

# LAND AND POWER

The growing scandal surrounding the new wave of investments in land

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**EMBARGOED UNTIL 00:01 HRS GMT 22 September 2011**



Miralvalle, Polochic Valley, Guatemala, 15 March 2011. The community was evicted, their houses and crops destroyed. Copyright photo: Archive Fundación Guillermo Toriello.

**The new wave of land deals is not the new investment in agriculture that millions had been waiting for. The poorest people are being hardest hit as competition for land intensifies. Oxfam's research has revealed that residents regularly lose out to local elites and domestic or foreign investors because they lack the power to claim their rights effectively and to defend and advance their interests. Companies and governments must take urgent steps to improve land rights outcomes for people living in poverty. Power relations between investors and local communities must also change if investment is to contribute to rather than undermine the food security and livelihoods of local communities.**

# Summary

International investment plays a vital role in development and poverty reduction. Investment can improve livelihoods and bring jobs, services, and infrastructure, when it is managed responsibly within the context of an effective regulatory framework. Oxfam sees this every day in its work and, in some cases, is working collaboratively with businesses to promote investments that directly benefit poor communities. The recent record of investment in land is very different. It tells a story of rapidly increasing pressure on land – a natural resource upon which the food security of millions of people living in poverty depends. Too many investments have resulted in dispossession, deception, violation of human rights, and destruction of livelihoods. Without national and international measures to defend the rights of people living in poverty, this modern-day land-rush looks set to leave too many poor families worse off, often evicted from their land with little or no recourse to justice.

In developing countries, as many as 227 million hectares of land – an area the size of Western Europe – has been sold or leased since 2001, mostly to international investors. The bulk of these land acquisitions has taken place over the past two years, according to on-going research by the Land Matrix Partnership.<sup>1</sup>

The recent rise in land acquisitions can be explained by the 2007–08 food prices crisis, which led investors and governments to turn their attention towards agriculture after decades of neglect. But this interest in land is not something that will pass; it is a trend with strong drivers. The land deals are very often intended to produce for foreign food and biofuel markets. They can often rightly be called ‘land grabs’. This term refers to land acquisitions which do one or more of the following:

- Violate human rights, and particularly the equal rights of women;
- Flout the principle of free, prior, and informed consent of the affected land users, particularly indigenous peoples;
- Ignore the impacts on social, economic, and gender relations, and on the environment;
- Avoid transparent contracts with clear and binding commitments on employment and benefit sharing;
- Eschew democratic planning, independent oversight, and meaningful participation.<sup>2</sup>

This paper looks in detail at five land grabs: in Uganda, Indonesia, Guatemala, Honduras, and South Sudan. It seeks: to understand the impact of land grabs on poor people and their communities; to identify the underlying factors between companies, local communities, and host governments; and to examine the roles played by international investors and home-country governments.

Some cases tell a story of the forced eviction – often violent – of over 20,000 people from their lands and their homes, and the destruction of their crops. Others tell how affected communities have been undermined through exclusion from decisions affecting the land they rely on. In most cases, the legal rights of those affected by the land grabs have not been respected. Where evictions have already taken place, the picture is bleak: conflict and loss of food security, livelihoods, homes, and futures. Most of those affected have received little or no compensation and have struggled to piece their lives back together, often facing higher rents, few job opportunities, and risks to their health. The evidence is sadly consistent with many other recent studies on land grabbing.

It is development in reverse.

Where there is scarcity, there is opportunity. Many governments and elites in developing countries are offering up large swathes of land at rock bottom prices for large-scale mechanised farming. This is a shocking departure from commitments made at the intergovernmental level – from the L’Aquila Food Security Initiative to the Comprehensive Africa Agriculture Development Programme (CAADP) – which emphasised support for the crucial role of smallholder farmers, particularly women.<sup>3</sup> Rather than gaining desperately needed support, smallholder farmers risk being undermined by the kind of land deals considered in this briefing paper.

Rising interest in farmland should come as good news for small-scale farmers, pastoralists, and others holding rights over land. But the opposite seems to be the case. Local rights-holders are losing out to local elites and domestic or foreign investors, because they lack the power to claim their rights effectively and to defend and advance their interests. In order to improve outcomes for these people, governments must ensure that land transfers do not take place without the free, prior, and informed consent of the affected communities.

National governments have a duty to protect the rights and interests of local communities and land rights-holders, but in the cases presented here, they have failed to do so. Instead, governments seem to have aligned themselves with investors, welcoming them with low land prices and other incentives, and even helping to clear people from the land.

Where international financiers or sourcing companies with responsible policies are involved, standards and rules appear not to have guided investments and sourcing decisions. While local communities may find recourse through one or another complaint mechanism, these seem to be underused. Other initiatives appear to reward land grabbing. Overall, the international community’s response to this devastating wave of land grabbing has been weak.

Home and host country governments, financiers and sourcing companies, the international community, and civil society groups all have a role to play. They must address the failure at all levels to respect human rights, to steer investment in the public interest, and to respond to one of the most alarming trends facing rural populations in developing countries today.

## Recommendations:

### *Justice for the cases discussed here:*

- Grievances of communities affected by the cases discussed here must be resolved. The rights of the communities affected by these deals must be respected and their grievances addressed, and those who are profiting from the international deals must help to ensure this happens. Those financing and sourcing from land acquisition projects, and companies further down the value chain, must use their influence to ensure that this happens.

### *Governments:*

- The balance of power must be shifted in favour of local rights-holders and communities. Governments should adopt strong, internationally-applicable standards on good governance relating to land tenure and management of natural resources.

### *Governments hosting investments:*

- Host governments should respect and protect all existing land use rights, and ensure that the principle of free, prior, and informed consent is followed and that women have equal rights to access and control over land.

### *Investors:*

- Investors should respect all existing land use rights. They should make sure that the principle of free, prior, and informed consent is followed in all agreements, as well as seeking alternatives to the transfer of land rights from small-scale food producers. They should be guided by proper social and environmental impact assessments (including relating to water use), and address food security issues.

### *Financiers and buyers:*

- Financiers and buyers should accept full supply-chain responsibility. They should require all agricultural operations that they finance or use as suppliers to follow the principles set out above, and remedy existing problems.

### *Home country governments:*

- Home country governments should require companies investing overseas to fully disclose their activities, and ensure that standards and safeguards are implemented to protect small-scale food producers and local populations, including through development finance organisations like the World Bank's private sector lending arm, the International Finance Corporation. They should remove measures in national legislation that support reckless large-scale land acquisitions, including biofuels mandates, and avoid introducing new ones.

### *Citizens:*

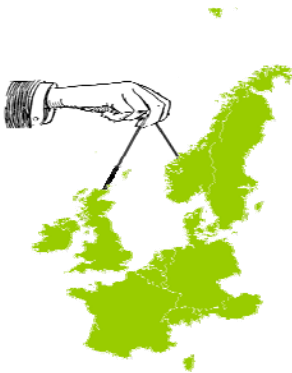
- The public can hold investors and traders accountable through the ballot box, consumer choices, and their pension fund and other investments.
- Civil society organisations, along with media and research institutes, can use accountability mechanisms, expose bad practices, acknowledge good practices, and help build transparency.

# 1

# Land acquisition: trends and drivers

## Introduction

**Figure 1: Global land deals**



*227 million hectares are reported to have been acquired since 2001, an area of land the size of North-Western Europe.*

Source: Land Matrix Partnership

*The World Bank appears deeply torn. While the report endorses the Bank's open-door globalisation agenda, the sub-text dissents on every page.*

UK newspaper, *The Telegraph* reviewing the World Bank report, 'Rising Interest in Farmland: Can it Yield Sustainable and Equitable Benefits?'<sup>5</sup>

International investment plays a vital role in development and poverty reduction. Investment can improve livelihoods and bring jobs, services, and infrastructure, when it is managed responsibly within the context of an effective regulatory framework. Oxfam sees this every day in its work and, in some cases, is working collaboratively with businesses to promote investments that directly benefit poor communities.<sup>4</sup> The recent record of investment in land is very different. It tells a story of rapidly increasing pressure on land – a natural resource upon which the food security of millions of people living in poverty depends. Too many investments have resulted in dispossession, deception, violation of human rights, and destruction of livelihoods. Without national and international measures to defend the rights of people living in poverty, this modern day land rush looks set to leave too many poor families worse off, often evicted from their land, with little or no recourse to justice.

## Increasing land acquisition

Preliminary research by the Land Matrix Partnership<sup>6</sup> indicates that as many as 227 million hectares have been sold, leased, licensed, or are under negotiation in large-scale land deals since 2001, mostly since 2008 and mostly to international investors. Finding out exactly how much land has changed hands is incredibly difficult due to the lack of transparency and secrecy that often surrounds the deals. The Partnership's figures are pulled together from a range of sources, including government reports, academic research, company websites, media reports, and the few contracts that are available. To date, 1,100 of these deals, amounting to 67 million hectares, have been cross-checked by the Partnership. Half of the land is in Africa, covering an area almost the size of Germany. Over 70 per cent of the total number of cross-checked deals are in agriculture.<sup>7</sup> While work continues to cross-check all the data, what is clear is that the scale of the phenomenon is much greater than previously thought.<sup>8</sup>

As will be discussed in this briefing paper, the rising interest in acquiring farm land has strong drivers and serious consequences for previous users and rights-holders of the land. Some of the acquisitions take the form of 'land grabs', as recently defined by the International Land Coalition (ILC) (see Box 1: Tirana Declaration). This is definitely the case in the five case studies which follow.

Whereas the surge in large-scale land acquisitions was initially described in neutral or even enthusiastic terms by intergovernmental organisations, including the World Bank and various United Nations (UN) agencies, the tone has become increasingly sceptical, and even critical. The fear is growing that this new wave of investment will do more harm than good if land grabbing is not stopped. There are few documented examples of large-scale land acquisitions that have resulted in positive impacts for local communities. By comparison, there are many examples – from the media, academia, civil society and the intergovernmental bodies – that point to land deals which have failed to provide benefits and have destroyed livelihoods and undermined human rights. Researchers are now publicly challenging investors to provide them with pro-poor or pro-development land deals to be documented.<sup>9</sup>

In its recent report on land to the Committee on World Food Security, the High Level Panel of Experts on Food Security and Nutrition (HLPE/FSN) concluded:

'It is widely recognised that increased agricultural investment is needed to raise yields as a means to improve food security in many parts of the world. Can such international investment in land be a means to improve agricultural productivity and rural livelihoods? Evidence from this land rush to date shows very few such cases. Rather, large-scale investment is damaging the food security, incomes, livelihoods, and environment for local people.'<sup>11</sup>

Given the central role that land plays in food security, livelihoods, and overall poverty reduction, there is ample cause for concern.

*Risk of Not Investing in Africa: Miss Greatest Growth Opportunities and Returns*

Susan Payne, CEO, Emergent – EmVest, Food Security Summit, Cape Town, May 2011<sup>10</sup>

*Many investments [...] failed to live up to expectations and, instead of generating sustainable benefits, contributed to asset loss and left local people worse off than they would have been without the investment. In fact, even though an effort was made to cover a wide spectrum of situations, case studies confirm that in many cases benefits were lower than anticipated or did not materialize at all.*

World Bank (2011) 'Rising Global Interest in Farmland: Can it Yield Sustainable and Equitable Benefits?'<sup>12</sup>

Box 1: Tirana Declaration

The International Land Coalition (ILC) consists of 116 organisations, from community groups, to Oxfam, to the World Bank. At its Assembly in Tirana, Albania, on 26 May 2011, the ILC denounced and defined land grabbing:

**We denounce all forms of land grabbing, whether international or national. We denounce local-level land grabs, particularly by powerful local elites, within communities or among family members. We denounce large-scale land grabbing, which has accelerated hugely over the past three years, and which we define as acquisitions or concessions that are one or more of the following:**

- (i) In violation of human rights, particularly the equal rights of women;
- (ii) Not based on free, prior, and informed consent of the affected land users;
- (iii) Not based on a thorough assessment, or are in disregard of, social, economic and environmental impacts, including the way they are gendered;
- (iv) Not based on transparent contracts that specify clear and binding commitments about activities, employment, and benefits-sharing;
- (v) Not based on effective democratic planning, independent oversight, and meaningful participation.

Source: International Land Coalition (ILC) (2011) 'Tirana Declaration: Securing land access for the poor in times of intensified natural resources competition', <http://www.landcoalition.org/about-us/aom2011/tirana-declaration> (last accessed July 2011).

## New pressures on land

*Farmland is going to be one of the best investments of our time.*

Jim Rogers, Investor<sup>13</sup>

The current wave of land deals is not essentially different from previous struggles over land. What is different is the scale and speed at which they are occurring. This can be explained by the 2007–08 food prices crisis, which made investors and governments turn to agriculture after decades of neglect, and the first signs of the global financial crisis, which led investors to look for new opportunities. Land and agriculture seemed to many a safe bet.<sup>14</sup> Today's very strong interest in land does not look set to disappear. On the contrary, it will intensify, as increase in demand is not likely to be met by the expansion of production area. There are many strong factors driving the current push. Whatever land there is will surely be prized.

One factor is world population, which is expected to grow from seven billion in 2011 to nine billion by 2050. Another important determinant is the global economy, which is expected to triple in size by 2050, demanding ever more scarce natural and agricultural resources.<sup>15</sup> Across the globe, diets are changing towards more land-intensive products, such as animal proteins (meat, dairy, eggs, and fish) and convenience foods.<sup>16</sup> Palm oil alone has become the world's most consumed edible oil, and can be found in up to half of all packaged food and hygiene products on supermarket shelves.<sup>17</sup> Production is expected to double by 2050, increasing the land area under cultivation worldwide to 24 million hectares – or six times the size of the Netherlands.<sup>18</sup>

The huge increase in demand for food will need to be met by land resources that are under increasing pressure from climate change, water depletion, and other resource constraints, and squeezed by biofuel production, carbon sequestration and forest conservation, timber production, and non-food crops.

Water, the lifeblood of agriculture, is already scarcer than land and a driver of land investments. Nearly three billion people live in areas where demand for water outstrips supply.<sup>19</sup> In 2000, 500 million people lived in countries that were chronically short of water; by 2050, the number will have risen to more than four billion.<sup>20</sup> By 2030, demand for water is expected to have increased by 30 per cent.<sup>21</sup>

Production of non-food agricultural products is also expanding, from traditional goods, such as textiles, timber, and paper, to modern products like biofuels and 'bio-plastics', in the face of climate change and the inevitable exhaustion of fossil fuels. Mandates, such as the EU target of obtaining 10 per cent of transport fuels from renewable sources by 2020, mean that there is now major pressure on land for biofuel production, constituting a major cause of food price rises and food insecurity.<sup>22</sup>

Land scarcity and volatility of food prices on the world market have led richer countries that are dependent on food imports to acquire large amounts of land elsewhere to produce food for their domestic needs.

While some investors might claim to have experience in agricultural production, many may only be purchasing land for speculative purposes, anticipating price increases in the coming years (known as 'land

banking'). World Bank analysis in 2011 of 56 million hectares of large-scale deals concluded that nothing had yet been done with 80 per cent of the land involved, suggesting a significant amount of land banking.<sup>23</sup>

All of the above is happening while the global share of land available for agriculture has peaked.<sup>24</sup> It is, in fact, reducing, as the world loses agricultural land to urbanisation and soil degradation.<sup>25</sup>

#### Box 2: Myths about land

***Myth: There is a lot of unused land waiting to be exploited.***

Statistical databases and satellite imagery have led researchers and investors to assertions about the ample availability of 'idle' land. In 2010, the World Bank, for example, quotes research concluding that 445 million hectares of unused land with agricultural potential was available, land which was non-forested, non-protected, and populated with less than 25 persons/km<sup>2</sup> (or 20 hectares/household).

However, these macro-data have little value unless they are corroborated on the ground. Satellite imagery does not show how land is used for shifting cultivation, pastoralism, hunting and gathering, and other critical uses of 'idle' lands. The HLPE/FSN asserted that 'there is rarely any valuable land that is neither already being used in some way, nor providing an important environmental service. Hence, any taking of land deemed to be 'available' will impose some cost, either on the existing land user, or in environmental services.'

In many places the real constraint for agriculture is water, not land. Research by Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) on large-scale land deals in Mali's Office du Niger region showed that during the dry season, there is no unused water. The water that will be used by planned new irrigation projects will come at the expense of traditional farmers in Mali and downstream in Niger and Nigeria. Similarly, Lester Brown has signalled that the new large land deals in Ethiopia and South Sudan are bound to affect the river's flow to downstream Nile-dependent Egypt.

Sources: World Bank (2010) 'Rising Global Interest in Farmland: Can it Yield Sustainable and Equitable Benefits?'; High Level Panel of Experts on Food Security and Nutrition (2011) 'Land tenure and international investments in agriculture', Rome: Committee on World Food Security, HLPE Report 2, July 2011; Johannes Baumgart (2011) 'Assessing the contractual arrangements for large scale land acquisitions in Mali with special attention to water rights', Berlin: GIZ; Lester Brown (2011) 'When the Nile runs dry', *The New York Times*, 1 June, [http://www.nytimes.com/2011/06/02/opinion/02Brown.html?\\_r=2&partner=rssnyt&emc=rss](http://www.nytimes.com/2011/06/02/opinion/02Brown.html?_r=2&partner=rssnyt&emc=rss) (last accessed July 2011).

***Myth: Land reform does not work.***

Ideology and politics inform the widely accepted notion that land reform does not work. However, success stories of land reform include Taiwan, Indonesia, Malaysia, Thailand, and China. Their agricultural sectors are all predominantly based on owner-operated small-scale family farms. In the cases of Taiwan and China, the smallholder-based agrarian structures were created by land reform, transforming tenants into owners. In the case of Thailand, 19<sup>th</sup> Century legislation set a four-hectare limit on freely acquirable agricultural land and constrained the emergence of large estates. Japan had very successful comprehensive land reform that also included strict ceilings land ownership.

Sources: Rogier van den Brink, Hans Binswanger, John Bruce, Frank Byamugisha and Glen Thomas (2006) 'Consensus, Confusion, and Controversy: Selected Land Reform Issues in sub-Saharan Africa', World Bank Working Papers No. 71, Washington, D.C.: World Bank; Ha Joon Chang (2009) 'Rethinking public policy in agriculture: lessons from history, distant and recent', *Journal of Peasant Studies*, 36(3): 477-515.



# Land security means food security

*History warns that any change in land relations is likely to be affected by systemic gender discrimination and that there is no a priori reason to assume that changes [induced by the new commercial pressures on land] will be any different.*

Elizabeth Daley (2011) 'Gendered impacts of commercial pressures on land', ILC/CIRAD/Mokoro<sup>28</sup>

*Since the agrarian reform began in the 1970s, the state has never taken us women into account. To have no access to land, not even to grow a banana tree, is very difficult. Not to be worthy of land, of a house, is a heavy burden on us women. We have realised that, and decided to fight for our access to land.*

Fernanda Rodríguez, age 40, Bajo Aguán, Honduras.

Access to land is critical for small-scale food producers. Lack of it defines 'landless farm workers'. Losing it and becoming landless is feared by many smallholders, as it will mean losing food security and opportunities for development. It is the most marginalised groups in society who are most susceptible to land grabbing – which makes preventing it a crucial issue for poverty reduction and human rights.

Land is not just an important productive asset. Even for families who have stopped living directly off the land, it often serves as an important safety net to fall back on when other economic ventures fail or when the economy fails to provide opportunities. Land has multiple other (so-called) secondary uses as well, which are vital to family livelihood security. It can provide fodder, nuts, fruits, roots, medicinal and kitchen herbs, dyes, rope, timber, and roofing and fencing materials. Many of these resources are available on common lands, and are often especially important for women. Land also provides a space for social, cultural, spiritual, and ceremonial events, and as such is essential for sustaining the identity and well-being of a community and its members.

Many researchers have shown that secure access to or ownership of land is associated with significant reductions in hunger and poverty.<sup>26</sup> This translates from the micro to the macro level, as was shown by World Bank analysis of land policies in 73 countries between 1960 and 2000. Countries that started with a more equitable distribution of land achieved growth rates two to three times higher than those with initially less equitable land distribution.<sup>27</sup> Nevertheless, equitable access to and control over land is not high on the agenda of national and international policymakers.

For women all over the world, lack of access to and control over land is a major determinant (and outcome) of gender inequality. In Guatemala, for instance, 8 per cent of farmers account for 78 per cent of the land in production; of the smallholders who control the remaining land, just 8 per cent are women.<sup>29</sup> In rural areas, lack of access to land forces many women to sell their labour on cash-crop producing farms, where they are paid less than men. Women farm workers may also suffer sexual violence and harassment, discrimination, and devaluation of their work. Rural women often end up with a double burden of providing for and managing the household when men migrate in search of work – another consequence of land shortages.<sup>30</sup>

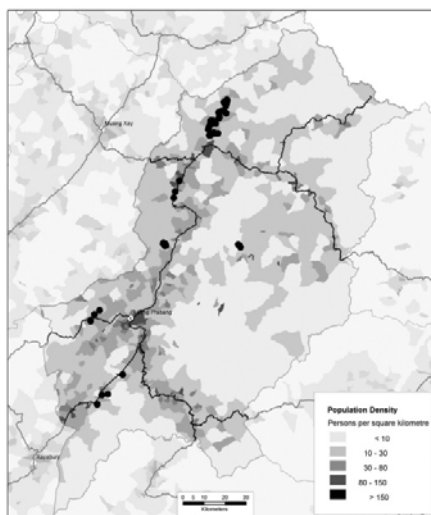
Women also fare disproportionately in conflicts over land, where they face a number of challenges.<sup>31</sup> Discriminatory legislation is compounded by the sexism of those implementing the laws, and women often have little opportunity to participate in decision-making processes regarding new legislation, projects, or contracts. They also tend to have less (cash) income than men, reducing their ability to buy land when it is available. Compounding this, gender-based violence is often a common feature in conflicts over land.

Evidence from research on land grabs in Africa suggests that women are getting a raw deal.<sup>32</sup> To begin with, women's land rights are less secure and more easily targeted. They also depend more on secondary uses of land, which tend to be ignored in large-scale acquisitions. Furthermore, although women comprise the majority of farmers, men effectively control the land and the income derived from it, even if it is the fruit of women's labour. In practice, a new commercial opportunity often means that men assume control of the land at the expense of women's access. Thus, new sources of income from the land are likely to burden women and benefit men. The new competition for land between biofuels and food crops, leading to less availability of food and higher prices, is also likely to affect women more than men, as women tend to take responsibility for feeding the family.<sup>33</sup>

### Box 3: Myths about land deals

***Myth: The new land projects focus on marginal lands.***

Despite claims to the contrary, investors target the best lands. They seek land with access to water resources, fertile soil, infrastructure, and proximity to markets to facilitate the profitability and viability of their ventures.



This map compares the location of new, large-scale agriculture concessions (black dots) with population density (the darker shades of grey indicate denser populations) in Luang Prabang province, Laos. The large-scale projects tend to be located where most people live. Further analysis shows that these are also the places where poverty rates are relatively lower and where land was already in use for food production – rather than it being empty, unused, marginal land in poor regions.

Source: University of Bern, Switzerland, Centre for Development and Environment (CDE).

***Myth: The projects will help bring food security and energy security.***

Oxfam's research in Ethiopia, Ghana, Mali, Mozambique, Senegal, and Tanzania revealed that the majority of agriculture-based land deals in Africa are for export commodities, including biofuels and cut flowers. In Mozambique, where approximately 35 per cent of households are chronically food insecure, a mere 32,000 hectares out of the 433,000 approved for agriculture investment between 2007 and 2009 were for food crops. Unrestricted export clauses in contracts, together with small-scale food producers losing their key productive asset, may well worsen rather than improve food security. Moreover, investors' short time scales may tempt them into unsustainable cultivation practices, undermining agricultural

*Foreign investors can easily get, nearly for free, thousands of hectares, while if we, local Kenyan small-scale producers, want to expand our production area, it is impossible. What is wrong here?*

Stephen Muchiri, Kenya, Chief Executive officer, Eastern Africa Farmers Federation.

production in the long-term. The research also shows that current costs of producing biofuels are prohibitive for African countries, meaning that raw materials must be exported to US or European markets to be economically viable.

Sources: Tinyade Kachika (2010) 'Land Grabbing in Africa: A Review of the Impacts and the Possible Policy Responses', Oxford: Oxfam International Pan Africa Programme.

**Myth: The projects will create jobs.**

Despite being touted as a key benefit of large-scale land acquisition, local employment generation requirements are absent from contracts and rarely materialise in practice. While lack of monitoring makes it difficult to quantify, jobs appear to be few, short-lived (as the planting phase ends or the project shifts towards greater mechanisation), seasonal, and low-paid. Survey and analysis of agro-investment in West Africa shows that very few jobs were created for local people, while pastoralists and women – who rely upon the land, trees, and water in common areas for economic activities – were suffering as a result of reduced access.

Sources: Lorenzo Cotula (2011) 'Land Deals in Africa: What is in the Contracts?' London: International Institute for Environment and Development; Thea Hilhorst, Joost Nelen, Nata Traoré (2011) 'Agrarian Change Below the Radar Screen: Rising Farmland Acquisitions by Domestic Investors in West Africa: Results from a Survey in Benin, Burkina Faso and Niger', paper presented at the 'International Conference on Global Land Grabbing', University of Sussex, 6–8 April 2011.

**Myth: The projects will bring tax revenues.**

Host governments tend to forfeit benefits by offering tax incentives in the race for investment finance. In 2008, the Government of Pakistan offered 'tax exemptions, duty-free equipment imports, and 100 per cent land ownership in special free zones in its agriculture, livestock, and dairy sectors', in a bid to attract foreign investors. Income tax is usually only payable once the investment project becomes profitable. Even if the host government has not forfeited benefits through tax incentives, it often lacks the capacity or the political will to regulate and monitor the investment, enforce the terms of the contract, or collect taxes. The World Bank, the International Institute for Environment and Development (IIED), and Oxfam's research in Africa all found that taxes were rarely collected.

Sources: Cotula (2011) *op. cit.*; Kachika (2010) *op. cit.*; World Bank (2010) *op. cit.*

## Opportunity or risk?

It is not just the 'demand side' of foreign investment that is driving the global scramble for land. Domestic companies are also promoting the opportunities presented by land acquisition to local populations. Investment promotion agencies are actively putting farmland on the international market on behalf of governments under pressure to catalyse economic development and improve the balance of payments.<sup>34</sup> There is personal motivation too for many; Transparency International's Global Corruption Barometer reported that 15 per cent of people dealing with land administration services had to pay bribes.<sup>35</sup> Some governments, particularly in Africa, risk competing in a 'race to the bottom' to attract investors.<sup>36</sup> Incentives provided include duty-free imports of capital goods used for projects, lack of restrictions on the use of the land for particular crops or purposes (e.g. exports), and permission to utilise underground water sources for free.<sup>37</sup>

This is a shocking departure from commitments made at the intergovernmental level – from the L’Aquila Food Security Initiative to the Comprehensive Africa Agriculture Development Programme (CAADP) – which emphasised support for the crucial role of smallholder farmers, particularly women.<sup>38</sup>

Small-scale producers, particularly women, can indeed play a crucial role in poverty reduction and food security. But to do so, they need investment in infrastructure, markets, processing, storage, extension, and research. However, these large-scale land acquisitions do little or nothing to address their needs. Small-scale producers have untapped potential with land, labour, and local knowledge on offer, which could match well with the capital, technology, and access to markets which investors bring. For example, contract farming, involving pre-agreed supply contracts between farmers and company buyers, can enable farmers to access markets and increase income stability.<sup>39</sup> However, in the current rush for land, the assets of small-scale producers are often ignored and their rights and interests violated.

For the increased interest in farming to be an opportunity rather than a risk for food security and poverty reduction, these things need to be in place.

- Assistance must be given to small-scale food producers to allow them to take advantage of new opportunities on the world market. In particular, their land rights must be strengthened, and they must be empowered to uphold their rights and advance their interests in the face of competing pressures on the land.
- Governments must strengthen and protect the rights of small-scale producers to the land. This includes the home governments of companies involved in agriculture investments.
- Companies equally have the responsibility to respect human rights and apply due diligence in their operations, as well as to require the same of the business partners with whom they co-operate, whether as financiers, buyers, or suppliers.

## 2

# Experiences on the ground

Increased investment in agriculture should come as good news for small-scale producers and others with land use rights, providing new market opportunities, higher prices, and more and better jobs.

The reality is very different. Local rights-holders are losing their livelihoods – and even their lives – in a new version of the ‘resource curse’, where investments in natural resource-rich countries cause more harm than good.<sup>40</sup> This is certainly the experience of local communities in the five cases considered here.

### South Sudan

In South Sudan, Africa’s newest nation, small-scale farming is the primary source of livelihood for 80 per cent of households. A January 2011 assessment found that of the 36 per cent of people, who were food insecure, 9.7 per cent were severely insecure.<sup>41</sup> Localised land and water conflicts are common and pose a challenge to stability and development. South Sudan’s newest challenge, which could derail its long-term socio-economic prospects, is large scale land acquisitions. Between 2007 and 2010, foreign companies, governments, and individuals sought or acquired at least 2.64 million hectares (26,400 km<sup>2</sup>) for agriculture, biofuel, and forestry projects. The area, equivalent in size to Rwanda, represents nearly 10 per cent of South Sudan’s land mass. For a new country still reeling from years of conflict, this wave of acquisitions may undermine affected people’s livelihoods.

In March 2008, Nile Trading & Development Inc. (NTD), a for-profit corporation established under Delaware law, secured a 49-year lease for 600,000 hectares (6,000 km<sup>2</sup>) of extremely fertile community land in Lainya County, Central Equatorial State (CES).<sup>42</sup> The deal was concluded between NTD and the ‘Mukaya Payam Cooperative’. According to the Mukaya Payam community, who live in Lainya County, this ‘cooperative’ is not a legally registered entity, has no local office, does not represent them, and is made up of three ‘influential sons of the region’.<sup>43</sup> The three signatories to the ‘cooperative’ are from the same family, and include the Paramount Chief, the Payam’s top tribal authority. The other two hold public office, which, according to some community members, they abused to get the agreement signed.<sup>44</sup>

The deal, between the company and the ‘cooperative’ (11 March 2008), was followed by a lease agreement between the CES government and the ‘cooperative’ (6 October 2008), which referred to the same 600,000 hectare plot of land. The community claims to have been bypassed on the basis that the ‘cooperative’ did not represent them. When questioned by Oxfam, NTD stated that it accepted the position originally

presented to them; 'it was always NTD's understanding that the Mukaya Payam Cooperative was synonymous with the Mukaya Payam communities [*sic*]'.

However, Oxfam considers that the nature of the deal, the size of the land included in the lease (which extended far beyond land controlled by the Mukaya Payam community), and the tradition of communally owned land in South Sudan, should have prompted NTD to independently verify the 'cooperative's' authority to agree the deal. NTD states that 'when...NTD received the registration document and subsequent letters from authorities confirming the registration, NTD assumed that the hectare figure was accurate'. NTD claims that it sought further maps and boundary data from government authorities and a preliminary aerial survey, but was unsuccessful, and that it would need to undertake a formal and verifiable survey once conditions justified the expenditure of funds. 'That is only now', it states.

Unlike with some other large-scale land acquisitions, the Mukaya community, partly galvanised by the Mukaya Diaspora in Juba and abroad, has mounted an organised and initially successful campaign against the lease with NTD. A local commission, with cross-community representatives, has presented a petition to the CES Governor to annul the lease.<sup>45</sup> The decision lies with the CES Governor, who has verbally supported the community; however, talk of an annulment is yet to be documented officially.<sup>46</sup> County and state-level officials believe that the lease cannot and will not go ahead because of the dubious legality of the 'cooperative', the scale of the land to be acquired (which extends beyond the Mukaya Payam), and the lack of due process. Uniquely, the government appears, at this stage, to be siding with the community, rather than the company. This should not be taken as the norm for land acquisitions in South Sudan.

According to the 2008 census, Lainya County's population (89,360<sup>47</sup>) is largely dependent on subsistence farming. Their staple crops are *dura* and maize but they also produce groundnuts, sweet potatoes, cassava, sesame, cow peas, and vegetables. Under the lease agreement with NTD, communities beyond the Mukaya Payam land give up the right to oppose the following activity by NTD (as permitted by the laws of South Sudan): 'exploiting timber/forestry resources on the leased land; the harvesting of current tree growth; the planting and harvesting of megafoli-paulownia, palm oil trees and other hardwood trees and the development of wood-based industries; and agriculture'. The lease also includes a clause giving NTD exploration, extraction and sub-leasing rights.<sup>48</sup> Since 2008, NTD has not activated its lease, nor has it applied to the Government of South Sudan for any licence – a prerequisite for NTD to become operational.

## Uganda

Christine (not her real name) and her husband used to grow enough food to feed their eight children on the six hectares of land that they had farmed for over 20 years. By selling the surplus at the market, they could afford to send their children to school. Instead of living in their old

six-room home, complete with kitchen, they now struggle to pay rent for a cramped two-room house, where there is not enough land to farm and grow food. Christine's children often eat only once a day and are no longer receiving an education, as it is too expensive. She and her husband were once self-sufficient, but now depend on the goodwill of friends and neighbours and whatever casual labour can be found.<sup>49</sup>

Christine is among more than twenty thousand people<sup>50</sup> who claim that they have been evicted from their homes and land in Kiboga district, and nearby Mubende district, to make way for UK-based New Forests Company (NFC) plantations.

The Ugandan National Forestry Authority (NFA) granted licences over the plantation areas to NFC in 2005 and authorised the removal of the former residents, which took place by February 2010 in Mubende and between 2006 and July 2010 in Kiboga.<sup>51</sup> The NFA says that the people living there were illegal encroachers on forest land and that their evictions were justified.<sup>52</sup>

NFC presents itself as a 'sustainable and socially responsible forestry company'. It has applied for carbon credits for carbon offsetting, and says it creates jobs in rural areas and builds schools and health facilities as part of its community development programme.<sup>53</sup> NFC maintains that, in Mubende and Kiboga, locals left the land voluntarily<sup>54</sup> and that, in any event, it would bear no responsibility for evictions from land licensed to it. The company told Oxfam that these 'are solely in the hands of the government' and that, as a licensee, it has 'very limited rights and certainly no rights to evict anyone'.<sup>55</sup>

In Oxfam's view, NFC's operations highlight how the current system of international standards – designed to ensure that people are not adversely affected as a result of large-scale transfers of land use rights – does not work. The serious impacts of the operations on local villagers, as reported by them to Oxfam, raise particular concerns given that NFC operations are supported by international investment from institutions including the World Bank's private sector lending arm, the International Finance Corporation (IFC), as well as the European Investment Bank (EIB) and HSBC, all of which claim to uphold high social and environmental standards.

On the villagers' rights to use the land, NFC has followed the NFA in describing the displaced groups, some of whom claim to have spent their entire lives on the land, as 'illegal encroachers' and 'trespassers'.<sup>56</sup> The company says that 'the majority of people who had settled within the [reserves] had done so illegally', with the exception of those who could demonstrate residence on the land since before 1992. It points to a government-driven authentication process in Mubende, which determined that only 31 families could demonstrate such ownership. NFC says that no families in Kiboga have demonstrated rights to the land they used to occupy.<sup>57</sup>

Over 20,000 local villagers, however, believe that they have clear legal rights to the land they occupied, and both communities have brought a case before the Ugandan High Court to protect those rights.<sup>58</sup> These

*All our plantations were cut down – we lost the banana and cassava. We lost everything we had. The company's casual labourers would attack us – they beat and threatened people. Even now they won't let us back in to look for the things we left behind. I was threatened – they told me they were going to beat me if we didn't leave.*

Christine, mid-40s, previously of Kayindiyindi village, Kiboga district, Uganda

claims are being resisted by NFC, and neither case has been finally decided. Those from Kiboga district state that they were invited to move onto the land in the 1970s by the Idi Amin regime. They also say that the government recognised their rights to stay on the land, allowing them to build schools and establishing administrative structures. Further, their legal pleadings refer to an executive order prohibiting the evictions, which they say remains in effect.<sup>59</sup> Many of the people who lived in the Mubende concession area say they were allocated land in the area as Second World War veterans, who fought in Egypt or Burma for the British, or their descendants. Others say they bought, were gifted or inherited land during the 1980s and 1990s. In their legal pleadings, the claimants aver that they are 'either bona fide, lawful occupants and/or customary tenants and are protected by the Constitution of the Republic of Uganda and the land laws of Uganda.'<sup>60</sup> In both court cases, the High Court considered that the communities' concerns were sufficiently urgent and their arguments sufficiently strong<sup>61</sup> to justify granting orders restraining evictions, pending disposal of the full hearings.<sup>62</sup>

Local communities say that evictions continued to take place despite these orders.<sup>63</sup> They describe the evictions as anything but voluntary and peaceful. People told Oxfam that the army and police were deployed in the area to enforce the evictions, and that many people were beaten during the process.<sup>64</sup> Some villagers also say that casual labourers, whom they believe were employed by NFC, joined the police and army in burning homes, destroying crops and butchering livestock.<sup>65</sup> The pleadings in the claim brought by the Kiboga community allege that NFC, 'purporting to be a licensee of [the NFA], trespassed on the Plaintiffs' land, destroyed homes, crops and animals of the Plaintiffs and attempted to evict the Plaintiffs'. They also allege 'trespass, uncivility, harassment and abuse' by NFC and its agents. The Mubende evictees claim that employees of NFC were 'evicting, harassing, erasing their plantations, demolishing their houses, intimidating, mistreating' them.<sup>66</sup>

NFC denies involvement in any evictions or violence and says 'there were no incidences of injury, physical violence or destruction of property during the voluntary vacation processes that have been brought to the attention of NFC'.<sup>67</sup> In support of this position, NFC points to a surveillance audit for the Forest Stewardship Council (FSC), which notes 'there were no incidences of injury to the encroachers or forceful eviction reported during [the clearance process in Mubende]'.<sup>68</sup> The company was aware of such allegations, however; a field appraisal of NFC's Mubende operations conducted by the IFC was designed to, inter alia, 'determine whether there is a basis to ... media references [to] alleged forced eviction, harassment and destruction of property [in Mubende] resulting from relocation of the local residents by government in order for NFC to proceed with its operations'.<sup>69</sup> NFC told Oxfam that its Community Development Officers were present during each of the 'vacation' processes and that they did not report any violence or property damage.<sup>70</sup> From materials provided by NFC to Oxfam, it appears that this was the extent of the company's investigations into the matter.



NFC denies breaching any court orders because 'NFC was not responsible for any evictions' and says that evictions from forest reserves are solely in the hands of the government and its designated authorities.<sup>71</sup> NFC explained to Oxfam that 'an injunction prohibiting NFC from evicting people is of little value if NFC is not evicting people in the first place. The court was right to halt the process of vacations in order to investigate the situation; however the injunction was issued to the wrong party.'<sup>72</sup>

During meetings and interviews with the communities, villagers told Oxfam that none of them, and no-one they knew who had lost their homes and livelihoods, had received compensation or alternative land to date.<sup>73</sup> Some say that local authorities offered compensation, but this has come to nothing.<sup>74</sup> Oxfam heard that, in Kiboga, a proposal was made to offer alternative land, for a period of five years. The communities say they rejected this offer because it provided insufficient space and was merely a temporary solution.<sup>75</sup>

NFC accepts that the failure to provide compensation 'is of great concern to NFC for both risk mitigation and ethical reasons'. The company told Oxfam it offered to be part of the compensation process but was prohibited from doing so by the NFA: 'We are firmly in support of compensation and believe this not only fair and just but also the fastest way to a mutually beneficial solution. However, as licensees we are expressly prohibited from offering anyone on government land any compensation'.<sup>76</sup> Further, the company says it pressured the government to compensate eligible evictees with the 'value of crops and land lost or alternative land.'<sup>77</sup> NFC also told Oxfam, however, that it only considers that compensation is due to those who can demonstrate rights to the land.<sup>78</sup> On this basis, only 31 families would receive redress for their lost livelihoods.

Oxfam considers that the legalistic approach taken by NFC in response to the court orders and on the issue of compensation is inappropriate for an ethical corporation, especially given the international standards to which the company says it adheres.

NFC and its investors rely heavily on two independent endorsements of its Mubende plantation to demonstrate that the company has adequately discharged its responsibilities in relation to the evictions and the provision of compensation: certification by the FSC and a field assessment by the IFC (neither of which address the situation in Kiboga). Oxfam has concerns regarding the rigour of these external evaluations and the level of comfort they provide. For instance, the IFC assessment notes that NFC 'has been unable to apply comprehensively its principles guiding resettlement' and that 'only a full social audit of resettlement [which was not conducted] can provide sufficient evidence such that IFC can negate the allegations [of forced eviction, harassment and destruction of property in Mubende]'. In addition, the extent to which IFC satisfied its objective of conducting meetings with local communities is unclear from the report.<sup>79</sup> In Oxfam's view, therefore, this assessment does not offer full assurance that the high ethical standards NFC claims to adhere to were met.

## Indonesia

*We earn 31,000 Rupia (\$3.50) per day. If you know that a chicken costs 40,000 Rupia it is easy to calculate that we do not get enough proteins. Even rice is expensive for us to buy, while before the oil palm we cultivated it ourselves. Before the oil palm came, some of our children even went to university; nowadays it is very difficult to have them [finish] primary school.*

Farmer from Tayan Hulu, Indonesia

The rapid expansion of palm oil production across the world has led to hundreds of conflicts over land with local communities, as their food security and access to natural resources are threatened by oil palm plantations. Latin America and West Africa are palm oil's new frontier, but many unresolved land conflicts remain in Indonesia, which together with Malaysia produces some 85 per cent of the world's palm oil. Indonesian NGO Sawit Watch is currently monitoring over 663 land conflicts – an astonishing number.<sup>80</sup> One involves indigenous Dayak communities in Sanggau district, West Kalimantan.

In the 11 villages of Tayan Hulu district, conflict has been dragging on for the past 15 years. In the mid-1990s a Malaysian/Indonesian joint-venture company named PT. Menara AlfaSemesta (PT. MAS) came to negotiate with representatives of the local communities about turning their land into oil palm plantations. The company, endorsed by the *Bupati* (Head of District), handed out 'letters of release' for villagers to surrender their land by way of a 35 year lease to the company, which in return promised to build houses, schools, a health clinic, and water facilities. Each family transferred over 7.5 hectares, of which 5.5 would be for company use, while two planted hectares would be returned to the family for oil palm cultivation.<sup>81</sup>

PT. MAS states that the area given back as smallholder oil palm plots currently amounts to 27 per cent of the total land area.<sup>82</sup> Oxfam research shows that, 15 years later, most families have only received an average of 1.2 hectares – not enough to harvest sufficient fruit to survive. PT. MAS also claims to have built facilities for workers,<sup>83</sup> and claims that since it acquired the land, the community has been brought into mainstream social and economic development activities. According to the communities, however, most of the facilities originally promised to them have not materialised. Moreover, while the 'letters of release' mentioned the right to lease the land, the communities in Tayan Hulu have since learned that at the end of the 35-year leasing period, the land will revert to the state, which in turn can extend the lease to the company up to 95 years without consulting or obtaining the consent of the people affected. Although in one case, villagers successfully used customary law to fine the company for failing to negotiate with them before accessing the land, by and large, the communities' grievances over the way the land was taken from them have never been resolved, either by the company or by the government, leading to protests, blockades, arrests, and oppression.

Sawit Watch noted that for the people of Tayan Hulu, these events came as a shock to their cultures, ways of life and customary systems of land management. There were heated debates about opportunities, costs and compensation, and these led to divisions among the local communities, and with both the district and sub district government and the company.

In 2007, community representatives asked the company to address their concerns. When no response came, people blockaded the

plantation road and demonstrated outside the company's offices, calling for more land to be redistributed. Five members of the local smallholders' union were arrested and charged with assault and destruction of property. The company made various offers to resolve the dispute, but has not agreed to fulfil the terms of the original agreement by recognising the communities' claim to the land.<sup>84</sup> PT. MAS now has expansion plans, giving rise to further tension.<sup>85</sup>

PT. MAS is a subsidiary of Malaysian palm oil giant, Sime Darby, which is responsible for six per cent of world palm oil production. Sime Darby claims to control the supply chain 'from food farm to food on the table', not only growing oil palms but also processing, refining, and selling consumer products such as cooking oil.<sup>86</sup> Sime Darby states that PT. MAS followed Indonesian legislation and rules, and that land acquisition was done through compensation where appropriate.<sup>87</sup> However, as a member of the Executive Board of the Roundtable on Sustainable Palm Oil (RSPO), the company should ensure that the expansion plans of one of its subsidiaries follow the procedure of free, prior, and informed consent, which it did not do,<sup>88</sup> as well as develop clear plans for the solution of older land rights conflicts.

In Latin America, historically a continent of extremely unequal distribution of land, income, and power, and of violent conflict over land, the expansion of sugar cane and oil palm for biofuel production is associated with brutal land-grabbing and violence. While Colombia is generally known for its large oil palm sector and associated problems,<sup>89</sup> the trend is spreading to other countries, including Honduras and Guatemala.

## Honduras

For a short period in the mid-1970s, the Bajo Aguán Valley, one of the most fertile regions in Honduras, was known as the 'capital of land reform'. Much of the valley's land – virgin forest – was given to 54 cooperatives of smallholder farmers from other parts of the country. Even after the Agriculture Modernization Act of 1992, which was generally seen as a counter-reform, the new law allowed land to be sold only to farmers or cooperatives that would have qualified to be beneficiaries of the land reform in the first place. However, in the decade that followed, corrupt cooperative leaders in coalition with bad-intentioned businesses circumvented the legislation through a combination of deceit, blackmail and violence, selling much cooperative land into the hands of powerful landlords. The farmers found themselves back as day labourers on large plantations, working hard for little pay.<sup>90</sup>

In 2001, some of the farmers organised as the Unified Peasants Movement of the Aguán Valley (known by its acronym in Spanish as MUCA<sup>91</sup>), with the aim of reclaiming their land rights, initially through the courts. With legal routes exhausted, in 2006 they began land occupations. In June 2009, they even occupied one of the palm oil processing plants of Exportadora del Atlántico, part of Grupo Dinant, provoking President Manuel Zelaya to promise to investigate the land

*I used to work eight hours per day harvesting palm fruit. If I didn't meet my targets I had to stay over hours. It is very hard work. It was very hot and they only gave us 15 minutes to eat and drink water. After that, we could only drink from the stagnant water in puddles. We could not claim social security. Nor could we set up a trade union or ask for a salary raise because they would immediately throw you out. They sold us the idea that this monoculture was going to guarantee work for all and a better living. However, what it brought was unemployment and poverty.*

Daniel Santos, former worker of Exportadora del Atlántico, Honduras<sup>93</sup>

*The main constraint on development is the inequitable land tenure and the enormous pressure on [land]. The existence of large areas of land in large estates with little capital investment, or large extensions of idle land, is the main constraint on access to land and a major cause of social backwardness in the field.*

National Coordination of Peasant Organisations, CNOO<sup>97</sup>

rights issue. However, Zelaya was removed in a coup later that month. Subsequently, as of October 2010, 36 small-scale farmers have been killed. None of these cases has been resolved or brought to court.<sup>92</sup> As a result of the escalating violence and murders, the government has militarised the area.

Dinant produces cooking oil, snacks, and other food products, and is now trying to gain a foothold in the biofuels market. To do this, the company took a \$30m loan from the IFC and a \$7m loan from the Inter-American Investment Corporation (IIC).<sup>94</sup> In April 2011, after interventions by international human rights groups like FoodFirst Information and Action Network (FIAN), two other major funders of the investment have terminated their contracts with Dinant. French company EDF Trading cancelled its contract to buy carbon credits from Dinant, indicating that they were 'taking the situation in Honduras very seriously',<sup>95</sup> and German bank DEG terminated a \$20m investment in 2011, 'with a view to the evolving agrarian conflict in the Bajo Aguán region'.<sup>96</sup>

The government was eventually forced to convene both MUCA and the company to negotiate a deal, which they did in June 2011. The government agreed to distribute 11,000 hectares to the farmers, including 4,000 hectares where oil palm has been planted by Exportadora del Atlántico. The company agreed to the proposal, but later announced it wanted to renegotiate it.

However, under the deal, the farmers have to buy back the disputed land at market prices. Moreover, many other peasant groups in the valley are still looking for solutions to their problems, and are continuing land occupations and exposing themselves to violent evictions by state security forces.<sup>98</sup> The farmers' organisations are now proposing an Integrated Agrarian Transformation Law. If approved, this will contribute significantly to a long-term solution to the problem of a land tenure structure that is concentrated in very few hands at the expense of hundreds of thousands of small-scale farmers, who do not have access to the land they need to earn a decent living and provide for the needs of their families.

## Guatemala

Guatemala has been discovered internationally as a suitable area for biofuels production, both for ethanol (sugar cane) and biodiesel (oil palm). This has given rise to a new wave of land dispossession, targeting the few remaining indigenous and peasant lands. The area planted with sugar cane in Guatemala increased from 3.4 per cent of the total agricultural area in 1980 to 14 per cent in 2008.<sup>99</sup> Similarly, the area dedicated to palm oil increased from 35,000 to an expected 100,000 hectares in 2010.<sup>100</sup> The areas deemed suitable for conversion to sugar cane and oil palm are also those where the Secretariat of Agrarian Affairs has registered the highest levels of land conflict.<sup>101</sup>

The Polochic Valley region in the north west of the country is one of the areas targeted for increased sugar cane cultivation. In 2005, the

Widmann family moved their sugar cane refinery from the south coast to the Polochic Valley, renaming it Chawil Utz'aj ('Good Cane' in the local Q'eqchi language), using a loan of \$26m from the Central American Bank for Economic Integration (CABEI).<sup>102</sup> By 2008, Chawil Utz'aj had planted 5,000 hectares of sugar cane. The farmers saw themselves with no option but to seek refuge in the steep and infertile lands of the Sierra de las Minas.

According to media articles, by 2010 Chawil Utz'aj was struggling to repay the loan. The mill's land was put up for public auction.<sup>104</sup> Farming families who had to leave the valley a few years earlier decided to return in late 2010 to occupy the land for food production. However, as has been recorded by a human rights mission from the UNESCO program on sustainability of the University of Cataluña, in March 2011, private security units forcibly evicted more than 800 families in 14 communities in the Polochic Valley.<sup>105</sup>

## Development in reverse

In the cases given here, thousands of people have been persuaded to part with their land on the basis of false promises (in Indonesia) or have been evicted from their lands and their homes (in Uganda, Guatemala, and Honduras).

The case studies present a sad picture of what happens next, after people lose their land and their livelihoods. Villagers in the Indonesian district of Tayan Hulu, who signed away their land to PT. MAS, cannot harvest sufficient fruit to survive from the land they received in return. Some desperate smallholders stole fruit from the company's plantation lands to earn enough to feed their families. They were caught and imprisoned.

In Uganda, the villagers from the NFC concessions in Kiboga and Mubende districts who spoke to Oxfam say they have much less food to eat now; most families have dropped from three to one or two meals a day. They are also eating less varied and nutritious food, with an over-reliance on maize, and hardly any meat. Children are more prone to disease, as their health is suffering through malnutrition. Most say they were evicted from well-established villages, and some of those who Oxfam spoke to had left behind homes which they had inhabited for over 30 years. All those who talked to Oxfam are now renting smaller houses or have put up fragile, temporary structures made from polythene or straw and wood. Few can afford to pay for school fees or medical treatment any more. NFC says that, in some cases, 'former encroachers who settle outside the boundaries of the reserve benefit from various educational, health and livelihood enhancing projects implemented by NFC, communities and local government',<sup>106</sup> but none of the evictees with whom Oxfam spoke said they had benefited from NFC's community development work.<sup>107</sup> NFC concedes that it is difficult to trace the evictees and ascertain whether and how they benefit from the company's initiatives.<sup>108</sup>

*Clearly, it is the interests of the company to develop the agro-fuel project that prevail, rather than the Q'eqchi peasant families living in the area.*

Daniel Pascual, Comité de Unidad Campesina<sup>103</sup>

## Communities at risk

The new land deals often unsettle communities, as they undermine the sharing of communal lands and create divisions. This is what happened in Tayan Hulu (and other Dayak communities in Indonesia), where the development of the oil palm plantation has created a rift between the community and its traditional leaders.

In Uganda, the influx of people displaced from their land to other villages surrounding the Mubende and Kiboga concessions has changed the demographic balance in the area. This is likely to have an effect on the (already poor) capacity of schools, health facilities, and other infrastructure. For example, Kisiita village, near the Mubende concession, and Kayindiyindi village, near the Kiboga concession, have both approximately doubled in size since the evictees were forced to move there. In response, NFC points to its infrastructure development work, especially the schools and health centres it funds, which it says was evenly distributed.<sup>109</sup> Again, none of the evictees with whom Oxfam spoke said they had benefited from NFC's community development work.<sup>110</sup>

The outcomes for local communities described in this chapter are highly problematic. In the coming chapters, consideration will be given to regulatory contexts at the national and international levels, which can transform much sought-after agriculture investment into a nightmare for those involved.

# 3

## What is failing at the national level?

Communities expect the state to ensure that investments are in their best interests and to protect them from abusive practices. This section explores why governments allow land grabs to occur.

### Rights without power

Opportunities often come with risks, but when those affected have little or no power, the risks usually outweigh the potential benefits.

The UN Special Rapporteur on the Right to Food, Olivier de Schutter, noted that human rights conventions contain clear provisions in relation to the negotiation of large-scale land deals. An important principle is that '[i]n general, any shifts in land use can only take place with the free, prior, and informed consent of the local communities concerned'.<sup>111</sup>

Respect for free, prior, and informed consent is key to good governance and is essential for poverty reduction.<sup>112</sup> Local governments must ensure that the principle is respected. In negotiations over land use, this means ensuring that rights-holders take part in negotiations and are informed and empowered by laws and institutions, so that they can get the best out of each opportunity. Gaining the consent of indigenous peoples and other affected communities at the outset can establish positive relationships, and prevent projects being plagued by conflicts, lost profits for companies, and lost revenues for governments.

### Not at the table

In practice, governments often fail to ensure that affected rights-holders are even at the negotiating table, never mind empowering them to be strong players. Too often it is the government – the president, the provincial governor, the local mayor or chief – negotiating with a disputed mandate from the people whose land rights are at stake. Where local communities are consulted, consultations tend to be biased against the equal participation of women, even where the (primary and secondary) use rights of women are heavily affected. This is because women often have no formal land ownership rights.<sup>113</sup>

In each of the cases presented in this briefing paper, negotiations were neither run nor even mandated by the land rights-holders, but by local chiefs and/or local and national government authorities.

In Uganda, the NFA granted NFC licences to land in Mubende and Kiboga districts and, despite the fact that the communities' rights over the land remain in dispute, has allegedly sanctioned the forced eviction of over 20,000 people. In its Sustainability Report for FY2010, NFC describes, in Mubende, a 'process of mediation involving national government, local government, community leaders and ordinary people', as a result of which 'the issue was resolved peacefully with voluntary resettlement', and notes that, in Kiboga, NFC's 'CSR team has embarked upon an aggressive awareness raising campaign with local government and residents of the reserve. Encroachers are cooperating and have voluntarily vacated the reserve'.<sup>114</sup>

However, Oxfam's research has revealed consistent testimony from villagers from both districts to the effect that they were not consulted and did not consent to losing their land, homes and livelihoods.<sup>115</sup> They say that public meetings, involving government representatives, were convened, but that these were not consultative and simply served to deliver deadlines for clearance of the land. This does not appear to contradict NFC's account. In a letter to Oxfam, NFC describes a series of 'consultations' that took place in the months leading up to the 'vacations', 'which clearly outlined the conditions under which the vacations should occur, the laws pertaining to land use of central forest reserves and the timeline to be observed'.<sup>116</sup>

In August 2008, NFC and Kiboga district officials met to discuss resettlement of the evictees. The minutes of that meeting show that no community representatives were present, and record that a proposal to allocate a maximum of two square miles for resettlement for a period of five years was agreed upon in their absence. NFC agreed to pay for a survey to determine precisely how much land would be required. Both NFC and villagers from Kiboga told Oxfam that the survey was conducted, but that its final findings were never reported.<sup>117</sup> One community leader explained that the resettlement proposal was presented to the community in a public meeting (which was not consultative), but it was unacceptable because too little land was offered and the solution was temporary.<sup>118</sup>

In the case of NTD in South Sudan, the 'cooperative' (rather than NTD itself) secured the lease for 600,000 hectares of community land at the state level, in a context where a unified national legal system for processing land acquisition requests by foreign investors was lacking. Land acquisitions, prior to 2009, were administered through a combination of (North) Sudanese land law, which was variably applied alongside customary land law; land was managed through ad hoc procedures, contributing to a lack of transparency. Customary land law, at the time of NTD's deal, was the most long standing and accepted legal framework for land management in South Sudan.<sup>119</sup>

Before 2009, legislation gaps made it easier for large scale acquisition to take place with less or no consultation. Although the company response was that 'NTD's intention was clear from the first – the land was to be developed with the fullest cooperation and in consultation



with the communities and that they should feel themselves the owners of the land' – no community-based consultations took place before the deal was signed. Only three people – the signatory members of the 'cooperative', including the Paramount Chief – appear to have had a place at the negotiating table when the deal was signed in 2008. No information was afforded to the community, who were left out of the decision-making process.<sup>120</sup> According to the community, the company only met with them in November 2010. The 2009 Land Act for South Sudan, passed after the date of the agreement between NTD and the cooperative, made community consultation and informed consent a legal requirement of any investment.

Only in the Indonesian case was there any form of consultation with land rights-holders. But it hardly followed the principle of free, prior, and informed consent; many of the farmers who handed over land felt cheated into signing a letter that turned out to have wider negative implications.

## Not informed

The Indonesian example illustrates the importance of rights-holders having access to timely and accurate information. Information is power, particularly in negotiations.

Despite commitments to the principle of free, prior, and informed consent by some private and public sector actors, it is hard for researchers – let alone local communities – to obtain even basic information about the negotiated deals, or those still under negotiation. The International Institute for Environment and Development (IIED) could only find 12 contracts for its analysis of land deals.<sup>121</sup> Of these, they found that 'some contracts underpinning the recent wave of land acquisitions may not be fit for purpose. A number of the contracts reviewed appear to be short, unspecific documents that grant long-term rights to extensive areas of land, and in some cases priority rights over water, in exchange for seemingly little public revenue and/or apparently vague promises of investment and/or jobs.'<sup>122</sup> Lack of transparency also undermines public scrutiny and may open the door to corruption.

Liberia bucked the trend when it recently renegotiated investor contracts; these were then ratified by Parliament and are available online. According to IIED, this achievement came thanks to 'determined political leadership, a strong government negotiating team and world-class legal assistance'. The contracts were significantly improved in terms of investor commitments on jobs, training, local processing and local procurement, attention to food security, and social and environmental safeguards.<sup>123</sup>

*The details of these big land acquisitions are often shrouded in secrecy, particularly the really big ones, which seem to be negotiated at a very high level.*

Esther Obaikol, Executive Director, Uganda Land Alliance

Box 4: A single standard to strengthen land rights everywhere?

UN Member States, under the auspices of the Committee on World Food Security, are in the final stage of discussing a set of 'voluntary guidelines on the responsible tenure of land, fisheries, and forests'. As the first international instrument devoted to land tenure, this will lay out guidelines on how states should handle issues including land redistribution, inward investment, and women's access to land. It is hoped that these guidelines will provide an implementable standard to which national governments can be held.

Complementary developments are occurring at the regional level too, the most prominent of which is the Framework and Guidelines on Land Policy in Africa, endorsed by the African Union Summit in July 2009, which have attracted significant political support among African governments and civil society.

Sources: UN Food and Agriculture Organization (FAO), 'Land Tenure: Voluntary Guidelines', <http://www.fao.org/nr/tenure/voluntary-guidelines/en/> (last accessed July 2011); African Union (AU), African Development Bank (AfDB), Economic Commission for Africa (ECA) (2011) 'Framework and Guidelines on Land Policy in Africa. Land Policy in Africa: A Framework to Strengthen Land Rights, Enhance Productivity and Secure Livelihoods', Addis Ababa: AU/AfDB/ECA, <http://www.au.int/en/dp/rea/content/framework-and-guidelines-land-policy-africa> (last accessed July 2011).

*Any land which increases in value gets taken out of the hands of the poor.*

Fernando Eguren, CEPES, Peru

## Not protected

All countries have systems of rules or laws establishing property rights, as well as rights over access and use of land. Often, communities have property and land tenure systems of their own that pre-date national systems. These are frequently rooted in their specific culture, existing outside the scope of the national system and varying between different parts of the same country. In many countries, a complicated hybrid of customary and statutory law has come to exist. Sometimes countries have translated aspects of customary law into formal law, but that does not necessarily mean these laws are implemented.

Box 5: Peru – Governments and companies seek to capitalise resources of the Amazon basin

Over the past 20 years, the Peruvian Amazon has seen a surge of new investment, facilitated by state-granted privileges to national and foreign investors, and the simultaneous dismantling of legislation that had previously protected collective rights. Beginning in 1992 with President Alberto Fujimori, this wave of investment continued through successive governments, including exploitation of the Camisea gas fields, the 2003 Biofuel Promotion Law, and the Initiative for the Integration of Regional Infrastructure in South America (IIRSA)<sup>124</sup> that entails large hydropower dams and diverse highways connecting the Pacific coast with Brazil. This trend of opening up Peru's Amazon region for private investment reached its zenith under the 2006–11 administration and led to violent conflicts.

In an unusual act, President García addressed national public opinion through a newspaper column in 2007 entitled, 'The Dog in the Manger Syndrome',<sup>125</sup> in which he made clear that the resources of the Amazon are

*... The Rapporteur was informed of several cases of evictions [in Guatemala] in situations where the identity of the land owner had not been properly verified or where the boundaries of the land in question (finca [estate]) had not been delineated in a precise manner. The participation of finca workers in the conduct of the eviction, although it is illegal, was also witnessed on several occasions. While the government has shown openness to solving some cases through forums for dialogue (mesas de dialogo), the Special Rapporteur notes that, all too often, the wealthy landowners are better supported by the State apparatus than the peasants (campesinos).*

Report of the UN Special Rapporteur on the Right to Food, Olivier de Schutter, Mission to Guatemala, p.8<sup>126</sup>

not being exploited due to rural communities that possess collective rights to property and resource access. As a result, he said, the nation foregoes the potential benefits of such natural richness. Moreover, he stated that Amazonian communities do not allow private corporate investment in resource exploitation, protected as they are by laws that guarantee certain collective rights. The President thus concluded that high poverty levels in Amazonian communities are the combined result of 'obsolete' legislation and the communities themselves, whom he characterised as 'idle' and 'indolent'. The latter statement referred back to the metaphor used in the article's title: the dog in the manger does not eat the food itself, yet prevents others from accessing it.

This polemic analysis was followed in the first half of 2008 by a set of 99 legislative decrees, many of which were aimed at discontinuing collective rights and promoting new facilities for private investors to access land and resources in the Amazon region. Community protest against these decrees escalated in June 2009 to a violent confrontation in the northern Amazonian town of Bagua, with a death toll of dozens of indigenous people and law enforcement officials.

As a result of the described government policies, there are currently more than 50 energy-related megaprojects. Oil and gas concessions cover 70 per cent of the Peruvian Amazon; more than 10 million hectares of mining concessions have been granted; and nearly 8 million hectares of forest are under concession for timber. In the midst of this land rush, the government agency Pro-inversión announced plans to implement biofuel crop production on half a million hectares.

In most cases, this resource rush is occurring without the knowledge of Peru's citizens, with a notable lack of transparency in legal and administrative proceedings, and based on deficient social and environmental impact assessments. As a result, Amazonian biodiversity is under threat, food insecurity among rural and indigenous populations is increasing significantly, and communities fear that they may become displaced.

In contrast with these trends, newly elected President Humala's government approved a new law, within its first month in office, which seeks to ensure the free, prior, and informed consent of communities affected by the exploitation of the natural resources they depend on. Providing that it includes stricter regulations on environmental and social impacts in line with international standards, and assuming that it will lead to amendments to other laws – including those ruling land investments – that currently ignore application of free, prior, and informed consent, this new law may help reverse decades of negative social impacts associated with the resource rush in the Peruvian Amazon.

The newly globalised pressures on land have put more strain on the fragile mix of legal systems that are in place in many countries. In practice, investors can often exploit the confusion created by overlapping systems to evade the requirements of either, or trump them by aligning with the government or a customary chief.

Recognised land rights are only as strong as the institutions that uphold them. The displacement of villagers for the NFC plantations in Uganda is a case in point. The communities believe that they hold formal rights over the land they lived on and derived their livelihoods from, and put their faith in the legal system to protect those rights. Further, the Ugandan High Court granted interim orders restraining evictions in both

Kiboga and Mubende districts.<sup>127</sup> However, evictions continued, and local people claim that the army and police were sent in with labourers, whom they believe were employed by the company, to enforce them.<sup>128</sup> The NFA and NFC refer to the villagers as ‘encroachers’ on forest land and point to a high-level directive sanctioning the evictions in Mubende, but their arguments are disputed by the displaced communities and have not yet been considered in detail by the Ugandan courts.<sup>129</sup> NFC denies any involvement in the clearance process and holds that the villagers left their land voluntarily.

Research by the Center for International Forestry Research (CIFOR) on several cases in sub-Saharan Africa found that despite diverse national contexts and laws, land investments often end up having the same outcomes for local communities. Customary rights, for instance, were seldom adequately protected in land negotiations, despite widespread legal recognition of these rights. They concluded that ‘results are strikingly similar despite a wide variety of legal and institutional frameworks for protecting customary rights and regulating large-scale land acquisition’.<sup>130</sup>

Similarly, oil palm planter PT. MAS exploited the inconsistencies in Indonesian land policies.<sup>131</sup> The Dayak land tenure system in West Kalimantan is governed by *adat* (customary) law: while land is communally owned, individuals can obtain rights to use it. Individual land boundaries are not marked but remembered, and land rights passed down from generation to generation. In Sanggau Regency, one third of the land has been designated by the local government as *izin lokasi*, or land that companies can persuade communities to part with. This has often meant that some community leaders are co-opted by companies or local authorities to persuade – or coerce – families into handing over their land.<sup>132</sup> In practice, this often means that the indigenous people's Chief (the *Kepala Adat*), the village head, and sub-village head are paid a monthly salary by the oil palm company. ‘As a result’, notes the NGO Sawit Watch, ‘the village heads and the Chiefs do not represent the community but effectively represent the company against their own community’.

*Land deal negotiations are unfolding fast and behind closed doors. But secrecy and haste are no friends of good deals. Rather than rushing into land contracts, governments should promote transparent, vigorous public debate about the future of agriculture in their country.*

Lorenzo Cotula, IIED<sup>133</sup>

## No recourse

In practice, people settle for deals that are, in the language of negotiation theory, better than what they see as their ‘best alternative to a negotiated agreement’ (BATNA).<sup>134</sup> If a woman smallholder whose land rights are under threat believes she can get a better deal from another avenue, such as through violence or from a court, she will not settle through negotiation. However, if she feels she has no other option, it is likely that she will agree to almost any proposal. If she knows that her land rights are weak, that the courts are corrupt or ineffective, and that she may be beaten by the police or hired thugs, she has no better option than to consent. This is illustrated by the answers of villagers from one of the cases Oxfam investigated to questions on whether they would have settled if they had been offered

compensation. All of them said they would have accepted, even without knowing anything about what would have been included in the offer.

Strengthening the rights of women farmers and other small-scale food producers, as well as their access to justice, is crucial. Enabling those affected by land acquisition deals to exercise free, prior, and informed consent will ensure that they know their rights and are able to exercise them. In contrast, the absence of the rule of law and access to justice can result in violent conflict – whether initiated by elite investment interests or by communities attempting to hold on to their land. Communities will struggle when something as basic as their land is under threat; it is at the core of their livelihoods, identity, and survival.

# 4

## What is failing at the international level?

The cases considered here are linked to international markets through finance and trading. When district and national accountability mechanisms fail, international instruments exist that should prevent abusive or irresponsible practices. But are these mechanisms working?

### Human rights instruments

Human rights conventions contain clear obligations in relation to the negotiation of large-scale land acquisitions. These apply not just to host governments, but also to companies investing in or sourcing from such operations, as well as 'home' governments in the countries where investors are based.<sup>135</sup> But the human rights system often fails to provide practical, effective mechanisms for individuals and communities to hold companies and home governments to account.

Several regions (Africa, Europe, and the Americas) have regional human rights courts and commissions that allow individuals and communities to bring complaints against governments. These instruments have been tested, albeit infrequently, with respect to foreign business operations.

- The **Inter-American Court of Human Rights** has rich case law on the protection of the collective property rights of indigenous peoples, and has, in some cases, ruled that states failed to meet their obligation to obtain free, prior, and informed consent from affected communities.<sup>136</sup> For example, in one case supported by Oxfam's partner, the Forest Peoples' Programme, the court ruled that the Surinamese government should review and consider revising the timber and mining concessions it had awarded.<sup>137</sup>
- The **African Commission on Human and Peoples' Rights** ruled in favour of Endorois pastoral communities' land rights in Kenya, following conflict with the government over the establishment of a game reserve on their land.<sup>138</sup>

It is important that the workings of the international legal system are developed in order to protect land rights and that aggrieved communities are able to test the systems already in place.

While these rulings have set important precedents, they are rare examples, and in the cases discussed in this paper, the courts have not provided recourse.

# Protect, respect, and remedy

*The root cause of the business and human rights predicament today lies in the governance gaps created by globalization - between the scope and impact of economic forces and actors, and the capacity of societies to manage their adverse consequences. These governance gaps provide the permissive environment for wrongful acts by companies of all kinds without adequate sanctioning or reparation. How to narrow and ultimately bridge the gaps in relation to human rights is our fundamental challenge.*

John Ruggie, UN Special Representative on Human Rights and Transnational Corporations and Other Business Enterprises <sup>139</sup>

In order to propose measures to fill the governance gap in applying human rights principles to business operations, the UN Secretary-General appointed a Special Representative on Human Rights and Transnational Corporations and Other Business Enterprises, John Ruggie, who recently completed his six-year mandate. While the mandate produced a broad framework and a set of Guiding Principles, now endorsed by the UN Human Rights Council, a follow-up mechanism has yet to be put in place.<sup>140</sup>

What is now known as the UN Framework is built on the ideal of 'protect, respect, and remedy'. States have a duty to protect people from human rights abuses by third parties, including business; corporations have a responsibility to respect human rights; and people must have more effective access to remedies.<sup>141</sup> The framework and its principles identify the following roles for businesses to meet their internationally recognised human rights obligations:

- Identify, prevent, and mitigate the adverse human rights impacts of their operations;
- Exercise due diligence pertaining to adverse human rights impacts that the business enterprise may cause through its own activities, or which may be directly linked to its operations, products, or services by its business relationships (in other words, a company should take responsibility for its entire supply chain);
- Communicate externally how the company is addressing its human rights impacts; and
- Give victims access to effective remedy.<sup>142</sup>

The behaviour of the companies described in this briefing paper is still a long way from complying with these obligations.

## Home governments

The UN Framework also underlines the importance of state oversight, including oversight of companies operating abroad; it calls on governments to provide effective remedies to redress human rights abuses by business enterprises. Investors often take advantage of weak or non-existent governance at the national level to acquire land. To address this, home countries (where investors are based) should institute tougher legal rules and safeguards for companies, regardless of where they operate, in order to promote transparency, regulate business practices, and enable communities to find remedy.

## Transparency

Legal provisions on transparency are important in the land-grab context because details about investments (such as who is involved, who was informed, what amount of land was leased or purchased, and for how long) are often unclear.

A lack of transparency limits both the involvement of civil society groups in negotiating and implementing deals, and the ability of local stakeholders to respond to new challenges and opportunities. It also undermines their bargaining power. At the moment, it is hard for local communities (or their domestic and international allies) to find out who is actually financing or managing a land investment, and which set of standards they are accountable to.

At present, legal regimes in key home states do not mandate transparency with respect to land and water investments in developing countries. The US Dodd-Frank Act (2010) does create new obligations with respect to transparency for investments, but it is limited to the extractive industries.<sup>143</sup>

Efforts to promote transparency internationally could be an important step, as long as lessons are learned from the limited impact of other initiatives, such as the Extractive Industries Transparency Initiative (EITI). While EITI is credited with creating space for national civil society organisations and helping to shed light on financial flows, its impact is limited, since it is voluntary. Its obligations also exclude contract details or transparency around consultations before contracts are finalised. In the meantime, civil society initiatives are helping to shed light on what remains a highly secretive business.<sup>144</sup>

## Business practices

While laws to promote transparency are limited in home states, some measures are already in place to regulate overseas investments and business practices. In the USA, there is the 1977 Foreign Corrupt Practices Act (FCPA) and the 2010 Dodd-Frank Act, while the UK introduced the Bribery Act in 2010. These pieces of legislation create obligations with respect to the overseas business practices of US and UK entities. The FCPA, for instance, contains an anti-bribery provision that might be relevant to contested land investments due to the possibly corrupt manner in which many deals are executed. The Act is unique in that it makes foreign investments a legal issue in the USA (where corporations often reside), rather than just in the target country, where legal institutions and other enforcement mechanisms are often insufficiently developed.

## Investor and sector standards

While it is difficult to agree and implement international human rights instruments that can provide effective protection against corporate abuse of power, some other initiatives can play a critical role in filling the governance gap at the global level – both in the short term, as effective mechanisms for the regulation of corporate actions, and in the long term, as stepping stones for future international governance.



In particular, the Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises<sup>145</sup> have the support of business, government, trade unions, and many NGOs (including Oxfam). The Guidelines apply to all companies based in OECD countries that are engaged in transnational activity, and draw heavily on John Ruggie's work on human rights. They oblige participating governments to set up National Contact Points to handle complaints raised by stakeholders regarding alleged breaches by a particular company, and to provide communities affected by the types of projects presented here with the opportunity to bring a complaint. To date, over 200 cases have been raised through this mechanism.

In addition to these, there are rules, standards, and mechanisms that have been developed within the private sector itself, at the company or sector level, sometimes in multi-stakeholder initiatives (MSIs). Companies that have fully integrated improved practices into their business operations and strategies are often the driving force behind voluntary sector-wide initiatives to adopt and implement common standards. These include the Equator Principles, which promote social and environmental safeguards for the financial sector, and the Principles and Criteria of the Roundtable on Sustainable Palm Oil (RSPO), which govern the production and processing of palm oil.

MSIs can play only a limited role in filling the governance gap created by globalisation, as they can only influence their members and, indirectly, their business partners. But they can play a critical role in fostering an environment that leads to the introduction of enforceable legal rules, both internationally and at the national level in affected countries. Some of them have grievance mechanisms that can be useful tools for affected communities.

## Standards and rules for financiers

The IFC has strict criteria to determine which projects it invests in, including community consultation, and social and environmental safeguards. Currently, many other public and private financial institutions refer to these performance standards.<sup>146</sup> For instance, they form the basis of the Equator Principles.<sup>147</sup> International financial institutions, extractive industry companies, and socially responsible investment fund managers have expressed growing support for the principle of free, prior, and informed consent in recent years. As the IFC has noted, discussion of the principle among international institutions has moved beyond questions of whether it should be implemented, to discussions of how it should be implemented.<sup>148</sup>

The IFC also has an accessible complaint redress mechanism through its independent Compliance Advisor/Ombudsman (CAO),<sup>149</sup> which helped communities in West Kalimantan, Indonesia, to resolve contentious issues with oil palm planter Wilmar (see Box 6). However, despite that success, few civil society organisations have turned to the CAO or the complaints panels of other investors.<sup>150</sup>

## Box 6: A complaint can pay off – The case of Wilmar

Since the 1980s, the World Bank Group, through the IFC, has invested more than \$2bn in promoting global trade in palm oil. One of the companies receiving funding from the IFC is Singapore-based Wilmar Group. Like other companies, Wilmar in West Kalimantan has been accused of land grabbing, extensive forest clearing, and widespread human rights abuses.

A community member from Dusun Sajingan Kecil, in Desa Semanga, West Kalimantan, was quoted in Wilmar's first sustainability report (from 2009):<sup>151</sup>

*'In early 2005, we were working in the jungle and we saw that some land was being cleared. When we tried to find out who was doing this, we found out that it was PT. ANI [PT. Agro Nusa Investama, a Wilmar subsidiary operating in West Kalimantan] ... The loss of the land costs us our livelihood. Our community leader met with the estate manager. We were told that the company did not know it belonged to us. We asked that the company stop the clearing and restore the cleared area, but they did not do this and we could not find a solution.'*

In 2007, community groups lodged a formal complaint with the CAO, based on the IFC's investment in Wilmar's downstream operations.\* The communities raised a number of concerns, including the takeover by Wilmar of indigenous peoples' lands without consent, illegal land clearing, deforestation, and failure by Wilmar to establish agreed areas for smallholdings.

The CAO found that Wilmar acknowledged that they had developed community land without those communities' free, prior, and informed consent, and that this (as well as other issues raised) needed to be resolved. The process of dispute resolution that followed resulted, in 2008, in negotiated settlements between Wilmar and over 1,000 community members in West Kalimantan. The settlements included compensation for land, the return of 1,699 hectares of community forest land, and the allocation of development funds for each community. Wilmar also agreed to implement a revised approach to dealing with land and social conflicts, and has declared that it is working to incorporate the principle of free, prior, and informed consent into all its operations. Monitoring of these agreements is ongoing.

Issues related to local approval processes and land rights were found to be a sector-wide concern. The World Bank Group as a whole reviewed its palm oil strategy in a worldwide consultation process, during which there was a moratorium on all palm oil investments. The review highlighted that land tenure and land use change are central to a responsible approach to the palm oil sector. It acknowledged the key role of strong land-tenure governance to counterbalance strong economic incentives for large-scale expansion. The review also led to the promotion of developments on 'degraded land' instead of community forests and subsistence farming land, and proposed a shift to investments that benefit smallholders.

The challenge of keeping companies accountable remains enormous: Wilmar alone has reported that it is involved in resolving 43 conflicts in Kalimantan and 5 in Sumatra. Indonesian NGO Sawit Watch monitors over 600 palm oil-related conflicts.

\* The complaint was supported, among others, by Oxfam, Sawit Watch, and the Forest Peoples Programme.

Sources: Forest Peoples Programme, material published on the IFC, <http://www.forestpeoples.org/topics/responsible-finance/international-finance-corporation-ifc> (last accessed July 2011); Wilmar International Ltd (2009) 'Sustainability Report', Singapore: Wilmar International Ltd, pp.52, 53-54, 56; CAO (2009) 'Final Ombudsman Assessment Report, March 2009, on the Complaint from Communities in Kalimantan and Civil Society in relation to activities of the Wilmar Group of Companies', Washington, D.C.: Office of the Compliance Advisor/Ombudsman (CAO); CAO (2007) 'Preliminary Stakeholder Assessment, November 2007, Regarding Community and Civil Society concerns in relation to activities of the Wilmar Group of Companies', Washington, D.C.: Office of the Compliance Advisor/Ombudsman (CAO); Private communications with Sawit Watch ([www.sawitwatch.org.id](http://www.sawitwatch.org.id) (last accessed July 2011)).

In Oxfam's view, the failure of international standards and rules to safeguard communities from the devastating impacts of land grabs<sup>152</sup> is demonstrated by the case of NFC in Uganda. NFC is backed by investments from international financial institutions and banks whose due diligence processes appear to have failed in this regard. The IFC reviewed NFC's Mubende operation as part of its due diligence for its \$7m equity investment in Agri-Vie, a private equity agribusiness fund whose portfolio includes NFC. On the one hand, the IFC concluded that NFC had been unable to comprehensively apply the principles guiding resettlement in IFC's performance standard on land acquisition and involuntary resettlement. This standard recognises that project-related land acquisition and restrictions on land use can have an adverse impact on communities using the land and therefore requires that affected communities are provided with compensation, resettlement, and livelihood restoration.<sup>153</sup> Yet, because this was a case of government-led settlement and because NFC had demonstrated, in IFC's view, 'all possible efforts to engage and collaborate with the Government agency,' the IFC was satisfied that NFC demonstrated compliance with the standard 'to the extent allowed by the Government'.<sup>154</sup> The IFC assessment does not cover NFC's Kiboga operations.

The European Investment Bank (EIB), the EU's financing institution, also has Environmental and Social Principles and Standards for the projects that it finances. The EIB funded the expansion of NFC's Namwasa operation through a €5m loan plus a €650,000 subsidy grant to finance the company's Corporate Social Responsibility (CSR) work. Like the IFC, the EIB also supports NFC indirectly via a \$12m investment in the equity fund, Agri-Vie. The EIB says that it was aware of land disputes between communities and the NFC, and the risk this posed to the project. In addition, it also says that it is satisfied by the project's Environmental Impact Assessment irrespective of the outcome of the on-going legal procedures, and it believes NFC to have acted within its rights. It says it considers the project to be fully in line with its Environmental and Social Principles and Standards, which include a standard on involuntary resettlement mandating that 'people whose livelihoods are negatively affected by a project should have their livelihoods improved or at minimum restored and/or adequately compensated for any losses incurred'.<sup>155</sup> Again, the EIB does not appear to have assessed NFC's Kiboga operations.

HSBC bank has invested around \$10m in NFC, has 20 per cent ownership in the company, and also has a seat on the NFC board. It made its investment in NFC conditional upon the company making adequate progress towards certification from the FSC.<sup>156</sup> HSBC also has a number of sustainability policies for 'sensitive sectors', including a Forest Land and Forest Products Sector Policy, and says that NFC meets the bank's sustainability requirements for this sector.<sup>157</sup> However, HSBC's policies (and those of other investors) rely heavily on the assurance provided by the independent confirmation of external bodies like FSC, and in Oxfam's view this case highlights serious failures in that process of independent confirmation, as detailed above. In HSBC's case, the reliance on FSC certification is particularly concerning, given

that the bank, as a board member, would have been aware of the existence of court cases against NFC seeking to assert legal rights over the plantation land.

#### Box 7: A new wave of finance – hands-off investment

There is a growing trend at the IFC to lend through financial intermediaries (FIs), such as private equity funds or banks, instead of managing loans and investments itself. In the 2010 financial year, lending via FIs made up over half of all new IFC project commitments. Oxfam believes that the IFC's performance standards should unambiguously apply to all FI sub-projects.

IFC lending through FIs lacks transparency and pays inadequate attention to social and environmental concerns, delegating most assessment, monitoring, and oversight to the FI. Affected communities are often unaware that IFC finance is backing the project, and therefore are unlikely to make use of its complaint mechanism.

In the case of NFC in Uganda, IFC's support is through a private equity agribusiness fund called Agri-Vie, whose portfolio includes NFC. Agri-Vie says all of its investee companies have to comply with the IFC performance standards; that it conducted extensive due diligence prior to its investment in NFC; and that it is of the opinion that NFC fully complied with all the IFC performance standards.<sup>158</sup> But these standards have failed to protect the livelihoods of the people displaced in Kiboga and Mubende. Oxfam believes that the IFC, although one step removed via the intermediary AgriVie, should review and be held accountable for any failures in its due diligence and monitoring processes in this case. If shortcomings are identified, they should not be allowed to reoccur in the future.

Sources: Bretton Woods Project / Ulu Foundation (2010) 'Out of sight, out of mind? IFC investment through banks, private equity firms and other financial intermediaries', <http://www.brettonwoodsproject.org/art-567190> (last accessed July 2011); Bretton Woods Project (2011) 'IFC standards revision leaves out human rights', <http://www.brettonwoodsproject.org/art-567600> (last accessed July 2011).

## Standards in value chains

Affected individuals and communities could also turn to other players (mostly downstream) in the value chain to seek recourse. The complaint mechanisms of the FSC and the RSPO could provide avenues for recourse for the affected communities in the cases discussed in this briefing paper.<sup>159</sup>

The FSC certifies forestry investments that adhere to best operating practices regarding labour, social, and environmental issues. In 2010, over 120 million hectares were certified by the FSC in over 80 countries around the world – the equivalent of roughly five per cent of the world's production forests. While the FSC's Principles and Criteria require the protection of local rights of ownership, use or access, the certification of operations sometimes falls short of this requirement, as in the case of NFC's plantation in Mubende which has been FSC certified, despite what appear to Oxfam to be breaches of these rights.

For instance, FSC Principle 2 on tenure and use rights and responsibilities requires that 'appropriate mechanisms shall be employed to resolve disputes over tenure claims and use rights' and

that 'disputes of substantial magnitude involving a significant number of interests will normally disqualify an operation from being certified.' Principle 4 on community relations and workers' rights requires appropriate mechanisms 'for providing fair compensation in the case of loss or damage affecting the legal or customary rights, property, resources, or livelihoods of local peoples'.<sup>160</sup>

An FSC surveillance audit of NFC's Mubende plantation, conducted by FSC's consultant SGS in June 2010, concluded that 'the company has followed peaceful means and acted responsibly to resolve the issue of encroachment, and currently there are no tenure and/or use-right disputes of substantial magnitude to affect the activities of the company'. SGS also states that the validity of the court cases is 'highly dubious'.<sup>161</sup> The basis for this assessment is not clear to Oxfam and, in view of the pending court cases involving over 20,000 claimants and the communities' reports that no compensation was provided for losses of property and livelihoods, Oxfam does not see how FSC Principles 2 and 4 have been adhered to.<sup>162</sup>

The RSPO, a multi-stakeholder initiative launched in 2004, brought together palm oil producers, processors, traders, consumer goods manufacturers, retailers, banks, investors, and environmental and social NGOs, to develop and implement global standards for sustainable palm oil. Unilever, Nestlé, McDonald's, and Burger King have already declared that by 2015 all palm oil used in their manufacturing processes will be sourced responsibly. In spite of some success in improving the practices of some major palm oil companies in South-East Asia, RSPO does not yet reach many other companies operating in the region. It has even less influence in the newly emerging oil palm-growing regions of West Africa and Latin America.

*CDM Watch was right to raise concerns. The board undertook an investigation and after full consideration found that the consultation met the CDM requirements under the parameters of its mandate. It's a matter for Honduras to deal with outstanding land disputes and responsibility for violence in the region.*

Martin Hession, Chairman, CDM Board<sup>163</sup>

Box 8: Responsible Agricultural Investment (RAI): encouraging or discouraging even more land deals?

In spite of widespread controversy among observers, a new set of principles to encourage companies to invest responsibly in land is being promoted by the World Bank and three UN organisations (FAO, IFAD, and UNCTAD), called the Principles for Responsible Agricultural Investment. These encourage companies to respect local rights, ensure transparency, and act in a socially and environmentally friendly manner. Some are adamant that the principles are intended to help eradicate damaging mega-farm deals. Others are convinced that the principles are a front to help legitimize land grabbing and facilitate 'long-term corporate (foreign and domestic) takeover of rural people's farmlands'.

Whatever the intention, the principles are not only weaker than all other standards mentioned in this paper (including the World Bank's own performance standards), they are also so far removed from implementation that they cannot be considered a serious response to the urgent, pressing, and widespread problems described here.

Sources: Knowledge Exchange Platform for Responsible Agro-Investment (RAI), <http://www.responsibleagroinvestment.org/> (last accessed July 2011); GRAIN (2011) 'It's time to outlaw land grabbing, not make it responsible!', Barcelona: GRAIN, [http://www.grain.org/o\\_files/RAI-EN.pdf](http://www.grain.org/o_files/RAI-EN.pdf) (last accessed July 2011).

## Perverse policies

Some national and international government policies, though well-intentioned, in practice serve to undermine local communities' land rights, providing incentives that increase the pressure for land or protecting harmful investments.

In the name of mitigating carbon emissions, the EU and the USA (as well as others) have introduced biofuels mandates over the past decade. This is despite the fact that the benefit of biofuels to reduce emissions has come under serious scrutiny, and biofuel production is increasingly linked to rising food prices and pressure on land.<sup>164</sup> In effect, the high demand for biofuels is giving rise to harmful land investments.

Another example is the UN Clean Development Mechanism (CDM), one of the instruments created by the Kyoto Protocol to facilitate carbon trading.<sup>165</sup> The CDM Board has registered a biogas installation at Dinant's Exportadora del Atlántico in Honduras as an emissions reduction project, allowing the company to sell certified carbon credits on the market.<sup>166</sup> The over 200,000 tonnes of emissions reduction credits which Dinant expects to realise by 2017 could raise several million dollars for the company. Dinant's application to the CDM was accepted despite the intervention of two human rights groups, FIAN and CDM Watch, which documented the violent displacement and human rights violations<sup>167</sup> linked to Dinant's project in the Bajo Aguán Valley,<sup>168</sup> and despite concerns raised by the UK government, the Carbon Markets and Investors Association,<sup>169</sup> and EDF Trading – which withdrew from an agreement to buy Certified Emission Reductions (CER) from the project. The CDM Board, however, explained that human rights concerns fall outside the parameters of its mandate in decisions on the recognition of carbon credits.<sup>170</sup>

NFC is also seeking carbon credits from the CDM for its plantation in Mubende district in Uganda, and has referred to its FSC certification to obtain them. As noted above, Oxfam has serious concerns regarding the FSC certification process.<sup>171</sup>

Furthermore, there are over 2,500 bilateral investment treaties (BITs), which protect investors from changes to host government policy and which may be impairing the ability of countries to regulate investments effectively.<sup>172</sup> The opportunity for investors to challenge public policy through arbitration procedures under these BITs weakens developing countries' capacity to regulate their food, land, and water sectors, as well as to introduce policies that promote food security and poverty reduction.

# 5

## Growing justice

*Land is power – social, political and economic ... and civil society must continually raise this.*

Rajagopal, Ekta Parishad, India

New demands for agricultural commodities on the world market have the potential to provide opportunities to local communities in areas of increasing investor interest. But at the moment, they present more of a risk than an opportunity for communities. The power balance has to shift in favour of those most affected by land deals. The right of communities to know and to decide must be respected by all involved. There is a clear imperative for action at a number of levels, both to ensure that this structural shift takes place and to remedy the conflicts that arise from the types of land deals described here.

## Recommendations

### **Grievances of communities affected by the cases discussed here must be resolved.**

- The rights of communities negatively affected by land grabbing must be respected, and their grievances heard and addressed impartially, according to national law and international standards.
- Those financing and those sourcing from land acquisition projects, be they domestic or international, must use their influence to ensure that this happens. The same is true for companies further down the supply chain. It is not acceptable for them to simply 'cut and run', by withdrawing their support and washing their hands of the situation.

### **The balance of power must be shifted in favour of local rights-holders and communities.**

#### *Governments should:*

- Adopt internationally applicable standards on good governance relating to land tenure and management of natural resources. The voluntary guidelines on the tenure of land, forests, and fisheries currently under discussion in the Committee on World Food Security (CFS) represent an opportunity for achieving this.

#### *Host country governments and local authorities should promote equitable access to land, and protect people's rights. They should:*

- Consider a moratorium on land rights transfers until better governance of land and protection of rights is established nationally.
- Respect and protect all existing land use rights, and ensure and verify that local rights-holders and communities have given their free, prior, and informed consent before endorsing land deals or awarding concessions.

- Ensure that women have the same rights regarding access to and control over land as men, in all relevant legislation (including family law).
- Require full disclosure of information relating to large-scale agricultural projects, including details of contracts.
- Insist that investors carry out comprehensive social and environmental impact assessments, including assessments of impacts on local and national food security.
- Implement pro-poor land and agrarian policies, and consider land redistribution.
- Prohibit or discourage transfer of smallholders' land rights and communal land rights.
- Design and implement fair and robust redress mechanisms to process and settle land related disputes.
- Facilitate, support the scrutiny of agricultural projects and that impact on local communities by Members of Parliament or local assemblies, civil society groups, media, and others.
- Support small-scale food producers to produce, invest, and organise, so that they are in a stronger position to resist land grabs.

*Investors operating agriculture projects should:*

- Respect all existing land use rights, and seek the free, prior, and informed consent of local rights-holders and communities before engaging in any land-related activities.
- Avoid the transfer of land rights (including land under customary tenure) away from small-scale food producers, and instead engage smallholders by proposing fair contracts.
- Carry out and be guided by comprehensive social and environmental impact assessments, including assessments of impacts on local and national food security, before engaging in any land-related activities.

*Financiers of agriculture ventures and buyers (traders and processors) of agricultural products should take responsibility for what happens in their value chains. They should:*

- Require that suppliers and clients adhere to the principles described above. They should review clients/suppliers and remedy cases where there is evidence of irresponsible practices.
- Financiers, including public financial institutions (such as the IFC and EIB), adhere to strict social and environment standards and safeguards. These should equally apply to sub-projects under financial intermediaries.
- Design and implement fair and robust redress mechanisms.

*Home country governments should take responsibility for acts of originating companies abroad. They should:*

- Require full supply-chain responsibility from registered companies, and require that all agricultural operations which they finance, or from whom they source, adhere to the principles listed above.



- Require full disclosure from companies and public financial institutions, including relating to the impact of projects on land and water resources.
- Offer mechanisms for affected people whose rights have been violated to hold investing or sourcing companies to account.
- Refrain from negotiating or signing investment agreements that reduce the right of countries to regulate land acquisitions or provide remedy when things go wrong.
- Remove measures that facilitate, encourage, or subsidise large-scale land acquisitions, including biofuel mandates, and avoid introduction of new measures.

*Members of the public can put pressure on governments and companies to grow justice. They can:*

- Hold investors and traders accountable.
- Use their power as voters, consumers, pension fund participants, and investors, to encourage action on the part of their governments and the companies whose goods and services they buy to help stop land grabbing.

*Civil society, media, and academia can help protect rights and foster transparency. They can:*

- Empower affected communities to claim their rights in the face of land grabbing.
- Use accountability mechanisms such as Ombudsmen's offices and litigation, to challenge damaging investments.
- Expose bad practice and, where appropriate, acknowledge good practice.
- Help build transparency by sharing information about land grabs with organisations tracking the phenomenon.

**More information on land deals can be found at the following websites:**

[www.commercialpressuresonland.org](http://www.commercialpressuresonland.org)

[www.farmlandgrab.org](http://www.farmlandgrab.org)

[www.oxfam.org/grow](http://www.oxfam.org/grow)

# Notes

- <sup>1</sup> ILC/CIRAD Forthcoming synthesis report on the Commercial Pressures on Land Research Project. The figures in this report are based on ongoing research by the Land Matrix Partnership. The partnership consists of the ILC, Centre de coopération international en recherche agronomique pour le développement (Cirad), Centre for Development and Environment (CDE) at University of Bern, GIGA at University of Hamburg, Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ), and Oxfam. Since 2009 they have been systematically collating information on large-scale land acquisitions worldwide. The dataset covers transactions that entail a transfer of rights to use, control or own land through concession, lease or sale, which generally imply a conversion from land used by smallholders or for ecosystem services to large-scale commercial use. It aims to shed light on six drivers that are contributing to a global rush for land, namely demand for food, fuel, timber, carbon sequestration, tourism and mineral exploitation. It now includes just over 2,000 deals from the year 2000 onwards. 1,100 to date are cross-checked with data derived from systematic national inventories of land deals based on in-country research that have been carried out by different institutions, alongside the increasing number of postgraduate and commissioned field-based research projects.
- <sup>2</sup> ILC (2011) 'Tirana Declaration: Securing land access for the poor in times of intensified natural resources competition', International Land Coalition, <http://www.landcoalition.org/about-us/aom2011/tirana-declaration>, (last accessed July 2011).
- <sup>3</sup> L'Aquila Food Security Initiative (2009) "'L'Aquila" Joint Statement on Global Food Security', G8 Summit 2009, L'Aquila: L'Aquila Food Security Initiative [http://www.g8italia2009.it/static/G8\\_Allegato/LAquila\\_Joint\\_Statement\\_on\\_Global\\_Food\\_Security%5B1%5D\\_0.pdf](http://www.g8italia2009.it/static/G8_Allegato/LAquila_Joint_Statement_on_Global_Food_Security%5B1%5D_0.pdf) (last accessed July 2011); The Comprehensive Africa Agriculture Development Programme (CAADP), <http://www.nepad-caadp.net> (last accessed July 2011).
- <sup>4</sup> See, for example, Oxfam (2010) 'Think Big, Go Small: Adapting Business Models to incorporate smallholders into supply chains' <http://www.oxfam.org/en/policy/think-big-go-small> (last accessed August 2011).
- <sup>5</sup> Ambrose Evans-Pritchard (2010) 'The backlash begins against the world land grab', the *Telegraph*, 12 September, [http://www.telegraph.co.uk/finance/comment/ambroseevans\\_pritchard/7997910/The-backlash-begins-against-the-world-land-grab.html](http://www.telegraph.co.uk/finance/comment/ambroseevans_pritchard/7997910/The-backlash-begins-against-the-world-land-grab.html) (last accessed July 2011). Quoted in Robin Palmer (2011) 'Would Cecil Rhodes have signed a Code of Conduct? Reflections on Global Land Grabbing and Land Rights in Africa, Past and Present', paper presented at the 'International Conference on Global Land Grabbing', University of Sussex, 6-8 April 2011.
- <sup>6</sup> See Note 1 for details.
- <sup>7</sup> Food crops, forestry, livestock, biofuels, and other non-food crops.
- <sup>8</sup> World Bank (2011) 'Rising Global Interest in Farmland: Can it Yield Sustainable and Equitable Benefits?', Washington, D.C.: World Bank, p.33 and p.50. 'According to press reports, foreign investors expressed interest in around 56 million ha of land globally in less than a year.' GRAIN. [http://econ.worldbank.org/external/default/main?pagePK=64165259&theSitePK=469382&piPK=64165421&enuPK=64166322&entityID=000334955\\_20110208033706](http://econ.worldbank.org/external/default/main?pagePK=64165259&theSitePK=469382&piPK=64165421&enuPK=64166322&entityID=000334955_20110208033706) (accessed September 2011).
- <sup>9</sup> Various researchers affiliated to IIED and the Center for International Forestry Research (CIFOR), were making such calls at the International Conference on Global Land Grabbing (University of Sussex, 6-8 April 2011), and at the World Bank Annual Conference on Land and Poverty (Washington DC, 18-20 April 2011). Ruth Meinzen Dick, IFPRI, recently said that 'in 2009 the balance of costs and benefits was genuinely unclear. Now [...] the burden of evidence has shifted and it is up to the proponents of land deals to show that they work.' Quoted in *The Economist*, (2011) 'The surge in land deals: when others are grabbing their land', 5 May, <http://www.economist.com/node/18648855> (last accessed July 2011).
- <sup>10</sup> Susan Payne, (2011), 'Positive Impact Investing in Agriculture – Economic Prosperity in Africa from a New Green Revolution', presentation given at the Food Security Summit (Cape Town, May 2011) <http://www.omegainvest.co.za/downloads/FoodSecurity-Presentations/Susan%20Payne.pdf> (last accessed July 2011).
- <sup>11</sup> HLPE (2011), 'Land tenure and international investments in agriculture: A report by The High Level Panel of Experts on Food Security and Nutrition', Rome, Committee on World Food Security, July 2011, p.8.
- <sup>12</sup> World Bank (2011), *op. cit.*, p.51.
- <sup>13</sup> Julie Crawshaw (2009) 'Soros, Rogers Snapping Up Farmland On Demand Bet', moneynews.com, 15 June, <http://www.moneynews.com/Markets/soros-rogers-farmland/2009/06/15/id/330897> (last accessed July 2011).
- <sup>14</sup> GRAIN report 'Seized! The 2008 land grab for food and financial security' was the first to make this point in October 2008. GRAIN (2008) 'Seized! The 2008 land grab for food and financial security', Barcelona: GRAIN, <http://www.grain.org/article/entries/93-seized-the-2008-landgrab-for-food-and-financial-security> (last accessed July 2011).
- <sup>15</sup> Karen Ward (2011) 'The world in 2050. Quantifying the shift in the global economy', London: HSBC Global Research.
- <sup>16</sup> UN Food and Agriculture Organization (FAO) (2006) 'Livestock's long shadow: environmental issues and options', Rome: FAO, <http://www.fao.org/docrep/010/a0701e/a0701e00.htm> (last accessed July 2011).
- <sup>17</sup> Up to half of all packaged food and hygiene products on super-market shelves contain palm oil – from toothpaste to biscuits.
- <sup>18</sup> WWF (2010) 'Living Planet Report 2010. Biodiversity, biocapacity and development', Gland: WWF, p.59.

- <sup>19</sup> D. Molden (ed.) (2007) *Water for Food, Water for Life: A Comprehensive Assessment of Water Management*, London: Earthscan, and Colombo: International Water Management Institute.
- <sup>20</sup> R. Clarke and J. King (2004) *The Atlas of Water*, London: Earthscan Books.
- <sup>21</sup> <http://www.bis.gov.uk/go-science/news/speeches/the-perfectstorm>
- <sup>22</sup> ActionAid recently estimated that the EU target of obtaining 10 per cent of transport fuels from renewable sources by 2020 could, if sourced from biofuels alone, require up to 17.5 million hectares (half the size of Italy) of developing-country land on which to grow these industrial biofuels (ActionAid UK (2010) 'Meals per Gallon: The impact of industrial biofuels on people and global hunger', London: ActionAid UK, [http://www.actionaid.org.uk/doc\\_lib/meals\\_per\\_gallon\\_final.pdf](http://www.actionaid.org.uk/doc_lib/meals_per_gallon_final.pdf) (last accessed July 2011); Food and Agricultural Organization (FAO), International Fund for Agricultural Development (IFAD), International Monetary Fund (IMF), Organization for Economic Cooperation and Development (OECD), United Nations Conference on Trade and Development (UNCTAD), World Food Programme (WFP), the World Bank, the World Trade Organization (WTO), International Food Policy Research Institute (IFPRI) and the UN High-Level Task Force on the Global Food Security Crisis (UN HLTF) (2011) 'Price Volatility in Food and Agricultural Markets: Policy Responses', Paris: OECD, <http://www.oecd.org/dataoecd/40/34/48152638.pdf> (last accessed July 2011).
- <sup>23</sup> World Bank (2011) *op. cit.*
- <sup>24</sup> The proportion of global land area devoted to agriculture rose steadily from the 1960s, before peaking at 38 per cent at the beginning of the 21<sup>st</sup> century. Calculated using statistics provided by FAO: <http://faostat.fao.org/site/377/default.aspx> (last accessed July 2011).
- <sup>25</sup> One major review recently concluded that 'we should work on the assumption that there is little new land for agriculture'. See Foresight (2011) 'The Future of Food and Farming, Final Project Report', The Government Office for Science, London, p. 34, <http://www.bis.gov.uk/assets/bispartners/foresight/docs/food-and-farming/11-546-future-of-food-and-farming-report.pdf> (last accessed September 2011).
- <sup>26</sup> This has been demonstrated at the global level by D. Maxwell and K. Wiebe (1998) 'Land Tenure and Food Security: A Review of Concepts, Evidence and Methods', Research Paper No 129, Wisconsin: Land Tenure Center. It has also been demonstrated at the local level by many, including: R. Singh, P. Kumar, and T. Woodhead (2002) 'Smallholder Farmers in India: Food Security and Agricultural Policy', Rome: FAO; R.S. Srivastava (2004) 'Land reforms and the poor in India: an overview of issues and recent evidence', in H. Gazdar and J. Quan (2004) 'Poverty and Access to Land in South Asia: A study for the Rural Support Programmes Network, Pakistan', Vol. 2: Country Studies, Department for International Development (DFID) / Rural Support Programmes Network (RSPN) / Natural Resources Institute (NRI); and H. Gazdar and J. Quan (2004) 'Poverty and Access to Land in South Asia: A study for the Rural Support Programmes Network, Pakistan'. Vol. 1: Regional Overview. DFID / RSPN / NRI.
- <sup>27</sup> K. Deininger (2003), 'Land Policies for Growth and Poverty Reduction. A World Bank Policy Research Report', Washington, DC, and Oxford: World Bank and Oxford University Press.
- <sup>28</sup> Elizabeth Daley, 'Gendered impacts of commercial pressures on land', ILC/CIRAD/Mokoro, 2011, pp 6–8.
- <sup>29</sup> Instituto Nacional de Estadística (2003) 'Censo Nacional Agropecuario', Guatemala City: Instituto Nacional de Estadística. Remarkably, the Gini coefficient for land distribution is a steep 0.84.
- <sup>30</sup> 'Mujeres y Conflictividad Agraria (Women and Agrarian Conflict', presentation by the Alliance of Rural Women (Alianza de Mujeres Rurales) during the First National Dialogue on Agrarian Conflict, 5-6 April 2011.
- <sup>31</sup> Daley (2011), *op. cit.*
- <sup>32</sup> Tinyade Kachika (2010) 'Land Grabbing in Africa: A Review of the Impacts and the Possible Policy Responses', Oxford: Oxfam International Pan Africa Programme.
- <sup>33</sup> *Ibid.*
- <sup>34</sup> The role of investment promotion agencies in relation to land is discussed in Annie Dufey, Maryanne Grieg-Gran, and Halina Ward (eds.) (2008) 'Responsible enterprise, foreign direct investment and investment promotion: key issues in attracting investment for sustainable development', London: IIED, <http://pubs.iied.org/pdfs/15511IIED.pdf> (last accessed July 2011).
- <sup>35</sup> Transparency International (2009) 'Global Corruption Barometer', Berlin: Transparency International, p. 9, [http://www.transparency.org/policy\\_research/surveys\\_indices/gcb/2009](http://www.transparency.org/policy_research/surveys_indices/gcb/2009) (last accessed July 2011). For the barometer, 73,000 respondents in 69 countries were interviewed.
- <sup>36</sup> World Bank (2011), *op. cit.*, p. xxxii.
- <sup>37</sup> Access Capital (2010) *The Ethiopia Macroeconomic Handbook 2010*, Addis Ababa: Access Capital, <http://www.accesscapitalsc.com/downloads/The-Ethiopia-Macroeconomic-Handbook-2010.pdf> (last accessed July 2011).
- <sup>38</sup> L'Aquila Food Security Initiative (2009) "'L'Aquila" Joint Statement on Global Food Security', G8 Summit 2009, L'Aquila: L'Aquila Food Security Initiative [http://www.g8italia2009.it/static/G8\\_Allegato/LAquila\\_Joint\\_Statement\\_on\\_Global\\_Food\\_Security%5B1%5D\\_0.pdf](http://www.g8italia2009.it/static/G8_Allegato/LAquila_Joint_Statement_on_Global_Food_Security%5B1%5D_0.pdf) (last accessed July 2011); The Comprehensive Africa Agriculture Development Programme (CAADP), <http://www.nepad-caadp.net> (last accessed July 2011).
- <sup>39</sup> Lucia Wegner and Gine Zwart (2011) 'Who will feed the world?', Oxford: Oxfam International, <http://www.oxfam.org/en/grow/policy/who-will-feed-world> (last accessed July 2011).
- <sup>40</sup> Richard M. Auty (1993) 'Sustaining Development in Mineral Economies: the resource curse thesis', London and New York: Routledge.
- <sup>41</sup> Food Security Cluster (2010), 'Annual Needs and Livelihood Assessment', World Food Programme, <http://www.wfp.org/countries/South-Sudan/Overview> (last accessed August 2011). This is down from 2009, when 53 per cent of the population were projected to be moderately or severely food insecure (21 per cent

severely). The November 2011 ANLA is expected to project a deteriorating situation from 2010.

- <sup>42</sup> Although the lease agreement is signed by NTD, several Texas-based investment firms and companies are affiliated with NTD and this agreement. This includes an affiliation between NTD and Kinyeti Development LLC, an Austin-based firm whose managing director is Howard Eugene Douglas, a former U.S. Ambassador and Coordinator for Refugee Affairs (1981–1985) during the Reagan Administration. ([http://www.kinyeti.com/index.php?option=com\\_content&view=article&id=61&Itemid=79](http://www.kinyeti.com/index.php?option=com_content&view=article&id=61&Itemid=79)) (last accessed September 2011). A recent report issued by the Oakland Institute provides additional details on the web of interconnected investment firms and companies, based especially in Texas and Singapore, which are affiliated with NTD. See Kineyti's website and also 'Understanding Land Investment Deals in Africa: Nile Trading and Development Inc., in South Sudan', Land Deal Brief, June 2011, [http://media.oaklandinstitute.org/sites/oaklandinstitute.org/files/OI\\_Nile\\_Brief\\_0.pdf](http://media.oaklandinstitute.org/sites/oaklandinstitute.org/files/OI_Nile_Brief_0.pdf) (last accessed August 2011).
- <sup>43</sup> According to the community administrator, 'We do not know ... how [the cooperative] was formed – it appears that a few people created it outside of this community and they made the deal on that basis... it was the 'Cooperative', not the community that made these deals.' (Interviewed at the community administrator's office, Mukaya Payam, 28 July 2011).
- <sup>44</sup> The Paramount Chief appears to be both a perpetrator and victim; as a co-signatory he signed as the representative of the Mukaya community. However, the Chief alleges he was duped by members of his own family, and that he only signed the lease because he thought the timeframe was less and the size smaller, and claims that had the two members of the 'cooperative' not been family members he would have checked the documents more thoroughly. (Interviewed at Paramount Chief's home, Mukaya Payam, 28 July 2011).
- <sup>45</sup> 'Chief Scoppas Lodou Torugo, James Yosia Ramadalla and Sumuel Taban Youziele. These three citizens, natives of our community, met with this company without consulting us and made this deal without our knowledge. And we as the citizens of Mukaya unanimously condemn and reject their deal, we call it null and void and we call it illegal.' – Chairman Dickson, a sub-Chief of the Payam, interviewed at Yei Hotel, 27 July 2011, and who was leading the community's council to Juba to present evidence to the Central Equatorial State and Government of South Sudan – this meeting took place on Monday, 1 August 2011.
- <sup>46</sup> According to the Chairman of the Juba-based Diaspora, Mr. Bullen Soro, the outcome of the meeting between the Mukaya community and the Governor was that the Governor verbally supported them: 'If the community has rejected the deal, he cannot impose it on the people'. (Interviewed at his office in Juba on 29 July 2011)
- <sup>47</sup> The local working estimates put it between 89,360 and 210,000 – this varies because the number of returnees increases each year.
- <sup>48</sup> Lomerry and Banak (2010), *op. cit.*, p. 22.
- <sup>49</sup> Recorded individual interview with Oxfam, July 2011. NFC disputes this testimony. It told Oxfam that 'No individuals who could demonstrate residence on the land since before 1992 have been kept off Namwasa [the Mubende plantation]. After the initial vacation process, those 31 families who could demonstrate pre-1992 residence were allowed to resettle on the reserve until they are compensated by the government. They are presently residing on Namwasa.'
- <sup>50</sup> The legal case filed by the Mubende evictees is brought on behalf of 1,489 families, which, based on an average family size of 5 (Uganda Demographic and Health Survey 2006), equates to approximately 7,400 people. In relation to Kiboga, a letter from the Office of the Prime Minister to the Minister for Water, Lands and Environment, dated November 2004, refers to 20,000 people under threat of eviction in Kiboga district, who 'have stayed in this place since the early 1970s'. Oxfam's interviews with the lawyers for the communities and with the communities themselves suggest that the figures could be significantly higher. NFC bases its enumeration of evictees in Mubende on a government process in which 540 families submitted claims for compensation (applying an average family size of 5, this gives 2,700 individuals). In Kiboga, it says a census identified 15,191 affected individuals (although the company suggests that this may overestimate the actual figure). In a call with Oxfam on 14 September 2011, NFC says on its estimate, the number concerned is around 17,800 (subject to its concerns regarding the accuracy of the Kiboga census).
- <sup>51</sup> NFC says evictions in Kiboga began in November 2008 (NFC written feedback to Oxfam, 15 September 2011).
- <sup>52</sup> Based on meetings between Oxfam and the Acting Executive Director and the Deputy Director of the NFA as well as the Resident District Commissioner and the Natural Resources Officer for Mubende district; a letter from the NFA to the lawyers for the Kiboga claimants dated 1 December 2009 confirms this position; a surveillance assessment of NFC's plantation in Mubende, prepared by SGS Qualifor for the Forestry Stewardship Council (FSC), notes that: 'Government, as the landowner, clearly indicated that these encroachments are illegal under the constitution and laws of Uganda'; Section 32 of the Ugandan National Forestry and Tree Planting Act of 2003 prohibits (except in accordance with the terms of a forest management plan or a licence) clearance of forest land for erection of buildings, planting crops or grazing (among other things).
- <sup>53</sup> See NFC's website, <http://www.newforests.net> (last accessed August 2011).
- <sup>54</sup> The Mubende evictions are described as 'voluntary and peaceful' in NFC's submission to the CDM Executive Board (2011), 'Project Design Document Form for Afforestation and Reforestation Project Activities (CDM-AR-PDD) Version 4', Namwasa Central Forest Reserve Reforestation Initiative, <http://cdm.unfccc.int/UserManagement/FileStorage/EK9VT8HIJ4AQ5NG03YCRDSFWOLZ7UP> (last accessed August 2011); NFC also says that its consultation process in Mubende was externally audited by the IFC and FSC (NFC Sustainability Report FY10: July 2009 – June 2010). In relation to Kiboga, NFC says that 'encroachers are cooperating and have voluntarily vacated the reserve' (NFC Sustainability Report FY10: July 2009 – June 2010).
- <sup>55</sup> Email from NFC to Oxfam, 5 September 2011.
- <sup>56</sup> NFC Sustainability Report FY10: July 2009 – June 2010, p.14; also an Affidavit in Reply to the claimants'

application for interim injunctive relief made by an NFC Community Development Officer refers to the applicants as 'encroachers and trespassers on the suit land which is a Central Forest Reserve.'

- <sup>57</sup> NFC written feedback to Oxfam, 15 September 2011. NFC says that 'the 31 families who could demonstrate pre-1992 residence were allowed to resettle on the reserve until they are compensated by the government. They are presently residing on Namwasa'. In a telephone call with Oxfam on 14 September 2011, NFC explained that 540 families had submitted applications to demonstrate residence in Mubende, but only 31 families had done so to the satisfaction of the government. NFC also stated that no-one from Kiboga has demonstrated rights to land. Oxfam considers that people from remote rural communities very rarely have clear full legal title documented, especially in countries such as Uganda coming out of decades of civil conflict where there was massive internal displacement, so there may have been justifiable difficulties for the evictees in demonstrating the duration of their occupation of the land.
- <sup>58</sup> The Mubende claim is brought on behalf of 1,489 families (roughly 7,400 individuals) and the Kiboga claim is brought on behalf of 332 families (roughly 1,500 individuals).
- <sup>59</sup> Oxfam has copies of the pleadings filed by the claimants from Kiboga and has interviewed the lawyers representing the Kiboga evictees. These arguments were also reflected in focus group discussions and individual interviews with evictees conducted by Oxfam and its partner organisations in July 2011. In relation to government recognition of administrative structures, Oxfam has copies of correspondence between village level local councils (LC1) and central government.
- <sup>60</sup> Oxfam has copies of the pleadings filed by the claimants from Mubende, as well as documents demonstrating allocation of land to war veterans and has interviewed the lawyers representing the Mubende evictees. These arguments were also reflected in focus group discussions and individual interviews with evictees conducted by Oxfam and its partner organisations in July 2011.
- <sup>61</sup> Oxfam has received the following advice from Ugandan lawyers: the requirements for granting an interim order are that the matter is urgent in terms of impending danger and that an application for an injunction has been filed and is pending hearing. An application for an injunction looks at three tests: whether there is a serious question to be tried; imminent danger; and the impossibility of atoning in damages in the event the injunctive relief is not granted. The court is guided in its deliberations by a 'balance of convenience' test. The requirements on an applicant are quite high, but are premised on the need to maintain the status quo until a court can hear and determine the main application. Both, being discretionary remedies, will be granted or denied depending on the particular circumstances and the force of the arguments made.
- <sup>62</sup> Oxfam has a copy of the Interim Order granted by the Central High Court of Nakawa on 19 June 2009 against the NFC, 'restraining the respondent, its workers, agents, assignees and/or those acting through or delivering authority from it from evicting the applicants and their families, destroying their crops, schools, hospitals, social infrastructure and livestock'. The Kiboga order remained in force until 2 October 2009. In Mubende, Oxfam understands the pattern was similar: lawyers representing the community explained to Oxfam that an interim order was granted against NFC, and extended until 18 March 2010, but was ignored, as reported in *The Observer* (Uganda) on 11 January 2010: [http://www.observer.ug/index.php?option=com\\_content&view=article&id=6736:museveni-okays- eviction-of-1500-mubende-homes&catid=78:topstories&Itemid=59](http://www.observer.ug/index.php?option=com_content&view=article&id=6736:museveni-okays- eviction-of-1500-mubende-homes&catid=78:topstories&Itemid=59) (last accessed August 2011).
- <sup>63</sup> The order in Mubende was granted on 24 August 2009 and remained valid until 18 March 2010; communities told Oxfam in focus group discussions and individual interviews that the large part of the evictions took place in February 2010. In Kiboga, the order was granted on 19 June 2009 and remained in force until 2 October 2009; communities told Oxfam in focus group discussions and individual interviews that evictions took place throughout the period from 2008 to July 2010; the pleadings in the Kiboga case refer to attempts to carry out evictions in 2008 and append correspondence between the Inspector General of Police and the Regional Police Commander for the Central Region that suggests previous court orders were also in place by June 2008.
- <sup>64</sup> Based on consistent testimony from 12 focus group discussions attended by 615 people in July 2011 and seven focus group discussions attended by 118 evictees in March 2011 (across both districts); also reinforced by individual interviews conducted by Oxfam in March and July 2011.
- <sup>65</sup> Based on testimony gathered during 12 focus group discussions attended by 615 people in July 2011 and seven focus group discussions attended by 118 evictees in March 2011 (across both districts); also reinforced by individual interviews conducted by Oxfam in March and July 2011. The pleadings filed by the claimants support these allegations; the Kiboga plaint refers to a letter from the Kiboga District Chairperson to the Prime Minister dated 1 July 2008 that brands the evictions 'brutal and forceful'. Oxfam understands that NFC has denied these allegations in a defence filed with the High Court. See also reports at [http://www.observer.ug/index.php?option=com\\_content&view=article&id=6736:museveni-okays- eviction-of-1500-mubende-homes&catid=78:topstories&Itemid=59](http://www.observer.ug/index.php?option=com_content&view=article&id=6736:museveni-okays- eviction-of-1500-mubende-homes&catid=78:topstories&Itemid=59), and [http://www.fsc-watch.org/archives/2009/09/16/Uganda\\_\\_Villagers\\_pe](http://www.fsc-watch.org/archives/2009/09/16/Uganda__Villagers_pe) (last accessed August 2011).
- <sup>66</sup> Plaint filed by 1,489 claimants in Civil Suit No. 164 of 2009 (High Court of Uganda Holden at Nakawa).
- <sup>67</sup> Letter from NFC to Oxfam, dated 9 September 2011.
- <sup>68</sup> Public summary of SGS's Forest Management Certification Report for the FSC: <http://www.forestry.sgs.com/documents/sgs-2405-ug-new-forests-sa2010-11-ad36a-sc-psummary-en-10.pdf> (last accessed August 2011).
- <sup>69</sup> From conversations with the company, Oxfam understands NFC to mean that no such incidents have been brought to NFC's attention that NFC considers have substance.
- <sup>70</sup> Telephone call with Oxfam, 14 September 2011.
- <sup>71</sup> NFC written feedback to Oxfam, 15 September 2011; email from NFC to Oxfam, 5 September 2011.
- <sup>72</sup> NFC written feedback to Oxfam, 15 September 2011. In addition, Oxfam understands that NFC disputes the enforceability of the order relating to the Mubende evictions on the basis that the claimants named the

company incorrectly in its application. The order was granted to restrain Namwasa New Forest Company Uganda Ltd. NFC took the legalistic view that, as a result, 'the order was not enforceable in law against the Respondent'.

<sup>73</sup> On the basis that none of the 615 evictees who attended 12 focus group discussions in July 2011, nor any of the 118 evictees who attended seven focus group discussions in March 2011, had received compensation or heard of evictees who had. Oxfam recognises that if the communities did not have legal rights over the land they occupied, they may not have a legal entitlement to compensation. The legality of the communities' stays on the land has not yet been determined by the courts, however. Further, the IFC's performance standards provide for informed consultation and compensation even in the case of lawful expropriations.

<sup>74</sup> Some evictees in Mubende say that in early 2010 the Resident District Commissioner (RDC) instructed them to open bank accounts in order to receive compensation; Oxfam has seen documentation to demonstrate that accounts were opened but no-one said they had received any deposits by July 2011. NFC says that the RDC made offers of compensation while appealing to Ministers to sanction the payments, but his efforts were unsuccessful.

<sup>75</sup> In a recorded interview, a community leader from Kiboga told Oxfam that the District Council Chairman requested NFC to identify land for resettlement and that NFC proposed the terms of the offer. Oxfam has a copy of minutes of a meeting between NFC and district officials (where the community was not represented), which appear to support this testimony: the minutes record 'a proposal to demarcate an area of minimum one and maximum two square miles – the size to be determined after the results of a population survey supported with funds of Ughs7m provided by NFC – which would be designated as an area which could be utilized by the historic occupants upon application for temporary occupation permit from the National Forestry Authority of 5 years duration within which period long term solutions to encroachment shall be found'.

<sup>76</sup> See also NFC Sustainability Report FY10: July 2009 – June 2010, p.13: 'the easiest and cheapest route for us would have been to have paid compensation but Government, our landlord, ruled this out as setting a dangerous precedent for community conflicts on hundreds of other tracts of government land.'

<sup>77</sup> Letter from NFC to Oxfam 9 September 2011, which states that it is illegal for a private investor leasing CFR land to offer or promise compensation.

<sup>78</sup> Telephone call with Oxfam on 14 September 2011.

<sup>79</sup> Back to Office Report presented to IFC by R. Novozhilov, March 2010.

<sup>80</sup> 'Sawit' means oil palm.

<sup>81</sup> M. Colchester, et al (2006) 'Promised Land: Palm Oil and Land Acquisition in Indonesia – Implications for Local Communities and Indigenous Peoples', Forest Peoples Programme and Sawit Watch.

<sup>82</sup> Email from Sime Darby to Oxfam, 22 August 2011.

<sup>83</sup> Email from Sime Darby to Oxfam, 22 August 2011.

<sup>84</sup> Sawit Watch, interview, August 2011.

<sup>85</sup> During RSPO RT5, a series of meetings took place between Dato' Azhar, president plantations SynergyDrive and staff, and representatives of SPKS, Sawit Watch and Dutch NGO Both ENDS. Minutes from those meetings (written by Sawit Watch and Both ENDS) show that the discussion around the expansion plans of PT MAS III was leading to social tensions. Village and community leaders expressed different opinions on whether the expansion plans should be stopped. Since 2007, the expansion plans have been suspended, not stopped, and social tensions persist. The minutes of the meeting stated: 'Effective from 21 November 2007, the expansion of the PT MAS III plantations will be immediately suspended. The status of expansion plans will be decided during the December 15th meeting. The expansion will only be allowed to continue if the community agrees to allow it to go ahead.'

<sup>86</sup> Sime Darby, 'Core Businesses', [http://www.simedarby.com/Core\\_Businesses.aspx](http://www.simedarby.com/Core_Businesses.aspx) (last accessed July 2011).

<sup>87</sup> Email from Sime Darby to Oxfam, 22 August 2011.

<sup>88</sup> Concluded from Oxfam's own research, and noted in M. Colchester et al (2006) *op. cit.*, p.98.

<sup>89</sup> Fedepalma (n.d.) 'Colombia - The Land of the Oil Palm Tree', Fedepalma, [http://www.fedepalma.org/oil\\_col.htm](http://www.fedepalma.org/oil_col.htm) (last accessed July 2011); Mica Rosenberg (2003) 'Colombia shifts from drugs to food in farm expansion', *Reuters*, 23 May <http://af.reuters.com/article/energyOilNews/idAFN194019120110523> (last accessed July 2011).

<sup>90</sup> CESPAD (2011) 'La Reconcentración de la Tierra y la Lucha Campesina en el Bajo Agua. Caso del MUCA Honduras', Tegucigalpa: Centro de Estudios Para la Democracia (CESPAD).

<sup>91</sup> Movimiento Unificado de Campesinos del Aguán.

<sup>92</sup> BBC News (21 August 2011), 'Honduran farm workers' leader killed amid land tensions.' <http://www.bbc.co.uk/news/world-latin-america-14609778> (last accessed August 2011); Association of World Council of Churches Related Development Organizations in Europe (APRODEV), Copenhagen Initiative for Central America (CIFCA), FIAN, International Federation for Human Rights (FIDH), Regional latinoamericana de la Unión Internacional de los Trabajadores de la Alimentación, Agrícolas, Hoteles, Restaurantes, Tabaco y Afines (Rel-UITA), Via Campesina (2011) 'Honduras: Violaciones de Derechos Humanos en el Bajo Aguán. Informe Preliminar de la Misión de Verificación Internacional Realizada del 25 febrero a 4 marzo de 2011', 25 March, <http://www.fian.org/recursos/publicaciones/documentos/honduras-violaciones-de-derechos-humanos-en-el-bajo-aguan/pdf> (last accessed July 2011).

<sup>93</sup> Giorgio Trucchi (2010) 'De nuevo corre la sangre en el Bajo Aguán', *Alba Sud*, 23 November <http://www.albasud.org/noticia/135/de-nuevo-corre-la-sangre-en-el-bajo-aguan> (last accessed July 2011).

<sup>94</sup> The IFC's Environmental & Social Review Summary holds that "Land acquisition is on a willing buyer-willing

- seller basis, and there is no involuntary displacement of any people.”  
<http://www.ifc.org/ifcext/spiwebsite1.nsf/ProjectDisplay/ESRS27250> (last accessed August 2011).
- <sup>95</sup> EDF Trading website, 'EDF Trading terminates its involvement with the Aguan CDM project',  
<http://www.edftrading.com/pressReleases.aspx?m=19&amid=2021> (last accessed August 2011).
- <sup>96</sup> FIAN (2011) 'German development bank withdraws Dinant finance in response to human rights violations in Bajo Aguán, Honduras', Heidelberg: FIAN, <http://www.fian.org/news/press-releases/german-development-bank-withdraws-dinant-finance-in-response-to-human-rights-violations-in-bajo-aguan-honduras> (last accessed July 2011); *El Herald*, 13 April 2011.
- <sup>97</sup> Coordinadora Nacional de Organizaciones Campesinas (CNOG) (2005) 'Propuesta de Reforma Agraria Integral', Guatemala City: CNOG.
- <sup>98</sup> Other peasant groups with land conflict issues in the Aguán Valley include the Broad Claim Movement of the Aguán (Movimiento Amplio Reivindicador del Aguán, MARCA), and the Peasant Movement of the Aguán (Movimiento Campesino del Aguán, MCA).
- <sup>99</sup> Statistics provided by FAO, (FAOSTAT, 2010), cited by Alberto Alonso-Fradejas in National Coordination of NGOs and Cooperatives (IDEAR CONGCOOP) (2010) 'Revista Territorios V, Monocultivos: la cara agraria del nuevo modelo extractivista en América Latina', Guatemala City: IDEAR CONGCOOP.
- <sup>100</sup> UN General Assembly Human Rights Council (2010) 'Report of the Special Rapporteur on the right to food, Olivier De Schutter, Addendum: Mission to Guatemala', A/HRC/13/33/Add.4, New York: UN, [http://www.sfood.org/images/stories/pdf/officialreports/20100305\\_a-hrc-13-33-add4\\_country-mission-guatemala\\_en.pdf](http://www.sfood.org/images/stories/pdf/officialreports/20100305_a-hrc-13-33-add4_country-mission-guatemala_en.pdf) (last accessed July 2011).
- <sup>101</sup> *Ibid.*
- <sup>102</sup> Alberto Alonso-Fradejas (2007) 'Caña de Azúcar y palma africana: combustibles para un nuevo ciclo de acumulación y dominio en Guatemala', Guatemala: IDEAR-CONGCOOP.
- <sup>103</sup> Fernando Quiñónez (2011), 'Grupo Pellas compra ingenio y creará 2 mil empleos', *siglo21.com.gt*, 21 June 2011, <http://www.s21.com.gt/pulso-economico/2011/06/21/grupo-pellas-compra-ingenio-creara-2-mil-empleos> (last accessed August 2011).
- <sup>104</sup> 'Subastarán fincas y activos del ingenio Chabil Utzaj', (2010), *El Periodico*, 6 August, <http://www.elperiodico.com.gt/es/20100806/economia/168283> (last accessed August 2011).
- <sup>105</sup> GIDHS (2011), Equipo de Trabajo de Relevamiento de Derechos Humanos en Guatemala, 'Informe Polochic Marlin'. Barcelona: Grupo de Investigación en Derechos Humanos y Sostenibilidad de la Cátedra UNESCO en Sostenibilidad de la Universidad Politécnica de Cataluña, August 2011. The Sierra de las Minas is a UNESCO Biosphere Reserve.
- <sup>106</sup> Letter from NFC to Oxfam 9 September 2011.
- <sup>107</sup> Based on testimony from 12 focus group discussions attended by 615 people in July 2011 and seven focus group discussions attended by 118 evictees in March 2011 (across both districts); also reinforced by individual interviews conducted by Oxfam in March and July 2011. In addition, the pleadings from and affidavits in support of the Mubende court case refer to the loss of livelihoods occasioned by the evictions and allege that 'schools and health centres [were] closed down by the defendant and/or their agents and workmen' and that 'our children do not go to school for lack of money'.
- <sup>108</sup> Telephone call with Oxfam, 14 September 2011.
- <sup>109</sup> NFC written feedback to Oxfam, 15 September 2011.
- <sup>110</sup> Based on testimony from 12 focus group discussions attended by 615 people in July 2011 and seven focus group discussions attended by 118 evictees in March 2011 (across both districts); also reinforced by individual interviews conducted by Oxfam in March and July 2011. In addition, the pleadings from and affidavits in support of the Mubende court case refer to the loss of livelihoods occasioned by the evictions and allege that 'schools and health centres [were] closed down by the defendant and/or their agents and workmen' and that 'our children do not go to school for lack of money'.
- <sup>111</sup> UN General Assembly Human Rights Council (2009) 'Report of the Special Rapporteur on the right to food, Olivier De Schutter. Addendum: large-scale land acquisitions and leases: a set of minimum principles and measures to address the human rights challenge', A/HRC/13/33/Add.2, New York: UN Human Rights Council. Among other agreements, he refers to: the International Covenant on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights; the General Comment on the right to adequate housing; the Declaration on the Rights of Indigenous Peoples; the International Convention on the Elimination of All Forms of Racial Discrimination; and various ILO instruments on workers' rights and working conditions.
- <sup>112</sup> Christina Hill, Serena Lillywhite and Michael Simon (2010) 'Guide to Free Prior and Informed Consent', Carlton, Victoria: Oxfam Australia, <http://www.oxfam.org.au/resources/filestore/originals/OAUS-GuideToFreePriorInformedConsent-0610.pdf> (last accessed July 2011).
- <sup>113</sup> Kachika (2010), *op. cit.*
- <sup>114</sup> NFC Sustainability Report FY10: July 2009 – June 2010, pp.14 and 60.
- <sup>115</sup> Based on testimony from 12 focus group discussions attended by 615 people in July 2011 and seven focus group discussions attended by 118 evictees in March 2011 (across both districts); also reinforced by individual interviews conducted by Oxfam in March and July 2011.
- <sup>116</sup> Letter from NFC to Oxfam 9 September 2011.
- <sup>117</sup> During a telephone call with Oxfam on 14 September 2011, NFC explained that the survey identified 15,191 individuals but that no final report had been delivered and NFC has concerns regarding its accuracy.

- <sup>118</sup> Based on oral testimony gathered from seven focus groups in July 2011 and witness interviews conducted by Oxfam in July 2011.
- <sup>119</sup> USAID (2010) 'Land Tenure Issue in South Sudan: Key Findings and Recommendations for Sothern Sudan Land Policy' <http://blog.usaid.gov/2011/08/helping-south-sudan-establish-secure-land-tenure/> (last accessed August 2011).
- <sup>120</sup> Land Act Ch. IX, § 63(3)); Local Government Act Ch. IX, § 89; Land Act Ch. X, § 67; Land Act Ch. XI, § 70(1) Sudan enacted the Land Act and Local Government Act in 2009, after the contract with NTD had been signed. The new law requires consultation with the community before leasing land to an investor; consultation with pastoralist groups with secondary rights of access; and environmental and social impact assessments.
- <sup>121</sup> None of the cases discussed in this briefing paper were referred to in the IIED report.
- <sup>122</sup> L. Cotula (2011) 'Land deals in Africa: What is in the contracts?' London: IIED, <http://pubs.iied.org/pdfs/12568IIED.pdf> (last accessed July 2011).
- <sup>123</sup> *Ibid.*
- <sup>124</sup> The acronym IIRSA, in Spanish, stands for: Iniciativa para la Integración de la Infraestructura Regional Sudamericana.
- <sup>125</sup> 'El síndrome del perro del hortelano', Diario El Comercio (Peru), 28 October 2007 [http://elcomercio.pe/edicionimpresa/html/2007-10-28/el\\_sindrome\\_del\\_perro\\_del\\_hort.html](http://elcomercio.pe/edicionimpresa/html/2007-10-28/el_sindrome_del_perro_del_hort.html) (last accessed August 2011). The metaphor 'dog in the manger' derives from a Greek fable that tells the story of a dog lying in a manger who did not eat the grain yet prevented the horse from being able to eat anything either.
- <sup>126</sup> O. de Schutter (2010) 'Report of the Special Rapporteur on the Right to Food, Mission to Guatemala', UN OHCHR, p.8, [http://www.srfood.org/images/stories/pdf/officialreports/20100305\\_a-hrc-13-33-add4\\_country-mission-guatemala\\_en.pdf](http://www.srfood.org/images/stories/pdf/officialreports/20100305_a-hrc-13-33-add4_country-mission-guatemala_en.pdf) (last accessed July 2011). There is no suggestion that the 'several cases' referred to in the Special Rapporteur's Report include cases involving the Widmann family or Chawil Utz'aj.
- <sup>127</sup> See Note 59.
- <sup>128</sup> Based on testimony from 12 focus group discussions attended by 615 people in July 2011 and from seven focus group discussions attended by 118 evictees in March 2011; also reinforced by individual interviews conducted by Oxfam in March and July 2011. Oxfam was also shown photographs of destroyed crops and injured livestock in Kiboga, which interviewees said occurred during the evictions.
- <sup>129</sup> Although the court orders were made initially against NFC (the NFA and other parties were added as defendants to the Kiboga claim in July 2009), community leaders told Oxfam that they brought the existence of the orders to the attention of the local authorities, including the police. The order in Mubende was extended until 18 March 2010; communities told Oxfam in focus group discussions and individual interviews that the large part of the evictions took place in February 2010 and the affidavits in support of the legal pleadings refer to evictions in July 2009. In Kiboga, the order was in force until 2 October 2009; communities told Oxfam in focus group discussions and individual interviews that evictions took place throughout the period from 2008 to July 2010.
- <sup>130</sup> L. German, G. Schoneveld, and E. Mwangi (2011) 'Processes of Large-Scale Land Acquisition by Investors: Case Studies from Sub-Saharan Africa', paper presented at the International Conference on Global Land Grabbing, University of Sussex, 6–8 April 2011.
- <sup>131</sup> Oxfam interviews with community members.
- <sup>132</sup> This is a common practice in land acquisitions in Indonesia. See M.T. Sirait (2009) 'Indigenous Peoples and Oil Palm Plantation Expansion in West Kalimantan, Indonesia', Amsterdam University and Cordaid.
- <sup>133</sup> Cotula (2011), *op. cit.*
- <sup>134</sup> R. Fisher and W.L. Ury (1981) 'Getting to YES: Negotiating Agreement Without Giving In', London: Penguin.
- <sup>135</sup> de Schutter (2009), *op. cit.*
- <sup>136</sup> W. Kalin and J. Kunzli (2009) *The Law of International Human Rights Protection*, New York: Oxford University Press.
- <sup>137</sup> The Association of Indigenous Village Leaders in Suriname, The Association of Saramaka Authorities, and The Forest Peoples Programme (2009) A Report on the Situation of Indigenous and Tribal Peoples in Suriname and Comments on Suriname's 11th and 12th Periodic Reports, [http://archive.forestpeoples.org/documents/s\\_c\\_america/suriname\\_cerd\\_ngo\\_shadow\\_rep\\_feb09\\_eng.pdf](http://archive.forestpeoples.org/documents/s_c_america/suriname_cerd_ngo_shadow_rep_feb09_eng.pdf) (last accessed August 2011); A.K. Lehr and G.A. Smith (2010) 'Implementing a Corporate Free, Prior, and Informed Consent Policy: Benefits and Challenges', Boston and Washington: Foley Hoag, [http://www.foleyhoag.com/NewsCenter/Publications/eBooks/Implementing\\_Informed\\_Consent\\_Policy.aspx?ref=1](http://www.foleyhoag.com/NewsCenter/Publications/eBooks/Implementing_Informed_Consent_Policy.aspx?ref=1) (last accessed August 2011).
- <sup>138</sup> Case 276/03 Centre for Minority Rights Development (Kenya) and Minority Rights Group (on behalf of Endorois Welfare Council) / Kenya (2009) African Human Rights Case Law Analyser, <http://caselaw.ihlda.org/doc/276.03/> (last accessed August 2011).
- <sup>139</sup> J. Ruggie (2008) 'Protect, Respect, and Remedy: A Framework for Business and Human Rights. Report of the Special Representative of the Secretary-General on Human Rights and Transnational Corporations and Other Business Enterprises', 7 April 2008, UN OHCHR, Para. 3, <http://www.business-humanrights.org/Documents/RuggieHRC2008> (last accessed August 2011).
- <sup>140</sup> *Ibid.*
- <sup>141</sup> *Ibid.*
- <sup>142</sup> J. Ruggie (2010) 'Report of the Special Representative of the Secretary-General on the issue of human rights



- and transnational corporations and other business enterprises. Business and Human Rights: Further steps toward the operationalization of the “protect, respect and remedy” framework’, A/HRC/14/27, April 2010, UN OHCHR, <http://198.170.85.29/Ruggie-report-2010.pdf> (last accessed August 2011).
- <sup>143</sup> The Dodd-Frank Act mandates unprecedented transparency for investments in the extractive industries. In particular, any US publicly listed company must disclose revenue payments made on a country-by-country basis around the world. Secondly, companies sourcing coltan and some other precious minerals from the Congo or adjoining countries must disclose their activities.
- <sup>144</sup> Such as the Land Matrix Partnership; GRAIN’s <http://www.farmlandgrab.org> (last accessed August 2011); ILC’s <http://www.commercialpressuresonland.org/> (last accessed August 2011).
- <sup>145</sup> [http://www.oecd.org/document/28/0,3746,en\\_2649\\_34889\\_2397532\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/28/0,3746,en_2649_34889_2397532_1_1_1_1,00.html) (last accessed 19 September 2011).
- <sup>146</sup> IFC (2011) ‘Press Release: IFC Updates Environmental and Social Standards, Strengthening Commitment to Sustainability and Transparency’, Washington, D.C.: IFC, 12 May.
- <sup>147</sup> For details of the Equator Principles see <http://www.equator-principles.com/> (last accessed August 2011).
- <sup>148</sup> IFC states: ‘There is emerging consensus among development institutions that adopting the term [free, prior, and informed consent] is necessary. Increasingly, other IFIs (European Bank for Reconstruction and Development, Inter-American Development Bank, Asian Development Bank, International Fund for Agriculture Development), industry associations (e.g., the Hydropower Association), and roundtables have adopted or are considering adopting [the principle].’ (IFC (2010) ‘Progress Report on IFC’s Policy and Performance Standards on Social and Environmental Sustainability and Access to Information Policy’, Washington, D.C: World Bank, 1 December).
- <sup>149</sup> For details of the IFC Compliance Advisor/Ombudsman (CAO), see <http://www.cao-ombudsman.org/> (last accessed August 2011).
- <sup>150</sup> Since 1999, the CAO has processed 76 complaints (out of 127 complaints brought) related to 48 different IFC/MIGA projects in 28 countries. See [http://www.cao-ombudsman.org/documents/CAO\\_10Year\\_AR\\_web.pdf](http://www.cao-ombudsman.org/documents/CAO_10Year_AR_web.pdf) (last accessed August 2011).
- <sup>151</sup> Wilmar (2009) ‘Sustainability Report’, p. 56, Singapore: Wilmar International Ltd, [http://www.wilmar-international.com/sustainability/resources/Wilmar%20SR%202009\\_single.pdf](http://www.wilmar-international.com/sustainability/resources/Wilmar%20SR%202009_single.pdf), (last accessed August 2011).
- <sup>152</sup> The way in which Oxfam defines a land grab is set out on page 7 of this report.
- <sup>153</sup> IFC, Policy on Environmental and Social Sustainability, 1 January 2012.
- <sup>154</sup> Back to Office report, R. Novozhilov, IFC, March 2010 and letter from IFC to Oxfam, 13 September 2011.
- <sup>155</sup> EIB Statement of Environmental and Social Principles and Standards, 2009 and EIB letter to Oxfam, 13 September 2011.
- <sup>156</sup> SGS Qualifor 2010, Forest Management Certification Report, Doc No. AD36A-08. See: <http://www.forestry.sgs.com/documents/sgs-2405-ug-new-forests-sa2010-11-ad36a-sc-psummary-en-10.pdf>.
- <sup>157</sup> SGS Qualifor 2010, Forest Management Certification Report, Doc No. AD36A-08 (see: <http://www.forestry.sgs.com/documents/sgs-2405-ug-new-forests-sa2010-11-ad36a-sc-psummary-en-10.pdf>) and NFC Sustainability Report FY10: July 2009 – June 2010.
- <sup>158</sup> Letter from Agri-Vie to Oxfam, 12 September 2011.
- <sup>159</sup> Multi-stakeholder initiatives can also play a critical role in fostering an environment that leads to the introduction of enforceable legal rules at the national level in affected countries.
- <sup>160</sup> For details of the FSC Principles and Criteria see <http://www.fsc.org/1093.html> (last accessed August 2011).
- <sup>161</sup> Letter from NFC to Oxfam 9 September 2011.
- <sup>162</sup> For details of the FSC Principles and Criteria see <http://www.fsc.org/1093.html> (last accessed August 2011). In relation to the court cases, SGS noted in a 2009 report that ‘due legal process is being followed to resolve the claims. Both the land claims and cultivation disputes (particularly since their validity is highly dubious) are not of such a magnitude or involve a number of interests as to prevent the company from being certified.’
- <sup>163</sup> Recharge (2011), ‘Call for ban on suspect carbon projects after human rights fears’, [http://www.rechargenews.com/business\\_area/politics/article268541.ece](http://www.rechargenews.com/business_area/politics/article268541.ece) (last accessed August 2011).
- <sup>164</sup> T. Rice (2010) ‘Meals per gallon: The impact of industrial biofuels on people and global hunger’, London: ActionAid, [http://www.actionaid.org.uk/doc\\_lib/meals\\_per\\_gallon\\_final.pdf](http://www.actionaid.org.uk/doc_lib/meals_per_gallon_final.pdf) (last accessed August 2011); R. Bailey (2008) ‘Another inconvenient Truth: How biofuel policies are deepening poverty and accelerating climate change’, #114 Oxfam briefing paper series, Oxford: Oxfam. <http://www.oxfam.org/policy/another-inconvenient-truth> (last accessed August 2011).
- <sup>165</sup> For more information on the CDM see <http://cdm.unfccc.int/> (last accessed August 2011).
- <sup>166</sup> UNFCCC, Project 3197: Aguán biogas recovery from Palm Oil Mill Effluent (POME) ponds and biogas utilisation - Exportadora del Atlántico, Aguán/Honduras, <http://cdm.unfccc.int/Projects/DB/TUEV-SUED1260202521.42/view> (last accessed September 2011).
- <sup>167</sup> See note 68 and CDM Watch (2011) Press Release, ‘EU action required as UN Panel keeps flawed rules of carbon offsetting scheme in place’, 18 July, [www.cdm-watch.org/?p=2187](http://www.cdm-watch.org/?p=2187) (last accessed September 2011).
- <sup>168</sup> FIAN / CDM Watch (2011) ‘United Nations under Pressure to Denounce Human Rights Abuses in Carbon Offsetting Scheme’, <http://www.fian.org/news/press-releases/united-nations-under-pressure-to-denounce-human-rights-abuses-in-carbon-offsetting-scheme> (last accessed August 2011).
- <sup>169</sup> Recharge (2011) *op. cit.*

<sup>170</sup> Recharge (2011), *op. cit.* and CDM Watch (2011), *op. cit.*

<sup>171</sup> CDM Executive Board (2011), *op. cit.*; see Standards in Value Chains above for an explanation of Oxfam's concerns relating to FSC certification of NFC.

<sup>172</sup> J. Perez, M. Gistelink, and D. Karbala (2011) 'Sleeping Lions: International investment treaties, state-investor disputes and access to food, land and water', Oxford: Oxfam International, <http://www.oxfam.org/en/grow/policy/sleeping-lions> (last accessed August 2011).

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This paper was written by Bertram Zagema. Oxfam acknowledges the assistance of Duncan Pruett, Kate Geary, Rohit Malpani, Kimberly Pfeifer, Radhika Sarin, Constantino Casabuenas, Dominic Jones, Claire Mortimer, Richard King, Gine Zwart, Kelly Gilbride, Sandra Seeboldt, Isabel Crabtree-Condor, Augustino Buya, Marc Wegerif, Thur de Kuijer, Giovana Vazquez, Asier Hernandez, Raquel Checa, Yolanda Palacios, Ana Eugenia Marín, and Jonathan Mazliah in its production. It is part of a series of papers written to inform public debate on development and humanitarian policy issues.

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For further information on the issues raised in this paper please e-mail [advocacy@oxfaminternational.org](mailto:advocacy@oxfaminternational.org).

The information in this publication is correct at the time of going to press.

Published by Oxfam GB for Oxfam International under ISBN 978-1-84814-947-2 in September 2011. Oxfam GB, Oxfam House, John Smith Drive, Cowley, Oxford, OX4 2JY, UK.

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