

# Large-scale land appropriations

**Analysis of the phenomenon  
and proposed guidelines for future action**

June 2010

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## Notice

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**M**any development institutions, researchers and civil society organisations in both developed and developing countries are concerned about the way that the 'appropriation' and concentration of cultivable lands in several regions of the world by large – often foreign – companies accelerated over the course of 2008 and 2009. These are not new phenomena in themselves, but they are taking place in a new context of soaring food prices, 'hunger riots', energy crises, demand for agrofuels and the current financial crisis.

Following a meeting at the end of 2008 organised by the French Ministry of Foreign and European Affairs (MAEE) as a result of the situation in Madagascar, members of the Land Tenure and Development Technical Committee felt that they should follow this up and contribute to the official French position beyond the framework of the French Development Agency (AFD) and the MAEE.

An extended working group was set up, bringing together the Land Tenure and Development Technical Committee, members of the Inter-ministerial Food Security Group (GISA) and representatives of civil society organisations. The committee asked the association AGTER<sup>1</sup> to lead a joint research process on this subject, using the mechanisms already put in place by various organisations in the context of the 'Land policy formulation support project' funded by the AFD to monitor developments in this field<sup>2</sup>.

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1. AGTER is an international association created under French law to contribute to improved governance of land, water and natural resources ([www.agter.asso.fr](http://www.agter.asso.fr)). In the first quarter of 2009, the International Land Coalition asked AGTER to produce a conceptual framework, methodology and terms of reference for a global study and numerous thematic and local studies on commercial pressures on land.

2. The objective of the Rural land policy formulation support project is to '*make conceptual frameworks and in-depth knowledge available to the actors involved in defining and implementing land policies and interventions, to help increase the relevance of their thinking and actions*'. It funds actions and projects in the fields of information, communication and training, as well as research and activities to build on previous experience. It is steered by the Land Tenure and Development Technical Committee, under the auspices of the AFD and the MAEE.

The idea was not to add one more study to actions by the World Bank, FAO, IFAD and the International Land Coalition (ILC), but to create the conditions for fruitful collaboration between permanent members of the Land Tenure and Development Technical Committee who already work on this issue in various ways (IIED, AGTER, GRET, HUB Rural de Dakar, Landnet West Africa, Inter-Réseaux, etc.) and members of GISA and other national and international initiatives.

The analysis and set of proposals presented below is a synthesis of the extended Working Group's thinking on the global phenomenon of large-scale land appropriations. It was produced under the auspices of Michel Merlet and Mathieu Perdriault, respectively Director and Head of Development for AGTER, an association that contributes to improved governance of land, water and natural resources.

Written and oral contributions to this document were also provided by Delphine Babin Pelliard (MAEE), Vincent Basserie (French technical assistant to the Hub Rural, Dakar), Frédéric Bazin (IRAM), Pierre-Marie Bosc (CIRAD), Antoine Bouhey (Peuples Solidaires-ActionAid), Cécile Broutin (GRET), Pascal Carrere (MinEco, DGTPE), Jean-Pierre Chauveau (IRD), Gérard Chouquer (FIEF), Jean-Philippe Colin (IRD), Joseph Comby (ADEF, Land Tenure consultant), Lorenzo Cotula (IIED, UK), Jean-Denis Crola (Oxfam France Agir ici), Michel Doucin (Ambassador responsible for bioethics and corporate social responsibility, MAEE), Nordine Drici (MAEE), Alain Durand Lasserre (CNRS), Benoît Faivre-Dupaigre (MAEE), Clara Jamart (AGTER), Lionel Galliez (Conseil supérieur du notariat), Willy Giacchino (Conseil supérieur du notariat), Philippe Lavigne Delville (GRET, LASDEL), Pierre Laye (MAEE), Etienne Le Roy (Laboratoire d'anthropologie juridique de Paris, LAJP), Aurore Mansion (GRET), Ambroise Mazal (CCFD-Terre Solidaire), Didier Nourissat (Conseil supérieur du notariat), Vatché Papazian (AFD), Emilie Pélerin (GRET), Philippe Pipraud (MAAP), Caroline Plançon (LAJP), Laurent Polidori (ESGT-CNAM), Alain Rochegude (LAJP), Thomas Ruger (Agence de services et de paiement), Irène Salençon (MAEE), Sujiro Seam (MAEE), Harris Sélod (French technical assistant to the World Bank), Cécile Sportis (MAEE), André Teyssier (CIRAD), Marie-Cécile Thirion (AFD), José Tissier (AFD), Lionel Vignacq (MAEE). The final version was translated from French into English by Lou Leask.

This paper reflects the dominant position among members of the working group, but does not discuss that of their respective institutions.

The research process was enriched by the diversity of its participants and their various personal positions. Many intermediate versions of this document were discussed and analysed, and every effort was made to ensure that the synthesis was as consensual as possible without losing sight of the need to come up with innovative proposals. As such, the views presented in the final version are not necessarily shared by every participant in the research process.

This document is also available in French, and can be downloaded from the Land Tenure and Development Technical Committee website in French and English ([www.foncier-developpement.org](http://www.foncier-developpement.org)).

In accordance with the Working Group's initial remit, this collaborative effort also generated a paper on the official position taken by France, which will be published in the near future.<sup>3</sup>

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3. The paper was being validated by the secretariat of the inter-ministerial Committee on international cooperation and development (CICID) as this document went to print. The French version is entitled *Appropriation de terres à grande échelle et investissement agricole responsable. Pour une approche garante des droits de l'homme, de la sécurité alimentaire et du développement durable*; the English version, *Large-scale land acquisition and responsible agricultural investment. For an approach respecting human rights, food security and sustainable development*.



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## Abbreviations

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ADEF	<i>Association des études foncières</i> , Land Tenure Studies Association
AFD	<i>Agence française de développement</i> , French Development Agency
AGTER	<i>Association pour l'amélioration de la gouvernance de la terre, de l'eau et des ressources naturelles</i> , Association for the improvement of land, water and natural resources
ARD	Agriculture and Rural Development Departement (World Bank)
CCFD Terre Solidaire	<i>Comité catholique d'action contre la faim et pour le développement – Terre solidaire</i> , Catholic Committee against Hunger and for Development
CICID	<i>Comité interministériel de la coopération internationale et du développement</i> , Inter-ministerial Committee for International Co-operation and Development
CIRAD	<i>Centre de coopération internationale en recherche agronomique pour le développement</i> , Center for International Cooperation in Agronomic Research for Development-related
EBRD	European Bank for Reconstruction and Development
ESGT-CNAM	<i>Ecole supérieure des géomètres et topographes - Conservatoire national des arts et métiers</i> , Superior School of Land Surveying and Topography - National Conservatory of Arts and Crafts
EU	European Union
FAO	Food and Agriculture Organization of the United Nations
FDI	Foreign Direct Investment
FIAS	Foreign Investment Advisory Service (World Bank Group)
FIEF	<i>Fédération internationale pour les études foncières</i> , International Federation for land Studies
GISA	<i>Groupe interministériel sur la sécurité alimentaire</i> Inter-ministerial Food Security Group
GRET	<i>Groupe de recherche et d'échanges technologiques</i> , Research and Technological Exchange Group
HLPE	High Level Panel of Experts (within the framework of the Global Partnership for Agriculture and Food Security)
IAASTD	International Assessment of Agricultural Knowledge, Science and Technology for Development
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICSID	International Center for Settlement of Investment Disputes
IFAD	International Fund for Agricultural Development

IFC	International Finance Corporation (World Bank Group)
IFPRI	International Food Policy Research Institute
IIASA	International Institute for Applied Systems Analysis
IIED	International Institute for Environment and Development
ILC	International Land Coalition
ILO	International Labour Organisation
IRAM	<i>Institut de recherches et d'applications des méthodes de développement</i> , Institute for research and application of development methods
IRD	<i>Institut de recherche pour le développement</i> , Institute for Development Research
LAJP	<i>Laboratoire d'anthropologie juridique de Paris</i> , Department of Legal Anthropology, Université Panthéon, Sorbonne, Paris
LASDEL	<i>Laboratoire d'études et de recherche sur les dynamiques sociales et le développement local</i> , Laboratory for the Study and Research on Social Dynamics and Local Development
MAAP	<i>Ministère de l'Alimentation, de l'Agriculture et de la Pêche</i> , Ministry of Food, Agriculture and Fishing
MAEE	<i>Ministère des Affaires étrangères et européennes</i> , French Ministry of Foreign and European Affairs
MIGA	Multilateral Investment Guarantee Agency (World Bank Group)
MinEco-DGTPE	<i>Ministère de l'Economie de l'Industrie et de l'Emploi - Direction générale du Trésor et de la Politique économique</i> , Ministry of the Economy, Industry and Employment - Office of the Treasurer and Receiver General
OECD	Organization for Economic Co-operation and Development
UNCTAD	United Nations Conference on Trade And Development
WTO	World Trade Organization

## Introduction

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**O**ne in six people now suffer from hunger, despite the fact that global agricultural production increased more quickly than population growth in the years between 1950 and 2000.<sup>4</sup> Therefore, we need to review the decisions of the past and lay the foundations for a new global food and agricultural policy.

In order to achieve the objective of food security,<sup>5</sup> food has to be available in sufficient volumes, and people need to have enough money to be able to produce or buy adequate food. This supposes that in addition to doubling agricultural production between now and 2050 in order to feed 9 billion people, there will be a significant increase in effective demand and thus the incomes of the poorest people, since more than one in two people currently survive on less than \$2 per day.

It is widely agreed that investment in agriculture needs to increase substantially. The question is, how this should be prioritised.

- Should investments focus on large-scale farms using paid labour, or on family farms?
- Should the priority be to improve infrastructures, processing channels and storage and marketing facilities? Or to start with land planning, irrigation, drainage, soil protection, etc.?
- Who are the main investors today? And which actors would be best placed to contribute to these objectives: national governments, large national or foreign companies, financial institutions, agro-industrial groups or family farmers themselves?
- How can we optimise the global use of capital, labour, land and natural resources?

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4. FAO (2008) *The state of food insecurity in the world*.

5. We use the FAO definition of food security as 'a state of affairs where all people at all times have physical and economic access to sufficient, safe and nutritious food to meet their dietary needs and food preferences for an active and healthy life', World Food Summit, 1996.

These questions led us to explore the collective procedures needed to define a framework for intervention that could provide food security, and to consider the public policies and institutional mechanisms that could help us meet this and other major climatic, environmental, political and social challenges to human survival.

Having defined the problem, the Working Group began by focusing on the possible consequences that land acquisitions might have on food security, before broadening the analysis to the more global economic, political, social and environmental consequences of this phenomenon and its implications for human rights, and moving on to consider systems of land governance.<sup>6</sup>

This paper is divided into three sections:

- The first section describes the observable phenomena of large-scale land appropriation and concentration;
- The second section considers the key issues associated with these processes;
- The third section presents the proposals formulated by the Working Group.

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6. The definition of land governance used here is taken from the *White paper on Land governance and security of tenure in developing countries* produced by French development cooperation actors: *'It is generally claimed that there is broad international consensus on the normative character and universality of "good governance", which is closely linked with the notion of democracy. This approach is restrictive, and the universality of the principles of "good governance" does not always stand the test of diversity. Each society judges the action taken by its State according to its history, level of development and political choices. More specifically, "good" land governance is based on a set of traditions and institutions through which authority is exercised in a given country, and the assumption that governments have the capacity to formulate land policies in negotiation with their citizens and ensure that they are implemented in accordance with the interests of all concerned, which often requires significant changes in the legal and institutional framework.'*

# The situation

The phenomenon of large-scale land appropriation and concentration first came to global attention in 2008. Since then, it has been the subject of much debate and controversy in both the media and international organisations. Given the gravity of the possible consequences of these ongoing processes, it is important to determine their real nature and avoid characterising them in a way that would undermine subsequent attempts to address them.

The Land Tenure and Development Technical Committee decided to use the term ‘large-scale appropriation and concentration of land’ rather than the ‘massive land acquisitions’ employed by the World Bank,<sup>7</sup> or ‘land grabs’ reported by many observers and civil society organisations.

This decision was based on research that members of the Land Tenure and Development Technical Committee have been engaged in for over ten years, on the appropriation of land and natural resources and the nature of rights to land and resources, land management, the genesis of land rights and land governance in general.<sup>8</sup>

This is not a purely French approach. It incorporates different conceptions of land appropriation based on different legal systems – the civil code, Common Law, Islamic law and indigenous customary systems – and has much in common with Elinor Ostrom’s work on taking account of shared resources in collective action.<sup>9</sup> Like many other actors working on land matters, members of the Land Tenure and Development Technical Committee see full land ownership as just one of many modes of land tenure. Furthermore, it is not necessarily the best way of meeting the challenges of the modern world. What is needed is recognition of the plurality

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7. The term ‘*acquisition*’ implies that land can be purchased. One can talk about ‘*acquisitions of land rights*’, but this is slightly different because certain rights can be sold while others cannot – and more work needs to be done to identify which is which. The International Land Coalition talks of ‘*commercial pressures on land*’, a rather vague term that can be applied to different mechanisms. The term ‘*transfer of agricultural assets*’ used by the French Prime Ministry’s Centre for Strategic Analysis focuses on the financial aspects of transfers, while ‘*land grabbing*’ implies the simultaneous takeover of control and concentration. We decided to use the term ‘large-scale appropriation and concentration of land’ in order to take account of two distinct phenomena, which, as we will show in this paper, should not be confused with each other.

8. See the publication by the Land Tenure and Development Technical Committee, *Land governance and security of tenure in developing countries*, White Paper by French Development Cooperation actors, coordinated by Lavigne Delville, P. and Durand Lasserre, A. MAEE, AFD, Paris, 2009. See also previous work by Lavigne Delville, P. (ed.) *Quelles politiques foncières en Afrique noire rurale ? Réconcilier pratiques, légitimité et légalité*. Ministry for Coopération. Karthala, Paris, 1998 and Le Roy, E., Karsenty, A., Bertrand, A. (eds) *La sécurisation foncière en Afrique. Pour une gestion viable des ressources renouvelables*. Karthala, Paris, 1996.

9. Ostrom, Elinor (1990) *Governing the commons. The evolution of institutions for collective action*. Cambridge University Press.

of individual and collective rights over land and resources, and the fact that that the market is only one of a whole range of ways of distributing these rights.

We will start by defining the phenomenon of large-scale land appropriation, and how it differs from its historical antecedents.

The analysis presented below is mainly based on information reported by the press in different countries around the world, particularly material gathered by the NGO GRAIN,<sup>10</sup> the International Land Coalition<sup>11</sup>, the Hub Rural,<sup>12</sup> published or ongoing studies by various research bodies and international institutions,<sup>13</sup> testimony from several investors and specific works by farmer organisations.

## **The drivers of land appropriation and concentration**

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### **• Diverse actors with different motivations**

These processes involve different actors with very different motivations and interests.

#### **Public and private actors**

The media have reported on a series of big agricultural investments in the form of large-scale appropriations and concentrations of land rights in foreign countries by certain corporations or countries. The names that crop up most often are those of countries in the Arabo-Persian Gulf (Saudi Arabia, United Arab Emirates, Kuwait and others), China, South Korea, Japan, India and Libya. However, national investors are also behind this kind of operation,<sup>14</sup> which may involve sovereign wealth funds, public and para-statal enterprises, public development banks, governmental agencies and private actors.<sup>15</sup>

International financial organisations and institutions also have a direct and indirect influence on these investments, by funding projects and enterprises or actively promoting direct foreign investments. This is particularly true of the World Bank, which has created several special-

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10. GRAIN, *Seized! The 2008 land grab for food and financial security*. October 2008. See also <http://farmland-grab.blogspot.com/>.

11. Merlet, M., Jamart, C. *Commercial Pressures on Land Worldwide. Issues and Conceptual Framework*. AGTER. ILC (International Land Coalition), April 2009. See also <http://www.landcoalition.org/cpl-blog/>.

12. Hub Rural website: <http://www.hubrural.org/>. See also Basserie, Vincent ; Ouedraogo, Hubert (2009) 'La quête des terres agricoles en Afrique Sub-saharienne', *Grain de sel*, n°45. December 2008 - January 2009.

13. For example: (i) Cotula, L., Vermeulen, S., Leonard, R. and Keeley, J. (2009) *Land grab or development opportunity? Agricultural investment and international land deals in Africa*, ILED, FAO, IFAD, 2009; (ii) Von Braun, Joachim and Meinzen-Dick, Ruth, "'Land grabbing" by foreign investors in developing countries: risks and opportunities'. IFPRI Policy Brief 13, April 2009; (iii) Hallam, David, 'International Investments in Agricultural Production', paper presented at the conference Land Grab: the Race for the World's Farmland, Woodrow Wilson centre, Washington DC, FAO (Trade and Markets Division), 5th May 2009; (iv) FAO 'De l'accapement des terres à la stratégie du gagnant-gagnant. Saisir les opportunités offertes par les investissements internationaux dans l'agriculture'. *Perspectives Economiques et Sociales, Synthèses n°4*, June 2009.

14. As in India, Ethiopia, and West Africa for example.

15. Large private enterprises (agricultural production and processing companies, trade and/or transport companies, real estate investors), investment funds mobilised by private banks, pension funds, speculative funds, etc. Source: GRAIN, Corporate investors lead the rush for control over overseas farmland, October 2009.

ist institutions<sup>16</sup> to make investments, encourage national governments to reform their legislation in order to facilitate and secure foreign investments, and to advise investors.<sup>17</sup> Other major actors include bodies such as the European Bank for Reconstruction and Development (EBRD), which plays an important role in funding agricultural projects in Eastern Europe, the Cooperation Council for the Arab States of the Gulf and the West African Economic and Monetary Union.

The modalities for setting up and putting investments in place are often complex, and the fact that public and private structures are frequently involved in the same project<sup>18</sup> makes it difficult to distinguish between public and private capital investments.

The governments of host countries maintain that they are seeking to develop their countries, and since international financial institutions believe that this involves opening up their economies to the global market and substantially increasing their exports, presidents or ministers who attract foreign investment tend to be viewed as excellent housekeepers. A veil of silence is drawn over the opportunities for personal enrichment available to the government officials and high-ranking bureaucrats involved in preparing these agreements, or their influence on policy decisions.

### **Why are these actors investing in land?**

#### **Expected development prospects for markets for raw materials**

Many investors believed that the rise in the price of primary agricultural products in 2007 and 2008 heralded a reversal of a century-long downward trend in global prices. However, not all specialists agree with this anticipated development. The rapid fall in the price of foodstuffs only a few months after it spiked, sparking '*hunger riots*', shows that prices are highly volatile. It also seems to indicate that the downward trend in agricultural prices has yet to bottom out, and will continue for as long as millions of hectares of cultivable land remain available.

To a certain extent, food and agrofuels are competing for the same land.<sup>19</sup> There is no denying that their respective markets are linked, but it is difficult to determine the extent of these links.<sup>20</sup> Markets for agrofuels have existed in Brazil since the mid-1970s, and appeared recently in the United States, Europe and Asia. Public support in the form of subsidies and tax

16. Multilateral Investment Guarantee Agency (MIGA); MIGA's Political Risk Insurance Center (PRI); International Finance Corporation (IFC) : IFC Advisory Service (working directly with firms to demonstrate 'the business case' for desirable practices and promoting investment climate reforms among governments) and IFC financing investment in developing countries activity; Foreign Investment Advisory Service (FIAS) : Technical Assistance to governments for reforms implementation aimed at improved business environments (encouraging and retaining foreign investment)

17. Political, economic and financial advice.

18. Through direct participation, loans, subsidies, tax exemptions, investment guarantees or diplomatic procedures.

19. With regard to pressure on land linked to agrofuels, see GRAIN, 'The new scramble for Africa', *Seedling*, October 2007; Cotula, L., Dyer, N., Vermeulen, S. *Fuelling exclusion? The biofuels boom and poor people's access to land*. IIED, FAO, 2008; FAO, *The state of food and agriculture, biofuels: the risks and opportunities*, 2008; Eide, Asbjorn, 'The right to food and the impact of liquid biofuels (agrofuels)', Right to Food Studies. FAO, 2008.

20. David Mitchell, leading economist in the World Bank Development Prospects Group, provided some figures in a paper produced in April 2008, with the highest estimation ascribing 75% of the increase in the price of agricultural products between 2002 and 2008 to agrofuels. Other estimates are lower, but still significant.



exemptions for processing companies, along with regulatory frameworks that require a growing proportion of fossil fuels to be replaced by agrofuels have facilitated the development of new markets and the emergence of new ground rents<sup>21</sup> in countries whose infrastructures and pedoclimatic and political conditions are suited to the production of raw materials for these new energy sources.<sup>22</sup> The volatility of oil prices has a direct influence on the competitiveness of agrofuels and investors' short-term interest in taking control of large swathes of land to produce them, while predictions that easily exploitable hydrocarbon reserves will dry up have an effect on the medium- and long-term prospects for these markets.

Global demand for wood and forest products has increased with the growth in effective demand from emerging countries, making forests an attractive prospect for investors. But this interest is also due to the fact that the 'unsustainable'<sup>23</sup> exploitation of forest resources opens the way for the development of agricultural and livestock-rearing activities through the appropriation of land and colonisation of new spaces. The appearance of new markets for carbon credits and payments for biomass conservation as part of the effort to tackle global warming further adds to their appeal.

In addition to this, the so-called 'sub-prime' crisis, which began in early 2008 prompting the collapse of the American property market, seems to have encouraged a shift in liquidities towards agricultural land.<sup>24</sup>

### **The quest for food and energy security**

Certain countries with substantial financial resources have limited agricultural capacities and are therefore reliant on imports to cover their food needs. The staggering increases in the price of imported foodstuffs between 2006 and 2008 prompted many of these countries to set up offshore production structures to guarantee their food supplies and shelter them from price rises and various political uncertainties.

Others, such as China, have focused on using their own land to cover their food needs, but appropriated foreign land rights in order to secure their renewable energy supplies. In recent years these countries have acquired the rights to use tens of millions of hectares of land abroad, which they also use to support the development of their private enterprises and maintain their position on the markets for primary agricultural produce.

The governments of developed countries do not seem to be at the forefront of the debate on this issue, but are not entirely absent from it either, as they carry considerable weight in the governance mechanisms of the international financial institutions that decide on policies and measures to increase direct investment in foreign countries. Some of the companies and large groups from these countries active on the international scene are also engaged in initiatives involving huge land acquisitions.

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21. In this document, the term '*rent*' is understood in the sense used by classic economists. See also footnote 28 below.

22. According to OECD calculations, the governments of its member countries (mainly the US and countries in the EU) pumped a total of 10 billion dollars into the first-generation biodiesel and bioethanol sectors in 2006.

23. Term used to denote modes of exploitation that do not allow the resource concerned to regenerate.

24. The search for alternative placements for financial assets identified as 'contaminated' by these dubious creditors contributed to the increase in operations on speculative markets for future cereals contracts in the United States, and then markets for primary agricultural products. After multinational trade corporations bought up storage infrastructure and transport equipment in 2008, investors seemed to turn their attention to primary production and land tenure. By the autumn of that year, major private financial institutions had set up several hundreds of millions of dollars' worth of new investment funds specifically dedicated to the agricultural sector.

### Short- and medium-term profitability and other objectives

Different investors operate in different time frames. Some play the markets for primary agricultural produce, speculating on the capital gains that buying and reselling operations can generate in the space of a few months. Others want to set up agricultural activities on forested land lacking in roads and other amenities, which will take several years to reach maximum production capacity.

Investors in land often work to much shorter timescales than 'productive' investors. In some cases, they may rent the land assets that they want to acquire, and use land as a safe haven or speculative investment, waiting for it to increase in value at a later date.

In certain cases investors seem to see taking control of land and the apparatus of agricultural production as a strategic lever to increase their bidding capacity and secure a dominant position in growth markets.

Their decisions are also influenced by the prospects for the development of agricultural food and energy markets, and in anticipation of mechanisms to reduce greenhouse gases (carbon sinks and quotas, markets for emission quotas).

### • Biased mechanisms for maximising the profitability of capital investments

The ability to maximise the return on an investment is shaped by several factors: speed of capital turnover, rates of return and the risk associated with such operations. The main factors determining the profitability of investments in the agricultural production sector are the price of purchasing or renting land, labour costs, ease of supplying inputs and materials, the existence and proximity of markets, and levels of taxation.

Producers' opportunities to gain access to markets depend on the scale of their production, their logistical resources, the information at their disposal and the organisation of supply chains. Thus, a business that is well positioned on certain international markets can not only invest in processing and marketing, but also in direct production, while local producers outside such supply chains cannot do this even if they have sufficient means of production. The land and means of production available to different categories of producer are shaped by a long history of opportunities, power relations and policies. Producers in developing or Eastern European countries rarely have these resources, which is why greater agricultural investment is needed. The question is, what kind of investment are we talking about?

Many states are offering investors large amounts of land that is suitable for agricultural activity at rock-bottom prices, or even for free.<sup>25</sup> The level of investment per hectare is often very low, raising questions about the real nature of these 'investments', which may simply be a mechanism for taking control of land and appropriating natural wealth. Klaus Deininger and Vera Songwe drew attention to this risk in a short text published by the World Bank in January

25. Sudan is offering investors substantial land packages for a few dollars per hectare: Cotula, L., Vermeulen, S., Leonard, R. and Keeley, J. (2009) *Land grab or development opportunity? Agricultural investment and international land deals in Africa*, IIED, FAO, IFAD, 2009. The association of South African agricultural producers, Agri SA, recently obtained renewable rights to use 200,000 hectares of land in the Republic of Congo (Brazzaville) free of charge for 30 years (extendable to several millions of hectares depending on these producers' business plans), <http://farmlandgrab.blogspot.com/>.

2009,<sup>26</sup> and the risks of predation are also mentioned in a joint declaration made by France and Brazil at the last World Food Summit.<sup>27</sup>

The profitability of such investments is determined by 'natural' factors and pre-existing social and economic situations. But it is also influenced by the exceptional advantages offered to certain investors, and the development of new markets directly linked to the implementation of public policies (such as agrofuel markets). Therefore, in order to put in place policies to optimise the use of resources, it is essential to be able to distinguish between the value created by an investment and the profits obtained from the often unsustainable exploitation of a natural resource or as a direct result of specific policies.

In this context, it is useful to revisit the concept of 'ground rent' developed by classical economists. This demonstrates the existence of wealth that is not directly linked to human activities, since a given technology will generate different levels of revenue on different pieces of land even though it uses the same amount of labour and capital. The difference, or 'differential ground rent', cannot be ascribed to the producer.<sup>28</sup> The private appropriation of such rent amounts to wealth whose accumulation owes nothing to the efficiency of the investment and has no intrinsic economic efficiency.

While this may be clear and indisputable in theory, in practice it is not easy to evaluate the levels of return or distinguish between the 'returns' on income from labour and capital generated by fertility or public policies. Land often has unused potential because its occupants lack the resources, knowledge or contacts that would enable them to produce and market their products. Conversely, investors who are well integrated into markets and have capital, the capacity to process or store produce and access to networks are able to capitalise on this latent potential. It is they who are the source of increased production, even though other productive structures could perform just as well or perhaps even better, given time and access to capital and appropriate technologies.

In theory, the price of land is equivalent to the capitalisation of the revenue that its use can generate, including rent. From society's point of view, purchasing land is not an 'investment' but a simple transfer.

Certain trade-offs may be offered in exchange for the long-term allocation of land use rights. Investors sometimes promise to build infrastructures as part of the 'development package' (communication, health, education, and so on), but all too often such pledges remain vague.<sup>29</sup> Land is generally acquired for little or nothing, whether it is purchased or rented, and the lack of taxes (annual land tax and/or taxes on production) allows investors to appropriate wealth whose existence they have in some way helped reveal. The main purpose of land taxes is to socialise and distribute the rents generated from the land.<sup>30</sup>

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26. Deininger, K. and Songwe, V. 'Foreign investment in agricultural production, opportunities and challenges', *Agriculture & Rural Development, Notes, Land Policy and Administration*, Issue 45, January 2009.

27. Declaration by the Franco-Brazilian peripheral panel at the World Food Summit: 'Pour une nouvelle politique mondiale de l'agriculture et de l'alimentation', September 2009.

28. Therefore, the landowner can demand that the producer pays him the difference. Ricardo, D. *On the principles of political economy and taxation*. London, ed. J. Murray, 1817. This presentation is simplistic, as there are other types of rent, and the analysis becomes more complex when the production and technologies vary. However, we did not intend to investigate this topic in any depth in this document.

29. In the agreement between the Republic of Congo (Brazzaville) and Agri SA, it seems that the Congolese government's only requirement was the creation of a commercial agricultural production sector in the country.

This means that investors are often ascribed qualities that they do not have.<sup>31</sup> Thus, the term 'land grab', which is understood as the wholesale appropriation of resources that excludes other potential beneficiaries, is used advisedly when it applies to the potential of the resources found on the land.<sup>32</sup>

## **Two distinct situations: privatisation and concentration**

Two different processes can be distinguished in the cases of large-scale land appropriation and concentration that have been identified around the world:

- The first involves the private appropriation of hitherto common resources over which groups exercised collective rights of use or management; or, much more rarely, land that had not been appropriated or claimed by anyone. This private appropriation may be the work of national, foreign or international actors purchasing or renting land (through concessions, leases, etc.).
- The second process involves the purchase or rental of large areas of land that were already subject to an individual or collective private land tenure regime.

It is always useful to distinguish between the private appropriation and concentration of land. The two may sometimes – but do not necessarily – coexist.

### **• The first situation: privatisation of 'common' resources**

Most of the land that is sold or leased to national or foreign investors is subject to a regime that we will call 'customary' in order to simplify matters. This is particularly true in sub-Saharan Africa, where such lands may be sparsely inhabited, but are not unoccupied. People have been living on and using this land for generations, but usually have no formally recognised documents setting out their rights, and consequently may be viewed as 'illegal' occupants. Even if their rights of use are recognised, they are generally insecure and dependent upon the goodwill of the authorities.

The State can often use current legislation to take back such land, with or without compensation, and make it available to investors. In fact, many governments regard this as 'state' or 'national' land, as their states assumed all the prerogatives of the former colonial powers when they gained independence. If there are no title deeds, as is usually the case, there is a presumption of state ownership that has led to untitled lands being treated as 'vacant and

30. Most 19<sup>th</sup> century economists thought that ground rent should be socialised, including those in the classical school and the fathers of liberalism like John Stuart Mill and Léon Walras. This was also the view of the American economist Henry George, and a central tenet of his key work *Progress and Poverty*, which appeared in 1879.

31. See Merlet, M. 'Les phénomènes d'appropriation à grande échelle des terres agricoles dans les pays du Sud et de l'Est. S'interroger sur la nature des droits de propriété peut aider à faire la différence entre investissements et prédation', *Etudes foncières* No. 142. November-December 2009.

32. Thus, an investor who buys thousands of hectares of rangelands from latifundists cheaply and transforms them into agricultural land is not a landgrabber, since the herders had already concentrated and appropriated the land. What the investor has appropriated is the potential wealth that the land contains, which could also have been tapped and shared between a large number of producers if there had been a process of agrarian reform and if they had had the opportunity to develop their own systems of production. This is a crucial distinction that needs to be taken into account when political and economic choices are made.

ownerless' land, collective use rights to such land not being recognised, and these lands being incorporated into state land – both during the colonial period and after independence. The presumption of state ownership thus creates tensions between the legality (written national legislation, statutory law) and legitimacy of practices, as these lands are clearly neither vacant nor ownerless, and are regulated by a system of traditional rights.<sup>33</sup>

Even when there is no presumption of state ownership, land can be legally expropriated in many countries regardless of the nature of its occupants' acquired rights. In such cases, their lack of organisation and the frequent absence of the rule of law preclude any opportunity for legal recourse, let alone compensation commensurate with the losses sustained.

In these conditions, the sale or long-term lease of land constitutes a violation of its occupants' rights,<sup>34</sup> marks a profound change in the 'land tenure regime'<sup>35</sup> and amounts to a privatisation of land and resources, whatever the preferred mode of transfer and forms of production.

These situations not only facilitate massive and rapid interventions over very large areas, but also present political and economic risks for the companies and governments concerned, as they can provoke fierce and sometimes violent protests.<sup>36</sup>

- **Second situation: concentration of lands already recognised as privately owned**

When formalised land rights already exist and are recognised at both the local level and by national legislation, smallholders and large landowners holding these rights may agree to transfer them – voluntarily or under pressure. This has happened in many Latin American countries, where different actors have different abilities to intervene on land markets, and rights holders cannot always compete on equal terms with large national bodies, let alone international corporations.

Lack of mechanisms to control or regulate these transfers of rights may lead to accelerated processes of land concentration as investors establish large domains or lease huge tracts of land.<sup>37</sup>

This second mechanism carries fewer political risks since rights holders agree to transfer their rights, or at least appear to do so. However, it takes longer to implement, and may require expropriation procedures to be put in place, as well as a court ruling if rights holders are reluctant to sell of their own free will, in which case they will need to receive compensation.

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33. The presumption of state ownership is no longer the rule in every African country. Niger has recognised the validity of customary rights for many years now, while the land reform in Madagascar led to this principle being overturned and the introduction of land ownership certificates recognising the rights acquired by users over time. However, this has not prevented several attempts to grab massive amounts of land, and tensions persist since constructing a new system of rights that incorporates and transforms customary rights is a long process involving different groups, often with conflicting interests.

34. As many governments do not recognise customary rights, this is not a problem for them, despite the fact that they may be flouting the terms of texts and international treaties that recognise the rights of individuals and communities. This is a crucial point, which we will come back to later.

35. 'Land tenure regime' refers here to the combination of different types of land rights held by individual and/or collective rights holders who coexist on a given territory, and the regulatory systems associated with them.

36. See the case of Madagascar, with Korea and Daewoo Logistics.

37. As in Argentina, where large-scale land concentrations were under way well before 2008.

## • Misconceptions about land ownership in both situations

A common aspect of both of these situations is the fact that appropriations are often based on an erroneous, univocal view of land rights whereby only one rights holder is entitled to 'use' and 'abuse' the land in question.<sup>38</sup> In both cases, this can be traced back to the effects of historical processes and, for developing countries in particular, the consequences of colonisation.<sup>39</sup>

Many individual and/or locally shared 'ownership rights' to 'common' territories are recognised socially or through customary regimes. There are multiple mechanisms of governance, which are not always fair and do not necessarily best serve the general interest. Land use on these territories is never wholly collective, and land is occupied in a more or less private manner, but modes of managing resources at the local level and regulating matters such as inheritance and transfers to 'incomers' to the community are still collective.<sup>40</sup> National 'statutory' law very rarely recognises the diversity of existing rights and governance mechanisms, especially those based on close social relationships. Apart from a few exceptions like Niger, which have broken with this tradition, the law in the countries concerned only effectively recognises rights that have been attributed from 'top down', in other words, by the State.<sup>41</sup> The main mechanism for this in francophone African countries has been the introduction of land registration, whereby all unregistered land belongs to the State, whose powers were inherited from the colonial authorities.

This concept is totally different from the thinking prevalent when land rights were being established in developed countries, where there was neither government land in the sense that this is understood in Africa and Latin America, nor statutory registration of rights. On the contrary, rights were gradually secured 'from the bottom up' through the recognition, codification and refinement of customary rights and by monitoring transactions.<sup>42</sup>

The second situation described here is also often the outcome of a colonial heritage. For example, Latin American countries are characterised by their total lack of mechanisms to regulate local markets; while landowners in Europe do not hold all the rights over their land, but are

38. As in the French Civil Code. However, this view is not restricted to civil legal systems, as systems based on Common Law evolved by only recognising rights that can be enforced against third parties, apart from exceptions defined in *trusts*. The English and French systems of ownership differ in both their institutional structure and legal formalities, but are based on identical values of 'Western possessive liberal individualism'. See Galey, Mathieu, 'La typologie des systèmes de propriété de C. R. Noyes. Un outil d'évaluation contextualisée des régimes de propriété privée, publique et commune' in Christoph Eberhard (ed.) *Enjeux fonciers et environnementaux. Dialogues afro-indiens*, Pondichéry, Institut Français de Pondichéry, 2007. pp. 89-125.

39. The reality is sometimes more complex than this general explanation suggests. Other factors apart from colonial heritage may also help create favourable conditions for large-scale land appropriations, such as the nature of certain customary land rights. Furthermore, the fact that the parties concerned do not carry the same weight in negotiations or arbitration between the State and individuals, the powerful and the poor, etc. (especially those based on customary law), has a major bearing on negotiations over the distribution and acquisition of land. This may take the form of coercion, bribes and evictions.

40. This is the case with pastoral land use management in nomadic or semi-nomadic communities, especially in the Sahel, which uses home grazing territories and priority (but not exclusive) rights to water resources. See works by Le Roy, E., particularly: 'L'apport des chercheurs du LAJP à la gestion patrimoniale', *Bulletin de liaison du LAJP*, n°23. Paris, 1998 ; 'Actualité des droits dits coutumiers dans les pratiques et les politiques foncières en Afrique et dans l'océan Indien', in *Cahiers d'Anthropologie du Droit, Retour au foncier*. LAJP Karthala, 2003.

41. Although some countries do recognise the existence of customary rights, especially in rural areas, the State is left a broad margin for interpretation.

42. See Comby J., 'Reconnaître et sécuriser la propriété coutumière moderne' in *Etudes foncières* n°128, 2007.

subject to mechanisms that regulate and limit their ownership rights. In other words, there are always overlapping rights to a particular piece of land.

These two characteristics – only recognising those rights awarded by the State, and its failure to acknowledge the existence of shared rights to land<sup>43</sup> – help explain the ease with which large-scale land appropriations and concentrations have developed.

## **What is new about this phenomenon?**

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The large-scale appropriation and concentration of land is not a new phenomenon. For centuries wars of conquest and processes of colonial domination have been driven by the desire to appropriate the wealth tied up in minerals, land, certain plants, marine resources and sometimes labour. These processes were based on the use of force, although the takeover of territorial control was sometimes facilitated by alliances between the conquerors and certain dominant groups. Pillaging resources and/or productive land use required the power to dispose of a large labour force and draw on large population reserves, either through subjugation of local populations, through the slave trade, or by encouraging large-scale migration to other continents, as with the settlement colonies in North and South America. All these processes involved the massive appropriation of wealth, but were only made possible by large-scale movements of human populations.

After decolonisation, which is still a recent event in many regions of the world, newly independent states claimed total sovereignty over their natural resources and territories.

The United Nations system established during this period was based on the principle of respecting the wishes of sovereign nation states, provided they conceded part of their right to use force outside their borders in the interests of collective security. In the following decades, international organisations promoted the introduction of an increasingly liberal system, progressively removing market transactions from state control.<sup>44</sup> Although this was not the main focus of the research undertaken by this Working Group, it is the basis of much of what is new about the land appropriations taking place today.

These large-scale land appropriations no longer rely on the direct use of force, but now use political and economic means where occupants' rights to the resources they use have been weakened. The spaces concerned cover a considerable proportion of the earth's surface, and are mainly territories that have been colonised in one way or another at different times, or endured enforced collectivisation – as in Eastern European countries where peasants were dispossessed of their farms and individual farms largely replaced by big socialist production facilities using waged or semi-waged labour, such as the *kolkhozes*, or Soviet collective farms.

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43. Once again, the reality may be more complex than this suggests. There are cases of countries whose legislation establishes the opportunity for multiple, overlapping rights to a single piece of land to exist, but where these rights are not genuinely recognised in practice and cannot be defended against third parties. In certain cases, governments ignore rights for political and economic reasons.

44. Chemiller-Gendreau, Monique 'Le droit international peut-il contribuer à une société mondiale plus équitable?' Conference-debates, AGTER thematic meeting, 13th October 2009 ([http://www.agter.asso.fr/article292\\_fr.html](http://www.agter.asso.fr/article292_fr.html)). Chemillier-Gendreau, M. 'Humanité et Souverainetés', essay on the function of international law, *La Découverte*, 1994.

The States that emerged from decolonisation legitimised by liberation struggles now play an important role in these processes. Large swathes of land are being appropriated through contracts that are supposedly accepted by the signatory parties, are apparently incontestable since they are based on contractual (often commercial) relations, and are presented as furthering development that entails the increasing liberalisation of trade. Furthermore, it is no longer necessary to import huge amounts of labour to make a profit from the vast expanses of land that are being taken under control, thanks to the use of heavy machinery, chemical inputs and biotechnologies. These are the new structural aspects of current forms of land appropriation and concentration.

A range of other factors have also come into play in recent times: demographic growth and better nutrition in several large emerging countries, the fall of the Soviet bloc, the rapid development of the financial sector with the advent of globalisation, mobile and increasingly speculative capital, the appearance of emerging countries whose economic power is overturning previous norms in the production of goods and demand for raw materials, and the energy and food crisis of 2007-2008. The onset of the financial crisis in 2008 also introduced new elements into the large-scale appropriations and concentrations of land we are witnessing today.

We need to proceed carefully, as these phenomena have not yet been characterised in sufficient detail to be able to ascertain the relative weight of each factor. The few studies that are available (especially *Land Grab or Opportunity?* produced by IIED, FAO and IFAD, which only covers a small number of countries) and press reports of numerous projects and signed contracts suggest that investors have become increasingly interested in agricultural land in recent years. But is it still not possible to categorically state that agricultural investments involving the large-scale acquisition of land rights are growing as fast as the media seem to indicate. UNCTAD's study on global investments, and agricultural investments in particular, found that direct foreign investments in agriculture, forestry and fisheries were greater in 2005-2007 than in 1989-1991, but does not shed any new light or give any figures on the mechanisms for purchasing or renting land.<sup>45</sup> We should have a clearer picture by the middle of 2010, when the study led by the World Bank on large-scale acquisitions of land rights in about 20 countries is due to be published.

Little is known about the situation of the people who are likely to be affected by or benefit from these processes. The actual details of these contracts rarely come to light, and we need to know their content and the type of conflict resolution bodies that are envisaged in order to determine their real nature.<sup>46</sup>

More in-depth analysis of the diverse modalities of contract farming is also needed in order to evaluate the merits and possible risks of this form of production. The term is fashionable, but covers different realities.<sup>47</sup> In its 2009 report on global investment, UNCTAD presents *contract farming* as an alternative to *foreign direct investments (FDI)*, and the figures in this report show how important this type of articulation between transnational companies and

45. UNCTAD, 2009 World Investment Development Report, *Transnational Corporations, Agricultural Production and Development*, UNCTAD, United Nations, Sept. 2009 (p. 112).

46. On this matter, see in particular IIED: Strengthening citizen's oversight of foreign investment: Investment Law and Sustainable Development, *Sustainable Markets Investment Briefing No.5*. 2007.

47. The typology adopted in Box III-7 of the UNCTAD 2009 World Investment Report, which was itself taken from UNCTAD, is purely formal and does not contribute any relevant analysis to the questions raised in this paper.



small and medium-sized producers is starting to become. While this is not the direct focus of our research, it is worth noting that certain investments in land are coupled with an interest in putting contract farming schemes in place. The various examples that we know of suggest that extreme caution is needed with this type of contract,<sup>48</sup> as the huge disparity in businesses' and producers' powers of negotiation, at least at the outset, can make it difficult to create favourable conditions for producers. This raises the question of what room to manoeuvre the producers concerned have in their choice of production and technical itineraries. As we have seen with integrated production in France, the quasi-proletarianisation of producers is becoming increasingly common, and it is they, not businesses, who are exposed to the risks.

Although we obviously need validated information to pursue this argument, we can already identify certain major trends, and urgently need to find responses to these developments and their irreversible consequences, which could lead to major conflicts.<sup>49</sup>

The few cases that have been well documented, the way that investors themselves explain their motivations and practices, and analysis of the mechanisms at play provide sufficient material to support the findings of the Working Group.

Having identified the nature of the phenomena, determined what triggers them and analysed what is new about them, we can now highlight several points that need further investigation.

- The need to question the nature of the ownership rights and legitimacy of the rights holders that are recognised in practice.
- The risk of imbalance in contractual relations between parties with very unequal powers.
- The commodification of common assets – 'global public goods' – which could lead to their destruction, with negative effects for everyone.
- Agricultural forms and models are a key element of the debates generated by the phenomena of large-scale land appropriation and concentration.

The agriculture that is establishing itself in this context is so-called 'modern', 'intensive', 'commercial' capitalist agriculture, which uses waged labour and is very often heavily reliant on mechanisation and chemical inputs, or even genetically modified plants. It is the only form of agriculture capable of rapidly appropriating the natural wealth of vast territories without recourse to war or large-scale migration. And it competes with forms of family (peasant) farming that still provide a living for the majority of the active rural populations in developing countries.

Depending on their respective dynamics, these forms of production can interact in very different ways, ranging from the complementary to the conflictual.

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48. At the CIRAD seminar held in Montpellier in September 2009, André Teyssier presented the case of the company VARUN in Madagascar, where the proposed contracts were clearly very unfavourable to producers. See his intervention on the CIRAD website. (<http://www.cirad.fr/media/videos/journee-foncier/>)

49. Alden Willy, Liz, *Whose land is it? Commons and conflict states. Why the ownership of the commons matters in making and keeping peace*, Rights and Resources Initiative, Washington DC. EUA, 2008. Also by the same author, *Fodder for war: getting to the crux of the natural resources crisis*, Rights and Resources Initiative Washington DC. EUA. 2010.

# The issues

The advent of climate change has brought growing awareness of the fact that everyone's fate is affected by the way that common resources are managed. The question of large-scale land appropriation and concentration is a global issue that concerns every sector of society today, the rich and the poor, individual enterprises and major economic groups alike.

The objective of this second section is to show how and why this is the case, by setting the debate in a broader perspective.

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## Major local and global issues

- **Poverty and food security**

Investments in the agricultural sector could improve food security in the countries where they are made if they do not result in a net reduction in national food production, if the revenues generated are shared with local populations, and if they are sufficient to allow better access to food. The fact that these investments help improve food security in the countries where these products will be exported to should not be the only factor that is taken into account.

One billion people suffer from hunger. This figure, which is rising, is directly linked with the development of poverty in the world, poverty that causes 'hunger riots'. The price of primary agricultural produce, which rose sharply in 2007-2008 sparking these riots, needs to be adjusted to reflect the sharp fall in world markets for agricultural produce in real terms over the last few decades. This has led to a supply shortage that is directly linked to changes in the structures of production, and has been aggravated by climatic causes.<sup>50</sup>

Agriculture varies greatly around the world. What do Chinese rice growers with half a hectare of farmland per family have in common with nomadic herders who travel hundreds of kilometres across the Sahel, family farms in Europe, or big businesses producing transgenic soya on tens of thousands of hectares in the Brazilian Matto Grosso? Allowing for the cost of inputs and capital depreciation, the net productivity of agricultural labour ranges from one to five hundred according to the production system. This range increases further when the subsidies allocated to certain producers, which are not available to the vast majority of farmers and herders

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50. Mazoyer, M. (2005) 'Développement agricole inégal et sous-alimentation paysanne' in Mazoyer, M. and Roudart L., *La fracture agricole & alimentaire mondiale. Nourrir l'humanité aujourd'hui et demain*. Encyclopædia Universalis.

on the planet, are taken into account. These variations in productivity are mainly due to huge inequalities in producers' access to agricultural equipment and land owing to insufficient and unequal investment in agriculture that marginalizes the vast majority of rural producers.<sup>51</sup>

The globalisation of trade is making the price of agricultural products and basic food-stuffs more uniform and dependent on exportable surpluses. Each sack of rice is sold for the same price on the market, even though it may represent over a year's work for a smallholder with minimal means of production on the one hand, and on the other, just one day's labour for a large-scale enterprise that uses machinery and inputs. This direct competition means that the two types of producer are rewarded very unequally for their agricultural activity. These mechanisms also affect farmers who are poorly integrated into the market, through relative prices. The result of such unequal exchanges is that large numbers of rural producers with the fewest tools and least land are losing their livelihoods and having to migrate to urban centres or more developed countries to seek employment.

Hence the paradox that three-quarters of all the under-nourished people on our planet are rural food producers.

This defies belief, challenging the axiom that the problems of development and poverty can be resolved by growth in trade. Although unequal trade mechanisms cannot be blamed for all the food insecurity and poverty in the world, since many other factors also need to be taken into account, they are still one of the fundamental causes of these problems. As we will see, they are also a key factor in large-scale land appropriations.

### • **Environmental issues**

Major environmental concerns directly linked to modes of land use include greenhouse gas emissions, diminishing biodiversity, declining fertility in certain types of soils, and depleted water resources. The battle to combat these phenomena is now becoming a priority for governments all around the world.<sup>52</sup>

It is not always easy to compare the environmental impacts of large- and small-scale production systems because both are established and run under very diverse conditions. There is nothing to say that industrial farms cannot incorporate environmental considerations into their operations and minimise their negative impacts. Similarly, the deforestation associated with the extension of cultivated land is not restricted to large-scale cultivation and extensive livestock rearing. Impoverished family farmers evicted from more productive areas also play a role in the advance of these pioneer fronts. And we should add that modern family farmers on our own patch do not set a very good example either, as they include some of the biggest users of pesticides, with tragic consequences for the environment (polluted water tables, declining soil fertility, etc.).

Nevertheless, the lure of short-term profits and prospect of not having to pay for the negative externalities of agricultural practices are likely to encourage big businesses to behave against the general interest of future generations. The very mechanisms of economic arbitra-

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51. Mazoyer, M.; Roudart, L. (1998) 'Histoire des agricultures du monde. Du néolithique à la crise contemporaine', *Le Seuil*. Paris.

52. Even though the results of the Copenhagen Summit show that there is less hurry to reach an agreement on climate regulation than there is to save the globalised banking system.

tion are being challenged. It is hard to balance renewing and improving soil fertility or maintaining the biodiversity of cultivated ecosystems against opportunities to increase the profitability of one form of production by using vast quantities of non-renewable inputs and bio-technologies that weaken the environment, especially when one knows that once the resources on one site are exhausted, it will still be possible to go elsewhere in search of other land, other resources and other financial investments likely to generate substantial profits.<sup>53</sup> In these conditions, financial considerations tend to outweigh concerns about the long-term consequences of production.

Although small family farms are not without their faults, the limited financial resources at their disposal and logic behind their operations mean that they do not behave in this way. If they have the means to ensure their reproduction,<sup>54</sup> they manage natural resources as a legacy that will be transferred to their children. Their economic behaviour thus took account of the long-term well before the concept of 'sustainable development' was invented.

Businesses of all sizes could play a decisive role in putting in place innovative technologies that will be indispensable for the whole of humankind. What we need to do now is create the necessary conditions for this to happen.

### • The need to make the best use of natural resources

Studies by the FAO and IIASA have found that half of the world's potentially cultivable land in both developed and developing countries is under-utilised.<sup>55</sup> But it is in Africa, South America and the former Soviet bloc countries that conditions lend themselves to large-scale land appropriations.

This is not because such land is unoccupied, but because its occupants have neither the means to use it productively nor the legal tools or power to maintain control over it as it is. It is this land that is targeted by investors.

The question now is what models of production we should choose in order to make more productive and valuable use of each unit of land.

These potentially cultivable lands cannot always be used without environmental or social risks, either because they are covered with forests whose clearance would cause CO<sub>2</sub> emissions and an irreversible loss of biodiversity, or because they are inhabited, and cultivating or using them more intensively would bring about major social changes.

In addition to this, the amount of good quality agricultural land available for each inhabitant varies greatly from country to country. So should we look to previous processes and promote large-scale human migrations to colonise little-used areas? This would undoubtedly cause considerable political difficulties.

It should be noted that similar problems are associated with the very unequal global distribution of energy and mining resources, and that the rents they generate, especially from oil, also play a role in the current wave of offshore agricultural investments.

53. See the data on the global availability of land in the following paragraph.

54. Otherwise, family farms survive from day to day, and their drive to feed themselves ultimately leads to the destruction of resources, soils and forests... especially if they don't have access to technical innovations and training.

55. Fischer, G. Van Velthuizen, H. et al., *Global agro-ecological assessment for agriculture in the 21<sup>st</sup> century*, FAO, IIASA. 2002.

The need to optimise the use of natural resources is not restricted to little-utilised territories, but is also an issue on lands that are currently used in an apparently satisfactory manner. Does it make sense to defend models that destroy forests in the Amazon in order to produce soya that travels thousands of kilometres around the world, and is finally used to feed cattle and pigs in industrial operations that are polluting Europe's water tables? The string of rational decisions made by each actor in a particular supply chain does not necessarily produce an economic system that is rational and coherent at the global level.

### • **The question of human rights**

Massive appropriations of land rights often raise questions about fundamental human rights, starting with rights of access to existing resources (rights of access to water and pastures, and the right to cultivate land). Access to land has been cited as the basis of food production, but land often also has a fundamental cultural, social and statutory dimension in the societies affected by these phenomena. Relationships with the land are an integral element of human relations.

The commodification of land does not merely have economic repercussions, but can also have significant indirect impacts on human rights.<sup>56</sup> Massive land appropriations can lead to human displacements (with the associated problems of abuses of the fundamental rights and freedoms of displaced nationals and foreign refugees), accentuating the insecurity of these particular groups through forced economic migration, mainly to urban centres where they have to change their way of life and find new support networks for their social and economic survival. It can also cause greater insecurity among the most vulnerable sectors of society, especially women and children, who may themselves be the target of illegal 'trades'.

Such developments can have very destructive social impacts, especially when they happen quickly. The disruption of the whole social and family organisation has a range of potentially dramatic consequences on the legal and physical situation of these communities, which will not be redressed by any social programmes that businesses might plan to put in place.

## **Issues associated with the choice of agricultural models**

The issues of employment and migration are directly linked to the topic under discussion here, as migratory pressures will continue to grow if global regional inequalities in income persist or increase. There is no doubt that total liberalisation of the labour market and unfettered mobility – the logical consequences of the liberalisation of trade and commodification of land – would balance the economic equations, but at what cost!

Experts in the World Bank working on land tenure have rightly stressed that one of the key issues in the large-scale appropriation of land rights is what forms of production should be

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56. See in particular, De Schutter, Olivier, 'Large Scale Land Acquisition and Leases: a set of minimum principles and measures to address the human rights challenge addendum to report by the Special Rapporteur on the right to food, 13th session of the Human Rights Council, 28th December 2009. Also: *3D Trade, Human Rights, Equitable Economy. The global land grab: a human rights approach*, 2009. 42nd session of the Committee on economic, social and cultural rights, Examination of reports presented by member states in accordance with Articles 16 and 17 of the pact. Final observations of the Committee on economic, social and cultural rights, Cambodia (E/C.12/KHM/CO/1) 12th June 2009.

promoted.<sup>57</sup> The growth in large-scale agricultural production that would result from virtually free access to land, the absence of land taxes and the opportunity to benefit from very cheap labour would constitute a major risk for peasant farming and have a negative impact on society as a whole. Profiting from the situation by appropriating wealth would generate more and more poverty and have dramatic consequences in the medium term.<sup>58</sup>

Job creation is a particularly important issue in developing countries, where the population is largely rural and where, as in sub-Saharan Africa, for example, between 70% and 80% of the active population are paid in kind and derive their monetary income from working the land and rearing livestock. Growth in effective global demand and migratory flows depend upon employment. Can large-scale agribusinesses that employ waged labour provide the same level of employment in rural areas as family farms? If not, what will become of the people who currently work on family farms? Where will we find the conditions for industrialisation that enabled Europe to deal with the rural exodus of the 18<sup>th</sup> and 19<sup>th</sup> centuries?<sup>59</sup>

In order to avoid the instability and insecurity that a worldwide rural exodus would inevitably create, it seems logical to maintain family farms and create the conditions that would allow them to modernise, along with a progressive demographic transition towards non-agricultural employment.

The working conditions on farms established in the context of large-scale appropriations and concentrations of land rights also need to be taken into account when analysing the opportunities offered by investments. However, this is only a secondary effect; the key question is what forms of production create the most jobs per hectare?

Once again, local realities vary greatly:

- In Argentina, the displacement of thousands of small and medium-sized family farmers to make way for gigantic ‘seed pools’ (pooles de siembra) run by investment funds that rent or purchase land from bankrupt producers, and farmed by service companies in order to maximise their profitability over a single growing season, has resulted in the desertification of rural areas and increased migration to poor neighbourhoods in large cities where there are no job prospects for these impoverished new arrivals.
- In Russia and Ukraine, much of the damage was already done by agricultural collectivisation, which left no real viable independent small-scale agriculture to despoil and destroy. It remains to be seen what effect the businesses renting or buying hundreds of thousands of hectares of land – and appropriating the revenues it generates because they brought in the capital, some of it foreign – will have on the farm labourers and small gardens and livestock rearing operations left over from the Soviet era, which still provide a large proportion of the population’s food supply.
- And what impact will the large businesses setting up in Ethiopia, Zambia, the Republic of Congo and Mali have on rural agriculture in the surrounding area?

57. Deininger, K. and Songwe, V. ‘Foreign investment in agricultural production, opportunities and challenges’, *Agriculture & Rural Development, Notes, Land Policy and Administration*, Issue 45, January 2009.

58. Merlet, M. ‘Les grands enjeux de l’évolution du foncier agricole et forestier dans le monde. Des réponses globales sont nécessaires’, *Revue Etudes Foncières* No. 143, January-February 2010. Paris.

59. Into urban areas, but also to distant lands, as some migrants headed for the Americas.

Rather than feeding humanity, the continued widespread development of large-scale structures of production using small numbers of waged labourers per hectare would provoke a fall in the price of primary agricultural products and thus the destruction of family farms – not just those with the least land and fewest means of production, but also those that subsist in developed countries, thanks to public support that is becoming increasingly difficult to maintain in the face of criticism from the World Trade Organization and countries in the Cairns group, which embody the route taken by agribusiness.

Dealing with migration will entail addressing the causes rather than the symptoms of the problem. Three-quarters of malnourished people live in rural areas. Their living conditions are directly affected by prices and their ability to make sustainable use of their land resources; therefore actions likely to have the most direct impact on global food security should in the first instance aim to improve the capacities of the production systems that are already in place. Several studies by FAO and IAASTD and forecasts by Agrimonde (INRA, CIRAD) have shown that family farming has the capacity to cover the future food needs of 9 billion people by 2050.

Food security is also the result of matching edible goods with each culture's consumption habits, and is partly linked with the species and varieties found in local ecosystems. Family farming is better able to meet this need for diversity than large-scale, standardised production systems, and is especially good at making productive use of land that large-scale agriculture cannot farm, such as highland areas. The growth in demand for food cannot be met by allowing land that is relatively difficult to farm lie fallow. More and more land will need to be cultivated, and in a way that does not irreversibly affect ecological balances. Therefore, the agricultural knowledge passed down over hundreds or even thousands of years will be irreplaceable, not because of any attachment to the past, but because increasing productivity and modernising agricultural production in very diverse historical and environmental contexts is an extremely complex process.

Small and medium-sized family farms also provide significant environmental services. Numerous analyses have found them to be generally superior to those that large-scale operations can provide<sup>60</sup> on account of their potential to intensify production under sustainable agro-ecological conditions.<sup>61</sup> Large structures operate according to economies of scale, and tend to make space uniform and artificial in order to maximise the yields from agricultural inputs and selected standard varieties. Therefore, they eliminate the uncultivated elements of the countryside and potentially productive varieties that play no part in simplified production processes. They are heavily reliant on monocultures (which increasingly involve a single, genetically modified variety), fertilisers, synthetic pesticides and fossil energy. Although there have been some positive developments, their impacts on ecosystems and considerable depletion of ecological diversity do have knock-on effects, as ecological imbalances lead to the disappearance of

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60. On these services and their potential for agro-ecological intensification, see especially work by: i) International Assessment of Agricultural Knowledge, Science and Technology for Development, IAASTD, *Global Assessment* and five *Sub-global Assessments*, FAO, GEF, UNDD, UNEP, UNESCO, World Bank and WTO, 2007; ii) FAO (particularly Miguel Altieri and the informal 'conservation agriculture' group which draws on several divisions in the organisation), the workshop on organic farming organised by the FAO in 2007 (which concluded that this type of production has the capacity to meet global food needs, and identified the conditions required for it to do so); and iii) Michel Griffon, *Nourrir la planète, pour une révolution doublement verte*, 2006. Paris. ed. Odile Jacob.

61. In terms of the intensification of labour, i.e., creating greater added value per hectare after deducting the cost of inputs and depreciation of machinery.

numerous auxiliary species responsible for renewing fertility and even controlling certain types of destructive pests.

Conversely, the scale of production on family farms, which by definition can be managed by a single family, facilitates the productive use of agro-ecological potential as it allows for more complex and diverse production systems that support crucial environmental services – provided other conditions are in place, such as access to land and credit, less uncertainty about prices, technical capacity building for farmers, and so on.

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## **Towards pragmatic social choices**

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In light of these observations, the massive appropriation of land and resources is neither cyclical nor transitory, but emblematic of critical economic and social choices.

These choices should not be solely determined by private interests, no matter how powerful they may be, or by ideological positions that ignore the long-term issues. Our societies need to find solutions to tackle the causes of the problems, not content ourselves with treating their effects.

France's stated preference for channelling investment towards family farming rather than transnational structures that control the land rights and production on vast tracts of land is a pragmatic position. It is based on historic experience of its own development and assessment of the effectiveness of this type of production system.

Investments in the agricultural sector can provide opportunities that should be seized, provided they do not deprive family farmers of access to land, but create the conditions for these farmers to increase their productivity in a sustainable manner.

Rather than dismissing different forms of production out of hand, we need to look for development trajectories with the greatest potential to create situations that are beneficial to all concerned. This requires long-term thinking, resilient systems with the capacity to withstand hazards and crises, and avoiding the irreversible destruction of biodiversity, knowledge and cultural wealth. Multiple scenarios are not only possible, but also necessary to articulate large-scale forms of production and powerful corporations operating at the global level with peasant farmers and artisanal producers working on a human scale. It is not a matter of finding blanket solutions, but of tailoring responses to the history, advantages, risks and opportunities concerned.

Finally, we need to guard against the emergence of major conflicts and the unforeseeable consequences of hopelessness engendered by the intolerable deepening of global inequalities.

As we move into the 21<sup>st</sup> century, agricultural development is no longer simply a sectoral issue. It needs to be thought through at both the local and global levels, in a way that addresses the interactions with other sectors concerned with the resources exploited by the agricultural sector: water, carbon, biodiversity and labour. Employment, the creation and distribution of added value, and the production of food goods and environmental services are all in the general interest, and their regulation cannot be left to the play of markets and strategies of multinational companies.





# Proposed positioning

## The basis for a new position

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France is well placed to contribute to international debates, both in terms of the positions it has defended and its accumulated expertise. It can draw on:

- several years of intellectual investment in the protection of global public goods, with a significant role in the work undertaken by the United Nations and previous successes on the issue of global taxes;
- a clear position on the resources required to meet the challenge of global food security;<sup>62</sup>
- longstanding practices and solid analysis on land tenure;
- experience drawn from its cooperation with African countries.

The quality of the research and work on land tenure undertaken by the French cooperation is widely recognised. The Land Tenure and Development Technical Committee synthesised the analyses and recommendations of actors in French development cooperation and research in a White Paper on land tenure,<sup>63</sup> which highlights:

- The importance of defining and implementing land policies that help secure existing land rights, be they individual, collective, formal, customary or traditional.
- Questions about the principle of presumption of state ownership of land inherited from colonial times, as national sovereignty over land should be compatible with protecting the rights of access and use held by groups and individuals.
- The need to recognise the huge diversity of land situations around the world and work on this basis.
- The importance of the role of family (or peasant) farming in developing countries. Strengthening these systems will require long-term processes, regulatory measures and support or protection to enable them to deal with the problems associated with agricultural price levels and fluctuations on world markets.

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62. Which was recently reaffirmed by the joint Franco-Brazilian declaration 'For a new world agriculture and food policy' at the World Food Summit organised by the United Nations Food and Agriculture Organization in November 2009.

63. Land Tenure and Development Technical Committee, *Land tenure and governance in developing countries*, White paper by actors in the French cooperation. Collective work coordinated by Lavigne Delville, P. and Durand Lasserre, A. MAEE, AFD. Paris 2009.

- The advisability of channelling investment into strengthening the productive capacities of family farms, and developing marketing and processing supply chains in order to include these farms in local, national and global economies.

## **The two basic principles of the Working Group position**

The position taken by the Working Group can be summarised in two propositions that may initially seem contradictory, but are actually complementary:

- the need to defend existing property rights;<sup>64</sup>
- the need to build ‘commonality’ by recognising collective rights in order to ensure that private individual rights and uses are compatible with the general interest (food security, biodiversity, climate, etc.).

### **• Respecting and consolidating existing property rights in all their diversity...**

Human communities have long been attracted to the most fertile areas, which means that the spaces targeted by investments are often occupied.

All formalised investment contracts should automatically respect existing land rights in all their diversity, whether these rights are formal or informal, individual or collective, and emanate from modern law or local customary systems.

There is broad agreement with this proposition. United Nations organisations view respect for the human rights of groups and individuals as a fundamental global imperative. This proposition is also the basis of World Bank proposals for discussions on a code of conduct for agricultural investments, signalling that rights must be respected regardless of whether they are statutory or customary, primary or secondary, formal or informal, collective or individual.<sup>65</sup>

However, translating this principle into effective practical measures poses real problems. If it is to be more than just a formula, analytical tools are needed to help identify the diversity of rights and plurality of rights holders. We also need to be able to assess how overlapping rights to the same space can create both complementarities that benefit everyone and conflicts of interest and antagonism. In addition to this, a legal and regulatory framework is needed, with administrative practices that make it possible to recognise the different rights and rights holders, and ensure that they are respected.

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64. In the sense of the English concept of property rights, which covers a plurality of rights of use, management and transfer, rather than ‘ownership’ in the sense of the French *code civil*.

65. Oral communication with the Working Group, based on an internal World Bank document: Deininger, K., Lamb, J., Securing land tenure and improving livelihoods: Towards a set of principles for responsible agro-investment, Draft paper for discussion only, Agriculture and Rural Development. World Bank, 21<sup>st</sup> September 2009.

- **...while building or rebuilding 'commonality'**<sup>66</sup>

While respecting existing rights is an essential pre-requisite for development, it does not guarantee that land will be used for 'sustainable' development.<sup>67</sup> The ways in which land, water and natural resources are used and managed concern not just the main holders of rights to these resources, but the whole community in one way or another, from the most local to the most global level. We now know that some of these uses may endanger the common future of humanity, and that we need to define the conditions for the sustainable management of land and natural resources on the basis of scientific knowledge and history.

This can be done through specific policies and legal frameworks designed to secure local people's land tenure and manage natural resources in a sustainable manner. There needs to be constant articulation between the different individual and collective rights of use at different levels – local, national, regional and global – with different forms and modalities of implementation according to the legal systems concerned. While the logic of systems emanating from common law recognises the existence of bundles of rights over land and resources, civil law systems are based on maintaining a type of dominant right limited by restrictive mechanisms that respond to requirements at different levels. There are also numerous other permutations, divergences and convergences, so care needs to be taken to avoid oversimplification. The key is to recognise diversity and use it to move forwards.

- Emphasising the need to respect existing rights does not signify automatic opposition to progress. Certain so-called 'traditional' practices can be very damaging to the environment and disregard fundamental human rights.
- Exporting models of ownership rights from developed countries can carry huge risks, especially if they have taken shape in a colonial context.<sup>68</sup> The commodification of land in developing countries is often much more rapid and radical than the changes experienced by developed countries.

The market tends to make practices more uniform, acting as a universal regulator of human relations with natural resources and other human beings. But our ecosystems, crops, social and political systems and historical trajectories are so diverse that no single system can respond to all these constraints in the best way for every situation. Action has to be taken on a case-by-case basis. Each society has to define its own norms, its own public policies and its

66. The word '*commun*' has different senses in French and English, which can cause great confusion. 'Commons' cannot be mechanically translated as '*biens communs*'. Elinor Ostrom has shown that there were no common goods (*biens communs*) without community management of these goods; thus, the word '*commons*' covers both a shared resource and the rules for its governance. When we talk about recreating commonality, we are not advocating collectivisation, but distinguishing what is in the general interest in a '*community*', and creating rules for governance accordingly.

67. We understand '*sustainable development*' as defined by the World Commission on Environment and Development in 1987 (Brundtland Commission): '*development that meets the needs of the present without compromising the ability of future generations to meet their own needs. There are two concepts inherent in this notion: the concept of "needs", in particular the essential needs of the world's poor, to which overriding priority should be given; and the idea of limitations imposed by the state of technology and social organization on the environment's ability to meet present and future needs.*' The Rio Earth Summit (1992) completed this notion by defining three fundamental areas that need to be reconciled: economic progress, social justice and environmental conservation.

68. As seen above.

own contractual practices, while ensuring that they do not contradict shared, universal norms and policies.

It should be possible to incorporate common human issues into the conditions and limitations on land use and the circulation of land rights. Therefore, a necessary condition for the adaptation and application of these modes of regulation is that they are defined through debates within each society and discussions between different cultures.<sup>69</sup> The new governance that we need to build should take local social practices and cultures as its starting point, and then broaden out to the national and global levels.

This is what we mean by 'recreating commonality': using our knowledge and understanding of common issues to generate and facilitate debate at every level within and between our diverse political communities.

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## **What does this mean at different levels?**

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Before asking what it seems possible to do, let us examine what form these two propositions might take at different levels of governance.

### **• At the national level**

International relations are based on respect for national sovereignty. Under current international law, strict application of the principle of sovereignty only permits the imposition of external rules relating to 'collective security'.

This should not be an obstacle to promoting virtuous behaviours, if we take it to mean behaviour that is more likely to take greater account of the interests of the majority of people in the world. It is from this perspective that the three following principles are presented: (i) protecting customary land users; (ii) seeking the long-term general interest; and (iii) promoting transparency and responsibility.

### **Protecting customary land users**

The massive land appropriations associated with current foreign and national investments are threatening local peoples' access to land and natural resources, and thus their very means of survival. It is often the poorest and most vulnerable communities, whose women and children work the land and pasture livestock, which find themselves on the front line of massive land appropriations. The first principle is to protect these people.

In order to do this, existing customary rights need to be recognised and the 'principle of presumption of state ownership of land' questioned, so that states do not use it to assume private ownership rather than acting in the general interest. Sooner or later customary rights will have to be inventoried and registered. This is not necessarily the first thing that needs to be

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<sup>69</sup>A good illustration of this is the establishment of local agreements in the Sahelian context; another example is Niger's innovative land policy, which is one of very few in the region to recognise both customary land rights and modern law while creating the conditions for them to be synthesised, from the community-based land commissions to the progressive introduction of a new legal framework. Lavigne Delville, Philippe. 'Des conventions locales pour gérer ensemble les ressources naturelles ?', *Grain de Sel*, N° 46-47, March-August 2009.

done, however, as stronger mechanisms for local governance are more useful than land registers that only take account of certain rights and end up expropriating rights holders who are not officially recognised.

Protecting the rights of rural populations requires a sound conceptual framework, and operational intervention methods to establish a three-stage process of identification, recognition and protection.<sup>70</sup> An inclusive approach is needed to identify the plurality of individual and collective land rights, by using field surveys and listening to the communities concerned so that lawyers can understand the nature of existing rights. In order to be clearly and effectively recognised over time, the different rights (of ownership and use, surface rights, rights of assignment, leasing and so on) should be recorded in written transcriptions, certificates, titles and documents noting collective decisions.<sup>71</sup> Furthermore, for this recognition to be functional and rights to be protected, it has to be possible to register, publicise and constantly update them. These operations could be undertaken by a government agency or by collective local bodies responsible for updating registers.<sup>72</sup>

This type of approach does not mean that the State renounces its rights. On the contrary, it has a key role to play in ensuring that regulations, boundaries and obligations regarding land use and the transfer of property rights are collectively defined and established in ways that take account of common environmental, social and economic issues.

Investors targeting spaces occupied by family-run agricultural, pastoral, agro-pastoral or agro-sylvo-pastoral systems should consider other options apart from destroying and replacing them with structures run by big businesses that employ paid labourers. Protecting current land users involves studying options that are based on existing systems, and improving them through:

- credit to help reduce farmer investments,
- better technologies to help modernise production,
- interventions in processing and marketing aimed at securing more predictable and, if possible, higher purchase prices for produce.

Large-scale and long-term land purchases and rentals should be restricted to situations where the country's population cannot provide the basis for a development process, in which case such transactions could be justified. If such populations do not exist at the local level but are present in other regions, colonisation and settlement processes could be organised in order to provide access to land, which would enable peasant farmers without access to sufficient land to develop their livelihoods in more favourable conditions.

70. On this point, it is worth considering France's experience with the notarial profession.

71. Apart from the security it confers, recognising land rights has many positive consequences, such as honouring human dignity, especially women's rights, and improving goods and thus agricultural production or access to micro-credit.

72. The protection and management of common resources is worth specific mention. Well-developed legal technologies are needed to put into practice the ideas of Elinor Ostrom, who was recently awarded the Noble prize. In order to ensure self-determination for the groups involved in managing common resources, regulations should be designed using the inclusive approach described above, along with rules for participation, effective control, mechanisms to resolve disputes and entry and exit rules. The success of this kind of procedure depends on consensual and accurate drafting to produce regulations tailored to each situation.

## Acting in the long-term general interest

### Seeking the general interest in decision-making processes concerned with investments involving large-scale land appropriations

Any investment that involves the appropriation of huge tracts of land should be in the general interest.<sup>73</sup> This is the second basic principle, which enables us to evaluate their pertinence.

It is not always an easy task, but it can be done using tools such as ex ante economic evaluations and impact assessments, a domain in which France has made significant contributions in recent decades.

Investors obviously need financial evaluations to enable them to assess the profitability of a project. However, these say nothing about its overall usefulness for the country concerned (and even less for the world). This can only be determined by systematic economic, social and environmental impact assessments, as with any major strategic investment. No such preliminary impact assessment, even of the most summary nature, seems to have been conducted in the countries affected by massive land investments in recent years. Certainly none have been published.

Such studies would enable countries whose food security is not assured or which remains precarious to at least ensure that the project does not constitute a new threat to the population's food security; rather, that it may even improve it, independently of any other benefits that it may bring the country.

- The repercussions of superimposing these new structures of production onto a country's existing agricultural concerns should be thoroughly evaluated. The introduction of a very modern sector could trigger the failure of a large number of family farms without the same conditions of access to land or the resources to modernise their production. Negative externalities could also exist, either in the form of declining global food production capacity, or a reduction in the agrarian systems' capacity to adapt to hazards.
- One way of improving access to food is to maintain or create gainful employment. Projects can help improve local living conditions by making intensive use of local labour and providing better than average conditions or wages. Foreign investments should at the very least guarantee the working conditions and social security of the local labour force, although many do not even do this.
- Food production projects should be chosen over other agricultural projects in countries with unused (or under-utilised) arable land that cannot ensure their own food supplies, and whose populations often depend on the *World Food Program* for their survival.<sup>74</sup> Some of the output should be marketed in the host country, possibly with the share of produce sold on local markets increasing in pre-ordained proportions according to changes in the price of basic foodstuffs on the national market. There could also be a role for buffer stocks.

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73. That of the host country in the first instance, but also in the interest of humankind.

74. As recommended by Mr. Olivier de Schutter, the United Nations Special Rapporteur on the right to food, in his report of June 2009: De Schutter, O. *Large-scale land acquisitions and leases: A set of core principles and measures to address the human rights challenge*. 11<sup>th</sup> June 2009.

One thing that all projects should share is respect for the environment. Agricultural practices should not lead to soil erosion, diminish biodiversity, deplete water resources or contribute to global warming.

One key area requiring further work is the tax regime that will be applied to this kind of project, whatever its nature. Offering long-term tax exemptions to encourage foreign investments amounts to legalised pillaging of natural resources rather than encouraging sustainable resource use, especially if the investor makes no explicit, verifiable commitment to contribute the host country's development.

Therefore, governments need to define legal and fiscal frameworks to ensure that the projects they authorise contribute to, rather than undermine, sustainable development.

### **Building public policies that help serve the interests of the majority**

Questions are also being asked about public policies in the countries affected by the massive appropriation of land and resources, and the links between their policies and the types of agriculture they wish to promote. Family farms in the United States and the European Union (and French agriculture in particular) would not have progressed without policies favouring the development of certain types of production units.

Decisions on these questions should not be limited to sectoral choices. This is a matter for society to decide; it should be the subject of broad debate and requires democratic mechanisms of governance – bringing us back to the notion of public policies as a public good discussed by Joseph Stiglitz.<sup>75</sup>

At the moment, changes in the agricultural sector and the future of farmers in developing countries are rarely a matter of collective choice, but are determined by the dynamics of large private enterprises. This can be seen in the role played by national enterprises and foreign investments in Brazil, South Africa, Russia and Ukraine. Even strong governments are failing to engage in public debate on these societal questions. The situation is worse when governments are weak, and is often exacerbated by lobbying and/or corruption.

Not nearly enough attention is paid to the long-term, trans-generational evolution of agricultural structures of production. This is rarely discussed, and public policies relating to this key dimension of agriculture are sketchy or non-existent. The Working Group believes that every country around the world urgently needs to discuss and debate the regulation of land markets and so-called policies on 'agricultural structures'.

### **Discussing and publishing clear policies on agricultural structures in host countries would make it possible**

- on the one hand, to prepare the ground to achieve food security by promoting economic models designed to produce good quality and accessible food,
- on the other, to determine how large structures and small farms can coexist and interact, and how they should develop.

In the current context, this kind of structural policy should usually be coupled with a policy to develop rural territories.

75. Joseph Stiglitz, 'Global public goods and global finance: Does global governance ensure that the global public interest is served?' in *Advancing public goods*, Jean-Philippe Touffut, ed., Edward Elgar Publishing, 2006.



The history of agriculture and rural areas in Europe (and especially France) demonstrates that these proposals are both legitimate and credible. Well-argued thinking on the desired evolution of agricultural structures, supported by public debate and public policies that enable them to achieve their objectives, would not only reinforce the legitimacy of the governments concerned in the eyes of their citizens, but also strengthen their position with regard to pressure from foreign investors and the international donors involved in funding development.

### **Promoting transparency and accountability**

Contracts that involve the large-scale appropriation of land have considerable consequences and impacts. Therefore, it is essential that they are not kept confidential or restricted to a small circle of initiators, and that negotiations for such contracts are transparent.

It should only be possible to accept a project if the current occupants of the land in question have agreed to it, after being given prior information about all the ins and outs of the project and access to preliminary evaluation studies. Local communities are often poor and vulnerable, with limited ability to negotiate. Since projects that appropriate land on a large scale affect several economic sectors and create multiple externalities, any project likely to have a significant impact at the regional (or national) level should have to be debated and approved by parliament.

Contracts should clearly set out detailed conditions ensuring that the investment safeguards the general interest, and at the very least ensure compliance with the law of the country concerned.

If an investment that is recognised as being in the general interest compromises local people's access to land, they should be compensated regardless of whether their rights are formal or informal, collective or individual, and whether or not they are formalised by a certificate or title recognised by the authorities. The law relating to evictions should be applied, in accordance with the standards set out in international agreements on this issue.<sup>76</sup>

### **• At the global level**

It is absolutely essential that we prevent a worsening of the food crisis, achieve the objectives of food security, distribute wealth equitably and stamp out the causes of climate change.

Large-scale appropriations and concentrations of land could lead to irreversible environmental and societal changes with the potential to threaten the knowledge, experience and very existence of certain societies. Adopting 'sustainable' modes of development is therefore not an option but an imperative.

This can be done on two levels. Through **voluntary procedures**, which can be applied if – and only if – countries and transnational private economic actors abide by them; and through the progressive introduction of **restrictive measures that apply to everyone**. The latter are much more complex, and will require time and political determination. They need to be realistic, but will ultimately be unavoidable, and will have to be introduced in stages if they

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76. In accordance with the 'Basic principles and directives regarding development-related evictions and displacement' presented in 2007 by the Special rapporteur on suitable housing as an element of the right to an adequate standard of living (A/HRC/4/18 Annex 1), and with General Observation No. 7 (1997) of the Committee on economic, social and cultural rights, on the right to adequate housing (Article 11.1): Forced evictions.

are to be properly applied. Although this will mean waiting for certain objectives to be achieved, it is important for measures to be properly calibrated so that they do not fail and send the pendulum swinging damagingly the other way, calling their very principles into question.

### **Supporting and strengthening voluntary procedures**

Initiatives aimed at involving investors, public actors and civil societies in voluntary procedures to respect rights declared at the international level and principles of environmental sustainability that do not yet have the status of international standards are starting to take shape. The principles set out by the team conducting research on land tenure for the World Bank should be supported,<sup>77</sup> even if, as we argue below, they do not go far enough. Several governments have announced that they are willing to support the joint World Bank, IFAD and FAO procedure, which aims to build the broadest possible international consensus on a voluntary code of conduct for agricultural investments. We welcome the desire to articulate this procedure with a process of regional consultations involving multiple actors, planned in the context of the work done by FAO to define **voluntary guidelines for responsible governance of land and other natural resources**.<sup>78</sup>

Given the current progress in mobilizing civil societies to create an effective international law, these initiatives constitute the most concrete short-term prospect for avoiding the negative impacts of large-scale land appropriations, and ensuring that the only projects implemented are those likely to serve the general interest of the populations of the host country.

The present international legal and institutional framework provides few opportunities to strengthen the negotiating powers of either local people using land targeted by investment projects, or the public actors involved in negotiating investment agreements.

The World Bank group<sup>79</sup> is devoting considerable energy and resources to increasing and protecting the rights of investors, particularly foreign investors. Its services are specifically designed to facilitate procedures to obtain land rights in developing countries in accordance with investors' demands, which entails working with national governments on legal, political and administrative reforms. A recent report by the Oakland Institute<sup>80</sup> highlighted the size and scope of these interventions, and their link with massive land appropriations, especially in Africa. There is no published evaluation of the impact of these interventions on the World Bank's declared objectives of reducing poverty and hunger in developing countries.

77. Recognising and respecting existing laws on land and natural resources; strengthening food security; transparency and the need for accountability; consulting with those likely to be affected and ensuring their participation; economic viability and corporate social responsibility; social and environmental sustainability.

78. See FAO discussion document *Towards voluntary guidelines on responsible governance of tenure of land and other natural resources*, Land Tenure and Management Unit (NRLA), January 2009. Also, among others, Monsalve Suárez, Sofia; Marques Osorio, Leticia; Langford, Malcolm. *Land Tenure Working Paper on Voluntary guidelines for good governance in land and natural resource tenure: Civil society perspectives*, FIAN International and Hakijamii (Economic and Social Rights Centre), 2008.

79. The World Bank group offers investment-related services, advice and technical assistance to governments and investors through the International Center for Settlement of Investment Disputes (ICSID), which is attached to the World Bank, and a number of its agencies and services, particularly the International Finance Corporation (IFC), the Foreign Investment Advisory Service (FIAS) and the Multilateral Investment Guarantee Agency (MIGA). It is also a direct investor, through its projects, and is thus both party and advisor to the process.

80. *(Mis)Investment in Agriculture, the role of the international finance corporation in global land grabs*, Shepard Daniel with Anuradha Mittal. The Oakland Institute, 2010.

The arbitration structures working to resolve investment-related disputes cannot function fairly if they are dealing with powerful *global corporations* on the one hand, and the poor-est governments in the world on the other. Improvements must be made at this level to protect populations whose governments do not guarantee their rights, and who are often not sufficiently organised or capable of defending them themselves.<sup>81</sup>

Given the limitations of international law and the interests at stake, the measures most likely to be accepted are those based on voluntary principles. However, the Working Group does not believe that these will be capable of tackling the risks identified. Therefore, everything possible must be done to overcome the limitations of current international laws relating to issues associated with land use around the world.

### **Working to put in place a restrictive legal framework to 'build commonality' at the global level**

Global-level thinking is needed to define global standards that can deal with the problems raised by the appropriation and concentration of land and natural resources, and determine the conditions required to implement them effectively.

It is a matter of building an identity, a consciousness and a shared feeling of belonging to the same group – humanity. Formulations contained in the International Covenant on Economic, Social and Cultural Rights (ICESCR) and several other treaties show that there is already broad ethical consensus on a number of the issues raised in this paper.<sup>82</sup> The work on formulating voluntary guidelines for 'responsible governance of tenure of land and other natural resources' initiated by the FAO and supported by numerous governments and civil society organisations is moving in the same direction. The problem is that the application of these arrangements is left to the goodwill of each actor.

At the moment, each state is free to decide whether or not to abide by the systems and norms of arbitration that are in place, even in what could be considered as key areas. The Committee on economic, social and cultural rights is one of the few bodies with sufficient technical abilities and moral authority to judge whether or not these practices are well founded.<sup>83</sup> However, there are no legal tools to sanction governments that engage in massive appropriations of land rights which are clearly devastating for local populations. We have to find ways of mitigating the lack of binding standards in current international law.

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81. On these questions see: Cotula, Lorenzo, *Making the Law work for the poor*, IIED, 2005; IIED, 'Strengthening citizens' oversight of foreign investment', *Investment Law and Sustainable Development, Sustainable Markets Investment Briefings* Nos. 1-5, 2007; Cotula, Lorenzo, 'International law and negotiating power in foreign investment projects: comparing property rights protection under human rights and investment in Africa', in *The South African yearbook of International Law*, 2008, 2009.

82. United Nations, International Covenant on Economic, Social and Cultural Rights, adopted by the United Nations general assembly in New York, 16<sup>th</sup> December 1966.

83. Which is concerned about the impact that speculation and land projects in Cambodia are having on the rights set out in the ICESCR.

## Proposed strategies and actions

The Working Group believes that participatory frameworks for land governance need to be set up, developed and strengthened before any investments are made in rural lands. This is a necessary, although not sufficient, condition to ensure that investments genuinely support sustainable agricultural development in host countries.

The proposed strategies and actions are grouped into three sections: (i) in the context of development assistance policies; (ii) in the context of putting in place new global governance mechanisms; (iii) in relation to the role of civil society.

### • In the context of French development assistance policies

We can begin with internal policies, whose application depends exclusively on decisions made by France. The following ten proposals are not presented in order of importance, but are simply listed one after the other.

1. Further prioritise funding for specific programmes researching current land tenure around the world, its links with food security and the need for a new framework for global governance. These programmes would benefit from close links with research institutions in developing countries and civil society organisations in France and other countries. Key research themes could include: the diversity of rights and governance regimes, regulation of markets for land rights, and land taxes. All these issues need to be addressed at the different levels of governance.
2. Assist the countries and collective actors concerned (local governments, farmer organisations) in identifying and enumerating existing individual and collective land rights, and rethinking the distribution of different ownership rights (rights to use different resources, management rights, rights of transfer – inheritance, sale, rental, etc.) among several categories of rights holders,<sup>84</sup> and the supposed ‘presumption of state ownership of land’ that still exists in many countries that have undergone a process of decolonisation.
3. Put in place development assistance programmes designed to strengthen the legal capacities of governments in developing countries, increase resources to inform and train their populations, and reinforce governance mechanisms that will facilitate rapid progress towards the rule of law based on a recognised system that includes different kinds of power. Articulation with policies supporting decentralisation would be highly desirable.
4. Reactivate French technical expertise in economic evaluation and conduct impact assessments in the agricultural and rural sector, with a particular focus on medium- and long-term ecological issues. Interested countries should be offered the opportunity to benefit from this expertise, and impact assessments should always be undertaken before any decisions are made to finance investment projects with loans from public funds. It is important that this is linked with methods of formulating ‘*Poverty Reduction Strategy Frameworks*’.

84. What French lawyers call ‘*the subdivision of proprietary rights*’

5. Establish restrictive rules on all public funding for investments that involve taking control of large swathes of land or natural resources, based on widespread consultations between private investors, research institutions, groups of specialists in sustainable development assistance, and civil society organisations.
6. Make better use of the vast land governance experience that France and other European countries have accumulated in agrarian systems based on modernised peasant farming, and develop knowledge and understanding of these experiences in developing countries by sharing and building on the lessons learned after several decades of diverse policies. These experiences will be particularly useful in formulating public agricultural policies that take account of trans-generational developments, as well as so-called policies on 'agricultural structures'.<sup>85</sup>
7. Support regional federations of farmer organisations and, where these do not exist, national organisations, so that they can produce or better support their own analyses of current dynamics, and be better able to assess the risks and opportunities they present.
8. Support human rights organisations, particularly national leagues, when they exist, directly or through the International Federation for Human Rights, as they can play an important role in seeking fairer solutions to these issues.
9. Fund the establishment of monitoring and even surveillance bodies bringing together public and private organisations from the countries concerned (France, other countries involved in investments, host countries), research institutions and representatives of civil societies in France and the host country, to provide critical oversight in putting the largest investments in place, and constantly monitor and control their development. The French government, private investors and local populations all stand to benefit from this type of mechanism and frank and open dialogue between all concerned.
10. Continue to support the work done by the French Cooperation Land Tenure and Development Technical Committee, which has helped inform France's position on strategic subjects and enrich international debates.

The aim of all these actions is to show that it is possible to design massive investments in agriculture that do not work against the interests of the poorest sectors of rural society. If France wants to be able to act at the international level, it has to show that its proposals are practicable. Nothing would be more damaging than seeing large French companies accused of continuing to deploy predatory practices,<sup>86</sup> pillage natural resources and exploit workers in defiance of the labour laws in host countries. Naturally this goes hand in hand with reflection on the social responsibilities of French and multinational corporations.

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85. Policies that aim to avoid an over-concentration of land and to maintain viable farms.

86. Picking up on the term used in the joint Franco-Brazilian declaration of November 2009.

## • Regional authorities, particularly the European Union

Regional spaces that bring together several countries are a particularly good level at which to start the thinking process and put in place measures and regulations that extend beyond the sovereignty of individual states. Pascal Lamy, then European Trade Commissioner, made a very clear argument for this in 2004.<sup>87</sup>

While Europe has had its difficulties, it has also had real successes, and its example opens the way to build other spaces of this kind.

When they do not limit themselves to simple free trade zones, regional spaces can help prepare the ground for balanced and mutually beneficial development among countries that share certain geographic and historical characteristics. Although we will not develop the idea any further in this paper, two possible convergent courses of action are worth noting:

- establishing common binding rules in spaces that bring together countries familiar with the phenomena of large-scale appropriation and concentrations of land;
- putting in place common procedures at the level of the European Union, in order to facilitate progress towards broader measures that could be applied in every country around the world.

## • In the context of multilateral diplomatic relations

The Working Group believes that international efforts need to move forward with the ideas and principles developed thus far, and ensure that they are recognised by international organisations and donors in policy dialogues with countries hosting investments.

### Supporting the development of voluntary procedures

In September 2009 about thirty governments, including that of France, moved to support procedures started by the World Bank, FAO and IFAD<sup>88</sup> at Japan's initiative. These procedures aimed to build consensus around several basic principles,<sup>89</sup> which would form the basis of a code of conduct that Japan wished to be applied to investors as a priority. The proposed principles actually cover fields of action relevant to all stakeholders in large-scale appropriations and concentrations of land: not only investors, but also the governments of host countries and investors' home countries, civil society groups and the populations concerned. They are broadly similar to those identified by the Working Group, presented above. Since this is one of very

87. *'Regional groupings may prove more effective at reconciling collective preferences and limiting the destabilising effects of greater openness. Countries in given region have been shaped by a shared history; their political cultures, economies and demographic structures have certain features in common; it is reasonable to expect that they will more readily form bonds that affect their policies and their sovereignty. Regional groups are a re-useable resource on the world stage, as initial synthesisers and coordinators of collective preferences'* In Lamy, Pascal 'The emergence of collective preferences in international trade: implications for regulating globalisation? Conference 'Collective preferences and global governance: What future for the multilateral trading system?' (speech by the European Trade Commissioner), Brussels, 15<sup>th</sup> September 2004.

88. Which were given further impetus during the G8 and G8+5 in July 2009. Government of Japan, 'Promoting responsible international investment in agriculture', Round table concurrent with the 64<sup>th</sup> United Nations General Assembly, Chair's Summary, 2009.

89. The World Bank team researching land tenure proposed the initial basis for discussion in a working paper entitled 'Securing land tenure and improving livelihoods: Towards a set of principles for responsible agro-investment'.

few forums for discussion where these issues are addressed multilaterally, it is important to continue to ensure that the French analysis and position is understood at this level. The procedure is worth supporting in order to steadily broaden consensus and create the conditions to make further progress.

The consolidation of existing ownership rights, which is one of the basic principles cited above, should naturally be central to these proposals. Similarly, it is essential that negotiations and contracts are transparent. Requirements to 'publicise' information and decisions, in the sense of making them accessible to the public, could easily be incorporated into the terms and conditions of initial voluntary procedures.

However, the Working Group is concerned about the possibility of transforming these good intentions into concrete actions. The risk with simple 'codes of conduct' is that they do not lead to any genuine changes in the practices of those behind the large-scale appropriations and concentrations of land. If they merely present these investment processes in a more 'ethical' guise without really modifying them, they could have a perverse effect of supporting practices that are more akin to predation than optimising investments.

Another key aspect of the process set in motion by the FAO, which aims to establish voluntary guidelines for modes of responsible governance of land and other natural resources, is a large-scale process of consultation and cooperation on land and governance issues that will include civil society groups. With regard to the procedures calling on individual governments to sign up to voluntary commitments, an additional protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR) was recently proposed for signature by the states subscribing to the covenant, largely thanks to France's efforts. This would give the Committee on Economic, Social and Cultural Rights new powers to monitor the rights stipulated by the ICESCR, similar to the Committee on Human Rights' powers regarding the rights set out in the International Covenant on Civil and Political Rights (most notably, to examine collective and individual communications).<sup>90</sup>

Article 11 of the ICESCR of 1966 establishes the basis for the fundamental values of 'the right to food' (which has a special rapporteur designated by the United Nations<sup>91</sup>) and rights to resources. Effective legal protection for these rights, which are already broadly recognised by the international community, would offer another powerful means of recourse for communities whose basic rights and economic development are threatened by large-scale appropriations and concentrations of land. Unfortunately such protection is not available at present.

Getting a large number of states to sign the aforementioned additional protocol to the ICESCR would probably constitute a step in the right direction. Indeed, this would entail states agreeing to give this entity, which embodies a multilateral understanding, the right to express an opinion on their schemes.

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90. Individuals or groups can call upon the Committee on Human Rights to question representatives of states that they wish to challenge, and inform the world and other states concerned of its opinion regarding their respect for the rights stipulated by the Covenant. However, these decisions still have no direct effect in terms of ascribing responsibilities, sanctions or reparations.

91. Whose responsibilities include presenting an annual assessment of the global situation regarding the right to food to the General Assembly of the United Nations.

Similarly, it is left to the political will of states to lay the foundations for international law under which failure to fulfil their written commitments to international agreements (ICESCR, ICCPR,<sup>92</sup> ILO agreements, etc.) would be noted and possibly sanctioned, in addition to acts that do not directly threaten collective security.<sup>93</sup>

### **Proposals to go beyond voluntary measures**

The Working Group feels that it is imperative not to rely on the goodwill of stakeholders in large-scale land appropriation and concentrations (investors, countries providing and receiving investments, beneficiaries, etc.) to change their practices as quickly as the current planetary challenges require.<sup>94</sup>

The aim of the following proposals is to help develop a set of core values and standards with sufficient legitimacy for everyone to consider that they should be respected, and to create the conditions and tools needed for them to be effectively observed. It is through these values that the common dimension of land uses can assume its full meaning.

#### **Set up a group of independent international experts on the governance of land and natural resources**

Land governance issues have an obvious common global dimension that extends far beyond the level of sovereign states. Problems in this arena are now assuming dangerous dimensions for food security, maintaining peace and conserving natural resources. Reaching a consensus on the best way of dealing with these problems is not going to be quick or easy, and the complexity of land and governance issues at different levels rules out any possibility of finding blanket or all-purpose solutions. The diversity of ecosystems, agrarian systems, societies, legal systems and cultures is such that it will be necessary to pursue different, parallel paths to establish better land governance and attain the objectives of sustainable development, particularly optimising resource use and reducing poverty and food insecurity. France has already suggested creating a High Level Panel of Experts (HLPE) within the framework of the Global partnership for Agriculture and Food Security (GPAFS). This could be a good place to start addressing the problem of large-scale land appropriations (and security of tenure in general), initially at least.

However, the Working Group suggests that the international community needs to take this further and set up a permanent group of independent experts composed of scientists and specialists from several countries and backgrounds, with an inter-governmental mandate to investigate and assess this matter, produce an assessment, and research and propose ways of moving forward on this issue.<sup>95</sup>

As the Intergovernmental Panel on Climate Change (IPCC) is doing with climate change, this group should look beyond private and national interests and propose regulatory mechanisms and a strategy for their implementation. Its work could articulate with that of a network

92. International covenant on civil and political rights.

93. Which are covered by binding decisions that the United Nations Security Council may choose to take.

94. At the moment, the only official document that we know of produced by a national administration calling for more than voluntary measures is one produced by the German Federal Ministry for Economic Cooperation and Development: *Development policy stance on the topic of land grabbing – the purchase and leasing of large areas of land in developing countries*, Discourse 015, 2009.

95. Another way of building this collective research capacity could be for France to start work on establishing or strengthening a group of European experts.



of universities, and with the establishment of a global land tenure observatory, which is needed to monitor developments and follow up proposed measures. This group should include at least one reference person specialising in human rights and gender, and receive international funding so that it can retain the independence required to work effectively.

### **Moving towards more effective international law**

The best way to respect human diversity while managing these common problems would surely be to design a process for building global governance that is based on subsidiarity, rather like the mechanisms implemented with the construction of Europe.

There is no question of challenging the position of the state as important regulatory body for national-level problems. However, global problems call for effective, shared global standards. The norms jointly drawn up by states are not truly binding (apart from those concerned with peace and collective security) and do not have a genuinely universal dimension (they are not shared by every state in the world, as they are not all 'party' to the various international agreements that formulated these values).

Nevertheless, the values so far defined through international treaties, conventions and declarations by the United Nations General Assembly, etc. do constitute a very useful set of sound, relevant basic principles. They could probably offer means of recourse for populations whose living conditions are threatened by large-scale appropriations or concentrations of land. But the international agreements in which they are enshrined do not give any supranational body the power to compel the states that ratified them to respect their commitments, which could be flouted by the implementation of certain investment agreements.<sup>96</sup>

In addition to this, the regulation of disputes over the implementation of investment contracts between a state and a transnational company is not covered by any of the major international treaties that provide a definition of human rights (shared by their signatories). Arbitration bodies only refer to investment agreements for guidance.<sup>97</sup> These agreements, individually negotiated by states with differing economic and geopolitical powers, provide highly favourable conditions for transnational investors. They frequently assume that the host government will guarantee all new investors the best conditions already granted to foreign or domestic investors (most favoured nation provision and national treatment provision), in which case local populations can expect a level of dispossession at least equal to the worst prior dispossession. These arrangements generalise tax exemptions on land, commercial transactions and

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96. No reference is made here to the values enshrined in the agreements whose violations the Dispute Settlement Body (DSB) of the World Trade Organization (WTO) is responsible for investigating and sanctioning (General Agreement on Tariffs and Trade, Agricultural Accord, etc.), nor to those of the *European Convention on Human Rights* backed by the European Court of Human Rights. To date, these are the only two examples of genuine binding international jurisdictions. But while the former involve a large number of countries, they only deal very indirectly with the problems raised by large-scale land appropriations, and are far from applying the social and environmental considerations to other principles that they are developing (trade deregulation). The populations most likely to be concerned by large-scale land appropriation and concentration do not have direct recourse to the *European Convention on Human Rights*. It would be interesting to know the effect that European civil society could have in referring to it on behalf of communities whose interests would be threatened by the appropriation or concentration by a European company of land outside Europe. The question here is what scope the European Convention on Human Rights has in terms of European states' offshore responsibilities (particularly outside Europe). We have not attempted to evaluate this.

97. Bilateral or multilateral agreements to promote and protect investments, and other sections relating to investments in international agreements on free trade and economic partnership and association.

profits that will stay in place beyond changes in government. In the case of massive land appropriations and concentrations, they make it impossible to raise land taxes that would socialise part of the rents generated by these investments in the long term.

These, then, are the limitations of current international law. There is no binding overarching law on contracts to guide the regulation of disputes and set the hierarchy of principles to be observed, as there is in national laws. The absence of such an overarching law makes it impossible for an arbitrator to settle a dispute between two parties to an investment contract by referring to a standard accepted by the entire political community concerned. Given the global challenges ahead, progress must be made towards defining such standards at the global level and applying them to all contractual commitments between transnational actors and national and/or local governments, transnational actors and private local actors, etc., as well as to international agreements themselves. A treaty has already established the name of this set of values: peremptory norm of general international law.<sup>98</sup> Now it is a matter of determining which values will give it its substance.

We suggest that one strategy would be to use the principles enshrined in the major international pacts that currently define basic human rights and people's rights to natural resources as the basis on which to build the content of the peremptory norms of general international law. Therefore, it is essential to at least publicise the issues raised by the fact that these treaties are not currently binding, and to make it known that this could be remedied by states signing an additional clause to these pacts accepting the truly compulsory jurisdiction of the International Court of Justice, starting with the International Covenant on Economic, Social and Cultural Rights.

It seems anomalous that these pacts cannot provide the basis for any form of recourse.<sup>99</sup> A promising attempt has been made to draw up universally comprehensible and enforceable rules setting out in legal terms the necessary conditions that the biosphere requires for the survival of the human race, but it is far from complete. As we have seen, we also need to work to broaden the scope of these major international agreements so that they cover everyone, thereby broadening participation in the definition of their content. This means that they will need to be adapted, which will entail building 'a global political community' around the issues that will determine our common fate. This is the subject of the Working Group's final recommendation regarding civil society.

**Valorise socially useful investments by developing mechanisms to reward labour and economic efficiency and redistribute unearned income that it has not been possible to eliminate**

Serious criticisms regarding the current functioning of the global economy have led the heads of certain states to talk of the need to 'reinvent capitalism'. Most of the problems in the field that we are concerned with are caused by confusion between investment and capturing wealth.

The greatest service that can be done for effective and decent investors is to clearly differentiate between fair wages for labour, economic efficiency and the risk-taking associated with any investment on the one hand, and the seizure of resources and capture of revenues generated by the land (ground rents) on the other. This would make it possible to distinguish

98. Vienna Convention on the Law of Treaties, 1969, Article 53.

99. What jurists call non-justiciability of pacts.

between well-intentioned investors and those who are primarily interested in predatory opportunities, seeking to exploit and prolong tax exemptions and capitalise on the abundance of poor, very badly paid workers.

The risks of conflict, rebellion and revolt will diminish appreciably for the former, whose legitimacy will be greatly increased by resisting the temptations of an opportunistic process of rapid and undeserved accumulation. They will gain greater security in the medium and long term, and help increase effective demand among local populations who could ultimately become their clients – thereby instituting virtuous rather than speculative development.

Beyond these questions of fairness, addressing the issue of ground rents more effectively would mean that:

- the poorest states would not have to sell off their natural resources,
- local producers would not suffer the consequences of unfair competition from more productive farming systems, would get better prices for their produce and therefore be able to improve their productivity,
- the whole of humanity could develop the tools and resources to put in place social and environmental practices compatible with sustainable development.

Therefore, priority should be given to developing tools to identify unearned incomes and putting mechanisms in place to prohibit them. Here again, this needs to be done at different levels. We have already seen that this type of rent may be generated at the local level or across the entire country concerned, but it obviously has an international dimension too. We suggest that work could be done in two complementary arenas at this level:

- working against the appearance of rents associated with market distortions,
- using taxation as a mechanism to redistribute rents from investment.

#### **Regulate global trade to avoid the creation of unearned incomes**

Until now the opportunity to make productive use of little-used land often depended on the existence of ‘artificial’ markets that increased the price of the potential outputs from this land.

- For example, the high demand for soya in European countries is partly responsible for increased pressure on Amazonian rainforests. This was compounded by agreements made in the early days of the Common agricultural policy, which led France and Europe to encourage the production of cereals rather than oilseeds and vegetable protein crops for animal feed.<sup>100</sup>
- Similarly, policies promoting agrofuels in developed or emerging countries, with a mandatory percentage of these new fuels going to distributors, led to the appearance of rents.

The mechanisms for negotiation within the *World Trade Organization* seem to give little or no thought to the fact that these ground rents emanate from the public policies of certain countries, even though direct subsidies are widely opposed.

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100. And the Blair House agreements of 1992, whereby the European Union pledged to reduce the amount of land under sunflower and soya and remove duties on oil and seedcake made from these two plants imported from the United States.

The Working Group believes that agricultural trade agreements should be re-examined to determine their unanticipated effects on global agricultural development, food security and human rights when they lead to the creation of ground rents that then drive large-scale appropriations of land rights.

### **Developing land taxes at different levels**

There are various other mechanisms that could lead to the appearance of ground rents, such as decisions regarding authorised land use. Land in an area suitable for building ‘gains value’, and the construction of a roadway near a plot increases its sale and rental price. These added land values generate higher rents, which are based on the location of the land rather than any action taken by the landowner.<sup>101</sup> Other types of rent are not linked to public policies or regulations, but are inherent in the natural attributes of the setting (initial fertility, etc.).

While it is always difficult and often impossible to avoid the appearance of these different ground rents, it is possible to ensure that they are not appropriated for private gain. Land tax is an excellent tool for socialising such rents. Redistributing ‘unearned’ income and using it to serve the general interest can only have positive effects for everyone, provided the systems of government and management function democratically and without too much corruption.

At the national level, opportunities to put fiscal policies in place primarily depend on the balance of political power. It is often just as difficult to introduce land taxes in developing countries as it is to conduct agrarian reforms, sometimes even more so.

What we are most interested in here is the effects that these ground rents are having at the international level. It is still possible to distinguish between their perverse effects and the virtuous outcomes of genuine investments, but it is becoming harder to treat them differently at the international level than it is at the national level. How can we socialise rents generated by the appropriation of common goods?

This could be done through binding clauses to reterritorialise some of the added value generated by investments, or a compulsory tax on large-scale land transactions by agricultural and forestry investment projects covering large amounts of land (acquisitions of ownership or long-term leases). However, national governments are currently the only bodies able to put these taxes in place, and we have seen that it is not always possible to get them to do so.

Introducing global taxes does seem to be an increasingly likely option as realisation dawns that simply putting market mechanisms in place is not an effective way of tackling problems with the governance of common goods (or global public assets) at the global level. From this point of view, it is worth considering developing a global tax on large land transfers, which could benefit everyone by reducing the effects of the inequalities inherent in land with different potential and constraints, and contributing to less unequal and more harmonious territorial development.<sup>102</sup> But who could set and raise this kind of tax on a global scale? How would it function? And how would the levels be set?

101. And should not be confused with the increase in value resulting from works to develop or service land.

102. As with the French ‘mountain policy’, or structural funding mechanisms in EU countries: they are based on the same logic, but seek to use subsidies to compensate retrospectively for inequalities, rather than deducting tax at source.

Even if it is imperfect and partial, a global land tax could help raise awareness of the common element of all natural resources: if the international community raises a tax, it is because it has rights to the land. This is the direction that the quest for concrete proposals should be heading in, to contribute to:

- greater awareness of belonging to the same world, with a common identity and shared responsibility for resources that cannot be divided or distributed without the risk of destruction,
- improved opportunities for each country to put a land tax in place, as this is one of the keys to controlling and reducing the negative effects of large-scale land appropriation and concentration.

Although this is not the place to explore where this line of thought might lead, we would like to note several points that are worth considering:

- The nature of the institution that could oversee collection of such a tax, which should be based on the United Nations system.
- Where the money would go, with a view to progressive implementation aimed at gradually changing the power relations between actors and conceptions of the common good.
  - the money could be used to build the negotiating capacities of the people concerned, and monitor respect for human rights and criteria for environmental sustainability
  - it could also be used to increase government capacities to establish operational and permanent land taxes based on land tenure in order to encourage efficient resource use and avoid land hoarding.

The possible negative effects of such measures also need to be considered. It is easy to see how paying a low tax could help legitimise the theft of wealth, in the same way as formal purchases or rentals.

Apart from the obvious difficulties in proposing an operational mechanism that is acceptable to everyone, this line of thinking would have the merit of considering the question of funding, putting in place genuinely global policies and rapidly going beyond the voluntary stage based on actors' good will and accountability. A 'return to politics' is more necessary than ever.

### • **With regards to civil society**

These are ambitious proposals, which cannot be transformed into widespread progress solely on the basis of voluntary efforts by the French State, no matter how strong its desire to be at the forefront of the search for global solutions. Therefore, we need a strategy for working with civil society. These actions cannot be restricted to our back yard, as progress on agreements requires convergent joint initiatives from different continents – similar to, but on a much larger scale than the Franco-Brazilian initiative on food security.

In our view, what is needed is support for wide-ranging actions and partnerships aimed at facilitating collective awareness of the concrete issues associated with land use, and to progressively build local, national and international solutions, especially at the legal level.

France's political position on these questions, and the experience of the Land Tenure and Development Technical Committee, which includes representatives from the French government, research institutions, universities, specialist NGOs and civil society, constitute advantages that could be built on if a strategy for large-scale dissemination, discussion and cooperation extending beyond francophone countries is put in place.<sup>103</sup> In some way, this is a necessary condition for seeing the foregoing proposals through to fruition.

France has a central role to play in this strategy, by funding some of the activities it will entail, running networks, organising citizen forums and supporting the translation and dissemination of ideas that could help establish the broadest possible consensus on possible solutions. The need to deal with the large-scale appropriation and concentration of land rights ties in with the need to find responses to climatic risks. This proposal is in step with French policy supporting the creation of a Global Assembly on Food Security, which also plays a central role in establishing a European position at the forefront of the campaign to combat climate change.

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103. The Land Tenure Technical Committee has worked in collaboration with partners from the United Kingdom, the International Institute for Environment and Development (IIED), from the outset. This has probably been one of its defining characteristics, and has helped enrich its thinking.



# Large scale land appropriations

## Analysis of the phenomenon and proposed guidelines for future action

Civil society organisations, international institutions and governments are becoming increasingly concerned about the appropriation and concentration of cultivable lands in numerous countries in the South and East by big businesses and corporations.

This document is a synthesis of the available information on the situation, contributions from members of the Land Tenure and Development Technical Committee and research by members of an extended working group. It considers the meaning of 'investment' and the types of investment the world needs to achieve food security and protect the environment, distinguishes the privatisation of common resources from the concentration of lands that are already recognised as private property, and identifies new elements of land appropriation and concentration.

We are all affected by this phenomenon, which is now a major global issue. Employment, the creation and distribution of added value, and the production of food goods and environmental services all serve the general interest. Their regulation cannot be left

to the play of the markets. Beyond the debate about different models of production, there are fundamental societal choices to be made.

The proposals presented here are built around two principles: i) protecting existing rights to land and resources, and ii) the need to recognise collective rights that ensure that private individual uses and rights are compatible with the general interest. These are explored at the national, regional and global levels.

The authors recognise the importance of putting voluntary measures in place, but emphasise that the problem cannot be addressed solely by relying on the good will of socially responsible businesses.

Therefore, they invite all concerned to:

- work towards establishing a genuinely binding legal framework at the global level;
- develop policies and mechanisms that reward labour and economic efficiency, and use land taxes to redistribute ground rents that it has not been possible to eliminate.

*The Land Tenure and Development Technical Committee is an informal think tank composed of experts, researchers and officials from the French Cooperation. It was set up in 1996 to provide strategic support to the French Cooperation and supervise land tenure initiatives through a network of French and international actors. Initiatives by the Committee include the White Paper on land governance and security of tenure in developing countries produced by actors in the French Cooperation, and numerous other works and tools aimed at improving our understanding of land issues in developing countries and our ability to meet the challenges they present. These can all be found on the Land Tenure and Development website ([www.foncier-developpement.org](http://www.foncier-developpement.org)), which was set up by the Committee to facilitate access to accurate and reliable information on the sector.*

*AGTER is an international association created under French law that works on issues associated with the governance of land, water and natural resources. It runs a network bringing together people from around the world to discuss and reflect on their practices, transcending linguistic and cultural barriers to build on previous experience and available information. In this way it contributes to the formulation of proposals and alternative ways of addressing the current challenges of resource management. AGTER was asked by the Land Tenure and Development Technical Committee to lead research by an extended working group on large-scale land appropriations, and to produce this document analysing its findings and proposals. [www.agter.asso.fr](http://www.agter.asso.fr)*