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through a Human Rights Perspective in Cambodia“

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## ABBREVIATIONS

AbD	Accumulation by dispossession
ADHOC	Cambodian Human Rights and Development Association
AfDB	African Development Bank
ASEAN	Association of Southeast Asian Nations
CAS	Country Assistance Strategy
CEA	Cambodian Economic Association
CEDAW	Committee on the Elimination of Discrimination against Women
CERD	Committee on the Elimination of Racial Discrimination
CESCR	Committee on Economic Social and Cultural Rights
CFS	Committee on World Food Security
CLUP	Commune Land Use Planning
CPP	Cambodian People's Party
CRC	Committee on the Rights of the Child
DFID	Department for International Development
EBA	Everything But Arms
ELC	Economic Land Concession
EU	European Union
FAO	Food and Agriculture Organization
FDI	Foreign Direct Investment
FIAS	Foreign Investment Advisory Service
FIDH	International Federation for Human Rights
FPIC	Free, Prior and Informed Consent
GIGA	German Institute of Global and Area Studies
GIZ	German Society for International Cooperation
GSP	Generalized System of Preferences

HAGL	Hoang Anh Gia Lai
HLPE	High Level Panel of Experts on Food Security and Nutrition
HRIA	Human Rights Impact Assessment
HRTF	Housing Rights Task Forces
ICESCR	International Covenant on Economic, Social and Cultural Rights
IDA	International Development Association
IDI	Inclusive Development International
IEA	International Energy Agency
IFAD	International Fund for Agricultural Development
IFAP	International Federation of Agricultural Producers
IFC	International Finance Corporation
IFPRI	International Food Policy Research Institute
IMF	International Monetary Fund
ILC	International Land Coalition
KKPC	Koh Kong Plantation Company Limited
KKSI	Koh Kong Sugar Company Limited
LASED	Land Allocation for Social and Economic Development
LASSP	Land Administration Sub Sector Program
LDC	Least Developed Country
LDPI	Land Deal Politics Initiative
LICADHO	League for the Promotion and Defense of Human Rights
LMAP	Land Management and Administration Project
MAFF	Ministry of Agriculture, Forestry and Fisheries
MDG	Millennium Development Goal
MIGA	Multilateral Investment Guarantee Agency
MLMUPC	Ministry of Land Management, Urban Planning and Construction
MoP	Ministry of Planning



ODC	Open Development Cambodia
OECD	Organization for Economic Co-operation and Development
OHCHR	Office of the High Commissioner for Human Rights
RGC	Royal Government of Cambodia
SLC	Social Land Concession
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
UNCDF	United Nations Capital Development Fund
UNDP	United Nations Development Programme
UNHRC	United Nations Human Rights Council
UNIFEM	United Nations Development Fund for Women
USAID	United States Agency for International Development
VRG	Vietnam Rubber Group
WB	World Bank
WFS	World Food Summit
WTO	World Trade Organization

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# 1. INTRODUCTION

I agree with Olivier de Schutter (2010d, p.327), the United Nations Special Rapporteur on the right to food, that the “question of hunger is not simply a technical question”, but “also a political question”. The challenge is not solely to increase the amount of food being produced, but to assure that food is available and accessible to the poorest, which is a matter of redistributive policies, social justice and combating discrimination. Currently there are new dynamics on the rise that increase marginalization and inequalities both within and between countries, making things worse for the already underprivileged in the population. One such development is the current land grabbing phenomenon with its severe social, economic and environmental impacts. My thesis revolves around this topic, which has attracted global attention since the food price crisis of 2008 and over the past few years it became clear that in reality it is more diverse, involves a wider range of stakeholders and affected countries and may not be as new as presumed. Commercial pressures on land continue to be fueled by a set of drivers, are enabled by policies drafted by international financial institutions and other powerful actors and result in further dispossession and marginalization of the rural poor.

## 1.1. EXECUTIVE SUMMARY

The goal here is to analyze the connections between these processes of dispossession from a human rights perspective and how these dynamics are facilitated by promoting win-win scenarios, in which large-scale acquisitions of land by mostly private investors are supposed to provide benefits for companies, host states and local populations alike. In order to do so, this thesis first assesses the state of the art of the land grabbing discourse to illustrate how difficult it actually is to define what land grabbing is and what it is not. It then describes the methodological approach, builds a theoretical framework and provides an own definition of land grabbing used hereafter.

Before proceeding to analyze the main point of interest of this thesis, it is important to understand what land grabbing actually is, namely how it was triggered, how it evolved, who the involved actors are and where do they operate as well as what the driving factors are. Therefore, the second chapter starts with highlighting the food price crisis of 2008 by showing what incidents have led to the rush for land, but also which aspects did not contribute as much as it may seem. As a next step, the status quo as of late 2013 is presented by examining the scale and pace of land grabbing, followed by an analysis of the investors involved and the targets of their acquisitions. As the final step, it is necessary to assess the trends that are responsible for the contemporary land rush not being just a brief phenomenon. Ultimately, these drivers of the increasing competition for land are growing consumption of a growing global population mostly at the expense of the world's rural poor. The more immediate drivers analyzed here are the increasing demand for food, biofuels and water.

Analyzing land grabbing through a human rights perspective is the crucial prerequisite for answering the main questions of this thesis, namely how the right to food and other human rights are violated by dispossession that is mostly caused by lost access to land. As will be argued in the third chapter, the latter is closely interlinked with the right to food, which in many cases is seriously threatened by large-scale land deals for agricultural purposes. It will outline the human rights responses to land grabbing with a particular focus on the right to adequate food and the human rights situation in Cambodia. The goal of the third chapter is to provide an assessment of the two dominant approaches of the land grabbing discourse. It will be argued how the market-based approach on one hand recognizes adverse impacts of large-scale investments in land and on the other hand balances them against vague potential benefits and merely seeks to constrain harmful the consequences of resource allocation by the market. Its problematic issues of accountability and the voluntary nature of its code of conduct are criticized by the rights-based approach, which argues that human rights obligations cannot be surpassed by other considerations. The right to food and other human rights can be realized by securing access to land, which, besides the issue of land distribution, is one of the key arguments in this context.

The drivers described in chapter two are on their own not sufficient enough to explain the largely negative impacts of land grabs in targeted countries. To answer

the question why impacts of large-scale land acquisitions are rarely in favor of the affected local population and marginalized groups, it is important to examine the contextual factors shaping the land rush and enable harmful land grabs to take place. In order to do so, the fourth chapter begins to expose the practices of international financial institutions and their goals that are aimed to facilitate private investment in land. Then it examines what effects state and governance have on the rural poor and their tenure security and also assesses the interplay of these forces while especially focusing on characteristics of state and its role in large-scale acquisitions of land.

As a next step it becomes possible to dismantle the win-win narratives, which are promoted by international financial institutions in order to legitimize large-scale private investment in agricultural land. As argued on a theoretical basis in chapter three, the market-based approach is manifested in these processes, which on one hand supposedly aim for improving global food and energy security by increasing production in 'low-yield' areas of 'land abundant' countries and on the other hand disregard patterns of actual land uses, resource rights and land reform agendas. Finally, a generalized overview of the complex potential impacts that land grabbing might have is closing this chapter and considers outcomes for affected communities in regard to dispossession, compensation, competition for water resources, employment opportunities, gender implications and environmental issues.

Cambodia's struggle with land grabbing phenomenon and the characteristic land concessions has been on the rise for more than a decade now. The fifth chapter aims to capture the status quo by highlighting the country's context and historical development of policies that facilitated this trend. It analyses the theoretical intentions as elaborated by the national government and its related normative framework and compares them with the impacts it has had in reality on a national and local level, by assessing the economic land concessions of Cambodia's sugar industry. Based on a concluded human rights impact assessment by two Cambodian NGOs in the provinces of Koh Kong, Kampong Speu and Oddar Meanchey, the case study illustrates the adverse impacts of large-scale private investment in land on human rights in Cambodia. Finally it presents the latest government initiatives and draws conclusions for future policy considerations.

## 1.2. RESEARCH QUESTIONS

As will be argued throughout this thesis, the contemporary rush for land enables processes of dispossession, which are a serious threat undermining a variety of human rights of local populations and the right to food in particular. In order to be able to answer the research questions related to this main point of interest, the following three key objectives need to be accomplished first.

- Firstly, to critically evaluate the literature and sources within the land grabbing discourse in order to determine a fitting methodological approach.
- Secondly, to provide an overview of the contemporary land grabbing phenomenon on a global scale and review its drivers as a basis for identifying key characteristics of analysis.
- Thirdly, to apply a human rights perspective on the land grabbing debate and examine human rights responses to land grabbing with a special focus on the right to food and to assess the two dominant approaches, namely the market-based approach and the rights-based approach.
- Fourthly, to critically assess these aspects shaping the land rush and its win-win narratives from a general perspective as a prerequisite for analyzing the case study of Cambodia.

I am particularly interested in the discrepancies between the win-win narratives of large-scale agricultural investment promoted by international financial institutions such as the World Bank (WB) and their factual impacts on the ground. Of special importance in this context is the case of Cambodia, which it is an exceptional example and very well demonstrating the diversity of the phenomenon. Cambodia is rarely mentioned among the most target countries (Anseeuw, Boche, et al. 2012) due to its relatively small size, but still stands out because of significant investor's interest in this country and the dominance of domestic land grabbers. On top of that, very little academic research has been conducted to examine the impacts of land grabbing in Cambodia, which makes it an interesting case study. Accordingly, this thesis aims to answer the following three research questions.

1. In what way does dispossession caused by land grabbing violate the right to food and other human rights of the rural poor in Cambodia by promoting win-win narratives?
2. In what way does the Cambodian government facilitate and/or prevent land grabs in Cambodia and how does this affect land tenure security?
3. To what extent are the two dominant approaches to land grabbing, namely the market-based and the rights-based approach, suitable for creating a normative framework for the contemporary land rush, which would truly facilitate a win-win scenario for all stakeholders?

### 1.3. DIFFICULTIES WITH DATA

In 2013, the current state of the art of academic publications and reports by Newspapers, Magazines and NGOs or other organizations addressing the ongoing land rush is in a difficult phase, which comes with a set of challenges an interested scholar has to face. While researching and reading many articles and reports for my thesis, I quickly realized the rather large bandwidth of topics within the scope of what is genuinely covered by the topic of land grabbing. By far not everyone is talking about the same set of issues when describing it, there are many differences regarding the following questions: What is actually happening? Where and when does it take place? Who is involved on both ends of the story? And, most obviously noticeable, how much land or how many units are concerned? These were the prevalent questions that were dominating the debate between 2007 and 2012, a time that Edelman et al. (2013, p.1520) were describing as the “making sense period”. Its purpose was to draw the attention of the public eye on the emerging phenomenon by producing shocking ‘killer facts’ based on dramatic numbers of hectares grabbed and people displaced. The one thing that basically every paper and publication under examination really could agree on, was the fact that there was a new land rush happening worldwide, although on differentiated terms.

After checking the working papers of the second International Academic Conference on Land Grabbing at Cornell University organized by the Land Deal Politics Initiative

(LDPI) in October 2012<sup>1</sup> as well as recent publications, especially issue 3 of this years *Journal of Peasant Studies* about methods used in the global land grabbing debate, it seems like this period of trying to make sense is about to phase out (Bräutigam & Zhang 2013; Edelman 2013; Oya 2013; Scoones et al. 2013; Rulli & D'Odorico 2013). Besides that, the lack of consensus about the form and details of the ongoing development is easily noticeable. The first and most important thing on the list of contested aspects of land grabbing is the question of defining it. What should be included and what should be excluded in the definition is a crucial first step, one that will make the analytical outcome less conclusive and comparable when not explicitly thought about and dealt with (see chapter: 1.6. Definitions). The second issue is about quantifying land deals and measuring the actual extent of what is commonly understood under the term land grabbing. The discrepancy I have experienced is significant and will be discussed below. Also a different understanding of drivers, backgrounds or impacts leads to different explanations of social processes and structures. This can be observed while examining data that does or does not include aspects such as taking into account domestic acquirers of land, the impact of 'green grabbing', mining concessions or projects that involve transformation of farmland into industrial or urban areas. The range of involved actors as well as their relations and how certain social groups react to concluded land deals also needs mentioning in this list (Edelman et al. 2013).

Another concern within the discourse on land grabbing stems from a historical point of view, the 'here and now' tends to be over-emphasized. Not a longer timeframe of examination is needed, but rather an analysis of the preceding social, political or ecological situation, as well as patterns of land tenure and use. The impacts of concluded and executed land deals can only be understood, if the pre-land grab situation has been properly evaluated.

On top of that, Edelman et al. (2013, p.1522) emphasize the importance of focusing on the dynamics of agrarian change and of global capital accumulation: "A broader agrarian political economy perspective goes beyond a land property relations-centric analysis to include other closely linked agrarian issues." As an example, the nature of particular labor regimes can be even more important than land tenure problems. An

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<sup>1</sup> Papers from the conference can be accessed here: <http://www.cornell-landproject.org/activities/2012-land-grabbing-conference/papers/> [Accessed November 19, 2013]



emerging labor issue can be viewed from two different angles: There are situations, where and when people are expelled from their land because their land is needed for different purposes but their employment is not required. In another scenario the investment in land can require both land and labor. In such cases employment opportunities may be offered to the dispossessed population and on larger scale the deals can show positive effects on broader labor market dynamics. Though, a critical assessment is needed regarding the quality of the offered working possibilities as well as the possibility of choice available for the affected people (Li 2011). While dispossession and displacement are broadly thematised, the topic of labor within the land grab debate does not get the proper attention yet that it deserves. This illustration leads us back to square one, namely the question what should be included or excluded in the definition of land grabbing: can a land deal be only be considered a land grab if people are displaced from the land they have been using (see chapter: 1.6. Definitions)? The last and crucial issue concerns the research methodology used in academic literature that deals with the new land rush. Researchers are starting to pay more and more attention to the quality of the data used in academic research and their criticism (Edelman 2013; Bräutigam & Zhang 2013; Oya 2013; Rulli & D'Odorico 2013) focuses on the applied methods, which are frequently just descriptive.

I want to start elaborating this problem by using a perfectly executed example by Bräutigam & Zhang (2013), to illustrate how conventional wisdom about Chinese investment in Africa has been constructed and in fact has become a 'fact' itself based solely on over and over recycled faulty media reports. Following the global price increases for food and other commodities in 2008, China's role as an investor and its intention to secure domestic food security has gained a prominent spot by the interest of global media. Initially reported by the Associated Press in May 2008 and repeated by *The Economist* in July 2009, a story about extensive Chinese investments in the Democratic Republic of Congo has been cited by a number of researchers and thus found its way into the academic sphere. Those media reports became the basis for analyses mainly made available online by think tanks and NGOs. By 2012, two influential international databases existed, the Land Matrix and one created by GRAIN (two of the leading organizations reporting on land grabbing), along with many corresponding papers, including the by now infamous WB paper (Deininger et al. 2011), which was based on the media reports collected by GRAIN. Step by step, more

deals have been included and more papers have been released, despite the criticism regarding the problematic data being used. Investments initially reported by the media turned out to be exaggerated, cancelled, never executed or were just never concluded. The sometimes large gaps among the sources were never discussed (Bräutigam & Zhang 2013).<sup>2</sup>

These critiques of the Chinese land grab discourse are supported by fieldwork data collected by researchers to examine the actual extent of the reported phenomenon. Although much of the findings were available online, there was at first little incentive to immediately update the existing data in the database by both organizations GRAIN and the Land Matrix, who were both concerned with large-scale land acquisitions (Anseeuw et al. 2013). Only little follow-up research has been concluded to actually verify the reports and once they were published in the database, these 'facts' became the foundation for analyses by others and starting point for further investigation. Almost immediate access to data over the Internet is making this even easier:

“Reliance on often outdated web sources has led to a circularity of referencing, producing a meta-discussion of land deals quite ungrounded in on-the-ground verification. The result has been circular referencing, reproduction of discredited data and double-counting of deals” (Scoones et al. 2013, p.475).

Even after the data has been updated, the 'damage' was already done, since “the nature of knowledge circulation is such that the first papers written on the initial analysis of data often have much greater impact than papers written later, with revised and better data” (Bräutigam & Zhang 2013, p.1680). This is exactly what happened during the alleged Chinese land rush in Africa and what is now hard to eradicate from the public opinion.<sup>3</sup>

The speed of growth of literature on land grabbing is indeed astonishing, judged by the amount of reports, papers and books that have been published during the last five

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<sup>2</sup> The authors provide a long list of examples of publications that have picked up the false or at least problematic data about Chinese land deals in Africa and more background information on this particular development. Along with many facts and figures, there also is included much more precise information about their approach and work to verify if the claims regarding Chinese land grabs in Africa were actually true. Bräutigam, D. & Zhang, H., 2013. Green Dreams: Myth and Reality in China's Agricultural Investment in Africa. *Third World Quarterly*, 34(9), pp.1676–1696.

<sup>3</sup> Although not dealing with the best informed audience in this regard, I still experience this phenomenon every time I tell anyone (colleagues from similar or different fields of study, etc.) about land grabbing: the first thing that crosses their mind is: “China is doing it!” I encourage everyone to try this him- or herself.

years compared to other, less fashionable but not less important topics. A deeper analyses of the “literature rush” (Oya 2013, p.505) that fuelled the land grabbing debate reveals a certain ‘false precision’ that comes with the way the empirical base for land grab data is acquired. Consequently it poses the following challenges.

To begin with, researchers have to be aware of the difficulties when interpreting the information provided by the two databases of GRAIN and the Land Matrix. These numbers can actually not be regarded as ‘facts’ since they are not collected using large-scale quantitative household surveys or interviews with a representative spectrum of stakeholders. Imprecision, biased reporting, the lack of verification of sources and their reliability and sometimes simple misunderstandings are easily understandable discrediting factors of data originating from media reports. Especially the extent of selection biases is hard to estimate and judge. A biased sample frame like a full list of deals in the GRAIN or Land Matrix database will inevitably result in a biased pool of case study literature and consequently focus more on certain countries, regions or type of land deals, while it does not pay enough attention to others that might be equally important and may result in different findings and outcomes. For example, foreign acquisitions of land tend to be more frequently reported than domestic land deals and are therefore over represented in the debate (Hall 2013). As described above in the snowball effect that occurred with reports on Chinas alleged land grabs in Africa, recycling of this data is happening quickly. The nature of this effect is lacking one relevant and substantial acknowledgement: Both “researchers and reporters fail to recognize that the ‘data’ in these databases are fluid, imprecise and subject to change after verification” (Oya 2013, p.508).

Specifically the Land Matrix needs some further examination here, since it is becoming more and more a powerful and widely used instrument of quantification of global land grabbing. A number of organizations became part of the project and the partnership now includes the International Land Coalition (ILC), German Institute of Global and Area Studies (GIGA) and the German Society for International Cooperation (GIZ) amongst others and is supported by Oxfam, the European Commission and the Swiss Development Cooperation (Anseeuw et al. 2013). They began to collaborate in this ongoing project to compile and cross-reference information on large-scale land acquisitions. Within this category there are included transactions that

“entail a transfer of rights to use, control, or own land through sale, lease, or concession; Imply a conversion from land used by smallholders, or for important environmental functions, to large-scale commercial use; Are 200 hectares or larger; and Were not concluded before the year 2000 when the FAO food price index was lowest” (Anseeuw, Alden Wily, et al. 2012, p.18).

The data is divided into two categories, namely “reported” and “cross-referenced” (Anseeuw, Alden Wily, et al. 2012, p.18). This classification literally divides land deals into one group based on less and one based on more reliable data. Those responsible for this segregation note that speaking of cross-referenced deals, “such evidence still cannot be taken in many cases as fully conclusive; hence, although our aim is to verify as closely as possible, we have refrained from calling these ‘verified’ deals” (Anseeuw, Alden Wily, et al. 2012, p.18). Directly on the Land Matrix website there is a clear warning regarding data reliability: “The dataset is inherently unreliable, but over time it is expected to become more accurate” (The Land Matrix Global Observatory 2013a). The following illustration shows the ratio these two categories:

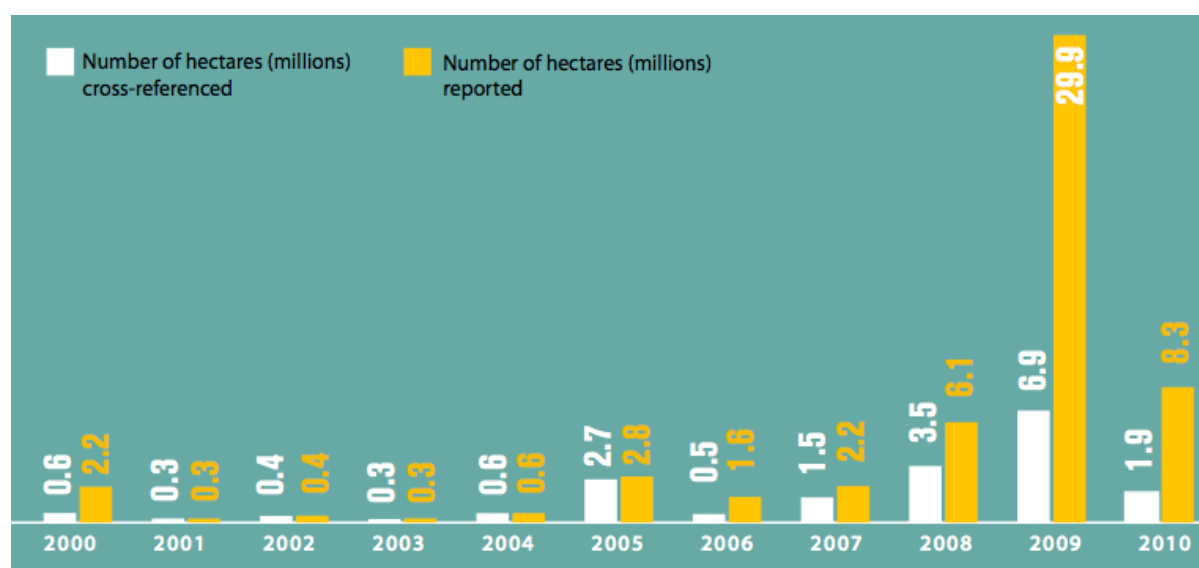


Figure 1: The global pace of land acquisitions (Anseeuw, Alden Wily, et al. 2012, p.20)

An independent scholar should also be aware of the fact that data on land is exceedingly difficult to obtain, which is a very important issue that simply needs to be recognized as such. Different sources tend to provide biased data and therefore under- or overestimate the size of land in question. For example Carletto et al. (2011) have discovered, that in Uganda small farmers are on average reporting larger sizes of their farms while large-scale farm owners are under reporting their land size. Just recently the possibility to use GPS measurements in order to determine proper sizes

of land areas has become a promising alternative, in practice it is still not used very often because of financial and accessibility reasons. What remains is a reality where “self-reported measures of land size are notoriously imprecise” (Carletto et al. 2011, p.12).

After outlining the limitations of the reported data on land grabbing, the question of the purpose of these databases and why they are used basically imposes itself. They are providing data for strong messages that are supposed to raise awareness and create an urging need for action. “Killer Facts” (Oya 2013, p.509; Green 2012) may serve the purpose to emphasize the importance of the topic and, if applied correctly, they have the potential to silence the critics. Oxfam, an organization with interests that are clearly condensing in an anti land grabbing position, emphasizes the effectiveness of these killer facts by providing an impressive list of dos and don’ts in its research guidelines, including the strong reminder to not use them without certainty regarding the origin of the sources they are based on (Green 2012). The same caution is indispensable when using them as providers of data for statistical analysis and sampling frames for case study selection (Oya 2013).

Does this mean that any study based on imperfect data should be ignored? No. Studying contemporary large-scale land acquisitions is only at the beginning and about to start providing quantitative estimates and qualitative assessments of the significance of land grabbing on both a regional and a global scale. Sure, there are various issues of uncertainty, but nonetheless these evaluations are an important step forward towards a better understanding of the importance of land grabbing and its influence on human rights, just to name one and concurrently the most important impact for this thesis. I support the claims for more critical and careful evaluation of data used to create global studies on land grabbing and acknowledge that this is sometimes very difficult to achieve. The phenomenon is evolving very rapidly and the “land deals are often the result of a non-transparent process of closed door negotiation. Thus, the lack of accurate data is inherent to the nature of the problem” (Rulli & D’Odorico 2013, p.908). More recent versions of data sets are paying tribute to the sophisticated requirements for quality data and their contribution to the topic is definitely more than welcome. Adequate documentation of sources needs to be one of the key principles of thorough dealings with the new land rush on an academic level. However, as long as the readers are being informed of the weaknesses of the

data used, the particular publication should be adding valuable information to the land grabbing debate.

## 1.4. METHODOLOGY

It is not doing all the effort justice to assess the status quo of knowledge about the global scale of land grabbing as drastically as Oya (2013, p.508) puts it in reference to other critics: “Whether the extent of global land grabbing has been 49 million hectares since 2000 (Land Matrix), 60 million, or 227 million, 60% or 40% of which is located in Africa, and so on, is really anybody’s guess”. Accordingly, I have extracted the following essence from this controversy. Processes of change resulting from concluded land deals and their aftermath have an impact on local livelihoods and they don’t necessarily change proportionally to the factual extent of the land deal. There are other factors discussed in this thesis that are shaping this outcome in a more effective way, so I am trying to relinquish going too much into details regarding the quantitative extent of land deals. Instead, I am focusing more on these impacts and specifically on human rights and land tenure related issues. This idea has shaped and contributed to the approach and stance taken in this thesis.

Collecting primary data, especially according to the high demands for quality data described above, would go beyond the timeframe of this thesis and definitely exceed all the sources available to me for this project. The nature of land grab deals results in undisclosed, almost camouflaged processes with little or no public participation whatsoever. In regard to Cambodia, the situation for collecting information about land concessions is particularly difficult. To illustrate this problem, I want to mention two examples of these difficulties, both coming from contrapositive parts of the land grabbing debate: the WB and the Cambodian Human Rights and Development Association (ADHOC), one of the leading NGOs reporting on land grab issues in Cambodia. The challenges faced when trying to obtain data received an honorable mention in the WB report (Deininger et al. 2011). The responsible Ministry of Agriculture, Forestry and Fisheries (MAFF) did not provide a requested and promised update on data regarding the process of awarding land concessions since 2006, forcing the WB to work with outdated information. The report also mentions internal

inconsistency of data and discrepancies in the interpretation of GPS coordinates included. Interviews with regional authorities suggested opposite strategies regarding allocation of economic land concessions and their monitoring than actually promoted by the government. This was also confirmed along the way by different sources (UN 2007b). ADHOC's (2013) recent report on this issue also emphasizes the lack of documentation of land deals by the Cambodian government since there is no institution in charge of aggregating and monitoring such data in a coherent way. There is still no registry that would classify land and disclose its state. Development partners who were financing and assisting the Cambodian land sector have demanding open access to information about the ownership of land for a long time. Information on land concessions provided by the ministry in charge seems to be clearly below actual extent. ADHOC and other civil society organizations are continuously reporting higher numbers of concessions and bemoaning a general lack of transparency around granting and implementation of land concessions (Sperfeldt et al. 2012). Both ADHOC and the WB can be regarded as competent, well-informed, interconnected and potent organizations, which should be able to obtain the information they are looking for. If their researchers were not able to do so, then, being completely disillusioned, my efforts adequate to this projects scale would have been condemned to failure as well.

Consequently, this is a hermeneutical, critical-analytical paper. Therefore I am using secondary data such as reports by NGOs and other organizations trying to fight land grabbing, although knowing that they are most likely biased in their writing. Nonetheless, being aware of these biases and understanding their origin justifies their usage and when subtracting the occasional polemics from the bottom line, they still provide a valuable resource for my investigation. High quality academic research is still scarce, especially when it comes to publications that are linking land grab related issues with the case study of my choice, Cambodia. The objective was to create a paper that is as up to date as possible and includes recent and important publications relevant to my topic. Taking everything discussed until this point into consideration, many sources used here in this paper are representing the most recent

overview of the land grabbing debate in general and within the context of Cambodia specifically<sup>4</sup>.

## 1.5. BUILDING A THEORETICAL FRAMEWORK

The most critical studies dealing with land grabbing are based on the Marxist tradition of political economy, in particular the notion of accumulation by dispossession (AbD) formulated by David Harvey. Applying this approach to land grabbing, the basic process is to be understood as “land and other resources are enclosed, and their previous users dispossessed, for the purpose of capital accumulation” (Hall 2013, p.1583). It allows outlining the phenomena of the recent land rush into a historical perspective of critical economic and geographic theory and further helps to identify some of its core principles. Furthermore, an AbD perspective can encourage a debate on the struggle over defining what is considered to be land grabbing, and what is not. However, applying the broadly used and widely discussed notion of AbD to processes of land grabbing also poses some problems, as will be discussed below.

### 1.5.1. INTRODUCING ACCUMULATION BY DISPOSSESSION

The (re-)introduction of the notion of AbD by Harvey in “The New Imperialism”<sup>5</sup> (2003) resulted in an extensive use of the concept, not just among geographers but also within development studies (Glassman 2006). Harvey builds upon one founding principle in Marx analysis of capitalism during the emergence of the industrial revolution in England. What he argues is that this form of ‘primitive accumulation’, as labeled by Marx, is not the predecessor of modern day capitalism, but is inherently part of it. Today, with new players, mechanisms and updated forms, accumulation by dispossession is playing an important role in re-distributing assets from the mass of the population towards the capitalist class, and from poorer countries to richer ones

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<sup>4</sup> Research of data for this thesis was a process that started in early 2012 and takes into account data available until late 2013. Especially the legal situation regarding land tenure security in Cambodia has undergone some important changes recently that needed to be taken into consideration for a proper assessment of the country’s situation.

<sup>5</sup> Harvey introduces this notion in *The New Imperialism*, a work which elaborates on the current state of the US American Empire (Harvey 2003), but AbD has been applied to countless different current phenomena ever since (Glassman 2006).



(Harvey 2007). Basically he argues, that with the turn towards neo-liberalism, from the 1970s onwards, the chronic crisis-tendency of the economic system is largely compensated by AbD (Harvey 2003).

When introducing primitive accumulation, Marx described it as “the historical process of divorcing the producer from the means of production” (Marx 1887, p.501). It was based on the observation of the dispossession of agricultural producers in industrializing England, marking the transformation from a feudal economic order to a capitalist one. Rosa Luxemburg (1913) reviewed these observations, stating that the dispossession of peasants was the most striking weapon in transforming production and labor power into capital. Moreover she has shaped the argument that the crisis tendencies inherent to capitalism identified by Marx can only be stabilized through the conquest of non-capitalist grounds, also in order to reinvest surplus. AbD can be seen as a specific way to overcome structural problems of over-accumulation (de Angelis 2004; Glassman 2006; Harvey 2003). The “removal of agricultural producers from the countryside and consolidation of more privatized control over resources – both central to primitive accumulation – remain hugely important processes today, effecting literally billions of people” (Glassman 2006, p.609). Such forms of accumulation, of bringing assets previously outside of capitalist logic into a productive use, are still very relevant in the Global South, but recently also show a re-emergence within the Western countries, marking it as integral to today's global capitalist system as it is within the scope of the land grabbing discourse (Hall 2013).

The commodification of rural land and the extraction of natural resources are considered to be the most conspicuous translations of AbD into empirical grounds. At the core of the notion lies an increased interest in land within economic theory, which is an important point of what geography and development studies have to add. By this, AbD entails also a territorial logic of capitalism. Bluntly it is about trying to maintain the well being of one particular place, at the expense of another. Harvey states, that there “is a good deal of historical evidence that the bourgeoisie has made more money out of land speculation than they have made out of factory production” (Harvey 2011). Despite the category of land being central to AbD it can not be seen by itself but as part of a range of other factors, which is a crucial point when applying AbD to the land grabbing phenomenon (Hall 2013). In fact, Harvey identifies several processes as emblematic of contemporary AbD. The most relevant in this context is of

course the commodification and privatization of land, often at the expense of a forceful expulsion of the local population. However, he also lists the conversion of different forms of property rights, such as a public, collective, or common property, into exclusively private property in legal terms. Also on the list are suppression of rights to commons such as food and water, the commodification of labor going hand in hand with suppression of alternative forms of consumption and production as well as the angle on such processes seen as imperial forms of appropriation of primarily natural assets (Harvey 2007). In this sense, dispossession does not simply stand for the dispossession of land, but includes all used values such as resources, housing, public services as well as dispossession of rights and even symbolic dispossession. The privatization of previously public or common assets is one of the angles of land grabbing, which can be highlighted through the theory of AbD (Hall 2013; Kenney-Lazar 2012).

Subsequently Harvey suggests overcoming one problematic aspect of the notion of primitive accumulation when applied to contemporary phenomena. In the preceded approaches of Marx and also Luxemburg, the idea was to bring 'extra-economic' forms into capitalist production, stating that the original state of the dispossessed was somehow 'outside' of capitalism. Hall (2013, p.1599) argues, that this is a core problem within the land grabbing literature, since it has proven fruitful to "include capitalist-to-capitalist land purchases and leases, deals which [...] do not bring anything 'into' capitalism". Through a close read of Harvey's concept of AbD it becomes clear, that this is not a distinct characteristic though, he explicitly includes the dispossession of a broad range of rights and other forms of symbolic dispossession. As an example, common resources are enclosed and transformed into rather exclusive places (Islar 2012). "Accumulation by dispossession can occur in a variety of ways and there is much that is both contingent and haphazard about its modus operandi" (Harvey 2003, p.149). Harvey formulated the basic essence of his argument in an interview in 2004, stating, that AbD "is about dispossessing somebody of their assets or their rights" in a way that some "people are accumulating at other people's expense" (Harvey 2004).

### 1.5.2. LAND GRABBING AS ACCUMULATION BY DISPOSSESSION

Returning to the phenomena in question, there are some relevant aspects to be mentioned from an AbD perspective before approaching a definition of land grabbing. In a nutshell, it is argued that the past decades of neoliberal policies, at its core the dynamics of privatization and financialisation (Harvey 2003), together with the indebtedness of countries and the policy debates on multiple scarcities have facilitated the current land rush (White et al. 2012). Hall (2013) identifies three, often interlinked, strands within the academic literature on land grabbing from a (neo-)Marxist perspective. Firstly he lists the controversy explained above, about the “extra-economic” dimension of land being grabbed. However it was argued, that AbD does not restrict analysis of land grabbing to such cases.

The second is the perspective on the land rush being a product of the recent global economic and financial crisis, or more precisely the multiple crises (White et al. 2012; also see chapter: 2.2. Triggers of the Land Rush), which lie beyond or resulted from it. Harvey argues, that the current multiple crises enhance the relevance of land since other surpluses decreased, or got more insecure for investment. “This land grab is very much about trying to find a secure source of profitability [...] because capitalism has run out a variety of options” (Harvey 2011). AbD opens new fields for investment, releasing assets at very low cost, so that “over-accumulated capital can seize hold of such assets and immediately turn them to profitable use” (Harvey 2003, p.149). This is to be seen in line with the argument of AbD being central to the broader project of redistributing wealth from the mass of the population to the capitalist class, the central concern of the neoliberal project. ‘Financialisation of economy’ together with international financial institutions of this development such as the WB, the International Monetary Fund (IMF), and more recently the World Trade Organization (WTO) as well had major impacts on national and local governments towards dispossessing policies (Holden et al. 2011). AbD also sheds a light on the activity of the state within land grabbing processes that still holds a crucial role in such processes of accumulation by dispossession in today's global financial capitalism with its monopoly of violence and the power over the definition of legality (Harvey 2003). From this critical perspective it is argued, that the state, but also international political institutions, ally in many cases with the capitalist business interest.

“Potentially, however, these deals open the way to a truly wide-ranging global ‘land reform’ – in this case, a regressive land reform where governments take land from the poor and give (or sell or lease) it to the rich.” (White et al. 2012, p.620)

Finally, Hall argues that AbD can help to analyze social relations, which are created through capitalist development, a perspective that could build a fruitful ground for research on resistance against land grabbing processes. He also mentions that there are several cases of land grabbing literature, which are informed by the theory of AbD “without engaging with broad theoretical questions” (Hall 2013, p.1586).

For the sake of writing this thesis it seemed appropriate to not just implicitly base a critical analysis of land grabbing and its implications on human rights on a strand of critical economic theory. The brief remarks above are not meant to outline a complete theoretical approach to a complex and contested debate, but rather to clarify the stance taken. On top of that, the engagement with AbD is adding fruitful aspects one should consider when defining land grabbing, which is discussed below.

## 1.6. DEFINITIONS

It is important to bear in mind that there are (almost) no common grounds when defining land grabbing and that none of the definitions is able to include all the phenomena, which are researched under this headline. The current “Manichean portrayal in which land deals are seen as either providing much-needed capital and technology for third world agricultural production, food security and employment [...], or as neo-colonial scrambles for land and resources conducted by predatory investors at the expense of marginal populations abroad” (Wolford et al. 2013, pp.191–192) provides a large bandwidth of aspects either being included or excluded from the defining the land rush. Hall (2013) identifies eight points of (dis-)agreement regarding the definition of land grabbing by applying the lens of AbD that arise while studying respective (scholarly) literature and thus need to be discussed before deciding on one definition used in this thesis.

First, the beginnings of research on land grabbing focused specifically on foreign investors (Zoomers 2010), while over time this notion has been dropped

since domestic investments gained more attention. Second, almost all definitions require acquisitions of land to be large in size and either use qualitative terms such as 'large-scale' or set specific limits of hectares, although there is no agreement on what 'large' actually means. Borras et al. (2012) argue that the emphasis should be on large capital involved instead of the extent of the respective land deal in order to 'count'. This understanding is being backed by what Edelman (2013, p.488) calls "fetishization of the hectare", the lack of knowledge regarding benchmarks such as how many people are actually being dispossessed (Hall 2013) and the difficulties and inconsistencies regarding measurement of land as discussed above. Third, some studies presuppose that relevant acquisitions are for specific purposes, especially crop production and/or resource extraction. The handling of urban development and acquisition for industry is actually unclear. Fourth, there is a complete disregard of geographical restrictions on where land grabbing takes place. Fifth, some analyses make references to time by mentioning a 'current' or 'contemporary' land grabbing practice while others do not. Sixth, only some studies relate to the type of actors involved, which can be either states, state owned enterprises, or private capital as well as the role played by NGOs. Seventh, there are no references at all to any specific way land has to be acquired in order to consider the deal a land grab. Eighth, in some definitions it is the control over land instead of just the acquisition of the legal rights to it, which is considered as key process of land grabbing, thus clearly distinguishing between control over land and legal ownership (Hall 2013).

The aim in this thesis is not to delimit the contemporary land rush, but to take a more diverse range of cases including their dispossessing implications into account. As argued by Anseeuw et al. (2013, p.523), the land grabbing phenomenon is "more about the massive conversion of different types of land into land under commercial agriculture (or other purposes), irrespective of the origin of the investor". This comprehension is shared here and especially in the Cambodian context it is of high importance to equally focus on domestic players and their investments in land. In the words of White et al. (2012, p.620), the "focus is on the ways in which 'grabbing' creates specific kinds of property dynamics, namely dispossession of land, water, forests and other common property resources."

Land grabbing in this thesis is understood as a synthesis of the definitions provided by the International Land Coalition (Anseeuw, Alden Wily, et al. 2012, p.11) and

ADHOC (2013, p.9). Accordingly, land grabbing is defined as acquisitions, leases, concessions or other contractual agreements that are used to gain legal land rights, or the power to control and to use land, by domestic or foreign actors with the intention of deriving benefits from it. Generally, it violates human rights, is carried out without due process and in violation of domestic and international law. It involves significant imbalances of power (economic, political, legal), may result in dispossession of land and other resources and typically disregards social, economic and environmental impacts.

## 2. LAND GRABBING

Before proceeding to analyze the main point of interest of this thesis, it is important to understand what land grabbing actually is, namely how it was triggered, how it evolved, who the involved actors are and where do they operate as well as what the driving factors are. Therefore, this chapter starts with highlighting the food price crisis of 2008 by showing what incidents have led to the rush for land, but also which aspects did not contribute as much as it may seem. As a next step, the status quo as of late 2013 is presented by examining the scale and pace of land grabbing, followed by an analysis of the investors involved and the targets of their acquisitions. As the final step, it is necessary to assess the trends that are responsible for the contemporary land rush not being just a brief phenomenon. Ultimately, these drivers of the increasing competition for land are growing consumption of a growing global population mostly at the expense of the world's rural poor. The more immediate drivers analyzed here are the increasing demand for food, biofuels and water.

### 2.1. OVERVIEW

Large-scale land acquisitions are not a particularly new phenomenon. During the past two centuries agricultural investments in countries of the Global South carried out mainly by companies from Europe, Japan and the United States have established a trend of developing large-scale plantations. Decolonization and the rise of the national state combined with increasing unionization and stricter labor legislation has led to a downfall of large-scale plantations as a model for agricultural investments. Agribusiness has shifted away from direct involvement in production and focused on a more beneficial distribution of risks and returns. Processing and distribution have become the areas where agricultural value chains started to allocate most of the returns and the risks continued to concentrate in primary production (Cotula 2011; Cotula 2012).

The latest land rush with its renewed interest in direct acquisition of farmland might be the beginning of a new shift and the reasons for this development are both economic and political. Various factors, such as growth of world population, rapid urbanization causing a large share of the population to rely on food purchases, but also the rising consumption of meat are all challenging national food sovereignty of many countries. Overall, this results in an increased global demand for food and pressure on food prices, which are constantly rising. In addition to that, increasing demand for energy and agricultural supplies combined with new ways how technology is able to improve yields from crops make the agriculture sector again attractive for investments. Not only includes this the acquisition or lease of land, but also investing in companies holding land, producing fertilizers, or other upstream agribusiness activities (Vermeulen & Cotula 2010a).

Potentially increasing returns from agriculture also make speculation with investments in land more attractive, particularly in the context of projected fast growth in food demand and still very cheap prices of agricultural land (Cotula 2011). This leads us directly to the triggers of the land rush. Especially during the past few years these circumstances became notably relevant. Moreover, the global financial crisis has forced investors to explore other, less common investment objects and strategies and led to a reawakening of interest in agricultural land and commodities.

## 2.2. TRIGGERS OF THE LAND RUSH

Beginning in 2005, the international food prices for major cereals escalated and reached a peak in May 2008. As in the case of rice for example, they have doubled within just a few months (Headey & Fan 2010; FAO et al. 2011). The world's poor are spending proportionally large parts of their income on food and many rely on producing food to sustain their livelihoods. On top of that, their capacity to compensate rising prices by undertaking necessary adjustments is very limited, so the effects of such severe changes in commodity prices are affecting them the most. Lack of appropriate mechanisms on a national level due to continuously neglected investments in agriculture has made rapid and adequate reacting to the impacts of food prices surges in many countries of the Global South very difficult. Without



appropriate measures to repair substantial flaws in the global food system, the scenario of increasing prices is likely to be repeated (Headey & Fan 2008; Headey & Fan 2010). Food prices have reached another peak in 2011 and by the end of 2013 they have dropped approximately to the level of the 2008 crisis pinnacle (FAO et al. 2013). The overall Food Price Index by the Food and Agriculture Organization of the UN (FAO) for November 2013 shows a difference of 4,9 points compared the figures of 2008.<sup>6</sup>

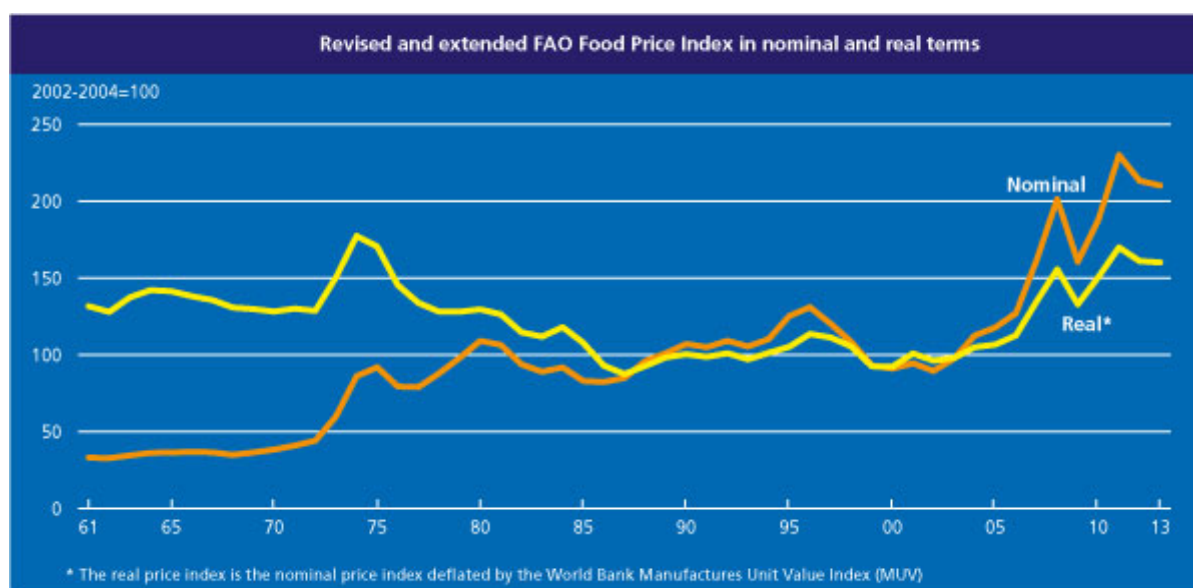


Figure 2: Revised and extended FAO Food Prices Index (FAO 2013)

There are many factors that led to the surge of prices and many of them are not controversial: rising energy prices, poor wheat harvests in the Ukraine and Australia, generalized inflation and depreciation of the US Dollar, low interest rates, investment portfolio adjustments in favor of commodities, reduced import tariffs and export bans and restrictions. These interconnected factors are related to other global macroeconomic phenomena and affected both food and non-food commodities (Headey & Fan 2010). Among the contested views regarding the triggers for the crisis is the role played by India and China. The shift in their diets is supposed to be responsible for a larger demand for feed cereals, which are required for sustaining

<sup>6</sup> Assessment is based on the FAO Food Price Index. This is a measure of the monthly change in international prices of a basket of food commodities. It consists of the average of five commodity group price indices including cereal, vegetable oil, dairy, meat and sugar, weighted with the average export shares of each of the groups. While the prices in early 2013 even exceeded to peak of 2008 (price index was 232,1 for cereal), by the last quarter of 2013 they have now fallen below the 2008 (November 2013 price index for cereal was 194,2). For details visit: <http://www.fao.org/worldfoodsituation/foodpricesindex/en/> [Accessed December 2, 2013]

their increasing meat consumption. This argument seems to be lacking linkages to the crisis, since national food security and therefore independence from food imports of both countries is very strong. Also, declining yield growth and low stocks of agricultural commodities have been used to explain the price surge, but a more careful analysis shows that the underlying reasons of these factors rather occurred due to structural change in transition countries and policy-driven reductions, hence having little direct impacts on the food price crisis (Headey & Fan 2010; Wiggins 2013).

The crisis of 2008 has shown how dependent many countries are on world market prices. It has also revealed the potential of price surges and especially rural food insecurity being a catalyzer for anti-government protests. In many countries of the Global South the protests, as a direct result of the food price crisis, have posed many challenges on policymakers to avoid an even bigger escalation from the government's point of view. These developments are considered to be one of the reasons why governments or government affiliated companies from Western and emerging economies are investing in arable land outside of their state territory to achieve cost effective production and food supply (Engels & Dietz 2011) in order to avoid shortages and consequently unstable social conditions.

However, the food price crisis is not the only trigger for the current land rush. Large-scale land acquisitions, transforming dynamics of land tenure security and changing usage of land are seen as the consequence of multiple, entangled phenomena of crises (Daniel & Mittal 2009; Land Action Research Network 2011; Rosset 2011). The "multiple crisis" (Engels & Dietz 2011, p.402) consists at least of a financial, climate and energy crisis and during its course land is becoming a desirable object of investment as well as speculation (Altvater & Geiger 2011). The energy crisis is encouraging Western and emerging economies to offset their need for energy by using more and more biofuels and thus needing large areas of arable land to grow crops like sugarcane or jatropha. Additionally, international efforts to combat climate change might play a significant role in different patterns of land exploitation. The United Nations REDD Program created to reduce emissions by protecting forest areas that are consequently not available to local communities any longer, require to also be mentioned at this point (Engels & Dietz 2011; Smaller & Mann 2009).

## 2.3. SCALE AND PACE

By today it is pretty much impossible to determine the scale of the ongoing land rush. Hardly any other type of international economic transactions is as poorly documented as land acquisitions in the Global South. Factors such as the rapidly changing dynamics of the phenomenon, a high level of secrecy surrounding the land deals and basically the complete lack of reference points for data collection and assessment are together resulting in a very large amount of very diverse estimates regarding the extent of the phenomenon (Anseeuw et al. 2013). Difficulties with its inherent logic and the available data have been widely discussed in the previous chapter. Nevertheless it is still important to showcase the quantitative spectrum of the global land rush to highlight its significance in contemporary debates as well as its future risks, impacts and maybe even potential opportunities.

Claims about the factual extent of the global land rush appear to have escalated. Since it is absolutely not clear what is actually being aggregated and how to count it, the bandwidth of what is being included in the land grabbing debate is very large. Depending on the chosen publication, the estimations differ substantially as a result of disparities of the definitions used (Anseeuw, Alden Wily, et al. 2012; Anseeuw et al. 2013; Cotula 2012; Edelman 2013). The problem of defining land grabbing has been addressed in the preceding chapters, thus only the quantitative spectrum will be broached here:

“An inventory of media reports on the GRAIN blog, carried out by the World Bank (Deininger et al. 2011) , documented land acquisitions for 56.6 million ha worldwide – roughly the size of a country like Ukraine – over a period of one year between 2008 and 2009. According to this inventory, two-thirds of the land area transacted globally was in Africa, with Southeast Asia also being an important recipient area (about 40 million ha in Africa, and more than eight million in Southeast Asia). Finally, a ‘Land Matrix’ featuring land deals reported in the media or discussed in published research is being established by an international consortium of organizations led by the International Land Coalition and Oxfam. Differently from earlier media-based inventories, the Matrix also involves triangulation of reported deals. Drawing on preliminary findings from the Matrix, Oxfam (2011) refers to reported deals for 227 million ha worldwide over the period 2001–2010. Of these, deals for about 67 million ha have been cross-checked through triangulation” (Cotula 2012, p.651).

The Land Matrix figures for the time between the year 2000 and November 2011 report the impressive number of 203 million hectares of land worldwide being subject to large-scale land deals. Although not cross-referenced, the reported deals are considered under negotiation, approved or already in production. However, the number of cross-referenced deals is significantly smaller with 35% of the total area involved accounting to 1,155 deals with a total area of 71 million hectares (Anseeuw, Alden Wily, et al. 2012). Thirteen months later, in December 2013, these numbers have changed: 1,555 deals now account to only 63,9 million hectares including both domestic and transnational deals (The Land Matrix Global Observatory 2013c), indicating that more deals have been identified as false and therefore excluded from the database. The following graphs will provide better understanding of differences in negotiation and implementation status as well as intention of investment. It is again important to emphasize the difficulties that come along with regarding all of here presented data as ‘facts’ (see chapters: 1.3. Difficulties with Data, also: 1.6. Definitions).

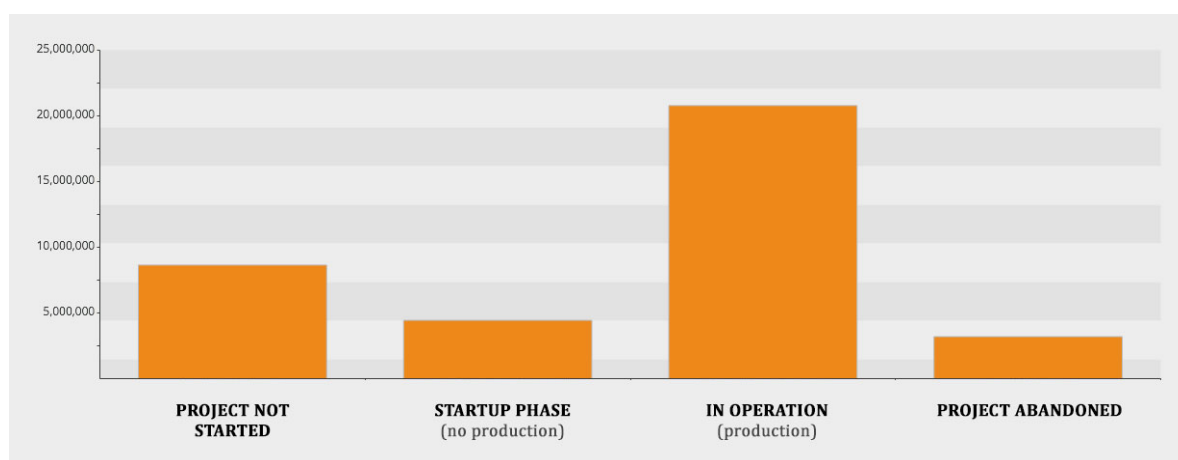


Figure 3: Implementation status of both domestic and transnational land deals with a total amount of 63,936,800 hectares, although only 58% equaling 37,067,618 hectares are represented due to data availability (The Land Matrix Global Observatory 2013c)

The Land Matrix data also suggests, that acquisitions remained quite small until 2005, from when on they continually began to rise until the peak in 2009 and slowing down again in 2010<sup>7</sup>. The decline in investments in 2010 can likely be seen as a

<sup>7</sup> In the first half of the decade the figures did not rise above approximately 0.6 million hectares, except for the year 2000. This is probably related to the fact that many deals that occurred before the millennium change have been also included into the year 2000 to simplify dealings with data. 2005 marked a turning point with land deals amounting to 2.7 million hectares (cross-referenced) and reaching 29.9 million hectares of reported deals, respectively 6.9 million hectares of cross-referenced

consequence of the preceding food price crisis and the again dropping prices for commodities. Another reason might be adapted expectations concerning risks and both technical and socio-political challenges of handling and executing large-scale agricultural investments (Anseeuw, Alden Wily, et al. 2012). A well-known example for underestimating local conditions as well as acceptance of concluded acquisitions is the involvement of Daewoo in Madagascar (Andrianirina Ratsialonana et al. 2011). Finally, rapidly growing critical reports about this issue may have resulted in second thoughts regarding the execution of investment in land or simply a declining desire to make them public.

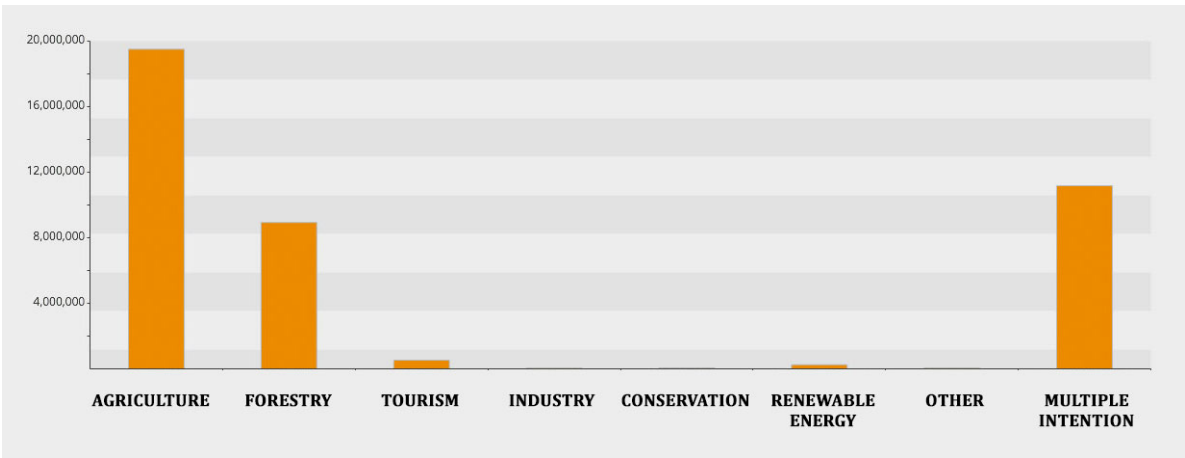


Figure 4: Land deals divided by intention of investment. Graph includes concluded deals, both domestic and transnational, with total amount of 40,534,395 hectares (The Land Matrix Global Observatory 2013c)

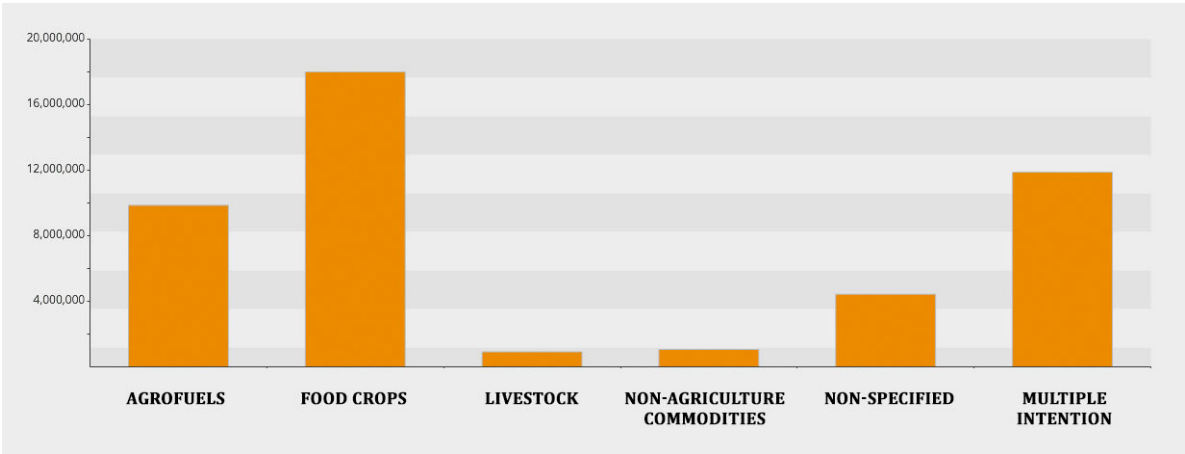


Figure 5: Land deals having „agriculture“ as main intention of investment disaggregated into subsections. Graph includes both domestic and transnational deals with total amount of 46,773,133 hectares, although only 99% equaling 46,132,532 hectares are represented due to data availability (The Land Matrix Global Observatory 2013c)

land deals. 2010 the number dropped down to 1.9 million hectares of cross-referenced and 8.3 million hectares of reported deals. (Anseeuw, Alden Wily, et al. 2012)

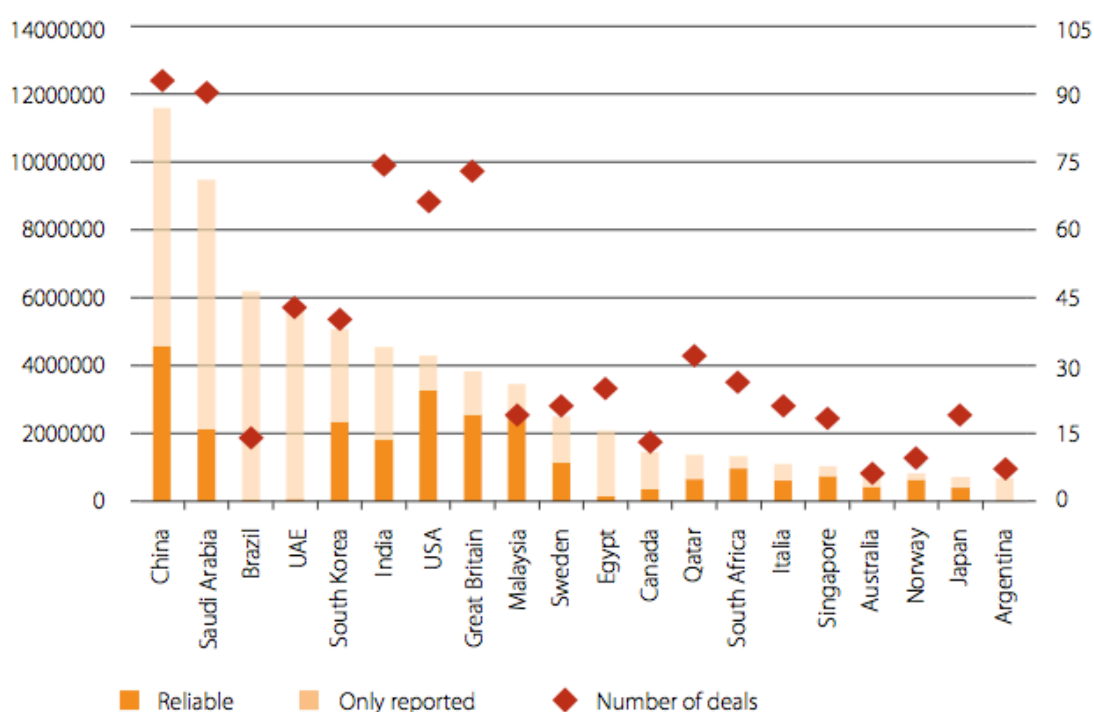
## 2.4. WHO IS ACQUIRING LAND?

First of all it is important to point out that the term ‘investors’ might be problematic if generally speaking about the economic actors acquiring land and involved in contemporary land grab debates. Many of them are actually not undertaking any investments in land or the targeted region in general, except the acquisition itself. Often investments are concluded out of purely speculative intentions or they do not show any implementation of production in the area despite eventually small portions of it being actually in use (Anseeuw, Alden Wily, et al. 2012). This issue has to be examined case by case and therefore this thesis will affiliate with the majority of publications and continue to use the term ‘investor’, although it is important to point out the difference and to distinguish between ‘acquirer’ and ‘investor’ if necessary.

Geographically, the economic actors investing in land can broadly be divided into three separate groups. First, there is the group of emerging countries, which includes the BRICS countries with the exception of Russia, whose contribution is by far not that significant as the ones from Brazil, India, China and South Africa. However, all or the latter are both origin and target of investments. Furthermore included are most of the emerging countries in Asia that are in general rich in capital but do not have recourse to much of arable land. Based on the figures derived from the Land Matrix database, investors from China and Brazil seem to be very most active when it comes to land acquisition activities, the same is true for South Korea and India. What needs to be once again considered at this point the reliability of data, which is especially low in Brazil's case (Anseeuw, Boche, et al. 2012) and as illustrated in the following chart (see figure 6). Regarding the role of South Korea and especially China, it needs to be highlighted that their public perception is overstated (Cotula 2012), especially in regard to their involvement in Africa (see chapter: 1.3. Difficulties with Data). Generally speaking and regarding the agricultural sector, Chinese companies seem to be more involved in upstream and downstream business segments while in Africa they have developed a larger interests for subsoil resources (Bräutigam 2011). India's involvement as well as the one of Southeast Asian companies did not get as much attention as would have been appropriate due to their activity in Africa. Ethiopia, Kenya, Senegal and Madagascar are examples for India's main target

countries with substantial deals concluded and estimates are listing figures amounting to 2.4 billion US Dollar of investments (Cotula 2012; Rowden 2011).

The second group is composed of the Gulf States: Saudi Arabia, Qatar and the United Arab Emirates. Characteristic for them is a relatively low percentage of implemented land projects, only 14% of concluded deals have reached this stage according to Land Matrix calculations. Also their geographical preference can be found in Africa with 113 deals and South-East Asia with 53 deals as of 2011 (Anseeuw, Boche, et al. 2012). The tendency towards countries with a Muslim majority such as Northern Africa, Pakistan, Indonesia and the Philippines is also undeniable.



Notes: The left vertical axis displays the total area covered by land deals in which investors from each country are involved. The right vertical axis displays the number of deals in which investors from each country are involved.

Figure 6: The origin of investment – top 20 countries, based on calculations on the Land Matrix data. (Anseeuw, Boche, et al. 2012, p.21)

The Global North constitutes the last geographical category. Among the most active actors there are mostly private companies from Europe, such as the United Kingdom, Sweden and the Netherlands, as well as the United States. Also France and Germany are important players if only reliable data is being taken into consideration. Land Matrix data is suggesting that Europe's preferential choice of investment targets are former colonies, where they can draw on former connections and well-established

political and commercial networks. Western companies are traditionally dominating the global land rush and in the current land rush they are key investors in biofuels and tree plantations used to produce biomass energy (Cotula 2012).

A new trend towards regionalism can be observed within both the groups of investing emerging countries as well as Gulf States. Transaction costs, issues of transportation of goods and cultural affinity are likely to explain this development. It is characterized by South-South relationships and linked to geopolitical considerations and regional trade agreements. A geopolitical agenda can be observed when analyzing investment patterns of Libya or the Gulf States and Muslim countries as their preferential targets. The latter is of significant importance in South-East Asia, a region that pushes for better regional integration and uses inter alia the instrument of land deals to achieve establish that. As pointed out by Ravanera and Gorra (2011), approximately 75% of land acquisitions is executed by regional players in this context. Foreign intra-regional investment can be exemplified by using the case of the Mekong region, where China as well as ASEAN countries such as Vietnam and Thailand are dominating land acquisitions in Cambodia and Lao PDR (Görngen et al. 2009).

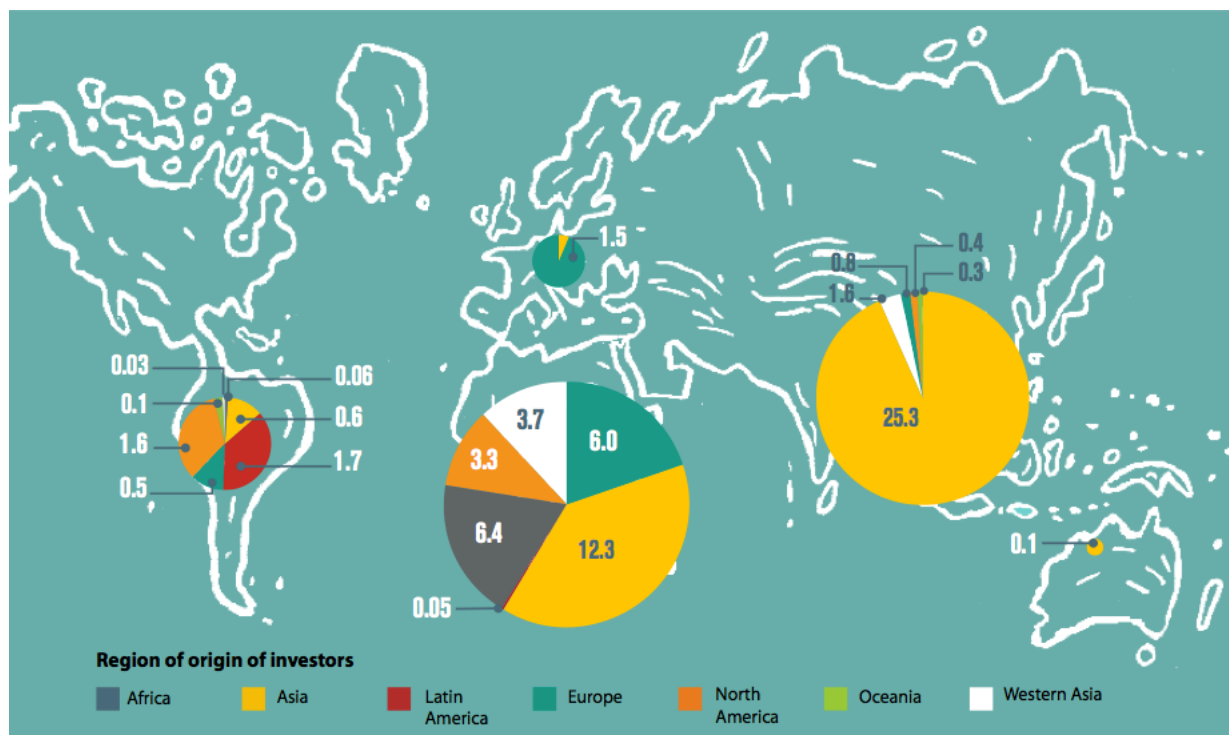


Figure 7: Home region of land acquirers in each region. Figures are number of hectares (millions) and include only cross-referenced deals (Anseeuw, Alden Wily, et al. 2012, p.22)

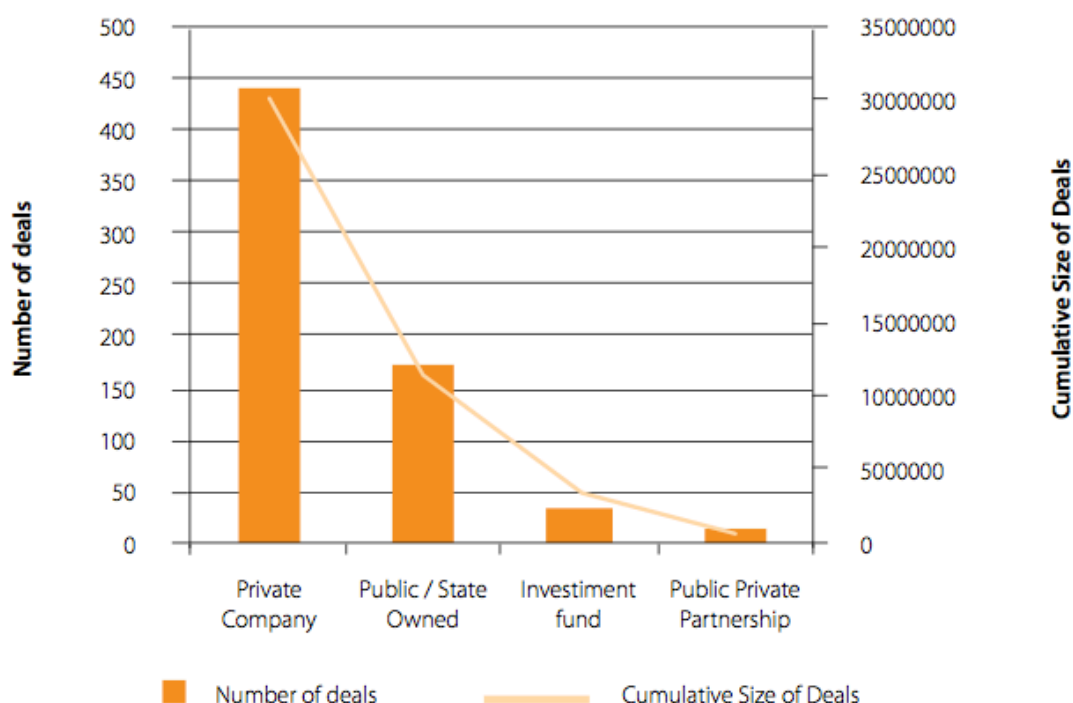


Another category besides foreign actors of cross-regional investment needs to be discussed here: Domestic players are of significant relevance for a deeper understanding of the land grab dynamics and seem to be chronically under-represented in the debate. This may be attributed to the circumstance that involved land areas of particular deals may be smaller than the ones with foreign investors involved. They are considerable relative to the average size of local plots though and adding up achieving a significant cumulative effect. Empirical research can underline the significance of national elites in the target country in both national and international land acquisitions. Cotula (2012) is providing a list of country examples, where domestic actors account for substantial or almost all of the acquired land, as this is the case in Nigeria with 97%, Sudan with 78% and Cambodia with 70%. In general it can be said that domestic elites are both directly and indirectly tied to foreign capital, as it is the case of large land deals in Cambodia's Pursat and Kampong Speu provinces and the involvement of Chinese and Thai capital (HLPE 2011). Another factor is the relative lack of (international) media coverage for those acquisitions, since they are rarely regulated or supported by public agencies (Anseeuw, Alden Wily, et al. 2012).

Focusing on the land acquirer only is therefore too short sighted to grasp the full dynamic on the acquisition side of the stakeholders involved. Implementation of large-scale land deals typically involves a broader range of actors and might include lenders, contractors, suppliers and insurers. Therefore, the nationality of the party simply acquiring land does not represent the geographic interests actually being involved in the deal. The acquiring companies headquarter may be located in one country while its capital mainly being derived from other countries. In addition to that, consulting engineers, lenders and/or insurers may be of different origin than the investor or the targeted country. Subsequently a single investment project may be simultaneously hosting different geographical interests, so the borderlines between national, regional and international investments are blurred (Cotula 2012).

Closer examination of case studies suggests that land acquisitions by nationals are being fuelled by the surge in foreign land deals. There are mostly established elites on local or national level, who are facilitating this development by providing services to foreign investors. They may serve as intermediaries between the local population and a foreign company or purchase land to be able to conclude potential agreements with

foreign acquirers. It is their political and economic interconnectedness that makes them so valuable for the investing party, both national or foreign (Anseeuw, Alden Wily, et al. 2012). In approximately 12% of cases partnerships between foreign investors and domestic companies are built, especially when private investors from the US, UK or China are involved, Ethiopia, Philippines or Tanzania are examples for target countries in this scenario. The motivation to form this hybrid form of investment can be found in potentially lower transaction costs caused by complex administrative legislation, which also may be a necessity in some countries (Anseeuw, Boche, et al. 2012; Cotula 2012). State-owned companies on the other hand prefer bilateral forms of cooperation and usually relinquish to form partnerships with domestic private actors (HLPE 2011). A comprehensive consensus about the heterogeneity of investors in the land grabbing debate cannot be disputed. Based on findings from the Land Matrix project, another form to characterize investors is to divide them into four different types: public or state owned companies, private companies, investment funds and private-public partnerships (Anseeuw, Boche, et al. 2012).



Notes: N = 658 deals. For 492 deals, the size of the investment is known.

Figure 8: Land acquisition by type of investor, based on calculations on the Land Matrix data. (Anseeuw, Boche, et al. 2012, p.24)

While private companies are by far the most active group of investors, state-owned companies are an also important sector. Investment funds and private-public partnerships on the other hand are comparatively only a peripheral matter, as illustrated in the following diagram. Cotula (2012, p.660) points out though, that the “divide between private and government-backed land deals should not be overestimated”. Often governments of investors home countries are providing financial, diplomatic or other kind of support to facilitate private deals, or devolve their implementation to the private sector after signing bilateral agreements with other governments. Another factor is lack of information concerning equity structure of, which makes determination of clear ownership structures not easy. It can often be observed that private actors are under significant influence of the state and thrive because of its formal and informal connections such as tax benefits, bending of rules and rules and regulations or favorable allocation of key contracts they profit by (Cotula et al. 2009; Cotula 2012). Wolford et al. (2013) are providing an in depth analysis of the ambiguous role of the state in the current land rush.

## 2.5. TARGETS OF ACQUISITION

There are many ways to analyze the targets of land investments. The approach here is to first locate and classify them geographically to show where high land deal concentration occurs. As a second step a national perspective will be applied where selected countries with certain characteristics will be examined from a socio-economic, institutional and agro-ecological angle. As a last step the analysis will be expanded to the local level to show the influence of types of land cover, accessibility, population density and yield gaps.

It is not necessary to have a precise quantification of number or cumulative size of deals to illustrate the extent and concentration of the current global land rush, therefore the figures and estimates here are based on the analysis of Anseeuw et al. (2012) and his calculations based on data from the Land Matrix project. The African continent is clearly the main target in this development, where 62% of a total of examined 1217 publicly reported deals are located. This amounts to a total area of approximately 56.2 million hectares (corresponding to 4.8% of the continent's total

agricultural areas) compared to 17.7 million hectares that have been reported for Asia and 7 million hectares in Latin America (corresponding to 1.1% of agricultural land of the former and 1.2% of the latter). The remaining amount of 2.2 million hectares takes place in other regions such as Eastern Europe and Oceania. Differences in this distribution pattern are attributed to population density and contemporary pressures on land in Asia that seems to restrict large-scale land acquisitions, whereas Latin America's traditionally strong agricultural land concentration is leaving less space for the current acquisition dynamics (Anseeuw, Boche, et al. 2012). Also noticeable are different preferences between sub regions of these continents, with Eastern Africa clearly being at the top of large-scale land acquisition interests and a very high concentration of deals (45%) when considering reliable data only, followed by South-East Asia and Western.

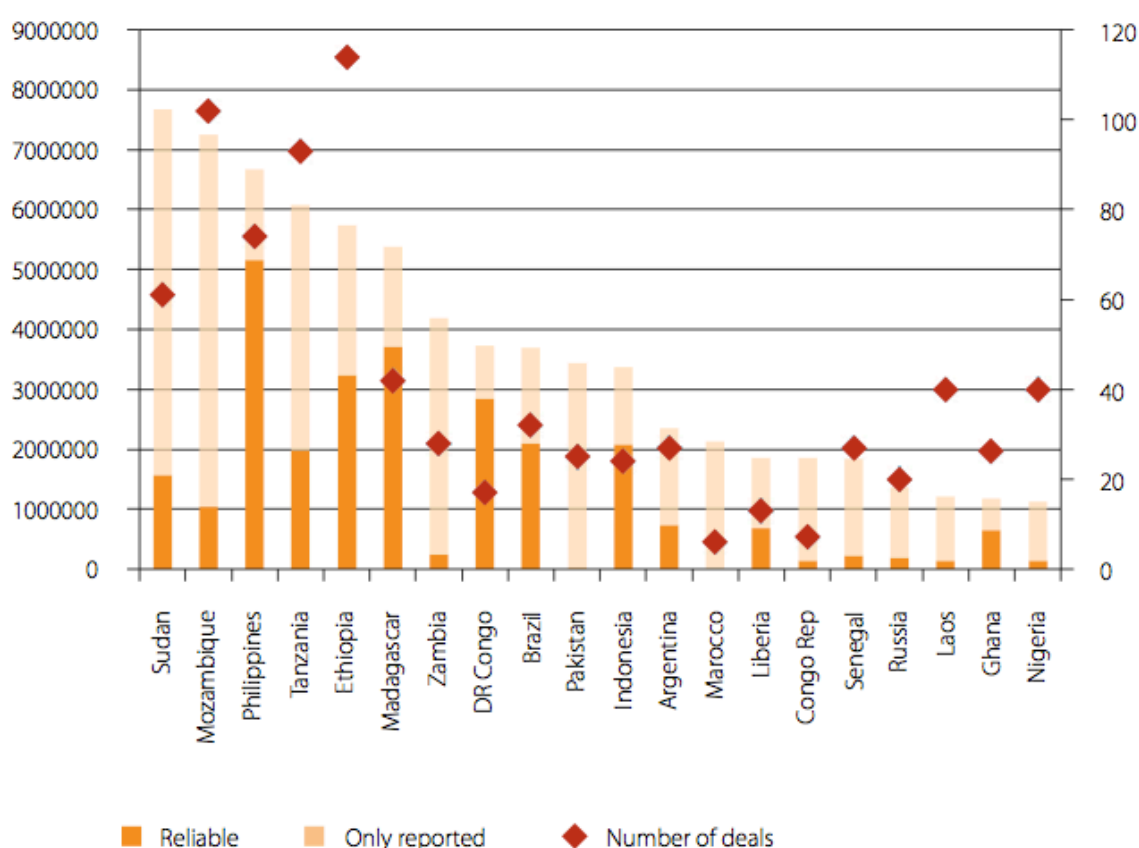


Figure 9: Most targeted countries according to size of total reported acquisitions. (Anseeuw, Boche, et al. 2012, p.9)

Only a few countries with specific characteristics are hosting the vast majority of the land rush. There is a strong interest in countries on the African continent. Out of the top 11 countries with 70% of the reported targeted area, seven are from Africa, the

same is true for half of the top 20 most targeted countries. The diversity of the phenomenon with its difficulties in measuring intensity of investing interests can be particularly illustrated with the case of Cambodia. As of 2012, a cumulative size of about 400,000 hectares of targeted area, the country does not even appear in the 20 most concerned countries, the investor's interest is very high, as 60 deals have been recorded in the Land Matrix database (Anseeuw, Boche, et al. 2012).

When it comes to key characteristics of targeted countries, there is a range of differences between the countries targeted by investors, especially when examining the intensity. Based on socio-economic and institutional factors<sup>8</sup> for example, the most affected countries within this scope, which are the ones with most signed projects in production phase, are significantly poorer and less involved in world food exchanges compared to both the average as well as the least affected group of targeted countries. Data on governance suggests that governance issues in regard to protection on investor interests are an important factor for engaging in agricultural production (Anseeuw, Boche, et al. 2012; Deininger 2011). The most affected countries also appear to have weaker land institutions, leading to the following conclusion: "Investors are interested in countries that combine a strong general institutional framework, that protects their investment and allows them to smoothly operate their business, with low land tenure security that gives them easy and possibly cheap access to land." (Anseeuw, Boche, et al. 2012, p.11) The significance of land tenure security on investor's decisions is also confirmed by Deininger's (2011, p.224) assessment, who says that "holding other factors constant, not having land rights recognized formally increases the likelihood of a country being subject to land demands by investors." Furthermore he warns about the implications of weak land tenure security:

"If countries that fail to formally recognize land rights are more attractive for investors, the social and environmental risks of large-scale land acquisition could be magnified by a lack of proper institutions. Failure to charge prices for land that are close to the social opportunity cost of this asset could easily exacerbate this and result in project choices that do not yield social benefits. Moreover, to the extent that weak recognition of land

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<sup>8</sup> The authors of the underlying analysis have selected population, GDP per capita and food imports and exports as basic socio-economic characteristics. When it comes to institutional factors, variables such as ranks for rule of law, control of corruption, regulatory quality, land tenure security, political stability and investor protection have been chosen (For details see Anseeuw, Boche, et al. 2012, p.11).

rights is linked to limited institutional capacity overall, strong civil society monitoring will be needed to prevent abuse and corruption” (Deininger 2011, pp.224–225).

Anseeuw et al. (2012) are describing agro-ecological characteristics of countries to be important factors of determination of investment targets. Among these factors land availability and the yield gap are particularly highlighted, the latter being a measure for comparison of the possibly achievable potential with current yields in a specific location. Most of the targeted countries of large-scale land deals show a high yield gap and especially the most affected countries including the majority of (East) African countries also have available land resources of good and medium quality. In the case of Cambodia, the yield gap appears to be quite high, although there seems to be relatively little suitable land available (Anseeuw, Boche, et al. 2012). Despite revealing clear patterns, it needs to be acknowledged, that “a national-level analysis of the effects of agro-ecological and socio-economic conditions is, on its own, limited. Such conditions, in contrast to governance and macro- economic factors, vary widely within a country” (Anseeuw, Boche, et al. 2012, pp.13–14). Analyzing post-independence states by attesting a context of weak governance and tenure security in addition to blame failed policies as enablers of land grabs is too superficial. A more nuanced perspective of power relations is required to grasp the full scope of the land grabbing debate (see chapter: 4. How Land Grabbing works).

To provide better understanding this analysis of national characteristics needs to be complemented by a local-level perspective. In order to bridge the gap between the usually neglected importance of local implementation contexts and the often too specific regional context to be generalized, the Land Matrix has geo-referenced 246 agricultural land acquisitions that are providing detailed information on location (Anseeuw, Boche, et al. 2012). In an attempt to provide a generalized assessment, the findings have been put in relation to key characteristics of particular locations, which are global land cover, yield gap, accessibility and population density.<sup>9</sup>

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<sup>9</sup> For details regarding the methods, in particular the accessible global datasets used for this assessment, see Anseeuw, Boche, et al. 2012, p. 16

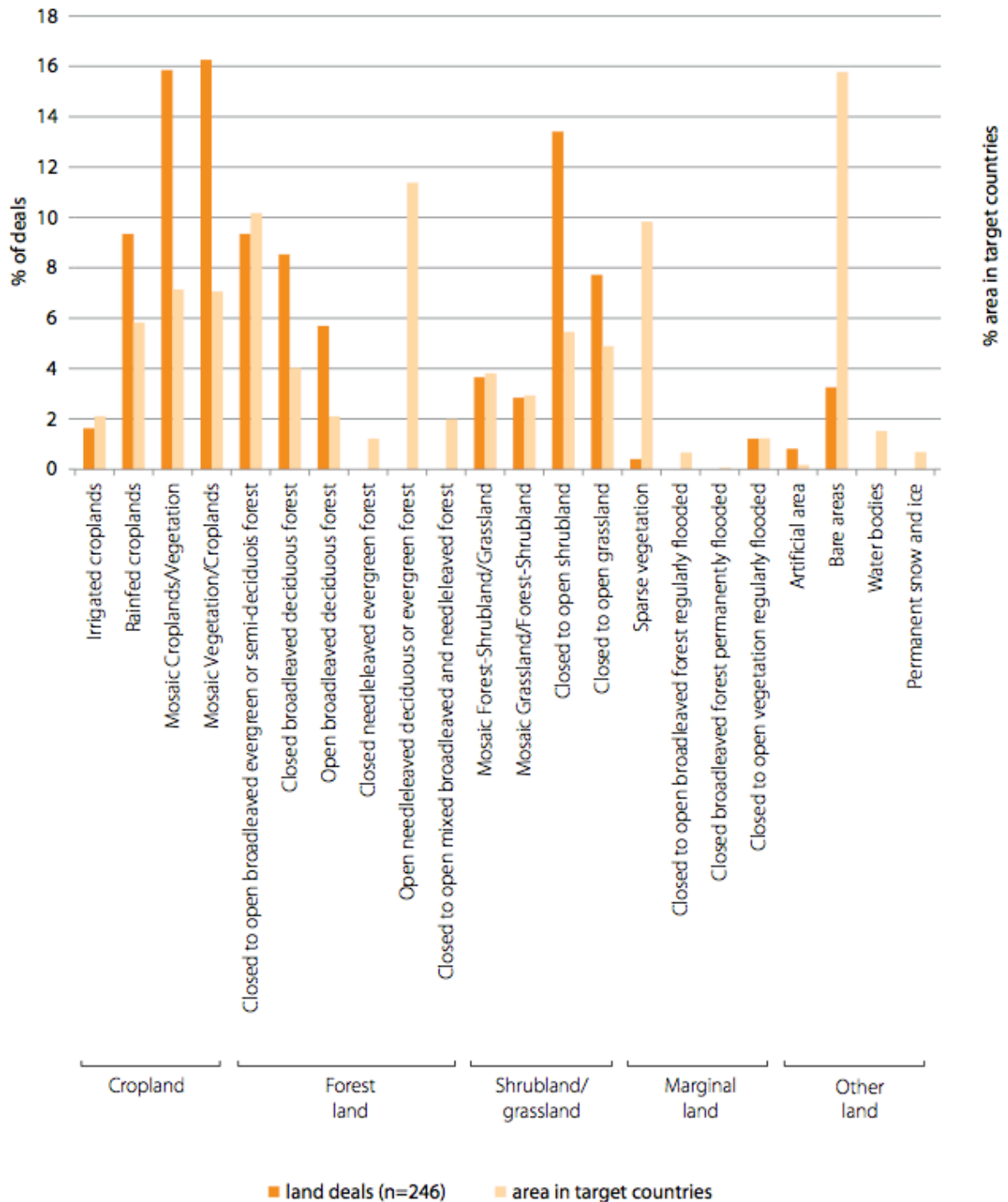


Figure 10: Share of land acquisitions in different global land cover classes. Note: the axis to the left represents the share of all agricultural land deals in a given land cover class whereas the axis on the right indicates what share of the combined area of all destination countries falls within a specific land cover class. (Anseeuw, Boche, et al. 2012, p.17)

The first main conclusion that can be drawn from this analysis indicates that the most commonly targeted land covers are cropland and forests. Out of this sample, which barely contains one sixth of reported deals currently present in the Land Matrix database, 43% of deals corresponding to 22% of the acquired surface are croplands.

Forests seem to be a desirable object of land as well, being subject to 24% of land deals with a total area of 31% (Anseeuw, Boche, et al. 2012). These figures are indicating that land deals for cropland tend to cover smaller amounts of areas than other types of land cover such as forests, which are followed by Shrub lands and grassland as the third most important land cover type as illustrated in the graphic below.

The authors are emphasizing

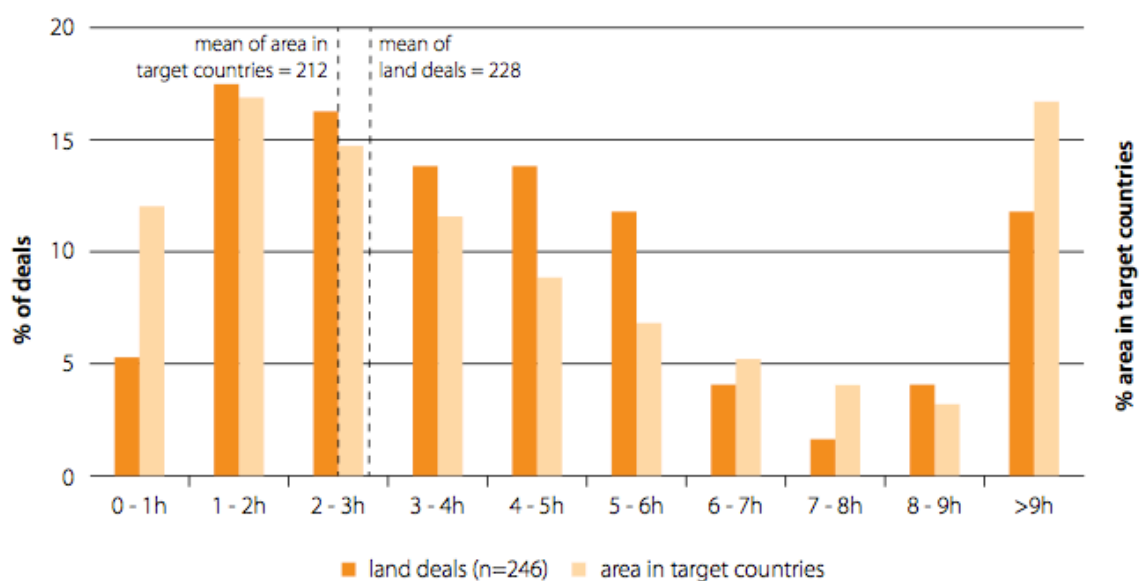
“the importance of studying the specific local contexts of land acquisitions using land cover data with the best possible spatial resolution. It allows us to put into perspective the national level data that suggests that yield gap and available land are key determinants of land investments. We see that in most cases the land acquired is already under different forms of use – e.g. cultivation or grazing - and that competition is unavoidable. Forest, like grassland, may be “available” for cultivation, but its cultivation implies significant trade-offs [such as biodiversity and CO<sub>2</sub> sequestration as well as with regard to food, timber and other forest products] against the provision of important environmental services and other economic and socio-cultural functions” (Anseeuw, Boche, et al. 2012, p.18).

The second conclusion drawn from this analysis is about the investor’s preferences regarding lands with good accessibility, a considerable population density and high yield gaps. What conclusions of the national-level assessment have shown is confirmed by the local-level analysis, namely that investors tend to target cropland with relatively large yield gaps. In combination with data from the land cover examination above the findings are suggesting that this particular class of land often consist of mosaics of cropland with forests and vegetation. This can be seen as an indicator for smallholder activities that are characterized by low levels of productivity and a considerable population density.

When taking the question of whether to invest in easily accessible and therefore probably more populated land or the other way around into account, accessibility (Nelson 2008) as a decision driver is an important indicator when assessing the extent to which livelihoods of the local population will be affected. It allows measuring the time required to bring products to their destination or access inputs such as machinery, pesticides or fertilizer and can therefore be considered as an important indicator for many key factors of rural development (Anseeuw, Boche, et



al. 2012). Looking at the numbers of the study shows that the vast majority of land deals as an access time of one to six hours and best accessible (less than one hour) and least accessible (more than six hours) areas are much under-represented. These circumstances are very disappointing when considering that one of the key promises of the win-win rhetoric often used when justifying land deals is establishment of road infrastructure, since most land deals are located within one day trip distance from the nearest city as is shown in the graphic below.



*Note: the vertical axis to the left represents the share of all agricultural land deals in a given class of accessibility. The vertical axis on the right indicates what share of the combined area of all destination countries falls within the different accessibility classes. Median accessibility values of the target countries' land area and the land targeted by land deals are provided.*

Figure 11: Accessibility of land deal locations (Anseeuw, Boche, et al. 2012, p.19)

Population density is the last factor investigated here when looking at the characteristics of targeted areas. Approximately four out of ten land deals are taking place in an area with less than 25 persons per square kilometer, which is in line with the findings from the land cover section and the deals attributed to forests and shrub- and grasslands. The argumentum e contrario on the other hand is implying that more than 60% of large-scale land acquisitions are targeting areas with a rather significant population density. Competition with local land users is subsequently likely to be an issue, especially when considering the rather large share of 20% of land deals that occur in densely populated areas of 225 or more persons per square kilometer (Anseeuw, Boche, et al. 2012). This hints to a vast interest in land used by

smallholders and implies that land already used for agricultural production can be considered a preference, which is as well confirmed by Deiningers (2011) assessment. Although, it needs to be pointed out that in case the targeted area is considered instead the number of land deals, these figures appear less dramatic. Two thirds of the targeted surface accounting for roughly 40% of land deals is located in an area with very low population density (25 persons per square kilometer).

## 2.6. DRIVERS OF THE LAND RUSH

While the triggers of the development have been examined before, a look of the factors driving the land rush will help to determine whether it is likely that the trend will continue or can rather be seen as a short-term phenomenon. The combination of issues driving the investments in land is very diverse with different underlying policies behind it. Countries are seeking to ensure their nation's food security to face the challenges of rising volatile food prices on the world market. Policies do exist, which require reaching quotas of biofuels used in the transportation sector, others force to governments to obtain vast areas to fulfill environmental goals, private companies are targeting new land to meet economic targets or contributing to the nation's commercial growth by searching for raw materials or producing crops or other commodities.

### 2.6.1. CATEGORIZATION BY AFFECTED SECTORS

Categorizing the drivers by dividing into public and private and looking at different forms of policies they are based on as it is done by other assessments (Cotula 2012; HLPE 2011) might seem appealing, but would not be the right approach here. As argued before, the line between state mechanisms and the private sector is very much blurred, the stakeholders and their motivation too interconnected. On top of that, there are many unanswered questions concerning determination of the final use of crops grown on the acquired area as well as their destination when analyzing data about land deals. Taking this into consideration and given the fact, that the numbers regarding the share of each crop type are not consistent across literature about land

grabbing<sup>10</sup>, a broader perspective seems more applicable. Therefore the approach of Anseeuw et al. (2012) is used here, which analyses the different production sectors driving the interest in land to illustrate the distribution of land deals amongst the different sectors.

Undisputedly, agriculture is the top sector affected by large-scale land acquisitions. Based on 2012 data from the Land Matrix project, agriculture appears as the top objective and accounts to 81% of all reported deals. Forestry and carbon sequestration, extraction of minerals and tourism adds up to 9% of land deals and the purpose of the remaining tenth is yet to be determined (Anseeuw, Boche, et al. 2012). Besides the reliability of data, the major flaw of this evaluation might be underrepresentation of some sectors, such as mining exploration for example. It has been deliberately excluded since the majority of the surface covered by concessions granted for this purpose will not directly be subject to exploitation. Nonetheless mining concessions have multi-layered impacts on tenure security and the environment amongst others, regardless of the state of implementation. However, the phenomenon they are representing is rather different from large-scale land acquisitions examined in this thesis and require separate analysis.

Precisely determining the type of production carried out on the targeted area may be difficult to decide. Food and biofuels are closely related and some of the concerned crops can be easily used as both solely depending on the investor's flexibility since they can be sold on both the market for food or biofuels depending on factors like world price and opportunity of commercialization. Therefore a simple classification such as food crop versus biofuel has deliberately been avoided here and instead agricultural production is divided into four categories: food crops, non-food crops, flex crops and multiple uses (more than one purpose is proposed for the land deal). "Food crops' are crops that do not have a likely non- food usage, while 'non-food crops' do not have a likely food use. 'Flex crops' [such as soybean, oil palm and sugarcane] are those that are commonly used as both food and for biofuel production" (Anseeuw, Boche, et al. 2012, p.27).

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<sup>10</sup> This is not surprising, since assessments within the land grab debate up to today are mostly based on media reports with questionable reliability. They have been created at different points in time hence draw on various stages of collected information (see chapter: 1.6. Difficulties with Data).

According to the Land Matrix data, relative shares are distributed among these four categories as follows: Food production represents 34% of deals and 26% of the surface, the shares for non-food crops are 23% and 26%, for flex crop they amount to 23% and 26% while multiple uses are responsible for 17% and 31% respectively. It is important to highlight how careful one has to be with interpretation of these results given the fact alone that the total targeted area for the category 'multiple uses' is approximately one third of the size of all agricultural deals. If all non-cross-referenced data is excluded, then non-food crop production takes first place in agricultural production with 34% of the deals, followed by flex crops (26%), food crops (24%) and multiple uses (16%) (Anseeuw, Boche, et al. 2012).

These findings are highlighting the significance of other purposes of agricultural investments besides food production itself. Large shares of flex and non-food crops show how important their role is, although it might indicate a research bias towards these crops, especially towards biofuel production. The development of a market for biofuels is clearly attracting investors. On the other hand, a not so insignificant share of projects declared as multiple uses is giving reasons to assume, that investors are undertaking steps to reduce risks coming with price volatility while still being able to benefit from arising opportunities. All in all it becomes clear that the rush for land can not only be seen as a matter of achieving better food security and is not solely based on food prices being on the rise. The importance of the food demand on a global scale driving land acquisitions might have been overestimated because of speculation and vast media interest in this topic (Deininger et al. 2011). The broad context of a globally growing population and their increasing consumption rates combined with finite resources has to be considered when analyzing drivers of the land rush.

## 2.6.2. DEMAND FOR FOOD

With the food price crisis of 2008 as a turning point, many food-importing countries are trading their dependence on unpredictable world markets for establishing a system of offshore farming by grabbing land in order to grow food and improve domestic food sovereignty. After two decades of stagnation and new highs in food prices since 2011, the expectations of rising prices in a longer term are starting to justify the concerns. In the medium to longer term the prospects of higher food prices in both nominal and real terms for the period between 2010 and 2019 (OECD & FAO

2010) are being backed by an expected rise of the world's population to about nine billion people by 2050 and the consequential implications. In addition to that, demand for food will increase disproportionately to the growth of global population since growing incomes are enabling a shift in diets towards more meat consumption and will serve as additional effects. Projections are suggesting, that an increase in food production of 70% will be required to feed the amount of people living on earth by reaching half of the century (Deininger et al. 2011).

With rising demand for affordable food crops there are various constraints and uncertainties challenging national food security. They are created by limits of agricultural production due to a limited amount of water and arable land in investor countries as well as declining productivity. This is especially true in the case of the Gulf States in particular and the Middle East in general, which are also the number one region targeting land for food production (Anseeuw, Boche, et al. 2012; Cotula 2012). Saudi Arabia for example, a country that achieved to be self sufficient in wheat by using water-intensive production methods and extensive subsidies had to outsource major parts of food production after resuming imports in 2007 (Pearce 2012). Due to extensive depletion of non-renewable fossil water, wheat production is expected to phase out completely by the year 2016 (Cotula et al. 2009; HLPE 2011). Besides the Middle East, Eastern Asia (particularly China and South Korea are following a food security strategy) also has to be considered an important region when counting land deals with information on origin country of investors. When looking at the targeted regions, it becomes evident that the land grabs are concentrated in three regions: Eastern Africa, South-East Asia and Western Africa in this particular order (Anseeuw, Boche, et al. 2012).

Climate change is going to compound the problem by increasing water scarcity, land degradation and the impact of extreme weather effects on harvests such as droughts. Systematic absence of rain has destroyed livelihoods of countless smallholder farmers across Africa, as it was the case in the Punjab, Syria and North-West China (HLPE 2011), resulting in desertification. Changing patterns of rainfall and temperature as a result of climate change are leading to the assumption that many more farmers will have to abandon their land out of the need to secure their livelihoods. Another issues constraining food supply are bottlenecks in storage

distribution infrastructure (Cotula 2012) as well as volume and security of supplies (De Schutter 2011b).

As a direct effect of rising and increasingly volatile prices on food, companies are seeking ways to vertically integrate primary production in contrast to relying on world markets. There is a full range of possibilities available in this context and acquisition of land to achieve more direct involvement in agricultural production is not the only option. The focus of supermarkets for example is on coordination of value chains by pushing for more contractual arrangements with farmers, while other business models in practice include leases and management contracts, tenant farming and sharecropping, joint ventures, farmer-owned businesses or upstream and downstream business links (Vermeulen & Cotula 2010a). Large-scale acquisition of land in the Global South for food security purposes by the richer countries will increasingly become even more controversial, as the resulting problems will become even more severe. Exporting food from countries which are suffering from food shortages and hunger themselves is becoming harder to justify in the context of extensive media coverage and growing resistance (Zoomers 2010). Demand for food however is just one of the major drivers of the contemporary land rush and the use of arable land is being contested by different agricultural commodities with increased frequency.

### 2.6.3. DEMAND FOR BIOFUELS

Pretty much simultaneously with the food price crisis of 2008 there has been a major shift in the opinion regarding the ratio between estimated oil supplies and rising global demand caused by an increasing population and the consequential implications discussed above. The International Energy Agency (IEA) has changed their assessment since the assumptions regarding both supply and demand have been proven inaccurate, especially regarding the higher demand due to faster rates of growth in China and India (HLPE 2013). The revised estimations are taking into account the risk of an emerging discrepancy of ten to fifteen per cent between supply and demand (IEA 2007; IEA 2009) and more recent estimations are assuming an even more rapid depletion of oil (Aleklett et al. 2010).

With GDP growth and the price of a barrel of oil being closely connected, it is widely accepted that oil shocks and generally high prices have been contributing to historical recessions. Poorer and more oil dependent economies are particularly vulnerable. For example, Sub-Saharan Africa has suffered disproportionately and was forced to increase its oil imports by three percent of the annual GDP for the period between 2004 and 2007, an amount accounting to more than their annual international aid (Harvey & Pilgrim 2011). Among the main negative impacts of high oil prices is the direct linkage to declining agricultural productivity, thus leading to higher costs of agricultural inputs such as pesticides and fertilizer products as well as for transportation and irrigation systems. Having a high impact on the Global South it consequently influences the whole production chain and increases the pressure to expand the area being used for agricultural production to keep up with global demand at lower productivity levels. The energy input of industrialized farming systems is 50 to 100 times higher than the one of traditional agricultural systems such as smallholder farming (Harvey & Pilgrim 2011).

Diminishing fossil fuel energy supplies, especially for transportation, are increasing the need for alternative sources to be used as fuel for motorized vehicles to meet the still growing demand, especially in the emerging economies China and India. Alternatives such as electric cars constitute promising niche markets, although judging from today's perspective, there is little evidence that internal-combustion engines are likely to be replaced as the dominating technology within the next decades to come. This conception is being strengthened by the fact that liquid transport fuels are the only technology available for aviation and the continuously growing fleet is and will remain dependent upon them for a long time (Harvey & Pilgrim 2011).

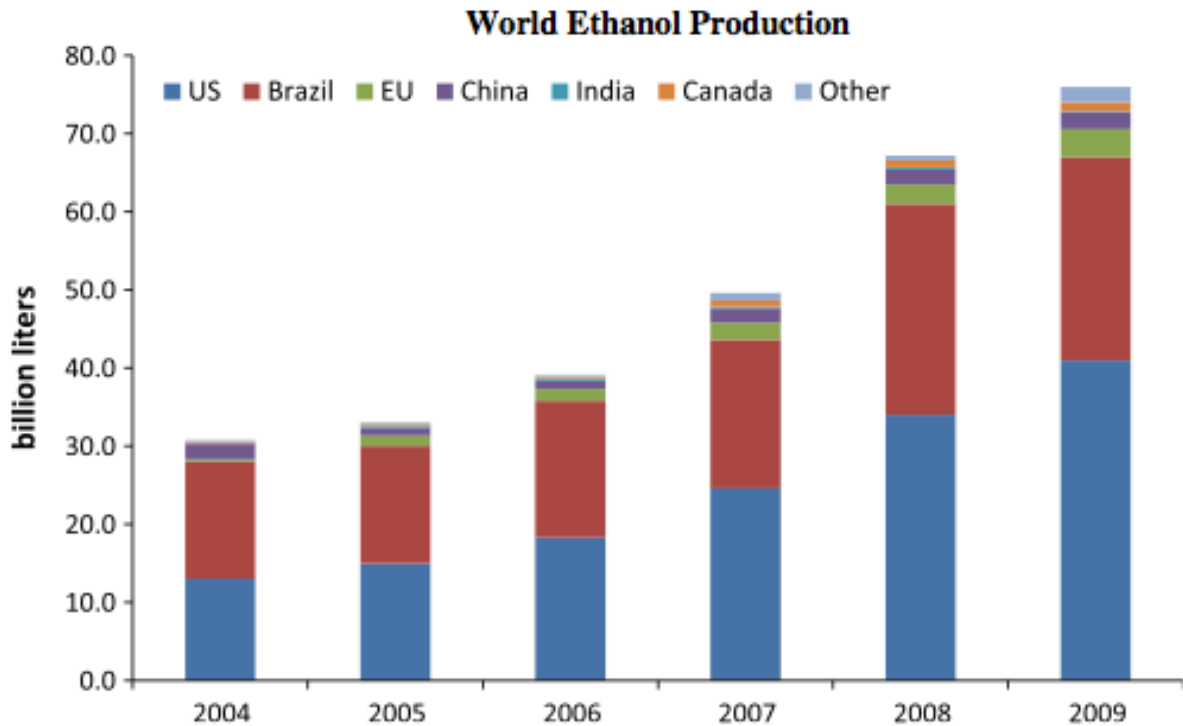


Figure 12: World Ethanol Production (Timilsina & Shrestha 2011, p.2057)

Another key factor in this debate is the consensus that has reached most of the national leaders around the globe, promoting the necessity to reduce greenhouse gas emissions related to combustion of fossil fuels. In this scenario of depleting global oil sources being less available at volatile and higher costs as well as non-decreasing demand for liquid fuel, biofuels are being promoted as an auspicious alternative improving aspects of economy, energy security and sustainability (Borras 2010; Murphy et al. 2011). The world has witnessed a tremendous growth in production and consumption of biofuels within the past several years. Between 2000 and 2009 the production output of biodiesel has increased from 0.8 to 14.7 billion liters while fuel ethanol grew from 16.9 to 72 billion liters (Sorda et al. 2010).

The key driver for surge in production is to be found in governmental interventions and across the globe governments have approved legislative instruments to boost the biofuel industry. Pushed by the motivation to achieve energy security, improve urban air quality, reduce greenhouse gas emissions or simply support the agricultural industry, biofuel programs have disseminated around the world within the past ten years. The United States have become the world's largest producer of fuel ethanol by granting substantial financial incentives for manufacturers of biofuels. Fiscal



incentives and regulatory blending mandates are the main factors responsible for the growth of biofuel output mainly derived from US corn (Timilsina & Shrestha 2011).

The Brazilian government has also established mandatory blending of ethanol equivalent to 20-25% in all regular gasoline sales. In addition to that it promotes flexible-fuel vehicles, which represent a large majority of 85% of all car sales in Brazil. At first ethanol production was supported by subsidies, price guarantees and state-guaranteed private bank and public loans. Simultaneously with the industry's evolution, the support has been wound down and production does not receive any more government subsidies. It is however being still supported by a variety of national policies such as one of the world's highest import tariffs on gasoline or the ban on personal vehicles powered by diesel (Sorda et al. 2010; Timilsina & Shrestha 2011).

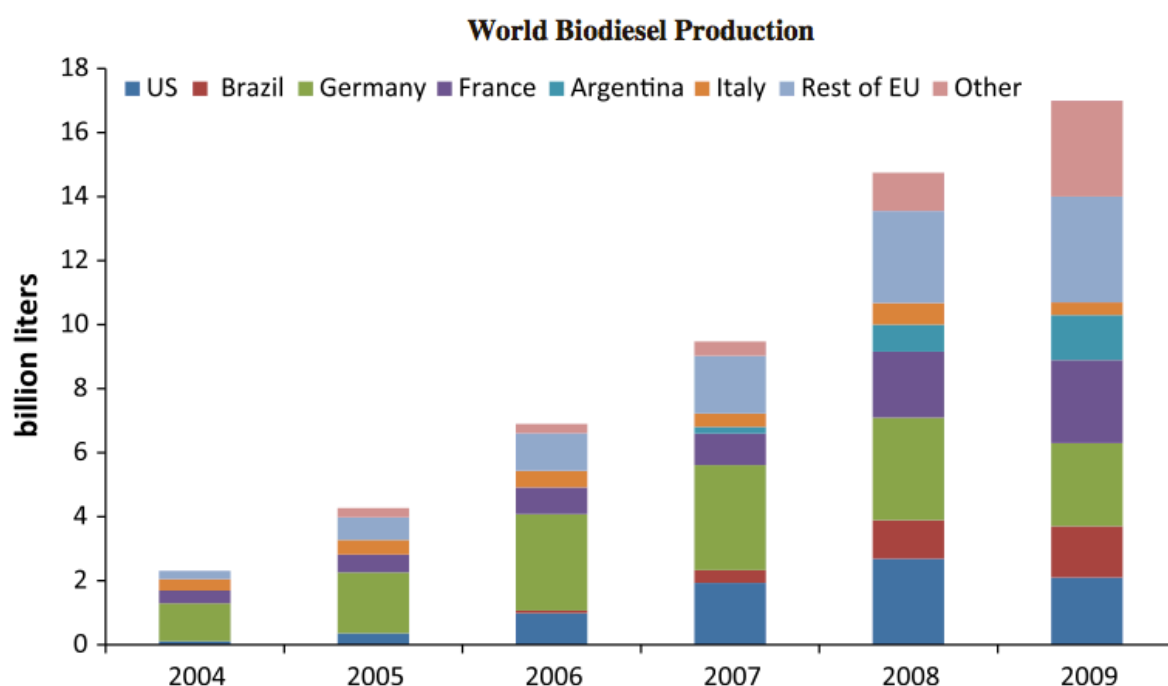


Figure 13: World Biodiesel Production (Timilsina & Shrestha 2011, p.2058)

In the European Union (EU) biofuels policies are being promoted in various ways. By 2020 the renewable fuels target of the EU requires 10% of fuels used in each member's state transportation to be supplied by renewables and 80% to 90% of this goal is expected to be met by the use of biofuels. In addition to that, 20 percent of the energy used within the Union has to originate from renewable sources. Since there is not sufficient arable land available for producing such a significant amount of

biofuels, European companies have responded by outsourcing and investing in biofuel production both inside and outside of Europe. With the main target areas located in the Global South, this policy is very controversial regarding its socio-economic and environmental impacts (Franco et al. 2010; Ravanera & Gorra 2011; Sorda et al. 2010). As estimated by the Netherlands Environment Assessment Agency, the required area to reach the target is about 20-30 million hectares and a 60% share of imported supplies (Anseeuw, Alden Wily, et al. 2012). Due to profitability prospects and encouraged by public policies and market forces, the companies involved in energy, biotech and agribusiness sectors have increasingly invested in biofuels projects by developing strategic partnerships paired with large-scale acquisitions of land in the Global South (Cotula 2012).

In contrast to many other analysts, Headey and Fan (2008; 2010) see the role of mandates and subsidies and public policies in general less influential on the high demand for biofuels than the high oil prices (Wiggins 2013). Depending on the ideological approach, there are large discrepancies between the perceptions of the impact biofuels are having on climate crisis and their social and environmental impact in the future. By using the views of the International Federation of Agricultural Producers (IFAP) and Via Campesina as an example, they become very obvious (Borras & Franco 2010b). Still, biofuel policies are described as “distortionary” (Sorda et al. 2010, p.6977). Because of the characteristics of production, the feedstock almost uniquely used for commercially available biofuels consists of food crops such as sugar cane, corn and oily seeds as well as one of the most developed representatives: jatropha. Production of biofuels has therefore been blamed at least to some extent for having contributed to the food price rises that triggered the global land rush by the end of the last decade (Borras 2010; Murphy et al. 2011; Sorda et al. 2010; Timilsina & Shrestha 2011).

Flex crops that can be used both for food and biofuel production are particularly important in this debate for three different reasons: First, they have already been produced on relatively large farms for a significant amount of time in the past. The knowledge of this kind of production by plenty of agricultural businesses has already been acquired before and they are willing to expand their activities and previously owned areas in their domestic countries. Furthermore, companies originating from other sectors can benefit from this knowledge and skills by either creating joint

ventures or forming different forms of partnerships. Lastly flex crops are representing a more secure form of return on investment compared to other crops since the investor can wait and chose until after production if to sell the crops on the food or the biofuel market. This assures the option to pick the most favorable commercial channel by reducing the risks of price volatility (Anseeuw, Boche, et al. 2012).

#### 2.6.4. DEMAND FOR WATER

Water scarcity and consequently the need to gain access to new sources of water constitutes another important driver for cross-border investments in land. As argued by Smaller and Mann (2009) as well as Woodhouse and Ganho (2011), it might be seen as a hidden agenda behind a number of large-scale land acquisitions. It has become a decisive factor within the process of investments in land in order to gain control of water resources. Close to 70% of all freshwater available for human usage is being used for agricultural purposes (Smaller & Mann 2009) and irrigation will grow proportionally to the demand of food required to feed the increasing population. Many countries heavily participating in the land rush on the investor's side suffer from increasing water scarcity as the Gulf States, which are using around 80% of their total water supply for agricultural purposes.

This development triggers changes in regional freshwater use patterns in both investor and target countries. Moreover the latter may suffer from water stress and increasing soil degradation subsequently having negative impacts on local people's livelihoods and causing conflicts. Little is known so far about the dynamics and politics of "water grabbing" (Franco et al. 2013, p.1651), although the little evidence points towards suffrage of the already vulnerable such as smallholder farmers as a consequence of this arising development (HLPE 2011). For example the case of a small-scale irrigation scheme in Ethiopia shows how the institutional arrangement has changed in favor of a newly appeared foreign investor. Water rights have been redistributed to the large-scale farms hence adversely affecting local smallholders (Bues 2011). Another case from the Iringa region of Tanzania illustrates negative impacts on the local population when investors are influencing regional water management for own advantages. As a result of a land grab followed by implementation of agricultural production, substantial water pollution was affecting

downstream local communities. Arduino et al. (2012) are demonstrating how directly responsible factors such as fertilizers, pesticides and the presence of cattle as well as indirect ones (unclear administrative boundaries, lacking transparency and participation of stakeholders and disregarding obligatory policies and procedures) are causing water contamination of a whole region in rural Tanzania.

Disputed water issues are not likely to decrease but will rather multiply because of their direct link to changes in climate (Smaller & Mann 2009). More and more the acquisition of water rights will develop into a key factor of foreign investments with unknown impacts on regional water management and local livelihoods in target countries. Already existing, scarce evidence is not particularly promising regarding this situation to turn out uncontested. In general, 'water grabbing' and water as a driver for large-scale investments in foreign land has received little attention so far with notable exceptions such as recent assessments by Franco et al. (2013) and Mehta et al. (2012) and should move up on the agenda of academic research.

#### 2.6.5. OTHER DRIVERS

Besides the already mentioned three main kinds of drivers (demand for food, biofuels and water), there are more, although less decisive ones such as the demand for other non-agricultural commodities and timber among others with even lesser impact, which still need to be recognized since their influence is contributing to this phenomenon as well. Notably interesting are high value non-food crops such as rubber or fiber crops. They have been driving economic relations between the Global North and the Global South since colonial times with demand for land being part of it (Anseeuw, Alden Wily, et al. 2012).

According to the Land Matrix data of December 2013, there are 119 land deals concerning rubber production, which makes it the second most represented crop in the database right after oil palm with 190 deals, although only if land deals with unknown crop type are excluded (The Land Matrix Global Observatory 2013b). It becomes quite clear that South East Asia seems to be the number one target region for rubber type since 105 out of 119 cross-referenced deals are located in this region and a clear preference towards Cambodia with 62 land deals for rubber production, followed by Lao PDR, Indonesia and Papua New Guinea (The Land Matrix Global

Observatory 2013d). As criticized before, these numbers do not depict the full extent of the phenomenon when considering the many variables taken into account. They still draw a useful outline to show the relevance of rubber and other non-food crops for the debate in general and South East Asia and Cambodia in particular (Cotula et al. 2009; Cotula 2012; Fox & Castella 2013; Global Witness 2013; Görgen et al. 2009).

Next on the list and deserving recognition is the demand for timber. Although evidence points to an increase in global trade and investment in forestry, there is very little reliable data on forest management and use when examining industrial timber concessions (Molnar et al. 2011). Driven by policies of renewable energy, there is an ongoing expansion of biomass such as wood chips and pellets that is used to produce new forms of energy. Coming mostly from OECD countries such as the United Kingdom, this development is increasing the pressure on land in the Global South (Cotula 2012). In a number of cases in Africa and South East Asia examined by Molnar et al. (2011), governments continue to grant concessions to foreign investors despite often negative revenue streams coming from this segment, numerous uncertainties regarding their legal status and severe adverse impacts (Overbeek et al. 2012). The authors are suggesting that forests are targeted more often by investments in land to satisfy the need for forest products, which get commoditized more often and in larger quantities. Forest areas become subject to concessions to cover domestic demand for timber in South East Asia as well as export of timber to the Global North (Anseeuw, Alden Wily, et al. 2012). Another issue that is putting more pressure on forests results from clearance for agricultural plantations for oil palm, as it can frequently be observed Indonesia (Colchester 2011). In the case of Cambodia there are significant inconsistencies between written contractual agreements and implementation taking place on the ground. Many plantations are intended for plantations instead of direct logging, however in many cases they turn out to be just disguised logging operations (Molnar et al. 2011).

Furthermore there is a range of other factors having an impact on the processes driving the current land rush as outlined by Zoomers (2010) that need to be mentioned although contributing far less than all drivers discussed above: Development of protected areas, nature reserves, ecotourism and hideaways; Special Economic Zones (Levien 2013), large-scale infrastructure works, urban extensions and industrial development; large-scale tourist complexes; retirement and residential

migration and finally land purchases by migrants in their countries of origin. Adding carbon markets and speculation is completing this list of drivers. To conclude the assessment of factors driving the current land rush, it needs to be noted that the land grabbing situation is “more diverse in its drivers and actors than reports of even a year ago tended to suggest. Among the drivers are factors that will not disappear quickly, suggesting that although peaks and troughs in large-scale deals for land will occur, the overall trend of intensifying competition over land and land-based resources [...] will be with us for the foreseeable future” (Anseeuw, Alden Wily, et al. 2012, p.28).

### 3. HUMAN RIGHTS PERSPECTIVE

Analyzing land grabbing through a human rights perspective is the crucial prerequisite for answering the main questions of this thesis, namely how the right to food and other human rights are violated by dispossession that is mostly caused by lost access to land. As will be argued in this chapter, the latter is closely interlinked with the right to food, which in many cases is seriously threatened by large-scale land deals for agricultural purposes. In the following sections I will outline the human rights responses to land grabbing with a particular focus on the right to adequate food and the human rights situation in Cambodia.

The goal of this chapter is to provide an assessment of the two dominant approaches of the land grabbing discourse. It will be argued how the market-based approach on one hand recognizes adverse impacts of large-scale investments in land and on the other hand balances them against vague potential benefits and merely seeks to constrain harmful the consequences of resource allocation by the market. Its problematic issues of accountability and the voluntary nature of its code of conduct are criticized by the rights-based approach, which argues that human rights obligations cannot be surpassed by other considerations. The right to food and other human rights can be realized by securing access to land, which is a key argument here besides the issue of land distribution.

#### 3.1. INTRODUCTION

The analysis of land grabbing as a scholar by using a human rights lens for assessing large-scale land acquisitions rests on the premise that both communities and individuals as rights holders are “entitled to specific rights guarantees that cannot be traded away in the context of large-scale land deals” (Narula 2013, pp.126–127). However, investment in land and especially large-scale land acquisitions for agricultural production can adversely affect a variety of human rights. The impacts

might range from infringements of labor rights to human rights such as protection of property rights, the right to an adequate standard of living or the fundamental right to be free from hunger.

The human rights approach is based on the recognition of corresponding, binding obligations of states to fulfill and protect human rights under international human rights law. As argued by de Schutter (2009, para.33) in his *Set of Minimum Principles and Measures to Address the Human Rights Challenge*, arrangements “to lease or cede large areas of land should under no circumstances be allowed to trump the human rights obligations of the States concerned”. This understanding needs to be distinguished from other approaches promoting solely voluntary commitments of states or private investors such as corporate social responsibility or codes of conduct. The goal of this approach, which will be subsequently discussed in detail, is to secure and reinforce the entitlement to land as a rights-fulfilling and productive asset of relevant groups (Narula 2013). It is supposed to unlock the realization of numerous human rights with the right to food at the head.

## 3.2. THE RIGHT TO FOOD

First recognitions of the right to food as a human right appeared in the Universal Declaration of Human Rights (UDHR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Article 25 of the UDHR (UN 1948) states that “everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food [...]”. Similarly, Article 11 of the ICESCR recognizes “the right of everyone to an adequate standard of living for himself and his family, including adequate food [...] and to the continuous improvement of living conditions” (UN 1966, Article 11, para. 1) and “the fundamental right of everyone to be free from hunger” (UN 1966, Article 11, para. 2). The formal legal recognition of the right to food with these main components was not rapidly followed by a strong international commitment at the political level that would ensure its full implementation. Only in 1996 at the World Food Summit (WFS), which is convened by the FAO, political leaders have committed more seriously to the realization of the right to food by requesting better definitions by the UN human rights system. As a



response, the UN Committee on Economic Social and Cultural Rights (CESCR 1999) has adopted its General Comment 12, which specified the normative content and the states obligations and the first mandate of the UN Rapporteur on the Right to Food was created in 2000. The second WFS of 2002 has been responsible for a basis of the *Right to Food Guidelines* providing practical guidance in order to reduce hunger (Golay & Biglino 2013).

The global food crisis of 2008 has prompted the UN Secretary General to make a strong appeal for integration of the right to food as a response to food insecurity by emphasizing that urgent hunger and humanitarian needs have to continue to be met by “providing food and nutrition assistance and safety nets, while focusing on improving food production and smallholder agriculture. This is the twin-track approach taken in the Comprehensive Framework for Action. We should be ready to add a third track – the right to food – as a basis for analysis, action and accountability” (UN 2009). Steadily, the right to food has been and continues to be incorporated by an increasing number of constitutions with most recent efforts undertaken by countries such as Brazil or Kenya and a growing number of courts is adjudicating it in rulings (Knuth & Vidar 2011).

According to the CESCR and its General Comment 12, the right to food is defined as follows: “The right to adequate food is realized when every man, woman and child, alone or in community with others, have physical and economic access at all times to adequate food or means for its procurement” (CESCR 1999, para.6). In line with this definition is also its understanding of the Special Rapporteur on the Right to Food, who says that it is

“the right to have regular, permanent and unrestricted access, either directly or by means of financial purchases, to quantitatively and qualitatively adequate and sufficient food corresponding to the cultural traditions of the people to which the consumer belongs, and which ensure a physical and mental, individual and collective, fulfilling and dignified life free of fear (UN n.d.).

Accordingly, the right to food is universally applied to all human beings and should assure availability of food in sufficient quantity, culturally and nutritionally adequate as well as physically and economically accessible (CESCR 1999, para.6–8). The *Right to Food Guidelines* are accepted by all states and were created on the basis of a

participatory process. They are emphasizing the element of dignity, and the ability to feed families and individuals, which can be achieved by access to productive resources such as land, seeds and water as well as fisheries and forests, but also access to labor or schemes of social assistance (FAO 2006). The right to adequate food is based on the core content implying availability and accessibility.

Corresponding obligations of states, which should “promote and safeguard a free, democratic and just society in order to provide a peaceful, stable and enabling economic, social, political and cultural environment in which individuals can feed themselves and their families in freedom and dignity” (FAO 2006, p.191) are now generally accepted. Without any discrimination, they are obliged to fulfill, protect and respect the right to food and these obligations refer to specific duties. Fulfilling the right to food implies its realization by creating an environment, which enables feeding of groups and individuals by their own means as well as providing the right to those incapable of feeding themselves due to reasons beyond their control. Protecting the right to food first of all means to ensure that other actors, such as private investors acquiring land for example, will not deprive individuals of their access to adequate food. Finally, the obligation to respect requires the state to refrain from all actions interfering with the right to food. These three obligations must be executed in accordance with human rights principles and access to justice needs to be secured for the victims whose right to food has been violated (Golay & Biglino 2013).

In the context of large-scale acquisitions of land, their implementation should rather lead to a better realization instead of violations of the right to food. Therefore it is important to address land and tenure security, as the mentioned UN bodies emphasize it. The Special Rapporteur on the Right to Food states that

“the right to food requires that States refrain from taking measures that may deprive individuals of access to productive resources on which they depend when they produce food for themselves (the obligation to respect), that they protect such access from encroachment by other private parties (the obligation to protect) and that they seek to strengthen people’s access to and utilization of resources and means to ensure their livelihoods, including food security (the obligation to fulfill)” (De Schutter 2010a, para.2).

The need for guaranteed access to land and tenure security is key in this debate. As underlined by both the current and former Special Rapporteur on the Right to Food,

for the majority of people struggling to meet their daily diet needs access to land is crucial. Moreover, they highlighted the special protection of women and indigenous people in international law, since these groups are particularly vulnerable (De Schutter 2010a; Ziegler 2002). These are mostly smallholders or agricultural laborers, whose land may be inadequate in terms of size or potentially achievable yield. The needs of indigenous peoples, pastoralists and fisherfolk but also smallholders should especially be considered, since market-led land reforms and private ownership of land may not be the most suitable options for them. Instead, different categories of land usage including communal property should be acknowledged by states in order to recognize a human right to land and its emergence (De Schutter 2010a; De Schutter 2010c). By adopting the *Right to Food Guidelines*, the states “recognized that the right to food protects the right of rural communities to access productive resources or the means of food production, including land” (Golay & Biglino 2013, p.1634). Furthermore, the guidelines state the following:

“States should respect and protect the rights of individuals with respect to resources such as land, water, forests, fisheries and livestock without any discrimination. [They] should carry out land reforms and other policy reforms consistent with their human rights obligations and in accordance with the rule of law in order to secure efficient and equitable access to land and to strengthen pro-poor growth”. Also the states “should take steps so that members of vulnerable groups can have access to opportunities and economic resources in order to participate fully and equally in the economy” (FAO 2006, p.198).

The obligations of states regarding their respect, protection and fulfillment of the right to food are thus clearly embedded in this framework and although the guidelines themselves are of voluntary nature, they are premised on legally binding human rights commitments (FAO 2006; Golay & Biglino 2013).

### 3.3. HUMAN RIGHTS RESPONSES TO LAND GRABBING

This section aims to introduce the contributions of various actors, which are operating within the human rights system of the UN in the context of large-scale land acquisitions focusing on the United Nations Human Rights Council (UNHRC) as well

as the responses to the human rights situation in Cambodia. It is important to acknowledge that even before the food price crisis has triggered the land grabbing phenomenon in 2008, the majority of these institutions were already dealing with many different issues related to impacts of land deals from a human rights perspective. The conceptual and analytical framework of the human rights-based approach emerged from a variety of issues, which not only the UN apparatus, but also regional human rights systems have scrutinized. Themes such as forced evictions, land tenure security, access to land and other natural resources in general, agrarian reforms, landlessness or free, prior and informed consent have therefore contributed to the development of a human rights-based approach (see chapter: 3. The Human Rights Approach) long before the contemporary land rush (Golay & Biglino 2013).

As discussed above, the UNHRC and its mechanisms are strongly involved in the monitoring process of human rights as well as their protection and promotion. Responding to the proliferation of large-scale land deals (Golay & Biglino 2013), the Special Rapporteur on the Right to Food Olivier De Schutter (2009) has presented a report to the UNHRC that outlined a set of eleven essential human rights principles. The *Minimum Principles and Measures to Address the Human Rights Challenge of Large-Scale Land Acquisitions or Leases* (hereafter 'Minimum Principles') emerged from a clear interpretation of internationally valid norms, which are applicable to large-scale land acquisitions or leases. They are targeted at both investors and target countries alike and intended to act as a benchmark for, by that time shortly afterwards upcoming, governance initiatives by dominant institutional actors (see chapter: 3.4.1. The Market-plus Approach) such as the World Bank Group (Claeys & Vanloqueren 2013).

Usually, tangible food security issues were scrutinized without applying the human rights perspective. The Minimum Principles were thus intended to demonstrate the compatibility of international human rights law in general and the analytical and normative framework based on the human right to adequate food in particular with those food security-related concerns (Claeys & Vanloqueren 2013; Golay & Biglino 2013). On one hand, they acknowledged how important investments in agriculture are when trying to realize the right to food, while on the other hand it became possible for the Special Rapporteur to shift the perspective of adverse land grabbing impacts towards a rights-based approach by interpreting them as a human rights

issue. By applying the Minimum Principles, violations of the right to adequate food become clear in case of lost access to land of communities, which are depending on it in order to sustain their livelihoods against the backdrop of non-existing suitable alternatives. The same is true if incomes of the local population become insufficient to absorb eventual increases in food prices as a result from shifts to export crops, or in the case of falling revenues of local smallholders due to newly available cheaply priced food on local markets coming from large-scale production on more competitive plantations (Claeys & Vanloqueren 2013; De Schutter 2009). The Minimum Principles and their key features will be discussed in detail below.

Before illustrating further bodies and their assessments within a more regional context of Cambodia, the UN Committee on World Food Security (CFS) requires to be mentioned among the human rights reactions to land grabbing. It was founded in response to the food crisis of 2008 and aims to become “the principal international and intergovernmental platform on food security” (Golay & Biglino 2013, p.1642). Vigorous civil society pressure, led by the NGO La Via Campesina, in reaction to the growing extent of the contemporary land rush induced the CFS to endorse the *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security* in May 2012. Under the supervision of the UN Special Rapporteur on the Right to Food, these guidelines have been created during a negotiation process lasting several years with the participation of states, the private sector, civil society organizations as well as peasant movements (Seufert 2013).

Their main objective is to realize the right to food and reduce poverty by promoting secure tenure rights as well as fair access to land and other sources of livelihoods. Their general principles target the states need to identify and record tenure rights independently from their formal recognition and to protect their legitimate holders from forced evictions with special focus on smallholders, indigenous people as well as other groups with customary tenure systems (FAO 2012b). It might still be too early to assess the impacts CFS's guidelines, but their role of being a handy tool in responding to the land grabbing phenomenon that is based on legally binding international human rights obligations needs to be acknowledged.

### 3.3.1. HUMAN RIGHTS SITUATION IN CAMBODIA

The correlation of human rights and large-scale land acquisitions is being scrutinized not only within the duties of thematic mandate-holders, but is also subject to the analyses of special rapporteurs assigned with specific country mandates. Examining the case of Cambodia reveals that a range of earlier UN reports have dealt with the problems caused by granted land concessions<sup>11</sup> and the *Report of the Special Rapporteur on the situation of human rights in Cambodia, Surya P. Subedi*, which was released in 2012 with a follow up report presented the subsequent year (Subedi 2012a; Subedi 2012b; Subedi 2013), is the most detailed assessment until this date. It focuses on land concessions granted to both foreign and national private investors and although not referring specifically to the right to food in a separate heading, this topic including a variety of its components is a recurring theme in the report above all the adverse impacts of large-scale land deals on local livelihoods (Golay & Biglino 2013).

The Special Rapporteur Subedi illustrates the consequences of losing access to land and its natural resources for communities and how this leads to problems with food security, which forces the affected groups to leave their living area in order to search for sources of revenue and/or food. Concessions have magnified impacts on already vulnerable groups of the society such as indigenous people for example and they compromise their ability to feed themselves through fishing, hunting and gathering food and forest products. On top of that, their traditional agricultural systems are suppressed by a developing agro-industry as a result of land grabbing, subsequently threatening food security of indigenous communities (Subedi 2012b; Subedi 2012a).

There are also other important issues in the context of food security and the right to food discussed by the Special Rapporteur Subedi. They range from contested access to sufficient and safe drinking water, the impact of large-scale land deals on women, who are traditionally excluded from the kind of labor opportunities that are created as a result of agricultural land concessions in Cambodia, as well as the latent danger of eviction. Women tend to suffer disproportionately compared to men from the loss

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<sup>11</sup> All UN reports regarding the human rights situation of Cambodia can be accessed on the OHCHR website: <http://cambodia.ohchr.org/EN/PagesFiles/Reports/SR-SRSG-Reports.htm> [Accessed December 30, 2013]

of sources of employment and livelihood when being relocated to the outskirts of market and city centers. The existence of such patterns is being maintained, the Special Rapporteur notably warns about the risks of further undernourishment, impoverishment and marginalization, which are particularly threatening for women in this context (Golay & Biglino 2013; Subedi 2012b).

In recent years, initiatives guided by the Advisory Committee of the UNHRC started to play another significant role for protecting the right to food in this context. In March 2012, the Advisory Committee presented a study on this topic, which identified large-scale land deals among the most serious dangers threatening the right to food. By this effort, the committee has acknowledged the significant pressure of civil society with Via Campesina leading the way (Edelman & James 2011). The study's conclusion is very clear, namely that "despite the existing human rights framework, peasants and other people working in rural areas are victims of multiple human rights violations that lead to their extreme vulnerability to hunger and poverty" (UN 2012, p.17). The Advisory Committee as a mechanism of the UNHRC therefore outlined a potential *Declaration on the rights of peasants and other people working in rural areas*, which explicitly recognizes the "Right to land and territory" (UN 2012, p.22) of peasants defined as smallholders and landless people amongst other, not less important rights. Despite the considerable potential in regard to the process of elaborating this UN declaration, its finalization is expected to take at least several years (Edelman & James 2011; Golay & Biglino 2013).

Moreover, various treaty bodies of the United Nations have scrutinized large-scale land transactions and their impacts. The observations of the CESCR, the Committee on the Elimination of Discrimination against Women (CEDAW), the Committee on the Elimination of Racial Discrimination (CERD), and the Committee on the Rights of the Child (CRC) have identified many closely linked threads in this context. These organizations deal with actual or potential violations of human rights resulting from land grabbing, such as internal displacement and evictions. Many cases prove that displaced groups are neither properly resettled, nor do they receive any compensation for losing their livelihood, as illustrated by CEDAW in Togo and Ethiopia as well as in the reports of the CESCR when examining Special Economic Zones in India for example (Golay & Biglino 2013).

The CESCR has extensively analyzed the human rights situation in Cambodia and is “gravely concerned over reports that since the year 2000, over 100,000 people were evicted in Phnom Penh alone; that at least 150,000 Cambodians continue to live under threat of forced eviction; and that authorities of the State party are actively involved in land grabbing” (CESCR 2009, para.30). Further on, it emphasizes “the culture of violence and impunity prevalent in the State party and the repression of human rights activists defending economic, social and cultural rights, particularly those defending housing and land rights” (CESCR 2009, para.31). The committee also expresses its concerns about the extent of granted land concessions to private investors and the associated practice of forced evictions, lack of prior consultation with affected people and inadequate compensation (CESCR 2009).

Land concessions and their human rights violations in Cambodia have also been scrutinized by CERD and is troubled by the execution of large-scale land deals “to the detriment of particularly vulnerable communities such as indigenous peoples” (CERD 2010, para.16). According to the report, concessions are being increasingly granted on land, which is traditionally occupied by indigenous communities while disregarding means of free, prior and informed consent. Moreover, “reports of intimidation and acts of violence against indigenous peoples during forced evictions or land disputes” (CERD 2010, para.17) are among the expressed concerns. CEDAW on the other hand analyses another recurring theme of land grabbing that can also be observed in Cambodia, namely its adverse impacts on women. First of all, it criticizes the explicit lack of means within the government’s responsibilities, which would help to curb both direct and indirect discrimination of women in Cambodia. Then, its report (CEDAW 2006) highlights that female heads of households were excluded from the participation in decision-making processes regarding land distribution, after having lost their sources of livelihood resulting from land grabbing by private companies. Accordingly, in an assessment of Cambodia’s situation, the CRC (2011, para.62) “expresses deep concern that thousands of families and children, especially urban poor families, small-scale farmers and indigenous communities continue to be deprived of their land as a result of land grabbing and forced evictions carried out by people in positions of power”.

One highly interesting aspect has fallen short during this assessment of land deals by applying a human rights lens, namely the impact of these responses and



recommendations including the extent of their contributions in regard to constituting a trigger of factual change across the globe. Land grabbing as the currently emerging land rush phenomenon is still quite young and many of the issues discussed above have just recently been introduced. Nonetheless, their potential to influence the framework facilitating land grabbing and the discourse continuously evolving around it might be severe (Suárez 2013) and although publications using this perspective are scarce, they deserve further examination.

It remains to address the challenge, which food security and socioeconomic analyses in general are facing when examining large-scale land acquisitions from a human rights point of view. They should “contribute to the acknowledgment of a compulsory – as opposed to optional or voluntary – legal reality for states and companies acquiring land and states agreeing to such transactions” (Golay & Biglino 2013, p.1645). Remedy and prevention of human rights violations require receiving further attention and need to be addressed systematically in prospective research efforts in order to consolidate their stance within the land grabbing discourse. Adding emphasis to human rights approaches in land grabbing research will make it harder to disguise the legal obligations of states under international human rights law and “mistakenly relegate the responsibility of states and companies involved in land deals to the realm of voluntary commitments” (Golay & Biglino 2013, p.1645). The following section is commenting on the struggle between the two dominant frameworks contesting the global land rush, which are trying to determine its narratives.

### 3.4. MARKET VS. RIGHTS-BASED PERSPECTIVES

From today’s perspective, there is little reason to assume that commercial pressure on land and large-scale land acquisitions will diminish any time soon hence increasing expectations of cases where human rights will be violated. This likely future requires strategies facing the implications by addressing and protecting the human rights of communities and individuals in target countries of land grabbing. They range from “advocacy” (Toft 2013, p.1183) of land deals, represented by the liberal ‘Code of Conduct’ approach of the World Bank Group (WB et al. 2010), to their

“cautious support” (Toft 2013, pp.1183–1184) as proposed by the Special Rapporteur on the Right to Food (De Schutter 2009).

### 3.4.1. THE MARKET-PLUS APPROACH

Developed by the WB, this approach can essentially be described as market-driven with a tendency towards a need for regulation. Fundamentally, it favors to view market-led processes as the engine of economic growth leading to increased food production and opts for the market being the most effective of means for increasing global wealth and handling its distribution (Narula 2013). The key idea is to de facto recognize harmful impacts of land acquisitions but to simultaneously balance them against potential benefits that come with increased investments in agriculture. Therefore, it argues that a proper environment is needed, which regulates the legal, regulatory and business frameworks to be able to further fuel private sector investments in land (WB et al. 2010). In order to do so, it acknowledges the rights and needs of both the local population and local environment affected by land grabbing dynamics. This constitutes an aspect that quite clearly distinguishes the current response to land investments, which are supported by a variety of international economic actors significantly shaping the land grabbing discourse, from the purely market-based responses provided during the past decades (Narula 2006). In her assessment of the dominant narratives highlighted here, Narula (2013, p.107) consequently calls this approach the “market-plus approach”, therewith recognizing “the shift in focus to impacts on local individuals and communities while remaining mindful of the market-based foundations of the solutions offered”.

As argued by the market-plus approach, win-win outcomes are possible to achieve for both the investor as well as the host population by applying careful discipline to large-scale land acquisitions and regulating them carefully. To achieve the latter, a continued facilitation of an investment climate is needed, which enables and supports private investments in land, while at the same time safeguarding principles of good governance (Borras & Franco 2010a; Daniel & Mittal 2010; Da Vià 2011). Land is treated as a commodity by this approach, which also intends to “revitalize land that is deemed idle and non-productive to help boost global food production” (Narula 2013, p.108). Another key aspect of the market-plus approach is the formalization of already existing land rights for the reason of land ownership and usage rights

clarification and as a consequence the facilitation of land markets (Borras & Franco 2010a).

For a long time the WB has played and still continues to play a crucial role in the enabling processes of large-scale agricultural investments in the Global South (see chapter: 4.1. Actors facilitating Land Deals). However, by 2010 the increasing consensus regarding adverse impacts of such land deals was well documented and the WB has released own studies (Deininger et al. 2011) sustaining these concerns. Consequently, it became necessary to elaborate and put in place safeguards and therefore make sure that while minimizing risks, the anticipated benefits would materialize in order to satisfy ideological beliefs as well as the demands of donor countries of the Bank and its private investors. In a joint effort including participation of the FAO, the International Fund for Agricultural Development (IFAD) and the United Nations Conference on Trade and Development (UNCTAD), the WB (2010) has released the *Principles for Responsible Agricultural Investment that Respects Rights, Livelihoods and Resources* (hereafter: RAI Principles). The seven principles are as follows:

1. Existing rights to land and associated natural resources are recognized and respected.
2. Investments do not jeopardize food security but rather strengthen it.
3. Processes relating to investment in agriculture are transparent, monitored, and ensure accountability by all stakeholders, within a proper business, legal, and regulatory environment.
4. All those materially affected are consulted, and agreements from consultations are recorded and enforced.
5. Investors ensure that projects respect the rule of law, reflect industry best practice, are viable economically, and result in durable shared value.
6. Investments generate desirable social and distributional impacts and do not increase vulnerability.
7. Environmental impacts of a project are quantified and measures taken to encourage sustainable resource use, while minimizing the risk/magnitude of negative impacts and mitigating them. (WB et al. 2010)

Adherence to these RAI Principles is voluntary, which qualifies them as a liberal approach promoting and relying on constraints on land, that are of purely voluntary nature. They “do not question the capacity of the market to allocate resources

optimally; they merely seek to constrain its potentially harmful consequences” (Toft 2013, p.1185). The RAI Principles build on other similar initiatives that aim to promote corporate social responsibility in different industries such as the Extractive Industry Transparency Initiative or the Equator Principles (WB et al. 2010). Their intention is to constitute the basis for elaborating governance frameworks, guidelines and best practices for the private sector. Summarized, the RAI Principles acknowledge the importance to protect existing rights of land users and promotes such protection by encouraging measures of good governance.

### 3.4.2. THE HUMAN RIGHTS APPROACH

Civil society groups and the human rights community have rejected the ideology of the market-plus approach and its main attention on good governance measures and robust land markets as key means of protecting host communities’ rights. In response, advocates of human rights have introduced an alternative framework, which is headed by the current UN Special Rapporteur on the Right to Food, Olivier De Schutter. His general criticism revolves around the problematic issues of accountability and voluntariness of the market-based approach (De Schutter 2011b). Its analytical framework is focused on the adherence to human rights and the rights-based approach does not allow human rights obligations to be surpassed by other considerations (Borras & Franco 2010a), such as benefits of increased investments in agricultural land, which are pivotal in the market-based approach.

According to the approach, the right to food amongst other human rights can be realized by securing access to land, hence also instrumentalising land, as does the market-based approach. It promotes legal reforms in order to increase tenure security as well as agrarian reforms trying to achieve a fairer distribution of land that would benefit smallholders more. Also, it argues in favor of investments supporting small-scale farming, which in addition do not result in transfers of land rights or dispossession by eviction (Narula 2013). The core of the rights-based approach wants to regulate large-scale land transactions with a set of principles, which are grounded in international human rights law and point out the obligations of states that need to be focused on in order not to violate human rights (Borras & Franco 2010a). This alternate framework is premised on the notion of indispensable human rights and aims to positively fulfill them instead of just reacting and disciplining market failures.

At the beginning this approach is evaluating the claims of rights-holders while simultaneously assessing the corresponding obligations that have to be fulfilled by duty-bearers. It continues to develop strategies that will strengthen the positions of rights-holders to be able to claim their rights as well as it helps to ensure adherence to the outlined obligations (De Schutter 2009; De Schutter 2011c). These proposed strategies are intended to “secure and strengthen the entitlement of relevant groups to land as a productive, rights-fulfilling asset” (Narula 2013, p.127).

Although the Special Rapporteur’s Minimum Principles are essential for minimizing the adverse impacts of land grabbing, he stresses that their adherence does not automatically justify the particular land deal. Instead, when considering “whether or not to conclude an agreement with an investor, the host government should always balance the advantages of entering into such an agreement against the opportunity costs involved, in particular when other uses could be made of the land available” (De Schutter 2009, p.16), uses that would be more in favor of the local population and their human rights needs. The following list gives an overview of the eleven Minimum Principles as suggested by De Schutter (2009), calling the relevant parties to recognize their responsibilities to:

1. Conduct investment negotiations in full transparency with the participation of host communities;
2. Consult with local populations prior to any shifts in land use, with a view towards obtaining their free, prior, and informed consent for the investment project;
3. Enact and enforce legislation that safeguards the rights of host communities;
4. Ensure that investment revenues are used for the benefit of local populations;
5. Adopt labor-intensive farming systems that maximize employment creation;
6. Adopt modes of agricultural production that respect the environment;
7. Ensure that investment agreements include clear obligations and predefined sanctions, with non-compliance determined by independent and participatory ex post impact assessments;
8. Ensure that investment agreements require that a minimum percentage of food crops produced be sold locally;
9. Conduct participatory impact assessments prior to the completion of negotiations;
10. Comply with indigenous peoples’ rights under international law;
11. Provide agricultural waged workers with adequate protection of their fundamental human and labor rights. (Narula 2013; De Schutter 2009)

The Minimum Principles are excellently summarizing the main aspects of a human rights analysis of large-scale land acquisitions. Their added value can be seen in the extension of available frameworks such as the requirement of applying free, prior and informed consent and the protection of the right to land of indigenous people in general, also including rural laborers and smallholder farmers. In addition to that, they cover a variety of different scenarios and contexts in which land grabbing can take place (Golay & Biglino 2013).

### 3.4.3. ASSESSING THE TWO FRAMEWORKS

Now seems to be “an important time to undertake [...] assessments [of these two dominant frameworks] as countries and leading international bodies are currently deliberating how best to move forward with reforms to agricultural investment and land tenure policies” (Narula 2013, p.108). The CFS for example prepares worldwide consultations with the intention to develop a new set of principles that are supposed to garner consent and commitment of key actors such as states and international organizations and financial institutions. This new approach is supposed to take into account the other proposals and frameworks, including all those guidelines and principles discussed above (CFS 2012) and try to reach a broad agreement.

Comparing the Minimum Principles with the RAI Principles reveals a lot of common ground. Both argue for greater transparency during the decision-making process of land transactions, consultation with local communities, measures to enhance land tenure and food security as well as sustainable environmental practices. It is not surprising that both sets of principles show that many similarities since they both emphasize the key values in their approaches, namely transparency and participation (De Schutter 2009; WB et al. 2010) while also raising questions of accountability. However, the Special Rapporteur made clear that even though “these two sets of principles present certain superficial similarities, they also present a number of major differences” (De Schutter 2011b, p.255).

First, because of the fact that “they ignore human rights, the [voluntary] Principles on Responsible Agricultural Investment neglect the essential dimension of accountability” (De Schutter 2011b, p.274). On the other hand, the Minimum Principles “are not optional; they follow from existing international human rights

norms” (De Schutter 2009, p.4) and build on specific obligations attached to multiple actors. Although both sets of principles outline the responsibilities of the investor, the RAI Principles do not address such duties on the side of the host state. “The home States of private investors are also under an obligation to regulate the conduct of these investors abroad, particularly if the host State appears unwilling or unable to do so” (De Schutter 2009, p.4). Furthermore, the Minimum Principles the international institutions such as the International Finance Corporation (IFC) (see chapter: 4.1. Actors facilitating Land Deals), which are involved in facilitation processes of land grabbing, are obliged to also respect international human rights law as part of general international law. Second, the rights-based approach prefers to determine what type of land usage does promote human rights in the first place. Although being essential for minimizing the negative impacts of large-scale land acquisitions, the adherence to the Minimum Principles alone does not legitimize the particular land investment. Instead, they argue for a prioritization of potential alternative pathways, which do not necessarily result in significant transfers of ownership rights and land use rights (De Schutter 2009).

Narula (2013) argues that the rights-based approach and the market-plus approach are distinguished conceptually in two crucial aspects, namely how they deal with rights and risks as well as distribution of land. The market-based approach reinterprets violations of human rights as risks and then tries to balance those risks against the benefits of increased agricultural investment, which are again praised with unjustified enthusiasm. This balancing act “facilitates rights violations as it validates large-scale land transfers even in situations where proper regulatory frameworks are not in place to protect host community rights” (Narula 2013, p.172). Access to land and its instrumentalisation are particularly important for both approaches, but there are substantial differences in each of the frameworks understandings of land distribution. While the market-plus approach starts at current distribution patterns and assumes that the market will distribute land effectively, meaning to the most effective producer, the rights-based approach values land as a way to promote human rights and therefore pays attention to the way land is distributed and who its beneficiaries are (Borras & Franco 2010).

Looking at land markets themselves reveals the next level of discrepancies. Narula (2013, p.173) explains how the market-plus approach tends to overlook the

“potential of land markets to reinforce existing power structures and deprive land users of a vital rights-protecting resource”. Moreover, she points out that “commodification of land can also reinforce existing hierarchies and further concentrate rural land in a manner that exacerbates tenure insecurity and undermines food productivity goals” (Narula 2013, p.173). In contrast, the rights-based approach wants to call attention to the controversial role of the land market and especially its distributional impacts. Specifically, the approach favors alternatives to the common practice of how large-scale land acquisitions tend to be executed. The special emphasis is on improving land tenure security as well as a state-led redistribution of land in favor of small-scale farmers in case of substantial land distribution inequalities. With proper support, such policies have been proved beneficial in terms of strengthened food security by smallholder agriculture and their contribution to economic growth caused by a more equitable distribution of land (Borras & Franco 2010a; Narula 2013; De Schutter 2009; De Schutter 2011b).

Further on, Narula (2013) raises concerns regarding the question, if the human rights framework is able to compensate necessary trade-offs while managing increasingly interdependent and sophisticated global processes, in which the rights of many different communities are contested simultaneously. She argues that the “international human rights law provides a robust normative framework that sets specific thresholds to help guide states as they manage trade-offs between various socioeconomic goals” (Narula 2013, p.173). On the other hand she points out that “these thresholds are notably absent from the market-plus approach, which endorses trade-offs between concrete rights and vague, uncertain gains” (Narula 2013, p.173). Potential conflicts among rights-holders are also addressed by the rights-based approach, an issue that does not get any attention by the market-plus approach. While the former provides a normative network, which aims to empower the most vulnerable groups affected by land grabbing, the latter does not attribute any normative value to these rights and points to average utility gains instead (Borras & Franco 2010a; Narula 2013).

One fundamental problem, which applies to both the market-plus as well as the rights-based approach, concerns their understanding of host state’s role as the instance responsible for implementation of the legal and procedural reforms proposed by the particular framework. As evidence from large-scale land acquisitions



clearly shows and as pointed out by Narula (2013, p.174), “such deference and faith in states to design and implement processes and policies that are truly responsive to land users’ needs is not warranted”. Whenever such procedures are intended to benefit marginalized groups, it is unlikely that they will be implemented successfully, therefore neither legal reforms alone nor the political will of the host government can be seen as reliable means to protect human rights of the already disadvantaged (Borras & Franco 2010a; Narula 2013). In order to face the challenges discussed above, it is necessary to incorporate a wide range of actors in this discourse, as their willing participation is required. Unfortunately, the processes of land grabbing are currently still subject to a specific dynamic, which is counterproductive for this purpose and examined in the following chapter.

## 4. HOW LAND GRABBING WORKS

The drivers described above are on their own not sufficient enough to explain the largely negative impacts of land grabs in targeted countries. To answer the question why impacts of large-scale land acquisitions are rarely in favor of the affected local population and marginalized groups, it is important to examine the contextual factors shaping the land rush and enable harmful land grabs to take place. In order to do so, this chapter firstly exposes the practices of international financial institutions such as the IFC and their goals that are aimed to facilitate private investment in land. The next section examines what effects state and governance have on the rural poor and their tenure security and also assesses the interplay of these forces while especially focusing on characteristics of state and its role in large-scale acquisitions of land.

As a next step it becomes possible to dismantle the win-win narratives, which are promoted by international financial institutions in order to legitimize large-scale private investment in agricultural land. As argued on a theoretical basis in the previous chapter, the market-based approach is manifested in these processes, which on one hand supposedly aim for improving global food and energy security by increasing production in 'low-yield' areas of 'land abundant' countries and on the other hand disregard patterns of actual land uses, resource rights and land reform agendas (Da Vià 2011). Finally, a generalized overview of the complex potential impacts that land grabbing might have is closing this chapter and considers outcomes for affected communities in regard to dispossession, compensation, competition for water resources, employment opportunities, gender implications and environmental issues.

### 4.1. ACTORS FACILITATING LAND DEALS

Much of the attention is focusing on the involvement of investors acquiring vast areas of arable land in land grab deals. Here, the international financial institutions and

their enabling policies facilitating the land rush will be examined with focus on the role played by the principal actor among these institutions: the International Finance Corporation (IFC) with the Foreign Investment Advisory Service (FIAS) under its management as one of its partner organizations. They are both part of the World Bank Group and profit-oriented institutions. Although their activities are theoretically aiming at reducing poverty, this mandate is being interpreted very broadly.

The IFC's primary activity can be described as private sector financing with a policy that in practice tends to view "all private sector development as good for overall economic development" (Daniel & Mittal 2010, p.8). One of the IFC's core functions is to provide investment lending and advisory services to governments of both investors and target countries of large-scale land deals. The objective is to improve investment climate in a particular context or more generally to reach goals such as "improving the legislative environment for a specific industry" (Daniel & Mittal 2010, p.8) while receiving its funds from donor countries. The FIAS aim is to facilitate growth of the private sector in the Global South by providing advisory services on investment policy and promotion, regulatory simplification and investment issues specific to various industries. In practice their activity is focused on the promotion of Foreign Direct Investment (FDI) in the Global South. In order to do so, IFC and FIAS are pushing for regulatory reforms and trying to increase the investment climate as well as the 'Business Enabling Environment', the latter being an IFC service product. 'Access to Finance', 'Corporate Advice', 'Environmental and Social Sustainability' and 'Infrastructure' are completing the range of IFC services (Daniel & Mittal 2010).

The two institutions are major enablers of the rush for land by increasing investor access to land markets. The WB is emphasizing that "business surveys identify problems in gaining access to land as among the biggest complaints of investors in developing countries" (Muir & Shen 2005, p.1). According to the IFC, this lack of accessible land constitutes a major constraint for investments and thus development of the Global South: "Evidence from Investment Climate Assessments, Doing Business Reports, FIAS diagnoses and other studies have highlighted that constraints in the land market are a critical bottleneck to private investment. Major concerns of investors include accessing land, securing property rights, and the time and cost for obtaining a myriad of permits to develop land" (Shen & Heggli 2008, p.1). Therefore, the institutions are seeking to increase, facilitate and simplify access to land for the

private sector by providing their controversial technical assistance and advisory services. Among these services are the 'investing across borders' and 'land market for investment' initiatives, which have been introduced by the FIAS as a direct response to the investor's complaints (Daniel & Mittal 2010). Other aspects of the IFC and FIAS technical assistance and advisory services include assisting governments in drafting new national laws, especially investment laws, promotion of land leasing and investments in supposedly idle land.

Evaluations of the WB's own 'Independent Evaluation Group' have come to the conclusion that the Advisory Services provided by IFC and FIAS have helped to increase the development impact (IEG 2009). There is eligible criticism and an ongoing debate over technical assistance and it is highly controversial whether the impact can be considered positive or negative. It is accused to foster dependencies, be inappropriate for the recipient's needs, disregard particularities of different fields of application and have ideological strings attached (Daniel & Mittal 2009; Daniel & Mittal 2010; Daniel 2011). Regarding the hypocritical role played by the WB, it needs to be pointed out that

"while arguing forcefully for private sector investment in land and agriculture, [it] has also made a cogent argument for smallholder based land reform [...] even though advocating a flawed 'willing buyer-willing seller' model [...]. Indeed the Bank, which for some years has juggled 'politically correct messages about the need to support small farmers' with policy and financial support for agribusiness [...] can hardly oppose large-scale corporate investment in farmland when it is itself an important promoter and facilitator of these investments" (White et al. 2012, p.626).

In 2010 the discontent with IFC practices has found expression in an open letter to the IFC CEO Lars Thunell, drafted by 94 civil society organizations from across the globe. They addressed the IFC's failure to recognize human rights, its lack of supervision and transparency, inadequate actions to meet climate policies standards, all resulting in undermining of the IFC's alleged poverty alleviation mission (Perrault 2010). According to Daniel and Mittal (2010, p.35), the underlying goals of the WB policies are "leading to trends that increase instability rather than provide security and opportunity". Furthermore, their services have "not only encouraged and facilitated land grabs but have deeply influenced the legislation and policy agendas of

developing countries, directly shaping social and economic outcomes that affect local livelihoods and food security” (Daniel & Mittal 2010, p.35).

Finally, the development of a variety of incentives, rules and regulations, which are embedded in international legal frameworks and largely provided by the international community, is promoting large-scale acquisitions of land in the Global South. Multilateral organizations such as the United Nations or the international development banks are responsible for generating both supply and demand of resources in the context of land grabbing (White et al. 2012). At the same time,

“international agencies such as the World Bank and [the United States Agency for International Development] USAID have worked to create a hospitable environment for large-scale investment, funneling money into Africa and Latin America for the purposes of ‘rural development’ and ‘improving rural markets’. Contradictory signals and accompanying discourses often exist within and across organizations. Within the World Bank Group, support for smallholder farming exists alongside investment support for large-scale land deals from the International Finance Corporation and insurance to cover land investments from the Multilateral Investment Guarantee Agency (MIGA)” (White et al. 2012, p.630).

As reported by Global Witness, a NGO with headquarters in London and Washington DC and with traditionally strong ties to Cambodian conflicts, the IFC also seems to play an important role in Cambodia. The corporation is involved in large-scale land deals for rubber plantations by bankrolling the land grabs of Vietnam’s largest companies, the Vietnam Rubber Group (VRG) and Hoang Anh Gia Lai (HAGL) together with Deutsche Bank, also indicating a more systematic involvement of German institutions in land grab deals (FIAN 2010; Herre 2010). HAGL and VRG are dominating domestic production of rubber in Vietnam, the third largest producing country of this crop (Global Witness 2013) and seeking to expand their production area abroad. Both international investors are financially entangled with the Vietnamese rubber producers and given the severe negative impacts on local livelihoods reported by Global Witness, they did not undertake adequate due diligence on VRG and HAGL and have hence “failed to uphold their own environmental and social commitments” (Global Witness 2013, p.3).

## 4.2. STATE, GOVERNANCE AND TENURE SECURITY

Taking a perspective that centers rights and interests of those affected by the land grabbing phenomenon on a local level as a starting point, four key factors can be identified that are shaping the land rush and concern weaknesses of governance<sup>12</sup> (Anseeuw, Alden Wily, et al. 2012).

### 4.2.1. WEAK DEMOCRATIC GOVERNANCE

First, there is weak democratic governance, which in context of land grabs needs to be seen as a crosscutting issue touching a range of decision-making processes in targeted countries. On a very generic level, weak governance can be equaled with weak national institutions of governance. Despite substantial advances in democratization processes, interests of the ruling elite are frequently mixed with private commercial aspirations. As a result they appear as both public representatives and businessmen and may be closely tied to large-scale acquisitions of land as either facilitators or direct participants. In Cambodia's case, these neo-patrimonial figures are very exemplarily represented in the person of Ly Yong Phat, a powerful senator and businessman with the ruling Cambodian People's Party (CPP) and involved in many controversial agribusiness projects and land concessions (Equitable Cambodia & IDI 2013; Pearce 2012).

A significant issue undermining solid governance in the context of land grabbing is the lack of transparency surrounding negotiations and signing of land deals. With only few contracts actually available to the public and only little or no granted participation of local land holders in decision making processes whatsoever, this "reduces scope for public scrutiny and creates a breeding ground for corruption" (Anseeuw, Alden Wily, et al. 2012, p.49). The perception of negotiations behind closed doors and to the exclusion of those, whose livelihoods will be affected in the end, is being backed by data available in the Land Matrix database. Although the extent is certainly limited and it is not possible to rule out certain biases in the reports, the scarce evidence points to very limited options regarding involvement of

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<sup>12</sup> These are important factors, although this list does not claim to be complete. Many of the issues in this section will be discussed in detail in the following chapter in a specific Cambodian context, therefore only highlighting the key features for the sake of argument consistency.

the community in the decision making processes of large-scale land acquisitions. Out of 86 examined cases (Anseeuw, Boche, et al. 2012), 51 reported that the local community members have not been consulted at all before commencement of the project. In 29 cases some, although very limited involvement has been reported and only six of them seem to have applied the principles of prior and informed consent.

Corruption defined in a broader sense as the abuse of entrusted power for private gain<sup>13</sup> is endemic in the majority of countries whose land is being most frequently targeted by investors such as Sudan or Cambodia (Riaño et al. 2009; Transparency International 2007). According to the Corruption Perception Index, which measures the perceived levels of public sector corruption, particularly these two countries reside at the very end of the list. Cambodia is currently ranked at 160<sup>th</sup> place with only 15 countries scoring less points, many of them dealing with latent violent conflicts (Transparency International 2013). MacInnes (2012) provides a good assessment on the role corruption is playing in enabling elite capture of land. Furthermore, processes that are affecting rural land users are not carried out in compliance with the principle of Free, Prior and Informed Consent (FPIC) and local governments, which are only rarely actually representing rural communities, are contributing to weak democratic governance.

#### 4.2.2. LAND GOVERNANCE FAILING THE RURAL POOR

Secondly, land governance that fails the rural poor is being expressed by dispossessions of existing land users, indicating an involuntary loss of land and resources. As argued at the beginning of this thesis, dispossession may refer to various aspects, such as housing, public services, rights and even symbolic dispossession and is therefore not only limited to scope of land (Harvey 2007).

“Dispossession may take place through an illegal transfer, but it is in fact far more common in the context of the current land rush for landholders to be legally dispossessed. Legal dispossession may occur through compulsory acquisition of privately titled lands or, far more commonly, through the appropriation of land and other resources that are possessed by local communities under customary form of tenure but are not given formal legal recognition as being owned by them” (Anseeuw, Alden Wily, et al. 2012, p.50).

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<sup>13</sup> This is how Transparency International sees corruption: <http://www.transparency.org/whatwedo> [Accessed December, 11 2013]

Numerous aspects of land governance systems are facilitating this dispossession. Many national governments centralize the mechanisms used to wield control over land while at the same time not legally recognizing customary land rights of rural communities. These dynamics, among other factors such as uncertainties regarding the usage of traditionally held land, encroachment on livelihoods and natural resources, unclear differentiation between state and private land or over boarding land disputes (Alden Wily 2011), facilitate large-scale acquisitions of land by dispossessing local land users. Overall, these factors result in a dual role of being both legal landowner and controller of land disposition held by the government regarding most of the land used by its citizens (Anseeuw, Alden Wily, et al. 2012). This might constitute a crucial issue in the decision making process for potential investors, since it is beneficial to acquire land without any private ownership claims. Not only do land tenure systems influence the investor's choice, but it is also likely that such activities might in turn result in repercussions on the land tenure system itself. The investor may have significant influence on the importance and implications associated formal land rights that are either owned by the state or sometimes by local players. Providing a hypothetical example, the standing of a village chief can undergo some substantial changes when the former only formally granted land rights become of interest to an investor. As long as this land is only being used by local communities and the owner of the land rights is de facto insignificant, the chiefs position suddenly shifts towards a more influential and powerful role among the stakeholders (Anseeuw, Boche, et al. 2012).

It is of vast significance to look at pre-existing forms of land ownership and land use since they both are key determinants of the impacts of land deals. Based on available Land Matrix data, which in this context is once again only available to a limited extent and unlikely free of reporting biases, it becomes visible that the predominant form of pre-acquisition land use was smallholder agriculture. Out of 82 cases (Anseeuw, Boche, et al. 2012) with information on former type of usage being available, 56 are attributed to small-scale agriculture, whereas communal use is the runner up with 16 cases. Only a minor fraction of the affected land was forest land, under conservation or used by commercial agriculture. Further on, the analysis of former land ownership reveals interesting insights, since the majority of land is being acquired from the state. Out of 90 cases under examination, 51 times the state was the former land



owner, followed by private land titles such as smallholders, community land and private companies being split amongst more or less equal shares (Anseeuw, Boche, et al. 2012). The comparison between pre-existing owners and users of land shows a discrepancy, revealing that most of the land deals are sold or leased by the state although the majority of land users are in fact smallholders. This can be seen as direct consequence of the diversity in land tenure systems and pressing land tenure insecurity, as many users of land do not actually own it formally.

#### 4.2.3. ECONOMIC GOVERNANCE FAILING THE RURAL POOR

Thirdly, economic governance policies are ineffective in establishing a balance between legal protection of investors and the rights of the rural poor. Investor's rights are disproportionately protected at the expense of local landholders, whose rights are subject to far less effective and generally far fewer arrangements (Anseeuw, Alden Wily, et al. 2012). This issue that becomes even more dramatic, when the often severe discrepancy between theoretical protection and the major flaws of the judiciary system in execution of those rights is taken into consideration as it is particularly the case in Cambodia (ADHOC 2013) and will be discussed in the following chapters.

#### 4.2.4. SIDELINING OF SMALLHOLDER PRODUCTION

Fourthly and finally, advancing negligence of smallholder production in favor of large-scale farming can throughout be observed as increasing trend throughout the land grabbing literature (Andrianirina Ratsialonana et al. 2011). For the past decades, the agricultural sector of the Global South has not been seen as a priority by policies in most cases since it is being considered a backward sector due to the assumption that smallholder farming is not able to be competitive in global markets (Anseeuw, Alden Wily, et al. 2012). Consequently, the idea of pushing large-scale farming pursued by global investors has been welcomed by host countries, which are enabling industrialized agriculture by ideological as well as regulatory and policy biases (HLPE 2011). As a consequence, the potential of smallholders is being undervalued, which can clearly be seen in their disdain by government policies both in theory in practice, although there are various nuances of forms that agribusiness models can have with numerous hybrids between the two binary categories of large-scale farms and small-

scale agriculture (HLPE 2011; Vermeulen & Cotula 2010a). Nonetheless, governments who seek to attract and support, even are “subsidizing” (Anseeuw, Alden Wily, et al. 2012, p.58) large-scale agricultural businesses are putting more and more pressure on the smaller end of the scale of agricultural organization.

#### 4.2.5. THE INTERPLAY OF FORCES

Concluding this assessment it needs to be recognized, that the trends and dynamics, as described above, are by themselves not new a new phenomenon. They should be seen as the legacy and continuation of processes established during colonialism and is today enabling the current land rush by using colonial tenure norms and forms of dispossession. The innovation that came with the recent wave of land grabs is the pace these changes are taking place and an outlook, which makes

“today’s enhanced commercial interest in land resources [...] unlikely to go away for the foreseeable future. Rural communities throughout the South have had to live for decades with insecure and threatened claims to land, but now increasingly face the prospect of finally losing access to these resources to a new wave of expropriation” (Anseeuw, Alden Wily, et al. 2012, p.57).

The contemporary events may be seen as a tipping point. After they will pass, the changes in control and ownership of land, water and other resources as well as in rural societies and agricultural systems may occur on a substantial scale and might be proven irreversible. It becomes clear that the impacts of harmful acquisitions of land, which are enabled by the failures of governance discussed above and those again facilitated by international organizations such as the IFC, are far reaching and might be creating a vicious cycle: “the rush for land could be in turn aggravating and worsening the governance failures that are allowing it to develop in the first place” (Anseeuw, Alden Wily, et al. 2012, p.57). Flows of global capital, both cross-border and domestic financial interests as well as government efforts to attract FDI and other forms of capital can have significant influence on elementary aspects of national policy and weaken land and labor law, agricultural and environmental policies while simultaneously driving corruption (White et al. 2012). Furthermore tenure insecurity is being reinforced and increasing uncertainty for local landholders even in areas where land deals are not implemented and a conversion of land use might never actually take place (Anseeuw, Alden Wily, et al. 2012).

While securing land rights and establishing good governance are objectives worth being reached, their implementation does not happen inside a vacuum. In their assessment of the role of the state in the current rush for land, Wolford et al. (2013) are claiming that a more nuanced analysis regarding the relationships of power in this context is necessary to gain a broader understanding of the phenomenon. Therefore, it seems necessary to gain more information about the nature of the states themselves, including the motivations of their actors and the political cultures responsible for implementation and monitoring of policies. In order to do so, four key arguments related to the role of the state in land deals are discussed in this context (Wolford et al. 2013).

First, states are not to be seen as simply passive bystanders in these land deals when allowing more powerful political and economical players to acquire vast areas of their land. Instead they are playing a more active role in calculating opportunity costs and negotiating conditions in order to maximize returns as the example of Brazil is illustrating well (de L.T. Oliveira 2013), although often at the expense of the vulnerable groups. Second, it is not possible to neatly divide states into two groups of acquirers and targets since they are not as coherent as they may seem at a first glance. Various players are trying to exploit unevenness also within the state, competing against each other over access to land (Wolford et al. 2013). As argued by Burnod et al. (2013), the infamous Daewoo Logistics deal in Madagascar of 2009 was in fact a case of “internal politicking intended to destabilize the president at the time than a definitive opposition by elites to international land deals” (Wolford et al. 2013, p.193). Another example from Mozambique shows how corruption has prevented a land deal rather than enabling it as two groups of local elites have held up the process by cancelling each other out (Fairbairn 2013). The third argument deals with the fact that different governments have responded in very different ways to large-scale acquisitions of land, as it is the case of Brazil and its strict regulations and the embracing reaction of Mozambique for example (Fairbairn 2013; de L.T. Oliveira 2013). Fourth, there are different kinds and mostly more than one source of power within the state, such as military, police or courts, but also paramilitary forces or narcotics traffickers, to whom implementation of land deals can be delegated to (Grajales 2013; Wolford et al. 2013).

Fairbairn (2013, p.335) is complicating the notion of land grabbing as a “top-down phenomenon driven by global markets or foreign states”. While investors are still playing a crucial role regarding politics and outcomes of large-scale land deals, the understanding of power in an over deterministic and reductionist way is an overly facile approach. Instead, it is argued to perceive the whole spectrum of actors, meaning local and regional elites, host state representatives, paramilitary organizations, smallholders as well as indigenous and marginal communities, operating within a multi-layered and entangled sphere of exercised power (Fairbairn 2013; Wolford et al. 2013).

“Certainly there is unevenness in power relations, but the particular forms, practices and effects of power must be understood in geographically and historically specific terms if we are to adequately address the multiple and diverse practices of land grabs, and the heterogeneous modes and forms of dispossession they generate” (Wolford et al. 2013, p.207).

Treating weak and failing governance as the main problem is an abridged approach (Wolford et al. 2013) and by following this logic it could be easily solved by appropriate regulation combined with incentives to correctly manage large-scale investments in land (De Schutter 2011b). Various aspects of failing governance as discussed in this chapter are important factors shaping the land rush, they are though not the only ones to blame for the largely negative impacts as argued by the WB for example (Arezki et al. 2011; Deininger et al. 2011). Within this argumentation, where weak land governance and weak tenure security are seen isolated and without being put into a context of complicated dynamics of power and capital interest, they may have a right to exist, but they do not grasp the full magnitude of the land grabbing debate. These analyses are suggesting that by improving issues of governance, the main inherent problems such as forced dispossession or lack of transparency and corruption, may provide change for the better. When applying a more critical perspective, the recommendations based on these claims are not withstanding an in depth approach as it is argued below.

### 4.3. DECONSTRUCTING THE WIN-WIN NARRATIVES

There is very little doubt about the negative nature of impacts that come with the contemporary land grabbing scenarios and even the WB recognizes this critical conjuncture in its infamous publication *Rising Global Interest in Farmland* (Deininger et al. 2011). The report is acknowledging disproportionate benefits for investors, mainly corporate players, at the expense of the rural poor, rural livelihoods and environmental systems. According to the assessment, in most cases the proper legal procedures have been ignored upon realization of deals, the local population was displaced without receiving any compensation, areas not being subject of the deals have been encroached, the impacts on gender were particularly negative, environment was polluted and destroyed, the amount of promised jobs have dramatically fallen short, land has been leased much below its actual value and marginalized groups did not have a chance to participate in the decision making process (Da Vià 2011; Deininger et al. 2011). Accordingly, the Bank's conclusion of the case studies under examination could not be any clearer:

“In light of these deficiencies, it should not come as a surprise that many investments, not always by foreigners, failed to live up to expectations and, instead of generating sustainable benefits, contributed to asset loss and left local people worse off than they would have been without the investment. In fact, even though an effort was made to cover a wide spectrum of situations, case studies confirm that in many cases benefits were lower than anticipated or did not materialize at all” (Deininger et al. 2011, p.71).

Hall (2013) points out that unkept promises and fraud usually complicate the situation, with the former constituting a “constant refrain in the land grab literature” (Hall 2013, p.1594) while fraud being a core mechanism of accumulation by dispossession for Harvey (2003). When reading on in the report, it might come as a surprise not to see the WB call for a moratorium of large-scale acquisitions of land, but to pledge for a transformation of these risks, dangers and adverse impacts on local livelihoods into “equally large opportunities” (Deininger et al. 2011, p.142). Furthermore, the recommendation is to “allow land-abundant countries to gain access to better technology and more jobs for poor farmers and other rural citizens” by allowing “new investments in agriculture [help to create] the preconditions for sustained, broad-based development” (Deininger et al. 2011, p.xxv), increase

effectiveness and productivity and reduce the often criticized yield-gap of smallholder agriculture (Da Vià 2011; Deininger et al. 2011). In her approach, which focuses on labor as the center of the land grabbing debate, Li (2011) illustrates how poverty reduction is a highly unlikely result by using data from the WB report itself. She emphasizes that sometimes land is needed while people are not, and explains how simultaneously policies are ensuring 'security' for some, while denying food, shelter and means of production to others (Borras et al. 2011; Li 2011).

Similarly, several international governance agencies and research institutions, including the FAO, the International Food Policy Research Institute (IFPRI) and the IFAD have followed this view and proposed ideas and ways to transform the land grabbing phenomenon more into a win-win scenario for both the target countries including their population as well as the variety of investing players (Daniel & Mittal 2009). The IFPRI argues that large-scale investment projects can be seen as providers of key resources for agriculture and be of benefit for local smallholders and those involved in contract farming schemes (von Braun & Meinzen-Dick 2009). The IFAD on one hand acknowledges worldwide growing landlessness and land fragmentation, large-scale acquisitions of land leading to higher land concentration, forced evictions and negative impacts on food security, biodiversity and the environment. On the other hand, extensive agricultural investments in rural areas of the Global South are described as opportunities for economic growth by agriculture-led development again enabling poverty reduction (Da Vià 2011; Haralambous et al. 2009).

As argued by Da Vià (2011), there are two deeply rooted assumptions that need to be overcome before an attempt should be considered to frame land grabs institutionally as a win-win development instead of an unilateral benefit. The first addresses the "claim that large-scale investments can improve global food and energy security by increasing production in 'low-yield' areas of 'land abundant' countries" and "reflects the reductionism of mainstream, capital-centric projects of agrarian transformation and provides no account of actual land uses, resource rights, and land reform agendas" (Da Vià 2011, p.6). The second assumption "fails to locate the expansion of commercially-oriented farming within global agro-food-fuel commodity chains controlled by the monopoly power of corporate capital" (Da Vià 2011, p.6). It is based on the argument that land acquisitions are means for rural development and facilitate smallholder access to various inputs, technologies and markets by transforming their

working schemes into contract farming, or other arrangements simulating partnerships. Overall, the current land grab phenomenon is institutionally legitimized by a concept of agricultural development that fuels rural dispossession and displacement while at the same time aggravating a whole set of problems on a global scale. As criticized by Borras and Franco (2010a), such an approach a priori dismisses “the possibility of other development pathway options and ignores the clamor of those who believe that other pathways are possible – and better – and are either working toward or attempting to actualize them”. Thus, it happens in the name of ‘development’ why public investors are increasingly engaging in processes of land grabbing and therefore contributing to the core causes of the global multiple crises (Da Vià 2011).

Codes of conduct such as the RAI Principles, jointly elaborated by the WB and other international players (see chapter: 3.4.1. The Market-based Approach), are the materialization of recent efforts undertaken to promote win-win narratives of land grabs. They are seeking to legitimize land grabbing and been subject to critical analysis (Borras et al. 2011; De Schutter 2011b; De Schutter 2011c; Li 2011; Narula 2012). The seven principles are trying to make the long-term corporate takeover of rural people’s farmlands socially acceptable by ‘guiding’ the private sector interest in land. The critique not only extends to the “fundamental flaws and short-comings” of the initiative and its principles related to being “utterly inadequate as regulation of policies that violate human rights and international law” (The Global Campaign for Agrarian Reform 2010, p.2), but also to their procedural and institutional problems.

It is hardly surprising that international and multilateral organizations are trying to further smooth the way to facilitate large-scale land acquisitions through promoting their win-win rhetoric by these means. The development apparatus has become more and more entangled with the land grabbing phenomenon over the past few years, a progress that is not only characterized by legitimizing narratives. Simultaneously to issuing codes of conduct, development institutions, including regional, national and international development agencies and other instruments such as development funds, have intensified their efforts to finance profit-oriented entity, provide infrastructure and consultancy services to private investors, rewrite laws in targeted countries to establish a more investment-friendly environment and implement treaties assuring protection of investment (Da Vià 2011; Daniel & Mittal 2009; Daniel

& Mittal 2010). This is being put into practice by providing advisory services and technical assistance as it is done by the IFC and described above. Moreover though, many national, bilateral and multilateral development institutions are closely linked to a range of international investment funds (Miller et al. 2010) that play “a crucial role in attracting private capital for land grabs”<sup>14</sup> (Da Vià 2011, p.15).

After decades of neoliberalism, the win-win narratives are a logical conclusion of promoting a new specific model of agricultural development. It facilitates policies aiming at the increase of corporate power within the food production system, commodification of both labor and land, expansion of value chains and oppression of means of public interventions benefitting the already disadvantaged (Da Vià 2011; Daniel & Mittal 2009). While corresponding well with “larger dynamics of international capitalist expansion and financial speculation, the neoliberal model is thus entirely consistent with the promotion of farmland investments as a core component of agricultural and economic restructuring across the Global South” (Da Vià 2011, p.19).

## 4.4. OUTCOMES AND IMPACTS

Depending on factors such as stakeholders, pre-existing land use conditions, location of the land deal, extent of deal implementation, type of crop the deal has been earmarked for, destination of produced commodities and others, the impacts vary greatly and are therefore strongly dependent on the particular case study under examination. The next chapter will focus on implications of land grabbing on human rights and especially on land tenure security and the right to food in Cambodia. It is still important to sketch out in what way the land rush is affecting a variety of different areas and how the win-win narrative is actually a mere strategy to legitimize large-scale land investments.

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<sup>14</sup> The involvement of development institutions in agribusiness investment is illustrated in detail by Da Vià's (2011) analysis and shows how institutions such as IFAD, the UK Department for International Development (DFID), the African Development Bank (AfDB) or French and Spanish development agencies participate in large-scale agribusiness investments. More in depth information regarding this very interesting but very rarely examined issue can be found in FAO's report “Agricultural Investment Funds for Developing Countries” itself (Miller et al. 2010).



Several groups and research initiatives have tried to document the extent of the impacts (Anseeuw, Alden Wily, et al. 2012; von Braun & Meinzen-Dick 2009; Cotula et al. 2009; Deininger et al. 2011; Grain 2008; HLPE 2011; among others), but even “if there were consensus on the definition of land grabs, and on the methodology of counting them, large land deals are typically shrouded in secrecy” (White et al. 2012, p.620), consequently resulting in heterogeneous results for the affected population. For many land deals it is yet too early to assess their longer-term impacts on agrarian structures and the concerned local population, since they remain at the speculative stage without having implemented any structures of production (White et al. 2012). Many case studies used for assessments of impacts refer to initial stages of implementation including negotiations, intervention design and maybe development of acquired land and construction of appropriate facilities. In all fairness it needs to be acknowledged that while most adverse impacts are likely to be concentrated during the early stages, some claimed benefits may only materialize to a recognizable extent in future periods (Anseeuw, Alden Wily, et al. 2012). This is an important issue and for sure requires long-term investigation. On top of that, case study evidence is naturally strongest on local impacts and therefore lacks strong evidence to draw conclusions on wider economic impacts, it tends to exclude marginalized land users by focusing on local communities and including diverse geographical contexts commonly aggravates generalizations.

Besides these caveats, there are nonetheless certain emerging trends and repeating patterns, which shall be highlighted to illustrate the bandwidth of ramifications. They can be categorized in several dimensions on a local, national or on a global level by affecting world markets and global ecosystems. Included are direct outcomes such as lost access to land or other resources and new ways of employment, as well as more indirect impacts resulting from changes in local or national food security for example. Different scenarios affect different groups of people divided along high-contrast power relations and besides the more obvious socio-economic aspects, implications on self-determination, dignity and the right to decide own paths of development should not be neglected. Most affected are the poor and “it should be noted that commercial pressures on land are not a phenomenon that affects only pockets of rural minorities but one that affects rural majorities, and indeed whole societies, in many parts of the world” (Anseeuw, Alden Wily, et al. 2012, p.30). Those impacts are

well documented by various publications and case studies and their detailed appraisal would by far exceed the scope of this thesis, therefore only a summarizing list with the most important aspects is provided here and given the complexity of the topic not making any claims of being complete.

Land grabbing and especially large-scale acquisitions of arable land for agriculture purposes very frequently result in lost access to land as well as access to adequate housing for local populations. While the perception of 'available' or 'empty' land is widespread (HLPE 2011), in fact most targeted land is either under cultivation or consists of forests, grasslands, which are still used and owned collectively by customary law and tradition by rural communities (Anseeuw, Boche, et al. 2012; Alden Wily 2011). Loss of access to any used valuable land often has severe adverse impacts on local livelihoods especially threatening their right to food. It frequently results forced dispossession of land resources (Andrianirina Ratsialonana et al. 2011), although not always being related to actual physical eviction. Local landholders may be allowed to continue living on their land until beginning of the development phase, losing their common property or parts of their landholdings and having to move to substitute housing areas for example (Colchester 2011; Cotula 2011; Dauvergne & Neville 2010; Ravanera & Gorra 2011).

With access to water as one of the key drivers of transnational acquisitions of land (Franco et al. 2013), competition for water resources is on the rise. As discussed above, Saudi Arabia and its neighboring countries are particularly affected and water scarcity is increasingly becoming a substantial constraint on agricultural production (Anseeuw et al. 2013; Pearce 2012; Ravanera & Gorra 2011). As it is the case in most jurisdictions, the legal entity owning water resources is the government, which is often granting priority access to water to investors. As a direct consequence of the changed access rights the other, 'pre-existing' water users are suffering from water abstraction and the struggle of enforceable water rights (Smaller & Mann 2009; Woodhouse & Ganho 2011). Especially if water resources are located in larger trans-boundary river basins as the example of the Niger and the Nile illustrate, the resulting competition of water interests may be very difficult to manage (Anseeuw, Alden Wily, et al. 2012; Cotula 2011). On top of that, to a great extent it is still uncharted how to cope with severe increases in water demand from large-scale land deals in context of

vulnerability of water supplies resulting from climate change (Cotula 2011; Franco et al. 2013).

The question regarding compensation for land that has been taken from communities, families or individuals is a very complicated one and unfortunately has received the attention in literature about the land grabbing that it deserves. It “usually refers to explicit compensatory payments [and] can also be taken to include proceeds from the negotiated transfer of land, and a range of infrastructure, services, and other in-kind contributions that land acquirers may promise or supply to local communities as part of the deal.” (Anseeuw, Alden Wily, et al. 2012, p.40) Many cases are indicating that no compensation at all has been paid, mostly due to the lack of legal recognition of customary ownership land rights. Even if compensation is paid, the amounts are not adequate to restore affected livelihoods, people are evicted before payment has been made, assessments were based on evaluations before development or it did not cover non-land assets (Anseeuw, Boche, et al. 2012; Anseeuw, Alden Wily, et al. 2012; Fisseha 2011). Moreover, Vermeulen and Cotula (2010b) argue that the bargain capacity of local people is very limited and “government agencies tend to align with the interests of large-scale investors when tested in real negotiations” (Vermeulen & Cotula 2010b, p.899).

Creation of new jobs is being seen as one of the main advantages of land grabs since they promise new ways for employment in agriculture or the processing industry both directly and indirectly through related supply chains. As evidence from case studies suggests, these jobs often do not materialize because of bad integration of the local population and capital intensity of such schemes, while simultaneously being undervalued by exceedingly poor working conditions and payment (Anseeuw, Alden Wily, et al. 2012; Cotula 2011). Colchester (2011) as well as Ravanera and Gorra (2011) describe how involvement of smallholders in oil palm plantations is actually resulting in forced labor caused by unaffordable debts to the investor or how jobs are being dissolved again after short periods of time.

When examining the relations between gender inequality and land grabbing, evidence is confirming widespread receptions of a disproportionately disadvantaged role of women in this context (Colchester 2011; Tsikata & Golah 2010; White & White 2012). Adverse impacts tend to mostly affect those who are economically and socially

the least empowered and this seems to be very evident in the relation to gender (Anseeuw, Alden Wily, et al. 2012; HLPE 2011; Ravanera & Gorra 2011). This vulnerability is based on four factors: the systemic constraints and discrimination of women in relation to land rights; their systematically discriminated position in political and socio-cultural relations concerning decision making and their everyday life in general; women's vulnerability in terms of relative disadvantages of incomes compared to men (HLPE 2011), often being closely linked to other mechanisms contributing to poverty and finally, their physical vulnerability becoming most apparent in sexual and gender-based violence against them (Daley 2011).

The last category of impacts concerns consequences on the environment, which are naturally very diverse and can be observed in high frequencies depending on the case study under examination. Environmental impacts have been subject to many investigations, especially in regard to the effects of large-scale agriculture production of biofuels (Dauvergne & Neville 2010; Fairhead et al. 2012; Franco et al. 2010; GRAIN 2013; HLPE 2013; Lappé 2013). They can be related to "detrimental effects of a change in agricultural production methods, as well as negative environmental consequences of the clearance and cultivation of forested and other non-farm habitats" (Anseeuw, Alden Wily, et al. 2012, p.45). The transformation from smallholder into intensive industrialized agriculture may cause many different environmental implications, such as land degradation, the already discussed problematic nature of water resources, relatively large increase in usage of fossil fuels, fertilizers and pesticides as well as required space for construction of necessary infrastructure. Handling of pollution of land, water and air is another determinant, as is the problem of geographically outsourced consequences, which may result in negative environmental impacts in a remote area compared to the actual implementation of the deal. Moreover loss of biodiversity and ecosystem services (Ravanera & Gorra 2011), degradation, carbon sequestration and diversion of water are linked with the contemporary land rush (Anseeuw, Alden Wily, et al. 2012; HLPE 2011;). Other reports draw the attention to the links between increasing depletion of forests and commercial pressures on land, emphasizing the adverse impacts of deforestation (Colchester 2011; Molnar et al. 2011).

The conditions of the contemporary land rush are clearly specific to our time and their characteristics and implications are daunting (Borras et al. 2011). In the words

of Peluso and Lund (2011, p.669), “there is no one grand land grab, but a series of changing contexts, emergent processes and forces, and contestations that are producing new conditions and facilitating shifts in both *de jure* and *de facto* land control. Moreover, while the ‘grab’ itself is important, it only marks the beginning of a process of gaining (or grabbing) access.” Allocation of vast areas of land to investors “can always be assumed to mean the dispossession of local land users, and their exclusion from resources that are critically important to their livelihoods” (Anseeuw, Alden Wily, et al. 2012, p.46). This dispossession, its impact on the right to food and the mechanisms that should prevent it from happening in the first place will be subject to the next chapters, which are examining the land grabbing situation in Cambodia.

## 5. LAND GRABBING IN CAMBODIA

Cambodia's struggle with land grabbing phenomenon and the characteristic land concessions has been on the rise for more than a decade now. In his 2012 report, the Special Rapporteur on the human rights situation in Cambodia describes the situation as follows, therewith confirming a variety of reports presented by other organizations.

"The impacts [of land grabbing] are numerous and many of them I have seen for myself during my missions to Cambodia: the destruction of the environment due to bulldozing [...]; the lack of consultation with local communities, contributing to their marginalization and conflicts [...]; the loss of traditional livelihoods and the perpetuation of a gross income disparity (rural poor as compared with wealthy concessionaires and those benefiting financially from the concessions); lack of access to clean water and sanitation; forced evictions, displacement and relocation of people from their homes and farm lands, creating difficulties with finding or sustaining employment/ income-generation and access to basic services; sub-standard labor conditions; militarization of land concessions, contributing to intimidation and violence by armed security guards, [...]; and lack of effective remedy or recourse for affected communities" (Subedi 2012b, para.129).

This chapter aims to capture the status quo by highlighting the country's context and historical development of policies that facilitated this trend. It analyses the theoretical intentions as elaborated by the national government and its related normative framework and compares them with the impacts it has had in reality on a national and local level, by assessing the ELCs of Cambodia's sugar industry. Finally it presents the latest government initiatives and draws conclusions for future policy considerations.

### 5.1. SETTING THE CONTEXT

Approximately 80 percent of Cambodia's whole population lives in rural areas (CIA 2013). Although the overall contribution of the agricultural sector to the country's

economy has continuously declined during the past two decades, around 75 percent of Cambodians are dependent on agriculture as the primary source to earn their living (UNDP 2007). The dominant type of agriculture is rain fed subsistence farming, in many cases rice cultivation on small pieces of land, which still makes one out of five Cambodians food insecure and unable to satisfy basic nutritional needs by getting the minimum share of calories per day (UNDP & RGC MoP 2007).

Rural poverty is closely interconnected with the deteriorating situation regarding tenure security and access to land in general, which is characterized by “a progressive consolidation of land holdings in Cambodia and an increase in landlessness or near-landlessness” (Sperfeldt et al. 2012, p.11). Data from household surveys confirms this consolidation trend and shows that the percentage of land held by the top ten share of landholders increased from 45 to 65 between 1999 and 2003, while the top five has expanded the land under control from 59 to 70 percent during the same period (UNDP 2007). As a result, the Gini coefficient indicated a quite clear inequality of land distribution in rural areas of 0.66 (Üllenberg 2009).

This situation becomes even more severe when put in context of the country’s demographic development, which has seen an increase in Cambodia’s population from 8 million to 15 million today during the past three decades (CIA 2013) thus dramatically increasing landlessness of the rural poor. This development has resulted in substantial lacks of farmland for a rising number of rural households, which has grown to an estimated 25 percent in 2007 from 13 percent in 1997 (UNCDF 2010; WB 2006) and likely to increase further by two percent every year (UNDP & RGC MoP 2007). The impact of landlessness tends to be significantly higher for female-headed households (UNIFEM et al. 2004). Moreover, two out of five rural households have to manage farm sizes not larger than 0.5 hectares, which barely enough to secure their livelihoods and puts them on the brink of being almost landless (Üllenberg 2009; WB 2006). Consequently, much of the reason for rural poverty and dissatisfying rural development in Cambodia is attributed to widespread involuntary landlessness (Sperfeldt et al. 2012).

Existing patterns of land usage, tenure insecurity and unclear property rights are aggravating this problem. Roughly four fifth of the country’s area are owned by the state and the remaining share belongs to private owners. Cultivated agricultural land

represents approximately 22 percent with the majority being covered by rice fields (UNDP & RGC MoP 2007; Üllenberg 2009). Nevertheless, reports estimate the share of rural household that possessed land but no official land titles in 2004 to as much as 80 percent (UNCDF 2010; WB 2006).

This development cannot be properly understood without examining the history of land ownership, which was profoundly influenced by violent conflicts in Cambodia and their legacy. A concept of individual land ownership with a very limited registration process has been first introduced during the period of French colonial administration before 1953. Prior to 1975, approximately only one tenth of landowners, who were mostly concentrated in urban areas have benefitted from land titles, while landlessness has increased from 4 to 20 percent between 1950 and 1970 (Sperfeldt et al. 2012). The Khmer Rouge regime (1975-1979) has abolished private ownership of land, destroyed all ownership records and demolished existing societal structures by executing a massive program of resettlement and forced deportations. During the following decade with the People's Republic of Kampuchea in power, collective ownership of land has been implemented and pre-existing land titles have not been recognized. Under the State of Cambodia private ownership of land has succeeded the concept of collectively owned land, although the redistribution process has never been properly recorded because lacking government capacities to handle the enormous amount of documents and data (Bugalski 2012; Sperfeldt et al. 2012).

Land disputes and insecure land tenure are the aftermath of this dilemma, which continues to affect landholders up to today. To summarize this briefly highlighted complex historical development, at the turn of the millennium policy-makers in Cambodia were confronted with "an entrenched problem of rural poverty characterized by a widening gap between urban and rural areas, widespread tenure insecurity, and a progressive increase in inequality and landlessness" (Sperfeldt et al. 2012, p.13). To tackle the problem of the rural poor in order to achieve the government's Millennium Development Goal (MDG) objective of halving poverty by 2015, both the government and donors have started to increase their focus on rural and agricultural development policies. The Supreme National Economic Council (2007, p.4), whose work is closely interconnected with the WB, concluded in his report that in order "to achieve the ambitious Cambodian development goals, it will be essential to turn agriculture into a driver of economic growth and spread human



development to the poor in the countryside”. The arguments and solutions of policy-makers for the problematic situation outlined above are examined in the following chapter.

## 5.2. LAND CONCESSIONS AS WIN-WIN-WIN SOLUTIONS

The *Rectangular Strategy for Growth, Employment, Equity and Efficiency*, the overarching policy tool of the Cambodian government, has named the agricultural sector the main priority for the country’s growth strategy with a special emphasis on agricultural productivity, competitiveness and diversification. The policy document has acknowledged the increasing occurrence of land grabbing and conflicts over ownership of and access to land. In response to that it is suggesting to secure clear property rights by proposing an effective land management scheme (RGC 2004). This double-tracked approach based on economic growth with clear focus on the agricultural sector as well a drastic improvement of the land management system has become the main framework of the government’s policies.

This idea has been further specified by the second Socio-Economic Development Plan (2001-2005) and in consideration of the country’s vast areas of ‘abundant’ and ‘underutilized’ land, it stated that the rather static agricultural sector needed a new approach. This new approach “was characterized by a focus on attracting private investment in agriculture and expanding agricultural exports” (Sperfeldt et al. 2012, p.14) and questioned long-term sustainability of smallholder agriculture. It has argued for increasing commercialization of the sector and promoted large-scale farming, the usage of the market’s know-how and lower unit costs. The key goal was to attract both domestic, but mainly foreign investment by focusing on liberalization of the land market (Sperfeldt et al. 2012). Cambodia’s National Poverty Reduction Strategy (2003-2005) has complemented this approach by drawing the attention more towards the improvement of rural livelihoods with a strong emphasis on access to land of the rural poor. According to the paper, “such secure access to land for the poor in Cambodia’s countryside will greatly contribute to reducing poverty and ensuring economic growth with equity” (RGC 2002, p.53). Thus, the government’s idea behind its land policy was to reduce poverty and to promote a sustainable social

and economic development by clearly securing and strengthening property rights legally, introducing concessions for social purposes and adding an environmentally sustainable approach to its land management (RGC 2002; RGC 2004; Sperfeldt et al. 2012).

At the beginning of the Millennium, Cambodia has promulgated the 2001 Land Law, which recognizes five main categories of land property, namely private land, state public land, state private land, communal land and land of indigenous communities (Hel 2012; Sperfeldt et al. 2012). According to this law, foreigners are prohibited from land ownership in Cambodia, although being allowed to own property and able to participate in joint ventures with a Cambodian majority that are entitled to land ownership (Hel 2012; MLMUPC 2002). Most importantly for the development of recent land grabbing dynamics in Cambodia, the 2001 Land Law enables the lease of land by introducing the mechanism of land concessions. These concessions are intended to intensify land usage by allocating more land for private sector investments as well as indigent landless people. Accordingly, such concessions may be either of economic or social purpose and thus representing the government considerations and policies described above. The Land Law specifies in its article 49 that “land concessions responding to an economic purpose allow the beneficiaries to clear the land for industrial agricultural exploitation” (MLMUPC 2002, p.14). Further on, land concessions “can only be granted on lands that are part of the private property of the State [...], shall not be more than 10,000 hectares” (MLMUPC 2002, p.16) and limit the maximum lease duration to 99 years. Finally, the law prohibits the granting of concessions jointly exceeding the limit of 10,000 ha to the same beneficiary, even if they are located in different places and orders to develop economic land concessions within a 12 month period after issuance to avoid them being cancelled (MLMUPC 2002).

Subsequent sub-decrees have specified the regulations for both economic land concessions (ELCs) and social land concessions (SLCs). The Sub-decree No. 146 on Economic Land Concessions determines the mechanisms, procedures and arrangements for that need to be considered for granting state private land as ELCs for agricultural and agro-industrial production (Sperfeldt et al. 2012). Moreover, it describes the purpose of ELCs and the government’s expectations, which are composed of the development of land by establishing intensive agricultural and

industrial-agricultural activities, which require large amounts of capital investment. Furthermore, the concessions are supposed to encourage both small and large investments, generate state revenue and increase employment in rural areas while ensuring sustainable development based on a framework of diversification and intensification of livelihood opportunities as well as appropriate management of ecological systems (RGC 2005). The criteria and conditions that need to be fulfilled before ELCs can be granted are also specified in the sub-decree. They consist of the mandatory classification of land as state private land as mentioned before, a required land use plan needed to be adopted by local committees, completion of a social and environmental impact assessment, resettlement solutions and exclusion of involuntary resettlement as well as public consultations, which need to be conducted with the local population and authorities (RGC 2005).

The promulgation of the 2001 Land Law and the 2005 Sub-decree on ELCs enabled all the mechanisms allowing the government's desired policy direction to progress as planned. According to the website of the Ministry of Agriculture, Forestry and Fisheries (MAFF n.d.), the "major goal of this opening is to provide free (non use) land for agricultural and agro-industrial plantation, and processing for export, which is expected by the government to create the jobs and generate income for the people living in the rural area". This indicates the government's idea to establish large-scale agriculture investment as a promising alternative to the existing smallholder agriculture schemes that were predominant in Cambodia.

Despite becoming a recipient of substantial international development aid since the first elections in 1993 (Sperfeldt et al. 2012; Üllenberg 2009), the country's accumulated investments in agriculture accounted for not more than four percent of the overall investment projects (Ngo & Chan 2010). A UNDP report is assessing natural resources and rural livelihoods in Cambodia and concludes that for a variety of reasons "public-sector investments supporting agricultural productivity and related rural infrastructure have been modest over the past decade; as a result, productivity and rural incomes remain low and poverty high. Notably, statistical analysis shows a strong correlation between lower crop yields and a higher incidence of poverty among smallholder farmers" (UNDP & RGC MoP 2007, p.10). With the beginning of the 21<sup>st</sup> century, international financial institutions and development donors have progressively acknowledged the pressing situation of rural poverty and

began to increasingly shift their focus towards rural and agricultural development (Sperfeldt et al. 2012). The new approach is also reflected in the WB's Country Assistance Strategy (CAS) for Cambodia, which was published by the two member organizations, the International Development Association (IDA) and the IFC.

“With 90 percent of the poor living in rural areas, promoting agriculture is considered to be the best strategy to accelerate growth, absorb a large part of the growing labor force, and address poverty more directly. Agricultural production, however, remains far below potential due to low productivity and constrained access to arable land and markets. Achieving new, or diversified, sources of growth would require significantly higher rates of productivity and investment” (WB 2005, p.3).

According to the WB, these disappointingly low rates of growth and productivity could be increased by large-scale private investments in the agricultural sector. A report criticizes that “compared to other countries in the region, foreign agribusiness investment which can bring capital, technology and market access is negligible [sic]” (WB 2007, p.2) and notes that “increased transformation of the smallholder agricultural sector away from subsistence towards greater commercial orientation, including regional specialization, will be essential to increase productivity and incomes of farmers” (WB 2007, p.4). Further on, the WB declares its objective, namely “to ensure that all rural households are able to contribute to and participate in rural growth and poverty reduction in Cambodia”. To do so, in its CAS (WB 2007, p.5) it focuses on “improving the climate for private sector investment – particularly trade facilitation”, “increasing the access of local communities to natural resources and their participation in management” and “supporting greater social accountability”. The Bank wants to “lead by example” and puts its emphasis on “building transparency, accountability and participation in terms of ‘how business is done’ in all rural development activities from policy formulation to the management of state assets and service delivery” (WB 2007, p.5).

Since reducing rural poverty and tackling its causes has gained a prominent spot on Cambodia's development agenda, the donors started to establish further programs and institutions to support the policies of the government. In order to develop an appropriate cadastral system, Cambodia launched its Land Management and Administration Project (LMAP) in 2002 that was supposed to facilitate the implementation of the 2001 Land Law. It focused specifically on ensuring systematic

land registration, the improvement of appropriate institutional capacities and establishing mechanisms for land dispute resolutions. The Land Administration Sub Sector Program (LASSP) was launched in 2009 as its successor program and continued the work of LMAP. Additionally, the Land Allocation for Social and Economic Development (LASED) was introduced in 2008 with the purpose to stimulate the implementation of the social land concession policy (ADHOC 2013; Sperfeldt et al. 2012; UN 2007b).

Under this framework and based on the assumption that ‘unused’ and ‘under-utilized’ land was available in abundance for commercialized, intensive agricultural exploitation, the possibilities of ELCs were regarded as the appropriate means for attracting private investments. Consequently, ELCs constitute an opportunity for development, which increases revenues for the state from taxes and leases, brings a new kind of business opportunities for foreign and domestic private companies and finally improves livelihoods of rural communities by promoting rural development and increasing employment. As such, “the new ELC policy aimed to provide a win-win-win policy with benefits for the state, the economy and the rural poor” (Sperfeldt et al. 2012, p.19). Simultaneously, the purposes outlined above including the “promotion of living standards”, “avoidance or minimization of social impacts” and “perpetual environmental protection” as stated in Article 5 of the ELC Sub-decree (RGC 2005) represent the benchmarks, which should be used to assess not only individual concessions, but the entire ELC policy as a whole.

### 5.3. GAP BETWEEN THEORY AND PRACTICE

Ultimately, the intended impact of leasing land for economic and social purposes was to significantly contribute to reducing rural poverty along with its causes. Despite all the preparation of the framework described above, there are profound discrepancies of the theoretical idea behind land concessions and their impact on the ground since their first introduction.

### 5.3.1. HISTORICAL TRENDS OF LAND CONCESSIONS

The historical development of Cambodia's contemporary ELC policy can be analyzed by highlighting the most distinct trends and characteristics. First, the responsible institutions had almost a decade of experience with policies concerning land concessions that were first introduced in 1992 by the predeceasing policy of the new 2001 and 2005 ELC framework. The practice surrounding the allocation and implementation of land concessions in the 1990s has been largely negatively appraised (UN 2004). Furthermore, it is quite difficult to assess, to which extent the evaluation past experiences has influenced the decision-making process of policy-makers when they elaborated the new 2001 Land Law combined with the respective sub-decrees in 2005 (Sperfeldt et al. 2012).

Second, granting of ELCs has increased drastically after the promulgation of the new ELC framework has been completed. The big problem with available data sets, which are documenting the extent of granted concessions, is that in many cases they differ greatly and are incomplete and inconsistent. According to the MAFF (n.d.) website, the government has granted ELCs to 118 Companies with the total land area of 1,204,750 hectares as of June 2012. The numbers estimated by local NGO's are significantly higher than the official figures published by the ministry. ADHOC for example estimates that "up to 2011, the Royal Government granted economic land concessions amounting to 2,276,349 hectares to 225 companies" (ADHOC 2012, p.1) and even raised this number to "at least 2,657,470 hectares" (ADHOC 2013, p.9) as of late December 2012. Similarly, the Cambodian League's for the Promotion and Defense of Human Rights (LICADHO) numbers are substantially higher than the MAFF and are reckoned between 2,036,170 hectares granted to 227 companies (Vrieze & Naren 2012) and 2,106,343 hectares (LICADHO 2013) dated from March 2012. Nevertheless, even when looking at the very conservative data published by the national government, it becomes obvious that land in Cambodia has been leased to private investors at a very large scale. One worrying trend needs to be underlined in this context, namely the vast areas of land leased as ELCs to private investors being located in protected areas, such as national parks (ADHOC 2012; ADHOC 2013; Vrieze & Naren 2012). The following graphic illustrates the magnitude of granted

concessions in Cambodia. It also includes mining concessions, which are though not considered in this assessment as explained before.

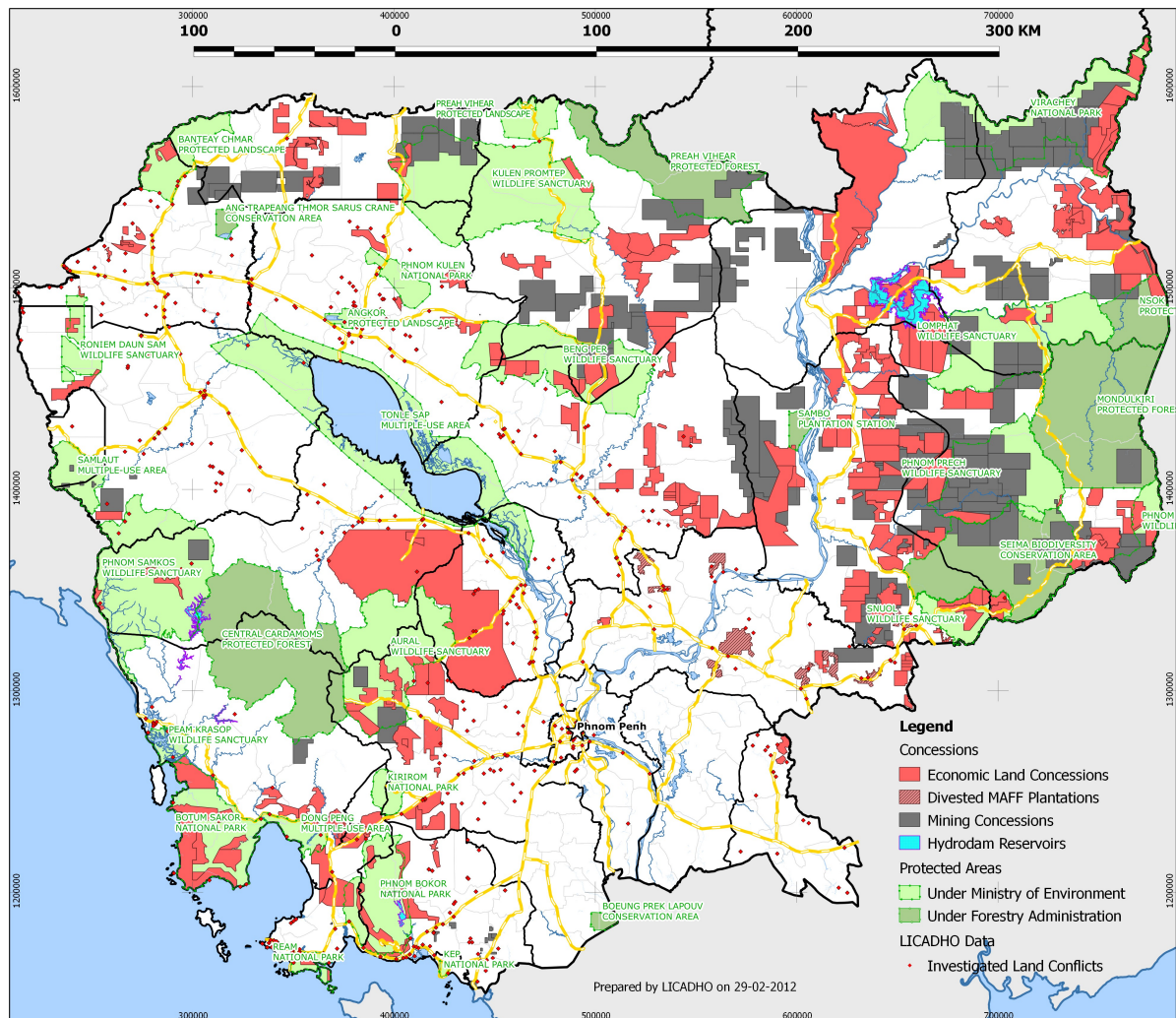


Figure 14: Map of Land Concessions in Cambodia (LICADHO 2013).

Third and in contrast to other countries, the major part of land, both in terms of number of concessions and as well as their total size, has been leased to domestic companies or individuals. Although the ownership status is at times difficult to determine, this aspect clearly distinguishes Cambodia from the majority of countries, where large-scale concessions are mostly dominated by foreign investment (Anseeuw, Alden Wily, et al. 2012; Anseeuw, Boche, et al. 2012; Ngo & Chan 2010). Nevertheless, “due to the limited information about ownership and shareholders, it is sometimes difficult to ascertain the number of Cambodian concessionaires acting in collaboration with foreign investors” (Sperfeldt et al. 2012, p.27). Closely connected to this characteristic is the fact that of those foreign investors present in Cambodia, the majority comes from the South East Asian region itself, mainly from China and

Vietnam (ADHOC 2013; Burgos & Ear 2013; Global Witness 2013), instead from the Global North, which also has implications for regulatory policies.

Fourth, there was no transparent review process conducted for existing land concessions to make sure they have been issued and implemented in accordance with the regulations of the ELC sub-decree. The controversy regarding this aspect is magnified by the lack of an institution in charge of the consolidation of data in a cohesive manner. Also, ADHOC (2013, p.11) criticizes that the “regulations pertaining to ELCs have not been implemented. Many concessions have been approved despite substantial breaches of legal and sub-decree requirements”.

Finally, SLCs are more prominently featured in all strategic and policy documents than ELCs, but the latter “have gained considerable more momentum in the past ten years than social land concessions and exceed the land size granted to social land concessions many times over” (Sperfeldt et al. 2012, p.27). The UNCDF (2010, pp.176–177) has noted that “implementation of the social land concession policy is losing ground in competition with economic land concessions and other instruments for allocating land to investors”. Further on, “for every hectare of land allocated to the landless people, 68 hectares were granted to investors as economic land concessions” and as illustrated above, this ratio is even more out of balance since even more ELCs have been granted since 2010 (ADHOC 2013; LICADHO 2013).

### 5.3.2. PRACTICE OF ECONOMIC LAND CONCESSIONS

In reality, implementation of the legal framework on the ground has proven much less successful than planned in theory as by the legal process elaborated through the ELC policy. One fundamental aspect, which is the prerequisite of the problems outlined in this section, concerns the significant deficits of authorities regarding management of state land. In many cases it has been well documented that land has arbitrarily been re-classified from ‘state public land’ to the category of ‘state private land’, thus enabling the particular parcel to be leased as concession in the first place (FIDH 2011; UNDP 2007; UN 2007b; Üllenberg 2009). When put into context of the small share of rural Cambodians that are holding land titles, this deliberate re-classification has at least in some extent contributed to the assumption of vast areas of land being available for ELCs, although this land may be already occupied and used



by the local population. Despite the government's attempts to establish a formal titling system for improvement of land ownership status, "many Cambodians simply lack the requisite understanding of how to safeguard their land rights in such a system" (Sperfeldt et al. 2012, pp.29–30). Commercial interests have become increasingly interested in this misperceived 'abundance' of rural land and the large-scale ELCs granted by the government are adversely affecting local residents, who in many cases may not even be aware of the need to protect their rights (Un & So 2011).

Among the criteria specified in the 2005 ELC sub-decree is the need to conduct social and environmental impact assessments as well as consultations with the affected residents and the local authorities regarding the proposed investment plans (RGC 2005). However, various reports are providing evidence, which is proving that numerous ELCs have been granted to private investors without the due process requested by the law and large areas of land seem to have been leased without any consultation or impact assessments whatsoever. On top of that, there are many reported cases, in which the investing companies had started to clear the land before their impact assessment have been completed (ADHOC 2012; ADHOC 2013; UN 2007b). During the examination process of already granted concessions, monitoring bodies are also criticizing their difficulties to verify the due process steps that have supposedly been executed because no or very little information is being made available (LICADHO 2009; Subedi 2012a). The lack of prior public consultations frequently results in the local and indigenous people not being aware of the fact that an already granted ELC is threatening access to their land that they are heavily relying on in order to secure their livelihoods. Consequently, their basic rights such as the right to food are undermined since they are excluded from any kind of participation during the decision making processes, which is happening without their knowledge (UN 2007b). In its latest report from 2013, the Cambodian NGO ADHOC (2013, p.22) states that "the fuzziness around the status of land, failure to enforce laws and regulations, lack of guarantees against forced evictions, lack of recognition of indigenous peoples' rights and lack of effective remedies culminate in an overall climate of insecurity around land tenure " and concluding that "generally speaking, Cambodia has failed to uphold citizens' right to security of tenure".

This lack of insufficient impact assessments, security of tenure and failed consultation efforts, combined with Cambodia's expansionary ELC policy, has also led to an

increasing amount and frequency of registered land disputes involving the population living on or around the concession area. ADHOC (2013, p.16) has noted “a high level of cooperation from victims, and community members have been increasingly motivated to participate in workshops, trainings and partnership-building activities”. Also, it emphasizes that “empowering communities is an effective way to tackle problems related to encroachment on land and natural resources”.

### 5.3.3. IMPACTS OF ECONOMIC LAND CONCESSIONS

This reaction is caused by the rising trend of the local population being displaced by implementation processes of ELCs. Although forced evictions at a first glance seem mostly to affect the urban population, such as made visible in Phnom Penh and the Boeung Kak Lake case (ADHOC 2012; HRTF 2011), this may be caused by the biased documentation in Cambodia, where more reports focus on urban evictions at the expense of analyzing evictions taking place in rural areas as well. The CESCR “notes with deep concern that the rate of large-scale forced evictions has increased over the last 10 years due to increased public works, city beautification projects, private urban development, land speculation, and the granting of concessions over vast tracks of land to private companies” (CESCR 2009, para.30). After being dispossessed, the victims are facing a series of problems including no access to basic needs, such as clean water, sanitation or electricity and people living in relocation sites “often lack access to jobs, education and income-generation activities” (ADHOC 2013, p.23). Also, the Housing Rights Task Force (HRTF 2011) reports that the average amount of household debt has risen to USD 869 compared to only USD 455 before the dispossession. As a further consequence, many children drop out of school and health concerns are severely increasing after being evicted.

In her assessment of forced evictions in Cambodia, Chinnery (2009, p.185) comes to the conclusion that “there is limited access to justice for those facing eviction in Cambodia” and “while legislative protection is stronger than in the past, it lacks key supporting policies and guidelines that ensure access to just outcomes for those facing eviction”. Moreover, she argues that the government is responsible for outcomes to the advantage of the politically and financially powerful with substantial disadvantages for everyone else by interfering with judicial processes as well as misuse and avoidance of laws. Nevertheless, “relocations and involuntary

resettlements have also been on the rise in rural areas in Cambodia” (Sperfeldt et al. 2012, p.32). Despite the government’s assurance that evictions will only be carried out where necessary and just compensation will be provided, numerous cases prove that this is actually happening very rarely (ADHOC 2012; HRTF 2011; UN 2007b). On top of that, LICADHO (2009) has identified cases, in which the military or other armed state security personnel has been directly involved in the eviction of families and residents from ELCs. The dispossessed victims of land grabbing in the countryside often have very limited choices than to work for the investor responsible for their eviction (ADHOC 2013; Sperfeldt et al. 2012).

One major goal of the policy framework for ELCs was to promote living standards of the local population (RGC 2005), but the newly created employment opportunities through development of agricultural business on ELCs frequently lowers the standards of living compared to pre-lease standards. Local residents “have often been reluctant to make the shift from their self-sustaining lifestyle to a wage-labor lifestyle [...], because many jobs operate on a seasonal basis and do not offer regular income, [which is] posing threats to food security” and undermining their right to food since they “lose their ability to secure their own nutritional needs” (Sperfeldt et al. 2012, pp.32–33). Some concessions offer employment with salaries higher than average (FIDH 2011; Ngo & Chan 2010), however dispossessed former smallholders are neither able nor allowed to work 12 months a year, which is “undoubtedly associated with greater job insecurity. In addition, labor conditions are not adequately monitored” (ADHOC 2013, p.24).

ELCs are also enforcing new migration patterns, since many concessionaires are reluctant to hire local residents because of reservations towards their reliability (FIDH 2011). Instead, the investors tend to rather bring in migrant workers from different districts, who are more willing to accept low quality jobs and worse payment than the local residents, which is further contributing to the financial pressures (Sperfeldt et al. 2012). The Special Rapporteur on the situation of the situation of human rights in Cambodia points out that “the lack of resources has exposed communities to problems with food security, and many communities have been forced to leave their area in search of work or food” (Subedi 2012b, para.168). On the other hand, the government “has been using migration as a pressure valve, exporting Cambodia’s cheap, unskilled labor force to neighboring countries”. This

“brings in remittances which are essential to poor households; however, migrant workers have been exposed to abuses [and] would not have migrated [if] they had access to job opportunities in Cambodia” (ADHOC 2013, pp.24–25).

ELCs have particular adverse impacts on livelihoods, food security and cultural rights. The companies, which have been granted land concessions, clear fields, forests and grazing lands needed by people to secure their livelihoods. NGOs also report cases, where checkpoints have been set up among other constraints to prevent people to access their land, rice fields and farm lands have been destroyed and livestock killed, which is all raising food insecurity at the local level. If cases where the dispossessed rural population has been compensated at all, the farmers criticize the small size of the new plots and that they are remote from their villages and less fertile (ADHOC 2013; LICADHO 2009). All in all, land grabbing in rural areas results in a decreasing yields of smallholders and deteriorating living standards, clearly violating their human rights as discussed above and the right to food in particular.

Vulnerable populations are specifically affected by the rising trend of ELCs. The legal collective rights of indigenous people to their ancestral lands are supposedly secured by the 2001 Land Law (MLMUPC 2002), but the process of gaining recognition is complicated and lengthy for indigenous communities. On top of that, it is often being undermined by development of land concession projects before the communities even had the opportunity to deal with securing their legal rights. Violations of their land, mostly by logging operations in their resident forest areas, are interwoven with infringements of their cultural rights since their areas of spiritual and cultural significance still continue to be affected by ELCs (ADHOC 2013). Despite being explicitly protected, indigenous land is subject to a disproportionate concentration of land concessions, which is in violation of both national law in Cambodia as well as international human rights law and it appears that “indigenous people have benefitted little from these ELC projects on or near their lands (Sperfeldt et al. 2012, p.34).

Another vulnerable group, which is particularly affected by ELCs in Cambodia, are women and girls. As highlighted by the Special Rapporteur, women are often denied the opportunity to work at local agricultural plantations since “plantation workers will only be taken up by male communities due to cultural reasons, which could lead

to a further marginalization of women, who are generally more prone to poverty and undernourishment” (Subedi 2012b, para.168). Furthermore, the changed post-concession situation poses additional threats related to safety for women and girls, such as theft, potential robbery and physical violence including rape. As a consequence, they also become more involved in precarious situations such as displacements, forced evictions and land disputes (Sperfeldt et al. 2012; Subedi 2012b).

Furthermore, the impacts on the environment and natural resources require to be mentioned as well, since article 5 of the ELC sub-decree (RGC 2005) requires the adherence to “perpetual environmental protection and natural resources management”. Although it was initially planned that concessions should be granted on non-used or degraded forest land, in reality many ELCs encroach pristine forest land or are even granted within national parks and other protected areas (Subedi 2012b). These areas, originally classified as supposedly untouchable conservation zones, now suffer from illicit logging, which is increasing the already very high deforestation rates even more and potentially having severe negative impacts on wildlife and biodiversity (ADHOC 2013). Concessions in forest areas are particularly susceptible to the illegal logging operations and many investors obtain concessions despite having any intentions of developing agricultural businesses on the leased land (UN 2007b).

Finally, it remains to debunk the final pillar of the win-win-win situation described above, namely that the government is supposed to benefit from increasing state revenues, mainly through taxation and lease fees from granted ELCs (RGC 2005). The general lack of transparency surrounding land deals is facilitating one of the world’s worst corruption rates in Cambodia<sup>15</sup> (Chinnery 2009; Riaño et al. 2009; Transparency International 2007) and makes it “difficult for the public to assess the benefits [the ELCs] will bring for the country and its development” (Sperfeldt et al. 2012, p.34). Nevertheless, there seems to be a consensus among NOGs and international organizations analyzing this development and concluding that state revenues from

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<sup>15</sup> According to Transparency International, Cambodia is amongst the countries affected most by bribery the judicial institutions is the sector most affected by corruption and 47% of Cambodians have reported they had to pay a bribe within 12 months prior to the survey (Riaño et al. 2009). The latest Corruption Perceptions Index (Transparency International 2013) ranks Cambodia 16<sup>th</sup> from the bottom with a score of 20 out of 100.

ELCs to date are relatively low and many investors simply have not paid their deposit fees altogether (Sperfeldt et al. 2012; UN 2007b). However, Subedi (Subedi 2012b, para.128) points out that “no comprehensive evidence-based report has been officially published about the benefits of land concessions”. Moreover, “there is no available evidence that revenue generated from land concessions has been used by the Government in concession areas for social and economic development, such as in the health and education sectors or in infrastructure development”.

In summary, the review of the actually well developed ELC policy framework as well as available literature clearly demonstrates substantial shortcomings and challenges in the implementation process of the laws, which were supposed to regulate land concessions. The UNCDF (2010, p.177) criticizes that “while regulations on economic land concessions set forth rational principles, there is a serious absence both of functional rules governing compensation and of procedures to effectively protect property interests of owners and possessors of the land to be taken”. The UNDP (2007, p.12) finds that “most land concessions have thus far not proven to be effective drivers of economic growth or job creation in rural Cambodia” and as analyzed above, this is a circumstance that still proves to be true seven years after this report has been released. Attracting more private investment for development of the agricultural sector but also infrastructure has put the rural pool and all other local residents affected by ELCs at risk of not being able to secure their livelihoods and violated their human rights. The human costs of many land concessions are very high and not only the Special Rapporteur on the human rights situation (Subedi 2012b, para.200) has “struggled to fully comprehend the benefits of many land concessions that the Government has granted” and it is “not clear to what extent the people of Cambodia have actually benefited from land concessions”.

## 5.4. CASE STUDY: CAMBODIA’S SUGAR INDUSTRY

This chapter is supposed to demonstrate these adverse impacts on human rights of land grabbing in the Cambodian provinces Koh Kong, Kampong Speu and Oddar Meanchey (see figure 15). It does so by examining a specific case of ELCs developed by Cambodia’s sugar industry within the context of the *Everything But Arms* (EBA)

initiative, a preferential trading scheme introduced by the European Union. It is largely based on the study *Bittersweet Harvest*, which was published by Equitable Cambodia<sup>16</sup> and Inclusive Development International<sup>17</sup> (IDI) in September 2013. In addition to that and where necessary, the data is supplemented with the findings of the research report *Does Large Scale Agricultural Investment Benefit the Poor?* published by Ngo & Chan in the name of the Cambodian Economic Association<sup>18</sup> (CEA) in July 2010. It also examines the same case study in Koh Kong province among others and its findings were used to assess the trends and impacts of foreign investment in developing country agriculture by the FAO (2012a). Although some of the data used in the reports appears to be hard to verify without engaging in fieldwork oneself, these two publications are by far the best analyses of the sugar industry's impact in Cambodia in the context of land grabbing and therefore indispensable sources for this assessment.

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<sup>16</sup> Equitable Cambodia is a NGO based in Cambodia campaigning for human rights of Cambodian people. For further information, check <http://www.equitablecambodia.org/> [Accessed January 20, 2014]

<sup>17</sup> Inclusive Development International is a non-profit association based in Southeast Asia, the United States, China and Europe and works to advance a human rights approach to development through research and policy advocacy. For further information, check <http://www.inclusivedevelopment.net/who/about/> [Accessed January 20, 2014]

<sup>18</sup> The Cambodian Economic Association is a NGO of economists and professionals doing research on socioeconomic issues in Cambodia. For further information, check <http://www.cea.org.kh/about.php> [Accessed January 20, 2014]



Figure 15: Location of major sugarcane concessions in Cambodia (Equitable Cambodia & IDI 2013, p.24).

#### 5.4.1. EVERYTHING BUT ARMS AND SUGAR

The concept of ‘aid for trade’ emphasized by the MDGs was picked up by the EU, who understands it as “assistance to support developing countries' efforts to expand their trade as a tool to help growth and reduce poverty” (European Commission 2013a). Against this backdrop, the EBA initiative was adopted in March 2001 and is one component of the EU’s Generalized System of Preferences (GSP), which consists of three separate arrangements. The standard GSP is available to a wide group of developing countries, the GSP+ scheme fully removes tariffs and grants preferential trade treatment to countries, which ratify and implement international conventions relating to human and labor rights, environment and good governance. Everything



But Arms is the third scheme for Least Developed Countries (LDCs), which grants duty-free quota-free access to all products, except for arms and ammunitions<sup>19</sup>.

Currently there are 49 countries classified as LDCs by the that are supposed to benefit from the EBA agreement and have access to the EU for all their exports excluding weapons UN (European Commission 2013c). For a limited time period there were exceptions made for exports of sugar, rice and bananas, but in the meanwhile these goods were also fully phased into the EBA arrangement and by October 2009, the access to the EU market was fully liberalized for sugar, which was produced in the world's poorest economies. The scheme to not only grants duty- and quota-free access to the European market, but also requires the importers to pay a minimum price for sugar that is guaranteed and on average substantially higher than the world market price (European Commission 2006).

Cambodia's access to EBA goes back until the scheme's beginning in 2001. Latest data indicates that Cambodian exports to the EU have rapidly increased over the past few years, growing to USD 2.32 billion in 2012 and representing a 42 percent total of the country's total exports, which means they increased by 23 percent compared to the previous year (European Commission 2013b; Zsombor 2013). The highest utilization rates are attributed to the footwear sector, followed by textiles and bicycles, but there was also possible to witness an exponential increase in Cambodian agricultural products since 2010. Statistics from the Ministry of Commerce have indicated that Cambodia's exports to the EU rose by 53% in the first five months of 2011 compared to the same period the year before (EU 2011).

UNCTAD emphasized the correlation between EBA and a sustained increase in the production of sugar in LDCs and suggested that "the investing companies, all based in non-EBA sugar exporting countries, [should invest] in these LDCs with a view to taking advantage of EBA quota-free access" (UNCTAD 2005, para.5). In Cambodia, the area used for agricultural production of sugarcane was still negligible by 2006, but only six years later more than 100,000 hectares of leased to agro-industrial companies for sugarcane production in the form of ELCs. Export rates for sugar went up drastically and by 2011 they reached USD 13.8 million after tariffs and quotas for

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<sup>19</sup> Further information regarding the EU's GSP concept can be found at <http://ec.europa.eu/trade/policy/countries-and-regions/development/generalised-scheme-of-preferences/> [Accessed January 14, 2014]

sugar have been totally abolished by the EU in 2009 with as much as 92% of these exports being destined for the EU (Equitable Cambodia & IDI 2013). According to the statistics of the General Department of Customs and Excise in Cambodia, annual sugar exports were non-existent during the most years and did not exceed 50 tons since 2000, but have jumped to 10.000 tons in 2010<sup>20</sup>. The involved companies have picked out the EBA as their primary motivator for these investments in Cambodia and noted that the duty-free imports would lead to reduced costs, hence allowing them to compete with other sugar producing countries (Equitable Cambodia & IDI 2013).

#### 5.4.2. KEY COMPANIES OF CAMBODIA'S SUGAR TRADE

The sugarcane boom has been de facto exclusively driven by sugar companies from Thailand, whose aim was to capitalize on the benefits promised by the EBA arrangement and the Cambodian business tycoon Ly Yong Phat, who is a highly influential mogul and senator of the long-time ruling Cambodian People's Party (CPP). The operations of the sugar industry in Cambodia are characterized by substantial secrecy and a conglomerate of shell companies obfuscating real beneficiaries and owners and most information is "deemed 'commercially sensitive' and concealed from public view" (Equitable Cambodia & IDI 2013, p.31). However, it is possible to highlight some background information about the key actors involved in the country's sugar trade.

L.Y.P Group was established by Ly Yong Phat in 1999, whose powerful position is well exemplified by being the Vice President of the Cambodia Chamber of Commerce and serving as a Special Economic Advisor to Prime Minister Hun Sen. His close connections have facilitated Thai investments in Cambodia and he is a "controversial figure due to his infamously unethical business practices" (Equitable Cambodia & IDI 2013, p.32). His company is not only conducting domestic and interregional operations in the real estate, infrastructure and utilities, hospitality, and trading and distribution sector, but is also involved in agroindustry through its subsidiary Phnom Penh Sugar Company for example. It also claims to play a leading role in the electricity, infrastructure and bio-energy industries in Cambodia with projects including bridges, ports and electricity and water supply systems in various

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<sup>20</sup> Information taken from <http://www.customs.gov.kh/stats.html> [Accessed January 11, 2014]

provinces across Cambodia<sup>21</sup>. The senator holds an interest in at least 10 sugar and rubber plantations as well as a Special Economic Zone with a total size of approximately 86,000 hectares and accounting for about 4.3 percent of the total nationwide land concessions (Vrieze & Naren 2012).

KSL Group is one of the leading producers of sugar in Thailand and has expanded its sugar business, which now also includes production of electricity and ethanol. It owns and operates sugar plants in Thailand, Lao PDR and Cambodia in the province of Koh Kong, which is a joint operation with the Taiwanese Ve Wong Corporation. The Cambodian branch began commercial production in 2009, but remained below the expected output due to difficulties to find skilled labor and farm management. Nevertheless, the company intends to increase its total sugar production to two million tons until 2015 and is exporting all raw sugar to the EU under the EBA agreement (Equitable Cambodia & IDI 2013). Mitr Phol is the leading producer and exporter of sugar in Thailand, the largest producer in Asia and another Thai investor participating in the Cambodian sugar rush. Its reported ELCs in Cambodia have a total size of 18,000 hectares and the company intends to produce and export 100,000 tons of raw sugar per year to the European market to benefit from the EBA scheme (Equitable Cambodia & IDI 2013; Viboonthart 2012).

Tate & Lyle, a subsidiary of the British multi-national corporation Tate & Lyle PLC, has been a massive importer and refiner of sugar and Europe's leading cane producer. Tate & Lyle has been criticized for its involvement in land grabbing operations in Cambodia after importing sugar from Koh Kong province and had to face serious accusations regarding infringement of human rights (Hodal 2013). In 2010 it sold most of its historic sugar business to the US company American Sugar Refining Inc. (ASR), herewith shifting all the responsibility to the new owner and claiming to no longer be responsible for their supply chains (Equitable Cambodia & IDI 2013). ASR is popularly known by its brand name Domino Sugar and continues to purchase the total output of the sugar plantation in Koh Kong under the pre-existing terms agreed between KSL and Tate & Lyle. 97 percent of the sugar that Cambodia was exporting by 2012 is EU bound and Tate & Lyle Sugars, which is the legal entity holding Tate &

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<sup>21</sup> More information about Ly Yong Phat and a detailed list of the L.Y.P Group's portfolio is available at <http://www.lypgroup.com/> [Accessed January 13, 2014] and <http://phnompenhsugar.com/> [Accessed January 13, 2014]

Lyle's former European sugar refining business (Equitable Cambodia & IDI 2013), is buying 99 percent of those exports (Hodal 2013).

### 5.4.3. CHARACTERISTICS OF ANALYZED CONCESSIONS

The main focus of this case study is on Koh Kong province, where the MAFF has granted two ELCs<sup>22</sup> to Koh Kong Plantation Company Limited (KKPC)<sup>23</sup> and Koh Kong Sugar Company Limited (KCSI)<sup>24</sup> for industrial sugar production in the districts Botumsakor and Sre Ambel in August 2006. Both companies are a joint venture consisting of the Thai KSL Group, the Vietnamese Ve Wong Corporation and Ly Yong Phat (Equitable Cambodia & IDI 2013). The two concessions have a size of 9,400 and 9,700 hectares respectively and a lease duration of 90 years (ODC 2014) and were technically issued to the two separate legal entities KKPC and KCSI. A closer examination seems although “reveals that they occupy the same office and applied for the concession, received approval, and signed the concession contracts on exactly the same days”. Furthermore, “the concessions are located side-by-side and have been developed into a single sugarcane plantation with a total of 19,100 [hectares]” (Equitable Cambodia & IDI 2013, p.25). As described above, the concessions are hence in breach of Cambodian law, since it is explicitly prohibited for ELCs controlled by one person or legal entity to exceed a total surface of 10,000 hectares (RGC 2005). On top of that, the two concessions were granted on land, which was owned by local smallholders, as emphasized by the Community Legal Education Center of Cambodia. Despite being in possession of documentation attesting possession rights, 456 families have been dispossessed by these ELCs, severe adverse impacts on their livelihoods and food security have been determined and as of October 2012, 207 families were still either under-compensated or uncompensated for their eviction (Yu 2013).

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<sup>22</sup> Legal papers, agreements, contracts, maps and implementation progress for both ELCs are available online at Open Development Cambodia (ODC). This is an “Open Data” website, the first of its kind in Southeast Asia. The “Open Data” movement is based on the simple premise that data collected for public interest should be publicly available – without restrictions. ODC does not promote any particular perspective, agenda or bias other than to provide objective information about Cambodia and its development. For further information, see <http://www.opendevdevelopmentcambodia.net/company-profiles/economic-land-concessions/> [Accessed January 15, 2014]

<sup>23</sup> Concession details for KKPC are available at <http://www.opendevdevelopmentcambodia.net/company-profiles/profile/?id=49&cat=0&type=0&map=elc&tier=1> [Accessed January 15, 2014]

<sup>24</sup> Concession details for KCSI are available at <http://www.opendevdevelopmentcambodia.net/company-profiles/profile/?id=48&cat=0&type=0&map=elc&tier=1> [Accessed January 15, 2014]

The three concerned villages can be seen on the figure below, that shows the two ELCs in questions on Cambodia's map and the village areas are marked as three colored polygons the top right corner of the graphic (see figure 16). The maps were produced by Cambodia's Commune Land Use Planning (CLUP) program shortly before the concessions were granted and the "three villages in the eastern concession were deliberately documented as land under smallholder use" (Dwyer 2013, p.14).

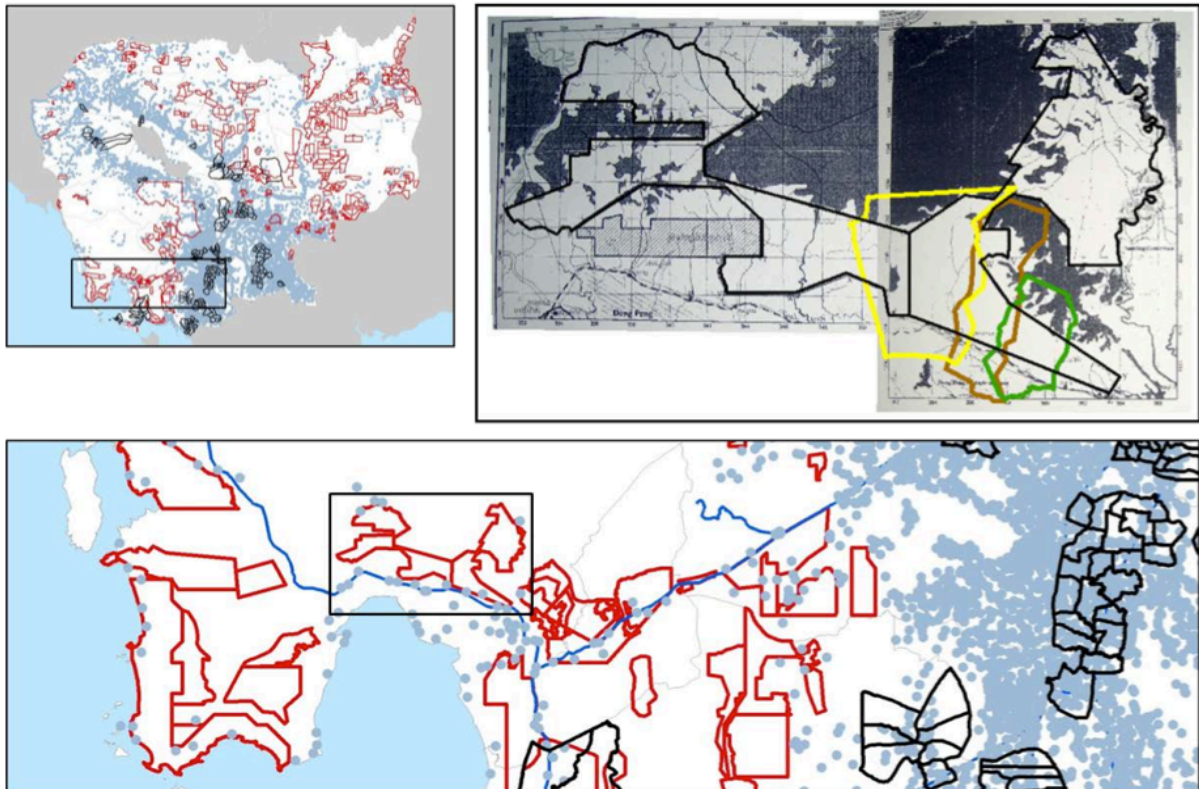


Figure 16: Location and maps of Koh Kong sugar ELCs granted to KKPC (western concession) and KCSI (eastern concession) as well as village areas as documented by the CLUP program, top right (Dwyer 2013, p.14).

Another study produced by a working group led by the MAFF states that "the land requested by the two companies overlapped protected areas, development zone protection forest, concession forest, concession land and the land of local people" (Equitable Cambodia & IDI 2013, p.25).

In January 2010, following the dispossession and eviction of the local population residing on its concession land, KSL has opened a sugar-processing factory in the district of Sre Ambel. Six months later, the first shipment accounting to 10,000 tons of sugar was exported and purchased by the British importer Tate & Lyle after previously concluding an arrangement with KSL to acquire the total sugar output

from Laos and Cambodia (Bangkok Post 2010; European Commission 2013d). According to a report published by the Guardian, Cambodia has exported 48,000 tons of sugar worth approximately EUR 24 million to Tate & Lyle (Hodal 2013).

The findings are supplemented by the additional fieldwork carried out in the provinces Kampong Speu and Oddar Meanchey. In February 2010, Phnom Penh Sugar Company Limited has been awarded an ELC in Thpong district in Kampong Speu province with an approximate size of 9,000 hectares and Kampong Speu Sugar Company Limited a bordering, 9,052 hectares big concession in Oral district (ODC 2014). The side-by-side ELCs are each registered to Ly Yong Phat and his wife Kim Heang and in March 2011 the concessions have been expanded by 4,700 hectares to a total size of over 23,000 hectares through a sub-decree signed by Prime Minister Hun Sen (Equitable Cambodia & IDI 2013). According to community representatives, the ELCs encroach “on more than 2000 hectares of farmland belonging to approximately 1100 families in ten officially recognized villages” (Equitable Cambodia & IDI 2013, p.27), many of them living in that area for at least five generations and possessing documentation proving their land rights. Nevertheless, the company of Ly Yong Phat has started to plant sugarcane in 2011 and opened a sugar-processing factory in December 2012 (Southeast Asia Weekly 2012)

In Oddar Meanchey province, three ELCs with a total size of 19,700 hectares have been awarded to the companies Angkor Sugar Company, Tonle Sugar Cane Company and Cane and Sugar Valley Company in January 2008, although being obvious that they are closely linked among each other as well as Ly Yong Phat and the area was not classified as state private land until August 2012. The concessions encroach on private land and supposedly protected community forests and it has been reported that 31 villages, which are occupying a combined area of 4,500 hectares, are located within the concession area (Equitable Cambodia & IDI 2013; LICADHO 2009).

#### 5.4.4. APPROACH AND METHODOLOGY

This ex post Human Rights Impact Assessment (HRIA) conducted by Equitable Cambodia and the IDI is following the *Guiding Principles on Human Rights Impact Assessments of Trade and Investment Agreements*, which is a framework for states to assure their consistency with international human rights law. The HRIA should be

prepared by independent experts with a human rights background and also be transparent, inclusive and participatory regarding the concerns of affected communities as well as reference normative content of human rights obligations and include human rights indicators (De Schutter 2011a). This HRIA initiative resulted from the European Commission's notorious disregard to conduct an investigation of human rights impacts of the EBA initiative in Cambodia, despite requests from the European Parliament<sup>25</sup> and civil society<sup>26</sup>.

The assessors are describing a set of challenges and limitations they have faced during the process, such as the frequently mentioned lack of transparency and the fact that "ELCs, land seizures and the impunity of powerful individuals are sensitive topics in Cambodia, so requests for interviews with Cambodian government authorities were mostly either denied or ignored", as were "written requests for information from the companies involved". Still, "the authors have attempted to verify all facts presented through at least two sources and have generally succeeded in doing so" (Equitable Cambodia & IDI 2013, p.36).

Based on the HRIA Principles, the methodological steps followed in the *Bittersweet Harvest* assessment include screening, scoping, evidence gathering, analysis and conclusions and recommendations (De Schutter 2011a; Equitable Cambodia & IDI 2013). Given the lack of empirical studies on the impacts of forced evictions on the affected local population in the context of ELCs for sugar production in Cambodia, the HRIA examines "the process and outcomes of evictions caused by the development of the sugar industry, with a focus on the right to adequate food and the right to

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<sup>25</sup> The European Parliament has initiated a joint motion for a resolution on the situation in Cambodia (2012/2844(RSP)) on October 26, 2012, see [http://www.europarl.europa.eu/meetdocs/2009\\_2014/documents/dase/dv/1129\\_13\\_epres\\_cambodia\\_10oct12\\_/1129\\_13\\_epres\\_cambodia\\_10oct12\\_en.pdf](http://www.europarl.europa.eu/meetdocs/2009_2014/documents/dase/dv/1129_13_epres_cambodia_10oct12_/1129_13_epres_cambodia_10oct12_en.pdf) [Accessed January 9, 2014]

On top of that, it has issued a letter vicariously signed by 13 Members of the European Parliament to the Commissioner for Trade Karel de Gucht and High Representative and Vice President of the European Commission Catherine Ashton asking for "an immediate and inclusive investigation into [the] serious human rights abuses related to [ELCs] for agro-industrial development [and] depending on its findings, the suspension of the [GSP] with Cambodia. Available at: <http://www.boycottbloodsugar.net/wp-content/uploads/2013/03/Letter-on-situation-in-Cambodia-March-2013.pdf> [Accessed January 9, 2014]

<sup>26</sup> On June 26, 2012 a joint letter has been issued to the Commissioner for Trade Karel de Gucht and High Representative and Vice President of the European Commission Catherine Ashton by the civil society organizations LICADHO, APRODEV, HRTF, IDI, FIAN, Equitable Cambodia, FIDH and others to express their concerns about reported and proven violations of human rights in connection with agricultural goods being exported to the EU under the EBA initiative. Available at: <http://www.equitablecambodia.org/newsarchives/docs/joint%20Letter%20to%20Karel%20de%20Gucht%20%2806-26-2012%29.pdf> [Accessed January 11, 2014]

adequate housing” (Equitable Cambodia & IDI 2013, p.37). The fieldwork included household surveys for people who have lost land, interviews and group discussions with a total of 243 affected participants across three provinces to assess the situation before, during and after the evictions, hence capturing both the pre and post concessions situation (Equitable Cambodia & IDI 2013).

#### 5.4.5. FINDINGS OF THE HRIA

International law requires evictions to be carried out only in exceptional circumstances. According to the *Basic Principles and Guidelines on Development-Based Evictions and Displacement* (UN 2007a, para.21), any eviction must be “(a) authorized by law; (b) carried out in accordance with international human rights law; (c) undertaken solely for the purpose of promoting the general welfare; (d) reasonable and proportional; (e) regulated so as to ensure full and fair compensation and rehabilitation; and (f) carried out in accordance with the present guidelines”. Furthermore, “the protection provided by these procedural requirements applies to all vulnerable persons and affected groups, irrespective of whether they hold title to home and property under domestic law”. In this context, this section examines the situation before, during and after the evictions.

The Koh Kong ELCs were the only ones with publicly available concession agreements in this case study. Prior to the evictions, the MAFF has stated that the land in question is either legally owned by the local residents or kept for natural conservation. Nevertheless, Ly Yong Phat has induced that the villager’s land began to be cleared in May 2006, before any agreements regarding development of land were even signed or let alone any impact assessments concluded (Ngo & Chan 2010). The latter “would have foreseen the significant human and environmental costs involved and determined that evictions were not necessary” (Equitable Cambodia & IDI 2013, p.51). Smaller concessions would have been a solution to use unoccupied private state land for development of sugar plantations hence avoiding eviction and destruction of forests.

Various villagers from Koh Kong province interviewed over the course of the study have reported to been cheated on or intimidated and pushed into handing over their plots to the investing companies, if it did not happen by force anyway. Under false



pretenses, representatives of the sugar companies have taken advantage of their illiteracy and made them transfer their land to Ly Yong Phat's company. The ones who have refused and were led to believe that by thumbprinting a protest petition in January 2010 (Equitable Cambodia & IDI 2013) they were contesting the sugar companies actions and applying for legal ownership of their land. In fact this turned out to be a deception and only several months later their land has been cleared by company bulldozers. Affected residents from villages in Oddar Meanchey have also reported serious intimidation efforts by the authorities carried out on behalf of the concessionaires with the aim to make them accept compensation offers. These compensation agreements have foreseen to provide much smaller plots than the original land or land that was already in use by others (LICADHO 2009). No adequate eviction notice (UN 2007a) has been provided in any of the examined research areas and the majority of affected people have first been confronted with their potential dispossession when their land was actually cleared, in some cases with the participation of military force (Equitable Cambodia & IDI 2013).

The local population in all research areas has suffered from violent forced evictions for the purpose of clearing land for sugarcane plantations, which is in clear violation of national (Hel 2012; MLMUPC 2002) and international law (UN 1966; UN 2007a; UN 2007b). Across numerous villages in all three provinces, violent encroachment on peoples land and forced evictions have been well documented, with many local residents being wounded and even murdered as well as their land, livestock and other possessions being destroyed. Local authorities and sugar company representatives were supported by the Cambodian military or private paramilitary organizations hired to support the dispossession process and sustaining a climate of fear even after the evictions<sup>27</sup> (Equitable Cambodia & IDI 2013).

The assessment indicates that that timing was not considered at all when the evictions and land seizures have been carried out in all research areas, disregarding people being sick and women being pregnant and therefore contributing to food security and impoverishment of affected families (Equitable Cambodia & IDI 2013). To enable development of sugar plantations, at least two villages have been

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<sup>27</sup> A detailed description of all the particular events is hardly possible and would exceed the scope of this assessment. Further information about particular cases can be found in the *Bittersweet Harvest* report itself (Equitable Cambodia & IDI 2013) as well as in the reports published by Cambodian NGOs ADHOC (2012; 2013) and LICADHO (2009).

completely destroyed and many residents suffered substantial losses of their possessions, including rice and food reserves, grazing and forest land as well as crops and other resources required to sustain their livelihoods. Particularly concerned were forests, which “have been destroyed and access to remaining forest is denied or monitored by company security guards hired to protect the concessions. In addition, the quality of the remaining forests in all research sites has deteriorated since the establishment of the plantations” (Equitable Cambodia & IDI 2013, p.59). Moreover, the situation regarding access to water has substantially worsened since water resources have been polluted, blocked or fully incorporated into the agricultural plantations, hence excluding local communities from their access (Ngo & Chan 2010).

After the evictions, the living conditions and humanitarian situation of the families remain critical (LICADHO 2009). Symbolic for all the research areas, in O’Bat Moan village in Oddar Meanchey province alone, the land seizures have left more than 200 families homeless and food insecure after their homes and possessions have been destroyed. They were left without a possibility to secure their livelihood and without shelter, clothing or essential medical services as well as minimum components that would help them fulfill their right to food (Equitable Cambodia & IDI 2013). The UN Special Representative for human rights in Cambodia has noted in his report that “the clearing of rice fields and orchards belonging to villagers in Sre Ambel district has affected over 400 families; some have little or no land remaining for farming, and are surviving on last year’s rice harvest”. Further on, the ELCs have also “restricted the availability of grazing land for villagers’ livestock, and company security guards have reportedly seized or shot cattle straying into the concession area” (UN 2007b, p.12).

Compensation was in general not provided, despite substantial losses of land, property, housing and other resources required to provide the local resident’s livelihood. However, in cases where the affected people have received compensation, the losses tended to be undervalued (Ngo & Chan 2010) and the compensation process was overshadowed by threats, corruption and a lack of participation (Equitable Cambodia & IDI 2013). Relocated families are criticizing their new plots as significantly smaller than the land they have been evicted from, more difficult to farm, lacking access to water and not supporting the crop type cultivated prior to their eviction, therefore they are not able to produce enough food to be food secure. No shelter was provided for the families that have been resettled, the rudimentary

housing improvised by the victims does not provide adequate protection from harsh weather events and the households lack safe drinking water and sanitation. On top of that, the resettlement sites are remote, resulting in restricted and complicated access to education and health care compared to the pre-eviction situation (Equitable Cambodia & IDI 2013). Moreover, most resettlement sites have no land documentation, which contributes to a precarious situation regarding tenure security, the families have been denied a return to their previous land and people in all research areas report that their movement has been restricted by company staff and security guards.

#### 5.4.6. IMPACTS ON HUMAN RIGHTS

The sugarcane concessions have impacts on the Human Right to Work and Livelihood as stated in article 23 of the UDHR (UN 1948) and article 1 and article 6 of the ICESCR (UN 1966). The main sources of livelihoods before the sugarcane plantation included cash crop farming, wet-season rice farming, and raising cattle (Ngo & Chan 2010). After development of the ELCs, there are few choices for families with low education levels who are living in remote rural areas without any access to dynamic labor markets, namely either migration or staying and working on the sugar plantations. Low quality Small and low quality land, which is usually provided as compensation, is not enough for the majority of the affected families to secure the household's survival, forcing many dispossessed people to illegally migrate to the number one destination in this context, Thailand. Among the reasons cited are insufficient income opportunities, lack of employment on the sugar plantations, debt, lack of food and illness (Equitable Cambodia & IDI 2013).

Those who stay need to work on the sugar plantations, but there are many downsides for this employment (Ngo & Chan 2010), which is not steady and requires mostly seasonal workers, who are left without work during Cambodia's rainy season between June and October. In addition to that, the general lack of safety regulations and compliance with workplace health is particularly dangerous for pregnant women and children. Furthermore, the findings indicate that "livelihood impacts resulting from industrial sugarcane development have led to an overall process of proletarianization of affected small-holder farmers" and "this impact was conveyed by farmers who spoke about their loss of freedom" (Equitable Cambodia & IDI 2013,

p.68). Compared to farming independently, the former landowners are criticizing worse working conditions, exhausting schedules and low wages, making the income insufficient for securing the livelihood of the families.

The Human Right to Adequate Food (see Chapter: 3.2. The Right to Food) is closely linked to other human rights such as the right to health, the right to life or the right to adequate housing, namely when “a house lacks basic amenities, such as for cooking or storing food, the right to adequate food of its residents may be undermined” (OHCHR 2010, p.6). In each of the research areas increased food insecurity has been reported and in some cases the forced evictions have led severe hunger including starvation. Food stocks constitute important assets for households in Cambodia and provide a benchmark of insurance against various farming and household shocks, thus increasing food security. Prior to the ELCs, “households had the ability to grow and store paddy rice [typically used as stock], but the vast majority of households – 71, 65 and 100 percent in Koh Kong, Kampong Speu and Oddar Meanchey respectively – reported less food stocks post-concession” (Equitable Cambodia & IDI 2013, p.70).

The main observed food security coping strategy was based on a reliance on cheaper or less preferred nutrition sources. In Koh Kong and Kampong Speu districts, the affected families started to get into debt through necessary food purchases, borrowed food and relied on the support from relatives and friends and another coping strategy consisted simply in the reduction of the daily calories intake (Equitable Cambodia & IDI 2013). Granting of ELCs that are encroaching on land of local communities, who are depending on it or its natural resources for securing their livelihoods and food security as well as private companies seizing that land, is representing a severe violation of the state’s obligation to respect and protect the right to food. “The failure of the Cambodian government to restore people’s access to adequate food, including the resources [and] means to provide for themselves, constitutes a violation of the obligation to fulfill the right to food” (Equitable Cambodia & IDI 2013, p.70).

The human right to health, as recognized by article 12 of the ICESCR (UN 1966), is also affected when the affected people’s health status is surveyed in the three provinces. In all research areas, the majority of households reported poorer health conditions after the ELCs have interfered with their lives and in many cases the decline has been attributed to a lack of adequate food and a decreased household

income. Other reasons for poor health include migration, reduced access to water with repercussions on health issues compared to the pre-concessions situation. The assessors are concluding that “not only did the sugar concessions cause a general deterioration in health conditions, but they also affected people’s ability to pay for treatment”, forcing many to suffer from even greater hunger in order to cover the costs for treatment (Equitable Cambodia & IDI 2013, p.72).

Finally, the study points out that although both men and women have been adversely affected by the sugarcane concessions, the findings indicate that women are suffering disproportionately. This is true for a variety of reasons, including the fact that as plantation workers, women are paid less than men while before prior to the ELCs it was possible for them to work for themselves and harvest the same benefits as men. Furthermore, women find it more difficult to take care of their children after losing their land since working on the sugar plantations is associated with long travel distance and consequently longer periods of absence. On top of that, in all areas an increasing level of domestic violence has been reported by women (Equitable Cambodia & IDI 2013). The same disproportionate suffering applies to children as well, as adverse impacts of their living conditions, mental and physical health as well as access to education have been reported in all research areas. Another severe concern is related to the widely reported cases of child labor on sugar plantations, where children at the age of 8 years are regularly working alongside their family members (Equitable Cambodia & IDI 2013).

## 5.5. RECENT GOVERNMENT INITIATIVES

Similar cases to the one just described above can be observed frequently when looking closer at land concessions in Cambodia and the disastrous impacts they are having on the country’s population. Pressure from a variety of human rights actors and civil society organizations as well as growing resistance of the country’s population (Schneider 2011) has induced Cambodia’s Prime Minister Hun Sen to sign a moratorium on the granting of new ELCs in May 2012. Its target is to exclude inhabited areas from within the concession boundaries and therefore mitigate the ELCs encroachment on land of local residents by enforcing the so-called ‘leopard-

skin' policy. Directive 001 is another initiative that aims to review all previously granted concessions in order to evaluate their compliance with legal standards and it reaffirmed the cancellation of respective ELCs, which will be found to be in violation of relevant laws and regulations (ADHOC 2013).

Nevertheless, there exists a critical loophole within the moratorium. All ELCs that were claimed to be under consideration prior to the announcement of the moratorium don't fall within its scope, in reality resulting in the continuance of the ELCs granting practice. ADHOC (2013) has discovered that within eight months, until December 2012, as many as 33 ELCs have been granted since the promulgation of the moratorium on May 7, 2012, covering a total area of at least 208,805 hectares. The Cambodian government has not disclosed any information regarding the amount of ELCs being under consideration before the moratorium, which leads to the conclusion that its political will to mitigate the adverse impacts of land concessions is highly questionable.

There are also attempts to launch an accelerated land titling scheme that is based on land demarcation by youth volunteers as announced by the Prime Minister in June 2012. The volunteers, mostly students, would measure and demarcate the land of families living in rural areas across the country and therefore help to implement the new land titling program (Sperfeldt et al. 2012). Until December 2012 and according to official data, the volunteers have demarcated 333,275 plots with a total area of 433,987 hectares and enabled 71,220 land titles to be delivered (ADHOC 2013). Although it is yet too early to assess the recent efforts properly, some initial reports and finding raise several concerns regarding the implementation of this land titling scheme. At first, it seems that state institutions and local authorities being in charge for land titling and management have not been included into the decision making process of this scheme. The program does not include the situation of Cambodia's indigenous communities, local-level reports indicate abuses of people clearing land in order to appear as legitimate residents and authorities are trying to deliberately exclude NGOs and other third parties from attempts to monitor the implementation of the new titling program. However, probably most important seems the fact that the "disputed areas have been left outside the scheme. People who are most in need of land titles (to protect themselves against eviction threats) will therefore not receive them through this scheme" (ADHOC 2013, p.35).

## 5.6. OUTLOOK

The uncertainties regarding a long-term impact of these recent initiatives can not hide the fact that currently there seems to be a “momentum for an increasing convergence in opinion among the government, civil society, and the donors in regards to the limitation of the current approach to [ELCs]” (Sperfeldt et al. 2012, p.41). The main question remains though, namely in what way this momentum can be used to achieve a positive change in the contemporary policies with learning from past experiences as a first step. There are a variety of aspects that needs to be taken into consideration by policy-makers as well as other stakeholders that will be responsible for reshaping theory and practice of land concession policies.

First, the discourse around ELCs policies in Cambodia seems to mostly evolve around domestic factors, while the global dynamics that are essentially shaping the debates around global dynamics of large-scale investment in agriculture remain mostly unaddressed. Cambodia cannot be seen separately from these dynamics including their implications on domestic policies and needs to accordingly consider this global context. Second, the evidence from analyzing many years of developing ELCs makes it clear that while the expected benefits do not quite materialize, the adverse impacts of large-scale agricultural investment and production are affecting mostly those, who were envisaged as their primary beneficiaries. Hence it seems that the problems and opportunity costs of such operations have been severely underestimated, without even being able to fully appraise any possible long-term impacts of these policies. Third, Cambodia’s challenging and historically determined land reform process is closely interrelated with many of the current problems arising from ELCs. A vast majority of the country’s area is still technically considered state land, although it is in reality occupied by both large and small-scale landholders. In the context of increasing land disputes and landlessness, commercial pressure is pushing for further commodification of land and causing encroachment on state land, mainly by displacing whole villages and converting forest areas. Fourth and as also explained in this chapter, governance structures show various deficiencies that magnify the negative impacts of land concessions and it is therefore necessary to improve these the way the government is operating and implementing its policies. Fifth, not enough attention seems to be paid to alternative agriculture and rural development by the

government's strategic plans in order to reduce poverty, which can only be achieved if the needs of the rural poor are constantly being considered by a well balanced policy approach (Sperfeldt et al. 2012) if external influences are excluded from this argument.

Given the recent developments, the chances are high that land conflicts resulting from land grabbing in Cambodia will rather increase than decline since development of most concessions is just about to start (Subedi 2013). ELCs are already covering substantial shares of the country's arable land (LICADHO 2013; Sperfeldt et al. 2012) and the government will not be able to maintain the pace of granting new concessions for much longer as it was doing over the past few years. Additionally, potential new land deals may increasingly be concluded on protected areas or previously cancelled concessions and conversely, "conflicts related to land grabbing by private companies and powerful people are likely to go on, fueled by greed and impunity" (ADHOC 2013, p.37).

Besides reviewing development policies and strengthening the rule of law, is the widely accepted recognition that even despite recent efforts, Cambodia's development has in practice been unregulated (ADHOC 2012; ADHOC 2013; LICADHO 2009; Sperfeldt et al. 2012). Interests of the powerful were the main beneficiaries of land deals and policies at the expense of the rural poor and marginalized communities. It is important to shift the focus of development policies increasingly towards human rights, equity and inclusiveness. Furthermore the government's view of development, including its supportive framework of international donors, needs to be contested and critical voices allowed to express their concerns regarding the adverse impacts of development projects and strategies (Schneider 2011). ADHOC (2013, p.37) concludes that "in the absence of a comprehensive strategy aimed at addressing structural issues – exclusion, injustice and power abuse in relation to land and housing – temporary government initiatives will only patch up the problems for a short period of time".



## 6. CONCLUDING REMARKS

The main point of interest of this thesis (see chapter: 1.2. Research Questions) has been very clearly analyzed by the findings of the HRIA (Equitable Cambodia & IDI 2013) presented above. The goal was to assess the extent, to which land grabbing results in dispossession of the rural poor in Cambodia and violates their human rights such as the right to food, although large-scale land acquisitions were supposed to foster win-win scenarios for both investors and local populations alike. Furthermore, the contribution of the Cambodian government to the problem of tenure insecurity experienced by local communities in the context of land grabbing has also been discussed by pointing out the discrepancies between the theory of the Cambodian land policy and the effects it actually has on the ground. The assessment shows, how the policy of granting ELCs to private investors for agro-industrial development as well as the EBA agreement which is stimulating such investments in LDCs, are both result in devastating human rights impacts.

These adverse impacts have materialized in all three researched provinces before, during and after the forced evictions, which were carried in order to enable development of industrial sugar plantations in Cambodia. The evictions happened in clear violation of international law and no strategies have been developed whatsoever in order to minimize displacement. Since being required by national law (RGC 2005), this should have been done conducting consultations and impact assessment with the potentially affected local residents as well as by exploring alternatives. On top of that, compensation was generally not provided or was significantly undervalued despite the substantial losses of land, housing, property and livelihood resources the local population has suffered.

As a result, the post-eviction phase was and, as of late 2013, still is characterized by a vast deterioration of their economic and social rights, including the human rights to adequate food, housing, work, education and health. Homelessness and landlessness have increased as a direct consequence of the sugar industry's encroachment on land and livelihoods of Cambodia's rural poor. In all districts under examination the

majority of households have reported increasing struggles with food insecurity as well as loss of income-generating opportunities, caused by their dispossession and lost access to land as well as natural resources that have previously provided a safety net. To cope with this situation, many affected people have chosen to migrate to Thailand after losing their land to the concessionaires. The ones who chose to stay had no other options but to accept the employment opportunities offered on the sugar plantations and work as day laborers with inadequate compensation and irregular work possibilities. Moreover, the rights of marginalized populations such as women and indigenous communities have been disproportionately violated by the evictions.

The continuous commodification of land and natural resources in Cambodia by its ruling elite and its pervasive patronage network is closely interlinked with dispossession and disempowerment of the rural poor. Widespread land grabbing in the form of ELCs is being implemented by the country's ambiguous land policy and, in the case of Cambodia's sugar concessions, facilitated by the EU and its EBA arrangement. It has led to a more efficient control of land and its resources in rural areas while completely disregarding the violations of human rights and other adverse impacts. Through leasing vast areas of formerly small plots of smallholder agricultural and forest land ELCs to private investors, the land grabbing processes have created a new kind of landlessness and rural poverty. The findings of this thesis are suggesting that large-scale and non-transparent land leases in the form of land concessions in Cambodia are only "discursively justified as land policy measures" (Neef et al. 2013, p.1085), which are supporting rural development, restoring 'idle' or degraded land and creating employment opportunities in rural areas. In reality these benefits barely materialize and the human opportunity costs are immense.

The EBA initiative is one of the EU's flagship schemes for promoting development in the Global South, yet it does not have any safeguards to ensure if this development is actually carried out without violating human rights or harming the environment. The impact of this scheme on the Cambodian economy is undeniable, as it has led to twice as high export rates to the EU (European Commission 2013b) and created and secured many jobs for Cambodians in the country's predominant garment and footwear sectors. Nevertheless, this can neither morally nor legally justify how livelihoods of other population groups are being destroyed by the impacts of such

initiatives. The European Commission (2010, p.8) has recently announced that it wants to “step up a gear in embedding [and] carrying out impact assessments on all new trade initiatives with a potentially significant economic, social or environmental impact on [...] trading partners, including developing countries”. It also intends to “address all significant economic, social, human rights and environmental impacts, and build upon a wide consultation of relevant stakeholders” (European Commission 2012, p.4). Yet, these commitments are only applying to new trade initiatives, while it has become very clear that the existing ones, including the EBA scheme, are also “in urgent need of assessment and mitigation measures to address adverse human rights impacts” (Equitable Cambodia & IDI 2013, p.85). Relying on national governments to prevent negative effects of such policies, which facilitate private sector investments in the Global South, is a negligent practice that merely passes the responsibility of dealing with human rights obligations to host countries.

However, the experience from large-scale agricultural land transactions shows that such faith in states to elaborate and implement policies and processes, which truly take the needs of disempowered land users into consideration, is not warranted. This becomes especially obvious when these procedures are meant to benefit the rural poor and other marginalized groups. It was argued (see chapter: 3.4.3. Assessing the two Frameworks) that the two dominant approaches to land grabbing, namely the market-based and the rights-based approach, both fall critically short in this regard since the implementation of their proposed legal and procedural reforms relies solely on the host state’s will to do so. Land grabbing in the Global South and large land deals for agricultural production involving powerful investors in general are hence raising challenging normative issues, which are manifested in the third research question of this thesis. To what extent are the two dominant approaches to land grabbing suitable for creating a normative framework for the contemporary land rush, which would truly facilitate a win-win scenario for all stakeholders?

The liberal market-plus approach has been criticized for balancing specific human rights violations and a variety of other adverse impacts of land grabbing against the potential benefits for investors and the supposed development for host countries. Moreover, it even facilitates these rights violations by transforming the character of land transactions from a ‘threat’ to an ‘opportunity’ that needs to be maximized. This market-based approach has been taken by the WB and is being promoted in the form

of a code of conduct such as the RAI Principles, which are the materialization of recent efforts to promote win-win narratives and consequently legitimize land grabbing (see chapter: 4.3. Deconstructing the Win-Win Narratives).

The criticism of this advocacy of private sector investments in land revolves around the issues of accountability, the purely voluntary constraints on such deals and its simplistic narratives surrounding large-scale land acquisitions. Also the naïve believing in win-win scenarios of such agricultural investments for the mutual benefit of both investors as well as the local population selling or leasing their land has been regarded with skepticism. The response of the human rights community is centered on the Minimum Principles proposed by the Special Rapporteur on the Right to Food, which are grounded in international human rights law and in the normative and analytical framework of the human right to adequate food. This critical approach aims to ensure accountability in the land grabbing debate and emphasizes the need of access to land for the rural poor in order to sustain their livelihoods. De Schutter (2009, para.6) explicitly notes that his guidelines “should be seen as a minimum safeguard and not as a substitute for more operational guidelines”, although he later also criticizes the WB’s approach (De Schutter 2010c; De Schutter 2011b).

Despite the rights-based approach and De Schutter’s Minimum Principles being “repeatedly discussed in a number of international arenas and intergovernmental processes, their endorsement by states has been limited” (Claeys & Vanloqueren 2013, pp.195–196). This is understandable considering the high demands for both investors and host states upon the negotiation and implementation of land deals as well as their strong requirements regarding the human rights obligations of investors towards the affected population. The global land grab makes it necessary to particularly pay attention to extraterritorial human rights obligations, which may be “the missing link for human rights to acquire the conceptual robustness for upholding legal primacy over all other legal regimes such as trade and finance in times of deepening globalization” (Künnemann & Monsalve Suárez 2013, p.123). Another aspect that requires further investigation in this context, is the question of how to hold global non-state and multi-state actors such as transnational corporations and international financial institutions accountable under international law (Narula 2006).

The rights-based approach also has other controversial issues and its endorsement by civil society organizations has therefore also been limited (Claeys & Vanloqueren 2013; Künnemann & Monsalve Suárez 2013) since they fear that the Minimum Principles would in the end not block the land grabs but rather legitimize their practice (Borras & Franco 2010a). Despite De Schutter insisting on the fact that adherence of land deals to the principles not automatically justified land grabbing, social movements still perceived them as indirect encouragement of the private sector to increasingly invest in large-scale agricultural production. Considering the imbalanced power relations between the stakeholders of such investments, the stance taken on the right to food might seem naïve and maybe even strategically dangerous. The second controversial issue concerns the alternatives to transferring land rights and therefore the role contract farming schemes as well as other similar business models are supposed to play in this context. Civil society organizations “generally argued against the incorporation of small farmers into global supply chains, and alerted to the unfair repartition of risks and benefits that these schemes often imply” (Claeys & Vanloqueren 2013, p.198).

The Special Rapporteur and other right to food advocates have tried to make the right to food ‘operational’. Over the course of the past few years, it starts to increasingly be perceived as a benchmark and associated with a set of criteria for assessing global and national development and trade as well as financial and agricultural policies. This becomes evident in recent initiatives to undertake human rights impact assessment as it is intended by the European Commission and its GSPs. Simultaneously, there have been efforts made to induce a paradigm shift regarding the most suitable economic model, which would best serve the realization of human rights by applying the right to food framework to a variety of issues concerning agricultural and rural development. De Schutter has outlined such positions in his reports on access to land (De Schutter 2011d; De Schutter 2011b), international trade (De Schutter 2010a) and agroecology (De Schutter 2010b).

Borras and Franco (2010a) are taking land grabbing critique and De Schutter’s Minimum Principle debate to a more rudimentary level. They point out that land grabbing responses framed around codes of conduct do not question the fundamental causes of land grabbing such as “the existing industrial pattern of food and energy production and consumption controlled by [transnational corporations], while

engaging in the problematic notion of win-win scenarios” (Borras & Franco 2010a, p.521). Therefore, they should not even be considered as a pragmatic second-best approach since it would acknowledge the inevitability of land grabbing in the political-institutional context and the current economic climate. Prioritization of truly pro-poor outcomes requires application of a human rights-based approach, which takes the right to land and the right to food more seriously. Such a categorically pro-poor and human-rights framed land policy framework would consist of two key features, namely “protection or transfer of land-based wealth in favor of the poor and transfer of land-based political power (Borras & Franco 2010a, p.522). Borras’ and Franco’s (2010b, p.12) view of the code of conduct approach states that it is

“an uncritical belief in the basic beneficence of formal and legal measures such as clearer contracts, clearer and more secure property rights (usually interpreted as private and individual rights), transparent contracting, FPIC, and state-civil society partnership. Each of these, in itself, is not necessarily bad; each could have merit depending on a particular context. But none is inherently good in that none can guarantee truly pro-poor outcomes. In the absence of a clear framework and process that insists on prioritizing truly pro-poor outcomes, the weaknesses of these various elements are more likely to be reinforced when framed within a win-win, voluntary [code of conduct] as the response to the global land grab”.

Accordingly, they argue that such approaches are not fundamentally bad, but “their utility for generating truly pro-poor outcomes is rather limited or even dubious” (Toft 2013, p.1189).

Finally and most importantly, land grabbing should not be seen as inevitable. In order to be prevented, it requires concerted efforts that can gain traction through an “appropriate (re)alignment of political forces at the international, national, and local levels, mobilized within a human rights framework” (Borras & Franco 2010a, p.521). International financial institutions and investor home states must engage in an increasingly regulatory role since it does not seem adequate to rely on private investors to police themselves. Affected communities can be truly empowered by a reformed approach to land, which supports agrarian policies that are more in favor of small-scale farmers as well as facilitate and promote more equitable access to land. Civil society groups and social movements need to urge both domestic and global

actors to conduct key reforms, which might even be seen as an act of self-preservation (Narula 2013).

In the short term, land grabbing has already had tremendous adverse impacts on the human rights of the affected local communities in host countries. It is yet too early to properly assess the long term impacts of the contemporary land rush, but how investments in agricultural land will be handled in the future will have crucial implications for the transnational food and climate crisis. Moreover, it will also determine the extent in which agricultural land will be able to serve the increasingly global needs of the world's population. The ultimate predisposition requires to renounce the paradigms that obstruct us from resolving the set of problems we are facing as a global community, to change the way we think about land investments and to push for strategies that ensure rights-protecting and sustainable pro-poor outcomes as we move forward.





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## ABSTRACT (ENGLISH)

Land grabbing is continuously and increasingly threatening human rights of affected populations in host countries. In this thesis I analyze how it violates the rights of the rural poor in Cambodia with a special focus on the human right to food as well as the role of the Cambodian government in this context. Furthermore, I assess how the win-win narratives promoted by international financial institutions such as the World Bank are facilitating land grabbing and how it actually does not result in beneficial outcomes for all stakeholders. It is being argued that a liberal market-based approach is reflecting recent efforts to balance risks and human opportunity costs of large-scale land investments against potential opportunities and benefits for the private sector, hence legitimizing land grabbing. The human rights responses are criticizing this voluntary code of conduct approach, including its lack of accountability and neglected human rights obligations. The case of Cambodia then analyzes the policies facilitating processes of land grabbing and how they are being implemented on the ground. A Human Rights Impact Assessment of land concessions granted to Cambodia's sugar industry is proving the enormous adverse impacts land grabbing has on the human rights of the rural poor.

## ABSTRACT (DEUTSCH)

Land Grabbing bedroht kontinuierlich und in zunehmendem Ausmaß die Menschenrechte der betroffenen Bevölkerung in den Zielländern. In dieser Arbeit analysiere ich die Rechtsverletzungen der benachteiligten Landbevölkerung in Kambodscha mit besonderem Augenmerk auf das Menschenrecht auf Nahrung und die Rolle der kambodschanischen Regierung in diesem Kontext. Des Weiteren wird hier ausgewertet, inwiefern die Win-Win Narrative, die von internationalen Finanzinstitutionen wie der Weltbank vertreten werden, Land Grabbing ermöglichen und wie es in der Realität nicht in vorteilhaften Ergebnissen für alle Beteiligten resultiert. Es wird argumentiert, dass ein liberaler, Markt-zentrierter Zugang jüngste Bestrebungen reflektiert, die versuchen Land Grabbing zu legitimieren, indem sie die Risiken und humane Opportunitätskosten von großflächigen Landinvestitionen gegen potentielle Vorteile und Möglichkeiten für private Investoren aufwiegen. Auf Menschenrechten basierende Reaktionen kritisieren diesen freiwilligen Zugang von Verhaltensnormen inklusive des Mangels an Haftung und vernachlässigten Menschenrechtspflichten. Der Fall von Kambodscha analysiert schlussendlich jene Policies, welche Land Grabbing Prozesse ermöglichen und wie sie implementiert werden. Ein ‚Human Rights Impact Assessment‘ von Land-Konzessionen, die an die kambodschanische Zuckerindustrie vergeben wurden, illustriert die enormen negativen Auswirkungen von Land Grabbing auf die Menschenrechte der benachteiligten Landbevölkerung.

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### SPRACHEN

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Deutsch	Muttersprache
Polnisch	Zweite Muttersprache
Englisch	Ausgezeichnete Kenntnisse
Französisch	Gute Kenntnisse