

LAND GRABBING IN KENYA AND MOZAMBIQUE

A report on two research missions –
and a human rights analysis of land grabbing





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FIAN International Secretariat

Willy-Brandt-Platz 5

69115 Heidelberg, Germany

Phone: +49-6221-6530030

Fax: +49-6221-830545

E-mail: contact@fian.org

<http://www.fian.org>

Photographs by

Ralf Leonhard and Saturnino Borrás Jr.

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The title photo shows the weir of Dominion Farms Ltd in the Yala Swamp case

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Executive Summary

Over the past years vast tracks of agricultural lands have been taken over by foreign firms. The total area probably surpasses the farmland of France. Much of this land is located in African countries with fast increasing populations suffering hunger and under-nourishment. Such land acquisition has been happening outside public scrutiny and many details are still hidden. This land grabbing has sparked debates in the media, in developmental institutions, in UN organisations and in civil society.

FIAN International has been working for more than twenty years against forced evictions of rural communities from their agricultural lands, pastures, forests or fishing grounds. In these two decades FIAN International has witnessed how peasant farming and pastoralism got increasingly marginalized as a matter of international and national policies. They are now faced with losses of lands to an extent reminiscent of colonial times.

The current publication contributes to the debate about land grabbing and in particular to a human rights framework dealing with this phenomenon. In May and August/September 2009 FIAN investigated four cases of land grabbing in Kenya and Mozambique in detail on the spot. In its introductory part the report puts these case studies in the context of land grabbing. A definition of land grabbing is suggested along with the reasons for the recent surge in land grabbing due to the financial crisis and the boom in agrofuels. The introduction mentions some general concerns about the effects of globalisation penetrating into the primary sectors of national economies, sectors which are absolutely essential for countries' and peoples' self-determination, food security and food sovereignty. Such activities of investors and their TNCs are seen as contrary to the

democratic vision of local people's equitable access to land and resources as a precondition for a decentralized, sustainable and autonomous agriculture.

The report introduces a human rights framework to analyze land grabbing, based on the rights to adequate food, to adequate housing, to an adequate standard of living including access to resources, the right to work and the rights to information and political participation. It recalls the rights of indigenous peoples, the right to self-determination and the right not to be deprived of one's means of subsistence. This framework is applied to two cases on land grabbing in the Tana River delta (Kenya), to the Yala Swamp case (Kenya) and to the Massingir case (Mozambique).

In November 2008 Kenyan President Mwai Kibaki leased 40000 ha of high potential land in the Tana river delta to the government of Qatar so that Qatar may use it to produce horticultural products for Qatar. It has not officially been made known where this plantation is to be located. The project has been surrounded with secrecy, as the news on this alienation of land and export of food crops was revealed just as Kenya had experienced severe droughts and failed harvests, and the government had declared a national food shortage emergency. A second project in the Tana delta concerns sugarcane monoculture. In a planned public private joint venture, Mumias Sugar Company Ltd., the largest sugar company in Kenya, and the state-run Tana Athi River Development Authority (TARDA), are proposing to turn 16,000 hectares into a sugar cane plantation for agrofuels. These two projects, if realized, will lead to the displacement of tens of thousands of peasant farmers, who currently use this land for food crops like maize, cassava, beans, vegetables and mango. Pastoralist tribes

such as Orma and Wardei will also suffer severely as the delta has been used as grazing land for their cattle for generations. For at least 2,000 pastoralists the projects would spell doom. The report identifies human rights violations that have already been committed in the preparatory stage of these two projects - and other human rights violations threatening.

The Yala Swamp wetlands are located on the north-eastern shoreline of Lake Victoria covering approximately 17,500 ha (175 km²). It provides major ecological and hydrological functions and is a major source of livelihoods for the neighbouring communities. The Yala swamp land is trust land under the custody of the Siaya and Bondo County councils. With a population of about half a million, it is densely populated. For a long time, the local people accessed it and used it in their various daily activities on a free access basis. In 2003, Dominion Farms Ltd, a subsidiary of Dominion Group of Companies based in the USA, made its appearance in Yala swamp. Dominion entered into an agreement with both the Siaya and Bondo County Councils covering 6,900 ha of the 17,500 ha wetlands under the Yala Swamp Integrated Development Project, for duration of 25 years, with a possibility of extension. Eventually, Dominion proposed to cover the entire swamp region of 17,500 hectares. The report investigates how states authorities breached their human rights obligations towards the local population and describes the experience of peasant farmers resisting the take-over of their lands.

The Massingir case must be seen in the context of the agrofuels-oriented export policies of Mozambique. The case (also known as ProCana) concerns a projected sugar cane plantation of 30000 ha under a 50 year contract meant to provide ethanol mainly to South Africa. The British company BioEnergy Africa bought 94% of the project from other investors in 2008 and 2009. The lands affected are the main source of livelihood of the Massingir communities and used for livestock raising, charcoal production, and subsistence farming. The Mozambican government granted ProCana extensive rights for irrigation waters from the Massingir dam. Such (re)allocation of water resources undermines the autonomy and capacity of adjacent local communities to produce food. Moreover the project would affect the pastoralists by disrupting spaces for livestock grazing and pastoralist routes. There is a great risk that these communities would lose their lands and livelihoods against their will and without being properly reallocated and compensated. Consultations with the affected communities affected took place, but severe irregularities were reported. The communities interviewed indicated that only the local elites and elders were actually consulted, some of whom had personally endorsed the mega-project in their communities in spite of apparent widespread objection amongst the communities. Some consultations did not deal with the question whether or not the local communities accept the ethanol project and under what terms they would do so. Some affected communities highlighted that ProCana was expanding the boundaries of the lands it wanted

to control, disregarding original agreements with the communities. In late 2009 BioEnergy Africa announced the suspension of investment in ProCana. According to recent information the government of Mozambique then cancelled the ProCana project.

The report summarizes the findings of these four case studies by pointing to their severe impacts in terms of livelihoods for the displaced and adjacent population. In all cases, no proper consultation of local communities took place. The report criticizes that no comprehensive impact assessments were made prior to the initiation of the project. At least as worrying as the particular human rights violations or threats mentioned above are the systemic violations underlying the policies implemented in the studied countries. In the case of Kenya, the government's "Vision 2030" strategy has not undergone any human rights impact assessment, nor does it even signal awareness of economic, social and cultural rights. It is based on a simplistic and misleading ideology: Foreign money coming into the country is seen as a panacea. It should, however, be observed that the ideology reflected in Vision 2030 has been promoted by the international financial institutions while at the same time ignoring the development of peasant farming and even instigating governments to dismantle the existing elements of pro-peasant policies and institutions. It is also observed that the EU's policy on agrofuels promotes land grabbing.

The report concludes by revisiting its human rights framework and making the point that land grabbing is a violation of the Covenant on Economic, Social and Cultural Rights. This point is argued by considering the multiple threats of severe human rights impacts of land grabbing for the displaced and adjacent population in terms of economic, social, cultural, civil and political rights. This argument is then extended to the human rights of future generations which are likely to be affected by land grabbing: Land grabbing is a long term activity destroying ecosystems and foreclosing rights-based rural policy options such as agrarian reform. The report rejects claims that large scale industrial agriculture is needed to increase soil productivity and hence food production. It refers to the scientific evidence that such claims are false. Productive and sustainable rights-based agricultural technologies exist for farming communities and the respective policies urgently need to be implemented.

States and the international community are under a human rights obligation not to promote or permit land grabbing. The duty-bearers in this context are first of all the states of the lands at stake. Moreover the states where the respective transnational corporations are based or operating carry particular extraterritorial obligations. Extraterritorial states obligations to prevent land grabbing are also incumbent on all other states, for example in the context of intergovernmental institutions.

List of acronyms

ASCU	Agricultural Sector Coordination Unit
CAMEC	Central African Mining and Exploration Company
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CEO	Chief Executive Officer
CESCR	Committee on Economic, Social and Cultural Rights
CPI	Investment Promotion Center of Mozambique
CRC	Convention on the Rights of the Child
ESCR	Economic, Social and Cultural Rights
EIA	Environmental Impact Assessment
EMCA	Environmental Management and Coordination Act
FAO	Food and Agriculture Organization of the United Nations
FDI	Foreign Direct Investment
GC	General Comment of the CESCR
HDI	Human Development Index
HRAF	Human Right to Adequate Food
IAASTD	International Assessment of Agricultural Science and Technology for Development
ICESCR	International Covenant on Economic Social and Cultural Rights
ILO	International Labour Organization
KEPHIS	Kenya Plant Health Service
KWF	Kenya Wetlands Forum
LBDA	Lake Basin Development Authority
MDG	Millenium Development Goals
MoU	Memorandum of Understanding
MP	Member of Parliament
NEMA	National Environment Management Authority
NLP	New Land Policy
ODM	Orange Democratic Movement
PARPA	Action Plan to Reduce Absolute Poverty
PNU	Party of National Unity
RPA	Resettlement Plan of Action
SADC	Southern Africa Development Community
TARDA	Tana and Athi River Development Authority
TISP	Tana Integrated Sugar Project
UNAC	National Organization of Mozambican Peasants
WFP	World Food Programme

1. Introduction

Since its inception in 1986, FIAN has actively investigated land conflicts and supported rural communities in the defense and struggle for their lands. FIAN was one of the first human rights organizations which began to systematically apply a human rights approach to land issues and to conceptualize access to land in terms of human rights. In particular, FIAN contributed to the understanding that access to land is a key part of the right to food, emphasizing thus the right to feed oneself. This concept was eventually adopted by the UN Committee of Economic, Social and Cultural Rights in its authoritative interpretation of the right to adequate food (General Comment N°12)

In a broad sense, land grabbing is not a new phenomenon. It has, unfortunately, been a recurrent pattern in human history. During its first decades of work, FIAN investigated cases in which land grabbers were local and national elites (land lords, paramilitary groups, plantations and companies) as well as the government itself. The first cases of foreign land grabbing related to mining by foreign companies. We have observed that mining has heavily intensified in the last few years due to the increased world demand for raw materials; thus it still represents one of the biggest threats for rural communities.

Over the last three years, a new type of land grabbing has arisen. Foreign investors, both public and private, are taking control of vast stretches of fertile land for agricultural production in some of, but not only, the poorest countries in the world.

This report takes a look at this new form of land grabbing with the aim of examining how it differs from land grabbing in the past, its dimension and its human rights implications. To have an idea what is going on the ground, FIAN undertook two research missions; cases in both Kenya and Mozambique were examined. Insights from these cases will be presented in this report. In a different publication¹ FIAN has contributed to an overview of the extent of such deals in Sub-Saharan Africa, as far as the secrecy surrounding them permits. Thus the present report will focus on this region of the world.

Definition of land grabbing

In the current context, a global process is underway whereby powerful foreign public or private investors create agreements with domestic states which involve taking possession of and/or controlling large surfaces of land,² which are relevant for current and/or future food security of the host country. After three decades of neglect of agriculture, there has been a resurgence, particularly of business interests, in agricultural

production. Over the past two years, this process has been increasingly described by the media as a growing trend across the world, most notably in Africa.

For the purpose of this analysis, land grabbing is defined as taking possession of and/or controlling a scale of land for commercial/industrial agricultural production which is disproportionate³ in size in comparison to the average land holding in the region.⁴ This definition does not focus on abusive practices in the process of acquiring the land but rather on the distributional aspects of the phenomenon and its impact on the political economy and the local and national populations' right to resources for both today and the future. This definition includes both national and foreign investors. In fact, the varying degrees of arrangements between foreign and national investors creates a situation where the boundaries are blurred because the partnerships between the two result in foreign entities being treated as nationals. Nevertheless, we will concentrate in this report on the role of foreign investors. Foreign land grabbing can be even more critical to human rights concerns than land grabbing by domestic actors because of the legal and practical difficulties faced by the territorial state in implementing its protect-obligation towards foreign actors. Moreover foreign land-grabbers normally lack a cultural relationship and corresponding responsibilities towards the affected communities. This can increase the harm to the local communities and their future generations with regards to cultural, social and economic rights.

Identifying the scope of the phenomenon

Within the last year several organizations, including the United Nations' specialized agencies and NGOs, have started to document and quantify the problem. However, quantifications and detailed information are often inadequate due to the noted unwillingness of both governments and businesses with vested interests to fully disclose information on negotiations and deals made.⁵ A 2009 study titled "Land Grab or Development Opportunity?" jointly produced by the Food and Agriculture Organization of the United Nations (FAO), the International Fund for Agricultural Development (IFAD) and the International Institute for Environment and Development (IIED), analyzed land acquisitions of 1000 hectares or more between 2004 and 2009 from

3 What can be considered "disproportionate" needs to be discussed in each particular context.

4 The most common definition of the global land grab refers to large scale land acquisition – be it purchase or lease – for agricultural production by foreign investors. See, for instance, Seized: the 2008 land grab for food and financial security, GRAIN Briefings, October 2008. Available at <http://www.grain.org/briefings/?id=212>. The Great Land Grab, the Oakland Institute (http://www.oaklandinstitute.org/pdfs/LandGrab_final_web.pdf). Other authors prefer the term '(trans)national commercial land transactions' as it pertains to both transnational and domestic deals, and underscores the commercial nature of the transactions regardless of scale and output markets. See Towards a Broader View of the Politics of Global Land Grab. S. Borras and J. Franco. Paper prepared for the Agrarian Studies Colloquium Series, Yale University, 30 October 2009.

5 See The Growing Demand for Land – risks and opportunities for smallholder farmers, Discussion Paper and Proceeding Report of the Governing Council Round Table held in conjunction with the Thirty-second Session of IFAD's Governing Council, IFAD, May 2009. Available at: http://www.un.org/esa/dsd/resources/res_pdfs/csd/17/csd17_crp_land.pdf

1 Foreign land grabbing in Africa, 2009 Monitoring Report by European Civil Society Organisations of the EC Commission's proposal on AAA

2 Many involving more than 10,000 hectares and several more than 500,000 hectares.

Ethiopia, Ghana, Madagascar and Mali. According to the study, about two million hectares of land across the four countries had been signed over to foreign interests, including a 100,000 hectare project in Mali and a 450,000 hectare plantation for agrofuel in Madagascar. IIED⁶ identified a cumulative increase in land acquisition in the four countries with the past five years seeing an upward trend in both project numbers and allocated land areas; it also identified further growth of these activities. For example, in July of 2009, the Government of Ethiopia marked out 1.6 million hectares of land, extendable to 2.7 million, for investors willing to develop commercial farms. The size of single acquisitions can be very large. Allocations include a 452,500 hectare agrofuel project in Madagascar, a 150,000 hectare livestock project in Ethiopia and a 100,000 hectare irrigation project in Mali. Investors include the private sector (banks, agribusiness, investment companies, institutional investors, trading companies, mining companies), and in some cases governments (directly or indirectly), through sovereign funds, domestic investors.

The FAO estimates that in the last three years, 20 million hectares have been acquired by foreign interests in Africa specifying that the proportion of land under foreign control remains a relatively small proportion of total land areas- for instance around one percent in Ethiopia or Sudan.⁷ Our own calculations for Ethiopia indicate that the relative importance of foreign investments could go up to 4% of the fertile land (according to the government's estimation of fertile lands). This would represent the equivalent of up to 8.5% of the total current agricultural area (including permanent meadows and pastures), and the equivalent of up to 20% of the current arable land and permanent crops area. In terms of land tenure structure, the proportion of wide-scale exploitations (>10ha) in Ethiopia could move from 1.4 % (census 2001-2002) to between 17% and 20% in the next years if the Ethiopian government's plan were to be completed. The massive foreign investments would thus substantially modify the land ownership structure, the correlated social structures and cultural practices in a country where the land is, traditionally and up to recently, in its great majority, used by small-scale farmers (95 to 98%).⁸

In Africa, land leases, rather than purchases, predominate with durations ranging from short term to 99 years. Host governments tend to play a key role in allocating land leases, not least because they formally own all or much of the land in many African countries⁹. Malagasy Law No 2007-036 for instance stipulates 'foreign natural or legal entities cannot directly have land access. However

they are free, without any prior authorization, to agree to a renewable perpetual lease which duration cannot exceed ninety nine years'. For instance, in Ethiopia the Government owns all the land, which is leased for periods from 20 to 45 years.¹⁰ Such leases vary in price depending on land use etc.¹¹

Why land grabbing?

Although it is difficult to precisely quantify the phenomenon, the World Investment Report 2009 of the United Nations Conference on Trade and Development (UNCTAD) highlights a certain number of facts about foreign direct investment in agriculture. It notes a 'significant growth' of the world inward foreign direct investments (FDI) stock in agriculture since 2000, 'particularly in developing countries'.¹² The total flows went from less than USD 1 billion per annum between 1989 and 1991, to more than USD 3 billion per annum by 2005-2007.¹³ Africa is at the top of the investors' agenda. The share of agriculture in FDI may by now have reached between 6% and 9%, for countries like Tanzania, Mozambique or Ethiopia.¹⁴ The UNCTAD also reports that transnational corporations have gained considerable influence in some African countries' agricultures. It indicates, for example, that 'in certain developing countries where floriculture is a major export industry – such as Ethiopia, Kenya and Uganda – the participation of foreign firms in cut flowers farming has been significant'.¹⁵ While Asia and Latin America 'restrict foreign investment in the production of food crops', African countries on the other hand 'actively encourage foreign private investors participation, even in staple food crops'.¹⁶

A number of different factors have been identified as responsible for the growing trend of land grabbing. The increasing pressure to produce agrofuels as an alternative to fossil fuels¹⁷ is reported as creating an 'artificial demand (for agrofuels) that is unprecedented among cash crops, and which is likely to persist beyond the usual length of a "commodity boom" cycle'¹⁸. Other contributing factors are the global food crisis and the financial crisis. Since the expected profit per unit of land has increased as a result of higher agricultural prices, demand for farmland has driven up land prices in all

6 See 'Land grabs' in Africa: can the deals work for development? IIED briefing note September 2009. Available at <http://www.iied.org/pubs/pdfs/17069IIED.pdf>

7 See Foreign Investment in Developing Country Agriculture – Issues, Policy Implications and International Response. David Hallam. Paper presented at the Global Forum on International Investment, OECD, 7-8 December 2009.

8 See Foreign land grabbing in Africa, 2009 Monitoring Report by European Civil Society Organisations of the EC Commission's proposal on AAA.

9 See 'Land grabs' in Africa: can the deals work for development? IIED briefing note, September 2009. Available at <http://www.iied.org/pubs/pdfs/17069IIED.pdf>

10 See Foreign Direct Investment in the Agricultural Sector in Ethiopia, EcoFair Trade Dialogue: Discussion paper No 12 by Lucie Weissleder, University of Bonn, Heinrich Böll Stiftung, Misereor, October 2009. Available at http://www.ecofair-trade.org/pics/en/FDIs_Ethiopia_15_10_09_c.pdf

11 See Ibidem.

12 United Nations Conference on Trade and Development (UNCTAD), World Investment Report 2009, Geneva, July 2009, p. 111.

13 Ibid.

14 Ibid. p. 113.

15 Ibid., p. 114.

16 Ibid. p. 98.

17 Several NGO/IGO publications on this topic recognise the increasing demand for bio-fuels. In its report The Great Land Grab, the Oakland Institute claims the use and production of bio-fuels is rocketing (http://www.oaklandinstitute.org/pdfs/LandGrab_final_web.pdf).

18 See Fuelling exclusion? The bio-fuels boom and poor people's access to land, IIED and FAO, 2008, page 7. Available at <http://www.iied.org/pubs/pdfs/12551IIED.pdf>

regions.¹⁹ The food price crisis of 2007-2008 is also said to have led to “the proliferating acquisition of farmland in developing countries by other countries” attempting to boost the security of their food supply.²⁰ To guarantee the food security of their own populations, a number of food-importing nations have started to purchase or lease land in developing countries, sometimes through sovereign wealth funds, to actually outsource their own food production.²¹ This is particularly the case of the Gulf States. Food riots in several Arab countries in early 2008 due to skyrocketing food prices resulted in governments of the region realizing the fact that they were highly dependant on imported food and thus at the mercy of volatile international food prices. The Arab Organization for Agricultural Development (AOAD) identified lack of investments, poor farm policies and low land exploitation among the factors behind this situation. AOAD has called the public and private sector to step up investment in farming projects in the Arab World to cut the massive import bill, ensure enough farm products for the region and bolster food security. A strengthened regional Arab cooperation at different levels is being promoted as key response to the food crisis.²² AOAD's Director-General is convinced that the whole of the Arab world's needs of cereal, sugar, fodder and other essential foodstuffs could be met by Sudan alone.²³

According to UNCTAD, the biggest country investors in terms of outwards FDI stock in agriculture are, in descendent order: the United States, Canada, China, Japan, Italy, Norway, Korea, Germany, Denmark and the United Kingdom.²⁴ Apart from the Gulf States, China, Korea, India, Japan, Libya and Egypt appear among the major investors looking for fertile and water abundant farmland.²⁵ However, EU countries and European private corporations are also significantly involved.²⁶ The reason why different countries are trying to control farmland abroad vary: whereas the Gulf States and China point to food security concerns, OECD countries seem to be supporting their food corporations in producing agrofuels, capturing new markets and moving towards production.²⁷

Following the recent financial crisis, actors within the finance sector are turning towards land as a source of solid financial returns.²⁸ While traditionally land acquisition has not been a typical investment for investment funds due to political obstacles and the lack of short-term returns, the food crisis and the demand for agrofuels has turned land into a new strategic asset. Indirectly, by increasing demand for agrofuels production, recent EU directives have increased demand for land by private finance institutions.

Throughout 2008, an army of investment houses, private equity funds, hedge funds and the like have been snapping up farmlands throughout the world.²⁹ UNCTAD also recognizes the emergence of new actors in agricultural investment/production such as private equity funds; however, it also acknowledges that ‘it is still too early to present a fully reliable statistical picture’.³⁰ In its report ‘The Great Land Grab’, the Oakland Institute highlights how many Western investors, ‘including Wall Street banks and wealthy individuals, have turned their attention to agricultural acquisitions over the course of the past two years’.³¹ Examples given include Morgan Stanley purchasing 40,000 hectares of farmland in Ukraine, or the Swedish investment groups Black Earth Farming and Alpcot-Agro along with the British investment group Landkom collectively acquiring nearly 600,000 hectares in Russia and Ukraine.³²

What are the main concerns about land grabbing as understood in this document?

Land conflicts and the struggles to maintain or to gain access to and control over land is nothing new in Africa, Asia and Latin America. For a long time now, women, peasants, small producers, pastoralists and indigenous people have seen their traditional lands taken away by powerful actors, including their own government, national elites or large investors. However, the pressure on the land of peasants has increased with the multiplication of deals by which foreign investors (be they governments or TNCs) acquire and control huge tracks of land. Evictions and land conflicts in general always represent situations in which human rights are very likely to be violated. This is true in all cases where the land is taken without respecting basic international standards such as a prior comprehensive impact assessment, consultation, compensation and rehabilitation.³³

This being said, the recent phenomenon of foreign states and companies taking possession of large surfaces

19 See ‘Land Grabbing’ by Foreign Investors in Developing Countries: Risks and Opportunities by Joachim von Braun and Ruth Meinzen-Dick, IFPRI Policy Brief, April 09. Available at http://www.landcoalition.org/pdf/ifpri_land_grabbing_apr_09.pdf

20 Ibidem.

21 See The Growing Demand for Land: Risks and Opportunities for Smallholder Farmers, IFAD, 18 February 2009. Available at <http://www.ifad.org/events/gc32/roundtables/2.pdf>

22 See Riyadh Declaration to Enhance Arab Cooperation to Face World Food Crisis. League of Arab States. Available at: <http://www.aoad.org/strategy/RiadhDeceng.pdf>

23 See The Arab World's combined food gap has widened to \$19bn. By Nadim Kawach, Emirates Business 24/7 | Wednesday, February 04, 2009. Available at http://www.business24-7.ae/articles/2009/2/pages/02042009_756732c5492147a18b23b2e6f4b415b8.aspx

24 See UNCTAD, Op. Cit. P. 118.

25 See Seized: the 2008 land grab for food and financial security, GRAIN Briefings, October 2008. Available at http://www.grain.org/briefings_files/landgrab-2008-en.pdf

26 See Foreign land grabbing in Africa, 2009 Monitoring Report by European Civil Society Organisations of the EC Commission's proposal on AAA.

27 See Seized: the 2008 land grab for food and financial security, GRAIN Briefings, October 2008. Available at http://www.grain.org/briefings_files/landgrab-2008-en.pdf

28 Ibidem.

29 Ibidem.

30 See World Investment Report: Transnational Corporations, Agricultural Production and Development, UNCTAD, 2009, page 103. Available at: http://www.unctad.org/en/docs/wir2009_en.pdf

31 See The Great Land Grab, the Oakland Institute 2009, page 4. Available at http://www.oaklandinstitute.org/pdfs/LandGrab_final_web.pdf

32 Ibidem.

33 See in particular the UN Basic Principles and Guidelines on Development-based Displacement and Evictions, at http://www2.ohchr.org/english/issues/housing/docs/guidelines_en.pdf

in countries where hunger, vulnerability to climate changes and extreme poverty are far from being solved, poses not only the immediate problems of violating the human rights to adequate food and housing, water and personal security linked to land conflicts and evictions, but also the issue of reduced land availability. Land grabbing, even where there are no related forced evictions, drastically reduces land availability for land scarce groups, reduces the political space for peasant oriented agricultural policies and gears national markets towards agribusiness interests and global markets, rather than sustainable peasant agriculture for local and national markets and for future generations. This is particularly detrimental in societies where the peasantry counts for a large percentage of the population – and where there is considerable population growth – hence the state obligation to provide access to productive resources. From the perspective of human rights, of justice, peace and sustainability, the new trend of foreign investors monopolizing land and related resources in other countries where people will have increasing difficulties to feed themselves can hardly be considered a desirable solution.

In the past 100 years as the world has moved from an “empty world” to a “full world, the amount of natural resources per capita has dwindled and thus been a cause for growing concern. This will become even more acute in future until world population has stabilized and sustainable consumption patterns have been introduced. Control over land has developed into an issue of great political significance affecting the full range of economic, social and cultural rights.

A further problem linked to land grabbing in the present document is the model of agricultural production which such deals imply. We can observe that most land grabbing processes entail a step backward for peasant and sustainable agriculture, because of the industrial high-tech agriculture that they favored. This is all the more alarming because it contradicts authoritative international recommendations such as those of the Hunger Task Force of the UN Millennium Project and of the more recent International Assessment of Agricultural Science and Technology for Development (IAASTD), which see the support of peasant agriculture as a fundamental effort in the struggle against hunger.

With land grabbing the globalization paradigm has reached the primary sector of national economies; sectors which are absolutely essential for countries’ and peoples’ self-determination and food sovereignty. The act of land grabbing fits well in a strategy towards deepening the commoditization of nature, agriculture and the global rule of a small group of “investors” and their TNCs. The corporate food regime is undermining, in a systemic way, the realization of the right to adequate food not only of peasants in food insecure countries, but of us all. Defending equitable access to land and resources as precondition for decentralized, sustainable and autonomous peasant agriculture is a crucial component of the right to adequate food.

2. A Human Rights Framework to analyze foreign land grabbing

In order to consider the results of the two country visits and their case studies in a human rights perspective, it is crucial to look into existing international standards. Land grabbing affects agricultural land and more generally rural areas where food is produced and where the majority of the hungry are still to be found; in this regard, it is particularly relevant to consider international standards related to the right to adequate food. However, because of the interrelatedness of all human rights, land grabbing is likely to impact the enjoyment of other human rights. It is thus important to consider international standards in relation to other human rights, too.

2.1. The Right to Adequate Food

The Right to Adequate Food is a human right in the UN Human Rights Charter.³⁴ It is guaranteed in the Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) that is binding to the 160 states that ratified it. The human right to food has been interpreted by the authoritative UN Committee on Economic, Social and Cultural Rights (CESCR) in charge of supervising the implementation of the ICESCR in its General Comment (GC) 12. GC 12 points out³⁵ that the right to adequate food is more than the right to a certain package of calories and nutrients; it states that the right to food is realized when every man, woman and child, alone or in community with others, has physical and economic access at all times to adequate food or means for its procurement. This includes both the use of productive land or other natural resources to obtain food and income as well as functioning distribution, processing and market systems that can move food from the site of production to where it is demanded. The ability to individually or communally cultivate land (on the basis of ownership or other form of tenure) is therefore part of the basic content of the right to adequate food which must be respected, protected and fulfilled by States.

However, keeping in mind the indivisibility of human rights, the right to food has to be interpreted in the light of many other economic, social and cultural, civil and political rights to which it is linked.³⁶

³⁴ The UN Human Rights Charter consists of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR).

³⁵ General Comment 12, art. 6 as pronounced by the UN Committee on Economic, Social and Cultural Rights in 1999 on the Right to Food. Available at: <http://daccessdds.un.org/doc/UNDOC/GEN/G99/420/15/PDF/G9942015.pdf?OpenElement>

³⁶ The doctrine that all human rights are indivisible and interdependent is key UN human rights doctrine repeatedly pronounced, for example in the Declarations of the 1993 Vienna World Conference of Human Rights.

2.2. The Right to Adequate Housing, to an Adequate Standard of Living including Resources, and the Right to Work

The right to adequate food should be considered in combination with other rights which are already recognized as such or with other rights that could derive from these existing rights.

Article 11 of the ICESCR guarantees the right to adequate food as a part of the right to an adequate standard of living, together with the right to adequate housing. GC 4 of the CESCR³⁷ states the right to adequate housing encompasses the right to live in a location in security, peace and dignity. The obligation to guarantee security of land tenure and to abstain from undertaking or promoting practices of forced evictions and arbitrary displacement is a corollary of the obligation to respect the right to adequate housing. According to GC 7 of the CESCR,³⁸ forced eviction is defined as the permanent removal of individuals, families, and/or communities from the homes and/or lands they occupy, on either a permanent or temporary basis, without offering appropriate measures of protection, legal or otherwise, or allowing access to these protection measures. Evictions may stem from conflicts over land rights, development and infrastructure projects, as a result of violent situations, or in relation to the implementation of monocultures, among other causes. The same GC establishes that cases of forced evictions are *prima facie* incompatible with the requirements of the ICESCR, and are only justifiable in the most exceptional circumstances. Under these circumstances, it has to occur in accordance with relevant principles of International Law by establishing legal obligations, in particular for the States, and rights for those people threatened with eviction. The right to food is also often severely affected, since in many cases the evicted persons also lose access to their source of livelihood, whether land or a job. In the same manner, the right to water can be affected, considering that evicted persons frequently face difficulty in accessing water. Forced evictions from their homes and lands leave many people homeless and destitute, without the means to make a living and often without effective access to legal recourse or other supports. Often, forced evictions result in physical and psychological injuries among those affected,

with impacts particularly felt by women, children, those living in extreme poverty, indigenous peoples, minorities, and other marginalized groups.³⁹

An adequate standard of living has not been exhaustively defined as only comprising food, housing and clothing but is kept open in the ICESCR. As the recent developments around Article 11 have shown, key resources or assets can be recognized as being integral part of the human right to an adequate standard of living. Indeed, the CESCR has defined a right to water as a human right deriving from Article 11 (emanating from the right to food and housing) and from other articles of the ICESCR that stipulate other rights such as the right to health. In an effort to interpret Article 11 so as to be meaningful to the enjoyment of ESCR by all, other key components of the right to an adequate standard of living could be defined in the future. In particular, the right to land is the subject of a concrete debate and would enable to protect the access to vital resources for still a large majority of the world population and especially of the most vulnerable to poverty and hunger.

In this regard, special attention is due to the work of the then Special Rapporteur on the Right to Food, who has specifically dealt with the relationship of this right and access to land and agrarian reform⁴⁰ and with fishing and the work of the Special Rapporteur on Adequate Housing, who has dealt intensively with the problem of forced evictions and has recently outlined UN Basic Principles and Guidelines on Eviction and Displacement Generated by Development which were adopted by the Human Rights Council in December 2007.⁴¹ The Principles aim to minimize evictions, calling for alternatives to the same whenever possible; underlining that eviction can only take place in “exceptional circumstances.” When inevitable, the Basic Principles establish non-negotiable human rights standards which must be respected and upheld. Moreover, the former Special Rapporteur on Adequate Housing recommended to the Human Rights Council in his last report that the right to land be recognized as a human right as this would be a major step forward in strengthening the human rights of those dependent on land for their lives and livelihoods.

The Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security, drawn up by States and adopted in the Council of the FAO in 2004⁴² put a particular emphasis in securing access to productive resources. They provide:

37 General Comment N° 4, available at: http://www.unhchr.ch/tbs/doc.nsf/0/469f4d91a9378221c12563ed0_053547e?OpenDocument

38 General Comment No. 7 may be consulted at: [http://www.unhchr.ch/tbs/doc.nsf/\(symbol\)/CESCR+General+Comment+7.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(symbol)/CESCR+General+Comment+7.En?OpenDocument).

39 See Handbook on the UN Basic Principles and Guidelines on Development-Based Evictions and Displacement, HLRN and YUVA, New Delhi, November 2008: <http://www.hic-sarp.org/UN%20Handbook.pdf>.

40 UN General Assembly. The Right to Food. Report prepared by Mr. Jean Ziegler, Special Rapporteur of the Commission on Human Rights in accordance with the resolution 56/155 of the General Assembly, 15th February 2002. U.N. Doc. A/57/356

41 The Basic Principles on Evictions are found in Annex I of the Special Rapporteur's Annual Report, and may be consulted at: http://www2.ohchr.org/english/issues/housing/docs/guidelines_en.pdf.

42 Available at: <http://www.fao.org/docrep/meeting/009/y9825e/y9825e00.HTM>.

- States should facilitate sustainable, non-discriminatory and secure access and utilization of resources consistent with their national law and with international law and respect and protect the assets that are important for people's livelihoods. States should respect and protect the rights of individuals with respect to resources such as land, water, forests, fisheries and livestock without any discrimination. Where necessary and appropriate, states should carry out land reforms and other policy reforms consistent with their human rights obligations and in accordance to the rule of law in order to secure efficient and equitable access to land and to strengthen pro-poor growth. Special attention may be given to groups such as pastoralists and indigenous people and their relation to natural resources. (Article 8.1)
- States should design and implement programs that include different mechanisms of access and appropriate use of agricultural land directed to the poorest populations. (Article 8.7)
- States should take measures to promote and protect the security of land tenure, especially with respect to women, poor and disadvantaged segments of society, through legislation that protects the full and equal right to own land and other property, including the right to inherit. As appropriate, States should consider establishing legal and other policy mechanisms, consistent with their international human rights obligations and in accordance with the rule of law, that advance land reform to enhance access for the poor and women. Such mechanisms should also promote conservation and sustainable use of land. Special consideration should be given to the situation of indigenous communities (Article 8.10).

The right to resources implied in the right to an adequate standard of living needs to be further developed by taking into account the rights of future generations: How can the future generation's human right to their own subsistence resources be defined? Which principles should govern policies which safeguard this right? And which extra-territorial obligations are implied? The consequences of the global overuse of resources, in particular climate change and loss of biodiversity are most severe for future generations; the loss of biodiversity leads to extreme vulnerability of food production, global warming leads to loss of fertile lands, water resources, and hence food production. The global overuse of resources therefore needs regulation based on human rights including those of future generations. Moreover, such regulation should take into account a fair bio-space for other species on earth, even beyond their utility of bio-diversity for humankind.

The aim of such regulation must be to reduce the global ecological footprint⁴³ to a value below the global



⁴³ The ecological footprint is a widely used indicator for the sustainability of a person's, community's or country's way of life – and in particular its consumption of resources. It transforms the major aspects of this consumption into a bio-capacity used (measured in "global hectares" of land) and relates it to the available bio-capacity in the country. Such resources are necessary both for production and for

bio-capacity. The normative principle underlying this aim is the “principle of intergenerational justice” or “generational non-discrimination”: The livelihoods of future generations must not be jeopardized or infringed by current activities. In terms of the ecological footprint, this means that the present generation must not encroach on future bio-capacity. It is important to note here that such encroachment takes place by overshoot (having a global footprint that exceeds global bio-capacity). Without further principles, it remains open which state has to reduce its overall footprint and how fast and whether certain states are exempt from such duties. For this matter a second principle is necessary.

A principle which is of key importance here is the national sustainability principle: Each state keeps its footprint within the limits of its own bio-capacity. Without respecting this national sustainability principle there is a very high risk that reduction of global overshoot will not succeed and hence that future generations’ right to resources and to an adequate standard of living will be violated. Adjusting the footprint to the size of the national bio-capacity does not exclude trade. The bio-capacity consumed in a country may come from abroad but should then be balanced by a corresponding export of bio-capacity so that there is no net import of bio-capacity. Each state must have a balanced trade in footprints. What is important here is that each state adjusts its footprint to its own biocapacity and must not count on other countries’ biocapacities.

Access to resources for today’s and tomorrow’s peasant farmers is relevant also under the right to work. In Article 6, the ICESCR guarantees the right to work which includes “the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts”⁴⁴. Work in the sense of the ICESCR is not limited to wage labor, but includes any activity “gaining a living”.⁴⁵ This activity has to be freely chosen or accepted. For many millions of people in the world and especially in Africa, this activity is the cultivation of food and other agricultural products. At least for the next decades this remains their primary source of livelihood and their right to work needs to be respected in this sense.

dealing with the waste generated. In computing consumption of resources the footprint recalls that CO₂ omitted from fossil fuel burning also has to be reabsorbed by carbon sinks (by “carbon land” sequestering the atmospheric CO₂ generated by burning fossil fuels) in order to be climate safe. In this way the atmospheric concentration of CO₂ would not further increase. Carbon land is essentially forest land that does not undergo harvesting. More details on footprint can be found by visiting: www.footprintnetwork.org/atlas

44 CESCR art.6.1

45 The Declaration on Social Progress and Development (proclaimed by UN General Assembly resolution 2542 (XXIV) of December 1969) links social development and the right to work through access to land and to the means of production. It states that social and economic advancement must assure equal opportunities to disadvantaged or marginal sectors of the population (Art. 5(d)) and that social progress and development require the participation of society in productive and socially useful labor and the establishment of forms of ownership of land and of the means of production which preclude any kind of exploitation of man, ensure equal rights to property and create equality among people (Art. 6). The right to work and the free choice of employment must be made effective in conformity with human rights and based on the principles of justice and the social function of property.

2.3. The Rights of Indigenous Peoples

Moreover, Articles 13-19 of the Convention No. 169 of the International Labor Organization (ILO) concerning Indigenous and Tribal Peoples safeguard, in a comprehensive way, the rights of indigenous peoples to their lands and territories. The concept of land encompasses the notion of territories, considered the lands used, owned or occupied by a community or people for the production and reproduction of their forms of social, environmental and economic development, traditions, religions, cultures – their way of life (Art. 13). The Convention recognizes the rights of indigenous and tribal peoples over the lands, territories and resources they traditionally own or otherwise occupy and use, and provides for a range of protective measures, especially against forced evictions and the arbitrary removal from their land (Arts. 7, 14, 15, 16, 17, 18).

With respect to indigenous peoples, the UN Declaration on the Rights of Indigenous Peoples provides for the full protection, through effective mechanisms for prevention of and redress for, any action which has the aim of dispossessing them of their lands, territories or resources (Art. 8(b)), as well as the right to not be forcibly removed from their territories without free, prior and informed consent, the right to be compensated and the right to return (Art. 10). Furthermore, they are entitled to the right to land, territories and natural resources they have traditionally owned, occupied, used or acquired, to the right to own, use, control and develop lands, territories and resources they possess, and a right to their legal recognition and protection (Art. 26). The relationship between their right to maintain a distinctive spiritual relationship with their land, territories, water, coastal seas and other resources is recognized and protected by Art. 26. Governance and management of land, land systems and the environment by the indigenous peoples are regulated by Arts. 29 and 32.

2.4. The Right to Self-determination and the Right Not to be Deprived of One’s Means of Subsistence

Both the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights state that all peoples have the right of self-determination (Art. 1.1); that all peoples may freely dispose of their natural wealth and resources and that in no case may a people be deprived of its own means of subsistence (Art.1.2).

The interpretation of the right to self-determination has been very much influenced by the process of decolonization, particularly after World War II. With the achievement of independence of almost all colonies, the interpretation of the right to self-determination has started to change in the course of the last two decades. These changes attempt to separate the right to self-determination from the right to secession, to not identify the state with a people, and to address the dimension of internal self-determination within a state in terms of the rights of individuals in community with

others. Moreover, courts are increasingly interpreting self-determination as a principle and procedural norm rather than as right.⁴⁶

The right to adequate food and housing should be thus interpreted in the light of the right/principle of self-determination and the right to one's means of subsistence.⁴⁷ The right to control one's own resources is then submitted in the right to an adequate standard of living.

In conclusion, it is important to highlight that the adoption of the human rights discourse by social movements from the South has already led to a new interpretation of existing rights or the creation of new rights particularly when it comes to access to and control over natural resources. Indigenous peoples are a particular case in point.⁴⁸ Additionally to the developments in international human rights law mentioned above, the recently adopted constitutions of Bolivia and Ecuador are examples of how indigenous cosmovisions concerning nature and its relationship with human beings are increasingly finding legal expression in statutory law. Other rural groups suffering from exclusion from the control of resources such as peasants have also started to frame their aspirations using the human rights discourse and call for the recognition of the rights of peasants to land and agrarian resources.⁴⁹ Now, both indigenous peoples and peasants fundamentally question the idea of turning natural resources into commodities. Thus they are calling for state regulation to keep community based control of natural resources.

As highlighted above, the fundamental role of accessing and controlling resources and, more precisely, land to enjoy several human rights is nothing new and is reflected in a number of general comments of the CESCR and in reports by UN Special Rapporteurs. Furthermore, there is a growing appeal to have the right to land recognize as a human right in a similar process as for the right to water. In the perspective of the growing pressure on agricultural land due to land grabbing and of the growing threats against peasants and scarce natural resources, this could represent a very important step forward.

3. Country case studies

3.1. Kenya

3.1.1. General background on poverty and hunger and relevant policies and laws

Poverty and Hunger

Kenya is a member State to several international and regional human rights instruments, among which is the International Covenant on Economic, Social and Cultural Rights ratified in 1972.⁵⁰ Still, the country has not taken legislative steps to implement the rights enshrined in the Covenant, as social, economic and cultural rights are not present in the Constitution, or in the Bill of Rights.⁵¹

Poverty is endemic in Kenya, with approximately 56% of the population living in absolute poverty.⁵² Among whom 53% live in rural areas and 47% in urban areas.⁵³ The Human Development Index (HDI) ranked the country at 143rd position in its 2009 edition out of 182 countries considered.⁵⁴ It is estimated that 10 million people suffer from chronic food insecurity and around two million people rely on food assistance at any given time. Around 32% of the entire population is undernourished.⁵⁵

Furthermore, child nutrition has not improved during the last 20 years, and according to government figures from 2005/6, levels of stunting, wasting and underweight among under five year old children had increased slightly to 33%, 6.1%, and 20.2%, respectively. It is already clear that Kenya will not reach the targets of Millennium Development Goal 1,⁵⁶ which is a major concern in terms of the progressive realization of the right to food in Kenya.

While high rates of chronic malnutrition are evident all across Kenya's provinces,⁵⁷ acute malnutrition is extremely high in North Eastern province. Rates of malnutrition are

46 See Klabbers, Jan. The Right to be Taken Seriously: Self-Determination in International Law. Human Rights Quarterly 28 (2006), 186-206. John Hopkins University Press.

47 The African Charter on Human and Peoples' Rights enshrines in its article 21 the duty of the State to protect the natural resources of peoples. In particular art.21.5 stipulates: "States parties to the present Charter shall undertake to eliminate all forms of foreign economic exploitation particularly that practiced by international monopolies so as to enable their peoples to fully benefit from the advantages derived from their national resources."

48 See, for instance, Santos, Bonaventura de Sousa and César A. Rodríguez-Garavito (eds). Law and Globalization from Below: Towards a Cosmopolitan Legality. Cambridge: Cambridge University Press, 2005. Rajagopal, Balakrishnan. International Law from Below. Development, Social Movements and Third World Resistance. Cambridge: Cambridge University Press, 2003.

49 See La Via Campesina's initiative for an International Convention on the Rights of Peasants (www.viacampesina.org) and the Report of the Advisory Committee to the Human Rights Council on discrimination in the context of the right to food. January 2010, A/HRC/AC/4/2, Available at: <http://www2.ohchr.org/english/bodies/hrcouncil/advisorycommittee/session4/documentation.htm>

50 http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg_no=IV-3&chapter=4&lang=en (Consulted on January 20, 2010).

51 Taking these Rights Seriously: Civil Society Organisations' Parallel Report to the Initial State Report of the Republic of Kenya on the implementation of the International Covenant on Economic, Social and Cultural Right. Available at: http://www2.ohchr.org/english/bodies/cescr/docs/ngos/K-HURINET_Kenya_CESCR41_report.pdf, p. 13 (Consulted on January 20, 2010).

52 Kenya Human Rights Commission (2007) Committee on Economic, Social and Cultural Rights Pre-Sessional Working Group 2007: List of Issues by the Kenyan Civil Society Coalition on Economic, Social and Cultural Rights, Nairobi and United Nations Development Assistance Framework (UNDAF) Kenya, 2004-2008 available at: <http://www.endimpunitykenya.org/pdf/issues%20on%20economic%20social%20and%20cultural%20rights.PDF> (Consulted on January 20, 2010).

53 Rural Poverty Portal, Kenya Statistics, available at: <http://www.ruralpovertyportal.org/web/guest/country/statistics/tags/kenya> (Consulted on January 20, 2010).

54 Kenya's HDI is 0,541. UNDP, Human Development Report 2009 - Kenya, Available at: http://hdrstats.undp.org/en/countries/country_fact_sheets/cty_fs_KEN.html (Consulted on January 20, 2010).

55 FAO, Country Profiles, available at: <http://www.fao.org/countries/55528/en/ken/> (Consulted on January 20, 2010).

56 United Nations Development Assistance Framework (UNDAF) Kenya, 2009-2013, p. 6-7, available at: http://planipolis.iiep.unesco.org/upload/Kenya/Kenya_UNDAF_May_2008.pdf (Consulted on February 10, 2010)

57 There are 8 provinces in Kenya. These are 1) Central, 2) Coast, 3) Eastern, 4) Nairobi, 5) North Eastern, 6) Nyanza, 7) Rift Valley and 8) Western.



also high in urban areas such as Nairobi. Every fourth child in the North Eastern province suffers from acute malnutrition (wasting), contributing to higher child mortality in the province.⁵⁸ In addition, poverty and food insecurity rates are very high, for example, as high as 60% of the population in North Eastern province and 80% in Nyanza live under the poverty line.⁵⁹

Lack of access to land is a major determinant of poverty, as more than 80% of the population depends on agriculture for their livelihoods and growing inequality in land ownership as well as small landholdings contributes to high levels of poverty. From the 20% of land which is suitable for cultivation, only 12 % is classified as high potential (adequate rainfall) agricultural land and 8% is medium potential land. The rest of the land is either arid or semiarid. Farming in Kenya is mostly conducted by small producers who usually cultivate no more than two hectares (about five acres) through simple means.⁶⁰

Kenya's arable land constitutes 9.2% of the country's territory, of which 1.8% is irrigated.⁶¹ Smallholdings have an important role in the agricultural production, as they are responsible for about 70% of the general crop production.⁶² Conversely, smallholdings generally face an unstable situation, as only 6% of the land in the country is registered under individual titles. Smallholders have both customary and statutory rights in Kenya, but the large number of different legislations and policies issued by the government has restricted further registration, due to a large number of land adjudications, and the fear by smallholders of having their customary rights disregarded.⁶³

Today, Kenya is ranked among the countries most vulnerable to flood and drought caused by climate change. Due to the drought in 2006/2008, the post-election political violence which displaced more than 600,000 people,⁶⁴ and a 50% rise in food prices since 2008, the United Nations World Food Program (WFP) has scaled up food assistance in 2009 to feed 3.5 million Kenyans and appealed for US\$244 million from donors.⁶⁵ According to a country report published by Credit Guarantee,⁶⁶ Kenya would

58 Center for Economic, Social and Cultural Rights, Kenya: Visualizing Rights, Fact Sheet n. 4, p. 3, available at: <http://www2.ohchr.org/english/bodies/cescr/docs/info-ngos/CESRKenya41.pdf> (Consulted on January 22, 2010).

59 Ibidem.

60 Encyclopedia of the Nations, Kenya – Agriculture, available at: www.nationsencyclopedia.com/Africa/Kenya-AGRICULTURE.html (Consulted on December 3, 2009).

61 Rural Poverty Portal, Kenya Statistics, available at: <http://www.ruralpovertyportal.org/web/guest/country/statistics/tags/kenya> (Consulted on January 20, 2010).

62 FAO, Land Reform: Land Settlement and Cooperatives, 2001/2002, p. 50. Available at: <http://www.fao.org/DOCREP/005/Y2519T/Y2519t05.htm> (Consulted on January 22, 2010).

63 Ibid.

64 According to The Kenya Food Security Securing Group, it is estimated that 20% of land was taken out of production in key production areas of the Rift Valley due to the ramification of political unrest in December 2007. See <http://documents.wfp.org/stellent/groups/public/documents/ena/wfp182903.pdf>, p. 7

65 Kenya Food Security Steering Group, The Impact of Rising Food Prices on Disparate Livelihoods in Kenya, www.thenational.ae/article/20090327/FOREIGN/419074559/1002 (Consulted on December 3, 2009).

66 Credit Guarantee is South African underwriting company operating in the field of domestic and export credit insurances. See <http://www.creditguaranteee>.

need 900,000 metric tons of corn to tackle the food emergency. The US has pledged credit guarantees which will help the country import white corn and the government will continue to import maize duty-free until the next major harvest. Kenyan stocks fell to 63,000 tons from 260,000 tons while strategic grain reserves have also dropped sharply. To address the crisis in the medium term, the government will avail 93,000 tons of fertilizer at affordable prices to farmers and reduce the price of seeds by 10%. Government will also provide farmers with affordable mechanical ploughing services.⁶⁷ According to the Kenya Food Security Outlook (April to September 2009), the current food security situation in Kenya is worrisome for marginal agricultural, agro-pastoral, pastoral, and urban livelihoods.⁶⁸

Kenya is the country with the fastest population growth in East Africa with about 2.9% p.a. This high reproduction rate poses a severe challenge to land distribution as only around 20% of the land is considered as “high potential”, i.e. apt for agriculture. As fathers divide their land among their sons, each new generation has a smaller portion of land at their disposal. Daughters generally do not inherit land. Although recently women have been buying land; “few women have land registered in their names and lack of financial resources restricts their entry into the land market. Moreover, International Conventions on women’s rights relevant to women’s rights ratified by the Government of Kenya have not been translated into policies or laws.”⁶⁹

Policies and laws regarding land and investment in agriculture

Around 85% of the Kenya’s estimated population of 36.1 million people (2006 census) live in rural areas and depend on land for living.⁷⁰ It is estimated that 75% of the entire population in Kenya live in its medium to high potential agricultural areas, accounting for around 20% of the country’s land mass. The remaining 25% of the population occupies vast arid and semi-arid lands.⁷¹

Land has always played an essential role in Kenya, both politically as well as socio-economically. Kenya became a British protectorate in 1895 and gained its independence in 1963. During the British rule, many indigenous communities’ land across the central uplands of Kenya, the so-called “White Highlands” and adjacent rangelands were dispossessed and

given to European settlers; 20% of Kenya’s land, most of which were prime agriculture lands, was seized in this process.⁷² This colonial land policy was legalized by Colonial legislation, supplanting the customary land tenure systems with the implementation of an individual freehold title registration system, thereby taking away the local inhabitants’ guaranteed claims over their land.⁷³ In addition, Colonial laws did not consider the indigenous groups to be capable of holding direct land titles, and therefore held land “on trust” for them by governmental authorities.⁷⁴

Kenya’s first president after its independence gave major political posts as well as much of the fertile central highlands to a small group of Kikuyu (an ethnic group to which the President belonged) at the expenses of other ethnic groups.⁷⁵ These land tensions were further aggravated by the successor who remained in office until 2002. Likewise, he used public lands as patronage resources and means to maintain control during the 1990s, at the advent of multiparty politics in Kenya. Land was traded for political support and allocated to influential individuals and to groups whose support the government needed.⁷⁶ To restore stolen land, the Kikuyu were evicted from areas where they had earlier settled; associated tensions thereafter had caused thousands of casualties and displaced more than 350,000 persons.⁷⁷ Ndung’ Report, a report by the Ndung’ Commission to investigate patterns of illegal and irregular allocation of public land, revealed that “most illegal allocations of public land took place before or soon after the multiparty general elections of 1992, 1997 and 2002”.⁷⁸ Today, Kenya has not yet recovered from civil strife after the disputed presidential elections in January, 2007. What is commonly referred to as post-election violence cost the lives of around 1,200 Kenyans and displaced around 400,000. The last remains of victims were buried in May 2009 and reports about the interment revealed that the wounds smitten during the violence have not yet healed.

A New Land Policy (NLP) which has been in the making for several years got stalled in the commissions due to post-election violence. It was finally adopted by Parliament in December 2009. Until then, land policy in Kenya was not explicitly articulated in any policy document. However, the legal framework for land had been clear and consistent: only private ownership of land

co.za/company_overview.htm

67 www.creditguarantee.co.za/Country%20Reports/Kenya%20-%20March09.pdf (Consulted on February 10, 2010).

68 <http://www.kenyafoodsecurity.org/inside.php?articleid=278> (Consulted on February 10, 2010).

69 Ministry of Lands, Draft National Land Policy, May 2004, p. 23, available at: <http://www.ilegkenya.org/pubs/docs/DraftNationalLandPolicy.pdf> (Consulted on February 10, 2010).

70 Kameri-Mbote, Patricia, Land Tenure, Land Use and Sustainability in Kenya: Towards innovative use of property rights in wildlife management, International environmental Law Research Centre, 2005-4, p. 1, <http://www.ielrc.org/content/w0504.pdf> (Consulted on February 10, 2010).

71 Ministry of Lands, Draft National Land Policy, May 2004, p. 23, available at: <http://www.ilegkenya.org/pubs/docs/DraftNationalLandPolicy.pdf> (Consulted on February 10, 2010).

72 Kenya National Commission on Human Rights and Kenya Land Alliance, Unjust Enrichment: The making of Land-Grabbing Millionaires, Living Large Series, Vol. 2, No. 1, 2006, p. 1.

73 Kenya Land Alliance, Righting the Wrongs: Historical Injustices and Land Reforms in Kenya, Policy Brief (Nairobi: KLA, 2004), pp.1-2.

74 Human Rights Watch, Ballots to Bullets: Organized Political Violence and Kenya’s Crisis of Governance, March 2008, p. 13.

75 Humanitarian Policy Group (HPG), Crisis in Kenya: land, displacement and the search for ‘durable solutions’, Policy Brief 31, April 2008, p. 4.

76 Ogada, Josua, Kenya: The politics of land clashes, available at: <http://www.pambazuka.org/en/category/land/40833> (Consulted on February 10, 2010).

77 Humanitarian Policy Group (HPG), Crisis in Kenya: land, displacement and the search for ‘durable solutions’, Policy Brief 31, April 2008, p. 4.

78 Roger Southall, Ndungu Report Summary, Review of African Political Economy, Vol. 32, No. 103, (March 2005), p. 148.

can ensure economic growth.⁷⁹ As a result, customary tenure has been neglected and treated as an inferior tenure system.⁸⁰ Accordingly, the thrust of laws previous to the NLP has been to individualize all modes of tenure, especially customary tenure.

The current Constitution establishes three types of land: government land, private land, and trust land while the NLP distinguishes between public land, community land and private land. The category of government land which was previously “owned” by the State and for which the President was legally empowered to allocate will be replaced by public land, and will come under the National Land Commission which is to be accountable to Parliament. As such, the President will no longer have a privilege of giving away land freely. The former trust land will become community land, and will not be “held in trust” by local county councils but instead administered by the local communities. In the past, the county councils which consisted of a number of elected and appointed councilors needed to seek the consent of the communities whenever they wanted to dispose of portions of the trust land. Legally, the local councils cannot sell it but they may lease it for up to 99 years. However, in practice, communities were rarely consulted. Both the county councils and central government treated trust land as if it were government land and the communities were simply informed when trust land was leased or even sold. This is why land administration has become the center of controversy; the allocation process lacked transparency because it was almost exclusively in the hands of the President.. No regard was taken of the interests of the residents, tenants or squatters in the area.⁸¹

Under the NLP, all land allocations must be made public to the people so objections can be raised. The NLP also ensures that land use by foreign investors complies with environmental standards and that land use benefits first and foremost local citizens, and colonial land leases allowed for up to 999 years will be limited to 99 years.⁸²

The national economic development “Vision 2030”, a series of five-year plans with the first one for 2008-2012, considers foreign investment as key to agricultural development. The Kenyan government sought to attract investors with the particular intent to grow cash crops both for export and for domestic consumption. According to Kenya Investment Authority, “Sugar production, at 402,000 tons per annum is below the domestic demand estimated at 600,000 tons per annum.”⁸³ Kenya currently has three bilateral investment treaties in

force: with Germany, Italy and the Netherlands. Treaties with China (2001), Switzerland (2006) and the United Kingdom (1999) have been signed but have not yet entered into force.

Following the invitation of Kenyan civil society organizations concerned with the impacts of large-scale land acquisition, FIAN International undertook a research visit to Kenya during May 15 – 25, 2009. The research team visited the following cases in Kenya, with an aim to analyze patterns of land grabbing and its impact on the local communities.

3.1.2 The Tana River Delta

The Tana River is Kenya’s largest river which traverses the northern and eastern part of the country and drains into the Indian Ocean. Its delta on the northern coast has created one of the most fertile agricultural areas in the country. The Tana River District was divided in 2007 into Tana River District and Tana Delta District and together there are over 200,000 people living in this area. Several ethnic groups reside here, among whom are the Bantu ethnic groups, Pokomo, Munyoyaya, Malakote and Mijikenda, who engage in farming, and the Cushites, Orma, Wardei and Somali, who are mainly pastoralists. Some of the farmers also engage in small-scale fishing in the rivers and numerous ponds. The pastoralist communities live mainly in the hinterland of the district in villages around watering points, dams, wells and boreholes where there is pasture. During the dry seasons, the pastoralists move with their cattle to the Tana River Delta where they frequently get into conflict with Bantu agriculturalists. In the rainy season, they return to the hinterland with their livestock.

Since the 1950s, irrigation projects were undertaken but proved unviable. The largest of which was a rice plantation that had left behind an enormous rice mill. In the 1970s, a road was built which cut through the wetland and blocked natural flooding in some areas. Three major irrigation schemes and their collapse have influenced employment and sources of income for the local communities. A confidential 1989 internal World Bank memorandum noted the number of people displaced by one of the irrigation projects, the Kiambere Dam, was 6,000, six times the original estimate: “Important provisions were ignored. There was no resettlement plan, no timetables and no evaluation of the adequacy of compensation.”⁸⁴ With the failure of irrigation, the nomadic pastoralists were forced to move during the wet season, while the farmers remained along the river. The utilization of the waters of the Tana River has been central to conflict between pastoralists and farmers, even resulting in a few casualties in the past.⁸⁵

79 John Bruce, Kenya Land Policy: Analysis and Recommendations, April 2008, p. 3.

80 National Land Policy, Ministry of Lands, Nairobi, May 2007, pp.15-16.

81 The Standard, Parliament adopts National Land Policy, available at: <http://www.standardmedia.co.ke/InsidePage.php?id=1144029597&cid=4> (Consulted on February 1, 2010).

82 Ibidem.

83 KenInvest, Investment opportunities in agriculture, available at: www.investmentkenya.com/index.php?option=com_content&task=view&id=87&Itemid=134 (Consulted on February 10, 2010).

84 Horta, Korinna, Troubled Waters: World Bank Disasters Along Kenya’s Tana River, available at: http://multinationalmonitor.org/hyper/issues/1994/08/mm0894_08.html (Consulted on February 10, 2010).

85 Weiss, Taya, Guns in the Borderlands, Reducing the Demand for Small Arms, available at: www.iss.co.za/pubs/Monographs/No95/Chap6.htm (Consulted on February 10, 2010).

Nearly all land in the Tana River and Tana Delta districts is trust land and an overwhelming majority of the settlers do not have title deeds to their ancestral lands. They are considered “squatters” by the authorities although they may have lived in the same place for generations. This legal situation makes them vulnerable to land grabs by powerful persons who use the district administration and Ministry of Lands and Settlement to acquire title deeds for land occupied and tilled by others. This also constitutes an additional issue of conflict between farmers and pastoralists; while the farming communities demand titling to secure their land, the pastoralists are opposed as they feel more secure in common land ownership that will allow them to graze their cattle freely.

Land deal – Qatar and Kenya

In December 2008, it was made known that Kenya would receive a US\$2.5 billion loan to build a second deep-water port, and provide in exchange 40,000 hectares of land to Qatar to grow food. This is an outcome of a three day official visit by the President of Kenya in November 2008 to the Gulf emirate of Qatar.⁸⁶ Since this deal was reported in the Kenyan press in early December of 2008, no further details have been made known.

Indeed, even high ranking public officials have no knowledge from official sources. The Communication and Advocacy Coordinator of the Government Environment Agency Nature Kenya, complained of hearing nothing official about the Qatar deal. The Kenya National Federation of Agricultural Producers tried to investigate the Qatari company which is supposed to execute the investment; however, no such company exists in Qatar which makes the deal even more mysterious. The coordinator of the Food and Nutrition Policy and Programmes in an inter-ministerial unit called Agricultural Sector Coordination Unit (ASCU), confirmed: “The content of the deal is not for public consumption” and “its magnitude is confidential.” As the deal is an agreement between two heads of states, the ministers just have to be informed: “They must operationalize it.”⁸⁷ No discussion about viability or ecological impact is provided for. In an interview with Inter Press Service (IPS), the permanent secretary to the Ministry of Lands revealed that communication about leasing the land had not been passed over their desk: “To date I have not received any official request or communication to process any lease of land to the Qatari government. I have not seen any document of any nature on any request for any land for the Qatari government. I will be happy to share such information,” the permanent secretary stated.⁸⁸

If the plans materialize, around 40,000 hectares of this high potential land will be leased to the emirate of Qatar



⁸⁶ Daily Nation, Qatar to fund Lamu port construction, available at: www.nation.co.ke/News/-/1056/496966/-/tm5rc/-/index.htm (Consulted on February 10, 2010).

⁸⁷ Interview on May 13th, 2009.

⁸⁸ www.ipsterraviva.net/Europe/article.aspx?id=7546

to provide horticultural produce for the Qataris. It has not officially been made known where this plantation is to be located. According to locals, the only place possible is in the middle of the delta where the river parts.

An FAO/IFAD/IIED report reads in this regard: “The Qatar-Kenya deal (...) has drawn particular media attention as the project, implying the alienation of land and export of food crops was revealed just as Kenya had experienced severe droughts and failed harvests, forcing the government to admit it would have to declare a national food shortage emergency.”⁸⁹

Agrofuels – Mumias Sugar Company Ltd.

Another large portion of the delta is earmarked for sugarcane monoculture. In a planned public private joint venture, Mumias Sugar Company Ltd.,⁹⁰ the largest sugar company in Kenya, and state-run Tana Athi River Development Authority (TARDA), are proposing to turn 20,000 hectares of the Delta over to sugarcane production and agrofuels.⁹¹ This project, the Tana Integrated Sugar Project (TISP), plans to develop a 16,000 hectare estate of irrigated sugarcane and support 4,000 hectares of out grower system.⁹²

TARDA owns a large part of the Tana River Delta, something between 130,000 and 200,000 hectares of high-potential wetland where a rice project was initiated in the early 1990s. It is now partly being used by farmers and pastoralists. In the planned sugar project, TARDA is supposed to provide the land and Mumias Sugar Company Ltd. would run the plantation and sugar mill. The land is basically trust land and any alteration to the land tenure ought to be consulted with the affected communities. Instead of consulting the affected communities, the county councils merely informed them when the land will be leased out.

Although the project was approved by the Kenyan Government's National Environment Management Authority in June 2008, a month later, the High Court ordered a temporary halt to the project. The order stopped Mumias Sugar Company Ltd. from making any further decisions with respect to the project, stopped the Tana River Country Council from taking any action to the land which is the subject of the suit, restrained Kenya's Commissioner of Lands from issuing title deed for land and the Water Resources Management Authority from issuing a water permit to the TISP.⁹³ Nevertheless, on

June 22nd, 2009, the High Court in Malindi dismissed the Tana case on a technicality. Apparently, the plaintiff's affidavit was found to be faulty because all evidential facts were not stated. This order has now given a green light to the project. Soon after the court order, the Government has given tenure rights and ownership of 40,000 hectares of Delta land to TARDA, apparently to grow rice and maize as a response to Kenya's recent drought and food shortage.⁹⁴

Local communities are deeply concerned about this project. The grazing land, community land held in trust by the county council, would be fenced off and converted into plantations. More than 25,000 people living in 30 villages are to be evicted eventually from their ancestral land that has now been given to TARDA. Both mega projects, the land lease to Qatar and the sugar/agrofuel plantation, will lead to displacements of tens of thousands of small farmers, mainly members of the Pokomo tribe, who have settled there and survive on food crops like maize, cassava, beans, vegetables and mango. Pastoralist tribes such as Orma and Wardei will also suffer tremendously as the delta has been used as grazing land for their cattle for generations. For at least 2,000 pastoralists families and 350,000 heads of cattle which depend on the fertile pastures during the long dry season, the realization of the projects would spell doom. Irrigation would cause severe drainage of the delta, leaving local pastoralists and farmers without water for their herds during dry seasons. Access to the river would also be blocked. A 29 year old pastoralist of the Wardei tribe living in the delta tells that some families own up to 1,000 heads of cattle, mostly for milk production. They spend at least seven months in the fertile delta and move to the arid hinterland only when the rainy season begins.

Many civil society organizations as well as government agencies oppose the project due to diverse reasons. The Communication and Advocacy Officer of Nature Kenya, argues against the project economically. Nature Kenya has elaborated a cost-benefit-analysis on the alternatives in the Tana River Delta which shows that the income generated by traditional farming, fishing and cattle grazing is almost three times higher than potential sugar cane revenues (3.5 billion Kenyan shillings per annum as opposed to 1.2 billion shillings per annum).⁹⁵ Nature Kenya suggests that investment in roads, markets, and a mango processing plant would bring more development than a sugar cane project.

Kenya Wetlands Forum has also been calling the Government to cancel its approval given to the project. The Wetland Forum has both socially and ecologically motivated objections: “Agrofuel production worldwide continues to destroy crucial natural ecosystems

89 FAO/IFAD/IIED, 2009. Land grab or development opportunity? Agricultural Investment and International Land Deals in Africa. P. 86-87. See also Ochieng-Oron, M., 2009, Ministry Says it Was Not Consulted over Qatar Land Deal, Business Daily Africa, available at: http://www.bdafrica.com/index.php?option=com_search&searchword=vegetab (Consulted on February 10, 2010).

90 Mumias Sugar Company will own 51 percent of the project, while the rest will be owned by TARDA. See <http://arochakenya.wildlifedirect.org/tag/sugarcane/> (Consulted on February 10, 2010).

91 Mulama, Joyce, Development – Kenya: Fears over new land deal, available at: <http://www.rspb.org.uk/ourwork/casework/details.asp?view=print&id=tcn:9-228564> (Consulted on February 10, 2010).

92 BirdLife, Africa, vol. 11.1 January-July 2008, p. 12, available at: http://www.birdlife.org/regional/africa/pdfs/BL_Africa_Newsletter_July_2008.pdf (Consulted on February 12, 2010).

93 BirdLife International, Sugarcane plantations in the Tana River Delta Threaten

Kenyan birds, biodiversity and livelihoods, available at: <http://www.biodiversityinfo.org/casestudy.php?r=pressure&id=121> (Consulted on February 12, 2010).

94 Wildlife Extra, Bio-fuel developments set to destroy Kenya's Tana River Delta, available at: <http://www.wildlifeextra.com/go/news/tana-river352.html#cr> (Consulted on February 12, 2010).

95 Interview on May 13th, 2009

required for local and global sustainability. While hailed as a climate change remedy, this destruction of natural habitats for agrofuel production almost always releases more carbon than saved. Using food such as sugar for fuel has raised food prices, leading to riots globally, including in Kenya. Let the Kenyan government know destroying ecosystems for toxic monocultures is unethical, ask them to please follow their own environmental laws, and respectfully request the project be permanently cancelled.”⁹⁶ A Kenyan Nobel Laureate and environmentalist Wangari Maathai warned: “We cannot just start messing around with the wetland because we need bio-fuel and sugar.”⁹⁷

Kenya’s Food Policy coordinator admits that government plans pose a serious threat to the pastoralists: “Although it is not deliberately stated in the blueprint, various statements in Vision 2030 are likely to phase out pastoralism by, for example, converting wetlands into irrigated agricultural land. The pastoralists’ way of life is keeping livestock. Wetlands will be taken away, pasturing will become more unsustainable, and people will fall into destitution. For pastoralists, it can only work out if wetland is also available for livestock and not just agricultural production.” The National Coordinator of the Pastoralists Development Network of Kenya is convinced that there is a plan behind this policy: “Government wants nature to wipe us out. They want to wake up one morning and be able to use the land for other purposes.”

Notwithstanding, some of the local communities are quite enthusiastic about the projects. Several local leaders were invited to participate in a two-day “sensitization” seminar organized by the Mumias in 2007. They were promised jobs, schools, health centers and a general bolstering of local economy. The elders in Tarasaa, the largest village in the Tana River Delta with about 5,000 inhabitants, are quite anxious for the project to start; “We are asking ourselves what is going on?” said an elder of Nahori to the mission team. However, to date, no numbers for potential jobs and infrastructure investments were provided and there have been no written guarantees given. The elders complained about the Orma pastoralists who frequently let their cattle graze among the crops of local farmers. Although they did not say so explicitly, farmers in Tarasaa would not mind if the pastoralists were pushed out by the sugar project. They knew nothing concrete about the Qatari horticultural project beyond what had been published in the media.

Under Kenya’s environmental law, any proposed law or policy is subject to an Environmental Impact Assessment (EIA), which would give all concerned parties a chance to interrogate its contents. In the case of the Tana River Delta projects, the severity of the ecological impact is obvious and yet EIA was issued to the TISP. NEMA (National

Environment Management Authority) can refuse to give permission (ultimate authority before allocation). The EIA is done at the expense of the interested party according to minimum standards laid down in the Environmental Management and Coordination Act (EMCA) of 1999. In an ideal setting, when the law is observed, the utilization of land and land based resources should adhere to the principles of sustainability and intergenerational equity, the principle of prevention, the precautionary principle, the polluter pays principle and public participation.⁹⁸ In the Tana River Delta, no proper public consultation was done. Nevertheless, the EIA states there is no adverse impact of the proposed project.

3.1.3 The Yala Swamp Case

The Yala Swamp wetlands are located on the north-eastern shoreline of Lake Victoria and are crossed by the equator. It is one of the most important riparian and floodplain wetlands around the lake, and indeed one of the largest in Kenya. The swamp forms the mouth of both the Nzoia and Yala Rivers and is a freshwater deltaic wetland arising from backflow of water from Lake Victoria as well as the rivers’ floodwaters. It provides a very important habitat for refugee populations of certain fish species which have otherwise disappeared from the lake. The wetlands cover an area commonly cited as 17,500 hectares (175 km²) and contain three freshwater lakes: Kanyaboli (1,500 hectares), Sare, and Namboyo. Other reports suggest that the swamp is much larger with a total area of 38,000 - 52,000 hectares. The swamp stretches 25 km from W-E and 15 km from N-S at the lakeshore.

This huge wetland ecosystem, third largest in the country after the Lorian Swamp and the Tana River Delta, provides major ecological and hydrological functions and is a major source of livelihoods for the neighboring communities. It is a highly productive ecosystem. According to Birdlife International,⁹⁹ “The Yala swamp complex is by far the largest papyrus swamp in the Kenyan sector of Lake Victoria, making up more than 90% of the total area of papyrus. The swamp acts as a natural filter for a variety of biocides and other agricultural pollutants from the surrounding catchment, and also effectively removes silt before the water enters Lake Victoria. The site supports an important local fishery for the Luo and Luhya people who live to its south and north, respectively”.¹⁰⁰

The Yala swampland is a trust land under the custody of the Siaya and Bondo County councils on behalf of the government. With a population of about half a million, it is densely populated. For a long time, the local people accessed it and used it in their various daily

96 Ibidem.

97 AlertNet, Kenya sugar, bio-fuels project stirs controversy, available at: <http://www.alertnet.org/thenews/newsdesk/L14523234.htm> (Consulted on February 12, 2010).

98 David Hunter, James Salzman and Durwood Zaelke, INTERNATIONAL ENVIRONMENTAL LAW AND POLICY 379-438 (New York: Foundation Press, 2nd ed., 2005).

99 Birdlife International is a global partnership of conservation organization which aims to conserve birds and their habitats. See www.birdlife.org.

100 BirdLife International, BirdLife IBA Factsheet: Yala Swamp Complex, available at: www.birdlife.org/datazone/sites/index.html?action=SitHTMDetails.asp&sid=6431&m=0 (Consulted on February 12, 2010).

activities on a free access basis. With the entry and take over by a US based company in 2003, this came to an abrupt halt and resulted in a loss of one of the most important assets for the local community to secure their livelihoods – the land.

In 2003, Dominion Farms Ltd, a subsidiary of Dominion Group of Companies based in Edmond, Oklahoma, USA, made its appearance in the Yala swamp. The initial proposal was that Dominion would engage in rice production, in part of the swamp known as Area I, covering about 2,300 hectares. This land portion had been reclaimed by the Lake Basin Development Authority (LBDA) before 1970 and previously used for agricultural activity, mainly to produce cereals, pulses and horticultural crops. Later in the same year, Dominion entered into a lease agreement with both the Siaya and Bondo County Councils covering 6,900 hectares of the 17,500 hectare wetlands under the Yala Swamp Integrated Development Project for duration of 25 years, with a possibility of extension. Eventually, Dominion proposed to cover the entire swamp region of 17,500 hectares.

Dominion was ushered in by a coalition of local politicians and evangelical pastors who even organized massive demonstrations in favor of the investment. At the beginning there was much optimism among the population: Dominion had promised jobs, school, clinics and an upsurge of the local economy in general. The infrastructure left behind by LBDA was worn down and poverty was rife in the malaria-infested swamp region. Dominion describes its initiative on its homepage: “By the time Dominion came into the picture, the situation at the Yala Swamp had deteriorated to dangerous levels. The primitive dikes were eroded and broken by heavy rains, the dike across Lake Kanyaboli had completely washed away and the feeder canal to Kanyaboli had been completely silted in. Roads around the swamp were impassable, the improvements at the compound were in a deplorable shape with bats overtaking the buildings; there was no running water, no electricity; grass had grown to the rooftops and snakes were a menace to the local community. Locals who had worked for LBDA had not been paid and there was general despair within the community. Poverty was rampant with high crime levels and prostitution was a principal source of survival for many families.”¹⁰¹

However, disillusion set in soon. According to residents of Siaya and Bondo counties, there was employment for some 200 workers for no more than six months when brushwood and undergrowth was removed in the area. For instance, a 60 year old man was hired as a subcontractor with a team of twelve. The workers were paid 200 shillings per day (approximately 2.6 USD) and the team leader received an additional 50 shillings. Today, according to the villagers in Bondo and Siaya,



¹⁰¹ Dominion Farms Kenya Overview of Dominion Farms, available at: <http://dominionfarmskenya.blogspot.com/2008/01/overview-of-dominion-farms.html> (Consulted on February 10, 2010).



there is permanent employment only for a handful of watchmen (60, according to Dominion's homepage) who are paid around 7,000 shillings (approximately 90 USD) per month. A watchman questioned by the research team at the gate of Dominion farm refused to reveal details about his contract and said that he was not allowed to speak to strangers.

In the rice fields, women can be seen armed with sticks to chase away the birds which prey on the cereal. According to villagers, they have to stand in the mud from dusk to dawn for a miserable pay and even remain there when the plantation is sprayed with pesticides. Neighbors suspect it is DDT as fowl and plants have died after the spraying. There is ample evidence of poisoned fowl and plants in the vicinity of the plantation. Villagers claim that even the cattle are destroyed by contaminated water. When interviewed, a villager replied "We took the livestock to market and found that the liver was rotten. We had to bury them, could not even allow dogs to eat them." Dominion is indeed alleged to have sought an exemption from the worldwide ban of DDT from Kenya's Ministry of Health supposedly to combat malaria. The incidence of malaria, however, is still high. Some claim it is higher now than before Dominion built dykes and cut off the natural flow of the swamp waters.

In 2003, an Environmental Impact Assessment (EIA) was commissioned by the NEMA for large-scale rice production. Authorities approved the EIA specifically for rice irrigation in a 2,300 hectare-area (about 13% of the Yala Swamp territory). Almost immediately Dominion began building irrigation dykes and a weir, airstrips and roads, and announced plans to build a hydroelectric plant and a major aquaculture venture, including fish farms, a fish processing factory and a fish mill factory, all of which could damage a fragile ecosystem far beyond the designated 2,300 hectare area.¹⁰²

Dominion Farm Limited operates on the basis of a Memorandum of Understanding (MoU) signed by Dominion directors and the chairmen of Bondo and Siaya county councils in May, 2003. According to this MoU, the councils pledge to lease to Dominion another 3,200 hectares approximately ("the Additional Area") in addition to 3,700 hectares – in total 6,900 hectares-set aside for large scale agricultural purposes. The MoU makes no reference to those who may live on the land earmarked for lease to Dominion. A lawyer in Nairobi, who was commissioned by the Institute of Law and Environmental Governance, assumes that there must be thousands of people who have been in occupation of the land by virtue of ancestral rights. One analysis criticizes that "no mention is made of these people. It is inconceivable that 3700 hectares of arable/agricultural land in a rural area would be lying idle without even persons who may be referred to as squatters. Provision must therefore be made for the original occupants. In my view, the County Councils should have given these

¹⁰² RAPID ASSESSMENT OF THE YALA SWAMP WETLANDS. A Report by The Kenya Wetlands Forum C/o East African Wildlife Society, Nairobi, 2006

individuals first priority if this land was required to be allocated or leased out to anyone.”¹⁰³

Indeed, there are entire villages of farmers whose families had been there for generations in the “Additional Area”. The majority do not have any titles to prove their claims. Some, however, had actually purchased the land and were assigned a parcel number which was supposed to be later replaced by a formal title deed. For example, the father of a 33 year old farmer from Aduwa village bought eight acres (roughly three hectares) of land in 1975. The soil is extremely fertile which has made the family quite prosperous. The farmer was sent to school as a child and finished secondary education, a rare exception for the region where schools are scarce and most children drop out before finishing even Primary. His mother lives in a comfortable house on the premises and the farmer has built himself a more modest house on the same plot. He grows maize, beans and vegetables, rears some poultry and livestock and has no intention of abandoning his land.

In 2004, Dominion offered to buy his land for 45,000 shillings/acre (approximately 600 USD), roughly a third of the market price. The farmer refused because he knew that for the meager compensation he would be unable to buy a plot the same size and equal quality anywhere else. One acre yields 24 bags of maize per harvest. At a price of 3,000 shillings (about 400USD) per bag of maize and two harvests a year, each acre produces around 144,000 shillings (around 1,893USD), more than thrice what Dominion offered to pay for the land. A few weeks after refusing to sell his land, the farmer found his fields flooded and his crops destroyed. He is sure that Dominion had opened the sluices of the weir to inundate the plots of stubborn farmers. When he complained, he was chased by the police “who were ferried in Dominion vehicles.”

The same happened to another farmer. Of a nine acre plot, eight acres were flooded. Dominion paid 45,000 shillings for this one acre and took the whole plot. The farmer says he accepted out of need. When he went to complain about the flooding, Dominion sent him to the county council as the owner of the land: “The county council said, the area is for government, you cool down, nothing will be done.” In another case, a 29 year old farmer, whose father possesses 15 acres in Siaya county directly adjacent to the Dominion estate, reports that an offer by Dominion to buy his parcel came immediately after six acres were flooded. The family refused. A woman 60 years of age from Yoro village, Bondo, says that the deliberate flooding of her land, inherited from her late husband who died in 1989, destroyed her crops of maize, beans, vegetables, 40 heads of cattle and five houses. Another farmer, 50 years old, who lives in the same village, lost 30 heads of cattle, 45 sheep and 60 goats in a flooding. Complaints with the local authorities were not attended. According to Inter

Press Service (ips) “the government has dismissed such allegations saying it is not aware of any complaints from communities in the Yala River area.”¹⁰⁴

“The idea behind the flooding is a way of pushing people away”, says a member of Siaya County Council. He alleges that Dominion controls all the local institutions: “They even managed to bribe the media. When floods occur you won’t see media.” The member, who has been campaigning against Dominion for several years, says that he was offered the post of PR officer by Dominion with a monthly salary of 120,000 shillings, airtime for the mobile phone of 7,000 shillings per week, and a car with fuel. He refused. The member, who wants to be reelected in 2011 and become chairman of the county council, accuses local politicians of having accepted bribes: “Some MPs have built their houses with Dominion money”. The mansion of a former MP stands on a hill overlooking the Southern shore of Lake Kanyaboli. It is fenced in and guarded by a watchman. The power line ends at his house. He is the man who initially brought Dominion to the swamp.

According to a report by the Kenya Wetlands Forum, Dominion wants to control over 65% of the Yala Swamp for its expanded “integrated project.” Some of this area is privately owned by hundreds of families. Some of it is used communally, including the species-rich waters of Lake Kanyaboli which is critical for food security in the region. Action Aid Kenya and the Kenya Land Alliance say the company has, in effect, privatized the lake and public roads, blocking lake access to over 200 fishermen and impeding access to schools, markets and health clinics. Residents say their protests in 2007 have been met forcibly with arrests and teargas.

Dominion Farm Limited is registered by Kenya Plant Health Inspectorate Service (KEPHIS) as a seed merchant. The registration is for rice production and processing. It started with cotton, supposedly GMO, during the first year, then planted rice and introduced aquaculture. In artificial ponds, tilapia is being bred. All this is not covered by the MoU. In its long term plan the farm wants to produce about 10 million kilogram of fish per annum, 80 per cent of which is supposed to go into export. The EIA was only conducted for rice production. The impact of intensive aquaculture was not considered. Farmers say that the waste from the ponds is dumped into the swamp with further damage to the fragile ecological balance. Local lobby groups like Friends of Yala Swamp have protested against the environmental threat.

For Dominion and politicians in Nairobi, Dominion Farm is still an example of regional development to be emulated and supported. Dominion’s homepage is full of praise: “Those with a global perspective recognize that the area around Dominion Farms is the modern day equivalent of the Garden of Eden. Water is plentiful, the climate is cool and the fields produce at least two crops per annum. Add the components of cost-effective

103 Analysis of Memorandum of Understanding, Dominion Farms Ltd. Vs. the County Council of Bondo and the County Council of Siaya, James Torore Makori, Jubilee Insurance Exchange, Nairobi, 2008.

104 www.ipsterraviva.net/Europe/article.aspx?id=7546

labor and regional food deficiencies and the area offers an exceptional farming scenario. The impact of two crops per annum cannot be overstated in a large-scale application. It is the financial equivalent of doubling the size of an efficient commercial farm at zero added cost. For a nation that imports more than 200,000 tons of rice annually from India, Pakistan and Southeast Asia, the continuous planting and harvesting of rice on a commercial scale is a welcome activity.¹⁰⁵ It is important to note that rice is only a part of the diet of urban population. Kenya imports rice because it only produces half the amount consumed.¹⁰⁶ Furthermore, although the Lake Victoria basin is considered to have great potential to irrigation, any major irrigation activity in the area is restricted by the Nile Treaty, signed between the British and the Egyptian governments in the 1920s.¹⁰⁷

The evangelical online publication TheTrumpet.com writes on May 27th, 2009: "Today, over a third of that land is a thriving rice and fish farm, and 20 more acres are reclaimed each day. Seven hundred Kenyans work there, and the farm's production has enriched over 50,000 more locals besides; the districts' poverty rate has dropped to 64 percent. Such success certainly evokes those millennial prophecies. But the individuals driving the Dominion Farms project have no illusions about whether God's Kingdom is here yet."¹⁰⁸ It continues further: "Local police, regulatory officials, politicians, even clergy, all routinely demand bribe money (...) but Dominion Farms, out of principle, has consistently refused to oblige them."¹⁰⁹ This is in stark contrast to what swamp residents tell. A councilor of Siaya County Council who turned down an offer to stop his campaigning in exchange for a well paid job is convinced: "Dominion bought the complete political leadership."

The Dominion estate has changed both the ecological and the social balance in the area. In the 1960s, a diversion canal of seven kilometers as well as a retention dyke and a feeder canal for Lake Kanyaboli were built. Dominion raised the weir by 1.8 meters. This enlarged the potential area of flooding considerably. The activities of Dominion Farms Ltd caused the closure of roads connecting Siaya and Bondo Districts apart from fencing off river and canal water from being accessed by the local communities. Neighbors have to take considerable detours when they want to get from one community to another and have no access to their traditional water points. They are barred from fishing in the river. And ponds where they used to fish have disappeared. Before Dominion came, people had made their living drawing water from the local Yala River. They raised goats and

cows and farmed small plots of land. Widows and children harvested papyrus and sisal from the nearby swamp from which they crafted rough mats and baskets. Most of these activities are no longer possible.

Both the government and opposition Members of Parliament are happy with the activities of Dominion Farms. A local MP of the Premier's Orange Democratic Movement (ODM) admitted there were some problems but insisted that the Dominion investment was a blessing for the population of Yala swamp: "We noted that there were a few problems which could be handled by the investor and the two local authorities, i.e. Siaya County Council and Bondo County Council. Otherwise, as a committee we were convinced that Dominion Farms is a good investor and should be supported by the government and the leaders from the two affected districts and the Luo community."¹¹⁰ Farmers who had their land flooded and their roads blocked would not be persuaded that Dominion was a blessing for their counties. Several times the road to Dominion's administrative building was blocked with stones. A demonstration in Siaya was dispersed with teargas and clubs by the police. A member of the Siaya County Council was arrested and held by police for several hours when he spoke against Dominion at a public rally. Dominion reacted by building a police station next to the administrative building. In 2007, entrepreneur Dominion requested Kenya's President to consider increasing the lease allocation to 17,500 hectares of the Yala River Swamp "to cover more areas and benefit the local communities who are among the poorest in Kenya."¹¹¹

FIAN tried unsuccessfully to get in contact with representatives of Dominion Farms Ltd. Moreover, FIAN sent to the company a letter on October 19, 2009 requesting their views on the allegations raised by the local community. Unfortunately, Dominion Farms Ltd did not respond the letter.

The Ramsar Convention provides a framework for conservation and use of wetlands, and it has been ratified by Kenya in 1990. Nevertheless, it is within the country's competence to determine which areas are going to be protected by the instrument, and the Yala Swamp is not one of the five areas indicated by the government.¹¹² Friends of the Yala Swamp, a coalition of residents and organizations, tries to channel public discontent and started writing letters to Kenyan authorities to protect the Yala Swamp wetlands. They also brought up the issue at the World Social Forum which took place in Nairobi in January, 2007. In a petition directed to the President of Kenya, they demanded: to stop all Dominion Farm activities outside the original 2,300-hectare lease unless

¹⁰⁵ Dominion Farms Limited, History, available at: <http://dominion-farms.com/history.html> (Consulted on February 12, 2010).

¹⁰⁶ Grain Production in Kenya 2005, p. 2. Available at: <http://www.epzakenya.com/UserFiles/File/GrainReport.pdf> (Consulted on January 18, 2010)

¹⁰⁷ Ibidem, p. 7.

¹⁰⁸ Export Processing Zones Authority, Grain Production in Kenya 2005, available at: <http://www.thetrumpet.com/index.php?q=6215.4636.0.0> (Consulted on February 10, 2010).

¹⁰⁹ Ibidem.

¹¹⁰ MajimboKenya.com, Dominion Farms must not go, says Nyanza MP, available at: <http://majimbokenya.com/home/2008/04/04/dominion-must-not-go-says-nyanza-mp/> (Consulted on February 12, 2010).

¹¹¹ Kenya Environmental & Political News Weblog, Politics of Yala Swamp and Dominion Farms in Kenya, available at: <http://kenvironews.wordpress.com/2007/08/09/politics-of-yala-swamp-and-dominion-farms-in-kenya/> (Consulted on February 12, 2010).

¹¹² Available at: www.ramsar.org (Consulted on January 18, 2010).

and until new, independent EIAs are completed and approved for each Dominion project proposal; to provide for full participation in the EIA process of all Yala Swamp residents who could potentially be affected by Dominion Farms projects; to prohibit construction of industrial facilities in the swamp and prohibit construction of fish farms and other industrial uses of Lake Kanyaboli, Lake Osare and Lake Namboyo; and to take immediate action to clarify issues of land ownership, resolve land disputes and issue title deeds to Yala Swamp residents.

3.2. Mozambique

3.2.1. General background on poverty and hunger and relevant policies and laws

Poverty and hunger

The 2004 Constitution of the Republic of Mozambique states it is within the fundamental objectives to promote the balanced, economic, social and regional development of the country, in addition to the promotion of human rights and equality of citizens before the law.¹¹³ Article 18(2) of the Constitution attributes to international conventions and treaties the same status as the national law that incorporated them into the legal system.¹¹⁴ The Constitution recognizes several human rights and the need to interpret them in accordance to the Universal Declaration on Human Rights and the African Charter on Human's and People's Rights.¹¹⁵ Mozambique has not ratified the ICESCR, and therefore is not bound by the obligations it contains. Still, it should consider GCs as tools to assist the implementation of economic, social and cultural rights deriving from instruments other than the ICESCR. In fact, Mozambique recently adopted a National Food Security Strategy which referred, for instance, to the human right to adequate food and the need to apply such rights based approach.

Mozambique remains one of the world's poorest countries, despite an economic growth of 7% over the last few years.¹¹⁶ The poverty is highly conditioned by its history of colonization and civil war. Furthermore, in 1991-1992, Mozambique was affected by one of the 20th century's most severe droughts, exposing the population to further poverty. Since then, there has been significant development and economic growth, but the

government still relies on external funds for achieving its objectives; about 50% of the country's budget derives from development aid.¹¹⁷ The Human Development Index ranked the country at 172nd position in its 2009 edition – out of 182 countries considered – with a HDI of 0.402.¹¹⁸ There has been a significant decrease in poverty and there is the potential to achieve the MDG to reduce by half the number of people living below the poverty line within 2015. However, 45% of the population continues to live with less than US\$1 a day and does not have access to basic services like safe water, schools and medical facilities.¹¹⁹ According to the Mozambican Technical Secretariat of Food and Nutrition Security approx. 35% of Mozambican households are chronically food insecure. The provinces with the highest incidence of chronic food insecurity are Zambezia (35.6%), Tete (34.6%), Maputo (34.4%) and Inhambane (29.5%).¹²⁰ Other statistics indicate that 41% of all children below 5 years are malnourished.¹²¹

According to the World Food Programme (WFP), the central and southern provinces of Maputo, Gaza, Inhambane, Sofala, Tete and parts of Manica do not produce enough cereals and are more vulnerable to natural disasters and, except for Inhambane, HIV/AIDS.¹²² Furthermore, WFP observed that

“Transporting cereals from the surplus areas in the north and central regions to the south is economically unviable because of high costs and better market opportunities in neighboring countries. The crop and food supply assessment mission by the Food and Agriculture Organization of the United Nations (FAO) and WFP estimated that 190,000 mt of maize were exported from the northern and central provinces in 2005, but 175,000 mt had to be imported for the southern and central provinces. In 2005, WFP received 54,000 mt through the protracted relief and recovery operation (PRRO) and 28,000 mt through the country program (CP). WFP local purchases decreased from 15,000 mt in 2003 to 8,961 mt in 2005 because quality food was not available on the market; a study of local procurement was carried out in 2005. The agricultural sector program foresees an increase in commercial production and processing of primary products and an improved commercial network, two crucial factors in increasing local purchases by WFP and partners.”¹²³

Another study comes to the conclusion that despite increased cereal production, pockets of food insecurity

113 Art. 11: “The fundamental objectives of the Republic of Mozambique shall be: d) the promotion of balanced economic, social and regional development in the country; e) the defense and promotion of human rights and of the equality of citizens before the law.”

114 Art. 18: “1. Validly approved and ratified International treaties and agreements shall enter into force in the Mozambican legal order once they have been officially published and while they are internationally binding on the Mozambican State. 2. Norms of international law shall have the same force in the Mozambican legal order as have infra-constitutional legislative acts of the Assembly of the Republic and the Government, according to the respective manner in which they are received.”

115 Art. 43: “The constitutional principles in respect of fundamental rights shall be interpreted and integrated in harmony with the Universal Declaration of Human Rights and with the African Charter of Human and Peoples Rights.”

116 Ministry of Planning and Development. Report on the Millennium Development Goals 2008, p. 9. Available at: www.undp.org/mz/ (consulted on: 20 November, 2009).

117 Report on the Millennium Development Goals 2008, p. 15. IDA is the largest single financier accounting for about twenty percent of all Official Development Aid. 19 further development agencies namely Austria, Belgium, Canada, Denmark, European Commission, Finland, France, Germany, Ireland, Italy, Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, United Kingdom and the African Development Bank provide general budget support contributing about 80 percent of Government's external financing needs. For more information about the contribution each donor has given in the last years, as well as the prevision for 2010, visit http://www.pap.org.mz/financial_contributions.htm (Consulted on 12 January 2010).

118 Available at: http://hdrstats.undp.org/en/countries/-country_fact_sheets/cty_fs MOZ.html (Consulted on December 2, 2009).

119 Report on the Millennium Development Goals 2008, p. 10.

120 See Salé, Nurdine. Estudo e Advocacia sobre Biocombustíveis e Segurança Alimentar em Moçambique. Action Aid Moçambique. 2008. P. 12.

121 See República de Moçambique. Plano de Acção para a Redução da Pobreza Absoluta 2006-2009 (PARPA II), Maputo 2 de Maio 2006. P. 215.

122 See World Food Programme, Country Programme Mozambique 10446.0 (2001-2009), WFP/EB.2/2006/8/6, 24 July 2006. P. 6.

123 See, ibidem. P. 7.

remain in semi-arid districts of Tete, Gaza, Sofala, interior Inhambane and southern Maputo, where increasing numbers of people require food assistance. For WFP and IFPRI the structural problem of hunger in Mozambique remains very high and alarming.¹²⁴

Some of the challenges for further improvement in the poverty reduction are: a) the overall impact of the food crisis on the country; b) the promotion of sustainable and economic growth; c) rapid growth of the urban population; and d) the strong incidence of HIV in the country. With regard to the later, it represents a major challenge as the percentage of the population with HIV (amongst youth and adults) has grown from 8.2% in 1998 to 16% of the population in 2007.¹²⁵ These numbers are also striking from a gender perspective, as women are three times more infected than men.¹²⁶ The high incidence of HIV has direct effects on families, given women's social responsibilities towards other family members. It has also an effect on the active population in the country, as well as their productivity.

Mozambique's development is deeply connected to the agricultural sector as 64% of the population lives in the rural area¹²⁷ and 55% of them live below the poverty line. In the rural areas, farming is the main source of income, but with the prevalent low productivity, families can hardly meet their nutritional needs in addition to being vulnerable to climate intemperance. In face of floods or droughts, farmers have few alternatives for income-generation other than agriculture and therefore are exposed to food insecurity. Women face additional challenges given their lower access to education and fewer skills to work on the land derived from it. The difficult access to medical facilities also contributes to a high percentage of maternal mortality. Although the Constitution and the Lands Law recognize equal rights to men and women and equal access to land, women many times are not aware of these rights, remaining deprived of their right to access to land.¹²⁸

In general, the rural population is isolated due to the lack of infra-structure in the country which hampers access to markets, goods and services.¹²⁹ It has been evaluated that groups closer to administrative offices tend to have more access to services like education, health and markets, while those living in more isolated areas "have been completely abandoned."¹³⁰ The lack of infrastructure affects the population to a certain extent

that these groups, when asked about their priorities, name them in order: transportation, roads, prices, marketing, and access to land and water. The nutritional and food security of the country was particularly affected by natural disasters in 2005 and 2008, and there is a tendency to further worsening with the rise of prices of food stocks.¹³¹

Mozambique's arable land is 5.6% of the territory, of which 2.6% is irrigated. Mozambique's land tenure structure is dominated by small holdings: Peasant families make up 99.65% of all agricultural holdings and control 95.19% of the total cultivated area.¹³² According to more recent data, by 2008, around 5 million hectares are under production; agriculture employs 80 % of the country's population, but contributes less to the GDP, at more or less 25 %, while the sector contributes 16 % to all exports. Commercial agriculture is not the norm, where agribusiness covers only three percent of the total cultivated land.¹³³

Policies and programmes

For a better understanding of the cases presented in the following section, we will briefly introduce key features of relevant policies and programs, particularly related to the overall development strategy for poverty reduction, to agriculture, land and agrofuels.

The Action Plan to Reduce Absolute Poverty (PARPA II), 2006-2009

The main goal of PARPA II is to maintain high rates of economic growth in order to reduce poverty. The consolidation of peace and democracy are also mentioned as ultimate goals. PARPA II focuses in three main areas: governance, human capital and economic development.

The priorities for governance lie in decentralization of governmental functions, better inter-sectoral coordination, the safeguarding of property rights, the rationalizing and regulation of land use and and coordination with civil society and the private sector for quick ways of conflict resolution, ensuring effectiveness of financial auditing authorities, and the implementation of commitments of regional and international integration, among others.¹³⁴

The area of human capital aims at improving access to primary education and health services, contributing to the creation of equal opportunities for women and men and reducing maternal mortality and incidence of HIV/AIDS, malaria and tuberculosis, among other objectives.

124 See Food Security Information for Decision Making – Mozambique, October 2009. P. 2. Available at: http://www.foodsec.org/countrybrief/Oct09/Mozambique_1009.pdf (Consulted on 12 January 2010)

125 Report on the Millennium Development Goals 2008, p. 12.

126 Republic of Mozambique. Action plan for the reduction of Absolute poverty 2006-2009. Maputo, May 2006, p. 22.

127 Rural poverty portal. Available at: <http://www.ruralpovertyportal.org/web/guest/country/statistics/tags/mozambique> (Consulted on December 3, 2009).

128 International Fund for Agricultural Development. Habilitar os pobres rurais e superar a pobreza em Moçambique. Rome: IFAD, 2008. Available at: http://www.ifad.org/operations/projects/regions/Pf/factsheets/mozambique_p.pdf (Consulted on December 3, 2009).

129 Rural poverty portal.

130 Republic of Mozambique. Action plan for the reduction of Absolute poverty 2006-2009. Maputo, May 2006, p. 19.

131 Report on the Millennium Development Goals 2008, p. 18.

132 See República de Moçambique. Plano de Acção para a Redução da Pobreza Absoluta 2006-2009 (PARPA II), Maputo 2 de Maio 2006. Para 524.

133 See World Bank and Embassy of Italy. 'Mozambique Bio-fuels Assessment: Final Report'. A Report prepared for the Ministry of Agriculture and the Ministry of Energy of Mozambique. Maputo: World Bank and Embassy of Italy, 2008. P. 22.

134 See República de Moçambique. Plano de Acção para a Redução da Pobreza Absoluta 2006-2009 (PARPA II), Maputo 2 de Maio 2006. P. 31-35.

With respect to economic development, PARPA II set the following priorities, *inter alia*: to stimulate the structural transformation of agriculture in order to increase its productivity and its competitiveness in the international market; to improve road infrastructure; to construct water capture systems and dams of small, middle and big scale in order to serve all needs for water consumption; to establish an international trade policy and a strategy of economic integration in the Southern Africa region; to promote the expansion of agro-industrial systems and labour intensive agro-industries oriented to export; to main macroeconomic stability and to ensure that the Mozambican government pays its foreign debt service and other goods and services acquired.

PARPA II counts on the support of the donor community and was developed in coordination with them. Thus the World Bank Group (IDA, IFC and MIGA) adopted a Country Partnership Strategy for 2008-2011 with the aim of supporting the government of Mozambique to implement PARPA II. The main objective of this strategy is then to ensure sustained future growth which is expected to be driven by coordinated infrastructure development, natural resource extractive industries, energy, agriculture, tourism, private sector development and increased regional trade. In addition to physical investments, the World Bank considers that many key sectors require second- generation reforms in order to create the enabling environment to unleash a new round of growth. Therefore, governance reforms are regarded as a priority, especially important in public financial management, decentralization and public sector management and also in relation to land administration and regulatory frameworks for markets, tax, labor and business licensing.¹³⁵

According to UNCTAD data, Mozambique has had a steady increase of Foreign Direct Investment (FDI) flows from US\$154 millions in 2006 to US\$587 millions in 2008.¹³⁶ Interestingly, Mozambique ranks among the developing countries with the biggest shares of agriculture in inward FDI close to 10%.¹³⁷ FDI in sugar and cotton production is quite significant.

Land Policy

The National Land Policy from Mozambique dates back to 1995¹³⁸ and recognizes the complex circumstances for land distribution in the country. Given the civil war that started shortly after the independence and lasted until 1992, about 6.5 million people most of whom were from rural areas, were displaced both internally and to neighboring countries. These migrations have resulted

in conflicting claims over the land, particularly because many communities have historical rights to certain areas. Under these circumstances, the national policy sets as priorities to eradicate poverty and promote self-sustained economic and human development,¹³⁹ and presents as objectives to recover the production of food in order to achieve levels of food security, and to create conditions for family-based agriculture to grow and develop.¹⁴⁰ Additionally, it states as principle, *inter alia*, the guarantee of access to the land both to investors and the population, where the customary rights of the rural population should be respected.¹⁴¹

In conjunction with the land policy, the agrarian policy¹⁴² incorporates the objectives of food security, reduction of unemployment rates and poverty reduction. These objectives shall be achieved with the recovery of the agrarian production for self-sufficiency and food reserve, and increase in export oriented trade.¹⁴³ The five years program presented by the current government (2005-2009)¹⁴⁴ gives emphasis to the importance of agriculture since more than 60% of the Mozambican population lives in rural areas. By setting agriculture as the basis for the economic and social development of the country, the government aims to: a) contribute to self sufficiency and food security of food crops; b) increase agrarian productivity; c) improve the competitiveness and sustainability of the agrarian activity; and d) promote the sustainable exploitation of natural resources.¹⁴⁵

Agrofuels Policy

Mozambique is one of the countries in the world today where agrofuels (ethanol and bio-diesel) are currently pursued with greater optimism and vigour by the transnational corporate sector, international development agencies and the national government.

In May 2009, the government of Mozambique has approved a new "Policy and Strategy for Bio-fuels".¹⁴⁶ The policy is based on a study conducted under the sponsorship of the World Bank, the Embassy of Italy to the Ministry of Agriculture and the Ministry of Energy of Mozambique. It is the result of the priority set by the Ministry of Energy to develop a national energy sector, reduce oil imports and enhance energy security.¹⁴⁷ The strategy justifies the option for focusing on agrofuels production as a response to the instability of the international oil market and based on the favourable conditions the country presents for producing

¹³⁵ See Promoting Shared Growth through Empowerment of Citizens and Institutions. Mozambique Country Partnership 2008-2011. World Bank.

¹³⁶ See UNCTAD. Transnational Corporations, Agricultural Production and Development. World Investment Report 2009. Annex Table B.1. FDI flows by region and economy 2006-2008.

¹³⁷ See UNCTAD. Transnational Corporations, Agricultural Production and Development. World Investment Report 2009. Figure III.6. Share of agriculture in inward FDI of selected economies.

¹³⁸ Resolution n. 10/95, from October 17, 1995.

¹³⁹ Resolution n. 10/95, from October 17, 1995, n. 13.

¹⁴⁰ Resolution n. 10/95, from October 17, 1995, n. 14, (i),(ii).

¹⁴¹ Resolution n. 10/95, from October 17, 1995, n. 17.

¹⁴² Resolution 11/95, from October 31, 1995.

¹⁴³ Resolution 11/95, from October 31, 1995, n. 10.

¹⁴⁴ Resolution 16/2005, from May 11, 2005.

¹⁴⁵ Resolution 16/2005, from May 11, 2005.

¹⁴⁶ Resolution 22/2009, from May 21, 2009.

¹⁴⁷ See World Bank and Embassy of Italy, Maputo. 'Mozambique Bio-fuels Assessment: Final Report'. A Report prepared for the Ministry of Agriculture and the Ministry of Energy of Mozambique. Maputo: World Bank and Embassy of Italy. 2008. p. ES-1.

agrofuels.¹⁴⁸ The policy declares that the bio-fuel sector will be developed in three stages: pilot phase from now until 2015, operational period from 2015 until 2020 and expansion. The regulatory framework will ensure that the sector will promote ethanol and bio-diesel produced from agricultural raw materials appropriate for Mozambique's agricultural and climate conditions.¹⁴⁹ Among the beneficial outcomes deriving from the implementation of this policy, the government names: a) the gradual replacement of fossil fuels; b) employment generation; c) the possibility to produce agrofuels and still prevent monocultures, while considering food security demands and generating income amongst rural population; d) to give the peasant population the opportunity to transform their agricultural products in agrofuels for their own energy needs, as well as export products with added value.¹⁵⁰ The policy itself, however, recognizes an existing challenge to attribute land for agrofuels production without generating conflicts with communities as well as balancing it with the production of food and proper management of natural resources.¹⁵¹ Six principles are mentioned as guiding the policy implementation: inclusion, transparency, environmental and social protection, graduality, fiscal sustainability and innovation. It also referred to the duties of different stake holders involved in the strategy; namely the duty of the government to support rural communities in the development of their own projects and to "guarantee clear and transparent communication with other interest parties in matters of general interest and stimulate public dialog and knowledge about relevant matters."¹⁵²

The study prepared by the World Bank, the Embassy of Italy for the Ministry of Agriculture and the Ministry of Energy of Mozambique is a voluminous policy recommendation of more than 500 pages. For our purposes, we quote at length some relevant provisions where the World Bank and the Embassy of Italy see the potential of bio-fuels for Mozambique:

„For long-haul exports, sugarcane-based ethanol could be cheaper than Brazil's, which can be taken as an international reference, and the price of which has recently decreased from earlier highs due to rapidly growing output (similarly to that of U.S. ethanol), though Mozambique's potential to secure competitive freight costs would depend on volumes. If ocean freight were to be discounted, however, sugarcane-based ethanol produced in Mozambique could be competitive against Brazil's for regional exports in Southern Africa (a rough estimate for ethanol price in the RSA is USD 0.58/liter). Mozambican ethanol, therefore, could be competitive in domestic markets (provided the fuel tax is waived, and oil prices remain above USD 60/barrel: prices lower by 20% would lead to parity with imported gasoline), as well as



148 Resolution 22/2009, from May 21, 2009.

149 <http://www.macauhub.com.mo/en/news.php?ID=7110>, accessed 27 November 2009.

150 Resolution 22/2009, from May 21, 2009.

151 Resolution 22/2009, from May 21, 2009.

152 Resolution 22/2009, from May 21, 2009, par. 5.2(i).

in regional and overseas markets. A national bio-ethanol program, therefore, should encourage large-scale ethanol production for export, but it should be primarily based on expected volumes for the domestic and regional markets, as the potential for long-term competitiveness will depend on international price trends in ethanol and fossil-based transportation fuels.¹⁵³ [...] even a relatively modest expansion of production of bio-fuels feedstocks (of about 450,000 hectares) together with a mandate for use of E10 and B5 in the country, would generate the following:

(i) Decrease in imports of petroleum-based fuels in the range of USD 15million to USD 20 million annually (based on 2006 petroleum prices, at current price levels this would be higher), representing about a 5% decrease in the total cost of imported fuel as projected for 2008.

(ii) Decrease of tax revenues (import duty, tax on fuel and VAT) in the range of USD 12 million, with the figure likely to be higher at current petroleum price levels.

(iii) Increase of corporate income tax levels of as much as USD 7 million, roughly halving the loss in revenues attributable to decreased fuel imports.

(iv) Creation of some 150,000 jobs, of which two-thirds would be in cultivation of bio-diesel feedstocks and the balance in ethanol production.

(v) Longer-term improvements in the balance of trade resulting from exports of ethanol, vegetable oil and bio-diesel, which could amount to as much as USD 450 million based on a conservative expansion of feedstock production, equivalent to as much as 20% of current exports including large projects.

(vi) Increases in traffic at the country's major ports, with associated port revenues, as well as increased business for transportation companies.,¹⁵⁴

Furthermore, the study analysed different food stocks for agrofuel production, in order to determine which would be more appropriate for cultivation in the country. It concluded that sugarcane and sweet sorghum are more adequate for the production of ethanol, while jatropha and coconut are advisable for bio-diesel.

At the same time that policy frameworks and feasibility studies are being carried out at the national level, a number of corporate-led ventures have started to be set-up across the country, promoting both ethanol and bio-diesel. Table 1 offers a summary of the major initiatives by the end of 2008.

TABLE 1: AGROFUELS PROJECTS IN MOZAMBIQUE

Name	Description (Development stage)	Feedstock and Target Market	Location
C3 – Bio-diesel	Operational	Jatropha plantation for bio-fuel production and related activities; exports contemplated	Estrada Nacional 1, Bairro de Rumbana, Maxixe (Inhambane)
DEULCO	In plantation	Jatropha plantation for bio-fuel production and related activities; exports contemplated	Inhassane, Distrito de Panda, (Inhambane)
ELAION AFRICA	In plantation	Jatropha plantation for bio-fuel production and related activities; exports contemplated	Localidade de Savane, Dondo, Sofala
ECOMOZ	Under construction	Bio-fuels production and related Activities	Petromoc installations (Maputo, Beira and Nacala)
ADAMA	Not yet presented to CPI		Manica
JATROPHA		Jatropha for bio-diesel and related Activities	Distrito de Moamba, Maputo
CAMEC, Central African Mining and Exploration Company (Procana)	Presented to CPI; feasibility study	Sugarcane for production of sugar and refined sugar, electric power and fertilizer; exports contemplated	Massingir (Gaza)
Haha Projects		Bio-diesel from jatropha	Provinces of Nampula or Cabo Delgado
Brunellus KFT		Ethanol based on corn and sweet sorghum	
Madal (Technoserve)	Operating in experimental phase	Coconut, jatropha and oilseeds for bio-fuels (as well as other crops)	Quelimane (Zambézia)
Eng. Petiz	Has 200 ha planted. Will deliver 20,000 tons of sugar cane to Mafambisse	Sugar for export and, from 2009 onward, production of ethanol	Dondo (Sofala)
Girassol Manica	In production	Sugar cane, sunflower, jatropha and soya for ethanol and bio-diesel	Sussundega (Manica)
Geralco	Initial testing at existing plantation	Jatropha	Quelimane (Zambézia)
Algas	Research and development of algae-based bio-fuel production	Bio-diesel	Quelimane (Zambézia)
Grupo MOÇFER SA Enerterra	Feasibility study	Jatropha; exports contemplated	
Sunbio-fuel		Jatropha	Manica
British Petroleum	Feasibility study		
Pete Nel	Feasibility study	Sugar cane for ethanol	Chimoio (Manica)
Somoli	Small-scale demonstration facility		Inhambane
COFAMOSA	Feasibility study to be funded by ADB	Exports contemplated	
Indústria Açucareira		Sugar cane for ethanol	Maputo (Sofala)
Principal Energy	Pre-feasibility studies	Sugar cane and sweet sorghum for ethanol; exports contemplated	Dombe (Manica)

Source: CPI, additional information from Econergy, as cited in World Bank/Embassy of Italy, Op. Cit.

153 See World Bank and Embassy of Italy, Maputo. 'Mozambique Bio-fuels Assessment: Final Report'. A Report prepared for the Ministry of Agriculture and the Ministry of Energy of Mozambique. Maputo: World Bank and Embassy of Italy. 2008. p. 31-33.

154 See ibidem. P. 33-34.

3.2.2. Agrofuel production in Massingir district, Gaza province

Mozambique has been reporting high rates of economic growth and attracting a significant flow of FDI, particularly for the mining and agricultural sectors. In order to examine the impacts of mining and agrofuel projects on the local rural population, FIAN International conducted a research visit in Mozambique from August 26th til September 2nd, 2009. The visit was carried out following an invitation by the National Organization of Mozambican Peasants (UNAC).¹⁵⁵

The research team visited the Massingir district in the Gaza province in order to look into the impacts of the sugarcane ethanol project ProCana on the social rights of the local communities. According to our information, the ProCana project was supposed to invest approx. US\$510 million on 30,000 hectares of land and, was one of the largest of its kind in Mozambique.¹⁵⁶ The British company BioEnergy Africa bought from the Central African Mining and Exploration Company (CAMEC) and another unknown investor 94 % of the project in 2008/2009,¹⁵⁷ forming a joint venture with national investors as well. However, in late 2009, it announced suspension of investment in ProCana, in order to preserve cash and focus on mining exploration and development in sub-Saharan Africa.¹⁵⁸ According to the most recent information, last December 22, 2009, the Cabinet of Minister has cancelled the ProCana project, and it has no legal existence in Mozambique anymore. The Government claims that the company did not fulfil the original intentions submitted and approved by the Government in 2007. For the Mozambican government, the ProCana land (30,000 hectares) can now be considered available for further development by any company who wishes to invest in agriculture under government-approved terms. While it appears that the CAMEC-controlled ProCana project is officially closed now, the key insights that can be drawn from this experience remain critical and relevant not only for the fate of these 30,000 hectares and the people who live there, but also for the broader issue of global land grab and agrofuel development more generally.

Background information

During the visit to the country, the research team had the opportunity to interview CAMEC's country manager in Mozambique and manager of ProCana,¹⁵⁹ who explained the main features of the project as follows:

ProCana started identifying suitable lands for sugarcane production in 2006, and successfully applied before the Mozambican government for land allocation of 30,000 hectares under a long-term lease of 50 years which was renewable. ProCana heavily invested in drip irrigation and intended to use 108 billion gallons of water per year taken from the nearby Massingir Dam¹⁶⁰. At the time of our visit, ProCana had already cleared 830 hectares of land and had already planted 25 hectares with 6 varieties of sugarcane as nursery. The idea was to plant up to 800 hectares in the first phase and subsequently scale up to 5,000 hectares three times so that it will be in full operation by 2011. The ethanol plant was supposed to be ready at the end of 2010 so that the ethanol production at commercial scale would start in 2012. ProCana planned to produce 300,000 m³ of ethanol a year and was convinced that it would be able to compete with Brazilian ethanol. According to the plans, 80% of ProCana's ethanol would be marketed across the border to Southern Africa Development Community (SADC) countries, but mainly to South Africa. The main line of product was not supposed to be agrofuel for the transport sector, but ethanol-based plastics for South Africa.

CAMEC's country manager was emphatic in portraying the project as a development project for the local communities. He explained that the sugarcane nursery was built together with a women's association called ASAMA. ProCana had installed the drip irrigation system in their lands in order to enable them to set up the nursery and start planting food crops brought by ProCana to Maputo for commercialisation in Shoprite, a South African retailer. The company planned to promote sugarcane outgrowing schemes for the local population, and affirmed to be helping and subsidizing peasant farmers in the surroundings of its plantation to develop farms under their scheme: 20% food production and 80% sugarcane. It was estimated that under the proposed scheme, a peasant farmer could have an income of \$12,000 per year, which is five times the Mozambican average income. By the time of the interview, it was also stated that a strip of 2 km alongside the Elephant River would be exclusively used by small-scale farmers. Additionally, ProCana had built facilities such as watering places, for cattle raising given the fact that the region is inhabited by pastoralists communities. It was further added by the country manager that 150 individuals from the local communities had already been employed by ProCana. Overall, the company expected the project would encourage the return of young Mozambicans from South Africa and committed itself to recruit only local people. However, according to the manager, the actual number of people to be employed could not be determined then, but it would range from 3,000 to 6,000 jobs, depending on the regulatory laws related to environmental, labour and social safety standards that the national government would pass.

¹⁵⁵ See Impact of development projects on the social rights of the Mozambican rural population. Field research visit to Mozambique. FIAN International, Heidelberg, forthcoming.

¹⁵⁶ See <http://www.bio-fuelsdigest.com/blog2/2008/01/29/mozambique-president-sets-bio-fuels-objectives-no-diversion-of-food-production-all-refining-in-mozambique/>, accessed on 27 November 2009.

¹⁵⁷ See "Ethanol's African Land Grab - Mozambique has survived colonialism and civil war. But can it survive the ethanol industry?" —By Adam Welz <http://www.motherjones.com/environment/2009/03/ethanol-african-landgrab?page=2>

¹⁵⁸ See ProBEC Bio-fuel newsletter # 20, September 2009, Programme for Basic Energy and Conservation - Saving energy for a better future, www.proBEC.org

¹⁵⁹ Interview held on the 26th of August, 2009 in Massingir.

¹⁶⁰ See „Ethanol's African Land Grab - Mozambique has survived colonialism and civil war. But can it survive the ethanol industry? " —By Adam Welz <http://www.motherjones.com/environment/2009/03/ethanol-africanlandgrab?page=2>

Potential impacts on local communities' access to land and their livelihoods

During the launch of the ProCana project, the Mozambican President said that “bio-fuel development will not dislodge Mozambican farmers from their lands.” According to the Mozambican leader, what would be utilized for agrofuels are currently underutilized or empty lands and that the same initiative would “avoid using lands used for food production.”¹⁶¹ The Director of the District Service for Economic Activities in Massingir, was also interviewed by the research team¹⁶². He explained that the area granted to ProCana was almost non-inhabited and was not being used for agricultural production, but rather for charcoal production by squatters which are destroying the few trees left. When the research team visited the area, however, it encountered several villages (Chinbangane, Chitar, Zulu, Mahiza and Mocatini), some of which with even health centres and schools. In Chinbangane, the research team got the following testimony:

“There are 61 families in this village. We were born in this village, and so as our parents who were buried in our community cemetery. We produce maize, sweet potato, peanuts, beans and we have quite some cattle... Yes, we were consulted by ProCana and the local government about the relocation site and the new grazing area last May. But we were not convinced. We did not agree. As far as we know, other villages also did not agree. We are trying to gather other villages to come together and discuss the matter. We are worried that we will be forcibly evicted from our land despite our opposition. The local government and ProCana people told us there is no irrigation in our land, and that we will be relocated to a place where there are irrigation facilities. Why not put those irrigation facilities here, in our land, if they really wanted to help us? We can even grow sugarcane for ProCana, but we have to stay in our land... We have what we need. This land is ours. We will not leave.”¹⁶³

According to the information provided by ProCana's manager, five local communities were consulted: Zulu, Chitar, Banga, Mahiza and Mocatini. Considering the lack of available statistics and information about the area, the research team was not able to find out the exact number of people currently living on the lands allotted to the ProCana project who would be affected by reallocation. If we take the number of Chinbangane's families (61) as average, at least 360 families will be affected. The actual figure should be indeed much higher given the fact that Chinbangane was referred to as one of the smallest villages in the area.

ProCana's project presented additional complexities, since part of the land it had requested was also claimed by the Limpopo National Park that intended to use the area for the resettlement of families still living inside this natural reserve. The General Secretary of the

Christian Council of Mozambique which has actively assisted displaced communities in the park, explained to the research team that nine communities (Mavoze, Massingir Velho, Bingo, Makavene, Chibatana, Matinga, Machaule, Machamba, Ximange) were still living inside the park and that only one had been already resettled. He indicated the Lutheran and the Catholic Church have been supporting these communities since 1994, and groups settled in the national reserve had been war refugees who were repatriated and resettled in the area which later became the Limpopo National Park. Now they would have to be resettled once again. According to the information provided to the research team, the Ministry of Tourism, the authority in charge of the park, negotiated with the Ministry of Agriculture land for this resettlement. It seems that the Ministry of Agriculture promised to the Ministry of Tourism the lands in Massingir district. Nevertheless, the allocation was apparently not formalized and ProCana appeared later on applying for a land-lease in this area and outbid the Ministry of Tourism.

The research team also had the opportunity to enter into the Limpopo National Park and interviewed the Mavoza community, one of the nine which would have to be resettled. 345 families (2,626 persons) live in Mavoza¹⁶⁴. Community leaders told the research team that the park authorities had proposed to them to resettle in the lands to be controlled by ProCana, which was considered a drawback by the group since the lands they were living on now are better. To address this concern, the communities had started to identify alternative lands but lacked the sufficient support from park authorities. At the time of the interview, the community leaders told the research team that they preferred to stay in the park and, therefore, would like to request the government to change the boundaries of the park.

The possible consequences the ProCana project would have on the livelihood of this community was very uncertain, and until the project was cancelled, it was not clear at all what would have happened with the communities currently living on the different lands. There had been, indeed, some kind of community consultation about the ProCana project, as mandated by the Mozambican Land Law (siehe chapter 2.1.2), but the complaints presented by the communities interviewed indicated that only the local elites and elders were actually consulted, some of whom have personally endorsed the mega-project in their communities in spite of apparent widespread objection amongst them.¹⁶⁵ Moreover, it was indicated that the consultation in Chinbangane had been flawed, considering the information was not sufficiently clear and was presented in a partial manner. Instead of including to the agenda the fundamental issue of whether or not the local communities accept the ethanol project and under what terms they would

¹⁶¹ See <http://www.bio-fuelsdigest.com/blog/2/2008/01/29/mozambique-president-sets-bio-fuels-objectives-no-diversion-of-food-production-all-refining-in-mozambique/>, accessed on 27 November 2009.

¹⁶² Interview held on the 25th of August, 2009 in Massingir.

¹⁶³ Interview held on the 25th of August, 2009 in Chinbangane.

¹⁶⁴ Interview held on the 25th of August, 2009 in Mavoza.

¹⁶⁵ See Vermeulen, Sonja and Lorenzo Cotula. 'Over the heads of local people: consultation, consent and recompense in large-scale land deals for bio-fuels projects in Africa'. Paper under review, Journal of Peasant Studies. 2009.

do so, the consultation processes were generally limited to the question of the terms on how the resettlement from the ProCana project allocated lands would take place. Furthermore, even this issue seemed not to have been properly tackled since neither the company nor the local authorities mentioned the existence of any concrete and mandatory resettlement plan for these communities, disregarding the need to present clear commitments, such as a time schedule, to undertake the resettlement. Representatives from other affected communities, namely Banga, Tihovene, Condzwane and Cubo, have expressed similar complaints and highlighted particularly that ProCana was expanding the boundaries of the lands it wanted to control, disregarding original agreements with the communities.¹⁶⁶ All these elements call into question the entire consultation process, clouding the requirement for accountability.¹⁶⁷

These lands are the main source of livelihood of the Massingir communities. The communities living in this area undertake three key agricultural economic activities: livestock raising, charcoal production and subsistence farming. The land is traditionally utilized, in this sense, in a very extensive way. The ProCana project would profoundly change the pastoralist lifestyle of these communities, by disrupting spaces for livestock grazing and pastoralist routes, while some of their traditional livestock raising practices will have to be changed to a 'semi-sedentary' regime. Ultimately, a substantial part of the land that would have been allocated to ProCana are, historically, areas and routes for livestock grazing by the dominantly pastoralist communities and would have been deeply affected if the project would have been fully executed. Losing their lands and their livelihoods derived from them without being properly reallocated and compensated for all losses would amount to a serious violation of the right to an adequate standard of living of these communities, including their right to food and housing.

It is important to highlight, additionally, that even though ProCana did not hold a land title deed, it would have been able to get title deeds for the infrastructure built with the expiration of the contract, after 50 years. This would mean an effective control over land resources after 50 years in light of infrastructures systems like a drip irrigation cutting across the land. And so, while on paper the land allocation to ProCana would not have violated the Constitutional provision on land ownership, it is possible that the institutional lease arrangement would eventually have lead to de facto land ownership (i.e. 'effective control') by a foreign company.

Finally, in addition to the 30,000 hectares that ProCana would have directly operated under an industrial monocrop setup, the company and the district government also encouraged farmers who would have

been relocated to adjacent and nearby places to produce sugarcane and food crops needed for outgrowing schemes. There are 20,000 and 70,000 hectares (re) allocated lands around the ProCana plantation¹⁶⁸ and these lands are being planned to serve the ProCana business interest as well. Hence, in essence, if ProCana's scheme is successful, it may even effectively control up to 100,000 hectares of land, three times more than its official land allocation.

As mentioned above, ProCana claimed to be a developmental project for the local communities and that it would create employment opportunities in the area. There were no binding commitments in terms of the number of jobs, and the actual number would have depended on what form of regulatory laws the national government will pass in relation to environmental, labour and social safety regulations. For example, if the government bans cane burning and imposes strict labour standards, then ProCana would have opted for a mechanized plantation set-up. It would have been technically feasible partly because the lands are quite flat. But if the national government does not impose a ban on cane burning and is flexible about labour standards, then they would have opted for a non-mechanized plantation set-up. The latter would potentially hire more workers, estimated by ProCana at 5,000 to 6,000 workers, while the former would accommodate less at around 3,000 to 4,000 workers. More to the point, it is recognized that the jobs created in these circumstances would have been, most likely, directed at younger and more skilled adults. This was also identified by an elder member of an affected community. He mentioned that while he was asked to leave the land where he was born and his ancestors had lived, he doubted the new project would hire an older man.

Potential impacts on local communities' access to water

One other major issue concerning the cancelled project referred to the use of water resources. The land that had been allocated to ProCana, as mentioned above, is located adjacent to the Massingir dam and the Elephants River. When the research group asked ProCana's manager about any major risk in their investment, he quickly and explicitly mentioned a possible conflict around the issue of what volume of water from the Massingir dam could be released to be used as irrigation for ProCana, as against the main allocation to produce electricity. In its full capacity, the dam has the potential to irrigate 90,000 hectares of land, while the total arable land in Massingir District is more than 70,000 hectares.¹⁶⁹ The actual releasing of water for irrigation was a contested issue as generating electricity for export would remain the main priority. After all, the loans for the dam construction have to be paid. In times of drought, the dam is likely to

¹⁶⁶ See Manuel, Lino and Alda Salomão. "Bio-fuels and land rights in Mozambique – the ProCana case." Haramata 54. March 2009, p. 17-19.

¹⁶⁷ For other problems with community consultation and impacts of agrofuel projects, see Salé, Nurdine. Estudo e Advocacia sobre Biocombustíveis e Segurança Alimentar em Moçambique. Action Aid Moçambique. 2008.

¹⁶⁸ Interview with ProCana's General Manager.

¹⁶⁹ Interview with the Director of Massingir's district service for economic activities.

honour its commitment to deliver a minimum quantity of electricity (for export to South Africa) – leaving dry the agricultural lands.¹⁷⁰ Therefore, the full potential of 90,000 hectares was unlikely to be realized anyway. In this context, ProCana would have probably needed a major portion of the actual farm irrigation water allocation from the dam, which the district and national governments had committed to provide.

In situations where there would be drought (and it is likely in this semi-arid region), the government would first honour its commitment to generate electricity for export to South Africa and for the domestic industrial sector. Any remaining water from the dam would have been committed to ProCana, as ProCana claimed that they got the assurance from the national government that their irrigation need were going to be protected at all times. Bioenergy Africa claims, that “To ensure that cane production is not compromised by other potential users, ProCana had obtained guarantee from the Mozambican government to enable it to use up to 750 million cubic metres a year with a water licence being granted once the final design for the extraction of the water has been submitted.”¹⁷¹ ProCana was going to need 407 million cubic metres of water to irrigate its sugarcane plantation. This means, that it was very likely that the least priority would have been the small farmers in the adjacent districts of Massingir and Chokwe, the latter being the heart of the Limpopo Valley irrigated agriculture. Hence, if this plan on water (re)allocation would have been carried out, in all probability it would have caused negative consequences to the farming activities, existing and future, by peasant households in the area. Such (re)allocation of water resources, especially in relatively dry places like Mozambique, would have undermined the autonomy and capacity of local communities to produce their own food for their consumption. In this case, the right to water and food of these communities would be endangered. As mentioned above, the ProCana project was cancelled, but this does not stop the government from authorizing similar initiatives with different parties involved. If the same disregard in promoting broad and effective consultation is kept, most likely these communities will be exposed to violations of their human rights again.

4. Findings

While in the Tana River Delta cases in Kenya and in the Massingir district case in Mozambique are at an early stage, the Yala Swamp case has already a history of 6 years of implementation. For this reason, we will first revisit this case. In a second step, we will identify problems common to the four cases.

There is first of all the concern how the Bondo and Siaya county councils dealt with the trust land in 2003 and with the communities living in these areas. Moreover, the MoU with Dominion Farms Ltd pledges to lease additional land to Dominion Farms Ltd. Some of the farmers living on this earmarked land can document their land ownership by purchase even though they do not hold title deeds. The great majority though does not have documents over their land rights but has been living there for generations. Bondo and Siaya county councils would breach their obligation under the right to adequate food and housing to respect and protect existing access to land of these communities, if the allocation of this additional land to Dominion causes forced evictions or displacement of the communities currently living on it without proper consultation and compensation.

Several farmers gave testimonies about Dominion Farms Ltd putting undue pressure on them to sell their lands. The allegations are very serious and include the destruction of harvests, cattle and housing through deliberate flooding of their farms. Kenyan authorities have not started any legal enquiry into these allegations.

The activities of Dominion Farms Ltd led to fencing off the Yala river and canal water so that local communities have seen their access to water severely impaired. Important livelihoods linked to the river have disappeared: Fishermen were barred from fishing in the river; families doing subsistence agriculture and raising goats and cows stopped because of lack of water; widows and children cannot harvest papyrus and sisal from the nearby swamp. Loss of these livelihoods affects the adequate standard of living of the affected communities. Kenyan authorities have breached their obligation to protect communities' access to water.

Residents protesting the closure of roads or the deliberate floodings have had to face repression by local authorities. Instead of inquiring into the complaints of the local population against the company, authorities have dispersed protest demonstrations and arrested community leaders. With this behavior, local authorities disregarded their obligations related to civil rights like freedom of expression and access to legal remedies.

The local population has also raised complaints about the environmental impacts of the company's activities, for example concerning the use of DDT, a pesticide which was banned for agricultural use worldwide under the Stockholm Convention. Villagers complain that their fields, water bodies and livestock close to the plantation have been poisoned by pesticides. It was alleged that

¹⁷⁰ Interview with ProCana's General Manager.

¹⁷¹ See <http://allafrica.com/stories/200811280929.html>, accessed 27 November 2009.

women who are employed for watching the rice fields to chase away the birds which prey on the cereal have to stand in the fields even when the plantation is sprayed. Kenyan environmental and health authorities have not properly investigated the complaints. Thus they have failed to meet their obligation to protect the health of workers and the livelihoods of local communities from pesticide poisoning.

Wetlands like the Yala Swamp are considered the most biologically diverse ecosystems of all. They play a fundamental role as regulators of water regimes and as carbon sinks. Drainage of wetlands, on the contrary, leads to substantial emissions of CO₂. The intensive activities of Dominion Farms Ltd in industrial agriculture and aquaculture in Yala Swamp will severely affect this ecosystem and the livelihoods of the local population linked to it. Kenyan government is failing to properly regulate and monitor the activities of this company and is risking the irreversible damage of an ecosystem of great importance for the region.

In the Tana River Delta case in Kenya and in the Massingir District case in Mozambique, the agricultural investment projects will probably lead to partial or total land and livelihood losses of the affected communities without being properly reallocated and compensated for all losses. In case this effectively happens, this would amount to a serious violation of the right to an adequate standard of living of these communities, including their rights to adequate food and housing, and their right to water.

In Kenya, both mega projects the land lease to Qatar and the sugarcane plantation for agrofuel production will lead to displacement of tens of thousands of small farmers, mainly members of the Pokomo tribe, who have settled there and survive on food crops like maize, cassava, beans, vegetables and mango. Pastoralist tribes such as Orma and Wardei will also suffer tremendously as the delta has been used as grazing land for their cattle for generations. For at least 2,000 pastoralist families and 350,000 heads of cattle which depend on the fertile pastures during the long dry season, the realization of the projects would spell doom. Irrigation would cause severe drainage of the Delta, leaving local farmers without water for their herds during dry seasons. Access to the river would also be blocked.

If it had been carried out, the ProCana project in Massingir district in Mozambique would have had a serious impact on the livelihoods of local communities. The communities living in this area undertake three key agricultural economic activities: livestock raising, charcoal production, and subsistence farming. The land is traditionally utilized, in this sense, in a very extensive way. The ProCana project would have profoundly changed the pastoralist lifestyle of these communities, by disrupting spaces for livestock grazing and pastoralist routes, while some of their traditional livestock raising practices would have been forced to shift to a 'semi-sedentary' regime. Moreover, ProCana had obtained guarantee from the Mozambican government to enable it to use up to 750 million cubic metres of water from



the Massingir dam to irrigate its sugarcane plantation. This means, that it was very likely that the least priority would have been the small farmers in the adjacent districts of Massingir and Chokwe, the latter being the heart of the Limpopo Valley irrigated agriculture. Hence, if this plan on water (re)allocation had been carried out, in all probability it would have caused negative consequences to the farming activities, existing and future, by peasant households in the area. Such (re) allocation of water resources, especially in relatively dry places like Mozambique, would have undermined the autonomy and capacity of local communities to produce their own food for their consumption.

Features common to the three cases

In all cases, no proper consultation of local communities took or has taken place. In the Yala Swamp case and in the Massingir district case there were some consultations but they were restricted to local elites; some of whom have personally endorsed the mega-project in their communities. Generally speaking, the consultations were flawed because the information provided was not sufficiently clear and was presented in a partial manner in favour of the projects. Social impact assessments were not conducted in any of the three cases. Mandatory resettlement plans for the affected communities do not exist in any of the cases. Only in the Massingir district case there were some informal commitments regarding resettlement. The agenda of the consultations did not include in any of the three cases the fundamental issue of whether or not the local communities accept the agricultural investment projects and under what terms they would do so. In the Tana River Delta, local communities and authorities have nearly no information about the Qatar project.

These practices impair the right of local communities to have access to information and to participate in decision making which affect their lives. Moreover, they contradict the Basic Principles and Guidelines on Development-Based Evictions and Displacement elaborated by the UN Special Rapporteur on the Right to Housing (see chapter 2.2.) in the sense that:

- No comprehensive and holistic impact assessments were made prior to the initiation of the project.¹⁷²
- The consultations conducted tended to involve community leaders only and did not provide all affected communities and persons with impartial information about the impacts of the projects.
- In the Yala Swamp case, the communities had little opportunities to challenge the displacement decision and/or to present alternative proposals and to articulate their demands and development priorities.¹⁷³

- No compensation or mandatory resettlement plans have been discussed or in place.¹⁷⁴

Even though large scale agricultural investment projects will also have serious socio-economic and environmental impacts, their approval, compared to mining projects, for instance, is not subject of strict regulations and procedures related to socio-economic and environmental impact assessments and binding resettlement plans and compensation schemes of the affected population.

At least as worrying as the particular human rights violations or threats explained above are the systematic violations that certain policies might be promoting in the studied countries.

In the case of Kenya, the Vision 2030 strategy has not undergone any human rights impact assessment, nor does it even signal awareness of economic, social and cultural rights. It is based on a simplistic and misleading ideology. Foreign money coming into the country is seen as a panacea, even if it is used for buying or leasing national assets. It should, however, be observed that the ideology reflected in Vision 2030 has been promoted by the international financial institutions for the past two decades. These institutions have ignored their human rights obligations. The states governing these institutions (and the institutions themselves) carry therefore a shared responsibility for Kenya's systematic violations which promote land grabbing. Moreover states in a position to assist have individually and jointly breached their extraterritorial obligations to cooperate in the fulfillment of Kenyan peasants' and pastoralists' right to feed oneself.

The Mozambican national government has been very clear on its intention on agrofuels: It wants to produce them both for international and domestic energy markets. The need to provide domestic energy seems to be compelling; while Mozambique is a land abundant country, roughly two-thirds of the country does not have electricity, only seven percent of the countryside has electricity. But projects like ProCana do not respond to the energy needs of the local population. The lion share of agrofuel production is intended to be for export. The 20 % of ethanol that is supposed to be destined for the domestic market is unlikely to be used for electrification, as it may be more economically viable to sell it to the transport sector. This fits in the general trend in the Mozambican energy policy. The country produces a large amount of energy from coal, natural gas and hydro power but exports almost all of this, leaving the country in its current state.

EU energy policies are fuelling amongst EU countries and elsewhere the demand for overseas agrofuel investment. As noted earlier, government consumption targets are creating an artificial demand unprecedented among cash crops and are a key driving force for large-scale agricultural investments. European development cooperation is actively supporting the introduction of

¹⁷² Basic Principles and Guidelines on Development-Based Evictions and Displacement, para 32.

¹⁷³ Ibidem, para 37, 38, 39.

¹⁷⁴ Ibidem, para 60, 63.

agrofuel policies in African countries. As was mentioned above, the embassy of Italy in cooperation with the World Bank sponsored a study on the agrofuel potential in Mozambique. Largely based on this study, the Mozambican government adopted its new “Policy and Strategy for Bio-fuels”.

As for the agricultural policy in general, an increase in production and in productivity rates will not automatically be beneficial to solve chronic hunger in several Mozambican provinces. Again, the majority of the new agricultural investments are oriented to exporting and international markets. The core of PARPA II policies aims at promoting agri-business and not at fostering peasant based agriculture for feeding the Mozambican population as a matter of first priority. From a human rights point of view, PARPA II does not comply with the obligations related to the right to adequate food. At the same time, the Mozambican Land Law is currently facing strong pressures for reform due to the fact that it is not functional to the economic development policies laid down in PARPA II with the support of the donor community. It is noteworthy that the reform of the land tenure system and its governance appears in a prominent place in PARPA II with the aim of „rationalizing land use“ and finding quick ways to solve conflicts. To put it bluntly, the peasants which control 95% of the cultivated area – 62% of them women – will have to make way for agribusiness entrepreneurs.

Given the fact that the donor community provides about half of the Mozambican government budget, donors have a lot of say in policy decision making and consequently are co-responsible for adopting policies which intend to promote agribusiness - including agrofuel - but are not compliant with international human rights law. Any attempt of the donor community to put pressure on the Mozambican government for reforming the Land Law in a way which lessens the degree of protection for the land rights of local populations would constitute a regressive measure and therefore would amount to a violation of the social rights of the Mozambican affected communities.

Merely pointing at a need for agricultural investment and increased agricultural production as justification for large-scale land acquisition, however, is misleading. For decades development cooperation in the field of agriculture has been decreasing. Moreover, the allocation of national budgets in Africa dedicated to food production for domestic consumption has been kept very low: States in Africa were strongly advised under structural adjustment to dismantle support structures for peasant farming, which is the main source of domestic food production in Africa. The same institutions which were largely responsible for these policies now claim that there is “not enough investment in agriculture”. The World Bank still regrets that ‘the green revolution breakthrough in cereal yields that jump-started Asia’s agricultural and overall economic growth in the 1960s

and 1970s has not reached Sub-Saharan Africa...’.¹⁷⁵ Amongst other things, the World Bank attributes the failure of a Green Revolution in Africa to low levels of investment.¹⁷⁶

It is well-known that increasing food production does not necessarily lead to increased individual food security; nor does it implement the right to food, unless it takes place on the fields of the vulnerable communities (and in an ecologically and socially sustainable way). There is ample evidence that African peasant farmers have the potential to double and triple the yields on their fields, and to do so in a sustainable way.¹⁷⁷ For this to happen, they need special attention and support, as will be explained below, but they need first of all to be able to securely access food generating resources. These resources include land and/or water for cultivating and harvesting food. Moreover if they are to feed their populations with their surplus produce, they need access to markets in which to sell their produce. Yet typically, in the agri-business type of “productivity increase”, peasant farmers are particularly vulnerable to having that access undermined or removed.

The Special Rapporteur on the right to food cautioned that ‘raising production is not all that matters. There is also an urgent need to focus on the most vulnerable and to search for solutions which are both socially and environmentally sustainable.’¹⁷⁸ In his open letter to the African Union,¹⁷⁹ the Special Rapporteur on the right to food cautions that large scale investments could negatively affect the right to food as well as other human rights through the forcible eviction of land users which have no formal security of tenure over the land they have been cultivating for decades; the loss of access to land for indigenous peoples and pastoral populations; competition for water resources; and decreased food security if local populations are deprived of access to productive resources or if, as a result of this development, a country increases further its dependency on food aid or imports for its national food security. Furthermore, the Special Rapporteur recalls the past failures to adequately support agriculture and rural development in developing countries, particularly sub-Saharan Africa. “It would be unjustifiable to seek to better regulate agreements on large-scale land acquisitions or leases, without addressing also, as a matter of urgency, these circumstances which make such agreements look like a desirable option.”¹⁸⁰

175 Ibid, page 54.

176 Ibid, page 54

177 UNCTAD, UNEP (ed), Organic Agriculture and Food Security in Africa, 2008, see also www.agassessment.org.

178 Open letter addressed by the Special Rapporteur to African Heads of State and Governments in advance of the 13th ordinary assembly of the African Union Summit, Syrter, 1-3 July 2009. Available at http://www2.ohchr.org/english/issues/food/docs/Open_letter_AU_july09.pdf

179 Ibid

180 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. Human Rights Council, Thirteenth session. A/HRC/13/33/Add.2. Para 7.

5. Concluding remarks about land grabbing and related human rights violations

Land grabbing violates the International Covenant on Economic, Social and Cultural Rights. It directly interferes with the right to feed oneself by foreclosing the taken lands to landless or land-scarce communities who could make alternative and better use of the resources. The CESCR has underlined the core obligation to give particular attention to the most disadvantaged groups.¹⁸¹ A state which does not provide available land and related productive resources to the marginalized, but instead hands over these lands to rich investors does not comply with these core obligations, which are of immediate application. Future national policy decisions to make this land available for policies aiming at local food production by and for the local communities and for the nearby urban areas will have to face the well-known difficulties of expropriating large scale lands for the benefit of landless communities. Moreover, the international investment protection regime and trade regulations make it difficult for a national government to implement its obligations under the right to food; to facilitate people's access to resources and put a stop to foreign land grabbing. Many African countries have a large population of unemployed rural and urban youth and a high rate of population growth. Land resources are necessary to offer opportunities for labor intensive food production. For this matter, even where foreign companies acquire lands that are not fully utilized at the moment, the human right to feed oneself is affected. In fact, peoples may be deprived of their future means of subsistence in an open violation of Art.1 of the Human Rights Covenants.

Since foreign land acquisition is profit-oriented and largely exports driven, it will foster the introduction/deepening of an industrial agricultural mode of production in the host countries. There is abundant literature available indicating that this mode of production is ecologically destructive and not sustainable. It implies massive loss of topsoil, destroys biodiversity and releases large amounts of CO₂. It displaces local producers who often have the knowledge of producing sustainably and would be in a position to do so with even higher yields if they were provided with an enabling agricultural policy environment and with proper learning and communication networks.

Increased agricultural production does not mean that local communities will have better access to food even if more food is produced. In fact, the expansion of cash crop monocultures has a severe impact on local availability of food as it diverts food producing resources and labor to cash crop production. As a result, communities are forced to depend on the market and on commercialization networks from outside the



¹⁸¹ See GC No. 14, para 43; GC No. 15, para 37b, GC No. 18, para 31a.



region for their basic provisions which puts them at the mercy of volatile food prices. The lack of local food availability and the high level of dependence on food from elsewhere also reduce the quality and variety of the diet of communities and alter their food customs. This constitutes yet another threat to their enjoyment of the right to food: the right to food implies that food must be adequate and culturally appropriate.

The UN Special Rapporteur on the human right to food has made the point that foreign land investment is only permissible under certain conditions. He has formulated a number of criteria which have to be met in this context.¹⁸² His concerns are linked to some of those formulated in the human rights analysis given in this report. The effective implementation of these principles, however, requires far reaching measures and substantial policy changes at national and international level. The Special Rapporteur emphasizes the fact that “these principles are not optional; they follow from existing international human rights norms.”¹⁸³ In this sense, proposals like the World Bank’s principles on responsible agricultural investment with no legally binding commitments are simply not an option as response to the serious threats that foreign land grabbing poses in hunger affected countries.¹⁸⁴ The needed regulation to meet the criteria proposed by the Special Rapporteur is quite complex since land grabbing interacts with a series of other policies like international investment protections, international capital flows, agriculture, trade and Official Development Aid. Proper national and international regulation would thus take considerable time. Even when these regulations are in place, it is not guaranteed that all host governments will be able to enforce them. In the light of these caveats and given the severe concerns identified in this report, it is appropriate to apply the precautionary principle and prevent large-scale land acquisition in order to safeguard the human rights of the rural population.

In fact, African farmers’ organizations, like the West African Network of Peasants and Producers, ROPPA, and other African civil society actors have already expressed strong opposition to the massive sell out of African lands.¹⁸⁵ The Eastern African Farmers Federation (EAFB) has cautioned that leasing farmland to multinationals could precipitate the food crisis in the region.¹⁸⁶ Sometimes the impression is created as if African farmers were not able to cultivate their land themselves

182 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. Human Rights Council, Thirteenth session. A/HRC/13/33/Add.2.

183 Ibidem. Para 5.

184 See “Principles for Responsible Agricultural Investment that Respects Rights, Livelihoods and Resources – extended”, available at http://www.donorplatform.org/component/option,com_docman/task,doc_view/gid,1280

185 See <http://www.afriquejet.com/actualites/agriculture/le-roppe-oppose-a-la-vente-massive-des-terres-agricoles-en-afrique-2009060128788.html>. See also Collectif pour la Défense des Terres Malgaches, <http://terresmalgaches.info>. La société civile met en garde contre l’acaparement des terres en Afrique. The Courier l 2 septembre 2009. <http://www.acp-eucourier.info/La-societe-civile-met-en-784.0.html?&l=2>

186 See [Multinationals now target land](http://thecitizen.co.tz/newe.php?id=14100). The Citizen (Dar es Salaam) l 31 July 2009. <http://thecitizen.co.tz/newe.php?id=14100>

and therefore need to bring in foreign investors. The President of EAFF said "If we had the basic facilities and better capacity we would cultivate that land."¹⁸⁷

Both host States and investor States are duty-bound to respect the human rights of the local population in Africa and elsewhere. Under the UN Charter and the UN Human Rights Charter, all states parties 'individually and through international cooperation' must respect, protect and fulfill the right to food and other economic and social rights to the maximum of their available resources.¹⁸⁸ Respecting the right to food also means that investor states must not encourage (and facilitate) foreign companies to lease land from already food insecure countries to produce food stuffs or other agricultural products intended for foreign markets in competition with local food production. As the cases of Kenya and Mozambique show, both countries have high rates of food insecurity and are dependent on external food aid. According to FAO, 43 of the 53 African countries do not produce enough food for their own population.¹⁸⁹

The obligations to protect and fulfill the human right to food and related economic, social and cultural rights in Africa are incumbent, in particular, but not only on the African states; investor countries like the EU-countries, USA, India, Qatar and others carry complementary extraterritorial obligations towards the hungry and malnourished in Africa and elsewhere. Investor states are duty-bound to protect the right to food in these countries by active measures (including regulation, monitoring and due diligence in their sphere of influence) to prevent land grabbing in those countries.

Given the unequal economic power balance between investor countries (and their corporations) and African countries, the implementation of the investor states' extraterritorial obligations is necessary and hence incumbent in order to protect human rights. The competition of African governments for incoming cash from abroad and the current way in which investment agreements and contracts are negotiated leave African states not much room to protect the rights of the affected communities, even if they wanted to do so (which may not always be the case). Investment in foreign countries has to be rights-based. States individually and through international cooperation are duty-bound to regulate such investment in order to respect, protect and fulfill the human rights of the local population. The rights of communities and families to feed themselves in coherence with their cultural rights and their rights as a people are at stake. Investor States must therefore regulate, at the domestic level, international land acquisition and related investment activities. This

refers first of all to TNCs, Sovereign Wealth Funds and Investment Funds in their activities overseas. Moreover, it requires regulatory measures at the multilateral level involving other investor countries.

Currently, investor states, both collectively and individually, are still largely ignoring their obligations under international human rights law. In the current context of increasing hunger and under-nutrition, more than ever States are obliged to act with due diligence and to apply the precautionary principle.

It is sometimes claimed that investor countries are forced by their own lack of food-producing cropland at home to look for cropland abroad. In a sample of 13 investor countries¹⁹⁰, only 5 countries were found having very low cropland capacity per capita (<0.20 gha¹⁹¹ per capita) in 2006. These were Jordan, Kuwait, Qatar, South Korea and United Emirates. By 2050 this group will have been joined by Egypt and India due to population growth. Except Egypt and India, all seven of these countries have a level of crop consumption which is high (crop footprint > 0.60 gha pc), and sometimes exorbitantly high.¹⁹² The first step that should be expected from these countries is to bring their own consumption patterns closer to the limits given by their own cropland bio-capacity per capita. Once this has been done, the need to consume from cropland abroad will exist only at a much reduced scale, if at all. Such deficits can, as usual, be covered by trade with regions which have a surplus of per capita crop bio-capacity, rather than by land grabbing in countries which have a deficit (or will soon run a deficit) and have a low level of cropland product consumption. Even in the cases of Egypt and India, a closer look at cases of land grabbing reveals that the purpose of such deals is to acquire other countries' resources for business on international markets and not to address food scarcity in their own countries. Egypt, for example, is both an investor and a target country. India is involved, for example in Ethiopian flower production; Indians don't eat flowers. Foreign large scale land acquisitions put the target countries' use of cropland for satisfying basic needs of their population at unacceptable risk both today and in future decades. For this matter target countries' governments must not accept such deals. Moreover, foreign states carry extraterritorial obligations under the human right to feed oneself, not to promote or permit land grabbing.

All states should therefore prevent large scale land acquisitions and initiate as soon as possible the needed international regulation, including a legally binding agreement related to the proper regulation of financial and other actors active in agricultural investment. At international level, discussions about how to develop such an initiative could be conducted in the FAO Committee on World Food Security with the participation

187 See *Africa: Could regulation ease fears over land grabs?* IPS | 23 October 2009 <http://www.ipsnews.net/africa/nota.asp?idnews=48982>

188 See Article 2.1 'Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.' Available at <http://www2.ohchr.org/english/law/ceschr.htm>

189 See FAO (2009). *Crop Prospects and Food Situation No. 3*. Available at <http://www.fao.org/docrep/012/ai484e/ai484e00.htm>

190 China, Egypt, Germany, Jordan, Kuwait, India, Libya, Qatar, Saudi Arabia, South Korea, United Arab Emirates, UK, USA

191 1 gha (one global hectare) is the world average biocapacity of one hectare.

192 See Rolf Künemann. *Calculating the resources available for land grabbing countries and target countries*. 2010. Mimeo.

of peasant farmers' organizations.

The current investment promotion system should be reformed in a way that includes clauses with clear reference to international human rights law and its supremacy to the effect that nothing in the agreements can be understood as preventing States from addressing possible human rights abuses by investors or human rights violations by states as a matter of priority. Moreover, the regulatory space of sovereign states should be safeguarded in regard to non-discriminatory regulatory measures for public interest purposes and for affirmative action policies and measures in favor of discriminated sectors of society.

Consumption targets of agrofuel as those applied in the EU serve as a major incentive for land grabbing. Therefore, these targets should be dropped and all policies which encourage the use of agrofuel for the transport sector should be frozen until and unless proper regulation of agricultural investment is in place. Sustainable energy policies in OECD countries should rather limit the use of energy and promote non agrofuel renewable energy in the transport sector. In Southern countries, agrofuel policies should focus on the needs of the local population and not on the production for export.

States should also implement human rights based land policies at the domestic level and in international cooperation. Implementation of the final declaration of the International Declaration on Agrarian Reform and Rural Development (ICARRD) and of the provisions of international human rights law which protect the rights to land and natural resources of all rural communities are particularly important.

States and the international community should implement the recommendations of IAASTD.¹⁹³ Substantial investment in agroecological peasant farming, combining modern and traditional knowledge on sustainable agricultural systems is urgently required. This would require low inputs in terms of capital, but demands a lot of input in knowledge, skills and social infrastructure. Capacity-building and training to introduce resource conserving and production enhancing technologies are needed on a comprehensive scale. The respective enabling institutional environment for peasant and pastoralist communities and their production should be ensured as soon as possible.

¹⁹³ See UNCTAD, UNEP (ed), *Organic Agriculture and Food Security in Africa*, 2008, see also www.agassessment.org.

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Persons interviewed

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Kenya

- Clement Isaiah Lenachuru, National coordinator, Pastoralists Development Network of Kenya (PDNK)
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- Sunya Orre, Programme Officer; Food and Nutrition Policy & Programmes, Agricultural Sector Coordination Unit (ASCU)
- Phares Mugo, Jesuit Hakimani Centre
- Josiah Omotto, political scientist, Umanda Trust
- Odindo Opiata, Economic & Social Rights Center
- Michael Ojiambo, General Secretary of Kenya Freedom from Hunger Council
- Angela Wauye, food rights coordinator, Action Aid
- Nixon Otieno, Action Aid
- Owino Kotieno, community facilitator, President of Assembly for the Poor
- Eric Kogara, Voices for Rural People
- George Odhiambo, Kenya National Federation of Agricultural Producers
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- Gladys Mbagi, Coast Land Rights Lobby Group (Kilifi)
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- Salama Awadhi, MAWAEAO, Kwale
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- Hamida Isaac, Kinango Human Rights Network (Kinango)

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- Patrick Ochieng, Ujamaa Center
- Maulidi K. Diwayu
- Yazina Shary Haro, Farmer
- Isaac Barisa, Framers Youth
- Yemuel Bonaya, retired police officer
- Ware Abaroba, pastoralist, Orma
- Ibrahim Dolla, pastoralist, Wardei
- Mary H. Komora, municipal employee

Mozambique

- Gimo António Bobo, Peasant Cooperatives Union of Chokwe
- Mavoza community, focus group interview
- Chinbangane community, focus group interview
- Reverend Denis Matsolo, General Secretary of the Christian Council of Mozambique
- Izak Holtzhausen, CAMEC's country manager in Mozambique and manager of ProCana
- Mauricio Huo, Director of the District Service for Economic Activities in Massingir Augusto Mafigo, President of the Peasant Union of Tete
- Dorida Amoce, Vice-President of the Peasant Union of Tete
- Crisanto Chimbango, Coordinator of the Livelihoods Program, Peasant Union of Tete
- Benjamin Gemo, Chief of the Land Department, Tete Province
- Nilza Matavel, Justiça Ambiental
- Diamantino Nhamposi, National Peasant Union of Mozambique



FIAN INTERNATIONAL

Willy-Brandt-Platz 5

69115 Heidelberg, Germany

Tel.: +49-6221-6530030

Fax: +49-6221-830545

E-mail: contact@fian.org

<http://www.fian.org>