

# **LAND GRABBING IN AFRICA:**

**A Review of the Impacts and the Possible Policy Responses**

*by*

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## ACRONYMS

AU	African Union
AfDB	African Development Bank
BEE	Business Enabling Environment
BITs	Bilateral Investment Treaties
CAADP	Comprehensive Africa Agriculture Development Programme
CNOP	National Coordinator for Farmers' Organisations
DAs	Development Agents
DCE	District Chief Executive
DUAT	Direito de Uso e Aproveitamento da Terra
DFID	United Kingdom's Department for International Development
ECA	United Nations Economic Commission for Africa
EIA	Environmental Impact Assessment
ESIA	Environmental and Social Impact Assessment
EU	European Union
UEI	EU Energy Initiative
FAO	Food and Agricultural Organisation
FDI	Foreign Direct Investments
FEMACT	Feminist Activist Coalition
FIAS	Foreign Investment Advisory Service
GDP	Gross Domestic Product
GEE	Global Energy Ethiopia
HECA	Horn, East and Central Africa
ICESCR	International Covenant of Social, Economic and Cultural Rights
IFAD	International Fund for Agricultural Development
IFC	International Finance Corporation
IFPRI	International Food Policy Research Institute
IIED	International Institute for Environment and Development
JA	Justica Ambiental
LOA	Agricultural Orientation Law
LTRE	Long Term Renewable Energy Strategy
MSP	Markala Sugar Project
MDGs	Millennium Goals
NEP	National Energy Policy
NEPAD	New Partnership for Africa's Development
NES	National Energy Strategy
NGO	Non Governmental Organisation
NGONET	Ngorongoro Non-governmental Organisations Network
NPE	The National Policy on Environment
PINGOs	Pastoralists Indigenous Non Governmental Organizations
PDES	National Economic and Social Development Programme
PNSA	National Food Security Programme
PPP	Public Private Partnership
RAINS	Regional Advisory and Information Network Systems
SNNPRS	Southern Nations, Nationalities and Peoples Regional State

SWF	Sovereign Wealth Fund
TIC	Tanzania Investment Centre
UEMOA	Union Economique et Monétaire Ouest Africaine
UNAC	Uniao Nacional de Camponeses
USA	United States of America
USAID	United States Agency for International Development
WB G	World Bank Group

## **EXECUTIVE SUMMARY**

Research in Ethiopia, Ghana, Mali, Mozambique, Senegal and Tanzania indicate that land grabbing is currently a big challenge for African countries because of increased interest by foreign agricultural investors to acquire massive pieces of land in rural Africa. Though the land dispossession of rural African communities dates back to colonial and post independence eras, land grabbing has intensively picked pace since the global food crisis of 2007-2008. Generally, countries short of agricultural land supply are looking elsewhere, particularly to Africa, in order to meet their agricultural needs. The demand for bio fuel feedstock has also seen many investors scuttling for tracts of land in Africa.

Land grabbing is of grave concern because land deals are affecting massive pieces of land. In most cases the land is not marginal as governments and investors have presented. Available evidence in 2009 indicated that land deals in Ethiopia involved an estimated 602,760 hectares; in Ghana, they affected 452,000 hectares; and in Mali, they affected 162,580 hectares. The Mozambican government is promoting the country as a southern African agro fuel hub, and in 2007 alone, agro fuel investors in Mozambique applied for rights to close to 5 million hectares in the country. In 2007, Senegal's Minister of Bio fuels and Renewable Energy confirmed that there were interests by investors to establish an irrigated agricultural zone ranging from 60,000 to 600,000 hectares for the production of ethanol in the country. In 2008, it was reported that investors in Tanzania were interested in producing biomass for either ethanol or bio-diesel on land measuring from 30,000 to 2,000,000 acres. Thus though many land deals involving foreign investors are arguably legal, in most cases, rural communities are dispossessed of land that they have routinely used for ages in order to accommodate domestic policy decisions promoting foreign agricultural investments. There is also evidence that the validity of some contracts directly entered into between foreign investors and rural communities has been in doubt. This therefore merits labelling many of the land deals as "land grabbing".

Host African governments are playing a major role in enabling land grabbing, despite its great potential to sidetrack African governments from the goal of revitalizing their agriculture for economic growth under the Comprehensive Africa Agriculture Development Programme (CAADP). For instance, Mali's government backed investments include a 100,000 hectares allocation to a subsidiary of a Sovereign Wealth Fund (SWF) based in Libya. In Tanzania, the State President has been known for wooing villagers to set aside village lands for use by investors in mutually beneficial arrangements. In Senegal, government departments have exerted considerable pressure on local communities to allocate land for bio fuels production. The same trend has been observed in Ethiopia. The challenge of "state sponsored" land grabbing is that the state can even use its power to effect land dispossessions, as has been witnessed amongst pastoralists in Tanzania. The support that African governments



are rendering to land grabs risks undermining the considerable contribution that agriculture makes to national Gross Domestic Products (GDP) in many of the six countries. In February 2010, agriculture was contributing 45 percent to Mali's GDP; 43.5 percent to Ethiopia's GDP; 33.6 percent to Ghana's GDP; 28.7 percent to Mozambique's GDP; and 13.8 percent to Senegal's GDP.

Land grabbing is being pursued by foreign investors for various purposes, including for food security and energy interests. Pastoralists in Tanzania have also been affected by investors pursuing hunting/tourism interests. The investments from rich countries trying to secure their own food supplies have the potential to undermine the food security of the countries hosting the investments. In Ethiopia, nations in the Gulf region and China are some of the big investors. Libya is growing food for export in Mali, and Mauritius also announced plans to grow food in Mozambique.

Though there have been statements of intent by countries like Mozambique to produce agro fuels both for international and domestic energy markets, the expectation is that the majority of the agro fuel production is planned to feed foreign markets such as Europe. Even aspirations of Senegal to use bio fuels for diversifying national energy sources are countered by now by foreign companies to install bio fuel plants in Senegal with the aim of exporting the fuels. In Tanzania, there are views that the talk about meeting domestic energy needs is intended to open the door to enable large-scale projects to establish themselves in Tanzania, and to target the lucrative international market. Ghanaian public officials have admitted that since the State has no plans to subsidize domestic consumption, the bio fuels industry would have to be clearly oriented toward export to the European Union and the USA. In countries like Mozambique, Tanzania and Ethiopia, foreign players have even driven processes of developing policy frameworks to promote bio fuels and foreign investments. *In spite of statements of intent about investments being intended to boost production for the domestic markets, this is proving not to be the case in any of the countries in this review.*

The lived realities of marginalized rural groups like small scale farmers, women and pastoralists in the six countries covered in this literature review offer useful insights into the risks that land grabs are imposing on rural communities; and the need for African governments to enter into fairer land deals with foreign investors. For small scale farmers (the majority of whom are women) in rural areas, who contribute an estimated 60 percent to Africa's agriculture, land grabbing is giving rise to several concerns. Rural communities have generally been dissatisfied with the low quality of consultations by investors, including in countries where consultations are required by law like Mozambique. In some cases, investors in the six countries have only consulted the local elite. Women are most likely to be sidelined in consultations due to the fragility of their land rights. Many contracts governing agricultural investments are also one sided, in favour of investors. For instance, among other provisions, the contract between the Malian government and Malibya imposes responsibilities for negative impact mitigation costs on the Malian Government; is silent on precise duties or obligations of the Libyan side; and requires the Malian government to reimburse Malibya for infrastructure developments. In Ghana, a traditional leader has reported

being coerced by political elites into signing an agreement that he understood little or nothing about with a foreign investor. Generally, governments are also known to be evasive about the contracts that they sign with investors. When investors dispossess small scale farmers of land, there has sometimes been no compensation. And even in some investments where investors have provided compensation, like in Mali and Tanzania, communities have still decried that the compensation did not match the permanent loss of their land. Promises of employment have not been fully fulfilled either, with some investors often mechanizing operations and thus drastically reducing the demand for workers, as has been seen in Ghana. Experiences in Mali, Mozambique, and Tanzania also show that land grabbing investors secure favourable deals in using available and often scarce water resources, to the detriment of small scale farmers.

The impact of land grabbing on women is complicated by the fact that the phenomenon is surfacing at a time when the question of women's land rights is yet to be resolved in many rural societies in Africa. Land grabbing through massive agricultural investments is therefore contributing to the further corrosion of women's land rights. This is true because various generalized arguments that have been made to justify biofuels investments do not fit with the lived realities of women, particularly where women's land rights are concerned. These arguments include that: a) growing biofuel feed stocks would increase incomes for rural dwellers; b) that growing bio fuel feed stock on marginal land is the solution to resolving tensions over land rights; c) that rural dwellers will receive compensation for lost land; and d) that bio fuels will not compete with food crops. However, research shows that the likelihood of rural women gaining increased incomes from growing bio fuel feedstock is reduced, as a result of the power dynamics relating to access and control of land in many societies. For instance, in all the six countries, women have more limited access to resources than their male counterparts, especially with regard to access to control over and ownership of land. Thus though women are the major agriculturalists, income from the land is mostly controlled by their husbands. This is likely to include cash from women's labour in bio fuels.

The lack of appreciation about how agricultural investments could impact on women specific traditional sources of livelihoods may result from the erroneous assumption that men and women would benefit equally from new sources of income. Ghana is a good example of how women have in fact lost traditional sources of income through shea trees (used for making shear butter) that have been destroyed by agricultural investments. Yet, compensation schemes for loss of land do not take into account such women specific loses, as well as hardships that women encounter from land grabbing due to their gender roles. The fact that policies by African governments are targeting "marginal land" is also harmful to some subgroups of women. For instance, in Ethiopia, widows who commonly lose land to their in laws upon the deaths of husbands depend on what looks like marginal land. Thus land grabbing deprives them of their major source of livelihood. In Mali, women who are allocated pieces of land by their husbands usually get the poorest parts of family plots. Thus land grabbing that takes away such land from women strips them of the few land rights that they may have enjoyed, no matter how fragile.

Even where the land grabbed is in fact fertile and not marginal, women, who are the major land users and usually have access rights (though not necessarily control

rights), then lose the strongest right that they usually have (access to productive land). The impact of competition between land for bio fuel food stocks and land for food crops is also likely to impact more on women when food prices rise. In Africa, female heads of households who do not have enough to eat are more vulnerable to HIV infection as they take more sexual risks through increased transactional sex, increased unprotected sex, and increased likelihood of intergenerational sex. The fact that land deals are being promoted on the basis that they will offer employment to locals can also not guarantee benefits to many women. For instance, formal employment in a rural Mozambican family is for men, raising the possibility that women are at once excluded from employment prospects. And due to low levels of education, many women will not be eligible for skilled jobs by investors. And as investors mechanise their projects, many women are likely to lose out.

Another marginalized group that is being threatened by land grabbing is pastoralists. Many African governments still hardly acknowledge the strong contribution that pastoralism makes to national economies, despite having significant pastoral populations. In Ethiopia, the pastoralist population is estimated to be 4 million, and the millions of livestock produced from Ethiopia's drylands are a vital engine for trade, farming and urban activities. In Mali, 10 percent of the population is pastoralists, and livestock farming accounts for 30 percent of primary sector GDP. In Tanzania pastoralists account for about 10 percent of the total population, and a 2005 study estimated the annual turnover of the industry in Arusha to be US\$22 million. However, significant investments in pastoral communities are lacking, and thus there is no full implementation of the CAADP agenda. To garner more commitment, in April 2009, the Joint Conference of AU Ministers of Agriculture, Land and Livestock isolated pastoralists as a vulnerable population in respect of whom African governments have to ensure that their needs to participate in economic activities are embraced in agricultural growth strategies.

The 2009 Framework and Guidelines on Land Policy in Africa (*continental framework and guidelines*) is a critical tool that provides possibilities for African governments to reshape the direction of foreign agricultural investments, and neutralise the land grabbing related risks that are threatening marginalized groups of African rural communities. The *continental framework and guidelines* were adopted by the African Union (AU) summit, on 3<sup>rd</sup> July 2009 in Libya through a "Declaration on Land Issues and Challenges in Africa." The *continental framework and guidelines* are complemented other norms, in particular a set of eleven core principles and measures that the UN Special Rapporteur on the right to food has developed to address the human rights challenge in large-scale land acquisitions and leases. Among other things, the *continental framework and guidelines* set standards for best practices in developing comprehensive land policies that can ensure that agricultural investments are promoting economic growth without weakening the development of some population groups. These standards include the need for African governments to develop comprehensive land policies in Africa that provide anchorage for further policy development in land-related sectors and sub-sectors. All the six countries that were studied have investment or energy or agriculture related laws and policies that would require assessment in order to check their suitability for revision.

The *continental framework and guidelines* also recommends that land policies should recognise the role of local and community land based administration and management

institutions and structures along with those of the state. Though land in Ethiopia, Ghana, Mali, Mozambique, Senegal, and Tanzania is owned by the State, the countries have systems whereby state and customary laws related to land operate side by side. However, the scale of harmonization of these laws and their administration structures varies—with Ghana, Mozambique and Tanzania having clearer laws on the roles of traditional structures in comparison to those of the State. But it is still the general situation that the customary and statutory land administration systems (and sometimes even tenure regimes) in all the six countries fail to smoothly reconcile. Further, the *continental framework and guidelines* sets the standard that land policies should strengthen the rights of women through specified mechanisms. Tanzania has already taken legislative steps to ensure the participation on women in local land administration structures like Village Councils and Village Adjudication Committees. And while all the six countries have fair constitutional and/or statutory provisions towards promoting equality between men and women, there are challenges is practically realizing these provisions, especially when discriminatory traditional systems related to land are in play.

Another standard that can help African governments to address land grabbing is that land policies must balance pro-poor priorities with market orientation by mainstreaming land issues in poverty reduction strategies. The experiences from Ethiopia, Ghana, Mali, Mozambique, Senegal, and Tanzania confirm that land can be leased out to investors for lengthy periods of between 50 years to 99 years. In pursuing land deals, African governments therefore are required to take adequate measures to ensure that increased market-driven policies of land development do not expose vulnerable groups, particularly women, to further marginalization through speculation and costly land rights transfer systems. Ethiopia has positively included the needs and priorities of pastoralists in its Poverty Reduction Strategy. However, such approaches should also consider the role that investment laws can also play in side lining the interest of pastoralists, including women. In fact, the *continental framework and guidelines* have set a specific standard on how land policies should protect pastoral eco systems. There is also a requirement that land policy reforms should impact on reducing tensions between the tourism industry and other social and economic uses.

For African governments to enter into responsible land deals with inventors, they also need to ensure that land policy reforms should guarantee net gains for African populations for use of land for functions like energy development. Thus comprehensive land policies are needed to ensure that the risks currently faced by small scale farmers, women, and pastoralist in Ethiopia, Ghana, Mali, Mozambique, Senegal, and Tanzania do not become the norm in other land deals across Africa. The UN Special Rapporteur on the Right to Food has recommended specific measures that should be taken to improve gains for affected communities. And to ensure that an enabling environment is created for agricultural development, the *continental framework and guidelines* require African governments to ensure that the systems of property under which land is held and used are clarified for the variety of agricultural forms and participants in that sector. In defining the rights for agricultural investors, African governments should avoid impeding access by local communities to vital and scare land related resources like water and grazing land, as has been the case in Ethiopia, Mali, Mozambique and Tanzania.

Another important standard that should guide the processes of developing comprehensive land policies in Africa is that civil society organizations (CSOs) should be deeply engaged from the start, and its inputs should be fully taken into consideration. Representation from specific interest groups [including small scale farmers, women, and pastoralists] should be ensured. Ethiopia, Ghana, Mali, Mozambique, Senegal, and Tanzania could benefit in adopting the same standard even in the re examination of sectoral laws that impact on land grabbing. Experiences of RAINS in Ghana demonstrate that national level civil society organizations can effectively support rural communities, including women, in responding to land grabbing. In Mali, farmers' associations whose members are victims of the Malibya project are also reported to have called on the National Coordinator for Farmers' Organisations (CNOP) to safeguard the victims' interest. Further, CSOs are necessary in reviewing bilateral investment treaties (BITs) before they are signed with foreign agricultural investors. Some BITs have direct negative impacts on land rights of populations with tenure insecurity, including women. They can also complicate land reform initiatives, since governments contemplating land reform must contend with the international legal framework protecting foreign investors. Decisively dealing with land grabbing therefore requires African governments to promote agricultural investments that benefit all domestic populations by comprehensively examining and re examining all relevant land related legal and policy frameworks and agreements through holistic, multi sectoral approaches.

### Location of the Land Grabs Covered in the Report



## INTRODUCTION

*Dismembered from the land, from labour, from power, and from memory, the result is destruction of the base from which people launch themselves into the world.*<sup>1</sup>

Not very long ago, many rural African dwellers could boast of having land as the one tangible asset that they could utilise in perpetuity, subject to traditional terms of use. Today, many livelihoods are insecure because it is quickly becoming lucrative for foreign agricultural investors to acquire pieces of land in rural Africa. However, the irony is that this interest in foreign agricultural investments seems to have little or nothing to do with addressing the acute need for investments in small scale farming at national levels. Some are diplomatically calling the phenomenon “commercial pressures on land,” “(foreign) investment in land,” and “large-scale land acquisitions.”<sup>2</sup> However, some are *out rightly* naming it “land grabbing.” Land acquisition has been defined broadly to include not only the purchase of ownership rights, but also the acquisition of user rights—i.e. through leases or concessions, whether for a short or a long term.<sup>3</sup> On the other hand, land grabbing has been defined as taking possession of, and/or controlling a scale of land for commercial and industrial agricultural production that is disproportionate in size in comparison to the average land holding in the region.<sup>4</sup>

There are *sentiments* that “*the term land grabbing is unfortunate as it suggests illicit behaviour, whilst in reality the deals are completely legal.*”<sup>5</sup> This report still loosely uses the term land grabbing, considering that usually, rural communities are dispossessed of land that they have routinely used for ages in order to accommodate domestic policy decisions promoting foreign agricultural investments. Further, this report presents some experiences where the legality of some contracts directly entered into between investors and rural communities has been in question. And for many legal contracts, raw deals that rural communities have gotten have left them protesting and regretting, usually belatedly, the loss of their land. Then there is also the issue of whether the term agro fuel is preferable to bio fuels. Due to sensitivities that may guide some authors to prefer one term over the other, this report uses the two terms interchangeably, depending on the terminology used by the various sources that have informed this research.

In this report, possibilities are reviewed for African governments to apply the 2009 Framework and Guidelines on Land Policy in Africa (adopted by the African Union Summit) to comprehensively formulate or revise land related policies—so that land grabbing does not distort continental agendas of promoting increased investment in

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<sup>1</sup>Ngugi wa Thiong'o's Re-membering Africa (2009)

<sup>2</sup> Aarts V., (2009), Unravelling the 'Land Grab:' How to Protect the Livelihoods of the Poor? Master Product for AMID 2009 CIDIN, Radboud University Nijmegen/ Oxfam Novib. Referring to terms used by International Land Coalition (ILC), the International Institute for Sustainable Development (IISD) as well as the Special Rapporteur on the Right to Food (SRRF), p.9

<sup>3</sup>Cotula, L., Vermeulen, S., Leonard R., and Keeley, J., (2009), Land Grab or Development Opportunity? Agricultural Investment and International Land Deals in Africa. IIED/FAO/IFAD, p.17

<sup>4</sup> FIAN, (2010), Land Grabbing in Kenya and Mozambique—A Report on Two Research Missions and a Human Rights Analysis of Land Grabbing, p.8

<sup>5</sup> Aarts V., (2009), supra note 2

agriculture. The main agenda that is driving African governments to revitalize their agriculture for economic growth is the Comprehensive Africa Agriculture Development Programme (CAADP) and its associated Declaration on Agriculture and Food Security in Africa that was adopted by the Heads of State and Government of the African Union (AU) in July 2003. The risks that marginalized groups like small scale farmers, women, and pastoralists face suggests urgent need of action by African governments that are serious about using agriculture as a gateway to poverty reduction and food security. Such action by governments would indeed be well attuned to objectives related to poverty eradication under both the New Partnership for Africa's Development (NEPAD) and the United Nation's Millennium Goals (MGDs).<sup>6</sup> The research suggests that inaction or indifference by African governments towards land grabbing related challenges potentially resulting in food insecurity in rural African communities is a violation of the human right to food—as interpreted by the UN Special Rapporteur on the right to food.

In supporting African governments to seize the opportunity provided by the 2009 Framework and Guidelines on Land Policy in Africa in addressing land grabbing and responsibly promoting investments in Agriculture, this report draws on experiences from six countries that represent Southern Africa (Mozambique), West Africa (Ghana, Mali and Senegal), and the Horn of East and Central Africa (Ethiopia, and Tanzania). In all the six countries, agriculture contributes significantly to national GDP in varying degrees. As of February 2010, agriculture had the highest contribution to Mali's and Ethiopia's GDP at 45 percent and 43.5 percent respectively. Ghana followed with agriculture contributing 33.6 percent to the country's GDP. In Mozambique, agriculture's contribution to the national GDP was 28.7 percent, and in Tanzania, it was 26.4 percent. In Senegal, agriculture accounted for 13.8 percent of the GDP.<sup>7</sup>

Through a comparative analysis of the six countries, Chapter One assesses the rise of land deals in sub-Saharan Africa, particularly by focusing on land deals that are being sealed for food and energy security objectives. Chapter Two examines the extent to which land grabbing is proving a risk to the promotion of agriculture by looking at how small scale farmers, who are mostly marginalized, are affected by land grabs. While acknowledging that the majority of small scale farmers in the six countries, as well as in Africa are women, Chapter 3 specifically looks at the further risks that land grabbing poses to the already fragile land rights of women in the six countries. Chapter 4 sheds light on other dimensions of land grabbing that have particular negative effects on pastoralists as another marginalized group. Chapter Five considers standards for best practices that are set under the Framework and Guidelines on Land Policy in Africa that could support African governments to strategically and comprehensively respond to the challenges that land grabbing is posing to the livelihood of the rural poor, in Africa. Chapter Six provides key conclusions.

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<sup>6</sup> African Union, African Development Bank, and United Nations Economic Commission for Africa, (2009), Framework and Guidelines on Land Policy in Africa, Part 3.1.1, p. 30

<sup>7</sup> Central Intelligence Agency. Accessed at <https://www.cia.gov/library/publications/the-world-factbook/fields/2012.html>



## **CHAPTER 1**

### **THE RISE OF LAND DEALS IN SUB-SAHARAN AFRICA**

To understand why land grabbing is such a concern for Africa, there is need to trace the origins of the phenomenon, its scale, the sources of the land that is implicated, as well as the characteristics of the land deals. While the characteristics of land deals are wide, this chapter only dwells on deals for food and energy security in order to streamline the analysis. For the same reason, land deals related to tourism/hunting that are known to have destabilized pastoralist communities in Tanzania are discussed in chapter 4 within the context of challenges facing pastoralists as a marginalized group. Through the demonstration of practical scenarios that are playing out in Ethiopia, Ghana, Mali, Mozambique, Senegal, and Tanzania, this Chapter provides the evidence that if not re-evaluated, land deals will continue being a major risk to food and energy securities of host countries; as well as to the development and livelihoods of African people.

#### **1.1 TRACKING THE INTEREST IN AFRICAN LAND**

Land dispossession of small-holder farmers, pastoralists, indigenous peoples and other rural communities has been a continuous process over centuries of foreign and internal colonisation, as well as post-independence land grabbing.<sup>8</sup> But admittedly, foreign investment flows in countries like Ethiopia, Ghana, Mozambique, and Tanzania are bigger now, even compared to their situation in the early 1990s.<sup>9</sup> The popular observation is that the recent rush for land emanates from the global food crisis of 2007-2008. Thus *“today, there is momentum building behind the idea that long-term control of large landholdings beyond one’s own national borders is necessary to supply the food and energy needed to sustain one’s own population and society into the future . . . .”*<sup>10</sup> And demand for bio fuel feedstock is also creating huge new pressures for land.<sup>11</sup> In particular, numerous bio fuel initiatives are already expanding and proliferating in African countries, suggesting that this is just the beginning of a massive trend.<sup>12</sup>

Fingers are also pointing to priorities of the European Union (EU) and World Bank Group agencies. In what has been labelled as “the most aggressive mandatory

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<sup>8</sup> Livsage H., Responding to ‘land grabbing’ and promoting responsible investment in agriculture. Posted on IFAD social reporting blog on June 20, 2010. Accessed at <http://ifad-un.blogspot.com/2010/06/responding-to-land-grabbing-and.html>

<sup>9</sup> UNCTAD 2008, in Cotula, L., Vermeulen, S., Leonard R., and Keeley, J., (2009), supra note 3

<sup>10</sup> Borras, S., and Franco, J., (2010), From Threat to Opportunity? Problems with the Idea of a “Code of Conduct” for Land- Grabbing Yale Human Rights & Development L.J., Vol. 13, p 508

<sup>11</sup> GRAIN, at <http://farmlandgrab.org/8122>. Cited in The African Biodiversity Network, Bio fuelwatch and the Gaia Foundation, (2009), Biochar Land Grabbing: The impacts on Africa. A Briefing Paper

<sup>12</sup> Africa Biodiversity Network, Kenya; Melca Mahiber, Ethiopia; Envirocare, Tanzania; Climate and Development Initiative, Uganda; and Nature Tropicale, Benin, (2007), Response to Public Consultation Exercise by Energy and Transport Directorate-General, European Commission on Bio fuel Issues in the New Legislation on the Promotion of Renewable Energy: An African Response to EU Bio fuel Targets.

targeting,”<sup>13</sup> in 2009, the EU legislated that 20 percent of all energy used in the EU, and 10 percent of each member state’s transport fuel, must come from renewable sources by the year 2020—with most of this expected to come from bio fuels.<sup>14</sup> Therefore, most EU countries seem to be turning to African land in order to meet these targets. As for the World Bank’s agencies, the International Finance Corporation (IFC) and Foreign Investment Advisory Service (FIAS) exist in large part to promote foreign direct investment through the promotion of policies and technical assistance to governments in order to spur foreign direct investment in agriculture in developing countries. IFC and FIAS insist on regulatory reform in order to increase the Business Enabling Environment (BEE), as well as the Investment Climate of their client countries.<sup>15</sup> However, IFC’s advice to governments’ increases investor access into land markets and this can undermine the wellbeing of local communities, both in terms of land rights as well as access to food.<sup>16</sup>

The IFC/FIAS priorities lie with the investor, and cooperation with developing country governments is ultimately aimed at facilitating access for the investor. Thus “*with investors’ priorities in mind, it is not surprising that IFC/FIAS presence in developing countries has spurred the land grab trend to the detriment of marginalized local people.*”<sup>17</sup> Countries in Sub-Saharan Africa are particularly targeted because of the perception that there is plenty of land available, because its climate is favourable to the production of crops, because the local labour is inexpensive and because the land is still relatively cheap.<sup>18</sup> A question is asked—what is the position of host governments in all the land deals?

## **1.2 ROLE OF GOVERNMENTS IN SUB-SAHARAN AFRICA IN LAND DEALS**

Though the land in the respective sub-Saharan countries is formally owned by the state, governments are aiding and abetting the grabbing of the land that is in practice used by members of rural communities. Alternatively, they are active land grabbers of such land themselves. The latter situation applies to regional governments or organizations that are acquiring land in other African countries, as well as national governments that are pursuing eviction policies that are essentially grabbing land from rural minorities (see Chapter 4).

Mali has witnessed major government backed investments, including a 100,000 hectares allocation to a subsidiary of a Sovereign Wealth Fund (SWF) based in Libya; and 11,000 hectares allocation to *Union Economique et Monétaire Ouest Africaine* (UEMOA), a regional organization of which Mali is a member.<sup>19</sup> In Tanzania, on several occasions, the State President, Jakaya Mrisho Kiwete, is on record as having directly exhorted villagers to identify village lands to be put to use by investors in mutually beneficial arrangements. This has been viewed as exposing unsophisticated rural people to advances from persons possessing far more strategic information as to land

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<sup>13</sup> Borras, S., and Franco, J., (2010), supra note 11, p. 509

<sup>14</sup> Ibid

<sup>15</sup> Daniel, S., (2010), (Mis)investment in Agriculture: The Role of the International Finance Corporation In Global Land Grabs. Oakland Institute publication, p.6

<sup>16</sup> Ibid

<sup>17</sup> Ibid, p.15

<sup>18</sup> De Schutter, O., (Special Rapporteur on the right to food), (2009), Large-scale land acquisitions and leases: A set of core principles and measures to address the human rights challenge, p.4

<sup>19</sup> Cotula, L., et al, (2009), supra note 3, p.49

value and implications of the land alienation.<sup>20</sup> A similar trend has been noted in Senegal, with local agricultural, forestry, and rural development services reporting considerable pressure to allocate land for bio fuels production.<sup>21</sup> And in Ethiopia, some farmers in the Wolaitta region claimed that they agreed to grow castor on their fertile farm land mainly because they were instructed to do so by the government officials, mainly development agents (DAs).<sup>22</sup>

It has been contended that foreign land grabbing can even be more critical to human rights concerns than domestic land grabbing. This is because of the legal and practical difficulties faced by the territorial state in implementing its “protect” obligation towards foreign actors.<sup>23</sup> However, the significance of “state sponsored” land grabbing—direct, or indirect—should not be underestimated either. Where foreign investors are concerned, land grabbing becomes even complicated because of “the home government’s role and connections with the robust, politically and financially well wheeled investor companies, countries and individuals—not to speak of their ultimate objectives and consequences.”<sup>24</sup> Government elites may also have stakes in the investment project, as evidenced by one experience in Ghana under **Box 1**.

**Box 1: Government Official Pushing a Land Grab in Ghana**

In November 2007, when investigations were carried out into a massive destruction of vegetation cover over a large stretch of land near a village called Alipe in Northern region of Ghana, it was found that the site was to be the beginning of a large *Jatropha* plantation developed by a Norwegian biofuel company called BioFuel Africa—a subsidiary of BioFuel Norway. Then facts began to emerge—a big fish in Government was promoting the project and had deployed his business associates in the Region to front for him. This front man was immediately employed as the Local Manager of BioFuel Africa.

Source: Nyari, 2008

And as can be seen from the case of pastoralists in Tanzania (**Box 15**), the state can even ruthlessly use its powerful machinery to effect land dispossessions.

### 1.3 SCALE OF LAND DEALS

Though just how much land has actually changed hands remain unclear,<sup>25</sup> evidence points to a surge of interest for massive investments in land in Africa. Generally, accessing accurate data on the scale land deals in African countries is a significant challenge. Usually, “*government agencies are cagey, and investors in their majority are thrifty, in sharing information—necessitating the gleaning of information from a myriad of often disparate information sources.*”<sup>26</sup> For example, an investment by German

<sup>20</sup> Kamanga K. C., (2008), *The Agrofuel Industry in Tanzania: A Critical Enquiry into Challenges and Opportunities*. Study carried out on behalf of Land Rights Research and Resources Institute (LARRI) and OXFAM Livelihood Initiative for Tanzania (JOLIT)

<sup>21</sup> [http://actionaidusa.org/what/monthly\\_feature/senegal\\_quest\\_to\\_balance\\_food\\_security/](http://actionaidusa.org/what/monthly_feature/senegal_quest_to_balance_food_security/)

<sup>22</sup> Birega G., and Botto, Y., (2008), *Rapid Assessment of Recent Developments of Investments in Biofuel Feedstock Production in Wolaitta, Ethiopia Case Study of Three Woredas: Offa, Damot Weiyde and Kindo Koysha Rapid Assessment*, p.18

<sup>23</sup> FIAN (2010), *supra* note 4

<sup>24</sup> Mersha G., (2009), *Experts Worry Over Land Grab by Foreigners in Ethiopia*. Available at [http://nazret.com/blog/index.php?blog=15&title=ethiopia\\_s\\_land\\_grab\\_by\\_foreigners\\_worri&more=1&c=1&tb=1&pb=1](http://nazret.com/blog/index.php?blog=15&title=ethiopia_s_land_grab_by_foreigners_worri&more=1&c=1&tb=1&pb=1)

<sup>25</sup> Borrás, S., and Franco, J., (2010), *supra* note 11, p.508

<sup>26</sup> Kamanga K. C., (2008), *supra* note 21

company Flora EcoPower in Ethiopia was reported to involve 13,000 hectares,<sup>27</sup> while it was recorded at the Ethiopian investment promotion agency for 3,800 hectares only.<sup>28</sup> In Tanzania, due to unclear records and demarcations, Bioshape, a Dutch/Belgian is known to have acquired around 33,000 hectares. However, it could be more, since in total, the company claims to have over 80,000 hectares.<sup>29</sup>

IFPRI estimates that between 15 and 20 million hectares of farmland in developing countries have been subject to transactions or negotiations involving foreign investors since 2006.<sup>30</sup> **Table 1** also provides a picture of the scale of land deals in three of the seven countries under study—as recently jointly documented by the Food and Agriculture Organization of the United Nations (FAO), the International Fund for Agricultural Development (IFAD) and the International Institute for Environment and Development (IIED).<sup>31</sup>

**Table 1: Land under Investor Claim in Ethiopia, Ghana and Mali between 2004 - Early 2009 (Approved Projects Only)**

	Ethiopia	Ghana	Mali	Total
Total Land Area Allocated	602,760*	452,000	162,580*	1,217,340*
No. of Projects Approved (over 100 ha)	157	3*	7*	167*
Largest Land Allocation	150,000	400,000	100,000	
Total Investment Commitments (US\$)	78,563,023*	30,000,000*	291,988,688*	400,551,711*

Adapted from country studies in Cotula, L., et al, 2009; \* denotes incomplete data

The study notes that the fact that a country like Mali seems to be receiving higher levels of investment for lesser land than the other countries must be read with great caution. This is because for each project, investment levels depend on project-specific variables linked, for instance, to the crop system, the business model, and existing ecological and infrastructural conditions. But also, land availability varies across the study countries—thus land allocations that look small in relation to the overall national territory could still be very significant where they concentrate on the possibly much more limited areas of higher-value land.<sup>32</sup>

Further evidence shows that large tracts of land are also involved in Mozambique, Tanzania, and Senegal. With respect to Mozambique, a top government official in Mauritius was quoted in January 2010 as saying “*the government of Mozambique is*

<sup>27</sup> Reuters, 2008e, “Firm Eyes Sorghum Ethanol Plant”, 19 September.

<http://uk.reuters.com/article/domesticNews/idUKLJ5231720080919>. Cited in Cotula, L., et al, (2009), supra note 3, p.41

<sup>28</sup> Cotula, L., et al, (2009), supra note 3, p.41

<sup>29</sup> Country experience provided by Marc Wegerif, Economic Justice Campaign Coordinator, Horn East and Central Africa, Oxfam International

<sup>30</sup> De Schutter, O., supra note 19, p.3

<sup>31</sup> Cotula, L., et al, (2009), supra note 3, p.42

<sup>32</sup> Ibid, p.43

*proposing to lease the government of Mauritius some 23,500 hectares of land.*<sup>33</sup> And with the Mozambican government promoting the country as a southern African agro fuel hub,<sup>34</sup> a recent study by JA and UNAC revealed that in total, agro fuel investors in Mozambique applied for rights to close to 5 million hectares in Mozambique in 2007 alone. This is nearly one-seventh of the country's officially defined arable land.<sup>35</sup> In fact, a sectoral paper, the Mozambique Position and Experience on Bio fuels of 2007 indicates intentions to make use of the 41.2 million hectares of "marginal land" to produce crops like *Jatropha Curcas*.<sup>36</sup> In 2007, Senegal's Minister of Bio fuels and Renewable Energy confirmed that "*some want to establish an irrigated agricultural zone ranging from 60,000 to 600,000 hectares for the production of ethanol in our country.*"<sup>37</sup> And a representative of the Norwegian company, Agro-Africa, aiming at developing the production of Agro fuel in South Senegal is also on record as saying "*we have asked rural communities if they can grow more than 200,000 hectares of the crop.*"<sup>38</sup>

In 2008, it was reported that Tanzania had nearly 37 entities of varying types that were engaged in diverse aspects of bio energy development. The proposals from these investors implicated capital ranging from US \$ 60 million to \$ 1.5 billion to produce biomass for either ethanol or bio-diesel on land measuring from 30,000 to 2,000,000 acres. A joint venture proposal from CFC Ltd, with BAFF and SEKAB projected a required land size of 200,000 hectares for a 'Nucleus Estate' and another 200,000 hectares of land to be developed by small scale farmers.<sup>39</sup> New Forest Limited, a UK owned company, requested 30,000 hectares of land to plant tree for timber and carbon credit. The district government helped it to get land and so far they have 6000 hectares and are looking for more.<sup>40</sup> A Cairo-based private equity firm, Citadel Capital, also plans to invest between \$200 and \$400 million in East Africa (Tanzania, Kenya and Uganda). The investment plans to mainly focus on the agriculture sector, with Tanzania's '*Kilimo Kwanza*' initiative taking centre stage.<sup>41</sup> While some of these situations do not symbolize actual sealed deals, they nevertheless provide a broader picture of how far land deals could go. A further issue of curiosity is: where is all this land coming from?

#### **1.4 THE SOURCE OF LAND FOR INVESTMENT—"MARGINAL" LAND?**

*The very notion of "reserve" more or less automatically renders such land, by definition, available, amenable to, and appropriate for transformation into global granaries or new oil*

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<sup>33</sup> Reuters a, Reported on Wed Jan 27, 2010 by Jean Paul Arouff. Available at <http://af.reuters.com/article/investingNews/idAFJJOE60Q0L820100127?sp=true>

<sup>34</sup> FIAN (2010), supra note 4

<sup>35</sup> Matavel D. R. N., (2010), *Jatropha! A Socio-economic Pitfall for Mozambique*. Justica Ambiental (JA) and e Uniao Nacional de Camponeses (UNAC) publication

<sup>36</sup> Jumbe, C., Msiska, F., and Mhango, L. (2007), Report on National Policies on Biofuels Sector Development in Sub-Saharan Africa. Submitted by Food Agriculture and Natural Resources Policy Analysis Network (FANRPAN) to WIP-Renewable Energies, Germany, for COMPETE- Competence Platform on Energy Crop and Agroforestry Systems for Arid and Semiarid Ecosystems – Africa as an output under Work Program Number 6—Policy Development, p.38

<sup>37</sup> Interview conducted by D. Mane and E. Kaly, translated and abridged by Jonas Van Den Berg and Laurens Rademakers, cc, 2007. Available at <http://news.mongabay.com/bioenergy/2007/10/interview-with-senegals-minister-of.html>

<sup>38</sup> Bio fuels: How Green is the Green Gold Rush in Senegal? Available at <http://www.cafebabel.co.uk/article/28576/bio-fuels-Jatropha-senegal-interviews-producers.html>

<sup>39</sup> Kamanga K. C., (2008), supra note 21, p.42

<sup>40</sup> Country experience provided by Marc Wegerif, supra note 30

<sup>41</sup> Daniel, S., (2010), supra note 16

*wells. . . . The land for large scale fuel production must come from somewhere—whether from small farmers’ land, communal land, or conservation areas. There is no free land in any of our countries, so communities will inevitably be displaced and denied of their land territories and natural resources.*<sup>42</sup>

“Reserve” land has also been branded marginal land, reserve agricultural land, idle land, degraded land, unproductive land, underutilized land, wasteland—you name it. This land, it is argued, could be rehabilitated if brought under cultivation, especially in ways that make use of recent biotechnological innovations that are already (or soon will be) available for both food and energy crop production and processing.<sup>43</sup> This land is apparently very abundant in Africa, and investors should seize the moment and turn it around. However, a fundamental question has been asked: “what is meant by marginal lands? Or, better put: for whom are the lands marginal?”<sup>44</sup> A correction is therefore made that:

*What are often presented as ownerless, unused lands are at times the source of subsistence for the poorest people, and provide them with food, medicine, construction materials, fuel and other resources, aside from being used normally for pasture. Due to its low value, the property is not often clearly defined, which weakens its users’ rights. . . .*<sup>45</sup>

And Chapter 3 exposes even more reasons regarding why the so called marginal land is in fact important to subgroups of women. But even assuming that marginal land indeed existed, evidence shows that many investors do not want to have much to do with it either. In countries like Ethiopia and Ghana, there have been cases where government and investors seem to be at cross purposes. For instance, despite that the Ghanaian government’s interest in making use of marginal lands, as well as land affected by mining and land which is contaminated, some companies growing *Jatropha* rejected the possibility outright. They were not keen to only expect marginal yields in turn.<sup>46</sup> In Ethiopia, though the strategic plan of the government was to use marginal land or wasteland for biodiesel plant cultivation, companies like GEE and Sun Bio fuel used good fertile land (farms and grazing lands) for *Jatropha* and castor plantations in Wolaitta.<sup>47</sup>

However, Ethiopia’s strategic plan should also be regarded with scepticism. This is because some of the lands classified as “wastelands” at the national investment promotion agency, and allocated to investors in Benishogul Gumuz and Afar regions have been used previously for shifting cultivation and dry season grazing respectively.<sup>48</sup> In these circumstances, even the UN Special Rapporteur on the right to food sees the real risk that “*land considered ‘empty’ or ‘idle’ will be sold or leased to investors, including foreign investors, without taking into account the important services*

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<sup>42</sup> Africa Biodiversity Network, Kenya; Melca Mahiber, Ethiopia; Envirocare, Tanzania; Climate and Development Initiative, Uganda; and Nature Tropical, Benin, (2007), supra note 13

<sup>43</sup> Renewable Fuels Agency, (2008), The Gallagher Review of The Indirect Effects of Bio fuels Production, p. 66. Cited in Borrás, S., and Franco, J., (2010), supra note 11, p. 512

<sup>44</sup> Celestino, C., P., (2009), Curse or Cure-all? The Expansion of Biofuels in Ghana and its Effects on the Right to Land and Food Security. Universidad Carlos III Madrid

<sup>45</sup> Ibid, p. 8

<sup>46</sup> Ibid

<sup>47</sup> Ibid, p.12

<sup>48</sup> See Marsha, G., (2009), supra note 25

*this land renders to the local population.*"<sup>49</sup> In Mozambique, research findings in **Box 2** dispute both the fact that *Jatropha* is being grown on marginal land, and that such land is present in abundance as claimed by government. In Tanzania, many areas of the country identified for bio fuels are characterised by a fairly high rainfall, water resources, rich soils, and fairly dense populations.<sup>50</sup>

**Box 2: Decoding the marginal land myth in Mozambique**

Almost all of *Jatropha* planted in Mozambique has been on arable land, with fertilizers and pesticides, but have still fallen short of the claimed growth rates and yields. Furthermore, one of the main factors for Mozambique's projected potential for *Jatropha* production is its "claims" of extensive stretches of "unused arable and marginal land". . . At an industrial level, one must take into consideration that around 70percent of Mozambique is covered in forest and woodlands and most large scale agriculture projects are going to replace natural vegetation. In the current climate change crisis the loss of the major carbon sinks like forest have to be taken seriously. Claims of marginal land also do not take into account ecosystem services, such as: sustaining local hydrology, replenishing/maintaining soil nutrients, and maintaining biodiversity. They also ignore the resource contribution to livelihoods, such as animal protein, fruit, firewood and building material.

Source: Matavel D. R. N., 2010

In Ghana, communities were being wooed to grow 200,000 hectares of *Jatropha* in the very fertile Velingara zone, which government had previously earmarked for rice channels.<sup>51</sup> In fact, the government confirmed that "*no zone has been excluded. The entire country is suitable for Jatropha, except for regions with a relatively dense forest.*"<sup>52</sup> It is therefore certain that though *Jatropha* has been widely marketed as "food security friendly"—because it can be grown in semi-arid areas—it is in fact usually grown on fertile lands already occupied by farmers. Thus there is merit in the observation that "*as is in any sector, corporate profit with agro fuel crops is best assured when these plantations are on the most fertile lands, closer to major transportation routes.*"<sup>53</sup> With these observations in mind, it is important to unveil the exact characteristics of the land deals.

### 1.5 THE CHARACTER OF LAND DEALS

The major private land deals that have actually reached conclusion have involved both agrifood companies and bio fuels developers.<sup>54</sup> In a study of five countries, including Ethiopia, Ghana and Mali, food projects accounted for the majority of allocated land areas, as well as investment commitments. The attractiveness of bio fuels as an investment option varied widely among African countries, with Mali and Ethiopia leaning towards food projects.<sup>55</sup> Ghana, Mozambique, Senegal, and Tanzania seem to

<sup>49</sup> De Schutter, O., supra note 19, p.7

<sup>50</sup> Kamanga K. C., (2008), supra note 21

<sup>51</sup> Bio fuels: How Green is the Green Gold Rush in Senegal? Supra note 39

<sup>52</sup> Hon. Kwesi Ahwoi, Minister of Food and Agriculture, Republic of Ghana, (2010), Government's Role in Attracting Viable Agricultural Investment: Experiences from Ghana, The World Bank Annual Bank Conference on Land Policy and Administration. Washington, DC April 26 and 27, 2010

<sup>53</sup> GRAIN, at <http://farmlandgrab.org/8122>

<sup>54</sup> Cotula, L., et al, (2009), supra note 3, p.38

<sup>55</sup> Diallo, A., and Mushinzimana, G., (2009), Foreign Direct Investment (FDI) in Land in Mali, Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ) GmbH. Eschborn, p.16— For instance, in Ethiopia, 98 percent of the projects recorded at the investment promotion agency involved food production,

have more bio fuels projects. Regardless of the nature of agricultural investment, the low amounts money involved for land acquisitions has left many speechless. For instance, in Ethiopia, Karuturi, a Bangalore based Indian company, has acquired more than 300,000 hectares (741,000 acres) of land in Gambella. Under their agreement, Karuturi does not have to pay a penny for the first six years for its holding in Gambella. Then it has to pay only 15 birr (equivalent to USD \$1.13) per hectare per year for the remaining 84 years of its 90 years lease.<sup>56</sup> This part intends to provide more insight into the nature of land grabs that are advancing the food and energy security interests of countries and companies both from within and outside Africa. The pertinent question to this analysis is: exactly whose interests are being served? Concerns relating to how energy priorities seem to be gaining advantage over national food security interest are also addressed.

### 1.5.1 Land Deals for Food Security

*Imagine empty trucks being driven into, say Ethiopia, at a time of food shortages caused by war or drought, and being driven out again full of grain to feed people overseas.*

Food insecure nations, particularly in the arid Gulf region, are investing in farmland across Africa.<sup>57</sup> Motivated by the need to address huge costs of food imports, the Gulf Cooperation Council (GCC), which spent \$10 billion in 2008 on food,<sup>58</sup> announced the need to turn Africa as their bread basket. The process started with strengthening the GCC-Africa Cooperation Forum, and out of the seven countries under study, Mozambique, Senegal, Tanzania got on board.<sup>59</sup> In particular, Ethiopia is the epicentre of land grabs for food exports in Africa. A consortium of Saudi agricultural firms called Jenat recently announced plans to invest US\$ 400 million into food production in the country [and Sudan].<sup>60</sup> Saudi Star Company plans to spend up to US\$2 billion acquiring and developing 1.25 million acres of land in Ethiopia in the next few years. So far, it has bought four farms and is already growing wheat, rice, vegetables and flowers for the Saudi market. It expects eventually to employ more than 10,000 people.<sup>61</sup>

Chinese investors are also interested in growing sesame in Ethiopia.<sup>62</sup> The Ethiopian venture has been marked as a threat to local producers, because until now, China had been Ethiopia's leading export destination for sesame. Thus "*the tilt to involving millions of ill-equipped peasant producers in unmatched competition by China of fertile virgin lands should be a cause of concern for Ethiopia and its friends.*"<sup>63</sup> In Mali, their experience with a Libyan investment (**Box 3**) in the Niger Basin Authority area will also

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compared to only 2 percent for bio fuels (though in terms of land area the split was slightly different—94 percent versus 6 percent). In Mali, out of the demanded land of all known projects, 142,500 hectares is for food production, while 17,000 hectares is definitely designated for agro fuel production.

<sup>56</sup> Daniel, S., (2010), supra note 16

<sup>57</sup> Reuters a, supra note 34

<sup>58</sup> Bahrain's Gulf Daily News. Cited in Mersha G., (2009), supra note 25

<sup>59</sup> Mersha G., Ibid

<sup>60</sup> Reuters, 2008f and 2009c. Cited in , Cotula L., et al, (2009), supra note 3, p.38

<sup>61</sup> Daniel, S., (2010), supra note 16

<sup>62</sup> Shewakena, F., (2009), Full Circle: Back to Land to the Tiller Implications of the Land Grab in Ethiopia, Available at

[http://nazret.com/blog/index.php?blog=15&title=full\\_circle\\_back\\_to\\_land\\_to\\_the\\_tiller\\_i&more=1&c=1&t b=1&pb=1](http://nazret.com/blog/index.php?blog=15&title=full_circle_back_to_land_to_the_tiller_i&more=1&c=1&t b=1&pb=1)

<sup>63</sup> Mersha G., (2009), supra note 25



see the whole food production exported. However, some projects that target the Malian market exist—a French investment of Agro Energy Development and the private-public-partnership in Markala for sugar production.<sup>64</sup> The Mauritius government, which set aside 1 billion rupees for the creation of a food security fund in its 2008/2009 budget, plans to take ownership of leases in Mozambique, before sub-leasing them out to investors.

**Box 3: All Food for Export by Malibya Agriculture—a Regional Investor**

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. Under Malibya Agriculture, Libya intends to establish an 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 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.

Source: Diallo A., and Mushinzimana G., December 2009

Mauritius intends to grow crops such as wheat, rice, pulses, maize, onions and potatoes on mainland Africa.<sup>65</sup> Yet, according to the Mozambican Technical Secretariat of Food and Nutrition Security, approximately 35 percent of Mozambican households are chronically food insecure.<sup>66</sup> Prioritising agricultural investments for food exports at the expense of national food security creates avoidable pressure on land. This situation reflects a lack of strategies to ensure that energy and food investments by other countries do not override agricultural interests of grassroots communities. It is also necessary to scrutinize the land deals that are being sealed for the production of bio fuel.

### 1.5.2 Land Deals for Energy Security

This part examines two aspects to deals for energy security in Ethiopia, Ghana, Mali, Mozambique, Senegal, and Tanzania: the beneficiaries of the energy sought, and the type of foreign interests involved.

*Whose energy interests?*

*There is a discrepancy between the government's stated aim of using bio fuels to bring energy to the rural poor, and the policy of evicting them from their lands in order to do so . . . .<sup>67</sup>*

Further, there is a mismatch between the recognition of domestic energy deficiencies by most of the six countries under study, and the reality that most of the bio fuel investments are geared for export. For instance, the Mozambican government has been very clear on its intention on agro fuels—it wants to produce them both for international and domestic energy markets.<sup>68</sup> However, there are expectations that the majority of the agro fuel production from *Jatropha* is intended to supply foreign

<sup>64</sup> Diallo A., and Mushinzimana G., (2009), supra note 56

<sup>65</sup> Reuters a, supra note 34

<sup>66</sup> Cotula, L., et al, (2009), supra note 3, p.26

<sup>67</sup> African Biodiversity Network, (2007), *Agro fuels in Africa—The impacts on Land, Food and Forests. Case Studies from Benin, Tanzania, Uganda and Zambia*, p.12

<sup>68</sup> FIAN (2010), supra note 4

markets such as Europe,<sup>69</sup> as can be deduced from patterns relating to Mozambique's energy outputs as depicted in **Box 4**.

**Box 4: Agro Fuel for Exports—The Basis for This Expectation in Mozambique**

The estimated hydropower potential for Mozambique is as high as 14 000 MW, with the current hydropower production being 2 488 MW. The 2 075 MW produced from the Cahora Bassa dam alone is enough to meet the country's entire energy needs, but only about 1percent of the Mozambican rural population and 14percent of the total population has access to electricity. . . The bulk of both gas and hydropower produced in Mozambique is exported to neighbouring South Africa, with insignificant amounts allocated locally. . . The local market is considered to be weak and is outcompeted by foreign markets with better prices.

Source: Matavel D. R. N., 2010

In Senegal, the promotion of bio fuel was based on the conviction that "*biofuel will help us diversify our energy sources and reduce the increasing oil bill while protecting the environment from pollution.*"<sup>70</sup> But even ordinary people seem to see through the rhetoric about using bio fuel investments for domestic energy needs. A grassroots supervisor of cooperatives of banana producers in the Tambacounda region has expressed his concerns that:

*It is clear that, given the size of the land surfaces required by the private developers coming from Europe and elsewhere, the objective is mass production for export . . . I was very surprised by this rush, by the surface areas required, and by the lack of information given to small producers . . .*<sup>71</sup>

Indeed, foreign companies are reported to have committed to install bio fuel plants in Senegal with the aim of exporting the fuels.<sup>72</sup> But this does not seem to give the government discomfort for the reason that "*Senegal would still have factories, and would not merely be an exporter of raw materials.*"<sup>73</sup> In Tanzania, there is also talk about the potential for bio fuel production to meet national energy requirements, and large areas of the country are being identified and evaluated for their potential to grow crops for agro fuel production, particularly sugarcane. However, an observation has been made that: "*it is quite clear that much of the talk about meeting domestic energy needs is intended to open the door to enable large-scale projects to establish themselves in Tanzania, and to target the lucrative international market.*"<sup>74</sup>

The African Union also shares these views and notes that "*energy development has become an important economic activity in many African countries. . . Most of this activity is driven by foreign investors and is geared towards the export rather than local markets.*"<sup>75</sup> Ghana seems to be facing this reality squarely, with the Executive

<sup>69</sup> Matavel D. R. N., (2010), supra note 36, p.15

<sup>70</sup> <http://www.globalenvision.org/print/1266>

<sup>71</sup> Bio fuels: How Green is the Green Gold Rush in Senegal? Supra note 39

<sup>72</sup> Interview with Minister of Bio fuels and Renewable Energy Interview conducted by D. Mane and E. Kaly, translated and abridged by Jonas Van Den Berg and Laurens Rademakers, cc, 2007. Available at <http://news.mongabay.com/bioenergy/2007/10/interview-with-senegals-minister-of.html>

<sup>73</sup> Ibid

<sup>74</sup> African Biodiversity Network, (2007), supra note 68

<sup>75</sup> African Union, the African Development Bank, and the United Nations Economic Commission for Africa, (2009), supra note 7, p. 35

Secretary of the Energy Commission expressing his doubts about the economic viability of domestic demand for bio fuel—since the State has no plans to subsidize domestic consumption. He acknowledged that “*the industry would have to be clearly oriented toward export to the European Union and the USA.*”<sup>76</sup> Indeed, any talk of bio fuel production for local energy consumption seems to be undermined by the obvious intent of international investors to target foreign markets, where rising global oil prices will determine high prices for agro fuels.<sup>77</sup> Thus for now, the potential for using bio fuel productions for domestic energy needs seems to remain just that—a potential. This reality has to be examined against the revelations that some cash-strapped, oil importing African governments are already forced to spend twice to thrice as much on importing energy than on health care.<sup>78</sup> For example, Senegal was once reported to have an estimated daily consumption of 33,000 oil barrels.<sup>79</sup> In 2008, Tanzania’s annual oil import bill was in excess of US\$ 1.46 billion.<sup>80</sup> Mozambique imported US\$750 million of fuel in 2008, over US\$300 million more than in 2004.<sup>81</sup>

#### *Examples of Foreign Interests in Bio fuels*

Available information indicates that over 20 companies from around the world, including China, Brazil, Germany, Italy, The Netherlands and Norway, are acquiring land in Ghana to produce bio fuel, mainly *Jatropha* and sugarcane.<sup>82</sup> Bio fuel Africa, a Finnish company, is also in the country to farm large areas in order to obtain *Jatropha* oil for export.<sup>83</sup> In Ethiopia, **Box 5** demonstrates how the agro fuels boom is unfolding in Ethiopia, with a German Company, Flora EcoPower, and a UK company, Sun Bio fuels, taking parts in the field.

#### **Box 5: Land Deals for Energy—Experiences of Ethiopia with International Investors**

The agro fuel industry is very active in Ethiopia, which has identified 17.2 million hectares as suitable for *Jatropha*. The German company Flora Ecopower is investing 671 million birr (US\$77 million) in the Oromia Regional State, and has negotiated the purchase of over 13,000 hectares of land in the Fadis and Miks woredas (districts) of the East Hararghe zone for the production of biodiesel. Another company, Sun Bio fuels, has signed a lease agreement with the Benshangul Gumuz Regional State government for 80,000 hectares of land. It has also purchased 80 per cent of the National Biodiesel Corporation of Ethiopia as part of its programme to strengthen its presence in Ethiopia prior to investing in the whole of East Africa. It is reported to have helped to draft the Ethiopian Bio fuels Strategy, which establishes the country’s overall agro fuels programme. The company is carrying out land surveys, and planning with the government which areas should be devoted to agro fuels. . .

Source: Africa Biodiversity Network, July 2007

Some of the large *Jatropha* companies already in Mozambique are ESV Bio Africa, affiliated to a Ukrainian Company; Energem Renewable Energy LDA, affiliated to a Canadian Company; Enerterra and MoçamGalp, two Portuguese companies; Deulco

<sup>76</sup> Celestino, C., P., (August 2009), supra note 45, p. 9

<sup>77</sup> African Biodiversity Network, (2007), supra note 68, p. 14

<sup>78</sup> Interview with Minister of Bio fuels and Renewable Energy supra note 73

<sup>79</sup> Floyd Mann, Brazil and India Join Senegal for Bio fuel Production. Available at <http://www.globalenvision.org/print/1266>

<sup>80</sup> Revelation by Tanzania’s Central Bank. Reported in IMF warns Tanzania on Oil Price Rise Impact. Available at <http://english.sina.com/business/1/2008/0626/168686.html>

<sup>81</sup> Daniel, S., (2010), supra note 16

<sup>82</sup> Hon. Kwesi Ahwoi, Minister of Food and Agriculture, Republic of Ghana, (April 2010), supra note 53

<sup>83</sup> Celestino, C., P., (2009), supra note 45, p. 13

Energias Renovaveis, affiliated to a South African company; MoçamGalp; Sun Biofuels, a UK company; and AVIAM, an Italian company.<sup>84</sup>

### **Pictorial Examples of Jatropha Projects in Mozambique**



TOP LEFT: Energem – Gaza; TOP RIGHT: CHEMC agric – Inhambane; BOTTOM LEFT: Sun Biofuels – Manica; BOTTOM RIGHT: D1 Oils – Maputo

Source: Source: Matavel D. R. N., 2010

The Embassy of Italy, in cooperation with the World Bank, also sponsored a study on the agro fuels potential in Mozambique. Largely based on this study, the Mozambican government adopted its Policy and Strategy for Bio-fuels, approved in May 2009.<sup>85</sup> Several foreign-owned companies are also investing in agro fuel developments in Tanzania within a context of support from international development agencies, such as the EU Energy Initiative (EUEI), the World Bank, USAID and DFID.<sup>86</sup> In 2007, the Ministry of Energy and Minerals (MEM) in Tanzania, and the Swedish Energy Agency

<sup>84</sup> Daniel, S., (2010), supra note 16

<sup>85</sup> FIAN, (2010), supra note 4, pp 36-37

<sup>86</sup> Ibid

(STEM), concluded a Memorandum of Understanding (MoU) to assist in reviewing policies, laws and institutional arrangements relevant to bio fuels.<sup>87</sup> With all this foreign interest, *There appears to be a real risk that governments are being tempted, or encouraged, to throw caution to the wind, as evidenced by an earlier GTZ study in Tanzania*<sup>88</sup> that “*in order to quickly proceed with the introduction of bio fuels in Tanzania, the Government should take immediate action to enter the learning-by-doing process—and not wait for results and policy advice from the National Bio fuels Task Force.*”<sup>89</sup> One of the identified impacts of land grabs for bio fuel production in sub-Saharan Africa is the clash between energy and food security interests.

### 1.5.3 The Competition between Energy and Food

Bio fuel production entails a competition for resources between bio fuel and food production. This is both in terms of land use (food crops or bio fuel crops), but also in considering whether a crop such as sugar cane should be directed to producing crystalline sugar, or to a bio-refinery.<sup>90</sup> Official voices in Senegal maintain that “*we are doing everything we can to make sure that the projects that are developed do not affect the food supply of the Senegalese people . . . . The president has been very clear and wants production to be oriented to local needs above all.*”<sup>91</sup> But according to **Box 6**, on the ground, there are both optimistic and pessimistic opinions surrounding *Jatropha*, including on its potential to impact on food security in the country.

#### **Box 6: The Imbalance Between Food Security and Fuel Crop Production—Senegal**

The government chose the very fertile region of the Velingara zone (in the south of Senegal, 700 kilometres from Dakar) to rebuild rice channels as a means to combat the serious food crisis in Senegal, where more than half of the population lives below the poverty line. Now the same Velingara zone is targeted for agro fuels production. According to Demba Balde, ‘Agro fuels will improve our lives and make things easier.’ The small producer permitted the plantation of *Jatropha* in his village, Goundaga. ‘I have seven children and at the moment I am producing peanuts, soy and corn. But I hope that selling my *Jatropha* grain will make life easier for us.’ His optimism is not shared. ‘I clearly refused all the initial propositions that I received for starting to grow *Jatropha* because I do not want us to become farm workers at the mercy of a few companies,’ states Abdou Tall, a member of the federation of producers of the Anambé, the river which irrigates the valley and makes the land fertile. ‘I prefer to continue to increase my production of rice and corn. Imagine what would happen if the world demand falls and the price of agro fuels collapses, after we have concentrated all our efforts on it: our situation would be even worse than now and there would be famine. We can’t eat *Jatropha*, but we can eat rice.’

Source: Pollack, A., 2009<sup>92</sup>

In Ethiopia, analysts’ reaction to the agro fuels projects in Wolaitta were that “*growing castor by making use of fertile farm lands of small holder farmers of Wolaitta means*

<sup>87</sup> Ibid

<sup>88</sup> German Technical Cooperation (GTZ), (2005), Liquid Bio fuels for Transportation in Tanzania: Potential and Implications for Sustainable Agriculture and Energy in the 21<sup>st</sup> Century. See Kamanga K. C., (March 2008), supra note 21, p. 32

<sup>89</sup> Ibid

<sup>90</sup> Kamanga K. C., (2008), supra note 21

<sup>91</sup> Words of Sana Faty—responsible for bio fuels at Senegal’s environment ministry. Quoted in Bio fuels: How Green is the Green Gold Rush in Senegal? Supra note 39

<sup>92</sup> Ibid

*adding an insult to the injury of the people who have been suffering from food insecurity for many years.*<sup>93</sup> In Mali, the concern is that Malibya's project reduces the amount of fertile irrigable farmland for national food production by 100,000 hectares. And the 14,100 hectares allocated to the Markala Sugar Project was formerly earmarked for rice production. Now, this land will become water-hungry sugar plantations, resulting in an 85,000-tonne drop in rice output (six tons per hectare).<sup>94</sup> Tanzania is not spared, and NGOs are asking *“why, then, is the government not focusing on increasing agricultural production in the most irrigated and fertile areas of land, but is instead looking to displace food production and precious water resources for production of agro fuels for export.”*<sup>95</sup>

## **1.6 CONCLUSION**

This Chapter has provided evidence that land grabbing is a real and serious threat to many rural communities in sub-Saharan Africa, especially when its by-products of food and energy are wholly meant for exports. The situation for rural communities is even more precarious because regional and national governments are behind the land grabbing—directly or indirectly. It will therefore be difficult for African governments to realize their aspirations to promote investments in agriculture in order to reduce the poverty of their populations—most of whom live in rural areas—if the food and energy security needs of such populations are secondary. To substantiate this position, the subsequent three Chapters demonstrate that land grabbing is having undesirable impacts on marginalized populations like small scale farmers, women, and pastoralists. By analyzing how each of these groups is, or could be, impacted by the phenomenon, the information draws attention for the need for governments in sub-Saharan Africa to be driven by multi dimensional realities in policy decisions involving large scale land deals.

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<sup>93</sup>Birega G., and Botto, Y., (2008), supra note 23, pp 17-18

<sup>94</sup>Diallo A., and Mushinzimana G., (2009), supra note 56, p 24

<sup>95</sup>African Biodiversity Network, (2007), supra note 68, p12

## CHAPTER 2

### LAND GRABBING AND RISKS FOR SMALL SCALE FARMERS

Government decisions relating to large scale land deals need to take into account the many risks that have differential impacts on various groups of the “approximately 80 million small-scale farmers in Africa who produce very little—not because they do not want to be more productive, but because they are not able to.”<sup>96</sup> This Chapter only provides selected broad examples of such risks, while recognizing that some of the risks may be more real to sub groups of small scale farmers, compared to others. Factors that can lead to differential impacts include sex, marital status, age, land holding sizes, investment capacities, their levels of poverty or well being etc. In Ethiopia, Ghana, Mali, Mozambique, Senegal, and Tanzania, examples of issues that are unsettling to small scale farmers in the context of land grabs include: lack of meaningful consultations, defective contracts, low quality of compensation, monopoly of water resources, and the dim reality behind prospects of employment by agricultural investors.

#### 2.1 LACK OF MEANINGFUL CONSULTATIONS

Dissatisfaction with the quality of consultation is the common element across communities who have suffered land grabbing. Though countries like Mozambique, Mali, and Tanzania require that communities be consulted in respect of projects that could affect them, as **Box 7** demonstrates, some “consultations” have been seriously flawed. However, there have been some recorded claims of solid consultations, like the African Development Bank’s documentation in respect of an Environmental and Social Impact Assessment (ESIA) for the Markala Sugar Project (sugarcane) in Mali. Curiously, concerned communities were contradicting these claims.<sup>97</sup>

<b>Box 7: Examples of Flawed Consultation Patterns By Investors in Mozambique and Mali</b>
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*New Forest Limited Project, in Tanzania*

In Kilolo, Iringa Region of Tanzania, New Forest Limited have planted over 3000 hectares mainly with pine trees. The villagers had been planting on much of this land, but the officials claim it was grass land. The terrain is hilly and the practice was for people to plough in the valleys and the lower slopes of the hills and graze animals on the higher slopes. What happened is land transfer by ‘fiat’; there was a lot of pressure from the central government pressuring the villagers to meet and approve the letters sent by the District Executive Director (DED) to the village assembly. The DED called a village council meeting and immediately afterwards called a village assembly to approve the request. The promise was that a road will be built and a hospital. After the approval the government proceeded to transfer the status of the land from village land - that the village council has control over - to general land that the

<sup>96</sup>Mannak M., Investment in Small Farmers Crucial in Africa  
Published by IPS on June 22, 2009

<sup>97</sup> Diallo A., and Mushinzimana G., (2009), supra note 56—Also explaining that: It seems that the reason for this contradiction lies in the fact that 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 be informed and could rather chose between different options concerning minor issues than decide on the whole concept of the project.

national government has control over. People do not know how the process of transfer is carried out and they came to realize only later that the land was no longer theirs. They were persuaded to accept an investment, but did not realize it would mean the loss of land for the village.<sup>98</sup>

*The Malibya Project in Mali*

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 required 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.<sup>99</sup>

The increased vulnerability of communities when investors only consult the elite, kick start projects without consultation, or fail to address communities' concerns that emerged from the consultation process—all speak about the looseness of investment policy and/or implementation in many countries in sub Saharan Africa. For countries like Ghana, one gap that has been noted is that that many plantations are being developed outside purview of governments. Although the district-level governments, in almost every observed case, are cognizant of the developments taking place in their respective districts, there are no formal mechanisms or incentives for them to liaise with regional and central government to ensure companies follow established regulations.<sup>100</sup>

Also, where traditional leaders are the decision makers, the asymmetrical power relationship between chiefs and “peasants” cannot be ignored. Since the social costs of disagreeing with chiefs can be high, public consultation run the risk of becoming a formality that endorses the chiefs' position.<sup>101</sup> Where women are concerned, they are usually not party to negotiations, and are not in a position to prevent land leases.<sup>102</sup> Clearly, the international principle of free, prior informed consent (FPIC)<sup>103</sup>—whose basic tenet is that indigenous people have the right to say “yes” or “no” to proposed developments on their lands—is yet to become practice for most African countries. Another issue that makes small scale farmers vulnerable to land grabbing relates to the quality of the contracts that communities or governments are signing with the investors.

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<sup>98</sup> Country experience provided by Marc Wegriff, *supra* note 30

<sup>99</sup> Diallo A., and Mushinzimana G., (2009), *supra* note 56, p 20

<sup>100</sup> Schoneveld, G.C., German, L.A., and Nutakor L., (2010), Paper Summary—Towards Sustainable Bio fuel Development: Assessing the Local Impacts of Large-Scale Foreign Land Acquisitions in Ghana. Summary version of a forthcoming journal article prepared specifically for the World Bank Land Governance Conference, 26-27 April, 2010, p 5

<sup>101</sup> Celestino, C., P., (2009), *supra* note 45, p 15

<sup>102</sup> Wandia, M., Africa: Safeguarding Women's Rights Will Boost Food Security. Published by Pambazuka News, 26 June 2009. Available at <http://allafrica.com/stories/200906260734.html>

<sup>103</sup> Formalised through article 32 of the 2007 UN Declaration on the Rights of Indigenous Peoples. Cited in FIAN (2010), *supra* note 4



## 2.2 DEFECTIVE CONTRACTS

*The bargaining power in negotiating agreements is on the side of the foreign investor, especially when its aspirations are supported by the host state or local elites.*<sup>104</sup>

True to this assessment, rural communities in sub Saharan Africa seem to be grossly short-changed in the contracts regarding agricultural investments. An observation was made by Mr David Hallam as Deputy Director at FAO that “*the contracts being signed are thin and have no safeguards.*”<sup>105</sup> Lack of bargaining power, unclear provisions, false promises, secrecy, as well as the interest by investors to maximize their gains all seem to mar these contracts. The experience in Mali with the Malibya project (**Box 8**) shows that even contracts directly entered into by the government are not immune to investor exploitation, and can be one sided.

### **Box 8: A One Sided Government Contract in Mali**

Malibya Agriculture is leasing 100,000 hectares 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. According to the funding agreement, re-housing and negative impact mitigation costs are the responsibility of the Malian Government. 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). 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.

Adapted from Diallo A., and Mushinzimana G., December 2009, and African Farm News in Review, 2010

While the government may have known what it was doing in the Malibya contract, a case in Ghana in **Box 9** exposes another reality—that Chiefs may sometimes fall prey to sophisticated and highly politically connected investors, and be coerced into signing agreements that they understand little or nothing about.

### **Box 9: Chief Coerced into Thumb Printing a Contract in Ghana**

A Norwegian bio fuel company took advantage of Africa’s traditional system of communal land ownership and current climate and economic pressure to claim and deforest large tracts of land in Kusawgu, Northern Ghana with the intention of creating “the largest *Jatropha* plantation in the world.” By-passing official development authorization and using methods that hark back to the darkest days of colonialism, this investor claimed legal ownership of these lands by deceiving an illiterate chief to sign away 38 000 hectares with his thumb print. . . The chief was very categorical that he had not made such a grant and that he had also been battling with those “white people” to stop them – without much success. He confirmed that he “thumb printed” a document in the company of the Assembly-man of the area which had been brought to his palace by the “white people” but he did not confirm its contents.

Source: Nyari, 2008

<sup>104</sup> Meinzen-Dick R, Researcher at the Washington Based International Food Policy Research Institute. Quoted by Mersha G, supra note 25

<sup>105</sup> Shewakena, F., (2009), supra note 63

Governments are also sometimes secretive about the contracts that they sign with investors. In the case where Bioshape, a Dutch/Belgian company, has acquired around 33,000 hectares of land in Tanzania, the investors are said to have signed a contract with the government at regional level. The villagers do not have a copy.<sup>106</sup> The main local criticism of *Office du Niger* is lack of information and transparency. The agreement between the Libyan company and the Malian government was never made public.<sup>107</sup> The concern over contracts is also linked to the compensation that small scale farmers are getting, or not getting, in the context of large scale agricultural investments.

### 2.3 LOW QUALITY OF COMPENSATION

Compensating people for loss of land may still be more convenient to the investor than cultivating an unoccupied but less fertile land.<sup>108</sup> However, the issues are: what type of compensation are rural communities getting, if at all? And if the compensation is awarded, who is benefiting from it? In Tanzania, for example, while there is a legal requirement that villagers be compensated fairly by the government when village land is transferred to general land, in practice however, investors themselves tend to pay compensation directly to the villagers. There are substantial differences in opinion and confusion over the amount of compensation and the entitled beneficiaries.<sup>109</sup> This has made communities vulnerable due to lack of practical safeguards that could prevent their exploitation when they directly transact with an investor. According to **Box 10**, compensation seems to be remote for small scale farmers in Mali who are affected by the Malibyan project.

#### **Box 10: Landless and Penniless Small Scale Farmers in Mali**

Entire villages lived on the 100,000 hectares the Malian government leased to the Libyan company for 50 years. Land belonging to 57 families was seized. These lands 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. Auguste Drago, Director General of Office du Niger, promises that compensation will be provided to locals soon. But he does not say when and how they will be compensated. "We can compensate them in kind. We can compensate them with buildings, houses, and we can set up orchards. Otherwise, we can give them cash," Mr. Drago says.

Adapted from Diallo A., and Mushinzimana G., December 2009, and African Farm News in Review, 2010

Government contracts that over-accommodate interests of investors seem to exude desperation, which "is a very dangerous factor that plays out in favour of the companies and against the communities."<sup>110</sup> Fears expressed that the lands in question may

<sup>106</sup> Country experience provided by Marc Wegerif, supra note 30

<sup>107</sup> Diallo A., and Mushinzimana G., (2009), supra note 56

<sup>108</sup> Cotula, L., et al, (2009), supra note 3, p. 62

<sup>109</sup> Sulle, E., (2009), "Bio fuels, Land Access and Tenure, and Rural Livelihoods in Tanzania," in *ibid*, at p.73

<sup>110</sup> Celestino, C., P., (2009), supra note 45, p.14

become a Libyan colony may seem far-fetched. But similar alarm has already been expressed in Tanzania over the land on which the Maasai provided a hunting permit to the UAE's Ortello Business Corporation.<sup>111</sup> In contrast to the Malibya project, the Markala Sugar Project in Mali (**Box 11**) seems to have considered the issue of compensation, though still unsatisfactorily.

**Box 11: Compensation in the Markala Sugar Project by SoSuMar, CaneCo and CommCo5 in Mali**

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. . . .In the area of intervention, 94,000 people living in 85 villages are affected. About 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.

Source: Diallo A., and Mushinzimana G., December 2009

Similarly, some positive outcomes have emerged from projects like the one being implemented by the Dutch/Belgian Company Bioshape in Tanzania. This project saw the delivery of corporate social responsibility investments like building modern houses for school teachers, a market and village leader's offices. The relevance of these investments still did not stop people from panicking when it sank in that they had lost their land for good, and that their needs were greater than those fulfilled.<sup>112</sup> Thus the common reality is that even where implemented, communities are dissatisfied about prevailing levels of compensation. In some countries, communities have been known to negotiate their own contracts. These arrangements have not produced satisfaction either—largely because the agreements were made with local elites and/or chiefs. The experience of Ghana in **Box 12** demonstrates this situation.

<sup>111</sup> Upon arriving at the Ololosokwan villages, one receives the following network text message through the Zain mobile network: "Dear Guest, Welcome to the UAE. Enjoy the best network coverage and other unmatched services only with Etisalat. Please use<+> or <00>before the country code for international calls. For directory services call 181, for availability of GPRS, MMS 3G roaming services call Etisalat Travellers help line 8002300 & for inquiries on Tourism, entertainment, shopping, etc call 7000-1-7000 (Roaming rates apply) Have a pleasant stay in the UAE." One wonders whether Ortello Business Corporation is a private company or is a sovereign state within Tanzania. See Feminist Activist Coalition, (2009), FEMACT Lolindo Findings.

<sup>112</sup> Country experience provided by Marc Wegerif, supra note 30

### **Box 12: Bio fuel Africa in Kpachaa, Ghana—The Question of Compensation**

Tijo Naa Iddrisu Ibrahim, community chief and legal owner of these lands, rented the land to Bio fuel Africa for a period of 50 years at the rate of 2 cedi/year/ha (0.9 euro). . . The compensations agreed upon were the provision of a small medical clinic, the construction of three water reservoirs, the installation of a machine to grind maize and the clearing of new areas, guaranteeing that no farmer would lose access to cultivable land. . . In different interviews with members of the community, they have expressed their dissatisfaction with the compensation received. They are obliged to pay for the use of the maize-grinding machine, and the trees were not respected, which means they have lost an important source of income. But the main complaint without a doubt was in regards to the land: the compensation has been insufficient, with many farmers losing access to cultivable land and many declared that even their food consumption has been affected. Some of those interviewed denounced the compensation as being completely random, and said that receiving compensation was a “*question of luck.*”

Source: Celestino, C., P., (August 2009)

The low compensation offered may even be more dissatisfactory to specific societal sub groups of men and women if gendered losses with regards to the use of the land are not counted. Women’s specific losses risk remaining invisible if forums to negotiate for compensations exclude them because of gender stereotypes that place little or no weight on women’s opinions. Alternatively, they may be considered for specific compensation just because they are not the “land owners.” These implications on women are discussed in depth under Chapter 3. The disappointing experiences of communities related to compensation are made even worse when one considers that other means through which agricultural investments could bring income into the community have been equally flawed.

#### **2.4 SUGAR-COATED PROMISES—EMPLOYMENT AND EARNINGS**

Lack of enough jobs, poor quality of jobs, false promises about perks—all seem to conspire to increase the vulnerability of small scale farmers in the context of large scale land investments. In Kpachaa, the site of Bio fuels Africa project in Ghana, jobs provided by the plantation were reported to be very scarce in 2009—because the project was in its initial phase. The company manager declared that they created a stable job for every 8 hectares cultivated and that the manual harvest (seasonal work) employed three workers per hectare. However, starting in the 2010 season the harvest would be mechanized and the demand for workers would drop dramatically to one worker for every 15 hectares.<sup>113</sup> Notably, “*most worrisome is the salary of 2.5 cedi (1.1 euro) per day, which is even below the legal minimum wage of 2.65 cedi.*” In Kusawgu, Northern Ghana, it was clear to all that the promises of jobs and a new improved life by Bio fuel Africa would not materialize. When pressed to account to the community, the company’s Chairman confessed that “*commitments are not very easy and so when I am required to make these, I need to be very careful. I do not want to be caught for not keeping my word.*”<sup>114</sup>

In Wolaitta, Ethiopia, the observation was that “*although the estimated ratio of jobs per energy unit were promising when compared to oil production, the figures proved to have*

<sup>113</sup> Celestino, C., P., (2009), supra note 45

<sup>114</sup> Nyari, B., (2008), Biofuel Land Grabbing in Northern Ghana. Available at <http://www.landcoalition.org/cpl-blog/?p=508>

*been hiding important issues related with the quality of the jobs created and their impact on unemployment.*"<sup>115</sup> The Malibya project in Mali is unapologetic about the intention to hire skilled Chinese employees familiar with Chinese modern rice production techniques, and not to train locals in these techniques. Thus Chinese employees were expected to act as supervisors while local people would do the low-skilled (and low paid) labour. In any event, the contract provides for no obligation for Malibya to hire local employees.<sup>116</sup>

An observation has been made in Mali that even for the locals who may secure jobs, it is not yet possible to say if the new jobs would provide the same or better livelihood than the previous lifestyle did. Former smallholders, most of whom are women, might be reduced to low paid season workers having difficulties earning their living during off-season.<sup>117</sup> The replacement of workers with machines, the unavailability of jobs for farmers whose land has been taken by investors, low wages, and the employment of cheaper labour from elsewhere—appear more likely to be norms than exceptions. Yet another negative impact of land grabbing on small scale farmers is access to water resources.

## **2.5 MONOPOLY OF WATER RESOURCES**

Foreign agricultural investors in areas that depend on irrigation seem to be getting fat deals out of available water resources to the detriment of small scale farmers. In Mozambique, **Box 13** shows that water has already been an issue in relation to the well documented but aborted Procana project. Though the ProCana project was cancelled, it is feared that this will not stop the government from authorizing similar initiatives with different parties involved. Thus: *"if the same disregard in promoting broad and effective consultation is kept, most likely other communities would be exposed to violations of their human rights again."*<sup>118</sup> In Mali, the Malibya project is located in the Niger Basin Authority area. Thus irrigation concerns arise about the maximum quantity of water which can be removed from the river Niger.

### **Box 13: Peasants' Water Interests Sidelined in Mozambique**

The land that had been allocated to ProCana its sugarcane plantation (for ethanol production) is located adjacent to the Massingir dam and the Elephants River. ProCana claimed that they got the assurance from the national government that their irrigation needs were going to be protected at all times. ProCana was going to need 407 million cubic metres of water to irrigate its sugarcane plantation. Hence, if this plan on water (re)allocation would have been carried out, in all probability it would have caused negative consequences to the farming activities, existing and future, by peasant households in the area. Such (re)allocation of water resources, especially in relatively dry places like Mozambique, would have undermined the capacity of local communities to produce their own food for their consumption. In this case, the right to water and food of these communities would have been endangered.

Source: FIAN, 2010

<sup>115</sup> Birega G., and Botto, Y., (2008), supra note 23, p13

<sup>116</sup> Diallo A., and Mushinzimana G., (2009), supra note 56

<sup>117</sup> Ibid

<sup>118</sup> FIAN (2010), supra note 4, pp 33-35

This concern risks increasing water conflicts between the locals and Malibya,<sup>119</sup> given that the contract gives Malibya unrestricted access to both canal and underground water. Local farmers are likely to lack irrigation water because the new channel constructed by Malibya<sup>120</sup> is at a lower level than the Macina canal, used for irrigation. Thus in times of low water, the areas watered by Macina canal may not receive sufficient water anymore.<sup>121</sup> Even the Markala Sugar Project, which will have heavy water consumption for sugarcane, will pose risks in terms of water shortages in the dry season.<sup>122</sup> The tension regarding the use of water resources has also hit Tanzania. In 2007, a Swedish company was reported to be looking to identify land in the Wami Basin.<sup>123</sup> This area has good access to water, and was being used for rice production by thousands of small-scale farmers. And in Kigoma, also an area with good access to fresh water, Malaysian and Indonesian investors had been proposing a proposed palm oil biodiesel project involving cultivation of 8,000 hectares of palm oil.

Thus the concern is that the diversion of Tanzania's water sources—so critical for food production, especially in times of climate change—to fuel production would likely cause increased conflicts over access to water.<sup>124</sup> The presence of water related risks due to land grabbing raises questions about the treaty obligations of states which are signatories to the International Covenant of Social, Economic and Cultural Rights (ICESCR) that “*taking note of the duty in Article 1 (2) of the Covenant, which provides that a people may not ‘be deprived of its means of subsistence,’ State parties should ensure that there is adequate access to water for subsistence farming and for securing the livelihoods of indigenous peoples.*”<sup>125</sup> Except for Mozambique, all countries in this study have ratified the ICESCR .

## 2.6 CONCLUSION

The existence of land grabbing, as revealed in existing studies, driven vulnerabilities of small scale farmers in Africa shows that African governments appear not to be not taking and implementing policy measures that can ensure the flourishing both of those small scale farmers who see foreign agricultural investments as an opportunity, as well as those farmers who would rather do it themselves. Measures to promote the (interests of?) latter category of farmers can take a leaf out of the book of, and build on, positive experiences of other small scale farmers within the region, for instance the Democratic Republic of Congo. Under the CAADP agenda, African governments have to strive to: attain food security; integrate farmers into the market economy and improve their access to global markets; and achieve more equitable distribution of wealth through more equitable access to land, physical and financial resources, and knowledge, information and technology.<sup>126</sup> Care must be taken address varied categories of small scale farmers, the majority of whom are women. To be tangible

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<sup>119</sup>Diallo A., and Mushinzimana G., (2009), supra note 56

<sup>120</sup> The capacity of the channel shall be 130 m3 which allows draining daily 11 million m3 or annually 4 billion m3

<sup>121</sup> Diallo A., and Mushinzimana G., (2009), supra note 56, p. 20

<sup>122</sup> Ibid, p. 24

<sup>123</sup> A vast area in the alluvial flood and delta plain of the Wami River and its distributaries as it enters the Indian Ocean.

<sup>124</sup> African Biodiversity Network, (2007), supra note 68, p14

<sup>125</sup> Aarts, V., (2009), supra note 2, p 31

<sup>126</sup> African Union and NEPAD, (2003), Comprehensive Africa Agriculture Development Programme

about the needs and interests of women, Chapter 3 brings in a women's land rights perspective into the land grab topic.

## CHAPTER 3

### LAND GRABS: ANOTHER YOKE OVER WOMEN'S LAND RIGHTS?

*Antoinette Dembélé was kicked off her land. Her garden allowed her to feed the three children of her deceased daughter. But it was destroyed to make room for an irrigation canal built by a Libyan company called MaLibya. The canal would allow the cultivation of rice for export. "My garden was very important," Ms. Dembélé laments. "It produced a good yield. I depended on no one to eat and pay my taxes."<sup>127</sup>*

Emerging when the question of women's land rights is yet to be resolved in many rural societies in Africa, land grabbing through massive agricultural related investments seems to be yet another way of eroding women's land rights. Throughout Africa, agricultural production and preservation of land resources is primarily the responsibility of women and children.<sup>128</sup> However, these responsibilities are being made heavier by land deprivations and/or reallocations that face communities where land grabbing is taking place. The fact that in countries like Mozambique women work the land, while men are at the centre of the negotiation processes,<sup>129</sup> makes women's exposure to risks associated with land grabbing invisible. By examining the situation in Ethiopia, Ghana, Mali, Mozambique, Senegal, and Tanzania, this Chapter exposes how some of the arguments that seem to soften the impact of large scale investments—whether for bio fuel feed stocks, or food production—could crumble if women's lived realities relating to their land rights were fully embraced.

These arguments include that: a) growing bio fuel feed stocks would increase incomes for rural dwellers; b) that growing bio fuel feed stock on marginal land is the solution to resolving tensions over land rights; c) that rural dwellers will receive compensation for lost land; and d) that bio fuels will not compete with food crops. While these arguments generically consider impacts on "communities," or "farmers," this part refocuses such impacts on women. This Chapter should be read with the awareness that women are not homogenous, and they may not all be affected similarly by the challenges posed by land grabs. The awareness should also extend to the fact that women specific impacts of land grabbing go beyond the economic related impacts that are of focus in this Chapter. Thus instead of being conclusive, the analysis aims providing examples of issues that could further be explored through research if policy and practice relating to large scale agricultural investments is to comprehensively accommodate the interests of various population groups of women.

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<sup>127</sup>African Farm News in Review, Issue #109, Mali farming families lose their land to a Libyan Company (Radio- Canada, IPS). Posted on May 3rd, 2010. Available at <http://weekly.farmradio.org/topic/issue-109/>

<sup>128</sup> African Union, the African Development Bank, and the United Nations Economic Commission for Africa, (2009), supra note 7, p. 31

<sup>129</sup> Duvane, L., Presentation made at a Regional Workshop on Commercialization of Land and "Land Grabbing" in Southern Africa. Cape Town, 24-25 March 2010



### 3.1 WILL GROWING BIO FUEL FEED STOCKS INCREASE INCOME FOR WOMEN?

Understanding the extent to which the growing bio fuel feedstock could increase income for rural African women requires a consideration of two issues: a) the likelihood of women fully benefiting from their involvement in bio fuel feed stock farming; and b) the income loss that women may suffer when their benefits from land resources are curtailed by bio fuel production.

#### *Power Dynamics Relating to Access and Control of Land Diminish the Likelihood of Women Benefiting from Bio Fuel Production*

Women's land rights in rural Africa are not fully enjoyed because though many women may have rights to use the land that belongs to their husbands, they are not necessarily in control of any income that is obtained from the use of the land. In Ghana, it is estimated that women account for 52 percent of the agricultural work force, 70 percent of subsistence crops production, and 90 percent of the labour force involved in marketing of farm produce. Yet, women have more limited access to resources than their male counterparts, especially with regard to access to control over and ownership of land.<sup>130</sup> In a research in Mozambique, about 70 percent of men were found to be responsible for making decisions over land within families—though it was women (90 percent) who played a major role of growing crops on the land. Some women protested against this situation by pointing out that: *“this does not make sense, because it is us women who intimately know the land, work on it every day. And surely we should have the capacity to make decisions on what to grow, when to grow, what to sell, and what to keep.”*<sup>131</sup>

Even in western Senegal, though under the law agricultural land is considered family land, most of the farmland is controlled by men. Wives only have access to land through their husbands.<sup>132</sup> Mali is no different, because access to land is principally always given to the male heads of the household. And in Ethiopia, even though land reforms enacted in March 1997 tried to improve access to land for women, it is frequently the case that women's only chance to access land is through marriage. It is generally accepted that only the head of the household—typically the husband—can be a land owner.<sup>133</sup> Given these realities, generalised assumptions that “farmers” who are growing bio fuel feedstock would reap financial benefits have to be avoided—because though women farmers may be seen to be in the frontline, the income may actually be controlled by the men who are already making decisions over land. Indeed, though one study in Ghana's Volta region noted an increased involvement of women in food crop production, cash crop production and trading activities, the conclusion was still that this had not necessarily resulted in a betterment of their socio-economic

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<sup>130</sup> Sarpong, G., A., (2006 ), Improving Tenure Security For The Rural Poor Ghana – Country Case Study. Lep Working Paper # 2 Workshop For Sub-Saharan Africa. Paper Prepared Under Contract With The Food And Agriculture Organization Of The United Nations (FAO), p. 6

<sup>131</sup> Kachika, T., (2009), Women Land Rights in Southern Africa, Consolidated Baseline Findings from Malawi, Mozambique, South Africa, Zambia and Zimbabwe, p.16. Commissioned by Action Aid International, p. 26

<sup>132</sup> Farm News Weekly, Rural women demand improved access to farmland. Posted in African Farm News in Review, Issue #91, on December 7th, 2009. Available at <http://weekly.farmradio.org/2009/12/07/2-senegal-rural-women-demand-improved-access-to-farmland-ips/>

<sup>133</sup> <http://genderindex.org/country/ethiopia>

position or an increased control over their farming activities. Rather, it had enlarged the workload and responsibilities of women farmers in the region.<sup>134</sup>

On the other hand, there are some societies, like in Mali, where there is the concept of “women’s fields” *versus* “main family fields.” The women’s fields, usually of poor quality, are allocated by a husband to a wife for market gardening. Though women may devote themselves to make the poor lands productive, the men are eager to take these lands back for the family rice production and give the women another piece of poor land in return.<sup>135</sup> The danger is that where communities are encouraged to grow and sell bio fuel feed stocks to investors, men—as controllers of cash crops—may take over full control of the women’s fields if these are also allocated to bio fuel feed stocks. Another impact of land grabbing on women is the loss of income sources specific to women.

#### *Loss of Women’s Income Sources*

Lack of appreciation about how agricultural investments could impact on women specific traditional sources of livelihoods may result from the erroneous assumption that men and women would benefit equally from new envisaged sources of income. Experiences from Ghana show that *Jatropha* plantations have ignored economic significance of shea trees, which have traditionally been harvested by women to make shea butter. This is an important commodity in cosmetics and soaps, and used locally in cooking. Thus poor rural women have used sheer (or shea? Consistency needed, also in summary at start) trees as an important source of supplementary income, particularly during the rainy season.<sup>136</sup> The agony of women over the disposal of sheer trees is represented in the remarks by one Ghanaian woman to a foreign investor at a community meeting:

*Look at all the shea nut trees you have cut down already, and considering the fact that the nuts that I collect in a year give me cloth for the year and also a little capital. I can invest my petty income in the form of a ram and sometimes in a good year, I can buy a cow. Now you have destroyed the trees and you are promising me something you do not want to commit yourself to. Where then do you want me to go? What do you want me to do?”<sup>137</sup>*

Such income losses by women as a direct result of large scale agricultural investments are usually not highlighted. There may even be other losses that still remain obscure.

### **3.2 IS COMPENSATION PROVIDED FOR WOMEN SPECIFIC LOSSES OF LAND USE?**

There are unique hardships that women face due to land grabbing that are not counted in compensation schemes, where they exist. In the case of the lost income experienced by women relying on sheer trees in Ghana, the woman commented that “[y]et we have not been paid anything in compensation. That is why I confronted the

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<sup>134</sup> Duncan, B.A., and Brants, C., (2004), Access to and Control over Land from a Gender Perspective: A Study Conducted in the Volta Region of Ghana. Food and Agriculture Organization of the United Nations, Regional Office for Africa SNV Netherlands Development Organisation, Ghana Office Women in Law and Development in Africa, Ghana Office, p.17

<sup>135</sup> Aarts, V., (2009), *supra* note 2, p. 27

<sup>136</sup> ActionAid UK, (2010), Meals per gallon: The impact of industrial biofuels on people and global hunger, p.25

<sup>137</sup> Nyari, B., (2008), *supra* note 115

*white man at the meeting . . .*<sup>138</sup> A woman from Tanzania captured some of the hardships that women generally face due to land grabbing as follows:

*It is the woman who is affected most because she is the main producer of food for the household. The woman is feeding the household. We normally used to go there [to the former community land on which the bio fuel company is now growing Jatropha] for farming and collecting firewood. Now we cannot go there anymore. They are prohibiting it. Now I have to go to another forest [to collect firewood]. This is a little bit far away. I would have to leave here now at ten o'clock and would be back at two o'clock. It is heavy. It is now harder work for me to go as compared to the other area. Because of this I can spend less time on my farm because the work time has been reduced.*<sup>139</sup>

Ghana has noted similar burdens.<sup>140</sup> And since, due to unequal power relations, men do not generally contribute to household tasks, women are doubly affected. A community's relocation due to agricultural investments may also mostly burden women. Because of their care giving role—including for the sick and children—the lack of social amenities is likely to be felt more by women. Further, given the major role that women play in Africa's agriculture, there is need to understand reallocation affects their involvement in the highly labour intensive job of breaking new fields, especially when they have no sophisticated machinery. Compensation schemes for land grabbing usually does not consider these dynamics. And because of women specific hardships, it is also not surprising that when the Maasai community was forcibly evicted from their land in Tanzania, **Box 14** indicates that it was the women who organized a protest action.

**Box 14: Mobilisation by Maasai Women in Loliondo, Tanzania**

On Thursday 8<sup>th</sup> April, 2010 around 600 Maasai women mobilised themselves to march to Loliondo town to hand back 1883 CCM cards – renouncing their membership of Chama Cha Mapinduzi (CCM), the Tanzanian ruling party since 1977. They are protesting the July 2009 evictions and burning of homesteads in Loliondo Game Controlled Area - the north-western Division of the district - and government plans to redraw the boundaries of village land and so exclude their livestock from their traditional pastures. The women's specific demands are that a) the Parliamentary Committee report on the Loliondo evictions of July 2009, led by the Speaker, Samuel Sitta is tabled when Parliament next reopens (the report was scheduled to be tabled in Parliament on 6 February, and civil society organisations supported eighteen leaders from the villages to attend. However, the day before the report was blocked from being tabled by the CCM); b) the government disavows plans to cut village land by creating a buffer zone along the boundary of Serengeti Park; and c) the women are allowed to have a peaceful demonstration in Loliondo town, since the police turned down previous requests. . .

This is not the first instance where Maasai women have been active in defence of their land. In October 2009 a delegation of Maasai women made the two-day journey to State House in Dar es Salaam, where they camped for a day outside the gates demanding to meet President Jakaya Kikwete, though they were not granted an audience. . . .

Source: PINGOS Forum and NGONET, 2010

<sup>138</sup> Ibid

<sup>139</sup> ActionAid UK, (2010), supra note 137, pp 24-25

<sup>140</sup> Schoneveld, G.C., German, L.A., and Nutakor L., (2010), supra note 101

In Mali, it was observed that if the land lease to Malibya involved the privatization or destruction of wild fruit trees, it could affect livelihoods of local women—who earn income by gathering and processing those fruits.<sup>141</sup> Therefore compensation packages from large scale agricultural investments should always consider that what women require is to get compensation in their own right, for the hardships they will suffer specifically due to loss of land.

### **3.3 WILL GROWING AGROFUELS ON “MARGINAL” LAND HELP TO PROTECT WOMEN’S LAND RELATED INTERESTS?**

Governments’ policies and practices blindly targeting the so-called “marginal land” are exclusionary to the interests of some marginalized sub groups of women, whose land rights may even suffer more if such land is taken out of communities’ reach. Part 1.4 has presented the argument that the considerable amounts of marginal land that are purportedly being set aside for investments may not always be marginal to some groups of society. This includes some subgroups of women. In Ethiopia, women who separate from their husbands are likely to lose their houses and property, and when a husband dies, other family members often claim the land over his widow.<sup>142</sup> For their survival, such women may therefore have recourse to what seems to be abandoned or unused infertile land (marginal land) within their communities for subsistence farming.

In Mali, even though the women who are allocated pieces of land by their husbands usually get the poorest parts of family plots, land grabbing that takes away such land from women strips them of the few land rights that they may have enjoyed, no matter how fragile. Thus it was rightly observed in Ghana that *“the terrain that is labelled marginal land is especially important to women, who have restricted access to more fertile land, and it is in these lands that they carry out many of their activities, such as gathering fuel.”*<sup>143</sup> So whether what is being grabbed is fertile land or marginal land, women tend to be particularly affected. In respect of fertile land, women lose the strongest right that they usually have (access to productive land). In respect of marginal land, marginalised and poor women (also usually heads of households), lose both access, and control of whatever proceeds of such land.

### **3.4 HOW WILL WOMEN FARE WHEN BIO FUEL PRODUCTION COMPETES WITH FOOD CROPS?**

Bio fuel feed stocks do not have to be grown on each available space in the community for them to have an impact on the availability of food crops, and thus the price of food. Also, the more maize is diverted to ethanol production, the less of it is available on the food market.<sup>144</sup> There is evidence that women in Africa, particularly female heads of households, who do not have enough to eat take more sexual risks through increased transactional sex, increased unprotected sex, and increased likelihood of

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<sup>141</sup> African Farm News in Review, Issue #109, supra note 128

<sup>142</sup> <http://genderindex.org/country/ethiopia>

<sup>143</sup> Celestino, C., P., (2009), supra note 45

<sup>144</sup> Kamanga K. C., (2008), supra note 21, p 10

intergenerational sex. Needless to say this increases their vulnerability to HIV infection.<sup>145</sup>

### **3.5 WILL EMPLOYMENT PROSPECTS COVER THE LIVELIHOOD OF WOMEN?**

One of the baits for the acquisition of agricultural areas is the guarantee of employment for the community members.<sup>146</sup> However, in some communities, women may not be natural beneficiaries. For instance, formal employment in a rural Mozambican family is for men, raising the possibility that women are at once excluded from employment prospects.<sup>147</sup> Women face additional challenges given their reduced access to education. This would prevent them from being considered for skilled jobs by investors. Their income could therefore be low, and not enough to sustain their livelihood compared to when they can access land on which to grow their own food. And as investors mechanise their projects, women may completely be eliminated from the scene.

### **3.6 CONCLUSION**

Because different variables may lead various sub groups of women to be impacted differently by land grabs, the risks noted in this Chapter are only a starting point for African governments with the resolve to eliminate the negative impacts of land grabs on women. The phenomenon of land grabbing has found an existing environment that already permits a violation of women's land rights in Africa, and is just adding another layer to such violations. Therefore without concretely correcting the land rights situation for the principal agriculturalists in Africa, there is a huge possibility that African governments will only have clear visions to promote investments in agriculture for sustainable national and continental economic growth. The same can be argued for African countries that have pastoralism, which is discussed next.

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<sup>145</sup> Farham, B., (2008), Hunger leads to sexual risk taking in Africa, (2008), The Free Library. Available at [http://www.thefreelibrary.com/Hunger leads to sexual risk taking in Africa.-a0176902606](http://www.thefreelibrary.com/Hunger+leads+to+sexual+risk+taking+in+Africa.-a0176902606)

<sup>146</sup> Duvane, L., supra note 130

<sup>147</sup> Ibid

## CHAPTER 4

### IS LAND GRABBING THREATENING PASTORALISM?

In the past few decades, the loss in access to land for pastoralists has been greater than for almost any other resource users, seriously compromising their livelihood options.<sup>148</sup> This Chapter demonstrates that land grabbing has the potential to increase the marginalization of pastoralists, and this impact is already been felt in countries like Tanzania. The significance of taking action to avert the resultant negative impact on African economies can best be understood by: exposing the “added value” of pastoralists to countries like Ethiopia, Mali, Senegal and Tanzania; the realities behind claims that pastoralists are facing land grabbing; as well as specific negative impacts on land grabbing on the livelihoods of pastoralists, including women.

#### 4.1 THE ADDED VALUE OF PASTORALISM

*East Africa has a huge hidden asset—but risks throwing it away in the quest for economic development. This is its millions-strong herds of dryland livestock managed by pastoralists. New findings show that pastoralism has immense potential value for reducing poverty, managing the environment, promoting sustainable development and building climate resilience. . . Yet, pastoralism is seen by many as archaic, economically inefficient, chaotic and environmentally destructive—perceptions that are not evidence-based, yet drive much regional policy. . . .*<sup>149</sup>

To ensure that large scale agricultural investments do not interrupt the welfare and human rights of pastoralist populations, African governments face the challenge of taking an objective approach in considering the significance of pastoralism to their agricultural economy bases. In Ethiopia, over 60 percent of the territory is semi-arid lowlands, and a home to an active livestock-based economy. The pastoralist population is estimated to be 4 million.<sup>150</sup> There is on-going civil society driven advocacy in the country, so that pastoralism is not seen as an isolated rural activity—because the millions of livestock produced from Ethiopia’s drylands are a vital engine for trade, farming and urban activities.<sup>151</sup>

In Mali, 10 percent of the population is pastoralists, and animal husbandry has traditionally been the chief economic activity in the northern regions.<sup>152</sup> However, livestock farming, which accounts for 30 percent of primary sector GDP, is not benefiting from investment commensurate with its importance.<sup>153</sup> And in Tanzania

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<sup>148</sup> Bruce H. Moore, Director ILC. Cited in Nori M., Taylor, M., Sensi, A., (2008), iied Issue paper no. 148

<sup>149</sup> International Institute for Environment and Development (iied), (2009), Arid waste? Reassessing the value of dryland pastoralism. Briefing Paper. Available at <http://www.iied.org/natural-resources/key-issues/empowerment-and-land-rights/supporting-pastoral-mobility-east-and-west>

<sup>150</sup> De Schutter, (2009), supra note 19

<sup>151</sup> The Future of Pastoralism in Ethiopia UN OCHA Pastoralist Communication Initiative June 2007. Available at <http://www.pastoralists.org/pages/publications.php>

<sup>152</sup> Kourouma, K., (2008), Nomadic Conflict in Mali. Internship Research Paper

<sup>153</sup> DAC Network on Poverty Reduction, (2008), Pro-Poor Growth and the Role Of Agriculture In Mali, Workshop Proceedings Bamako.

pastoralists account for about 10 percent of the total population.<sup>154</sup> A 2005 study in Arusha, Tanzania, identified over 600 *nyama choma* businesses employing 5600 people with an estimated 25,000 dependents. When ancillary businesses such as butchers' outlets were included, the annual turnover of the industry in Arusha was estimated at US\$22 million.<sup>155</sup>

The full implementation of the CAADP agenda requires that the contribution of pastoralism to African economies be acknowledged and be boosted. In April 2009, the Joint Conference of AU Ministers of Agriculture, Land and Livestock isolated pastoralists as a vulnerable population in respect of whom African governments have to ensure that their needs to participate in economic activities are embraced in agricultural growth strategies. Because the animal resources sub sector has one of the highest potentialities for agricultural growth, the Ministers therefore called upon Members States to develop a comprehensive pastoral policy framework and an adaptable animal resources - cropping interface model in order to secure access to land, water and pasture for animals. Even at sub-regional level, they recommended the maintenance and sustenance of pastoral and livestock mobility through harmonisation of animal health delivery systems.<sup>156</sup> As the next section illustrates, despite its value, pastoralism in Tanzania is at periphery of policies and laws, and is almost threatened with extinction.

#### **4.2 LAND GRABBING EXPERIENCES OF PASTORALISTS: TANZANIA**

Recent developments in Tanzania provide a good example of how land grabbing driven eviction is destabilising pastoralist communities in reality. In the country, there is widespread perception of hostility by the government to indigenous pastoralists.<sup>157</sup> During his inaugural speech before Parliament on 30 December 2005, the State President is on record as having advocated for the total abandonment of nomadic pastoralism. In another speech on 22<sup>nd</sup> February 2006, he stated that "*it is better for a few pastoralists to be angry, but protect the lives of the next generation.*"<sup>158</sup>

And in April 2006, the Vice President announced a government strategy for conservation and protection of the environment, which included the eviction of pastoralists from their grazing areas, accusing them of destroying the environment. According to **Box 15**, a recent ruthless eviction that made headlines was pursued to protect the interests of foreign investor, at the expense of the interests of the pastoralists.

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<sup>154</sup> Background to the Land Conflicts concerning pastoralists in Loliondo and other parts of Tanzania. Briefing note prepared with the assistance of PINGOS Forum and NGONET—civil society organizations that are long term partners of Oxfam.

<sup>155</sup> IIED, (2009), supra note 150

<sup>156</sup> Report of the Joint Conference of AU Ministers of Agriculture, Land and Livestock, Theme "Investing in Agriculture for Economic Growth and Food Security." Held on April 23-24, 2009 in Addis Ababa, Ethiopia. CAMA/Min/Rpt(XI)

<sup>157</sup> Supra note 155

<sup>158</sup> Feminist Activist Coalition, (2009), supra note 112

### **Box 15: Land Grabbing Through Forced Evictions in Loliondo, Tanzania**

The evictions of Maasai pastoralists in Loliondo took place from the 4th to 6th July 2009 in 8 villages bordering the Serengeti National Park. The villages were established and are legally governed by the Land Laws that allow them to own, utilize and manage village land under the Village Land Act No 5 of 1999. The evictions were conducted by the paramilitary Police Field Force Unit, together with security forces Ortello Business Cooperation (OBC). The OBC is owned by the royal family from the United Arab Emirates. In 1992, it was granted hunting rights within the Loliondo Game Control Area—settled and legally owned by Maasai pastoralists. Over the past 17 years, during the hunting period, Maasai villagers have been subjected to restrictions on access to grazing land and water for livestock—raising serious questions about ownership of the land that legally belongs to the villagers.

At local level, the directive that villagers should vacate their land was given by the District Commissioner on the 1<sup>st</sup> of July 2009, and the villagers were ordered to vacate their villages on the 3<sup>rd</sup> of July. The malicious and ruthless operation to evict the Maasai communities left their villages in unimaginable distress and utter poverty. It was alleged that more than two hundred Maasai *bomas* (*homesteads*) were totally burnt; women were raped; more than 3000 people left homeless without food and other social basic needs; and more than 50,000 cattle were left with no grass and water. A FEMACT investigation team that set out to validate such allegations came across women who had undergone miscarriages, rape, loss of children and other properties including food and shelter. They also met men who had been chained, beaten and humiliated in front of their families. Some had lost thousands of livestock—among other properties; and some had been imprisoned for no apparent reasons. The conclusion reached was that the Maasai communities in the Loliondo villages were internally displaced persons. They had no land to settle, no shelter, no food, no water for even their livestock, no clothing or any other form of social services.

Source: FEMACT 2009, PINGOS Forum and NGONET, 2010

Forced evictions, including of pastoralists, have been recognised as a violation of Article 11 of the ICESCR—which guarantees the right to adequate food as a part of the right to an adequate standard of living, together with the right to adequate housing.<sup>159</sup> Coupled with risks specified in the subsequent section, land grabs affecting pastoralists also violate many other rights.

### **4.3 RISKS OF LAND GRABBING FOR PASTORALISTS**

Apart from the noted impacts of land grabbing on the pastoralist community in Tanzania, experiences in Mali, Senegal and Ethiopia also add other distinctive risks to the list. These risks can remain undetectable or unaddressed in governmental pastoral blind approaches to large scale agricultural investments, much to the detriment of national economies. For instance, the project by Malibya in Mali is building canals, and destroying transhumance routes in the process. Yet, cattle rising and transhumance is at the backbone of Malian economy, pride, culture and identity.<sup>160</sup> **Box 16** also demonstrates how the failure to consider pastoralists in the project has dismantled investments in building strategies to harmonise various community interests.

<sup>159</sup> FIAN (2010), *supra* note 4, p.12

<sup>160</sup> Diallo A., and Mushinzimana G., (2009), *supra* note 56, p.27



**Box 16: Destruction of Transhumance Route in Mali**

Project activities by Malibya include the construction of an office (to control the work) in Boky-wèrè; and 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.

Source: Diallo A., and Mushinzimana G., December 2009

In Senegal, much of the land assigned for industrial biofuel production in the Sahel region (the driest part of the country) is also used for grazing animals. Each animal requires about 12 hectares of grazing, which will be completely impossible if land is given over to biofuels.<sup>161</sup> Like the risk that Ethiopia faces, without well calculated investment policies, pastoral drylands could therefore be erroneously earmarked by governments as wastelands, and thus be regarded as eligible for bio fuels investments. The blatant disregard of the important services that the land renders to pastoral populations in policies facilitates land grabbing, and has unfavourable effects on women in the pastoralist communities. Women pastoralists will usually have been accessing the lands for food, fodder, firewood, building material, medicine and herbs.<sup>162</sup> Grounded researches may shed in-depth light into these risks.

#### 4.4 CONCLUSION

The experiences of pastoralist communities show that currently, the significant contribution of livestock produced through pastoralism to national economies is not counted in earnest. Unless the recognition of this contribution is also reflected by a synergy of all policies that affect land rights and livelihoods of pastoralists, land grabbing will continue to thrive on the insecure position of pastoralists. It is positive that AU Ministers of Agriculture, Land and Livestock have taken action to direct the strengthening of pastoralism in pursuant to the CAADP agenda of improving economies through the revitalisation of agriculture in African countries. This direction has now been endorsed by the 2009 Framework and Guidelines on Land Policy in Africa, which go beyond pastoralism, is also relevant for ensuring that the agenda to promote investments in agriculture is not misdirected by the land grabs such as those affecting marginalized groups in Ethiopia, Ghana, Mali, Mozambique, Senegal and Tanzania. The possibilities of using the Framework and Guidelines on Land Policy in Africa in this way are discussed in Chapter 5.

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<sup>161</sup> ActionAid UK, (2010), supra note 157, p. 26

<sup>162</sup> Kenya Land Alliance, (2004), The National Land Policy in Kenya: Critical Gender Issues And Policy Statements. Issues Paper, pp 7-8

## **CHAPTER 5**

### **OPPORTUNITY FOR GROUPS AT RISK: THE AFRICAN UNION'S CONTINENTAL STANDARDS ON THE LAND QUESTION**

The realities behind the substantial land grab that research has shown to be occurring in Ethiopia, Ghana, Mali, Mozambique, Senegal, and Tanzania reflect the imbalance between pursuits for economic development by African governments, and efforts to build sustainable systems that could comprehensively resolve land related tensions and interests in Africa. It is therefore timely that African Heads of State and Governments have adopted a Framework and Guidelines on Land Policy in Africa (*continental framework and guidelines*) in order to prompt and inspire countries to develop comprehensive land policies that take into account their particular needs. By drawing on the legal and policy situations in the six countries, this Chapter reviews the extent to which the *continental framework and guidelines*, and other normative instruments (in this case the 11 principles laid out by the UN Special Rapporteur on the Right to Food) can be a critical tool to guide African governments in instituting strategic, systematic, and sustainable policy measures to promote economic growth (through agricultural investments) without weakening the development of some population groups. Though the many standards set by the *continental framework and guidelines* are equal in relevance, for practicality, this Chapter only focuses on nine standards that can be directly applied to the dynamics of land grabbing raised in this report. **Annexure 6** provides a comprehensive outline of the standards under the *continental framework and guidelines*. Before engaging in the analysis, it is necessary to comprehend the background and relevance of the *continental framework and guidelines*.

#### **5.1 THE FRAMEWORK AND GUIDELINES ON LAND POLICY IN AFRICA: ORIGINS AND RELEVANCE**

The *continental framework and guidelines* were developed through the joint initiative by the African Union (AU), the African Development Bank (AfDB), and the United Nations Economic Commission for Africa (ECA). The process started in 2006, and included regional assessments and consultative workshops of different groups of stakeholders and experts from the five regions of Africa. The AU Heads of States and Governments adopted the *continental framework and guidelines* on 3<sup>rd</sup> July 2009 in Libya through a “Declaration on Land Issues and Challenges in Africa.”

Under the Declaration, the Heads of States and Governments undertook to prioritise and lead land policy development and implementation processes, support the emergence of the institutional framework required for the effective development and implementation of land policies, and allocate adequate budgetary resources for land policies development and implementation processes. They also resolved to: a) ensure that land laws provide for equitable access to land and related resources among all land users including youth and displaced persons; and b) strengthen security of land tenure for women as an issue requiring special attention. All these measures are necessary to overcome the documented challenges that land grabbing is posing to marginalized groups in Ethiopia, Ghana, Mali, Mozambique, Senegal, and Tanzania.

The AU's commitment to comprehensively resolve the longstanding political issue of land in Africa is grounded in the view that land policies ought to support a wide range of continental and national economic, social, and political objectives. Among prominent objectives are those related to poverty eradication under both the New Partnership for Africa's Development (NEPAD) and the United Nation's Millennium Goals (MGDs).<sup>163</sup> Thus the *continental framework and guidelines* are aimed for use as a resource by AU Member States in their efforts to improve the performance of their land sectors. And as observed, the *continental framework and guidelines* could contribute immensely towards supporting African to refocus strategies aimed at meeting targets under CAADP. <sup>164</sup> Though African governments pledged to commit to allocating at least 10 percent of national budgetary resources for the implementation of sound policies for agricultural and rural development implementation by 2008,<sup>165</sup> a five year review that included Ethiopia, Ghana, Mali, Mozambique, Senegal, and Tanzania show varying levels of commitment (**Table 2**).

**Table 2: Countries Meeting or Missing CAADP Budgetary Targets on Agriculture**

Countries allocating 10 percent of budget or exceeding	Countries allocating between 5 percent-10 percent of budget	Countries at allocating less than 5 percent of budget
Ethiopia	Ghana	Tanzania
Mali	Mozambique	
	Senegal	

Source: Shenggen Fan et al, IFPRI discussion paper, 2008<sup>166</sup>

The use of the *continental framework and guidelines* to guide investments in agriculture that avoid the negative impacts of land grabbing is also relevant in meeting the obligation of States to fulfil respect, protect and fulfil the human right to food under Article 11 of the ICESCR. This obligation has several implications. States are obliged to refrain from infringing on individuals' and groups' ability to feed themselves where such an ability exists (respect); to prevent others—in particular private actors such as firms—from encroaching on that ability (protect); and to actively strengthen individuals' ability to feed themselves (fulfil).<sup>167</sup> Even though Mozambique has not ratified the ICESCR, it should still consider General Comments of the treaty monitoring body [and recommendations of the UN Rapporteur on the right to food] as tools to assist the implementation of its vision to achieve the right to food mentioned under its a National Food Security Strategy.<sup>168</sup> In fact, the set of eleven core principles

<sup>163</sup> African Union, African Development Bank, and United Nations Economic Commission for Africa, (2009), Part 3.1.1, supra note 7, p 30

<sup>164</sup> For example the attainment of food security, integration of farmers into the market economy and improve access to global markets, achieving more equitable distribution of wealth through more equitable access to land, physical and financial resources, and knowledge, information and technology, establishing dynamic regional and sub-regional agricultural markets and practice environmentally sound production methods

and develop a culture of sustainable management of natural resources

<sup>165</sup> Declaration on Agriculture and Food Security in Africa Assembly/AU/Decl.7 (II) adopted by the Heads of State and Government of the African Union (AU), assembled in Maputo at the Second Ordinary Session of the Assembly, 10 to 12 July, 2003

<sup>166</sup> Shenggen Fan et al, (2008) 'Investing in agriculture to halve poverty by 2015', IFPRI discussion paper, p.11.

<sup>167</sup> De Schutter, (2009), supra note 19

<sup>168</sup> FIAN (2010), supra note 4

and measures that the UN Special Rapporteur on the right to food has developed to address the human rights challenge in large-scale land acquisitions and leases fit very well with the standards set by the *continental framework and guidelines*. Their principles and measures are therefore integrated in the analysis to examine the role that the *continental framework and guidelines* can play in the land grab context given the current status of land related laws, policies and programmes in Africa.

## **5.2 MEASURING LAND RELATED POLICIES AND LAWS IN AFRICA THROUGH THE LENSES OF THE FRAMEWORK AND GUIDELINES ON LAND POLICY IN AFRICA**

By broadly examining laws, policies and programmes directly related to land, agriculture and energy, this analysis directs African governments towards some of the issues that they could reconsider in efforts to strengthen their land economies through adherence to the standards set by the *continental framework and guidelines*. It is acknowledged that a holistic picture can be best provided by more in-depth country studies, thus this Chapter is only a starting point and not exhaustive. Each of the selected nine standards of the *continental framework and guidelines*, and what they imply for the situation that is impacting on land grabbing in Ethiopia, Ghana, Mali, Mozambique, Senegal, and Tanzania, will be discussed in turn.

### **5.2.1 Land Policies Must be Comprehensive and Must Anchor Policies for Related Sectors**

The status of land resources is an important determinant of the health and vitality of sectors and sub-sectors that depend on land or land resources for their viability. The *continental framework and guidelines* therefore places emphasis on the need for AU member states to develop **comprehensive** land policies. Among other things, comprehensive land policies in Africa should play the role of providing anchorage for further policy development in land-related sectors and sub-sectors like agriculture, livestock, energy, minerals, water, wildlife, forestry and human settlements.<sup>169</sup> Thus the standard is that African countries should back-track from the trend whereby “land policy development has tended to follow sectoral paths or to be sector-driven—with little or no co-ordination or harmonization with policies regarding other sectors.”<sup>170</sup>

Out of the six countries under study, the *continental framework and guidelines* recognize Ghana, Mozambique and Tanzania as being amongst countries that have completed the review and assessment of the performance of their land sectors, and formulated new policies for reform in the past two decades.<sup>171</sup> However, if the negative impacts that foreign direct investments in agriculture are having on small scale farmers, women and pastoralists are anything to go by, there is still more to be done. There is need to closely measure if the existing land policies are indeed meeting the comprehensive standards set by the *continental framework and guidelines*, some of which are discussed in the subsequent parts of this report. From the tone of the *continental framework and guidelines*, while comprehensive land policies are a foundation to addressing land grabbing, even with their existence, the implementation

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<sup>169</sup> African Union, African Development Bank, and United Nations Economic Commission for Africa, (2009), Part 4.5.9, *supra* note 7, p.51

<sup>170</sup> *Ibid*, Part 4.4.3, p.46

<sup>171</sup> *Ibid*, Part 4.3.2, p. 45

of land reforms may be frustrated if existing laws, plans and management systems in related sectors like energy and agriculture are not appropriately revised.<sup>172</sup>

All the six countries that were studied have investment or energy or agriculture related laws and policies that would require assessment in order to check their suitability for revision. A country specific broad picture is provided in turn:

#### *Mozambique*

Subsequent to Mozambique's 1995 Land Policy, the country adopted a Policy and Strategy for Bio fuels in May 2009. Mozambique also has the National Food Security Strategy (2005- 2009), which refers to the human right to adequate food.<sup>173</sup> Promotion of the welfare of citizens is central to this strategy. However, this interest can be jeopardized by ill calculated investments that have occurred due to policies and strategies that are not well harmonized with a comprehensive land policy. The streamlined administrative processes for investors that were supported by the Foreign Investment Advisory Service (FIAS), a World Bank Group (WB G) agency also require harmonization with any land policy that is certified as meeting the *continental framework and guidelines* standards.

#### *Ethiopia*

Ethiopia approved a Strategy for Bio Fuel Development and Use in September 2007. Land acquisition process for purposes of investment in the country is the primary responsibility of the Ethiopian Investment Commission. These measures are therefore among those that could be inspected for their conformity with any developed comprehensive land policy in the country.

#### *Tanzania*

The comprehensiveness of Tanzania's 1997 National Land Policy would also have to be ascertained. Other policies and laws to be re-examined against a comprehensive land policy include the 1997 Tanzania Investment Act (which mandates the Tanzania Investment Centre (TIC) to identify available land and provide it to investors<sup>174</sup>) and Tanzania's National Energy Policy of 2000. And since facts from the ground suggest that evidence of the presence of socio-cultural and economic harm to communities is not a barrier to implementing bio fuel projects, the examination and dedicated implementation of the National Environmental Management Act, 2004 (NEMA) is also crucial.

#### *Ghana*

In Ghana, policies that would require scrutiny due to the emerging topic of large scale acquisitions would include the 1999 Land Policy itself, and the associated 15 years Land Administration Project (LAP). The need for Ghana to reflect on the comprehensiveness of its land policy is even more urgent now that the country is engaged in an inter-agency process<sup>175</sup> to develop a policy framework and guidelines for large scale land acquisitions by both local and foreign investors for bio fuels

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<sup>172</sup> Ibid, Part 4.5.9, p.51

<sup>173</sup> FIAN, (2010), supra note 4, p.26

<sup>174</sup> Daniel, S., (2010), supra note 16

<sup>175</sup> The Ministry of Food and Agriculture in Ghana had initiated an inter-agency consultations between the Ministries of Food and Agriculture, Energy, Lands and Natural Resources, Environment Science and Technology, Chieftaincy Affairs and Local Government and Rural Development and Finance and Economic Development

development.<sup>176</sup> And since the National Bio fuels Policy (2005) is directed at promoting investments to address national energy and livelihood needs, strong policy direction and implementation is necessary to ensure that priorities of investors do not override policy objectives, as appears currently to be the practice. Like in Mozambique, FIAS driven strategies to minimize barriers to land access by investors in Ghana would also beg re-evaluation in order to tighten their compatibility to a comprehensive land policy that seeks to meet the standards set by the *continental framework and guidelines*.

### *Mali*

For Mali, aside the need for a comprehensive land policy, laws and programmes that require re examination through the lenses of the *continental framework and guidelines* include the 2006 National Energy Policy. This policy calls for a reinforcement of the institutional and regulatory framework in the energy sector, among other things. Also relevant is the 2006 Land Act and the Agricultural Orientation Law (LOA)—which is aimed at supporting the government to reorganise the development of its agriculture. There is also the 2006-2015 National Food Security Programme (PNSA).<sup>177</sup> From the land grab experiences in the country, it has been observed that though FDI officially seem to align with the PNSA, when it comes to the contract agreement, specific project/investment objectives might differ from those of the PNSA.<sup>178</sup> Just like in Mozambique and Ghana, also pertinent are the systems that were instituted with the support of FIAS to ensure that Mali’s investment promotion agency can facilitate the acquisition of all necessary licenses, permits and authorizations for investors.<sup>179</sup>

### *Senegal*

Upon developing a comprehensive land policy, Senegal would need to review its Jatropha National Production Program that was instituted in 2007—with the target of increasing the land used for Jatropha production for biodiesel by 321,000 hectares by 2012.<sup>180</sup> Further, a comprehensive land policy could be necessary for the practical realisation of Senegal’s energy policy. Since 2003, the policy has focused on the contribution that the energy sector can make to provision of basic social services, including education, health and water in order to increase wellbeing and eradicate poverty among the Senegalese population.<sup>181</sup> As the preceding Chapters have shown, land grabbing at national level has the potential to greatly misdirect this vision. As part of the features of a comprehensive land policy, the *continental framework and guidelines* also provide standards that should guide country approaches in ensuring the “blending of tradition and modernity.”<sup>182</sup>

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<sup>176</sup> Hon. Kwesi Ahwoi, Minister of Food and Agriculture, Republic of Ghana, (2010), supra note 53

<sup>177</sup> Diallo, A., and Mushinzimana, G., (2009), supra note 56, p.15

<sup>178</sup> Ibid, p. 17

<sup>179</sup> Daniel, S., (2010), supra note 16

<sup>180</sup> [http://actionaidusa.org/what/monthly\\_feature/senegal\\_quest\\_to\\_balance\\_food\\_security/](http://actionaidusa.org/what/monthly_feature/senegal_quest_to_balance_food_security/)

<sup>181</sup> Diop, M., (2009), Energy Systems: Vulnerability – Adaptation – Resilience (VAR) Regional focus: sub-Saharan Africa, Senegal.

<sup>182</sup> African Union, African Development Bank, and United Nations Economic Commission for Africa, (2009), Part 3.1.3, supra note 7, p.31

### **5.2.2 Land Policies Should Recognise the Role of Local and Community Land Based Administration and Management Institutions and Structures Along with Those of the State**

Land grabbing draws attention to the role that weak national land administration systems are playing in threatening land rights and livelihoods of smallholder farmers, pastoralists, indigenous communities and women.<sup>183</sup> Though land in Ethiopia, Ghana, Mali, Mozambique, Senegal, and Tanzania is owned by the State, the countries have systems whereby state and customary laws related to land operate side by side. However, the scale of harmonization of these laws and their administration structures varies—with Ghana, Mozambique and Tanzania having clearer laws on the roles of traditional structures in comparison to those of the State. But it is still the general situation that the customary and statutory land administration systems (and sometimes even tenure regimes) in all the six countries fail to smoothly reconcile. Rural communities therefore do not appear to have unequivocal protection of their land rights in the context of land grabbing.

For instance, in Mozambique the 1997 Land Law recognizes DUAT<sup>184</sup> (the Right of Land Use and Benefit title) as the single type of tenure. In practice, there have been challenges related to the recognition of customarily acquired DUATs (which do not have to be registered or recorded on official maps), as the state and its favoured interests attempt to use the constitutional principle of state ownership of natural resources to achieve its ends.<sup>185</sup> Though the law identifies the importance of local community leaders in dealing with community rights and the prevention and resolution of conflicts at a local level, this has been abused by investors and Government through bribes to leaders to gain community consent without community consultation.<sup>186</sup> In Tanzania, the Village Land Act embraces customary tenure. The community itself may conduct the adjudication, recording and titling processes through elected Village Councils and Village Adjudication Committees.<sup>187</sup> Though a contract with investors is usually made with the regional investment office, local leaders may be party to the agreement in some instances.<sup>188</sup>

However, one area requiring policy attention in Tanzania is the exploitation that rural communities reportedly encounter when they transact directly with an investor, particularly in negotiating compensation. In rural areas of Ghana, agricultural investment companies typically directly engage with Traditional Authorities—often with the support of the Ghana Investment Promotion Centre—who manage the land according to customary law and make the ultimate decisions on land allocation.<sup>189</sup> However, the challenges that a comprehensive land policy framework needs to deal with is the lack of seamless information flow regarding investment land deals between traditional leaders and government agencies. And just as in other countries, the need

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<sup>183</sup>Liversage, H., *supra* note 9

<sup>184</sup> *Direito de Uso e Aproveitamento da Terra*

<sup>185</sup> FAO, Legal support for the implementation of Mozambique's 'Land Law' and 'Forestry and Wildlife Law' (undated)

<sup>186</sup> Matavel D. R. N., (2010), *supra* note 36

<sup>187</sup> Dondeyne, S., Vanthournout, E., Wembah-Rashid J.A.R., and Deckers, J., Changing Land Tenure Regimes in a Matrilineal Village of South Eastern Tanzania, Vol 18 No 1 January 2003 *Journal of Social Development in Africa*, p. 11

<sup>188</sup> Cotula, L., et al (2009), *supra* note 3, p.67

<sup>189</sup> Schoneveld S.G., German L.A., Nutakor, E., (2010), *supra* note 101

to avoid abuse of processes (like consultations) by traditional elites is clear. In Senegal, though the Senegalese 1964 law on the “domaine national” abrogated customary land tenure and nationalized most of the land <sup>190</sup>customary rules regarding land are still widely applied in rural areas.<sup>191</sup> Rural councils rarely make land allocations without the approval of customary chiefs. <sup>192</sup>

In Mali, customary land rights are granted by traditional leaders, and are only recognised by the state as long as they refer to unregistered land. <sup>193</sup> As Chapter 3 has demonstrated, the marginalization of women in issues of land puts them at the periphery of land administration priorities at both traditional and state levels, even in the context of land grabs. But there is hope for women (and marginalized groups like pastoralists) if African countries should follow the proposition under the *continental framework and guidelines* that AU member states should seek to develop new and innovative policies, including the provision of statutory frameworks, for the documentation and codification of informal land rights regimes. Ethiopia and Ghana have been applauded for already taking steps in this direction.<sup>194</sup> Women can also be optimistic due to the fact that the *continental framework and guidelines* have set a specific standard for addressing the long standing subject of women’s land rights.

### **5.2.3 Land Policies Should Strengthen the Rights of Women**

Comprehensive national land policies that secure land rights for women by protecting them against negative impacts of large scale agricultural investments would “*dramatically alter the insecurity, disempowerment and abuse that are associated with poverty and inequality, and would create new fronts for rolling back HIV and AIDS.*”<sup>195</sup> Such positive impact is immensely useful to strategies aimed at promoting agriculture, given the revelations in this report that women are the backbone of agricultural labour in Africa. Addressing the risks that women face in the context of land grabbing as articulated in Chapter 3 is therefore yet another strong reason for African countries to aspire to meet the standards set by the *continental framework and guidelines*. The standard for African countries to achieve better and more productive use of land under the *continental framework and guidelines* is that the land rights of women should be strengthened through a variety of mechanisms, including the enactment of legislation that allows women to enforce documented claims to land within and outside marriage. Other mechanisms include guaranteeing equal rights for women to inherit and bequeath land, co-ownership of registered land by spouses and the promotion of women’s participation in land administration structures.<sup>196</sup>

Tanzania has already taken legislative steps to ensure the participation on women in local land administration structures like Village Councils and Village Adjudication

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<sup>190</sup> Cotula, L., and Toulmin, C., (2004), Till to tiller: Linkages between international remittances and access to land in West Africa, LSP Working Paper 14 Access to Natural Resources Sub-Programme. International Institute for Environment and Development (IIED) UK, p. 35

<sup>191</sup> Ibid, at p.35

<sup>192</sup> Cotula, L., and Toulmin, C., (2004), supra note 191

<sup>193</sup> Diallo, A., and Mushinzimana, G., (2009), supra note 56, p.12

<sup>194</sup>African Union, African Development Bank, and United Nations Economic Commission for Africa, (2009), Part 3.1.3, supra note 7, p.32

<sup>195</sup> Wandia, M., (2009), supra note 103

<sup>196</sup>African Union, African Development Bank, and United Nations Economic Commission for Africa, (2009), Part 3.1.4, supra note 7, p.32



Committees.<sup>197</sup> However, the challenge is to avoid counter-productive implementation of such laws. In other parts of Africa, an observation has been made that “*women in local land councils are not even informed of their role; are unfamiliar with procedures and the manner in which meetings are done; and mostly lack knowledge of the issues raised at the meetings.*”<sup>198</sup> And while all the six countries under study have fair constitutional and/or statutory provisions towards promoting equality between men and women, Chapter 3 has demonstrated that the challenge is the practical realization of these laws when they clash with the force of discriminatory traditional systems on the ground. Linked to the specific guidance to make women’s land rights real, the *continental framework and guidelines* also have suggestions on how African governments can approach the task of advancing a pro poor agenda along with a market oriented one in land related reforms.

#### **5.2.4 Land Policies Must Balance Pro-Poor Priorities with Market Orientation**

The *continental framework and guidelines* prompt African countries to mainstream land issues in poverty reduction strategies as a way of engaging and rationalizing objectives that pursue pro-poor strategies of land development on the one hand, and market-driven options, on the other.<sup>199</sup> Market-based land reform has repeated the mantra that investment—particularly foreign direct investment—is the means to financial growth.<sup>200</sup> The experiences from Ethiopia, Ghana, Mali, Mozambique, Senegal, and Tanzania confirm that land can be leased out to investors for lengthy periods of between 50 years to 99 years. In pursuing land deals, African governments therefore are required under the framework to take adequate measures to ensure that increased market-driven policies of land development do not expose vulnerable groups, particularly women, to further marginalization through speculation and costly land rights transfer systems.<sup>201</sup> In respect to pastoralists, Ethiopia has included their needs and priorities in its Poverty Reduction Strategy,<sup>202</sup> which is a strong move for African countries (with pastoralist communities) that are aiming at strengthening their agricultural economies. However, as noted, such approaches should always remember the role that investment laws can also play in side lining the interest of pastoralists. The approaches should also always consider the needs of both men and women pastoralists.

In further efforts to balance pro-poor priorities with market orientation, African governments could also be guided by the principles developed by the UN Special

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<sup>197</sup> Tripp, A.M., *Women's Movements, Customary Law, and Land Rights in Africa: The Case of Uganda*, African Studies Quarterly. Available at <http://www.africa.ufl.edu/asq/v7/v7i4a1.htm>

<sup>198</sup> Kachika, T., (2009), supra note 132—Citing experiences from KwaZulu Natal in South Africa where the 2004 Communal Land Rights Act entitles women to participate in Traditional Councils that were constituted to implement the Act. However, it is usually Chiefs that select the type of women to participate.

<sup>199</sup> African Union, African Development Bank, and United Nations Economic Commission for Africa, (2009), Part 3.2.3, supra note 7, p.33

<sup>200</sup> Wandia, M., (2009), supra note 103

<sup>201</sup> African Union, African Development Bank, and United Nations Economic Commission for Africa, (2009), Part 3.2.3, supra note 7, p.33

<sup>202</sup> PANOS, at <http://www.panos.org/waves/pastoralism.asp>

Rapporteur on the right to food. These include that investment agreement revenues should be used for the benefit of the local population. Thus investment contracts should prioritize the development needs of the local population and seek to achieve solutions which represent an adequate balance between the interests of all parties. Further, governments should consult and cooperate in good faith with the indigenous peoples concerned in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.<sup>203</sup> Apart from integrating the needs of marginalized groups, including pastoralists, in poverty reduction strategies, the *continental framework and guidelines* specifically mentions that a comprehensive land policy also implies the need for African governments to confront the threats facing pastoral eco systems.

### **5.2.5 Land Policies Should Protect Pastoral Eco Systems**

Among other sources, risks to pastoral eco systems are arising from invasion by agricultural communities and a long tradition of neglect in the national development policies of many countries.<sup>204</sup> The hostile political atmosphere towards pastoralists in Tanzania is an illustrative example of the latter. The standard set for African governments by the *continental framework and guidelines* is therefore that the protection of pastoral ecosystems will require policies that address issues of tenure security, the role of pastoral communities in pastoral management, guarantee equal access to pastoral resources for women, establish processes for the resolution of cross-boundary disputes, and improve technologies of resource use.<sup>205</sup>

Sincerely addressing issues of tenure security is significant to addressing fears like those of pastoralists in Loliondo in Tanzania that “*the government was compelling them to conduct land use planning so that after the exercise, it could utilize the provisions of a new Wildlife Conservation Act No 5 of 2009 to put the land that the community had leased to the hunting investor under the exclusive control of the investor.*”<sup>206</sup> The forced evictions of pastoralists in Loliondo also fail the test in relation to the UN Special Rapporteur on the right to food’s principle that: “*forced evictions should occur only when they are justified as necessary for the general welfare, are accompanied by consultations, adequate compensation and alternative resettlement or access to productive land.*”<sup>207</sup> Since the experiences of the Loliondo pastoralists were connected to use of land for tourism/hunting, it is worth examining the standards that the *continental framework and guidelines* have set for African governments on the tourism topic.

### **5.2.6 Land Policy Reforms Should Impact on Reducing Tensions between the Tourism Industry and Other Social and Economic Uses**

The land grabbing incident against pastoralists in Loliondo in Tanzania confirms the observation under the *continental framework and guidelines* that tourism is a delicate industry which requires systematic land use planning and service infrastructure to

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<sup>203</sup> De Schutter, (2009), supra note 19

<sup>204</sup> African Union, African Development Bank, and United Nations Economic Commission for Africa, (2009), Part 3.5.4, supra note 7, p.39

<sup>205</sup> Ibid

<sup>206</sup> Feminist Activist Coalition, (2009), supra note 112

<sup>207</sup> De Schutter, (2009), supra note 19

avoid ecological and other forms of environmental damage, and adverse social and cultural impacts.<sup>208</sup> Comprehensive land policies that intend to soundly protect land rights of communities in the context of tourism could therefore benefit from the recommendation by the UN Special Rapporteur on the right to food that:

*In considering whether or not to conclude an agreement with an investor, the host government should always balance the advantages of entering into such an agreement against the possibilities of putting the land to other uses better suited to local communities' long-term needs and the full realization of their human rights.*<sup>209</sup>

Where such investments are an option, the *continental framework and guidelines* hope that African governments can pursue measures that include extensive investments for the benefit of local communities if the participation of communities in wildlife management and revenue sharing is to be meaningful and mutually beneficial.<sup>210</sup> The expectation of local benefits under the *continental framework and guidelines* does not stop with those whose land rights are affected by tourism. It is anticipated that African governments take measures to ensure that sustainable gains are attained by any affected local community.

### **5.2.7 Land Policy Reforms Should Guarantee Net Gains for African Populations for Use of Land for Functions like Energy Development**

With the evidence that Ethiopia, Ghana, Mali, Mozambique, Senegal, and Tanzania have allocated large parcels of land to investors for bio fuel production, comprehensive land policies need to play their part to ensure that the noted risks currently faced by small scale farmers, women, and pastoralist do not become the norm. The *continental framework and guidelines* would like African governments that are dealing with or contemplating FDI to ask: “*whether or not their countries have the capacity to meet their internal agriculture food production requirements as land is taken out; and the ecological trade-offs involved in the scramble by foreign investors for land for energy development.*”<sup>211</sup> It is the grounded reality that should guide country policy direction.

To ensure that the local community gains from investments, the UN Special Rapporteur on the right to food recommends that host States should impose enforceable obligations on investors. Such obligations could include: a) clear and verifiable commitments related to local employment and full compliance with labor rights, or to the inclusion of smallholders through properly negotiated out grower schemes, joint ventures or other forms of collaborative production models; b) to the need to make infrastructural investments so that a larger portion of the value chain can be captured by the local communities; and c) a commitment that a specific minimum percentage of the crops that will be produced will be sold on local markets, and commitment to increase this percentage (in proportions to be agreed in advance),

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<sup>208</sup> African Union, African Development Bank, and United Nations Economic Commission for Africa, (2009), Part 3.4.7, supra note 7, p.37

<sup>209</sup> De Schutter, (2009), supra note 19

<sup>210</sup> African Union, African Development Bank, and United Nations Economic Commission for Africa, (2009), Part 3.4.7, supra note 7, p.37

<sup>211</sup> Ibid, Part 3.4.4, supra note 7, p.36

if the prices of food commodities on international markets reach certain levels. There should also be clearly specified sanctions for non compliance.<sup>212</sup>

**Box 17** exemplifies the model of public private partnerships that is being tried in Mali, and the associated ventures are also intended to benefit the Mali population.

**Box 17: Community Part of a Public Private Partnership in Mali's Markala Sugar Project**

The Markala Sugar Project (MSP) 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. Another plant will be 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 surpluses of which will be transferred to the electricity network of the Malian Energy Company (EDM).

The Project is mainly the initiative of two independent entities. One is SoSuMar: Markala Sugar Company (Société Sucrière de Markala), responsible for the Project's industrial and private component. The other one is CaneCo: Sugar Cane Production Company (Société de production de canne à sucre), responsible for the agricultural component. 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. . . . This land will be allocated for production and sale of sugar cane to SoSuMar. About 20percent 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. . . . The establishment of "CommCo" actually makes the MSP a PPP Project with a three-pronged partnership structure: Malian Government/SoSuMar/ Community.

Adapted from Diallo A., and Mushinzimana G., December 2009

The UN Special Rapporteur on the right to food also suggests that host States should ensure that contracts providing for the lease or sale of land will distribute their benefits equitably between *the local communities, the host State, and the investor*. To achieve this, States are advised to ensure that participatory impact assessments are conducted prior to the completion of the negotiations. Such assessment is necessary in order to highlight the consequences of the investment on the enjoyment of the right to food through: a) local employment and incomes, disaggregated by gender and, where applicable, by ethnic group; (b) access to productive resources of the local communities, including pastoralists or itinerant farmers; (c) the arrival of new technologies and investments in infrastructure; (d) the environment, including soil depletion, the use of water resources and genetic erosion; and (e) access, availability and adequacy of food.<sup>213</sup> Currently, laws and policies in the six countries mainly focus on environmental assessments, and the requirements are usually weakly implemented as evidenced by the documented land grabs in this report.

**5.2.8 Land Policies Should Clarify Systems of Property under which Land for Agriculture is Held and Used**

To ensure that an enabling environment is created for agricultural development, African governments will need to ensure that the systems of property under which

<sup>212</sup> De Schutter, (2009), supra note 19

<sup>213</sup> Ibid

land is held and used are clarified for the variety of agricultural forms and participants in that sector.<sup>214</sup> The *continental framework and guidelines* considers the making of this improvement in the land sector as being crucial to different players. Firstly, clear property rights in different agricultural scenarios is crucial to rural farmers, particularly women, whose access to land is based on various indigenous tenure systems. At the same time, they produce most of Africa's food crops. Secondly, clear property rights in different agricultural scenarios are also crucial for foreign or local commercial investors, some of whom seek to engage in large scale operations (including extensive irrigation networks).

In defining the rights for agricultural investors, African governments should avoid impeding access by local communities to vital and scarce land related resources like water and common grazing land. This report has uncovered these effects in Ethiopia, Mali, Mozambique and Tanzania. The UN Special Rapporteur on the right to food also reinforces the principle of responsible customized property rights by calling on host governments and investors to cooperate in identifying ways to ensure that the modes of agricultural production shall respect the environment, and shall not accelerate climate change, soil depletion, and the exhaustion of freshwater reserves.<sup>215</sup> In defining rights for small scale farmers, including women who have varying tenure security, African governments need to intensify complementary measures. As an analyst has observed: "*Africa needs investment in agriculture—better seeds and inputs, improved extension services, education on conservation techniques, regional integration, and investment to build local capacity.*"<sup>216</sup>

### **5.2.9 Land Policy Processes Should Meaningfully Engage Civil Society**

Another important standard that should guide the processes of developing comprehensive land policies in Africa is that civil society organizations (CSOs) should be deeply engaged from the start, and its inputs should be fully taken into consideration. The *continental framework and guidelines* highlight that CSOs can provide necessary checks and balances on government decision-making during the development and implementation of land policies. Representation from specific interest groups [including small scale farmers, women, and pastoralists] should be ensured.<sup>217</sup> Ethiopia, Ghana, Mali, Mozambique, Senegal, and Tanzania could benefit in adopting the same standard even in the re examination of sectoral laws that impact on land grabbing, some of which have been mentioned earlier.

Experiences from Ghana (**Box 18**) provide testimony that vibrant national level civil society organizations can effectively support rural communities, including women, "*who have the least political voice, they are often the least well organised, and they lack bargaining power.*"<sup>218</sup>

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<sup>214</sup> African Union, African Development Bank, and United Nations Economic Commission for Africa, (2009), Part 3.2.2, supra note 7, p.33

<sup>215</sup> De Schutter, (2009), supra note 19

<sup>216</sup> Daniel, S., (2010), supra note 16

<sup>217</sup> African Union, African Development Bank, and United Nations Economic Commission for Africa, (2009), Part 4.5.4, supra note 7, p.48

<sup>218</sup> <http://www.new-ag.info/developments/devItem.php?a=782>

**Box 18: RAINS Intervenes in Unauthorized bio fuel development in Kusawgu, Northern Ghana**

In November 2007 a team from Regional Advisory and Information Network Systems (RAINS) discovered massive destruction of vegetation cover over a large stretch of land near a village called Alipe within the White Volta River basin about 30 kilometres from Tamale, the capital town of the Northern region of Ghana. Heavy agricultural machinery were systematically pulling down trees and decimating the area a few metres south of the village. The land had been stripped bare of all its vegetation cover. Enquiry revealed that the site was to be the beginning of a large *Jatropha* plantation developed by a Norwegian bio fuel company called Bio fuel Africa – a subsidiary of Bio Fuel Norway. At a public engagement session in Kusawgu, the traditional capital of the Kusawgu Division of the Gonja Traditional Council, Mr. Finn Byberg, Director of Land Acquisition for Bio fuel Africa, stated that Bio fuel Africa hoped to “develop the largest *Jatropha* plantation in the world in Ghana”

RAINS immediately contacted the District Chief Executive (DCE), the political head of the District to inquire about the project. Neither he nor the District Assembly had any information about it. He had noticed the work on the site and was in the process of finding the “culprits” because they did not have any planning permission to undertake the development. To gain time, RAINS advised the DCE to use the planning powers conferred on the District Assembly under the Local Government Act 1993 Act 462 to stop the destruction of the vegetation. Under this law nobody can undertake any development of land without seeking the prior approval of the District Assembly of the area. In this particular case the Assembly could not stop them, owing perhaps to the highly politicized nature of the Assembly process and the vulnerability of the personnel there. Eventually, using the Environmental Assessment Regulations LI 1652, we managed to get them to stop the destruction, but not before more than 2 600 hectares of land had been stripped of its natural vegetation cover.<sup>219</sup>

Source: Nyari, 2008

In Mali, farmers’ associations whose members are victims of the Malibya project are also reported to have called on the National Coordinator for Farmers’ Organisations (CNOP) to safeguard the interests of those affected. Further research can establish more about the impacts of such interventions. But what is clear is that CSOs have the advantage of bringing full information to communities, as well as to governments in order to strengthen policy direction. Thus promoting more responsible investment in agriculture by governments also implies support for the role of civil society to empower rural communities and to strengthen good land governance. As the next part explains, CSOs can even support transparent governments in concluding bilateral investment treaties (BITs), since these can also increase vulnerabilities of rural communities to land grabbing.

**5.3 A CAUTION IN IMPLEMENTING THE FRAMEWORK AND GUIDELINES ON LAND POLICY IN AFRICA: BEWARE OF BILATERAL INVESTMENT TREATIES**

Currently, the challenge is that there is little evidence in most countries of civil society being invited to contribute constructively to emerging intergovernmental arrangements,<sup>220</sup> some of which may have direct negative impacts on land rights of populations with tenure insecurity, including women. In dealing with foreign investors, the common practice is for host States to sign Bilateral Investment Treaties (BITs) with the investment partners. BITs are meant to supplement the sometimes

<sup>219</sup> Nyari, B., (2008) supra note 115

<sup>220</sup> Cotula, L., et al, (2009), supra note 3, p 69

eager legal protections accorded to property in some countries. Therefore, they are international protections that are layered on top of whatever protections may be available in domestic law.<sup>221</sup>

In taking measures to implement the *continental framework and guidelines*, African governments will need to realize that BITS can place constraints on the policy space available to implement land reform initiatives. While BITS do not bar land reform, governments contemplating land reform must contend with the international legal framework protecting foreign investors.<sup>222</sup> This is why African governments stand a lot to gain by being transparent before they sign agreements with foreign agricultural investors; so that they avoid embracing legal protections for foreign nationals owning property that are parallel to domestic laws and policies. This can complicate land reforms.<sup>223</sup>

Transparency is even more necessary because the investment protection treaties also provide for their own system of enforcement. Therefore, States typically give advance-consent to international arbitration in cases where a foreign investor alleges breach of the treaty protections. Thus, foreign investors may be able to bypass national courts, and pursue legal action against a government before an international arbitration tribunal.<sup>224</sup> African governments need to be mindful about the effects that BITS can have on a country's overall social and economic development, by taking into account the priorities of marginalized populations, including small scale farmers, women and pastoralists. Caution is all the more important because BITS do not provide for states to bring claims against investors for activities of investors that harm the public.<sup>225</sup> Thus in the six countries under study, as well as in Africa generally, evidence is needed to assess the scale and impacts of existing BITS on land grabbing, as well as on the prospects of developing comprehensive land policies in the future.

## 5.4 CONCLUSION

The standards that can guide African countries to holistically address land grabbing through the development of comprehensive land policies and appropriate revision of land related sectoral laws are high, but manageable and gainful. It is clear that African governments intending to promote meaningful, sustainable, and responsible investments in agriculture must be willing to intensively invest the time, multi sectoral human resources, and economic resources in implementing the *continental framework and guidelines*. These recommendations (also called core principles and measures) tightly complement the *comprehensive framework and guidelines* in supporting African governments not to waver in their measures to implement the CAADP agenda. As African governments contemplate applying the *continental framework and guidelines*, they must always remember that BITS have a lot to do with the complications, or ease

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<sup>221</sup> Peterson L.E., and Garland, R., (2010), *Bilateral Investment Treaties and Land Reform in Southern Africa*. Rights and Democracy publication. Available at <http://www.africafiles.org/article.asp?ID=23979>

<sup>222</sup> Ibid

<sup>223</sup> Ibid

<sup>224</sup> Ibid

<sup>225</sup> Harten G.V., (2008), *Policy Impacts of Investment Agreements for Andean Community States*

that can accompany land reform processes. The role of civil society to provide checks and balances should therefore be embraced as key to both the processes of strengthening land policies, as well as entering into BITs.



## CHAPTER 6

### OVERALL CONCLUSION

This report has illustrated how land grabbing is seriously threatening the livelihoods of marginalized groups like small scale farmers, women, and pastoralists in many rural communities in Ethiopia, Ghana, Mali, Mozambique, Senegal, and Tanzania. By focusing on foreign agricultural investors who have energy and security interests, evidence shows that it will be difficult for African governments to realize their aspirations to promote investments in agriculture—in order to reduce the poverty of their populations—if the food and energy security needs of rural populations are secondary. The fact that African regional and national governments are directly or indirectly behind the land grabbing necessitates immediate redress of the situation.

The many risks to small scale farmers, the majority of whom are women, that are emanating from land grabbing show that African governments are not taking and implementing policy measures to concretely address the needs of farmers who welcome foreign agricultural investments, as well as those who would like to be in the frontline of productive farming themselves. CAADP provides needed direction for African governments to take measures to attain food security; integrate farmers into the market economy and improve their access to global markets; and achieve more equitable distribution of wealth through more equitable access to land, physical and financial resources, and knowledge, information and technology.

The presence of women specific risks arising from land grabs also calls attention for African governments to go beyond paper exercises, and use the *continental framework and guidelines* to concretely correct the land rights situation for the principal agriculturalists in Africa. And the experiences of pastoralist communities call for the recognition of the significant contribution of pastoralism to national economies through a synergy of all relevant policies that affect the land rights of pastoralists. The fact that AU Ministers of Agriculture, Land and Livestock have taken action to direct the strengthening of pastoralism in pursuant to the CAADP agenda is therefore timely, so long as implementation is equally timely. As efforts to implement the *continental framework and guidelines* are adopted, research is necessary to develop effective responses to the multi dimensional challenges of both women and pastoralist communities.

If African governments diligently work towards achieving the standards set under the *continental framework and guidelines*, addressing land grabbing is possible. These standards are strengthened by the human rights based recommendations set by the UN Special Rapporteur on the right to food in relation to the challenge of large-scale land acquisitions and leases. However, governments cannot succeed alone without the support of civil society organizations, which usually promote the accountability of governments and represent rural communities, whose voices are not often heard. CSOs are also relevant in ensuring the accountability of African governments to rural populations in the bilateral investment treaties that governments enter into with foreign agricultural investors.

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