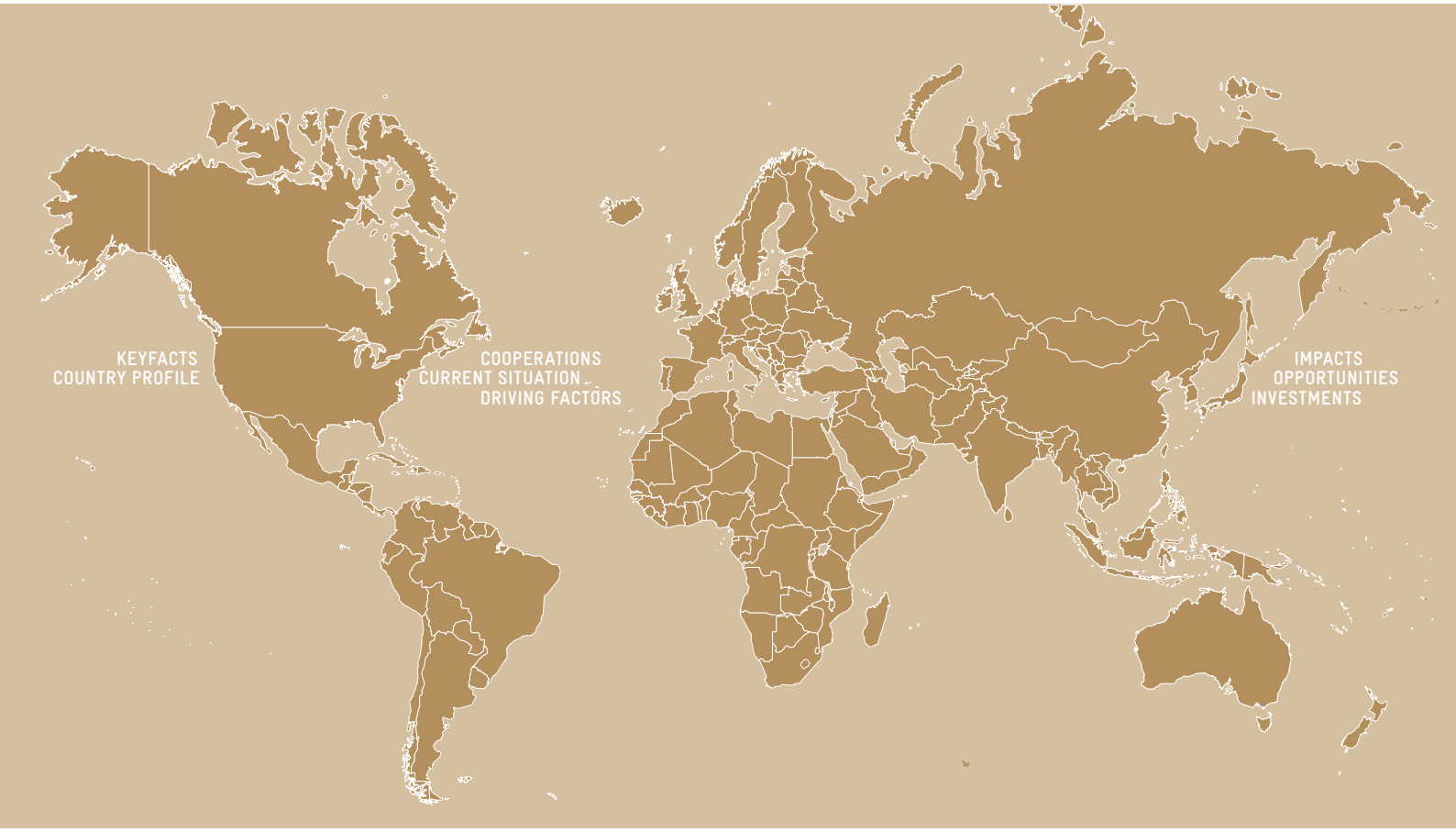
Division 45
Agriculture, Fisheries and Food



Foreign Direct Investment (FDI) in Land in developing countries

gtz

On behalf of
Federal Ministry
for Economic Cooperation
and Development

Imprint

Published by:
Deutsche Gesellschaft
für Technische Zusammenarbeit
(GTZ) GmbH
P.O. Box 5180
65726 Eschborn
Germany

T +49 6196 79 - 0
F +49 6196 79 - 1115
E info@gtz.de
I www.gtz.de

Work of Division 45 - Agriculture, fisheries and food, GTZ, Eschborn:
Sector Project "Land Management" (Dorith v. Behaim)
Sector Project "Agricultural Policy and Food Security" (Dr. Marlis Lindecke)
Future Initiative "AgroInvest" (Dr. Christian Henckes)

Responsible, contact:
Dorith v. Behaim, Martina Römer, Sector Project "Land Management"
Dr. Thomas Breuer, Planning Officer

Authors: Dr. Matthias Görgen, Dr. Bettina Rudloff, Dr. Johannes Simons, Alfons Üllenberg
Susanne Väth, Lena Wimmer

Contact to the Federal Ministry for Economic Cooperation and Development
Karin Foljanty

Design:
Jeanette Geppert,
www.jeanette-geppert.de

Eschborn, December 2009

Content

List of figures and tables

List of abbreviations

AoA	–	Agreement on Agriculture
ASEAN	–	Association of Southeast Asian Nations
BIT	–	Bi-lateral Investment Treaties
BMELV	–	Federal Ministry of Food, Agriculture and Consumer Protection
BMZ	–	Federal Ministry for Economic Cooperation and Development
BOD	–	Biological Oxygen Demand
CDC	–	Council for the Development of Cambodia
CDF	–	Code Domanial et Foncier (Mali)
CDM	–	Clean Development Mechanism
CPI	–	Corruption Perception Index
CSO	–	Civil Society Organisation
DAC	–	Development Assistance Committee
DDFI	–	Department of Domestic and Foreign Investment (Laos)
EIA	–	Environmental Impact Assessment
ELC	–	Economic Land Concession (Cambodia)
ESAF	–	Enhanced Structural Adjustment Facility (Mali)
EU	–	European Union
FAO	–	Food and Agricultural Organisation
FDI	–	Foreign Direct Investment
FTA	–	Free Trade Agreement
GATS	–	General Agreement on Trade in Services
GATT	–	General Agreement on Tariffs and Trade
GDP	–	Gross Domestic Product
GHI	–	Global Hunger Index
GIS	–	Geographic Information System
GTZ	–	Gesellschaft für technische Zusammenarbeit
IFAD	–	International Fund for Agricultural Development
IFPRI	–	International Food Policy Research Institute
IIED	–	International Institute for Environment and Development
IISD	–	International Institute for Sustainable Development
IMF	–	International Monetary Fund
IPCC	–	Intergovernmental Panel on Climate Change
LASED	–	Land Allocation for Social and Economic Development (Cambodia)
LLDC	–	Least Developed Countries
LOA	–	Loi d'Orientation Agricole (Mali)
LPDP	–	Lao German Land Policy Development Project
MAFF	–	Ministry of Agriculture, Forestry and Fisheries (Cambodia)
MEF	–	Ministry of Economics and Finance (Cambodia)
MLMUPC	–	Ministry of Land Management, Urban Planning and Construction (Cambodia)
NGO	–	Non-governmental Organisation
NTFP	–	Non-Timber Forest Products
ODA	–	Official Development Assistance
OECD	–	Organisation for Economic Cooperation and Development
PPP	–	Public Private Partnership
QIA	–	Qatar Investment Authority
RIT	–	Regional Investment Treaties
SIA	–	Social Impact Assessments
SLC	–	Social Land Concession (Cambodia)
SOE	–	State-owned Enterprise
SWF	–	Sovereign Welfare Fund
TNC	–	Transnational Corporation
TRIMs	–	Trade Related Aspects of Investment Measures
UNCTAD	–	United Nations Convention on Trade and Development
UNDP	–	United Nations Development Programme
WHO	–	World Health Organisation
WRI	–	World Resource Institute
WTO	–	World Trade Organisation

Preface

Land acquisitions by foreign private investors have taken place on a small scale for decades. However, a changed economic and political environment seems to have accelerated this process in the recent past. The current dramatic increase in sales and leasing of land in developing countries makes clear that land is an increasingly scarce resource in competition between various land use interests. Continuing population growth, climate change and associated problems such as ongoing soil sealing, erosion, desertification and urbanization are increasing the pressure on land and other natural resources. At the same time, there is growing competition for a limited amount of agricultural land, due to rising demand for food and fodder, as well as biomass for industrial and energy use in national and international markets. Against this background, state actors and private investors from industrialised and emerging countries are using long-term leases or purchase agreements to secure large areas of agricultural land in developing countries in order to grow food or energy plants for export - a process described in international news headlines as “land grab”. In the current financial crisis, land is also increasingly becoming a speculative asset for investors.

The recent upsurge in FDI in land raises the hope to bridge the gap of decades of underinvestment in developing countries’ agricultural sector, but it may also threaten host countries’ food security and increase the vulnerability of the rural population. However, keeping FAO’s estimation in mind, that at least an additional 30 billion US$ are annually required in the agricultural sector in order to half the world’s hungry until 2015, private sector investment is indispensable. Effects of FDI in land strongly depend on their specific institutional setting. This emphasises the need for action of Development Cooperation to respond to the political demands and come up with sound ideas on how FDI in land should be shaped, what the policies should look like, which can trigger investments and which lead to sustainable and accessible supply of food in the years to come. A coherent policy for improved land management and secure land rights in developing countries can limit the possible risks and also contribute towards better utilisation of the possible opportunities of FDI in land.

This study by GTZ on behalf of BMZ focuses on these challenges and attempts to analyse the so far existing FDI in land. It aims to broaden the understanding of the complexity of FDI in land in order to provide for better-targeted ways of addressing those investments. Therefore the study presents background information, causes and impact chains as well as recent developments concerning large-scale land acquisition on the basis of four case study countries. Cambodia, Lao PDR, Madagascar and Mali have been selected out of many least developed countries which are among the potential hosts for FDI in land. Even though exact information on contractual details remains limited, exemplary insights in land use rights and land conflicts, investment climate and legal requirements, current land deals, as well as social and environmental opportunities and risks are given. To initiate developmental benefits from private and/or public sector FDI in land, recommendations are given how to improve the institutional environment and the acceptance of foreign investment in land serving as an overview of the resulting need for action for development cooperation.

Eschborn, December 2009

Albert Engel
Head of Division
Agriculture, Fisheries and Food

Dorith von Behaim
Sector Project
Land Management

1. Introduction

Official development assistance (ODA) for the agricultural sector has lost share of overall aid over time: it had been around 15% in the 1970s, but it decreased to around 5% in 2007. The dominant spending areas supported administration, water and forestry; food crops were not a priority (OXFAM, 2009). But, according to FAO 2009, the agricultural sector in developing countries urgently needs capital. Decades of low investment have meant stagnating productivity and production levels. In order to halve the world's hungry by 2015, as targeted by the 1996 World Food Summit, FAO calculations show that at least US$ 30 billion of additional funds are required annually in the next ten years.
Public investments can only address this requirement partially and must be amended by private investments, which currently are approximately five times higher than public aid (OXFAM, 2009). Private investments, therefore, can play a very relevant role in increasing agriculture's capacity (FAO, 2009).

Developing countries often face a lack of domestic – private and governmental – investment capacities. Foreign direct investments (FDI) in agriculture are, therefore, crucial for strengthening the agricultural sector. These FDI in agriculture are often closely linked to FDI in arable land in order to secure and to control the access to commodities produced on the land.

Recently, more and more investors from foreign countries are acquiring arable land in less developed regions – mainly in Africa, South and Central America and Southeast Asia. Since 2000, approximately 15-20[1] million ha of land worldwide have been acquired or are under negotiation in the context of the recent surge of Foreign Direct Investments in land (FDI in land) (v. Braun and Meinzen-Dick (IFPRI)[2], 2009). Land acquisitions by foreign private investors have taken place on a small scale for decades. However, a changed economic and political environment seems to have accelerated this process in the recent past (v. Braun and Meinzen-Dick (IFPRI), 2009; Haralambous et al. (IFAD), 2009; Grain, 2008; Cotula et al. (IIED, FAO, IFAD), 2009).

1 For Comparison: Farmland Germany: 16.8 million ha (2005); EU 27: 160.7 million ha (2005), compare BMELV, 2008, p. 432.
2 The papers referring to FDI in land are often assigned to the organisations that the authors work in. Therefore the organisations are mentioned in brackets.

Definition of FDI in land

FDI in land is a special form of FDI. But even for general FDI, definitions only exist as guidelines for statistics or as a reference within international agreements:

"Foreign investment involves a lasting interest in effective management control over an enterprise. Foreign direct investment can include buying shares of an enterprise in another country, reinvesting earnings of a foreign owned enterprise in the country where it is located, and parent firms extending loans to their foreign affiliates. International Monetary Fund (IMF) guidelines consider an investment to be a foreign direct investment if it accounts for at least 10 % of the foreign firm's voting stock of shares" (WORLD BANK GLOSSARY).

The impacts of FDI in general can be positive on the target country because the capital in-flow, tax income and the subsequent transfer of know-how can be a kick-off for development.

This perspective is shared widely in international development cooperation. Increased access to FDI is seen as one of the key benefits of globalization because it is thought to lead to capital formation, technology and knowledge transfer, higher wages and greater job opportunities.

No specific official definition for FDI in land exists so far. According to the above-mentioned general definition of FDI, FDI in land can be characterised as follows:

"FDI in land by a foreign company or state is based on a lasting interest in taking control over land use rights. The transaction includes either rights of land-use or land-ownership. The land-use rights are generally valid for a limited period and can possibly be extended."

Objective of the study

This study has a two-fold objective:

(1) It summarises the recent discussion on FDI in order to give an overview of the scope of FDI in land. Relevant criteria for evaluating the positive and negative outcomes, the influence of the contract designs and the institutional framework are also presented.

(2) As part of the evaluation criteria the results of the four case studies are given for Cambodia, Laos, Madagascar and Mali.

2. Overview of FDI in land and analysis of recent developments and trends

2.1. Global land resources: a short overview

In order to better understand FDI in land, a rough overview about global land resources is necessary. This chapter investigates the potential available land area for crop production and forecasts the development of arable land. The chapter relies mainly on a study by **Bruinsma** (2009).
The worldwide land surface covers 13.4 billion ha. Of these 13.4 billion ha 12 % is currently used for the cultivation of crops which translates into an estimated area of 1.5 billion ha. Arable land has increased over the last decades and higher demand for agricultural commodities will lead to a further increase of cultivated land area. The main drivers of this development will be on one hand the increasing demand for food and on the other the increasing demand for agricultural raw materials for energy and other industrial purposes (e.g. rubber). From 1967 until 2005, the global area used for crops increased by 187 million ha. The increase occurred mainly in developing countries (227 million ha), while in developed countries the cultivated area decreased by 40 million ha. Primary reasons for this development in developed countries were the continual growth of yields and the deceleration of agricultural commodity demand. When discussing FDI in land, the central question has to be answered whether land is a scarce resource.

According to calculations, a wider range of global land surface for the cultivation of crops could be used. An estimation by Fischer et al. (2002) shows a potential of 4.5 billion ha which can be used for crop production. Consequently only 36% of potential land areas for crop production are in use and the remaining 2.7 billion ha could be used in the future to satisfy the increasing demand. These potentials are unequally distributed. Whereas great potentials mainly exist in developing countries, in developed countries potentials are rare. According to Fischer et al. (2002) potential land area for crop production in developing countries is estimated at 2.8 billion ha. At the moment 970 million ha are in use which implies that 1.8 billion ha could be activated. However, this calculation is often overestimated and potentials are in reality far lower due to a number of restrictions:

First, this estimation ignores all other possible land use opportunities besides crop production. The need for forest, protection areas as well as settlement and industrial areas is not considered. According to Alexandratos (2009) only 40% of the potential 2.7 billion ha available is under consideration for forests (45%), protection areas (12%) as well as settlement and industrial areas (3%). Similar to Alexandratos (2009), Nachtergaele and George (2009) also restrict the potential land use to crop production on 55% of potential available land.

A further point of criticism exists in the varying land qualities. The estimated potential of 2.7 billion ha does not consider that not on all of these areas a wide variety of crops could be cultivated. For example, in this calculation land areas in North Africa are also considered, which could be only used for the cultivation of olive trees.

The third restriction concentrates on the distribution of potential available land. The potential available land for crop production mainly concentrates on South America and Sub-Saharan Africa. 90% of potential available land is located in South America and Sub-Saharan Africa and 50% of the potential is spread among only seven countries (Brazil, Democratic Republic of the Congo, Angola, Sudan, Argentina, Colombia and Bolivia).

This estimated potential does not consider the important fact of ecological and economic constraints. Due to ecological fragility and in some cases toxicity of land, not all potential areas could be exploited for crop production. On the other hand, in many cases the cultivation with crops on these areas is not profitable, because infrastructure to these areas does not exist or the fertility is relatively low and, therefore, the cost benefit ratio is too high. According to Fischer (2002) 70% of potential available lands in Sub-Saharan Africa are affected by at least one ecological or economic constraint. When considering preceding reasons, it is forecasted that in developing countries an additional 120 million ha for crop production will be activated. The increase of arable land will take place mainly in Sub-Saharan Africa (64 million ha) and in South America (52 million ha). In contrast to Sub-Saharan Africa and South America, it is forecasted that arable land in some countries in Asia (e.g. China, Rep. Korea) will decrease until 2050. The main reasons for the increasing arable land will be the price incentives for the production of agricultural commodities. According to Lopez (1998) and Deininger and Minten (1999), an expansion of crop cultivation areas correlates with agricultural commodity prices. Besides economic incentives, ecological effects are also responsible for expansion of arable land. Regeneration of soil fertility with fertilizer is often more expensive than the evasion on so far not used land.

Going over these facts, it could be that the potential for land expansion exists but the potentials are often overestimated and land availability is constrained due to ecological and economic restrictions. The resulting amount of potential available land area for crop production is, therefore, in some regions scarce and FDI in land could lead to further scarcity of land.

2.2. Overview of the magnitude of large-scale FDI in land

A comprehensive set of data allowing for a precise overview of the extent and the contractual details of FDI in land is not available. Well-documented examples are scarce, details on the deals are often unclear and some reports are contradictory. However, some organisations gather information provided by the media in order to outline the magnitude and the relevance of the emerging phenomenon.[3]

A table in the annex assembles currently available information about FDI in land exceeding 5,000 ha per project. It is mainly based on studies conducted by Grain (2008), by IFPRI (v. Braun and Meinzen-Dick, 2009), and the GTZ case studies for Cambodia, Laos, Madagascar, Mali on behalf of BMZ and a working group of IIED,

3 For example see: http://farmlandgrab.org/ and http://www.landcoalition.org/cpl-blog/.

Field work with ox plough

FAO and IFAD (Cotula et al, 2009). The table comprises information on size (in finance or ha), locations, actors and contract details such as the current status of reported land deals. To what extent these deals, not all finished yet, will be implemented in the near future is not exactly known because of a lack of transparency. For instance in the prominent Daewoo case in Madagascar the negotiations were formally suspended after it induced riots, but might be resumed.

In spite of the above mentioned lack of completeness and reliability of data, the table in the annex demonstrates:

- Developing countries and especially least developed African and Southeast Asian countries are the main target regions for FDI in land.
- The biggest deals are negotiated with investors from Saudi Arabia, other Gulf States and some Asian countries (China, South Korea, India). These countries are characterised by a shortage of fertile land due to unfavourable climate conditions or population growth on the one hand and sufficient financial means on the other hand.
- The scope of some of the envisaged investments (up to 1.3 million ha) demonstrates the dimension of single deals.

2.3. Incentives for FDI in land and relevant stakeholders

The World Investment Report as well as the World Investment Prospects Survey address FDI in general but do not explicitly refer to FDI in land (UNCTAD 2008a, UNCTAD 2008b). Nevertheless, presented figures give empirical evidence of the growing relevance of FDI. Regarding Africa, the increase in FDI is explicitly ascribed to high commodity prices among other things. For Latin America and the Caribbean, the surge of FDI is said to be driven by the demand for natural resources.

It is commonly agreed that several developments on the global markets for agricultural commodities enhanced the attractiveness of FDI in land. Long-term developments refer to:

- **Expectation of a high and rising level of prices** for agricultural commodities due to globally-reduced growth in production and rising demand because of population and economic growth. As a result, food security may be a growing risk in the future. From a private perspective, land investments may become more attractive as high prices may lead to high land rents.
- **Food aid** as a traditional source to ensure food security in times of unexpected shortages may increasingly become insufficient depending on the design of aid: As long as a large part of aid still is given in kind, a countercyclical availability is system immanent: if price peaks symbolize overall scarcity, then aid in kind will not be available or the loss in alternative high export returns are too high for donors.

- **Climate change** (due to weather events like droughts and flooding) leads to a possible loss in overall productivity and raises the probability of unexpected harvest losses.
- **Climate obligations**. The Clean Development Mechanism (CDM) allows industrialized signatories of the Kyoto Protocol to buy certified emission reductions. Hereby, the actual emission reductions are transferred to other – mainly developing – countries, in order to cut the costs of reduction. The transfer can be implemented by forestation projects in developing countries requiring land resources.
- Another advance in developed countries refers to the political **support of agro-fuels** (US, Brazil and the European Community). These countries have established compulsory rates for agro-fuels for energy used in the transportation sector. Hereby, competition between food and agro-fuels production for restricted land area increases and countries characterised by suitable soil and climate conditions for agro-fuels are now on the target list of foreign investors interested in those alternative energies.
- **Trade Liberalisation**. The ongoing process in trade liberalisation and reforms of national agricultural policies of large agricultural exporters have induced a general food price increase and adds to the reduced availability of food surpluses.[4]

The following recent developments have aggravated this generally changed environment:

- **Food crisis in 2007 and 2008**: the price peaks for agricultural products led to a special focus on food security in particular for food importing countries and their dependency on the world markets. In several of these countries, e.g. the Middle East, food imports account for an important part of the domestic consumption and they had to cope with high expenditures for imports and a respective burden for their trade balances in the period of high food prices. On account of high costs for promoting local food production and due to the limited resources, these countries decided to produce food abroad and invested in land in foreign countries. By that they aim to grow less dependent on food imports and the volatility of global food prices.
- **Financial crisis in 2008**: high prices for agricultural products due to scarcity of land and water resources on the one hand and rising demand for agricultural commodities on the other, may lead to two-fold profits from investments in land: (1) profit from raising land prices has increased land rents and the attractiveness of land investments for private investors, (2) incentives for agricultural production. The rise of profits is of specific relevance as the global financial crisis has led to a collapse in equity and bond markets, and thereby strengthening indirectly the competitiveness of FDI in land (Cotula et al. (IIED, FAO, IFAD), p. 57). Developing countries may not be able to follow these incentives as they lack the necessary capital.

These developments have pushed investment in the agricultural sector and especially in land in foreign countries instead of buying products like food or energy at the world markets.

Empirically, the relevant time span to analyze and to collect data on FDI in land compromises different phases:

- In 2000, the first Chinese investments in cash crops and food production became an important part of Chinese investment policy, due to industrialization and economic development.
- In 2005 and 2006, high prices for energy, an intensified debate about climate change and political promotion of agro-fuels resulted in an increasing demand for agricultural commodities in order to produce agro-fuels and increased the demand for land.
- A further surge in FDI in land can be observed in 2007 and 2008 when food prices rose dramatically during the food crises.

The investors in the field of FDI in land can be governmental and private actors:

- Most of FDI in the land sector is conducted by private bodies in the form of **private sector investments**. Investing companies originate from different countries like the USA or the UK and Sweden, but China and Saudi Arabia appear on the list as well. The prominent deal of the South Korean company Daewoo Logistics in

4 Trade liberalisation in the agricultural sector was connected with a considerable reduction of subsidies.

Madagascar, which has received extensive media coverage, is an example of a private sector investment too.

- **Governments**: Governments can act in different ways.
  (1) FDI in land may be negotiated on the highest political level between the governments of the affected countries.[5] A prominent example for intergovernmental negotiations is the case of Malibya Agriculture where the Libyan and the Malian governments agreed on a Libyan investment in the Malian Niger Office Area to produce food for the Libyan population.
  (2) Even if the final actors signing an investment contract are private, public actors play a dominant role in the overall investment environment laid down in investment law. As well, very often deficits in the final investment arise from weak governance structures for enforcing domestic law. Governments can create a favourable framework for FDI in land with the help of Bilateral Investment Treaties (BIT) which provide legal protection to investments for citizens or enterprises outside of the contracting nations.
  (3) Moreover, governments in target countries can facilitate FDI in land by adjusting the domestic legal framework to the needs of investors, by providing informational, technical support or by direct or indirect subsidies.

- **Sovereign Wealth Funds** (**SWF**): Those funds are state-owned and serve the political objectives of the respective country. In the last several years they have been expanding abroad as a result of a rapid accumulation of reserves. By now, it is not common for SWF to invest directly in foreign land, but SWF are engaged in the agricultural sector (Cotula et al. (IIED, FAO, IFAD), 2009, p. 30). For example, the Qatar Investment Authority (QIA) is reported to have established joint venture funds with the governments of Indonesia and Vietnam and is negotiating similar deals with the government of Malaysia and the Philippines. In addition, it is reported that the QIA was involved in the land deals in Sudan (Cotula et al. (IIED, FAO, IFAD), 2009, p. 35; Grain, 2008). The state-owned Saudi Industrial Development Fund is currently granting financing facilities to firms exploring agricultural investments abroad.

- **State-owned enterprises**: These companies are state-controlled and, therefore, act according to the political objectives of the government too. Examples for state-owned enterprises are Zad Holding Company from Qatar, China International Water and Electric Corporation in Zimbabwe and other companies owned by the Chinese state in Tanzania and the Democratic Republic of Congo. A huge amount of large-scale investments in the context of national food strategies can be assigned to state-owned enterprises.

Foreign direct investors in land can be classified according to their different primary motives based on the political goals and economic background of their domestic frame:

- **Investors from oil rich countries** with poor resources of arable land, water scarcity and harsh climate conditions. They aim at improving food security and reducing the dependence on high and volatile food prices. These countries are rich in capital and able to invest lots of money especially through state funds that serve state interests.
- **Investors from industrialized and emerging countries** with large populations and rapid economic growth. They face an increasing demand for feed, fodder, fibre and for renewable resources and try to countervail it by FDI in land. This strategy helps them to grow less dependent on the world markets.

Based on available information, it seems that the investors from oil rich and emerging countries mainly are governments or state enterprises or state funds respectively. In contrast, investors from industrialised countries primarily are private companies investing mainly in agro-fuel projects. When governments try to follow their food or energy strategies by investing in foreign lands,

5 Several points within the land deal can remain unclear and therefore contain social, political and environmental risks as there is little transparency and possibility for public control. Even for some government-to-government deals, no official data but only media reports and governmental press releases are available. Very often those reports are the only source on the content of the contract and the status of implementation.

they usually set up investment contracts with the governments in the target countries themselves or with companies through which they act. While private investments are mainly driven by the goals of the companies (especially short and long-term profit, sustainable development of the firm), public investments can result from different objectives. Table 1 summarises the drivers for FDI in land.

Table 1: Overview of the drivers of state-backed and private investments in FDI in land

Incentives	State-backed investments	Private investments
Economic drivers	• Reducing import costs for food • Securing future energy security • Securing future food security • Reducing dependence on (volatile global) price development	• Increasing shareholder value because of rising food prices due to population growth and climate change • Increasing shareholder value because of emerging agro-fuel markets mainly in the US and EU • Anticipating growing land prices (speculation) • Searching for alternative investments as a result of the financial crisis
Political and strategic drivers	• Meeting growing demand for agro-fuels (blending targets, etc.) • Complying with international agreements (mitigation climate change, Kyoto protocol, etc.) • Reducing the dependency on the world market for food and fuel	

Source: own work.

The target countries differ in terms of natural resources, economic development or political stability. However, it seems feasible to divide them into two groups according to agricultural and economic resources. 1) Developing countries with low world market integration 2) Export oriented developing countries with established access to world markets.

Table 2: Typology of target countries

Developing countries with low world market integration	Export oriented developing countries with established access to world markets
• Favorable natural conditions (soils and climate) for agriculture: Underutilised land resources, water resources for irrigation • Often weak infrastructure and world market access • Low productivity and smallholder agriculture (often subsistence farming) • Low input costs (land and labour) • Little information about the availability of arable land and unclear land titles • Weak governance • Unclear land markets and tendency towards corruption • Political disturbances	• Availability of arable land resources which cannot be utilised due to enormous extent, production capacity and financial resources • Appropriate infrastructure and world market access • Established or beginning development of a land market • High productivity and market-oriented agriculture • World market orientation
Main motivation • Potential for development in economy through FDI in land/agriculture	**Main motivation** • Secure capital flow into a agriculture, an important and growing sector of the economy
Examples Countries mainly in Sub-Saharan Africa or South East-Asia (Sudan, Madagascar, Mali, Cambodia, Laos)	**Examples** Brazil, Argentina, Russia, Ukraine, Indonesia

Source: own work.

2.4. International frameworks and agreements concerning FDI and FDI in land

The legal framework for foreign direct investments, which have an impact on investments, encompasses all types of different legal settings – from international to domestic law, from public to private commercial law and from explicit investment-related law to trade rules. Thereby, the relevant rules may affect both state and private actors. Some specific provisions for FDI in land exist which differ from rules to other FDI.

At a **multilateral level** the WTO addresses FDI in different agreements:[6]

(1) Explicit *investment rules* are laid down in the Agreement on Trade Related Aspects of Investment Measures (TRIMs). It defines general rules for investment measures in order to avoid trade restrictive and distorting effects. It focuses on measures that have a possible impact on export and import quantities, but it requires an equal treatment of national and foreign investors as well. In particular, export restrictions are prohibited.

(2) The General Agreement on Trade in Services (GATS) integrates FDI in the concept of commercial presence. Hereby, members give individual positive lists of those sub-sectors for which market access is offered for services.

(3) The General Agreement on Tariffs and Trade (GATT) and the Agreement on Agriculture (AoA) define rules that are of specific relevance to FDI in land. These allow *export restrictions* in case of food shortages under GATT Art. XI, 2 a and c as well as under AoA Art. 12. The respective rules are specific to the agricultural sector as export restrictions are forbidden for all other commodities.

Trade-related provisions can affect investments in the sense that trade options influence the overall investment climate. For example: Export restrictions in case of a food crisis enable target countries to ensure their food security. But for the investor it reduces FDI attractiveness if in phases of shortage his own export flows may be limited.

Bilateral Investment Treaties (BITs) and **Regional Investment Treaties** have increased considerably in numbers and countries concerned, either covering topics not regulated by the WTO framework or obliging the signatory states to a higher level.[7]

Major rules important to FDI in land in BITs are the following (Smaller and Mann 2009):

- The *national treatment* obligates the target country to treat foreign investors no less favourably than domestic investors in "like circumstances". The definition of like circumstances is contentious and will be elaborated by case law. Judgement so far summarises activities in one sector – like agricultural production – as a group of investments in which like circumstances have to be assumed. Other factors like the size of a farm are not considered to justify different treatment. This is why large-scale international investors have to be treated equally to small-size domestic farmers in the target country.
- The *most-favoured nation treatment* provision extends the treatment of one foreign investor to all foreign investors. Hereby, any privilege for one investor has to be applied to others as well. This requirement makes BITs different to Bilateral Trade Agreements, which can grant preferential conditions for the partners under defined circumstances.
- The *prohibition of expropriation without compensation* is the most crucial element of BITs. Expropriation of the investor in the target country is possible but not without compensation. The scope for applying expropriation has not been defined in a coherent manner e.g. whether a change in domestic law for stricter environmental standards requires compensation.
- The *right to export* ensures the export of produced commodities in the target country to the foreign investor's country. In the case of food, this right can be limited by exceptions such as shortages under GATT and the AoA.

6 FDI can function as substitutes for imports or increase exports of the target country. In both cases trade flows and trade quantities and world market prices are influenced (compare GOPINATH et al, 1999). This is why FDI have an impact for other countries and the WTO deals with trade distortions that can result from FDI.

7 BITs have gained exploding relevance and the number of signed treaties has increased tenfold since the 1990s up to 2,676 signed treaties in 2008 (UNCTAD 2009): recent key signatories are Germany and China, concluding most BITs in 2008. Among developing countries those from Asia and Oceania dominate, signing 31 new BITs in 2008 alone (UNCTAD 2009). African countries had signed 687 BIT by 2006, up from 193 in 1995 (UNCTAD, 2008a, p. 24 and 26).

- The access to *logistic infrastructure and intermediate goods*. Hereby, the right is ensured that the investor can use all intermediates and the target country's infrastructure for his production. This includes the access to water and energy.
- *Safeguards and protecting clauses* support the target country in times of balancing payments imbalances to restrict capital flows. Additionally, in phases of conflicts, public interest can limit access to internal infrastructure.

FDI in land in the context of Transnational Corporations

FDI in land is a specific form of Transnational Corporations (TNC) along the value chain in agriculture. Within the World Investment Report (UNCTAD 2009b) three principal forms of Transnational Corporation are identified:

- "Indirect, non-equity participation through implementation of standards and other information-intensive relationships in which a target country farmer/firm produces to the specifications of a foreign TNC …"
- "Direct, non-equity participation through contract farming, in which target-country farmers/firms are tightly coordinated and controlled by the TNC, which may also provide inputs and assistance …."
- Direct equity participation through FDI, whereby coordination and control of transactions are fully internalised within the TNC.

This classification highlights that contract farming is not covered by the term FDI in land. However, contract farming may lead to similar results because of an asymmetric distribution of power in the value chain: The foreign buyers may exercise a high degree of control over the producers of agricultural products which are usually less powerful and much smaller (UNCTAD 2009b). Those networks are called "Captive networks"[8].

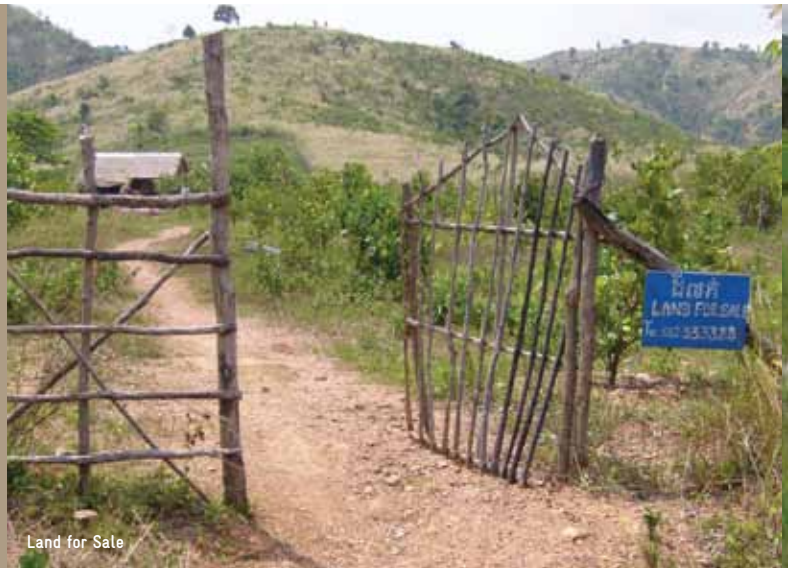
Private international contracts on investment projects in land identify "the key elements of the fiscal and economic bargain relating to the investment" (Smaller and Mann 2009). Because of the private nature, information about these contracts can hardly be obtained. They contain the specifics of the transaction not only in terms of quantity, price and duration for purchase or lease. They also may contain treatment issues like taxation, export and import requirements or rules on using intermediate goods and infrastructure. Where no reference is found in the contract, the domestic law is applicable (Smaller and Mann 2009).

Private contracts have been setting legal standards, as their requirements often are transferred to general domestic legislation (Smaller and Mann 2009). Individual investor countries and firms may take over a leading role by designing their specific contracts and thereby indirectly changing domestic law in target countries.
Investment rules and especially BITs are often blamed for protecting only the investor's interests. Even though international rules may arise from this objective, it must be stated that the overall scope remains for the target country to protect domestic interests.
One dominant rule is that compensation for foreign investors – once they have entered the market – has to be guaranteed in case of expropriation. But whether all changes in domestic legislation must be defined as expropriation has not been defined in a coherent manner.

But prior to entering the market, certain sectors can be excluded from access – which is often the case due to domestic law e.g. land or water. Performance requirements such as environmental obligations or ensuring local employment can be defined, protecting clauses in phases of national insecurity can restrict exports and food exports can be principally imposed in the WTO frame in case of shortages.

FDI in land also has a very close link to the **human right to food**[9] because FDI in land can have an impact on the access to land by the rural population. It is generally admitted that access to land plays a key role for rural livelihood and for reducing poverty. So large-scale land acquisitions by foreign investors and the loss of access to land for the local population can directly influence rural development and the possibilities to enhance

8 For forms of global value chain governance compare for example STURGEON and GEREFFI (2008).
9 The right to food is part of the Universal Declaration of Human Rights (Art. 25) and of the International Covenant on Economic, Social and Cultural Rights (Art.11).

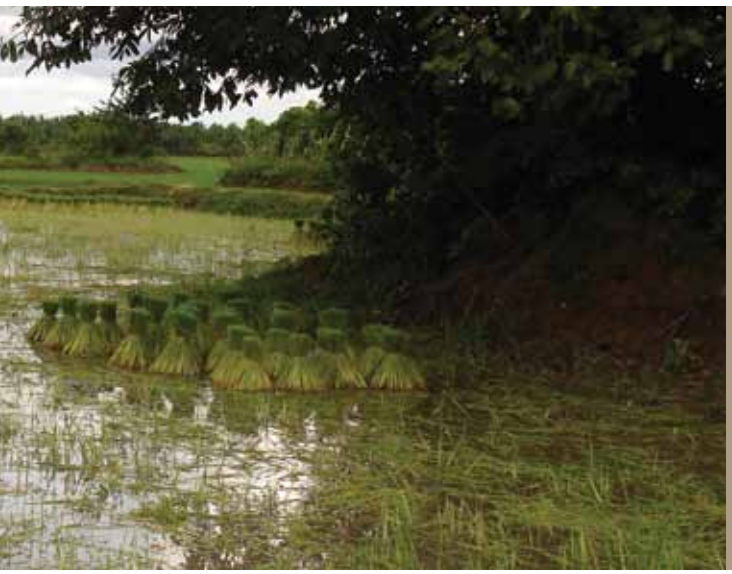

Land for Sale


Rice field

it. The frequently used terms “land grab”, “land grabbing” or “the new neo-colonialism” indicate the negative attitude towards FDI in land. Regarding the opportunities and risks of FDI in land, some specifics of agricultural production compared to other sectors have to be considered (De Schutter, 2009).

The dominant negative attitude towards FDI in land may lead to an ignorance of possible development perspectives. Major objective therefore, should be to enhance the positive potential by avoiding negative effects. The human right to food is not directly enforceable by law, but plays a role in shifting more awareness to sustainable food security policies: The UN developed voluntary guidelines which may serve as a coherent tool box by combining different measures at different political levels and by combining legal instruments and development strategies.

Despite international frameworks and agreements, **the domestic law** in the target country is the major basis for access of a foreign investor and for treating him once he invested. Regarding access to a target country, certain sectors and activities can be excluded from foreign property, which often is the case for land acquisitions and lease. After getting market access, national treatment is required. This treatment refers to the overall bundle of national legal requirements like property rights in land and water, labour rights, human health and safety, taxes or environmental standards. Rights stemming from international investment agreements are layered over the domestic law and domestic laws and government activity that is inconsistent with the international investment agreement can be challenged by the investor (Smaller and Mann , 2009).



In the context of land use rights, related domestic law is often characterised by legal pluralism with a mixture of official and informal land provisions. Informal land rights are based on tradition and mutual recognition within the rural communities. A lack of recognition of these informal land rights by the state makes it difficult for landholders to enforce their traditional rights.

This indicates that the target country plays an active part in weighing domestic interests and has the potential to protect sustainability and food security.

But even if such protective aims are followed on paper, very often the enforcement is lacking: the right to compensate domestic owners for expropriation within the target country itself very often is laid down in domestic law. However, it often fails due to missing cadastre systems and property documentation.

3. Possible impacts of FDI in land on target countries in terms of sustainable development

The recent foreign large-scale investments in land have been strongly criticised especially by some NGOs and international development organisations (E.G. Grain, 2008, Oppeln and Schneider (Welthungerhilfe), 2009). Those organisations hint at possible negative impacts for the target countries and especially for the local poor. The expropriation of local landholders and the loss of adequate access to land supposedly result in negative consequences for local food supply (food security) and for the environment. On the other hand, some authors highlight opportunities for economic development and poverty reduction in targeted areas through e.g. job and income creation, technological transfers, know-how spill over effects and infrastructural improvements (e.g. v. Braun and Meinzen-Dick (IFPRI), 2009; Cotula et al. (IIED, FAO, IFAD), 2009, p. 5).

Negative or positive, the consequences of FDI in land for a particular target country and its population strongly depend on the national specific circumstances, both in overall economic and legal terms, the contractual framework and the capability of national institutions in both the investing and target countries to control and assert compliance with the contracts. International rules and institutions may support an effective implementation. Since many of the actual negotiations about land deals lack transparency, are characterised by power asymmetries and do not encompass code of conducts in favour of the poor (Smaller and Mann , 2009, p. 3), it is in question whether under the current framework positive effects can outweigh the negative.

With this in mind any interest in controlling the effects of FDI in land should focus on the definition of a code of conduct and the capabilities of national and international institutions. They should design and implement agreements in a way that ensures sustainable development by benefitting the local population and by addressing developing goals for the affected regions.

To develop principles and an international framework to promote responsible investment in agriculture, a roundtable was convened in New York on 23 September 2009 concurrent with the 64th United Nations General Assembly (Government of Japan, World Bank, FAO, IFAD, UNCTAD 2009). The roundtable was co-chaired by the government of Japan, World Bank, FAO, IFAD and UNCTAD. Representative stakeholders from 31 governments and 13 organisations attended the meeting.[10]

The roundtable can be regarded as a first step towards a coordinated international response to responsible investments in agriculture associated with acquisition of rights to land and related resources.

In its World Investment Report 2009 the UNCTAD analyses the impact of Transnational Corporations on the production in targeted

10 The Roundtable was attended by over 70 people from 31 countries and 13 organizations. The participants included representatives from the Governments of Australia, Belarus, Brazil, Bulgaria, Cameroon, Canada, Central African Republic, Comoros, Denmark, Egypt, France, Germany, Ghana, Holy See, India, Indonesia, Italy, Japan, Luxembourg, Moldova, Pakistan, Papua New Guinea, Sao Tome and Principe, Saudi Arabia, South Africa, South Korea, Sweden, Switzerland, Tanzania, United Kingdom, United States of America, European Union, Food and Agriculture Organization of the United Nations (FAO), International Fund for Agricultural Development (IFAD), International Food Policy Research Institute (IFPRI), Organisation for Economic Co-operation and Development (OECD), The United Nation Conference on Trade and Development (UNCTAD), The World Bank, The United Nation World Food Programme (WFP), Global Donor Platform for Rural Development, International Institute for Sustainable Development, International Land Coalition, Rabobank International and Yara International.

developing countries as well as the impact on the environment, social effects and political implications and consequences for food security. According to this analysis it was concluded: "The actual impacts of TNC participation vary greatly across countries and types of agricultural goods, and are influenced by a range of factors, especially the mode of TNC involvement and the target-country institutional environment."

So the following chapter aims at summarising possible effects of FDI in land. It serves as a framework for a comprehensive evaluation of investments by systematising relevant areas of impacts to be considered. Furthermore, identifying the drawbacks of existing investments may serve as a basis for improving future contracts and agreements that result in a win-win situation for the investor and for the local economy.

3.1. Possible economic impacts of FDI in land on rural livelihoods

In general terms, FDI in land can enhance economic development and contribute to poverty reduction by initiating growth in the local economy. On the other hand it can have a negative impact on local economies by detracting access to a production factor that is of outstanding importance for its development.

A multitude of direct and indirect effects can arise from FDI in land.

Direct **positive socio-economic effects** can be summarised as follows:

- Increasing productivity on agricultural land. This can be achieved if FDI in land is connected to better access to agricultural inputs (e.g. seeds, fertiliser and capital) or by applying technologies that raise yields and reduce post-harvest losses and by educating employees and farmers. Investments in irrigation schemes can lead to more efficient use of existing resources.
- Valorising or augmenting of marginal land by melioration measures (i.e. irrigation schemes, dams, terraces, etc.).
- Market access for farmers in rural areas of developing countries.
- Generating income by leasehold.
- Generating tax income by levy land taxes or land transfer tax, the establishment of new firms, by the increase of employment and by raised consumption.
- Improving infrastructure by building roads, or investing in transportation and communication.
- Increasing agricultural exports due to increasing overall productivity and product quality.

Some of these potential improvements can also easily go in the other direction and depend strongly on the design of FDI: whether exports really grow is determined by the replacement of former export flows. If land areas were formerly dedicated to export production then simply a displacing occurs. The tax income may be even lower than before if tax breaks are offered to attract investments. Consumption taxes can collapse if income losses appear due to a loss in rural livelihood.

Indirect positive impacts affect not only the narrow production of agricultural raw material. FDI in land can lead to a transfer of know-how and to a better integration of the local economy into added value chains. Additionally, positive effects can occur by spill over impacts for the local economy. On-farm and off-farm business

(processing) may offer additional revenues, and thus stimulate economic growth. Increased commodity production for exports generates foreign currencies and additional taxes and may expand the scope of national governments to invest in projects that improve living conditions.

Negative effects of FDI in land may affect the following areas:

- Reduced food security in the target country when food crops are not available for local consumption (e.g. export or replacement with industrial crops). This is of outstanding importance in light of the human right to food. As a matter of fact, some of the relevant target countries for FDI in land are dependent on food aid e.g. Madagascar, Sudan or Cambodia (Haralambous et al., (IFAD), 2009).
- Biased distribution of benefits in favour of the investor or just some parts of the local population, not alleviating poverty but fueling social conflicts. Additionally, the states' bureaucracy may appear in the bargaining process due to corruption or ineffective governance control mechanisms. This does not only reflect welfare losses, but leads to less acceptance of FDI in land.
- Competition in land use for food, animal feed, and agro-fuels with the poor suffering from high prices for land and water resources.
- Increase of local and regional unemployment when applying labour extensive mechanisation. As very often women are involved in crop production, they can be most affected by this development.

Specific problems may occur if water is a scare resource and FDI in land leads to a change in the availability for local farmers. The above mentioned negative effects may be intensified.

It is often argued that FDI in land is related to land that is marginal, "underutilised" or "abandoned" and, therefore, does not negatively affect the local economy.

Marginal land
Marginal lands are lands with very low productivity and difficult to cultivate due to natural and economic conditions (e.g. climate, soil properties, soil degradation, lack of market access). Marginality does not imply that land cannot be used or improved. Marginal lands are often used as pasture, for the production of fuel wood and for some food crops in countries where land is rare.

Underutilised
Underutilised lands are characterised by the fact that its production capacities and its rate of return are not fully exploited.

Abandoned land
Abandoned land is land that was used before and is now abandoned because of market and/or political developments.

However, such lands are often important for the livelihoods of poor rural communities. For example, they are used for grazing, livestock transit routes, as well as for collection of fuel wood, biomass, wild fruits and nuts, medicinal plants and natural products. Moreover, they grant access to water sources. Such lands can contribute up to a quarter of the income of poor households, with the poorest households being most dependent on them. The role of this land becomes even more crucial in times or conditions of shock (e.g. crop failure, HIV/AIDS) and for the most vulnerable groups. Furthermore, the tenure status of this land may be very complex, with the state asserting land ownership but exercising little control at local level, and local groups claiming rights based on local customary tenure systems that may lack legally enforceable status. In such a context, demand from outside for land may further undermine the land rights of rural communities (see also v. Braun and Meinzen-Dick, 2009).

3.2. Possible socio-cultural impacts of FDI in land on rural livelihoods

Socio-cultural impacts of FDI in land on rural livelihoods and in terms of sustainable development are closely related to the above-mentioned economic effects.

As **positive effects**, following improvements are possible:

- Improving living conditions and sustainable development by additional income possibilities in rural areas which can be linked to the employment option within the investments project directly or due to an increase in other business options like catering and others. Additionally, living standards may be increased if overall living infrastructures may be improved e.g. by establishing schools or health care organisations.
- Reactivation of abandoned land and value adding of underutilised land leads to income generation in rural areas.
- An increase in working standards is possible if foreign investors apply their domestic standards to the employees which may be higher than those in target countries.
- Better integration of smallholder/family farmers, who may integrate in associations.
- An increase in civil safety and political stability can be the outcome of improved living conditions and a better integration of local small-size farmers.

Depending on the specific design, these above-mentioned advantages may not be achieved but instead turn into a burden for the target country if the following **possible negative effects** occur:

- A strong competition for remaining land can invoke land conflicts, leading to civil and political instability.
- Reducing access of land and marginalisation of small-size land owners has negative effects on any development geared towards the needs of the poor. Reduced access to land can lead to displacement of indigenous people or the exclusion of rural communities and increase rural poverty, especially for women. Access to use of common lands can be restricted (collecting fuel wood, wild fruits, medicinal plants, etc. or grazing livestock). As a consequence, socio-cultural cohabitation between different socio-professional groups (e.g. livestock and crop farmers, pastoralists, etc.) can be impeded.
- Emigration of local farmers can increase social tensions and urban poverty. If former landowners lose their livelihood this may induce a migration flow into cities and increase urban burden or poverty. Plus, a loss of inherent cultural habits may occur.
- Immigration of foreign employers can invoke social frictions. Income disparities in local communities may arise from the fact that often highly educated management personnel will be recruited from the investor's countries whereas low-level work will probably be done by local personnel. Especially if the imported employers benefit from better working standards or a firm's better healthcare system, social frictions can increase. Cultural and lingual divergences can also worsen social systems.

3.3. Possible environmental impacts of FDI in land on rural livelihoods

The ecological sustainability in agricultural production is an important subject in the context of large-scale foreign investments. Applying intensive agricultural production has an impact on biodiversity, carbon stocks, and land, soil and water resources.

Positive effects can be:

- An increase in environmental-friendly production methods can take place if foreign investors import practices which are more sustainable compared to local ones in the target country – due to a higher level of education and better technical capacities. Plus, imported quality standards for food production may have a positive influence.
- A reduction of erosion can be invoked by producing on formerly abandoned land.

These positive effects may spread to remaining areas for local producers: Training local farmers in environmentally sound production can strengthen awareness for the underlying problems. In addition, it can have spill-over effects for other farms and lead as a kick-off for a comprehensive natural resource management.

However, **negative impacts** may be the following:

- Increase in erosion and worsen climate change by displacing forest areas and other land use changes, which result in high carbon stock releases. Especially if fire cleaning takes place.
- A loss in water availability and quality (salinity, water logging) may be invoked by large-scale water use and use of pesticides and fertiliser.
- A loss in soil quality can be caused as well by an unsustainable use of chemicals.
- A reduction of biodiversity may be caused by large-scale monoculture production systems.
- Disruption of the local ecologic systems by introducing plants or species that are not part of the local biodiversity (e.g. eucalyptus, palm trees and rubber in some areas).

Regarding possible impacts of FDI in land, there are a lot of possible positive as well as negative consequences. FDI in land can neither be fully condemned nor supported without restrictions. The actual consequences depend on the design of the individual projects and the conditions in the target countries. Economic, societal and environmental consequences cannot be assessed in general and detached from the individual projects. In addition, it seems to be necessary not to assume a single interest in the target country. Rather, it should be differentiated between the interests of different groups within the society. So FDI may bring development to the region but people originally living here may experience a negative impact on their livelihood.

Harvest

4. Assessment of FDI in land in four selected countries: Cambodia, Laos, Madagascar and Mali

4.1. General Overview

The general overview reveals that it is necessary to analyse the specific environment of FDI in land in order to be able to assess the risks and opportunities. The country studies amend the overall study on FDI in land by presenting additional information for four selected countries.

The four countries have been selected based on the criteria whether FDI in land is of high relevance and whether programmes and projects are implemented with support by German development cooperation in the respective rural development and land management sectors. The studies have been executed in close collaboration with GTZ staff members or with local consultants as subcontractors. Data collection was undertaken in the 2nd quarter of 2009 (May-June).

The aim of the country studies was to achieve a comprehensive overview of how FDI in land are implemented in target countries in order to characterise deficits and a possible scope of improvements in the governance of FDI in land.

Information on the amount of FDI in land as well as on contract details is restricted: Information on private contracts is not publicly available and in the case study countries, comprehensive cadastre systems are missing. Therefore, land use and property rights are not always documented. Substitutes for that official information are difficult to obtain and the level of information differs across the countries.

In spite of these shortcomings, the country studies give a deeper insight into (1) existing state of the economy, status of food security and the environment in the target country, (2) climate for foreign investments in the target country, (3) legal conditions, (4) design of existing FDI in land, and (5) observed and potential impacts of FDI.

The following country profiles give an overview of some relevant data characterising the economic environment, the relevance of agriculture, food security, environment and biodiversity, the investment climate, the legal multi- and bilateral environments, the legal domestic environment and give data on the size of FDI in land and risks and opportunities of the case study countries.

The economic situation is described by the GDP per capita and the official development aid (ODA). As an additional indicator for the economic situation, the country profiles show the share of population below the poverty line of 2 US$ per day.
The 2008 Global Hunger Index (GHI) (Welthungerhilfe, 2008) indicates food security and the importance of the hunger problem. The GHI ranks 88 developing and transitional countries using three equally-weighted indicators and combines them into one index.[11]
The GHI offers a picture of the past, not the present. It incorporates data only until 2006 – the most recently available. The 2008 GHI, therefore, does not reflect recent increases in food and energy prices, however it indicates their likely impact on hunger. The index ranks countries on a 100-point

11 The three indicators are (1) the proportion of people who are calorie deficient or undernourished, which is a key indicator of hunger. (2) The prevalence of underweight in children under the age of five, which is a measure of childhood malnutrition – children being the most vulnerable to hunger. (3) The under-five mortality rate, which measures the proportion of child deaths that are mainly caused by malnutrition and disease.

scale, with 0 being the best score (no hunger) and 100 being the worst, though neither of these extremes is achieved in practice. Values less than 4.9 reflect low hunger, values between 5 and 9.9 reflect moderate hunger, values between 10 and 19.9 indicate a serious problem, values between 20 and 29.9 are alarming, and values exceeding 30 are extremely alarming. Though the proportion of people who are calorie deficient is integrated in the GHI, this information is also listed separately in the country profiles.

Additionally, the relevance of agriculture is addressed by its share of GDP and overall employment. The higher its relevance especially as an employment option, the larger a potential burden to rural livelihood, if foreign investments displaces local employers.
Moreover, food security is described by the amount of food aid, the food import bill and the classification of the countries according to the FAO as a country in crisis.
Biodiversity and overall environmental conditions are addressed with indicators representing the area in each country that is protected area, the deforestation rate and overall share of forests in total area. The deforestation rate can only serve as proxy variable for loss of biodiversity as it primarily indicates the annual loss of forest area and, therefore, the ongoing loss of area relevant for climate and soil and groundwater quality. The use of fire cultivation can give a hint whether this potential damage to the environment is an applied cultivation habit within a country. Additionally, it indicates the already existing pressure to accede new land.

Overall economy

All case countries belong to the category of least developed countries (LDC), which have a GDP per capita below 900 US$ and/or are highly economically vulnerable e.g. due to low diversification and/or have weak human assets like education. The share of population living below the poverty line of 2 US$ lies in all countries higher than 65% and is the highest in Madagascar with nearly 90% in 2000-2006. If economic development is a goal of the society, there is an urgent need for investments. Especially Mali attracts a large amount of ODA for agriculture with 72 million US$ in 2007.

Relevance of agriculture

In all cases, agriculture plays a very relevant role for the overall economy. Especially as regards to employment, agriculture plays an important role in all of the countries. The share of agriculture in GDP reaches from about 30% in Cambodia, Madagascar and Mali to 45% in Lao PDR. In light of this, FDI in land affects a sector that is of outstanding importance for employment in all of the four countries (in the EU it is 4%).

Food security

Data on food security reveals a need for improvement, even though the countries are not classified as “countries in crisis” according to the FAO. However, all four countries can be seen as vulnerable to food insecurity. The GHI states an alarming status for all countries. All receive food aid and all except Mali paid large food bills in 2006, most in Cambodia (FAO 2009b). Taking into account the percentage of people living below the poverty line, it is obvious that FDI in land may worsen the situation of the poor if it does not create additional income opportunities.

Environment and Biodiversity

With respect to the environmental conditions and biodiversity, the share of protected areas differs considerably between the Asian and the African countries. The forestry area is the highest in Lao PDR. Forests are an important source of income. Official data from 2002 (MAFF) reported that 42% of land area was covered with forest. A more current estimate by the end of 2007 from the National Land Management Authority reported 35%. Even though a high protection rate can be found for Cambodia, their deforestation rate is the largest with 2% per year. In Mali – for example – fire cultivation destroying about 14 million ha pasture per year.

Investment climate

Some information characterising the overall climate for FDI in the case study countries is summarised in the country profiles. The investment indicators of the World Bank reflect how attractive a target country is for foreign investors. They rank a single country’s position within an overall list of 181 evaluated countries – the larger the position, the worse the investment attractiveness.

With respect to "ease of doing business", the four countries are ranked into the last quarter of the surveyed countries. Concerning corruption, Madagascar and Mali are much less affected than Cambodia and Lao PDR.
Regarding the degree of how target countries protect foreign investors' rights, there are remarkable differences between the countries: Madagascar and Cambodia are perceived as protecting investors much better compared to Mali or Lao PDR. But Lao PDR is perceived to be best in "enforcing contracts".
The corruption perception index (CPI), put together by Transparency International, ranks more than 180 countries by their perceived levels of corruption, as determined by expert assessments and opinion surveys. Scores assigned remain between 0 and 10 as best score. All case countries received bad scores. Madagascar ranks best among the case countries.
In all countries, extracting and mining play the dominant role in all FDI, but in Cambodia and Lao PDR the share in agricultural FDI is very high too.
Regarding the specific share of FDI for agriculture, here there is no comprehensive dataset provided by the UNCTAD or by other organisations.
More specific information on the FDI climate is provided by the 2009 Investment Climate Statements of the US Bureau of Economic, Energy and Business Affairs of the US State Department. It assesses the investment climate in about 150 countries.[12]

Legal multi- and bilateral environment

The four case countries differ greatly in their involvement in legal arrangements at multi- and bilateral level. Cambodia, Madagascar and Mali are members of the WTO, so that the multilateral provisions of WTO are applicable. This does not hold for Laos which is not a WTO member.
All of the four countries have signed a large number of BITs. However, agreements do not cover all countries that investors come from.[13]
This lack of a bilateral frame may be a risk and a chance: In the absence of a BIT, the risk for the investor increases that no compensation is guaranteed in the case of expropriation. This leads to a loss in attractiveness in investing in the target country. On the other hand it may raise the bargaining power for the target country by offering such provisions by requiring own conditions at the same time. In any case, the negotiation of new BITs should carefully balance the existing outlook for protecting their own interests.

Legal domestic environment

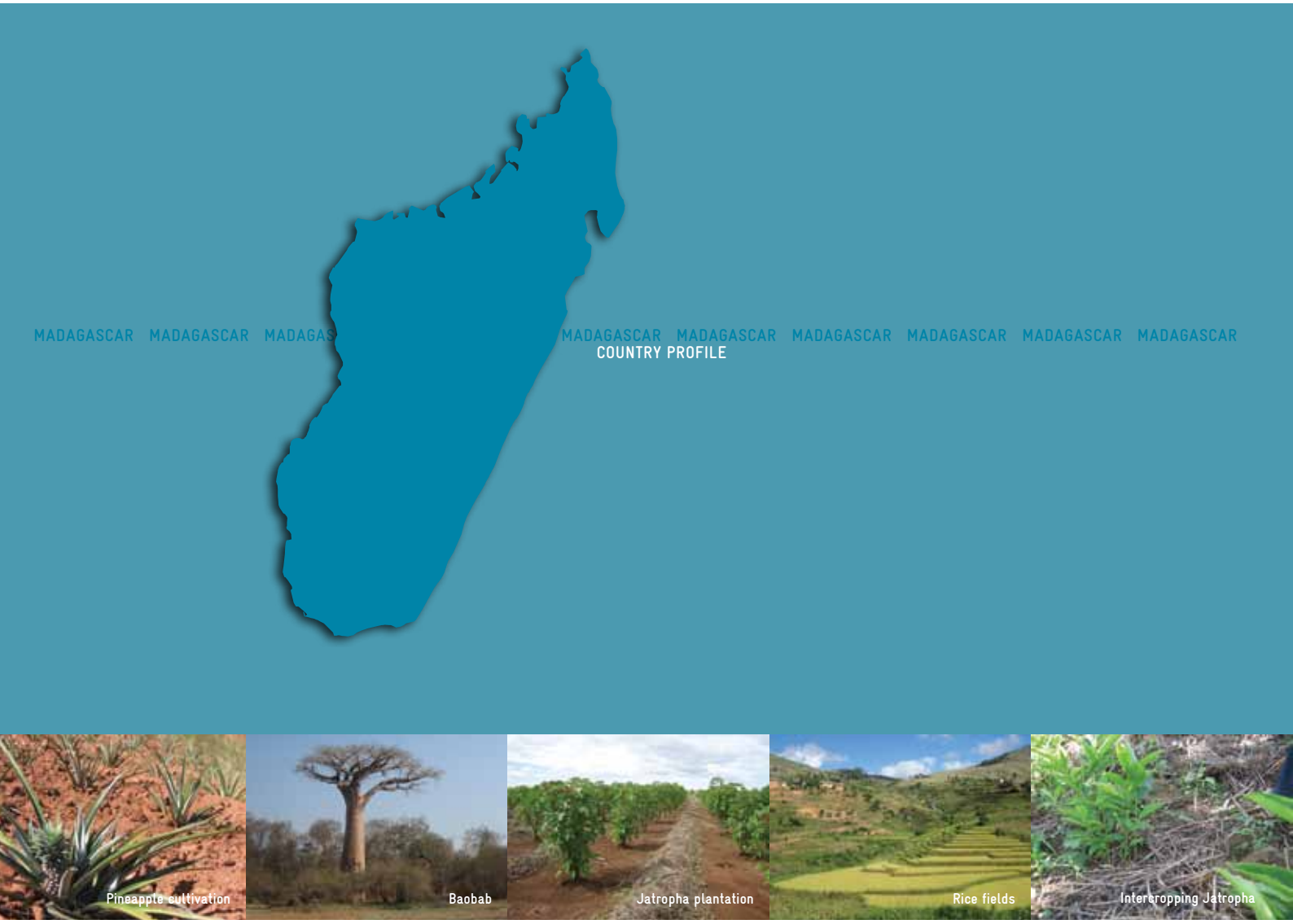
The description on the legal domestic framework focuses on land law, because domestic land law is of special relevance for FDI in land.

Data on the size of FDI in land and risks and opportunities

The lack of transparency in FDI in land affects the attempt to give a comprehensive overview of the amount and size of land devoted to foreign investors. However, some relevant information was gathered.

Rice harvest

12 For general information compare U.S. State Department, 2009a; for country specific information see U.S. State Department, 2009b–d.
13 The most relevant investing countries for FDI in land in Cambodia, Laos, Mali and Madagascar are summarised in the tables of the respective country profiles.



4.2. Country profile – Republic of Madagascar

Madagascar lies in the Indian Ocean off the southeastern coast of Africa and is the world's fourth largest island with a surface of 587,040 km^2. Table 3 provides an overview of the country profile regarding:

- Economy, agriculture, food security, poverty and environment
- Overall investment climate
- Legal frame
- Pattern of FDI in land

Table 3: Country profile Madagascar

Overall domestic background: Economy, Agriculture, Food security, Poverty and Environment	
(1) Economic situation	
GDP per capita, 2008, US$ (a)	457
Official Development aid (ODA), 2007, US$ million (b)	892
ODA in agriculture, forestry and fishery (b) Commitments 2007, US$ million Disbursements 2007, US$ million	 68 4
Share of population below poverty line (2 US$ per day, average 2000-2006) (c)	89.6%
(2) Relevance of agriculture	
Share of in GDP (2007) (d)	26%
Share of agriculture employment (e)	80% (2007)
(3) Food security	
Global Hunger Index (GHI), 2008 (f)	28.8
GHI-Ranking (out of 88 countries), 2008 (f)	76
Share of undernourished population (f)	37%
Food aid, 2008, '000 t, cereals in grain equivalent (g)	29.6
As country in crisis according to FAO (2009) (h)	No
Value of food import minus export, 2006, US$ million (i)	-92
(4) Environment/ Biodiversity	
Protected area, % of total area 2003 (k)	3,1%
Forestry area, % of total area 2005 (l)	22,1%
Deforestation rate (annual change in forest covered area, within 2000-05) (i)	-0,3%
Fire cultivation	No data
Overall investment climate	
(1) Climate for FDI (m)	
Ease of doing business (rank of 181 countries)	144
Protecting investors (rank of 181 countries)	53
Enforcing contracts (rank of 181 countries)	153
(2) Corruption (n)	
CPI ranking (rank of 181 countries), 2008 (2007)	85 (94)
(3) Share of FDI in agriculture in % of all FDI average (o)	
US State Department Climate Statements 2009 (o)	No data
World Investment Report 2009 2005 – 2007 (p)	2% Average 2005-2007
Legal Frame	
(1) Multi- and bilateral frame (q)	
WTO rules applicable?	yes
BITs in force with major FDI in land investor countries	5 of all investors included
(2) Domestic frame (q)	
Major legal basis	LAW N° 2007-036 dated 14th January 2008 relating to investment law in Madagascar

Table 3: Country profile Madagascar

Pattern of FDI in land	
(1) Investor country (r)	
Major investors, in ha	Japan
	South Korea (not yet signed)
	United Kingdom
	India
	Australia
	Lebanon
	South Africa
	Italy
(2) Major purpose (r)	
Food	**minor**
Main crops	rice, maize, beef
Agrofuels	**dominant**
Main crops	jatropha, palm oil, sunflower oil
Other	**minor**

Source: (a) IMF, 2009; (b) OECD, 2009; (c) UNDP, 2008; (d) World Bank, 2007; (e) GTZ estimates, 2007; (f) Welthungerhilfe, 2008; (g) FAO 2009b, (h) FAO, 2009e; (i) FAO, 2009b; (k) WRI,2009; (l) FAO 2007; (m) World Bank 2009, (n) Transparency International 2008 and 2009 (o) U.S. State Department, 2009b-e (p) UNCTAD 2009b (q) UNCTAD, 2009c, GTZ case studies; (r) GTZ case studies

Madagascar is classified as LDC with a GDP per capita of US$ 457 per year with nearly 90% of the population having an income below US$ 2 per day (on average in 2000-2006). The relevance of agriculture is pointed out by the 26% share of agriculture in GDP and especially by the high percentage of employment in agriculture (80%).

Regarding the allocation of total FDI in different sectors, the 2009 Investment Climate Statement does not imply explicit information on FDI in agriculture for Madagascar. Based on the data presented in the statement, the share of agriculture in the overall 2007 FDI (777 million US$) is less than 3%.

The government of Madagascar welcomes FDI and is developing the legal framework to become more investor friendly. A lack of fair competitive conditions worsens the investment climate as well as a lack of transparency in contracting, corruption and governmental regulations. This is viewed as a disadvantage for foreign investments. Private entities both foreign and domestic are provided with the right to establish and own business enterprises. The government remains a minority shareholder in some privatised companies, such as Telma,[14] and continues to own Air Madagascar. Competitive equality is officially granted to all private enterprises. But in practice politically-connected companies are given preferential market access. The private sector often complains about government interference in some sectors of the economy, including flour and vegetable oil.

Legal multi- and bilateral environment

Madagascar signed 9 BITs, but none with a major investing country of FDI in land. One BIT with South Africa, a relevant investor, has not entered into force yet. Compensation for expropriation is foreseen and the protecting clauses are comparable to the other countries` BITs. One exception refers to the BITs with EU Member States (Germany, Belgium and Luxemburg, France, Sweden). Here trade restrictions are explicitly excluded not only for the final product relevant for the investor but also for intermediate goods and inputs relevant to transport and logistics. This indicates a strong pro-investor attitude.

14 State-owned telecommunication company

Legal domestic environment

At a domestic level, a reform of the Madagasy investment law was undertaken in 2008 that ensures protection of ownership for investments, the free movement of capital and equal treatment. Additional rules aim at stabilisation and the fight against AIDS (art. 6 and 7): thereby an investor-friendly environment based on a stable tax system and a public health programme is envisaged.[15]

According to the constitution, foreigners are not allowed to own land. In contrast, the investment regulation (Loi 2007 du 14 Janvier 2008 sur les investissements à Madagascar) allows foreigners access to land via a company according to Malagasy law. This company has the right to lease or to purchase land. Although the legal situation is not clearly defined, in fact foreign investors are generally demanding long leasing contracts.

Before 2005, non-titled land was presumed to belong to the state. Different activities have been undertaken ever since for implementing a land reform that increases the security of land use rights for local farmers and alleviates land access for foreigners. The so-called "territoire domanial" has been divided into two parts: One part still belongs to the state for specific purposes, but the biggest is now presumed to belong to communities and individuals. People who are using the land are now regarded as owners (proprieté privée non-titrée), but these rights are not yet documented and, thus, the situation is still insecure.

In order to increase security of land use rights, another part of the land reform is the introduction of the so called "guichet fonciers", agencies on a communal level to document land use rights. But still only 22% of farmers have a documented certificate on their land ownership. Undocumented traditional access still dominates which often leads to conflicts about the ownership of land.

Traditionally, land was owned by the family and received by heritage. Since land pressure was low during pre-colonial times, land conflicts occurred rarely and were solved by traditional authorities (raimand'reny). When Madagascar became a French colony, the French introduced a cadastral system and started documenting landownership. But when the French left the country, the cadastral system was not used and updated anymore, leading to the current situation where no land rights are secured.

The Malagasy land right system acknowledges all different kinds of land use rights as owning, using, inheriting, leasing, purchasing, as well as usufruct.

In the high plateau, where land pressure is the highest in the country, farmers have started to use fertiliser to increase productivity of the land. Also, they use former uncultivated land to augment the quantity of agricultural land. That means that land resources in the high plateau are limited, and access for foreign investors is difficult. In the eastern part of the country, where the most natural forest can be found, tribes still practice slash & burn to gain fertile land. In this region, FDI is likely to increase conflicts between agricultural use and conservation of biodiversity.

All investments over 1,000 ha formally require an environmental impact assessment which should ensure ecological stability and includes social aspects. Due to weak governance this obligation is not always fulfilled.[16] In terms of social impacts, only a third of all documented projects explicitly aim at local job opportunities or at supporting the local infrastructure. These firms which explicitly employ local population in the project contracts mainly come from the EU.

Data on the size of FDI in land and risks and opportunities

Table 4 summarises the demand for FDI in land in Madagascar from 2005 until March 2009. All major FDI in land projects are included (with more than 1,000 ha requested by foreign and/or national investors). This overview still contains the Daewoo case (1 million ha for food production and 0.3 million ha for agro-fuel production), although this project has been recently cancelled by the new leader of the transition government in Madagascar.

15 In compliance with the principles presented in Law 2005-040 dated 20th February 2006 relating to fight against HIV/AIDS and protection of the rights of those infected with HIV/AIDS, all companies must set up an awareness and education program for their staff as well as make it easy for those wishing to undergo a screening test.

16 The Daewoo case described in the country study supports this statement.

Table 4: Demand for FDI in Madagascar (2009)

	Area, in ha without the Daewoo project	Area, in ha including the Daewoo project
FDI in land (in total)	**1,720,300**	**3,020,300**
FDI in land for food production	446,500	1,446,500
FDI in land for agro-fuel production	**1,231,700**	**1,531,700**
FDI in land for cash crop production	9,100	9,100
FDI for other purposes	**33,000**	**33,000**

Source: Own research

Most of these demands are still in the planning phase and land contracting has not been finalised yet.

The overall size of FDI in land in Madagsacar is the highest of all selected target countries, representing an area equal to nearly 50% of the currently cultivated land area. So far the FDI`s purpose is dominated by agro-fuel.

In Madagsacar, investors from European and American countries are interested in the production of agro-fuels, investing especially in Jatropha, whereas Asian countries are mainly looking for FDI in food production. In most cases, all production will be exported. It is worth noting that investors in agro-fuels are rarely agro-business companies but either newly established companies raising money at the stock exchanges, or from international investor companies or companies working in the petrochemical industry. This often results in bad plantation management due to a lack of experience in agriculture. Furthermore, Jatropha yields are often tremendously overestimated. The question still is what will happen with the plantations and the farmers working on them when investors realise that the expected results will never be reached.

This is different with FDI in food production. In general, companies investing in this type of product are working in the agro-business sector and are experienced in agricultural production.

Social conflicts arising from the assignment of land to foreign investors reveal the sensitivity of the citizens with respect to FDI in land. It is not only the property rights that fuel the conflicts, but the role land plays in the context of traditional beliefs. Land is holy and is still owned by the ancestors, who play an important role in the life of Malagasy people.

After the world economic and financial crisis, the demand for land seemed to diminish and some of the projects have been stopped mainly due to a lack of financial resources. In addition, first experiences in large-scale and low-cost farming have lead to disillusionment about the possibilities of realising the envisaged profits.

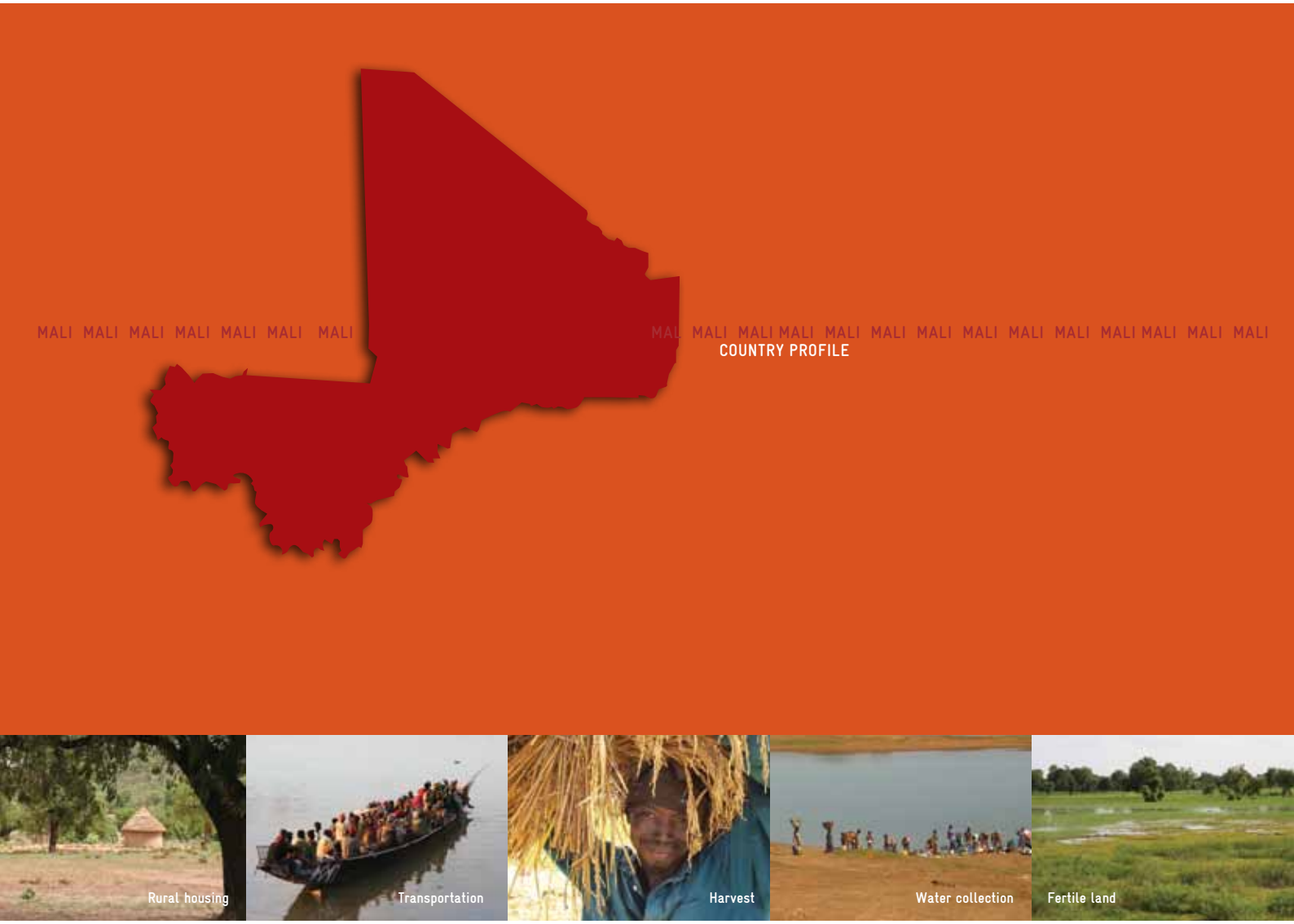
Most investors seem to be aware of the importance of the unique biodiversity in Madagascar or fear pressure from the numerous international NGOs working in biodiversity conservation. At least no FDI in land for agricultural production is known that is destroying bio diverse spots. This is not true for mining projects. The two big mining projects of Sherritt (Ambatovy) and QMM both are working in hotspot-areas destroying large areas of rainforest.

Impacts on food security differ from project to project. Some projects might increase food production or augment revenue of farmers which could improve the supply of food for individual farmers. Other projects implemented on fertile land produce food for export purposes and would only reduce food security.

Cocoa Harvest

Jatropha Nursery of Eco Flower Investor

Rice Harvest



Rural housing

Transportation

Harvest

Water collection

Fertile land

4.3. Country Profile – Republic of Mali

Situated in West Africa, the Republic of Mali covers an area of 1,241,238 km^2. In 2002, 35.2 % of this area was designated arable land and 11.6 % cultivated land. Mali has large conservation areas (4.6 %), forests (26.1 %) and pastureland (24.2 %).
Table 5 provides an overview of the country profile regarding:

- Economy, agriculture, food security, poverty and environment
- Overall investment climate
- Legal framework
- Pattern of FDI in land

Table 5: Country profile Republic of Mali

Overall domestic background: Economy, Agriculture, Food security, Poverty and Environment	
(1) Economic situation	
GDP per capita, 2008, US$ (a)	657
Official Development aid (ODA), 2007, US$ million (b)	1017
ODA in agriculture, forestry and fishery (b) Commitments 2007, US$ million Disbursements 2007, US$ million	 283 72
Share of population below poverty line (2 US$ per day, average 2000-2006) (c)	77,1%
(2) Relevance of agriculture	
Share in GDP (2007) (d)	37%
Share of agriculture employment (e)	76% (2004)
(3) Food security	
Global Hunger Index (GHI), 2008 (f)	26.9
GHI-Ranking (out of 88 countries), 2008 (f)	73
Share of undernourished population (f)	11%
Food aid, 2008, '000 t, cereals in grain equivalent (g)	23.6
As country in crisis according to FAO (2009) (h)	No
Value of food import minus export, 2006, US$ million (i)	36
(4) Environment/ Biodiversity	
Protected area, % of total area 2003 (k)	3,7%
Forestry area, % of total area 2005 (l)	10,3%
Deforestation rate (annual change in forest covered area, within 2000-05) (i)	-0,8%
Fire cultivation	3% of total area
Overall investment climate	
(1) Climate for FDI (m)	
Ease of doing business (rank of 181 countries)	166
Protecting investors (rank of 181 countries)	150
Enforcing contracts (rank of 181 countries)	158
(2) Corruption (n)	
CPI ranking (rank of 181 countries), 2008 (2007)	96 (118)
(3) Share of FDI in agriculture in % of all FDI average (o)	
US State Department Climate Statements 2009 (o)	No data
World Investment Report 2009 2005 – 2007 (p)	No data
Legal Frame	
(1) Multi- and bilateral frame (q)	
WTO rules applicable?	yes
BITs in force with major FDI in land investor countries	No relevant investor included, but existence of a frame contract between Mali and Libya, which may not be called a BIT
(2) Domestic frame (q)	
Major legal basis	Investment Code, National Investment Law (Loi 91-48/ANRM, March 1991)

Table 5: Country profile Republic of Mali

Pattern of FDI in land	
(1) Investor country (r)	
Major investors, in ha	Lybia (86%)
	South Africa
	China
	USA
(2) Major purpose (r)	
Food	**dominant**
Main crops	rice, millet, corn, sorgo, cotton, sugar, jatropha, mango
Agrofuels	**minor**
Main crops	jatropha
Other	**minor**

Source: (a) IMF, 2009; (b) OECD, 2009; (c) UNDP, 2008; (d) World Bank, 2007; (e) GTZ estimates, 2007; (f) Welthungerhilfe, 2008; (g) FAO 2009b, (h) FAO, 2009e; (i) FAO, 2009b; (k) WRI,2009; (l) FAO 2007; (m) World Bank 2009, (n) Transparency International 2008 and 2009 (o) U.S. State Department, 2009b-e (p) UNCTAD 2009b (q) UNCTAD, 2009c, GTZ case studies; (r) GTZ case studies

Agriculture plays an important role in Mali´s economy. Its share of GDP is about 37%. Mali attracts in particular a large amount of ODA for agriculture with 72 million US$ in 2007. 76% of the population is employed in agriculture. About 77% of the population lives below the poverty line. Mali receives food aid. In 2008, the amount of food aid was estimated at 23.600 t cereals in grain equivalent (g).

As regards to the allocation of total FDI to different sectors, the 2009 Investment Climate Statements include some information based on national statistics. In 2004, South African investors and others pledged to invest about US$ 100 million in agro-business. The investment was later postponed to 2009. There is no evidence these investments have taken place so far.

The Malian government succeeded in encouraging FDI and foreign investors are not discriminated against. Enhanced structural adjustment facility (ESAF) agreements signed by the IMF/World Bank and Mali and are in force since 1992. These agreements encourage the mobilisation of external resources to boost investment. The government's national strategy to fight poverty presented to the IMF/World Bank and other donors emphasises the role of the private sector in developing the economy.

Foreign investors can own 100% of any businesses they create and purchase shares in privatised parastatal companies. Access to land is provided on the basis of renewable long-term leases of up to 50 years, respectively 99 years.

The tax system is complicated even though some efforts have been made to improve it. Foreign investors sometimes report that tax laws are interpreted in a way that discriminates against foreign investors.

Legal multi- and bilateral environment

Mali altogether signed 15 BITs, but the dominant investor country, Libya, which holds 85% of all FDI in land, is not included as a partner country of BITs. However, Mali and Libya signed a cooperation agreement which serves as a framework for all joint projects, including FDI in land. Again, the compensation and protective measures are similar to the BITs in the other countries.

Legal domestic environment

In Mali, the land tenure system is based on the *Code Domanial et Foncier* (CDF, Land Act)[17], the *Loi d'Orientation Agricole* (LOA, Agricultural Orientation Law), the *Code Forestier*, (Forest Act) and the *Charte Pastorale* (Law on Pastoralism) as well as its implementing provisions. They provide the following four property categories:

- National Domain (covering the entire Malian territory),
- State public land,
- State private land, and
- Private land.

In accordance with the French system, state land is divided into state public and state private land. While state public land comprises all lands with public functions (natural and artificial domains), state private land covers all other areas which are not under private ownership. State private land can be registered under the name of a legal entity (such as a state enterprise, a foreign investor etc.) or be unregistered.

Neither communal nor indigenous land is known as such in Mali. Areas where local people possess customary land rights are included in the state private domain, hence considered to be state private lands. They are only recognised and partially secured if they are located in unregistered areas. They remain secured as long as common public interest does not call for a different use. In this case, however, customary rights need to be compensated. In practice, this is only done for customary owners who can present written proof. Although customary rights are recognised on unregistered lands, they are considered to be use rights only. Officially, they cannot be sold. In case of compensation, not the land, only the added value in form of constructions, cultures etc. is compensated. It is, however, possible for a holder of a customary right to change it into a formal right – first a provisional concession and then a title – if he or she follows a rather long, drawn out and expensive procedure.

CDF and LOA provide for the following land tenure arrangement: annual contract, cultivation permission, rural concession, leasehold, land title – all allocated by the state on (former) state private land. The land title can be held only by national farmers. Foreign operators are entitled to leases only. Most FDI contracts are based on a renewable lease of up to 50 years, respectively 99 years in total. Similar to the situation in Laos, problems and conflicts arise from the fact that local farmers' and pastoralists' land (use) rights are not (sufficiently) respected by the national institutions/representatives signing the FDI contracts. Most of the land FDI investing in Mali has been given to the Niger Office (a state enterprise irrigating a major area along the river Niger, primarily for rice production) and has thus been registered as "registered land". Hence, customary rights on this land are not recognised although hundreds of thousands of people live on these lands, farm these lands, graze their animals there, live from the forests and depend on the water available there.

Additional national regulations oblige foreign investors to conduct an environmental and social impact assessment. In practice, however, these are often not done or only after major construction works have already been started.

Data on the size of FDI in land and risks and opportunities

Currently in Mali, 173,605 ha are known to be demanded for foreign investments. In addition, there is information about an investment of another 200,000 ha by a Saudi Arabian company in food in Mali (GRAIN). This information could not been verified yet.

Most of the investment is taking place in the Niger Office Area. This is the most fertile area of Mali with production depending on irrigation from the Niger River. But since water availability during the dry season is limited, only 250,000 ha are irrigable. Therefore, further demand in land and water will create water conflicts. The case of Malibya, currently in the implementation project phase of building roads and dams, is already resulting in conflicts with cattle breeders, since their traditional routes and grazing areas are ignored. Whereas Malibya is exclusively producing for the Libyan market with the objective to secure food security in Libya and to reduce dependency on food imports and therefore on the food world

17 Ordinance n° 00-27/P-RM of Mars 22 2000, named "Code domanial et Foncier" (Land Act) modified by the Law n° 02-008 of February 12 2002.

market, the other example presented in the case study, the Markala Sugar Project, produces sugar for the domestic market to secure food security in Mali and to reduce dependency on sugar imports and therefore the world market. The reason for this difference in philosophy is the different form of investment. Malibya is a classic FDI in land, while Markala Sugar Project is the first public-private partnership project in Mali and the first public private partnership (PPP) development project in the agro-industrial sector submitted for financing to the African Development Bank. Accordingly, Malibya is exclusively heading for quality and profits using sophisticated technologies requiring little and mainly skilled (therefore foreign) manpower, while the Markala Sugar Project will, according to the Bank's plans, among other things be accompanied by a poverty reduction program, a resettlement action plan and measures to mitigate the negative environmental impact.

Table 6: Demand for FDI in land in Mali

Investor Investor	Country	Surface (ha)	Crops
Malibya Agriculture	Libya	100,000	rice and vegetables
UEMOA	UEMOA	11,288	rice and vegetables
Agro Industries Developement	France	2,605	rice and vegetables
Mali Biocarburant	Netherlands	2,112	jatropha curcas
Manuel Estepa Gonzalez	Ivory Coast	5,000	jatropha curcas
SUDAN	Ivory Coast	5,000	jatropha curcas
ASSIL	Ivory Coast	5,000	jatropha curcas
CAMEX	UK	20,000	rice and vegetables
Burkina Faso	Burkina Faso	2,500	rice and vegetables
FORAS	Saudi Arabia	5,000	rice and vegetables
CO-ENTREPRISE	West African Countries	1,000	rice and vegetables
Total		159,505	

Source: own research

Most projects are still not yet implemented. So far, it is therefore too early to do an evaluation. Nevertheless, some observations show a violation of existing rights: Both the Malibya Agriculture project as well as the Markala Sugar Project started with their implementation work before carrying out the environmental and social impact assessments and compensation for resettled farmers does not meet the legal obligations. Despite all positive impacts, it is obvious that not all of the affected population will benefit from these projects. Both projects can also result in major environmental degradation.

Harvest

Field work with ox plough

Fishermen


Rubber plantation in Luang Namtha


Jatropha concession


Jatropha concession


Jatropha concession

4.4. Country Profile – Lao People's Democratic Republic (Lao PDR)

Lao PDR is a small, landlocked country in Southeast Asia, bordered by Myanmar and China to the northwest, Vietnam to the east, Cambodia to the south and Thailand to the west with a total area of 236,800 km^2. The forested landscape consists mostly of rugged mountains with some plains and plateaus. The Mekong River forms a large part of the western boundary with Thailand, whereas the mountains of the Annamite Chain form most of the eastern border with Vietnam.

Table 7 provides an overview of the country profile regarding:

- Economy, agriculture, food security, poverty and environment
- Overall investment climate
- Legal framework
- Pattern of FDI in land

Table 7: Country profile - Laos

Overall domestic background: Economy, Agriculture, Food security, Poverty and Environment	
(1) Economic situation	
GDP per capita, 2008, US$ (a)	858
Official Development aid (ODA),2007, US$ million (b)	396
ODA in agriculture, forestry and fishery (b) Commitments 2007, US$ million Disbursements 2007, US$ million	 49 36
Share of population below poverty line (2 US$ per day, average 2000-2006) (c)	76.8%
(2) Relevance of agriculture	
Share in GDP (2007) (d)	42%
Share of agriculture employment (e)	75% (2006)
(3) Food security	
Global Hunger Index (GHI), 2008 (f)	20.6
GHI-Ranking (out of 88 countries), 2008 (f)	57
Share of undernourished population (f)	19%
Food aid, 2008, '000 t, cereals in grain equivalent (g)	16.8
As country in crisis according to FAO (2009) (h)	No
Value of food import minus export, 2006, US$ million (i)	-163
(4) Environment/ Biodiversity	
Protected area, % of total area 2003 (k)	18,8%
Forestry area, % of total area 2005 (l)	69,9%
Deforestation rate (annual change in forest covered area, within 2000-05) (i)	-0,5%
Fire cultivation	No data
Overall investment climate	
(1) Climate for FDI (m)	
Ease of doing business (rank of 181 countries)	165
Protecting investors (rank of 181 countries)	180
Enforcing contracts (rank of 181 countries)	111
(2) Corruption (n)	
CPI ranking (rank of 181 countries), 2008 (2007)	151 (168)
(3) Share of FDI in agriculture in % of all FDI average (o)	
US State Department Climate Statements 2009 (o)	31% Average Jan 2000 - Sep 2008
World Investment Report 2009 2005 – 2007 (p)	12% Average 2005-2007
Legal Frame	
(1) Multi- and bilateral frame (q)	
WTO rules applicable?	not, not member
BITs in force with major FDI in land investor countries	All investors included
(2) Domestic frame (q)	
Major legal basis	Law on the Promotion of Foreign Investments from 2004

Table 7: Country profile Laos

Pattern of FDI in land	
Investor country (r)	
Major investors, in ha	Thailand
	China
	Australia
	Vietnam
	India
	Korea
	Japan
	France
Major purpose (r)	
Food	**minor**
Main crops	Corn, cattle,
Agrofuels	**minor**
Main crops	jatropha
Other	**dominant (mining)**

Source: (a) IMF, 2009; (b) OECD, 2009; (c) UNDP, 2008; (d) World Bank, 2007; (e) GTZ estimates, 2007; (f) Welthungerhilfe, 2008; (g) FAO 2009b, (h) FAO, 2009e; (i) FAO, 2009b; (k) WRI,2009; (l) FAO 2007; (m) World Bank 2009, (n) Transparency International 2008 and 2009 (o) U.S. State Department, 2009b-e (p) UNCTAD 2009b (q) UNCTAD, 2009c, GTZ case studies; (r) GTZ case studies

Agriculture plays an important role in the Laos economy. Its share in GDP is about 42% and 75% of the population is employed in agriculture. About 77% of the population lives in absolute poverty and 19% is undernourished. Lao PDR receives food aid. In 2008, the amount of food aid was estimated at 16.800 t cereals in grain equivalent.

In Lao PDR, economic reforms dating back to the late 1980s officially welcome and promote FDI as a means for enhancing development and economic growth. All sectors are open to investments unless they are regarded detrimental to national security, to health and national traditions, or have a negative impact on the environment.

As regards to the allocation of total FDI to different sectors, the 2009 Investment Climate Statements include some information based on national statistics:

- Licensed Foreign Investment in Lao PDR from 2000 through September 2008 add up to 6,972 million US$ or 792 million US$ per year. Recent figures show the accelerating increase of foreign investments in Lao PDR as 2008`s figures almost quadrupled during the first nine months of 2009 (being worth 4.3 billion US$) (Vientiane Times 2009).

The data presented in the World Investment Report 2009 (UNCTAD 2009b) differ considerably from those presented in the Investment Climate Statements. This may be due to the different periods of time that the average was calculated for, but it may also reflect the difficulties of getting reliable data.

Investment climate is assessed as "poor but improving" due to the very low rates in international indices of transparency and ease of doing business.

Because Lao PDR is a communist one-party state, the sanctity of contracts is subject to political interference and a number of socialist principles. Contracts can become void if it is disadvantageous to one party or conflicts with state or public interests.

Another obstacle for enforcing the legal framework is the little training judges have in commercial disputes as mentioned in the Investment Climate Report.

Legal multi- and bilateral environment
Laos signed 24 BITs. All relevant FDI in land investing countries are included. Laos' BITs include compensation for expropriation and measures to protect the domestic economy.

Legal domestic environment
According to the constitution, land is completely owned by the state and, therefore, land cannot be sold de jure. Nevertheless, the assignment of permanent use rights allows the evolution of a land market. According to the Land Law 2003, the Lao tenure system is de facto based on state land and private land, whereas private property, as long as it is not colliding with public interests, is secured by article 16 of the constitution. Additionally, communal land is defined in the Decree 88 from 2008, but not yet included within the Land Law.

In rural areas, generally no titles are issued, mainly because 99% of the rural areas would not qualify for the current requirements that have to be met to receive a title. However, for local villagers a traditional system based on the knowledge of the village community can guarantee the use rights as long as there are no conflicting outside claims. In cases of FDI in land, the traditional system is not appropriate for saving the rights of the traditional owners as these rights are not recognised by the state. Neither individual nor common/collective use rights are registered. Hence, the state considers all rural land to be state land which it can allocate in form of concessions. Since 2002, when pressure on land resources increased, caused by the emergence of FDI in land and by resettlement programmes, tenure insecurity in rural areas has grown tremendously.

Since 1997 the Lao government, supported by the Land Titling Project initiated by the World Bank, has allocated roughly 540,000 land titles, but nearly exclusively in settlement areas. The Land Titling projects concentrated on settlement areas because the majority of people live there and land values are much higher.

Domestic and foreign investors can obtain land via long-term state land concessions. Concession refers to a type of investment whereby land is transferred to companies that are responsible for all its investment and cultivation/construction. Large concessions are usually the preferred form of investment since it maximises company control over the land. As mentioned above, a major problem for investors is the fact that local people may have legitimated rights on these lands which often results in conflicts between the investor and the local farmers whose farms become destroyed by the investor.

To access land, foreign investors must submit their proposals to the Department of Domestic and Foreign Investment (DDFI) of the Committee for Planning and Investment. FDI worth less than 3 million US$ can be approved at the provincial level, less than 10 million US$ gets signed by the president of the DDFI, and investment exceeding 20 million US$ has to be proved by the Prime Minister.[18] Besides the monetary triggers, responsibility of the different levels is defined on the basis of the area of the FDI in land. This creates an ambiguous framework that does not clearly confine the responsibility of different authorities.

Table 8: Authorities in charge depending on land size

Land size	Authority
< 3 ha	District authorities
3 – 100 ha	Province authorities
100 – 10,000 ha	Ministry on Agriculture & Fisheries
> 10,000 ha	Approval by the National Assembly

Source: GTZ, 2006.

18 FDI exceeding the limits can be approved by the National Assembly.

The screening of the submitted proposals conducted by the Department of Domestic and Foreign Investment (DDFI) takes into account the financial and technical feasibility of the project. A lack of exact regulations concerning social and environmental impact assessment hinders a socio-ecological feasibility survey securing the interests of smallholders and indigenous people.

Referring to the investment climate, the one-stop service intended by the Lao Law on Promotion of Foreign Investment does not apply for FDI in land, as a bundle of different permits granted by various state authorities is mandatory.

It can be observed that rules and regulations concerning investment appraisal and concession approval are not always clearly defined, and additionally guidelines for the selection of land for land concessions and its monitoring are partly underdeveloped. For example, in Vientiane Province several concessions are in protected areas, some concessions are substantially larger than contractually agreed upon, and district and provincial administrations have granted concessions that were larger than the allowable size of 3 and 100 hectare allotments. In many cases (89 out of 237 in Vientiane Province) written concession agreements are lacking, allowing the blatant circumvention of statutory provisions. Consultations with local villagers are rare and rent-seeking activities arise on all levels (National Land Management Authority 2009).

The lack of a systematic overview detailing the location, size, boundaries, etc. of the concessions and the lease tracts makes regulating the granting of concessions difficult. With support from the Lao-German Land Policy Development Project (LPDP/GTZ), in October of 2008, the Land and Natural Resources Research and Information Center of the National Land Management Authority began a nationwide inventory and survey of all concession and lease tracts. However, it remains necessary to ensure the security of the current use rights of the local population and their inclusion in the apportionment of concession tracts. A first step to this end was taken in July of 2009 when the LPDP/GTZ Project was given the authorisation to extend the power to grant land titles to rural regions as well.

Due to many protests and conflicts arising from the allocation of land concessions without consultation of local villagers, a temporary memorandum on government concessions over 100 ha was declared by Prime Minister Bouasone Bouphavanh on 30 May 2007. In the Prime Minister's 2007 memorandum, contract farming was emphasised as a better approach to FDI in the agricultural sector that would ensure local level benefits. It has been heavily promoted in northern Laos, where reportedly over 10,000 ha have been planted under contract schemes. Unfortunately, no information is available about impacts on the farmers' livelihood. And still, most investors prefer investments in land instead in contract farming.

Data on the size of FDI in land and risks and opportunities

Since 1993 Lao PDR became increasingly the focus of FDI and a massive surge can be observed since 2002. Lao PDR has one of the lowest concession rates in Southeast Asia (2-9 US$/ha); it grants long concession periods and is characterised by unclear regulations and low enforcement.

The main investors are China, Vietnam and Thailand and the main products are rice, rubber, cassava, sugar, and pulp wood. Whereas China mainly invests in rubber and rice, Thailand and Vietnam together with Malaysia concentrate on rubber, sugar and cassava. Investors from Japan, India and the Scandinavian countries focus on pulp wood.

A reliable data base is available for just two of the 17 provinces of Lao PDR. GTZ supports the Lao PDR in carrying out an inventory to collect data about all the different investment projects in the country, not only in the agricultural sector.

Table 9: Area of land lease/concession projects of two provinces (2009)

	Vientiane Province (total surface 1,852,600 ha)		Luang Namtha (total surface 961,200 ha)	
	Number of projects	Surface (ha)	Number of projects	Surface (ha)
Total	237	391,709	107	25,366
Concessions	198	390,374	23	19,291
Lease	34	177	61	126
Contract Farming	5	546	23	5,949
Sector				
Agriculture	114	62,551	43	18,140
Rubber	46	25,104	36	18,110
Mining	55	326,944	5	5,502
Industry	30	714	12	48
Investors are	1. Lao (149)		1. Lao (58)	
	2. Chinese (25)		2. Chinese (45)	
	3. S-Korean (24)		3. Thai (1)	

Source: GTZ Lao PDR, 2009

Collected data for the provinces Vientiane and Luang Namtha are already available. They cover only active and implemented projects and are assembled in Table 9.

- To get a comprehensive overview, a close co-operation with local authorities is necessary. Hence projects not in line with the interests of local authorities will hardly find the required support.
- It is not always clear where the investor comes from. To circumvent legal requirements, it seems to be possible to make use of Lao citizens to conduct business on behalf of foreign investors. Therefore, investments cannot be allocated to domestic or foreign investments unambiguously.
- For some FDI in land, there are no written contracts or documents. They are based on oral agreements.

The inventory has brought transparency to the investment projects of two provinces. The Lao parliament has recognised the efforts and agrees to a follow-up project extending the GTZ activities nationwide.

Since data for the other provinces are not yet available it is difficult to estimate FDI in land for the whole country. In a pre-study to the GTZ project, estimates amounted to approximately 2-3 million ha of land that is already under concession (including concessions for mining). This is about 10-15% of the whole Lao PDR territory.

Additional demand for land originates from China (about 1 million ha) and Kuwait (about 200,000 ha) for food production. Apart from food, there are many projects for the production of agro-fuel, mainly investing in Jatropha.


Rubber planting on burned site


Rubber plantation in Luang Namtha

4.5. Country profile – Kingdom of Cambodia

Cambodia is located in Southeast Asia, occupies a total area of 181.040 km^2 and has a population of 14.5 million.

Table 10 provides an overview of the country profile regarding:

- Economy, agriculture, food security, poverty and environment
- Overall investment climate
- Legal framework
- Pattern of FDI in land

Table 10: Country profile Cambodia

Overall domestic background: Economy, Agriculture, Food security, Poverty and Environment	
(1) Economic situation	
GDP per capita, 2008, US$ (a)	818
Official Development aid (ODA),2007, US$ million (b)	672
ODA in agriculture, forestry and fishery (b) Commitments 2007, US$ million Disbursements 2007, US$ million	 34 24
Share of population below poverty line (2 US$ per day, average 2000-2006) (c)	68.2%
(2) Relevance of agriculture	
Share in GDP (2007) (d)	32%
Share of agriculture employment (e)	71% (2007)
(3) Food security	
Global Hunger Index (GHI), 2008 (f)	23.2
GHI-Ranking (out of 88 countries), 2008 (f)	64
Share of undernourished population (f)	26%
Food aid, 2008, '000 t, cereals in grain equivalent (g)	44.2
As country in crisis according to FAO (2009) (h)	No
Value of food import minus export, 2006, US$ million (i)	-476
(4) Environment/ Biodiversity	
Protected area, % of total area 2003 (k)	23,7%
Forestry area, % of total area 2005 (l)	59,2%
Deforestation rate (annual change in forest covered area, within 2000-05) (i)	-2,0%
Fire cultivation	No data
Overall investment climate	
(1) Climate for FDI (m)	
Ease of doing business (rank of 181 countries)	135
Protecting investors (rank of 181 countries)	70
Enforcing contracts (rank of 181 countries)	136
(2) Corruption (n)	
CPI ranking (rank of 181 countries), 2008 (2007)	166 (162)
(3) Share of FDI in agriculture in % of all FDI average (o)	
US State Department Climate Statements 2009 (o)	10,5% Average 1998 – 2008
World Investment Report 2009 2005 – 2007 (p)	15% Average 2005 – 2007
Legal Frame	
(1) Multi- and bilateral frame (q)	
WTO rules applicable?	Yes
BITs in force with major FDI in land investor countries	Only 3 of all investors included
(2) Domestic frame (q)	
Major legal basis	Land Law 2001

Table 10: Country profile Cambodia

Pattern of FDI in land	
(1) Investor country (r)	
Major investors, in ha	China
	USA
	Thailand
	Vietnam
	Korea
	Taiwan
	South Africa
	Italy
(2) Major purpose (r)	
Food	**Minor**
Main crops	Rice
Agrofuels	**Dominant**
Main crops	Palm oil
Other	**Medium**

Source: (a) IMF, 2009; (b) OECD, 2009; (c) UNDP, 2008; (d) World Bank, 2007; (e) GTZ estimates, 2007; (f) Welthungerhilfe, 2008; (g) FAO 2009b, (h) FAO, 2009e; (i) FAO, 2009b; (k) WRI,2009; (l) FAO 2007; (m) World Bank 2009, (n) Transparency International 2008 and 2009 (o) U.S. State Department, 2009b-e (p) UNCTAD 2009b (q) UNCTAD, 2009c, GTZ case studies; (r) GTZ case studies

Agriculture plays an important role in Cambodia's economy. The share of agriculture in GDP is about 32% and 71% of population is employed in agriculture. 68.2 % of total population still lives in absolute poverty and 26% is undernourished. Cambodia receives food aid and paid large food bills in 2006 (FAO 2009b). In 2008, the amount of food aid was estimated at 44 200 t cereals in grain equivalent (g).

The investment climate in Cambodia was rated by the World Bank in 2008. Cambodia was ranked in two of three categories (ease of doing business, enforcing contracts) in the last quarter. Concerning the category "protecting investors" a high protection rate can be found for Cambodia. Cambodia is perceived as protecting investors much better compared to Mali or Lao PDR.

After the Civil War, Cambodia started to transform to a free market economy in the late 1980s and is integrating into the regional and world trading framework: It became a member of the Association of Southeast Asian Nations (ASEAN) in 1999 and of the World Trade Organisation (WTO) in 2004. In keeping with its WTO commitments, it is improving the climate for foreign and domestic investments. Based on the reforms, the economy has grown steadily and the real GDP growth rates averaged 8.8% during the period 1994-2008.
Within the legal framework there is little or no discrimination against foreign investors. However, there are some reports about acts of corruption, tax evasion or the poor enforcement of laws that lead to disadvantages for foreign investors. The CPI corruption index rates Cambodia 166 of 181.

As regards to the allocation of total FDI to different sectors, the 2009 Investment Climate Statements include some information based on national statistics. Total cumulative registered investment capital from January 1998 to December 2008 amounted to 2,432 million US$ which averages about 221 million US$ per year. FDI in agriculture totaled 177 million US$ for the whole period or 16 million US$ per year. According to the data, the share of agriculture in overall FDI is about 10%.

Cambodia officially welcomes FDI and established an open and liberal regime by the Law on Investment in 1994. In principle all sectors are open to FDI; a 100% ownership is permitted in most sectors. However, in some sectors FDI are subject to conditions (manufacture of cigarettes, movie production, rice milling, exploitation of gemstones, publishing and printing, radio and

television, manufacturing wood and stone carvings, silk weaving, and hospitals and clinics). Additionally, the Cambodian Constitution only provides Cambodian citizens and Cambodian legal entities with the right to own land. FDI in land can only be undertaken in joint ventures.

Legal multi- and bilateral environment
Cambodia signed altogether 21 BITs of which only three cover relevant investor countries for FDI in land (China, Thailand and Taiwan).[19] In these agreements, a compensation for expropriation for the investor is foreseen, based on an appraised market value. Additionally, protective trade measures like import restrictions to stabilise the balance of payments are possible from both contracting partners and specific rules for dispute settlements are integrated.

Legal domestic environment
Domestic law follows a very restrictive land policy: ownership of land is restricted to Cambodian persons and legal entities only. A company is defined as Cambodian if 51% is nationally held. Concessions are limited to 10,000 ha and rules for exceptions exist. An environmental impact assessment (EIA) is required and a national plan to ensure food security has been adopted in 2008. Cambodia ranks worst of all case countries regarding corruption which hinders the effective implementation of existing legal rules.

Until 1989, all land in Cambodia was state owned and land markets did not exist. After the end of Khmer Rouge, land distribution took place based on size of families, and possession rights were granted for residing and subsistence farming. Temporary possession was established, which allows tenants who had occupied the land for a minimum of five years the acquisition of a land title.

According to the new constitution of 1993 and the Land Law of 2001, five main categories of land property can be distinguished:

- Private land,
- State public land (all areas needed for public services such as roads, river banks, etc.),
- State private land (all other areas owned by the state),
- Communal land, and
- Indigenous land.

The first Land Law of 1991 was established to provide the opportunity to register traditional land use rights, but the government was not able to manage the huge demand. As land pressure increased dramatically, mainly caused by population growth, social conflicts about land grew steadily and were enhanced by missing land titles and an unsatisfied cadastral system. In 2001, a new Land Law entered into force to accelerate the process of land registration and improve tenure security. Temporary possession was removed. With the help of development organisations, a new cadastral system was implemented and about 1.15 million plots have been registered.

Private state land can be used for Social Land Concessions (SLC) and Economic Land Concessions (ELC). The Ministry of Land Management, Urban Planning and Construction (MLMUPC) is responsible for granting these land concessions. A sub-decree of SLC was established in 2003 to accompany the implementation of the Land Allocation Project (LASED). It offers the poor an opportunity to apply for land for housing and subsistence farming.
In 2005, the land act degree was amended by the ELC sub-decree, a mechanism established to grant state private land not exceeding 10,000 ha to concessionaires for agricultural exploitation up to a maximum of 99 years.

Village workshop

19 No data of entry available; no reasons available why this or that agreement has not entered into force yet.

To acquire land use rights, foreign investors must submit their proposals to the Council for the Development of Cambodia (CDC) and a clear procedure is defined, as for instance mandatory environmental and social impact assessments. The MLMUPC is entitled to assign the ELC to investors.

Even though a clear procedure for FDI in land is defined, the process often does not comply with the regulations. Some public authorities, especially the Ministry of Economy and Finance (MEF) and the Ministry of Agriculture, Forest and Fishery (MAFF), act as legal entities and lease, sell or exchange land even though they are not authorised. Moreover, it can be observed that the capacities to enforce the rule of law are partially weak and the lack of transparency enhances rent-seeking activities. Furthermore, the governments of the provinces are difficult to control by the Cambodian government. Obviously, there are weaknesses in enforcing the legal framework. In addition, the low level of land registration and the lack of land titles make way for the interpretation and allocation of property rights. As a consequence, the number of overlapping land use rights for certain plots increases dramatically, which augment social conflicts and endanger the rights of smallholders and indigenous groups. Despite the 10,000 ha limit, it is reported that land concessions exceeding the 10,000 ha are granted. One way to circumvent the official limit is by granting concessions on contiguous tracks of land for the same purpose (compare UN, 2007).

Data on the size of FDI in land and risks and opportunities

An official database for FDI in land exceeding the size of 1,000 ha is provided by the Ministry of Agriculture, Forestry and Fisheries (MAFF, 2009). According to this database, 58 Economic Land Concessions (ELC) for about 1 million ha were granted for growing agricultural and forestry products between 1998 and 2006. Companies from abroad account for 26 of the overall ELC with an area of about 300,000 ha.

Table 11: Official data on granted ELCS to companies for Agriculture and Forestry in Cambodia

Origin of investor	Granted Economic Land Concessions (ha)
Cambodia	656,047
China	189,070
USA	28,597
Thailand	25,700
Vietnam	24,540
Korea	14,886
Taiwan	4,900

Source: MAFF, 2009

More than two thirds of the ELC were granted to Cambodian companies. Regarding the origin of investors from abroad, China leads with about 200,000 ha, followed by other countries with an area between 5,000 and 30,000 ha.

The database is not always specific with respect to the crops grown on the land. Some concessions just refer to one crop, others refer to several crops or to agro-industrial crops in general. Regarding Economic Land Concessions granted to companies from abroad, about 60,000 ha are devoted to oil palms, another 60,000 to agro-industrial crops in general, the rest to corn, bean, soya bean, rice, cassava & peanut (28,500 ha), cassava & agro-industrial crops (16,000), cassava (8,000 ha), cassava, rubber, cashew (15,200 ha), sugar cane (9,700 ha), crops (8,000 ha) rubber (6,900 ha). Forestry products encompass 10,000 ha of acacia, trincomali wood, and other plantation crops, 10,000 ha merkusii plantation & processing, 26,400 ha pistacia chinensis bunge and other trees, and about 30,000 ha tectona plantation & processing.

The official database is not supposed to be comprehensive and the extent of land concessions is supposed to exceed the officially reported amount by far. But there is no reliable estimation on the additional land concessions granted by other entities.

Regarding the economic, socio-cultural and environmental impact of FDI in land, the case study reveals the following positive points:

- The recent upsurge in private sector FDI in Cambodia (FDI is estimated to reach US$ 8.9 billion in the first eight months of 2008 (Royal Embassy of Cambodia in Washington D.C (2008) is considerably larger than the volume of Official Development Aid being provided by the donor community (see table 10). When a conflict arises between private sector and donor projects, it is likely that the larger project will be given precedence, and this may pose a threat to some donor projects.
- There is significant increase in local employment opportunities with raising wages (up to US$ 100 per month) which is more or less equal to the urban wage rate.
- Improved local roads for moving company goods and products means local villagers also benefit from better road conditions. But also the effects of damaged roads were seen due to heavy loaded trucks, especially in the rainy season.
- Export to foreign countries has tremendously increased, especially to China (mainly wood and rubber) going along with an increase of export revenues. Also, it is expected that the local production of agro-fuel will benefit the country by reducing imports of fossils fuels (but this heavily depends on the development of jatropha yields which often are overestimated).
- There is a hope that FDI will result in the creation of job opportunities and thus contribute to the development of the country.

On the other hand, unfavourable developments for the rural people could be detected:

- But many people are already negatively affected by FDI by losing their agricultural land or access to forests which is an important source of revenue especially for indigenous communities (NTFP).
- Large-scale land investments granted to foreign companies have already led to dominant control of fertile land by foreigners, more land concentration, inequitable land distribution and causes an increase in landless people. Many local villagers migrated to urban areas for non-agriculture jobs.
- Since there is no baseline data available at national level on patterns of changes of natural resources, especially of biodiversity, impacts can only be estimated:

  - A large part of FDI investments in land concern establishing tree plantations like eucalyptus, palm trees and rubber. All these exotic species are not part of the local biodiversity resulting in a disruption of the local ecologic system. They are not part of the natural local food chains.
  - These trees are generally cultivated in large-scale monocultures going along with intensive use of chemical fertiliser and pesticides and thus showing a high risk of water pollution.
  - Eucalyptus plantations are forming a serious fire risk.
  - Palm oil production with its high biological oxygen demand (BOD) presents a serious danger to nearby rivers and lakes.
  - Monocultures of tree plantations with clear cut at short intervals and without a stable forest cover are likely to increase the risk of soil erosion, especially during the establishment phase.
  - Ongoing illegal logging activities are detrimental to natural environment resulting in a loss of biodiversity. Even national conservation areas are threatened by human activities.

Village workshop

5. Conclusions and recommendations

The case studies give some evidence of the benefits and threats that FDI in land present to the target country as regards to the domestic economy, people's livelihoods and ecological sustainability. As most of the investment projects are not yet fully implemented in the case countries, a comprehensive evaluation is not possible at present.

The effects of FDI in land are dependent on the contractual design and on the opportunities to implement and enforce the provisions that the parties agree on.

v. Braun and Meinzen-Dick (IFPRI, 2009) recommend a dual approach to address the threats and opportunities related to FDI in agricultural land: *"First, the threats need to be controlled through a code of conduct for host governments and foreign investors. Second, the opportunities need to be facilitated by appropriate policies in the countries that are the targets of these foreign direct investments"*.

It is important to stress - foreign investors and the target country can and should contribute to minimise the negative and increase the positive impacts. It is the nature of FDI in land that interests may differ between these actors. However, in the end win-win situations should be possible if the right business model is in place.

Elements to optimise FDI can be applied at different levels of the process of negotiating FDI in land:

A priori elements refer to the negotiation process of planned investment, i.e. how to involve all affected stakeholders in a transparent manner. Also all provisions relevant for considering local needs fall into this category, starting with land property rights. Some of these elements are only the responsibility of the target country, like domestic law on land property and all monitoring and enforcing mechanisms. Others are the joint responsibility of both actors like all procedural issues:

- **Generation of an accurate and reliable information** (data) base. Most information comes from 'grey' literature, newspapers and internet blogs. To verify these sources, local information and stakeholder opinions are necessary (since obtaining accurate information about land deals is quite a sensitive topic). Information on the volume, conditions and possible effects of FDI in land on a global level as well as on the ground in the target countries should be available beforehand in order to assess threats and opportunities adequately.
- **Transparency of the negotiations and participation** of all relevant stakeholders. In order to be able to support their interests, local landholders must be granted access to all relevant information and be involved in negotiations. "Free, prior, and informed consent is the standard to be upheld" (v. Braun and Meinzen-Dick, (IFPRI), 2009). In particular, the rights of indigenous people and other marginalised groups are to be protected. It is the media as well as civil society that can make information available especially if there is no official announcement of negotiations. Obtaining information on large-scale land investments is the first step to ensure sustainability of FDI in land. The essential elements are:
- **Participation of all affected communities** at the different stages of an investment project (from planning to evaluation), and
- **Implementation of an effective system for the redistribution** of benefits and provision of public goods.
- **Policy dialogue between investing and target countries and private investors**. Public presentations and discussions on the risks and chances of large-scale investments in land can help in reaching an agreement on rules to find a sustainable approach which encompasses

pro-poor-growth. Internationally accepted standards like "social- and ecological guidelines" in which access to land and securing of land use rights are stipulated should be considered.

- **Integration of smallholder production and sharing of benefits**. The main management principle could be the integration of smallholder production into the value-added chains of large agribusinesses. Therefore, it is necessary to generate a proper incentive system to stimulate such collaboration (Bickel and Breuer, 2009). The local community should benefit, not lose, from foreign investments in agriculture. Leases are preferable to lump-sum compensation because they provide an ongoing revenue stream when land is taken away for other uses. Contract farming or out-grower schemes give more opportunities because they leave smallholders in control of their land but still deliver output to the outside investor. Explicit measures are needed for enforcement if agreed-upon investment or compensation is not forthcoming.
- **Enforcement and Capacity development of Civil Society Organisations (CSO), NGOs (especially rural ones) and farmer groups**. CSO and NGOs and local stakeholder organisations should be formed through public support to control investments and guarantee the participation of all stakeholder groups, especially the rural communities which normally generate high transaction costs.
- **Capacity development in government institutions in investing countries and investment agencies of target countries**. Members of investment agencies should be qualified to negotiate individual business plans and models for FDI in land. Therefore, it is necessary that they have in mind the complexity of the subject in order to design and bargain contracts that result in a win-win situation for the foreign investor and the rural population. Key elements of a sustainable investment concept are situation analysis, multi-stakeholder process, definition of a business model, capacity development along the value chain, monitoring and evaluation.
- **Respect of land rights**. If people have to give up their land, there should be an adequate compensation that enables for an equivalent livelihood. This requires defined and certified property rights which lie fully in the target country's responsibility. Respecting land rights includes customary and common property rights. One necessary precondition for enforcing land property is the registration of land use rights as an integral part of a comprehensive land reform policy. In this context, recognised land rights (or cadastre) on community (village) level, individual or communal title deeds and certificates as well as local conventions on land use and regulations could be elaborated and tested. Through clarification, documentation of land use rights on the local, regional (decentralised) and national level, the legal protection and security of smallholder families will be improved.
- **Environmental and social sustainability**. To ensure agricultural production practices are in line with the goals of environmental sustainability, environmental impact assessment (EIA) and social impact assessments (SIA) are required during the negotiation process. If deals are finalised, implementation has to be monitored against depletion of soils, loss of critical biodiversity, increased greenhouse gas emissions or significant diversion of water from other human or environmental uses.
- **Building up and implementation of sustainable land use management systems**. Through participative land use planning processes based on an appropriate information system which includes availability of land, existing land use, quality of land (soil, climate conditions), and tenure systems, transparency on national and decentralised levels will be increased. Transparency is an important prerequisite for any further planning and responsible decision-making on

distribution of land and on eventual permitting land concessions.

Ex post elements address mechanism to solve problems that appear after FDI are implemented.

- **Compensation for expropriation** can address either local farmers and depend then on respective domestic legal provisions in the target country or foreign investors and will then be part of a BIT.
- **Macroeconomic protection clauses** can address changes in the macroeconomic situation in the target country. Trade restrictions can then be allowed which may affect the investing country negatively but support the target country's economy. They should be restricted to a limited period of time and are usually part of a BIT.
- **Food security protection clauses**. Domestic food security should have priority over the supply of export markets. If national food security is at risk (for instance, in case of an acute drought), export restrictions can support domestic food availability for the target country. As they may be counterproductive in the long run, they have to be limited in time. They are allowed according to the WTO and could be covered as well by BITs. Additionally, such provisions can be part of the private contract.

More general provisions refer to the international community:

- **Development of international guidelines for investments in land** and natural resources abroad. The institutional arrangements could be modelled after the international business laws adopted during the past 10 years to prevent corrupt practices in the context of FDI. The following policies and guidelines could be relevant in this context: FAO Voluntary Guidelines for the Right to Food, EU Land Policy Guidelines, FAO Voluntary Guidelines for Responsible Governance of Tenure of Land and other Natural Resources and the African Land Policy Initiative.
- **Enforcement of scientific research**. Focus should be on food security issues and the economic, social and ecological impacts of FDI in land in the target countries.

All recommendations are in line with those of other organisations dealing with problems caused by FDI in land. The case studies reveal the necessity of acting according to these recommendations, but they give evidence of some obstacles in implementing them. Transparency is difficult to achieve as long as a lack of transparency is in the interest of powerful groups in the society. The GTZ project in Lao PDR reveals that it takes extensive field research to generate reliable information about the extent of FDI in land and that it requires the willingness by national and local authorities to co-operate. Moreover, it takes years to implement a system of land registration and to register land titles. So regarding the conditions in developing countries, it may be difficult to enforce the rights of poor people and to implement an institutional framework that takes into account their needs.

Moreover, recommendations given by several institutions suggest that there is a common sense in the target countries regarding strategies of development and the distribution of benefits. They do not deal with the difficulties of different groups seeking rent within the target country. So the overall problem cannot be reduced to an imbalance of power between the foreign direct investor on the one side and the target country on the other. A comprehensive approach must consider the political and societal environment within the target country in order to develop a strategy that is in line with internationally agreed development objectives.

Another opportunity is to address the investors explicitly. Regarding investments done by governments or governmental organisations like Sovereign Wealth Funds and state-owned enterprises, a code of conduct could be established and enforced by political agreements. Regarding private enterprises, the code of conduct could be integrated into guidelines for corporate social responsibility. Given the fact that corporate social responsibility is becoming more and more important for at least some of the global players on the food and agrofuels markets, this may be an opportunity to achieve some improvements.

The second element of a dual approach recommended by v. Braun and Meinzen-Dick (IFPRI, 2009) consists of facilitating opportunities in the target countries by strengthening the policy environment and implementation capabilities. These target countries should improve investment climate through the rule of law and contract security; pursue evidence-based agricultural policies related to incentives, markets, technologies, and rural infrastructure; facilitate out-grower schemes and contract farming in the smallholder sector; enhance market information systems that can point to opportunities for farming communities; and build extension systems that facilitate access to knowledge and services, including rural banking.

To sum up: According to the results of the case studies, the problems arising with FDI in land are not so much a deficit in the legal environment of the target countries. There seem to be deficits in enforcing the laws and in (the willingness in) controlling that give room for assigning land concessions not in line with the interests of the poor. A lack of a comprehensive cadastral system and the deficit of land titles aggravate transparency and controlling.

Another approach to deal with the problems arising from FDI in land is to strengthen the competitiveness of contract farming. UNCTAD concludes in the World Investment Report 2009: "With regard to the mode of TNC involvement, evidence from many developing countries shows that through contract farming target countries can receive most of the benefits related to TNC participation, while avoiding a number of negative consequences." But contract farming in the frame of Transnational Corporations requires appropriate capabilities of the farmers and appropriate technology and expertise to deliver quality and quantity of the products. A suitable organisation of local farmers may help to fulfil these requirements.

In light of this, educating local farmers according to the requirements of contract farming and assistance in organising contract farming in global value chains can be a means to strengthen the competitiveness of relevant alternatives to FDI in terms of TNC participation.
Referring to the Roundtable "Promoting Responsible International Investment in Agriculture" mentioned in the introduction, a first step towards a coordinated international response to the acquisition of rights to land and related resources has been done (compare Government of Japan, World Bank, FAO, IFAD, UNCTAD 2009).

At the roundtable it was generally agreed that investments in agriculture are vital for improving food security and economic growth. On the other hand many participants expressed an urgent need for action to alleviate possible negative impacts associated with large-scale international investments in developing countries.

Some analyses propose elements of a "code of conduct", general guidelines and measures to overcome probable negative impacts. Important recommendations are outlined hereafter (compare e.g. v. Braun and Meinzen-Dick, (IFPRI), 2009; Cotula et al, (IIED, FAO, IFAD), 2009; Bickel and Breuer, 2009; Smaller and Mann , (IISD), 2009 De Schutter, 2009).

A code of conduct as a first element in a dual approach for foreign land acquisition requires international arrangements and laws that apply everywhere, not only in the countries that are targets of investments, which often have insufficiently developed legal institutions and enforcement mechanisms, but also in the countries where the investments originate.

Regarding the principles of international code of conduct, the overwhelming view was that these principles should have a flexible mechanism for monitoring and consider country-specific circumstances. Fundamental principles should cover:

- "Land and Resource Rights: Existing rights to land and natural resources are recognised and respected.
- Food Security: Investments do not jeopardise food security, but rather strengthen it.
- Transparency, Good Governance and Enabling Environment: Processes for accessing land and making associated investments are transparent, monitored and ensure accountability.
- Consultation and Participation: Those materially affected are consulted and agreements from consultations are recorded and enforced.
- Economic viability and responsible agro-enterprise investing: Projects are viable economically, respect the rule of law, reflect industry best practice, and result in durable shared value.
- Social Sustainability: Investments generate desirable social and distributional impacts and do not increase vulnerability.
- Environmental Sustainability: Environmental impacts are quantified and measures taken to encourage sustainable resource use, while minimising and mitigating them negative impact." (Government of Japan, World Bank, FAO, IFAD, UNCTAD 2009).

Furthermore, the need for additional research and analysis on the extent, nature and impact of large-scale investments in agriculture is underlined.

Likewise the Federal Ministry for Economic Cooperation and Development (2009) has designed six basic principles in order to be able to make use of the possible opportunities and potential of foreign investments in land.

While the analysis of FDI in land reveals risks and opportunities, the case studies conducted for this report also disclose the difficulties in achieving an empirical, comprehensive overview of the actual impacts. The lack of transparency as well as the complexity of the subject aggravates the analysis. There is need to further gather and distribute information covering the general conditions and the interests of the involved actors as well as on the negotiation process and the impact on local sustainable development. The impacts (economic, social and environmental) of FDI in land – either positive or negative – need to be monitored and published, so that interventions can take place if negative impacts are observed. Furthermore, capacity development in target countries may help those countries negotiate more favourable contracts that bring in line the interests of the investor with the needs of the target country.

Working in rice fields

Slashed and burned old growth forest area

Water collection

References

Alexandratos, N. (2009):
World food and agriculture to 2030/2050: Highlights and views from mid-2009. Contribution to FAO Expert Meeting on How to Feed the World in 2050 24-26 June 2009, Rome
Available at: ftp://ftp.fao.org/docrep/fao/012/ak542e/ak542e04.pdf, last visit 27/10/2009

Bickel, M. and Breuer, T (2009):
FDI in land in developing countries. In Rural 21 – The international Journal for Rural Development, Vol. 43, No. 2.

Bruinsma, J. (2009):
The Resource Outlook to 2050: By how much do land, water and crop yields need to increase by 2050. Contribution to FAO Expert Meeting on How to Feed the World in 2050 24-26 June 2009, Rome
Available at: http://www.fao.org/fileadmin/templates/wsfs/docs/expert_paper/05-Bruinsma_ResourceOutlookto2050.pdf, last visit 27/10/09

Cotula, L.; Vermeulen, S.; Leonard, R. and Keeley, J. (2009):
Land Grab or development opportunity? Agricultural Investments and international deals in Africa, IIED, FAO, IFAD, London/Rome.
Available at: ftp://ftp.fao.org/docrep/fao/011/ak241e/ak241e.pdf, last visit 07/07/2009.

Cruz, R.V., H. Harasawa, M. Lal, S. Wu, Y. Anokhin, B. Punsalmaa, Y. Honda, M. Jafari, C. Li and N. Huu Ninh (2007):
Asia. Climate Change 2007: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change. In: M.L. PARRY, O.F. CANZIANI, J.P. PALUTIKOF, P.J. VAN DER LINDEN AND C.E. HANSON (Eds.), Cambridge University Press, Cambridge, UK, 469-506.)
Available at: http://www.ipcc.ch/publications_and_data/publications_ipcc_fourth_assessment_report_wg2_report_impacts_adaptation_and_vulnerability.htm, last vist 10/10/09

Deininger, K. and Minten, B. (1999):
Poverty, Policies and Deforestation: the Case of Mexico, Economic Development and Cultural Change, 1999, January

De Schutter, O. (2009):
Large-scale land acquisition and leases: A set of core principles and measures to address human rights challenges. *Available at: http://www.srfood.org/images/stories/pdf/otherdocuments/22-srrtflarge-scalelandacquisitions-hrprinciples-9.6.09-2.pdf, last visit 07/07/2009.*

European Commission(2009a):
Energy Statistics of Cambodia. *Available at: http://ec.europa.eu/external_relations/energy/events/asem_energy_2009/docs/cambodia_en.pdf, last visit 09/03/09.*

European Commission (2009b):
Energy Statistics of Lao PDR. *Available at: http://ec.europa.eu/external_relations/energy/events/asem_energy_2009/docs/lao_en.pdf, last visit 09/03/09.*

FAO (2007):
State of the World's Forests 2007, Rome, 2007. *Available at http://www.fao.org/docrep/009/a0773e/a0773e00.htm, last visit 09/30/09*

FAO (2008):
The right to food and access to natural resources, Using Human Rights Arguments and Mechanisms to Improve Resource Access for the Rural Poor, Rome, 2008.

FAO (2009a):
Statistic Division – AquaStat. *Available at: http://www.fao.org/nr/water/aquastat/countries/index.stm, last visit 09/03/09.*

FAO (2009b):
Statistical Yearbook 2007-2008. Value of agricultural imports and exports are available at: *http://www.fao.org/fileadmin/templates/ess/documents/publications_studies/statistical_yearbook/FAO_statistical_yearbook_2007-2008/c01.xls, last visit 09/03/09.*

FAO (2009c):
From Land Grab to Win-Win. Seizing the Opportunities of International Investments in Agriculture. *Available at: ftp://ftp.fao.org/docrep/fao/011/ak357e/ak357e00.pdf, last visit 07/07/2009.*

FAO (2009d):
Crop Prospects and Food Situation, No. 2, April. *Available at: http://www.fao.org/docrep/011/ai481e/ai481e02.htm, last visit 09/08/09.*

FAO (2009e):
Global Information and Early Warning System – Countries in Crisis Requiring External Assistance. *Available at: http://www.fao.org/Giews/english/hotspots/index.htm, last visit 09/09/09.*

Federal Ministry for Economic Cooperation and and Development (2009):
Development Policy Stance on the Topic of Land Grabbing – the Purchase and Leasing of Large Areas of Land in Developing Countries: Discourse 015, Bonn

Fischer, G., van Velthuizen, H., Shah, M. and F. Nachtergaele (2002):
Global Agro-ecological Assessment for Agriculture in the 21st Century: Methodology and results, RR-02-002, IIASA, Laxenburg.

Gopinath, M., Pick, D., and Vasavada, U. (1999):
The Economics of Foreign Direct Investment and Trade with an Application to the U.S. Food Processing Industry, American Journal of Agricultural Economics, 1999, 81(2), pp. 442-452.

Government of Japan, World Bank, FAO, IFAD, UNCTAD (2009):
"Promoting Responsible International Investment in Agriculture" Chair's Summary of the Roundtable concurrent with the 64th United Nations General Assembly. *Available at: http://www.mofa.go.jp/policy/economy/fishery/agriculture/summary0909.pdf, last visit 10/01/09.*

GRAIN (2008):
Seized! The 2008 Land Grab for Food and Financial Security, Grain Briefing. *Available at: http://www.grain.org/briefings_files/landgrab-2008-en.pdf, annex available at: http://www.grain.org/front_files/landgrab-2008-en-annex.pdf, last visit 07/07/2009.*

GTZ (2006):
Study on State Land Leases and Concessions in Lao PDR. Land Policy Study No. 4 under LLTP II. Vientiane, Lao-German Land Policy Development Project.

GTZ (2009):
The Food Price Crisis and the Right to Food Results of a symposium held in Eschborn in November 2008.

Haralambous, S.; Liversage, H. and Romano, M. (2009):
The Growing Demand for Land – Risks and Opportunities for Smallholder Farmers. Rome, IFAD, Discussion paper prepared for the Round Table organised during the Thirty-second session of IFAD's Governing Council, 18 February. A*vailable at: www.ifad.org/events/gc/32/roundtables/2.pdf, last visit 07/07/2009.*

IMF (2009):
World Economic Outlook 2009. *Available at: http://www.imf.org/external/pubs/ft/weo/2009/01/weodata/index.aspx, last visit 09/03/09.*

Lopez, R. (1998):
The Tragedy of the Commons in Côte d'Ivoire Agriculture: Empirical Evidence and Implications for Evaluating Trade Policies, The World Bank Economic Review, 12, 1, pp. 105-31.

MAFF (2009):
Economic Land Concessions. *Available at: http://www.maff.gov.kh/elc/profiles.html, last visit 09/07/09.*

Nachtergaele, F. and George, H. (2009):
How much land is available for agriculture, (unpublished paper), FAO, Rome.

OXFAM (2009):
Investing in poor-farmers pays. Rethinking how to invest in agriculture. Oxfam Breifing Paper 129, June 2009.

OECD (2009):
Aid for trade at a glance 2009. *Available at: http://www.oecd.org/document/56/0,3343, en_2649_34665_42835064_1_1_1_1,00.html, last visit 09/07/09.*

Royal Embassy of Cambodia in Washington D.C (2008):
Information Bulletin November 2008 - Volume 34. *Available at http://www.embassyofcambodia.org/information_bulletin_vol_34.pdf, last visit 10/10/09.*

Smaller, C. and Mann, H. (2009):
A Thirst for Distant Lands: Foreign investment in agricultural land and water. International Institute for Sustainable Development (IISD). *Available at: http://www.iisd.org/pdf/2009/thirst_for_distant_lands.pdf, last visit 07/07/2009.*

Songwe, V. and K. Deininger, K. (2009):
Foreign Investments in Agricultural Production: Opportunities and Challenges. World Bank Agricultural & Rural Development Notes, Issue 45. *Available at: http://siteresources.worldbank.org/EXTARD/Resources/336681-1231508336979/Note45a.pdf, last visit 07/07/2009.*

Sturgeon, T.J. and G. Gereffi (2008):
The Challenge of Global Value Chains: Why Integrative Trade Requires New Thinking and New Data. *http://www.cggc.duke.edu/pdfs/GVCmetrics_Nov202008.pdf, last visit 09/30/09*

Transparency International (2008):
Global Corruption Report 2008. *Available at: http://www.transparency.org/publications/gcr/gcr_2008, last visit 08/31/09.*

Transparency International (2009):
Persistently high corruption in low-income countries amounts to an "ongoing humanitarian disaster". *Available at: http://www.transparency.org/news_room/latest_news/press_releases/2008/2008_09_23_cpi_2008_en, last visit 08/31/09.*

Tucker, H.G. (2009):
Foreign Large Scale Investments in Agriculture, Hydropower and Mining: Challenges and Opportunities for Development Cooperation in Laos and Cambodia. Report prepared for GTZ Lao and the Mekong River Commission (MRC), May 2009, draft version.

U.S. Department of State (2009a):
Investment Climate Statements 2009. *Available at: http://www.state.gov/e/eeb/rls/othr/ics/2009/index.htm, last visit 09/07/09.*

U.S. Department of State (2009b):
Investment Climate Statement – Cambodia, February. *Available at: http://www.state.gov/e/eeb/rls/othr/ics/2009/117418.htm, last visit 09/07/09.*

U.S. Department of State (2009c):
Investment Climate Statement – Laos, February. *Available at: http://www.state.gov/e/eeb/rls/othr/ics/2009/117377.htm, last visit 09/07/09.*

U.S. Department of State (2009d):
Investment Climate Statement – Madagascar, February. *Available at: http://www.state.gov/e/eeb/rls/othr/ics/2009/117354.htm, last visit 09/07/09.*

U.S. Department of State (2009e):
Investment Climate Statement – Mali, February. *Available at: http://www.state.gov/e/eeb/rls/othr/ics/2009/117844.htm, last visit 09/07/09.*

United Nations (2007): Economic land concessions in Cambodia. A human rights perspective. *Available at: http://cambodia.ohchr.org/webdocuments/reports/Thematic_rpt/Thematic%20Report%20on%20ELC_12-Jun-07_eng.pdf, last visit 09/09/09*

UNCTAD (2008a):
World Investment Prospects Survey 2008-2010. New York and Geneva. *Available at: http://www.unctad.org/en/docs/wips2008_en.pdf, last visit 07/07/2009.*

UNCTAD (2008b):
World Investment Report 2008, Transnational Corporations and the Infrastructure Challenge. New York and Geneva. *Available at: http://www.unctad.org/en/docs/wir2008_en.pdf, last visit 07/07/2009.*

UNCTAD (2009a):
Recent Developments in International Investment Agreements (2008–June 2009), IIA MONITOR No. 3 (2009). *Available at: http://www.unctad.org/en/docs/webdiaeia20098_en.pdf, last visit 09/23/2009.*

UNCTAD (2009b):
World Investment Report 2009, Transnational Corporations, Agriculture and Development. New York and Geneva. *Available at: http://www.unctad.org/en/docs/wir2009_en.pdf, last visit 09/30/2009.*

UNDP (2008):
Human Development Report - Statistic Division. *Available at: http://hdr.undp.org/en/media/HDI_2008_EN_Tables.pdf, last visit 09/03/09.*

v. Braun, J. and Meizen-Dick, R. (2009):
„Land Grabbing" by Foreign Investors in Developing Countries: Risk and Opportunities. IFPRI Policy Brief 13. *Available at: http://www.ifpri.org/pubs/bp/bp013.pdf, last visit 07/07/2009.*

Vientiane Times (2009):
"Foreign investment in Laos jumps nearly fourfold this year", 27/10/2009.

Welthungerhilfe (2008):
Global Hunger Index – The Challenge of Hunger 2008. *Available at: http://www.welthungerhilfe.de/fileadmin/media/pdf/WHI/GHI_2008.pdf, last visit 09/09/09.*

World Bank (2007):
Quick Query – World Development Indicators. *Available at: http://ddp-ext. worldbank.org/ext/DDPQQ/member.do?method=getMembers&userid=1&queryId=135, last visit 09/09/09.*

World Bank (2009)
Doing Business 2009. *Available at: http://www.doingbusiness.org/documents/DB09Easeofdoingbusiness-rankmethod.pdf, last visit 31/08/09.*

World Resource Institute (2005):
Earth trends: Global Forest Assessment. *Available at: http://earthtrends.wri.org/country_profiles/index.php?theme=7, last visit 09/03/09.*

Online Sources:

Farmland Grab:
http://farmlandgrab.org/.

The Land Coalition:
http://www.landcoalition.org/cpl-blog/.

World Bank (Glossary):
http://www.worldbank.org/depweb/english/beyond/global/glossary.html.

UNCTAD (2009c), Database on Bilateral Investment Agreements, :
HTTP://WWW.UNCTADXI.ORG/TEMPLATES/DOCSEARCH. ASPX?ID=779/.

Pollination of vanilla

Glossary

Agro-fuels

Agro-fuels are defined as liquid energy sources produced from agricultural commodities (e.g. from sugar, starch and oil crops), which are used in the transport sector as well as for thermal energy generation (heat and power). Fuels from agricultural waste and residues are less controversial and not included in this definition.

Source: GTZ.

Foreign Direct Investment (FDI)

Foreign investment involves a lasting interest in effective management control over an enterprise. Foreign direct investment can include buying shares of an enterprise in another country, reinvesting earnings of a foreign owned enterprise in the country where it is located, and parent firms extending loans to their foreign affiliates. International Monetary Fund (IMF) guidelines consider an investment to be a foreign direct investment if it accounts for at least 10 % of the foreign firm's voting stock of shares. However, many countries set a higher threshold because 10 % is often not enough to establish effective management control of a company or demonstrate an investor's lasting interest.

Source: World Bank.

Contract farming

Contractual partnership between small farmers and a processing and/or marketing firm for the purpose of commercial production, frequently at predetermined prices. Depending on the terms of contract, small farmers may receive technical assistance, seeds, agro-chemicals and some credit from their contract-partners, and are ensured of guaranteed markets, secure income and employment.

Source: HU Berlin; SLE.

FDI in Land

FDI in land by a foreign company or state that is based on a lasting interest in taking control over land use rights. The transaction includes either rights of land use or land-ownership. The land use rights are generally valid for a limited period and can possibly be extended. Source: (Own definition following the general definition of FDI). Increased access to FDI is seen as one of the key benefits of globalization because it is thought to lead to capital formation, technology and knowledge transfer, higher wages and greater job opportunities. The UN Conference on Finance for Development argues that FDI, along with international financial stability, are vital components to national and international development efforts. Many other international policy documents stress the value of FDI but critics are concerned that its benefits are very unequally distributed, both globally and within societies.

Source: WHO.

Forest Area

Forest area is the land spanning more than 0.5 ha with trees higher than 5 metres and a canopy cover of more than 10 %, or trees able to reach these thresholds in situ. It does not include land that is predominantly under agricultural or urban land use. Forest is determined both by the presence of trees and the absence of other predominant land uses. The trees should be able to reach a minimum height of 5 metres (m) in situ. Areas under reforestation that have not yet reached but are expected to reach a canopy cover of 10 % and a tree height of 5 m are included, as are temporarily unstocked areas, resulting from human intervention or natural causes, which are expected to regenerate. It includes: areas with bamboo and palms provided that height and canopy cover criteria are met; forest roads, firebreaks and other small open areas; forest in national parks, nature reserves and other protected areas such as those of specific scientific, historical, cultural or spiritual

interest; windbreaks, shelterbelts and corridors of trees with an area of more than 0.5 ha and width of more than 20 m; plantations primarily used for forestry or protective purposes, such as: rubber-wood plantations and cork, oak stands. It excludes: tree stands in agricultural production systems, for example in fruit plantations and agroforestry systems. The term also excludes trees in urban parks and gardens.

Source: FAO.

Sovereign Wealth Funds (SWFs)

Sovereign wealth funds are government investment vehicles that are funded by foreign currency reserves but managed separately from official currency reserves. Basically, they are pools of money governments invest for profit.

Source: U.S. Department of the Treasury.

Sustainable Development

According to the United Nations World Commission on Environment and Development (1987), sustainable development is "development that meets the needs of the present without compromising the ability of future generations to meet their own needs." According to the more operational (practice-oriented) definition used by the World Bank, sustainable development is "a process of managing a portfolio of assets to preserve and enhance the opportunities people face." Sustainable development includes economic, environmental, and social sustainability, which can be achieved by rationally managing physical, natural, and human capital.

Source: World Bank.

Sustainable land use

Land use that achieves production sufficient to meet the needs of present and future populations while conserving or enhancing the land resources on which that production depends.

Source:World Agroforestry Centre

Transnational corporations (TNCs)

Transnational corporations are incorporated or unincorporated enterprises comprising parent enterprises and their foreign affiliates. A parent enterprise is defined as an enterprise that controls assets of other entities in countries other than its home country, usually by owning a certain equity capital stake. An equity capital stake of 10% or more of the ordinary shares or voting power for an incorporated enterprise, or its equivalent for an unincorporated enterprise, is normally considered as the threshold for the control of assets. A foreign affiliate is an incorporated or unincorporated enterprise in which an investor, who is a resident in another economy, owns a stake that permits a lasting interest in the management of that enterprise (an equity stake of 10% for an incorporated enterprise, or its equivalent for an unincorporated enterprise).

Source: World Investment report 2009

Reported FDI in land (2000-2009) exceeding 5,000 ha

Africa				
Target Country	**Investor**	**Dimension**	**Type of Land Use**	**Business Status**
Angola	Lonrho (UK)	25,000 ha leased (Lonrho is negotiating for a further 125,000 ha in Mali and Malawi)	Rice	Signed
Cameroon	IKO (China)	10,000 ha	Rice	Implemented
	SOCAPALM (Belgium)	58,063 ha for 60 years	Palm oil	Signed
Democratic Rep. of the Congo	China (ZTE International)	2.8 million ha	Agrofuel oil palm plantation	Signed
	Eni (Italy)	180,000 ha	Palm oil	
	MagIndustries (Canada)	68,000 ha	Eucalyptus	Signed
Egypt	Jenat; Joint venture of Tadco, Almarain and Al-Jouf (Saudi Arabia)	10,000 ha US$ 100 million	Barley, wheat, and livestock feed	Unknown
	Janan (UAE)	42,000 ha	Wheat (no export planned)	
Ethiopia	Flora EcoPower (Germany)	56,000 ha	Agrofuel crops; contract farming arrangement	Signed; right of use for 50 years
	India	US$ 4 billion	Agriculture, flower growing, and sugar estates	Unknown
	Karuturi (India)	40,000ha	Maize, rice and vegetables	Signed, Ethiopia has agreed to grant in total 300,000 ha
	Fri-El Green Power (Italy)	30,000 ha	Agrofuels	Signed
	Ardent Energy Group (USA)	15,000 ha	Agrofuels	Signed
	AgriNexus (Malaysia) with Mohammed al-Amoudi (based in Saudi Arabia and Ethiopia)	30,000ha	Sugar cane; 100,000 ha for agrofuels planned	Signed
	Ethio Agri-CEFT (Saudi Arabia)	19,200 ha	Coffee, tea, crops	Signed
	Sun Biofuels (UK)	80,000 ha	Jatropha	Implemented
	Djibouti	5,000 ha	Unknown	Signed
	Dubai World Trading Company (UAE)	5,000 ha	Joint venture for tea	Signed
	Becco Biofuels (UK)	35,000 ha	Agrofuels	Signed or under negotiation
	Hovev Agriculture Ltd. (Israel)	40,000 ha granted expanding to 400,000 ha	Agrofuels	Signed
	The National Biodisel Corporation (NBC) (Isreal, Germany, USA)	190,000 ha	Jatropha and other agrofuels	Signed or under negotiation
	UAE	5,000 ha; US$ 300 million	Tea	Signed
	IDC Investment (Denmark)	15,000 ha	Jatropha	Implemented
	LHB (Israel)	100,000 ha	Jatropha	

Africa				
Target Country	**Investor**	**Dimension**	**Type of Land Use**	**Business Status**
Kenya	Qatar	40,000 ha leased in		
	exchange for funding US$2.3 billion port	Fruit and vegetable cultivation	Signed	
	Bioenergy International (Switzerland)	93,000 ha	Jatropha	Planned
Liberia	Dominion Farms (USA)	17,000 ha	Rice and other crops	Implemented since 2003 planned to be expanded
	Equatorial Biofuels Limited (EBF), wholly owend by Equatorial Palm Oil (EPO) (UK)	169,000 ha	Palm oil	Signed
Madagascar	Sime Darby Bhd (Malaysia)	220,000ha; US$ 800 million	Palm oil and Rubber	Signed
	Varun (India)	230,000 ha	Rice, maize and lentils	Planned
	DAEWOO Logistics (South Korea) / Madagascar Future Enterprise (MFE)	1.3 million ha	Maize and 300,00 ha palm oil	Discontinued
	MadabeefMalagasy company, financed and owned by british investors	200,000 ha; US$ 480 million	Livestock	
	SUCOCOMA (China)	10,000 ha	Sugar cane	
	Avana Group (United Kingdom)	10,000 ha	Jatropha	Planned
	Global Agro-fuel (Lebanon)	100,000 ha	Jatropha	
	Delta Petroli (Italy); investment of nearly EUR 50 million	50,000 ha	Jatropha	
	ER Company	80,000 ha	Jatropha	Unknown
	Bio Energy Limited (Malagasy company with Australian interests)	120,000 ha	Jatropha	
	GEM Biofuels (UK)	452,500 ha	Jatropha	
	J-Oils (France)	10,000 ha	Jatropha	
	JSL Agro-fuels (Germany)	30,000 ha	Jatropha	Planned
	New Ecology Oils (NEO) (France) investment of EUR 8.4 million in the first two years	35,000 ha	Jatropha	
	NOTS Renewable Energy (The Netherlands)	15,000 ha	Jatropha	
	Oji Paper (Japan)	30,000 ha	Eucalyptus and Acacia	
	OSHO Group (South Africa)	100,000 ha	Sugar cane production for ethanol	
	Sithe Global (USA)	60,000 ha	Palm oil production for ethanol	
	SOPREMAD (France)	15,000 ha	Sugar cane production for ethanol	

Reported FDI in land (2000-2009) exceeding 5,000 ha

Africa				
Target Country	**Investor**	**Dimension**	**Type of Land Use**	**Business Status**
Madagascar	Tozzi Renewable Energy (Italy)	100,000 ha; US$ 300 million	Jatropha	
	Unitech and United Technologies Group(USA)	150,000 ha	Sunflower for oil production	
	Les Cultures du Cap Est; Malagasy company, financed by an Indian Group	9,100 ha	Palm oil for industrial purposes	
	DEKO SA(South Africa); in Madagascar represented by DEKOMAD	33,000 ha	Agroforestry (pine)	
Mali	Project Malibya; Libyan African Investment Portfolio (LAP) (Lybia)	100,000 ha	Rice	Signed
	Millenium Challenge Account (MCA) (USA)	16,000 ha	Rice and vegetables	Signed
	Al-Korayev (Saudi Arabia)	100,000 ha	Unknown	Planned
	South Africa and China	55,000 ha	Sugar cane	Planned
	Libya Projet de SOSUMAR	US$ 170 million	Sugar cane	Planned but problems concerning compensation of the farmers
Malawi	Djibouti	55,000 ha	Unknown	Signed
Mozambique	China	US$ 800 million	Rice	Discontinued (political opposition)
	Sekab (Sweden)	100,000 ha	Agrofuel crops	Under negotiation
	Trans4mation Agric-tech Ltd (UK)	10,000 ha	Unknown	Signed
	Agri SA (South Africa)	10 million ha	Maiz, soya, poultry and diary	Expected to be implemented soon
	Procana, owned by Bio Energy Africa (British interests)	24,500 ha	Sugar cane	Signed
	Sun Biofuels (UK)	Unknown	Jatropa	Implemented
	Agriterra (Agricultural Investmentfund with ain shareholders in US and Europe)	20,000 ha	Livestock	Implementated
	CAMEC (UK)	30,000 ha	Sugar cane for agrufuels	Implemented
Nigeria	Trans4mation			
Agric-tech Ltd (UK)	10,000 ha	Unknown	Signed	
	Viscount Energy (China)	US$ 80,000	Sugar cane, Cassava	In negotioation with the government
	Vietnam Africa Agricultural Development Company (VAADC) (Vietnam)	10,000 ha	Rice	Planned
Republic of the Congo	Agri SA (South Africa)	200,000 ha offered to farmers' union	Unknown	Planned but delayed

Africa				
Target Country	**Investor**	**Dimension**	**Type of Land Use**	**Business Status**
Sudan	Saudi Arabia (Hail Agricultural Development Co)	9,200–10,117 ha leased (60% financed by Saudi government)	Wheat, vegetables, and animal feed	Signed
	South Korea	690,000 ha	Wheat	Signed
	United Arab Emirates (UAE)	378,000 ha	Unknown	Implemented
	UAE (Abu Dhabi Fund for Development)	30,000 ha	Corn, alfalfa, and possibly wheat, potatoes, and beans	Signed
	Egypt	Unknown	2 million tons of wheat annually	Signed
	Citadel Capital (Egypt)	210,000 ha; right of use for 99 years	Sugar cane, corn, wheat	Signed
	Jarch Capital (USA)	400,000 ha	Unknown	Signed
	Saudi Arabia	500,000 ha	Unknown	Requested
	Jordan	25,000 ha	Livestock and crops	
Tanzania	Sun Biofuels (UK) with Tanzania Investment Center (TIC)	5,500 ha	Jatropha	Signed
	China (Int. Water and Electric Corp.)	101,000 ha	Corn	Rights of use received
	Tadco (Saudi Arabia)	US$ 40 million	Wheat	Planned
	D1 Oils (UK)	60,000 ha	Jatropha	Signed
	South Corea	ca. 100,000 ha	Food production and processing	Under negotiation
	CAMS Group (UK)	45,000 ha	Sweet sorghum	Implemented
Uganda	Heibei Company (China)	40,500 ha	Poulty, cattle, maiz, rice wheat	Signed for first 1000 ha; further operations planned
	Egypt	840,000 ha	Unknown	Planned
Zambia	Marli Investments Ltd.	US$ 69 million	Agrofuels	Planned
	China	2 million ha	Jatropha	Requested
	D1 Oils (UK)	45,000 ha	Agrofuels	Signed
Zimbabwe	China (Int. Water and Electric Corp.)	101,000 ha	Corn	Right of use received
Egypt, Ethiopia and Sudan	Tadco (Saudi Arabia)	US$ 40 million	Wheat	Planned
	Vietnam Africa Agricultural Development Company (VAADC) (Vietnam)	10,000 ha	Rice	Planned
Republic of the Congo	Agri SA (South Africa)	200,000 ha offered to farmers' union	Unknown	Planned but delayed

Reported FDI in land (2000-2009) exceeding 5,000 ha

Asia				
Target Country	**Investor**	**Dimension**	**Type of Land Use**	**Business Status**
Cambodia	Vietnam Rubber Group	100,000 ha	Rubber	Unknown
	Chinese Farm Cooperation – Pheapimex Group	right of use for 70 years; 300,000 ha	"develop spare forest"	Signed (2000)
	Marubeni Corporation	2004: feasibility study for 11,231 ha concession area; 7,600 ha rubber plantations	Rubber	Planned (since 2004)
	Rethy Investment Cambodia Oil Palm Co., Ltd. (MRICOP); joint venture owned by Mong Rethy of Cambodia (60%), Borim Universal of Korea (30%) and Lavanaland of Malaysia (10%)	11,000 ha	Palm oil	Land concessions eceived 1996
	Joint venture between Mittapheap-Men Sarun and Rama Khmer International of Cambodia, and Globaltech Sdn. Bhd. Of Malaysia	20,000 ha	Palm oil	land concessions eceived 1995
	Kuwait	300,000 ha; US$ 200 million	Agricultural production; rice	Planned (May 2008)
	Qatar	Unknown	Hydropower, agricultural production	Unknown
	China	Unknown	20-30 years land lease; rice, grains and livestock feed for export to Korea	Planned (2008)
	China	130,000 ha	rice	Signed
	South Korea	200,000 ha	"win-win to restore forestry and produce Agrofuels"	Signed (October 2009)
	Green Rich Co. Ltd.(China)	60,200 ha now reduced to	Palm oil and acacia	Implemented since 1998; right fo use for 70 years
	China National Corporation for Oversea Economic Cooperation Loadstars Development Co., Ltd.	8,000 ha	Agricultural and industrial crops	Implemented since 2000
China	Goldman Sachs (USA)	US$ 450 – 500 million	Poultry and pig farms	Implemented
Indonesia	Saudi Arabia (Bin Laden Group)	500,000 ha; US$ 4.3 billion	Rice	Discontinued
	India	56,000 ha	Palm oil	Implemented
	Sime Darby Bhd (Malaysia)	195,856 ha	Palm oil	Implemented

Asia				
Target Country	**Investor**	**Dimension**	**Type of Land Use**	**Business Status**
Laos	Vietnam Rubber Group	100,000 ha	Rubber	Unknown
	Kuwait	200,000 ha	Crop production for export	Memorandom of cooperation Signed; deals Planned
	Japan	34,000 ha	Food, energy, cash crops	Unknown
	China,ZTE International (Chinese) in partnership with Dynasty Company, a Laotian firm	10,000 ha	Cassava	Unknown
	Thailand,Mitr Lao Sugar, a subsidisary of Mitr Phol Group Co. Ltd.	10,000 ha	Sugar cane	Land concession in 2006 (8,000ha are planted); request for further 10,000 (2009) and 24,000 (in 3-5 years)
Malaysia	Sime Darby Bhd	329,470 ha	Palm oil	Implementated
Pakistan	Saudi Arabia and other Gulf States	405 000 ha	Food	Under negotiation
	UAE (Abraaj Capital)	324,000 ha	Unknown	Implemented
Philippines	Bahrain	10,000 ha	Agro-fishery	Signed
	China	1.24 million ha	Unknown	Discontinued
	Qatar	100,000 ha	Unknown	Planned
	Saudi Arabia	20,000 ha	banana pineapples	Planned
	South Korea	20,000 ha	Jatropha and sugar cane for ethanol	
Vietnam	Qatar Investment Authority (Qatar)	US$ 1 billion joint fund	Agricultural production	Unknown

Reported FDI in land (2000-2009) exceeding 5,000 ha

Eastern Europe and Central Asia				
Target Country	**Investor**	**Dimension**	**Type of Land Use**	**Business Status**
Lithuania, Estonia and Latvia	Lithuania	35,000 ha	Agricultural production	Fund raised 2003
Ukraine	Morgan Stanley (USA)	40,000 ha	Unknown	Implemented
	Landkom (UK)	100,000 ha	Unknown	Implemented
	Renaissance Capital (Russia)	331,000 ha	Unknown	Implemented
	Libya	100,000 ha	Unknown	Signed
Russia	Alpcot Agro (Sweden)	128,000 ha	Unknown	Implemented
	Trigon (Denmark)	100,000 ha	Unknown	Implemented
	Black Earth Farming (Sweden)	331,000 ha	Unknown	Implemented
	Khorol Zerno LLC (South Korea major stakeholder)	10,000 ha	Unknown	Signed
	Russian Grain (Russia)	87,000 ha	Wheat, barley	Fund raised

Latin America				
Target Country	**Investor**	**Dimension**	**Type of Land Use**	**Business Status**
Argentina	Olam International (Indian owned))	12,000 ha	Soybeans, corn	Signed
	Arumugam (Malaysia)	600,000 ha	Agrofuels	Signed
	South Korea	21,000 ha	Unknown	Signed
Brazil	Mitsui (Japan)	100,000 ha	Soybeans	Implemented
	CalyxAgro	28,000 ha	Soybeans, cotton, sugar cane	Fund raised
	Cosan (Brazil) and	128,000 ha	Unknown	Implemented

Other				
Target Country	**Investor**	**Dimension**	**Type of Land Use**	**Business Status**
South Africa and other Sub-saharan countries	African Land Fund (ALF) Emergent Asset Management and Grainvest	150,000 ha	Agricultural production	EUR 2 billion raised, total of EUR 3 billion planned
World	Saudi Company for Agricultural Investment and Animal Production (Saudi Arabia)	US$ 800 million company to invest in agricultural projects abroad		Unknown
	Qatar Investment Authority (Qatar)	US$ 60 billion sovereign wealth fund to invest in food and energy		Unknown
	Agricapital (Bahrain)	US$ 1 billion investment vehicle formed by Abu Dhabi Investment House, Ithmaar Bank, and Gulf Finance House to invest in agriculture		Unknown
Africa	Agri-Vie (South Africa's Development Bank, Kellogg Foundation, etc.)	Private equity fund is raising up to US$ 100 million to invest in agricultural projects in Ghana, Kenya, Nigeria, South Africa, Tanzania, and Uganda		Unknown
Turkey	Bahrain (Agricapital)	US$ 500 million may rise to US$ 3 – 6 billion	Unknown	Signed
Georgia, Egypt, Pakistan	Bahrain MAP (Market Access Promotion) Services Group	US$ 2.7 million	MAP has joined other Gulf partners to form a Middle East Food Fund that will collectively invest in food production in nearby countries for the Gulf market	Implemented

Sources: Own compilation based on GRAIN, 2008; V. BRAUN AND MEINZEN-DICK (IFPRI), 2009; COTULA ET AL. (IIED, FAO, IFAD), 2009.

Deutsche Gesellschaft für
Technische Zusammenarbeit (GTZ) GmbH

Dag-Hammarskjöld-Weg 1–5
65760 Eschborn/Germany
T +49 61 96 79-0
F +49 61 96 79-11 15
E info@gtz.de
I www.gtz.de