

Unravelling the 'Land Grab'

How to Protect the Livelihoods of the Poor?



Master Product for AMID 2009
**CIDIN, Radboud University Nijmegen/
Oxfam Novib, The Hague**

Written by Verie Aarts LL.M
Amsterdam, 30th of October 2009

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Acronyms and Abbreviations

AOPP	Association des Organisations des Producteurs Paysans
BP	Business Plan
CEN-SAD	Community of Sahel Saharan States
ECOWAS	Economic Community Of West African States
FAO	Food and Agriculture Organisation
FUNDP	Facultés Universitaires Notre-Dame de la Paix
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant of Social, Economic and Cultural Rights
IFAD	International Fund for Agricultural Development
IIFPRI	International Food Policy Research Institute
IGO	Inter-Governmental Organisation
IISD	International Institute for Sustainable Development
ILC	International Land Coalition
MCA	Millennium Challenge Account
MCC	Millennium Challenge Corporation
NGO	Non-Governmental Organisation
OdN	Office du Niger
OI	Oxfam International
ON	Oxfam Novib
PNIR	Projet Nationale de l'Infrastructure Rurale
RBA	Rights-Based Approach
SEXAGON	Syndicat des Exploitations Agricoles de l'Office du Niger
SRRF	Special Rapporteur on the Right to Food
SWF	Sovereign Wealth Fund
UEMOA	Union Economique et Monétaire Ouest Africaine
ULB	Université Libre de Bruxelles
WHH	Welt Hunger Hilfe

1. Introduction

1.1 Background

Over the past year there has been swiftly increasing international attention to a phenomenon in popular terms often referred to as 'land grabbing'. Since 2008 there has been a proliferation of both cases of so-called land grabs, and discussion on these cases. The media are ever more covering the topic.¹ At the same time, the international community is trying to grasp the significance of the phenomenon, holding seminars and setting out research.² Land grabbing is a broad term, which in the current debates refers to the large-scale acquisition of land in developing countries by (foreign) companies or governments. These acquisitions have the positive potential to inject investment in agriculture and rural areas in countries where these investments are highly necessary. In opposition, the media as well as the international community observe the deals with increasing apprehension about the real impact of these investments in land. This concerns the effects of the deals on development and food security in general, and on the livelihoods of the local population in particular.

The paradox between the need for investment in agriculture in developing countries on the one hand, and the potential negative consequences of these investments on development on the other, is holding back a clear understanding of the phenomenon. As IFAD notes, to date information and empirical research have been limited.³ In addition, most investments are still in its early stages so it is difficult to predict how these will work out. The actual benefits of the land deals are widely unknown, and only preliminary considerations are formulated on the potential adverse impact of the land grabbing phenomenon on poor rural people and communities. Nonetheless, many international organisations are pointing out the massive and fast character of land grabbing these days, which is said to include the significant evasion of land rights.⁴ In an effort to come to terms with the opportunity-threat incongruity, the international community highlights in particular that it is essential that deals for land acquisition are designed in a way that will reduce the threats and increase the opportunities for all parties involved.⁵

In line with this development, Oxfam Novib wants to come to grips with the issue – trying to understand the implications of the capital-rich countries and companies endeavouring to purchase or lease large tracts of agricultural land in resource-rich developing States.⁶ Some general questions that have come up in internal debates start even from the premises whether this is a good or a bad thing. As the paradox says, on the one hand capital injections in developing countries' agricultural sector are highly necessary. On the other hand, one could ask himself whether the purchase or long-term lease of land really qualifies

¹ Grain has kept an inventory of media releases on land grabs which date back to 2002 (and a lost article from 1989). This inventory today counts a total of 1187 articles. A spur in new coverage is found in May 2008. The peak is noticed from April 2009, and still lasts today. See www.farmlandgrab.org. Under a relatively narrower definition, the International Land Coalition has started an inventory in 2009, in which today some 387 articles are kept. For more information: <http://www.landcoalition.org/cpl-blog/?cat=149>.

² Significant seminars that were organised on the topic were the 3D Seminar 'Land Grab: a Human Rights Approach' held in Geneva 16 May 2009, see <http://www.3dthree.org/en/page.php?IDcat=-19&IDpage=51>; and the Development Policy Review Network (DPRN) Expert Seminar 'Commercial Pressures on Land' held in Utrecht on 8 July 2009. Important studies are the International Land Coalition (ILC) Global Initiative on Commercial Pressures on Land (CPL) and the Dutch IS Academy on Land Governance. For documents on the ILC Global Initiative studies see <http://www.landcoalition.org/cpl-blog/?cat=149>.

³ IFAD, 2009.

⁴E.g. Welt Hunger Hilfe, 2009 & ILC, 2009.

⁵ As also mentioned by Von Braun & Meinzen-Dick, 2009.

⁶ Also Oxfam International, a consortium of 13 like-minded organisations of which Oxfam Novib is a member, has recently decided to devote its attention to the land grab issue in international campaigning and lobbying.

as an agricultural investment or is rather a form of ‘neo-colonialism’ in which rich States rule the enjoyment of access to and utilisation of natural resources, whilst the developing countries itself are loosing out on the benefits of the outcomes in terms of production and the marketing of the commodities.

When analysing the phenomenon, several issues come up that are of great interest to the development debate. Land grabbing covers many links between land and commercial interests, which are related to agriculture (think of food, feed and fuel needs), extractive industries, industries or tourism.⁷ However, the most prominent debate in the media and the one the international organisations such as the FAO and the ILC point at is related to agricultural lands. In this debate, land grabbing in broad terms borders issues of food security as well as of access to natural resources.

1.2 Object, scope and methodology

These issues of food security and access to natural resources are important themes for Oxfam Novib. It upholds a ‘right to a sustainable rural livelihood’, which aims at achieving food security and greater access to natural resources for poor people.⁸ For Oxfam Novib the need to understand the land grab issue and its consequences is therefore directed at the effects on poor rural groups – more in specific furnished by their food (and income) security, and their access to productive resources.

As ON works from a rights-based approach, it is important to look at how the issue infringes upon rights of the people. It sees poverty in terms of incapacity of people. According to ON’s view poverty is thus always due to power imbalances. A right-based focus implies that for strategies to tackle the problems these vulnerable groups encounter, one has to look at the entitlements the people have, how these entitlements (rights) are infringed, as well as how people can claim them. This also means that on the other side of the spectrum there are actors (governments and increasingly also companies) that bare a certain responsibility and can be held accountable.

Henceforth, the main question for ON at this point is how it should approach the land grab debate in general and from a rights-base approach in particular. To assess this, this study looks at the effects of the land acquisition deals and whether negative consequences for vulnerable groups exist. To fully understand this, it is important to have examples from case studies. The International Land Coalition’s Global Initiative is fed by case studies from Africa and Asia. Oxfam Novib highly values this study, however, due to planning processes related to subsidy demands it cannot await the ILC deadline (that is postponed probably until November 2010) before drafting a strategy to work with the issue. For this reason this study builds on exploratory research.⁹

Even though the timeframe for this study is limited, ON wishes to take account of some cases that can justify its action and provide a first basis for the content of this action. Therefore, the objective of this study is to feed into Oxfam Novib’s future policy formation. The research question following ON’s need is:

⁷ Borras, 2009.

⁸ This right to a sustainable livelihood is one of the programmes Oxfam Novib works on. In the organisation’s terminology it is also referred to as ‘aim1’. Currently, the objective of this aim is that “people living in poverty will achieve food and income security as well as greater access to, protection of, and control over the natural resources on which they depend” (Oxfam Novib, 2008). Other aims ON works on are the right to education (aim2), rights in crisis (aim3), the right to social and political participation (aim4) and the right to identity (aim5).

⁹ This study aims at exploratory research as no real theory on the issue yet exists and the problem has not been clearly defined. More insights into and comprehension of the land grab issue is needed. The exploratory research draws on qualitative research with the goal to learn ‘what is going on’. This means that definitive conclusions can only be drawn with extreme caution. To distinguish the main concepts in this study, no earlier model is used but key insights from an RBA will be discerned to highlight the specific issues that are important for Oxfam Novib.

What is the relevance of the land grab issue for Oxfam Novib and how should it (consequently) approach the issue?

Given the several issues mentioned earlier, the research question has the following sub questions:

1. What is a land grab?
2. What is a rights-perspective?
3. How does a rights-perspective relate to the issue of land grabbing?
4. Where are land grabs taking place?
5. Who are the main actors involved in these land grabs?
6. What are the causes of these land grabs?
7. What are asserted consequences of the land grabs, both risks and opportunities?
8. What is the effect of land grabs on vulnerable groups?

The research question will be answered on the basis of academic literature, policy briefings from various NGOs and IGOs as well as research the FAO-IIED-IFAD has performed. Given the fact that the study is concerned with a human rights approach to the issue, it will further draw on a review of human rights legislation and a number of formal laws where needed. An original fieldwork in Mali provides a case from which to draw additional insights on the effects on grass roots level.¹⁰ One case study is obviously not enough to understand the land grab phenomenon thoroughly as it cannot be generalised, but since the research is exploratory it draws from a single experience in Mali to provide an understanding of what elements are important in approaching the issue. The qualitative case study in combination with literature can provide some general lessons to feed into future policy formation.

1.3 Plan of the study

First, the relevant theory is discussed in chapter 2, which introduces the key concepts and human rights that are important for the ON approach of land grabs. Chapter 3 delves into the content, scale and importance of the land grab debate. Chapter 4 discusses the Mali case. Building on the information of all these chapters, chapter 5 looks at the land grab from a rights-perspective and analyses what this means for Oxfam Novib. In the end the lessons from this example are used to feed the policy recommendations on a theoretical level.

¹⁰ Fieldwork methodology involved (i) semi-structured interviews with key informants (donors, government and NGO officials), and (ii) focus group discussions with farmers. It should be noted that fieldwork was limited by a tight timeframe. It is used to feed into policy recommendations to Oxfam Novib, but in itself it does not lead to specific policy recommendations for the institutions or organisations in Mali.

2. Key concepts and rights in the ‘land grab’ debate

2.1 The ‘land grab’ redefined

The increasing international attention to land grabbing over the past year is essentially about the fear that developing countries are losing out in the various deals directed at purchasing or leasing land. This is the red line that runs through the various media items devoted to the topic and it further underlies (although at many points implicit) many of the (calls for) research.¹¹ The media often refer to the various land-related investment deals as modern- or neo-colonialism. Whereas popular news items in ‘Der Spiegel’ and ‘The Economist’ are nuanced in their assessment of the phenomenon and are hoping the deals could create win-win situations for investors and receivers, they do mirror an apprehension that good news might be hard to find. ‘The Economist’ mentions that “(...) land deals will never help the poor as much as freer trade and stronger property rights”.¹²

In general, the international community is more prudent when it comes to denouncing the phenomenon. Where the media blatantly use the term ‘land grabbing’ or speak about ‘land grabs’, organisations such as the International Land Coalition (ILC), the International Institute for Sustainable Development (IISD) as well as the Special Rapporteur on the Right to Food (SRRF) respectively refer to ‘commercial pressures on land’, ‘(foreign) investment in land’ and ‘large-scale land acquisitions’.¹³ The term ‘land grabbing’ is unfortunate as it suggests illicit behaviour, whilst in reality the deals are completely legal.¹⁴ Since this study intends to remain objective and does not denote the phenomenon without knowing its consequences (whether positive or negative) it will rather refer to the phenomenon as ‘(large-scale) land acquisitions’, ‘investment deals’, or the like.

2.2 The rights-based approach & Oxfam Novib

An organisation like the World Bank regards large-scale land acquisitions in purely economic terms. If it creates economic opportunities for investors and provides windows of opportunity for economic growth in developing countries, this provides a ground for advocating the phenomenon – a so-called ‘win-win’.¹⁵ Yet, this notion forgets to take into account the impact of large-scale land acquisitions on the ground. In fact, in order to attain a total zero sum game, land acquisitions must create a win-win-win situation: for investors, for host States and for the local communities.¹⁶

Although economic growth is historically heralded as the way out of poverty and respectively the means to achieve development, over time this notion has come to be contested by many development agencies, both IGOs and NGOs. Development should be sustainable – also encompassing a social and environmental dimension. Particularly fostering this social notion, the development debate has progressed towards the inclusion of human values. These values are reflected by basic people’s rights, or rather human rights. Human rights and development are effectively complimentary as they both aim to promote well-

¹¹ For instance see the vast collection of news items on the GRAIN blog www.farmlandgrab.org, FAO-IFAD-IFAD, 2009 and the ILC Global Initiative through http://www.landcoalition.org/cpl-blog/wp-content/uploads/09_07_cpl_discussionpaper.pdf.

¹² Citation from ‘Cornering Foreign Fields: Land Deals in Africa and Asia’, *The Economist*, May 21 2009. Also see ‘The New Colonialism: Foreign Investors Snap Up African Farmland’, *Der Spiegel*, July 30 2009.

¹³ E.g. the ILC ‘Commercial Pressure on Land (CPL) blog <http://www.landcoalition.org/cpl-blog/>; IISD, 2009 & SRRF, 2009.

¹⁴ Looking at the dictionary meaning of land grabbing, it implies the ‘illicit’ acquisition or the ‘aggressive taking’ of land. However, in the current debate land grabbing not always entails an illegal act. Whereas the debate largely goes out to its adverse effects, attention is also paid to the positive side of land grabbing. Nonetheless, the media and some organisations still make use of the term.

¹⁵ Also see Daniel & Mittal, 2009.

¹⁶ ILC, for instance, is strongly advocating this. See ILC 2009a & 2009b.

being and freedom, based on the inherent dignity and equality of all people.¹⁷ Both human rights and human development are people-centred. This means that they share a concern for improving people's lives, but moreover uphold agency of all individuals. As a result, they are preoccupied not only with content but also with better processes that are participatory and as comprehensive as possible.

The fusion of human rights and development has provided an incentive for a particular approach in development programming and as a practical tool for implementation: the rights-based approach (RBA).¹⁸ In essence, the RBA is a conceptual framework for the process of development that is based on international human rights standards, which in effective terms is directed at the promotion and protection of human rights. This implies that the RBA is not involved with mere charity. Conversely, it helps people to claim what accrues to them. It is therefore highly involved with empowerment and has a strong focus on accountability as well as participation. According to the RBA, people should be able to participate in policy formulation and to hold accountable those who have a duty to act.¹⁹ This corresponds with obligations that are established by the international human rights law system. As Cornwall and Nyamu-Musembi state, "needs can be met out of charitable intentions, but rights are based on legal obligations".²⁰

The rationale behind the rights-based approach is simple: human rights conventions, which States have agreed to by consensus, are binding on States that have ratified them, and it is these commitments that help formulate objectives of development programmes.²¹ The importance of the RBA for one part lies in the emphasis it places on the accountability of policy-makers and other actors whose actions have an impact on the rights of people.²² On the other side of the spectrum, it acknowledges that people should be able to take care of their own lives and in essence have the ability to do this.

What inhibits many people in the world from doing so, according to the RBA is all related to power. The RBA seeks to analyse inequalities that lie at the heart of development issues, which in this approach is due to the world's unjust power distribution. Particularly for the non-governmental sector, the RBA is a continuation of the ongoing struggle to challenge power relations.²³ This seemingly is an obvious choice, as in the rights-based approach human rights are empowering the people and the powerless in particular. Strongly upholding people's agency, they are used to give a voice to the voiceless (but – as is important to emphasise – inherently do have the potential to act). As Uvin highlights, the RBA aims at processes of social change.²⁴ In this RBA "human rights are tools that crystallise the moral imagination and provide power in the political struggle".²⁵ They are lenses that frame social problems.

It is this social element that Oxfam (Novib as well as International) is concerned with. For Oxfam, a bundle of power is one dimension that is always present in poverty.²⁶ In its first Strategic Plan "Towards Global Equity" (2001-2006), Oxfam International (OI) states that "poverty is a state of powerlessness in which people are denied their human rights and the ability to control crucial aspects of their lives".²⁷ Poverty is a symptom of deeply rooted inequalities and unequal power relationships that are institutionalised through policies

¹⁷ As mentioned by the UNHCHR, 2006, p. 7.

¹⁸ In development cooperation language, it is commonly referred to as the rights-based approach. The UN often rather refers to the human rights-based approach or the rights-based approach to development. Other well-known organisations working with the RBA for instance are DfID and CARE.

¹⁹ UNHCHR, 2006, p. 15.

²⁰ Cornwall & Nyamu-Musembi, 2004, p. 1417.

²¹ As mentioned by Sarelin, 2004, p. 475.

²² Also see Cornwall & Nyamu-Musembi, 2004.

²³ Brouwer, 2005, p. 1.

²⁴ Uvin, 2004, p. 175-179.

²⁵ *Ibidem*, p. 176.

²⁶ Novib, 2002, p. 3.

²⁷ Oxfam International, 2000, p. ii.

and practices at levels of State, society and household.²⁸ People living in poverty have little or no control of their lives, but the importance of human agency implies that they want to gain control of this. People are the active subjects of their own development. Oxfam helps them to achieve this, with justice as a central approach. For Oxfam, the underlying purpose of the RBA therefore is to identify ways of translating the self-sustaining vicious cycle of poverty, disempowerment and conflict into a virtuous cycle in which all people, as rights holders, can demand accountability from duty bearers.

2.3 The ‘rights of development’

Despite the differences between the applicability of the RBA in various intervention strategies, the basis of the application of the approach is clear: human rights. These rights come from the set of international human rights treaties and the Universal Declaration of Human Rights (UDHR). The most basic human rights are captured in the UDHR and the International Bill of Rights, which encompasses the International Covenant for Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Despite their location in various treaties, “all human rights are universal, indivisible, interdependent and related”.²⁹ This – in common terms – ‘indivisibility of rights’ means that for the fulfilment of one human right other human rights have to be adhered to as well. They cannot be regarded in isolation. Furthermore, all human rights should be treated in a fair and equal manner.

Particularly the latter covenant is important in development cooperation, as economic and social progress is indispensable to poverty reduction. Brouwer states that the ICESCR can serve as a meeting ground between rights and needs.³⁰ The RBA entails that NGOs can no longer just deliver food to the poor or create a labour employment programme.³¹ They must attempt to improve capabilities associated with basic rights and fundamental freedoms. This means they must make the people conscious of their rights. Even though a society might have accepted socio-economic rights, such as food, housing, health, education or labour, as a right, nothing will happen if there is no one that claims these rights. This is the constant tension between right-holders and duty-bearers. If an NGO works with an RBA it is its duty to enable right-holders to claim their rights as well as to point duty-bearers to their obligations. Rights-holders can be all people but in terms of the RBA are the most vulnerable and marginalised in society. Duty-bearers are broadly defined: government, individuals, private companies, etc.³²

The fact that the RBA identifies duty-bearers highlights that someone has to make an effort in order for the rights to be attained. This is why development NGOs work from a ‘progressive realisations approach’ – as opposed to a ‘violations approach’ as human rights NGOs uphold. Of course this division of labour is never quite as strict as said here, but in general the divide between the human rights and the development community can be depicted as follows:

²⁸ Brouwer, 2005, p. 63.

²⁹ Vienna Declaration and Programme of Action, 2003.

³⁰ Brouwer, 2005, p. 10.

³¹ As follows from a speech given by Arjun Sengupta, UN Independent Expert on the Right to Development, cited in Brouwer, 2005.

³² States are the signatories to the human rights treaties and thus are the primary duty bearers. Yet, increasingly human rights are also applied with regard to internationally operating actors, such as transnational companies and international organizations.

Figure 2.1 NGO division of labour

Rights / Obligations	Type of NGO	Type of Approach
Civil & Political	Human Rights NGO	Violations Approach
Socio-Economic (& Cultural)	Development NGO	Progressive Realisations Approach

Source: own elaboration based on Brouwer, 2005.

Presupposing that development NGOs predominantly work on socio-economic rights as are profoundly enshrined in the ICESCR, it is important to get a clearer understanding of these ‘rights of development’ and their implications. A general right underlying all the further rights enshrined in the covenant is the right to self-determination, which includes the right for people to pursue economic, social and cultural goals and manage their own resources.³³ This also implies a negative right that states people cannot be deprived of its means of subsistence. Explanations of this right vary greatly, but the minimum goal is political, cultural and economic autonomy.³⁴

In this sense, the right to self-determination provides the basis of the other rights enshrined in the convention. One of the rights that are internationally very important is ‘the right to food’, which the FAO has operationalised into a concept of ‘food security’ the international community (including Oxfam Novib) appreciatively applies.³⁵ As the Committee of Economic, Social and Cultural Rights (CESCR) states, it is a fundamental right since it is “of crucial importance for the enjoyment of all rights”.³⁶ The right of food is realised when individuals or groups “have physical and economic access at all times to adequate food or means for its procurement”.³⁷

Every State party is to undertake steps to realise the ‘progressive realisation’ of all rights recognised in the ICESCR.³⁸ This acknowledges that some of the rights may be difficult to achieve in a short period of time and that States may be subject to resource constraints, but they are still required to act as best they can within their means. Furthermore, socio-economic human rights imposes three types of obligations on State parties: the duty to protect, to promote and to fulfil.³⁹ The duties to respect and protect are quite straightforward, referring to the States’ obligation to – respectively – refrain from measures that result in preventing existing access to adequate food and to take measures to ensure that enterprises or people do not deprive individuals of their access to adequate food.⁴⁰

The duty to fulfil entails both an obligation to facilitate and to provide. Taking the right to food as an example, the latter means that when people are unable to enjoy the right to food by the means available at their disposal, States have an obligation to provide that right directly. This obligation often gains importance when people are victims of natural or other disasters. The obligation to facilitate means that State parties “must pro-actively engage in activities that intend to strengthen people’s access to and utilisation of resources and means to ensure their livelihood, including food security”.⁴¹

³³ Article 1, ICESCR.

³⁴ For more information, see for example www.unpo.org.

³⁵ For more information, for instance see Oxfam Novib’s policy on sustainable rural livelihoods: Oxfam Novib, 2007.

³⁶ CESCR, 1999, para 1. The CESCR is the monitoring body of the ICESCR.

³⁷ *Ibidem*, para 6.

³⁸ Article 2, ICESCR.

³⁹ In opposition, civil and political rights impose on states only the duty to protect and to promote. Also see Brouwer, 2005, p. 8.

⁴⁰ Also see the definitions given by the CESCR, 1999, para 15.

⁴¹ *Ibidem*.

When looking at large-scale buying or leasing deals for agricultural land, particularly this latter element of the right to food can be significantly threatened. In June 2009, the Special Rapporteur on the Right to Food (SRRF) issued a publication on “large-scale land acquisitions and leases”, in which he states that States would be acting in violation of the right to food if deals to sell or lease land to investors would deprive the local populations from access to natural resources essential to their livelihoods.⁴² When negotiating deals States should further ensure that the purchases or leases will not result in food insecurity, for instance because food produced under the deal would be shipped off to the country of the investor or sold on international markets. There are more aspects of significance when assessing the impact of the land acquisition deals, but first it is important to understand what is the content of the international debate.

⁴² SRRF, 2009, p. 2. The SRRF has the mandate to, inter alia, identify emerging issue related to the right to food worldwide. He is appointed to stimulate an integrated and coordinated approach in the promotion and protection of the right to food. Also see www.srfood.org.

3. Large-scale land acquisitions as dubious development

Descriptions of the land acquisition phenomenon in the media bare with it a sense of importance with a lot of reservations. This has not remained unnoticed in the international community and the academic world. An ILC tracking of studies and media reports suggests that the pace of land-related investment deals is quickly progressing.⁴³ Between 15 and 20 million hectares of farm land may have been subject to transactions or planned deals in the past 2.5 years.⁴⁴ Only in five African countries, (foreign) investors have allocated almost 2.5 million hectares since 2004⁴⁵. Some countries, like Brazil, Pakistan and Turkey, are inviting investment. Conversely there are also signs of wariness, particularly amongst African governments. The debate in the international community so far has been leading to diverse questions. To what extent is this a new phenomenon? How should one regard these deals? Are they a bad thing – as the media largely imply – or could they also present opportunities for host countries? What are the drivers of this trend, and who is involved?

Although the media make it seem that the ‘land grab’ phenomenon is something new, the international community is increasingly aware of the fact that this is not the case. The ILC and the IISD note that land acquisitions have always taken place.⁴⁶ However, there are some aspects that are contributing to the international interest in the phenomenon and that are making it of significant debate. These refer to the size and scale of the acquisitions – sometimes the tracts of land involved in investments deals nowadays exceed 100,000ha –, the fact that it is driven by food and fuel security needs – which adds a food security component to the debate, as well as the fact that governments are actively participating in it, as direct buyers or sellers, through sovereign wealth funds (SWFs) or as facilitators.⁴⁷ Another import aspect is that in earlier years enterprises and countries were looking for commodities. Now the investors are still interested in the crops, but it is the land and water that is required for agriculture itself that is increasingly being commodified.⁴⁸

ILC Director Niasse notes that although the current phenomenon we are facing thus cannot be labelled as ‘new’, its magnitude and dynamics are bringing to light the unpreparedness of the international community, and particularly of recipient countries, to deal with it.⁴⁹ The debate is heating up around what the impact of land acquisitions is and how countries should respond to it. Reactions by the international community so far signal both positive as negative aspects of the current rush for land.

As Jacques Diouf, Director General of the UN Food and Agriculture Organisation (FAO) warns, such investments risk being perceived as neo-colonialism.⁵⁰ For years the FAO has campaigned for more foreign investment in the global agricultural sector. Yet, Diouf is advising against straightforward land purchases. These could trigger political reactions in developing countries that are already struggling to feed their own populations. He wants to

⁴³ ILC, 2009, p. 5. For the tracking see www.landcoalition.org/cpl-blog.

⁴⁴ As mentioned by the SRRF, 2009.

⁴⁵ Inventory available in *Land grab or development opportunity? Agricultural investment and international land deals in Africa*. FAO, IIED and IFAD (2009)

⁴⁶ ILC, 2009 & IISD, 2009.

⁴⁷ Food and fuel are not the only drivers of the land acquisitions, but they are among the most important. Other causes are carbon sequestration as related to REDD initiatives, mineral extraction and tourism. For more information see ILC, 2009, which speaks of ‘the ten myths’ of large-scale land acquisitions. With regard to SWFs it has to be noted that these are an unusual type of investment funds. They are government-owned but have a market-oriented management (separate from the government). National governments create them for macro-economic purposes, funded by foreign exchange assets. Their investment strategies include investing in foreign financial assets. For more information see www.swfinstitute.org.

⁴⁸ IISD, 2009, p. 7.

⁴⁹ ILC-Oxfam Novib-CDS, 2009.

⁵⁰ The National, *UN Casts Eye on Farmland Investment*, September 7 2008

avoid provocation of a negative response in the developing world, which might cause the investment to dry up. “Foreign direct investment in agriculture is the only way we are going to eradicate global poverty”, he states.⁵¹ In a similar approach, IFAD President Nwanze points out that there is a potential for a win-win situation. Whereas the deals risk depriving local poor farmers from their access to farmland, when they take into account the interests of both parties – the investor and the recipient country – they help increase agricultural production, provide jobs, boost export and bring in new technologies.⁵² Rich nations buying farmland in less developed countries to improve their own food supplies should also contribute to improving agriculture overseas.

In a first effort to tackle some of the main concerns around the land acquisitions, the FAO, IIED and IFAD have jointly conducted a study that provides an analysis of the main drivers, countries involved, characteristics of the deals and the consequences these deals potentially have (here further referred to as the FAO study).⁵³ The study draws some significant preliminary conclusions based on five quantitative and two qualitative studies in Sub-Saharan Africa. To know, the quantitative information comes from Ethiopia, Sudan, Mali, Ghana and Madagascar. The qualitative input came from Tanzania and Mozambique.

As follows from the FAO study, the drivers are indeed food and fuel security concerns on the part of the investors. This is related to a lack of arable land and water for agriculture in the home countries, bottlenecks in storage and distribution as well as an expansion of biofuel production. Food demand is rising because of urbanisation rates and changing diets. Furthermore, the global demand for biofuels is increasing, which makes government consumption targets a driving force of land acquisitions as well. Expectations are that supplies of fossil fuels will diminish. Rising commodity prices lead to expectations that rates of return in agriculture will rise. This is related mainly to high (and possibly even further rising) food prices. Another aspect of these food prices is that countries want to enter into direct production.⁵⁴ Governments seem to have lost faith in the market.⁵⁵ This has pushed countries short in land and water to find alternative means of producing food.

Consequently, the investors are (from) food-importing countries that have land and water constraints but are rich in capital, such as the Gulf States. Other investors are countries with large populations and food security concerns such as China, South Korea and India, in an effort to secure their food supplies. The land acquisitions take place in the form of purchases or long-term leases (with terms of 50 to 99 years) in developing countries where production costs are much lower and where land and water are more abundant.

For the host countries, incentives exist through renewed interest in agriculture as a source of employment, growth and revenue as well as out of food security concerns.⁵⁶ Foreign investment is expected to bring new technologies and infrastructure development. The host countries also see the investments as a means for diversification from their single commodity dependence. As follows from the FAO study, States show a predominant tendency towards policy reforms to improve attractiveness to investment.⁵⁷ According to media reports, significant recipient countries are Sudan, Ethiopia, Mali, Madagascar, Mozambique, Pakistan, Cambodia and the Ukraine. Figure 3.1 (overleaf) shows a map of the main land acquisition trends in the world.

⁵¹ Wall Street Journal, *UN Food Chief Warns on Buying Farms*, September 20, 2008.

⁵² Reuters, UN Food Agencies See ‘Win-Win’ Farmland Deals, April 19, 2009.

⁵³ FAO-IIED-IFAD, 2009.

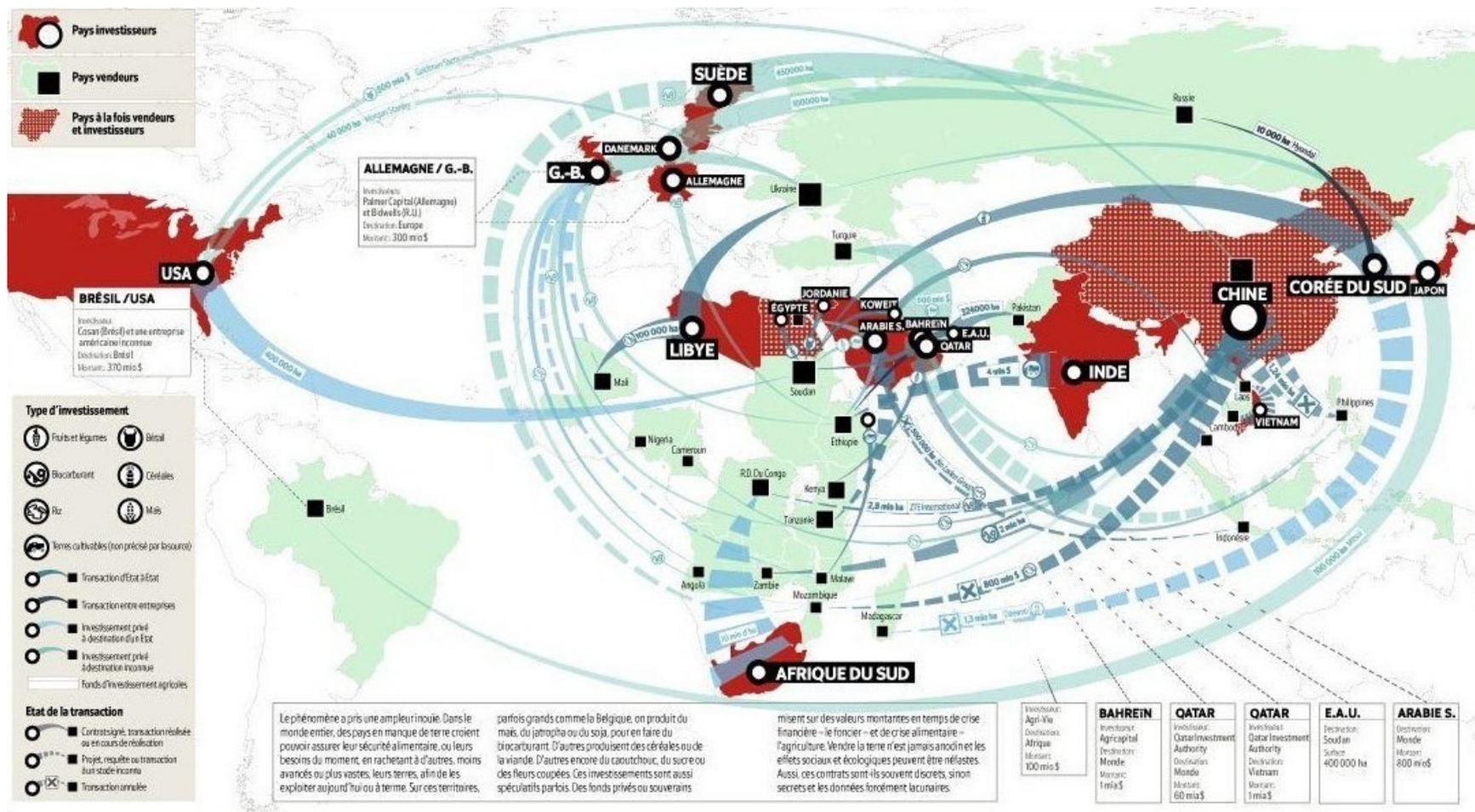
⁵⁴ Reportedly, this is the case with Lonrho Agriculture in Angola and expected to happen in Zimbabwe and the Niger Delta in Mali. See Lonrho PLC, Substantial Progress at Lonrho Agriculture, January 13, 2009 through <http://farmlandgrab.org/2683>.

⁵⁵ Also see GRAIN, 2008, p. 9 & IFPRI, 2009.

⁵⁶ FAO-IIED-IFAD, 2009, pp. 58-59.

⁵⁷ *Ibidem*.

Figure 3.1 Land deals in the world



Source: ILC 2009.

Besides the prevailing trends in drivers and countries involved the FAO study identifies a set of common characteristics in the deals. These have important implications for the impact of the phenomenon. In the first place, direct economic benefits of the land deals are hardly noticeable. In many deals official land fees do not seem to play a role.⁵⁸ Often they are not charged or at relatively low cost. The same goes for water fees: in most of the cases water use, which is indispensable for agricultural production, is for free. In order to have some benefits from the deals, host governments may also decide upon certain contractual conditions, as is the case for instance in Mali where the investing country has to develop irrigation infrastructure. However, it is questionable to what extent this comes to the direct benefit of the host country as long as the investor itself is using the land.

In the long term economic benefits largely depend on the way in which the deals have links with the local economy (local markets, producers and employees). The choice of production models therefore may have major consequences for the distribution of the deal's benefits. Possible models are contract farming or outgrower schemes. These can be alternatives to direct acquisition of land, but also conditions to the purchase or lease contracts. Another important issue is whether production from the plots is sold on the domestic market or only goes directly to the host State. These aspects have the FAO et al. conclude that the phenomenon may have implications for the future world of agriculture.⁵⁹ There might be possible changes in the balance between large-scale and small-scale agriculture, in the importance of export-led agriculture, in the role of agribusiness and in the degree of vertical integration in production, distribution and processing.

As a second characteristic the case studies show an obvious lack of transparency and civil society involvement.⁶⁰ Parties in the deals are mostly governments and private companies, sometimes even accompanied by administrative investment promotion agencies that promote the purchase or lease deals and seek for the most favourable administrative conditions to enable the deals. Although it is often stated that deals take place on idle or unused land, in practice this seems to be untrue. Almost always there are people affected in the deals.⁶¹ As the FAO et al. say, the extent and depth of engagement with directly affected people in the deals is a key area of concern.⁶²

In the worst scenario, large-scale land acquisitions for local people can result in them losing out on access to the resources on which they build their livelihoods. In the first place this can force them away from their productive means for food and income security. Second – and often unrecognised –, it disables the poor from some traditional forms of land use for subsistence purposes such as grazing animals and gathering fuelwood or medicinal plants. In assessments of the issue these uses are undervalued because they are not marketed, but they can provide valuable livelihood sources to the poor. As IFPRI states “large-scale land acquisitions may further jeopardise the welfare of the poor by depriving them of the safety-net function that this type of land and water use fulfils”.⁶³ Third – and almost always forgotten –, land in developing countries tends to have a significant social function. In Africa in particular, families have been living on the same hereditary lands for decades or even longer. It is the place where they have grown up and want to see their children grow up. This is something of value that cannot be easily replaced by money, resettlement strategies or any other type of compensation.

⁵⁸ *Ibidem*, p. 78.

⁵⁹ *Ibidem*, p. 15.

⁶⁰ FAO-IIED-IFAD, 2009, pp. 68-69.

⁶¹ This is also one of the ten myths ILC points out. Empirical studies note that all usable land is very likely to be occupied or used by local communities. With regard to ‘unusable’ land, in all possibility pastoralists that use the land for non-arable purposes are disregarded. See ILC, 2009. The FAO et al. research might add to this that existing claims often go unrecognised since local land users are marginalised from formal land rights and access to law. FAO-IIED-IFAD, 2009, pp. 5-6.

⁶² FAO-IIED-IFAD, 2009, pp. 70-74.

⁶³ IFPRI, 2009.

The consequences of land acquisitions on the grassroots level are difficult to assess without taking into account the local context and the terms and conditions of the deals. Out of this consideration the next chapter will unravel the case of large-scale land acquisitions in Mali in order to assess the impact of the deals on local land users, particularly women. The FAO study provides the main insights on the content of the contracts. This is complemented by original fieldwork among grassroots communities and producer organisations.

4. The case of Mali: the need for investment in a tenure insecure context

4.1 Land acquisitions in a Malian context

One of the countries the FAO et al. included in their quantitative study is Mali. Here the FAO study reports a total of thirteen documented investment deals, including a single acquisition of a 100,000ha irrigation project by a Libyan SWF that is coordinated by Mali-based company Malibya, a project funded by regional community UEMOA (of which Mali is a member), a lease deal for biofuels with company Agromali/Petrotech SA and a large-scale irrigation project run by the United States. Whether or not these fall under the documented projects the FAO et al. makes notice of, from information obtained in Mali other known projects are land leases by regional communities CEN-SAD as well as ECOWAS, a biofuel project from Groupe Tomota and deals for sugarcane plantations of the Chinese company Sukala SA (who already has 6,000ha but wishes to double this plot), and the South African enterprise Transvaal Sugar Beperk (which envisages some 14,000ha).

This large range of projects all takes place within one particular region in Mali, which is known as the Office du Niger (OdN) (figure 4.1). In effect, the OdN is one of the oldest and most extended irrigated perimeters of West-Africa, constructed alongside the banks of the Niger river in the inner Niger river Delta. ‘Office du Niger’ is both the name of the geographical region and the administrative institution that has the governmental mandate to manage this region – although with regard to the latter it has to be noted that the Office has always maintained a certain independence from the government, which leads certain people to qualify it as “a state within a state”.⁶⁴ Inspired by a study of French irrigation specialist Belime French colonists created the Office du Niger in 1932 under the aim of becoming the

Figure 4.1 The Office du Niger



Source: Office du Niger, 2009.

⁶⁴ As mentioned in Coulibaly, 2006, p. 9.

principal supplier of cotton for the French colonial textile industries, the ‘attic’ for rice provision in West-Africa in order to fight famine in the region, and a place for technical and social innovations.⁶⁵ The objective was to irrigate one million hectares of land within fifty years of time (about 450,000ha for rice and 510,000ha for cotton).

At the time of its creation, the Office had to populate its lands, create villages and teach the farmers how to use new cultivation methods. As Coulibaly phrases, the OdN was held to adopt ‘politics of seduction’ to get farmers to come to the region and to stay there.⁶⁶ In the meantime, the French colonists and the State started to realise the first irrigation schemes. This irrigation works encountered many financial difficulties and at the time of independence in 1960 only 45,000ha of land were irrigated, of which only 82% was cultivated. This lasted until the early 1980s, when the government made count of the situation in the OdN and: the irrigated surface was still below 50,000ha, the irrigation infrastructure was in a bad state, cotton production had been a disaster and was abandoned in 1970, and the social and economic situation of the population was bad. With the help of many donors, such as the World Bank, France and the Netherlands, the Office du Niger initiated the improvement of the infrastructure and the development of new irrigation. In addition, the OdN implemented several projects to improve living conditions for the farmers, including the intensification of rice production.

As the Office du Niger points out, the region evolved from a “situation of underexploited irrigated lands with a relative disaffection of agricultural producers for irrigated lands to a situation of increasing intensification and a strong demand for irrigated lands”.⁶⁷ Today, this demand is regulated by the 1996 *Décret de Gérance*, a Stewardship act for the region. Land in the first place belongs to the State who trusts the management of the land to the Office du Niger. The people who exploit the land, chiefly family exploitations (*exploitations familiales*), can apply for lands at the OdN. This institution attributes parcels of a surface that is a function of the size of the family, the number of active workers and the level of equipment (animals etc.) to the family chef (*homme-travailleur*), who is the leader of the family exploitation.⁶⁸ There are various contracts through which the OdN grants land to land holders. Figure 4.2 (overleaf) gives an overview of these forms.

A piece of land to live on and plots for production (currently cultivation composed of rice, market gardening and often tree cultivation and rain fed cultures such as millet and sorgho) constitutes the capital of the family exploitations’ lands. Rice cultivation is the principal economic activity and is performed by the entire family. Market gardening, on the other hand, is managed individually by the women and sometimes the children of the family. It has an important function in providing financial revenues to send the children to school as well as to complete the family diets, particularly for small children.

Currently Mali’s challenge is to increase the production in the Office du Niger in order to meet food needs of its population as well as to produce commodities for the rest of West-Africa. In its development model Mali distinguishes the family exploitation as the fundament of its economy, which – according to official statistics – make up for 80% of the population.⁶⁹ As the enabling legislation of agricultural orientation (LOA) says, “the agricultural development policy has as ultimate goal to promote sustainable, modern and competitive agriculture, depending primarily on the recognised agricultural family exploitations (...)”.⁷⁰ As follows, the economic and social wellbeing of the population in rural and peri-urban areas is one of the general objectives to achieve this goal.

⁶⁵ *Ibidem*. Also see the OdN website: <http://www.office-du-niger.org.ml>.

⁶⁶ Coulibaly, 2006, p. 13.

⁶⁷ As mentioned on <http://www.office-du-niger.org.ml>.

⁶⁸ Coulibaly & Belières, 2004. The current calculation of the plot sizes per family exploitation is as follows: 1ha per male worker, 1ha per female worker plus 1ha per 3 mouths to feed. In case the family owns draught animals, 3ha per animal is added to the count.

⁶⁹ IMF, 2008.

⁷⁰ Article 3, LOA.

Figure 4.2 Types of land holdings in the Office du Niger

Type of land holding	Content	Duration	Transferability	Expropriation?
<i>Contrat annuel d'exploitation</i> (CEA)	Annual exploitation contract by which the ON grants an irrigated parcel for rice cultivation to a physical or legal person. The entitled has to exploit its parcel regularly and take care of its maintenance.	One year. It can be tacitly renewed.	No.	- In case of urgency (impairment of fertility and land productivity) the ON can shorten the duration of use of amenities, facilities and waterworks and run these in the place of the entitled. - The non-compliance relating to the maintenance of the hydraulic system and the non-payment of the annual water fee shall be punished by the termination of the CEA.
<i>Agricole exploitation permit</i> (PEA)	Permit for agricultural exploitation the ON mandatorily grants to producers with a CEA.	Gives a usufruct right to the entitled for undetermined duration.	The rights of the entitled can be transferred to the spouse or a descendant that has participated in the exploitation of the land.	- Subject to compliance of the contractual obligations, land granted under the PEA cannot be withdrawn from the entitled. - The ON can take land back for irrigation works. In this case it has to compensate the entitled for the realisations it has yet made on the plot.
<i>Bail asphytétique</i>	Lease contract the ON can grant on non-irrigated lands for purposes for the installation of enterprises and every other activity that is related to agro industry. The entitled commits to the development of irrigation structures on its lands.	50 years. It can be renewed upon explicit agreement of both parties.	No.	The ON cannot end the lease before the expiration of the term, unless agreed by the parties involved, the public interest, or a legal decision. If the lease is terminated for public purposes, compensation of damages is granted to the lessee pursuant to the legislation.
<i>Bail ordinaire</i>	Lease contract for non-irrigated lands the ON can grant to natural or legal persons for the installation of projects or enterprises related to rice cultivation or any other type of agricultural, forestry or pastoral activity.	30 years. It can be renewed indefinitely upon agreement by both parties.	No.	In case of non-payment of the annual water fee.
<i>Bail d'habitation</i>	The entitled of a CEA or PEA can receive a lease contract for residential purposes in one of the villages or agglomerations situated in the ON.	It gives a usufruct right to the entitled for indefinite duration.	It can be transferred to those having legal or customary rights.	The eviction of the entitled from its farmland does not lead to the termination of the residential lease. If lands are taken away for public purposes the effectuated investments on the terrain are compensated.

Source: own elaboration.

4.2 Characteristics of the land deals in Mali

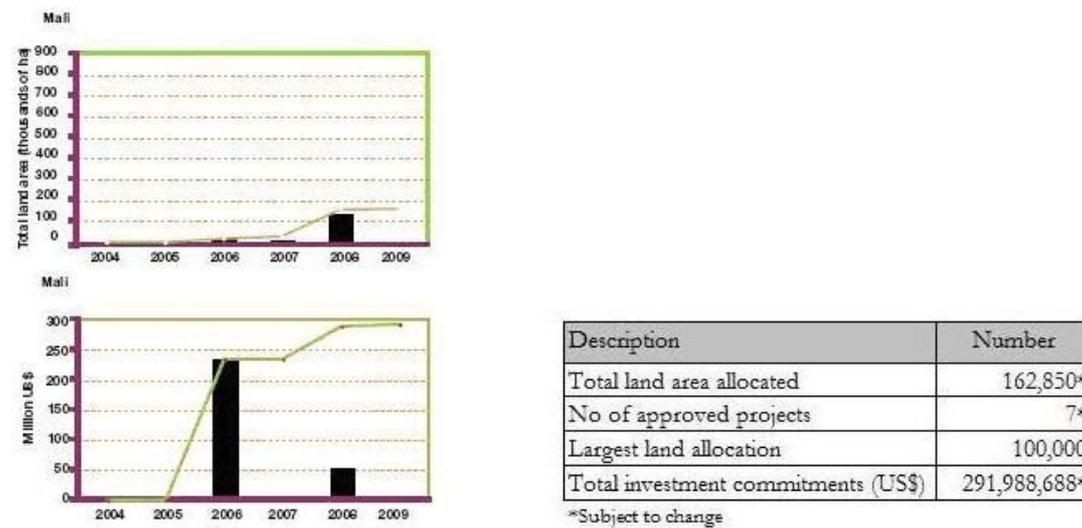
However, at the same time the goal of the agricultural policy introduces another objective to “modernise family agriculture and develop agro-industry”.⁷¹ It goes without saying that these two objectives seem hardly reconcilable. In effect, it leads to a tension that is markedly showing in the Office du Niger. The insufficiency of irrigated land constitutes one of the key barriers to the pursuit of economic growth. Land for irrigation is largely available, but the investment capacity of the Malian State significantly limits the pace of land preparation for agriculture. In order to attract financial means to lead the region to fulfil its agricultural potential, the OdN is currently promoting private investment in the area.⁷² Apparently this strategy is carrying its fruits. Since some years the region that is traditionally inhabited and cultivated by family exploitations shows an influx of entrepreneurial investments, as have been identified at the beginning of this chapter (see figure 4.1 for its size and scale). Up till

⁷¹ Article 10, LOA.

⁷² Its website already illustrates this strategy, with headlines saying ‘why invest in the Office du Niger?’

now a total land area of around 160,000ha has been allocated for total investment commitments of 290 million US\$ (Figure 4.3).⁷³

Figure 4.3 Land allocations in Mali (ha. and US\$)



Source: FAO-IIED-IFAD, 2009.

As the legal framework for land holdings in the region is fixed all large investors commonly get leases for 30-50 years (see figure 4.2). Other aspects of the deal might vary according to the contracts between the investor and Mali (which are called *contrat-plans*). As follows from the FAO-IIED-IFAD study and original fieldwork, the deals are enacted by various investors, aim at a variety of commodities, and have different contractual content. This means that the effects of the large-scale land acquisitions vary from case to case.

When looking at the social dimension of the land grab, effects on the local population are broader than can be assessed in this time bound study. They range from short-term to long-term effects, which can be direct or indirect. For instance, a short-term direct effect can be expropriation. A crowding out of smallholders from markets due to rising prices is an example of a potential long-term indirect effect. This study cannot provide information as regards the latter, as this is too difficult to measure in a short timeframe (and given the fact that the earliest land allocations date from 2004 will probably not yet be known either).

Evidently, expropriation as an effect is one of the consequences easiest to distinguish. Malian legislation provides for compensation measures every time a land holder gets expropriated. As mentioned before, in principle land in Mali is owned by the State. This also counts for the lands in the OdN: when people are expelled for purposes of the development of irrigation works on the lands where they are based, the State (and not the Office du Niger) takes charge of the compensation of their loss of land.⁷⁴ Regardless of these theoretical aspects, in reality it is mostly the investor who pays for compensation.

The aspects of the land allocation compensation regime in Mali are depicted in figure 4.4. This is a general overview – according to the FAO study the terms and conditions for superseding local land rights in practice vary among projects within the country.⁷⁵ In general, compensation applies to all types of rights to land, and is given in cash or in kind. Yet, legal requirements for compensation are limited to loss of ownership, whilst in the Office du

⁷³ These numbers refer to the allocations in the entire of Mali, however, given the OdN private investment strategy and the fact that ten investment deals in the OdN are known, it can be upheld that the larger share of the figures relate to the OdN case.

⁷⁴ Article 6, Décret de Gérance.

⁷⁵ FAO-IIED-IFAD, 2009, p. 94.

Niger, the farmers do not have ownership rights to land. This leaves open the possibility for compensation of improvements and harvests. Furthermore, the expelled population has to negotiate this compensation as compliance only relates to cases of ownership. One might ask himself how this is dealt with in practice when it is not the State, but the investor who – although on not on paper – bares the final responsibility for compensation.

Figure 4.4 Land allocation compensation regime in Mali

Assessment criteria	Regime
For private ownership	Yes
For other legally registered rights	Yes
Paid by	Government in theory, investor in practice
Rates	Loss of improvement and harvests, also loss of ownership
In-kind compensation allowed?	Yes
Compliance?	Yes, if ownership. Otherwise dependant on negotiation
Deemed sufficient to restore livelihoods?	Yes for ownership, not for other rights

Source: FAO-IIED-IFAD, 2009.

Figure 4.4 portrays that compensation for land allocation in Mali is not sufficient to restore livelihoods. Cash compensation may not be enough to provide access to alternative land, particularly where land markets are underdeveloped. In addition, the FAO reports that shortcomings in implementation may also undermine the ability of compensation rates to restore affected livelihoods.⁷⁶ In this case in kind compensation might provide a good alternative solution, but can also be rather limited in cases where demographic pressures are increasing.

It are these kinds of issues that leave the international community concerned about the “massive evasion of land rights” that comes with the current surge of land acquisitions.⁷⁷ The FAO study illustrates that population density in the various countries in their sample has increased substantially, and these figures increase significantly if related to land suitable for cultivation.⁷⁸ This means that the availability of land should not be taken for granted, even in Africa. If smallholders get expelled from their plots, what land can they really get in return? And if so, what kind of land is this? To say the least, the plots they access in cases of compensation should be of the same quality as the ones they cultivated before. If returns on new plots are lower, this should provide a basis for additional in cash or in kind (extra land or extra inputs to increase productivity) compensation.

4.3 *Pression foncière*: investment in scarce lands

In the Office du Niger the issue of availability of lands takes on an importance of its own. Regardless of the compensation issue, access to land already leads to so much discussion that it is a question in itself whether the promotion of investment in the area through private land allocations is the way to go. The developments in the area since its take-off in the 1930s have resulted in a significant ‘*pression foncière*’ (pressure on land). When farmers first came to the region, land was abundant and the irrigation of the lands gave them incentives for prosperous production. The surface attributed to every *colon* (settler) was calculated based on a parcel of 6ha per ‘*travailleur-homme*’ (every male between 15 and 55 years old).⁷⁹ All the measures taken to have the settlers to stay in the region and to attract other farmers have had favourable effects on the population in the region.

⁷⁶ *Ibidem*.

⁷⁷ ILC, 2009a.

⁷⁸ FAO-IIED-IFAD, 2009, pp. 60-61.

⁷⁹ Coulibaly, 2002, p. 18.

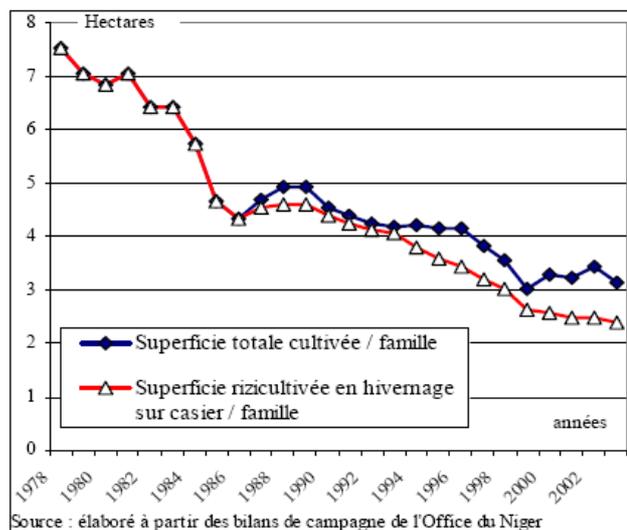
Yet, over the past decades the total number of farmers in the Office du Niger has augmented progressively. The families have grown and separated due to regular successions or in some cases to internal conflict.⁸⁰ Also there still is a significant amount of in-migration, particularly from State officials or civil servants who are looking to invest in land with high productivity. As follows from data from the OdN, in 2006 some 25,000 family exploitations were living on (and from) small parcels with an average size of 3.7ha (see figure 4.5).⁸¹ However, of these families 56% had access to irrigated parcels of less than 3ha, which is considered the minimal parcel size a family exploitation can live from. This is a remarkable reduction in comparison to the 6ha the OdN in earlier days granted to every male worker in the region. The still-lasting growth and separation of families leads to the fact that this number is even subject to constant progression. Figure 4.6 shows a rapid decline in irrigated surfaces the family exploitation cultivates.

Figure 4.5 The Office du Niger in numbers

Description	Amount
Irrigated surface	80,000ha
Number of family exploitations	25,000
Average size of family exploitation	3.7ha
Percentage of exploitations with less than 3ha	56%
Average number of people living in a family exploitation	13
Population living in the region	About 400,000 people

Source: Study from ULB, FUNDP and l'Université du Mande Bukari, 2006.

Figure 4.6 Evolution of cultivated area per landholder family



Source: Belières et al., 2009.

A study by Belières et al., remarks that this reduction in plot size is not compensated by an increase in yields and the progression of cultivation intensity.⁸² Therefore, under the effects of demographic growth and separation as well as migration in the region the availability of irrigated land is becoming a major constraint and leads to competition for access to land and – through these lands – water. This has led the family exploitation to develop alternative

⁸⁰ Défi Sud, Mali – Office du Niger: Le Mouvement Paysan peut-il faire reculer l'Agro business? 30 November 2008.

⁸¹ There is also a significant number of landless workers in the OdN, as well as people holding lands that are not irrigated. These populations are not accounted for in the official numbers of the Office du Niger.

⁸² Belières et al, 2009.

strategies. They rent lands elsewhere (although officially this is not allowed), diversify their production from rice into more market gardening and other products – something which has been interdicted for many years as the irrigation of the OdN was initially destined to rice production for alimentary self-sufficiency.⁸³

This alimentary independence yet remains the main goal of the Office du Niger. As today only 80,000ha of the envisaged 1,000,000ha has been irrigated (see figure 4.4) and the family exploitations do not have the means to irrigate lands themselves, the OdN is building in strategies to attract landholdings that can provide for irrigation. Increasingly attention is going out to (often migratory) family exploitations that have significant financial means and private investors. This means that for the family exploitation it is getting harder to attain irrigated lands. Although the application procedure is open for them to apply for land, in practice these demands are scarcely fulfilled. New irrigation destined to family exploitations is rare and civil servants, tradesmen or new (more wealthy) exploitations often confiscate the non-irrigated lands.⁸⁴ On the grounds of the legal contracts available, small farmers cannot demand for non-irrigated lands in the region to start with. This possibility is only left open to producers who have the adequate financial means to develop irrigation works. To make things worse, investment credit to irrigate lands themselves is inaccessible to the family exploitations.

In addition to this, expropriation is part of the Stewardship act in the OdN. When the exploitations do not pay their annual water fee the Décret de Gérance provides for a ground to evict them from their lands.⁸⁵ As Coulibaly & Belières mention, the impact of this measure accentuates the poverty in the region because the eviction of people in difficulty – which in practice are the smallest family exploitations – from their lands takes away their key mean of production (in effect, there is a large discussion going on about the securitisation of access to land in the region to take away adverse effects on the poor families. For more information see box 4.1).⁸⁶ Some members of the regional syndicate SEXAGON accordingly believe that the Office du Niger in reality is only interested in the farmers for their financial contribution in the form of the annual water fee instead of their well-being.⁸⁷

It is in this context of large tenure insecurity that the influx of large-scale land acquisitions is taking place. Perhaps this is logical, as the OdN does this to resolve the issue of lack of financial means but need for irrigation.⁸⁸ Within its view of alimentary independence in the country and the region, private investors may well irrigate lands to produce commodities for the national market, however, the other side of the coin is that the investors also have an interest when opting for land elsewhere, which might either be to make profit (which is largely the case with private companies) or to provide for their own food or fuel security (in case of governments). This means that the host country should make good contracts providing for adequate financial compensation to later at least buy the

⁸³ Coulibaly & Belières, 2004.

⁸⁴ As mentioned by Dave in *Défi Sud, Mali – Office du Niger: Le Mouvement Paysan peut-il faire reculer l'Agro business?* 30 November 2008. In addition, it should be noted that the farmers are sceptical as regards the land allocation procedure the OdN applies. They mention that even if irrigated lands are available, these are given to exploitations that belong to or have good ties with the administration (*'accomplices de l'Etat'*). Although the OdN takes in applications for land from the family exploitations in which the exact size of the family as well as its means of production are specified, the families in practice receive no land or a lot less land than the common calculation would indicate (Exploitants agricoles de la zone de Macina, personal communication, 3 October 2009). Of course the OdN denies this practice, but to this it should be added that one of the civil servants who is responsible for the allocation of lands has mentioned (on personal title) that he does not believe that the family exploitations can provide alimentary independence to the country – as is the ultimate goal of the Office du Niger (for personal reasons this person remains anonymous).

⁸⁵ Décret de Gérance, articles 28, 38 & 59.

⁸⁶ Coulibaly & Belières, 2004, p. 11.

⁸⁷ Exploitants agricoles du KM26, personal communication, 2 October 2009.

⁸⁸ Articles 45 and 55 of the Décret de Gérance stipulate that investors are required to develop irrigation structures as a condition for their lease.

cultivated commodities from , or which incorporate that the host country gets a fair share of the production.

Box 4.1 Baux or titres? The land securitisation discussion in the Office du Niger

In order to avoid the expropriation of lands for family exploitations, Coulibaly & Belière (2004, p. 11) point at the possibility of giving people in financial difficulty lands for rent. In this way they can meet their water fee payment deadline without risking to lose their main mean of production. This option is not part of the Stewardship act of the Office du Niger, but one notes the informal practice in some well-structured farmers' organisations.

There actually is a large discussion in the region on the securitisation of access to land for the family exploitation. In this discussion, the parties involved do not see land rents as most feasible. Attention is principally focussed on two types of contracts that involve either leases (baux) or titles (titres). Producer organisations strongly advocate the first, whilst large donors as the World Bank and the Millennium Challenge Corporation (MCC) are experimenting with projects that implement the latter – respectively in the Projet National de l'Infrastructure Rurale (PNIR) in Koumouna and a project of the Millennium Challenge Account (MCA) in Alatona.

The preference for titles comes from a World Bank legacy that upholds that these provide the most tenure security. They transfer a right of individual property that is protected by most national constitutions. It is this sense of tenure security that gives peasants incentives to invest in land improvement and conservation (Deininger, 2003). Furthermore, land titles can be used as collateral for financial credit. In opposition, the producers fear that land titles will give the family exploitations too much opportunity to sell their lands in case of financial distress. Lease contracts inhibit this possibility, as they do not allow transfer without the consent of the lender. Moreover, baux still constitute a real right that can represent a bank guarantee.

Against this backdrop it is striking to see that in the cases in Mali that where the FAO looked at more in-depth in Mali, no upfront payment was charged.⁸⁹ In two projects a fee of US\$ 6 to 12 per hectare per year is charged. In the draft convention of the deal with the UEMOA no reference is made to fees. Some contracts, such as the Petrotech/AgroMali draft lease contract, require the investor to pay an annual water fee.

This illustrates that the lease contracts do not always respect the legal obligations the *Décret de Gérance* stimulates. The Office du Niger also indicates that it is not the regional administration that closes these deals.⁹⁰ In reality, Ministries or even the President (in the Malibya deal) sign the contracts of the large-scale land acquisitions. When doing this in many of the cases the national governing bodies do not consult the OdN, which leads to deals that do not take into account the reality on the ground.⁹¹ This is the case in the Malibya deal, in which neither the local population nor the Office du Niger have been consulted.⁹²

⁸⁹ FAO-IIED-IFAD, 2009.

⁹⁰ Dembele, personal communication, 28 September 2009.

⁹¹ Exploitants agricoles de la zone de Macina, personal communication, 3 October 2009

⁹² It has to be noted that the Malibya deal is not a land acquisition deal like no other in Mali. Although the Malian government as well as Malibya have declared the alimentary independence of Mali as its aim, it is often described as rather a political move. La Via Campesina points out that according to FAO data, in 2005 Libya has imported 177,000 tons of rice for an amount of US\$ 62 billion. They feel that, just as other Arab countries, Libya is seeking for ways to get out of its food dependant situation. See Via Campesina, *La Libye s'Accapare des Terres Rizicoles Maliennes*, 17 August 2009 and [http://www.viacampesina.org/main_en/-](http://www.viacampesina.org/main_en/)

Regardless of what is the prime motive behind this deal and how much it will benefit Mali as a whole in terms of food production or other economic activity (for instance providing employment for the local population – although in this stage this can be debated as Malibya has contracted Chinese company CGC to undertake all necessary construction works for the irrigation structure), adverse effects are already noted as regards the livelihoods of the local population. Some 150 families will be displaced because the 100,000ha plot as well as a 40km long irrigation canal runs through existing villages.⁹³ Of these families only 58 have received compensation. Malibya nor the government has held a social and environmental impact study, whilst the irrigation works have been started in October 2008.

Other effects are the obstruction of animal routes and the destruction of cemeteries and fruit and vegetable gardens. The latter has significant implications for the women. As mentioned before, market gardening belongs to their livelihoods activities. It is the main mean of income to provide for schooling for the children and it complements the family diet. This type of economic activity is significantly threatened in Kolongo (one of the villages bordering the Malibya plot), as CGC has constructed a bridge that conflicts with the gardens in the village. This makes the situation for women in the region particularly vulnerable as their access to land is already delicate (see box 4.2).

Box 4.2 The issue of women's access to land

Access to land is principally always given to the male heads of the household. In the Office du Niger the men demand land at the administrative authority. In regions where customary law regulates land tenure, the men can appeal for land at the Chef du Village (the village leader). Primarily the lands are devoted to rice cultivation, in which the entire family is involved.

Whatever land is not used for rice production goes to the women, who use these lands for market gardening. It is the man who decides which piece of land their wives (polygamy is allowed up till four wives in Mali) get. Following this practice, the women report that they mostly get access to the poorest lands of the family plot. This means that in order for the lands to be productive, they have to put in many agricultural inputs.

Effectively their devotion to make the lands productive does not even help them that much. The men are eager to take these lands back for the family rice production and give the women another piece of poor land in return. This practice results in bad harvests of the market garden products that have a very important function in the households, particularly with regard to schooling for the children.

[index.php?option=com_content&task=view&id=785&Itemid=1](#). Also see Le Républicain, *Terres Rizicoles de l'Office du Niger : Grogne Paysanne Contre l'Occupation Libyenne*, 4 September 2009.

⁹³ As indicated in a Via Campesina fieldwork with the Prefecture, l'Office du Niger, the municipalities, the relevant population and others, summarised in Via Campesina, *La Libye s'Accapare des Terres Rizicoles Maliennes*, 17 August 2009 or more elaborate in http://www.viacampesina.org/main_en/index.php?option=com_content&task=view&id=785&Itemid=1.

5. Underpinnings from an RBA and the (ir)relevance of the ‘land grab’ debate

5.1 Large-scale land acquisition effects from a rights-perspective

5.1.1 Principles of compensation and participation

The example from Mali already illustrates that land acquisitions have (potentially) adverse effects for local populations, even if the overall intentions of the deals involved are aimed at catering for certain development needs in the host country. Exactly this is of interest for Oxfam Novib. How to address issues that large parts of the population are missing out on? The poor have certain entitlements the State must fulfil. So, in order to address the issues arising from large-scale land acquisitions it is important to consider which rights are infringed with the deals that take place these days. For this reason, ON attributes great importance to the UN Special Rapporteur on the Right to Food (SRRF) (as was briefly mentioned in chapter 2).⁹⁴ In this document the SRRF formulates a set of guidelines (or principles) large-scale land purchase or lease deals have to follow in order to be in accordance with international human rights law.⁹⁵ As a consequence of the indivisibility of rights, the SRRF statement covers various international human rights – all of which are important in assessing the ‘righteousness’ of the deals.

The first right concerns issues of expropriation or relocation that may come along with the land acquisitions. States but also investors (companies, project developers and others involved in land allocations that lead to forced resettlement) should respect the right to adequate housing, as laid down in article 11(1) ICESCR. There are many aspects to this right, but important in the light of this study is that it stipulates that States must refrain from, and protect against, forced evictions from homes as well as land.⁹⁶ This also applies to development-linked evictions, which include evictions planned and conducted under the pretext of serving the public good, such as infrastructure projects (e.g. dams), land acquisitions (referring to urban renewal) and land-use programmes (including for agricultural purposes).⁹⁷ So even if large-scale land acquisitions are undertaken for the public good, they are subject to scrutiny. They can only be carried out under exceptional circumstances and States should provide effective remedies such as full and fair compensation and rehabilitation.

Furthermore, whenever a project affects the lands of the local population the principle of free, prior and informed consent (FPIC) determines that States have an obligation to consult the local population in order to obtain their free, prior and informed consent (article 32(2) UN Declaration of the rights of indigenous peoples). For the population this implies a positive right to participate in decisions that affect their lands and use of lands. This use cannot be changed without prior consultation.⁹⁸ Whereas the FPIC is primarily aimed at indigenous peoples, in its guidelines on land acquisitions the SRRF also mentions the principle with regard to a broader term of local populations. With regard to the Mali case, although not for all lease deals data are available, it is clear that in the Office du Niger not all land acquisitions comply with these rights. As follows from chapter 4, neither

⁹⁴ For a complete description of the SRRF mandate, see <http://www.srfood.org/index.php/en/special-rapporteur>.

⁹⁵ As his name already suggests, the SRRF works on the right to food worldwide. His mandate allows him to identify emerging issues related to this right to food and to work in close cooperation with all States, IGOs, NGOs and other relevant actors to promote the effective realisation of the right to food for all.

⁹⁶ Here we refer to States as they bear the principle obligation for applying human rights. However, as stipulated in chapter 2 this does not absolve other parties, such as transnational and other corporations, of all responsibility.

⁹⁷ As defined by the CESCR, 1997.

⁹⁸ As also mentioned by the SRRF, 2009, p. 12.

the government nor the investor has consulted the local population prior to the closing of the deal. In addition, out of the 150 families that will be forced to displace only 58 have received compensation. Another salient detail is that the authorities not even notified the family exploitations at the time the construction works took off, despite the fact that these practice ruined the traditional market gardening plots the women used to cultivate.

5.1.2 People-centred development: the right to food and access to productive resources

In effect, the latter aspects of depriving people of their access to natural resources indispensable to their livelihoods is strongly regulated by two other international human rights. The SRRF mentions that, overall, “States would be acting in violation of the human right to food if, by leasing or selling land to investors (whether domestic or foreign), they were depriving the local populations from access to productive resources indispensable to their livelihoods”.⁹⁹ With this statement the SRRF links the right to food to the right to self-determination. In fact, as the CESCR has also defined the right to food is realised when every person has access to adequate food or *means for its procurement* (also see 2.2). This is aided by the right to self-determination entailing a negative right that people may not be deprived of their means of subsistence, which to an important extent are natural resources (but can also be labour).

In Africa this right goes even further. Article 21 of the Banjul Charter stipulates that “All peoples shall freely dispose of their wealth and natural resources.¹⁰⁰ This right shall be exercised in the exclusive interest of the people. In no case shall a people be deprived of it” (sub 1). “States parties to the present Charter shall undertake to eliminate all forms of foreign economic exploitation particularly that practiced by international monopolies so as to enable their peoples to fully benefit from the advantages derived from their national resources” (sub 5). This imposes an obligation on States to protect individuals from being deprived of their access to natural resources. States must particularly inhibit foreign exploitations from threatening of this access.

It has to be noted that in the Mali case in the Office du Niger the right to food is already threatened due to the ever increasing pressure on land. As the investors can only get access to non-irrigated lands, this will not directly aggravate this situation. However, the legal system in the OdN does not provide the possibility for local family exploitations to get access to non-irrigated lands either (see figure 4.1). What happens is that they see their demands for land in the OdN being denied, whilst foreign investors and well-off national exploitations are getting long-term lease contracts on dry land that can actually also give the small farmers a possibility for food production in the form of sorgho and millet. In conversations with the producers in the Office du Niger they mention that their food availability is getting less and less.¹⁰¹ Although this is not directly related to the incoming enterprises but rather to the already existing pressure on land, it has to be taken into account that there is an enormous tension with large-scale investors starting their business in situations where food security as well as access to land and productive resources is already low.

Furthermore, States should make sure that deals will not result in food insecurity. Concerning the latter it is important to note that the deals in Mali involve various commodities, ranging from food to cash crops. For instance the CEN-SAD, UEMOA and Malibya land leases are aimed at large-scale rice production. Other projected projects involve

⁹⁹ SRRF, 2009, p. 2.

¹⁰⁰ In order for treaties to be applicable to States, the latter have to ratify the them. Mali has ratified all the treaties mentioned in this study. Furthermore, the ICESCR has been ratified by almost all countries in the world. The same counts for the Banjul charter in Africa.

¹⁰¹ Exploitants agricoles de la zone de Macina, personal communication, 3 October 2009 & Exploitants agricoles du KM26, personal communication, 2 October 2009.

the production of sugar cane or yatropha for biofuel production.¹⁰² In the first place, when negotiating these deals the host States should make sure that the production involved will not be shipped off directly to the investor's country or sold on the international market. They should get fair prices for the products or (the opportunity to buy) a share of the production itself.¹⁰³ Secondly, cash crops or crops for biofuels should not make place for food crops in countries where food security is already delicate. With regard to fuel crops this has an extra aspect as some crops are used for both food and biofuels. Obviously in food insecure situations States should thoroughly consider whether or not this is a good production opportunity, as the increased demand for such food crops can lead to price rises.

In the OdN the latter does not pose any problems (even if there is biofuel production, yatropha is not a food crop). On the other hand, the interest in sugar cane leads the family exploitations in the region to question the development model of the Malian government.¹⁰⁴ Whereas the official objective of the Office du Niger is to provide alimentary independence in Mali and even outside its borders, cash crops will not help much to achieve this goal. Some farmer organisations such as SEXAGON feel that Mali is aiming at intensifying agro-industry – a process that could come to the detriment of the local poor.

Looking at this issue from a human rights perspective, the State should have transparent processes and enable the participation of the population in decisions that affect their development. The right to development stipulates that States have a duty (and a right) to formulate national development policies – including the right to engage in economic affairs – but this should aim at the improvement of the well-being of the entire population and all individuals on the basis of their participation in development and in the fair distribution of the resulting benefits.¹⁰⁵ By virtue of this right, “all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realised”.¹⁰⁶ These transparency and participation processes also count for the land deals that are now increasingly taking place.

5.1.3 The legal sphere of land tenure systems

With regard to the land acquisitions two other rights are very important: water and land rights. These rights are not part of international human rights law. Nonetheless, they are linked to several human rights. Land rights are the backbone of land tenure systems – the legal and institutional regime under which land is held, managed used and transacted. These rights include ownership and a range of other land holding and use rights (such as usufruct, grazing rights and servitudes), which can be held by individuals, groups or States.¹⁰⁷ This can be based on national legislation, customary laws or combinations of both. As Cotula says, in much of rural Africa this combination of legal regimes often exist over the same territory, which results in “overlapping rights, contradictory rules and competing authorities” – a situation he identifies as ‘legal pluralism’.¹⁰⁸

Water rights are legal entitlements for the use of water resources. They are concerned with the removal of water from the natural environment or its use in that environment. The exercise of these rights often depends on infrastructure for abstraction and transportation, such as canals or wells. Therefore, water rights are ruled by legal instruments that enable individuals to abstract water that is governed by authorities (e.g. permits or licences).

¹⁰² It is not sure whether the plans for yatropha production are still pending. According to some external sources (most of) these projects have been cancelled since the fall of the oil prices.

¹⁰³ All this, evidently, is all part of the contractual arrangements. As this study did not have access to the contracts, apart from the information the FAO study gave at this level the status of these determinants could not be checked for the Mali case.

¹⁰⁴ Exploitations agricoles du km26, personal communication, 1 October 2009.

¹⁰⁵ Article 2 (2)(3), Declaration on the Right to Development. Also see SRRF, 2009, p. 12.

¹⁰⁶ Article 1, Declaration on the Right to Development.

¹⁰⁷ For more information see Hodgson, 2004.

¹⁰⁸ Cotula, 2006, pp. 7 & 12-13.

Hodgson acknowledges that it is widely accepted that these rights constitute property rights, regardless of the fact that they are created under administrative law.¹⁰⁹ Just as land rights, water rights may be based on customary law rather than domestic legislation.¹¹⁰

Land rights are linked to the human right to property (recognised in the UDHR, several regional human rights treaties and most national constitutions). The fact that land rights are linked to a right to property implies that these cannot be suddenly infringed – even when formal legal framework does not provide for this negation – and expropriation therefore entails payment of compensation.¹¹¹ Secondly, water rights are linked to the human right to water, which originates from article 11 and 12, ICESCR. The CESCR has clarified this right as entailing “everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses”.¹¹²

Just as the right to food, this right is subject to progressive realisation (to the maximum of available resources): States must take measures to progressively ensure access to water for all. The measures extend from regulation to provision. Although speaking about personal and domestic uses, the Committee “notes the importance of ensuring sustainable access to water resources for agriculture to realise the right to adequate food”.¹¹³ “Attention should be given to ensuring that disadvantaged and marginalised farmers, including women farmers, have equitable access to water and water management systems, including sustainable rain harvesting and irrigation technology. Taking note of the duty in article 1, paragraph 2, of the Covenant, which provides that a people may not ‘be deprived of its means of subsistence’, States parties should ensure that there is adequate access to water for subsistence farming and for securing the livelihoods of indigenous peoples”. Also Cotula mentions that both land and water rights are instrumental to food production and, therefore, to the progressive realisation of the right to food.¹¹⁴ For food production they cannot be regarded separately, as for agriculture the land is useless without water and vice versa.

5.2 Fighting large-scale land acquisitions: treatment of symptoms?

5.2.1 Securing tenure as a wider debate

It is clear that the international human rights framework gives many leads to tackle the current large-scale land acquisition phenomenon. Figure 5.1 (overleaf) gives an overview of all these rights and their applicability with regard to the land acquisitions issue: the content of the rights, the positive rights they entail (the obliged action), the negative rights involved (the obliged inaction) as well as the obligation for States that evolve from the rights.¹¹⁵ The Mali case shows that to an important extent the State nor investors respect human rights. Chapter 4 already distinguished many social effects, of which the most salient are the displacement of people (even without prior notification let alone their consent) and the loss of natural resources that form an indispensable basis of their livelihoods, particularly for the women in Kolongo.

¹⁰⁹ Hodgson, 2004.

¹¹⁰ For agricultural uses both water and land is required. This leads to a water and land rights interface (for example this of cases of irrigation). Hodgson has scoped the entire legal framework that can exist around land and water rights. For more information see Hodgson, 2004.

¹¹¹ This can be illustrated by an example Cotula addresses. In the Tanzanian case *Attorney General v Akonaay, Lobar and Another* ([1995] TLR 80), the Tanzanian Court of Appeal held that although customary land rights do not amount to ownership, they are real property protected by the Constitution. Therefore, their expropriation entails payment of compensation. See Cotula, 2006, p. 8.

¹¹² CESCR, 2003, para. 2.

¹¹³ CESCR, 1999, para 7.

¹¹⁴ Cotula, 2006, p. 9.

¹¹⁵ As mentioned in chapter 2, the primary obligation that evolves from human rights is with the State and thus the table is built on this premises. Yet, it is important to be aware of the fact that increasingly human rights are also applied with regard to internationally operating actors, such as transnational enterprises, IGOs or NGOs, or certain project developers.

Table 5.1 Human rights framework applicable to large-scale land acquisitions

International human right	Location	Content	Positive right*	Negative right*	Obligation for states
Right to food	Art. 11 (2) ICESCR	The right to food is realised when every man, woman and child has physical and economic access at all times to adequate food or means for its procurement	Everyone has a right to adequate food or means for its procurement	States should refrain from measures that result in preventing existing access to adequate food	Progressive realisation; states should take measures to ensure that enterprises, states or people do not deprive individuals of their access to adequate food; states must pro-actively engage in activities that intend to strengthen people's access to and utilisation of resources and means to ensure their livelihood, including food security
Right to self-determination	Art. 1 ICESCR; art. 21 Banjul Charter	The right for people to pursue economic, social and cultural goals by freely disposing of their wealth and natural resources	-	People may not be deprived of their means of subsistence	State must protect people under their jurisdiction from being deprived of their access to productive resources
Right to adequate housing	Art. 11(1) ICESCR	Component of the right to an adequate standard of living. This right (amongst others) protects people from forced evictions	Everyone has a right to adequate housing	Prohibits forced eviction without effective remedies and fair compensation	States should refrain from, and protect against, forced evictions from home(s) and land; in case forced evictions are inevitable states should provide effective remedies and fair compensation
Principle of free prior and informed consent	Art. 32 UN Declaration on the right of indigenous peoples	FPIC means the consensus/consent of indigenous peoples of any project affecting their lands or territories and other resources, determined in accordance with their customary laws and practices	Local populations have the right to participate in decisions affecting their land and other resources	No people's use of land can be changed without prior consultation	States need to consult the local population prior to undertaking projects affecting lands or territories and other resources
Right to development	Declaration on the right to development (art. 1); art. 22 Banjul Charter	Group right, not a personal right	Right of States to elaborate development policies; right of local populations to participate in development	-	-
Right to property	Art. 17 UDHR; art. 14 Banjul Charter	Every person has the right to own property	Everyone has a right to own property	No one shall be arbitrarily deprived of his property	States cannot arbitrarily deprive people of their property
Right to water	Art. 11 & 12 ICESCR	Entails everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses	Everyone has a right to sufficient, safe, acceptable, physically accessible and affordable water for domestic uses	-	Progressive realisation; states should ensure that there is adequate access to water for subsistence farming

* There is considerable criticism on the distinction between positive and negative rights. International human rights treaty bodies list both types of rights, but do not identify them as such. In general terms positive rights are often associated with second and third generation rights, such as here the right to food, to housing, to water, to self-determination and to development. It should be taken into account that the 'positive rights' of these rights are subject to progressive realisation and thus are not directly available but progressively realised over time.

Source: own elaboration.

This tenure insecurity is an important consequence that is related with the land acquisition phenomenon in cases where people are subject to being evicted from their lands. When looking at the Mali case, this is certainly a feasible risk. However as was mentioned earlier, this situation is even more delicate given the fact that people have insecure land tenure already. The plots per family exploitation have decreased progressively over the past years (figure 4.6), and pressure on lands is still on the rise due to natural demographic growth as well as in-ward migration to the OdN. In the first place this is problematic for farmers. Rice growing comes to be no longer sufficient to generate the income needed to satisfy family members and thus for food security subsistence farming is no longer the principle solution. This leads heads of household to diversify their activities, mainly in the direction of performing services (threshing, crafts, collecting wood, etc.), in which there is already a high level of competition. Furthermore, the women in the families undertake market-gardening activities to supplement household income.

However, as also Belières et al. mention, these options are proving to be inadequate to solve the problem.¹¹⁶ In order to preserve the viability of family farms and the gains that have been made, the problem of land availability must now be tackled. Dry lands are available outside the zones destined for irrigation development (the zone of the Office du Niger), but not near the region where the traditional OdN farmers have been settled for the past five decades. The main problem is not tenure security as such, but access to new irrigated plots. It seems that when land tenure is moved out of customary spheres access to land is becoming more problematic than before. In fact, for the tenure situation to become difficult this does not even require the legal pluralism Cotula speaks of.

This counts for the situation in the OdN in Mali and therefore by no means is necessarily representative of other contexts. Yet, it is commonly understood that access to land in many African and some South-East Asian and Latin American countries is poorly arranged, particularly for local communities.¹¹⁷ This does not mean that the land tenure issue refers merely to discussions on what type of ownership is the best way to secure access to lands for the local peoples (as, following box 4.1, is part of the land access discussion in Mali). Central questions are what type of farming should be promoted, and what are the views concerning these types of farming and their access to land in the future.

5.2.2 Agricultural modernisation: and increasing trend

In many countries in West-Africa, for instance, policy debates show an increasing trend to contrast commercially-oriented forms of agriculture with 'traditional' forms of family farming. In effect, this is also what is happening in the OdN at the moment. The Malian government seems to be split between a development model with the family exploitations as its backbone at the one hand, and the increasing interest in becoming an agro-industrial force on the other. Whereas the LOA is putting the farmers at the heart of Mali's agricultural policy, at the same time it also envisages "the modernisation of the family agriculture and the agricultural enterprise in order to promote the emergence of an agro-industrial sector that is structured, competitive and integrated in the regional economy".¹¹⁸

This dualist model is reflected in policy trends in Africa since the 1980s. Liberalisation in Africa (just as happened earlier in Latin-America) and the consequent withdrawal of national governments resulting from liberalisation evolved in the emergence of large-scale private companies active in the agricultural sector. Today, the trend is further buttressed by international donor agencies, which support the private sector while also focussing efforts on combating poverty through various mitigation programmes.¹¹⁹ These tendencies exacerbate the dualism in rural policies as well as divergence between different

¹¹⁶ Belières et al., 2002.

¹¹⁷ See Cotula, 2004; statements from ILC, 2009 as well as country cases presented at the DPRN Expert Seminar in Utrecht in July this year.

¹¹⁸ Article 3, LOA.

¹¹⁹ Belières et al., 2002.

kinds of farmers. State support to farmers has been gradually declining, which has further effects on the perceptions of the farmers who see the emergence of agribusiness as a challenge. Accordingly, there is a growing split between a small number of modern and market-oriented farms, and a large mass of rural dwellers who are economically marginalised.¹²⁰

Discussions as to what form of farming system should be advocated now might seem old-fashioned, but are still relevant. Belières et al. highlight that some development programmes are now concerned with improving the overall structure of the farming industry.¹²¹ They pose some essential questions that reflect considerations on what type of agricultural model should be preferred – the modern agribusiness model or the model of ‘traditional’ family farms: “is the development of ‘modern and efficient’ farming enterprises a real solution to existing needs? Is the priority in Africa today simply one of increasing agricultural production? Does not agriculture also have an important role to play in the management of natural resources and the preservation of employment? For what will become of more marginal farms and the people who make a living from them in the absence of alternative occupations, given that in 2000 sixty per cent of Africa’s active population – 195 million people (Losch, 2002) – were still engaged in agriculture?”¹²²

In effect, findings from their case studies in Senegal, Mali, Burkina Faso and Benin demonstrate that in three of the four cases agricultural productivity per person is higher in the case of small family farms than for larger ones. Family farming systems have a competitive advantage in adaptive capacity and economic effectiveness. In opposition, some participants in the agricultural modernisation debate argue that family farms constraint economic growth as they have difficulty producing surpluses that are able to meet national food security needs, let alone produce crops for export. Belières et al. further mention that obstacles are compounded in case of irrigated agriculture, as the funding of irrigation works and their maintenance is constrained in terms of collective management by farmers. Given these circumstances it is then not surprising that States are looking to attract private investment in agriculture.

5.3 Oxfam Novib’s approach: the ‘land grab’ phenomenon and wider development issues

This brings the land acquisition issue back into focus. We have seen that the issue is context-specific (country politics) and its effects should be measured on different levels. Furthermore, opportunities and risks are both there and in order to create win-win situations many thorough assessment of these two sides of the spectrum should be made. This gets even more complicated when, as the ILC puts it, we want to create win-win-win situations – i.e. for the investor, the host country as well as for the local community involved.¹²³ The latter has important dilemmas in itself already: there are risks of expropriation or loss of access to natural resources, but gains can also be found in the creation of labour opportunities.

When looking at these issues from an Oxfam Novib perspective, the question is what social effects we want to bring to a close. Strictly referring to the Mali case, it is obvious that the Malibya deal violates all aspects that could with common sense be held to account for ‘socially responsible investment’ – with strong emphasis on the social responsibility catering for the social good.¹²⁴ Furthermore, the sugar cane projects form a threat to the water availability in the region, so these initiatives should also be subject to close scrutiny.

¹²⁰ Losch, 2002. Also see Belières et al., 2002.

¹²¹ Belières et al., 2002, p. 6.

¹²² *Ibidem*, p. 2.

¹²³ ILC, 2009a.

¹²⁴ Socially responsible investing describes investment strategies that maximise both financial return as the social good. Environmental protection and promotion of human rights are two significant aspects of this investment practice.

The rights-perspective shows great opportunity for earmarking the adverse effects of land acquisition deals in the form of human rights violations. This perspective leads to a number of keywords. Looking at paragraph 5.1 the most important ones are participation, access to productive resources and people-centred development. These all play an essential role for Oxfam Novib. The overall development model the organisation upholds is people-centred: it believes in people's entitlements and human agency in gaining these entitlements and using it for the better. People should be able to participate in their own development. Furthermore, Oxfam Novib's aim1 programme focuses on access to productive resources as the basis of people's sustainable livelihoods.

Yet, when looking at these key aspects there is still one question that has to be tackled, and that is the one of accountability. Who is accountable? If people claim their entitlements, it should be clear for them where they can bring this claim – in other words, who are the duty-bearers. In addition, these duty-bearers should take on their responsibility. When we approach this from the experiences put forward in the Mali case it appears that this is not always the case. However, it can be questioned whether the OdN in its position of catering for the right-holders in the region while being overruled by the Malian Government that has an entirely different agenda, is not put checkmate. Moreover, although the Malian Government seems to succumb to external political and diplomatic pressure, it claims to always have Mali's best interest at heart (what other option to fulfil the dire need for agricultural investment?).

Whereas the RBA is an opportune lens to approach the land grab from, when looking at the issue of accountability it appears unable to cross from the one side of people's entitlements to the opposite side of States' (or companies') obligations. The human rights system does not provide smooth access for people to make claims to their States or other government bodies. They are left over to the formal legal system in their own country. In Mali, the farmers already stated that this also is a tough road to follow. The tribunals in their view are linked to the State, and the State is not having the best interests of the farmers at heart (which again shows how deeply the pressure on land and of agricultural modernisation is affecting farmer's confidence in the State). This touches upon the fact that the RBA is perfect tool for distinguishing the ingredients for what would be 'a perfect society' in which the poor local communities enjoy the necessary safeguards to live a decent life. However, to put these safeguards in practice a great deal of awareness-raising and negotiation power is needed, both on grassroots and on State level. This is what Oxfam Novib intends to enable by working with three different overall strategies: direct poverty alleviation, society-building as well as lobby and advocacy. The question now is whether 'land grabbing' should get a role in this.

For the situation in Mali, the core of the problem lies not in the land acquisitions per se, but rather in the issue of agricultural modernisation through promotion of agribusiness and private investment in combination with the crisis in the land tenure system. As one of the farmers in the Office du Niger has said: "we need to take action on the shortage of land for family exploitations. This is the biggest problem. The issue of large-scale commercial interest in land is incidental to this land shortage, albeit important."¹²⁵ If people had strong property rights in which also the access to sufficient land for women were adequately regulated, expropriation and a loss of productive resources would not come about so easily. In addition, farmers are also more prone to investment in the productivity of the land if they feel secure about their tenure situation, as Belières et al. illustrate.¹²⁶ Although this study cannot generalise from just one case study, similar issues are the heart of rural development problems in at least West-Africa.¹²⁷

These issues call for a need to examine the process of restructuring that is affecting African systems. For Oxfam Novib, reflecting on the restructuring process would mean a

¹²⁵ Epxloitants agricoles de la zone de Macina, personal communication, 3 October 2009.

¹²⁶ Belières et al., 2002.

¹²⁷ See *ibidem*, particularly with regard to Senegal, Benin and Burkina Faso; and Cotula, 2004.

different way of looking at things. From its mission statement it focuses on the vulnerable groups in society, which with regard to its work on sustainable livelihoods are smallholders and other (more vulnerable) groups such as landless rural workers.¹²⁸ However, the question of agricultural modernisation would mean that these groups need different types of protection than is given in by their neglected (and possibly even disappearing) position in society. Their tenure insecure situations are a consequence of this 'neglect', but can also already enable an easy undermining of their 'rights' (in the sense of human rights, not legal rights) of access to productive resources, of which for smallholders land is the main asset.

¹²⁸ Oxfam Novib, 2008.

6. Conclusion and recommendations

The previous chapter has shaken up the initial understanding of the importance of the 'land grab' debate. Whereas the scale and content of the phenomenon justifies the large attention it gets in the international community, there are larger issues bordering, perhaps even underlying, the current boom in land acquisitions in the world's poorest countries. These now run the danger to be overlooked in the 'land grab hype'. So now let us get back to where we started. This one question is keeping Oxfam Novib busy: what is the relevance of the land grab issue for Oxfam Novib and how should it (consequently) approach the issue?

Knowledge from earlier research complemented with the Mali case study already illustrates that adverse effects from large-scale land acquisition for local populations are very likely to come about, even if the overall intentions of the deals involved are aimed at catering for certain development needs in the host country. Exactly this is of interest for Oxfam Novib. How to address issues that large parts of the population are missing out on? The poor have certain entitlements the State must fulfil. So, in order to address the issues arising from large-scale land acquisitions it is important to consider which rights are infringed with the deals that occur these days. The RBA thus is an opportune lens to approach the land grab from, highlighting three keywords that are of crucial importance to people's livelihoods: participation, access to natural resources and people-centred development.

Looking at its mandate these are important aspects Oxfam Novib should address. People's loss of access to their productive resources (in this case land and water) and the resulting loss of food security are key elements of its sustainable livelihoods work. From this perspective it is imperative that Oxfam Novib works on consolidating poor people's access to land, and fights deals that violate human rights. Yet, it is important that Oxfam Novib sees the land grab issue as an issue related to the short term. From a long term perspective the 'land grab' proves to be an effect of larger issues that are of crucial importance to the development debate – particularly in rural Africa. Two developments, that are intrinsically related, arise from the Mali case: the modernisation of agriculture and tenure insecurity. These are effects of demographic growth as well as increasing food, feed, fuel demand (which to large extent in itself is also related to population growth), but also of the development models important actors (large multilateral and bilateral donors, governments and sometimes even development organisations) adhere to.

With regard to these larger issues, various strategies are possible. We can choose to first stop the tendency of agricultural modernisation, secure land tenure for the poor, try to find solutions for the food, feed, fuel demand or even the population growth (depending on what causal relations exist between the three, but this extends the purposes and possibilities of this research). Or we can accept all these developments take place and look at how we can protect the vulnerable people from falling (even) deep(er) in poverty. If we look at what happen a long time ago in Western Europe and the United States, we see that there is not much left of sustainable livelihoods in the form of subsistence farming. Therefore, what is key now is to be more inventive within the process of modernisation: make sure the farmers are not left out of these discussions, that with whatever changes are taking place their land tenure is adequately regulated, and that large international actors, whether States, companies or influential organisations do not exert pressure to override the rights of the poor and vulnerable regardless of the comprehensive models that are being developed.

From these considerations the following recommendations are distilled:

In the short term,

- Oxfam Novib should fight against human rights violations on the poor resulting from large-scale land acquisitions.

- In its programme work on sustainable livelihoods Oxfam Novib should be aware of the increasing land allocation trend by large investors and make sure that these do not interfere with the results that have been booked already, or with future results Oxfam Novib envisages to attain.

In the long term,

- Oxfam Novib has to focus its attention on both tenure issues and questions of agricultural modernisation. In this respect, Oxfam Novib should determine its position on the restructuring of agriculture and who they want to protect.
- Given in by the consequent rural development model, Oxfam Novib has to support appropriate local counterpart organisations that work on implementing land tenure.
- Oxfam Novib has to ensure that the discourse on agricultural modernisation incorporates the voices of local communities (farmers in particular) in discussion on the restructuring of the rural world.

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