UNDERSTANDING LAND INVESTMENT DEALS IN AFRICA

COUNTRY REPORT: **MALI**

The Oakland Institute

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ABOUT THIS REPORT

This report is part of the Oakland Institute's (OI) seven-country case study project to document and examine land investment deals in Africa (Ethiopia, Mali, Mozambique, Sierra Leone, Sudan, Tanzania, and Zambia) in order to determine social, economic, and environmental implications of land acquisitions in the developing world.

The research team conducted a thorough examination of the actual agreements and the extent and distribution of specific land deals. Through field research, involving extensive documentation and interviews with local informants, multiple aspects of commercial land investments were examined including their social, political, economic, and legal impacts.

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LIST OF ACRONYMS

ABN	*Autorité du Bassin du Niger* / Niger River Basin Authority (NBA)
ACI	*Agence de Cessions Immobilières* (Mali)
AfDB	African Development Bank
AFSA	Alliance for Food Sovereignty in Africa
AGRA	Alliance for a Green Revolution in Africa
AOPP	*Association des Organisations Professionnelles Paysannes* / Association of Professional Smallholder Organizations (Mali)
APCAM	*Assemblée Permanente des Chambres d'Agriculture du Mali*
API	*Agence pour la Promotion d'Investissements* / Investment Promotion Agency (Mali)
CNOP	Coordination Nationale Organisations des Paysannes / National Coordination of Smallholder Organizations (Mali)
CNPI	*Centre National de Promotion Investissements* (Mali)
COPAGEN	Coalition for the Protection of African Genetic Heritage (African)
CPI	Conseil Présidentiel pour l'Investissement / Presidential Investment Council (Mali)
DNACPN	*Direction Nationale pour le Contrôle des Pollutions et des Nuisances* / National Direction of Sanitation and Pollution and Noise Control (Mali)
ECOWAS	Economic Community of West African States
ESIA	Environmental and Social Impact Assessment
FAO	Food and Agriculture Organization of the United Nations
F CFA	West African franc
FDI	foreign direct investment
FIAS	Foreign Investment Advisory Service (World Bank)
GDCM	*Grand Distributeur Céréalier du Mali*
GTZ	*Deutsche Gesellschaft fuer Zusammenarbeit* / German Technical Cooperation (Germany), became GIZ in January 2011
ha	Hectare (1 hectare = 2.4175 acres)
HUICOMA	*Huilerie Cotonnière du Mali*
IBIC	*Impots sur les Benefices Industriels et Commerciels*
IAASTD	International Assessment of Agricultural Knowledge, Science and Technology for Development
ICRAF	World Agroforestry Centre (formerly International Centre for Research in Agroforestry)
IDA	International Development Association (World Bank)
IFAD	International Fund for Agricultural Development
IFC	International Finance Corporation (World Bank)
IMF	International Monetary Fund
KfW	*Kreditanstalt für Wiederaufbau* (Development Bank of the German Federal Republic and Member States)
LOA	*Loi d'Orientation Agricole* / Agricultural Orientation Law (Mali)
MCC	Millennium Challenge Corporation (USA)
MIGA	Multilateral Investment Guarantee Agency (World Bank)
OPAM	*Office des Produits Alimentaires du Mali* / Cereal Marketing Board
OPIC	Overseas Private Investment Corporation
PDG	President Director General
ROPPA	*Réseau des agriculteurs et de producteurs agricoles des organisations de l'Afrique de l'Ouest* / Network of Farmers' and Agricultural Producers'Organizations of West Africa
SAIL	Schaffer & Associates International LLC, USA
SEXAGON	*Syndicat des Exploitants Agricoles de l'Office du Niger* / Union of Agricultural Producers in the Office of the Niger (Mali)
UEMOA	*Union économique et monétaire ouest-africaine* / West African Economic and Monetary Union
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Program
UNEP	United Nations Environment Program
USAID	United States Agency for International Development
USD	United States dollar(s)
WFP	World Food Program (United Nations)

EXECUTIVE SUMMARY

The Global Land Rush – Targeting Africa

This report identifies and examines cases of large-scale land acquisitions in Mali. The report provides background on the institutional and political context of the country, the current macroeconomic situation, the state of food and agriculture, and the current investment climate. Additionally, it documents detailed information regarding four land investment deals currently being carried out in Mali.

Foreign investors represent the bulk of large agri-investors in Mali. The area controlled by foreign interests has increased by two-thirds in just one year, between 2009 and 2010 (Table 1).

Based on field research conducted in the "lease areas" between October and November 2010, this study provides new and important information on the way land agreements are being negotiated out of public scrutiny and the impact these deals have had on local populations and livelihoods.

The study examines four case studies of foreign investments in land in Mali's Office du Niger by the following investors:

1. Malibya (subsidiary of Libya's sovereign fund): 100,000 ha, hybrid rice and infrastructure (canal/road) development

2. Moulin Moderne du Mali (Mali): 20,000 ha, wheat and infrastructure (canal/road) development

3. Huicoma/Tomota (Mali): 100,000 ha, stated purpose is "comestible oils" but plans to cultivate jatropha

4. Petrotech-ffn Agro Mali (subsidiary of Petrotech-ffn USA): 10,000 ha, oleaginous crops/jatropha, but still seeking financing (as of the end of 2010)

OI RESEARCH RESULTED IN THE FOLLOWING KEY FINDINGS:

- By the end of 2010, at least 544,567 ha of fertile land have been leased or were under negotiation for lease in Mali according to official documents. The figure reaches 819,567 ha when accounting for unofficial expansion plans.
- Despite Mali's limited availability of arable land and dramatic hunger figures, more than 40% of land deals involve crops for agrofuels. Those involving food crops are not obligated by contracts to have their produce sold and consumed in Mali. The conditions of the largest deals, such as Malibya and Moulin Moderne profiled in this report, suggest that the produce is unlikely to benefit those suffering from hunger in Mali.
- Most of the large agricultural projects are still in early stages, with minimal clearing occurring as of yet. They are still very recent, with contracts signed in the past two to three years, and have not yet become fully operational.
- Local communities affected by the initial operations, such as those of Kolongo or Samana Dugu, oppose the deals and already report serious disruptions and threats to their livelihoods but have little or no opportunities for consultation, compensation or ability to contest operations.
- There are violent and flagrant abuses of human rights and attacks on smallholder populations in the irrigated/developed agricultural zones of the Office du Niger. In June 2010, men, women and youth from the Samana Dugu community protested the work of bulldozers and the cutting of hundreds of their trees. About 70 gendarmes were brought in to quell their protest. Protestors were beaten and about 40 of them were arrested, among them 14 women.
- Most of the large-scale land acquisitions have converged to the large riverine Delta of the Office du Niger, in state-owned lands, where informal customary rights of the people living on these lands are not protected by law, and are not recognized by public officials. Therefore investors avoid any information, consultation, and compensation mechanisms.
- To date, none of the four case study investments adhere to the World Bank principles for responsible agro-investment, nor do they conform to the set of core principles and measures laid out by the United Nations Special Rapporteur on the Right to Food.
- There is a serious lack of public disclosure and transparency from government on all aspects of the four land deals. In 2009, the government created the position of Secretary of State in charge of development in the Office du Niger, which formerly fell within the jurisdiction of the Ministry of Agriculture. Since then, land deals have

been negotiated behind closed doors by the Secretary of State and the President Director General (PDG) of the Office. The Malibya deal was reportedly directly negotiated between the Malian and Libyan heads of state.

- Malian authorities keep lease documents out of the public domain. No environmental and social impact studies have been released and it seems unlikely that any had been undertaken as of late 2010. In addition, a systematic lack of consultation with local communities prevails on all four cases. As a result, there is little critical or accurate media coverage of the land deals, meaning that Malians have little information about how much of their farmland has already been leased to large-scale investors. Public awareness lacking, there is no serious public debate on the land deals.

- In November 2010, farmers' associations and civil society groups held the "Kolongotomo Farmers' Forum on Land Grab in Mali" and produced a list of issues confronting smallholders in Mali as a result of the government's desire to lease large tracks of fertile lands, in the Office du Niger. The authorities have ignored their critiques as well as demands for transparency and fair treatment.

- The government of Mali justifies the large-scale leasing of lands with the need to "modernize" Malian agriculture and increase "efficiency." However, promotion of "green revolution" technologies and less labor intensive approaches to agriculture, undermines proven organic efficiencies,[1] fair competition, food/seed sovereignty, and risks aggravating social disparities and hunger issues.[2]

- The structural adjustment programs starting in the 1980s in Mali emphasized policy reforms to encourage foreign investment. In the past decade, new local structures, staffed and supported by the World Bank, such as the Investment Promotion Agency (API) or the Presidential Investment Council (CPI) have intensified this process. This has placed Mali's legal framework under the de facto governance of organizations that are not representative or accountable to the Malian population.

- There is concern that the ongoing land tenure reform, supported by the World Bank, is being driven by the desire to make farmland more accessible to large-scale investors. The country's Investment Promotion Agency (API) suggests that almost half of the country's arable land is "available" for agricultural investment.[3] Civil society groups argue that land tenure reforms should instead be geared to ensure equitable access to land for women and youth.

- There is an alarming lack of environmental protection. The land investments profiled in this study operate in an area designated as "Wetland of International Importance" under the Ramsar Convention.[4] They seem to have been implemented without environmental and social impact assessments. While the law does not seem to bind investors to such crucial practices, it is apparent that the large irrigation canals being constructed upstream of the Niger River for industrial agriculture may seriously threaten the livelihoods of the estimated 100 million people dependent on it in West Africa.

Based on the findings of this study, OI concludes that several major problems characterize the land acquisition trend in Mali:

- Land rights of local communities have been ignored by recent land deals in Mali, which led to the violations of basic human rights for the people affected.

- A lack of transparency and disclosure of land deals exists to the degree that local communities cannot make informed decisions regarding lease negotiations.

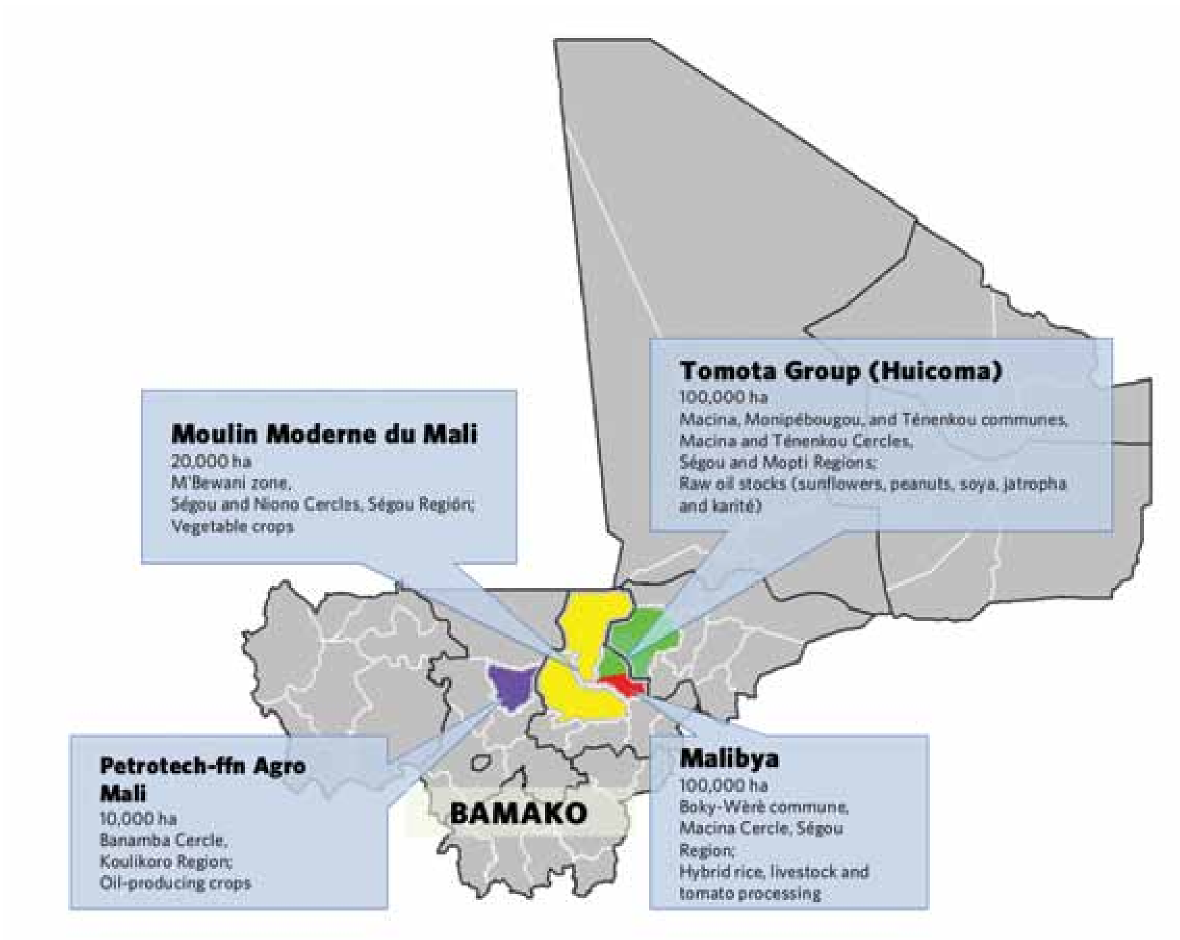
- The ambiguities entertained in regulatory frameworks regarding investors' obligations and smallholders' rights pose great risks to local populations living in the allocated leases.

- The confusion surrounding the "availability" of land and the suggestion by the Malian Investment Promotion Agency (API) that more than 2.5 million ha of Mali's arable land is available to investors is problematic in a country plagued by hunger and threatened by increasing desertification.

- A large share of land deals will be for agrofuel production, taking away land and water from food production.

- Lack of legal obligations to conduct environmental or social impact assessments before the start of investment operations, poses great risks to the traditional agrodiversity of the Office du Niger and the survival of populations dependent on the water flows of the Niger River, in Mali as well as in the rest of West Africa.

- The World Bank has shaped the economic, fiscal, and legal environment of Mali in a way that favors the acquisition of vast tracks of fertile lands by few private interests instead of bringing solutions to the widespread poverty and hunger plaguing the country.


Tomota Group (Huicoma)
100,000 ha
Macina, Monipébougou, and Ténenkou communes,
Macina and Ténenkou Cercles,
Ségou and Mopti Regions;
Raw oil stocks (sunflowers, peanuts, soya, jatropha and karité)
Moulin Moderne du Mali
20,000 ha
M'Bewani zone,
Ségou and Niono Cercles, Ségou Región;
Vegetable crops
Petrotech-ffn Agro Mali
10,000 ha
Banamba Cercle,
Koulikoro Region;
Oil-producing crops
BAMAKO
Malibya
100,000 ha
Boky-Wèrè commune,
Macina Cercle, Ségou Region;
Hybrid rice, livestock and tomato processing

INTRODUCTION

Around the world, fertile land is being made available to investors, often in long-term leases and at giveaway prices. This practice, often referred to as "land-grabbing," gained traction after the global food and fuel crisis of 2008.[5] By the end of 2009, such investment deals encompassed 56 million hectares (ha) of farmland around the world.[6] Corporations, fund managers, and nations anxious to secure their own future food security have sought and secured large land holdings for offshore farms or speculation. The United Nations Food and Agriculture Organization (FAO) has suggested that land investments can create a "win-win" situation and the World Bank has laid out a set of principles for "responsible agro-investment"[8] that in theory, would make this the case.[9]

However, many civil society and human rights groups, smallholder farmer associations and scientists disagree. They argue that "land-grabs" threaten food security and the human right to food and land. They call instead for investment in and support for smallholder agro-ecological farming systems.[10]

Africa has been a particular target of land- and water-hungry investors, comprising more than 70 percent of the investors' demand.[11] They are welcomed with appealing fiscal incentives and strong investor protections in Mali.

Despite the considerable publicity given to the acquisition of 100,000 ha in Office du Niger by Libya in 2008,[12] little is known about the activities and implications of large land deals that have concentrated in the region in recent years. It is estimated that at least 544,567 ha of fertile land had been leased as of the end of 2010 and that the pace of such large land deals is increasing dramatically. The largest investments are foreign controlled and have increased by two-thirds in just one year, between 2009 and 2010.

The Oakland Institute identified a need to understand the legal, political, and economic context that has enabled such massive investments in the region and the social implications of this activity. In October and December 2010, as part of its pan-African study on land deals, the Institute embarked on research involving an extensive literature review and information gathering during field visits and meetings with public officials, donors, investors, farmers' groups, and farmers in Mali.

This report analyzes the land deals negotiated to date and focuses on the zone managed by the Office du Niger a semi-autonomous government agency with authority over at least one million hectares of land in the inland delta of the Niger River. Because of the abundance of water resources and the eased procedures to secure land holdings, the Office du Niger has become a choice area for foreign and domestic investors. The report profiles four land investments and gives detailed information regarding the scope and execution of these large land deals in Mali. It assesses the threats to human rights, food security, land rights, health and the environment posed by the current trends of large-scale agricultural investments. In conclusion, the study discusses the land deals in the Office du Niger against principles on responsible agro-investment and identifies steps to address some of the key problems identified.

I. OVERVIEW: MALI

Difficult geography and an even-harsher climate in an agrarian nation

Mali, in the words of a former minister, is a "rich country without money."[13] Mali has a very diverse cultural heritage that flourished alongside the Niger River valley through farming and trade, and was consolidated by the Ghana, Mali, and Songhai empires, as well as by Islam since the eleventh century. In the late nineteenth century, France made the current territory of Mali part of its colonial empire under the "French Sudan" and worked to develop export crops needed by its industry such as groundnuts and cotton.[14] Mali achieved independence in 1960 but still bears the imprint of colonial agricultural and food policies in its land, agricultural economy, and class system opposing the farmers' majority to an elite minority.[15]

Postcolonial Mali is a landlocked country of 1,241,000 sq. km lying at the southern edge of the Sahara desert. A satellite image of the country shows a strong climate gradient from the desert north to the tropical south, with two-thirds of the territory being considered desert or semi-desert (but nearly all at risk from desertification).[16] Most of the economic activity is concentrated along the Niger River (Africa's third largest river). The areas with better rainfall in the south are important for the production of cotton, rice, millet, maize, vegetables, tobacco, and also tree crops, many of which contribute significantly to food security.[17]

Despite its relatively large area (the largest in West Africa, and seventh largest in the continent[18]), Mali has less than 5 percent arable land to sustain its more than 14 million people.[19] Mali is particularly vulnerable to population pressures on land resources, pollution from pesticides, mining activities, dam/irrigation projects disrupting the natural flood cycles,[20] and increasing droughts and desertification. These factors further contribute to a decline in soil fertility, loss of tree cover, loss of biodiversity, and soil erosion[21] and makes sustainable resource management, particularly of land, vegetation and water, crucial for future livelihoods and food security in the country.[22]

The fertile areas that surround the Niger River are considered particularly vulnerable to desertification.[23] Yet, the Office du Niger which encompasses this area is precisely the zone being targeted by investors for large-scale intensive agriculture.

Desertification and degradation of lands northeast of Mopti, Mali

Officially established in1932 under French colonial rule, reconstituted as an independent government agency in 1994, the Office du Niger has developed one of the largest irrigated perimeters in West Africa, comprising the Markala bridge-dam on the Niger River and a dense network of irrigation canals.[24] Until very recently, with the advent of large-scale land leases, the Office du Niger was worked primarily by smallholders on leased plots in the area using water diverted from the Niger River to irrigate about 80,000 ha of land. The Office produces about one third of the paddy rice grown in Mali[25] and is an important region for many subsistence cultivations, as well as livestock grazing and freshwater fishing (see Section IV).

The conjunction of harsh climate conditions (including prolonged droughts in the 70s and 80s), income dependence on the export market,[26] and decades of neglect of family farms by agricultural investments and policies has taken a toll on Mali's socio-economic health and food security.

In 2010, Mali was ranked 160 out of 169 countries in the UNDP Human Development Index.[27] Mali enjoyed some 5.8 percent of economic growth in 2010[28]. However, the country remains crippled by debt.[29] In addition, the distribution of wealth is extremely inequitable.[30] The richest 10 percent of the population accounts for 40 percent of the country's consumption, while the poorest 10 percent accounts for just 1.8 percent.[31]

There is limited access to basic health care and very little access, especially in rural areas, to safe water.[32] More than 70 percent of the people live in rural communities, and more than two-thirds of them fall below the poverty line.

The staple diet is based on cereals such as millet, rice, sorghum and maize, augmented by milk products and tubers such as sweet potatoes, yams and cassava, as well as a wide variety of fruits and vegetables. In urban areas, rice supplants millet and sorghum as the staple food.[33] Rice is generally considered more desirable and easier to cook by urbanites and wealthier households, while rural dwellers are more accustomed to coarse grains.[34]

Rice, the only cereal grown under irrigation, is viewed by the government as offering the greatest potential for surplus production when tackling both the domestic and export markets.[35] In 2008, in the face of sky-rocketing food prices,[36] Mali's Prime Minister Modibo Sidibé launched the "Rice Initiative," involving subsidies for inputs (seed, fertilizer, pesticides) to increase rice production in the country and also duty exemptions for rice imports. The government claimed that the initiative resulted in a 50 percent increase in rice harvests (600,000 metric tons) in 2008 – 2009, and that this meant a food surplus. However, the initiative was highly criticized for not supporting staple crops consumed by the majority of the rural population and for failing to stabilize rice prices.

Food surpluses such as the one announced in 2008 - 2009 may be deceptive and indeed conceal what are underlying problems of malnutrition, lack of access to affordable food, and chronic hunger.[37] The cereal market in Mali has been completely liberalized. The country's cereal marketing board, OPAM *(Office des Produits Agricoles du Mali)*, has been restructured as a parastatal commercial body and no longer stabilizes cereal prices. Prices have become more volatile and largely influenced by fluctuations of regional and international food markets.[38] As a result, private traders and agribusinesses have gained a dominant position in the West African food trade, which they exploit to their advantage, by influencing local prices and trade flows.[39]

Sahara desert encroaching in Timbuktu

As a result of all these factors — drought, land degradation, limited arable land, little support for family farmers, and price volatility — parts of Mali face structural deficits of cereals. One third of Malian children under the age of five are chronically malnourished. In 2010, based on three criteria — the proportion of under-nourishment, prevalence of underweight children, and under-five mortality rate — Mali's situation was ranked as "serious" on the Global Hunger Index.[40]

Smallholder farming and pastoralism — the backbone of Mali's economy

Family farmers are the backbone of Malian society and also its economy, working about 90 percent of all the land under cultivation.[41] About 70 percent of Malians work

Dry season garden with trees, Office du Niger

in agriculture, primarily as pastoralists or smallholders practicing mixed farming.[42] Although often ignored or undermined by decades of development policies, pastoralism represents an important land-use system, contributing 10 percent to the country's GDP.[43]

Historically, pastoralists and farming populations in West Africa developed a symbiotic relationship. Besides providing valuable goods and services such as milk, meat, fiber, hides or transport, pastoralists brought to farmers natural fertilizers from the livestock moving across their lands after harvest. In return the livestock benefited from crop residues in the fields.[44] However, across the Sahel in the past 40 years, the combined effects of demographic growth and significantly reduced annual rainfall have vastly increased the pressure on land. Growing competition for land and water resources has thus pushed traditional farming and pastoralist systems into closer contact.

As in much of the semi-arid Sahel region that stretches from Sudan in the east across to Senegal in the west, smallholder farming in Mali involves the complex integration of annual crops, trees and animal husbandry in an agroforestry system known as the parklands. The trees scattered in cropland provide invaluable environmental services. They help recycle nutrients, protect soils, act as a reserve of agro-biodiversity and serve as a buffer against desertification. Different varieties of trees, including baobabs, Neré, Karité and tamarind also contribute to food security when annual staples run low towards the end of the dry season, which lasts from October through May, and into the rainy season before crops are harvested. They provide valuable goods such as fruits, edible leaves, nuts, oils, condiments, medicines, fodder, fiber, fuel wood and timber.[45]

Smallholder farming systems also promote seed and food sovereignty.[46] They rely on local crop varieties developed over centuries to cope with local conditions, and manage risk through diversification of crops and farm produce,[47] and through seed saving and sharing. Decades of neglect by policymakers, unfair competition with highly subsidized agriculture in richer countries and lack of adequate investment in research and support services, have worked against the productivity and economy of small farms.[48] Yet, family farming systems have remained resilient in the face of climate change and other environmental pressures.[49]

In Mali, as in much of dryland in Africa, family farmers are the custodians of a rich diversity of cultivations of local staple crops, particularly sorghum and millets such as fonio, black fonio, and guinea millet.[50] Though frequently neglected by development programs, local millet biodiversity, sustained through local knowledge, represents extraordinary genetic resources for addressing and coping with unpredictable climatic conditions, desertification, household nutrition concerns, and socioeconomic marginalization.[51] Small farms still produce most of Mali's food and in the right policy environment, smallholders, alongside civil society[52] and scientists[53] argue that family farms can assure food and income security and the sustainable use of land, soil, and water resources.

An ideological divide, conflicting models for agricultural development

The World Bank and the International Monetary Fund (IMF) have worked to improve Mali's attractiveness as a destination for foreign investments since the 1980s. As a result, in Mali as elsewhere in Africa, the government has been promoting "industrial" agricultural models, which involve large inputs of capital and commercial orientation.[54] Implicit in the arguments put forward by policymakers about "modern" versus "traditional" farming systems is that the latter are assumed to be less efficient and unable to take advantage of opportunities arising in the context of globalization.[55]

The growing emphasis on industrialized agriculture necessitates large-scale investment for irrigation, machinery, inputs, and large land holdings.[56] While it may involve smallholder support projects, the purpose is rarely to strengthen and promote traditional farming systems and preserve the agro-ecological approach to land use. Rather, the aim is to "modernize" them, increase competitiveness, focus on value chains for commodities, and orient smallholders towards the global marketplace.[57]

Along with the World Bank, this approach is strongly promoted by the Alliance for a Green Revolution in Africa (AGRA), a collaboration between the Rockefeller and Bill & Melinda Gates Foundations, and the Millennium Challenge Corporation (MCC).[58]

Civil society groups in Mali, including farmers' associations and coalitions, have lobbied against the industrialization and this "green revolution" approach to agriculture.[59] In Mali, CNOP (National Coordination of Smallholder Organizations), AOPP (Association of Professional Smallholder Organizations), as well as SEXAGON (Union of Agricultural Operators in the Office du Niger) have forged alliances such as the Alliance for Food Sovereignty in Africa (AFSA) and mobilized their members to defend the rights of smallholders in response to the government's policies towards large-scale agricultural investments and unchecked optimism regarding such development models. They work to promote traditional agro-ecological approaches to land and natural resource management, protect the rights of African people to indigenous genetic resources, and resist the corporatization of African agriculture. The latest of their campaigns is to solicit attentiveness and solidarity with regard to issues of "land grabs."[60]

Fulani woman harvesting rice, Office du Niger

II. MALI – A WELCOMING CLIMATE FOR INVESTORS

Mali and the "pan-African" strategy of the World Bank

The structural adjustment programs starting in the 1980s in Mali emphasized policy measures to encourage foreign investment.[61] In the past decade, the government of Mali has worked to further improve the investment climate in the country.[62] The creation of new structures to promote investment and pro-investment policies has intensified this process. Similar strategies, structures (e.g. pro-investment agencies, presidential councils etc.) and reforms are visible across Africa, highlighting a "pan-Africa strategy" of the World Bank.[63]

In 1991, the government passed an "investment code" to promote private investment in the country.[64] Over time the legislation has been amended, and today Mali's Investment Code offers generous fiscal incentives to large investors, including a 30-year tax holiday. Promoted as "one of the most attractive investment codes in West Africa,"[65] it is currently being revised to be even "more attractive" to investors. This will include measures to reduce taxes on industrial and trade profits *(Impôts sur les Bénéfices Industriels et Commerciaux* or IBIC) from 35 percent to 20 – 25 percent annually.

However, such fiscal advantages tend to level off under similar regional policies over time and according to the Director of Strategy and Promotion of the Malian Investment Promotion Agency (API), political risks, infrastructure and security of investment (notably land tenure) remain prime considerations for investors.[66]

The World Bank's influence on Mali's "business climate"

In 2005, the World Bank approved the "Growth Support Project for Mali," financed by a loan from the International Development Association (IDA) of approximately USD 36 million, which was later extended until 2012. Its objective is "to create the conditions for increased private sector investment through investment climate reforms, improved financial services, and the provision of non-financial services to private enterprises."[67]

The project's Investment Climate and Institutional Strengthening component, with a budget of nearly USD 3.5 million,[68] implements key recommendations from [business] climate assessments to improve "the country's legal and regulatory framework in key areas so better performances are reflected in the Doing Business reports."[69] The annual "Doing Business" reports issued by the World Bank since 2004 rank 183 countries around the world based on 9 key business topics such as "paying taxes," "trading across borders," and "protecting investors."[70] For governments, the ranks represent an important means of attracting foreign capital.

Mali has been performing well on the World Bank's annual Doing Business report card.

WORLD BANK'S DOING BUSINESS RANKING FOR MALI[71]

Doing Business 2009 rank	Doing Business 2010 rank	Doing Business 2011 rank
162	156 (↑6)	153 (↑3)

Sign for The Malian Investment Promotion Agency - API

The business and investor friendly reforms are facilitated by a host of structures in Mali. The Malian Prime Minister leads a group for consultation on the private sector, comprised of both government officials and private sector individuals, which meets regularly to look at the business climate of Mali. There are also the Malian Investment Promotion Agency (API) and the Presidential Investment Council (CPI), both of which are progeny of the World Bank.[72] These are both part of the investment climate component of the World Bank Growth Support Project, under which API has nearly USD 1.7 million in financing and the Presidential Investment Council close to USD 270,000.[73]

API–"a one-stop-shop" solution for investors

The Malian Investment Promotion Agency (API) was created in 2005 to replace the National Centre for Promotion of Investments (CNPI).

Opened in January 2009 and attached to the Ministry of Industry, Investments and Trade, API is a "one-stop-shop"[74] for business creation.

API acts as an organ of the World Bank. API has one Director General and two other directors, whose salaries are covered by the World Bank (IDA) loan to Mali as part of its Mali Growth Support Project.[75] The agency has also had support from the World Bank's Foreign Investment Advisory Service (FIAS) and the Multilateral Investment Guarantee Agency (MIGA) as well as the U.S. Agency for International Development (USAID).[76] In June 2011, the International Finance Corporation (IFC), the private sector lending arm of the World Bank will send foreign consultants to identify investment opportunities in agriculture, tourism, mining and energy.[77]

Collaborating with the World Bank on defining investment promotion strategies, API's services and activities include among others: locating investment opportunities in Mali, facilitating administrative formalities and feasibility studies for investors, prospecting for investors internationally, or linking with the Malian business community and Chambers of Commerce.[78]

Promoting investments without accountability

On its website, API depicts Mali as "widely open to private investment," putting forward an "increasingly simplified regulatory, legislative, and institutional environment," allowing investors to operate in and out of the country with safety:

"Foreigners who invest in the country or who work in a Malian company have the right to transfer [out of the country] all the dividends, proceeds of any kind from their invested capital, and the proceeds of liquidation or sale of their belongings, and their salaries. Investments are also guaranteed under Article 15 of the Multilateral Investment Guarantee Agency (MIGA) [of the World Bank] signed by Mali in October 1990." [79]

In promoting Mali to investors, API's website outlines the central role of the World Bank and Foreign Investment

Advisory Service (FIAS) in facilitating "investor access to land" by providing "in-depth diagnostics on the legal and regulatory framework."[80] Such penetration by the World Bank / FIAS is likely to increase the bias toward large-scale agricultural models in current land reform debates and to divert the government from addressing crucial land and food access asymmetries in the country. (See in Section III below the sub-section: Ongoing reforms – land as a commodity or community resource?) Despite its sponsorship by the World Bank, API fails to promote any of the Bank's seven principles for "responsible agro-investment."[281]

The Presidential Investment Council (CPI) – a direct channel to the president

In addition to supporting investment promotion agencies such as API, the World Bank has been instrumental in expanding presidential investment councils in several African nations, including Ghana, Mali, Tanzania, Uganda and Senegal.[82] The "model council," conceived by the World Bank is to:

- be a direct channel of dialogue between investors and a country's political leaders, at the highest level possible on both sides
- proactively seek to identify obstacles to investment and propose solutions that benefit investors collectively through a working group structure
- include not more than 15 private sector members and 5 government representatives and potentially an International Finance Institution representative for effective dialogue[83]

Created in 2003 in Mali, the Presidential Investment Council (CPI) is presided by President Amadou Toumani Touré and meets twice a year. It has developed an Action Plan that has been passed on to the Prime Minister for governmental action. The Council is also working on the new Investment Code and developing a law for the private sector.

The CPI membership includes 15 foreign members.[84] It was created in 2004 with some of the largest corporations in the world, including Anglogold, Coca Cola, Eskom, Barclays, and Legacy Hotels. Malian members of the CPI represent some of the largest industrial groups in the country. Also on the CPI, are the Prime Minister and several ministers (Economy and Finance, Artisanal Sector and Tourism, Agriculture Livestock and the Fishery, Communication and New Technologies, Trade and Investment Promotion, Malians Abroad and African Integration, International Cooperation).[85] Representatives of the World Bank and the IMF also attend CPI meetings.[86]

Interestingly, the Presidential Investment Council is not listed as an institution on the presidential website and its discussions and resolutions are not made public.[87] The Malian public remains largely unaware of the Council or what it does. The Council, with foreign corporate representatives, guides government policy in Mali, thus raising concerns as to which interests are being promoted.

Facilitating investors access to land: land "availability"

API offers the following profile of what awaits investors looking for land in Mali:

"Mali has significant reserves of land that can be developed for agriculture. More than 45,000 ha are suitable for irrigation in the valley of the Senegal River; 100,000 ha are suitable for development in the upper valley of the Niger River; the Office du Niger has more than 960,000 ha: the Niger River delta covers 900,000 ha; the southern zone offers 300,000 ha; there are 280,000 ha in the riparian zone [central part of the country, semi-arid area around Hombori] and more than 110,000 are available in Dogon Country."[88]

API suggests that more than 2.5 million ha of Mali's arable land — and its most precious water and natural resources— are "available" and on "offer" to large-scale investors. But as discussed earlier in this report, the country is already food-insecure and faces serious environmental constraints such as land degradation, desertification, population growth, climate change, etc.[89] Only 3.8 percent of Mali's territory is arable land,[90] or about 4.7 million ha is available to sustain its population of about 14.5 million.[91] API is thus advertising almost half of the country's arable land to investors.

A landmark 2010 report on agricultural and agrofuel investment in Mali highlights the dangers of placing so much of the country's land for lease to foreign investors: "The pressure to grow more food may be contributing to a vicious cycle as the degradation of Mali's resource base lessens production levels, causing additional hunger." According to a 2009 estimate, 150,000 ha— or 0.1 percent of the country's total land surface — are being degraded every year through soil depletion and desertification."[92]

Additionally, there are concerns regarding the accuracy of land availability data put forward by API. A key issue is that current figures on land and land use in Mali actually date back to the colonial period.[93]

III. THE REGULATORY FRAMEWORK – BENDING IT TO SUIT INVESTORS?

Land policy and tenure in Mali

Land tenure in Mali is complex, consisting of modern laws, which essentially put land in the hands of the state to sell or attribute, and customary rights in which chiefs, elders, and other traditional leaders manage the land and its use.

In the past two decades, the legal and administrative framework for managing land and other renewable resources in Mali has undergone numerous reforms. Beginning in 1992, the year of the first democratic elections in the country after the overthrow of President Moussa Traoré, a ruling modified the property and tenure code *(Code Domanial et Foncier)*. In 1995, with the advent of decentralization, there was a new Code on semi-autonomous regions *(collectivités territoriales)*, then in 1996, the new Code on property in the semi-autonomous regions of the country *(domaine des collectivités)*. In 1995, a new law also came into effect on the management and exploitation of forests and on the exploitation, transport, and trade in forest resources. Lastly, a new charter on pastoralism was published in 2001.[94]

Access to land and natural resources is thus governed by several different pieces of legislation. Many are still influenced by French colonial laws (conferring ownership of the land to the state), while others have been shaped by recent political and economic changes in Mali (placing more emphasis on decentralization and private property).[95] Yet, customary land tenure practices that date back to pre-colonial times are still applied and under these, traditional leaders allocate usufruct rights over land and its resources in a communal approach to land ownership and use.[96]

At present, it seems no one is fully satisfied with these various systems of land tenure. Smallholders worry that it leaves them open to expropriation, especially with more and more large-scale agricultural investors seeking large land holdings. Women are not entitled to inherit land because of existing family laws. Youth and migrant populations have difficult access to land, and even the large investors and agribusinesses want assurance of more security on the land they lease. While land reform appears necessary to ensure security of tenure and equitable access to land, reform means different things to small landholders and foreign agricultural investors.

Ongoing reforms — land as a commodity or community resource?

Mali's new agricultural law, one of the country's most important pieces of legislation in recent years, was passed in 2006 and it calls for a new agricultural land tenure policy (see in Section III The Agricultural Orientation Law).[97] To launch the land policy reform process, national stakeholder negotiations on land tenure *(Assises Nationales des Etats Généraux du Foncier)* were organized in December 2009 by the Ministry of Housing, Land issues, and Urban Planning. The consultations leading up to the national meeting were held at local *(cercle)*, regional, and national levels to solicit opinions from a broad cross-section of Malian society before establishing a new code on land tenure. However, with the increasing push toward large-scale investments, many fear for the protection of smallholders' rights to land.[98]

The customary tenure practices that are managed and applied by local leaders and communities have ensured smallholders some access to land, in small plots less than 10 ha.[99] Under this system, women farmers in particular, have been able to secure some small plots such as market gardens and tree crops that are not recognized by officials as professional farming or deserving of compensation if they are lost. As a result, women farmers are the most vulnerable and the first to lose when large-scale investors come in and take over land. (See also Section V.)

In the view of development workers working with women's groups in the Office du Niger, if the government decides to bring about land reform that adopts World Bank tenets that land is "economically valuable" — and thus to be leased out and sold as a commodity — it will be "catastrophic." The country's smallholders, whose social cohesion and very way of life depend on their holistic approach to land use, will "lose everything and become paid laborers on land that they've always considered their own."[100]

Professor Assétou Samake, a founding member of the Coalition for the Protection of Africa's Genetic Heritage (COPAGEN) and founder of the *Institut de Recherche et de Promotion des Alternatives en Développement* (IRPAD), believes that what initially drove the new land market in Mali was the creation of the *Agence de Cessions Immobilières* (ACI) by the Malian government with support from the World Bank in 1992.[101] This served to transform the concept of land from a communal resource governed for posterity by communities and traditional leaders into a commodity. ACI sold off state lands and property to pay off government debts, creating a land and real estate market. The Agency states that one of its goals is to reduce speculation in real estate and land.[102] But Assétou Samake maintains that it did the reverse and that ACI launched the phenomenon of land speculation in the country.

The Deputy National Director of the *Direction Nationale des Domaines et du Cadastre* (National Department of Property and Cadastres) is deeply concerned about rampant land speculation that is already happening in and around the capital, Bamako. There, unlike rural areas where customary land tends to prevail, private land holdings are common and he says that speculators have realized how much money can be made from land deals. The trend is now extending to rural areas, he says, and impoverished villagers are extremely vulnerable to offers of cash, however small the amount, for their land. He sees this as a dangerous trend that could spread much further, should all the land in the country one day be privatized.[103]

To date, there is no cadastre that shows existing land holdings and land use in the country. Although customary land tenure practices are recognized, all the land in the country that is not privately owned through title (which has been accorded by the government of Mali) belongs officially to the state, until a new land tenure code has been developed and passed.[104]

The new agricultural land tenure legislation is called for by the country's agricultural orientation law (*Loi d'Orientation Agricole* - LOA),[105] but the LOA itself is not free of contradictions or controversy.

The agricultural orientation law in Mali

In September 2006, the Malian parliament adopted the *Loi d'Orientation Agricole* (LOA), or the Agricultural Orientation Law, which "determines the orientations of agricultural development policies in Mali."[106]

The LOA acknowledges the value of family farms:

"The politic behind agricultural development has as its goal to promote sustainable agriculture that is both modern and mildly competitive, primarily for family farms that are recognized and secured, through adding maximum value of their agro-ecological potential and agricultural know-how of the country and by creating a favorable environment for a well-structured agricultural sector. It aims to guarantee food sovereignty and to make the agricultural sector the motor of the national economy with a view to assure the well-being of the population."[107]

The law reflects divergent views on what constitutes agricultural development. While it devotes several chapters to clauses that aim to strengthen and improve family farming, "food sovereignty" and "sustainable agriculture," it also emphasizes the need for "maximum value," "modern," and "well structured agriculture."[108]

The same types of ambiguities pervade land tenure. On one hand, LOA's articles 75 and 77 mention that new agricultural tenure legislations should be consultative, "fight against land speculation" and ensure that farmers have equitable access to land.[109] On the other hand, Article 83 facilitates land leases by foreign investors via the state, which could spark speculation and result in inequitable access to land.

As per article 82 *"In the framework of investment promotion, of capitalization and growth in agricultural production, dispositions will be taken to ease the costs of and to simplify the procedures involved in establishing land titles and rural concessions, and in securing long-term land leases for agricultural actors. The State will take dispositions to facilitate the obtaining of land titles for national agricultural actors and the concluding of leases with a set of pre-conditions for foreign agricultural actors who wish to invest in agricultural development in Mali."*[110]

Overall, it remains unclear how the government plans to protect smallholders while facilitating access to long-term land leases for foreign investors or how it would stop the ongoing land speculation.

Different interpretations of the LOA for different interests

Different interest groups interpret the law differently. API's agricultural profile offers its own interpretation of the country's LOA, stressing that the law will: [111]

- move from subsistence agriculture to an intensive and diversified agriculture to satisfy national needs and conquer regional and international markets
- register and license agricultural businesses
- develop land (irrigation, etc)
- deal with tenure issues
- manage water
- put in place programs or growth of competitive diversification of agricultural products

Similarly, officials in the Ministry of Agriculture acknowledge that the new land tenure policy, currently being developed by the government, should make it easier for investors to access land throughout the country, and make it possible for them to acquire land in regional offices.[112] Officials dismiss concerns of "land-grabbing" and neocolonialism by stating that the country has 30 million ha of arable land, is in need of foreign capital and investment, and that large-scale agricultural investments are not extractive because "the land stays" and no one can take it away.

Their arguments, like the API promotional material, fail to take into account the precarious environment in the country. Nor do they acknowledge that the exploitation of soil and water resources for crops (including for agrofuels) that may be exported constitutes a form of extractive industry.

The new land tenure policy, called for in the LOA, is still in the works. But already civil society groups are concerned that in the context of large-scale agricultural investments, smallholders are particularly vulnerable without legislation securing local land holdings. In a declaration made at a Smallholder Forum in the Office du Niger in November 2010 to protest the large-scale acquisition of farmland by investors, the participants called on the government to respect its legal obligation to come up with an agricultural land tenure policy as stipulated by Article 77.[113] President of CNOP, Ibrahim Coulibaly, says its members want new land legislation to give every family member rights to the land. This would prevent family heads from falling prey to speculators who offer them cash and convince them to sell off family land.[114]

The United Nations Special Rapporteur on the Right to Food strongly endorses the civil society and smallholder views on land reform. In a 2010 report submitted to the UN General Assembly, he acknowledges the importance of secure land tenure, but cautions that creating a market for land rights is not the most appropriate way to achieve that security.[115] He recommends that if market-led reforms are undertaken, they should be compatible with human rights; that governments regulate to prevent speculation; and that imbalances in access to land between men and women are removed. Furthermore, development models that do not lead to evictions, disruptive shifts in land rights, and increased land concentration should be prioritized.

Equity concerns expressed by civil society and farmer groups are further legitimized by the current involvement of the World Bank in the land tenure reform process. Part of the International Development Association's (IDA) loan to the Growth Support Project for Mali, is indeed allocated to the creation of a communication agency, whose objectives are to edit the texts that emerge from the negotiations for a new code on land tenure, and to publicize these nationwide.[116]

At this time, because of unresolved issues regarding land tenure in the rest of the country, most large-scale investors are securing long-term leases in the Office du Niger, where they are easier to negotiate.

IV. THE OFFICE DU NIGER

A state within a state

In Mali, the large land deals for agricultural investment have been limited so far to the zone of the Office du Niger.[117] This zone is a vast inland delta, a riverine irrigation scheme on the Niger River, which extends east and north of the city of Ségou.

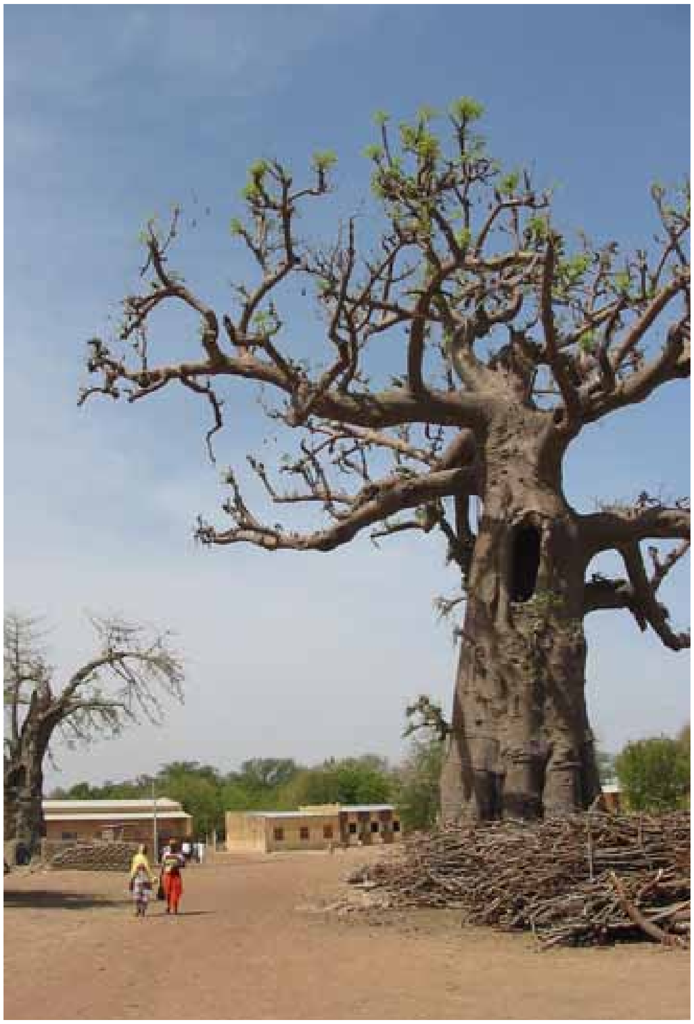
The Office du Niger authority that manages this land and irrigation in the zone is sometimes described as "a state within a state."[118] It was created by the French during the colonial era, and inherited by the newly independent state in 1960. It became a semi-autonomous government agency in 1994, charged with managing a large area irrigated by water diverted from the Niger River by the Markala Dam. The purpose was to lease out irrigated land, primarily to smallholders, who would pay for the water provided by the irrigation systems, produce rice, and engage in market gardening.

The main stated purpose of the Office du Niger was to contribute to food security in Mali. In 1987, the average yield of paddy rice per hectare in the area was 2.2 metric tons per ha for a total production of 88,000 metric tons; by 2001 it had risen to 6.1 metric tons per ha and the annual production was close to 380,000 metric tons, more than half of the country's rice needs.[119]

Another decree in 1996 laid out the management plans for the land and water resources of the Office du Niger,[120] giving the management of the Office an astounding amount of authority and power. These included the right to extend the zone itself or to take over management of any lands they deemed important to its mission to develop the central delta of the Niger River. Any displacement of people or communities caused by the taking over of lands and extending the boundaries of the Office du Niger zone became the responsibility of the state, which would also cover the costs incurred by giving titles for this land. It also imposed an annual exploitation fee on those using the land (and water) in the zone and established three kinds of leases: *Bail d'Habitation* or residents' lease that applied to everyone in the zone, even indigenous communities, the *Bail Emphyteoptique* or long-term lease for agro-industries (50 years) with a set of pre-conditions on infrastructure investment to be fulfilled by the lessee, and the *Bail Ordinaire* or ordinary lease, valid for 30 years, also with some conditions on infrastructure development by the lessee.[121]

The hydraulic systems in the Office du Niger[184]

Until very recently, when the Office du Niger began attributing large leases (2,000 to 100,000 ha), the two longer leases were almost non-existent in the zone. The producers in the area were primarily smallholders, or small-scale leaseholders who employed laborers to produce rice on their holdings. Market gardening is extremely productive in the area and particularly important



Baobab tree in Koutiala

for women.[122] Some settlements are indigenous villages known throughout the country for their production of millet.[123] The area is also important for pastoralists and their cattle, which graze in the zone, and their co-habitation with farmers results in occasional conflicts over land and water resources.

Smallholders and pastoralists lack protection from land acquisition.[124] While large-land leases in the Office du Niger require the involvement of government authorities, these have been negotiated so far without transparency as evidenced by the following case studies. Furthermore, the government does not recognize their rights to land as evidenced by the Secretary of State responsible for the Office du Niger who stated that communities living on the allocated land deals have "installed themselves" without permission.[125]

Other constraints that smallholders in the Office du Niger have faced include lack of transport networks to get produce to urban markets, lack of access to credit to enlarge their production systems, and lack of preservation and processing facilities to increase their revenue from agricultural produce.

Demographic data from the Office du Niger are difficult to track down; the statistics section of the Office du Niger website is empty.[126] However, an older site, which appears to date back to the time when the Office du Niger was governed by the Ministry of Agriculture, does offer some demographic data from 2003-2004. At that time, 249 villages were present in the zone, occupied by 26,435 farming families, for a total population of 350,079.[127]

In 1994, when it was reconstituted as a commercial state entity, the Office du Niger was placed under the jurisdiction of the Ministry of Agriculture. More recently, in April 2009, it was placed under a Secretary of State within the Office of the Prime Minister, responsible for development in the zone of the Office du Niger (*Secrétariat d'Etat auprès du Premier Ministre Chargé du Développement Intégré de la Zone Office du Niger)*.

The Secretary of State has three ambitions for the zone:[128]

- extend the irrigation system to develop the full potential of the Office du Niger; an area of 960,000 ha, of which 450,000 can be irrigated, and to date only 100,000 ha have been developed *(aménagés)*
- increase rice productivity in the Office du Niger from the current 6.2 metric tons per ha to 7 or 8 tons per ha
- cultivate other crops in the area in addition to rice

The Secretary of State in charge of development in the Office du Niger claims that large investors are needed because they have the capital to extend the irrigation systems and the agricultural zone to its full potential. The investors have been flocking to the area; by late 2010, well over half a million ha had been allocated to large-scale national and foreign investors in holdings of 2,000 ha or more.[129] And the government of Mali is enthusiastically inviting still more investors to come and enjoy the benefits of the country's land and water resources. This is evident in this "Call from the Malian Government" (translated from French) to investors to "enrich" their assets.

This call to investors, which appears on the Office du Niger website (as of this publication date), clearly invites

Call from the Malian Government

"Ladies and Gentlemen,

Did you know that the Republic of Mali has a gravity-fed irrigation potential that is unique in the world. In fact, thanks to its natural course, the Niger River waters a plain of nearly a million hectares that are suitable for rice cultivation.

Unfortunately, only 60,000 ha are developed.

Ladies and Gentlemen,
Since the advent of democracy in our country in 1991, the government of the Republic of Mali has assured much greater land tenure security in the Office du Niger, with security being assured by ordinary and emphyteutic leases of 30 and 50 years respectively, renewable as many times as the two parties agree to.

Already, Malian and foreign investors have obtained, by emphyteutic lease, many hundreds even thousands of hectares. You too can do like them and invest in the Office du Niger. Thanks to the contract that links you with the Office du Niger you have the opportunity to exploit the land for 50 years and pass the [land] rights on to your heirs.

It's a safe place to invest your money when one thinks that in other countries, nearly 10 million francs [F CFA, or USD 20,913] are necessary to make one hectare productive. But in the Office du Niger, it will cost you only 3 million [F CFA, or USD 6,274].[130]

What a bargain for you when a developed hectare can produce on average 6 metric tons [of rice], with the possibility of producing a second yield during the dry season.

Ladies and Gentlemen,
In this way, you can become the owner of land in the Office du Niger and enrich your assets by multiplying them more than ten-fold.

Contact the Office du Niger today at (223) 21 32 02 92 or get in touch with the Secretary of State under the Prime Minister responsible for integrated development in the Office du Niger zone."[131]

the investor to become the "owner" of land. Yet the President and Director General (PDG) of the Office du Niger, confronted with accusations of promoting land-grabbing in the Office du Niger, denied that a "square meter of land has been ceded to a private owner" and emphasized that "the investors have signed leases with the state" for their land.[132]

All leases for land in the area are handled at the headquarters of the Office du Niger, located in the town of Ségou, about 270 km east of Bamako. Annual leases for smallholders are available and cost, with water fees included, from 125,000 to 150,000 F CFA per ha (about USD 315 – 420) in the Niger Basin Authority area and 150,000 to 200,000 F CFA per ha (about USD 420 to 439.93) in the Baguineda Irrigated Zone Area.[133]

Two kinds of long lease agreements are being issued to large-scale foreign and Malian investors:

- Ordinary lease *(Bail Ordinaire):* 30 years, renewable (water use fee not stipulated, but one fixed by the Office du Niger)
- Long-term or emphyteutic lease: 50 years, renewable (carries obligations to develop land and defined fees for water use, both spray and gravity-fed irrigation)

But the way those leases have been negotiated, how land allocations are decided, and what oversight mechanisms are in place to monitor and control them is far from clear.

Land deals in the Office du Niger — what oversight?

By establishing a separate Secretary of State in charge of the Office du Niger in 2009, the government put the immediate responsibility for the land deals in the Office du Niger in the hands of two men, the Secretary of State himself and the PDG of the Office du Niger, whom he

Office du Niger headquarters, Segou

appointed. This drew public criticism, both in the choice of the PDG and because of alleged complicity between the two.[134]

The new Secretariat was established just as large-scale land deals were taking off, and almost a year after the Minister of Agriculture had signed a deal for 100,000 ha with Libya.[135] By creating the new Secretariat, the government effectively sidelined the Ministry of Agriculture, which no longer had any oversight over developments in the Office du Niger. Nor did it have a list of land leases and investments.[136]

All land leases and transactions in the country should be registered with the Ministry of Housing, Land Affairs and Urban Planning. [137] However, to date most of those in the Office du Niger have not been registered there or with the National Department of Property and Cadastres. A technical advisor in the Ministry says the Ministry has been trying in vain to obtain information on the leases.[138] He is particularly concerned about the villages that exist within the area where large land leases have been accorded to investors. An official at the National Department of Property and Cadastres says that the Office du Niger itself does land allocations and he has no record of them.[139]

The PDG of the Office du Niger appears to be the key in the process of negotiating and sealing large-scale deals and investors have to go through him.[140] He describes his office as being "complementary" to that of the Secretary of State, in charge of development in the Office du Niger. He maintains that he and the Secretary work together to "defend the interests of the government" when they draw up lease contracts with investors for the zone.[141]

OI was unable to obtain copies of the leases and other documents associated with the large land deals through official channels. The Secretary of State in charge of development in the Office du Niger says that these agreements and any associated studies are not made public as they are "private" documents, but then claims the leases are "not confidential" and they go only where they "need to go."[142]

Similarly, investors' obligations with regard to Environmental Social Impact Assessment studies (ESIA) remain unclear and not transparent. (See section V.)

The lack of disclosure of these leases renders the entire process of land acquisition by investors opaque and without public accountability.

Finding pieces of the land deal puzzle

The lack of transparency surrounding investors and their land holdings in the Office du Niger is a serious problem for civil society, farmer associations, and researchers attempting to assess the scale and the impact of the phenomenon. Even the farmers union, *Syndicat des Exploitants Agricoles de l'Office du Niger* (SEXAGON), with 12,000 members in the Office, is unable to obtain copies of all lease contracts from the Office du Niger.[143]

Civil society groups and farmer associations have managed to obtain copies of leases and/or agreements for the following large land deals in the Office du Niger, and only one (the SoSuMar project with Ilovo)[144] through official channels:

- Malibya: Agreement for Investment in the Agricultural Sector / *Convention d'Investissement dans le Domaine agricole)*, (100,000 ha); signed June 2008[145]
- Moulin Moderne du Mali: Special Agreement of Investment in the Agricultural Sector (20,000 ha) and Ordinary Lease in the Office du Niger (7,400 ha), signed 31 May 2010[146]
- Illovo Group Holdings Limited and Schaffer and Associates International LLC (CaneCo and SoSuMar): agreement (15,000 ha), signed 27 June 2007 (holdings on official Office du Niger map of October 2010 amount to 39,538 ha)[147]
- N'Sukala, China Light Industrial Corporation for Foreign Economic and Technical Cooperation (CLETC): agreement, (20,000 ha) of which 13,000 available on date of signing, remaining 7,000 attributed over next 3 years, signed 22 June 2009[148] (holdings shown on Office du Niger map October 2010 at 18,300 ha)
- PetrOtech-ffn Agro MALI, ordinary lease for 10,000 ha[149]

OI obtained a map of land allocations within the Office du Niger, as of October 2010. That map shows 22 large (2,000 to 100,000 ha) allocations, but does not specify those finalized vs. those under current negotiations.

Table 1 represents a preliminary attempt to list and identify all the investors that appear on this map. While details are missing for many of the investors, the overall findings and trends reveal both the rapid pace and the large scale of the takeover of land in the Office du Niger.

TABLE 1. SUMMARY OF LARGE (2,000 – 100,000 HA) LAND ALLOCATIONS IN THE OFFICE DU NIGER, MALI

	Investor / Leaseholder *	Origins / Shareholders / Financing / Parent Companies	Surface (ha)	Details of the Investments	Stated Purpose
1	AED [150]	France	2,600		Sunflowers in growing season and wheat in off-season
2	Agroenerbio S.A. [151]***	Mali	40,000		Agrofuels
3	Assil Meroueh [152]	Ivory Coast	5,000		Jatropha
4	Baba Seid Bally (SBB BIO) [153]	Burkina Faso	10,000		Company activity: "agriculture energy" Agrofuels
5	CEN-SAD	Community of Sahel-Saharan States (Libyan initiative)	40,000		
6	Co-Enterprise [154]	West African Countries	3,000		Rice and vegetables
7	FORAS International Investment Company (project also referred to as "AgroGlobe") [155]	Saudi Arabia. *Main shareholders*: Islamic Development Bank & private investors from Saudi Arabia and other Gulf countries *Largest shareholders*: Dallah Al Barakah Group and Saudi Bin Laden Group. *Other major shareholders*: National Investment Company of Kuwait, Nasser Kharafi of Kuwait, and Sheikh Saleh Kamel	5,000	200,000 ha already acquired in Mali according to the International Rice Research Institute (IRRI)	Rice
8	HUICOMA [156] (GOUPE TOMOTA)	Mali - Tomota Group is owned by billionaire Alou Tomota - Financial partners have included International Finance Corporation (IFC) and AFD (Agence Française de Développement)	100,000	- In Sept. 2010, the PDG of the Office du Niger told the media no lease had been signed yet; Office du Niger map of Oct. 2010 shows allocation of 100,000 ha - No resettlement plan; Expropriations have been reported - Employment projections:~ 1,000	-Company says it will cultivate oleaginous crops (sunflowers, soya, peanuts, karité, jatropha) and produce comestible oils although jatropha is not edible - it says "surplus" can be sold to those wishing to make agrofuels
9	LONHRO Agriculture [157] (Subsidiary of LONHRO Plc)	UK (London HQ)	20,000	Plans to develop a total of 100,000 ha.	Sugar / ethanol

	Investor / Leaseholder *	Origins / Shareholders / Financing / Parent Companies	Surface (ha)	Details of the Investments	Stated Purpose
10	MALIBYA [158]	Libya Libya Africa Investment Portfolio (LAP) - Libyan sovereign fund	100,000	- 50 years lease - Investment "Convention" signed between (former) Mali Min. Agric. and Libyan Sec. Agric. & Livestock - Land is free, only water is charged - Water charge is 2,470 F CFA/ ha ($ 5) for spraying & 67,000 F CFA/ha ($ 135) for gravity irrigation - No resettlement plan and little liability. Expropriations and loss of livelihoods have been reported	-Hybrid rice, tomato processing & livestock -Development of irrigation canal (40km long – largest in Mali) and roads
11	Millennium Challenge Corporation (MCC)[159]	USA	22,441	- Presented as a development project, land being privatized and allocated / sold to local farmers. Not an "investment" - Issue land titles to local population – 2 ha free, 3 ha to be paid for 3 to 4 million F CFA ($ 5,775 to 7,700) per ha -Some resettlement required	- Purpose is to increase production / productivity, expand Mali's access to markets and trade -Land management, irrigation, work with AGRA to provide inputs, privatization of land, issue land titles
12	Moulin Moderne du Mali, M3-SA (Part of Groupe GDCM, Grand Distributeur Céréalier du Mali)[160]	Mali Groupe de Sociétés Moulin Moderne du Mali (GDCM) and Complexe Agropastroal et Industriel in public-private partnership with Malian government	**7,400** (initial phase covered by lease); 20,000 in the special areement)	- 30 years lease -"Special Investment Agreement" (50 years) also signed under Public Private Partnership - Land free, water is charged (same rate as Malibya) - "Convention" stipulates 1 year for technical, socio-economic and environmental studies although project started immediately and no studies have been published - "Convention" stipulates a resettlement plan for displaced populations but expropriations and loss of livelihoods have been reported without compensation.	- Wheat as main crop -"agriculture and livestock"

	Investor / Leaseholder *	Origins / Shareholders / Financing / Parent Companies	Surface (ha)	Details of the Investments	Stated Purpose
13	N'Sukula [161] (part of China Light Industrial Corporation for Foreign and Technical Cooperation) (CLETC)	China (HQ Beijing) Mali govt 40% shareholder in N'Sukula	18,300	- According to the map of the Office du Niger allocations of 3,300 ha + 5,000 ha + 10,000 ha would equal 18,300 ha - According to the 2009 official Agreement, 20,00 ha would be attributed: 13,000 immediately; 7,000 within 3 years -50 years (renewable) lease -857 ha ceded to CLETC with title for 1.5 billion F CFA(about $ 3 million) -19,143 ha in long-term lease, with annual rent of 382,747,500 F CFA ($ 772,778), for 50 yrs total of 19,137,375,000 F CFA ($ 38,638,920), but govt gives land for a flat rate for 50 yrs of 2,038 billion F CFA($ 41,147,810)	
14	Ousmane Ouane		10,000		
15	SeedRock Africa Agriculture [162] (Subsidiary of SeedRock Corporation)	Canada (HQ Vancouver) (registered in British Virgin Islands); Advisory Council includes several former African heads of state and ministers	40,000 (total by 2015)	- 50 years lease (renewable) - Company plans to lease 46,000 ha - 2,000 ha being negotiated in south of Mali, near Bougouni	Sunflowers, maize, soybeans, sorghum, wheat, rice, plus produce & sell hybrid seeds
16	SNF (Société N'Diaye et Frères)***	Mali	15,000		Oleaginous plants (probably for agrofuels)
17	Société Petrotech-ffn Agro Mali s.a [163] (Subsidiary of PetrOtech-ffn, Inc)	USA (Hyannis, MAHQ)	10,000	- Ordinary tenancy agreement of 30 years - Can sub-lease - Claims 100 direct jobs to be created	-Jatropha (9,500 ha) to be sold in Europe or supply the company's agrofuel plant in Egypt
18	SOCIMEX [164]	Mali	10,000	-Intends to "mobilize smallholders" on 10,000 ha to produce jatropha -Claims 1,000 jobs will be created	Jatropha

	Investor / Leaseholder *	Origins / Shareholders / Financing / Parent Companies	Surface (ha)	Details of the Investments	Stated Purpose
19	SoSuMar [165] Local company CaneCo to be created in Mali by SoSuMar (Societé Sucrière de Markala) with Illovo Group Holdings Ltd. (IGHL) as majority shareholder Public-private partnership with Govt of Mali	South Africa (Illovo Group Holdings Ltd. is also registered in Mauritius & Louisiana, USA) -*Shareholders SoSuMar* include Govt Mali (6%) & Schaffer & Associates International (SAIL) *Project developers*: Malian Ministry of Industry & Commerce, through SAIL *Other Sponsors*: USAID co-funding sugarcane trials with Schaffer & Associates and the Govt of Mali *Lead Commercial Financial Institutions* TBD *Public Sector support:* World Bank, ADB, IFAD, Islamic Development Bank, OPEC Fund, Banque Ouest Africaine de Développement Export Credit Agencies: US Ex-Im Bank, US Trade and Development Agency (USTDA) for feasibility study funding, Export Credit Insurance Corporation of South Africa, Bilateral Development Agencies (e.g.,OPIC, KfW) Saudi Fund, Kuwaiti Fund, Proparco, IDC	39,538 (total)	- Agreement (long term lease) signed 27 June 2007, between Govt of Mali and ILLOVO Group Holdings Ltd./Schaffer & Associates International LLC -50 years (renewable) -Original lease for 17,000 ha, with right to extend (Oct 2010 Office du Niger map shows total of 39,538 ha) - Must employ 5,000 according to Agreement ("Convention"); SoSuMar foresees 7,200 -Project running behind schedule	-Sugar & ethanol Original agreement for 17,000 ha says: -195,000 T sugar/year -15 million litres ethanol/year
20	Soudan Fayez	Ivory Coast	5,000		
21	Southern Global Inc.[166]	USA (Alabama)	30,000		Rice
22	UEMOA [167] West African Economic and Monetary Union	West African nationals, including Malians	11,288		For private sector investors from UEMOA states to grow rice, fruits and vegetables
	TOTAL LEASED**	**Foreign investors: 16**	**544,567**		**Agrofuels: 9 investors**

* Source for investor names and allocated hectares: Office du Niger map of 16 Oct. 2010

** Actual holdings in Office du Niger, shown on Office du Niger map, Oct. 2010, not including expansion plans noted by companies.

*** Leases reported resiliated[168]

CONFLICTING INFORMATION

AREA THAT CAN BE DEVELOPED FOR AGRICULTURE / LEASES IN THE OFFICE DU NIGER

960,000 ha — Secretary of State in charge of the Office du Niger[173]

2,000,715 ha — Office du Niger data[174]

AREA THAT CAN BE IRRIGATED IN THE OFFICE DU NIGER

450,000 ha — Secretary of State in charge of the Office du Niger[175]

1,000,000 ha — API website[176]

1,100,000 up to 2,000,000 ha (including underground water sources) — Office du Niger official[177]

AREA THAT HAS ALREADY BEEN DEVELOPED (FOR IRRIGATION) IN THE OFFICE DU NIGER

98,531 ha — Office du Niger data[178]

350,000 ha — Permanent Secretary of the Executive Committee of the Superior Council on Agriculture[179]

By October 2010, OI found that:

- According to this map, at least 544,567 ha of land had either been leased or allocated (letters of provisional agreement accepted) in the Office du Niger; another Office du Niger document gives the figure of 588,243 ha.[169]
- This does not include unofficial expansion plans as given by investors on their websites and collected from other sources, which would inflate this figure of 544,567 ha by 275,000 ha,[170] for a total of 819,567.
- Out of 544,567 ha, at least 372,167[171] concern allocations to foreign investors (as major shareholders), a dramatic increase in just one year; in 2009 only 130,105 ha were foreign investors.[172]
- OI identified that at least 9 of 22 investors intend to produce agrofuels, either from sugarcane (ethanol) or were to foreign investors.

The lack of transparency and public disclosure surrounding the land deals makes it impossible to assess the full extent of and nature of the land leases in the Office du Niger. No large-scale land lease obtained by OI involves payment for the land itself, but the Secretary of State in charge of the Office du Niger told OI he was preparing new legislation that would change this. Only one contract (N'Sukala) involved rental fees but these go towards Mali's purchase of 40 percent of the shares in the company (see Table 1).

The contracts that have water fees (Malibya and Moulin Moderne) stipulate that leaseholders using irrigated land pay 2,470 F CFA (about USD 5) per ha per year for spray irrigation and 67,000 F CFA (about USD 140) per ha per year for irrigation that is gravity-fed, and that this rate may be reviewed and renegotiated by the signatories each year. Those agreements also contain loose guidelines about water use – unrestricted when the river is high, and recommended for crops that require less water (wheat, maize soya, etc) when it is low between January and May.

The paucity of information surrounding the projects and the lease agreements is problematic in Mali. Also of concern are the many contradictory statements regarding land availability for investments in the Office du Niger.

Two eminent Malian authorities on land tenure, Moussa Djiré and Amadou Kéita, concluded in a 2010 report that the scale of land investments in the Office du Niger constitutes "a big risk for land security of rural agricultural producers and seriously mortgages the future for generations to come."[180]

Djiré and Kéita further note differences in the ways investors operate, and therefore affect local populations. They single out the SoSuMar project (whose goal is to produce sugar for the domestic market) as one that could "inspire hope" in the way its benefits are supposed to be distributed.[181] But even with what they call this project's "overall coherence" and the apparent support it received from the majority of villages in the area, the authors question whether all the promises to the communities (including 5,000 jobs) will be fulfilled and whether the displacement of 1,644 villagers[182] will be completed to their satisfaction. They also note resistance among some village leaders.[183]

They conclude that while there is legislation to ensure good governance and natural resource management in Mali, judicial and institutional gaps, together with a failure to apply existing legislation, leave the field open to corruption.

V. CASE STUDIES OF FOUR INVESTMENTS

Because of the lack of transparency and public disclosure, the following case studies are preliminary and are based on contracts obtained from unofficial sources, media reports, civil society and farmer association findings, OI interviews and field visits.

Members of the Semana Dugu community meeting in the chief's hut, Office Du Niger

1. MALIBYA

MALIBYA AT A GLANCE:

- 100,000 ha in the Office du Niger, west of Macina
- 50-year renewable lease
- production of hybrid rice, livestock and tomato processing
- land is free
- water to be charged at 2,470 F CFA (about USD 5) per ha/year (spray irrigation) and 67,000 F CFA (about USD 140) per ha/year for gravity-fed water
- Malibya has the right to use all the surface and subterranean water it needs between June and December each year
- between January and May each year, less water-intensive crops should be produced, such as wheat, maize, soya and various vegetables; no actual limit for water use is stipulated
- will involve the construction (between Kolongotomo and the main project site in the Boky-Wèrè zone) of the largest canal in Mali and one of the largest in Africa, and a road, both 40 km long in the first phase (25,000 ha) [185]
- the canal has a minimum capacity of 130 m^3 of water per second, permitting irrigation using 11 million m^3 of water per day or 4 billion m^3 per year [186]

Malibya billboard, Segou

Unanswered questions

In 2008, in the context of the national "Rice Initiative" to stabilize food prices and restore self-sufficiency in the country, Mali leased 100,000 ha in the Office du Niger to Malibya, a subsidiary of Libya Africa Investment Portfolio (LAP) as part of a larger project that includes the construction of one of the largest canals in Africa and the production of hybrid rice.[187] Not surprisingly, the deal generated many reactions among farmers and civil society — why should Mali give so much of its fertile land to Libya; who is supposed to benefit; what impact will it have on smallholders in the lease area; and what impact will its massive water needs have on the Niger River itself? These questions remain unanswered.[188]

The project was negotiated allegedly at the very top, directly between Libyan head of state Muammar Gaddafi and Malian President Amadou Toumani Touré on the fringes of the CEN-SAD summit in Bamako.[189] The actual agreement, however, was signed between Tiémoko Sangare, (then) Malian Minister of Agriculture, and Dr. Aboubaker al Mansoury, Secretary of the Popular Committee for Agriculture, Livestock and the Fishery, representing the Arab Libyan Popular and Socialist Grande Jamahiriya.[190]

Generous tax breaks and other unspecified advantages — but no public information

The agreement states the project will benefit from all incentives listed in Mali's Investment Code. It doesn't spell these out, but according to the terms for System B (investments above F CFA 150 million / approx. USD 314,000) large enterprises undertaking a new activity, this would grant Malibya:

- total exemption from all duties and taxes related to Malibya activities for 30 years

- exemption for the first 8 years from company tax, corporation tax, and license
- exemption for the duration of the construction for 3 years of import taxes and duties on equipment, machinery, tools, spare parts and building materials required for the project.[191]

The agreement also says that Malibya will be accorded all the advantages contained in the Action Plan (signed May 9, 2008), without providing more details.

A copy of the agreement was obtained through unofficial channels many months after work had already started on the new irrigation canal.[192] As noted earlier, the Secretary of State responsible for development in the Office du Niger expressed its intention to keep such documents out of the public domain.[193]

ENVIRONMENTAL AND SOCIAL IMPACT – NO PUBLIC DISCLOSURE AND LITTLE LIABILITY

Similarly, the government has not made public any Environment Social and Impact Assessment (ESIA) and it is unclear whether such an assessment has been made. While, the Ministry of Environment claims an ESIA was undertaken and approved,[194] the contract makes no mention of it. Malibya's Director refers to technical studies, including topographical and soil, as well as economic viability studies but does not mention any ESIA,[195] and CNOP confirmed the absence of an ESIA as well. Investor's obligations remain unclear at this time. The Permanent Secretary of the Executive Committee of the Superior Council on Agriculture only mentioned that an ESIA "will come" for Malibya but for now it appears that there is no public oversight or monitoring of the project. Meanwhile, the Center for Human Rights and Global Justice highlights that by being awarded a land "free from any juridical constraints or individual or collective property that hinders the exploitation of the land," Malibya bears little (if any) responsibility toward local communities.[196]

NO LAND FEES, NO LIMITS ON WATER USE

The government provided very generous lease conditions and little constraints to Malibya. The agreement doesn't impose any fees for the use of the 100,000 ha for 50 years. It charges negligible fees for water extraction from the Niger River, and places no limits on the actual amount being extracted, only loose guidelines according to water flows. It states that, from June to December, Malibya can use all the water it needs "without restriction" and from January to May, when the river is low, the project should cultivate less water-intensive crops. Even these crude estimations of when the river flow is high and low appear flawed, as June is still a low-water month for the Niger River in Mali.[197] Millions of people downstream on the Niger River depend on receiving the heavy flows well after the river peaks.

In contrast, Mali is obliged by the agreement to assure the "quantity of water needed for these crops through the

CONFUSING AND MISLEADING CLAIMS FROM THE MALIBYA DIRECTOR GENERAL[199]

- The project "aims to assure food security for everyone in Mali first, and then for the rest of Africa."[200] *There is no mention in the agreement of where the agricultural produce will go, whether it will be domestic markets and consumption or for export to Libya.*
- The project will generate at the very least 10,000 jobs and could "provide employment for all the inhabitants of the Region of Ségou." *There is a great difference between these two projections. The population of the Region of Ségou in 2009 was over 2.3 million people,[201] with an active population that could be roughly estimated at 989,000 inhabitants.[202] The employment claims appear exaggerated.*
- "These activities require a workforce, where the priority will be given to the local population." *However, the construction of an irrigation canal of 40km has been subcontracted to the Chinese operator (CGC* owned by oil company SINOPEC[203]*), and it is unclear how many local people may be employed in the future.*
- By introducing hybrid rice, the project should produce 8–9 metric tons per ha. *The average rice yield per ha in all of Mali — including rain-fed production — in 2009 was 2.3 metric tons per ha,[204] but in the Office du Niger where Malibya has its lease, the average yield in 2009 – 2010 was 6.2 metric tons per ha.[205] So it is misleading to suggest that the hybrid rice will quadruple yields.*
- "As far as the reorganization of the local population goes, that is, the villages that will be moved, I say that all arrangements will entail some inconvenience and I ask the cooperation of everyone for this. It is not a question of chasing the people out or evacuating them, but simply of reorganizing them." *"Reorganization" is a misleading euphemism that downplays the disruption that comes with resettlement and loss of land and homes.*

Malibya canal near Kolongo

Macina Canal."[198] This raises major questions that should have been examined before the agreement was signed — how much water will the project need for year-round agricultural production, what impact will that have on the rest of the Office du Niger and on the river itself, and how can Mali assure Malibya it will provide all the water it needs?

Immediate impacts on local communities and smallholders

The construction of the 40-km-long irrigation canal and adjacent road resulted in massive disruption in the region of Kolongo. Houses were razed, market gardens and orchards bulldozed, animal trails obstructed and the broad canal now divides single villages. A cemetery was unceremoniously unearthed in the village Goulan-Coura. Local people there were shocked to find human remains scattered about the construction site before the contractors then plowed them into the ground.[206] According to research by local farmer organizations in July 2009, out of 150 households in the area affected by the initial construction, only 58 were to be compensated or provided alternative solutions.[207]

The local union of smallholder farmers, SEXAGON, fears the future deployment of the project where no consultation has been undertaken and no information has been provided to the local communities. While it is apparent that local populations will lose their lands and livelihoods, no one knows how many people might be employed by Malibya locally, and how much those who are employed would be paid. "We will all become the beggars of Gaddafi," says Tiédo Kane, a member of SEXAGON,[208] echoing fears of other farmers in the region. [209]

Threats on food and seed sovereignty

Civil society groups are concerned that Malibya's hybrid rice plantation will further erode food security, agro-biodiversity and eco-social ties in the zone. While the convention lists "food self-sufficiency" as one of the project's main strategic objectives,[210] officials in the Office du Niger recognize that hybrid rice is a variety not suited for the local market, where local varieties are appreciated for their flavor and texture.[211] Meanwhile, such projects (which have also been conducted in Liberia) represent for Libya a means of reducing its commercial rice imports by outsourcing food production.[212] Smallholder associations also believe that the widespread use of hybrid seeds will eventually extend to smallholders who currently produce and share their own seeds. If it does, it will increase their dependency on imported seeds and increase farmer debts.

Destruction of valuable market gardens

The construction of the canal for the Malibya project in 2009 closed the small irrigation channels that were watering the market gardens of the women farmers' groups in that area. The women subsequently lost all their harvest and livelihoods. According to a development agent working with them, no information, consultation or compensation were ever provided.[213] Her words below express the disconnect between the authorities in the Office du Niger and the women farmers.

> "Why don't they view women as farmers? When they speak of development, it's always numbers and technology, it's never about the actors. They don't even know who the farmers are! The work of the smallholder is never valued, it's as if they're nothing." Malian woman development agent, October 20, 2010.

2. MOULIN MODERNE DU MALI

MOULIN MODERNE DU MALI AT A GLANCE

- two separate agreements signed on May 31, 2010: one a special agreement between the Government of Mali and the Group of companies of Moulin Moderne du Mali and the Agropastoral and Industrial Complex; the other an ordinary lease between the Office du Niger and Moulin Moderne du Mali 20,000 ha in the upper Kala hydraulic zone of the Office du Niger at the disposition of the Group (special agreement)
- 50 years renewable, no land fees[214]
- first phase of project (under the ordinary lease) for 7,400 ha in M'Bewani zone, 30-year lease, renewable indefinitely for 30-year periods[215]
- wheat is the principal crop in the first phase[216]
- no limits to water use, proposes that less water-intensive crops (wheat, maize, soya, vegetables) should be cultivated between January and May (when the river is low)
- water to be charged at 2,470 F CFA (about USD 5) per ha/per year for spray irrigation; 67,000 F CFA (about USD 140) per ha/year for gravity-fed irrigation

Just whose land is the Moulin Moderne lease on and what is it used for

Samana Dugu is an indigenous community of approximately 3,500 inhabitants on land now leased by the Office du Niger to Moulin Moderne. The 40 elders and youth met by OI in October 2010 assert that their community has been there for centuries. In the small mud hut that serves as the Bambara chief's palace, there are animist shrines, attesting to its ancient pre-Islamic history.

Yet the Secretary of State responsible for the Office du Niger doesn't seem to recognize their rights, stating that such communities have "installed themselves" in the Office du Niger without permission and therefore do not have any rights to the land.[217]

The farmland around Samana Dugu is not irrigated by Office du Niger canals; it has been used by the community since before the colonial period and is extremely productive.[218] The family farmers of Samana Dugu cultivate millet in a highly productive agroforestry system involving trees such as néré, baobab, karité and balanzan (*Faidherbia albida*, a tree sacred to the Bamanankan people of the area), which provide valuable economic products and perform environmental services such as soil protection and biodiversity conservation. Farmers also produce watermelon, pigeon peas, sesame and fonio (an indigenous, highly nutritious and ancient kind of millet grown in Mali).[219] Not only are the people of Samana Dugu self-sufficient in millet, but they also produce enough to sell year-round to cover taxes, health, marriage (etc.) costs. Two years ago, during a major food crisis in the country, the community donated 40 metric tons of millet to the Malian government as food aid.

Noble and ambitious?

The PDG of the Office du Niger describes the Moulin Moderne agricultural project as "noble and ambitious."[220] The people of Samana Dugu that OI met did not agree.

They learned about the lease when the Chair of the Board of the Groupe de Sociétés Moulin Moderne du Mali and Complexe Agropastoral et Industriel came to the community. He allegedly solicited support for the project by paying off a single clan within the community and promising its members compensation for their land and trees. The majority of the village opposed the project, unsatisfied with a deal offering family heads 1 ha in compensation for each 10 ha taken away. Their visit created enormous tension in the village between those few who supported the project and the rest who opposed it.

Shortly after the leases were signed, the bulldozers moved in and started to clear the land, felling all the trees. In

June 2010, men, women and youth from the community protested the cutting of their trees. Trucks carrying about 70 gendarmes arrived to quell their protest. They allegedly beat the protestors, including elders and two pregnant women, one of whom, Aminata Tangara, later miscarried. Kaninfin Diarra said she was beaten and arrested because she tried to stop the felling of her 100 karité trees, and pointed to the scars on her knees from her injuries. About 40 people were arrested, among them 14 women. Most were released without charge, but five months later eight were still in prison.[221] One of those, Bakary Coulibaly, awaiting trial in nearby Markala, said that the accusations by the gendarmes that the protestors were violent were untrue. He said they had their hoes with them on the land where the trees were being cut.[222]

One media report alleged that the protest was instigated by "mal-intentioned" youth and a Samana Dugu development association whose members are not residents of the village but living in Bamako.[223] It also reported that the protestors had destroyed valuable machinery. The PDG of the Office du Niger also dismissed the massive opposition to the project: "We even wanted to disburse 300 million F CFA (USD 627,392) to resettle the village and at one time the villagers agreed. We have the impression that it is people from the village living in Bamako pulling strings of this revolt."[224] These statements were refuted by the chief, elders, youth and women of Samana Dugu.

A similar protest and arrests occurred in Siranikoro, another community on the Moulin Moderne lease area.[225]

Moulin Modern's activities resulted in unrest, violence, arrests, and loss of farmland and trees in the first few months of its operations. As the Moulin Moderne project expands, it seems inevitable that these negative impacts will spread more widely. The community maintains that there was no genuine consultation about the project, no information about possible compensation for lost land and trees, and in late 2010, they were awaiting anxiously the loss of their ancestral lands and village.

Work has already begun, where are the studies?

The Special Agreement (Article 6) states that Moulin Moderne must complete technical, socio-economic, environmental studies, within one year, or within a time frame agreed to by both parties. It also stipulates that Moulin Moderne undertakes a resettlement plan for the population that may need to be moved. In Article 4, it states that the land will be made available to Moulin Moderne three months after the state (Malian authorities) have received the feasibility studies on development of infrastructure, socio-economic studies, and environmental impacts. Water needs, it states, will be determined by the economic feasibility study.

Moulin Moderne began clearing the land on its initial lease area of 7,400 ha less than a month after the contract was signed, which means that these studies all had to be completed and approved by the Office du Niger and the Malian government well in advance of the signing. None has been made public, and the affected population in Samana Dugu is unaware of the results of any of the studies, including one that would inform them of how much land they would lose, if and to where they will be resettled, and what compensation would be offered.

Generous tax breaks — what does the public get from this Public Private Partnership?

The Agreement between Moulin Moderne and the government describes the agricultural investment deal as a "Public/Private Partnership" between the two signatories, although it is unclear how Malians will benefit from the project. In the absence of any ESIAs or public information, many questions remain unaddressed. Will the production of wheat on an industrial scale significantly reduce Mali's imports of wheat, which reached 41,883 metric tons (or 19.5 million USD) in 2008?[226] How much local crops will be lost? How will domestic staple food production be impacted? Wheat is actually used to produce bread and other products consumed primarily by urban middle and upper income groups; it is not a staple or affordable for the majority of Malians, particularly in rural areas. Yet, the land Moulin Moderne has leased is important for millet production, which is a national staple.

It remains unclear how the project will increase government revenue as well. Article 14 of the Agreement states that Moulin Moderne qualifies for fiscal incentives in the Investment Code, and other fiscal advantages granted by an agreement to be concluded with the Ministry of Finance. This means that among other fiscal advantages, the company will benefit from total exemption on all duties and taxes related to the project for 30 years and exemption for the first 8 years from company tax, corporation tax, and license.[227] There is no information available on the mentioned agreement "to be" concluded with the Ministry of Finance.

3. TOMOTA GROUP (HUICOMA)

TOMOTA AT A GLANCE

- 100,000 ha on the western border of the Malibya lease, including Monipébougou, Macina, and Ténenkou[228] for the production of "oleaginous" plants[229]

Who and what is Tomota / Huicoma and what are its plans?

Huicoma, formerly the mostly (96 percent) state-owned *Huilerie Cotonnière du Mali* (part of the parastatal cotton company CMDT), was privatized in 2005, with its majority of shares purchased by the Tomota Group (owned by the Malian business mogul Alou Tomota). This was a highly controversial transaction that resulted in massive lay-offs and special tax incentives being accorded by the Ministry of Finance to the Tomota Group, after a selling process involving restricted bids.[230]

After the purchase, the company realized that it did not have enough raw stock for its oil production.[231] Tomota decided to acquire 100,000 ha in the Office du Niger to produce its own raw oil stocks. The large land lease will be used to cultivate sunflowers, peanuts, soya, jatropha *(Jatropha curcas)* and karité (domesticated varieties that mature and produce in 3 – 4 years).[232]

Production started before any lease was signed

According to the PDG of the Office du Niger, as of October 1, 2010, no lease had yet been signed for the 100,000 ha attributed to Tomota.[233] However, in October 2010, Tomota was already producing 2,000 ha of sunflowers. One newspaper reported a possible land holding extension from 100,000 to 140,000 ha.[234] This raises serious questions about the procedures employed by the Office du Niger and the government in allocating land, and their reasons for permitting production on such a vast and fertile area without a prior signed agreement and an ESIA.

Oil for domestic human consumption or for fueling vehicles elsewhere?

In an interview with OI, Tomota's Technical Director emphasized that the project will produce comestible oils, obscuring the fact that it also plans to cultivate jatropha, a non-edible plant whose oil is used to produce agrofuel.[235] The company aims to produce 1,350 metric tons of oil per day, and sell any surplus (which cannot be processed for domestic consumption), on the open market, very likely for exports.[236]

What happens to the people — and their farms — on the Tomota land holding?

According to Tomota, no villages will be moved[237] but an international environmental association (aGter) reported that smallholders have already been expropriated, without compensation.[238]

Conflicts, which periodically flare up between pastoralists and smallholders in the area of the Tomota lease, could be exacerbated or activated as land and water access constraints build. In the absence of any ESIA for the project, it is difficult to evaluate risks and opportunities involved with such a massive project. However, the current company's operations point to potentially dramatic losses of farmland, smallholder livelihoods, livestock corridors, and agro-biodiversity. Smallholder organizations express growing frustration that this land deal has been carried out in such secrecy.[239]

OI estimates conservatively a population density of 1 to 2 people per ha, or 100,000 to 200,000 people living on the leased land.[240] Tomota states it may employ 1,000 workers on its land.[241] So it is unclear what will happen to the rest of the population. Meanwhile the environmental association aGter reports that some of the farmers displaced by Totoma currently work as laborers on the Tomota plantation site, being paid between 500 F CFA and 750 F CFA (approx. USD 1-1.50) per day.

4. PETROTECH-FFN AGRO MALI-SA

PETROTECH AT A GLANCE

- 10,000 ha in the hydraulic system of Kareri[242]
- 30 years, renewable indefinitely in 30-year[243]... or 99 years[244]
- principal crop will be oil-producing plants

Who and what is Petrotech?

Created in 2007, Petrotech-ffn Agro Mali is a sister of the Egypt-based research and development center Petrotech-ffn in Egypt, and a subsidiary of Petrotech-ffn USA.[245]

Its initial plan was to implement and manage a large-scale biodiesel feedstock research center and *jatropha* plantation on 10,000 ha in the Kouli Koro Region, Banamba City, Agriculture Private Zone.[246]

However, instead of acquiring land in Kouli Koro, Petrotech Mali negotiated a land deal in the Office du Niger, where it secured 10,000 ha.[247] The land in question is not yet irrigated with large-scale infrastructure, but there are small canals to water the land.[248]

Fuel from fertile farmland?

Petrotech holds an ordinary lease (30 years) for the land holding in the Office du Niger. The lease describes the land as "brownfields" (*friches – fallow land)* and indicates that Petrotech will produce "oleaginous" crops. The company's promotional presentation further specifies a plantation of 9,500 ha of jatropha to be used domestically to fuel multi-functional platforms (village processing units), generators and power stations and vehicles.[249] Yet on its website, it outlines a different end market, stating that it will "initially sell its feedstock to the EU countries, the US and to support the Biodiesel facility in Egypt."[250]

Regardless of the ultimate market for the jatropha oil, the Petrotech deal underlines two important issues: 1) the description of the land as "brownfield" by the Office du Niger, and 2) the use of 10,000 ha for the production of agrofuels, which cannot be construed as a contribution to Mali's food security (listed as a priority in the country's agricultural orientation law).

What happens to the people living on the Petrotech lease area?

A Petrotech presentation on the project states: "the project will benefit first and foremost the local population in the Macina area in general, and particularly the population in the rural municipality of Monipe. In fact, the project will be achieved in partnership with the population of Kareri (in the Office du Niger) in the framework of a participative approach. The population will be implicated at all stages of the project, from the intensification of the site to the operational phase of the project. Women will constitute a privileged target group through co-operative groups."[251] Besides these claims, Petrotech does not offer any explanation of how rural women in the lease area, as well as other smallholders, would benefit from the project.

Petrotech claims it will create 100 jobs on a holding of 10,000 ha.[252] Using similar rough calculations as previously, OI estimated conservatively a population density of 1 to 2 people per ha, translating into at least 10,000 to 20,000 people living on the Petrotech lease area. Again, what will happen to the rest of the population living in the lease area? For now however, Petrotech is still seeking financing for its project.[253]

VI. LARGE LAND DEALS IN MALI — EVALUATING RISKS TO PEOPLE AND THE ENVIRONMENT

The phenomenon of large land leases in Mali is recent, dating back to just two to three years. As a result, the investors' projects in the Office du Niger are still in the early stages. In some cases land clearing and transformation have yet to be undertaken. The intensive use of land and water resources, chemical fertilizers, and pesticides, has yet to be felt on a large scale when all the large investors unfold their full operations on over half a million hectares.

Yet, there are already early warnings on a small scale of the risks that the large land deals pose — to the environment and water resources, to food security, to smallholders and their land, and to social and political stability of the country.

Contested versions on consultation, consent and compensation

The Secretary of State in charge of development in the Office du Niger maintains that before an agricultural project can go ahead, the investor is obliged to perform several studies including an ESIA. The only required consultation that he mentions however is that between investors and the Office.[254]

The Secretary of State further claims that any trees that are cut in the Office du Niger will be compensated, and that investors who cut, for example, a néré tree *(Parkia biglobosa,* a very slow-growing and economically important indigenous species), will be asked to plant a néré tree elsewhere. Similarly, villagers will be compensated for lost land and infrastructure. However, the fact that the Secretary doesn't recognize the rights of the inhabitants of the zone (qualifying them as recent settlers) poses serious concerns as to the actual implementation of these rules.

The PDG of the Office du Niger claims that all persons displaced by development in the zone have already been compensated for expropriated lands.[255] These claims are contradicted by local farmer organizations and by the OI findings on the Malibya and Moulin Moderne du Mali leases.

As highlighted in these case studies, communities slated for displacement as a consequence of large land leases are not recent settlers, contrary to what the Secretary of State for the Office du Niger suggests. Many of them date back well past the creation of the Office du Niger and the Markala dam.[256]

Communities living on the land leased to Malibya and Moulin Moderne du Mali indicated to our researchers they were not informed of any of the details of the projects, were not asked for their consent, or told how they and their land would be impacted by these large-scale investments.[257]

"It was with bulldozers that they [the investors] consulted with the smallholders," says Ibrahim Coulibaly, president of CNOP.[258] It appears that there was no public debate over any of the land deals in the Office du Niger.[259]

Smallholders and civil society mobilize

Despite being based in the Office du Niger, members of the farmers union SEXAGON are hampered by the lack of transparency and information surrounding large land leases. "It's a mirage, there is no real information available," says their Secretary General.[260]

The farmers coalitions and union's priority is to inform their membership and all the concerned smallholders of their rights to land, information, consultation, and compensation. They believe all the farmers in the zone will be affected adversely by the large land deals.[261] As they have been unable to obtain copies of the leases officially, they have worked to gather information on the land deals themselves. In late 2010, CNOP, AOPP, and SEXAGON linked forces with the Network of Farmers' and Agricultural Producers' Organizations of West Africa (ROPPA) to undertake their own study to identify the investors and obtain more details about what contracts had been signed, and what the agricultural development project would entail.

Simultaneously, they have been monitoring events on land leases where investors have already started to develop land and irrigation systems in the hope to convince the government to rethink and suspend the large land deals in the Office du Niger.

In November 2010, these groups were joined by a broader coalition of Mali's civil society organizations to hold the "Kolongotomo Farmers' Forum on Land Grabs in Mali." The Forum, attended by about 2000 smallholder representatives from all over Mali raised the following list of issues:[262]

- "The smallholders in the Office du Niger are in a precarious position and there is difficulty in accessing information on government policies governing the massive concessions of agricultural land to foreign investors.
- The Agricultural Orientation Law is supposed to protect and support smallholders and secure land for them.
- There are violent and flagrant abuses of human rights and attacks, both physical and moral, on smallholder populations in the irrigated/developed agricultural zones of the Office du Niger.
- There are sudden and brutal occupations by foreign and Malian investors of agricultural lands to the detriment of family farmers who have urgent need of access to land and security over tenure.
- The massive ceding of agricultural land to private investors is an infringement on national sovereignty and will contribute to the almost inevitable disappearance of family farming."

The Forum participants called on the government:

- "to respect the Agricultural Orientation Law by adopting a policy on agricultural land tenure (Article 77).
- to recall that each Malian has the right to land tenure as contained in the Universal Declaration of Human Rights, and that Mali must respect those rights.
- to recall that land, water and forests and all natural resources in Mali are part of the national heritage and that they are inalienable.
- to freeze the development and irrigation projects underway on contentious sites and to suspend transactions and/or ongoing negotiations for them until all conflicts have been resolved.
- to engage in policy discussion with smallholder agriculturalists by organizing a roundtable focusing on issues of land tenure and the government policy on investment in the agricultural sector with a view to informing the public about the direction of its policies."

Participants of the Forum put in place a Committee to follow-up on these recommendations with a mandate to:

- "take stock of and document all cases of damages incurred by smallholders and violations of human and citizen rights, in addition to those already raised during the Forum.
- solicit the advice of a competent lawyer to follow up on cases of physical and moral attacks on smallholders who are victims of Modibo Keita [Moulin Moderne du Mali], the destruction of their material and non-material belongings.
- work with the Office du Niger to compensate the victims of Samana Dugu [the indigenous community on the Moulin Moderne du Mali lease, which has lost land and tree resources to the project].
- as a last resort, only after all other attempts have been made to find solutions through political dialogue, take their case to human rights tribunes and commissions to defend the material and moral interests of the smallholders: Malian jurisdictions, courts of the Economic Community of West African States (ECOWAS), the International Court for Human Rights in Geneva, and others."

The determination of the farmer associations demanding transparency and justice in large-scale land investments in Mali is extremely strong. "This is about our survival," said one spokesperson.[263]

Ignoring farmers and their recommendations

One official at the Office du Niger justifies the ongoing displacement of smallholders as follows: "All investment, all development, brings periods of transformation. At the beginning, perhaps, the people [smallholders] are going to co-exist with the big investors... So the two systems are there trying to co-exist but it's the law of nature, the one that is the most efficient will overcome the other. There's nothing we can do about that, if the large investors come to develop the Office du Niger, then there's nothing we can do." [264]

The image of the "law of nature" suggests a "natural" selection process. However, the large-scale land acquisitions have benefited from extensive assistance and fiscal incentives from the government and the World Bank as outlined throughout this report. In contrast, smallholders' oppositions to the land deals have largely been ignored or repressed by the government as in the case of Moulin du Mali.

In a 2007 study undertaken by the Office du Niger, farmers outlined their recommendations to the government, to fight poverty and transform the Office du Niger into the granary of West Africa:

"1. Stop supporting big private investors who wish to exhaust the country's resources without creating sufficient wealth and work for the rural population

2. Invest in modernizing household farming

3. Revise the land management decree[265]

4. Ensure transparency in the allocation of managed land

5. Increase the area of managed land in response to growing demand for land"[266]

None of these recommendations have found an audience in the Office du Niger. While the Office du Niger is increasing the area it manages, it is not to enhance smallholder food production and national food security. Conservatively, the area covered by the recent large land deals could sustain at least 112,537 farm families,[267] well over half a million people (686,478).[268] Instead, the government attributes land to investors for capital-intensive agriculture that can create at best a few thousand jobs and whose priorities may not align with Mali's food security imperatives.

Food security for Malians or profits for investors?

One of the main arguments used by the government to justify its drive to attract large agricultural investors is its objective to make Mali a major food supplier for the sub-region and beyond. In the view of an official at the Office du Niger, the aim is to "transform Mali into an agricultural powerhouse, producing not just enough rice and other food for its own needs but to export to neighboring countries."[269]

The day after the Kolongotomo Forum, the PDG of the Office du Niger held a press conference and stated categorically that there was "no land-grabbing in the Office du Niger."[270] He defended the large leases, stressing that investors would be developing/irrigating the land they leased. "All these investments," he said, "once they have been finalized, will help our country achieve the objectives that we've set for the agricultural sector between now and 2012, to transform Mali into an emerging country."[271] But he failed to mention food security as one of these objectives.[272]

Many of the land leases are for the production of agrofuels. At least 9 of 22 investors with large land holdings in the Office du Niger intend to grow plants used to produce agrofuels, such as sugarcane, jatropha or other oleaginous crops. (Table 1)

The Permanent Secretary of the Executive Committee of the Superior Council on Agriculture argues that letting investors pursue their financial (ROI) goals will help "diversify food production." However, he also recognizes that Mali should be giving preference to food over agrofuels production, and that the question of producing agrofuels on fertile and well-watered land is one that "needs to be debated by the authorities responsible for this."[273] Yet, so far, calls from civil society to open up a debate on such issues remain unanswered.

Women highly vulnerable

Women farmers in the Office du Niger are the most vulnerable to large-scale land deals. Even before the advent of the land leases in the Office du Niger, women had difficulty accessing land in irrigated zones, which they needed for market gardens. Plots cost 80,000 F CFA (USD 167) per year per ha for rental, so many of those who could afford to lease these plots were economic operators, sometimes called "Sunday peasants" in Mali. These small leaseholders then hired others, frequently women, to work their farms. Despite the high costs, many women grouped to obtain small plots in the Office du Niger, where they cultivate shallots and vegetables. Whether they work as subcontractors or directly on small market gardens, women farmers are systematically overlooked in consultation and compensation processes by authorities and investors.

Development workers and smallholders have long advocated for small-scale agriculture and multiple small irrigation canals,[274] rather than giant, water-guzzling irrigation canals, which in the case of Malibya divided villages, cut off pastoralists' corridors, and destroyed lucrative market gardens, held by women. Small-scale farmers — both men and women — are already at a disadvantage due to their poor capacity to get their produce to markets in urban areas.[275] By providing incentives to large investors and ignoring the needs and socio-economic organization of smallholders, the Malian government risks increasing social and gender disparities.[276]

Environmental threats to a fragile area

A VITAL RIVER AND PRECIOUS WETLAND

The Office du Niger is part of a vast wetland ecosystem recognized for its international importance under the Ramsar Convention (site 1365).[277] Extending from Ségou, to Mopti and Timbuktu, this is the largest inland wetland in West Africa and the second largest in Africa. It is a refuge for migratory birds, more than 350 species, and more than a million birds coming from over 80 countries use the delta. It is a rich repository of faunal biodiversity, with some endangered species. For Malians, it represents an important source of fish (at least 138 species have been identified by the convention), it offers a rare fertile ground for agriculture, and a precious source of plants and agricultural residues for livestock grazing.[278]

Niger River at Markala dam during the dry season

The advent of large land leases for massive irrigation and industrialized agricultural projects poses significant risks to the resources and the people of the Office du Niger, and appears to contravene the country's responsibility to protect the zone under the Ramsar Convention. According to an official in the Ministry of Environment and Sanitation, it is "a fragile zone" and more attention should be given to the kind of investment allowed there. With numerous villages, his belief is that the land originally belonged to the "indigenes," and they should have the greatest right to it.[279]

Nevertheless, the intention of the government is to dramatically extend the irrigated area from less than 100,000 ha to a million or even 2 million ha.[280] This will involve a massive increase in the amount of water extracted from the Niger River, which nourishes the biodiversity of the inland delta and millions of people downstream. The Niger River Basin is an extremely important resource for the people of West Africa. Nine countries are within its watershed — Benin, Burkina Faso, Cameroon, Chad, Côte d'Ivoire, Guinea, Mali, Niger, and Nigeria.[281] It is estimated that more than 110 million people live on its banks and depend on the river as it carves its way across 4,200 km from Guinea to the Niger Delta in Nigeria.[282] But its ability to supply the resources needed by those people is increasingly threatened by population growth, unsustainable resource use, development, and desertification.[283] In 2004, the nine members of the inter-governmental Niger Basin Authority (NBA) met to draw up a blueprint for the sustainable use of the river and to address serious issues of siltation, pollution, and protection of the river and its ecosystems. In the past 30 years, river levels have dropped about 30 percent, and experts fear that without careful management its ecosystems and the river itself could face extinction.[284]

Despite the precarious health and future of the Niger River, the Malian Ministry of Environment supports optimistically the extension of large-scale irrigation in the Office du Niger, even though there are no limits set on water use by investors. Though all major projects that withdraw water from the river are subject to approval by the NBA, it is unclear whether these have indeed been approved by the NBA, or whether an overall cumulative assessment of the impacts of all the on-going and potential agricultural projects would be undertaken.[285]

An economist at the World Bank concedes that there are technical "problems" with investors seeking to acquire 100,000 ha or 200,000 ha of land, which raises the question if it is possible to irrigate such vast areas, and whether there is even enough water in the Niger

Felled trees from the Moulin Moderne site

River.[286] No studies have been undertaken to assess how much land the river can realistically irrigate in the Office du Niger, without negatively affecting populations downstream. Several observers warn of the dangers of believing that the Niger River can irrigate 200,000 ha, let alone the 1 or 2 million ha foreseen by the government. CNOP's President highlights that "the deals are not just about land-grabbing. They are taking land where there is water available, so it's also water-grabbing."[287]

ENVIRONMENTAL AND SOCIAL IMPACT ASSESSMENTS – NO PUBLIC DISCLOSURE

The Ministry of Environment insists that all large agricultural projects in the country go through a process of approval, including an Environmental and Social Impact Assessment (ESIA), which has to be approved not just by the National Department of Sanitation and Pollution and Noise Control (DNACPN) but also by several government ministries.[288] These are to be conducted by independent consultants of the investor's choice, with terms of reference that have to be approved by the DNACPN. Those studies are then to be reviewed by a national commission, involving any government ministries that may be concerned by the project. Once the commission has made its comments, and any revisions it requires are made by the investors, the DNACPN issues an environmental permit. Monitoring of the project is the responsibility of regional offices of the DNACPN, with overall supervision under the domain of the national DNACPN office at the Ministry of Environment.

In practice, such studies are only made public if the financing is from the World Bank or another financial institution that demands full public disclosure. If the investor's capital is private, there is no obligation to publish them.[289]

The lack of public disclosure makes it impossible to know what the ESIAs contain, and if they have been done. One official says they are; another says they will be. For instance, the Ministry of Environment claims an ESIA was undertaken and approved for the Malibya project, which was not confirmed by the company. Meanwhile, the Permanent Secretary of the Executive Committee of the Superior Council on Agriculture mentioned that ESIAs will be included in the *"cahier des charges"*[290] and "will come" for all large land contracts signed after June 2007, implying that they have yet to be undertaken.[291] No ESIAs have been made public, and none was made available to OI, despite requests at the Ministry of Environment and the Secretariat of State responsible for development in the Office du Niger. The secrecy and lack of disclosure create legitimate suspicion. Either they exist and their results are not published, suggesting they are not favorable to the investment, or they don't exist and the investments made and decisions taken are not adequately informed, which raises serious concerns about the threats to the environment, natural resources, and even around the viability of these investments.

AGRICULTURAL INVESTMENT OR RAMPANT SPECULATION?

The Office du Niger maintains that it is only with large-scale investment capital that the irrigation systems can be extended to develop the potential of the zone. According to the Secretary of State in charge of development in the Office du Niger, it costs between 4 million F CFA (about USD 8,365) and 4.5 million F CFA (about USD 9,411) to develop irrigation for one hectare of land.[292] The rationale of the Office du Niger is that only large investors have the capital required for such development.

Farmer groups and civil society are skeptical about this rationale, considering that none of the Malian investors with large leases in the Office du Niger have the capital to even begin to develop their entire land holdings. Assuming an average of USD 8,900 to develop and irrigate a hectare, the cost for 10,000 ha would be USD 89 million. It is doubtful that any Malian investors in the Office du Niger have the means to develop that much land, let alone 20,000 or 100,000 ha. To develop and irrigate the Tomota lease, for example, would cost USD 890 million. This leads smallholder associations and civil society groups to believe that what is happening in the Office du Niger is not agricultural investment but land speculation and that foreign interests may be behind some of the large domestic investors.[293]

Local seeds saved and preserved by farmers.

VII. CONCLUSIONS

Scale and rate of land deals is alarming

According to OI's findings, at least 540,000 ha of fertile land had been leased or were under negotiation for lease as of October 2010, with foreign investments covering over 370,000 ha. Compared to two previous studies, this would suggest that the area allocated to large land leases has increased dramatically, by at least two-thirds between 2009 and 2010.

The average farm size for crop-based farming in Mali is just 4.7 ha and one third of the 805,000 farm households cultivate less than 1 ha. To put the recent large land deals in perspective, the area they cover could sustain 112,537 farm families,[297] well over half a million people (686,478).[298] Instead, that land is now concentrated in the hands of 22 investors.

These large developments are unlikely to provide the necessary paid labor-intensive activities to sustain populations. Two of the case studies (Tomota and Petrotech) highlight that investors may employ at best one person per 100 ha, whereas 100 ha of land would otherwise sustain 21 families or 105 persons, using conservative farm and household size averages.

Sidelining smallholders and food security

The situation in the Office du Niger could be significantly improved for smallholders if small-scale village irrigation schemes *(Perimètres Irrigués Villageois)* were expanded and replicated. Farmers could harvest more than once a year and increase yields through rice intensification methods that involve seedlings grown in nursery beds planted more widely and fertilized with applications of organic manure.[299] Where this method has been tried in communities along the Niger River near Timbuktu in Mali, farmers have been able to attain yields of 7 to 15 tons per hectare per year, for an average of 9 tons per ha, more than twice the conventional irrigated rice yield in the area, and more than the previsions of the Moulin Moderne du Mali. The small-scale village-based irrigation schemes involve plots of just 35 ha of land, shared by as many as 100 farmers, so each household has access to only one-third of a hectare. Yet from that piece of land they are able to earn USD 1,879, more than double the average annual per capital income of USD 676.[300]

If the rice intensification scheme were replicated and successful in the Office du Niger, 10,000 ha of such small-scale irrigation schemes could provide livelihoods for 285,715 farmers and dramatically increase rice production and revenues.

The immense potential for improving the yields, and thus the revenues and lives, of smallholders in the Office du Niger using such innovative small-scale irrigation schemes is being ignored by officials.

Failing to respect core principles to protect human rights to land and food

In 2009, the UN Special Rapporteur on the right to food issued a set of core principles to address the human rights challenge posed by large-scale land acquisitions.[301] The table below assesses the land deals profiled in this report against these principles.[302]

	Up to 2009	2010
Numbers of Investors	7 [294]	22
Total Allocated Land	162, 850 ha [295]	544,567 ha
Area Controlled by Foreign Investors	130,105 ha [296]	372,167 ha

Core Principles	Findings from Case Studies
1. Transparent and participatory process	All land deals lack transparency. Government officials state their intention to keep land leases and studies out of the public domain. None of the communities have been participants in lease negotiations.
2. Free, prior consent of communities	Communities are not being fully informed and their consent is not required. There has been forced displacement of population and destruction of valuable crops and trees on the Malibya and Moulin Moderne leases, without prior consent or consultation.
3. Protection of local communities' rights	There is no clear legislation detailing the rights of local communities. The land deals in the Office du Niger reside on state-owned land, where informal customary rights of the people living on these lands are not protected by law, and are not recognized by public officials. Violence was inflicted by security forces on the people of Samana Dugu who were protesting the loss of their land, with arbitrary arrests and detentions.
4 Priority to local development	Revenues are not intended for sharing with local populations, nor are development needs of local people being considered.
5. Employment creation	Job creation is minimal; the new agricultural schemes are highly mechanized and provide very few jobs for the existing populations on the land leases.
6. Environment protection	The models of agricultural production envisioned rely heavily on chemical fertilizers, pesticides and massive irrigation. Given the fragile ecosystem of the Niger River delta, they may potentially generate an ecological disaster. No environmental impact assessment has been made public yet.
7. Clear and enforceable investor's obligations	The obligations of investors are not defined in clear terms; the irrigation schemes they are to develop are vaguely described in the leases, and any studies that may detail these are not made public.
8. Share of crops to be sold locally	There is no guarantee that any of the crops produced will be sold and consumed in local markets.
9. Participatory impact assessment	ESIAs may — or may not — have been done for the large projects; there is no public disclosure. Local communities report not having participated in them.
10. Protection of Indigenous People's Right to Land	The Secretary of State in charge of development in the Office du Niger denies that the communities living on the leased lands are indigenous, despite evidence that predates their presence to prior to the colonial era.

Responsible agro-investment? World Bank ignores its own principles

The World Bank has been instrumental in encouraging large land deals in agriculture.[303] Mali appears to be part of the "pan-African" strategy of the World Bank, which seeks to improve the "business climate" in African countries, by emphasizing policy reforms, fiscal incentives and investor protection. Even if they are not well-known by ordinary Africans, several branches of the World Bank are working, often behind the scenes, to facilitate foreign direct investment. Among them are the International Finance Corporation (IFC), the International Development Association (IDA), Foreign Investment Advisory Service (FIAS), and the Multilateral Investment Guarantee Agency (MIGA). These branches have been involved in establishing a whole host of pro-investment structures in African countries — business forums, investment promotion agencies (IPA) and presidential investment councils (CPI).

Mali's investment code offers numerous and generous fiscal incentives for large-scale agricultural investors, diminishing government revenues from such investment. The World Bank is supporting structures such as the CPI and API that endorse and promote still more fiscal incentives. Already, large investors benefit from: total exemption from all duties and taxes for 30 years; exemption for the first 8 years from company tax, corporation tax, and license; exemption during construction for 3 years of import taxes and duties on equipment, machinery, tools, spare parts and building materials required for the project.[304] And yet, the Investment Code is currently under revision to make it even more attractive to foreign investors.

In Mali, both the CPI and API have been influential in pro-investment reforms in the country and in attracting foreign investors. API, in particular, advertises enormous areas available for agricultural investment on its website, informing potential agricultural investors that almost half the country's arable land is "available" or "on offer" to investors.[305] Few people in Mali are even aware of API's existence and its role.

As part of its efforts to quell the criticism of such "land grabbing" around the world, the World Bank came up with a set of voluntary principles "responsible agro-investment."

This report finds that none of these principles are being respected in Mali. Nor is there any sign that those in charge of the Office du Niger believe they must be. Indirectly, the World Bank ignores its own principles by supporting institutions and policy reforms that disregard them.

Mali does not have spare land and water

As more and more land in the Office du Niger is leased out to large-scale investors, and smallholders are displaced, it is unlikely that those farm families will be able to find available arable land and requisite water resources elsewhere in the country.

Diminishing amounts of arable land and water resources have already caused large-scale migration to urban centers, where unemployment and poverty are serious threats to social stability and well-being in burgeoning urban slums. Growing pressure on decreasing amounts of arable land and water also threatens the fragile peace that exists between pastoralists and farmers, particularly in the Niger River delta that boasts the best-watered land in the country.[306] Yet the Office du Niger, which is expanding to consume still more of the central inland delta, is precisely the zone being offered up to large-scale investors, whose developments diminishes available farmlands for smallholders and block existing livestock corridors.

The potential impact of such land leases on food security and water resources on a national or even a regional level has not been assessed, or if it has, those studies have not been made public.

Despite the claims by the API and the government itself that there is abundant land "on offer" or "available" for agricultural investment,[307] Malian officials are unable to point to any recent land use studies that would legitimize the API figures.

Biodiversity, seed sovereignty, human health and a vital inland delta at risk

The kinds of monoculture plantations that investors are proposing and undertaking in the Office du Niger run counter to the agro-ecological approach to land use and farming that was identified by the landmark International Assessment of Agricultural Knowledge, Science and Technology for Development (IAASTD) as the only sustainable option in the face of climate change, land degradation and a growing population.[308]

This model does not take into account the fragility of the ecosystem, a Wetland of International Importance under the Ramsar treaty, extremely rich in natural resources and biodiversity.[309] Nor does it take into account the importance of agro-biodiversity and tree cover, which are the trademarks of mixed family farming systems in Mali. Evidence of the destruction of biodiverse local ecosystems can already be witnessed around Kolongotomo on the Malibya site and Samana Dugu on the Moulin Moderne site. The felling of valuable slow-growing indigenous trees on the Moulin Moderne lease site and the replacement of an extremely biodiverse and productive smallholder farming system with a massive plantation of wheat, is just an indication of the kind of environmental issues – loss of biodiversity, loss of protective vegetative cover — to come, should the investors continue unimpeded to transform the Office du Niger into giant plantations. The environmental and health risks of the widespread use of chemical fertilizers and pesticides required for such industrial agriculture have not been evaluated, or made public.

Irrigation can improve and increase agricultural production, but the importance of small-scale irrigation schemes seems to have been put aside in favor of massive irrigation infrastructure on the investors' land holdings. If the agricultural investors in the Office du Niger are undertaking studies to determine the impact their projects will have on water availability, these are not in the public domain and open for critical discussion and assessment. Unsustainable management of natural resources is "increasing competition for land and resources" according to a comprehensive study carried out to look at the land deals in Mali.[310] What is happening in the Office du Niger can only exacerbate that competition.

Time for public disclosure, debate and rethinking, before it's too late

Government ministries appear to be sidelined in the allocating of land leases because they are the responsibility of the Office du Niger itself and the Secretary of State in charge of development in the Office. This puts an enormous amount of power in the hands of just two men, without the requisite public accountability and governmental checks and balances, and contributes to the lack of transparency with which the land deals are being made. Positive press coverage that the PDG garners by granting special interviews or taking the media with him on visits to the lease areas are clearly intended to reassure the public, but still do not reveal details required for informed public debate.[311]

When land deals are surrounded by a lack of transparency bordering on secrecy, as they are in Mali, this raises concerns about government conduct and undermines its accountability, increasing opportunities for corruption. It also contravenes the right of citizens to information, under Article 19 of the UN Covenant on Civil and Political Rights.[312]

Because large land deals have not become fully operational yet, it is not too late for the government to rethink its development strategies and open a dialogue with farmers' associations on how best to support and strengthen family farming and food security in Mali.

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4: Involve consultation and participation. All those materially affected are consulted, and the agreements from consultations are recorded and enforced.

5: Be responsible agro-investing. Investors assure that projects respect the rule of law, reflect industry best practice, are economically viable and results in durable shared value.

6: Be socially sustainable. Investments generate desirable social and distributional impacts and do not increase vulnerability.

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292 Secretary of State in the Office of the Prime Minister in charge of integrated development in the zone of the Office du Niger, direct communication, op. cit.; Office du Niger, 21 December 2009, op. cit.

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295 Ibid.

296 Aly Diallo and Godihald Mushinzimana, 2009, op. cit. p 6.

297 This calculation has been done assuming an average farm size of 4.7 ha, over an area of 528,926 ha. This is the total area of land allocated to investors in the Office du Niger, according to an official map from October 2010, minus the allocations of 2,000 ha for the UNTM and 22,441 ha for the Millennium Challenge Corporation (MCC). The UNTM (L'Union nationale des travailleurs du Mali) holding has been removed from the total land allocations (calculated on Table 1) and from the equation, as the lease is reportedly being worked by cooperatives and smallholders, and is not similar to other investments. The MCC does not qualify as an investment, per se, as it works with smallholders and pastoralists on the land. While the MCC project is not strictly an example of foreign direct investment in Mali's farmland, GRAIN has done a critical analysis of the project that questions its motives and operations: GRAIN, "Turning African farmland over to big business: the US's Millennium Challenge Corporation," *Seedling*, April 2010, http://farmlandgrab.org/post/view/12656 (accessed 18 January 2011).

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