

French Position Paper



Large-Scale Land Acquisition and Responsible Agricultural Investment

*For an approach respecting Human Rights, Food Security
and Sustainable Development*

June 2010



This position paper was elaborated based on the reflections of an extending working group involving members of French Cooperation's "Land and Development" Technical Committee (CTF), the French Inter-Ministerial Food Security Group (GISA) and civil society organizations (*Large-scale land appropriations. Analysis of the phenomenon and proposed*

guidelines for future action, Technical Committee on "Land tenure and development", Agence Française de Développement, French Ministry of Foreign and European Affairs, June 2010). It was validated by the Secretariat of the Inter-Ministerial International Cooperation and Development Committee (CICID) in June 2010.

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

The French Inter-Ministerial Food Security Group, created in April 2008 to provide a joint response to the food crisis, is a reflection and exchange group focusing on food security; it brings together five Ministries, research organizations, civil society and the private sector:

- *Ministry of Ecology, Energy, Sustainable Development and Sea (MEEDDM)*
- *Ministry of Food, Agriculture and Fishing (MAAP)*
- *Ministry of Foreign and European Affairs (MAEE)*
- *Ministry of Higher Education and Research (MESR)*
- *Ministry of the Economy, Industry and Employment (MEIE)*
- *General Secretariat of European Affairs (SGAE)*
- *Centre International de Recherche Agronomique pour le Développement (CIRAD)*
- *Institut de Recherche pour le Développement (IRD)*
- *Institut National de la Recherche Agronomique (INRA)*
- *Agriculteurs Français et Développement International (AFDI)*
- *Comité Catholique contre la Faim et pour le Développement (CCFD-Terre solidaire)*
- *Coordination SUD*
- *FARM Foundation*
- *Oxfam France Agir Ici*
- *Peuples solidaires - ActionAid*
- *Agence Française de Développement (AFD)*



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I. The Emerging Land Issue

Public or private, national or foreign, investors launch acquisition, lease or contractual use of farm land programmes in countries where land resources are available and cheap, where the land market is generally managed by the State (in Africa, Central Asia and South America). The Food Crisis in Spring 2008, and then the Financial Crisis, have accelerated this trend. According to the Food and Agriculture Organisation (FAO), transactions have involved 20 to 30 millions of hectares of land for the last few years.

These land operations, which may be large-scale, most often aim at controlling a food production and avoid purchases on the fluctuating and unreliable international market. They also take advantage of new investment opportunities (anticipating on future food or land price increase; development of non-food crops — in particular bio-fuels; improved conditions for investors). They may be intended to protect the environment (to benefit from carbon credits or to preserve bio-diversity), or to control strategic resources, anticipating on possible shortages or tensions (with the idea to get ownership of subterranean resources).

II. The Impact of Land Acquisition

Large-scale investments in farm land may have **positive effects**:

- >> construction of infrastructures;
- >> generation of jobs and wealth;
- >> technology transfers;
- >> reduction of food insecurity at the global or local level;
- >> preservation of areas of ecological interest.

However, these positive aspects cannot become concrete without commitments and a monitoring of these commitments. Without commitments, there is a risk that land investments produce **negative effects**:

- >> contraction of small holders farming, with a negative impact on direct farm jobs and a risk of depletion of rural areas;
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- >> increased competition over land (land becomes less affordable and direct farming regresses), discouraging the settlement of young farmers;

- >> degradation of food security for the host country;
- >> environmental impact (deforestation, destruction of ecosystems, overexploitation of water resources, spread of phyto-sanitary products, mono-culture);
- >> social and political trouble at the local and sometimes national level.

Only an effective framework would protect land users rights and guarantee the transparency and the economic, social and environmental sustainability of land operations, through a balanced co-operation between investors, public authorities and civil society and producers organisations representatives, with a fair and equitable allocation of benefits between all the stakeholders.

III. French Position

The French position builds upon analyses on land policy, elaborated in the **White Paper on Land Governance and Secured Land Rights**, published in June 2009. France strongly believes that the main stake is to optimise the contribution of land investments to the achievement of **food security, secured land tenure, jobs preservation and creation and sustainable development**. It is governed by 2 principles:

- >> **respecting land users rights**, formal or informal (customary or traditional), individual or collective, is a prerequisite for any investment; and
- >> **ensuring that private use is compatible with general interests**, insofar as food security shall be considered as a global public good.

These basic principles apply throughout the 3 pillars of the **Global Partnership for Agriculture, Food Security and Nutrition**: knowledge and expertise; governance and policy coherence; funding and implementation.

● Develop Knowledge and Expertise on Land Issues

In the framework of the Global Partnership for Agriculture, Food Security and Nutrition, France calls upon the Committee on Food Security (CFS) to invite the **High Level Panel of Experts** (HLPE) to address the issue of farm land management already in 2010. Bearing in mind ongoing international processes, the following themes deserve in-depth study in the context of a **pluri-disciplinary approach** (involving social, legal, economical, agronomical and environmental expertise):

- >> existing and prospective statistical tools, at the 2050 horizon, on **land availability**, focusing on a regional approach;
- >> economical, social and environmental impact of the **forms of agricultural production** which develop with large-scale operations involving acquisition, lease or contractual use of land, including comparison with smallholder farming;
- >> comparison of the various tools pertaining to **land taxation** and **management of land investments and land measures**.

In the field of knowledge and expertise, **the French technical committee on land and development and the European land issues group should be consolidated**. This European group meets under the auspices of the informal European « Heads of Agriculture and Rural Development » group.

Specific research programmes on world land issues and rural and land policy should be developed. These programmes could be developed in the framework of the **Observatory of the World Agricultures**, which is being set up.

● Reinforce Global Governance on Land Issues

In the framework of the Global Partnership on Agriculture, Food Security and Nutrition, the CFS reform makes it a relevant discussion forum and strategic co-ordination platform for land issues.

The CFS should therefore become a forum where the impact of large-scale operations involving acquisition, lease of contractual use of land, and best practices in this matter, should be discussed, in connection with food security. France and its European Union partners may in this regard share lessons learnt from their agricultural and land governance policy, in the framework of agrarian systems based on modern farming and agriculture.

Beyond exchange of best practices, the CFS should be tasked to **identify guidelines** to ensure that land operations take place according to the best standards. In this respect, the nature of the different possible forms of action (voluntary or more binding approaches) and their content (rights and obligations).

Support Voluntary Approaches

Voluntary approaches may only apply if all the stakeholders concerned agree and if supporting measures are implemented, with the assistance of the donors community. They should be distinguished from more binding measures, which are more complex and require progressive approaches.

Initiatives targeting commitments from investors and donors, public and private, through voluntary tools, building upon internationally proclaimed rights and principles of economical, social and environmental sustainability, are becoming more structured:

- >> since 2008, the FAO has been working on « **Voluntary Guidelines on Responsible Governance of Land Tenure and Other Natural Resources** »;
- >> in September 2009, following a Japanese initiative, the World Bank, FAO and the International Fund for Agricultural Development (IFAD) presented **Principles for Responsible Agricultural Investments**, which received support from nearly 30 countries, including France. This work has to be articulated with the ongoing discussion on the FAO voluntary guidelines;
- >> specific clauses on land could be introduced in the context of the implementation of **the Principles of Ecuador**, which require from participating financial institutions to perform advanced impact assessments on any investment project beyond 10 million \$, and of **the United Nations Principles for Responsible Investments**, which provide for a peer review on social and environmental aspects.

These discussion fora allow for a multilateral dialogue on land issues. France will continue to express its position in these fora. The emerging consensus, with converging ongoing international initiatives, should be supported. It could give rise to favourable conditions, which would allow to go beyond « codes of good practice », if they do not materialise into improved behaviours from the stakeholders concerned.

Encourage to go Beyond Voluntary Measures

Beyond voluntary measures, the definition of disciplines allowing to face the problems arising from land appropriation and concentration, and the conditions for the effective application of such disciplines, should be given more thoughts.

The **International Covenant on Economic, Social and Cultural Rights** (ICESCR) recognises peoples' right to freely dispose of their natural resources (Art. 1) and the right to food (Art. 11). The **United Nations Declaration on the Rights of Indigenous Peoples** of 13 September

2007, though not binding, provides for mechanisms to protect these peoples' land rights (Art. 8, 10, 26 et 28).

An additional Optional Protocol, adopted on 10 December 2008, provides for a mechanism to examine individual and collective claims by the Economical, Social and Cultural Rights Committee, which reinforced the implementation of the rights contained in the ICESCR. Special United Nations Rapporteurs, in particular on the Right to Food and the situation of Human Rights and Fundamental Freedoms of Indigenous Peoples, may participate in the identification of violations affecting the right to food and land and lead to the elaboration of recommendations on these issues.

None of these mechanisms obliges the States which have ratified the ICESCR or adopted the United Nations Declaration on the Rights of Indigenous Peoples to respect their commitments in a binding way. Besides, Human Rights Treaties do not govern dispute settlement between private economic operators or investors and States in land operations.

These Treaties, in particular the ICESCR and the Declaration on the Rights of Indigenous Peoples may nevertheless provide for a basis, upon which a global binding system to protect land usage rights in connection with food security, could develop.

The European Partnership and Co-operation Agreements could incorporate clauses imposing certain rules on land operations performed by European firms overseas. A better application of international norms, protecting the right to food and land, under national or international dispute settlement procedures, to investments could also be encouraged.

Specific clauses or commentaries on land could be introduced in the context of **the revision of the Organisation for Economic Co-operation and Development (OECD) guidelines for multinational enterprises**. 12 countries outside OECD already apply these Guidelines. Other countries should be encouraged to join. The implementation of these Guidelines is controlled by « National Contact Points », which deal with claims of violation of these Guidelines.

Specify the Content of the Disciplines

With respect to the content of the disciplines which must be respected, **the World Bank principles provide for a well-shared starting point** (identification and respect of land rights, improvement of food security, transparency and good governance, consultation and participation, economical, social and environmental sustainability of investment operations).

These principles would however be improved if they were **more specific and concrete**. Thus, to identify and respect land rights (property or usage, individual or collective, customary or traditional rights), a particular attention should be paid notably to smallholder farmers, taking into account the rights of indigenous peoples and gender issues. To reinforce food security, it could be worth examining how a share of any investment could be dedicated to local food supply. More broadly, the issue of a fair and equitable allocation of the benefits arising from the exploitation of land should be addressed.

The application of these principles may be envisaged in the context of the implementation of Corporate Social and Environmental Responsibility. In this connection, many initiatives, such as the European « Modernisation » directive of 18 June 2003, have an interesting potential. This directive provides for corporate impact assessment on social, economical, sanitary, Human Rights issues etc... The enhanced requirements imposed on major companies by stock exchanges in terms of transparency and accountability also goes in the right direction.

Fairly Share the Benefits of Land Use

When fairly and equitably shared, the added value created by land investment would allow:

- >> poorest Countries to make the most of their land resources;
- >> local producers to increase the income generated by their production and to develop;

- >> the international community to adopt tools to favour economically, socially and environmentally sustainable practices.

Tools to better identify land benefits should be further explored as a matter of priority, at the different local, national and regional scales. In this context, **taxation tools**, allowing for internalisation of some negative external effects and, in particular, land taxes, as means to redistribute the benefits generated by land resources, deserve special attention.

At the national level, the implementation of a taxation policy to avoid **undue appropriation of land benefits** and discourage **speculation requires**, as other land reforms, first and foremost, political will. Regional harmonisation may be relevant to avoid competition among host countries and discourage investors to select countries with the lowest taxation rates.

● Better Integrate Land Issues in Development Assistance

For the implementation of development assistance policies, respect of land users rights and achievement of long term general interests remain the general principles. Issues of land and agriculture governance and policy should be better integrated in all the phases of the operations cycle involving acquisition, lease or contractual use of land, on the basis of the following actions:

- >> in accordance with processes leading to **strategic documents to fight poverty**, favour the elaboration of **national land markets regulatory frameworks** and support the construction of **economic models and national policies** for food security, land management, agricultural structures and access to associated natural resources, in particular water and forest;
- >> **strengthen capacity for all the stakeholders concerned** in partner countries, during the elaboration, the implementation, the monitoring and the evaluation of public policies and the negotiation of land investment and contractual agriculture projects;
- >> assist the countries concerned to **identify and establish records of existing land rights**, formal and informal, individual and collective, and to rethink ways to secure land and land users rights;
- >> in the framework of the support to decentralisation, improve means of **information and training** of peoples, local authorities, local organisations et local Government services to better integrate national land and agriculture policies into local development plans and contribute to a **better efficiency and a greater transparency of land governance**;
- >> contribute to the **economic evaluation and ex ante impact assessments**, primarily by the host countries themselves, in partnership with all the stakeholders concerned, putting the emphasis on medium to long term, to ensure that investments serve general interests, in terms of food security, local participation in the decision-making process, respect of existing agricultural production structures, jobs preservation or creation, application of international labour standards, conservation of the environment, taxation;
- >> assist in the development and dissemination of **indicators** at the local, national and regional level, for further consolidation in the framework of an international observatory, to analyse the impact of different production models;
- >> **support all the stakeholders, particularly federations of producers organisations**, at the regional level and, when they do not exist, national organisations, in order to allow them to produce or improve their own analysis on ongoing projects, assess risks and opportunities thereof and defend their interests;
- >> fund the set up of **local, national and regional monitoring and surveillance mechanisms**, bringing together public and private partners from the countries concerned, research bodies and the civil society, with respect to most important investment operations, so as to permanently control their development;

- >> contribute to effective mechanisms for **dispute settlement**, in particular at the local level (judiciary and/or alternative systems), and assessment and compensation of any prejudice.

Development assistance should provide an incentive to beneficiary countries to engage in responsible land policies. Donors should, in any event, abstain from funding, guaranteeing or insuring investment operations designed to control large land resources in violation of emerging rules on large-scale land appropriation and agricultural investments. ●