunges local people who cultivate and live off the land and its resources in a situation of land tenure insecurity. While their rights are recognized as locally legitimate, they run the risk of seeing their rights challenged by either the State or third parties without any guarantee that they will be compensated or paid.¹²

Spurred by international partners, many States have initiated land reforms attempting to respond to changes in the political, economic and social environment, and secure the land occupation and local rights of the most vulnerable populations. To mention only the best known examples, the land tenure offices in Madagascar and the rural land plans in Benin are some of the innovative experiments seeking alternatives to registration and individual private ownership.¹³ Nevertheless, the economic opportunities created by foreign investments allow them to receive exemptions and preferential treatment, which has an impact on governments' credibility and efforts to improve land tenure security.

Land Policy and Laws Struggling to Be Effective: the Example of Chhattisgarh in India

In 2000, when Chhattisgarh State was created in India, a land code was written to include the main national provisions on this subject: land rental protections, facilitated access to ownership for users, a cap on the amount of land owned, and protections for communal lands, notably those held by indigenous peoples.

Despite the existence of this binding framework, the provisions are not enforced due to a lack of resources and political will: the land situation remains extremely unequal across segments of the population, and is characterized by a denial of the rights of indigenous peoples to their ancestral lands.

● *"Informal" Practices that Favor Investment Projects*

Some governments clearly show a desire to adapt their land policies to the needs of outside investors to facilitate their access to land. However, beyond laws that facilitate land acquisition by investors, it is above all informally that government authorities facilitate this access to land.

In Madagascar, the government passed a law in 2007 that authorized the allocation of land to foreigners, thus allowing Daewoo to envisage investing in land in this country. The project is managed and negotiated directly by the President of the Republic and the Ministries concerned, without any consultation of the population.

¹² "Land and Development" Technical Committee, 2009.

¹³ See the case studies in: "What Public Policies for Family Farming in Developing Countries?", Coordination SUD, 2010. And the proceedings of the international workshop held in Cotonou in October 2008: Lavigne, Mansion, Mongbo, "Vers une gestion foncière communale. Stratégie, outils et conditions de réussite", 2009. <http://www.foncier-developpement.org/vie-des-reseaux/le-projet-appui-a-lelaboration-des-politiques-foncieres/atelier-dechanges-sur-la-gestion-fonciere-a-lechelle-communale>.

In Peru, the central government facilitates private investment by authorizing direct allocation of land. On the regional level, and notably in the Piura Region (whose development is based on agriculture), land can be made available to investors through simple regional or municipal edicts. For instance, in this region, the Maple Ethanol SRL company was able to acquire more than 10,000 hectares of land with remarkable speed and, among other things, benefit from a large irrigation project financed by the government authorities a few months after this purchase. However, at the same time in the same region, smallholder farmers grouped together in a cooperative have, for their part, had considerable difficulty accessing land although they have all the guarantees demanded. This example is indicative of differential treatment given large private investors and small farmers' organizations when it comes to access to land. Another illustration of this differential treatment is that the President of the Republic traveled in person to Piura to confirm the sale of more than 10,000 hectares of land to the Maple company. On this occasion, he called the operation "the start of the agrarian revolution."¹⁴

In Chhattisgarh State, India, where there is a wealth of mining resources, 80% of the population depends on farming. Yet, no agricultural policies supporting smallholder farming exist. Since the agricultural sector's contribution to the economy of this state was seen as marginal, priority was given to industrial development and mining. In this context, the state authorities offered potential investors attractive conditions: tax exemptions for five years, few land rental and purchase fees, provision of land, and expulsion with little or no financial compensation. The benefits for the State in exchange are still difficult to grasp today, given the lack of transparency around the agreements reached.

In the Chinese context of rapid economic growth and strong urbanization, land competition between cities and countrysides is a major phenomenon. Following the evolutions in China's land policy since 1980, the Constitution indicates that the principal usage rights holders are local governments. The Government therefore does not need to requisition land directly from families but from local village governments. Between 1996 and 2006, the land of forty million farmers was thus requisitioned, and that of fifteen million farmers between 2006 and 2010.

The Continuity of Land Policies at the Service of the Economic Elite in Guatemala

Since the 20th century, the alliances between the State and the landed and industrial elites have inspired policies that promote large-farm models focused on export markets. These policies have led to spectacular land concentration. Today, 2.6% of farms account for more than 64.5% of land.

The Franja Transversal del Norte is a recent agricultural frontier zone that was ravaged by civil war until 1996. It is now being rebuilt with considerable infrastructure development, dam building, electrification, etc. The land tenure regularization policy based on individual private property generated a rise in land sales to the detriment of community dynamics of indigenous territory management, benefiting large Guatemalan families that continue to extend their oil palm plantations.

¹⁴ <http://www.tribunavirtual.com/revolucionagraria.htm>.

Opportunities Created by Governance Problems

The complexity of land acquisition procedures always tends to benefit the most powerful, those who are informed, and those who can contact the right people. The decentralization process underway in many countries further intensifies the uncertainty around the prerogatives of each level of the administration. This multiplicity of actors with competing economic and political interests and stakes often generates conflicts that may be exacerbated by the lack of clear boundaries on land tenure management responsibilities.

In a majority of our case studies, land tenure management is the responsibility of the local authorities. However, they are not involved in parties to the sale and concession of land to investors. They are regularly bypassed by the central authorities who give themselves new responsibilities so as to be able to directly manage negotiations over access to land.

In the case of the Piura Region in Peru, the investments were viewed differently by the various administrative levels. While the central and regional governments have been the main promoters of such investments, seeing them as strategic for the development of the Piura region, the local governments have not been as enthusiastic over the arrival of these investments that they see as a potential source of conflict within their jurisdictions. National elected officials, members of Congress, have decried the irregularity of the land acquisition procedures undertaken by the Maple Ethanol SRL company. Nevertheless, the contract was still signed despite this opposition.

In India's case, the overlapping responsibilities for land tenure management have led to the creation of contradictory policies and legal vacuums. Since land tenure policies have been numerous (more than one hundred since independence), the legislative confusions and legal system failures serve the interests of the authorities and maintain the land tenure privileges of the elites.

However, even when the local level is involved, transactions may lack all transparency. Populations are ignored, and local civil servants have personal interest in relying on intermediaries who play a decisive role in the formalization of agreements. ●

The Role Played by More or Less Scrupulous Intermediaries in Benin

In Benin, the SYNPA farmers' union¹⁵ conducted a study in early 2009 with the help of its network of activists and partner NGOs to measure the magnitude of the phenomenon of private investments in land. It notably noted that most of the investment projects identified made use of Beninese intermediaries, including local development NGO executives, to facilitate land acquisition.

For example, to farm 5,000 hectares of corn, soy and oil palm, CAJAFCOMON (a Beninese company) is said to have solicited intermediaries that intimidated small landowners by making them believe that the government was going to expropriate their land and sell it. The special report published in the French weekly *La Vie* on March 19, 2009, notably illustrates how unscrupulous intermediaries take advantage of the credulity of small farmers and isolated communities to sign contracts with them for the use of their land to grow jatropha even though this does not provide them with the expected economic outlets. The special report also shows the corruption of local elites (arrondissement heads, royal family, etc.) by economic intermediaries to facilitate foreign entrepreneurs' acquisition of very extensive plots of farmland.

¹⁵ Synergie Paysanne (SYNPA) is a Beninese activist farmers' union.

CHAPTER 2

The Risks of the Investments for the Population

There is a consensus among international organizations and States on the potential positive effects that investments in land may have: revenue creation, poverty alleviation, supplements to public investments, job creation, improved productivity, and easier access to capital, technologies and know-how. GISA¹⁶ also mentions, when the investor has a real “corporate social responsibility” policy, other expected positive effects: infrastructure building, lowered food insecurity worldwide, preservation of ecologic interest zones, and financing for agricultural development.

However, every international institution also notes the real risks of such investments in the context of developing countries where rights have been little formalized, governance is weak, and the populations affected by these investments are unable to defend their rights. In this context, we are nowhere near the “win-win” investment system described by some, including the IFPRI (2009).

Lack of Transparency in Contract Negotiation Processes

Daewoo in Madagascar: Laws on the Cession of Malagasy Land to Foreigners Voted “in the Dark”...

In Madagascar, while the land reform initiated in 2005 in the framework of the National Land Program (NLP) was conducted in consultation with civil society, laws authorizing foreigners to purchase land were passed between 2003 and 2008 without any attempts to consult and inform people or their representatives.

Non-Transparent Negotiations on Daewoo’s Investment...

In Daewoo’s case, the agribusiness project was negotiated without the slightest transparency. The information provided by the Malagasy authorities and by Daewoo’s directors was voluntarily incomplete. The figure announced in Malagasy newspapers in July

¹⁶ The Groupe Interministériel sur la Sécurité Alimentaire (GISA, interministerial group on food security) wrote a position paper on large-scale land appropriation and responsible agricultural investment in March 2010.

2008 when the investment agreement was signed was 150,000 hectares of land—considerably less than the amount revealed in November 2008 by the *Financial Times* that claimed at that time that the agreement covered a 99-year emphyteutic lease on 1.3 million hectares of farmland.

The Malagasy case is far from an isolated incident: it is symptomatic of the nature of most investment negotiation processes. The lack of information provided to citizens and concerned populations facilitates the advance of projects. Without such consultation, the corruption of national and local elites during land transactions becomes all the easier.

The information available on foreign investments in land is extremely limited. Many reports and studies now exist on the subject, but they often rely only on the information reported in the international press. This relay makes it possible to reveal investment negotiations and land transactions but it has its limits, including control of the content of national press under the effects of censorship; late publication of articles, making it impossible for the populations concerned to have a voice in already concluded negotiations; and even the inaccessibility of the media for isolated rural populations.

The status and content of transactions are often not specified in the circulating news stories. The lack of reliable and verifiable data on these investments makes all study and in-depth, detailed analysis haphazard. This is all the more true as most small- and medium-sized investments are not identified.

Even more problematic for the local actors concerned is the fact that the investment contracts are not accessible to the public and NGOs. The IISD¹⁷ even evokes cases in which land transactions are said to have been approved without the existence of a contract or without said contract being available to the civil servants in charge of foreign investments, nor to the communities and local actors affected by these agreements.

Local Populations Deprived of their Elementary Rights

Calling into Question Local Populations' "Property Rights" to Land

In a vast majority of cases, land rights consist of a range of prerogatives and regulations on the community scale. When this is the case, land management goes hand in hand with the management of people through institutions anchored in the local authorities. It is these institutions that ensure the co-existence of different uses of the land and manage competition for land to maintain the cohesiveness of the social group.¹⁸ Without recognizing them formally, independent States have had an ambiguous attitude to this local management of land, oscillating between tolerance and negation, lacking an operational system to counter them.

While the reforms undertaken in numerous contexts in the past twenty years with the support of international organizations tend to recognize their legal existence, establishing operational systems is a lengthy undertaking everywhere. The arrival of foreign investors weakens

¹⁷ International Institute for Sustainable Development, May 2009.

¹⁸ *Land Governance and Security of Tenure in Developing Countries: White Paper on Land Tenure by French Cooperation Actors*. "Land and Development" Technical Committee, June 2009. Available for download at www.foncier-developpement.org.

the processes underway and risks upsetting them when the economic and financial stakes are very high for the authorities. Faced with investors, local populations are not always able to defend their rights, either because they simply do not know them or because they do not have the means to assert them.

The most emblematic case of this denial of rights is that of Madagascar, mentioned above. Investments can also result in the grabbing of natural resources, notably water. IIED claims, for instance, that a large proportion of land “grabs” are also water “grabs,” as can be seen with Maple Ethanol SRL.

The pastoral uses of land seen as “empty” are often ignored in massive investment processes even though these activities are central to household budgets in dry or arid regions. Consideration of pastoral use rights in investment processes is a crucial issue, notably in sub-Saharan Africa where nearly half of the world’s 120 million or so shepherds and farmer-shepherds are concentrated.

Land Appropriations in the Piura Region of Northern Peru: Negating Natural Resource Usage Rights

Agricultural Water Grabbed by Maple Ethanol SRL

Between March 2006 and January 2007, more than 10,000 hectares of land, owned by the Chira-Piura Special Project, were sold by the regional government for sixty dollars per hectare to Maple Ethanol SRL, a subsidiary of the American company, The Maple Companies. These land purchases were done without consulting the local populations. In addition, some of the land granted was in fact already cultivated by small farmers (recorded in the land registry but without deeds) or even occupied by legally acknowledged communes. During the investment process, exclusive use of the water from the Chira River was also granted to the Maple company, increasing the value of the land by a factor of fifty.¹⁹

These transactions immediately sparked conflicts, mainly over the use of water from the Chira River. Indeed, the users present, such as small farmers’ organizations and other small and medium businesses, demanded their rights and equal terms for the use of irrigation water.

Denial of Pastoral Usage Rights by the Camposol Company

With the aim of developing agro-export crops, the Peruvian company Camposol appropriated 1,650 hectares of land, part of which was purchased from the State (notably the Ministry of Defense). Since 1981, usage rights on this land had been granted to the Señor Cautivo ranchers’ association by the Ministry of Agriculture so that ranchers’ cattle could graze there. The conflict broke out when Camposol fenced in the land, thus preventing cattle from accessing 1,500 hectares of land that had initially belonged to the territory, the use of which had been ceded to the ranchers’ association. Despite these conflicts, Camposol is said to have already appropriated 560 hectares, for which it was even said to have obtained properly registered titles from the land registry...

Sources: Section 2, Case Studies

The instances of land appropriation in the Piura region between 2006 and 2007 by Maple Ethanol SRL and Camposol show the total lack of coordination with local populations and a negation of their property and usage rights over land.

¹⁹ According to the calculations by the experts consulted by Peru’s national daily newspaper.

Negative Impacts on the Environment

Environmental Destruction with the Case of Jindal in Chhattisgarh State, India

In Chhattisgarh State, India, Jindal Steel & Power Ltd., a leading Indian steel company, began its mining activities on limited areas in 1990. In 1997, the company tried to divert a river to supply water for its steel operations. Faced with protests from indigenous communities, the company ultimately built a dam to meet its own water needs. In 2004, Jindal Steel & Power Ltd. received authorization to mine forty-one hectares to produce metal scrubbers. In 2005, the company built fifteen other iron mining units in the area. Today, it continues to create new sites for prospecting and mining.

The activity sites are relatively small, but mining generates soil and water pollution well beyond the confines of the mining site. The environmental nuisances, the lack of water, and even the physical destruction of plots during prospecting operations make the land unfit for cultivation and force indigenous populations to leave, thereby facilitating mining expansion without the company needing to pay out compensation packages.

The destruction of the environment can eliminate local populations' livelihoods, forcing them to farm marginal land and clear new land to survive. A vicious circle can then be triggered, multiplying the impacts on the climate and the environment. The Amazonian pioneer front is another clear illustration of this phenomenon.

What Long-Term Impacts from Investments?

Beyond the direct negative effects on local populations (expropriations, denial of various land rights, environmental destruction, etc.), there are also long-term risks.

Worsening food security in the host country is one of the major risks in the case of investments targeting biofuel production or export-only food production.

The other major risk is the decline of smallholder farming in a context of poor absorption of rural populations by salaried farm labor and other sectors of activity. The agricultural models used by these investments are usually based on considerable labor mechanization, and do not allow for the hiring of large numbers of farm workers. Even when farmers become salaried workers, this does not automatically improve their living conditions: they often remain in precarious situations with very low paying day contracts. What is more, in most host countries—especially those in Africa—the outlets for labor in other sectors are extremely limited because industry is in its infancy and the tertiary sector is almost nonexistent.

When farmers are deprived of their land, their living conditions are likely to worsen further, economic inequalities are likely to increase even more, and already very fragile social and political balances are likely to be upset.

These impacts also contribute to the disappearance of peasant know-how—a disappearance whose scope is difficult to measure, but that is inevitable. All the more so since the technical itineraries developed and established by local populations are often the ones best suited to local socio-environmental conditions.

Finally, the overlaying of different levels of law (written law and local law) on different scales (local, national and international) carries the risk of threatening countries' national sovereignty when it comes to the ability to set up their own regulation systems (food governance, environment, social policy, etc.). ●

CHAPTER 3

Civil Society in Action

From Local to International: the Scales on which Civil Society Mobilizes

The case studies reveal several levels of mobilization:

- On the local level, it is mostly the populations directly involved in the distribution of resources that mobilize. Individuals operate through their local networks (farmers' organizations and grassroots community organizations). Elected officials and local customary chiefs may support their actions and carry them to the national scale.
- On the national level, a more organized civil society mobilizes by federating associations, and with the support of the national press. National elected officials may also strengthen mobilization by denouncing the abuses in some transactions.
- On the international level, mobilization happens primarily through the intermediary of the international media, international NGOs, and even diasporas, key actors to strengthen the link between the inside and outside of the country.

The case studies show that there is no typical schema for how mobilization is organized. Classically, mobilization grows from the grassroots, from the populations directly affected by investment projects. Their actions and demands are relayed by local, then national, and then finally international, organizations. This is the case with the Jindal company in India, for example.

But civil society mobilization may also be triggered by international stimuli, which causes reactions within the country, mainly in cities. From there, it spreads to ultimately reach the countryside and populations directly concerned. The case of Daewoo in Madagascar clearly illustrates this mobilization schema. But there are many other patterns as well.

The Case of Daewoo Logistics in Madagascar: Unique "Top-Down" Mobilization Relayed by the Political Opposition

On November 18, 2008, the *Financial Times* revealed that the Malagasy State had signed a 99-year emphyteutic lease on 1.3 million hectares of farmland with the powerful South Korean conglomerate Daewoo. The news alerted the international opinion, international solidarity organizations, and the Malagasy diaspora through the TANY Group. The national press in Madagascar also published the information. However, beyond the transgression of the "land taboo" linked to the sacred and inalienable value of the land of their "ancestors," this major transaction generated relatively few organized reactions from Malagasy civil society. There were only a few outcries on the national level from the Madagascar Observatory of Public Life and a customary chief in one of the regions concerned by the lease, and the news was little relayed. [cont.]

This relative silence can be partially explained by the lack of information reaching the population due to the poor circulation of the written press and the high illiteracy rates in rural areas. However, the major hindrance to structured mobilization by civil society seems to have been the fear of speaking out in a country where political repression is violent.

This affair coincided with a major political crisis that opposed the sitting president and the mayor of Tananarive. For the political opponents of the sitting government, the Daewoo affair was an additional way to attack the regime in place by playing on nationalistic feelings. Denouncing the sale of land to Daewoo thus became a highly political subject. The scandal grew in scope and led to a coup d'état, with the resignation of ministers and the proclamation of a High Authority of the Transition led by Andry Rajoelina at the end of January 2009. The preparation of Daewoo's prospecting contract was declared to have been "suspended" in July 2009 by the Minister of Territorial Development and Decentralization. Civil society must remain vigilant, however, because the renewal of projects of this type is always possible.

The Goals of Civil Society Mobilization

A given territory is always attached to a local population that depends on it through the use of natural resources (land, water, wood, pastures, etc.). The poorest populations are often the ones that depend the most heavily on natural resources and their environment to survive. Beyond financial and survival stakes, each territory also has a strong symbolic and identity-based dimension for populations. Because they challenge the foundations of the appropriation of a territory, investment projects set off sharp reactions from local populations and civil society.

Local Demands

The case studies show that the mobilization is first organized around local demands in regard to information on the negotiations underway and safeguarding access to land and natural resources.

● *Transparency in Transactions and Contracts*

Mobilization is organized first around demands for transparency in land acquisition. The primary objective of local populations is to obtain clear and detailed information on projects underway. Their main fear is being handed a "done deal," that is to say seeing their land occupied overnight by an investor without advance warning. In the Peruvian case, the ranchers were denied entry for their cattle into their pastures overnight because the land had been ceded to Camposol. To avoid this situation, civil societies mobilize to obtain information on projects (land concerned, types of investment, etc.). This type of demand targets in priority the government authorities that manage land cession. Civil societies also mobilize for more transparent contracts.

Civil societies manage to bring the government authorities face to face with their inconsistencies through such demands for greater transparency:

- the support given to small farmers in public rhetoric, compared to practices that favor foreign investors to the detriment of small farmers; and
- land regulations that are based on improving the security of existing rights to land, compared to other autocratic practices allocating land outside any legal framework.

Through their demands, civil societies work to improve development policy coherence in developing countries.

● *Securing Access Rights to Land*

The main objective of these mobilizations is to ensure that local populations' land use rights are acknowledged. Sometimes, however, the rights granted do not meet the expectations of rural communities and can, in this way, help weaken them.

Individual Ownership vs. Collective Ownership in Guatemala

In the case of Guatemala, communities primarily want to obtain property titles to the land they occupy, and do so according to their system of collective ownership. In the municipalities of Chisec and Raxruhá, the land tenure system advocated after the civil war was that of individual ownership. Collective ownership was stigmatized as a hindrance to development, although it is the basis for the agrarian system developed by the small farmers there (mainly q'eqchi indians).

In the areas where individual ownership was most intensely spread, many poor small farmers rapidly sold their land to obtain money. In this way, large ranchers were able to settle in, followed by outside investors wishing to develop sugar cane production. Farmers found themselves dispossessed of their land and forced to become farm workers in increasingly precarious conditions.

Faced with this situation, the local organization SANK rallied to obtain recognition of the collective property right as practiced by farmers. This demand was based on the International Labour Organization's (ILO) Convention No. 169 on indigenous and tribal peoples, which Guatemala had ratified. This Convention imposes respect for the rights of indigenous peoples and their forms of land and legal administration.

By dint of pressuring the national and local authorities, the local organization SANK managed to have the collective ownership of land recognized in certain areas where private individual ownership had not yet been established. This success allowed smallholder farmers to collectively resist the pressure exercised by outside investors to acquire their land. Inversely, when farmers are isolated (notably by individual ownership of land), they are more vulnerable to investors' proposals.

● *Defend Smallholder Farming and Food Security*

Through their mobilization actions, civil societies promote smallholder farming. This observation brings up the precariousness of paid farm labor. When investors arrive, the opportunities for paid labor seem promising for local economies, notably in regions that are highly inaccessible with limited access to consumer markets for agricultural products. But the economic instability of these large farms can destroy this initial optimism.

By definition, industrial single-cropping is very exposed to the risks of international price fluctuations. All it takes is a drop in the price of a product for the investor to switch strategies or even completely abandon production. The risk also comes from situations of rent created by certain policies. When it comes to agrofuel production, if the United States and Europe were to lower their targets for the incorporation of agrofuels in conventional gasoline,²⁰ global demand and prices would drop sharply, thus hurting the profitability of the investments in land in developing countries that target this crop.

This high exposure to risk leads civil societies to demand that smallholder farming be given more room. Indeed, smallholder farmers more easily adopt strategies that limit their risk exposure, notably by diversifying crops.

²⁰ As several political parties demand.

● *Obtain More Favorable Compensation*

The Case of Tianjin in China: Mainly Compensation-Related Demands

Huaming is a rural region to the east of Beijing, near Tianjin, the largest deep-water port in China and a major industrial center. The Tianjin free trade zone established in 1991 has an economic growth rate of more than 30% and is constantly expanding. The airport industry park created in 2005 as an extension of the free trade zone is one of the city of Tianjin's key projects. The zone covers forty-two square kilometers, but the construction and then expansion of the airport industry park is scheduled to take place in three successive phases covering 23.5 sq. km., 18.5 sq. km., and 13 sq. km. The vast majority of the land concerned is farmland. While usage rights had been granted to farming households, the land belongs to the village government. The negotiations were first conducted between the local government and the village committees and hamlets' community representatives. An agreement was reached. The farmers' land was requisitioned for construction to begin. The villagers reacted strongly, delaying construction. Groups filed complaints with the highest local authorities for theft of land and insufficient compensation. The demands focused on obtaining better compensation and decent re-housing conditions.

Sources: Section 2, Case Studies

Sometimes Conflicting Goals within Civil Society

The divergences and contradictions that one can see in government leaders' speeches (between claims of sustainable and sovereign agriculture, and claims of agricultural intensification based on an agrarian vision) can also be found in civil society, which struggles to formulate a clear position in the face of the perceived advantages and risks of these investments.

Beninese Civil Society Divided on the Question of Massive Investments in Land and Agrofuels

For many local development actors, the investments in farmland are a positive phenomenon for Benin: it is said that these investments will provide the State with a source of revenue, a way to modernize agricultural production, a way to farm a larger share of its currently fallow land, and a good job creation strategy for rural youths.

Many NGOs support the establish of investments in the field. In December 2007, they notably organized, with government support, reflection days on the "stakes and challenges related to biofuel development in Benin" to increase recognition that it would be useful to open the country to foreign investors in agro-industrial commodity chains. Inversely, a smaller but very pro-farmer fraction has, for its part, a very different view of this phenomenon: risks that the productive farming class will disappear, emergence of a weakened agricultural proletariat, non-distribution of the wealth generated by these investments, the export of foodstuff and the reallocation of farmland to produce agrofuels endangering the country's food security, etc.

On the local level, the worries in regard to the massive purchase of land are more pragmatic and not exclusively focused on agrofuel. For example, the new municipal staff in Djidja, elected in 2007, is aware of the risks that these purchases may bring to bear on communities in terms of the loss of productive capital. It has high expectations from the establishment of the MCA land program, which began in 2010 to strengthen allocation procedures and avoid conflictual purchases usually conducted by intermediaries.

[cont.]

Accordingly, Beninese civil society does not currently share a common position. Even Social Watch, which brings together twenty-five civil society actors acting as citizen monitors, is divided on the subject. For some, these investments contribute to the country's development while for others they threaten food sovereignty.

Furthermore, the Beninese press has not yet become aware of the magnitude of the phenomenon, and simply passes on the small amount of available information without measuring the overall scope. According to SYNPA, it even appears that the media are still not convinced of that the phenomenon is real.

Means of Action

Be Heard: Demonstrations, Media Coverage and Networking

The methods most frequently used by civil societies in reaction to land grabbing are actions to spread information on events affecting local populations:

- marching, demonstrating, blocking roads, occupying land on the local level by the actors directly concerned by land investments;
- national forums, often organized by networks that mobilize local organizations in the country (unions, federations of associations, platforms, etc.) with more visible actions for the national and international media (large marches on capital cities, etc.); and
- media coverage (notably international media): use of the media makes it possible to reach a national and international audience widely and rapidly, and increase support for demands. While they are crucial to vitalize mobilization, these tools can be ineffective when there is repression and when freedom of expression is low.

Community Development Actions

SANK's Activities in Guatemala...

In the Franja Transversal del Norte (FTN), oil palm plantations belonging to large Guatemalan families developed rapidly starting in 2008, following the increase in oil and foodstuff prices. In reaction to the greed exacerbated when the zone was made accessible in 2002, young q'eqchi' indians created a local organization, SANK. It first worked on natural resource management and community land administration. It was the first local organization to react to the loss of land due to the expansion of oil palm plantations.

The indigenous populations got organized to avoid the theft of their land, ensure collective land management, and eliminate sales to outsiders. SANK understands, however, that protecting the territory cannot be limited to avoiding the sale of land: strengthening smallholder farming is therefore a key action. This requires moving beyond gathering and single-cropping models, and the traditional systems of corn, beans and cardamom. Since 2006, experience exchanges among farmers have been making it possible to promote very elaborate farming strategies based on a diversity of species and crop combinations that make it possible to generate incomes much higher than the minimum wage in the country. *[cont.]*

What is more, SANK has done considerable work with indigenous communities to improve peasant conditions, notably by developing farmers' markets that have had real commercial success in villages. SANK has also supported the defense of indigenous lands by producing community land registries defining the distribution of plots among families within the communities. Here, women are key actors in farming and the sale of agricultural products; they are also often the ones most attached to their land. SANK therefore also supported a local organization, Qana' Tzuultaq'a, that federates women's groups in their demands for land rights, notably co-ownership of land with their husbands to counteract possible financial temptation of the latter.

Sources: Section 2, Case Studies

SANK's actions make up an original way of mobilizing and strengthening farming communities that are surrounded by palm plantations. These methods are promising in that they go beyond a simple "reactionary" logic and offer concrete and innovative alternatives. These community development actions seek to strengthen local farming through a multitude of methods: agricultural intensification, improving peasant conditions, community dialogue to define the land tenure space, improving marketing of agricultural products, strengthening the role of women in land management, etc. The aim is to build a future chosen by the farming communities.

Given that massive instances of investment in land are greatly encouraged by the perceived "crisis" in smallholder farming—which is seen as archaic and little productive by policy makers—showing real examples of dynamic and effective smallholder farming can therefore be a proactive force to propose other agricultural and social models.

Recourse to Courts and the Law

In all the case studies, instances of land appropriation by investors were characterized by procedural irregularities or even violations of national and international laws. Aware of this phenomenon, local communities have in some cases mobilized to call on the courts, filing claims for various reasons.

● *Calling on the Rights of Indigenous Peoples*

In the cases of FTN in Guatemala (and its Q'eqchi' indian population) and Chhattisgarh in India (and its numerous tribal peoples), indigenous communities called on public international law, notably the ILO's Convention No. 169 on indigenous and tribal peoples in independent countries and the United Nations Declaration on the Rights of Indigenous Peoples. These texts notably grant specific forms of protection to their access to the land and require their prior consent, given freely with full knowledge, for any project that will affect their land and resources.

● *Contest Procedures*

The affected populations can be "nitpicky" by filing court cases in regard to irregularities in land acquisition procedures, as was the case with the Huaming airport industry park in China and Camposol's investment in Peru. When political mobilization is limited, the legal path is most often used. In China, this path was chosen by farmers who denounced the lack of approval from various government bodies for land requisition requests as required by China's land law. For instance, 886 families filed suit in court with the municipal government to demand the cancellation of documents relating to the land requisitions conducted despite the law.

● *Court Actions Must Have Support to Be Effective*

At first glance, recourse to the courts may be seen as the most compliant and effective method to assert communities' rights. In reality, it has numerous limitations:

- filing complaints may be too costly and therefore impossible for local populations;
- even once filed, complaints can be thrown out of court or rejected by administrative offices in the name of the political and economic interests at work (e.g. India, China); and
- even when plaintiffs win in court, investors can appeal and have decisions overturned (e.g. Camposol in Peru).

The outcome of court cases are often disappointing for civil societies who turn to the courts, because of the asymmetrical relationships between the various groups of actors when it comes to wealth, power, information and knowledge of legal procedures. It would be relevant to set up legal assistance for the local populations affected in many host countries so as to inform them of their rights, make recourse to the courts more financially affordable, assist them with complex legal procedures, and support the claims filed to ensure that they are not thrown out of court unfairly.

Demand Impact Assessments that Include Consultation

The Case of the People of Chhattisgarh State and the Jindal Company

Environmental impact assessments are required under state law in India.²¹ The law states that the results of the assessments must be presented publicly. In early January 2005, consultation was therefore organized by the population and civil society, without any support from the state authorities despite requests for their support, for Jindal Power & Steel Ltd. to present the results of its environmental impact assessment. But it was pushed back to the end of January because of disturbances and police intervention. Then, the consultation was once again rescheduled because of gaps in its organization: the impact assessment was not available in the local language and the evaluations were incomplete, making any discussion of the report difficult. The district prefect preferred receiving complaints over running a public debate. During the summer of 2005, other consultations were organized with the Forest and Environment Committee to investigate the environmental impacts of mining. But the organizational conditions did not enable a proper assessment of the situation: field visit lasting only one day, on sites not directly affected, dialogue only with plant managers, etc. Jindal Power & Steel Ltd. submitted the environmental impact assessment in June/July 2005, but the consultation in it was incomplete: some geographic zones were not mentioned, and environmental impacts were minimized or hidden. Despite these obvious gaps, the assessment was validated by the Ministry of the Environment and Forests, and the company was able to continue its activities. The traditional village authorities also consulted their constituents, but the recommendations were not followed and the most inconvenient people were stifled.

Current estimates indicate that 67.37% of farmland and 30% to 31% of forests in Raigarh district have been affected directly or indirectly by the Jindal project.²² In Korba District, 78% of forests are said to have been destroyed...²³

Source: Case Study

²¹ The Environment Impact Assessment Notification of 1994.

²² Centre for Science and Environment <http://www.cseindia.org/node/466>.

²³ Indian Institute of Remote Sensing, 2006. <http://infochangeindia.org/200901077561/Environment/Analysis/India%E2%80%99s-new-mineral-policy-will-usher-in-gloom-for-advivasis.html>.

Conducting environmental impact assessments that consult local populations should be an obligation with which investors comply. The case of Jindal in India shows that even when the law contains such a requirement compliance is poor, with skewed studies and no consultation. What is more, beyond environmental aspects, the assessments should also measure the social and economic impacts of investment projects. Civil society should be strengthened in order to demand this type of impact assessment. This obligation should also be required of investors by the governments of host countries. In order to avoid any gaps in the conducting of objective impact assessments, they should be produced by independent bodies and should involve local populations and outside observers.

Help Formulate Policy

An Example in Benin

A first version of Benin's Plan Stratégique de Relance du Secteur Agricole (PSRSA, agriculture sector strategic revival plan), elaborated in 2008, promoted large farms for intensive farming with the aim of establishing agro-industrial and bioenergetic commodity chains. Thanks to the involvement of farmers' organizations, farmers' unions and platforms in the negotiations around the agricultural policy, the PSRSA evolved from 2008 to 2009 towards greater consideration of smallholder farming, small farms and farmers' organizations.

Civil society organizations²⁴ have also been mobilized for several years on land tenure issues. Faced with the urgency of the land tenure issue, SYNPA even made it the highest priority in its 2005 policy manifesto. It lobbied decision-makers intensely to revive the passage of the new land bill, the negotiations on which had been blocked from 2004 to 2006 by large landowner lobbies. To defend the land interests of small farmers and access to land for young agricultural entrepreneurs, it proposed maintaining certain customary principles²⁵ that had been eliminated in the draft bill, as well as innovations such as a limitation on the amount of time land can lay fallow, municipalities' right to recover unused land, etc.

Faced with parliament's reluctance to debate the law, SYNPA organized a sit-in with the Social Watch network in front of the National Assembly in February 2007, and threatened to mobilize the rural world for the legislative elections scheduled for the following month. The law was thus passed in October 2007, and contained 70% of SYNPA's demands. This new land law of 2007 acknowledged the duality of rights regimes. It institutes rural land plans (RLPs) to secure customary land rights and establishes rural land certificates (RLCs).

These advances are threatened by the Millennium Challenge Account project, MCA-Benin, whose primary objective is to "facilitate investment and the creation of a real estate market using land titles as marketable assets." A white paper on land tenure is to be produced in this framework. It will define the country's land policy for the next thirty years. This white paper will call into question some of the advances made in the 2007 law that are struggling to be applied. SYNPA is studying the current version of the white paper in order to begin advocacy on the risks of the MCA-Benin strategy.

²⁴ Synergie Paysanne (SYNPA); JINUKUN, an NGO network specialized in natural resource access and protection; PNOPPA, a platform of Beninese farmers' organizations created in 2006; and WILDAF, another NGO network supporting women. The mobilizations in Benin were supported by partner NGOs such as CCFD, GRAIN, COPAGEN, ROPPA, and WILDAF International.

²⁵ e.g., recourse to customary conciliation tribunals, more affordable in the case of land conflicts.

The Benin case shows that structured civil society organizations—here, a FO and a union—can have a real impact on public policy formulation, notably when they join together as platforms and networks. The support of national and international partners for these advocacy actions is, from this perspective, a key element.

Compete with Investors

The Case of Producers' Organizations in Piura, Peru

In Piura, small organic banana producers' organizations such as AMPBAO²⁶ and CEPIBO²⁷ have real negotiating clout because of the financial resources that they generate from fair trade, their shared vision of development and their political influence. They took advantage of the sale of land by the Piura regional government to the Maple Ethanol SRL company to demand the acquisition of irrigable land under identical terms.

In the framework of the regional policy to promote private investment, the Chira-Piura project put large tracts of land up for sale on the presentation of an investment study. In April 2008, the AMPBAO association therefore decided to submit a request to purchase 2,700 hectares of irrigable land that was still available and would go to 350 of its members, along with the required private investment study.

The Comité Especial de Privatización de Perú (CEPRI,²⁸ private investment promotion committee) then analyzed the request. After lowering the requested amount of land to 2,470 hectares, the study was finally approved. However, the regional government decided not to sell the land but instead cede it to AMPBAO in the form of a 99-year cession of use.

Whereas the Maple company was able to purchase 10,000 hectares of land outright in less than nine months, AMPBAO has still not succeeded in being allocated land after eighteen months of procedures.

Other farmers' organizations followed its example: CEPIBO with a request for 10,000 hectares. If this request is fulfilled, it will allow 1,350 farmers to increase their land capital from 0.9 to 10 hectares each on average and diversify their agricultural products with fruit trees and grains...

This example shows that there are other models—socially and economically effective models—that the government could support to enable sustainable agricultural development. Supporting small farmers and farmers' organizations is part of this. There are also other investment models focused on small farmers that could turn out to be more interesting for agricultural development and local populations than the simple appropriation of large tracts of land and the associated speculative tendencies. Host countries' and investors' policies would in particular deserve to lean more toward contract farming under certain conditions and with specific social arrangements.

²⁶ The Association de Micro-Producteurs de Bananes Biologiques Rive Gauche (left bank organic banana micro-farmers' association): it has 465 members and is one of CEPIBO's members.

²⁷ The Centrale Piuranaise de Petits Producteurs de Banane Biologique (Piuran organic banana small farmers' union): this federation brings together twelve organizations, including AMPBAO.

²⁸ This body is composed notably of members of the regional government, the Chira-Piura project, and the regional agricultural directorate.

The Involvement of Political Figures

In three of our six case studies, political figures mobilized to denounce the massive foreign investments and the illegal conditions under which land was acquired. They helped improve media coverage of the phenomenon and strengthen the demands of the affected populations.

In the Peruvian case, two members of Congress, for instance, denounced irregularities during the procedure to sell land to the Maple Ethanol SRL company. In the case of Huaming, China, the Ministry of the Earth and Resources himself publicly informed the media of cases of land rule violations including the violation by the Tianjin airport industrial park. This is said to have facilitated the local government's allocation of improved compensation to expropriated people.

However, the involvement of political figures can carry the risk of individual partisan reasoning and political manipulation, as can be seen in the example of Daewoo in Madagascar. ●

CHAPITRE 4

What Impacts Does Mobilization Have on Investment Processes?

Impacts on Investment Projects

Because of the diversity of local contexts, the impacts of civil society mobilization on investments are also very variable.

Cancellation and Suspension of Investment Projects

Civil society mobilization can lead to the suspension or cancellation of investment projects, as illustrated by the albeit atypical case of Daewoo in Madagascar. All the same, one must put into perspective the role played by civil society in the cancellation of this project because of the political crisis at the time. Indeed, going beyond citizen outcry initiatives, the political opponents utilized the announcement of Daewoo's investment to channel demonstrations that hastened a change of government. Afterward, the leaders of the High Authority that took power also showed very little transparency when it came to contracts and foreign investment projects.

Renegotiating Investments

Civil society mobilization can enable the renegotiation of investments with the establishment of mitigation measures: reducing the amount of land transferred, more advantageous production modalities and redistribution obligations, various compensations, etc.

In cases of expropriation, such as the Huaming case in China, the mobilization allowed farmers to obtain much higher compensation (€451 per ha) than what was initially planned under the law (€139 per ha). In addition, the government rallied to showcase the new job and employment opportunities in the industrial zone that was built (280,000 jobs planned) and in urban agricultural gardens (1,200 jobs planned). None of these advantages would have emerged without the legal proceedings conducted steadily by farmers to put real pressure on the government.

Sometimes Limited Impact

Despite civil society mobilization, there is sometimes little impact on the evolution of investment projects. Indeed, the imbalances between interest groups may be too big, and the political and economic stakes so high that no adjustments are possible.

The case of Jindal in India illustrates this type of situation. Despite diverse actions relayed as far as the capital through structured organizations, Jindal continues to expand its area of activity, without questioning its bad industrial and environmental practices or providing the most affected populations with proper compensation.

Nevertheless, even though the actions did not make it possible to stop the phenomenon, it did lead people to mobilize and unite against a model that they reject. This is the first step in a struggle that will intensify. Struggles are usually not huge victories overnight, but move forward progressively.

Impacts on Local Policies and Balances of Power

Recognition of Rights by National Authorities

Civil society mobilization can enable the recognition of local populations' rights.

In Guatemala, the Qe'qchi decided to demand respect for indigenous peoples' rights. After several months of legal proceedings with the assistance of a specialized lawyer, the communities won their recognition as "indigenous communities" by the State. Afterward, twenty-seven other communities in the area obtained this same recognition from local authorities.

Among the rights to be recognized, one can also mention the rights to own and use land and natural resources. The Ekta Parishad people's movement, for instance, is planning massive efforts to demand the application of existing land laws in India and in Chhattisgarh State.

Furthermore, demands can also focus on all other obligations arising from international human rights law, which the United Nations Special Rapporteur on the Right to Food, Olivier de Schutter, notably listed in a recent report.²⁹

A Larger Role for Civil Society Organizations

Civil society mobilization can enable significant progress in regard to national policies for the recognition of smallholder farming and the need to improve security of access to land and natural resources for rural populations. In the case of Benin, farmers' organizations and their platforms are present in the agricultural and land policy negotiations, and are able to influence the direction of these policies with concrete proposals.

Greater Policy Coherence...

Civil society backing can facilitate greater policy coherence. In Niger, for example, a land transaction ceding 15,000 hectares of fertile and irrigable land to Saudi investors was negotiated directly with the head of state and the ministers in charge of rural development, despite the existence of a Rural Code defining a set of laws and regulations aiming to safeguard agriculture and stock farming, prevent conflicts, and create the conditions necessary for social stability. Indeed, the Rural Code administration was not included in the project at any time. With the backing of civil society—including ranchers, farmers, customary chiefs

²⁹ De Schutter, December 2009.

and elected officials—the Rural Code was able to reverse the decision. The permanent secretary for the Rural Code concluded from this experience: “It is only one example of the need for mechanisms to supervise the State’s actions. Even as civil servants, we can make progress if we have citizens’ support.”³⁰

The Weak vs. the Strong?

In some cases, notably in the least democratic countries, civil society mobilization can have negative effects such as the national authorities hardening their position and digging in their heels, and more or less violent retaliatory measures against civil the society structures that denounced the massive investments (expulsion of international structures, closure of national structures, attacks on people, etc.).

Initiatives to Support the Emergence of New Investment Practices

Have civil society’s reactions to large-scale land appropriation not helped generate debate on the legitimacy of this phenomenon? Have the various efforts by civil society in both developed and developing countries not helped assert the need to control these massive investments?

The major international organizations UNCTAD, FAO, IFAD and the World Bank have written a joint position paper on the subject.³¹ It relies on seven principles for responsible agricultural investment that will respect rights, resources, and local and household economies. This code of conduct primarily addresses the governments of host countries and foreign investors. We can also mention the FAO’s Voluntary Guidelines on Responsible Governance of Land Tenure and Natural Resources, which are still being drafted.³²

It will also be a matter of monitoring certain specific clauses in already existing codes of conduct, both public and private: the Equator Principles, the Santiago Principles, the OECD Guidelines for Multinational Enterprises, and the Extractive Industries Transparency Initiative (EITI).

The ambition of these codes of conduct can be praised, even though they are non-binding frameworks. Are they simply a ruse to legitimize land “grabbing,” or can they help form a true framework in which to regulate agricultural investments? In any case, civil society needs to rally in a strong and organized manner to ensure that these principles do not remain merely empty promises. ●

³⁰ Highlights of the Permanent Secretary for the Rural Code at Niger’s Ministry of Agricultural Development Abdoul Karim Mamalo’s speech during AGTER’s General Assembly, 2009, www.agter.org.

³¹ *Principles for Responsible Agricultural Investment that Respects Rights, Livelihoods and Resources*, January 2010. FAO, IFAD, UNCTAD, World Bank.

³² The revised draft is slated to be examined by the FAO’s governing bodies in early 2011.

CHAPITRE 5

How to Move Forward?

How can civil societies make progress in this area? Faced with the dominant rhetoric on the mandatory growth of large-scale intensive farming to meet the coming agriculture and world food security³³ challenges, it is necessary harness a proactive approach in favor of other agricultural and natural resource management models that can be economically and socially effective.

Civil society in developing countries needs to be supported to continue to assert all of its rights and contribute to public policies. It is notably necessary to have a strong position on land and natural resource management policies that support approaches that are alternatives to the “sacrosanct” land registers and individual private property titles. Needs are extensive (building expertise and advocacy capacities, etc.) but the amount of latitude available differs from one context to another, notably in regards to access to the media and freedom of expression.

Civil society in developed countries has an important role to play in backing the initiatives of civil society in developing countries by strengthening them and relaying information on them. It also has a role in raising the awareness of the general public and advocating for changes in investor countries’ policies and companies’ practices.

Beyond “developed” countries, should we not also reflect on how one can involve civil society in emerging countries, actors in massive investments abroad?

While developed and developing States and international institutions take pleasure in voluntary regulation measures, civil society must be able to demand mandatory economic, social and environmental impact assessments and the establishment of watchdog institutions that can put pressure on States and investors. These institutions would monitor investments in regard to transaction transparency and respect for the rights of local populations. What is more, they could supervise impact assessments to ensure that they are conducted by independent bodies and include real consultation of local populations.

Civil society must also aim for longer-term targets, notably by encouraging international law to evolve in the direction of fairer and more effective regulation of land investments. Advocacy actions to promote a binding international justice system (notably on the most important points in the ICESCR³⁴) and encourage the emergence of shared values based on more equitable and more sustainable distribution of the resources generated are, with this aim, a priority for action. The legal tools for this exist but must be strengthened so that the objectives targeted can really be attained. ●

³³ It is said that there will be nine billion people to feed by 2050.

³⁴ International Covenant on Civil and Political Rights.

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This report was produced
with the financial support of the French
Development Agency (*Agence
Française de Développement* - AFD).



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