

Foreign Direct Investment (FDI) in Land in Mali

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Abbreviations

ADB	–	Asian Development Bank	DNSI	–	National Directorate for Statistics and Information Technologies (Direction Nationale de la Statistique et de l'Informatique)
AOPP	–	Association of Professional Farmers' Organisations (Association des Organisations Paysannes Professionnelles)	DPS	–	Detailed Pilot Study
APCAM	–	Permanent Assembly of Malian Chambers of Agriculture (Assemblée Permanente des Chambres d'Agriculture du Mali)	DRA	–	Regional Directorate for Agriculture (Direction Régionale de l'Agriculture)
BMZ	–	Federal Ministry for Economic Cooperation and Development	ECOWAS	–	Economic Community of West African States
CaneCo	–	Cane Company	ESIA	–	Environmental and Social Impact Assessment
CDF	–	Land Act (Code Domaniale et Foncier)	FAO	–	Food and Agriculture Organisation
CEN-SAD	–	Community of Sahel-Saharan States	FCFA	–	Francs CFA (Franc Communauté Financière Africaine) – currency in Mali and other countries of the African Financial Community
CFC	–	Chlorofluorocarbons	FDI	–	Foreign Direct Investments
CMDT	–	Malian Textiles Development Company (Compagnie Malienne du Développement des Textiles)	FEBIVIM	–	Malian Federation of Cross-Professional Organisations for the Cattle Rearing and Meat Industries (Fédération des Groupements Inter-Professionnels de la Filière Bétail-Viande du Mali)
CNOP	–	National Coordinator for Farmers' Organisations (Coordination Nationale des Organisations Paysannes)	GDP	–	Gross Domestic Product
CNRS	–	National Scientific Research Centre (Centre National de Recherche Scientifique)	GMO	–	Genetically modified organisms
DC	–	Development Cooperation	HUICOMA	–	Mali Cotton Oil Mill (Huilerie Cotonnière du Mali)
DNA	–	National Directorate for Agriculture (Direction Nationale de l'Agriculture)	ICRAF	–	International Centre for Research in Agroforestry
DNPIA	–	National Directorate for Industrial Animal Rearing (Direction Nationale de la Production Industrielle Animale)	ICRISAT	–	International Crops Research Institute for the Semi-Arid Tropics



Rural housing



Watering cattle



The Niger river during dry season



Fertile land

IER	–	Rural Economic Institute (Institut d’Economie Rurale)	PDES	–	Economic and Social Development Programme (Programme de Développement Economique et Social)
IFAD	–	International Fund for Agricultural Development	PDESC	–	Economic, Social and Cultural Development Programme (Programme de Développement Economique, Social et Culturel)
LOA	–	Agricultural Orientation Law (Loi d’Orientation Agricole)	PNSA	–	National Food Security Programme (Programme National de Sécurité Alimentaire)
MCA-Mali	–	Millennium Challenge Account-Mali	PPP	–	Private-Public-Partnership
MSP	–	Markala Sugar Project	PRMC	–	Cereals Market Restructuring Programme (Programme de Restructuration du Marché Céréalière)
NGO	–	Non-Governmental Organisation	SNDI	–	National Irrigation Development Strategy (Stratégie Nationale du Développement de l’Irrigation)
ON	–	Niger Basin Authority (Office du Niger) – state agency responsible for the management of approx. 1 million ha of irrigation/irrigable land along the river Niger	SNF	–	N’Diaye and Brothers Company (Société N’Diaye et Frères)
OPIB	–	Baguineda Irrigated Zone Office (Office du Périmètre Irrigué de Baguineda)	SoSuMar	–	Markala Sugar Company (Société Sucrière de Markala)
PACT	–	Programme to Support Local Governments (Programme d’Appui aux Collectivités Territoriales)	SPS	–	Summary Pilot Study
PANGIRE	–	National Action Plan for Combined Management of Water Resources (Plan d’Action National de Gestion Intégrée des Ressources en Eau)	STI	–	Sexually Transmitted Infections
PASSIP	–	Community Irrigation System Support Programme (Programme d’Appui au Sous Secteur de l’Irrigation de Proximité)	UNTM	–	Mali National Workers’ Union (Union Nationale des Travailleurs du Mali)
			UEMOA	–	Union Economique et Monétaire Ouest Africaine
			WAEMU	–	West African Economic and Monetary Union

1. Summary

Since 2007 foreign direct investments (FDI) in land have dramatically increased. The main reasons are the search for alternatives for fossil fuel and the global food crisis in 2008. Foreign governments and private companies have intensified investments in agricultural land in poor countries for the production of oil-producing crops as well as for the production of food. One can surmise that the majority of this produce is bound for export. In light of these facts, and to help partner countries derive maximum benefit from FDI, German development cooperation undertook a series of studies on foreign land-holding investments. The results of the Mali study are presented in this report.

Situated in West Africa, the Republic of Mali covers an area of 1,241,238 km². Of this in 2002, 35.2 % was designated arable land and 11.6 % was cultivated land. Mali has large conservation areas (4.6 %), forests (26.1 %) and pastureland (24.16 %). Each year it is estimated that Mali loses 150,000 ha of fertile land due to land degradation, equivalent to 0.12 % of the total national surface area. In 2008, the population of Mali was estimated to be 13 million and the GDP per capita (at PPP) has been calculated about USD 657. The agricultural sector contributes 33 % to the total GDP.

In Mali to date, FDI have secured **130,105 ha of land**, comprising:

- **Malibya-Agriculture:** Following an investment agreement signed between Mali and Libya, 100,000 ha in the Niger Basin Authority area have been granted to Malibya-Agriculture.
- **Markala Sugar Project by SoSuMar, CaneCo and CommCo:** The area covered by the agreement of this private-public-partnership is 14,100 ha in the Niger Basin Authority area designated for sugar and ethanol production.
- **UEMOA:** A contract has been signed with the UEMOA for about 11,288 ha, also in the Niger Basin Authority area. The land shall be given to private farmers coming from the UEMOA or to local farmers. It is foreseen to produce rice, fruits and vegetables for the national market. The project started in 2008.
- **Agro Energy Développement:** Studies are about to be completed for a French investment in 2,605 ha to be cultivated with sunflowers in the growing season and wheat in the off-season. The production is designated for the national market.
- **Mali Biocarburant:** 80 % of this company's capital is retained by KIT (a Dutch research institute) with the remaining 20 % held by Malian jatropha farmers. Mali Biocarburant finances jatropha production costs through international carbon credit trading (2,112 ha planned for 2009/10 in the Koulikoro region).



Transportation

FDI offer many advantages, particularly in terms of agricultural modernisation through mechanisation and the introduction of new and more resource-efficient irrigation systems. However, the social and environmental problems that engender are significant.

The investment agreement signed in June 2008 between Mali and Libya is a concrete example of a FDI. Through this agreement, Mali has made 100,000 ha of land available to Malibya-Agriculture for the development of irrigation farming, agro industries and cattle-rearing. The lands have been granted on a 50-year renewable lease without preliminary studies or public consultations performed to ascertain and take account of local interests and concerns. Water provision in the off-season is notably problematic for long-cycle cultivation and the Malian Government has not so far made any arrangements to cover the relocation costs for the people who will be displaced because of the agreement.

The second example presented is a different type of FDI as it involves a public-private-partnership. As Malibya-Agriculture, the Markala Sugar Project is located in the irrigable zone of the Niger Basin Authority area. Also the investment will have similar negative social and environmental impacts as the Malibya project; they seem to be better mitigated by accompanying measures. There will probably also be more employment opportunities for the local population than in the other example. However, it is still too early to judge the long-term impacts of both projects.

This study by GTZ on behalf of BMZ about FDI in land has identified numerous problems that the Malian Government needs to tackle. Notable amongst these are issues surrounding the granting of lands and the commencement of works without environmental and social impact assessment or public consultation being undertaken and the failure to take the land requirements of local communities or local customary land rights into account that regulate access to farm land, grazing areas, transhumance routes, settlement, herder accommodation, water, forests etc.

To ensure that Mali and its local communities derive the best possible benefits from FDI in general and the Malibya Agriculture Project as well as the Markala Sugar Project in particular, we offer the following recommendations:

1. Contracts and agreements should be reviewed and amended taking into account:
 - local land requirements (habitats, fields, pasture land, transhumance routes, herders' accommodation, watering holes, forests etc.)
 - the trade in food to avoid food shortages
 - the needs of displaced or re-housed local populations.
2. In any FDI, the land rights of occupants who derived their use rights (for settlement, agriculture, pasture, water, forests etc.) from customary tenure need to be recognised – no matter if the land under question is registered or not. To achieve this objective, the Land Act (CDP) should be reviewed to ensure the recognition of all informal land (use) rights which are based on the customary land allocation system.

3. Take advantage of the ongoing review (“Etats Généraux”) of the legal framework on land tenure (Land Act, Agricultural Orientation Law etc.) in order to develop clear and transparent procedures for foreign direct investments in land.
4. Agreements and contracts shall only be signed after consulting the local population and with greater transparency and respect for the law. Local population should be informed by civil society organisations (rural bodies and unions) about the implementation of such projects. The affected population should be empowered to assert their rights.
5. Access to food has to be secured. FDI contracts and agreements should contribute to an increase in local food security. Therefore, they should include objectives and commitments in agreements and contracts for the production of food (cereals, milk, meat and fruits) for the national market in order to cover Mali’s own food requirements.
6. Use civil society organisations (farming and trade union organisations) to inform local communities so they are able to assert their rights and to oblige signatories to operate transparently and within the law.
7. Rethink the current practice of exhaustive tax exemption for foreign investors as income tax from these investments could present a major income for the national budget.
8. Institute a reasonable annual hectare-based land tax for commercial investors (not necessarily for small farmers) to provide new income for the national budget.
9. Undertake financial, technical, social and environmental feasibility studies before entering into an agreement or signing a contract.
10. Respect local conventions that regulate access and use to the land in question as they are the outcome of local negotiations settling long-term conflicts over the use of land and have been officially recognised by the state.
11. Introduce a participatory land use planning for the area in question to identify sustainable resource uses and to minimise the number of local people to be resettled as well as to ensure that they will receive adequate fertile lands as compensation for those lands given to foreign investors.
12. Define a transparent and fair policy to compensate local population who needs to be resettled.
13. Make it a prerequisite for foreign investors to present a convincing corporate social responsibility strategy as part of their investment.



House that has to give way to an investor's project, so far without compensation for the residents

2. Introduction

The fall in cotton prices on world markets – in combination with the high production costs in Mali due to state ownership of the cotton sector – has had profound effects on the Malian cotton industry since the beginning of the present decade. This crisis led to a noticeable reduction in cotton seed production, from record harvests of 600,000 tons in the 1980s to 190,000 tons in 2009. This drop in production has resulted in the virtual closure of Mali's oil mills (HUICOMA, SNF and small-scale presses) due to the lack of raw material. As an alternative to cotton, some operators (Groupe Tomota and SNF) are looking to create large plantations of oil seed crops (sunflowers, ground nuts and soya) in the Niger Basin Authority area where water from the river Niger is available and irrigation either in place or foreseen. The explosion in global crude oil prices prompted national and foreign operators to produce agro-fuels from jatropha and maize (Groupe Tomota, Mali Biocarburant in Koulikoro, Producteurs de Pourghère in Koulikoro, Huileries Abou Woro Yacouba Traoré in Sikasso).

The 2008 global food crisis brought with it an exponential growth in the purchase of agricultural land. Foreign governments and private companies

have intensified investment activities in agricultural land in poor countries, not only for the production of oil-producing crops but, above all, for the production of food. The majority of this produce is bound for export. Take for example Libya, which is growing rice and rearing cattle in Mali through the medium of its state-run enterprise Malibya Agriculture. Crashing stock markets are another causal factor for the so-called “land grab”. Property investment is no longer a safe option and crude oil prices are low. Only the prices of food look to be on the rise.

In the light of increasing FDI in land throughout the world, GTZ on behalf of BMZ has undertaken a study about FDI in land including four country case studies. Results of the study are supposed to give better insight on the topic and to provide a basis for discussions and decision-making concerning German interventions in rural development in general and at country level. The study should develop an overview on FDI in land worldwide and in particular partner countries. This report is the Mali case study performed in collaboration with the Programme to Support Local Governments (PACT), Mali.

3. Country Profile

National overview

Situated in West Africa, the Republic of Mali covers an area of 1,241,238 km². In 2002, 35.2 % of this area was designated arable land and 11.6 % cultivated land. Mali has large conservation areas (4.6 %), forests (26.1 %) and pastureland (24.2 %). It is estimated that in Mali about 150,000 ha of land are degrading every year, which is equivalent to 0.1 % of the total national surface. In 2008, the population of Mali was estimated to be 13 million, the GDP in total to be USD 5.571 billion and per capita (at PPP) USD 657. The agricultural sector contributes 33 % to the total GDP:

Soil quality and climate

Mali is divided into five agro-ecological zones:

1. the Saharan zone, which is characterised by poor soil, water scarcity and an annual precipitation of between 50 mm to 200 mm,
2. the Sahel zone with average soil, fair to good water availability and annual rainfall levels between 200 mm and 600 mm,
3. the Sudanese zone with good soil, good water availability and annual rainfall levels between 600 mm and 1,000 mm,
4. the Sudano-Guinean zone characterised by good soil and water availability and annual rainfall levels above 1,000 mm, and
5. the Active Delta zone with average to good soil, fair to good water availability and annual rainfall levels of between 200 mm and 800 mm.

Food and cash crops

The main food crops produced in Mali are rice, wheat, maize, sorghum, millet, fonio, niebe beans, vouandzou (earth pea), soya and sesame. The four highest yielding crops in 2008/09 are rice (1,624,246 tons), millet (1,463,183 tons), sorghum (1,063,000 tons) and maize (719,296 tons). The most important cash crops are cotton (190,000

tons in 2008/09), sugar cane (35,000 tons of sugar in 2008/09) and mango (10,905 tons in 2001), whereas banana, peanuts and tobacco are sold on national markets.

Farming systems and practices

Intensive farming is generally carried out in irrigation areas where water supply is either fully or partially controlled. Outside these areas, farmers practice itinerant cultivation such as clearances (400,000 ha per year) or slash-and-burn techniques (9,191,400 ha per year). Burning techniques reduce the productivity of 14.5 million ha of pasture annually.

The current scale of farming

In 2004, the cultivated land per inhabitant ratio stood at 0.44 ha per person. In well-developed cultivated areas, farms are small due to the intense pressure of the property market. In the farming year 2009/10, small holders in developed areas with gravity irrigation systems are farming on average 2 ha in the Niger Basin Authority area. In the farming year 2000/2001, agricultural holdings in primarily undeveloped areas relying on rainfall and Niger flooding to meet water needs averaged 4.61 ha in the Mopti region and 14.22 ha in the Koulikoro region.

Food Security Situation

The projected gross surplus¹ in 2008/09 of rice is 100,703 tons and of dry cereals, 1,144,600 tons. These figures indicate that food stocks are secure. However, rice was imported in 2009 because of informal exports to neighbouring countries and the retention of rice stocks by producers seeking to ensure corporate security and to achieve prices above those on national markets. Furthermore, these statistics are often poorly gathered and do not reflect reality.

¹ The projected gross surplus is the difference between the projected production and the country's projected consumption requirements (food and seed).

Pressure on existing land resources

Pressure on land resources derive from livestock keeping (the country has a total of 33,583,060 heads of cattle, which constitutes 0.76 head of cattle per ha), mining (among others Mali disposes of important gold reserves), extension of irrigated agriculture and the extension of settlement areas into rainfed cultivation areas. Pressure on land resources depends a lot on the location, as conditions for agriculture and livestock keeping vary significantly within the country. Accordingly, population density varies from 0 to 50 inhabitants per km².

In respect to pressure on land resources, three types of areas can be identified:

1. areas with high pressure on land such as peri-urban areas, areas with a high agricultural potential, areas with easy access to water, areas rich in minerals, agricultural lands situated close to major national road networks etc.;
2. areas where pressure can be perceived but is still moderate such as rural areas characterised by rainfed cultivation and agro-sylvo-pastoralism where population increases (often due to in-migration from areas with deteriorate lands) or where resources start to be extracted on a commercial base;
3. areas with little pressure on land, generally located in remote dry and semi-arid areas that do not possess significant resources such as forests, minerals or water. Pressure on these lands are generally only due to the degradation of parts of the land due to misuse, overuse or climate change which results in increasing pressure on the remaining land.

In conclusion, pressure on land in rural areas is the highest in irrigated or irrigable areas. FDI in land will further increase this pressure as investors generally look for this type of (rare) land. FDI in Mali is, therefore, as much about access to water as it is about access to land.



Harvest

4. Land Tenure and Land Markets

4.1 Land tenure systems in Mali

Land tenure in Mali is characterised by legal pluralism. Access to land is either provided under customary law which grants the right to use or by law, which gives rights to use (contracts, permits, leases) or to own land (land concessions or land titles). While the state allocates land on the basis of statutory law to investors or people rich enough to lease or buy land, traditional chiefs allocate land use rights to local farmers based on customary rules (prices depend on the location, the traditional chiefs attitude, the wealth of the buyer, the relation between chief and buyer etc. and range from a symbolic price to market price). Customary rights are only recognised by the state as long as they refer to unregistered land. This means that the land is registered neither as state private or state public land nor as private property but is considered to be national domain. These rights can be formalised on request by legal procedures which are supposed to verify the validity of traditional rights. On agricultural land, owners will then receive a rural concession which can be up-graded into a title. However, procedures are long and expensive. De jure, customary rights in unregistered areas can only be rescinded where a public need is identified and upon provision of compensation for the development of the land (structure, crops etc.) but not for the land itself as occupants (farmers) are considered to be traditionally users and not owners of the land. A major problem is that only written documents are considered by the state while customary land tenure is based on oral agreements. Farmers who have unwritten customary land rights have no legal guarantee. People, therefore, increasingly prepare private contracts – so-called “petits papiers” – signed and approved by the mayor, when they transfer land (informally). Such written customary land rights or farming permits have an indefinite duration and are transmittable to rights-holders as long as the conditions of use are met.

The ordinary leasing contract and the leasehold allocated by the state last respectively a renewable period of 30 and 50 years if the farmers respect the clauses and conditions of the contract. Other rights of use (annual contracts, farming permits, leasing contracts or leasehold) allocated by the state are secured and valid for the period according to the contract clause.

The government’s willingness to grant land titles to farmers is relatively new throughout the rest of Koumouna and the irrigation project in Alatona within the Niger Basin Authority area. In both cases, it is expected to give land titles once farmers have paid the costs for the development of parcels.

As both systems – statutory and customary – exist in parallel and both are affected by corruption, they are not 100% reliable and land rights received on a customary basis are not secured. Where land pressure increases, people, therefore, prefer formal recognition of their rights, but are often hindered to do so due to high costs or to higher interests. For the majority of rural poor, tenure insecurity is increasing.

4.2 Legal and institutional frame governing access to land

Access to land is regulated by the following laws and decrees:

- *Code Domaniale et Foncier* (CDF) [Land Act],
- *Loi d’Orientation Agricole* (LOA) [Agricultural Orientation Law],
- *Code Forestier* [Forest Law], and
- *Charte Pastorale* [Law on Pastoralism] as well as by their implementing provisions.

The CDF and the LOA provide for annual contracts, cultivation permissions, rural concessions, leases and land titles. The land title can be held only by national farmers. Foreign operators are entitled to leases only – accompanied by a statement of requirements. These leases can have a duration of up to 50 years and can be renewed.

The CDF and the LOA recognise customary land rights for unregistered lands under conditions fixed in the CDF. As mentioned above, customary rights need to be approved by the local authority to be recognised by the state. Insecurity of tenure based on customary rights is currently increasing in areas with high pressure on land such as irrigation and irrigable zones. FDI increase pressure on land and thereby insecurity for small farmers.

In Mali, land management issues are subject to the Ministry of Housing, Land Affairs and Planning (*Ministère du Logement, des Affaires Foncières et de l'Urbanisme*) and are entrusted to the National Directorate of Land Affairs which is represented in the eight regions by the Regional Directorates. The Regional Directorates have branches in the districts (*cercle*).

The law on decentralisation and local administrative bodies foresees the transfer of responsibilities in land management and land tenure to the communes. Details still need to be clarified by by-laws. So far, communes are little aware of their new competences and lack the qualification to take them over. The GTZ-supported Programme to Support Local Governments (PACT) in cooperation with local communities is currently developing simple land tenure and land management tools to be applied by local municipalities to secure tenure and to manage their land resources.

4.3 Land Market and Land Prices

Mali's land market is not yet formalised. Outside government distribution and sales, the market mainly consists of customary and/or informal transactions, especially in peri-urban areas. Once land has been acquired through customary channels, buyers start to formalise their ownership. Alternatively, land can be received by the state but this refers mainly to building plots in development areas.

As there is no legal market for purchasing or selling land, officially there has not yet been a sale price determined for state land set aside for development. Observations in settlement areas, however, show that land prices are increasing with an increase in security. While a parcel of around 30 x 30 meters is (informally) sold by a customary owner for 150.000 to 350.000 FCFA (USD 289 to 674), it can easily be resold for 600.000 FCFA (USD 1,155) and goes for 2.5 – 3 million (USD 4,813 to 5,775) once a title has been acquired. Main costs for the land are hence those for formalisation of ownership.

The MCA-Mali project is looking for developing 15,000 ha and to sell these to farmers at cost price – around 3 to 4 million FCFA (approximately USD 5,775 to 7,700) per ha. Furthermore, there exists a black market where land is sold. In the area of the Office du Niger, prices per ha for rice growing land range from 200,000 to 500,000 FCFA (USD 385 to USD 963).

Given the land pressure in the area managed by the Niger Basin Authority², farmers who want to grow rice pay an annual rent to those who possess the land use rights. The price for annual leases is from 125,000 to 150,000 FCFA per ha (ca. USD 271 to 326) in the Niger Basin Authority area and 150,000 to 200,000 FCFA (ca. USD 326 to 434) in the Baguineda Irrigated Zone Area. Prices include fees for water.

² The Niger Office is a public institution responsible for the management of approximately 1,000,000 ha of registered and unregistered land. The current area cultivated with rice and sugarcane is estimated at 100,000 ha.

In respect to market pressure on land resources, three types of areas can be identified:

1. areas with high market pressure on land (e.g. irrigation zones and irrigable lands, peri-urban lands);
2. areas where market pressure can be perceived but is still moderate (e.g. areas with moderate infrastructure, good access to markets and/or resources that start to be exploited);
3. areas with little market pressure on land (e.g. remote areas with little economic activity).

In areas with little pressure on land, customary land rights generally define access to and use of land. Where pressure increases, formal procedures start to be applied often in contradiction to customary arrangements. In areas with high (market) pressure on land, access to land is mainly distributed in accordance with official procedures, notably the Land Act (Code Domaniale) and the Agricultural Orientation Law. The agricultural operating licence, the rural concession title and the leasing contract allow the holder to work the land for a designated period. The property deed (title) grants the holder full property rights, notably the right to sell or to lease. However, even in these areas, customary land allocation still continues to be the main/only way to access land for the majority of poor people. Legal pluralism, therefore, constitutes a major challenge for any investor as well as for the local communities. Especially women suffer a lot from the increasing commercialisation of agricultural lands as they are the last to be considered when land is allocated and, therefore, the first to receive nothing when land becomes scarce.

4.4 Land conflicts

Since times immemorial – as Malians would call it – the management and allocation of land resources has been done at the local level by customary authorities. Colonialism resulted in the loss of this power and function to first the colonial power and later – after independence – to the central government. It is only now that in the course of decentralisation, certain functions are slowly re-decentralised. In the mean time, many conflicts over land have been created. Some are due to competing land uses at the local level such as the widely spread conflicts between farmers and pastoralists for the use of land as farmland and pasture. These local conflicts are now increasingly prevented and solved by “local conventions” – defining use and access to well-defined land areas or common pool resources, negotiated by all stakeholders and approved by the state. Other conflicts which are due to legal pluralism remain and seem far from being resolved. The core problem is the fact that statutory law considers all land to be state land (national domain) of which the central government can dispose – neglecting unwritten customary rights. This phenomenon makes FDI a major threat to local people as their lands can be leased to a foreign investor at any time – leaving them without fertile land and no or little compensation. In addition, climate change and environmental degradation due to misuse or overuse of land are contributing to land conflicts as they reduce the area suitable for agriculture and pastoralism. To give an example, transhumant herders must now head further south thereby creating land use conflicts with farmers there.



Water collection

5. Foreign Direct Investment (FDI) in Landholdings

5.1 Regulations regarding FDI in land

The Agricultural Orientation Law (LOA) and the national Economic and Social Development Programme (PDES), defining the roadmap for the national development, express Mali's political desire to become an agricultural force for the benefit of farmers and the wider population. Despite this explicit intent by the government, it is obvious that the interests of local people in respect to rural development in general and to FDI in particular are not sufficiently taken into account in practice.

According to official regulations, all people concerned must be informed in public consultations undertaken as part of the Environmental and Social Impact Assessment (ESIA). The decision to grant lands must then take the outcome of these consultations into account.

Impact assessments are compulsory and must be carried out according to Decree No. 08-346/P-RM. The ESIA are performed by specialist research units and validated by a government cross-departmental commission, which is supposed to act and decide independently from sector interests.

The decree regarding ESIA states that relevant farming associations and the local population can influence development projects substantially as the developer is duty bound to take on board the objective concerns of these groups. Furthermore, according to law, the developer must prove that the project will have a positive impact on the farming community.

The law also states that the developer is bound to take into account existing rights if these rights are legally sound. This, however, only applies to customary rights on unregistered land and not to registered lands, such as the land within the Niger Basin Authority area where most FDI are made.

Malian law does not entirely regulate compensation processes for customary land owners/users – even not on unregistered lands. As customary rights are considered to be use rights only, the government does not foresee any compensation for the land. It only compensates the added value brought to the land which includes constructions and crops etc.

FDI are subject to agreements signed by the investor and the state. Currently, checks and balances to counter corruption are performed by the Office of the Auditor General. However, with decisions being taken at a high level and without consultation of the concerned population, this anti-corruption mechanism is ineffectual.

5.2 Overview of FDI in Mali

FDI programmes in Mali directly or indirectly involve agro-fuel, cash crops and food. The total area counts for 130,105 ha. The following five projects of FDI contracts are already signed and the project has started (in order of land surface/size involved):

- **Malibya-Agriculture:** Following an investment agreement signed between Mali and Libya, 100,000 ha in the Niger Basin Authority area have been granted to Malibya-Agriculture.
- **Markala Sugar Project by SoSuMar, CaneCo and CommCo:** The area covered by the agreement of this private-public-partnership is 14,100 ha in the Niger Basin Authority area designated for sugar and ethanol production.
- **UEMOA:** A contract has been signed with the UEMOA for about 11,288 ha, also in the Niger Basin Authority area. The land shall be given to private farmers coming from the UEMOA or to local farmers. It is foreseen to produce rice, fruits and vegetables for the national market. The project started in 2008.

- **Agro Energy Développement:** Studies are about to be completed for a French investment in 2,605 ha to be cultivated with sunflowers in the growing season and wheat in the off-season. The production is designated for the national market.
- **Mali Biocarburant:** 80 % of this company's capital is retained by KIT (a Dutch research institute) with the remaining 20 % held by Malian jatropha farmers. Mali Biocarburant finances jatropha production costs through international carbon credit trading (2,112 ha planned for 2009/10 in the Koulikoro region).

a) The following table gives an overview of additional projects currently being studied or planned.

Investor	Country	Surface (ha)	Crops
Manuel Estepa Gonzalez	Ivory Coast (Private Sector)	5,000	Jatropha curcas
SUDAN	Ivory Coast (Private Sector)	5,000	Jatropha curcas
ASSIL	Ivory Coast (Private Sector)	5,000	Jatropha curcas
CAMEX	UK (Private Sector)	20,000	Rice and vegetables
Burkina Faso	Burkina Faso	2,500	Rice and vegetables
FORAS	Saudi Arabia	5,000	Rice and vegetables
CO-ENTREPRISE	West African Countries	1,000	Rice and vegetables
Total		43,500	

Source: Office du Niger

Together with the more advanced projects mentioned above in Mali, the demanded land of all known projects counts for about 173,600 ha. Most of the demanded area, 142,500 ha, shall be used for food production, only 17,000 ha is definitively designated for agro-fuel production. The 14,100 ha of SoSuMar are designated for the production of either sugar or ethanol.

In September 2009, GRAIN³ informed about another FDI project in Mali. It concerns an investment of the Saudi Arabian company Foras International in 200,000 ha farmland. Unfortunately, this information could not be verified yet. Likewise, it is known that Chinese investors are interested in irrigable land along the river Niger where they already started a pilot project and announced their plans to the local community promising social and technical infrastructure. However, details on these investments have not been available.

All FDI projects are located in the Niger Basin Authority area, except the Jatropha projects. Food production in the most cases is probably for the investing country's market, except in the case of the French investment of Agro Energy Développement and the private-public-partnership in Markala for sugar production for the national market. That means that competition with land for local/national food production in the Niger Basin Authority area is increasing and already leading to land conflicts (see the example on Malibya-Agriculture). According to public information, the Niger Basin Authority area of 1 million ha is potentially arable and irrigable. If this is the case, the known projects count for about 1/5 of the cultivable area only. But there are other sources saying that only 250,000 ha are cultivable in the Niger Basin Authority area. The restriction is not due to the topography but the maximum quantity of water which can be removed from the river Niger. This bottleneck will probably result in increasing water conflicts.

3 <http://www.grain.org/articles/?id=52>

5.3 Key drivers and motives for investors

Key drivers and motives for investors are:

- availability of land resources (incl. anticipating land scarcity and increase in land prices),
- availability of water resources,
- increasing self-sufficiency and food security for the investor's country,
- gaining additional market shares in the international agro-fuel and food market,
- increasing shareholder value (with rising food and agro-fuel markets),
- strengthening economic ties between Mali and foreign direct investor countries,
- availability of cheap labour force,
- absence of effective control on environmental obligations,
- establishing agro-industries,
- establishing stock-farming.

5.4 Key drivers and motives for beneficiaries⁴

The key drivers and motives to attract FDI in land for beneficiaries are:

- development of infrastructure (irrigation and drainage systems, roads),
- modernisation of the farming sector, improving farming techniques and productivity,
- rural job creation,
- improvement of rural incomes,
- self-sufficiency and food security,
- development of agricultural value chains.

These motives are, however, not necessarily reflected by the contracts agreed upon by the Malian and the foreign government and even less by their implementation (see case of Malibya).

5.5 Linkage between FDI and national food security policy

Mali has developed a national food security programme (PNSA) for the period 2006 to 2015. The PNSA comprises the following eight components:

1. improvement of basic natural resources (water management and improving soil fertility),
2. farm intensification (increasing output),
3. diversification of production systems,
4. marketing and processing raw products (storage, preserving, processing and marketing),
5. health and nutrition,
6. monitoring and alert mechanisms, and crisis management strategies,
7. peripheral measures (funding distribution, developing rural finance, undertaking research, improving capacity building and making this more accessible),
8. support in the roll-out of the PNSA and preparing institutions accordingly. It could be expected that FDI have to be in line with this policy. In the official discourse they more or less do. When it comes to the contract agreement, specific project/investment objectives might however differ from those of the PNSA. The two case studies presented below will illustrate the rather inconsistent alignment of FDI towards food security objectives. There are FDI that will contribute to the stabilisation of food availability while there are others that mainly serve the interests of a few privileged people – supposedly by unpublished side agreements.



Fishermen

⁴ Beneficiaries are the government, the affected population, farmers and all other stakeholders who may benefit from FDI-funded project activities.

6. Case Studies of FDI in Malian landholdings

For the case studies, the investments by Malibya-Agriculture and the consortium of SoSuMar, CaneCo and CommCo have been selected as they are the two most important ones in terms of the land surface involved. They also represent two different types of FDI. While the engagement of Malibya is a classical FDI, the project undertaken by SoSuMar, CaneCo and CommCo is a special and rather new form of FDI as it actually is a private-public-partnership which involves financial means provided by the African Development Bank.

6.1 Example 1: Malibya Agriculture Project area, project objective and project agreement

Malibya Agriculture is a Libyan company founded to produce rice and other agricultural products in Mali for export to Libya and for the improvement of food security of the Libyan population. In June 2009, a bilateral investment treaty was signed between Mali and Libya. The project is situated in the Niger Basin Authority area around Macina, an agro-pastoral area with the potential for irrigation. It is the most important rice production zone of Mali. Currently more than 75,000 people are living in the project area. Apart from those living in the town Macina who have formal land rights over their land as the town has been created by the state, people do not have formally recognised land rights as they moved into the area only after the land was registered as property of the Niger Basin Authority in the mid 20th century. And customary rights – if at all – are only recognised on unregistered lands. People moved here because most parts of the land had not been developed by the Niger Basin Authority. They settled there, built villages, worked the land and lived from the forests. Pastoralists are also using major parts of the land to graze their cattle. In addition, a main transhumance route passes through the area.

According to the renewable investment treaty, Malibya Agriculture is leasing 100,000 ha of irrigate land “free from any juridical constraints or individual or collective property that hinders the exploitation of the land” for 50 years to develop farming activities, agro-industries and cattle rearing. The contract can be renewed up to a total of 99 years. The contract provides Malibya with unrestricted access to water from the Macina canal as well as ground water against a fixed fee that can be renegotiated annually. If underground minerals are found in the area, they will remain Malian property and exploited by the Malian government. Malibya, on the other hand, has the right to exploit all sands and ordinary stones on the surface for the required construction works. Malibya’s rights are limited to the use of the surface land and the underground water. The company is not allowed to transfer the land to a third party. It has to respect Malian laws on the environment.

Apart from the water fees and the obligation to respect the Malian law and regulations on the environment, the contract does not say anything else about any duties or obligations of the Libyan side. No taxes, fees or other payments are mentioned. Article 17 states that the two parties agreed upon the “*gratuité de la terre*” (no payment for the land). There also is no obligation to hire local employees or to produce for the Malian market. Concerning infrastructure development, the contract only states that Mali authorises Malibya to realise access roads which are necessary for the functioning of the project. It is implicitly said that Malibya puts in place the infrastructure needed for the project. The Government of Mali can “if it desires” [sic] develop any kind of public infrastructure in accordance with Malibya. According to information provided by the Niger Basin Authority, Malibya-Agriculture is currently funding infrastructure developments because the Malian government does not have the

financial means to do it now. Malibya will later be reimbursed by the Malian Government. The Libyan investors only have to finance the development of land (estimated to be between USD 6,514 to 8,686/ha), construction of factories, cultivation of the land (seeds, fertiliser, water etc.) and agricultural advisory services – investments that only serve their own production but neither the Malian state nor the local population. Main objective of the Libyan project is food self-sufficiency. In 2005, Libya imported 177,000 tons of rice. With regard to increasing food prices, Libya wants to become independent of the world food market. Additional objectives are, therefore, the establishment of agro-industry and stock-farming in Mali. Different agricultural activities are envisaged such as the production of 200,000 tons of rice and 25,000 tons of meat annually. Agro-industrial plants shall be constructed for the transformation of agricultural products, for instance concentrated tomatoes. The investments for the first block of 25,000 ha focus on irrigation infrastructure, human settlements for employees and cattle rearing. The total investment required for this first block, excluding re-housing and negative impact mitigation costs, is estimated at USD 297,871,706. According to the funding agreement, re-housing and negative impact mitigation costs are the responsibility of the Malian Government.

The project comprises the construction of two major infrastructure developments:

- The construction of a water channel in a length of 40 km, from Kolongotomo to the project area in Boky-Wèrè. The capacity of the channel shall be 130 m³ which allows draining daily 11 million m³ or annually 4 billion m³.
- The construction of a road in a length of 40 km (for 25 billion FCFA, appr. USD 48 million).

Malibya intends to cultivate the area with its own employees, engaging local farmers as agricultural workers. To reach the target of 8 to 9 tons of rice per ha, modern agricultural techniques shall be introduced including high yielding varieties (hybrid rice), chemical fertiliser and pesticides. To insure modern rice production technologies, Chinese labour familiar with Chinese production techniques shall be used for jobs requiring skilled labour. Chinese employees will probably act as supervisors while local people will do the low-skilled (and low paid) labour. Chinese workers will also be involved in the construction of the site.

Work started several months ago and, meanwhile, farmers' associations whose members are victims of the commenced work have called the National Coordinator for Farmers' Organisations (CNOP) to safeguard the victims' interest.

Involvement of local population in the decision process

In October 2008, Malibya Agriculture started its first operations without having carried out the Environmental and Social Impact Assessment (ESIA) first. The inhabitants affected by the decision were neither primarily informed nor involved in a consultation process as demanded by the law. The people were informed long after the agreement was signed and thus customary land rights were ignored.

When conflicts with the local population occurred in the beginning of 2009, first meetings between villagers and the project were held. According to local authorities (sous-préfet), these meetings with 30 villages and hamlets were transformed into public consultations and thereby officially substituted the ESIA. No real ESIA has been conducted.

Meanwhile, the project is continuing, without an agreement between local communities and the project and without any compensation. Project activities include:

- The construction of an office (to control the work) in Boky-wèrè;
- Starting the channel construction.

Both activities demonstrate the ignorance towards local realities and are proof of the lack of local participation. The Malibya office has been constructed on a transhumance route which has been delimited as a result of a participatory process settling long-lasting land use conflicts between herders and farmers and resulting in a local convention formally approved by the Malian state. The channel likewise is cutting through a transhumance route. Altogether, so far 7 km of the traditional animal trespassing route are blocked from Kolongo to Boky-wèrè.

First impacts and expected/potential future impacts:

Potential positive impacts:

From a national perspective:

- Good political relations with the government of the neighbouring state Libya. The land deal has to be seen in the broader context of Malian-Libyan relations and cooperation. Libya also is a strong partner in the region.

From a local perspective:

- So far, the local population and their representatives such as the mayors and deputies do not see any possible or potential positive impact for them in the future resulting from this investment.
- There will be some employment created for local workers. It can however be expected that this will not counterbalance the loss of income generation opportunities destroyed by the project.

Already visible negative impacts:

- People are expropriated and evicted of their houses.
- Houses, villages, gardens and fields are destroyed by the construction of the road and the channel.

- Many villages are flooded and destroyed.
- All forests in the area have been taken by Malibya, many are already flooded. Local people therefore lost access to products crucial for their livelihood such as food, medicine, fuel wood, building material, animal fodder etc.
- Blockage of transhumance routes.
- For the construction of the roads, local quarries and even cemeteries are exploited and destroyed (without approval of the local communities).
- Dust pollution produced by the heavy lorries used for the provision of construction materials has become a serious problem for the villagers.

There are no positive impacts so far.

Expected and potential negative impacts:

- Lack of irrigation water for fields within the Niger Basin Authority area leased to local farmers (the new channel has been constructed at a lower level than the Macina canal which may result in the fact that at times of low water the areas watered by Macina canal will not receive sufficient water any more);
- Loss of farmlands currently used by the local population for dry farming and as pasture;
- Displacement of the local population primarily depending on agriculture and forest products resulting in a deterioration of livelihood due to soils of lower quality and more difficult access to water;
- Risk of desertification and salinisation;
- Negative carbon balance.

Finally, there will be an influence of foreign cultures (Chinese and Libyan) that can either be positive or negative. The project, involving 100,000 ha, effecting 75,000 people and introducing foreign lifestyle habits and technologies will definitely alter the way people live – in one way or another.

Contribution to food security

The objective of Malibya Agriculture is to export the whole production. Therefore, the production will not help to improve food security of the local people. It could be difficult for resettled people, who have lost their fields, to achieve self-

sufficiency in food production as soils will be of lower quality and access to water will become more difficult. The project may eventually improve the income situation for part of the population by creating new jobs and thus providing means for the local population to buy food on the local markets. The question, however, remains how many farmers will be employed by Malibya and who will produce and where for the local market.

Compensation measures

The lands up for lease are currently used or have been used until recently by the local population for rain fed cultivation (millet, sorghum, maize, peanuts, fonio, pumpkin, watermelon, vegetables and others). The lands are also used for pasture and cattle crossings. In addition, forests provided a lot of resources for daily life as well as sources of revenue (e.g. fire wood and charcoal). Now, all forests have been taken by Malibya, parts of the farm land and settlement areas are already flooded and transhumance routes are blocked.

All these activities are carried out without any compensation of the local population. Malibya Agriculture has made no provision to compensate people who will be displaced or harmed by the project, as this is the responsibility of the Malian Government. When signing the investment agreement, the Malian Government made no provisions to compensate the people who will be displaced. This compensation is one of the issues to be resolved in the lease that will be signed by the Niger Basin Authority and Malibya Agriculture. It is still not known how Malibya Agriculture or the Malian Government will approach matters of compensation. It is doubtful that Malibya will feel responsible as according to the contract they received land “free from any juridical constraints or individual or collective property that hinders the exploitation of the land.” As the project makes progress, all people living in the project area will be affected. Farmers as well as herders will be expelled from their lands and it will be more difficult for them to get access to water especially in the dry season.

6.2 Example 2: Markala Sugar Project by SoSuMar, CaneCo and CommCo⁵

Project area, project objective and project agreement

The Markala Sugar Project (MSP) is an agro-industrial project proposed in the form of public-private partnership (PPP), to be established in the Niger Basin Authority area to the North-East of Segou. It is the first public-private partnership development project in Mali and the first PPP development project in the agro-industrial sector submitted for financing to the African Development Bank. Overall, the project's impact area comprises the territories of 6 municipalities for a land area of 2,087 km² and a population of about 155,902.

The project comprises an agricultural component which involves the planting and irrigation of 14,100 ha of sugar cane fields and an industrial component consisting in the construction and operation of a sugar cane extraction plant with annual production capacity of 190,000 tons of sugar and another plant for the production of 15,000 kl of ethanol from a by-product of the process. The sugar will be mainly produced for the national market as Mali has an annual shortfall of around 120,000 tons of sugar. The project will also produce 30 MW of electricity by co-generation, the 3 MW surplus of which will be transferred to the electricity network of the Malian Energy Company (Société Énergie du Mali - EDM). There are also plans to produce about 95,886 tons of compost per year.

The agricultural component of the project entails the irrigation and development of slightly over 14,000 ha divided into two distinct blocks. The water supply systems are based on the existing irrigation infrastructure. In the first block, water uptake shall be through the existing Costes Ongoïba canal while the second block will be irrigated from the existing Macina canal. The irrigation method is by rotary sprinkler (central pivot system), chosen mainly to save water. Based on the water needs for sugar cane cultivation and the above-mentioned land area, the total volume of water uptake is estimated at 14.5 m³/ha,

⁵ Most of the information on this project is taken from the memorandum by the African Development Bank and the African Development Fund on the environmental and social impact assessment of the Markala Sugar Project (September 2009).

corresponding to a hypothetical continuous flow of about 1 litre/s/ha.

Except for 894 ha for which a land title is granted to SoSuMar as contribution of the Malian government to the PPP project, a leasing contract will be concluded with the Niger Basin Authority.

In the long run, the economic activity generated by the project is supposed to create 5,000 direct and 20,000 indirect jobs. However, the MSP will entail the displacement and resettlement of 1,644 inhabitants. It also involves the clearing of natural vegetation and the conversion of farmlands currently used by the local population for dry farming and as pasture into sugar cane plantations.

The Project is mainly the initiative of two independent entities:

- a) SoSuMar: Markala Sugar Company (Société Sucrière de Markala), responsible for the Project's industrial and private component. The shareholders of SoSuMar are: ILLOVO⁶: 70%; SCHAFFER⁷: 4%; Malian private sector: 22%; Government of Mali: 4%.
- b) CaneCo: Sugar Cane Production Company (Société de production de canne à sucre), responsible for the agricultural component. The State of Mali is the majority shareholder of CaneCo, holding 90% of the shares (while SoSuMar will hold the remaining 10%). CaneCo is the public component of the Project.
- c) A third entity known as "CommCo" will be created for the benefit of the community. It will be responsible for developing 5,600 ha to be used entirely by the specific community to which they will be allocated. The establishment of this entity actually makes the MSP a PPP Project with a three-pronged partnership structure: Malian Government/SoSuMar/Community.

In accordance with national policies, laws and regulations, the project must harmonise with nine policies, comply with the requirements of 35 decrees and fulfil conditions for obtaining eight permits. An in-depth Environmental and Social Impact Assessment (ESIA), including the design of an Environmental and Social Management Plan (ESMP) and a Resettlement Action Plan (RAP) for populations to be displaced, was conducted as well as a poverty reduction study as required by Malian regulations and environmental procedures of the African Development Bank.

Involvement of local population in the decision-making process

Information on the involvement of local population is slightly contradictory. While it was stated during the field work for this study that no opportunity was given to the local population to participate in the decision-making processes, the documents prepared by the African Development Bank on the ESIA describe in detail the public consultation process. It seems that the reason for this contradiction lies in the fact that SoSuMar started the development works on the site before the ESIA was carried out and farmers' associations were informed. Once the ESIA started, the local population got involved. It remains, however, unclear if this was still early enough for them to get involved in basic decisions or if they have only been informed and could rather choose between different options concerning minor issues than decide on the whole concept of the project.

In the Bank's document it says: "The public consultation process was conducted following the guidelines of Decree No. 03-594 of 31 December 2003 (as amended by Decrees No. 08-346 PRM of 26 June 2008 and No. 09-PRM-318 of 26 June 2009), principally in the months of May 2007, January to April 2009 as well as in August 2009 during the pre-appraisal meeting. Consultations were held with the populations of villages situated in the irrigation areas, those of adjacent villages,

⁶ ILLOVO Sugar, main shareholder of SoSuMar, is a South African company and the continent's leading producer of sugar. It has operations in six African countries. The company is quoted on the Johannesburg Stock Exchange and is controlled mainly by Associated British Foods Ltd, which holds 51% of the capital.

⁷ Schaffer Global Group is a US-based private corporation which offers world-class services.

those of villages in potential host areas and also with Government departments and technical services at national, regional and local levels. The consultation was intended to inform and sensitise the various affected and/or concerned parties about the components and operation of the future project and to obtain their views, concerns and proposed solutions for eradicating, mitigating and/or offsetting potential negative impacts and strengthening positive ones. The views thus obtained were considered during the conduct of the remaining part of the ESIA and the Resettlement Action Plan. With the help of LTSC, far-reaching consultations were held with the population affected by the project. These consultations were rounded off by a workshop to validate the findings of the different studies. This workshop brought together all project stakeholders for three days to better incorporate the concerns of all parties involved especially in designing a Resettlement Action Plan.“

Expected impacts

“The Markala Sugar Project has major positive impacts and like any large-scale development project, it also generates major social and environmental disruptions and changes due to its sheer size, the affected populations and the scale of works” (AFRICAN DEVELOPMENT BANK, 2009).

Expected positive impacts:

From a national perspective:

- Foreign exchange savings of over FCFA 31 billion, corresponding to amounts invested each year on sugar imports – sums that can be injected in the economy to develop other sector activities;
- Fiscal revenue of around FCFA 4 billion as salaries and taxes under the national budget annually (estimated by SoSuMar);
- In accordance with the Agricultural Orientation Law qualitative and quantitative change in the agricultural sector by offering the opportunity of transferring irrigation pivots to the local popula-

tion who will operate them and sell the sugar cane produced to SoSuMar.

From a local perspective:

- Creation of 5,000 direct and 20,000 indirect jobs, hence higher household incomes, food self-sufficiency (as income will allow to buy food throughout the year) and better living conditions;
- Increase in revenue, particularly for women;
- Facilitated electrification of villages situated close to the electricity distribution line;
- Creation of healthier living conditions thanks to drainage works;
- Rebuild villages provided with decent housing, educational, health, economic and road infrastructure.

Further eventual positive impacts:

- Improvement in health infrastructure;
- Development of the regions tourist potential;
- Capacity development due to training and technical assistance for producers and stock-breeders;
- Strengthened capacity of local men and women through the community development programme that will be implemented to fight poverty.

Expected negative impacts:

- Displacement necessary of 1,644 inhabitants losing their fields, shelter, socio-economic infrastructure, food, immediate economic income etc. at least during the phase of resettlement;
- Conversion of farmlands currently used by the local population for dry farming and as pasture into sugar cane plantations;
- At least during the first years, local population will experience a decrease in income from agriculture, animal raising and fishing;
- Opportunities for livestock keeping are gone;
- Blockage of transhumance routes;
- Loss of natural vegetation and forests;



Transportation

- Destruction of ligneous species with economic, nutritional and socio-cultural value, e.g. shea butter, balanzan, wine palm, tamarind tree, acacia, fern tree, jujube tree, sugar apple, wild dates, African locust, baobab;
- Loss of forest products including non-timber products such as food, medicine, fuel wood, building material, animal fodder etc.;
- Increased pressure on the remaining natural resources due to population increase (due to massive migration);
- Risk of erosion;
- Irreversible loss of wildlife and plant resources;
- Environmental pollution concerning air, soil and water;
- Risk of insufficient availability of (irrigation) water;
- Potential disruption of the ecological balance;
- Increase of HIV/AIDS due to the influx of seasonal and permanent workers;
- Forced change of production and livelihood as the population had no chance to opt for an alternative approach to sugar cane production (contract farming);
- Loss of independence and traditional way of living; dependency on one company (SoSuMar).

Expected impact on food security

In the short-term, it can be expected that the resettled population will suffer from a decline in food production at least during the transitional phase until their new fields will provide sufficient food again. The remaining population may also suffer temporarily from a decline in food production during this time as they will have at least partly to give up food production for own consumption as well as for the market and it takes some years until they will be able to yield sugar and sell it to SoSuMar to have the financial means to buy food. As this project is a private-public-partnership it can however be expected that people are taken care of during this time.

In the long run, the monoculture sugar project might also weaken all over food security as it leads to the destruction of diversity and the potential self-sufficiency of the local population. People will probably earn sufficient money to buy food, but when food will be short, they may be at disadvantage. After all, the area was originally earmarked as rice production area as Niger Basin Authority has mainly been created to produce rice to satisfy national demand of this staple food!

Compensation methods for farmers

In the area of intervention, 94,000 people are affected living in 85 villages. 23 villages with a population of 1,644 are to be relocated. Since Malian law does not regulate compensation processes in detail – stating only that the added value has to be compensated but not how and on which base – the compensation is regulated in the contract. According to the contract, compensation must be made based on an assessment of the value of one year's harvest income – one year being deemed a suitable time frame for the farmer to settle elsewhere. However, farmers affected by the project were only awarded compensation at 50,000 FCFA per ha of millet (equivalent of USD 96), even though one tonne of millet (the quantity produced per ha) was worth 100,000 FCFA (USD 192). There might, however, be some more non-monetary compensation in the future as the Resettlement Action Plan envisages an indemnification process which will favour land and food security to offset the other losses caused by the project. Details on this have not been available. To those farmers remaining in the project area, an area of 5,600 ha will be allocated for production and sale of sugar cane to SoSuMar, 20% of the area will be allocated to women for growing sugar cane. Another 1,000 irrigated ha will be made available for the communities to be used for market gardening to generate income and ensure food security.

It is currently too early to finally comment on the sufficiency and fairness of the compensation as it will depend on the implementation of the plans.

Other mitigative measures

Apart from the design and implementation of a Resettlement Action Plan, the main impact mitigation measures proposed by the ESIA are the planting of wood producing plantations, the domestication of fruit species of economic value, the transfer of livestock to a developed site, the establishment of a special wildlife settlement ranch and the promotion of ecotourism. The cost of the Environmental and Social Management Plan which includes environmental monitoring,

capacity building, mitigative measures of the agricultural sector and mitigative measures of the industrial sector is estimated FCFA 1,663,753,000 (USD 3,202,728) over five years. This cost does not include the Resettlement Action Plan.

In respect to water availability, the Niger Basin Authority envisages certain measures to improve the efficiency of the water system by rehabilitating existing infrastructure, introducing more efficient equipment and improving the management of use of water by users. According to its new plan implementation agreement, the Niger Basin Authority also envisages obliging new water stakeholders to look for alternative water sources during the low water period (April – June).



Harvest



Field work with ox plough

7. Opportunities and Risks of FDI in Land

The case studies of Malibya Agriculture and Markala Sugar Project show already some impacts although they are still in their first steps of realization. But, most impacts will be shown in the long term run only. They can be estimated but are not yet proven. Therefore, it needs to be

distinguished between first already existing impacts and future risks and opportunities of these investments. As the private-public-partnership project offers other options than the classical FDI, the two approaches are presented in a comparative way.

Foreign Direct Investment, the case of Malibya Agriculture

	National level	Local level
Already existing economic and socio-economic impact	0	-
Potential long term economic and socio-economic impact	?	---
Already existing socio-cultural impact	?	--
Potential long term socio-cultural impact	+ or -	-- and +
Already existing environmental impact	0	---
Potential long term environmental impact	--	---
Already existing impact on food security	0	?
Potential long term impact on food security	--	---

Private-Public Partnership, the case of Markala Sugar Project

	National level	Local level
Already existing economic and socio-economic impact	0	0
Potential long term economic and socio-economic impact	+++	+ (++)
Already existing socio-cultural impact	0	0
Potential long term socio-cultural impact	+0	+ and -
Already existing environmental impact	0	-
Potential long term environmental impact	-	---
Already existing impact on food security	0	0
Potential long term impact on food security	++	-

Legend: + (positive impact), 0 (neutral impact/no impact), - (negative impact), ? (impact unknown); if a symbol appears several times, it signifies a very positive or very negative impact.

While both investments show only negative impacts right now briefly after they have been started, the public-private-partnership project is much more promising on what concerns possible future impacts than the FDI.

7.1 Economic and socio-economic opportunities and risks

The investments done so far did not result in a short-term positive economic and socio-economic impact, neither at local nor at national level. Generally, the investments create costs in the beginning.

In regard to long-term impacts, it can be expected that there are positive economic and socio-economic impacts at least at the national level from those investments such as the private-public-partnership which respect the Malian laws and regulations dealing with taxes and fees for foreign investors. There are, however, deals which are not 100% clear on the financial duties of the foreign investor. Therefore the risk exists, that the economic impact for the Malian state will be low or null.

Long-term economic and socio-economic impacts at local level will probably differ as well depending on the type of contract and the specific arrangement. There seems, however, to be one sad similarity in all these FDI which is the fact that although new employment is created, traditional income generating activities are no longer possible and it is not yet possible to say if the new jobs will provide the same or better livelihood than the previous lifestyle did. In addition, new jobs might be limited in number as the increased mechanisation goes along with a reduced requirement of labour. It is also not clear how many of the new jobs will actually be given to the local population as many of the new jobs will require skilled labour. For example: Malibya wants to introduce modern production methods and thus also Chinese labour familiar with those techniques. Former smallholders might be reduced to low paid season workers having difficulties earning their living during off-season.

Theoretically, for all the project activities (construction work, agriculture, processing and transformation, transport etc.) labour is necessary, meaning that many jobs have to be created, especially during the investing period. With new jobs, money could be generated within the local economy improving the living conditions of the local people. These job opportunities also could reduce the migration to urban centres. Unfortunately, the created jobs are often specialised jobs which are not accessible for smallholders who are lacking a good education. In fact, in case of Malibya, farmers will probably be recruited neither in factories nor for administrative work. No initiative has been taken or is planned in respect of capacity development and knowledge transfer. This is different in case of the Markala Sugar Project which will be accompanied by a poverty reduction programme.

While the extent of direct employment created by FDI is uncertain and will definitely vary from one project to another, it can be expected that additional income-generating activities will be triggered simply by the presence of paid workers. These indirect jobs will include local businesses, small traders, the catering industry and others.

Apart from job creation, FDI can contribute to the development of local infrastructure that can be beneficial to the local economy. Companies need access to their fields and, therefore, they are constructing roads as shown above with the example of Malibya Agriculture. This can help farmers/villagers to get easier access to markets and generally can facilitate the transport of goods. But there are risks that other interests are not taken into account as the already often cited destruction of transhumance routes etc. To understand the impact of destroyed transhumance routes it has to be known that cattle rising and transhumance is at the same time the backbone of Malian economy, pride, culture and identity!

Also, FDI in land often go along with re-housing. The situation of displaced farmers is often worse than before with inadequate compensation for their loss of land.

Crucial for positive impact at the local level is how the former smallholders are compensated and how they will participate in the new environment. Malibya Agriculture, for example, has made no plans to allocate plots to smallholders or to train smallholders in order to give them better paid jobs while this is foreseen in the Markala Sugar Project.

7.2 Social and socio-cultural opportunities and risks

The social impact depends mainly on the amount of money available either directly from the foreign investor or the national government or indirectly through a boost of the local economy. As stated above, it is still uncertain if and if so to what extent there will be a positive economic impact at the local level. Social improvements due to own local capacities are therefore uncertain too. Concerning direct support from government and investor it can be observed that FDI contracts often contain obligations to invest in social infrastructure such as schools, health centres etc. Malibya Agriculture is planning to build a school and kindergarten in the workers' settlement. This will, however, have a limited impact on the community – if at all. Also, the ESIA have set out requirements for Malibya and SoSuMar to deliver sexual health and HIV/AIDS campaigns. It remains to be demonstrated to what extent these social measures will be accomplished.

The socio-cultural impact depends on the extent of changes the FDI will bring. As both case studies show that these investments bring major changes with them, such as relocation, destruction of villages, fields, forests, transhumance routes etc. this will trigger a complete change of livelihood and lifestyle. It can be expected that many of the traditional habits will get lost or replaced by foreign/exogenous ones. This can lead to a loss of identification and a break up of family units. On the other hand, there currently is a tendency to

leave rural areas (rural exodus) which could be stopped by FDI creating new jobs. But it can also be accelerated by FDI leading to the expropriation of people and the pushing away from fertile areas. It is hard to judge if the expected change should be considered as positive or negative. People probably have to face both: negative impacts in the form of loss of tradition and indigenous culture and positive impacts by the introduction of exogenous cultures.

With disregard of archaeological heritage in order to develop and lease areas interesting for investors, important national heritage could be destroyed.

The changes in livelihood, the immigration of workers from other regions, neighbouring countries and even foreign cultures as well as the increasing competition for natural resources, resulting from this population increase and the investment itself, has already led to first conflicts and will probably lead to many more.

There also is a risk of investors occupying land formerly used as pastureland or hindering access to herders' accommodation. This will endanger the traditional transhumance patterns in the area, have a major impact on the local culture and aggravate conflicts between cattle herders and arable farmers⁸.

Also, conflicts are arising because of ignoring traditional cattle routes. In the case of Malibya, the local Chamber of Agriculture has written to the Ministry of Agriculture to express its concern in relation to the occupation of cattle crossings and herders' accommodation. Furthermore, the rights of water access will be severely affected by the Malibya project, particularly during the dry season in the Niger Basin Authority area where off-season farming is practised. The farmers association CNOP has been involved and is trying now to safeguard the interests of the concerned population.

Also, ethnic conflicts may rise between better paid foreigners and low paid local people having no access to superior jobs.

⁸ For more information, see DNPIA/Conseil de Cercle/PACT: *Rapport sur l'impact des aménagements Malibya sur les espaces agropastoraux de Macina*, avril 2009 (National Executive for Animal Product Industries / District Council / Support Programme for Domestic Communities: Report on the impact of Malibya developments in Macina's agropastoral areas, April 2009)

7.3 Environmental opportunities and risks

From the current point of view, the already visible environmental impacts as well as potential future environmental impacts are negative throughout. The risks as mentioned and explained in chapter 6 can be summarised as follows:

- Loss of biodiversity due to deforestation and the introduction of vast monocultures;
- Increased pressure on the remaining natural resources due to population increase;
- Erosion, desertification, salinisation and consequently loss of soil fertility;
- Water shortage and drawdown;
- Destruction of carbon sinks;
- Increase in greenhouse gas emission;
- Negative carbon balance;
- Environmental pollution of air, soil and water.

Conservation areas (protected forests or national parks) are not affected by the planned FDI programmes. However, the FDI as currently planned will inevitably mean losses of natural vegetation, areas with high conservation value, cultural landscapes, grazing areas etc.

7.4 Opportunities and risks in respect to food security

Food security is not yet affected by FDI in land projects. However, when these schemes and production activities commence, cereal production seems likely to be hit. For example, Malibya reduces the amount of fertile irrigable farmland for national food production by 100,000 ha. SoSuMar's 14,100 ha formerly earmarked for rice production will now become water-hungry sugar plantations, resulting in an 85,000-tonne drop in rice output (six tons per ha). This also poses risks in terms of water shortages in the dry season.

FDI in sugar cane for instance could pose problems for long-term food security strategies as these crops compete for land and water resources. At present, food production and agro-fuel production do not compete. In fact, the first agro-fuel crops will be jatropha, which is inter-tilled with millet, maize and sorghum in rows spaced five metres apart. Jatropha agro-fuel crops do not compete with rice-production if jatropha is grown in harsher conditions. Competition may arise in future if agro-fuels become more profitable than food due to high oil prices. In that situation, agro-fuel crops might replace millet, maize or sorghum production.

FDI programmes are just getting off the ground; however, one has to apprehend an increase in food insecurity of vulnerable groups who may be affected when these projects are implemented, for instance by a lack of recognition for their customary rights on land, by disappearance of their forest habitats or by unavailability of sufficient water for agriculture as well as for livestock keeping which will deprive them of their production base.

The effect of FDI in terms of food security is closely linked to the economic impact. The more local people will benefit economically from the FDI, the better they will be able to ensure their food security. However, even in the case of a high positive impact on the local economy and on people's income situation, their food security might be at risk due to insufficient food production for the national market within the country and, therefore, a strong dependence on foreign countries who – in case of a regional or global food crisis – will first serve their own needs.



Cattle herd

8. Links between FDI in land and concepts/ support strategies of development cooperation to promote rural development

8.1 Existing support to successfully deal with FDI

German development cooperation supports rural development in Mali through several German-Malian technical and financial cooperation projects. None of them explicitly focuses on the support of FDI strategies. However, as they all deal – in one way or another – with natural resources management and local capacity building, some of their activities support local as well as national institutions to deal more successfully with foreign investors defending their own interests. The German Kreditanstalt für Wiederaufbau (KfW) assists in developing the infrastructure in the Niger Basin Authority area. KfW supported a detailed study analysing ‘the potential for dry season irrigation in the Niger Basin Authority area’. The study’s conclusions were not favourable for FDI programmes, in particular for sugar cane growing, as it may threaten water supplies in the dry season.

The Programme to Support Local Government (PACT) deals with, amongst other things, local capacity building, natural resource management and land management at the local level. GTZ’s input through PACT has put Malibya’s activities on the agenda of local elected representatives and they have since put in place strategies to protect the interests of local communities. GTZ/PACT’s activities built the capacities of key players (community authorities, civil society) to a level where they are aware of their rights in the development of local agreements and know how to assert these rights in the FDI process. PACT capacity

development activities enabled representatives from the Macina District to gather support from civil society and then to lobby national authorities. The communal land management component of PACT is currently developing simple tools to be used by communal administration to increase tenure security. It also realised a study on the harmonisation of customary and statutory land tenure to identify and propose ways in which the land rights of small farmers which are based on customary tenure could be secured. The study is a contribution to the ongoing national discussion/ review (“États Généraux”) of the current legal frame for land tenure (incl. the Land Act, the Agricultural Orientation Law, Forest Law, Law on Pastoralism).

The community irrigation system support programme (PASSIP)⁹ is currently developing a national community irrigation programme (PNIP) as part of the national investment programme for agriculture (PNISA).

German development cooperation is a member of the Technical and Funding Partners group in the Farming and Rural Economies section and heads up the irrigation team. It has expressed reservations about the vast, FDI-funded large scale irrigation holdings that are being developed as it is possible that these systems will break the fragile balance of irrigation water supplies in the Niger Valley during the off-season.

⁹ PASSIP is working at two levels: governmental consultancy and support of the government in building up a national small scale irrigation program (PNIP). In a later phase, PASSIP will support the implementation of the PNIP in selected regions. The approach of PASSIP is a holistic approach in regard to small scale irrigation (bringing together from the beginning the set up of irrigation infrastructure and its future productive use).



Fertile land

8.2 Potential additional areas of support

To guarantee FDI programmes are economically, socially and environmentally sustainable, it is imperative:

- To develop the national agricultural policy as set out in the LOA. This policy will place an emphasis on developing strategies for balanced irrigation scheme investments that take into account the actual capacities of irrigable areas for private development and for state and community development.
- To harmonise approaches to small- and large-scale irrigation schemes.
- To ensure the economic viability and sustainability of small- and large-scale schemes and undertake the necessary studies well before project works begin to avoid social and environmental issues and problems with financial viability.
- To document their intended commercial strategies.
- To rigorously apply existing legislation:
 - do not take high-level decisions without first consulting with all concerned people or representatives – this includes local communities
 - respect established standards and regulations on research and action to prevent disastrous environmental impacts
- To account for the communities' Economic, Social and Cultural Development Programme
- To ensure community authorities are given all the powers they are due, particularly in terms of public and private heritage
- To involve engineers working in the field in FDI decision-making processes.

Development Cooperation could contribute to these measures by further capacity development of local governments and civil society. This could include:

- informing local communities about their rights in regard to FDI projects which derive from national laws and regulations such as the Agricultural Orientation Law.
- providing the necessary platform and secure space for negotiations between the local communities, the Malian government and the foreign investor(s). If desired, the role of DC projects could also consist of the facilitation or moderation of the process. One way of conducting these negotiations could be in the context of a participatory local / regional land use planning which could serve to balance local, national and the investor's interests. The role of DC could consist in the capacity building of local actors to independently conduct such a large scale land use planning covering the area of several communes.

These activities would perfectly fit into the PACT programme and might be considered to be added during the next phase.

9. Conclusions and Recommendations

This study is based on the results of a survey about Foreign Direct Investments (FDI) in land in Mali. The data gathered are not exhaustive but they provide a clear picture of two major projects (Malibya Agriculture and Markala Sugar Project). In spite of the possible negative impacts listed here, these projects are globally interesting for Mali and its population, if measures are taken to mitigate the risks.

In terms of these projects, the main problems identified and requiring regulation by the Government of Mali are:

- the granting of lands without undertaking the relevant studies and public consultations to ensure the social and technical feasibility of a given project;
- not taking into account the land requirements of local people;
- the commencement of works before the completion of ESIA's, which has drawn protest from local people;
- failure to respect the customary rights of local people such as grazing pastures, transhumance routes and herders' accommodation;
- failure to take into account local authorities' Economic, Social and Cultural Development Programmes (PDESC);
- disregard for local agreements;
- Malibya's failure to take into account the cattle-rearing sector when building the principal irrigation channel;
- the calling into question of local authorities' role as contractors;
- Malibya's refusal to pay quarrying taxes;
- the failure of the Mali-Libya agreement to set out provisions for trading produce or for protecting food stocks in case food shortages occur;
- the lack of clear water-use and distribution strategies for irrigation projects;
- deficiencies in trade policy with regard to FDI programmes;
- lack of transparency in contractual arrangements and corruption resulting in bi-national contracts benefiting those who are privileged due to their position but not providing convincing benefits for the Malian population and even worsening their livelihoods and endangering their food security.

To ensure that Mali and its local communities reap maximum benefits from FDI programmes, the following recommendations should be followed:

1. Contracts and agreements should be reviewed and amended taking into account:
 - a) local land requirements (habitats, fields, pasture land, transhumance routes, herders' accommodation, watering holes, forests etc.)
 - b) the trade in food to avoid food shortages
 - c) the needs of displaced or re-housed local populations.
2. In any FDI, the land rights of occupants who derived their use rights (for settlement, agriculture, pasture, water, forests etc.) from customary tenure need to be recognised – no matter if the land under question is registered or not. To achieve this objective, the Land Act (CDP) should be reviewed to ensure the recognition of all informal land (use) rights which are based on the customary land allocation system.
3. Take advantage of the ongoing review ("États Généraux") of the legal frame on land tenure (Land Act, Agricultural Orientation Law etc.) in order to develop clear and transparent procedures for foreign direct investments in land.

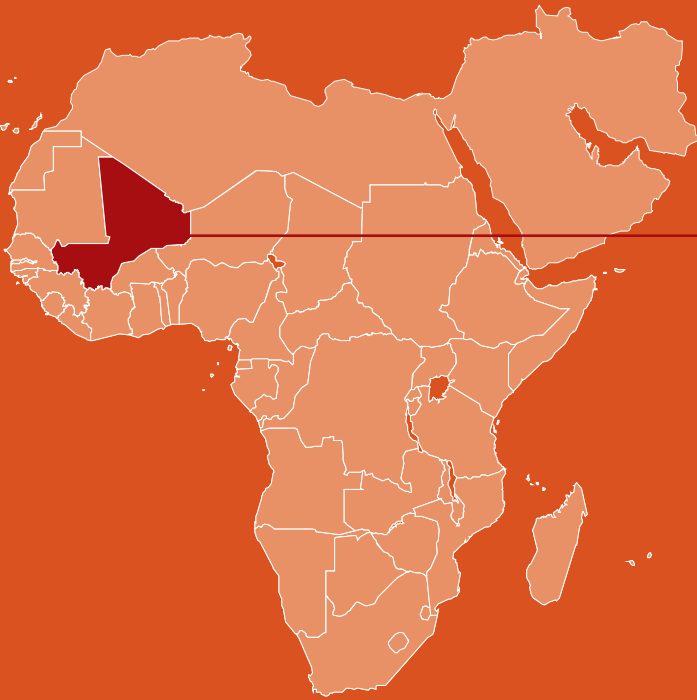
4. Agreements and contracts shall only be signed after consulting the local population and with greater transparency and respect for the law. Local population should be informed by civil society organisations (rural bodies and unions) about the implementation of such projects. The affected population should be empowered to assert their rights.
5. Access to food has to be secured. FDI contracts and agreements should contribute to an increase in local food security. Therefore, they should include objectives and commitments in agreements and contracts for the production of food (cereals, milk, meat and fruit) for the national market in order to cover Mali's own food requirements.
6. Use civil society organisations (farming and trade union organisations) to inform local communities so they are able to assert their rights and to oblige signatories to operate transparently and within the law.
7. Rethink the current practice of exhaustive tax exemption for foreign investors as income tax from these investments could present a major income for the national budget.
8. Institute a reasonable annual hectare-based land tax for commercial investors (not necessarily for small farmers) to provide new income for the national budget.
9. Undertake financial, technical, social and environmental feasibility studies before entering into an agreement or signing a contract.
10. Respect local conventions that regulate access and use to the land in question as they are the outcome of local negotiations settling long-term conflicts over the use of land and have been officially recognised by the state.
11. Introduce a participatory land use planning for the area in question to identify sustainable resources uses and to minimise the number of local people to be resettled as well as to ensure that they will receive adequate fertile lands as compensation for those lands given to foreign investors.
12. Define a transparent and fair policy to compensate local population who needs to be resettled.
13. Make it a prerequisite for foreign investors to present a convincing corporate social responsibility strategy as part of their investment.

The study has shown that FDI in Mali, although only in its beginnings, may have a major impact on rural development. If this impact will rather be positive or negative depends a lot on the involvement of the local population in the drafting of the projects as well as on the extent to which compensation is paid and mitigative measures realised for those negative impacts which cannot be avoided. As one-sided agreements resulting only or mainly in benefits for the investor('s country) will definitely have a negative influence on rural development, Development Cooperation needs to follow-up on how these FDI are drafted and implemented and should offer support to the Malian government as well as to local communities and civil society to enable them to better defend their interests. German Development Cooperation in Mali already started to get involved by capacity development of local governments and civil society as well as by the financing and/or conducting of studies focussing for example on the impacts of FDI in irrigation areas or on possibilities to secure local people's land rights.

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Item	Publication title	Translated title
1	Avant Projet Sommaire des travaux d'aménagement hydro-agricole de la 1ère tranche de 25 000 ha du projet de Malibya-Agriculture (rapport de synthèse, janvier 2009)	Summary pilot study of hydro-agricultural development works for the first 25,000-hectare stage of Malibya-Agriculture's project (summary document, January 2009)
2	SoSuMar and CaneCo combined business plan (November 2007)	SoSuMar and CaneCo combined business plan (November 2007)
3	Convention d'investissement dans le domaine agricole entre la République du Mali et la Grande Jamahiriya arabe Libyenne populaire et socialiste (June 2008)	Agriculture sector investment agreement between The Republic of Mali and the Socialist People's Libyan Arab Jamahiriya (June 2008)
4	Décret N°07-231/P-RM du 18 juillet 2007 fixant le cadre institutionnel de gestion de la sécurité alimentaire	Decree No. 07-231/R-PM of 18 July 2007 instituting the management framework for food security issues
5	Décret N°08-346/P-RM du 26 juin 2008 portant Etudes d'Impact Environnemental et Social	Decree No. 08-346/P-RM of 26 June 2008 for Environmental and Social Impact Assessments
6	Etude d'Impact Environnemental et Social des travaux d'aménagement hydro-agricole de la 1ère tranche de 25 000 ha du projet de Malibya-Agriculture (mai 2009)	Environmental and Social Impact Assessment for hydro-agricultural development works for the first 25,000-hectare stage of Malibya-Agriculture's project (May 2009)
7	Lettre de la Chambre d'Agriculture de Macina au Ministre de l'Agriculture (février 2009)	Macina Chamber of Agriculture's letter to the Ministry of Agriculture (February 2009)
8	Loi N°06-045 du 5 septembre 2006 portant Loi d'Orientation Agricole	Law No. 06-045 of 05 September 2006 instituting the Agricultural Guidelines Law (LOA)
9	Ordonnance N°027/P-RM du 22 Mars 2000 portant Code Domanial et Foncier	Edict No027/P-RM of 22 March 2000 instituting the private estates and property act (CDF)
10	Plan d'Action National de Gestion Intégrée des Ressources en Eau, Avril 2008	National action plan for combined water resource management, April 2008
11	Plan de financement indicatif de SoSuMar	SoSuMar indicative finance plan

Item	Publication title	Translated title
12	Plan de campagne 2009/2010 de la Direction Nationale de l'Agriculture	National Agriculture Executive plan for the agricultural year 2009/10
13	Programme de Gestion Environnementale et Sociale du Projet Sucrier de Markala (version provisoire, mai 2009)	Environmental and social management plan for the Markala Sugar-Producing Project (interim version, May 2009)
14	Programme National de Sécurité Alimentaire (PNSA) de la période 2006-2015, 1ère phase quinquennale 2006-2010 (15 juin 2005)	National Programme for Food Security (PNSA) 2006-2015: year five review 2006-2010 (15 June 2005)
15	Projet pour le Développement Economique et Social (mars 2007)	Economic and social development project (March 2007)
16	Rapport bilan de campagne 2007/2008 et 2008/2009 de la Direction Nationale de l'Agriculture	National Agriculture Executive evaluation report for the agricultural years 2007/08 and 2008/09
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