Insights from Cambodia, Laos, Madagascar and Mali

Big push for development or erosion of local livelihood?

The recent upsurge in Foreign Direct Investment (FDI) in land raises the hope to bridge the gap of decades of underinvestment in developing countries' agricultural sector, but it may also threaten host countries' food security and increase the vulnerability of the rural population. Based on four country case studies conducted by Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ), this article illustrates distinct impacts of large-scale investments in agricultural land.

Cambodia, Lao PDR, Madagascar and Mali are just four of many least developed countries which are among the potential hosts for Foreign Direct Investment (FDI) in land. Even though exact information on contractual details remains limited, exemplary insights in

- land use rights and land conflicts,
- investment climate and legal requirements,
- current land deals, as well as
- social and environmental risks

demonstrate that effects of FDI in land are strongly dependent on their specific institutional setting.

Land use rights and land conflicts – the Cambodian case

Following the fall of the Khmer Rouge regime, Cambodia's formerly state-owned land was distributed based on family size, and initial property rights were granted. In 1991, the first Land Law enabled the registration of existing land use rights, but as the Ministry of Land Management, Urban Planning and Construction could not manage the huge demand, large segments of the population did not receive land titles. In addition, population growth and (forced) resettlement amplified the pressure on land and an unsatisfied cadastral system fuelled land conflicts.

According to a reformed Land Law enacted in 2001, five categories of property were introduced: private, communal and indigenous land, state public land (covering areas needed for public services such as roads), and state private land (embracing all other state-owned areas).

With the Sub-decree on Social Land Concession (SLC) of 2003 accompanied by a special Land Allocation Project (LASED), poor people received

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In Cambodia, within a reformed land law, a new cadastral system was implemented in 2001. These regulations did not prevent the government from leasing the same land to foreign investors, resulting in rising social conflict.

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Lao PDR officially promotes FDI. However, unclear legal regulations, corruption and administrative opacity constrain investment in land.

the opportunity to apply for state private land for subsistence farming. Supported by development organisations, a new cadastral system was implemented and about 1.15 million plots have been registered thus far. Nevertheless, the level of land registration does not yet meet demand. However, Cambodia's LASED initiative can be seen as a sound step for better pro-poor land access and secured property rights.

In order to attract financial support urgently needed for agricultural development, an additional Sub-decree on Economic Land Concession (ELC) of 2005 enables investors to lease state private land up to 10,000 hectares for a maximum of 99 years. This opens de facto land markets to foreigners in rural areas who, as in many other countries, are de jure blocked from land ownership. According to an official database, about one million hectares of land or 58 ELCs were granted between 1998 and 2006. Twenty-six of them are held by foreign investors, with China dominating this share with about 200,000 hectares for food and agrofuel production.

In this regard, the ELC Sub-decree seems to fulfil its objective, but taking some concomitant assessments into account, one receives a different picture. Although a clear legal procedure is defined, land allocation processes do not comply with intended regulations. Due to low legal enforcement, mandatory social and environmental impact assessments are not conducted. Additionally, far larger land concessions than are legally permissible have been granted and rent-seeking activities are arising at all levels. Furthermore, the Ministry of Economy and Finance and the Ministry of Agriculture, Forest and Fishery are acting on parallel terms as legal entities and actively lease land even though they are not authorised to do so.

As a consequence, the number of overlapping land use rights for certain plots is continuously rising, evoking further social conflicts. Considering asymmetric bargaining power between large-scale investors and subsistence farmers and unequal access to legal assistance, FDI in land is currently endangering the still fragile and contested property rights of smallholders and indigenous groups.

Investment climate and legal requirements – the example of Lao PDR

Lao PDR officially promotes FDI and protects its investors through 24 signed Bilateral Investment Treaties. Thanks to one of the lowest concession rates among South East Asian countries ranging from 2 to 9 US dollars (USD) per hectare, an estimated 2 to 3 million hectares (equivalent to 10 to 15 % of the whole Lao territory) are already under concession. Nevertheless, as in the other countries in question, the Laotian investment climate is quite poor because of pervasive corruption and an unfriendly business environment.

To obtain such long-term state land concessions, foreign investors must submit their proposals to the Department of Domestic and Foreign Investment (DDFI). FDI worth less than 3 million USD can be approved at the provincial level, less than 10 million USD gets signed by the president of the DDFI, and larger investments must be approved by the National Assembly and the Prime Minister. Besides the monetary triggers, FDI in land additionally needs approval by district (< 3 ha), provincial (< 100 ha) or national authorities. This creates an ambiguous framework without clearly defined responsibilities. Therefore, it is not surprising that the exact details of land lease contracts are often unknown.

To create a reliable database for all kinds of FDI, GTZ supported Lao PDR in a pilot study for Vientiane and Luang Namtha provinces. Besides improving transparency, the inventory revealed alarming deficits (see also Rural 21, issue 5/09, pp. 34–37). In general, legal regulations are neither precisely defined nor well enforced. Usually, socio-environmental impact assessments, fair stakeholder dialogues and adequate compensation for lost access and management rights to land are missing. Furthermore, power misuse and corruption are spread on all levels. Worse still, while some foreign investors make use of Laotian citizens to conduct concessions on their behalf, other land deals are based solely on oral agreements.

To combat these offences, Lao's parliament agreed upon a follow-up project extending these activities nationwide. With regard to present investment regulations, it is questionable how China, Thailand and Vietnam, as the primary investors with a strong bargaining power, can be restrained from unsustainable exploitation of agricultural land and forestry and encouraged to allow a more equitable distribution of resources.

An overview of current FDI in land – insights from Madagascar

At nearly 50 percent of its currently cultivated land area, Madagascar is hosting the largest amount of FDI in land among the case countries. The table summarises foreign demand of agricultural land exceeding 1,000 ha since 2005. It contains the Daewoo project (1 million ha for food crops and 0.3 million ha for agrofuel production), which partly fuelled the unrests in Antananarivo ending with a political overthrow in March 2009. Recently, this deal has been cancelled by the new leader of Madagascar's transition government in order to regain social stability.

In Madagascar, nearly 50 percent of cultivated land is leased to foreign investors. This could severely reduce the nation's food security.

Photo: laif

Even though the vast majority of land deals are still in the planning phase, some general trends can be identified. In most cases, all production is earmarked for export, which could reduce Madagascar's food security. While Asian countries are mainly interested in land for food production, European and American investors are usually driven by the growing demand for agrofuels.

It is noteworthy that instead of experienced agrobusinesses, investors in agrofuels are rather newly established companies operating at the stock exchanges. Due to their lack of agricultural experience, farm management is often poor, and the very fact that jatropha yields are frequently overestimated may lead to over-optimistic business plans and threaten their success.

This raises the question of what will happen with mismanaged plantations and former smallholders working on them when speculators realise that the expected returns on investment will never be reached. However, projects do not often rely on Malagasy farmers. The Indian company Varun, for example, plans to employ South Africans with experience in large-scale farming.

Demand for FDI in Madagascar (2009)

FDI in land	Area, in ha without the Daewoo project	Area, in ha including the Daewoo project
in total	1,720,300	3,020,300
for food production	446,500	1,446,500
for agrofuel production	1,231,700	1,531,700
for cash crop production	9,100	9,100
for other purposes	33,000	33,000

Source: GTZ 2009

Photo: gtz

When foreign investors do not respect the legal framework, as is the case in Mali, and implement a project without the necessary assessments, conflict with local population is pre-programmed.

But, the reverse is also true. A third of all documented projects, mainly originating from the EU, explicitly aim for local job creation or for infrastructure development. In addition, thanks to a sound environmentally-oriented NGO scene, no FDI-funded project regarding land is known to destroy biodiversity hotspots.

Unfortunately, social conflicts arising from investment in agricultural land seem to be persistent. First of all, as is similar in the other case countries, the rural population does not possess clear property rights. Additionally, in the Malagasy context, land is holy and still owned by the ancestors prohibiting its sale by traditional belief.

A final appraisal of FDI in land is not possible at present. Initial negative experience in low-cost farming, however, has led to disillusions, while some projects have been closed down or interrupted due to the global economic downturn. This recent slowdown on large-scale land markets might create a positive environment to learn from early experiences.

Weak enforcement of socio-ecological protection measures – Malian experiences

In Mali 175,705 hectares are currently contracted for foreign investments, while probably another 200,000 hectares have been requested by a Saudi Arabian food company. With 85 percent of all present FDI in land, Libya is the most dominant investor securing agricultural land for food production.

The majority of FDI is allocated to the Niger basin as it is the most fertile area of the country. However, it is also highly dependent on irrigation from the river. Since water availability during the dry season is limited, only 250,000 hectares can be irrigated. Hence, a lasting demand for cultivable land by foreign investors will definitely create water conflicts in the region.

Nevertheless, most land deals are still not fully implemented. The Libyan Malibya Agriculture Project as well as the Markala Sugar Project (a public private partnership by Malian, South African, British and American investors) demonstrate exemplarily the weak enforcement of the legal framework in least developed countries. Neither of them carried out the legally required social and environmental impact assessment before running implementation work. Moreover, compensation for resettled farmers violated legal obligations and the construction of roads and dams has already raised conflicts with cattle breeders since traditional grazing routes were ignored and destroyed.

Despite all potential positive impacts of FDI in land, the Malian case shows that given the actual institutional environment, the natural resource dependent population may suffer rather than benefit from these projects.

Zusammenfassung

Der rasante Anstieg ausländischer Direktinvestitionen (FDI) in Land weckt nicht nur die Hoffnung, die jahrzehntelange Unterfinanzierung des Agrarsektors zu überwinden, sondern stellt auch eine neue Bedrohung für die Ernährungs- und Einkommenssicherung der ländlichen Bevölkerung dar. Der Artikel illustriert, basierend auf Fallstudien der GTZ, unterschiedliche Auswirkungen von großflächigen Landinvestitionen. Ausführungen zu Landnutzungsrechten in Kambodscha, Investitionsklima und -regulierung in Laos, FDI in Madagaskars Landflächen und sozio-ökologischen Risiken von Landkonzessionen in Mali verdeutlichen, dass es stärkerer Regulierung bedarf, um negative Folgen langfristig zu minimieren.

Resumen

El vertiginoso crecimiento de la inversión extranjera directa (IED) en tierras agrícolas despierta sin duda la esperanza de poder superar finalmente la falta de financiación que ha afectado al sector agrario durante décadas. Sin embargo, a la vez representa una nueva amenaza para la seguridad alimentaria y los ingresos de la población rural. Basándose en estudios de caso de la GTZ, este artículo ilustra las distintas repercusiones de las inversiones en grandes extensiones de tierras. Las explicaciones sobre los derechos de uso de la tierra en Camboya, el ambiente para las inversiones y su regulación en Laos, la IED en las áreas rurales de Madagascar y los riesgos socio-ecológicos de las concesiones de tierras en Malí ponen de manifiesto que se requiere una regulación más estricta para minimizar las consecuencias negativas a largo plazo.

So what to do? – Corrective interventions to trigger developmental benefits from FDI in land

Looking at these case studies, one has to doubt the expected benefits of FDI in land. However, keeping FAO's estimation in mind, at least an additional 30 billion USD are annually required in the agricultural sector in order to halve the world's hungry by 2015. Given that this sum is unlikely to be carried by official development assistance, private-sector investment is indispensable. To initiate developmental benefits from private and/or public sector FDI in land, the following actions will improve the institutional environment and the acceptance of foreign investment in land:

- registration of land use rights of all involved parties in a proper cadastral system,
- generating reliable data regarding FDI in land,
- improving policy dialogue between investing and host countries, but also private investors,
- participation of all affected stakeholders,
- strengthening of civil society organisations, NGOs and farmers groups,
- integration of smallholders in the newly emerging value chains and equitable sharing of benefits,
- facilitating the redistribution of benefits and fair compensation for expropriation,
- implementation of sustainable land use management systems,
- enforcement of social and environmental impact assessments,
- implementation of food security and macroeconomic protection clauses,
- development of international guidelines for FDI in land, and
- enforcement of scientific research.

These corrective interventions, which are in line with the policy stance by Germany's Federal Ministry for Economic Cooperation and Development, can be summarised in the dual approach recommended by Joachim v. Braun and Ruth Meinzen-Dick (IFPRI):

- controlling threats through a binding code of conduct, and
- facilitating opportunities by appropriate policies.

Following this heuristic method, FDI in land has the potential to reduce the gap of underinvestment in agriculture.

A list of references can be obtained from the author. For detailed information about the country case studies please contact Dorith von Behaim – GTZ Sector Project Land Management: dorith.von-behaim@gtz.de