

After Daewoo ?

Current status and perspectives of large-scale land acquisition in Madagascar

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Foreword

The International Land Coalition (ILC) was established by civil society and multilateral organisations who were convinced that secure access to land and natural resources is central to the ability of women and men to get out of, and stay out of, hunger and poverty.

In 2008, at the same time as the food price crisis pushed the number of hungry over the one billion mark, members of ILC launched a global research project to better understand the implications of the growing wave of international large-scale investments in land. Small-scale producers have always faced competition for the land on which their livelihoods depend. It is evident, however, that changes in demand for food, energy and natural resources, alongside liberalisation of trade regimes, are making the competition for land increasingly global and increasingly unequal.

Starting with a scoping study by ILC member Agter, the Commercial Pressures on Land research project has brought together more than 30 partners, ranging from NGOs in affected regions whose perspectives and voices are closest to most affected land users, to international research institutes whose contribution provides a global analysis on selected key themes. The study process enabled organisations with little previous experience in undertaking such research projects, but with much to contribute, to participate in the global study and have their voices heard. Support to the planning and writing of each study was provided by ILC member CIRAD.

ILC believes that in an era of increasingly globalised land use and governance, it is more important than ever that the voices and interests of all stakeholders – and in particular local land users – are represented in the search for solutions to achieve equitable and secure access to land.

This report is one of the 28 being published as a part of the global study. The full list of studies, and information on other initiatives by ILC relating to Commercial Pressures on Land, is available for download on the International Land Coalition website at www.landcoalition.org/cplstudies.

I extend my thanks to all organisations that have been a part of this unique research project. We will continue to work for opportunities for these studies, and the diverse perspectives they represent, to contribute to informed decision-making. The implications of choices on how land and natural resources should be used, and for whom, are stark. In an increasingly resource-constrained and polarised world, choices made today on land tenure and ownership will shape the economies, societies and opportunities of tomorrow's generations, and thus need to be carefully considered.

Madiodio Niasse

Director, International Land Coalition Secretariat

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Acronyms

AEC	Administrative Evaluation Committee
AIZ	Agricultural Investment Zones
CIRAD	International Center for Agricultural Research and Development (<i>Centre de coopération internationale en recherche agronomique pour le développement</i>)
CSOR	Commission of State-ownership Recognition
DPU	Declaration of Public Utility
EIA	Environmental Impact Assessment
EDBM	Economic Development Board of Madagascar
FAO	Food and Agriculture Organization
FDI	Foreign Direct Investment
IR	Income Tax (<i>Impôt sur les revenus</i>)
IFT	Land Taxes (<i>Impôts fonciers sur les terrains</i>)
MAP	Madagascar Action Plan
MECIE	Decree to Make Investments Compatible with the Environment
ONE	National Office for the Environment (<i>l'Observatoire du Foncier à Madagascar</i>)
PAP	Persons Affected by the Project
PLOF	Local Land Occupation Plans (<i>Plan local d'occupation foncière</i>)
QMM	QIT Madagascar Minerals
TEC	Technical Evaluation Committee
VOI	<i>Vondron'Olona Ifotony</i> (Community-based natural resource management organization)

Executive summary

On March 17, 2009, the echo of the fall of Ravalomanana's government resounded in the national and international media. The event assumed a unique character, as land questions appeared to be among the claims that led to the uprising. Accusations of "selling off the ancestors' land" were brought against President Ravalomanana following the revelation of a land lease project, under obscure conditions, of more than one million hectares of agricultural land to a South Korean company, Daewoo Logistics.

Since the beginning of the 2000s, several land acquisition projects in the agricultural sector were indeed announced or revealed by the press. The little information available implied that they aimed at the production of food commodities, agro-fuels or wood. The surfaces in question comprised between 1,000 and 200,000 hectares per investment project.

What is in the facts?

This study presents the evolution of large agricultural investments in Madagascar between 2005 and 2010. Requested by the International Land Coalition (ILC), it was realized by the Malagasy Land Observatory (*l'Observatoire du Foncier à Madagascar*) and CIRAD. It intends to:

- Recall the establishment processes of the Daewoo and Varun projects, which were finally abandoned;
- Lay out the status of land investment projects, by differentiating the projects that were simply announced from the projects that are effectively underway;
- Determine the operators' objectives with regards to land acquisition and to pinpoint the status of their application for land;
- Present the legal framework supposed to regulate these investments;
- Analyze the operators' practices to access land as well as the means of regulation, both formal and informal, of these investments at the local and national levels;
- Raise the core questions to be addressed in the framework of a future debate on the role of these investments in the agricultural sector and on the institutional mechanisms to be reinforced in order to improve the transparency of these land acquisition projects, to clarify the procedures for investors to follow and to limit negative social, economic and environmental impacts.

Daewoo and Varun, the "lose-lose" strategies of agribusiness establishments

In November 2008, Madagascar is propelled to the international news following the information published by the press: the South Korean company, Daewoo Logistics, is negotiating with the Malagasy government the transfer of 1,300,000 hectares of arable land in four coastal regions. This large-scale project is immediately denounced by the opposition of President Ravalomanana's regime, who is accused of selling off the nation's heritage to foreigners. This accusation is reinforced by the press' revelation of another

agribusiness project run by the Indian Company Varun International, in the region of Sofia, for more than 200,000 hectares. The protest is orchestrated in part by international intermediaries, who mobilize the public opinion of western countries. In Madagascar, it combines with other demands and contributes to the fall of the government in March 2009.

These two agri-food projects, aimed at developing large surfaces, experienced the same issues and are now suspended. Both investors have left the country. They devoted more time negotiating access to land with central authorities than with the populations and the regional and local governments of the coveted land. The absence of transparency in these negotiations and the – at best – hasty negotiations at local level drove these projects to failure. The terms of the land contracts appear to be extremely unfavorable for the people.

Status of the investment projects in the agricultural sector

Following the abrupt abandonment of Daewoo's and Varun's agricultural projects and the new government's assumption of power, the investment dynamic has slowed down, though without truly dying out.

Of the 52 projects announced since 2005, one-third has not passed the prospecting phase or has stopped. The main reasons given by the investors are, on the global level, the financial crisis and, at the national level, the political situation and the difficulties in accessing land. Not having obtained the guarantees required by the banks to obtain financing, certain investors, particularly in the agri-food processing sector, abandoned their project. Only a quarter of the projects has been maintained and is advancing slowly. The rest remain in the set-up phase.

According to announcements made by the operators, close to 3 million hectares of land was coveted. These numbers are significant considering the 2 million hectares cultivated by the 2.5 million family farms. Although the estimates of potential cultivatable land vary according to the institutions and the methodologies – 8 million hectares of arable land according to the Ministry of Agriculture (2008), but 15 to 20 million hectares according to the FAO (2007) –, coveted land thus represents 37% in the former case and 15-20% in the latter.

Because of the soil quality, the favorable rainfall for crops, the presence of vast relatively flat surfaces, and above all the proximity to the sea to ship products, the coastal lands are those most in demand by investors. Since 2005, the majority of solicitations concern the regions of Boeny, Sofia, Melkay, Menabe, Antsinanana, SAVA, and Atsimo-Andrefana.

In reality, the surfaces concerned by the projects underway represent no more than 150,000 hectares, thus 20 times less than the initial announcements, while the surfaces effectively used represent only 23,000 hectares for the moment. The fact that "only" 130,000 are actually coveted tends to appease the debate related to the risks of land acquisition by agribusinesses, but does not close them altogether, however. To take aim

at such a high proportion of the arable land reserves, in the space of five years, raises a debate on land use planning and the conciliation of family agriculture and agribusiness.

The Madagascar case reveals the diverse origins of investors. More than two-thirds of the investors between 2005 and 2010 are foreigners (the majority are of European origins: United Kingdom, France, Germany, Italy, Holland); the others are Malagasy.

The on-going projects primarily aim to produce agro-fuels, as most of the agribusiness projects have been abandoned. The majority of promoters of foreign projects foresee the production of jatropha on surfaces between 10 and 30,000 hectares by deploying a production model based on a wage system. Most of the Malagasy companies focus on sugar cane value addition in the rural areas and concentrate their activities on the industrial transformation of sugar cane into ethanol. Exportation is the common point among these projects.

The Investors' Land Strategies

Most often, foreign operators want to lease, rather than buy, land. They hope to sign 50-year leases and, based on the information obtained, to pay approximately 2,000 ariary/hectare in rent (€0,60/hectare). This preference for renting arises from a desire to limit initial investment costs and not to immobilize capital. Operators also believe that renting will be less socially controversial at the local and national levels.

The Malagasy investors want to buy land. Their project being limited, for the most part, to industrial transformation activities and based on farmers' provisions (sugar cane), their needs are limited to small surface of land so as to establish nurseries and to construct buildings (storage, factories), thus less than 50 hectares.

The investors hoping to develop large-scale crops seek land with similar characteristics:

- Good pedo-climatic conditions adapted to the planned crop and the level of mechanization;
- Non- or under-productive, un-owned land. The targeted land is supposed to be State-owned land. The steps to access land are driven closely by the State land services and applications for more than 50 hectares must be viewed by the Council of Ministers;
- For the most part, the proximity of a national road for the transportation of raw materials and inputs as well as the proximity of a port, maritime or river, for the shipping of raw or finished products (large economic investors, like Daewoo and Varun, were not as limited by the constraint of accessibility and envisaged the construction of infrastructure).

Contrary to all expectations concerning the size of Malagasy land and the potential arable land announced (8 million to 20 million hectares, c.f. supra), the investors found themselves competing to access land. This competition proves that the land fitting all the favorable investment criteria was not as extensive as initially forecasted. The estimates of millions of hectares of potentially arable land based on pedo-climatic criteria proved thus

to be partial information, indeed the majority of investors seek arable land but above all plane land, that is accessible at a lower cost.

With the exception of a few Malagasy investors who succeeded in buying less than 50 hectares of land, the majority of investors could not finalize the procedures to obtain a lease. Certain investors initiated their procedures more than two years ago. The length of this process is explained by the difficulties encountered on the ground to obtain plots between 10,000 and 30,000 hectares of undeveloped land, and – above all – by the present political context. To prevent delays in their projects and to begin agronomic tests, the investors carried out their first plantations (nurseries or first plots) on informally rented land, thanks to agreements with private Malagasy owners, mayors or main representatives of the regional government.

Without a lease contract signed by the Minister of Town and Country Planning and Decentralization, the operators have difficulties in securing financing, as, before granting credit, the banks require guarantees confirming effective access to the land. The operators thus found themselves in difficult situations: they incurred the costs of the various procedures over two years and initiated the first nurseries but they are not assured to obtain credit. For some, this situation contributed to stopping their project.

The legal and institutional framework to welcome investors in the agricultural sector

Three bodies of legal text currently regulate the establishment of investors in Madagascar. It concerns the Law on Investments, the Decree to Make Investments Compatible with the Environment (MECIE Decree) and the Land Laws. Their implementation rests on three respective institutions:

- The Economic Development Board of Madagascar (EDBM). The function of this institution, created in 2008 and linked to the Presidency, was secured until 2009 by international public aid funds (World Bank). Its objective is to facilitate the different procedures for investors: the creation of a Malagasy legal entity (the only constraint is that one associate must be a registered resident), obtaining a visa, registering in the commerce registry, and issuing of “authorization to acquire land”. The EDBM is currently inactive because of the suspension of international financing.
- The National Office for the Environment (ONE). The ONE, in collaboration with the environmental units of various ministries, is in charge of overseeing the application of and monitoring the MECIE Decree. For all agricultural projects exceeding a surface of 1,000 hectares, this Decree obliges the investor to undertake an environmental impact assessment (EIA). This integrates an analysis the environmental impacts, as well as the social and economic impacts of the project. It also includes local level consultations with authorities and the population, in the presence of an evaluation commission composed of a representative from ONE and from the concerned ministries. ONE validates the study. It leads to the issuing of a permit and the establishment of a list of requirements. The commission is responsible for enforcing the list of requirements.

- State-owned Land Services (*services des Domaines*). The major change imposed by the land law of 2005 is the passing of the presumption of state-ownership to the presumption of private ownership. State-owned land is thus reduced to land registered in the name of public actors and unoccupied land. It falls within the competence of the State-owned Land Administration (*services des Domaines*) (decentralized and central land services). Untitled private land – whether held individually or collectively – falls under the competency of the local government (*commune*). The latter can give, from their local land office, land certificates to users who request them. Land certificates have virtually equal legal value of a title.

Although the purchase or leasing of land can be negotiated through land title or certificate holders, the investors in search of large surfaces rather prefer land arising from State-owned land. The applications are thus addressed to State-owned Land Services which must verify that the land effectively arises from State-owned land and does not encroach on private titled land or not:

- For Malagasy individuals or legal entities the purchase of State-owned land implies a preliminary stage of registering in the purchaser's name.
- For foreign investors, only the establishment of a long-term lease between 18 and 99 years is possible. In theory, it is possible for foreigners to purchase land by creating a Malagasy legal entity, by applying for an “authorization to acquire land” from the EDBM or by establishing themselves in the Agricultural Investment Zones (*zone d'investissement agricole* (ZIA)). In practice, even when foreign investors create Malagasy legal entities they do not want to buy agricultural land. Furthermore, as the decrees to enforce the laws related to the “authorization to acquire land” and the ZIA were not promulgated, investors cannot resort to these procedures. In addition, the rental of State-owned land implies a preliminary step of registering in the State's name.

The investor is thus supposed to be directed by an obligatory passage through these three institutions. While none of these institutions has the required competencies to select projects, they must ensure in according to the texts that: (i) the investor is registered for and pays taxes, (ii) the land rights of the people (untitled private property, titled private property) are respected and that those of the investors are secured, (iii) the harmful environmental impacts of the project are limited, (iv) the social and economic conditions offered to residents or those employed in the projects respect the minimal norms.

From the legal framework to the practices on the ground

There is obviously a certain distance between the legal framework and the practices on the ground, which can be explained by three main factors:

- Large investments represent a new phenomenon, for which the public service, under endowed in both material and human resources, is not necessarily prepared;

- The texts directly or indirectly governing investment can be more or less well mastered and interpreted differently by public officials, investors and citizens;
- While the steps imposed by the legislation are generally respected (application for land through the State services and the EIA), favors, sometimes granted by agents of the administration, can allow, not only accelerated handling of files, but also the reduction of certain constraints.

A one-stop service provider that struggles to fulfill its functions

An analysis of the procedures of the operators and of the role of institutions with which they interact reveals that the investors' procedures are far from being linear. Several have gone back and forth between state services and local and regional government. The EDBM, which should be the only office directing the investors, struggles to fulfill its role. Investors do not use all of the EDBM's services, and the latter, with its financial difficulties, cannot manage to systematically respond to operators' demands. Finally, if the mayors and the populations of the rural areas targeted are informed, they are usually at the end of the chain and the consultations remain symbolic.

Impact assessment: Relevant safeguards, uncertain control mechanisms

The Environmental Impact Assessment (EIA) imposed by the ONE has been realized or is in progress by almost all of the operators. Conditional to accessing land, it represents a first environmental and social safeguard. It could however be reinforced. Indeed:

- The lack of clear distinction between the project promoter and the entity in charge of the EIA, as well as the absence of an obligation to resort to the services of a certified body to validate it, questions the validity and the quality of the EIA.
- Since it does not include an economic evaluation, the EIA in its current form has no role to serve as a basis for project selection.
- The realization of the EIA requires operators to consult local populations and authorities (leaders of *fokontany*, mayors, and main representatives of regional government) of the concerned territories. This consultation has the advantage of contributing to the dissemination of information and to feeding the debate at local level. However, questions arise regarding the true representativeness of the villagers attending the meetings and regarding the actual level of consultation. Furthermore, the information is not more widely disseminated, resulting in "civil society" not having in-depth knowledge and *a fortiori* a right to observe on-going processes.
- The operator's commitments, formalized in the list of requirements developed at the conclusion of the assessment and the consultations on the ground, are often more developed and quantified on environmental issues than on social issues. The ambiguity over the social and economic obligations makes it difficult to monitor and control the requirements, let alone to impose sanctions for lack of adherence. Furthermore, questions persist regarding the means available to the concerned authorities (re-

- gional environmental units, Ministerial services) to execute control in an effective and coordinated way.
- The fact that an operator did not realize an EIA questions the capacity of the ONE and the specific judicial authorities to force the investors to respect the law.

Improving the processes of securing the population's and the investor's land rights

In 2008, Madagascar presented a paradoxical situation. The government lauded, on one hand, the securing of local people's land rights thanks to the implementation of new land laws, and welcomed, on the other hand, foreign investors by agreeing to transfer large tracks of land to them; a desire to secure the rights of the farmers "from the bottom", overlapped with a desire to impose the development of very large agricultural firms "from the top". Up to now, the current authorities have not redefined their position towards the questions of land allocation and have not signed any contracts in the agricultural sector (however, foreign investors in the mining sector were recently granted mining contracts).

The land acquisition or lease applications concern mainly lands presumed to be unoccupied (without occupants), *a priori* from State-owned land. So as not to deny the rights of the owners and the users, a Commission for State-ownership Recognition (CSOR) has to verify that the allocated surfaces are really unoccupied. According to the laws, lands arising from titled private property (formalized by a title) or untitled (formalized – or not – by a certificate) must be removed from the surface targeted by the applicant (buyer or lessee). The first case studies reveal that:

- The realization of the land surveys by the Commission for State-ownership Recognition (CSOR) is not easy due to technical problems (absence of updated land-use maps, scale of the plots). Furthermore, it can be biased by corrupt practices.
- The local population's claims depend on the type of land. While it is rather clear and well marked to secure cultivated or forest plots, it is less evident for pastures (in the investigated zones, the users did not have certificates). In several projects, pasture lands are the object of negotiations with the investors: populations accept that these lands will be used by the operator, provided that the latter plans new pastures or produces grazing crops on the lands that it will occupy. The social demands are eased further by the jobs created, or the promises of jobs, made by the operators.
- In case of opposition at the local level, there is a risk that the dispute will be resolved at the level of State services, without the concerned populations and under the influence of strong political pressure.
- If there is no negotiation, or if the negotiation is neglected, the rural population's reactions can be strong, and can manifest in the burning of plantations – this was noted in several cases in the past.

Certain investors perceive the procedures to access land as long and complex, particularly because of the lack of information regarding the order and the nature of documents

to be provided. Others succeeded in advancing their applications quickly by investing considerable energy in following their applications, while some had to settle – unrecorded – expenses to accelerate the process. The low leasing price (less than one euro per hectare), which attracts the operators, often masks the real total cost of preparing the contract, negotiating it with the population, the local governments and the technical State services, and ensuring its progress.

Normally, the purchase or lease contract guarantees the acquirer's or the lessee's rights. Concerning the lease contract, numerous clauses specify the rights and duties of the lessee and the State, and the conditions that could lead to the termination of the contract (unrealized scheduled works, non-payment of rent). However, the risk of the State opportunistically breaking the lease contract, and eviction of the lessee, remains in the current context. In the agricultural sector, certain symbolic cases the administration breaking lease contracts have already taken place.

Points for debate and reflection related to an investment regulatory framework

Two models of development presently seem to oppose one another. The one depends on national and foreign private investments and on the creation of agribusiness activities, partially oriented towards exports, which one hopes will lead to positive effects and economic growth. The other is based on family farming and aims to strengthen food security by protecting the existing land rights and by promoting a set of public actions in support of farms.

Reality shows that these two models coexist and that one is not going to disappear for benefit of the other. Thus, the debates and the reflections need to avoid a bipolar and simplistic controversy ("for or against one model or the other") that reverts to discourses tainted with ideologies. The debates must, on the contrary, provide the elements for a rural development policy that could combine both models. It is noted, moreover, that such combinations already exist and would deserve to be better understood.

The challenge is to accentuate the mutual interests of the investors and the family farmers and to anticipate the principles and the institutional framework for agribusiness investment in Madagascar. This study, through its first observations, allows for the proposal of option for the way forward.

The implementation of a regulatory framework for investment in the agricultural sector supposes the observation of several points:

- Making information on the projects transparent and public;
- Undertake reflections on the institutional, technical and financial viability of a one-stop service provider for investors,

For access to land and the negotiation of a lease contract, the debate should cover the following issues:

- Undertake consultations with the local populations obligatory, not only during the impact assessment, but also before beginning the procedures to access land;
- Plan for the validation of these consultations by a third party;
- Monitor the respect of existing land rights:
 - by opening the Commission of State-ownership Recognition to a wider number of actors: representatives selected by the villagers, members of the local land office, expert witnesses to oversee the proper roll-out of the procedures;
 - by widely publishing the results of the enquiry;
 - by giving users or owners the opportunity to solicit advice from a legal counselor, financed by funds provided by the investors;
- To clarify the number and the nature of documents to be provided, as well as the steps to follow.

Concerning the environmental impact assessment, solutions are proposed for:

- Strengthening the economic and social dimensions of these impact assessments,
- Improving the process of developing a list of requirements so that its content makes the operators' commitments more explicit,
- Coordinate the control of the commitments stated in the list of requirements.

Finally, so as to feed the debates between the actors and to support the new orientations of the land and agricultural policies, it seems important to question the implementation of a national body to analyze and follow-up the projects, that would study their actual impacts.

Conclusion

This inventory of agribusiness establishments, and the land acquisition dynamics that are taking place, permits the drawing of a first set of lessons learned.

The establishment of agro-industries and the transfer of lands are a national stake of the very first order – This theme deserves particular attention in the framework of national debates. The highest State offices must seize it to define multi-sector development policy orientations that are favorable to investment, all while guaranteeing protection of the rights and interests of the concerned populations. Making the legal texts and the institutional articulation coherent, emerge as priorities to ensure an equitable sharing of the advantages between the communities, the local governments, the State administration, and the investors.

Opacity does not pay. It is in the investors' interests to engage in genuinely transparent negotiations with the concerned populations; confidentiality on the subject guarantees the failure of the projects before they even begin.

The announced momentum of land acquisitions did not materialize. Less than 1% of land identified from 2005 to 2009 by 52 agribusiness projects counted by this study is

cultivated today! The political crisis Madagascar is experiencing is one of the main explanatory factors of the abandonment of numerous projects, particularly because of the banks' unfavorable risk assessments for the financing of agribusiness projects. The media's power in the social protest is another determining factor. From now on, any company that intends to limit the risks to its reputation will have to take into account, from the onset of new investment projects, "civil society's" ability to react, the efficiency of its international intermediaries and the communication opportunities offered by the Internet. The globalization of strategies to control land is accompanied by a globalization of protests against them.

"Cultivable land", without rights and infinitely available? Certain statistics state that 95% of arable land is un-exploited. On the ground, the reality seems quite different and "un-cultivated arable lands" are being sought, to the extent that the investors find themselves in competition to obtain the same land. During the next debates, it would be appropriate to revisit the notion of "arable land", in recalling that the lands of the Malagasy countryside are rarely without rights.

Strategies to strengthen local communities' rights – The roles of the State, NGOs and civil society still seem very weak, even absent, insofar as protecting communities and strengthening their negotiation capacities. Access to information is severely lacking at level of the population, which does not have legal assistance for the negotiation of employment contracts, in the establishment of the lease contracts, or in the protection of their vital spaces (water resources, pasture, family farms, wood fuel reserves, etc.). Lessons concerning "win-win" contracts that allow inclusion of the populations concerned in decision-making can be drawn from other African countries.

This study is to be considered as the first step of a longer process, needed for the conception of a regulatory framework for agribusiness investments. This framework is one element of a rural development policy and must favor investments that integrate family agriculture. The next steps proposed to follow this study could be organized in a process comprising three phases:

- i. Information about the strategies of agribusiness establishment and the conception of a regulatory framework for investments;
- ii. Debating and defining orientations; and
- iii. Joint definition of a regulatory framework.

It is a question of:

- ° Determining the skills to assemble in an entity to reflect upon and conceptualize a regulatory framework for agribusiness investments. The Sustainable Agro-fuel Platform, the Land Observatory, the EDBM, the ONE, the concerned ministries could be mobilized to establish this national capacity.
- ° Continuing to gather information about the current processes of large-scale land acquisition and the establishment of agro-industries, to identify Malagasy agribusiness

models that allowed for the establishment of agricultural value-chains and, above all, the integration of family agriculture.

- Proposing orientations to establish the basic principles of a regulatory framework for investments.
- Provoking a national debate on the orientations of rural policy development, and particularly land policy, protecting the existing rights and opening to international capital. This debate should be opened, not only to the practitioners of the concerned sectors, but also to the various civil society representatives, to complete or revise the national rural development policy.

Introduction

The national and international public opinions of land acquisition projects in Madagascar only focused on the Daewoo Logistics project and, to a lesser degree, that of Varun International, without ever really knowing the fine details. Can they see the forest for the trees? On the ground, are there not diverse initiatives? It is difficult to answer this question since no institution, whether public or private, has precise information on, or an overall vision of, the scale and methods of land allocation to agribusinesses.

With ILC's support, the Land Observatory, the National Land Program of Madagascar and CIRAD tried to address this lack of data by conducting a study aiming to:

- Understand the details of the Daewoo Logistics and the Varun International projects, which are now cancelled;
- Establish an inventory of land investment projects, by differentiating the projects announced from those that are effectively implemented;
- Better grasp the operators' strategies regarding land and specify the status of their application to access land;
- Present the legal framework supposed to regulate these investments;
- Analyze the operators' practices for accessing land, well as the formal and informal regulatory methods for these investments at local and national level;
- Raise the core questions to learn from in the framework of a debate regarding these investments and the institutional bodies to be strengthened to improve the transparency of these land acquisition projects, clarify the procedures for the investors to follow, and limit the negative social, economic and environmental impacts.

The goal of the present study, therefore, is to produce information about the on-going processes of agribusiness establishment, in order to draw lessons able to support Malagasy public authorities in the conception of a collaborative and transparent regulatory framework.

The study concerns investment projects in the farming sector aiming to produce food commodities, agro-fuels, or timber. It focuses on the projects promoted by private operators, foreign or Malagasy, who plan large-scale farming on more than 1,000 hectares, or contract farming (pre-agreed supply agreements between buyers and farmers) or management contracts (lease or tenancy contracts) with the local farmers. It only focuses on projects announced since 2005. The agricultural or agri-food processing enterprises, based on large-scale production or on contractual arrangement, which have existed for more than five years, are not studied.

From a methodological point of view, the data supplied by articles and the studies on the large-scale land acquisitions (Üllenberg 2008 and 2010) have been further developed and completed through numerous interviews with agents from public institutions, regional or local governments, with private operators, populations, and key individuals. The interviews were conducted in the capital city, Antananarivo, and in two regions coveted by investors (Boeny, Sofia). Significant efforts were made to cross check the information and the field observations, so that the presentation of the current processes as complete and as realistic as possible, without aspiring to be exhaustive.

Daewoo and Varun, agribusinesses' "lose-lose" set-ups

In November 2008, Madagascar is propelled to the front page by the international media following the information published by the Financial Times (Blas 2008): the South Korean company, Daewoo Logistics, would undertake negotiations with the Malagasy government to acquire 1,300,000 hectares of arable land in four coastal regions. This large-scale project is immediately denounced by opponents to Ravalomanana's regime, who is accused of disposing of national heritage to foreigners. This charge is reinforced by the revelation in the Le Monde newspaper (Hervieu 2009) regarding another agribusiness project led by the Indian company Varun International in the region of Sofia on more than 200,000 hectares. The protests are partially orchestrated by international intermediaries, who mobilize Western countries' public opinion. In Madagascar, this support adds to the national demands, and contributes to the fall of the government in March 2009. These two agribusiness projects are now suspended and their main promoters have left the country.

Objectives and contents of the Daewoo and Varun projects

These emerging countries' projects concern the production of agricultural commodities for export. Daewoo intends to produce 500,000 tons of palm oil in the eastern parts of the country and 4,000,000 tons of corn in the western parts, most of which will be exported to the Korean market. Varun International plans to establish 13 irrigation schemes in two years, in order to produce 2,800,000 tons of paddy¹ and 400,000 tons of corn from the fourth year onwards. Of this production, 20 % of the rice and 50 % of the corn must be exported. Varun International hopes for a spectacular increase of paddy's productivity, up to 10-12 tons per hectare², thanks to mechanization and systematic intensification. The return on investment is expected from the third year.

Significant investments are announced: Daewoo intends to mobilize about USD 6 billion over 25 years and Varun declares an initial investment of USD 1,170 billion over three years. The list of infrastructure to be developed by Daewoo is impressive: 1,170 schools, 170 private hospitals, 250 markets, 120 churches, 60 power plants, 8 airports, 30 factories and silos, 8 ports, and the list continues. Varun's commitments are no less impressive: construction of health establishments, schools, electricity and drinking water networks are announced but not quantified. The creation of numerous jobs – 1,500 for Varun International and 70,000 for Daewoo – is announced, as well as detailed projects, which, more or less, involve the construction of new towns.

These very large-scale projects appeared as tools in support of the struggle against poverty. Yet, their implementation required large surfaces to be made available, which would be partially acquired from lands already subject to rights, if not already cultivated.

¹ Which represents half of the nation's annual paddy production!

² The average yield of paddy in Madagascar does not exceed 2.5 tons/hectare.

Implementation process, land negotiations and agrarian contracts

Both companies followed similar routes to establish themselves. Already engaged in the mining sector in Madagascar, they hoped to extend their activities to the agricultural sector. They held negotiations at the highest level of the State to obtain lands needed for their large-scale mechanized agricultural projects. The negotiations were sequential, first with the Presidency, then with the concerned ministries and regions, finally with "persons in charge" of the local population, generally through subcontractors, whose "representativeness", was a subject of caution.

Varun's case is revealing. On occupied land, the implementation of the planned contract farming would have been delicate. These contracts were not agreed upon with each farmer, but with 13 associations, formed for this occasion and were supposed to be represented by their president. These responsables claimed to have the authority "to lease land to Varun for crops" on 171 000 hectares. They made commitments not only on their own land, but also for the lands of their descendants and the "full rights holders" members of the association, for leases lasting 50 years! Yet, life expectancy in Madagascar is lower than 60 years, thus these contracts are akin to life-long transfers of their land.

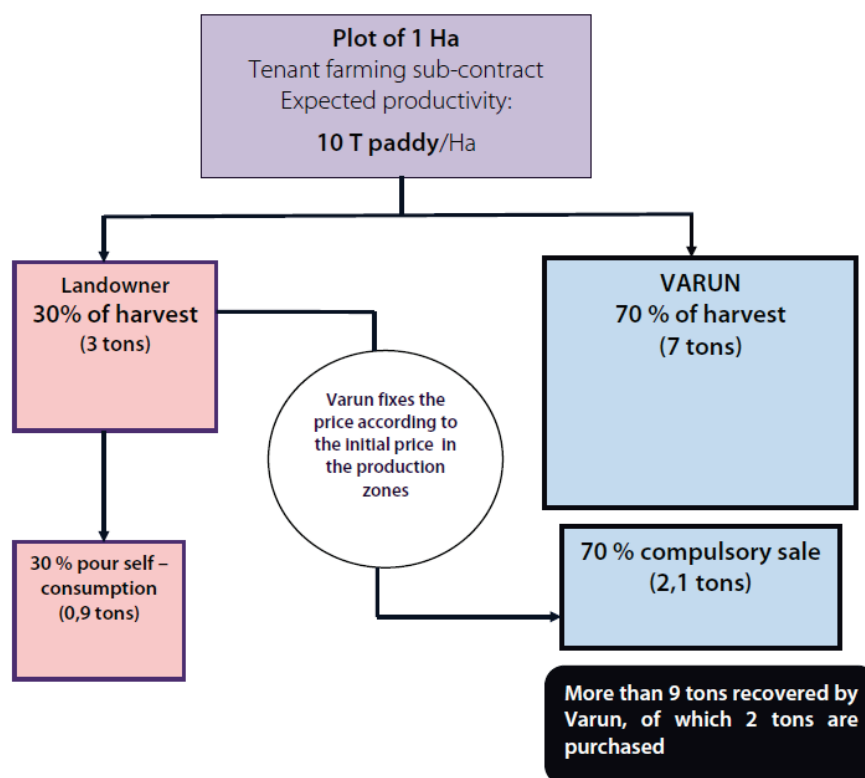
The contracts anticipated that the 13 associations would authorize Varun to occupy the lands, to do all agricultural work, to sell the production. They also specified that the granted lands would not be the subject of any claims, demands, or conflicts. Landowners were required to agree to a confidentiality clause, and bound them not to interfere in the Varun's agricultural work. The distribution of the envisaged production was unfair: 70% to Varun and 30% going to the landowners; 70% must be sold to Varun at the price fixed by the company (Figure 1).

The planned sharecropping contracts risked causing more poverty and exclusion, because the expected returns seemed unrealistic. According to the terms of the contract, even with an illusory production of 10 tons of paddy per hectare, a peasant family, consisting of five persons with one hectare, would anticipate an annual rent of three tons of paddy, of which 900 kilograms in kind, equaling 585 kilograms of white rice. As they consume approximately 700 kilograms of white rice per year, they would have to buy rice, on a market controlled by Varun.

This raises also the question of the activity of these peasant families converted freely or by force into a landlord or farm workers recruited by Varun. Would they have been able to maintain some agricultural activities if Varun used the lands during a half a century? Would they have had to migrate to new lands, probably by cultivating the last land reserves such as forests? Would they have moved, without any qualification, towards cities where the meager industrial and service sectors offer few jobs? In the hasty establishment of the project, these fundamental questions were not asked and the conclusions of the consultations regarding the rural development of the region of Sofia

were ignored. As for the "increase in farmers' incomes" announced by Varun, this seemed debatable, to say the least.

Figure 1: The terms of the contract planned by Varun



The political crisis put an end to this project. The day after the signature of the contractual farming agreements, January 27th, 2009, riots burst in Antananarivo; they mark the beginning of the political transition. The project will not be pursued. Several governmental statements confirm the decision to suspend all land acquisition projects, even if no legal arrangements have emerged since to formalize these intentions.

The failures of the Varun, and especially of the Daewoo, projects were widely used by the political protests of 2008-09 (Teyssier and al. 2010). The idea of a transfer of the *tanindrazana*, the "land of the ancestors", moreover to *foreign* companies, provoked shockwaves in the national public opinion. The denunciation of these projects of land transfer was orchestrated in fact by few people: information raised from the regions concerned by the prospection works of Daewoo and were then widely broadcasted from January, 2009 on the Internet and then by most of the international media. The Malagasy

Diaspora, particularly the Collective of Malagasy Land Defense Collective,³ created for this occasion, in connection with the vigil for land appropriations organized by various militant organizations,⁴ played a major role in the mediatization of the protests. This media buzz then returned to Madagascar and the opposition forces got hold of this sensitive issue, able to raise the masses.

What lessons?

The cases of Daewoo and Varun present the ingredients of an agribusiness set-up destined to fail. These elements of a "lose-lose" strategy can be synthesized in three points.

A top-down approach

In both cases, the time spent in negotiations with the central authorities is significantly higher than the time allocated for discussions with the local populations. Varun took more than a year to reach agreements with the Malagasy State and the region of Sofia, but envisaged only a 15-day mission, assigned to an engineering consulting firm, to negotiate contractual farming arrangements with 13 farmers organizations established for this purpose. Daewoo signed a prospecting contract with the Malagasy State in July 2008, containing specific clauses of confidentiality, to identify the land with utmost discretion.

A lack of interest in the local land negotiations

Intermediaries, with varying competencies, were recruited to negotiate contractual farming arrangements with the producers. Daewoo recruited topographic brigades tasked with locating land and plots, without planning for genuine dialogue with the local populations. Varun hired a subcontractor to create 13 peasant organizations and to make their representatives sign contracts with the other family farmers on a total surface of 171,000 hectares over 15 days, which confirms the lack of consideration for the local populations. To ask to 13 new leaders of farmers' organizations to make a commitment to give up lands for 50 years in the name of the other villagers and of their children was a hugely naïve project. Even with the support of the highest authorities, it was clear that the implementation of such a project could not be successful.

³ <http://terresmalgaches.info/>. The Collective launched a petition from January 2009 against "the Daewoo affair".

⁴ Among the most known are: <http://farmlandgrab.org/>, <http://www.grain.org/>, <http://www.viacampesina.org/fr/>

Inequitable agrarian contracts

The terms of the agrarian contracts proposed by Varun were highly inequitable and were likely to generate poverty. As could be observed in other rural regions, social protests would have emerged in various ways: lands occupations, crop fires, etc.

The feasibility of both projects was thus at least uncertain, unless strong pressures were exerted on the populations. All the stakeholders – public authorities, investors, local authorities, etc. – lost a lot of energy and money in the preparation of these unlikely operations, which are going to traumatize the inhabitants of the Malagasy countryside in the long-term.

What about the other agribusiness investments and the other attempts of land appropriation?

1 Diverse agricultural investment projects

More than 50 projects announced,
30% have stopped and 25% are
on-going

Besides the mediatized cases of Daewoo and Varun, Madagascar was the focus of numerous investment projects (Üllenberg 2010). Since 2005, 52 agricultural projects (this is not an exhaustive inventory) promoted by foreign and Malagasy investors were announced, but only 13 are still on-going (Table 1).

Of all the announced projects, 30% have been cancelled or have stopped their activity

There are many reasons leading to the abandonment of the projects.

The first is associated with the social and political opposition reactions provoked by the Daewoo project. Demonstrations against this project, which was un-transparent and was of such a large-scale that the rights of the local populations risked being affected, led to its cancelation (Teyssier and al. 2010). Confronted by this mobilization and the positioning of the new political authority, certain investors and their financiers judged the country's political and social climate to inconvenient for investment and abandoned their projects. Their doubts were particularly linked to the possibility of accessing land and to securing their investment.

Other investors reexamined their project because of financing problems linked to the global financial crisis or to the uncertainty regarding the project's economic profitability in a context of strong fluctuations in world prices (food commodities, petrol).

Finally, some projects were abandoned because of their technical or managerial fragility. Varun's project stopped largely because the social engineering was insufficient. The contracts for land access, which contained unrealistic clauses, were hastily signed with 13 nominees – appointed by intermediaries – who were supposed to represent thousands of farmers (Teyssier and al. 2010).

Table 1: Number and status of agricultural investment projects by sector

Sector	Announced	On-going	Stopped	In preparation	No information
Agro-food processing	10	2	5	1	2
Agro-fuels					
Sugarcane	14	1	2	9	2
Jatropha	20	8	4	5	3
Palm	2	0	2	0	
Forestry	5	1	2	0	2
Other	1	1	0	0	
TOTAL	52	13	15	15	9

Only 25% are on-going

They are only in their initial phase of development and, for the most parts, are in the process to gain access to land.

30% are in the preparation phase

Despite the abandonment of numerous projects, the investment dynamics in the agricultural sector are not totally disrupted. But they are changing in their nature: the investors are primarily Malagasy nationals who envisage smaller-scale projects (11 of the 16 projects in the preparation phase). The foreign investors are waiting for political stability to actively reengage their projects.

Finally, little information is available on the remaining 15% of projects. No indication could be deciphered on their future: are the investments maintained or not? What is their level of progress?

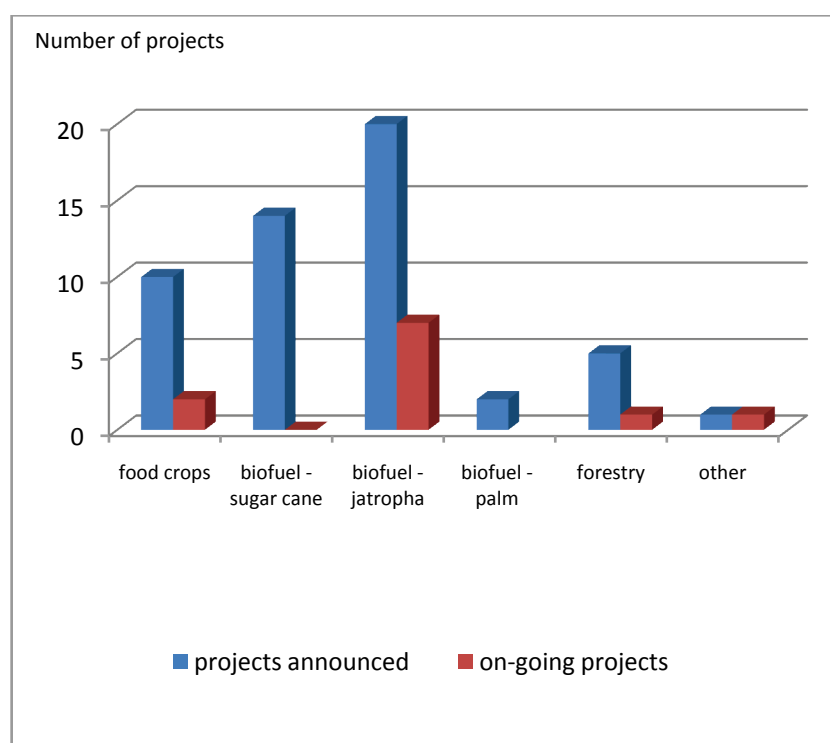
The majority of projects target agro-fuel production

Based on the announcements counted since 2005, three main sectors are targeted:

- Food commodity production (cereal, produce crops, beef);
- Agro-fuel production from jatropha, sugar cane and, in a lesser proportion, from palm trees;
- Development of industrial forest plantations to produce resin or wood, or reforestation for carbon sequestering.

At present, the on-going projects are mainly agro-fuel production-oriented, particularly from jatropha. In Madagascar, the engine of investment is not the securing of foodstuffs, as the media announced on the basis of Asian investors. The main motive for the investors is to free-up profits, by producing agro-fuels.

Figure 2: Projects announced and on-going projects, according to their anticipated production objective



Coveted surfaces vs. used surface: The great divide!

Based on the announcements, about 3 million hectares of land were coveted to develop annual or perennial crops (and for a livestock project on 200,000 hectares) (Üllenberg on 2010), mostly for foodstuffs production (Map 2, Figure 3).

The area actually targeted by the current projects represents no more than 150,000 hectares, thus 20 times less than what was initially announced (Map 1), and most are intended for jatropha production.

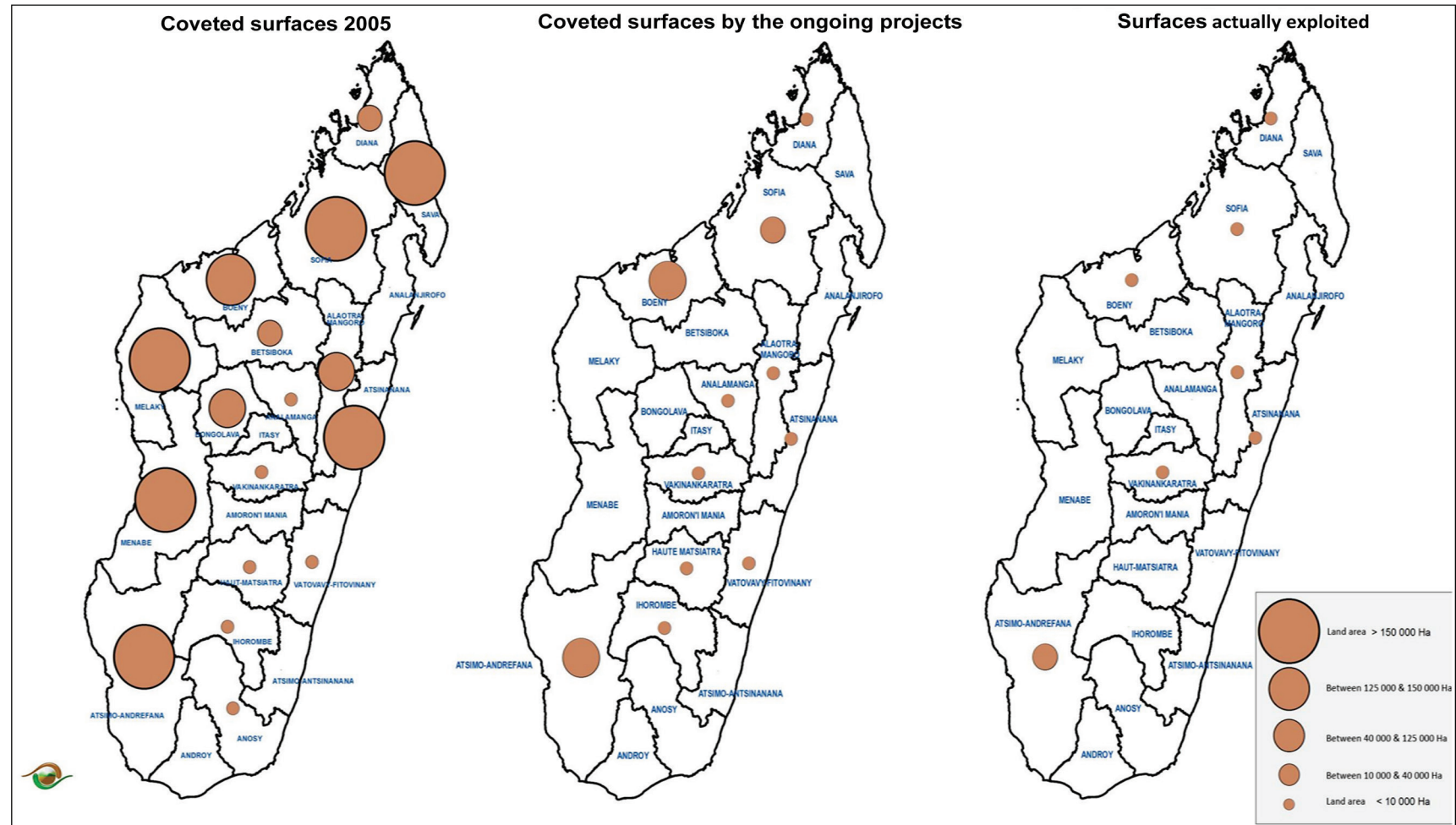
Because of the soil quality, the favorable rainfall for the crops, the presence of vast, relatively flat surfaces, and especially because of the proximity of the sea to ship products, land in the coastal regions is subject to the most applications by investors. Since 2005, the majority of applications concern the regions of Boeny, of Sofia, of Melaky, Menabe, Atsinanana, SAVA and Atsimo-Andrefana.

The coveted surfaces areas – 3 million hectares in total, with 1,3 million hectares for Daewoo – are in contrast with the 2 million hectares cultivated by the 2,5 million family farms. Although the estimations vary depending on the institutions and methodologies – 8 million hectares of arable land according to the Ministry of Agriculture 2008 and 15-20 million hectares according to the FAO (Food and Agriculture Organization) (2007) –, the desired lands represent 37% of the arable land reserves in the first case, and 15% in the second.

These data explain that government understood in the issue and that certain associations got involved in the debate on private investment in the agricultural sector. The fact that "only" 150,000 hectares are presently coveted slightly appeases the debates about the risks of land acquisition by the agribusiness, but does not close them altogether. To target such a proportion of the arable land reserves, in the space of five years, raises a debate on development planning and on the reconciliation of family farming and agribusiness.

Madagascar should capitalize on the present period's decline in applications from investors (or a break in the acquisition of lands?) to engage in a deeper reflection on the position to be adopted in the face of investment, and on the terms to be established to direct it: land occupation, production (crops, production organization modes, targeted markets). Furthermore, the notion of arable land must be discussed in terms of the practices and the realities of the Malagasy context (cf. infra).

Map 1: Coveted surfaces announced, implicated and developed by region



The figure consists of three maps of Madagascar, each showing the distribution of land area suitability for different agricultural sectors. The maps are titled 'Coveted surfaces for biofuel crops', 'Coveted surfaces for food crops', and 'Coveted surfaces for forestry'. The maps use colored circles to represent different land area ranges in hectares. A legend on the right explains the circle sizes.

Legend:

- Land area > 100 000 Ha (Large circle)
- [30 000 & 100 000] Ha (Medium circle)
- [10 000 - 30 000] Ha (Small circle)
- [1 000 - 10 000] Ha (Very small circle)
- Land area < 1000 Ha (Tiny circle)

Map 1: Coveted surfaces for biofuel crops (Blue circles)

Regions with large areas (> 100,000 Ha) include: SOFIA, DIANA, SAVA, BOENY, MELAKY, BONGOLAWA, ITASY, MENABE, AMORON'NY MANIA, HAUTE MATSIATRA, VAKINANKARATRA, VAVOAVY-FITOVINANY, ITHOROMBE, and ANOSY. Regions with medium areas (30,000 - 100,000 Ha) include: BONGOLAWA, ITASY, and HAUTE MATSIATRA. Regions with small areas (10,000 - 30,000 Ha) include: BONGOLAWA, ITASY, and HAUTE MATSIATRA. Regions with very small areas (1,000 - 10,000 Ha) include: BONGOLAWA, ITASY, and HAUTE MATSIATRA. Regions with tiny areas (< 1,000 Ha) include: BONGOLAWA, ITASY, and HAUTE MATSIATRA.

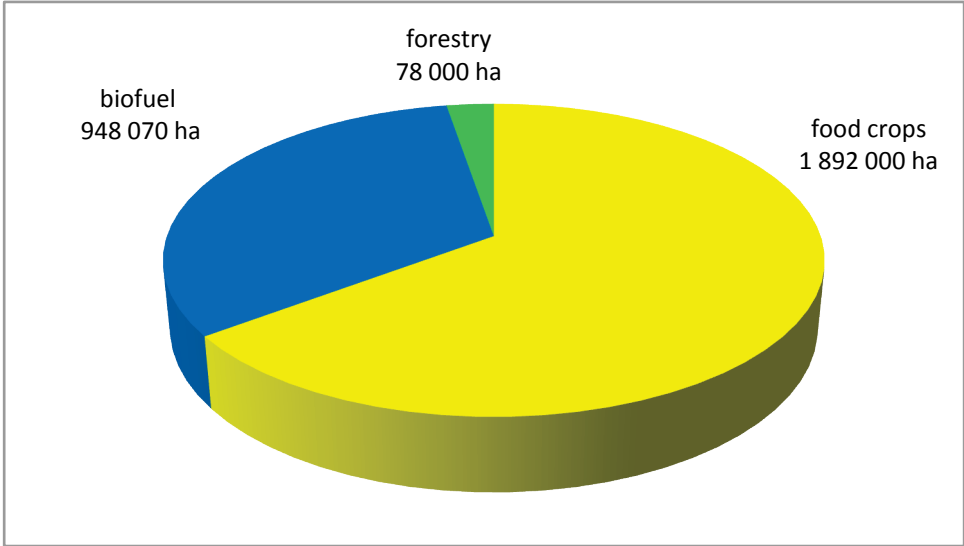
Map 2: Coveted surfaces for food crops (Orange circles)

Regions with large areas (> 100,000 Ha) include: SOFIA, DIANA, SAVA, BOENY, MELAKY, BONGOLAWA, ITASY, MENABE, AMORON'NY MANIA, HAUTE MATSIATRA, VAKINANKARATRA, VAVOAVY-FITOVINANY, ITHOROMBE, and ANOSY. Regions with medium areas (30,000 - 100,000 Ha) include: BONGOLAWA, ITASY, and HAUTE MATSIATRA. Regions with small areas (10,000 - 30,000 Ha) include: BONGOLAWA, ITASY, and HAUTE MATSIATRA. Regions with very small areas (1,000 - 10,000 Ha) include: BONGOLAWA, ITASY, and HAUTE MATSIATRA. Regions with tiny areas (< 1,000 Ha) include: BONGOLAWA, ITASY, and HAUTE MATSIATRA.

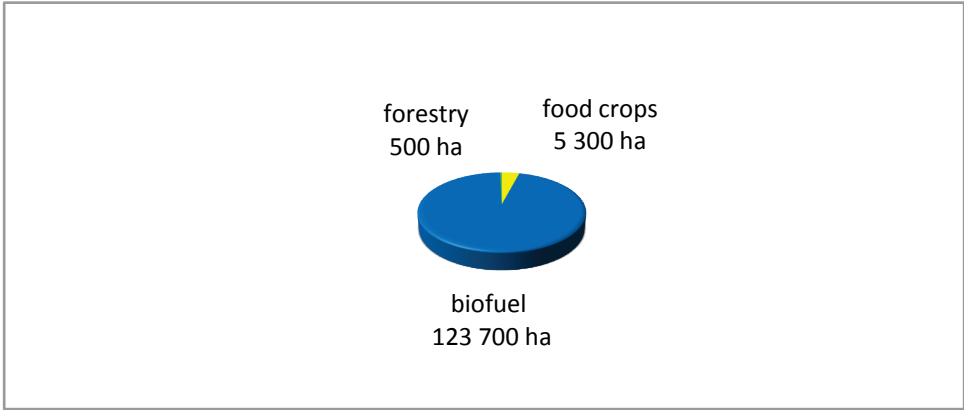
Map 3: Coveted surfaces for forestry (Green circles)

Regions with large areas (> 100,000 Ha) include: SOFIA, DIANA, SAVA, BOENY, MELAKY, BONGOLAWA, ITASY, MENABE, AMORON'NY MANIA, HAUTE MATSIATRA, VAKINANKARATRA, VAVOAVY-FITOVINANY, ITHOROMBE, and ANOSY. Regions with medium areas (30,000 - 100,000 Ha) include: BONGOLAWA, ITASY, and HAUTE MATSIATRA. Regions with small areas (10,000 - 30,000 Ha) include: BONGOLAWA, ITASY, and HAUTE MATSIATRA. Regions with very small areas (1,000 - 10,000 Ha) include: BONGOLAWA, ITASY, and HAUTE MATSIATRA. Regions with tiny areas (< 1,000 Ha) include: BONGOLAWA, ITASY, and HAUTE MATSIATRA.

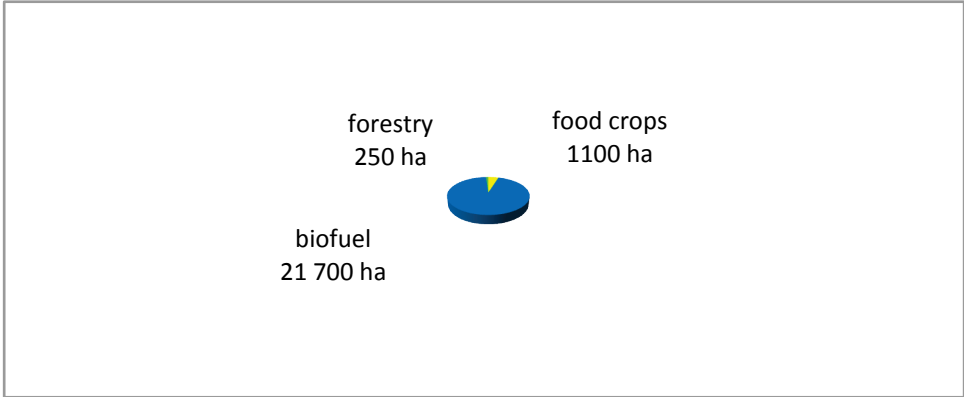
Figure 3: Distribution of surfaces targeted by on-going and announced projects



Distribution of surfaces targeted by all projects since 2005, by sector



Distribution of surfaces targeted by all on-going projects, by sector



Distribution of effectively developed surfaces

Behind the global figures, the projects differ in terms of land holdings:

- In the agri-food, besides the large-scale projects (Daewoo or Varun) that planned the development of 200,000 to 1 million hectares, smaller-scale projects (200 to 1,000 hectares) were planned. At the moment, only two projects are in progress. The most significant covers only 1,000 hectares and eventually aims to cultivate 5,000 hectares.
- In the agro-fuels sector, the jatropha projects announced concerned surfaces of 300 to 120,000 hectares. The majority, particularly those that are on-going, hope to obtain surfaces comprising between 10,000 and 30,000 hectares. The projects in the preparatory phase, some undertaken by Malagasy nationals, do not exceed 2,000 hectares (only one sugarcane project targets approximately 25,000 hectares).
- The forestry sector, for the few projects on which information is available, also envisages plantations of 10,000 to 30,000 hectares.

The nature of the land targeted varies significantly according to the type of production. While projects based on food production or on sugar cane look for good quality, arable shoals, the projects based on jatropha or forest plantations seek lower-quality lands situated on plateaus. These various orientations can raise problems of competing usages. Family farms generally use shoal lands (*tanimbary*, *baiboho*), those most in demand, for food crop production. Plateau lands (*tanety*), on the other hand, are reserved for breeding and for tree plantations, and are used according to the location.

Presently, the surfaces actually cultivated amount only to 22,000 hectares and represent less than 1% of the announced surfaces and 15% of surface areas involved in on-going projects (Figure 3, the graphs respect the proportions).

Foreign and national operators

Madagascar's case reveals the investors' diverse backgrounds. **More than two thirds of the project promoters between 2005 and 2010 are foreign (36 out of 52 projects)**, half are European (the United Kingdom, France, Germany, Italy, the Netherlands), the others are from South Africa, India, Australia, and South Korea. The attraction of foreign investors to Madagascar seems to be linked to the Government's efforts to create a favorable investment climate, a challenge resulting from an evaluation by the World Bank in 2005 on the investment climate in six countries, including Madagascar, China and four other African countries. This evaluation revealed a considerable decline in FDI (foreign direct investment),⁵ and ranked Madagascar 146th out of 177 countries.

Afterward, the country's economic recovery strategies were, inter alia, focused on the promotion of foreign investments through the creation of the EDBM (Economic Development Board of Madagascar) in 2006, the elaboration of the MAP (Madagascar Action Plan) in 2007,⁶ which clearly announces among its immediate priorities, the increasing of investment particularly through the authorization of land acquisitions for non-national investors, and the adoption of an investment law in 2008.

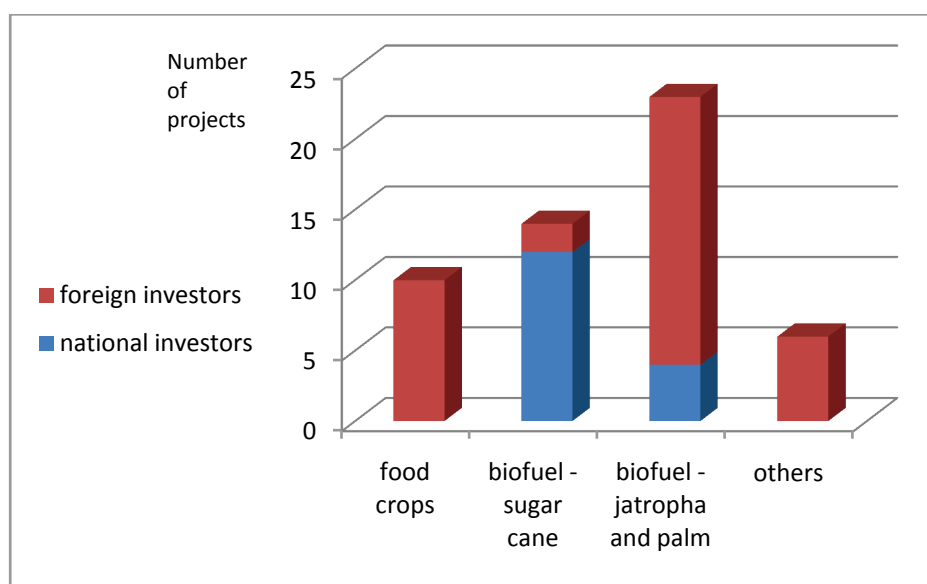
The Malagasy operators tend to concentrate on the agro-fuel sector and mainly aim to develop the sugar cane value-chain for ethanol production (Figure 4).

In Madagascar, the projects promoters – foreign or Malagasy – are for the most part small or medium private companies. Whereas the promoters of agri-food processing and forestry projects are highly experienced in the agricultural sector, the promoters of agro-fuel projects are generally inexperienced in this sector (Figure 4).

⁵ Estimated at USD 262 million in 2003, USD 256 million in 2004, and USD 250 million in 2006 Source: Banque Centrale de Madagascar – INSTAT. Compilation 2008. *Etudes annuelles sur les Investissements Directs Etrangers et de portefeuilles à Madagascar*.

⁶ Immediate priorities of MAP/Reform 2: significantly increasing investment in favor of growth. In Madagascar Action Plan 2007, 16

Figure 4: Number of projects by type of investor and by the objective of production



The few agreements between foreign and Malagasy operators concern access to land.⁷ These land arrangements concern plots covering less than 500 hectares, with the immediate objective of developing tree nurseries on the plots or to conduct trials. In one case, the foreign operator is associated with a Malagasy partner, who undertakes the land lease applications under his name for a surface of about 20,000 hectares. The engagement of the latter in the management of the project cannot reduce him to a ‘frontman’, but nor does it seem to confer him the status of an economic partner or shareholder in the company.

⁷ Apparently, among the on-going projects or those in the start-up phase, there are few economic partnerships in which Malagasies are shareholders of a company launched by foreigners, but this issue warrants deeper analysis.

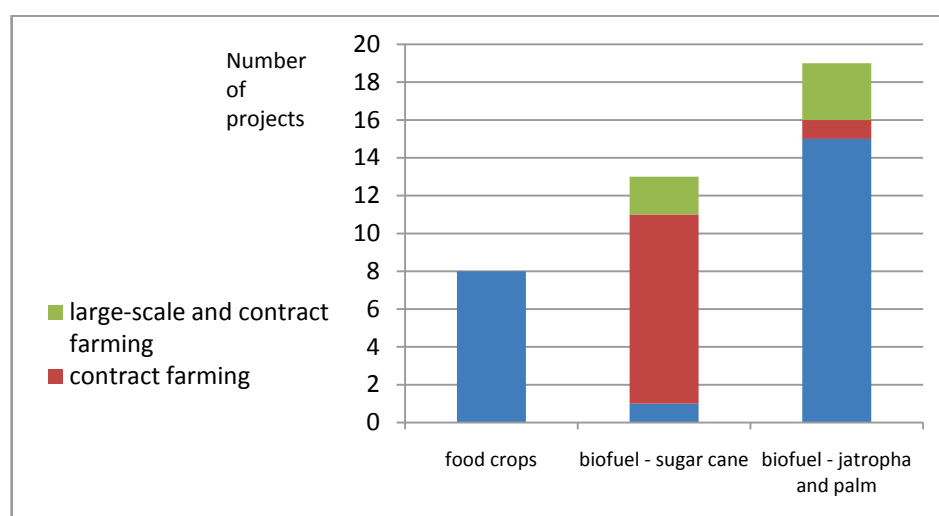
Plans for large-scale agricultural production

Two main organizational frameworks for production were retained: large-scale farming and contract farming (the delegation of production through contracts with farmers).

For food or forestry production, large-scale farming or plantations – mechanized to a certain degree – is preferred. Although family farms are familiar with and produce most of the crops or envisaged trees, **barely any projects intend to implement contracts.**

In the agro-fuel sector, the situation is different. **Although the plan for large-scale farming was maintained for most of the jatrophpa projects, the leaders of ethanol projects chose to use and to develop sugar cane in the rural areas.** Indeed, the investors are Malagasy and close to the sugar cane producer's network, if not a member themselves. Their objective is to propose more profitable outlets to local producers than those offered by the sugar factories in unstable economic conditions. Some jatrophpa projects, promoting objectives of sustainable local development, also envisage the development of contract farming.

Figure 5: Number of projects by production plan and by the announced objective of production



Project promoters do not systematically announce the eventual in country processing of the production, except for the agro-fuel production. The operators hope to build ethanol plants or jatrophpa extraction units, but not biodiesel plants (for which the possibility of generating a profit margin depends on the capacity of the plants and on the exporters' requirements in terms of quality).

Export-oriented projects

Exportation is the common point among the projects. For food commodities, the targeted markets are, with a few exceptions (Varun), the investing countries' markets. For agro-fuels, Europe is the main target market, in anticipation of quotas for bio-fuels in conventional fuels, and also because of networks maintained by investors in their country of origin.

2 Operators' land strategies

A general preference for renting rather than purchasing land

The investors' first objective is to access land. For projects based on large-scale plantations (jatropha), for both foreigners and national investors, the vast majority of operators seek a land lease. According to the investors, this preference for leasing arises from a desire to limit the initial capital costs, the immovability of the capital, and the risks of social protests. A lease also allows them, in the event of technical, economic, or political problems to stop their project at a lower cost. Only a grouping of Malagasy investors wants to buy large surfaces.

For the projects based on farmers' provisions (sugar cane and jatropha), the operator's need for land is limited. They generally limit themselves to small surfaces to set up tree nurseries and build buildings (storage facilities, factories). In this case, Malagasy entrepreneurs undertake an application for registration or try to buy the land.

The selection criteria for land

Investors look for land that with similar characteristics:

- Good pedo-climatic conditions: the sought-after lands are generally flat surfaces allowing for mechanization, located in regions that get significant rainfall, while, at the same time, are shielded from cyclones. The on-going jatropha projects look for *tanety* lands (hilltops and plateaus) and not shoal lands suitable for the production of irrigated rice.
- Available un-owned land, that is locally under- or un- used or unoccupied.
- Low-cost access: proximity to a main road for the transportation of raw materials and inputs, as well as proximity to a sea (or river) port for the shipping of raw materials or finished products. The big economic operators, like Daewoo and Varun, are not limited by accessibility constraints. The Daewoo project, for example planned for the construction of roads, bridges, and ports.

Competition between operators: A sign of scarcity of lands suitable for agro-industry?

Contrary to all expectations regarding the scale of the Malagasy territory and the significant *tanety* surfaces, operators find themselves competing to access the same land. These situations do not seem to be isolated. Of the seven current *jatropha* projects, three competitive situations emerged:

- In Sofia, competition emerged between three operators for 30,000 hectares of land in a plain zone that is directly accessible by the sea. Each of the operators had identified this land through different procedures (identification of the land by a Malagasy partner, advice from the Regional services, or identification based on maps and aerial identification). Only two submitted their lease applications to the State-owned Land Services.
- In Boeny, two operators targeted an area of 10,000 hectares, along the national highway. Only one persevered.
- Again in Boeny, two operators developed projects in the same rural area. They tried to agree on the areas on which they could respectively develop.

These competitive situations prove the fact that, at present, there is not much land that meets favorable investment criteria. Estimations of millions of hectares of potential arable land based on pedo-climatic criteria turns out to be partial information, the majority of investors are certainly looking for arable land but, more precisely, for flat and accessible land at a reduced cost.

No lease contract was signed

For the majority of the foreign operators, lease applications are in progress.⁸ Most initiated their application more than two years ago, and have yet to obtain their lease contract. The assembly of the lease application file demands a significant time investment from the entrepreneurs. The length of this process is explained by:

- The technical difficulties encountered on the ground to examine plots of 10,000 to 30,000 hectares;
- The practices of certain agents who only handle the file in exchange for monetary compensation;
- Competition among operators;
- Problems of the targeted land encroaching on titled land or land claimed by local people;
- Local social reactions to protect lands already in use (cf. *infra*);
- And, above all, the current political situation: on one hand, the investors do not want to submit their file to be signed out of fear that a future government might question their contract, and, on the other hand, the current authorities do not want to sign a contract as long as the question of large acquisitions is socially controversial. According to the Ministry of Town and Country Planning and Decentralization, the government has not signed any lease contracts concerning State-owned land.

So as not to delay the progress of their project and to begin agronomic tests, the operators planted their first plantations (tree nurseries or first plots) on informally rented land, thanks to agreements with private Malagasy owners, mayors or the main representative of the regional government (for example, the Land Mark project).

Without a lease contract or formal confirmation of a future contract, the operators have difficulty in securing financing, as banks require land guarantees before granting credit. Thus, the operators find themselves in a difficult situation: they incurred expenses over two years to finance the various procedures, initiate the agricultural work, and have no assurance that they will obtain credit. This situation contributed to some investors cancelling their project.

Only two projects, which have now stopped, would have obtained within two years the first lease commitments, their applications concerned land already registered in the name of a public institution. The Flora Eco Power Company, comprising Norwegian and Israeli shareholders, had obtained through the main representative of the Boeny regional government a 3,500-hectare lease on lands titled in the name of the Ministry of Water and Forests. In the exchange of the granting of the lease, the region required the operator to build additional buildings for the prison in the area and to assure agricultural

⁸ Generally, the initial plans were realized, and the procedures of identifying the land are yet to be done or are on-going (among others Delta Petroli, Bio Energy Limited, Fuel Stock, Sopremad).

training courses for the prisoners. Only 600 hectares were planted, but the operations were stopped because of a lack of financing.

In addition, the GEM project managed to negotiate land access without passing through the State-Owned Land Services. The actors have already planted more than 30,000 hectares of jatropha on various lots, the largest being 7,000 hectares (but plantations' success rates are very heterogeneous). Land access was negotiated within one year with the mayors of the local government and with the approval of the former main representative of the regional government, even on State-owned land. The operator negotiated that the rent, of USD 1/hectare, is paid to the local government concerned once the jatropha plantations enter production.

For the most of the Malagasy operators, the applications for acquisitions were issued. Because the surfaces in question are limited, the files are handled only by the decentralized State-owned Land Services, and their validation does not assume the same polemic character. At present, the operators have obtained title deeds (temporary or permanent) on plots less than 50 hectares in size (one to three plots per operator).

3 The legal and institutional framework for investment in the agricultural sector

The role of public authorities, according to the texts

Three bodies of legal texts presently regulate the establishment of operators in Madagascar. It consists of the Investment Law, the new land legislation, and the State's Decree on the Compatibility of Investment with the Environment (MECIE). Their implementation rests on three groups of institutions, respectively: Economic Development Board of Madagascar, State Owned Land Services and local land offices and the National Office for the Environment (ONE).

The establishment of a one-stop service provider for operators according to the Investment Law

One of the central points of the Investment Law (n°2007-036 of January 14th, 2008) is to establish a single office to receive and direct investors: the Economic Development Board of Madagascar (EDBM). The functioning of this institution was assured until 2009 by international donor funds (World Bank). Its main objectives are:

- To contribute to the development of an incentive framework for foreign and national investors (taxes, customs, duties);
- To simplify certain administrative procedures: creation of a company, obtaining visas, authorization to set-up of a "tax-free zone", registration in the commercial registry.
- To facilitate land acquisitions by foreign operators who had already created a Malagasy legal entity⁹, by the issuing authorization for land acquisitions.
- To mitigate the possible disputes between companies or between companies and the State.

Investors must pay two types of taxes. Land taxes (IFT) are to be paid to the local government where the plantation is located (in Amboromalandy, for example, the Mayor announced that the land taxes were USD 1/hectare per year for effectively cultivated

⁹ In practice, the only constraint is to have one of the associates registered as a resident.

lands). Then, as a company, the operator is hit with income tax (IR) or tax on net profits. The latter is paid at the regional level, where the company is registered on the commercial registry. In addition, the investor must, if he transports unprocessed farm produces for commercial purpose, pay taxes to the local government where the production took place.

New land laws aiming to the secure of the population's land rights and regulate investors' access to land

Since 2005, Madagascar has been engaged in a land reform process based on the modernization of the land services and the decentralization of most of the land resources towards local authorities, so as to strengthen land security.

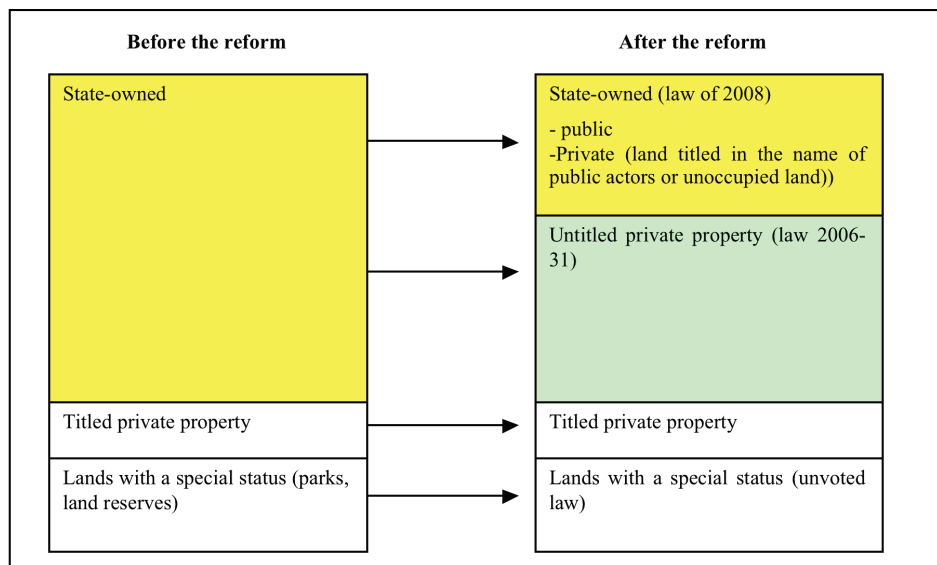
The recognition of the local land rights

The major change imposed by the 2005 Land Law is the passage of the presumption of State-ownership to the presumption of private property. State-owned land is thus reduced to land titled in the name of public institutions and to land without occupants (Figure 6).

Now, un-titled but occupied land is no longer State-owned. Land claimed by local people acquires the status of "un-titled private property" and is the administrative responsibility of the local government. According to this law, the users able to prove individual (or collective) holding of land can obtain a land certificate of similar legal value to that of a title. This certificate is issued by a local land office at the conclusion of a local, public and contradictory process. Thanks to these procedures, the users can secure their land rights.

In April 2010, 350 local land offices were created and issued 52,000 land certificates. Considering that land reform began only four years ago, these figures provide evidence of significant progress in recognizing users' rights. However, the local land offices do not cover the whole Malagasy territory (which account for 1550 local governments), nor, do they cover at the local level, all of the lands used by the local population, taking into consideration the status of certain lands that remain State-owned and beyond the jurisdiction of local governments.

Figure 6: The status of land in Madagascar following the Land Law of October 17, 2005



Source: National Land Program

Entrepreneurs' methods to access land

The leasing or the purchase of lands can be done through:

- ° Land owners, in possession of a title or a certificate (concerning titled private property or certified untitled private property);
- ° The State on state-owned land (land titled in the name of the State or without occupants). The purchase, only possible for Malagasy individuals or Malagasy legal entities, implies that the buyer registers the land in his name. A lease, between 18 and 99 years, can be directly established if the targeted land is already registered in the name of the State, and at the lessee's expense if this ground is genuinely unoccupied in its most basic sense "vacant and without master";
- ° In theory, the transactions can also concern zones with specific status. The previous government planned to create land reserves qualified as "Agricultural Investment Zones" (AIZ) in the case of the agricultural sector. These zones would allow the faster establishment of leases, and even sales to the investors meeting the selection criteria (intensive and market-oriented agriculture). But the law concerning the definition and the evolution of lands with a specific status was not promulgated.

For less than 50 hectares, applications for lease or acquisition must be sent to the regional state owned land services. Above this limit, the applications are passed on to the central state owned land services and become the responsibility of the Minister in charge of land administration – the Ministry of Town and Country Planning and Decentralization (*Law 2008-014 on State-owned land*).

The authorization of land acquisition issued by the EDBM is supposed to facilitate land access for foreigners, provided that they create a Malagasy legal entity. Its objective is to allow the foreign investors the right to registration and acquisition equivalent to that of Malagasy operators. As the corresponding Decree of application was not adopted, a level of ambiguity persists concerning the actual function of this authorization as well as about the division of roles between the EDBM and the State-owned Land Services. In the agricultural sector, no investors applied for this authorization.

The requirement to conduct an environmental impact assessment

The MECIE Decree on Compatibility of Investments with the Environment (Decree N° 99-954 of December 15th, 1999 modified by Decree N° 2004-167) announces the measures to which every operator should conform to reduce the ecological, social and economic risks associated with the establishment of projects. The ONE, in association with the environmental units of various ministries, oversees the application and the follow-up of this Decree.

For every agricultural project comprising a surface of 1,000 hectares, the Decree obliges the operator to realize an environmental impact assessment (EIA). This assessment integrates the analysis of all of the environmental as well as social and economic impacts of the project. It also includes consultations with local level authorities and the population, in the presence of an evaluation commission comprising a project manager from ONE and representatives from the concerned ministries. ONE validates the assessment, which concludes with the issuing of a license and in the establishment of list of requirements. The evaluation commission controls adherence to the list of requirements.

The obligatory steps for the investor

The previously mentioned documents oblige the investor to pass through three institutions, which are, in order:

1. EDBM – supposed to be the investor's only access point – for (if necessary) the creation of a Malagasy legal entity, for obtaining visas, and for recording in the commercial registry;
2. State-owned Land Services – to apply for the registration or a lease for land;
3. ONE for the realization of the environmental impact assessments and the issuance of the environmental license, associated with a specific list of requirements.

The investor's path thus is supposed to be indicated. Though none of these institutions has the specific competency to select the projects, they still have to ensure according to legislation that:

- ° The operator is registered for and pays taxes,

- The population's land rights (untitled private property, titled private property, specific status zones – land reserves, national parks, etc.) – are respected and those of the investors are secured,
- The project's harmful environmental impacts are limited,
- The social and economic conditions offered to the local residents or actors employed by the projects meet the minimum standards.

4 From the legal framework to the practices on the ground

The discrepancies between the legal framework and the practices on the ground are caused by three main factors:

- Large investments represent a new phenomenon, for which the public service, under endowed in both material and human resources, is not sufficiently prepared;
- The texts directly or indirectly governing investment can be more or less well mastered and interpreted differently by public officials, investors and citizens;
- While the steps imposed by the legislation are generally respected (application for land through the State services and the EIA), certain practices can allow, not only accelerated handling of files, but also the reduction of certain constraints.

The analysis of the steps taken by the operators and the role of the institutions with whom they interact, brings to light the differences between documents and practices, and allows consideration of the effectiveness of the regulatory methods set up by public authorities.

A one-stop service provider for investors, which struggles to perform its functions

Entrepreneurs do not systematically use the EDBM for all of its functions, to receive, advise, and guide the investors. The EDBM has difficulty in developing an overall vision of the current projects and does not really direct investors towards the obligatory passages (State-owned Land Services, ONE), or those that are strongly advised (regional and local public authorities, the population). Indeed, while most of the foreign investors hire a national expert to assist their process,¹⁰ their points of entry and their institutional paths are different.

In their initial phase, the processes followed by foreign operators are mainly top-down: from the government or the main representative of the regional government towards the local elected representatives.

The economically most significant operators, particularly those representing big multinational companies, directly address members of Government. This approval by the highest representatives of the State allows them to obtain the support of the regional level public authorities. These big operators, such as Daewoo and Varun, while they effectively mobilized Regions and decentralized services, they invested less time in the lower administrative levels, their economic strength and their capacity to recruit experts seemingly nullified any need to negotiate directly at the local level.

Some operators mobilized the EDBM's services from the beginning. In addition to obtaining precise information on the national investment conditions, they looked for support to identify land, and make their project known to the government at the same time. The EDBM thus played the intermediary directing them to the concerned Ministers and the regional representatives and, at the same time, by accompanying the negotiations.

Several operators solicited the main representatives of regional government (*chef de Région*), bypassing – or not – the EDBM. They thus obtained initial political support and information on *a priori* available land. They are notably put into contact with the mayors

¹⁰ In the prospecting phase, foreign operators generally turn to the services of an intermediary. The expectations of these experts generally concern three factors: (i) establishing contact and accompaniment through the institutional procedures; (ii) advice and information on the legal framework related to the investment and to access to land; (iii) agronomic advice and expertise to identify suitable production areas. Because of the newness of these large-scale agricultural projects, few consultants are really in a position to call themselves experts. Consultants who position themselves as consultants “jacks of all trades”, retired or public official – are generally recruited because of their networks within the public service or their agronomic knowledge. Their competencies in a single area have at times lead projects down difficult paths (wrong choice of agronomic area, unfamiliarity with the institutional processes). Presently, the intermediary market is evolving and is becoming progressively more specialized. Consultants, through by their experience within the first projects in Madagascar, as either a manager or an agronomist, are emerging and sell their services of intuitional and technical support.

of the concerned rural areas. The regional level – particularly the *chef de Région* – appears to be a point of entry or systematic passage.

Except for projects promoted by Malagasy operators, mayors are generally informed at the end of the chain, if not by-passed altogether. The investors should nevertheless systematically obtain their agreement – formalized by a signature – to begin their process of applying for a lease with the State-owned Land Services. The mayors are normally supposed to participate in the Commission for State-ownership Recognition, an integral part of the land registration procedure.

And the local populations? They are generally informed by the investors only when the necessary procedures for land access (agreement of mayors, acceptance by the Commission for State-ownership Recognition) are initiated or during the realization of the EIA, the level of consultation being more or less significant, depending on the case (cf. infra).

The impact assessments: Relevant safeguards, uncertain modes of control

Conditional land access based on the impact assessment

An environmental impact assessment (EIA), including the environmental, social and economic aspects is compulsory for any agricultural project with a land holding exceeding or equal to 1,000 hectares. On the basis of a guide supplied by the ONE, it can be realized by the operator or subcontracted to a research consultancy firm. It is then examined by a Technical Evaluation Committee (TEC), comprised of representatives of the concerned ministries (Agriculture, Water and Forests, Tourism, Mines, Transport, etc.) and representatives from ONE.

Although the legislation specifies that the EIA must be realized once the land contract (purchase or lease) is acquired, the technical services and ONE insist on the opposite. This adaptation proves the will of the technical services to better regulate the investment dynamics, even if it confuses the order of the steps to be followed by the investors. This measure, which conditions land access in the EIA, is respected. Almost all of the investors wanting to develop surfaces greater than 1,000 hectares indeed initiated this study;¹¹ the

¹¹ At present, operators are in the process of realizing or evaluating this study. Three permits have been issued for bioethanol factory projects, these do not include the agricultural production phase managed by the operator.

only operator who did not do an EIA managed to access land through informal agreements with the local government.¹²

The majority of operators initiates an EIA, but is it complete and is it really binding?

Impact assessments to be strengthened

The lack of clear distinction between the project promoter and the entity in charge of the EIA, as well as the absence of obligation to use the services of a certified body, raises questions concerning the quality of the impact assessments.

In addition, the EIA is coupled with the reading – but not with the critical analysis – of the business plan. The hypotheses relative to the expected agronomic and economic results returns, allowing one to judge the actual conditions for realization of the project, seem to be overlooked. The short- and medium-term economic impacts by category of beneficiary (population, local or regional government, State) are not estimated.

The implementation of the EIA obliges the operators to consult the local populations and authorities. This consultation has the advantage of contributing to the dissemination of information and the opening of a debate at the local level. However, questions remain about the true representativeness of the villagers attending the meetings and about the effective level of consultation. Furthermore, the information is not more widely disseminated and deprives “civil society” from a minimum level of knowledge, if not the right to monitor the current processes.

A list of requirements that completes the contract

A list of requirements is produced during the evaluation of the EIA and annexed to the lease contract. It is supposed to formalize the environmental, social and economic measures that the operator agreed to undertake. It thus completes the lease contract, which limits itself to the land dimension of the arrangement between the State and the operator.

In the rare published EIA concerning the agricultural sector, the environmental measures are numerous and clearly described. The social or economic measures are, on the other hand, underdeveloped. The consultations held in the region of Sofia for the Delta Petroli project is an example that attests to the population’s ability to react and of their social and environmental demands. The regional representative, the mayors and the populations do not hesitate to announce their hopes in terms of infrastructural development and jobs to operators. The effective translation of these hopes in the list of requirements is less evident, on the other hand. In a list of requirements, respect for usage and the current modes of management of the coveted lands, and the possibility for the operator to delegate the development of water and energy access schemes to an NGO are

¹² Follow-up investigations would be necessary to see if this operator, who circumvented the environmental legislation, will be summoned by ONE, if not sanctioned by the concerned ministries.

mentioned, but the objectives are neither qualified nor quantified. In the absence of these precise details monitoring and enforcing these commitments proves to be difficult.

Social and environmental commitments without real controls

The EIA has the advantage of formalizing environmental and social safeguards but the conditions of respecting and controlling them remain hypothetical. In theory, the monitoring, which is engaged by the operator, must be checked every year by the concerned mayors, representatives of ministries and ONE. Added to the potential difficulties of familiarizing certain local actors with assessment matrices, drafted in French, the lack of specifications on the commitments of the operator, leads to persisting questions about the effective means at the disposal of concerned authorities (regional and national services of various ministries) to realize controls in a effective and coordinated way.

Securing land rights: Improvements to be pursued

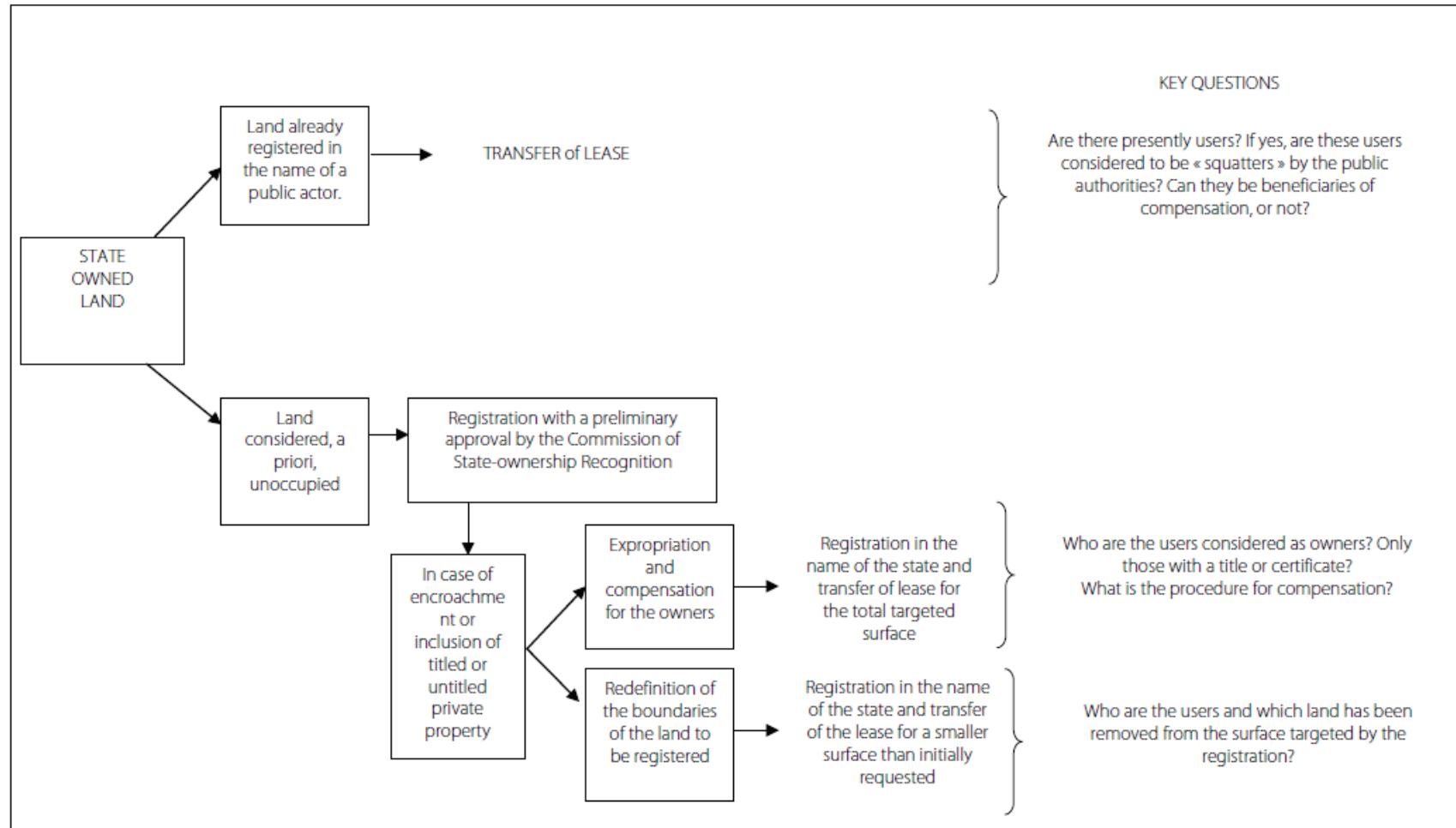
The Malagasy situation may appear paradoxical in 2008. The government lauded, on one hand, the securing of the population's land rights thanks to new land laws, and proposed, on the other hand, the establishment of foreign investors by agreeing to allocate them huge surfaces of land; a desire to secure rights of the farmers "from the bottom", overlapped with a desire to impose the development of very large agricultural firms "from the top". The current authorities have not yet defined their position on the questions of land security and allocation.

Land security of local occupants and owners

a. The sources of land insecurity during entrepreneurs' land acquisition processes

On the basis of the new land legislation, the granting of a lease on lands recovering from the state-owned land can be made on two types of land (Figure 7).

Figure 7: Options and key questions in the framework of transferring a land lease comprising State-owned land



In the first case, a lease can be granted for lands registered in the name of a public actor. If these are already occupied, the administration considers the activity – crops, pastures, and wood collection for energy purposes – illegal. The users are qualified as squatters and are not considered eligible for compensation. According to State-owned Land Services representatives, such a situation could, nevertheless, lead to agreements, even compensation, to avoid the risk of social conflict. For the moment, no cases of lease transfer to a private investor on land registered in the name of a public actor are in progress.

In the second case, the lease can be established on unoccupied State-owned land. This land must be previously registered in the name of the State. The lands to be registered must not encroach or include titled private property, the special status zones (national parks, land reserve) or un-titled private property.

This implies that lands comprising these various categorized are identified and/or listed beforehand. Now, no database exhaustively lists at the local level the various types land and their status. The local land use plans (*Plan local d'occupation foncière* (PLOF)) should eventually be able to establish this inventory. For the moment:

- The PLOF is available only in the local government equipped with a local land office (one-third of Malagasy local government). As land reform is relatively recent, a lot of land is individually or collectively claimed, such as the cultivated or wooded plots of land, fallow land, village or family land reserves, ancestral lands and pastures, is not yet secured by a land certificate and is not demarcated on maps. The PLOF does not contain exhaustive or precise information about the location of the titled parcels and they are not still used by the State-owned Land Services.
- The topographic maps used by the State-owned Land Services are not necessarily up-to-date and do not consider land comprising untitled private property.

The State-ownership recognition commission's fieldwork compensates, *a priori*, for the absence of a systematic inventory. Comprised of a State-owned Land Services agent, a topographer, a mayor and leaders of *fokontany* concerned,¹³ the commission has to verify on the ground that the coveted surface does not encroach on already owned lands. When these commissions are actually active, the users and owners are informed and, in cases of encroachment, can ask that the boundaries of land targeted by the registration be rectified.

Respect for the local owners' and users' existing rights entirely depends on the effective realization of this stage of the Commission and the way it is led. Yet, the local residents/users of the coveted lands are not systematically informed, of the agricultural project, or the coming of the State-ownership Recognition Commission. They are supposed to be represented by the leader of the *fokontany* and the mayor, but the latter does not necessarily know about new measures to secure untitled private property and

¹³ Equivalent to a village

can be influenced by the main representative of the regional government or the operator. Initial observations, however, show that the populations are reactive. Questions arise concerning the formalization of the information produced during the State-ownership Recognition Commission to rectify the limits of the coveted land and, especially, about the capacity of the users or the owners concerned to assert their interests in the event of a dispute

Exceptionally, when the project is considered to be in the public interest (decree emitted by the Council of Ministers) and when surfaces targeted by the lease partially include titled and untitled private property, the lease application can lead to expropriations. In this case, following the example of the projects in the mining sector (Box 1), the occupants, whether they have a title or not, are legally entitled to compensation. For now, no agricultural project required such a decree in the public interest.¹⁴

Box 1: Compensation procedures in practice: the example of the mining sector

The Malagasy government authorized the establishment of the QIT Madagascar Minerals (QMM) mining project for the extraction of ilmenite by Rio Tinto in the Taolagnaro region, in southeast Madagascar. The large scale of the project required the relocation of certain villages. According to the law and in coherence with the Operational Policy OP 4.12 addressing involuntary displacement within the framework of World Bank-financed projects, compensation must be granted to the affected persons.

Although the quarry is located in a sparsely populated forest zone (in the Mandena forest – 6,280 hectares were affected by the mineral deposit), the construction of the Ehoala industrial-harbor complex, the construction of a temporary camp for the workers, and the construction of a road (15 km) connecting mines with the port required the relocation of 530 households found along the highway and the limits of its holdings.

The implementation of this infrastructure required the availability about 800 hectares of land, this latter was state-owned land or private properties (titled or untitled). A Declaration of Public Utility (DPU)¹⁵ justified the acquisition for land affected by the plan. Since the project was established with the support of the World Bank, its operational policy (O.P.4.12) concerning involuntary displacement required that a person or a property is exposed to the least damage possible during and after the project's

¹⁴ The Daewoo and Varun projects could have, if they were not stopped, been considered as priorities and could have lead to expropriations.

¹⁵ According to Ordinance 62 – 023 of September 16, 1962, a Declaration of Public Utility is made by the Council of Ministers. The level and the criteria of projects able to be declared of the public utility vary and are not clearly specified in the Ordinance (which only cites the types of work).

implementation. In addition, this policy calls for the granting of compensation to the Persons Affected by the Project (PAP).

An Administrative Evaluation Committee (AEC), managed by the main representative of the regional government and comprised of the representatives from the concerned regional services (Agriculture, State-owned Land Services, etc.), was created to estimate the PAP's losses and the opportunity costs, and to study the nature and amount of the compensation required. Following a *commodo-incommodo* investigation, the AEC communicated decisions on compensations, notably: i) the land characteristics (bare land, "waste" lands, or fallow land) are compensated in cash, ii) houses are compensated in kind – that is, replaced by new houses, iii) agricultural land is compensated in kind, by the other land of equal surface if the productivity is identical and by larger surfaces of land if the quality replacement land is lower, iv) tree plantations are compensated in kind.

For fallow, bare or uncultivated land the compensation was 1,000 Ar/m² (10 million Ariary per hectare, approximately USD 5,000), while the loss of rice fields was compensated to 2,500 Ar/m². For crops other than rice, the compensation was 1,700 Ar/m².

In addition, monetary compensation was paid for lost crops (certain fruit trees or crops requiring a few years after planting to produce, compensation was paid annually until the new crops were able to be harvested), the relocation allowance and the compensation for eviction on State-owned land. In April 2007, final date for compensation, more than 5,3 billion Ariary (USD 2,65 million) were paid (the initial sum of 5,3 million Ariary was increased following users' late claims), and 80 new houses (out of 83 planned) were built and delivered to the PAP. Land included with these houses was not titled, contrary to the initial announcements. An NGO was recruited for the management of payments and accompaniment of the affected persons.

Overall, the principles and the basic theories of the program of relocation were conceived to assure the legality of the process (*commodo-incommodo* investigation, Declaration of Public Utility, organization of an AEC, creation of a unit in charge of receiving and handling of the claims and the complaints) and the distribution of fair compensation. All of the listed PAPs, that occupied a land without a formal document or with land titles (8% of land), were listed for compensation and paid according to the nature of their plots of land (the owners of titled land benefited from a 10% increase compared to "informal" occupations as interest at the legal civil rate (article 11 of the Ordinance).

The practical implementation confronted three great difficulties, linked to the desire to accelerate the procedures:

- The project struggled to find good quality agricultural land in the same villages as in-kind compensation for cropland losses, although the farmers had already been

displaced. This situation goes against the principle of article 10 of the OP 4.12, which recommends that the affected persons not be moved until all relocation and compensation measures are ready. In the end, because of a lack of adequate agricultural land, these households were all compensated in cash;

-The procedures of displaying and taking inventory of the affected owners discriminated against owners who do not live permanently in the affected villages, and some people were not able to receive compensation;

-The insufficient information sessions concerning the determination of the compensation rates provoked social reactions from PAP who felt wronged or swindled. These PAP repeatedly erected blockades, blocking machines and workers' access to construction sites. These means of reclaiming of rights, which led to an increase in the compensation rates, were appropriated and instrumented by certain political groups. Blockades were thereafter used as a form of manipulation by the opposition against the local leaders (regional representatives, Mayor).

b. Position and reactivity of users and owners

When they are effectively consulted about the registration project and the lease, the users and the owners of the parcels – including titled and untitled private property – are able to assert their rights and influence the demarcation of lands coveted by the operator. Preliminary case studies reveal the following points:

- In most of the concerned rural areas, the local land offices are not yet present or are still not effective. Even if the farmers do not possess a certificate, they rightly consider themselves owners and oppose that their lands be registered in the name of the State and transferred in a lease. The vigor of their demand depends on the type of plot:
 - Their refusal is categorical when it concerns cultivated plots or arable plots, which will be needed by future generations. The operator must not use this land, which on his side announces that he does not want to encroach on these lands.¹⁶ While the consensus is quickly reached between operator and villager, questions remain about the effective removal of these plots of the coveted land by the investor and targeted by the registration. There is a risk of conflict when the demarcation procedures – physical determination of the limits – begins.
 - The reaction of the locals can also aim to defend the rights that they hold in common, particularly within the framework of a contract that transfers the man-

¹⁶ The project leaders for Delta Petroli even announced that the good quality, uncultivated arable land at the heart of the parcels transferred by the lease would be titled, in four-hectare plots, in the names of the farmers.

agement of natural resources on wooded areas.¹⁷ As the situation studied in the Boeny region illustrates, the Ministry of Water and Forests supported the community's opposition to a management contract (see Box 2)

- Their position concerning pastures is more mitigated. The population is often divided between the desire to see the project, perceived as a potential source of jobs, arriving and getting established, and the desire to secure their land rights. Generally, pastures are the objects of negotiation between the operator and the population – with the latter generally accepting that the lease for this land in the exchange for compensation (preservation or development of new pastures, production of grazing crops by the investor). Nevertheless, questions persist about the true participation of the breeders in these negotiations and the effective realization of the commitments. Protests can be lively if the breeders' agreement is not duly acquired or if the operator does not keep his promises. Several examples demonstrate opposition to the development of crops on village pastures once the project has begun. Bush fires then damaged the plots (cases observed in the Boeny region where 1,500 hectares of a 2,00 hectare cashew plantation hectares were burned; likewise in Tuléar, where jatropha plantations covering about 30,000 hectares were partially damaged by fire).
- Owners with a private title deed are also reactive. In several cases where lease applications encroached on titled private properties disputes were generated and resolved by the intervention of the regional representatives or State-owned Land Services agents.
- Representatives from the Ministries of Agriculture and Water and Forests also affirm their ability to oppose certain registration applications when the development of the land can have harmful environmental impacts (particularly linked to deforestation). The risk is that the environmental stake is only a pretext in conflicts of a political nature between public service agents and elected representatives.

¹⁷ The Minister of Water and Forests established with the local populations organized in "basic communities" (for which the acronym in Malagasy is "VOI") contracts to transfer the management of natural resources. The contracts generally concerned wooded surfaces. Certain contracts, established according to the terms of the GELOSE law (secured local management), if they are renewed, can lead to the registration of these lands in the name of the "basic community" after ten years.

Photo 1: Land coveted for the development of a project in the Boeny region



Box 2: An example of contestation by the public and technical services to secure natural resource management rights

A Malagasy operator wishes to acquire a 20,000-hectare surface to develop a sugar cane production project. Having obtained the support of the main representative of the regional government, he presented his project to the concerned mayors and to the populations. The Mayor of the local government A is hesitant because the coveted area includes a forest area, managed by a VOI association within the framework of a natural resources management transfer contract.

A few months later, the mayors were summoned by the main representative of the regional government to get their agreement and so that the operator could start his application for land lease. At this point, the local government has a new mayor who, on the recommendation of the regional representative, agrees.

The operator finances the topographic services to realize the plan. A commission of State-ownership recognition arrives on the land. Inhabitants, VOI members notice the presence of the commission in the forest areas that they manage. They announce their fears to the person in charge of their VOI group. This latter then negotiates with the members of the commission and the operator. He proposes that lands managed by the VOI be removed from the requested surfaces.

Yet, the State-ownership Recognition Commission does not formalize these exchanges in the report and does not modify the plan. The operator wants to acquire a large surface all in one piece to successfully conclude his agricultural and irrigation activities. He hopes he can informally negotiate with the occupants of land included in the coveted zone.

The application for registration, including the plan and the report, is passed on to the regional offices of the concerned ministries, notably those of Water and Forestry. Already having been informed by the regional responsible for the VOI, the Ministry's regional office submits its veto and convenes a meeting with all of the concerned technical services (Agriculture, Environment, Water and Forests, State-owned Land Services).

The following events are recounted differently depending on the interlocutors. For some, it was decided by the various technical services that the operator had to finance the modification of the plan (more than 2,000 hectares could be removed) and a second visit by the Commission. For others, only the regional office of Water and Forests was in opposition, and did not have the support of either the Ministry or the VOI members. The VOI members, for the most part already employed by the private operator to initiate the agricultural work, would in fact have no interest in opposing the project's development. Finally, for some, these oppositions were the result of political conflicts between the various personalities involved.

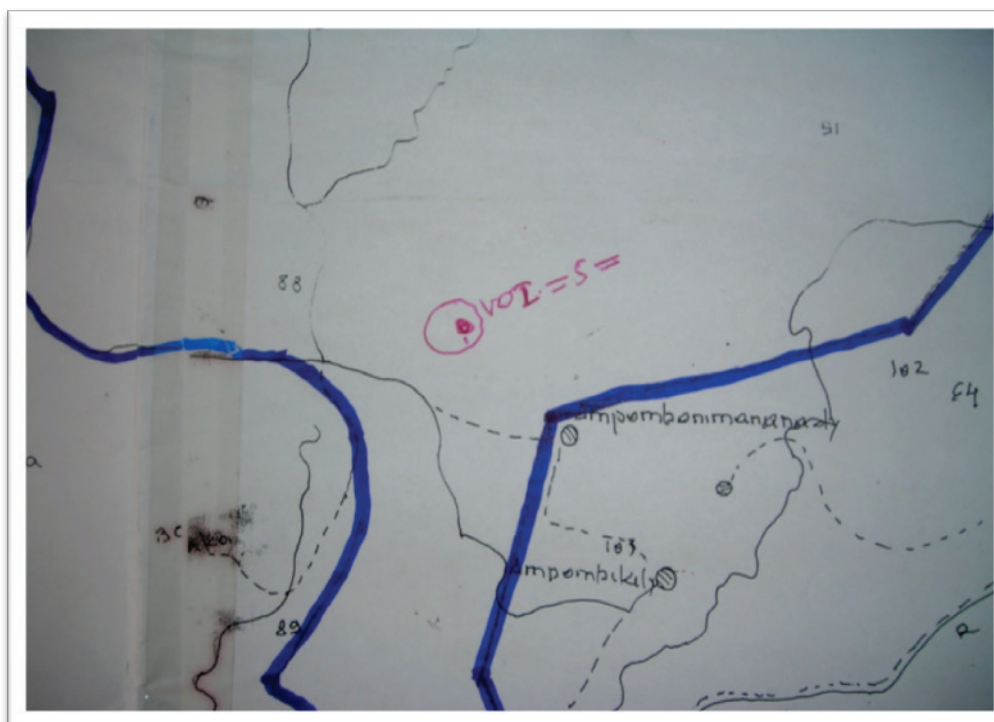
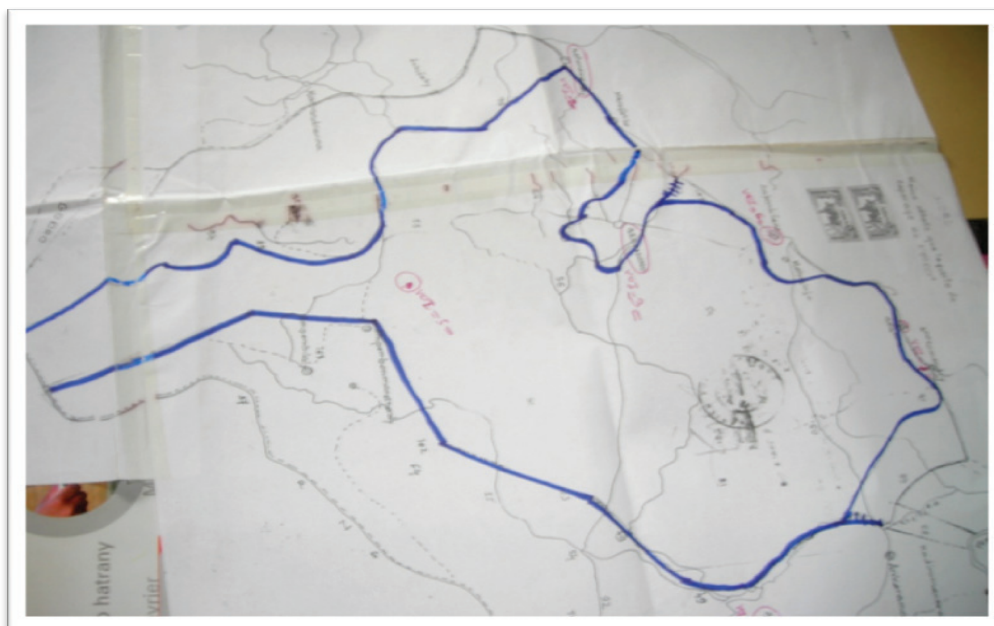
According to the business plan and the environmental impact assessment, which will

be presented by the operator, the regional office of Water and Forests announced that the opposition to the registration application could be maintained and extended to all wooded areas. The desired zone is indeed rich in jujube trees whose exploitation supplies Mahajanga with firewood and coal. The withdrawal of the wooded areas could decrease the coveted surface by up to 80%. For some, the defense of such a position arises from economic advantages that the actors in the wood-energy value chain would not like to lose.

In addition, even if the VOI members' rights on lands are successfully respected, numerous questions linger concerning pastures or land reserves for the village's future generations. Those villagers most involved in breeding made their fears known, but did not protest enough for the grazing areas to be removed from the lands to be leased to the investors. Two reasons explain this situation. First of all, the operator and his team promised the breeders that they would develop grazing areas on the edge of the village with improved grazing. Then, the villagers did not want to oppose the project and hoped to see it develop in their village. According to the presentation they received, they saw the project as an opportunity to obtain jobs, to benefit from irrigation infrastructure, and to cultivate some sugar cane to sell to the operator.

This case demonstrates the ability the population to react and of their capacity to mobilize technical services to protect their land rights. But it also shows the population's divided positions between the possibility of accessing jobs and the protection of their land rights. It also highlights that dispute will certainly be resolved between the State's technical services and the Ministries, without involving the population.

Photos 2 and 3: Forest territories under natural resource management contracts (red circles) included in the land covered by the lease (blue delimitation)



Investors' land security

a. A long and costly process to access land and secure rights

For investors, the objective is to formalize their land rights so as to obtain financing from their banks or their shareholders and, more broadly, to secure their investment. The required procedures demand significant financial and time investments from the investors.

One part of this investment is incompressible. The effective security of investors' land rights is strictly linked to that of the owners and the residents. The absence of encroachment upon other individually or collectively claimed lands significantly limits the risks of conflicts. The time dedicated to the consultations and to the negotiations with the users and the owners cannot be reduced. Expenses dedicated to realizing field inquiries for the Commission of State-ownership Recognition, to the topographic survey and to the demarcation cannot be avoided.¹⁸

Another part of this investment, on the other hand, depends on administrative efficiency. Because of a lack of harmonized processes, systematic coordination between the technical services, and because of various institutional points of entry, the operators receive different privileges or advice depending on which elected representative or civil servant they met. They lament that there are no clear directives regarding to the nature and the order of documents to supply. They must engage in several back-and-forth processes between the regional directors of the State-owned Land Services, topographic services, the mayors, the central State-owned Land Services, ONE, even the EDBM. Furthermore, because of the political transition and of the appointment of new Ministers, regional representatives and senior officials, most of the operators were forced to renew their whole application.

This lack of clarity for the operators and the significant time dedicated to their files would sometimes offer to the representatives of institutions the opportunity profit from support for the operator. The investors encountered complain about frequent demands for financial and material compensation by certain State and regional and local representatives, which add to the formal expenses of the administrative procedures. In situations where several operators were present, it was agreed that interlocutors raise the stakes.

The low price of the rents (less than 1€ per hectare), which are very attractive for the operators, often mask the total cost required for the preparation of the contract and its negotiation with the populations, the regional and local governments, and the technical

¹⁸ Numerous questions arise about the time and cost required for the topographic services to succeed in demarcating plots of such scale. The demarcation of a large surface of land the realization of the topographic plan is an enormous amount work for the State-owned land services agents, given the human and material resources at their disposal. For example, Boeny's topographic service has six people in total, who estimate that they can delimit at most 20 hectares a day if the terrain is not too rugged. For 20,000 hectares of land, one thousand working days would be necessary, if this service does not handles any other file during this time!

services. To limit the initial investment (cost of demarcation and the annual rent), operators asked for evolutionary leases with the aim of progressively extending the project's land holding (up to a predefined maximum surface).

b. The lease contract: A theoretically sound securing of rights that is sometimes unpredictable

In certain countries, the land contracts established between the lessee and the State seem extremely succinct – less than a page (Cotula and al. 2009). In Madagascar, lease contracts, based on examples of contracts discussed in the present study, can reach five pages. Certainly, the number of pages does not guarantee the quality of the contract, but can provide an idea. Numerous clauses specify rights and duties of the lessee, of the State, and the conditions that can lead to the termination of the contract (unrealized planned work, defaulting on payment of rent). The contract is limited to the land dimension but makes reference to the impact assessments, which must be attached in annex. Based on the lease contract, the operator's land rights are guaranteed in theory by the law.

However, the risk of the State opportunistically breaking the lease contract and the eviction of the lessee is not unheard of in the Malagasy context. In the agricultural sector, certain symbolic cases of the State threatening to break a lease have already occurred.

5 Broaden the debate on a regulatory framework for investments

Two models of development presently seem to oppose one another. The one depends on national and foreign private investments to create agribusiness activities, partially oriented towards exports, which one hopes will have positive effects on economic growth. Other is based on family farming and aims to strengthen food security by protecting the existing rights and by promoting a set of public actions in support of farms.

The reality shows that these two models coexist and are not going to disappear any time soon. The majority of the Malagasy population lives off of family farming. The peasant societies have over centuries shaped the rural areas in highly varied physical contexts, which attests to their adaptability. But it is also necessary to recognize that agribusinesses have been present in Madagascar since the colonial period and that it is very possible that new investors will reappear when the political situation stabilizes. Madagascar will not be spared by the strategies of land acquisition or, according to the point of view one adopts, will be integrated into the global investment dynamics, which are presently manifested in most Southern countries and the former Soviet Union.

Also, the debates and the reflections do not need to be reduced to a bipolar and simplistic controversy ("for or against one model or the other"), which reverts to discourses tainted with ideologies. The debates must, on the contrary, provide the elements for a policy of rural development that could combine both models. It is noted, moreover, that such combinations already exist and deserve to be better understood.

The challenge is to accentuate the mutual interests of the investors and the family farmers and to plan the principles and the institutional framework for agribusiness investment in Madagascar. This study, in its first observations, allows us to propose some ways forward.

Open a national debate on large land acquisitions

Before presenting the themes for reflection, it is the methods of conducting this debate that must be considered. The stakes are so important for the development of Madagascar, and the number of the actors concerned is so high, that this debate must not only be opened to the government and its technical services, but also at the parliamentary level and through process of consultation with civil society. This raises the following questions:

- To feed these debates, how can we make transparent the information on large-scale investments and analyses of the past or current experiences at the national level and in the other countries? What is the potential role of an observatory?
- How can we ensure that the public decision-makers, private operators, civil society and, especially, peasant organizations and NGOs can follow, express their opinion, and participate in these debates? The example of the Platform for Sustainable Agro-fuels is an interesting introductory experience. This dialogue process, associating representatives from ministries, investors, the WWF and peasant organizations, was introduced to tackle the development of an agro-fuel value-chain in Madagascar. This initiative demonstrates the possibility for a debate around stakes common to the various actors of the value-chain and the cooperative building of the regulation methods. How can this process be expanded and strengthened?

Debate agricultural policies

Madagascar's agricultural and land policies were already the subject of numerous discussions, which determined the orientations of public policies. Considering the new context of land transfers big agribusinesses, it is advisable to update points to be addressed. The debate should be oriented according to the following questions:

- Instead of assigning vast surfaces, can we promote models of production based on partnerships between private operators and local farmers, by contractual delegation of the agricultural production to the farmers or by forming joint ventures?
- How can we facilitate the joining of large-scale agricultural production and family farming, beyond the use of farm laborers? In particular, how can the private operators be encouraged to provide support for the consolidation of the local agricultural value-chains?
- What tools can encourage operators to supply the national market when the offer is insufficient (food commodity markets) or when value-chain development is considered desirable (agro-fuel)?
- When the agricultural productions envisaged by the operators are destined for exportation and processing, how can investors be encouraged to realize the steps (or some of them) of processing at the national level?

Coordinate the selection and the directing of investors

To facilitate the visibility of the on-going projects and the steps that the investors have to follow, the nature and the identity of institutions in charge of the direction of investors must be questioned.

Harmonize the processes for investors

a. Define a single institutional entry point?

The direction role devolved to the EDBM is not still respected by the operators, especially since the functioning of this structure has become very slow, leading some investors to take other routes (national, regional or local governments). Besides, no public institution has a vision of all the projects in preparation or underway:

- The EDBM really only knows the projects for which the operators – almost exclusively foreign – solicited their support for institutional direction and the identification of land suitable for investment. Furthermore, contact with the operators stopped, for the most part, at the beginning of the political crisis of 2009 and their staff was significantly reduced following international lessee's withdrawal of funds. At the moment, the EDBM is no longer really capable of identifying the projects still in preparation and their level of progress.
- The main representatives of the regional government are generally aware of the current projects but, because some have been recently appointed, the accuracy of their knowledge about the projects and their contents varies.
- The State-owned Land Service at the central level is only aware of the projects that initiated the process of applying for a lease. They do not necessarily know of the projects in preparation and do not have systematic information on the small-scale projects, for which the application for registration or a lease is handled at the regional level.
- Similarly, ONE only knows of projects that have entered the evaluation phase of their impact assessment.

When faced with these observations, the Ministry of Town and Country Planning and Decentralization asked to all main representatives of the regional government to provide information about the current projects. By March 2010, only some regions had replied.

The following are the questions that must be addressed:

- Can we be satisfied with the current diversity of the procedures and institutions directing the investments? What are the consequences of these scattered procedures? Is it relevant to define a "compulsory institutional path" and, if necessary, what must be done to encourage operators to follow it?

- What is the assessment of the EDBM in terms of receiving agribusiness investments? Will it be necessary to reactivate the EDBM or to envisage the creation of a new structure able to make the various investment projects coherent? With which resources?

b. Define a standardized approach including local consultations?

The current legislation imposes the passage through three institutions: the EDBM for the administrative formalities, the State-owned Land Services for access to land, and ONE for the impact assessment. A synthesis of legal frameworks concerning to the rights and duties of the operator, in addition to establishing the chronological order of the steps to be followed and documents to be obtained, could improve the visibility of the operators, reinforce the work and the coordination of the technical services and facilitate the role of the monitoring organizations.

Finally, the operator has no obligation to consult the populations and the local governments, except during the impact assessment. A reflection could be undertaken on ways to improve this consultation process and exchanges with the populations and the local authorities, as well as the formalization of the commitments made during these exchanges.

The questions to be addressed are the following:

- In the perspective of systematic local consultations and a more detailed description of the procedures to be followed, is it necessary to revise the investment code and law of December 2007? What would be the specifications concerning the central question of informing the local populations? Can we aim to conceive these texts within the framework of a technical committee open to investor and civil society representatives?
- In particular, we can impose a consultative process at the local level before the steps to access land have begun?
- How to ensure that the consultative processes lead to information and an effective consultation of the local communities and their representatives? How must the results of these consultations and exchanges be formalized? What is the possible role of a third party, which accompanies and oversees these processes, in this respect?

Selecting the projects

ONE, along with the services of Ministries concerned (Agriculture, Livestock Breeding and Fishing, Water and Forests, Environment, Town and Country Planning) require an environmental, social and economic impact assessment and can, by means of the specifications stipulated with the environmental license, propose certain reorientations (recommendations for local processing of the products, and to employ the local workforce).

The questions to be addressed are the following:

- Can certain aspects of the impact assessments (analysis of the opportunity costs of the land, the net number of jobs created, contribution to the objectives of the agricultural policy, effects of training at the local level) be strengthened?
- Is it desirable that a certified body realizes the impact assessment? If yes, which one?
- Must the role of the Inter-ministerial Evaluation Commission for the impact assessment be extended to the selection of the projects? If necessary, on what criteria (economic viability of the project, the potential social impacts, the methods of agricultural production envisaged, the company's reputation with regard to respect for the fundamental international rights, the company's adherence to voluntary steps, etc.)?

Regulate access to land and secure the existing land rights

In order to master the development of large agricultural exploitations and, especially, to limit competition between land uses, many Ministerial agents would like to preemptively identify land dedicated to investment.

While this appears to be an interesting option, it encounters major implementation difficulties. It is difficult to define *a priori* zones of investment:

- To be reliable, precise, and useful maps that couple pedo-climatic zones suitable for agricultural crops and land use methods are expensive (it is difficult to know the soil's properties: quality, slope, depth, image analysis level to identify the land uses). The definition of so-called arable lands varies and deserves a genuine reflection in the Malagasy context: does it include zones presently used for grazing? Is it limited to flat lands? Does it include lands for which the level of inputs must be increased to ensure a minimal return? Furthermore, the modes of land occupation (prairies, savannas, forests) supply no information about effective land use and on the modes of ownership; land areas reserved for grazing, fallow land, or for the wood-energy reserves are particularly hard to identify.
- The Regional Planning schemes enable the organization of the area's development. They can lead to the demarcation of investment zones but can have difficulties precisely identifying unoccupied land areas on a map.
- The definition of zones dedicated to agricultural investment can be difficult to enforce in practice.

It seems thus more effective to reflect on the pragmatic procedures to oversee the recognition and the securing of the existing land rights and, particularly in zones coveted by the investors, from the perspective of land contracts with the populations that hold rights.

Several procedures exist to regulate investors' access to land, notably concerning the means of accessing a lease. The on-going land reform is a major advancement towards recognizing and securing usage rights and can only be encouraged.

However, the study accentuated the need to debate the following points:

- In situations where local land offices are not yet present and where all the plots are not secured by a certificate, what are the possible ways to recognize land needed by future generations of farmers, for pastures, for fallows, for wood-energy supply? What are the possible rules of exclusion and compensation for lands that are subject to registration?
- Is it necessary to open the Commission of State-ownership Recognition to more actors: representatives chosen by the villagers; members of the local land office as well as expert witnesses to oversee the proper progression of the procedures and the broader dissemination of information about the lease projects?
- How to facilitate legal advice for the users, owners and local governments, during negotiations with the private operator? Who can finance this service? Who has the capacity for this role?
- Under what conditions can the land transfer lead to the expropriation of the users or the owners? What are the compensation procedures?
- What role can the local land office play in the mediation and the prevention of the conflicts between local populations, operators, and State-owned Land Services? Can the investors participate financially – through local taxes or through direct subsidies – to the creation or functioning of local land offices?

Define the parties' commitments

At the moment, the lease contract established between the operator and the State is accompanied by a list of requirements. A first point for reflection concerns the contents of the commitments established between the operator, the State and consequently the regional and the local governments and the population:

- Concerning the lease contract: reflections, already initiated within the Ministry of Town and Country planning and Decentralization, could be pursued on:
 - The amount of the renting royalties, and their key of distribution between the regional and local governments and the State,
 - The duration of the lease, respecting the time needed by the investor to obtain a good return on investment (stating a duration of 30 years).
- Concerning the commitments of the investor, the debatable points are the following:
 - Must they include social measures and/or rely on taxation tools that aim to redistribute the wealth created?
 - If they include social measures, how and by whom these they are defined? During the consultation processes undertaken during the impact assessment?

- Must these economic and social measures be quantified and subjected to a precise timeline? Are they only mentioned in the list of requirements or must they be contained in an explicit contract as for accessing land (lease)?

Ensure the methods of assessing the commitments of the various parties

The final elements for reflection concern the methods of assessing the commitments of the parties (operators, State, population) and of resolution of disputes.

- Which institutions and organizations are in charge of monitoring and evaluation and dispute resolution (local government, regional monitoring and evaluation units, monitoring and evaluation units of the various ministries, ONE)? How can they coordinate themselves?
- Knowing that their reputation is an important factor for companies, how could the dissemination of information be facilitated concerning the operators' practices to promote the companies that are respectful of the rights of the populations and the environment, and stigmatize those that are not?

Conclusion

This inventory of the establishment of agribusiness projects and the ensuing dynamics of land acquisition, allows for first set of lessons to be drawn.

The establishment of agro-industries and the transfer of lands are a national stake of the very first order – The question of foreign and national investments in agriculture goes beyond only the agricultural sector and assumes a national strategic importance. To successfully integrate agribusiness projects is probably one of the keys to Madagascar's economic development, and *a contrario*, any failure in this domain could lead to grave economic and social disturbances, harmful to the rural populations, as well as the investors and to the public authorities. This question raises stakes not only in terms of economic growth, but also social peace. The highest institutions of the State, within the framework of national debates, have to seize it in order to define multi-sector oriented development policies that favor investment, while guaranteeing protection of the rights and interests of the concerned populations. Making the texts and institutional frameworks coherent emerges as a priority to guarantee economically favorable results for communities, local governments, public authorities and investors.

Opacity does not pay – One can understand the logic of investors who do not wish to reveal their projects in a competitive environment, but the unfortunate experience of the negotiations led by Daewoo and Varun demonstrates the patent failure of projects implemented "in secrecy". The confidentiality clauses stipulated in contracts agreed to by these two groups perhaps protected them from the strategies of rival firms, but they also led to the emergence of rumors and suspicions, and did not succeed in keeping the investors' intentions secret. On the contrary, the whole world was informed about the Daewoo project! This empty hope for confidentiality is moreover contradictory with the scale of such projects. How could one believe that prospecting hundreds of thousands of hectares of land, made visible by the work of several topographic brigades, will be unnoticed, especially in rural areas where the risk of despoliation of lands is a traumatizing reality? It is in the investors' interests to engage in genuinely transparent negotiations with the concerned populations; confidentiality on the subject guarantees the failure of the projects before they even begin.

The announced momentum of land acquisitions did not materialize. Less than 1 % of land coveted from 2005 to 2009 by 52 agribusiness projects is cultivated today! The political crisis Madagascar is experiencing is one of the main explanatory factors for the abandonment of numerous projects, particularly because of the banks' unfavorable risk assessments for the financing of agribusiness projects. The media's power in the social protest is another determining factor. From now on, any company that intends to limit the risks to its reputation will have to take into account, from the onset of new investment projects, civil society's ability to react, the efficiency of its international intermediaries and the communication opportunities offered by the Internet. The

globalization of strategies to control land is accompanied by a globalization of protests against them.

“Cultivable land”, without rights and infinitely available? One must wonder about the real extent of arable land that is still unused and interesting for agribusiness exploitation. Certain statistics that claim that 95% of arable land is not cultivated undoubtedly need to be revised. These figures have a political connotation: they can justify the transfer of large surfaces under the pretext of impacting only a very low proportion of the cultivable land. On the ground, the reality seems different and lands “un-cultivated arable land” is sought, so much so that investors are sometimes in competition to obtain the same land. During future debates, it is advisable to revisit the notion of “arable land”, by recalling that Malagasy rural areas are rarely without rights.

Strategies to strengthen local communities’ rights – The roles of the State, NGOs and civil society still seem very weak, even absent, insofar as protecting communities and strengthening their negotiation capacities. Access to information is severely lacking at level of the population, which does not have legal assistance for the negotiation of employment contracts, in the establishment of the lease contracts, or in the protection of their vital spaces (water resources, pasture, family farms, fuel food reserves, etc.). Lessons concerning “win-win” contracts that allow inclusion of the populations concerned in decision-making can be drawn from other African countries.

This study is to be considered as the first step of a longer process, needed for the conception of a regulatory framework for agribusiness investments. This framework is one element of a rural development policy that should favor investments that integrate family agriculture.

The next steps proposed to follow this study could be organized in a process comprising three phases:

- i. Information about the strategies of agribusiness establishment and the conception of a regulatory framework for investments
- ii. Debating and defining orientations
- iii. Joint definition of a regulatory framework

It is a question of:

- Determining the skills to assemble in an entity to reflect upon and conceptualize a regulatory framework for agribusiness investments. The Sustainable Agro-fuel Platform, the Land Observatory, the EDBM, ONE, the concerned ministries could be mobilized to establish this national capacity.
- Continuing to gather information about the current processes of large-scale land acquisition and the establishment of agribusinesses, to identify Malagasy agribusiness models that allowed for the consolidation of agricultural value-chains and integration of family agriculture.

- Proposing orientations to establish the basic principles of a regulatory framework for investments.
- Provoking a national debate on the orientations of rural policy development, and particularly land policy, protecting the existing rights and welcoming international capital; and to open this debate, not only to the practitioners of the concerned sectors, but also to the various of the civil society representatives, to complete or revise the national rural development policy.

Annex: List of projects announced since 2005

Sector	Project name	Origin	Region	Production	Targeted surface (ha)	Surface developed (ha)	Mode of production	Targeted market	Status
Agro-food Processing	Daewoo logistics	South Korea	Melaky - Menabe - Atsinanana	Maize	1,300,000	0	Large-scale farming	Export	STOPPED
	Varun	India	Sofia	Rice, maize, lentils	230,000	0	Large-scale/centralized + peasant-based	Export	STOPPED
	Monteverde	Mauritius	Analamanga	Potato	1,000	NA	Large-scale farming	NA	STOPPED
	ERS	Mauritius	Vakinankaratra	Potato, carrot	?	0		Export	STOPPED
	Unitech	USA	Sofia	Sunflower	150,000	0	Large-scale farming	NA	STOPPED
	Land Mark	India	Ihorombe	Maize	5,000	1,000	Large-scale farming	Local + export	ON-GOING
	Groupe Caillé	France (Reunion Islands)	Analamanga	Potato, dried beans, legumes	300	NA	Large-scale farming	Export	ON-GOING
	Madabeef	United Kingdom	Menabe - Atsimo Andrefana	Beef cattle	200,000	0	NA	Export	PREPARATION
	Domaine du lémurien	Mauritius	Anosy	Legumes	1,000	NA	NA	NA	NA
	Soabe	France	Atsimo Andrefana	Cereals, legumes	4,500	NA	Large-scale farming	NA	NA

	Project Name	Origin	Region	Production	Targeted Surface (ha)	Surface developed (ha)	Mode of production	Targeted market	Status
Agro-fuel: jatropha	MCD (ex- D1)	Madagascar - United Kingdom	Boeny Alaotra Vakinankaratra	Jatropha	600	50	Large-scale farming (50 one 500) contract farming (600)	Local	ON-GOING
	DRAMCO	Madagascar	Boeny	Jatropha + coconut	810	0	Large-scale farming	NA	PREPARATION
	Magnard	France	Atsimo Andrefana	Jatropha	1,200	0	NA	Local	NA
	Vaudo	France	Boeny	Jatropha	1,500	0	Large-scale farming	NA	PREPARATION
	Bioenergy Invest	Madagascar	Boeny	Jatropha	2,000	2*49	Large-scale farming	NA	STOPPED
	Association "soavadia"	Madagascar	Boeny	Jatropha	2,000	0		Local	PREPARATION
	Jatro Solutions	Germany	Haute Matsiatra	Jatropha	3,000	NA	Large-scale farming	NA	ON-GOING

Agro-fuel : jatropha	Project name	Origin	Region	Production	Surface targeted (ha)	Surface developed (ha)	Production mode	Targeted markets	Status
	J – Oils	France	Diana	Jatropha	10,000	Less than 100 large-scale farming	Large-scale farming + contract farming	Export	ON-GOING
	JSL	Germany	Boeny	Jatropha	10,000	NA	Large-scale farming + contract farming	NA	ON-GOING
	Avana Group	United Kingdom	Bongolava	Jatropha	10,000	NA	Large-scale farming	PREPARATION	
	NOTS	Holland	Betsiboka	Jatropha	15,000	NA	Large-scale farming + contract farming	Local	NA
	Delta Petroli	Italy	Sofia	Jatropha	20,000	300	Large-scale farming	Export	ON-GOING
	Fuel Stock	United Kingdom	Boeny	Jatropha	30,000	More than 100	Large-scale farming	Export	ON-GOING
	NEO	France	Bongolava	Jatropha	30,000	10	Large-scale farming	Export	PREPARATION
	Flora Eco Power	Isreal	Boeny	Jatropha	30,000	600	Large-scale farming	Export	STOPPED
	GEM	United Kingdom	Atsimo Andrefana	Jatropha	50,000	20,000	Large-scale farming	Export	ON-GOING
	TRE	Italy	Atsimo Andrefana	Jatropha	80,000	0	Large-scale farming	Export	STOPPED
	Global Agro-fuel	Lebanon	Boeny et Sofia	Jatropha	100,000	0	Large-scale farming	Export	NA
	Bio Energy Limited (BEL) John Bizeray	Australia	Sofia	Jatropha	120,000	300	Large-scale farming	Export	PREPARATION
	Daewoo logistics	South Korea	Sava Atsinanana	Palm tree	300,000	0	Large-scale farming	Export	STOPPED
	Southern Hemisphere	Madagascar-Belgium	NA	Jatropha	NA	NA	Contract farming	Local	ON-GOING
	J and J	South Africa	NA	Palm tree	NA	0	Large-scale farming	Local + export	STOPPED

Agro-fuel : Sugarcane	Project namet	Origin	Region	Production	Surface targeted (ha)	Surface developed (ha)	Mode of production	Targeted market	Status
	Sopremad	Madagascar - France	Boeny	Sugar cane	20,000	5*50	Large-scale + contract farming	Local + export	ON-GOING
	JWE	Madagascar	Boeny	Sugar cane	20	20	Contract farming	Local + export	PREPARATION
	SITEC Brickaville	Madagascar	Atsinanana	Sugar cane	20	20	Contract farming	Local + export	PREPARATION
	SAIM	Madagascar	Diana - Sava	Sugar cane	1,520	(1500 large-scale farming+ 20 factory)	Large-scale + contract farming	Local + export	PREPARATION
	SITEC Farafangana	Madagascar	Atsimo Andrefana	Sugar cane	20		Contract farming	Local + export	PREPARATION
	E-Kolo	Madagascar	Atsinanana	Sugar cane	20	In discussions	Contract farming	Local + export	PREPARATION
	Madagascar Industries	Madagascar	Boeny	Sugar cane	20		Farmer	Local + export	PREPARATION
	TF Sarl	Madagascar	Diego	Sugar cane	NA	NA	NA	Local + export	NA
	Malagasy Green Energy	Madagascar	Atsinanana	Sugar cane	20	NA	Farmer	Local + export	PREPARATION
	Tora Green Industry	Madagascar	Atsinanana	Sugar cane	20	NA	Farmer	Local + export	PREPARATION
	GEAR	Madagascar		Sugar cane	NA	NA		?	STOPPED
	ULEM	Madagascar		Sugar cane		NA	Farmer	Local	STOPPED
	Osho group	South Africa	Menabe	Sugar cane	100,000	NA	NA	Export	?

	Project name	Origin	Region	Production	Surface targeted (ha)	Surface developed (ha)	Mode of production	Targeted market	Status
Reforestation	Oji Paper	Japan	Atsinanana	Eucalyptus - Acacia	30 000	0	Large-scale plantation	Export	STOPPED
	DRT	France	Moramaga	Pine resin	15 000	*	Concession	Export	STOPPED
	Mada Woodland	Norway	Sofia	NA	NA	NA	Farmer	NA	ON-GOING
	DEKO SA	South Africa	Alaotra Mangoro	Pine	33 000	0	Large-scale plantation	Export	NA
	Minergy Resources	NA	Anosy	NA	NA	NA	NA	NA	NA

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