Paper title: Large-scale land acquisitions in Africa. A contractual approach

Presented at the

Sixth Annual conference
Theme:

"Foreign Land Acquisitions in Africa: Implications for Trade, Investment and Development Policies"

24 – 25 November 2011

Arusha, Tanzania

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"The trick here is not just to harvest crops, but to harvest money"- Mikhail Orlov, founder of Black Earth Farming.[1]

[1] Both quotes from GRAIN, 2008, *Seized! The 2008 land grab for food and financial security*. Viewed 13 August 2011, http://www.grain.org/landgrab.

1. Introduction

1.1. A thirst for distant lands

In the past few years a renewed worldwide interest in farmland has turned the world's attention to the phenomenon of large-scale land acquisitions in the global South. A series of trends contributed to a dramatic surge in foreign direct investment (FDIs) in agriculture after a period of relatively low investment rates in this sector.[2] The drivers of this "land rush" can be found in the recent surge of food prices the world is experiencing, with hikes in 2008 and in 2011, when prices reached their highest level in real terms since 1984 [3]. In addition, it was estimated that in order to keep pace with the impetuous population growth, food production will have to rise by 70% by 2050[4]. These conditions clearly constitute a highly favorable environment for resource-seeking investments, qualitatively different from traditional market-seeking ones[5], not only for traditional investors operating in the agribusiness sector, but also for other actors such as big industrial conglomerates, sovereign wealth funds and even pension funds.[6]

The soar in food prices was partially caused by biofuel policies and the changing diet of a considerable part of the World population in developing countries. The preference for biofuels, in particular by the European Union, has resulted in land acquisitions for the production of palm oil, rapeseed, jatropha, soy bean and cassava since the early 2000s. Since some of these crops are also used for human consumption and some of the lands on which they are grown could previously be assigned for food-crops, the result is a further tension on food prices. In addition, governmental concerns over food security in land or water-scarce countries, in particular in the Middle East and in South-East Asia, are also causing a boost in government or government-backed investment in the production of food for export in the investor's country of origin[7].

A profitable investment climate - also for speculation - and a contingency of other political and socio-economical factors make therefore rather unlikely the possibility that such interest in farmland, or "land grabs" as defined by its opponents, would decrease in the near future[8].

The phenomenon has been the object of a growing debate, and most of the literature has been devoted to the investigation of the actual number and size of land acquisitions. As found by a World Bank study, around 56 million hectares of cultivable land were targeted by foreign investors in 2009 alone, compared to an average yearly expansion of agricultural land of less than 4 million hectares before 2008[9]. Approximatively 70% of such deals took place in Africa, and in particular in Sudan, Ethiopia, Mozambique, Mali, Democratic Republic of Congo and Madagascar. This is not surprising, considering that African countries are endowed with the largest amount of fertile uncultivated land, around 600 million hectares, representing the three-fourths of the global cultivable land currently not in use.[10]

However, most of the reported deals have not been implemented or terminated in their early phase. The risks involved are often too large, and include lack of capacity by the host government, an endemic country-risk that curses most of the targeted countries and, above all, a tangible threat of highly destructive repercussions on the livelihoods of the local population affected. Still, many observers have seen FDIs in land as the opportunity to effectively contribute to the economic development of some of the poorest countries in the

[2] Herger, N., Kotsogiannis, C. & McCorriston, S. 2008, "Cross-border Acquisitions in the Global Food Sector" *European Review of Agricultural Economics*, n. 35, pp. 563-587.

[3] *The Economist* 2011 "Crisis Prevention. What is causing food prices to soar and what can be done about that", 26 February, p. 10. On this issue see also: FAO, IFAD, IMF, OECD, UNCTAD, WFP, the World Bank, the WTO, IFPRI & the UN HLTF 2011, *Price Volatility in Food and Agricultural Markets: Policy Responses.*

[4] FAO 2010, *Growing Food for 9 Billion*, FAO, Rome, p. 3.

[5] Cuffaro, N. & Hallam, D. 2011, "Land Grabbing in Developing Countries: Foreign Investors Regulation and Code of Conduct", *Dipartimento di Scienze Economiche dell'Università di Cassino, Working Paper* no. 3, p. 6.

[6] A recent study by GRAIN, the first NGO to investigate the issue of land acquisition, has found track of more than US $ 10 billion investment by pension funds in worldwide farmland in the 2010-2011 period alone. See GRAIN 2011, *Pension Funds: Key Players in the Global Farmland Grab,* viewed 13 August 2011, http://www.grain.org/article/categories/13-against-the-grain.

[7] England A. & Blas J. 2009, "Saudis set aside $800m for foreign food". *Financial Times*, viewed 13 August 2011, http://www.ft.com/cmßs/s/0/59a9da3a-2920-11de-bc5e-00144feabdc0.html.

[8] The Economist Intelligence Unit, *World risk: Alert – Price rises spark food crisis fears,* viewed 13 August 2011, http://viewswire.eiu.com/index.asp?layout=homePubTypeRK.

[9] Deininger, K. 2011, "Challenges Posed by the New Wave of Farmland Investment", *The Journal of Peasant Studies*, Vol. 38, no. 2, p. 219-220.

[10] Cotula, L., Vermeulen, S., Leonard, R. & Keeley, J. 2009, *Land Grab or Development Opportunity? Agricultural investment and international land deals in Africa*, IIED/FAO/IFAD, London/Rome, p. 34 and 59-60.

world. Some much-needed foreign capital could flow into the country's economy, while large-scale farming can bring employment, spillovers of techniques and technology, and can result in improvement in land productivity, food production and ultimately food security.

Nevertheless, it is common ground that the negative impact of land acquisitions could offset the positive consequences for development, and they would result in massive human rights violation if certain measures were not taken. Land deals between foreign companies and local governments are often underpinned by a strong inequality in bargaining power[11]. Local populations might be expropriated of their land, which in Africa also embodies crucial societal and cultural values; this risk is further exacerbated by uncertain land tenure regimes in force in several African countries, mediating between customary, private and governmental tenure. Here the long term of the lease, up to 99 years, and the extension of the land allotted, frequently exceeding 100.000 hectares, have a severe impact on many livelihoods. The fiscal revenues from the investment are normally very low, and the host country expects to benefit from the investor's commitment to build infrastructures, to create new employment and to sell part of the production on its market. It is therefore essential that, at the very least, land acquisitions be based on a transparent negotiation process and on a sound contractual framework which exhaustively and unambiguously defines all relevant provisions able to bring positive outcomes for development, which at the same time also contribute to secure the investment and to avoid the risk of expropriation.

1.2. The contractual approach

After having framed the debate between advocates (although with many warnings) and opponents of the possible beneficial impact of FDIs in land, this contribution aims at investigating the contractual side of large-scale land acquisitions in Africa, where most of the reported deals have taken place and where similar characteristics are present. It will do so by analyzing 21 contracts between foreign investors (in all cases but one) and 11 African countries. The lack of transparency and the frequent secrecy surrounding the deals have affected the results of the analysis by deeply influencing the selection of the contracts, since only the few made public by the host government or leaked on the internet could be used for this study.

The limits of the analysis also lie in the high diversity of the evidence, with contracts encompassing different kind of projects located in countries where enormous economical, political and social conditions are present. Moreover, also the size of the investments varies substantially, as well as crops intended to be grown. However, the biggest limit is posed by the variety of legal instruments analyzed, since these contracts do not always constitute the main legal instrument underpinning the investment project. The contracts reviewed are in the form of land lease agreement, but also memorandum of understanding, project authorization, agricultural investment agreement or contract farming. It is acknowledged that deals are often regulated by different contacts, which could offset and balance obligations contained in previous ones or imposed by national law. In any case, all agreements contain provisions relevant for this study. Moreover, it is evident that if a preliminary contract already grants the land to the investor failing to define important clauses, the position of the host government in further negotiations would be seriously weakened and the overall positive impact of the deals diminished.

Many studies have stressed that host governments are willing to grant favorable conditions to investors, defined by low rentals and other fiscal benefits, and balanced by commitments to undertake further investments in the host country, normally in infrastructures and social or industrial facilities. The objective is to attract further investment, to obtain valuable spillovers of technology and techniques and ultimately contribute to the country's development. Given the preference for investors commitments rather than fiscal-revenues, the importance of the contract should not be underestimate, as the formers can only be defined in a contractual form.

The contractual analysis aims at assessing whether the current contracts represent a viable solution for a balanced outcome and the much sought-after "win-win situation" between development needs and business profitability. It also intends to highlight successful contractual provisions and best-suited practices to achieve

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[11] Von Braun, J. & Meinzen-Dick, R. 2009, "Land Grabbing by Foreign Investors in Developing Countries: Risks and Opportunities", *IFPRI Policy Brief,* www.ifpri.org/sites/default/files/publications/bp013all.pdf.

such end. A legal approach, centered on contract, international investment and trade law, will be mostly used to achieve this end. Nevertheless, a multidisciplinary approach will also be employed, in order to assess the viability of the projects and their likely impact on development and on local communities.

This contribution will conclude by evaluating whether the solution proposed by advocates of land acquisitions for development goals, namely a code of conduct in the framework of corporate social responsibility, is practicable given the particular features of the actors involved, and whether it could successfully offset the drawbacks of land grabbing.

2. A debate on conflicting views of development

The global debate on "land grabs" has grown in intensity after the publication of several reports by NGOs and international organizations that raised awareness on the issue and attempted to identify a quantitative and analytical background. Only in the last few months the debate has moved to the more official fora of academic publications and journals.

Contributions from researchers and policy makers, among the others, in the World Bank, FAO, IFAD, IIED and IFPRI constitute the first fundamental analysis on the complexity of land acquisitions. They are based on the assumption that FDIs in land could represent an important opportunity for development, but at the same time they acknowledge their adverse effects. In general, those reports confirm that inconsiderate behaviors are well-spread and local populations may suffer massive displacements, loss of employment due to increased use of mechanization and loss of livelihoods[12].

However, the biggest threat is the possible violation of human rights, including the human right to food[13]. Land rights are another very sensitive issue[14]: also when land seems idle or unused, in Africa it embeds social and cultural values, being the tangible heritage of the ancestors. It also constitutes an invaluable "safety net" for local people that have used it for generations for grazing, as a source of wild foods and medicinal plants, and for access to water; they consider it to be as theirs, even if they hold no formal title at all[15]. The ILO Convention Concerning Indigenous and Tribal Peoples in Independent Countries acknowledges the cultural and spiritual values connected to lands, including not only those formally owned, but also those "occupied or otherwise used"[16], and according to the United Nations Declaration on the Rights of Indigenous People[17], States shall provide mechanisms for the prevention of and the redress for any action resulting in a dispossession of indigenous people's lands and resources.

Lastly, if local populations decide to set aside their right to their common well-being, they have the right to effectively participate in the decision-making in matters affecting their condition, according to the right of self-determination granted by the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Moreover, they shall not be relocated without their free, prior and informed consent, and after having received a fair and appropriate compensation.[18]

In order to mitigate these risks, an effort towards responsible investment in agriculture is deemed to be necessary, and a code of conduct is often proposed as a possible solution. For instance, the World Bank suggests seven principles companies should comply with, namely ensuring compliance with existing land and resources rights; the preservation of food security; the actual involvement of all the stakeholders into

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[12] Report of the Special Rapporteur on the right to food, 2009, *Large-scale land acquisitions and leases: a set of Minimum Principles and Measures to Address the Human Rights Challenge*, UN doc. A/HRC/13/33/Add.2 (22 December 2009), p. 6.

[13] Under Article 11 of the International Covenant on Economic, Social and Cultural Rights, every State is obliged to ensure access to the minimum essential food which is sufficient, nutritionally adequate and safe to ensure their population freedom from hunger. See International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR).

[14] For a deeper analysis of indigenous land rights: Pentassuglia, G. 2011, "Towards a Jurisprudential Articulation of Indigenous Rights", *The European Journal of International Law*, Vol. 22, no.1, pp. 165-202.

[15] Spieldoch, A. & Murphy, S., 2009 "Agricultural Land Acquisitions: Implications for food security an poverty alleviation", in Kugelman, M. & Levenstein, S.L. (eds), *Land Grab? The Race for the World's Farmland*, Woodrow Wilson International Center for Scholars, Washington, D.C., p. 45.

[16] International Labour Organization (ILO), *Indigenous and Tribal Peoples Convention, C169*, 27 June 1989, C169, Article 13.

[17] UNGA Res 61/295, (13 September 2007) A/RES/61/295, Art. 8.

[18] Formalized in article 32 of the 2007 UN Declaration on the Rights of Indigenous Peoples.

effective consultations; ensuring transparency, good governance and accountability; respect rule of law and relevant industry best practices; and ensure social and environmental sustainability.[19] As noted by the Financial Times, the World Bank seems to "walks a fine line between supporting the farmland deals in order to boost agricultural output in poor countries and warning about the potential risks of the controversial investments"[20].

On the other hand, opponents of land acquisitions point out that most of the risks are very difficult to manage or even to avoid. In their view, the World Bank attempts to create a new narrative on the issue, which presents large-scale investment in agriculture as the only solution to the problem of rural poverty; although it recognizes large-scale land acquisitions are likely to undermine people's access to land, it considers this as a mere "side effect of an essentially beneficial cure"[21]. Most importantly, the proposed code of conduct it is said to divert attention from the wrong economic development model it aspires to, and it contributes to the legitimization of the phenomenon[22]. Codes of conduct in general would be based on an uncritical belief "in the beneficence of formalistic and legalistic measures such as clearer contracts, clearer and more secure property rights […], transparent contracting, free, prior and informed consent, and state-civil society partnership[23].

Opponents of land grabs anyway recognize the necessity for investment in agriculture and increase in productivity, but they point out it should be carefully assessed what types of investment are needed, who will be the beneficiary and what will be the impact on rural development[24]. The same World Bank questions the impact in terms of employment, by presenting evidence that many deals employed a high level of mechanization and resulted in very limited new job opportunities, and are thus desirable only in areas with low population density.[25] Others have claimed that large-scale farming not only fails to reduce poverty but it actively produces it by fostering migratory fluxes, and conflicts over land and jobs between locals and transmigrants[26]. As recommended by the United Nations Special Rapporteur on the right to food, the use of alternative methods such as contract farming, which does not entail any change over land rights, should be explored by investors[27]. However, opponents of foreign investment in land conclude that a market-oriented approach is not going to deliver any tangible results, since "it is against the prevailing capital-logic to expect private investors to take the lead in designing and managing schemes that reduce their profits in favor of the labor of their attached smallholders/suppliers. For this reason, poverty reduction cannot be left to corporations. It requires intervention by states and/or donors".[28]

All in all, the debate has become characterized by an increased polarization between two different models of development, in which the opponents of large scale FDIs in agriculture exclude the possibility that any benefit may be delivered to the local population and alternative concepts of development urgently need to be considered.

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[19] Deininger, K., Byerlee, D, Lindsay, J., Norton, A., Selod, H. & Stickler, M. 2011 *Rising Global Interest in Farmland. Can it yield sustainable and equitable benefits?* The World Bank, Washington DC, p. XXVII. Similar recommendations are also issued, among the many, by Cotula, L., et alt., pp. 104-110 and by Von Braun, J., and Meinzen-Dick, R. 2009, p. 3-4.

[20] Blas, J. 2010 "World Bank Backs Farmland Investment" *Financial Times,* 7 September, viewed 13 August 2011, http://www.ft.com/intl/cms/s/0/0778c538-baaf-11df-b73d-00144feab49a.html#axzz1VDte3xzD. The article referred to the leaked version of the report.

[21] Borras, S.M., & Franco, J. 2010, "Towards a Broader View of the Politics of Global Land Grab: Rethinking Land Issues, Reframing Resistance", *ICAS Working Paper Series*, n. 001, p. 7.

[22] Borras, S.M., & Franco, J. 2010, p. 12.

[23] Borras, S.M. & Franco, J. 2010, "From Threat to Opportunity? Problems with the Idea of a Code of Conduct for Land-Grabbing, *Yale Human Rights and Development Law Journal*, Vol. 13, no. 1, p. 520.

[24] Center for Human Rights and Global Justice 2011, *Foreign Land Deals and Human Rights. Case studies on agricultural and biofuel investment*, New York, New York University School of Law, Center for Human Rights and Global Justice, p. iv. On the same issue also GRAIN, 2008, p. 9.

[25] Deininger, K., et al. 2011, p. 91.

[26] Murray Li, T. 2011, "Centering Labor in the Land Grab Debate", *Journal of Peasant Studies*, Vol. 38, no. 2, p. 288.

[27] Report of the Special Rapporteur on the right to food, *Large-scale land acquisitions and leases: a set of Minimum Principles and Measures to Address the Human Rights Challenge*.

[28] Murray Li, T. 2011, p. 289.

3. So much for a little piece of paper. The contractual side of large-scale land acquisitions

An objective assessment of the impact on the host country's development of large-scale FDIs in agriculture is difficult to be made, especially from a legal viewpoint. The often secreted or very difficult to accede to[29] terms of the investments further complicate such evaluation. For this reason we believe the albeit limited information provided by the few available contracts is helpful to understand the real terms of the projects and their possible implications. An analysis of the contracts will allow us to assess whether the current deals foresee effective mechanisms to minimize their adverse effects and to maximize benefits for host countries and local populations. It will also evaluate whether the terms of the deals are balanced and whether improvements in the broader legal terms of the projects are needed.

3.1. Research methodology

The contractual analysis is based on 21 international investment contracts between foreign investors and 11 African countries. Although most of the companies are incorporated under national law, in all cases but one has been possible to trace the foreign nationality of the major shareholders, and whether their country has signed a Bilateral Investment Treaty (BIT) with the host country. Moreover, in two cases (Sudan 1 and Mali 2) the foreign investor is a national state.

Before starting the analysis, some caveats about its limits are necessary. Firstly, the selection of the material was deeply influenced by the difficulty in finding any information about the legal background of land deals. Most of the acquisitions are surrounded by a high level of secrecy and lack of transparency[30], and only few contracts were publicly made available by the parties. This is the case of the Ethiopian and Liberian governments, which uploaded on the web some of their investment agreements[31]. Others were leaked and made public on various websites or case study reports[32].

Secondly, the social and economical characteristics of the host countries are highly diverse, including countries from Central, Southern, East and West Africa. Also the type of project varies heavily. The area sizes range from 2.000 ha to 1.000.000 ha; 11 deals foresee the cultivation of food-crops, 4 of biofuel crops and 5 of non-food monoculture crops such as sugar cane and rubber trees.

Thirdly, the legal instruments analyzed are quite different. Whereas land lease agreements can be seen as the most important legal framework of a land deal, in other cases the contracts are in the form of memorandum of understanding, project authorization, agricultural investment agreement or contract farming, which not always constitute the main legal instrument underpinning an investment project. For instance Sierra Leone 1, a MoU, explicitly foresees the possibility to further clarify or implement into greater detail any provision by a subsequent agreement between the parties. However, they always include provisions defining investor obligations and other commitments relevant for this study. It has to be borne in mind that foreign investment projects are often regulated by multiple contracts, each of those concurs in the definition of the final balance between rights and obligations of the investor and the host state. As a consequence, a single contract shall not be considered in insolation, since unfavorable provisions may be offset by more favorable ones in another legal instrument or in the applicable law[33]. Nevertheless, the importance of those contracts, and in particular of land lease contracts, should not be underestimated either, because they remain the main source containing crucial binding provisions for the investor and for the host country, for instance those protecting the social environment or securing investor's commitments.

For many projects it has been impossible to verify their implementation and assess whether their legal framework has successfully stabilized the deal, positively contributed to development and minimized

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[29] One of the contract reviewed, Senegal 1, even contains detailed provisions prohibiting both parties from revealing any information about the project.

[30] Viñes Fiestas, H., Sullivan, R. & Crossley, R. 2010, *Better returns in a better world. Responsible investment: overcoming the barriers and seeing the returns.* Oxfam, p. 10, http://www.oxfam.org/en/policy/better-returns-better-world.

[31] Respectively on http://www.ethiopian-gateway.com/eaportal/node/836, and http://www.leiti.org.lr.

[32] Most of them can be found at http://farmlandgrab.org/home/post_special?filter=contracts. Sudan 2 is included in Center for Human Rights and Global Justice, 2011.

[33] Cotula, L. 2011, *Land Deals in Africa: What is in the contracts?* IIED, London, p. 7.

possible negative effects. For this reason, we will try to evaluate the contracts only from a theoretical point of view, aware that the real situation might be different, but certain that a weak contract hardly contains effective mechanisms to held the investor accountable.
On all grounds mentioned above, it is obvious to say that this study cannot be representative of wider trends in a statistical sense.

3.2. The parties to the contracts
Except for Madagascar 1, contracts are entered into by the central government, a ministry or some form of governmental agency. Albeit it is impossible to assess the role played by the different actors in the negotiation of the deal, an interesting study has shown the process is more supply-driven than one may think [34]. In particular, in countries such as Tanzania (in Tanzania 1 the agreement is signed directly with the regional government) and Mozambique, the active role played by investment promotion, land agencies and local governments is remarkable. Those institutions are found to be able to control sizable areas of land for transfer to the public domain in the name of investment promotion for economic development and poverty alleviation, and are able to mediate and deeply influence community consultations. The role played by investment promotion agencies is also very strong in countries such as Mali, where a "one-stop-shop" for investors has been created and where a parastatal entity (the Office du Niger, signatory of the contract in Mali 3) is vested of administrative power on most of the country's fertile land.[35]
In Southern Sudan 2, the contract is signed by the regional government of Central Equatoria, but it contains a Community Support Program agreed upon by the investor and the Tinidilo Payam community. On the other hand, Madagascar 1 is the only contract directly signed with the local communities, grouped in 13 associations of local landholders. The type of the deal, a contract farming, is probably more suitable for an agreement at the lowest level, but serious concerns were raised over the very short timeframe allowed for negotiation and the local people's capacity to understand the complexity of the deal and its far-reaching implications[36].
In all the contracts the host party ensures the foreign investor that the land is given free from any claims and other legal impediments, even future ones. For instance, Madagascar 1 reads as follow:

> "Association of Persons is an association of lawful land holders in the SOFIA Region, and have agreed to the following:
>
> • Undertake to give the peaceful authorization, allotment and possession to VARUN AGRICULTURE SARL to use plains/land for the cultivation of rice, corn, maize, wheat, pulses, fruits, vegetables and other ingredients or for any other purpose.
>
> • Undertake to ensure that plains/land agreed to give to VARUN AGRICULTURE SARL will have no legal or other claims from from any other party and will be free from any nature of nuisance, possession and legal or other hassles."[37]

In Ethiopia 1,

> "The Lessor hereby covenants with and assures the Lessee that there are no legal or other impediments whatsoever in the Lessee's clearing the land and using the same for the lessee's activities on the land covered by this Agreement, and purposes ancillary or incidental thereto."[38]

[34] German, L., Schoneveld, G. & Mwangi, E. 2011, "Processes of Large-Scale Land Acquisition by Investors: Case Studies from Sub-Saharan Africa", Paper presented at the *International Conference on Global Land Grabbing*, Institute of Development Studies, Brighton, 6-8 April 2011, p. 26.
[35] The Oakland Institute 2011, *Understand Land Investment Deals in Africa. Country Report: Mali*, p. 10 and 22, http://media.oaklandinstitute.org/understanding-land-investment-deals-africa-mali.
[36] Andrianirina–Ratsialonana, R., Ramarojohn, L., Burnod, P. & Teyssier, A., 2011, *After Daewoo? Current status and perspectives of large-scale land acquisition in Madagascar*, International Land Coalition / International Fund for Agricultural Development, Rome, p. 6.
[37] "Contract Farming Between Varun Agriculture SARL and Each Association of Thirteen Different Plains in Sofia Region".
[38] "Land Rent Contractual Agreement made between Ministry of Agriculture and Rural Development and Ruchi Agri PLC", Art. 6.3.

In countries as Ethiopia, where customary tenure is not recognized, such an assertion from the host government may not take into due account the needs of the local populations and expose them to dispossession. On the other hand, also in the many African countries that have granted some form of recognition to traditional land uses in the past years in order to promote rural development,[39] it is not always clear who owns what, and which claims are allowed under customary rights[40]. In addition, in all these countries the government enjoys the sole legal authority to sign off land transactions; land expropriation for public purposes are allowed, but compensation mechanisms are not properly defined in many cases[41].

The foreign investor is a private investor in all cases but two. In some project it operates through a locally-incorporated company according to local regulations (for instance in Liberia 1, in the six Ethiopian cases and in Tanzania 1). In the two contracts where the investor is a foreign government, Sudan 1 and Mali 2, the distinction between public and private sector is not always clear-cut because of the involvement of entities whose nature is unclear. In Mali 2 in particular, the management of the project is left to the semi-private Libyan company Malibya.

By looking at the structure of the contracts, speculations can be made over which party took a more active role during the negotiations. The two Liberian contract share a similar structure, although they encompass projects with different characteristics. Evidence shows such similar structure is the result of an higher influence of the government on the negotiations, which resulted in a better deal for the host government[42]. On the other hand, the four Malian contracts contain completely different structure and features; a reason may be found in a more active role of investors, who shaped the deals according to their needs. The Ethiopian land lease agreements are remarkably similar, and this may be the consequence of the imposition of a model contract by the Ethiopian government, whose conditions seems nevertheless very favorable to foreign investors.

3.3. The land targeted by investors

In order to avoid social impacts, a suggestion frequently given to investors is to focus on marginal land[43], and satellite imagery is often used to determine unoccupied and unused land suitable for agriculture[44]. However, it has been pointed out that in Africa it is very difficult to assess which land is not used at all by local populations,[45] and considering the special value it is given - as already described above, consequently avoid the risk of displacement and loss of livelihood.

Conversely, evidence suggests that marginal land is infrequently targeted by investors[46]. In fact, most of the deals reviewed have targeted the most fertile and previously occupied land, such as the Ethiopian region of Gambela, location of the land in all the six Ethiopian investment contracts, which resulted in the relocation of some 45.000 people[47]. In other cases, such as in Cameroon 1, we can infer from the contract that displacements took place, since some forms of compensation are foreseen in the investment agreement. In Southern Sudan 1 and in Southern Sudan 2, the size of the project simply makes impossible to avoid any impact on local communities.

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39 Brown, T. 2005, "Contestation, Confusion and Corruption: Market-based land reform in Zambia". In Evers, S., Spierenburg C., & H. Wels (eds), *Competing Jurisdictions: Settling Land Claims in Africa*, Brill Academic Publishers, Leiden, pp. 79-102 Available at: http://www.oxfam.org.uk/resources/learning/landrights/downloads/market-based_land_ reform_zambia.pdf.

40 Borras, S.M., & Franco, J. ,"Towards a Broader View of the Politics of Global Land Grab" p. 34.

41 German, L. et al. 2011, p. 31.

42 Indeed Liberia 1 was used as a model for successive concession agreements. Kaul, R., Heuty, A. & Norman, A. 2009, *Getting a Better Deal from the Extractive Sector. Concession Negotiation in Liberia, 2006-2008*, Revenue Watch Institute, Washington, D.C., p. 69.

43 Deininger, K., et al. 2011, pp. 75-77.

44 The most comprehensive study in this field was undertaken by Fischer, G., van Velthuizen, H., Shah, M., & Nachtergaele, F. 2002, *Global Agro-Ecological Assessment for Agriculture in the 21st Century*, FAO/IIASA, Rome/Laxenburg.

45 Friends of the Earth International 2010, *Africa: Up for Grabs. The scale and impact of land grabbing for agrofuels*, p. 19, http://www.foeeurope.org/agrofuels/FoEE_Africa_up_for_grabs_2010.pdf.

46 Vermeulen, S. & Cotula L. 2010, "Over the Heads of Local People: consultation, consent, and recompense in large-scale land deals for biofuels projects in Africa", *The Journal of Peasant Studies,* Vol. 37, no. 4, p. 903.

47 The Oakland Institute 2011, *Understand Land Investment Deals in Africa. Country Report: Ethiopia*, p. 38, http://media.oaklandinstitute.org/understanding-land-investment-deals-africa-ethiopia.

In Mali 2, the exact definition of the land is completely left to the Libyan party, without requiring consent from the host government:

> "ART. 3 La Republique du Mali offre à la Société Malibya agricole une superficie de 100.000 ha net destinée à l'agriculture dans la région de Segou, dans le delta du fleuve du Niger précisément a l'ouest du Macina.
> ART. 4 La Société Malibya agricole a le droit de choisir plusieurs sites mais dans la limite de 100 000 ha net dans la même zone, en cas d'indisponibilité d'octroi de la terre citée à l'article 3."[48]

Also in Senegal 1 the land allocated is not defined in the contract. In these two cases it is likely that a subsequent contract would define more precisely the parcels, but the fact that the investment was allowed before the identification of the land and the establishment of effective safeguard mechanisms, raises serious doubts about the effective protection of local people, and the possibility for the host government to exercise efficient forms of control on the project and on its implementation.
The case of Tanzania 1 is quite interesting, because the land targeted hosted three refugee settlements "currently under the process of being closed"[49]. However, two out of the three camps were evacuated, after 40 years from their establishment, by the Tanzanian government to make way for the project[50]. The legal instrument analyzed, a preliminary Memorandum of Understanding for the conduction of a feasibility study, which nevertheless contains an agreement between the parties for the most important terms of the final contracts, does not mention any compensatory measure towards the refugees, although the government of Tanzania entered into commitments to that purpose[51].

3.4. The terms of the deals: lease durations, land extension and rental prices

The contracts reviewed, although with some variations, confirm to a large extent the main characteristics of the deals that many studies have pointed out: long duration, very large land extension and low rental.
The size of the land targeted ranges from a minimum of 2.000 ha in Mozambique 1 to a maximum of 1.000.000 ha of Southern Sudan 2, with a mean extension of around 129.000 ha. In all the deals land is leased, but in Mali 4, a 857 ha portion is sold in full ownership for € 2.280.000 to the investor for the construction of a processing facility. The duration of the lease varies from 25 years to 99 years, and it is renewable in most cases. Since different projects are often granted a similar duration, it has been suggested that such clauses are standardized and not based on the determination of an appropriate time-span to recover costs and make a reasonable profit [52], although it is impossible to assess from the contracts alone whether their duration is required by the economic of the project or by other factors.
Some contracts allow the investor to sublease the land: this is the case in Ethiopia 5 and 6, with the consent of the government and only after a considerable part of the project is made operative; in Mali 1, only after the entire allocation is made productive, and the investor remains nevertheless responsible for possible infringements by the sub-leaser; in Mali 2 and Cameroon 1 after the consent of the government; and in Southern Sudan 1, with apparently no restrictions at all. The possibility of sub-leasing blurs the distinction between a contract of lease and a contract of sale, and contributes to reduce the risk borne by the investor by allowing him to use the land in other ways, for instance, as collateral for credit. On the other hand, it is hardly desirable for the host government, since it limits its project monitoring ability and may lead to ill-defined legal relations with the sub-leaser.
The fiscal revenue for the host government varies substantially from case to case, and it is difficult to assess whether land is given for its fair market value or for less. In any case, a common view among African

[48] "Convention d'invcstissemcnt dans le Domaine agricole entre La République du Mali ct La Grande Jamahiriya arabe Libyenne populaire et socialiste". Art 3 and 4.
[49] Memorandum of Understanding for Conducting Feasibility Study between Mpanda District Council and Agrisol Energy Tanzania, 11th August 2010, p. 1.
[50] The Oakland Institute 2011 *Understanding Land Investment Deals in Africa. Agrisol Energy and Pharos Global Agriculture Fund's Land Deal in Tanzania". Land Deal Brief,* http://media.oaklandinstitute.org/land-deal-brief-agrisol-energy-and-pharos-global-agriculture-fund's-land-deal-tanzania.
[51] The Oakland Institute 2011, *Understanding Land Investment Deals in Africa. Agrisol Energy and Pharos Global Agriculture Fund's Land Deal in Tanzania.*
[52] Cotula, L. 2011, *Land Deals in Africa: What is in the contracts?*, p. 23.

governmental official is that rental revenues are of secondary importance if compared to the necessity to create new productive economic activities and to foster investment.[53]
In the cases where it was possible to accede to more information, it has been revealed that land was leased for a much cheaper value. In the six Ethiopian contracts, for instance, although a newly introduced price policy (with increase in value corresponding to a closer proximity to Addis Ababa) seems to be respected by the deals reviewed, land rates are from 80 to 280 times cheaper than the African average[54]. This is due, according to governmental officials, to the fact that investors have to clean the land an can rely on little infrastructure.[55] In Southern Sudan 1 and 2, land is leased respectively for € 0,03 and € 0,05 per hectare per year, although compensatory mechanisms in the form of royalties and yearly percentage increase are foreseen. In Southern Sudan 1 the host government even allows the company to explore for and eventually exploit natural resources:

> "The Cooperative acknowledges and agrees that the Company may undertake any other activity permitted by the laws of Southern Sudan on the Leased Land. Without limiting the foregoing, the Cooperative acknowledges that the Company may seek to explore, develop, mine, produce and /or exploit (x) petroleum, natural gas and other hydrocarbon resources, for both the local and export markets, and (y) other minerals, and may also seek to engage in power generation activities on the Leased Land. The Cooperative hereby agrees that it shall not oppose the undertaking of any such activities by the Company on the Leased Land and shall cooperate with the Company in any effort undertaken by the Company to obtain one or more concession therefor from the Government of Southern Sudan."[56]

In this case, the € 0,03 per hectare per year rental price can be seen as "little more than a symbolic payment"[57], especially for a country endowed with a huge amount of fertile land and with the potential to become the largest food producer in Africa[58]. In Mali 2 and 3, land fees are not indicated in the contract. A field study has confirmed that the price was not defined in successive contracts, but that the land was simply allocated for free to the investors, in return of their commitments.[59] In the case of Cameroon 1 the situation is exactly the opposite: if it was not defined otherwise in a subsequent agreement between the parties, the only source of income from the project for the host government would be the annual land fee of € 1 per hectare, since no other commitment is foreseen.
In Madagascar 1, where the deal was negotiated with the local communities[60], land fees are not present. Being the project concluded as a contract farming, a percentage of the production is granted to the farmers as a form of remuneration for their performance, and a portion is purchased by the company at a fixed price. However, a study has pointed out that the contract relies on unrealistic expected returns; a different estimation based on more viable increase in productivity has found out that those amounts of produce would probably not even ensure food security to the almost 250,000 farmers affected by the deal[61].
The already favorable investment climate is in many cases further improved by special provisions granting tax and fiscal advantages. The Ethiopian contracts, using a common structure and wording, acknowledge the importance of the proposed investment and offer a grace period on lease payment. In addition the Government undertakes to provide privileges such as exemption from taxation, import of capital goods and repatriation of capital and profits as granted under Ethiopian investment law. Other contracts grant ad-hoc fiscal advantages to the investor, such as in Liberia 1 and 2, whereas in Southern Sudan 2 the exact amount

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[53] The Oakland Institute, 2011, *Understand Land Investment Deals in Africa. Country Report: Ethiopia*, p. 28.
[54] Access Capital 2010, *2010 Ethiopian Macroeconomic Handbook*, http:// www.accesscapitalsc.com/downloads/The-Ethiopia-Macroeconomic- Handbook-2010.pdf.
[55] The Oakland Institute, 2010, *Understand Land Investment Deals in Africa. Country Report: Ethiopia,* p. 29.
[56] "Lease Agreement between the Mukaya Payam Cooperative and Nile Trading & Development", Art. 1.c.
[57] Center for Human Rights and Global Justice, 2011, p. 56.
[58] *The Economist* 2011, "Their Day in the Sun. Southern Sudanese are gaining independence on July 9th but have yet to build a fully functioning state", 7 July, p. 21.
[59] The Oakland Institute 2011, *Understand Land Investment Deals in Africa. Country Report: Mali*, pp. 26, 29.
[60] Andrianirina–Ratsialonana, R., Ramarojohn, L., Burnod, P. & Teyssier, A. 2011.
[61] Teyssier, A., Ramarojohn, L. & Andrianirina-Ratsialonana, R. 2010, "Des Terres Pour l'Agro-Industrie Internationale? Un dilemme pour la politique foncière malgache", *EchoGéo* , no. 11, p. 11.

of the exemptions has to be defined by a separate agreement with Ministry of Finance. In any case, the definition of the fiscal regime seems to be taken in the utmost account by the parties involved, and in particular by the investors. In Mozambique 1, the "Fiscal and Custom Incentives" section constitutes one-fourth of the contract and is by far the most detailed part of the agreement.

3.5. The difficult task of balancing business and development

Indeed, the aim of attracting investment and foreign capitals appears to be a key issue for host governments involved in land deals, more than public revenues. Given the generally favorable conditions investors have to comply with regards to rental, size of the land allotted and various fiscal benefits, it would be expected that these advantages are at least balanced by a number of provisions defining investors' obligations and other safeguard measures capable of bringing benefits also for the host country.

A common feature of African contracts is the attempt to balance the deal with an agreement between the host government and the investor on non-fiscal aspects of the investment, the so-called "commitments", i.e. other investments, normally in the form of infrastructures, the investor accepts to undertake for the benefit of the people and the region where he is operating [62] . Commitments aim at reaching a fairer "economic equilibrium" by compensating the limited revenue the country suffers due to the lease price, by providing a stabler long-term perspective to the project, and by engaging the investor in pivotal activities for the host country's development, which would hopefully result in technology transfers and spillovers of knowledge. As we will see in the contracts, commitments can also include an accurate schedule for land exploitation (as in the Ethiopian and Liberian cases, and in Mozambique 1, where a minimum amount of investment is defined for the first 2-year period), in order to avoid the investor refrains from starting the production.

Advocates of large-scale land acquisitions, among the benefits for local people, have also indicated, alongside the increase in productivity and technology transfer arising from investors' commitments, the positive impact in terms of employment. Investment in agriculture could create many jobs in farming or in upstream and processing activities [63]. In order to maximize the positive effects, a careful mix between capital intensive and labor intensive productions is to be found, with the objective to meet the development requirements and without resulting in unemployment for the many farmers were previously using less-sophisticated techniques. In addition, it is necessary that not only the less-qualified positions, but also at least a percentage of the more skilled ones are designated for the host country nationals, preventing thus the investor from importing manpower.

However, even from a quick assessment, the first impression is that most of the contracts may result inadequate in balancing benefits and obligations for the investor. Although length is not an indicator of a properly-drafted legal instrument, given the size of the project, its duration and its possible impact, it seems that short contracts such as most of the ones reviewed are unable to tackle all the possible economical, social and environmental issues that may arise during the project, and at the same time they may fail to address exhaustively the necessary safeguards and risk-management mechanisms. In addition, in some cases contracts are already granting authorization for starting the project, but details are limited and successive agreements are necessary to make the deal operative, for instance by defining the land. In this way, the government is in a weaker position to negotiate and define commitments and other safeguards not present in the main lease contract.

It should be noticed that except the two Liberian contracts and Southern Sudan 2, none of the agreements reviewed contains provision concerning investors' failure to comply with the implementation of its commitments and/or possible mechanisms able to ensure their enforcement, i.e. sanctions or the termination of the concession. However, the often weak monitoring capacity of the host state can compromise the ability to effectively control the activities of the foreign investor[64].

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[62] Cotula L. et al. 2009, p. 81.

[63] Among the others, in Deininger, K., et al. 2011, p. 34.

[64] Meinzen-Dick, R., & Markelova, H., 2009, "Necessary Nuance: Toward a Code of Conduct in Foreign Land Deals", in Kugelman, M. & Levenstein, S.L. (eds), *Land Grab? The Race for the World's Farmland*, Woodrow Wilson International Center for Scholars, , Washington, D.C., p. 74

3.5.i. Implementing measures

One of the most important issues for the host state is to ensure that the investor does not refrain from starting to cultivate, in order to immediately benefit from some return in terms of employment opportunity and increase in productivity. Contractual provisions containing a schedule for exploitation and implementation of the project are very frequent in oil production sharing agreements and are often resisted by the companies, that prefer to have more general commitments and not to be tied to any strict time periods[65]. In the agricultural sector, given the impact on food security entailed by having large extension of land left uncultivated, it is even more important to avoid that the investor "sits" on his land, occupying it without producing anything.

Most of the contracts reviewed contain some provisions relating to the implementing stages of the investment. The Ethiopian contracts provide for an early deadline for starting part of the production and for its complete implementation, whereas Mozambique 1 and Southern Sudan 2 contain an implementing measure in form of monetary investment to be made by the company within five years. However, in the last two cases, failure to start the production or to meet the targeted objectives does not lead to the termination of the lease, making these provisions hardly enforceable. In Southern Sudan 1 the implementing clause has little more than an hortatory value, since the investor only

> "agrees to use its commercially reasonable best efforts to engage in the development, production and/or exploitation of the timber/forestry resources within the Leased Land and to engage in agricultural production"[66].

On the other hand, the two Liberian contracts contain detailed schedules for trees plantation, as well as the obligation to relinquish the undeveloped parcels at the end of the implementation period.

3.5.ii. Investors' commitments

Regarding investors' commitments in infrastructure or other activities with a positive social impact, the evidence emerging from the contracts seems to clash with the view stressing their importance for the host country's development. Commitments are not always defined in investment agreements, and when they are, many factors cast serious doubts on their enforceability. It is however essential to understand that fundamental spillovers of technology can take place only if part of the investor expertise is somehow passed to the host countries through the construction of infrastructures such as processing facilities, power plants, roads, railways, irrigation networks, residential infrastructures, etcetera.

The six Ethiopian contracts and Mali 2 simply do not mention any further measure to be taken by the investor to the advantage of the host state. In Mali 2, however, the Libyan government accepted to undertake the development of additional 100.000 ha in the Office du Niger irrigation scheme, which represents a sizable investment for a country such as Mali, but with a limited impact, since the construction contract had not been awarded to a Malian company[67]. Cameroon 1 only defines a € 280.000 lump sum to be paid as compensation to the displaced communities. In other cases, such as in Sierra Leone 1, the decision whether to construct other infrastructures is left to company. In Southern Sudan 1 and Madagascar 1, these provisions reflect a very broad commitment impossible to quantify, let alone to enforce, by the investor: the contracts respectively record a commitment to undertake a

> "*commercially reasonable best effort* to enhance the livelihood of the communities within or adjacent to the leased land in which it conducts its activities. Toward that end, the Company will use its *commercially reasonable best effort* to assist in the provision by the Government of Southern Sudan of social and educational services for the benefit of the communities within or adjacent to the Leased Land, with the Company providing

[65] Stein, S. W. 2005, "Non-Fiscal Elements in Petroleum Production Sharing Agreements in Developing Countries", *Oil, Gas & Energy Law Intelligence*, Vol. 3, no. 1, pp. 11-12.

[66] "Lease Agreement between the Mukaya Payam Cooperative and Nile Trading & Development", Art. 2.b.

[67] The Oakland Institute 2011, *Understanding Land Investment Deals in Africa. Malibya in Mali, Land Deal Brief*, http://media.oaklandinstitute.org/land-deal-brief-malibya-mali.

(or causing its sub-lessees and/or sub-licensees to provide) training and apprenticeships to local employees in the business activities it undertakes within the Leased Land"[68] (emphasis added)

and to

> "bring good technology and experience, as well as the materials and necessary equipments for the realization of the project [… and] setting up social and cultural infrastructures (health center, schools and training, public institutions, road infrastructures, drinking water, house and equipments of the security guards) in the region where it is necessary for the implementation of the project"[69].

In other cases, the exact definition of the commitments is to be defined by a further agreement between the parties, as for the construction of irrigation facilities in Sudan 1 and some unspecified infrastructures in Mali 4. As already mentioned, the host government will suffer a lower bargain capability due to the fact that the investment has already been approved, and it is thus likely that the positive effects will be limited. A similar problem arises in Southern Sudan 2, where a detailed community support program in three time-periods was set forth by the investor. It envisages in a quite precise manner different investments in education and other infrastructures for the community, including improvement in access to clean water, agriculture productivity and transport system. However, a study has pointed out that it was implemented unilaterally by the company after the local community agreed to transfer the land title. In this way, the negotiating power of the community is undermined, as well as its ability to negotiate favorable terms.[70] In other contracts, such as in Senegal 1, the commitment to build a raw oil refinery and a processing plant for biofuels production is not subordinated to any measure providing for an implementation timeframe or countermeasures in case of non-compliance. The only article referring to investor's commitments in Senegal 1 reads as follow:

> " AgroAfrica AS accepte de :
> a. Développer et entretenir la terre de manière responsable.
> b. Couvrir les couts de toute la machinerie et des équipements nécessaires pour planter, entretenir et récolter les plantes.
> c. Contracter avec les fermiers locaux pour planter, entretenir et récolter les plantes.
> d. Etablir des facilités d'extraction pour produire de l'huile brute de Jatropha dans les aires de cultures.
> e. Etablir une société sénégalaise pour remplir ses engagements pris dans cet accord."[71]

Again, the Liberian contracts provide the most efficient provisions for securing investors' commitments, both in terms of definition and implementation. Liberia 1 contains exhaustive provisions for the construction of infrastructures and other facilities, such as wells to provide clean water, sanitation facilities and 2300 new houses for the employees. Among the commitments, it also encompasses the supply of important services to the community, including medical care, free of charge education for employee dependents, scholarship programs and vocational training. All commitments are defined in terms of capital required from the company, and a strict schedule with accurate deadlines for implementation is set forth. Most importantly, the failure for the investor to implement any obligation contained in the agreement would allow the host government to unilaterally terminate the contract. The same provision is present also in Liberia 2, which goes even further in the accuracy of the definition of the investments required by the company, by including in the annexes exhaustive copies of all housing plans.

3.5.iii. Local content and local employment provisions

As far as local content and local employment clauses are concerned, only few contracts make full use of them. Sierra Leone 1 requires the company to tender to local suppliers all ancillary services; Mozambique 1

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68 "Lease Agreement between the Mukaya Payam Cooperative and Nile Trading & Development", art. 1.d.
69 "Contract Farming Between Varun Agriculture SARL and Each Association of Thirteen Different Plains in Sofia Region."
70 Center for Human Rights and Global Justice, 2011, p. 53.
71 "Contrat d'Exclusivité pour l'Utilization de Terre conclu entre AgroAfrica AS et La Communaute Rural de Kounkane", Art. 2.

requires to hire at least 18 Mozambican citizens from the first year and at least 100 seasonal workers. Some local content provisions are merely hortatory, such as in Madagascar 1, where the investor agrees to give preference in the recruitment of local employees or workers, considering their merits, performance and capabilities. In the framework of contract farming, however, the employment of local farmers is ensured. In Mali 2 the Libyan party wants to reserve the right to hire Libyan nationals, and this is included in the agreement. Also in this case, the Liberian contracts seem to provide an efficient outcome: Liberia 1 and 2 include obligations to hire Liberian citizen for non-skilled positions, certain quotas for managerial positions and a "softer" local content provision, i.e. a "preference" for Liberian products and services.

> "Employment practices of Firestone Liberia shall conform to Law. In no case shall Firestone Liberia hire non-Liberian citizens for unskilled labor positions. Firestone Liberia shall give preference for employment at all levels of financial, accounting, technical administrative, supervisory and senior management positions and other skilled positions to qualified Liberian citizens as and when they become available, it being the objective of the Parties as soon as is practicable that the operations and activities of Firestone Liberia under this Agreement should be conducted and managed primarily by Liberian citizens. Subject to availability of qualified applicants, Firestone Liberia shall cause Liberian citizen to hold at least 30 percent of the ten most senior management positions within 5 years of the First Amendment Effective Date, and at least 50 percent of such positions within 10 years of the First Amendment Effective Date. Appointment of a Liberian citizen to a particular position shall not, however, preclude subsequent employment of a non-Liberian in such position as long as, subject to availability, the overall percentage of Liberian citizen employed in senior positions are otherwise met."[72]

Liberia 2 even fixes the prices to which the company may purchase rubber and oil products from smaller local farmers. In this way, the company's stronger market power is harnessed, and the investor is compelled to buy products from local producers at market prices.
The possibility of a large increase in productivity (yield gaps) is one of the main factors considered by the companies in the definition of a profitable deal.[73] Therefore, projects often make use of some form of mechanization and capital-intensive way of production. Although some contracts stress the importance of a preference for labor-intensive means of production (Sierra Leone 1), ultimately most of the deals analyzed involve also the employment of modern farming techniques. From Madagascar 1, for example, it emerges that the investor is willing to employ good technology and modern expertise in order to improve productivity. Also in Senegal 1 the investor agrees to import modern technology and machinery for the development of the leased land. It is therefore possible that the foreign company would provide jobs only to fewer farmers than those previously cultivating the land. A successful way of counterbalancing this adverse result is the creation of out-grower schemes[74], which consist in the provision by the investor of production and marketing services to farmers on their own land[75]. Although the definition of "out-grower scheme" sometimes encompasses a weaker vertical relation between the foreign company and the local farmers, it is often used as a synonymous of "contract farming". The degree of independence of local farmers anyway varies from case to case.[76]
The extension of the deal defined by Liberia 2 is around 240.000 ha, and none of the crops cultivated is for human consumption. In order to limit the impact of such a potentially disruptive project, a 44.000 ha surface adjacent to the concession was allocated for an out-grower program, with a joint management by the Liberian government and the investor. The government commits to seek the support of international financial institutions and other development funds, to select farmers entitled for the program and to establish risk-management procedures in order to monitor and prevent eventual environmental and social issues that might

[72] "Amended and Restated Concession Agreement between the Republic of Liberia and Firestone Liberia, Inc.", Section 11.1.
[73] Deininger, K., et al. 2011, p. 92.
[74] Robertson, B., & Pinstrup-Andersen, P. 2010, "Global Land Acquisition: Neocolonialism or development opportunity?", *Food Security*, no. 2, p. 281.
[75] Abwino, E.N. & Rieks, H. 2006, *Out-grower System through contract farming in Zambia*, Grolink / Agro Eco Report n. 04, p. 2, www.grolink.se/epopa/publications/Outgrower_System_Zambiac.pdf.
[76] Brüntrup, M. & Peltzer, R. 2006, *Outgrowers. A key to the development of rural areas in Sub-Saharan Africa and to poverty reduction*, Report of the DEG / DIE Workshop 18 August, 2006.

arise. The company agrees to develop and manage the area provided for out-growers and to purchase all the produce. In addition it supports and assists the out-growers and provide them with technical knowledge and management skills. The out-growers have nonetheless to pay yet-to-be-defined management and crop fees, and agree to adhere to work methods and standards set forth by the investor. An out-grower scheme is also foreseen in Sierra Leone 1, but it is not defined into further details in the text of the agreement. Although the company has described it as a priority for the project, as of now, no out-grower scheme has been established. [77]

In Liberia 1 a different type of community support program is envisaged, under which farmers' autonomy is not as undermined as in the case of out-grower programs. In order to offset the negative impact on the competitiveness of smaller local producers, the investor accept to support the Liberian rubber farmers by providing them almost free of charge with 700,000 rubber stumps a year for ten years, in this way supporting their production capability.

3.5.iv. Other safeguards

Since most of the deals reviewed involve the cultivation of food crops, it is essential that safeguard mechanisms are set in order to limit food insecurity and to avoid that the totality of the production is exported to the investor's country or sold on foreign markets. Being free from the constrains of international trade law (see section 3.7. for a deeper discussion), Liberia could impose the requirement to give precedence to the Liberian industry for the sale of rubber products, as in Liberia 1, or to sell minimum percentage of the production of palm oil and rubber as raw material for manufacturing by local companies, as in Liberia 2:

> "Investor agrees to sell at least 25% by volume of its estimated annual gross sales of crude palm oil (CPO) in Liberia (the "*Minimum Local Sales Amount*") at the prices set forth below. […] All domestic sales of CPO, whether at prevailing international or domestic prices shall be executed at free-on-board Monrovia prices. The first 5% of the Minimum Local Sales Amount shall be sold at a price determined in accordance with prevailing domestic prices for CPO within Liberia. The remaining 20% of the Minimum Local Sales Amount shall be sold at a price determined in accordance with prevailing international and market rates." [78]

Although the products at issue are not for human consumption, it is nevertheless reasonable to retain some control on the exporting capacity of a company enjoying a massive market power. However, similar provisions are not present in the other contracts. The only exception is Madagascar 1, which contains percentages of the final produce to be sold on the domestic market, but no safeguard mechanism are set up. In case of famine or drought in the host country, a fixed percentage of the yields would be nevertheless exported abroad.

3.6. The economic balance of contracts in Africa

It has been observed that because of their provisions on commitments, land acquisition contracts in Africa do not drastically differ from concession contracts, which normally include a 'build-operate-and-transfer' (BOT) provision, where the investor undertakes the construction and financing of infrastructure facilities and may operate and maintain them for an agreed period of time, during which the investor can charge fees for its use. At the end of the agreed period, the facilities are transferred to the host government[79].

However, the literature on commitments in FDIs focuses only on the urge for securing the host country's commitments, maybe unsurprisingly if we consider that the ultimate goal of Bilateral Investment Treaties and international investment law has traditionally been the protection of the investor from expropriation and other threats. Moreover, it was always given for granted that the host state had the capacity to negotiate a favorable deal and to compel the investor to comply with its obligations.

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[77] The Oakland Institute 2011, *Understand Land Investment Deals in Africa. Country Report: Sierra Leone*, p. 29. http://media.oaklandinstitute.org/understanding-land-investment-deals-africa-sierra-leone.

[78] "Concession Agreement between the Republic of Liberia and Sime Darby Plantation Liberia Inc.", section 8.7.

[79] Cotula L. 2010, *Investment Contracts and Sustainable Development. How to make contracts for fairer and more sustainable natural resource investments*, Natural Resource Issues n. 20. IIED, London, p. 25.

Some concepts are nevertheless applicable also for investors' commitments. One of the most acknowledged issues in contract theory is the necessity to stipulate a contract with precise and "hard" terms able to ensure credible commitments, because those terms are less open to interpretation and able to diminish the shifting of risk to the injured party in case of infringement. On the other hand, "hard" terms tend to reduce the level of flexibility the parties may want to have in case of considerable change of circumstances. It is therefore necessary to find a balance between credibility of the commitments and the desired level of flexibility.[80]
However, as we have seen in the contracts reviewed, the situation is far from being optimal, since most of them completely lack of hard terms, leaving a considerable margin of action for investors' opportunistic behavior. The absence of clearly defined and well-enforceable commitments results in a shift in risk allocation towards the host state, which suffers from the loss of significant non-fiscal revenues. This is the reasons why most deals are likely to have a very limited impact on development; moreover, due to the lack of social safeguards limiting the impact on local populations, the risk of loss of livelihood is amplified.

3.7. The constrains of international obligations. Not-so-tied hands

Some commitments, as well as all local content and employment provisions such as the ones reviewed, can be defined as "performance requirements". Although their effectiveness and legality are still debated, in some cases they were found to be economically beneficial for development[81]. On this point, concerns were raised over the limitations imposed by agreements previously entered into by host states. Oliver De Schutter, the United Nations Special Rapporteur on the right to food, fears they may preclude the imposition of useful measures aiming to ensure the benefits from FDIs would outweigh the risks.[82] WTO law[83] prohibits some of them in the Agreement on Trade-Related Investment Measures (TRIMs); local content requirements are declared to be quantitative restrictions and inconsistent with the principle of national treatment. In particular, safeguard mechanisms in the form of export control, preventing the foreign investor from exporting foodstuff, and providing that part of the production be sold on the domestic market are highly desirable in countries where an important part of the population is food-insecure, but are nevertheless infringing the TRIMs Agreement[84]. Other measures, such as the above-mentioned employment, training or export requirements are prohibited, conditioned or, at the very least, discouraged by most of the Bilateral Investment Treaties (BITs) and other multilateral and regional instruments[85].
The evidence suggests that even when countries are not constrained by the requirements of WTO membership or by a BIT signed with the foreign investor's country, not always the potentially successful balance mechanisms in the form of performance requirement and local content provisions are included in the contracts. This is the case in Ethiopia 6 and Southern Sudan 1, whereas Liberia 1 and 2 seem to make good use of this opportunity with the imposition of forms of export control, employment requirement and a "soft" form of local content requirement. However, Mozambique 1 is signed within the framework of a BIT between Mozambique and the Maldives, and it contains a provision regulating the employment of local workers. Unfortunately, the BIT is not publicly accessible and it is therefore impossible to assess whether it prohibits local employment requirements. Moreover, Madagascar 1 does include export limitations in the form of remuneration to the farmers, but this is a normal practice in contract farming.[86]
It seems thus that the international obligations entered into by the host governments influence only to a certain extent their possibility to introduce these measures. In particular it is remarkable that in some cases

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[80] Van Aaken, A. 2009, "International Investment Law Between Commitment and Flexibility: A Contract Theory Analysis", *Journal of International Economic Law*, Vol. 12, no. 6, p. 517.
[81] In particular local content provisions, either in terms of inputs and labor. See Balasubramanyam, V. N. 1991, "Putting TRIMs to Good Use", *World Development*, Vol. 19, no. 9, pp. 1218-1219.
[82] De Schutter, O. 2011, "How not to Think of Land-Grabbing: Three critiques of large-scale investment in farmland", *Journal of Peasant Studies*, Vol. 38, no. 2, p. 266.
[83] Among the 11 countries object of this study, Cameroon, Sierra Leone, Mozambique, Mali, Senegal, Tanzania and Madagascar are WTO Member States.
[84] An illustrative list of prohibited measures is indicated in the annex of the TRIMs Agreement. The above mentioned measure can be caught by item 2, (c) of the list.
[85] United Nation Conference on Trade and Development 2003, *Foreign Direct Investment and Performance Requirements: New evidence from selected countries,* United Nations, New York/Geneva, pp. 4-5.
[86] Eaton, C. & Shepherd, A. 2001, *Contract Farming: Partnership for Growth*, FAO, Rome, p. 10-11.

where no multilateral or bilateral agreement is present, such measures were not taken, probably because of a lack of awareness by the host governments of the implications arising from the deals. It appears that the shift in power from the host state to the investor entailed by international investment law[87] also takes place in the absence of international obligations, and it is even more striking if we consider that countries endowed with natural resources are normally in a strong negotiating position. This view is supported by the weak definition in most of the contracts reviewed of the measures that are frequently indicated to constitute the most efficient tools to reach the much sought-after "win-win" situation for business and development, with the result of an highly unbalanced framework to the disadvantage of the host state and, most importantly, to the local people affected by the project.

A possible partial explanation of such disequilibrium and lack of strong contractual terms may be explained, from the point of view of the investor, by the low risk he suffers when the bargaining power "shifts" to the host state after the deal is concluded[88], caused by the relatively low investment necessary to start some of the project and high expected return rates since the very first years.[89] In such a context of immediate high profitability, the investor would tolerate an higher risk entailed by a loose contractual framework even if it exposed him to a threat of expropriation. This low correlation between international obligations and investment confirms also the findings of a large literature on the interplay between BITs and FDI flows, which presents evidence of a weak relationship between the two, and the little impact of BITs on foreign investment, in particular in natural resources-rich countries, where investors seem to be less concerned with the overall domestic investment environment and also less prone to make use of the investment protection granted by international treaties[90].

4. Codes of Conducts and CSR. Different features, new implications

The contractual analysis has revealed that the legal provisions underpinning most of the land deals reviewed are likely to result in a limited, if not negative, impact on development of the host country. Although different circumstances concur to define the positive effects on growth, there is a wide margin for improvement and for better drafted contracts entailing a fairer distribution of rights and obligations between the investor and the host country. For instance, it is necessary a more accurate and enforceable definition of commitments; efforts in this direction need to be made both by the host government, by putting more pressure on the investor and negotiate a better deal, and by the foreign investor. The host country often suffers from serious deficits, from negotiation and legal drafting to ultimate monitoring or enforcement capabilities[91], but it is nevertheless possible to set forth equitable terms in natural resources contracts, and the case of Liberia shows that a government can successfully draft or re-negotiate a concession agreement with the support of world-class legal advisors, and with the mutual satisfaction of the host government, the domestic public and the foreign investor.[92]

From the perspective of the foreign investor the situation is more complex, especially where the host government's lack of capacity would require action from the investor in order to bring positive outcomes. In this case the investor is expected to sacrifice its profits on the altar of development. It is obvious that long-term deals such as the one reviewed are not sustainable without a certain support from the local population; however, to rely only on investors' goodwill may be dangerously naive. In other words, proponents of a code of conduct and advocates of corporate social responsibility do not consider that the peculiar characteristics of the actors investing in agriculture in Africa, and in particular the lack of some of the traditional motivations

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[87] Cheng, T. 2005, "Power, Authority and International Investment Law." *American University International Law Review*, Vol. 20, n. 3, pp. 465-520.

[88] On this issue, see Yackee, J.W. 2008, "Do We Really Need BITs? Toward a return to contract in international investment law", *Asian Journal of WTO and International Health Law and Policy,* Vol. 3, n. 121, pp. 121-146.

[89] Some investment funds are offering agricultural land funds with an expected return of 270% on a 5 year term. See for instance www.emergentasset.com. Obviously, deals involving the construction of processing facilities and other plants entail a much higher start-up capital.

[90] Tobin, J., & Rose-Ackerman, S., 2005, "Foreign Direct Investment and the Business Environment in Developing Countries: The Impact of Bilateral Investment Treaties", *Yale Law School Center for Law, Economics and Public Policy Research Paper*s, no. 293.

[91] Deininger, K., et al. 2011, pp. 129-133.

[92] Kaul, et al. 2009, p. 18.

urging companies to embark on voluntary initiatives, can considerably constrain compliance with CSR practices in some cases.
A comparison with the extractive and mining industry, which presents several common features with FDIs in land (i.e. large portions of land targeted, long term leases, severe impact on populations, frequent relocations, land-rights issues), can be helpful to understand this concept. For mining companies, CSR is crucial because it has a positive impact on public opinion's concerns over their environmental and social performance, and at the same time allow them to maintain their "license to operate"[93].
However, regarding the first point, the public opinion control on agricultural and foodstuff producers can be less effective than in other sectors. The "naming and shaming" campaigns that have often been successful against extractive companies could be less effective when the targeted-company is from the agribusiness sector. The reason lies in the fact that the consumer power, an important driver of CSR campaigns[94], is weaken, being in many cases quite difficult to trace where a certain agricultural product was cultivated, by whom, and under which conditions, in particular if it had been used as raw material for other products. Agribusiness companies seem less consumer-oriented and thus less affected by boycott campaigns or reputational damages. However, exceptions are possible, and there is evidence of deals where reference to internationally recognized good practices was included to the contract simply because the investor and the government thought it was "the right thing to do"[95].
The "license to operate" is a more pragmatic approach, and involves those activities fostering dialogue with shareholders and mitigating possible negative impacts on local populations, especially where companies are dependent on government consent, as in the case of concession or land-lease agreements. Whereas the possibility of the government to exercise effective control on the deals seems to be deeply compromised by the unfavorable terms of the contracts and by a frequent lack of capacity, the role played by local population and public opinion is still strong and in some cases effective. Some projects were even cancelled under public opinion's pressure and unrest, which ultimately resulted in the resignation of the Government which signed the deal[96].
On the other hand, international instruments such as the Equator Principles attempt to address the negative consequences of FDIs in developing countries when an international lender is involved. They were developed by a group of banks operating in developing countries which commit not to "provide loans to projects where the borrower will not or is unable to comply with [their] respective social and environmental policies and procedures that implement the Equator Principles"[97]. They include standards on social and environmental impact assessment, and the International Monetary Fund Performance Standard 5 on "Land Acquisition and Involuntary Resettlement," regarded as the most specific guidance on land issues[98]. However, the effectiveness of these rules very much depends on the mechanisms for disclosure and enforcement that are available to assess compliance with the standards and to deal with cases where infringements are reported.[99] Moreover, where the investor is a foreign state, a sovereign wealth fund or an investment fund, it is likely that the liquid assets at his disposal are sufficient not to require the involvement of any financial institution, and thus the possible application of the Equator Principles is restricted.
It was impossible to assess whether any international lender was involved in the projects reviewed, except in Sierra Leone 1, where four European Development Financial Institutions and the African Development Bank

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[93] Jenkins, H., & Yakovleva, N. 2006, "Corporate Social Responsibility in the Mining Industry: Exploring Trends in Social and Environmental Disclosure", *Journal of Cleaner Production*, Vol. 14, no. 1, p. 272.
[94] Porter, M.E., & Kramer, M.E. 2006, "Strategy and Society. The Link Between Competitive Advantage and Corporate Social Responsibility", *Harvard Business Review,* December 2006, p. 4.
[95] Cotula, L. 2011, Land Deals in Africa: What is in the Contracts, p. 35.
[96] This was the outcome of Madagascar 1 and of another 1.3 million hectares project by Daewoo Logistic in the same country, cancelled by the new Government after massive demonstrations and allegation of corruption against former President Mr. Ravalomanana, See Berger, S., "Madagascar's new leader cancels Korean land deal", *The Telegraph*, 18 May 2009, viewed 13 August 2011, http://www.telegraph.co.uk/news/worldnews/africaandindianocean/madagascar/5012961/Madagascars-new-leader-cancels-Korean-land-deal.html.
[97] http://www.equator-principles.com/principles.shtml.
[98] Deininger, K., et al. 2011, p. 136.
[99] Kiene, W. 2010, "Enforcing Industry Codes of Conduct: Challenges and Lessons from Other Sectors." Paper presented at the *Annual Bank Conference on Land Policy and Administration*, World Bank, Washington, DC, April 26–27, 2010.

declared their support to the project. From the Memorandum of Understanding it emerges that an impact assessment has been made, but control and enforcement of the implementation of the counter-measures identified to offset the potential damages is weak or, in some cases, impossible[100]. In countries such as Ethiopia the implementation of a social and environmental impact assessment is required by law; however in the contracts this requirement is not mentioned. It has been noted that only a few projects in that country were actually based on a social and environmental impact assessment, mainly due to a lack of capacity, and a rush to approve projects by the investment authority that precluded sectoral agencies from performing due diligence[101].

5. Conclusion

The issue of land grabbing has become a popular topic in the debate for development; however lack of transparency and undisclosed contractual terms have sometimes affected the full understanding of all the long-term implications of the phenomenon. The contractual analysis has shown that most of the deals either do not foresee or have very weak mechanisms to minimize their adverse effects and to maximize benefits for the host countries and local populations, whose rights are frequently at risk. The conditions to which the investor is subjected are often very favorable, whereas the same cannot be said for the host government. Most of the projects are highly unbalanced to the disadvantage of the host state, which could suffer from difficult implementation of important provisions concerning non-fiscal revenues, normally included in the contracts in form of investors' commitments or local content provisions, but too often defined in a ineffective and unenforceable form. Also local content and local employment clauses are hardly present, and in some cases subordinated to the investor's willingness to implement them.

The lack of any kind of safeguards and "strong" contractual terms able to secure investors' commitments and other positive measures for the host country's development seems to indicate a deficit of capacity from the host government. The absence of certain provisions, for instance the ones regulating local content, even when international obligations would not prohibit them, suggests also a lack of awareness of the implications of the deals and their economic and social impact on the country.

In conclusion, it is safe to state that a wide margin of action for the adoption and implementation of good practices, CSR and codes of conducts is present, as recommended by many studies, including the World Bank's. However, the particular status of the actors involved makes it more difficult than in other sectors. Unfortunately, given the potential risk of the investment projects, measures addressing negative impacts are urgently required. An effort by development agencies and international organizations towards the empowerment of the host government for the negotiation of better d eals, might be a possible solution. An increased awareness of the long-term implications is necessary and, in particular, host governments should understand that the attraction of foreign investment - with risky "races to the bottom" - is not an end in itself, but simply a means to contribute to the development of the country. Most importantly, investment in land should always be subordinated to broader development goals.

On the other hand, efforts should also be made at empowering the local population in understanding the far-reaching implications of the deals and provide them with the necessary tools to strike better agreements. On this point, a possible approach to follow is represented by the "legal empowerment of the poor', which is based on the claim that poverty persists partly because the poor do not enjoy legal rights, or the power to exercise those rights, because of a lack of capacity[102].

Only with these necessary safeguards a responsible way of investing in agriculture would be attainable, and it would not only be profitable for often negligent investors, but also, and most importantly, to the local population's need for development.

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[100] See Anane, M. & Abiwu, C.Y. 2011, *Independent Study Report of the Addax Bioenergy Sugarcane-to-Ethanole Project in the Makeni Region in Sierra Leone,* Sierra Leone Network on the Right to Food (SiLNoRF), Bread for All, Bread for the World and Evangelischer Entwicklungsdienst (EED).

[101] Deininger, K., et al. 2011, p. 57.

[102] On this issue, Banik, D. 2009, "Legal Empowerment as a Conceptual and Operational Tool in Poverty Eradication", *The Hague Journal on the Rule of Law*, Vol. 1, no.1 pp.117-131.

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Annex 1 - Contracts Table

	Type of contract	Company	BIT	WTO Member	Size	Lease rate p/ha/yr	Crops	Lease duration	Environmental/Social obligations	Investor Commitments	Local Content/ Employment Provisions	Tax and Fiscal Provisions	Destination of the Crops and Safeguards	Stabilization Clause	Implementation measures	Possibility to sub-lease	Grounds for Termination	Other remarks
Cameroon 1 (2006)	**Contract of Lease**	Société Sucriere du Cameroon (SOSUCAM) (France)	no	yes	11.980 ha	€ 1, adjusted every 5 years	Sugar cane	99, renewable	Absent	280.000€ to be paid as a form of compensation to the displaced communities	absent	Absent	absent	absent	Full implementation within 5 years.	Yes	Failure to implement in 5 years; failure to pay fees	
Ethiopia 1 (2010)	**Land lease agreement**	Ruchi Agri PLC (India)	yes	no	25.000 ha	€ 4,56	Soybean	25 years, renewable	Conservation of natural resources, soil erosion, respecting current legislation, env. impact assessment	absent	absent	Taxation and import duties, also for capitals	absent	absent	Start developing the land within 6 months. Full development within 4 years	yes	Failure to fulfill contractual obligation	
Ethiopia 2 (2010)	**Land lease agreement**	BHO Bio Products PLC (India)	yes	no	27.000 ha +73.000 ha	€ 4,56	Cereals, pulses, edible oil crops	25 years, renewable	Conservation of natural resources, soil erosion, respecting current legislation, env. impact assessment	absent	absent	Taxation and import duties, also for capitals	absent	absent	Start developing the land within 6 months. Full development within 3 years	yes	Failure to fulfill contractual obligation	
Ethiopia 3 (2010)	**Land lease agreement**	Sannati Agro Farm Enterprises PVT Ltd (India)	yes	no	10.000 ha	€ 6,50	Rice, pulses and other rotational crops	25 years, renewable	Conservation of natural resources, soil erosion, respecting current legislation, env. impact assessment	absent	absent	Taxation and import duties, also for capitals	absent	absent	Start developing the land within 6 months. Full development within 5 years	yes	Failure to fulfill contractual obligation	
Ethiopia 4 (2010)	**Land lease agreement**	Karuturi Agro Products PLC (India)	yes	no	100.000 ha, extendable to 300.000 ha in two years	€ 0,84	Palms, cereals and pulses	50 years, renewable	Conservation of natural resources, soil erosion, respecting current legislation, env. impact assessment	absent	absent	Taxation and import duties, also for capitals	absent	absent	Develop at least half the land within 12 months. Full development within 2 years	yes	Failure to fulfill contractual obligation	
Ethiopia 5 (2010)	**Land lease agreement**	Hunan Dafengyuan Agriculture (China)	yes	no	25.000 ha	€ 6.50	Sugar cane and related activities	40 years, renewable	Conservation of natural resources, soil erosion, respecting current legislation, env. impact assessment	absent	absent	Exemption from taxation and import duties of capital goods. Repatriation of capital and profits	absent	absent	Develop at least one tenth within the first year. Full development within 5 years	Yes	Failure to fulfill contractual obligation	
Ethiopia 6 (2010)	**Land lease agreement**	Saudi Star (Saudi Arabia)	no	no	10.000 ha	€ 1.23	Rice and processing activities	50 years, renewable	Conservation of natural resources, soil erosion, respecting current legislation, env. impact assessment	absent	absent	Exemption from taxation and import duties of capital goods. Repatriation of capital and profits	absent	absent	Develop at least one fourth within the first year. Full development within 4 years	Yes	Failure to fulfill contractual obligation	
Sierra Leone 1 (2009)	**Memorandum of Understanding and Agreement**	Addax Bioenergy Ltd and Addax & Oryx Holding Ltd (Switzerland)	no	yes	20.000 ha	€ 6,17, subject to revision	Sugarcane and any other crop	50 years, renewable	Technical and environmental studies already undertaken at the time of the signature. However, the company has the right to alter the level of the land, stop up or alter the course of any watercourse and remove vegetation at its discretion.	Ethanol distillery and power plant, roads, railways, pumping stations, irrigation networks, factory installation and related civil works, residential and social infrastructures, "as in each case determined by the company". Out-grower scheme.	4000 jobs are foreseen. tendering to local suppliers of ancillary services such as warehousing, packaging, engineering and shipping	Tax holidays and exemption of duties	abroad	yes, for land tenure	absent	no	not present	Project financed by European Development Financial Institutions and African Development Bank
Liberia 1 (2008)	**Amended and Restated Concession Agreement**	Firestone Liberia Inc. (USA)	no	no	48.153 ha, eventually extendable	€ 3,51, adjusted every 5 years	Rubber Trees	36 years, renewable	Public health and safety measures, Environmental management plan (to be approved by the Government), environmental assessment	Clear water, sanitation and housing provisions (with deadlines). Access to education to employees' children; participation and financial assistance to education program; scholarship program, rubber wood facility (2008), farm advisory support and free provision of rubber stumps to qualified Liberian rubber farmers, funding industry innovation studies	obligation to hire Liberian citizen for non-skilled positions, quotas for managerial positions, "preference" for Liberian products and services	Taxation according to law but at a rate not exceeding 30% of the net taxable income, partial exemptions on the turnover tax, facilitation on some import duties, taxes on interests and dividends	Commitment to give precedence to the Liberian industry for the sale of rubber.	absent	Detailed 10-year schedule for rubber trees replantation and implementation of social commitments. Provisions for forfeit of undeveloped parcels	no	failure to comply with any contractual obligation	Renegotiation of the 2005 Concession Agreement
Liberia 2 (2009)	**Amended and Restated Concession Agreement**	Sime Darby Plantation Liberia Inc. (Malaysia)	no	no	120.000 ha under the previous concession + additional 100.000 ha + 44.000 ha for out-growers program	€ 3,50, adjusted every 5 years	Palm oil, rubber, related products and downstream activities	63 years, renewable	Public health and safety measures. Specific conditions for relocation and reparation. Governmental approval required for new infrastructures. Out-growers program within 3 years. $ 5 per hectare a year + 1% of annual gross sales for a Development fund. Very strict monitoring of the project.	Clear water, sanitation system and housing provisions in compliance with the binding standards included in the annexes. One hospital to be built within 10 years, and other clinics. Investments in existing schools. Additional education facilities will be indicated by the Government. $ 25.000 per year in vocational training. Free education for employees' children	Fixed prices in case of purchase of rubber and oil products from Liberian farmers. Obligation to hire Liberian citizen for non-skilled positions, quotas for managerial positions. "preference" for Liberian products and services	More favorable aggregate income tax liability. Additional capital allowances and deductions. Exemptions on turnover tax, facilitations on some import and export duties. Partially withheld tax on interests and dividends	At least 25% of palm oil to be sold on the Liberian marked at fixed prices. At least 5% of oil and 35% of rubber to be sold as basic raw material for eventual future manufacturing	Absent	15-year schedule for rubber trees and oil palms plantation. Provisions for forfeit of undeveloped parcels. Vegetable oil refinery to be built within 15 years if commercially viable	no	failure to comply with any contractual obligation	Renegotiation of a 1954 Concession Agreement with B.F. Goodrich, amended in 1985

	Type of contract	Company	BIT	WTO Member	Size	Lease rate p/ha/yr	Crops	Lease duration	Environmental/Social obligations	Investor Commitments	Local Content/ Employment Provisions	Tax and Fiscal Provisions	Destination of the Crops and Safeguards	Stabilization Clause	Implementation measures	Possibility to sub-	Grounds for Termination	Other remarks
Mozambique 1 (2009)	**Project Authorization**	Emvest Chókwe Mauritius Ltd, Pro-Alia Investment 1 Mauritius, Ltd (Mauritius)	yes	yes	2.000 ha	€ 5,71	Agricultural production and cattle	25 years, renewable for equal periods of 10 years	absent	absent	Employment of at least 18 Mozambican workers from the first year and at least 100 seasonal workers.	Exemption from customs duties on capital inputs and VAT; reduced profit tax; profit repatriation for a base period of 25 years, renewable for ten-year periods; optional repatriation of the investment's total equity	absent	absent	A minimum total amount of investment of USD 5.236.000 to be undertaken within 2 years, through the delivery of equipment and/or currency	no	not present	
Sudan 1 (2002)	**Framework Agreement**	Syrian Arab Republic	yes	no	12.505 ha subject to increase	Not specified	Not specified	50 years, renewable	Commitment not to waste water resources, preservation of the environment based on international standards, 5% of the surface devoted to forest tree plantation. An economical feasibility study is envisaged	Provide irrigation to additional 10.000 acres, subject to further agreement between the parties	absent	exemption from import duties for all the equipment, 2-year exemption from custom duties for all production inputs, 10-year exemption from profit income tax	absent	yes, for tax and fiscal measures	Commitment by the Syrian party to build the necessary infrastructure within 3 years and start production within 5 years	no	not present (framework agreement)	
Southern Sudan 1 (2008)	**Lease Agreement**	Nile Trading and Development (USA)	no	no	600.000 ha (with further extension to 1.000.000 ha)	€ 0,03. Royalties to the local government starting from 40% of the revenues and increasing up to 50% for the last 25 years	Timber, jatropha, palm oil	49 years, renewable	Reforestation or agricultural cultivation program.	Commercially reasonable best effort to enhance the livelihood of the communities within or adjacent to the leased land	absent	Exemption from taxes and other duties to be defined in the future	absent	absent	the Company agrees to use its commercially reasonable best efforts to engage in agricultural production	yes	not present	The company is allowed to explore for and exploit petrol and other natural resources.
Southern Sudan 2 (2008)	**Land Title Agreement**	Tree Farms Sudan Ltd. (Norway)	no	no	179.000 ha	€ 0,05, increased by 2% every year	Tree plantation for timber and carbon credit scheme	99 years, renewable	Reforestation program and other environmental measure defined in the "Community support program"	"Community support program" included in the annexes, with detailed schedule of obligations in terms of infrastructures, facilities and equipment. However the implementation phase and amount of resources devoted to the program will be decided by the investor only after the land title has been transferred.	provide employment opportunity and training to the community	Exemption from taxation and import duties to be determined by an agreement with the Ministry of Finance	absent	absent	$ 3 million investment in 5 years to develop the property	Yes	Bankruptcy of the company or failure to comply with the community support program	
Mali 1	**Contract of Lease**	Petrotech Agro Mali SA (USA)	no	yes	10.000 ha	Not specified	Oleaginous crops/ jatropha for biofuel production	30 years, renewable	Ensure the proper conservation of the land, undertake all the necessary measures to avoid the spread of pests	Maintenance of hydraulic networks	absent	not indicated	absent	absent	At least 50% in three years and 100% in six years.	Yes	Non compliance with the implementation period, failure to properly maintain the water system, non-payment, change of use without consent	
Mali 2	**Agricultural Investment Agreement**	The Libyan Arab Jamahiriya	no	yes	100.000 ha, to be identified by the Libyan party	Land is allocated for free. Water fees are however present.	Agricultural production	50 years, renewable	Technical and environmental study is envisaged. Access to water sources is defined into detail	Absent. The Republic of Mali is committed to build the necessary infrastructure in the investment site	Right for the Libyan party to hire foreign experts	Not indicated	absent	absent	absent	no	not present	The project constitutes the biggest extension to the irrigation area of the Office du Niger. Oil, minerals and other natural resources eventually discovered on the investment site are property of the Republic of Mali.
Mali 3 (2010)	**Contract of Lease**	Société Moulin Modern du Mali (national investor)	-	yes	7.400 ha	Land is allocated for free.	Wheat and other agricultural products	30 years, renewable	Technical and environmental study is envisaged. Ensure the proper conservation of the land, undertake all the necessary measures to avoid the spread of pests	Maintenance of hydraulic network	absent	Not indicated	absent	absent	Implement at least 50% of the investment in 3 years and 100% in 6 years.	Yes	Non compliance with the implementation period, failure to properly maintain the water system, non-payment, change of use without consent	
Mali 4 (2009)	**Contract of Lease**	China Light Industrial Corporation for Foreign Economic and Technical Cooperation (China)	yes	yes	13.000 ha + 7.000 ha available after 3 years. 857 ha are sold	€ 30. The 857 ha portion is sold for € 2.280.000	Agricultural production	50 years	Technical and socio-environmental study is envisaged.	The company bears the costs of awareness campaigns, evictions and resettlement of villages. Infrastructures construction to be decided jointly by the parties.	absent	Not indicated	absent	absent	absent	no	not present	Project located in the Office du Niger irrigation area
Senegal 1 (2008)	**Contract of Lease**	Agroafrica AS (Norway)	no	yes	10.000 ha	Not specified	Oleaginous crops/ jatropha for biofuel production	99 years	Responsible utilization of the land leased	Oil refinery and processing plant.	Use of local farmers.	relief from water fee	absent	absent	absent	no	not present	Contract concluded with the Rural Community of Kounkane
Tanzania 1 (2010)	**Memorandum of Understanding for Conducting Feasibility Study**	AgriSol Energy Tanzania Ltd (USA)	no	yes	325.000 ha, although not indicated in the contract	€ 0,23, adjusted every 3 years	Agricultural production and related activities	99 years	Preliminary feasibility study already conducted. The contract, inter alia, regulates the conditions for a disclosed full socio-economic feasibility study	Training and assistance program for small holder farmers aimed at capacity building	absent	Not indicated	absent	absent	Yearly implementation plan (to be defined by the parties),	no	failure to comply with the implementation plan may result in the termination of the agreement for the non-implemented parcels	The MoU is subjected to further contractual conditions to be defined by the parties. It however indicates the basics terms reported in this table. The area identified for the investment currently hosts two refugee camps under the process of being closed.
Madagascar 1 (2009)	**Contract Farming**	Varun Agriculture Sarl (India)	no	yes	231.911 ha	Land is given for free. 30% of the crops is given to the local farmers as a payment for their performance.	Rice, corn, maize, wheat, pulses, fruits, vegetables	50 years, extendable to 99	Take due care of the lands allotted. Respect all the traditions and the social disciplines	Bring good technology and experience, setting up social and cultural infrastructures (health center schools, public institutions, roads, etc.)	Give preference in the recruitment of local employees or workers, considering their merits performance and capabilities	Not indicated	For rice, meat, wheat and pulses, the contract provides for percentages of the produce to be sold on the domestic market or used as stock. 30% of the produce is given to farmers as remuneration	absent	absent	no	not present	The contract is stipulated with 13 farmer associations, which remain the lawful owners of the land.