



After Daewoo? Current status and perspectives of large-scale land acquisitions in Madagascar



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A global alliance of civil society and intergovernmental organisations working together to promote secure and equitable access to and control over land for poor women and men through advocacy, dialogue, knowledge sharing and capacity building.

### **Our Vision**

Secure and equitable access to and control over land reduces poverty and contributes to identity, dignity and inclusion.



CIRAD works with the whole range of developing countries to generate and pass on new knowledge, support agricultural development and fuel the debate on the main global issues concerning agriculture.

CIRAD is a targeted research organization, and bases its operations on development needs, from field to laboratory and from a local to a global scale.



The Madagascar Land Observatory is a research – oriented agency which role is to provide information to support policymaking. Embedded within the Ministry of Land use planning and decentralization, it is funded by international donors such as IFAD and the French Agency for Development. Its functions consist in analyzing the relevance and effectiveness of land policies and land tenure systems design and implementation, and in assessing their impacts in order to disseminate and debate the research findings with stakeholders (government, donors, lawyers, researchers, civil society, NGOs, farmers' associations).

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# Foreword

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

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

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

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

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

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

**Madiodio Niasse**

Director, International Land Coalition Secretariat

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# Acronyms

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

# Executive summary

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

Since the beginning of the 2000s, a number of land acquisition projects in the agricultural sector have been announced or revealed by the press. The little information available implied that they were aimed at the production of food commodities, agrofuels, or wood. The land areas in question comprised between 1,000 and 200,000 hectares per investment project.

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

- Examine the establishment processes of the Daewoo and Varun projects, both of which were eventually abandoned;
- Describe the status of land investment projects, by differentiating between those that have simply been announced and those that are effectively underway;
- Determine the operators’ objectives with regards to land acquisition and to pinpoint the status of their applications for land;
- Examine the legal framework that is meant to regulate these investments;
- Analyze operators’ practices in accessing land as well as the means of regulation, both formal and informal, of these investments at the local and national levels;
- Raise core questions to be addressed in the framework of a future debate on the role of these investments in the agricultural sector and on the institutional mechanisms that need to be reinforced in order to improve the transparency of land acquisition projects, to clarify the procedures for investors to follow, and to limit negative social, economic, and environmental impacts.

## **Daewoo and Varun: “lose-lose” strategies of agribusiness projects**

In November 2008, Madagascar was propelled into the international headlines following information published by the press that the South Korean company Daewoo Logistics was negotiating with the Malagasy government for the transfer of 1.3 million hectares of arable land in four coastal regions of the country. This large-scale project was immediately denounced by the opposition to President Ravalomanana’s regime, which accused him of selling off the nation’s heritage to foreigners. This accusation was reinforced by press revelations of another agribusiness project planned by the Indian company Varun

International in the region of Sofia, which targeted more than 200,000 hectares. The protest was orchestrated in part by international intermediaries, who mobilized public opinion in Western countries. In Madagascar, these protests combined with other demands and contributed to the fall of the government in March 2009.

These two agri-food projects, aimed at developing large areas of land, both raised similar issues. Both have now been suspended and both investors have left the country. The companies involved devoted more time to negotiating access to land with central government authorities than with the populations and the regional and local governments of the targeted land. The absence of transparency in these negotiations and the – at best – hasty negotiations at local level drove these projects to failure. The terms of the land contracts appeared to be extremely unfavorable for local people.

### **Status of investment projects in the agricultural sector**

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

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

According to announcements made by operators, close to three million hectares of land have been targeted. These numbers are significant considering that Madagascar has two million hectares of land cultivated by 2.5 million family farms. Estimates of total potential cultivatable land in the country vary according to different institutions and different methodologies: Madagascar has eight million hectares of arable land according to the Ministry of Agriculture (2008), but 15–20 million hectares according to the FAO (2007). The land targeted thus represents 37% in the former case and 15–20% in the latter.

Because of their soil quality, favorable rainfall for crops, the presence of vast, relatively flat areas of land, and above all their proximity to the sea in order to ship produce, Madagascar's coastal lands are those most in demand by investors. Since 2005, the majority of approaches have involved the regions of Boeny, Sofia, Melkay, Menabe, Antsinanana, SAVA, and Atsimo-Andrefana.

In reality, the areas involved in projects currently underway represent no more than 150,000 hectares – 20 times less than the areas initially announced – while the areas actually in use represent only 23,000 hectares for the moment. The fact that “only” 130,000 hectares are currently being targeted tends to calm the debate related to the risks of land acquisition by agribusinesses, but does not resolve it altogether. The target-

ing of such a high proportion of total arable land reserves, within the space of five years, raises serious questions about land use planning and the relationships between family agriculture and agribusiness.

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

The ongoing projects are aiming primarily to produce agrofuels, as most of the agribusiness projects have been canceled. The majority of promoters of foreign projects foresee the production of jatropha on areas of between 10 and 30,000 hectares, deploying a production model based on a wage system. Most of the Malagasy companies are focusing on adding value to sugar cane production in rural areas and are concentrating their activities on the industrial processing of sugar cane into ethanol. Exportation is the common point among these projects.

## **Investors' land strategies**

Most often, foreign operators want to lease, rather than buy, land. They hope to sign 50-year leases and, based on the information obtained, to pay approximately 2,000 ariary/hectare in rent (€0.60/hectare). This preference for renting arises from a desire to limit initial investment costs and to avoid tying up capital. Operators also believe that renting will be less socially controversial at the local and national levels.

The Malagasy investors, on the other hand, want to buy land. Their projects are limited, for the most part, to industrial processing activities and are based on farmers' inputs (sugar cane), and their needs are limited to small areas of land where they can establish nurseries and construct buildings (storage, factories) – thus less than 50 hectares.

Investors hoping to develop large-scale crops are seeking land with similar characteristics:

- Good pedo-climatic<sup>1</sup> conditions adapted to the planned crop and the level of mechanization;
- Non- or under-productive, or unowned land. The land targeted is supposed to be State-owned land. Steps to access land are overseen closely by the State land services, and applications for more than 50 hectares must be considered by the Council of Ministers;
- For the most part, proximity of a national road for the transportation of raw materials and inputs as well as the proximity of a port, maritime or river, for the shipping of raw or finished products (large investors, such as Daewoo and Varun, were not as limited by the constraint of accessibility and envisaged the construction of infrastructure of their own).

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<sup>1</sup> That is, pertaining to soil and climate.

Contrary to all expectations, given the estimates of the potential extent of arable land (between eight and 20 million hectares: see above), investors have found themselves competing for access to land. This indicates that the amount of land fitting all the favorable investment criteria is not as extensive as initially forecast. Estimates of millions of hectares of arable land potentially available based on pedo-climatic criteria have proved to be based only on partial information, as the majority of investors are seeking not only arable land but above all plain land, i.e. accessible at a lower cost.

With the exception of a few Malagasy investors who have succeeded in buying plots of less than 50 hectares of land, most investors have been unable to finalize procedures to obtain a lease. Some investors began these procedures more than two years ago. The length of this process is explained by the difficulties encountered on the ground in obtaining plots of undeveloped land of between 10,000 and 30,000 hectares and – above all – by the current political context. To prevent delays in their projects and to begin agronomic trials, investors have established their first plantations (nurseries or initial plots) on land rented informally, thanks to agreements with private Malagasy owners, mayors, or representatives of regional governments.

Furthermore, without a lease contract signed by the Minister of Town and Country Planning and Decentralization, operators have had difficulties in securing financing, as, before granting credit, banks require guarantees confirming their effective access to the land. Operators have thus found themselves in a difficult situation: they have incurred costs related to various procedures over a period of two years and have initiated their first nurseries, but they are not assured of obtaining credit. For some, this situation has contributed to halting their projects.

## **Legal and institutional framework for investors in the agricultural sector**

Three bodies of law currently regulate the establishment of investors' operations in Madagascar: the Law on Investments, the Decree to Make Investments Compatible with the Environment (MECIE Decree), and the Land Laws. Their implementation rests with three specific institutions:

- The Economic Development Board of Madagascar (EDBM). The function of this institution, created in 2008 and linked to the Presidency, was initially secured until 2009 by international public aid funds (from the World Bank). Its objective was to facilitate different procedures for investors: the creation of a Malagasy legal entity (the only constraint is that one associate must be a registered resident), obtaining a visa, registering in the commerce registry, and issuing an "authorization to acquire land". However, the EDBM is currently inactive due to the suspension of international financing.
- The National Office for the Environment (ONE). ONE, in collaboration with the environmental units of various ministries, is in charge of overseeing the application of and monitoring the MECIE Decree. For all agricultural projects exceeding an area of 1,000 hectares, this Decree obliges the investor to undertake an environmental im-

pact assessment (EIA). This integrates an analysis of the environmental impacts as well as the social and economic impacts of the project. It also includes local-level consultations with authorities and the population, in the presence of an evaluation commission composed of a representative from ONE and from the relevant ministries. ONE validates the study, which then leads to the issuing of a permit and the establishment of a list of requirements. The evaluation commission is responsible for enforcing the list of requirements.

- State-Owned Land Administration (*Services des Domaines*). The major change imposed by the land law of 2005 was a switch from a presumption of state ownership to a presumption of private ownership. State-owned land has thus been restricted to land registered in the name of public actors and unoccupied land, which falls within the competence of the State-Owned Land Administration (decentralized and central land services). Untitled private land – whether held individually or collectively – falls under the competency of the local government (*commune*). The latter can issue, via its local land office, land certificates to users who request them. Land certificates have virtually the equivalent legal value of a title.

Although the purchase or leasing of land can be negotiated through land title or certificate holders, investors in search of large areas tend to prefer State-owned land. Applications are thus addressed to the State-Owned Land Administration, which must verify that the land in question is State-owned and does not encroach on private titled land.

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

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

## **From the legal framework to practices on the ground**

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

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

## **A one-stop service provider struggling to fulfill its functions**

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

## **Impact assessment: relevant safeguards, uncertain control mechanisms**

The Environmental Impact Assessment (EIA) mandated by ONE has been carried out (or is in progress) by almost all of the operators concerned. A condition of accessing land, it represents a first environmental and social safeguard. It could, however, be reinforced:

- The lack of any clear distinction between the promoter of a project and the entity in charge of the EIA, as well as the absence of any obligation to have it validated by a certified body, calls into questions its quality and validity ;
- Since it does not include an economic evaluation, the EIA in its current form has no role to serve as a basis for project selection;
- The EIA requires operators to consult local populations and authorities of the territories concerned (leaders of *fokontany*, mayors, and main representatives of regional government). This consultation has the advantage of helping to disseminate information and inform the debate at local level. However, questions arise regarding the true representativeness of the villagers attending meetings and the actual level of consultation. Furthermore, information is not disseminated more widely, resulting in civil society not having in-depth knowledge or *a fortiori* a right to observe what is happening.

- The operator's commitments, formalized in the list of requirements developed at the conclusion of the assessment and the consultations on the ground, are often more detailed and quantified on environmental issues than on social issues. Ambiguity concerning social and economic obligations makes it difficult to monitor and control these requirements, let alone impose sanctions for lack of adherence. Furthermore, questions persist regarding the means available to the authorities concerned (regional environmental units, Ministerial services) to execute control in an effective and coordinated way.
- The fact that one operator did not conduct an EIA questions the capacity of ONE and the specific judicial authorities to force investors to respect the law.

## **Improving processes to secure populations' and investors' land rights**

In 2008, Madagascar presented a paradoxical situation. The government lauded, on one hand, the securing of local people's land rights thanks to the implementation of new land laws, while on the other hand it welcomed foreign investors by agreeing to transfer large tracts of land to them. A desire to secure the rights of farmers "from the bottom" coincided with a desire to impose the development of very large agricultural firms "from the top". Up to now, the current government has not defined its position towards the question of land allocation and has not signed any contracts in the agricultural sector (however, foreign investors in the mining sector have recently been granted mining contracts).

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

- The realization of land surveys by the CSOR is not easy due to technical problems (absence of updated land-use maps, scale of the plots). Furthermore, it can be biased by corrupt practices.
- The local population's claims depend on the type of land involved. While cultivated or forest plots are relatively straightforward to secure, it is less evident for pastures (in the zones investigated, users did not have certificates). In a number of projects, pasture lands are the object of negotiations with investors: populations accept that these lands will be used by the operator, provided that the latter plans new pastures or produces grazing crops on the lands that it will occupy. Social demands are eased further by jobs created, or by promises of jobs made, by operators.
- In the case of opposition at the local level, there is a risk that the dispute will be resolved at the level of State services, without the participation of the populations concerned and under the influence of strong political pressure.

- If there is no negotiation, or if the negotiation is neglected, the rural population's reactions can be strong, and can be manifested in the burning of plantations – this has been noted in several cases in the past.

Some investors perceive that procedures to access land are long and complex, particularly due to the lack of information regarding the order and nature of the documents that must be provided. Others have succeeded in advancing their applications quickly by investing considerable energy in following up, while some have had to incur (unrecorded) expenses to accelerate the process. The low leasing price (less than €1 per hectare), which attracts operators, often masks the real total cost of preparing the contract, negotiating with the local population, local governments, and the technical State services, and ensuring its progress.

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

## **Points for debate and reflection related to a regulatory framework for investment**

Two models of development currently seem to be in opposition to one another. The first depends on national and foreign private investment and on the creation of agribusiness activities, partially oriented towards exports, which its promoters hope will lead to positive effects and economic growth. The second is based on family farming and aims to strengthen food security by protecting existing land rights and by promoting a set of public actions in support of farms.

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

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

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

- Make information on projects transparent and public;
- Reflect on the institutional, technical, and financial viability of a one-stop service provider for investors.

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

- Undertake obligatory consultations with local populations, not only during impact assessments, but also before beginning procedures to access land;
- Plan for the validation of these consultations by a third party;
- Monitor that existing land rights are respected, by:
  - Opening the CSOR to a wider number of actors: representatives selected by villagers, members of local land offices, expert witnesses to oversee the proper roll-out of procedures;
  - Widely publishing the results of the enquiry;
  - Giving users or owners the opportunity to solicit advice from a legal councillor, financed by funds provided by investors;
- Clarify the number and nature of documents to be provided, as well as the steps to be followed.

Concerning environmental impact assessments, solutions are proposed for:

- Strengthening the economic and social dimensions of EIAs;
- Improving the process of developing a list of requirements so that operators' commitments are made more explicit;
- Coordinating control of the commitments stated in the list of requirements.

Finally, so as to inform debates between actors and to support new directions of land and agricultural policies, it seems important to raise the question of implementing a national body to analyze and follow up projects, which would study their actual impacts.

## Conclusions

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

**The establishment of agro-industries and the transfer of lands is a national issue of the very first order.** This theme deserves particular attention in the framework of national debates. The highest State offices must tackle it to define multi-sector development policy directions that are favorable to investment, while guaranteeing protection of the rights and interests of local populations. Making legal texts and their institutional articulation coherent is a priority to ensure an equitable sharing of advantages between communities, local governments, the State administration, and investors.

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

**The anticipated momentum of land acquisitions has not materialized.** Less than 1% of the land identified between 2005 and 2009 by 52 agribusiness projects counted by this study is currently being cultivated. The political crisis that Madagascar is experiencing is one of the main explanatory factors for the cancelation of numerous projects, particularly because of banks' unfavorable risk assessments for the financing of agribusiness projects. The power of the media in orchestrating social protest has been another determining factor. From now on, any company that intends to limit risks to its reputation will have to take into account, from the outset of any new investment project, civil society's ability to react, the efficiency of its international intermediaries, and the communication opportunities offered by the Internet. The globalization of strategies to control land has been accompanied by a globalization of protests against them.

**Is there really "cultivable land" without rights and infinitely available?** Some statistics indicate that 95% of arable land in Madagascar is currently unexploited. On the ground, the reality seems quite different and "uncultivated arable lands" are in demand to the extent that investors find themselves in competition over the same land. In the debates to come, it would be appropriate to revisit the notion of "arable land", while recalling that in the Malagasy countryside land is rarely without rights.

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

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

- i. Information about strategies to establish agribusinesses and the conception of a regulatory framework for investments;
- ii. Debating and defining directions; and
- iii. Joint definition of a regulatory framework.

It is a question of:

- Determining the skills to assemble in an entity to consider and conceptualize a regulatory framework for agribusiness investments. The Sustainable Agrofuel Platform, the Land Observatory, the EDBM, ONE, and relevant ministries could be mobilized to establish this national capacity;
- Continuing to gather information about the current processes of large-scale land acquisition and the establishment of agro-industries, to identify Malagasy agribusiness models that allow for the establishment of agricultural value chains and, above all, the integration of family agriculture;
- Proposing directions to establish the basic principles of a regulatory framework for investments;
- Encouraging a national debate on the direction of rural policy development, and particularly land policy, protecting existing rights, and opening to international capital. This debate should be opened not only to actors in the sectors concerned but also to civil society representatives, in order to complete or revise a national rural development policy.

# Introduction

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

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

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

The goal of the present study, therefore, is to produce information about the ongoing processes involved in establishing agribusinesses, in order to draw lessons that will support Malagasy public authorities in the conception of a collaborative and transparent regulatory framework.

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

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

## Daewoo and Varun: “lose-lose” agribusiness set-ups

In November 2008, Madagascar was propelled onto the front pages of the international media following information published by the *Financial Times* (Blas 2008), which reported that the South Korean company Daewoo Logistics was involved in negotiations with the Malagasy government to acquire 1.3 million hectares of arable land in four coastal regions of the country. This large-scale project was immediately denounced by opponents of President Ravalomanana’s regime, who accused it of disposing of the national heritage to foreigners. This charge was reinforced by reports in another newspaper, *Le Monde*, (Hervieu 2009) regarding another agribusiness project led by Indian company Varun International in the region of Sofia, which involved more than 200,000 hectares. The protests were partially orchestrated by international intermediaries, who mobilized public opinion in Western countries. In Madagascar, this support added weight to national demands and contributed to the fall of the government in March 2009. These two agribusiness projects have since been suspended and their main promoters have left the country.

# Objectives and content of the Daewoo and Varun projects

These projects from emerging countries both involved the production of agricultural commodities for export. Daewoo intended to produce 500,000 tons of palm oil in the eastern parts of Madagascar and 4 million tons of corn in the western parts, most of which would be exported to the Korean market. Varun International planned to establish 13 irrigation schemes within a period of two years, in order to produce 2.8 million tons of rice<sup>2</sup> and 400,000 tons of corn from the fourth year onwards. Of this production, 20% of the rice and 50% of the corn would have been exported. Varun International was hoping for a spectacular increase in the productivity of rice paddy, up to 10–12 tons per hectare,<sup>3</sup> thanks to mechanization and systematic intensification. A return on investment was expected from the third year.

The companies announced significant investments: Daewoo intended to mobilize about USD 6 billion over 25 years and Varun announced an initial investment of USD 1.17 billion over three years. The list of infrastructure to be developed by Daewoo was impressive: 1,170 schools, 170 private hospitals, 250 markets, 120 churches, 60 power plants, eight airports, 30 factories and silos, eight ports, among other projects. Varun's commitments were no less impressive: the construction of health facilities, schools, and electricity and drinking water systems was announced, though not quantified. The creation of numerous jobs –70,000 by Daewoo and 1,500 by Varun International – was announced, as well as detailed projects, which more or less involved the construction of new towns.

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

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<sup>2</sup> Equivalent to half of Madagascar's annual rice production.

<sup>3</sup> The average yield of paddy in Madagascar does not exceed 2.5 tons/hectare.

# Implementation process, land negotiations, and agrarian contracts

Both companies followed similar routes to establish their operations. Already involved in the mining sector in Madagascar, they hoped to extend their activities to the agricultural sector. They held negotiations at the highest State levels to obtain the land they needed for their large-scale mechanized agricultural projects. Negotiations were sequential, first with the Presidency, then with the relevant ministries and regions, and finally with "persons in charge" of the local population, generally through subcontractors, whose "representativeness" was open to question.

The case of Varun was revealing. On occupied land, implementation of the contract farming planned by the company would have been delicate. Its contracts were not agreed with individual farmers but with 13 associations, formed specifically for this purpose and represented by their presidents. These representatives claimed to have the authority to lease land to Varun for crops on 171,000 hectares. They made commitments not only for their own land but also for the lands of their descendants and the "full rights holders" members of the association, for leases lasting 50 years. However, life expectancy in Madagascar is lower than 60 years, so these contracts were akin to life-long transfers of their land.

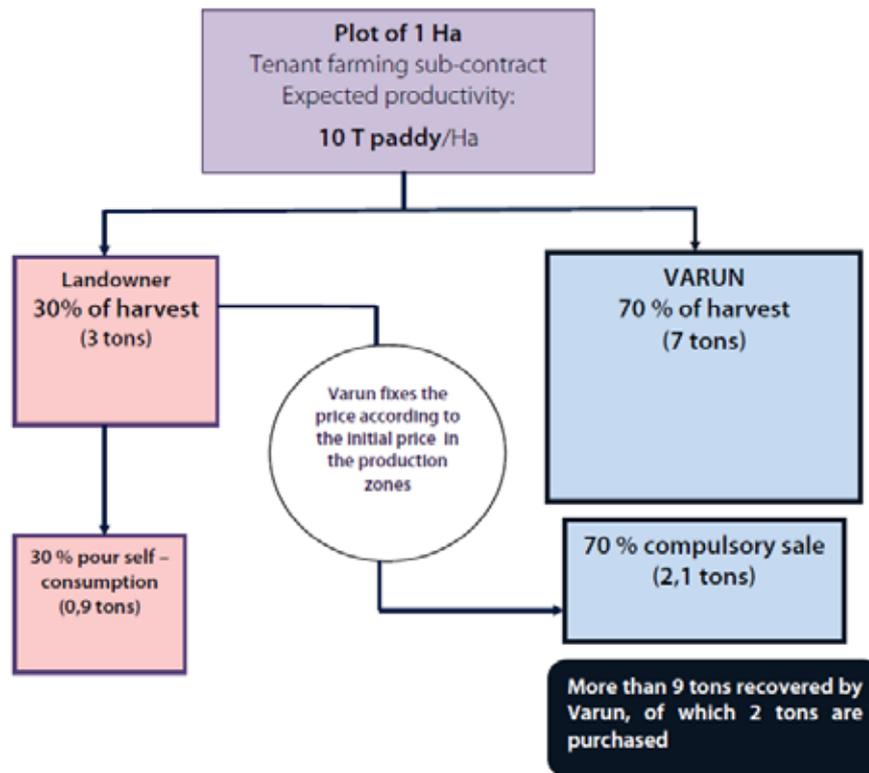
The contracts anticipated that the 13 associations would authorize Varun to occupy the lands, do all the agricultural work, and sell the produce. They also specified that the lands granted would not be subject to any claim, demand, or conflict. Landowners were required to agree to a confidentiality clause,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

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

This also raises the question of whether these peasant families would have their activities converted freely or by force into a system of landlord/farm workers recruited by Varun. Would they have been able to maintain some agricultural activities of their own if Varun had used the land for half a century? Would they have had to migrate to new areas, probably by cultivating the last land reserves available, such as forests? Would they have moved, without any qualifications, towards cities where the meager industrial and service

sectors offer few jobs? In the hasty set-up process of the project, these fundamental questions were not asked and the conclusions of consultations regarding rural development in the region of Sofia were ignored. As for the "increase in farmers' incomes" announced by Varun, this seemed debatable, to say the least.

**Figure 1: Terms of the contract planned by Varun**



The political crisis put an end to this project. The day after the contractual farming agreements were signed, January 27, 2009, riots erupted in Antananarivo; this marked the beginning of the political transition. The project will not now be pursued. A number of government statements have confirmed the decision to suspend all land acquisition projects, even if no legal arrangements have emerged since then to formalize these intentions.

The failures of the Varun project and especially of the Daewoo project were largely a consequence of the political protests of 2008–2009 (Teyssier et al. 2010). The idea of a transfer of the *tanindrazana*, the "land of the ancestors", especially to foreign companies, provoked shockwaves in national public opinion. Criticism of these land transfer projects was orchestrated in fact by a small number of people: information was gathered from the regions involved on Daewoo's preparatory work, was then widely broadcast from January

2009 on the Internet, and then taken up by most of the international media. The Malagasy diaspora, particularly the Collective of Malagasy Land Defense Collective<sup>4</sup> – an organization set up in response to the situation, in connection with the watch on land appropriations organized by various activist organizations<sup>5</sup> – played a major role in raising the profile of the protests. This media buzz then returned to Madagascar and opposition forces were able to use this sensitive issue to mobilize the masses.

## What lessons can be learned?

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

### **A top-down approach**

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

### **A lack of interest in local land negotiations**

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

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<sup>4</sup> <http://terresmalgaches.info/>. The Collective launched a petition from January 2009 against "the Daewoo affair".

<sup>5</sup> Among the most widely known are: <http://farmlandgrab.org/>, <http://www.grain.org/>, <http://www.viacampesina.org/fr/>

## **Inequitable farming contracts**

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

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

The following section examines other agribusiness investments and other attempts at land appropriation.

# 1 Status of agricultural investment projects

Of more than 50 projects announced to date, 30% have stopped and only 25% are ongoing

Besides the highly publicized cases of Daewoo and Varun, Madagascar has been the focus of numerous other investment projects (Üllenberg 2010). Since 2005, at least 52 agricultural projects promoted by foreign and Malagasy investors have been announced (though this is not an exhaustive inventory). However, of these only 13 are still currently ongoing (see Table 1).

## **Of all the projects announced, 30% have been canceled or have stopped their activity**

There are many reasons for projects being abandoned. The first is associated with the strong social and political opposition provoked by the Daewoo project. Demonstrations against this project, which lacked transparency and was of such a large scale that the rights of local populations risked being affected, led to its cancelation (Teyssier et al. 2010). Confronted by this mobilization and by the position of the new government, some investors and their financiers judged the country's political and social climate to be unsuitable for investment and canceled their projects. Their doubts were particularly linked to the possibility of accessing land and securing their investment.

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

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

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

Sector	Announced	Ongoing	Stopped	In preparation	No information
<b>Agro-food processing</b>	10	2	5	1	2
<b>Agrofuels</b>					
– Sugarcane	14	1	2	9	2
– Jatropha	20	8	4	5	3
– Palm oil	2	0	2	0	
<b>Forestry</b>	5	1	2	0	2
<b>Other</b>	1	1	0	0	
<b>TOTAL</b>	<b>52</b>	<b>13</b>	<b>15</b>	<b>15</b>	<b>9</b>

### Only 25% are ongoing

The projects that are continuing are only in their initial phases of development – for the most part, in the process of gaining access to land.

### 30% are in the preparation phase

Despite the cancelation of numerous projects, the investment dynamics in the agricultural sector have not been totally disrupted. However, they are changing in their nature: investors are now primarily Malagasy nationals who envisage smaller-scale projects (11 of the 16 projects in the preparation phase). Foreign investors are waiting for political stability to actively re-engage in their projects.

Finally, little information is available on the remaining 15% of projects. No indication could be gathered on their future: whether these investments will be maintained or not, or what level of progress they have made.

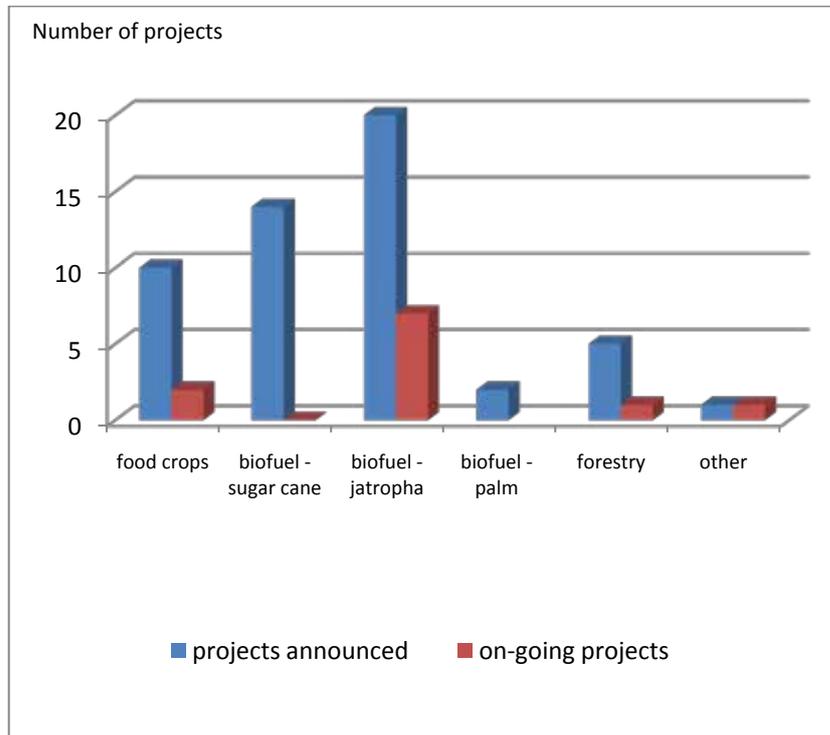
## The majority of projects are targeting agrofuel production

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

- Production of food commodities (cereals, crops, beef);
- Agrofuel production from jatropha, sugar cane and, to a lesser extent, palm oil trees;
- Development of industrial forest plantations to produce resin or wood, or reforestation for carbon sequestration.

At present, the ongoing projects are mainly oriented towards agrofuel production, particularly from jatropha. In Madagascar, the engine of investment is not the securing of foodstuffs, as the media have announced on the basis of Asian investors. The main motive for investors is to generate profits by producing agrofuels.

**Figure 2: Projects announced and ongoing, according to anticipated production objectives**



# Targeted land areas vs. areas in use: the great divide

Based on the projects announced to date, about three million hectares of land have been targeted to grow annual or perennial crops, mostly for production of foodstuffs (and for a livestock project on 200,000 hectares – Üllenberg 2010): see Maps 1–2 and Figure 3.

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

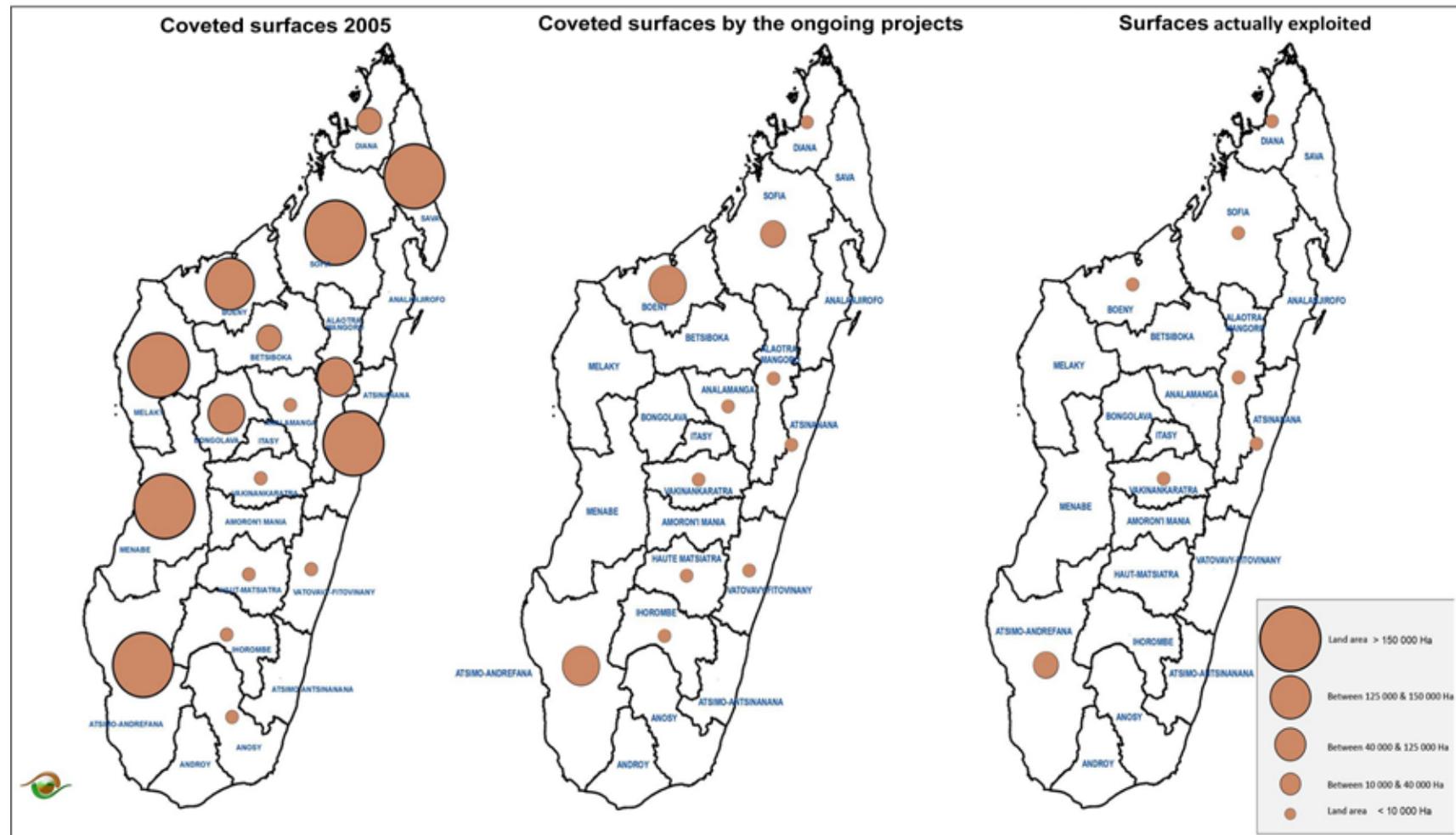
Because of its soil quality, favorable rainfall for crop production, the presence of vast, relatively flat tracts, and especially because of its proximity of the sea in order to ship products, land in the coastal regions is subject to the most applications by investors. Since 2005, the majority of applications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

The targeted land areas – three million hectares in total, including 1.3 million hectares for the Daewoo project – are in contrast with the two million hectares cultivated by 2.5 million family farms. Estimates of the total area of arable land in Madagascar vary depending on institutions and methodologies – eight million hectares of land in total according to the Ministry of Agriculture (2008) and 15–20 million hectares according to the UN Food and Agriculture Organization (FAO) (2007). Based on these estimates, the land targeted represents 37% of total arable land reserves in the first case, and 15–20% in the second.

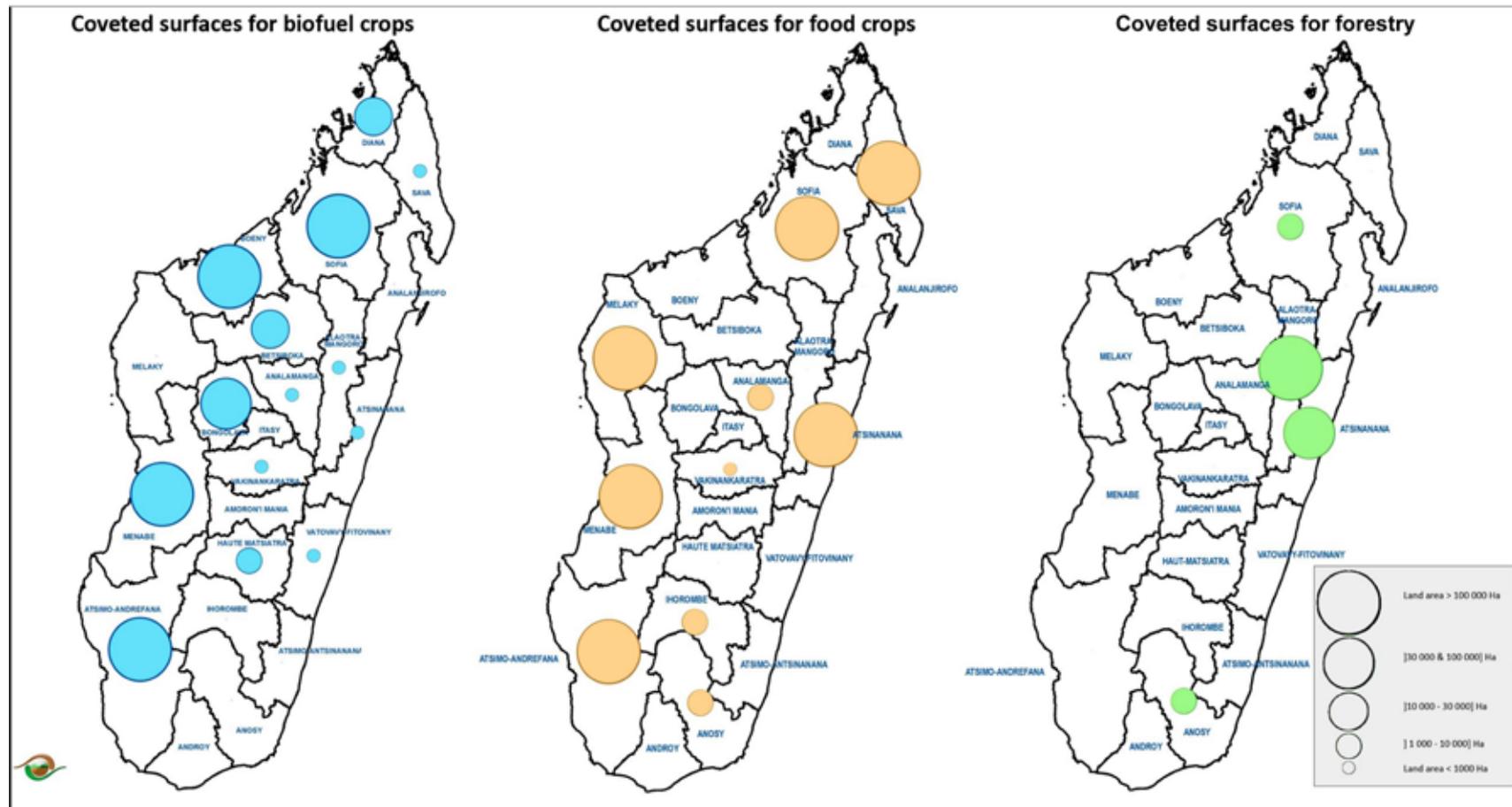
These data explain why both government and other organizations have become involved in the debate on private investment in the agricultural sector. The fact that "only" 150,000 hectares are currently being targeted slightly takes the sting out of debates about the risks of land acquisition by agribusiness, but does not resolve them altogether. To target such a proportion of arable land reserves, in the space of just five years, raises serious questions about development planning and how family farming and agribusiness can be reconciled.

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

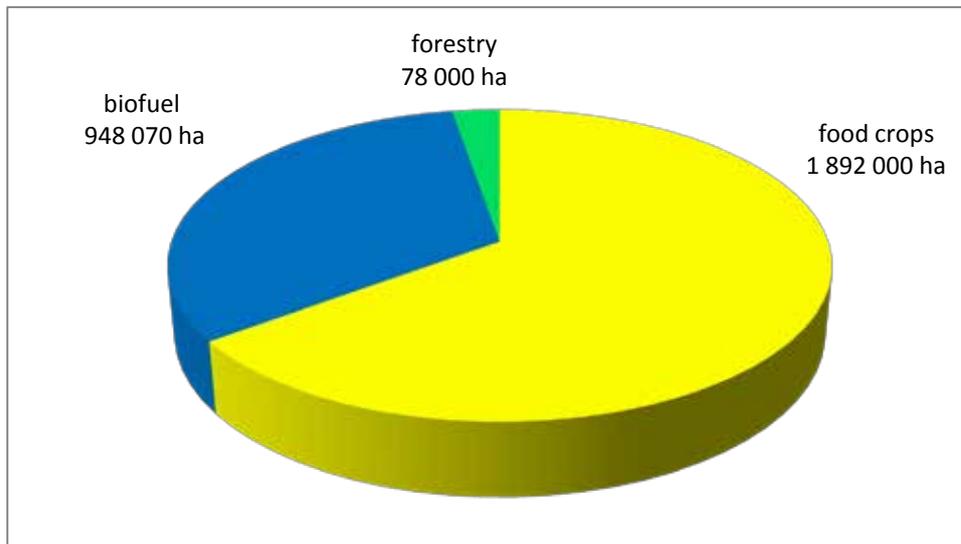
Map 1: Targeted land areas announced, ongoing, and currently being exploited, by region



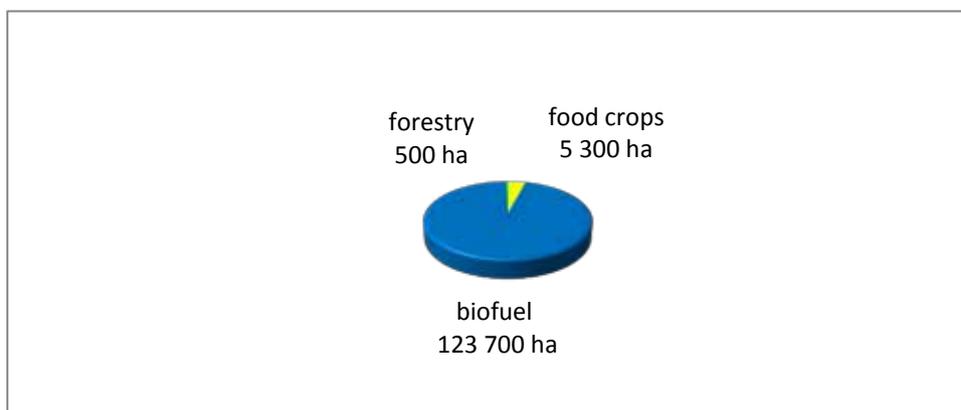
Map 2: Division of land areas initially targeted, by type of crop



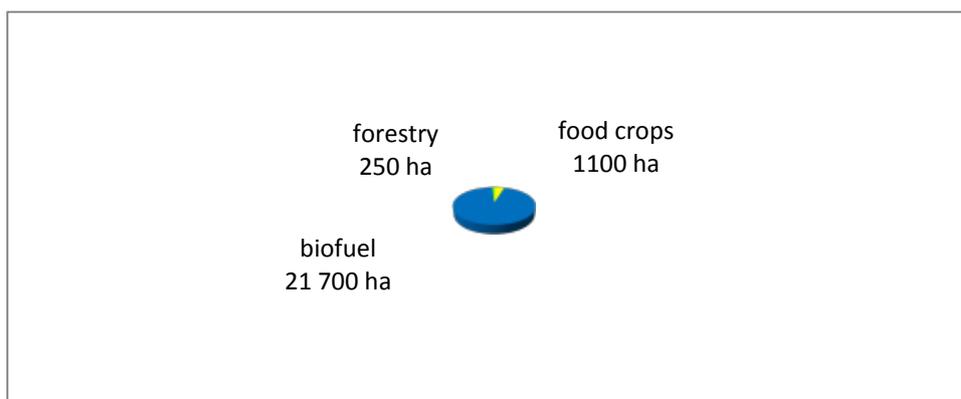
**Figure 3: Distribution of land areas targeted: projects announced and ongoing**



Distribution of land areas targeted by all projects since 2005, by sector



Distribution of areas targeted by all ongoing projects, by sector



Distribution of land areas currently being developed

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

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

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

Currently, **the land areas actually cultivated amount only to 22,000 hectares and represent less than 1% of the areas initially announced** and 15% of the land area involved in ongoing projects (see Figure 3).

# Foreign and national operators

The case of Madagascar involves investors from a variety of backgrounds. **More than two-thirds of project promoters between 2005 and 2010 were foreign (36 out of 52 projects).** Of these, half were European (from the United Kingdom, France, Germany, Italy, and the Netherlands), and the rest were from South Africa, India, Australia, and South Korea. The attraction of Madagascar to foreign investors seems to be linked to the government's efforts to create a favorable investment climate, a challenge resulting from an evaluation by the World Bank in 2005 of the investment climate in six countries including China, Madagascar, and four other African countries. This evaluation revealed a considerable decline in FDI (foreign direct investment),<sup>6</sup> and ranked Madagascar 146<sup>th</sup> out of 177 countries worldwide.

Subsequently the country's economic recovery strategies were focused, *inter alia*, on the promotion of foreign investment through the creation of the Economic Development Board of Madagascar (EDBM) in 2006; the development of the MAP (Madagascar Action Plan) in 2007,<sup>7</sup> which clearly set out among its immediate priorities an increase in investment, particularly through the authorization of land acquisitions for non-national investors; and the adoption of an investment law in 2008.

Malagasy operators tend to concentrate on the agrofuels sector and are aiming mainly to develop the sugar cane value chain for ethanol production (see Figure 4).

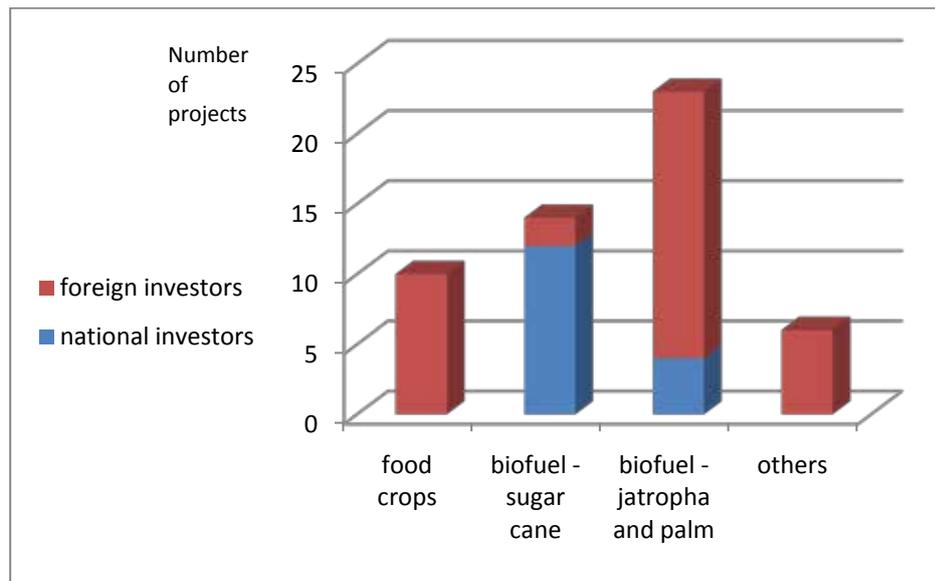
In Madagascar, the remaining project promoters – foreign or Malagasy – are for the most part small or medium-sized private companies. Whereas the promoters of agri-food processing and forestry projects are highly experienced in the agricultural sector, the promoters of agrofuel projects are generally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

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<sup>6</sup> FDI was estimated at USD 262 million in 2003, USD 256 million in 2004, and USD 250 million in 2006. Source: Banque Centrale de Madagascar – INSTAT. Compilation 2008. *Etudes annuelles sur les Investissements Directs Etrangers et de portefeuilles à Madagascar.*

<sup>7</sup> Immediate priorities of MAP/Reform 2: significantly increasing investment in favor of growth. In Madagascar Action Plan 2007, p. 16.

**Figure 4: Number of projects by type of investor and type of production**



The few agreements concluded between foreign and Malagasy operators involve access to land.<sup>8</sup> These land arrangements involve plots covering less than 500 hectares, with the immediate objective of developing tree nurseries or conducting trials. In one case, the foreign operator is associated with a Malagasy partner, who has undertaken the land lease applications under his own name for an area of about 20,000 hectares. The engagement of the latter in the management of the project cannot reduce him to a “front man”, but nor does it seem to give him the status of a full partner or shareholder in the company.

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<sup>8</sup> It seems that, among the ongoing projects or those in the start-up phase, there are few economic partnerships in which Malagasies are shareholders of a company launched by foreigners, but this issue warrants deeper analysis.

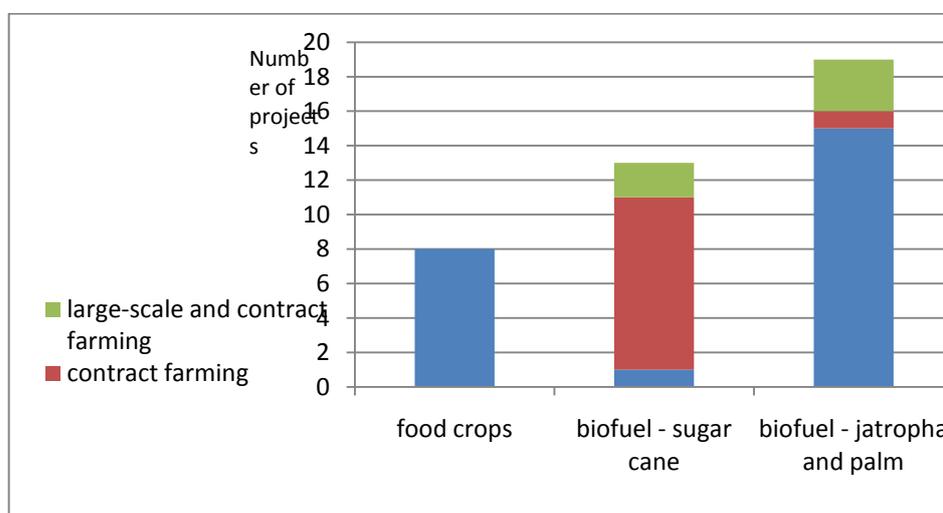
# Plans for large-scale agricultural production

Two main organizational frameworks for production have been retained by the remaining projects: large-scale farming and contract farming (i.e. the delegation of production via contracts with farmers).

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

**In the agrofuels sector**, the situation is different. **Although the plan for large-scale farming has been maintained for most of the jatropha projects, the leaders of ethanol projects have chosen to use sugar cane and to grow it in rural areas.** Indeed, the investors are Malagasy and are close to the sugar cane producers' network, if not member themselves. Their objective is to propose more profitable outlets to local producers than those offered by sugar factories in unstable economic conditions. Some jatropha projects, promoting objectives of sustainable local development, also envisage the development of contract farming.

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



Project promoters have not systematically announced the eventual in-country processing of their production, except for agrofuel production. Operators are hoping to build ethanol plants or jatropha extraction units, but not biodiesel plants (for which the

chances of generating a profit margin depend on the capacity of the plants and on the exporters' requirements in terms of quality).

## Export-oriented projects

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

## 2 Operators' land strategies

### A general preference for renting rather than purchasing land

The investors' first objective is to access land. For projects based on large-scale plantations (jatropa), for both foreigners and national investors, the vast majority of operators are seeking a land lease. According to investors, this preference for leasing arises from a desire to limit initial capital costs, to avoid tying up capital, and the risks of social protest. A lease also allows them, in the event of technical, economic, or political problems to halt the project at a lower cost. Only a group of Malagasy investors wants to buy large areas of land.

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

### Selection criteria for land

Investors are looking for land with common characteristics:

- Good pedo-climatic conditions:<sup>9</sup> the most sought-after land generally has a flat surface area allowing for mechanization, located in regions that receive significant rainfall but at the same time are sheltered from cyclones. The ongoing jatropa projects require *tanety* lands (hilltops and plateaus) and not shoal lands suitable for the production of irrigated rice;
- Available unowned land that is locally under- or unused, or unoccupied;
- Low-cost access: proximity to a main road for the transportation of raw materials and inputs, as well as proximity to a sea (or river) port for the shipping of raw materials or finished products. Large economic operators, such as Daewoo and Varun, are not limited by accessibility constraints. The Daewoo project, for example, planned for the construction of roads, bridges, and ports.

### Competition between operators: a sign of scarcity of land suitable for agro-industry?

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<sup>9</sup> That is, pertaining to soil and climate.

Contrary to all expectations regarding the scale of Madagascar's territory and its significant *tanety* areas, operators have found themselves competing for access to the same land. Such situations do not seem to be isolated. Of the seven current jatropha projects, three have involved competitive situations:

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

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

# No lease contracts signed

For the majority of the foreign operators involved, lease applications are in progress.<sup>10</sup> Most initiated their applications more than two years ago, but have yet to obtain their lease contracts. Assembly of a lease application demands a significant time investment by entrepreneurs. The length of this process is explained by:

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

So as not to delay the progress of their projects and to begin agronomic trials, operators have established their first plantations (tree nurseries or initial plots) on land rented informally, thanks to agreements with private Malagasy owners, mayors, or the main representatives of regional governments (for example, the Land Mark project).

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

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

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<sup>10</sup> Generally, initial plans have been realized and procedures of identifying land are either yet to be done or are ongoing (among them Delta Petroli, Bio Energy Limited, Fuel Stock, Sopremad).

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

In addition, the GEM project managed to negotiate land access without going through the State-Owned Land Administration. The actors have already planted more than 30,000 hectares of jatropha on various plots, the largest being 7,000 hectares (through the plantations' success rates are very varied). Land access was negotiated within the space of one year with the mayors of the local government and with the approval of the former main representative of the regional government, even on State-owned land. The operator negotiated that the rent, of USD 1 per hectare, would be paid to the local government involved once the jatropha plantations had entered production.

For most of the Malagasy operators, applications for acquisition have been issued. Because the areas in question are limited, these cases are handled only by the decentralized State-Owned Land Administration, and their validation is less controversial. At present, operators have obtained title deeds (temporary or permanent) to plots of less than 50 hectares in size (1–3 plots per operator).

# 3 The legal and institutional framework for investments in the agricultural sector

## The role of public authorities, according to current law

Three bodies of legal texts currently regulate the establishment of operators in Madagascar. These are the Investment Law, the new land legislation, and the State's Decree on the Compatibility of Investment with the Environment (MECIE). Implementation of these rests with three groups of institutions, respectively the Economic Development Board of Madagascar (EDBM), State-Owned Land Administration and local land offices, and the National Office for the Environment (ONE).

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

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

- Contribute to the development of an incentive framework for foreign and national investors (taxes, customs, duties);
- Simplify certain administrative procedures: creation of companies, obtaining visas, authorization to set up "tax-free zones", registration in the commercial registry;
- Facilitate land acquisitions by foreign operators who have already created a Malagasy legal entity,<sup>11</sup> by issuing the authorization for land acquisitions;
- Mediate in possible disputes between companies or between companies and the State.

Investors must pay two types of tax. Land taxes (IFT) are paid to the local government where the plantation is located (in Amboromalandy, for example, the mayor announced that land taxes would be USD 1 per hectare per year for cultivated land). Then, as a company, the operator must pay income tax (IR) or tax on net profits. The latter is paid at the regional level, where the company is registered on the commercial registry. In

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<sup>11</sup> In practice, the only constraint is that one of the associates must be registered as a resident.

addition, the investor must, if it transports unprocessed farm products for commercial purposes, pay taxes to the local government where the production has taken place.

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

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

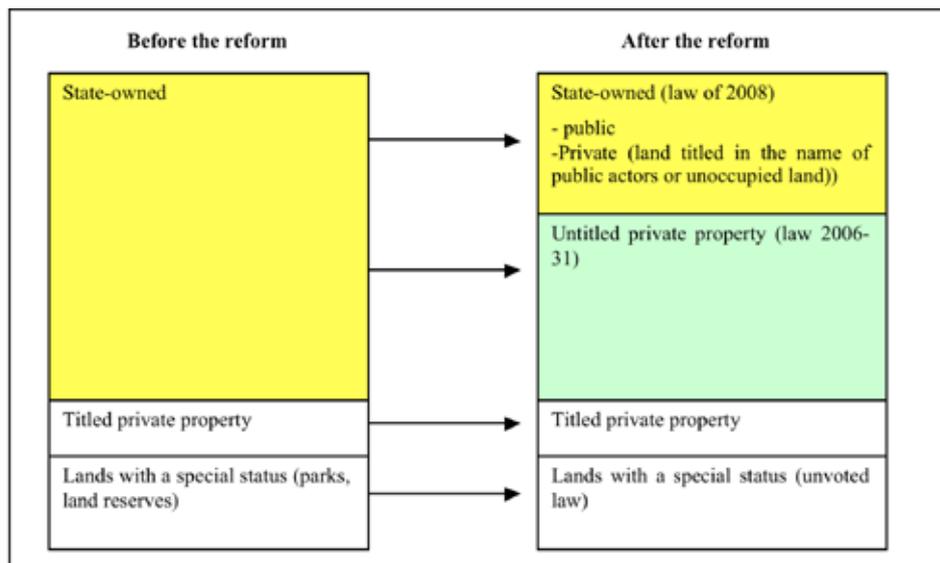
### **The recognition of local land rights**

The major change imposed by the 2005 Land Law was the shift from the presumption of State ownership to the presumption of private property. State-owned land has thus been restricted to land titled in the name of public institutions and to land without occupants (Figure 6).

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

In April 2010, a network of 350 local land offices was created, and these have since issued 52,000 land certificates. Considering that land reform began only four years ago, these figures provide evidence of significant progress in recognizing users' rights. However, the local land offices do not cover the whole Malagasy territory (which encompasses 1,550 local governments), nor do they cover at the local level all of the lands used by the local population, taking into consideration the status of certain lands that remain State-owned and beyond the jurisdiction of local governments.

**Figure 6: Status of land in Madagascar following the Land Law of October 17, 2005**



Source: National Land Program

## Entrepreneurs' methods of accessing land

The leasing or purchase of land can be done through:

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

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

The authorization of land acquisitions issued by the EDBM is supposed to facilitate land access for foreigners, provided that they create a Malagasy legal entity. Its objective is to

allow foreign investors the right to registration and acquisition equivalent to that of Malagasy operators. As the corresponding decree concerning application was not adopted, a level of ambiguity persists concerning the actual function of this authorization, as well as the division of roles between the EDBM and the State-Owned Land Administration. In the agricultural sector, no investors have yet applied for this authorization.

## **Requirement to conduct an environmental impact assessment**

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

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

## **Obligatory steps for investors**

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

1. The EDBM (which is supposed to be the investor's only access point) for (if necessary) the creation of a Malagasy legal entity, for obtaining visas, and for registering in the commercial registry;
2. The State-Owned Land Administration to apply for the registration of land or a lease for land;
3. ONE for the completion of the environmental impact assessment and the issuance of an environmental license, associated with a specific list of requirements.

These steps are meant to indicate the path an investor must take. Although none of these institutions has the specific competency to select projects, they still have to ensure according to legislation that:

- ° The operator is registered for and pays taxes;

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

# 4 From the legal framework to practices on the ground

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

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

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

# A one-stop service provider for investors that is struggling to perform its functions

Entrepreneurs do not systematically use the EDBM for all of its functions, to receive, advise, and guide investors. The EDBM has difficulty in developing an overall vision of current projects and does not really direct investors towards the obligatory steps they must undertake (State-Owned Land Administration, ONE) or those that are strongly advised (regional and local public authorities, local population). Indeed, while most foreign investors hire a national expert to assist their process,<sup>12</sup> their points of entry and their institutional paths are different.

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

The economically most significant operators, particularly those representing large multinational companies, directly address members of the government. Approval by the highest representatives of the State allows them to obtain the support of regional-level public authorities. Big operators such as Daewoo and Varun have effectively mobilized regions and decentralized services, but have invested less time in lower administrative levels: their economic strength and their capacity to recruit experts seemingly nullified any need to negotiate directly at the local level.

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

Several operators have solicited the main representatives of regional government (*chef de région*), bypassing – or not – the EDBM. They have thus obtained initial political support and information on *a priori* available land. Notably, they have been put in contact with

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<sup>12</sup> In the surveying phase, foreign operators generally turn to the services of an intermediary. The expectations of these experts generally involve three factors: (i) establishing contact and accompaniment through institutional procedures; (ii) advice and information on the legal framework related to the investment and to access to land; and (iii) agronomic advice and expertise to identify suitable production areas. Because of the newness of these large-scale agricultural projects, few consultants are really in a position to call themselves experts. Consultants who position themselves as “jacks of all trades”, typically retired or public officials, are generally recruited on account of their networks within the civil service or for their agronomic knowledge. Their competencies in specific areas have at times led projects down difficult paths (e.g. wrong choice of agronomic area, unfamiliarity with institutional processes). Currently, the intermediary market is evolving and is becoming progressively more specialized. Consultants, through their experience with the first projects in Madagascar either as managers or agronomists, are emerging and selling their services of knowledge and technical support.

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

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

As for local populations, they are generally informed by investors only when the necessary procedures for land access (agreement of mayors, acceptance by the CSOR) are initiated or during the completion of the EIA, with varying degrees of consultation, depending on the case (see below).

## Impact assessments: relevant safeguards, uncertain modes of control

### Conditional land access based on impact assessments

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

Although the legislation specifies that the EIA must be carried out once the land contract (purchase or lease) is acquired, the technical services and ONE insist on the opposite. This adaptation demonstrates the will of the technical services to better regulate investment dynamics, even if this confuses the order of the steps to be followed by investors. This measure, which conditions land access in the EIA, is largely respected. Almost all of the investors wanting to develop areas greater than 1,000 hectares have indeed initiated this study;<sup>13</sup> the only operator who did not carry out an EIA managed to access land through informal agreements with the local government.<sup>14</sup>

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<sup>13</sup> At present, operators are in the process of conducting or evaluating this study. Three permits have been issued for bioethanol factory projects, but these do not include an agricultural production phase managed by the operator.

<sup>14</sup> Follow-up investigations would be necessary to see if this operator, who circumvented the environmental legislation, will be summoned by ONE, if not sanctioned by the concerned ministries.

Although the majority of operators initiate an EIA, questions remain as to whether it is comprehensive and whether it is really binding.

### **Impact assessments to be strengthened**

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

In addition, the EIA is coupled with a reading – but not with any critical analysis – of the business plan. Assumptions of the expected agronomic and economic results and returns, allowing the actual conditions for realization of the project to be judged, seem to be overlooked. Nor are short- and medium-term economic impacts estimated by category of beneficiary (population, local or regional government, State).

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

### **A list of requirements that completes the contract**

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

In the rare EIAs concerning the agricultural sector that have been published, environmental measures are numerous and are clearly described. Social or economic measures are, on the other hand, underdeveloped. The consultations held in the region of Sofia for the Delta Petroli project provide an example that attests to local people's ability to react and of their social and environmental demands. The regional representative, local mayors, and local populations did not hesitate to state their hopes in terms of infrastructural development and jobs to the operator. The effective translation of these hopes in the list of requirements is less evident, however. The list mentions respect for the usage and current modes of management of the targeted lands, and the possibility of the operator delegating the development of water and energy access schemes to an NGO, but these objectives are neither qualified nor quantified. In the absence of precise details, monitoring and enforcing such commitments is difficult.

## **Social and environmental commitments without real controls**

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

## **Securing land rights: improvements to be pursued**

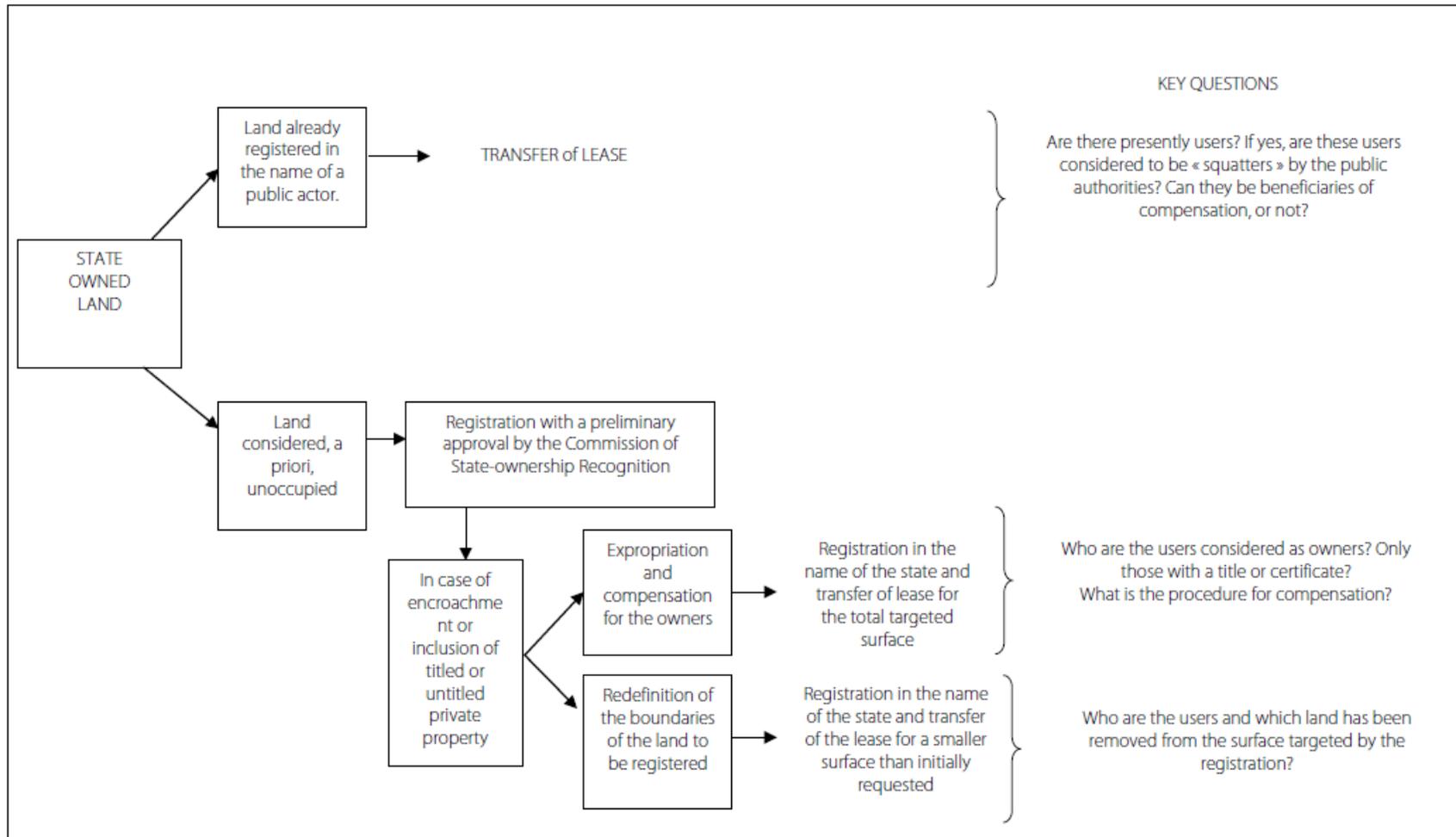
The situation in Madagascar in 2008 appeared somewhat paradoxical. The government lauded, on the one hand, the securing of the population's land rights thanks to new land laws, while proposing, on the other, the establishment of foreign investors by agreeing to allocate them huge tracts of land; a desire to secure the rights of farmers "from the bottom" coincided with a desire to impose the development of very large agricultural firms "from the top". The current government has not yet defined its position on the questions of land security and allocation.

### **Land security of local occupants and owners**

#### **a. Sources of land insecurity due to entrepreneurs acquiring land**

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

Figure 7: Options and key questions in the transfer of leases for State-owned land



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

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

This implies that land comprising these various categories is identified and/or listed beforehand. Currently no database exhaustively lists at the local level the various types of land and their status, although local land use plans (*Plans locaux d'occupation foncière* (PLOF)) should eventually be able to establish this inventory. For the moment:

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

The SCOR's fieldwork compensates, *a priori*, for the absence of a systematic inventory. Comprised of a State-Owned Land Administration agent, a topographer, a mayor, and leaders of the *fokontany* concerned,<sup>15</sup> SCOR commissions have to verify on the ground that the targeted area does not encroach on land that is already owned. When these commissions are actually active, land users and owners are informed and, in cases of encroachment, can ask that the boundaries of land targeted by the registration be rectified.

Respect for the existing rights of local owners and users depends entirely on the effective realization of this stage of the Commission and the way it is led. However, local residents/users of targeted lands are not systematically informed either of the planned agricultural project or of the coming of the SCOR. They are meant to be represented by the leader of the *fokontany* and the mayor, but the latter does not necessarily know about

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<sup>15</sup> Equivalent to a village.

new measures to secure untitled private property and can be influenced by the representative of the regional government or the operator. Initial observations, however, show that populations are reactive. Questions arise concerning the formalization of information produced during the SCOR process to rectify the limits of the targeted land and, especially, about the capacity of the users or owners concerned to assert their interests in the event of a dispute

Exceptionally, when the project is considered to be in the public interest (decree issued by the Council of Ministers) and when areas targeted by the lease partially include titled or untitled private property, a lease application can lead to expropriations. In this case, following the example of projects in the mining sector (see Box 1), the occupants, whether they have a title or not, are legally entitled to compensation. Until now, however, no agricultural project has required such a decree in the public interest.<sup>16</sup>

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

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

Although the quarry is located in a sparsely populated forest zone (in the Mandena forest, where 6,280 hectares have been affected by the mineral deposit), the construction of the Ehoala industrial/harbor complex, together with a temporary camp for workers and a 15 km road connecting mines with the port, required the relocation of 530 households along the highway and in the limits of the company's holdings.

Implementation of these infrastructure projects required the availability of about 800 hectares of land; this consisted of State-owned land or private properties (titled or untitled). A Declaration of Public Utility (DPU)<sup>17</sup> justified the acquisition of land affected by the plan. Since the project was established with the support of the World Bank, its operational policy (OP 4.12) concerning involuntary displacement required that persons and property should be exposed to the least damage possible during

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<sup>16</sup> The Daewoo and Varun projects, if they had not been stopped, could have been considered as priorities and could have led to expropriations.

<sup>17</sup> According to Ordinance 62 – 023 of September 16, 1962, a Declaration of Public Utility is made by the Council of Ministers. The level and the criteria of projects able to be declared of public utility vary and are not clearly specified in the Ordinance (which only cites the types of work).

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

An Administrative Evaluation Committee (AEC), managed by the main representative of the regional government and comprised of representatives from the regional services involved (Agriculture, State-Owned Land Administration, etc.), was created to estimate the PAPs' losses and the opportunity costs, and to study the nature and amount of the compensation required. Following a *commodo-incommodo* investigation, the AEC communicated its decisions on compensation, notably: i) the land characteristics (bare land, "waste" lands, or fallow land) should be compensated in cash, ii) houses should be compensated in kind – i.e. replaced with new houses, iii) agricultural land should be compensated in kind, by other land of equal area if productivity was identical and by larger areas if the quality of replacement land was lower, and iv) tree plantations should be compensated in kind.

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

In addition, monetary compensation was paid for lost crops (for certain fruit trees or crops requiring several years after planting to produce, compensation was paid annually until the new crops were able to be harvested), as a relocation allowance, and as compensation for eviction from State-owned land. By April 2007, the final date for compensation, more than 5.3 billion Ariary (USD 2.65 million) had been paid (the initial sum of 5.3 million Ariary was increased following users' late claims), and 80 new houses (out of 83 planned) had been built and delivered to PAPs. Land included with these houses was not titled, contrary to initial announcements. An NGO was recruited for the management of payments and accompaniment of the affected persons.

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

The practical implementation of the program faced three great difficulties, linked to the desire to accelerate procedures:

– The project struggled to find good-quality agricultural land in the same villages as

in-kind compensation for cropland losses, although the farmers had already been displaced. This situation went against the principle of article 10 of OP 4.12, which recommends that affected persons not be moved until all relocation and compensation measures are ready. In the end, due to a lack of adequate agricultural land, these households were all compensated in cash;

– The procedures of displaying names and taking inventory of the affected owners discriminated against those who did not live permanently in the affected villages, and some were not able to receive compensation;

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

#### **b. Position and reactivity of users and owners**

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

- In most of the rural areas concerned, local land offices are not yet present or are still not effective. Even if farmers do not possess a certificate, they rightly consider themselves owners and oppose their lands being registered in the name of the State and transferred as part of a lease. The vigor of their demand depends on the type of plot:
  - Their refusal is categorical when it concerns cultivated plots or arable plots, which will be needed by future generations. The operator must not use this land, even though he may say that he does not want to encroach on it.<sup>18</sup> While a consensus can be quickly reached between operator and villager, questions remain about the effective removal of these plots of land targeted by the investor and by the registration. There is a risk of conflict when demarcation procedures – the physical determination of the limits – begin;
  - The reaction of local people can also aim to defend the rights that they hold in common, particularly within the framework of a contract that transfers the management of natural resources in wooded areas.<sup>19</sup> The situation studied in the

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<sup>18</sup> The project leaders for Delta Petroli even stated that the good-quality, uncultivated arable land at the heart of the parcels transferred by the lease would be titled, in four-hectare plots, in the names of the farmers.

<sup>19</sup> The Minister of Water and Forests has established with local populations organized in “basic communities” (for which the acronym in Malagasy is “VOI”) contracts to transfer the management of natural resources. These contracts generally concern wooded areas. Certain contracts, established according to the terms of

Boeny region illustrates how the Ministry of Water and Forests supported the community's opposition to a management contract (see Box 2);

- The position concerning pastures for livestock use is more equivocal. The population is often divided between a desire to see the project, perceived as a potential source of jobs, arrive and become established, and the desire to secure their land rights. Generally, pastures are the object of negotiation between operators and the local population – with the latter generally accepting that this land will be leased in exchange for compensation (preservation or development of new pastures, production of grazing crops by the investor). Nevertheless, questions persist about the true participation of farmers in these negotiations and the effective realization of commitments. Protests can be strong if the farmers' agreement is not duly acquired or if the operator does not keep its promises. Several examples demonstrate opposition to the development of crops on village pastures once a project has begun. Plots have been damaged by bush fires: cases have been observed in the Boeny region, where 1,500 hectares of a 2,000-hectare cashew plantation were burned; likewise in Tuléar, where jatropha plantations covering about 30,000 hectares were partially damaged by fire;
- Owners with a private title deed have also taken action. In several cases where lease applications have encroached on titled private properties, disputes have been generated and resolved only through the intervention of regional representatives or State-Owned Land Administration agents.
- Representatives from the Ministries of Agriculture and Water and Forests have also shown their ability to oppose certain registration applications when development of the land might have harmful environmental impacts (particularly linked to deforestation). The risk is that the environmental argument is only a pretext in conflicts of a political nature between public service agents and elected representatives.

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the GELOSE law (secured local management), can if they are renewed lead to the registration of these lands in the name of the "basic community" after a period of ten years.

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



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

A Malagasy operator wished to acquire a 20,000-hectare area of land to develop a sugar cane production project. Having obtained the support of the main representative of the regional government, he presented his project to the relevant mayors and local populations. The mayor of the local government was hesitant because the targeted area included a forest area, managed by a VOI association within the framework of a natural resources management transfer contract.

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

The operator financed the topographic services to realize the plan. A Commission of State Ownership Recognition (CSOR) arrived on the land. Local residents and VOI members noticed the presence of the commission in the forest areas that they managed, and communicated their fears to the person in charge of their VOI group. This person then negotiated with the members of the commission and the operator, proposing that lands managed by the VOI be removed from the area requested.

However, the CSOR did not formalize these exchanges in its report and did not modify the plan. The operator wanted to acquire a large area all in one piece to successfully conclude his agricultural and irrigation activities. He hoped that he could informally negotiate with the occupants of land included in the targeted zone.

The application for registration, including the plan and the report, was then passed on to the regional offices of the relevant ministries, in particular those of Water and Forestry. Already having been informed by the regional representative of the VOI, the Ministry's regional office exercised its veto and convened a meeting with all of the technical services concerned (Agriculture, Environment, Water and Forests, State-Owned Land Administration).

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

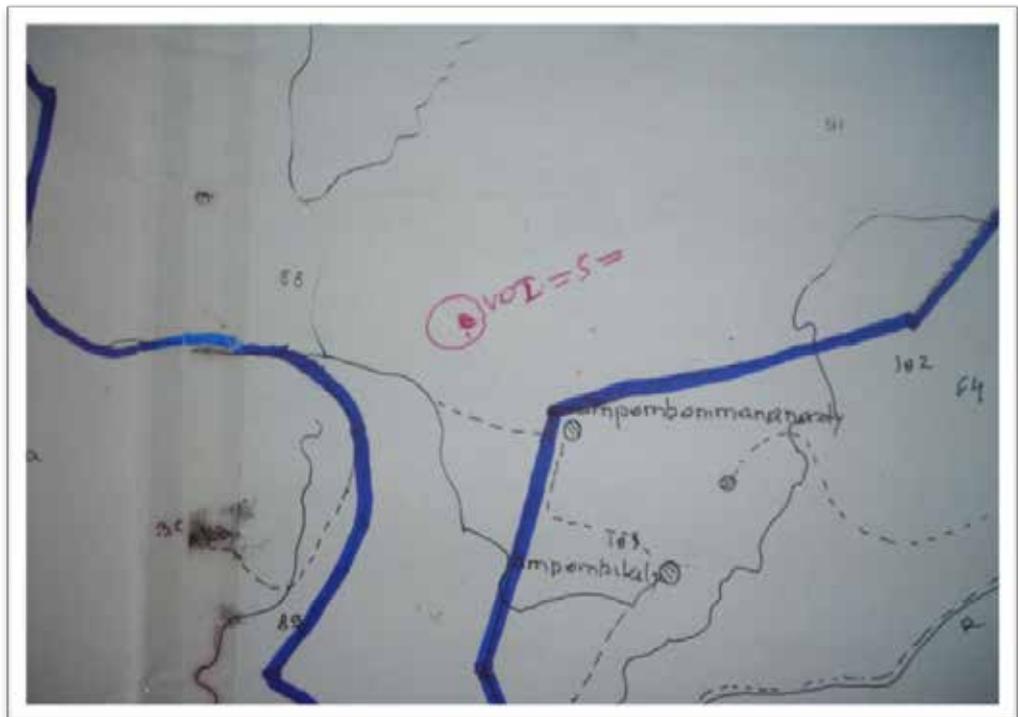
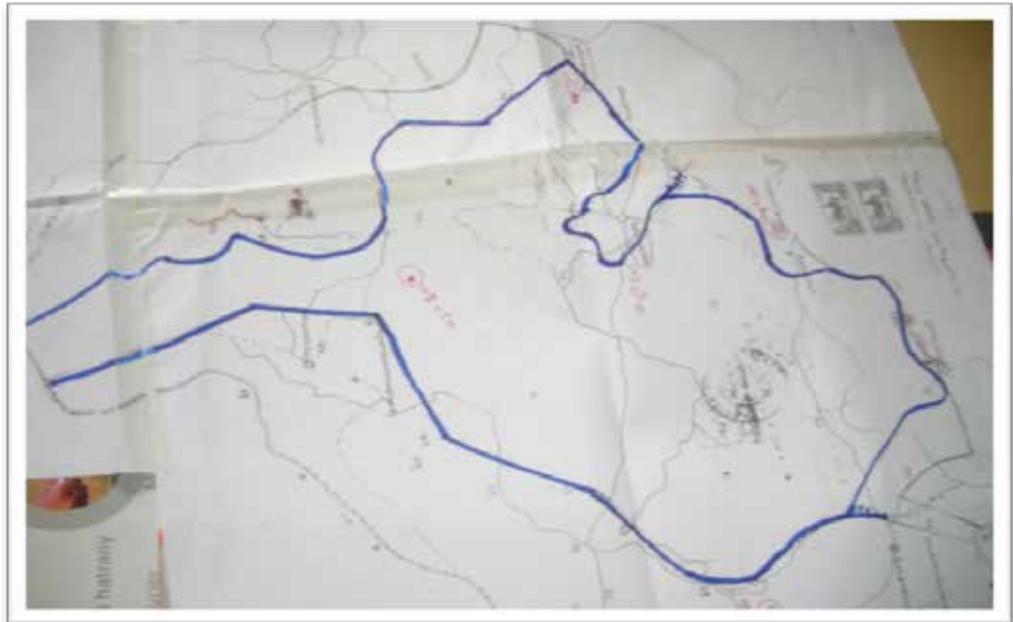
According to the business plan and the environmental impact assessment to be presented by the operator, the regional office of Water and Forests announced that

opposition to the registration application could be maintained and extended to all wooded areas. The desired zone was indeed rich in jujube trees, whose exploitation supplies Mahajanga with firewood and coal. The removal of the wooded areas could potentially reduce the targeted area by up to 80%. For some, the defense of such a position arose from economic advantages that the actors in the fuel wood value chain would not like to lose.

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

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

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



## Investors' land security

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

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

One part of this investment is incompressible. The effective security of investors' land rights is strictly linked to that of land owners and residents. The absence of encroachment upon other individually or collectively claimed land significantly limits the risks of conflicts. The time dedicated to consultations and to negotiations with land owners and users cannot be reduced. Expenses incurred in carrying out inquiries for the CSOR, on the topographic survey, and on demarcation cannot be avoided.<sup>20</sup>

Another part of the investment, on the other hand, depends on administrative efficiency. Due to a lack of harmonized processes and systematic coordination between the technical services, and because of the various institutional points of entry, operators receive different privileges or advice depending on which elected representative or civil servant they deal with. They complain that there are no clear directives regarding the nature and order of the documents they must supply. They must engage in a number of back-and-forth processes between the regional directors of the State-Owned Land Administration, topographic services, the mayors, the central State-Owned Land Administration, ONE, and even the EDBM. Furthermore, because of the recent political transition and the appointment of new ministers, regional representatives, and senior officials, most operators have been forced to start their whole application over again.

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

The low price of rents (less than €1 per hectare), which is very attractive for operators, often masks the total costs involved in the preparation of a contract and its negotiation with local populations, regional and local governments, and technical services. To limit the initial investment (cost of demarcation and annual rent), operators have asked for

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<sup>20</sup> Numerous questions arise about the time and costs required for the topographic services to succeed in demarcating plots of such scale. In the demarcation of a large area of land the realization of the topographic plan involves an enormous amount of work for the State-Owned Land Administration agents, given the human and material resources at their disposal. For example, Boeny's topographic service has six people in total, who estimate that they can delimit at most 20 hectares a day if the terrain is not too rugged. For 20,000 hectares of land, 1,000 working days would be necessary even if the service had no other cases to handle during this time.

progressive leases with the aim of gradually extending the land holding of their project (up to a predefined maximum area).

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

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

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

# 5 Broadening the debate on a regulatory framework for investments

Two models of development currently seem to be in opposition to one another. The first depends on national and foreign private investments to establish agribusiness activities, partially oriented towards exports, which their promoters hope will have positive effects on economic growth. The second is based on family farming and aims to strengthen food security by protecting existing rights and by promoting a set of public actions in support of farms.

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

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

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

# Open a national debate on large land acquisitions

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

- To inform these debates, how can we make transparent the information on large-scale investments and analyses of past or current experiences at the national level and in other countries? What is the potential role of an observatory?
- How can we ensure that public decision-makers, private operators, civil society, and especially farmers' organizations and NGOs can follow the issues, express their opinions, and participate in these debates? The example of the Platform for Sustainable Agrofuels is an interesting introductory experience. This dialogue process, bringing together representatives from ministries, investors, the World Wide Fund for Nature (WWF), and farmers' organizations, was introduced to tackle the development of an agrofuels value chain in Madagascar. The initiative demonstrates the possibility of initiating a debate around the issues common to the various actors in the value chain and the cooperative building of regulation methods. How can this process be expanded and strengthened?

## Debate agricultural policies

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

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

# Coordinate the selection and regulation of investors

To facilitate the visibility of ongoing projects and the steps that investors have to follow, the nature and identity of the institutions in charge of regulating investors must be questioned.

## Harmonize the processes for investors

### a. Define a single institutional entry point?

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

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

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

The following are the questions that must be addressed:

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

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

**b. Define a standardized approach including local consultations?**

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

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

The questions to be addressed are the following:

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

**Selecting projects**

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

The questions to be addressed are the following:

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

## Regulate access to land and secure existing land rights

In order to control the development of large-scale agricultural exploitation and, especially, to limit competition between land uses, many ministerial agents would like to preemptively identify land dedicated to investment.

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

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

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

A number of procedures exist to regulate investors' access to land, notably concerning the means of accessing leases. The ongoing land reform is a major advance towards recognizing and securing usage rights, and can only be encouraged.

However, this study accentuates the need to debate the following points:

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

## Define parties' commitments

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

- Concerning the lease contract: reflections, already initiated within the Ministry of Town and Country Planning and Decentralization, could be pursued on:
  - The amount of rental royalties, and their distribution between regional and local governments and the State,
  - The duration of the lease, respecting the time needed by an investor to obtain a good return on investment (stating a duration of 30 years);
- Concerning the commitments of investors, the debatable points are the following:
  - Should investors' commitments include social measures and/or rely on taxation tools that aim to redistribute the wealth created?
  - If they include social measures, how and by whom are these defined? During the consultation processes undertaken during the impact assessment?
  - Should these economic and social measures be quantified and subject to a precise timeline? Are they only mentioned in the list of requirements or should they be contained in an explicit contract as for accessing land (the lease)?

# Ensure methods for assessing the commitments of the various parties

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

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

# Conclusions

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

## **The establishment of agro-industries and the transfer of lands is a national issue of the very first order.**

The question of foreign and national investments in agriculture goes beyond the agricultural sector alone and assumes a national strategic importance. Successfully integrating agribusiness projects is probably one of the keys to Madagascar's economic development. By contrast, any failure in this area could lead to grave economic and social consequences harmful to rural populations, as well as to investors and to public authorities. This question raises issues not only in terms of economic growth, but also of social peace. The highest institutions of the State, within the framework of national debates, have to tackle this issue in order to define multi-sector-oriented development policies that favor investment, while guaranteeing protection of the rights and interests of the populations concerned. Making legal and institutional frameworks coherent emerges as a priority to guarantee economically favorable results for communities, local governments, public authorities, and investors.

## **Opacity does not pay.**

The logic of investors who do not wish to reveal details of their projects in a competitive environment is understandable, but the unfortunate experience of the negotiations led by Daewoo and Varun demonstrates the patent failure of projects implemented in secrecy. The confidentiality clauses stipulated in contracts agreed to by these two companies perhaps protected them from the strategies of rival firms, but they also led to the emergence of rumors and suspicions, and did not succeed in keeping the investors' intentions secret (on the contrary, the whole world was informed about the Daewoo project). This empty hope of confidentiality is moreover contradictory with the scale of such projects. How could anyone believe that surveying hundreds of thousands of hectares of land, made visible by the work of several teams of surveyors, would go unnoticed, especially in rural areas where the risk of despoliation of land is a traumatizing reality? It is in investors' interests to engage in genuinely transparent negotiations with the populations concerned; confidentiality on the subject guarantees the failure of projects before they even begin.

## **The anticipated momentum of land acquisition projects has not materialized.**

Currently, less than 1% of the land targeted between 2005 and 2009 by 52 agribusiness projects is being cultivated. The political crisis that Madagascar is experiencing is one of the main explanatory factors for the cancelation of numerous projects, particularly because of banks' unfavorable risk assessments for the financing of agribusiness projects. The power of the media in orchestrating social protest has been another determining

factor. From now on, any company that intends to limit risks to its reputation will have to take into account, from the outset of any new investment project, civil society's ability to react, the efficiency of its international intermediaries, and the communication opportunities offered by the Internet. The globalization of strategies to control land has been accompanied by a globalization of protests against them.

### **Is there really “cultivable land” without rights and infinitely available?**

One must wonder about the real extent of arable land that is still unused and suitable for exploitation by agribusiness. Certain statistics that claim that 95% of arable land is not cultivated undoubtedly need to be revised. These figures have a political connotation: they can justify the transfer of large land areas under the pretext of impacting only a very small proportion of all cultivable land. On the ground, the reality seems different and “uncultivated arable land” is sought to the extent that investors are sometimes in competition with one another to obtain the same land. In future debates, it is advisable to revisit the notion of “arable land”, by recalling that Malagasy rural areas are rarely without rights.

### **Strategies are needed to strengthen local communities' rights.**

The roles of the State, NGOs, and civil society still seem very weak, even absent, insofar as protecting communities and strengthening their negotiation capacities are concerned. Access to information is severely lacking at the level of local populations, who do not have legal assistance to negotiate employment contracts, establish lease contracts, or protect their vital spaces (water resources, pasture land, family farms, fuel wood reserves, etc.). Lessons concerning “win-win” contracts that allow the inclusion of populations in decision-making can be drawn from other African countries.

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

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

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

It is a question of:

- Determining the skills to assemble in an entity to reflect upon and conceptualize a regulatory framework for agribusiness investments. The Sustainable Agrofuel Platform, the Land Observatory, the EDBM, ONE, and relevant ministries could be mobilized to establish this national capacity;

- Continuing to gather information about the current processes of large-scale land acquisition and the establishment of agribusinesses, to identify Malagasy agribusiness models that allow for the consolidation of agricultural value chains and the integration of family agriculture;
- Proposing directions to establish the basic principles of a regulatory framework for investments;
- Encouraging a national debate on the directions of rural policy development, and particularly land policy, protecting existing rights and welcoming international capital; and opening this debate not only to actors in the sectors concerned but also to a variety of civil society representatives, to complete or revise a national rural development policy.

## Annex: List of projects announced since 2005

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

	<b>Project Name</b>	<b>Origin</b>	<b>Region</b>	<b>Production</b>	<b>Area targeted (ha)</b>	<b>Area developed (ha)</b>	<b>Mode of production</b>	<b>Market targeted</b>	<b>Status</b>
Agrofuel: jatropha	MCD (ex-D1)	Madagascar - United Kingdom	Boeny Alaotra Vakinankaratra	Jatropha	600	50	Large-scale farming (50) contract farming (550)	Local	ONGOING
	DRAMCO	Madagascar	Boeny	Jatropha + coconut	810	0	Large-scale farming	N/A	PREPARATION
	Magnard	France	Atsimo Andrefana	Jatropha	1,200	0	N/A	Local	N/A
	Vaudo	France	Boeny	Jatropha	1,500	0	Large-scale farming	N/A	PREPARATION
	Bioenergy Invest	Madagascar	Boeny	Jatropha	2,000	2*49	Large-scale farming	N/A	STOPPED
	Association "Soavadia"	Madagascar	Boeny	Jatropha	2,000	0		Local	PREPARATION
	Jatro Solutions	Germany	Haute Matsiatra	Jatropha	3,000	N/A	Large-scale farming	N/A	ONGOING

Agrofuel: jatropha

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

	<b>Project name</b>	<b>Origin</b>	<b>Region</b>	<b>Production</b>	<b>Area targeted (ha)</b>	<b>Area developed (ha)</b>	<b>Mode of production</b>	<b>Targeted market</b>	<b>Status</b>
Agrofuel: sugar cane	Sopremad	Madagascar - France	Boeny	Sugar cane	20,000	5*50	Large-scale + contract farming	Local + export	ONGOING
	JWE	Madagascar	Boeny	Sugar cane	20	20	Contract farming	Local + export	PREPARATION
	SITEC Brickaville	Madagascar	Atsinanana	Sugar cane	20	20	Contract farming	Local + export	PREPARATION
	SAIM	Madagascar	Diana - Sava	Sugar cane	1,520	1,500 large-scale farming+ 20 factory	Large-scale + contract farming	Local + export	PREPARATION
	SITEC Farafangana	Madagascar	Atsimo Andrefana	Sugar cane	20		Contract farming	Local + export	PREPARATION
	E-Kolo	Madagascar	Atsinanana	Sugar cane	20	In discussions	Contract farming	Local + export	PREPARATION
	Madagascar Industries	Madagascar	Boeny	Sugar cane	20		Farmer	Local + export	PREPARATION
	TF Sarl	Madagascar	Diego	Sugar cane	N/A	N/A	N/A	Local + export	N/A
	Malagasy Green Energy	Madagascar	Atsinanana	Sugar cane	20	N/A	Farmer	Local + export	PREPARATION
	Tora Green Industry	Madagascar	Atsinanana	Sugar cane	20	N/A	Farmer	Local + export	PREPARATION
	GEAR	Madagascar		Sugar cane	N/A	N/A		N/A	STOPPED
	ULEM	Madagascar		Sugar cane		N/A	Farmer	Local	STOPPED
	Osho group	South Africa	Menabe	Sugar cane	100,000	N/A	NA	Export	?

	<b>Project name</b>	<b>Origin of investor</b>	<b>Region</b>	<b>Production</b>	<b>Area targeted (ha)</b>	<b>Area developed (ha)</b>	<b>Mode of production</b>	<b>Market targeted</b>	<b>Status</b>
Forestry	Oji Paper	Japan	Atsinanana	Eucalyptus - acacia	30,000	0	Large-scale plantation	Export	STOPPED
	DRT	France	Moramaga	Pine resin	15,000	*	Concession	Export	STOPPED
	Mada Woodland	Norway	Sofia	N/A	N/A	N/A	Farmer	N/A	ONGOING
	DEKO SA	South Africa	Alaotra Mangoro	Pine	33,000	0	Large-scale plantation	Export	N/A
	Minergy Resources	NA	Anosy	N/A	N/A	N/A	N/A	N/A	N/A

# References

- Blas, J. 2008. "Land leased to secure crops for South Korea". *Financial Times*, November 18, 2008.
- Cotula, L. and Vermeulen, S. 2009. *Making the Most of Agricultural Investment: A survey of the business models that provide opportunities for smallholders*.
- Hervieu, S. 2009a. "A Madagascar, une société indienne compte louer près de 500 000 hectares." *Le Monde*, March 20, 2009.
- Hervieu, S. 2009b. "L'Inde guigne à son tour des terres arables à Madagascar". *Le Monde*, March 21, 2009.
- Teyssier, A., Ramarjohn, L., Andrianirina Ratsialonana, R. 2010. "Des terres pour l'agro-industrie internationale ? Un dilemme pour la politique foncière malgache". *Echogéo*, December 11, 2009 / February 2010.  
<http://echogeo.revues.org/index11649.html>
- Üllenberg, A. 2008. "L'état actuel de la culture du jatropha à Madagascar". Study for Gesellschaft für Technische Zusammenarbeit (GTZ). Madagascar, Antananarivo.
- Üllenberg, A. 2010. "Foreign Direct Investment in Land in Madagascar". Study for Gesellschaft für Technische Zusammenarbeit (GTZ). Madagascar, Antananarivo.





This report is part of a wider initiative on Commercial Pressures on Land (CPL). If you would like further information on the initiative and on the collaborating partners, please contact the Secretariat of the International Land Coalition or visit [www.landcoalition.org/cpl](http://www.landcoalition.org/cpl)

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