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Struggles over property rights in the context of large-scale transnational land acquisitions. Using legal pluralism to re-politicize the debate.

Illustrated with case studies from Madagascar and Ghana

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Abstract

A key issue in the context of increasing large-scale land acquisitions in developing countries is how poor populations can prevent their land rights being encroached upon by more powerful actors. To date, the majority of policy recommendations have been directed towards the legal recognition and formalization of land rights in order to safeguard local and historical land rights holders, as well as towards the design and implementation of 'voluntary' guidelines or codes of conduct which should regulate large-scale investments in land, in order to contribute to positive development outcomes. We argue, however, that these types of recommendations tend to depoliticize the debate surrounding access to land and natural resources. This paper therefore aims to reintroduce a political dimension into the analysis, by proposing a framework based on the socio-institutional definition of land rights consistent with the legal pluralist approach. It acknowledges a multiplicity of land rights and rights holders, governed by the existence of several superimposed normative orders and social fields. It also implies that state and non-state normative orders interact to determine land management practices and, as a result, also the actual 'rules in use' that are followed and enforced locally.

We demonstrate the analytical potential of this theoretical framework using case studies from Ghana and Madagascar, two countries with different legal traditions and distinct levels of recognition of non-state tenure systems. Our tentative analysis reveals that what is fundamentally at stake are power relations and social struggles between actors in a variety of social fields. The key is therefore to strengthen the bargaining capacity of weaker actors within certain political arenas when it comes to land. Their capacity is not unrelated to the nature of formal national and international legal orders, since these co-shape and affect actors' bargaining position, but we should not expect a one-way relationship between formal rules and the effective enforcement of the rights of the poor. Related issues that will also play a critical role in the analysis are broader discursive struggles regarding the concept of 'idle land'; the role of small-scale family production versus large-scale entrepreneurial production in agricultural development; and the requirements of social and environmental sustainability.

Résumé

L'une des questions-clés dans le contexte des acquisitions foncières à grande échelle dans les pays en voie de développement est de savoir comment les populations pauvres peuvent défendre leurs droits sur la terre et les ressources naturelles contre des atteintes portées par des acteurs plus puissants qu'elles. Jusqu'à présent, la plupart des recommandations politiques sont axées sur la reconnaissance légale et la formalisation des droits fonciers afin de sécuriser les titulaires locaux et historiques de ces droits, ainsi que sur le développement et l'application de directives ou de codes de conduite 'volontaires' visant à réguler les investissements fonciers à grande échelle afin que ceux-ci contribuent à générer des résultats positifs en matière de développement. Nous avançons que ces types de recommandations tendent à dépolitiser le débat au sujet de l'accès à la terre et aux ressources naturelles. Par conséquent, le présent document vise à réintégrer cette dimension politique à l'analyse, en proposant un cadre basé sur une définition socio-institutionnelle des droits fonciers et une approche de pluralisme juridique. Celle-ci reconnaît l'existence d'une multiplicité de droits fonciers et de titulaires de ces droits, régis par l'existence de plusieurs ordres normatifs et champs sociaux. Elle implique également que les ordres normatifs étatiques et non étatiques interagissent pour déterminer les pratiques de gestion de la terre et des ressources naturelles, et par conséquent les 'règles réellement en vigueur' qui sont suivies et appliquées au niveau local.

Nous illustrons le potentiel analytique de ce cadre théorique dans des études de cas concernant le Ghana et Madagascar, deux pays aux traditions juridiques différentes, et qui connaissent différents niveaux de reconnaissance par l'état des systèmes fonciers non étatiques. Notre ébauche d'analyse révèle que ce qui est fondamentalement en jeu, ce sont les relations de pouvoir et les luttes sociales entre les acteurs, que ce soit au sein d'un même champ social ou entre différents champs sociaux. Il est par conséquent crucial de renforcer la capacité de négociation des acteurs les plus faibles dans les arènes politiques qui traitent des questions foncières. Cette capacité n'est pas sans lien avec la nature des ordres juridiques formels étatiques et internationaux, étant donné que ceux-ci contribuent à déterminer et affectent la position de négociation des acteurs, mais il ne faut pas s'attendre à ce que la relation entre ces droits formels et l'application réelle des droits des pauvres se fasse à sens unique. Des débats animés sur le concept de 'terre disponible', sur le rôle de la production familiale à petite échelle par opposition à la production entrepreuneuriale à grande échelle, ainsi que sur la durabilité environnementale, occupent également une place cruciale en ce qui concerne la capacité des pauvres à défendre leurs droits.

1. Introduction

The reduction of poverty and of hunger remain two important challenges for humanity. In the context of the current global ecological and food crises, the role of agricultural production in addressing these challenges is becoming increasingly pertinent. Despite our planet's rapid urbanization, poverty and hunger remain essentially rural phenomena, with 70% of the world's poorest populations living in the countryside (IFAD, 2010; Chen and Ravaillon, 2007; Mazoyer, 2001). Moreover, the majority of the rural poor depend on agriculture for their livelihoods (Borras, 2009; IFAD, 2010). Agrarian questions, particularly regarding access to and control of land and natural resources, thus remain key (Deininger, 2003; IFAD, 2008), since any reduction of the poor's historical rights to land would represent a further threat to their already precarious livelihoods. The combined world food, energy and environmental crises, combined with deepening commercial liberalization, will entail increased pressure on land and natural resources, however. These crises will not only redefine the context of agrarian issues, but also add new concerns about ecosystem services and ecological sustainability. At the same time, they will redefine the power relations, social structures and normative orders that govern political arenas surrounding land. One new, potentially threatening, development is what is commonly known as the global land grab, i.e. the recent wave of large-scale transnational land acquisitions (LSTLA) made in developing countries by foreign states and private investors, performed mainly with the intention of producing food or agrofuels for international markets.

This new phenomenon was first brought to international attention by non-governmental organization (NGO) GRAIN (GRAIN, 2008), and since then a heated and still largely unconclusive debate has ensued. Nevertheless, certain indications of an initial consensus can be identified. First, it has been pointed out that these land rights transfers are not new (Cotula 2011a; Huggins, 2011; Taylor and Bending, 2009; Deininger and Byerlee, 2011). Similar processes occurred during colonization and in relation to foreign-controlled mining. Nevertheless, certain features are specific to the current processes, including the phenomenon's rapid growth since the 2008 food prices peak, the involvement of a larger variety of actors (e.g. other Southern states, sovereign investment funds and international investors) and new types of investment (e.g. those related to agrofuel production or carbon sinks) (Taylor and Bending, 2009; Deininger and Byerlee, 2011). Second, the quantity of land involved seems to be significant, and is mainly located in Sub-Saharan Africa. Two global studies published in 2011 give an indication of the phenomenon's scale. A study by the International Land Coalition (ILC) describes the amount of affected land as 51-63 million ha, mainly in African countries (Cotula, 2011a). Similarly, on the basis of the data gathered by GRAIN, the World Bank (WB) identified 464 projects consisting of a total of 56.6 million ha (Deininger and Byerlee, 2011). Third, LSTLA are strongly affected by a variety of factors that transcend national borders, such as: policy choices that promote the utilization of agrofuels in the European Union and the USA; changing trends in international markets (e.g. increased global food demand, increased food prices, vertical integration in global value chains); international environmental commitments (e.g. carbon markets, payment for environmental services); economic gains; and financial speculation (Zoomers, 2010; CTFD-MAEE, 2010; Merlet and Jamart, 2009; Cotula, 2011a). Fourth, land sale is not necessarily implicated, as rights are often transferred through long-term leases (Merlet and Jamart, 2009; Cotula et al., 2009). Fifth, there is often little transparency in the arrangements signed, which may also explain a relative lack of reliable information on the actors involved as well as on the types and conditions of the investments. Finally, and most importantly in the context of this publication, LSTLA are always accompanied by significant transformations in the management, access and use of

land and other natural resources, especially water and forests. Acquisitions can therefore have a significant impact on poverty alleviation and development goals, as highlighted by several NGOs (GRAIN, 2008; Görgen et al., 2009), international organizations and research centers (De Schutter, 2009, 2010 and 2011; Cotula and Vermeulen, 2009).

Unsurprisingly, a variety of different approaches can be identified in relation to this issue. A first approach tends to focus on land tenure security. Cotula (2011a) and Alden Wily (2011) emphasize the diversity of local communities' historically held rights to land and natural resources, and highlight how their levels of security are affected by LSTLA. This approach therefore prioritizes legal issues and other issues of governance that protect or inhibit local populations' land rights at national and international levels, and it argues in particular for legal recognition of customary rights and customary institutions. A second approach also focusses on the rights of local populations, but links the concept of 'rights' to human rights in general rather than to the positive right to land alone. This approach is associated with the work of the UN Special Rapporteur on the Right to Food (De Schutter, 2010). Here, the argument is that LSTLA pose a threat to local populations' fundamental human rights, in particular their right to food, the labour rights of agricultural workers, the right to adequate housing and to water, and the right to self-determination (Huggins, 2011; De Schutter, 2010; Heri, 2011). A third approach, as employed by the WB, takes an economic standpoint, and centers its attention on the mobilization and efficient use of allegedly underexploited land resources (Deininger and Byerlee, 2011).

Policy recommendations made on the basis of these three perspectives tend to converge. Indeed, none of them actually rejects LSTLA, and most seem to imply that better regulation may lead to pro-poor outcomes. At national level, their recommendations propose legal reforms that formally recognize and protect individual and/or collective customary rights, as well as the strengthening and/or modification of institutions that manage land rights (e.g. improvement of local land administration, formal and legal recognition of customary rights and customary institutions) (Alden Wily, 2011; Cotula, 2011a). At international level, they promote the adoption of voluntary codes of conduct designed to protect the rights of local people, although they are not legally binding. De Schutter (2009, 2011) proposes a minimum set of 11 human rights principles that should be applied to LSTLA. The most influential (and controversial) set of principles, however, are the seven Principles for Responsible Agricultural Investment that Respect Rights, Livelihoods and Resources, outlined below, as proposed by the Food and Agriculture Organization (FAO), the IFAD, the United Nations Conference on Trade and Development (UNCTAD) and the WB:

1. Existing rights to land and associated natural resources are recognized and respected;
2. Investments do not jeopardize food security, but strengthen it;
3. Processes for accessing land and other resources, and for making the subsequent associated investments, are transparent, monitored, and ensure the accountability of all stakeholders, within the proper business, legal and regulatory environments;
4. All those materially affected are consulted, and agreements resulting from consultations are recorded and enforced;
5. Investors ensure that projects respect the rule of law, reflect industry best practice, are economically viable, and result in durable shared value;
6. Investments generate desirable social and distributional effects and do not increase vulnerability;
7. The environmental impact of a project is quantified, and measures are taken to en-

courage sustainable resource use while minimizing and mitigating the risk/magnitude of any negative impact (FAO et al., 2010)1.

These kinds of recommendation have been challenged by several parties. Civil society movements reject the suggestion that LSTLA could provide any positive outcomes whatsoever for the poor, and several farmers' organizations, NGOs, religious organizations, unions and other social movements signed the Dakar Appeal Against Land Grabbing during the World Social Forum held in Dakar in 2011 (AGTER, 2011). This stance is also supported by scholars who have adopted a political economy perspective from which to analyze the issue of LSTLA (Borras et al., 2011). Advocates of this approach consider LSTLA only one element of a broader global agricultural and food context, where the evolution of agrarian structures is the result of political processes embedded in power-laden social relations of production and property regimes. They argue that it is important to take into account the dynamics of accumulation as well as the processes of withdrawal and/or escalation of various actors' property rights. These dynamics, they argue, are the result of the changing formal and informal rules of the game, and of power structures in political arenas that are characterized by differing narratives and legitimating principles. They are very sceptical of the possibility of generating pro-poor outcomes from LSTLA, and argue that discussions of voluntary codes of conduct may become new narratives for justifying land deals, since they fail to address the political and social issues that explain and govern the new wave of LSTLA (Borras and Franco, 2011). Logically, they advocate a new focus on these issues, and thus a *re-politicization* of the debate.

This paper builds on the important foundations of the political economy perspective and aims to contribute to a conceptual-theoretical approach and related analytical tools for a re-politicized analysis of LSTLA. The aim of our contribution lies specifically within our attempt to infuse the political economy approach with insights from the legal pluralist perspective. Legal pluralism acknowledges the existence of multiple normative orders that govern land rights simultaneously, and draws attention to the power relations between social actors who will ultimately determine which elements of these orders (and the associated legitimatizing principles) are mobilized and enforced. The legal pluralist perspective avoids adopting too simplistic a 'legal-titling-registry approach', acknowledging the limitations of the state and of formal normative frameworks in regulating land rights practices. It also provides insightful analytical tools for the study of how the political battle around land rights is waged and how the bargaining capacity of the poor can be reinforced as they strive to have their rights recognized and protected.

The remainder of the paper is organized in four sections. In Section 2, we describe the concepts and theories that frame our study. Section 3 presents the implications of the conceptual framework we adopt for the analysis of LSTLA. Next, in Section 4, we demonstrate the potential of our framework using an analysis of LSTLA in Madagascar and Ghana. Finally, Section 5 presents our main conclusions along with some comments.

[1] A variation of these principles is promoted by the WB (Deininger and Byerlee, 2011).

2. LEGAL PLURALISM AND POLITICAL ARENAS SURROUNDING LAND AND NATURAL RESOURCES

2.1. Land rights as a bundle of rights

Evidently, land rights are a crucial aspect of LSTLA. There is no consensus, however, about how the emergence, securization and role of these rights should be understood. Two main approaches can be identified in the literature.

The first is inspired by mainstream economic theories, and emphasizes the need for clearly specified and - preferably - legally recognized rights, defined and enforced by a state that is assumed to be neutral and capable. The (ultimate) superiority of private individual ownership is usually recognized and the focus is on the land as a factor of production. This concept is related to modernization theories and what Platteau (2002) calls the Evolutionary Theory of Land Rights. According to this theory, land management systems follow a more or less universal transformation from open access or collective land rights to individually formalized rights, a transformation which accompanies the gradual growth of intensive market-based agricultural production. Given its popularity in mainstream policy circles, it has legitimated numerous interventions that aim at clarifying land rights through formal titling and registration initiatives (De Janvry et al., 2001; Platteau, 2002; Benjaminsen et al., 2008; Sjastaad and Cousins, 2008).

The second perspective is informed by socio-institutional approaches. Here, land is not treated solely as a factor of production; its social, cultural and environmental functions are acknowlegded and incorporated in the analysis. Neither are land rights defined and guaranteed exclusively by state. Instead, they are viewed as the result of dynamic and complex social processes taking place within state and non-state political arenas, where it is determined which rights will ultimately take precedence and be enforced. According to this perspective, land rights are not fixed legal entities, but flexible social constructions, specific to particular territorial contexts. They change and adapt according to the continuously evolving claims and struggles between social actors (Merlet, 2007; Lavigne-Delville and Chauveau, 1998; Le Roy, 1996b). Furthermore, 'land' itself is conceived as a socially structured space-time continuum, which contains multiple natural resources used at given moments by the interacting human beings as part of their interrelated livelihoods (Le Roy, 1996b). Several social actors - individuals or groups - can have rights over the same piece of land and its resources, and it is therefore useful to refer to 'bundles of rights' (Schlager and Ostrom, 1992; Le Roy, 1996b). These flexible and complex bundles of rights are often tied to particular ways of life, and also, therefore, to discursive and practical struggles and negotiations between conflicting worldviews and livelihood pathways.

The second perspective discussed above implies that land is characterized by a variety of superimposed, overlapping rights and rights holders. Several attempts have been made to model this complex reality (Schlager and Ostrom, 1992, Le Roy, 1996b, Barry and Meinzen-Dick, 2008). In this paper, we adopt the approach demonstrated by Le Roy (Le Roy, 1996a, 1996b) who advocates the dropping of the concept of 'propriété' in favour of the concept of 'patrimoine' (translated as 'common heritage' by Lavigne Delville (2000)). Le Roy argues that a territory encompasses a variety of resources which are the patrimony of a society as a whole, and which are the products of the past as well as a bequest to future generations (Barrière, 2006; Lavigne Delville, 2000; Plançon, 2009). The recognition of this collective dimension and the introduction of intergenerational responsibilities compels us to consider land management from a collective point of view. It challenges the idea that exclusive and freely alienable private rights can ever be held over land. Second, Le Roy's approach refers not only to the land itself,

but also to the diversity of ways in which the resources attached to a piece of land can be put to use. It therefore emphasizes the interaction between local actors and the multiple resources available in one territory, as well as the social interaction between the actors themselves in relation to their use of those resources.

2.2. From 'bundle of rights' to legal pluralism

2.2.1. The pillars of legal pluralism

Both formal and informal institutions play a role in the social construction and enforcement of land rights (Meinzen-Dick and Pradhan, 2002). The World Resources Institute (WRI) states that property rights define what rights holders can do with resources and that "in practice, property rights in many developing countries reflect a diversity of tenure regimes" (WRI, 2005:60). We argue that legal pluralism is an appropriate approach to tackling this diversity of tenure regimes and the diversity of normative orders that govern land rights. This approach has been explicitly adopted by several authors, mainly in the African context (e.g. Meinzen-Dick and Pradhan, 2002; Lavigne Delville, 2000; Muttenzer, 2010; Le Roy, 1996b). However, a closer reading of these studies also reveals discrepancies in the various understandings and applications of legal pluralism.

Generally, legal pluralism is defined as the presence of several legal orders in one social space (Griffiths, 1986). According to F. and K. von Benda-Beckmann (2006), the concept was first introduced by legal anthropologists studying legal systems in contexts of decolonization, in order to deal with the mutual existence of several legal systems (former colonial law, customary law, etc.).These initial studies generated new debate on "whether the term 'law' should by definition be tied to the state, or whether it would also include normative structures of other political or social units" (ibid, 2006:11). They also led to several versions of legal pluralism, which could be distinguished from one another according to their diverging definitions of law (compare e.g. Tamanaha (2000), Barrière (2006) and F. and K. von Benda-Beckmann (2006)). This fine-tuned debate, however, is of minor importance for our purposes here, since we adopt legal pluralism as an analytical approach to studying situations where several normative orders co-exist (F. and K von Benda-Beckmann, 2006), and are less interested in the theory of legal or normative orders. The following features are key to this analytical approach.

One central point is the rejection of legal centralism, which affirms that "law is and should be the law of the state, uniform for all persons, exclusive of all other law, and administered by a single set of state institutions" (Griffiths, 1986:3). This means that, within a legal pluralist framework, law is not based on the sovereign power of the nation states alone. There are also other ways in which to create and impose norms than via state coercive force or formal legal practices (Berman, 2007). This implies that the state's normative order is not exclusive in the management of land rights, but that "[c]ustomary regimes based on local traditions, institutions, and power structures such as chiefdoms and family lineages may exist alongside the formal legal tenure system sanctioned by the state" (WRI, 2005:60). Several systems therefore operate simultaneously in the same space-time continuum and interact with each other in complex ways in the definition and enforcement of land rights (Meinzen-Dick and Pradhan, 2002; Bastiaensen et al, 2006). It does not imply, however, that this diversity of systems represents fully specified and coherent systems of rules. After all, not even state-sanctioned legal systems do. Instead, they function as a repertoire of discursive principles and rules that are mobilized by actors attempting to promote their interests in specific circumstances, i.e. to legitimate and socially enforce their claims to property.

We also support the idea that behind the existence of a diversity of normative orders lies a diversity of social spaces (Moore, 1978). Each of these social spaces2 has the potential to produce and enforce norms. They overlap, influence each other and are in turn influenced by the broader social context in which they are embedded. This process is best described by Moore, when she writes that they are "simultaneously set in a larger social matrix which can, and does, affect and invade [them]" (1978:55-56). What is more, no pre-established hierarchy orders these social spaces. In particular, there is no state superiority. Most importantly, there are continuous discursive and practical struggles among the social actors belonging to these social spaces, both within and between these spaces, including the state. These struggles play a key role in determining which rules will take precedence (Merry, 1988; Anders, 2003; Berman, 2007), including within the realm of the state. Thus, the key insight of legal pluralism can be summarized as the "recognition that multiple normative orders exist [and the need for] a focus on the dialectical interaction between and among these normative orders" (Berman, 2007:1171). It is also important to underline that this multiplicity of normative orders and social spaces often relate to a variety of overlapping social groups (Le Roy, 1993 and 2003; Younes, 2003; Eberhard, 2003). As indicated by Le Roy (2003), overlapping social spaces usually occur because of the fact that individuals often have multiple identities: they belong to several social groups at the same time, and refer to the different normative orders of these groups.

2.2.2. The relevance of legal pluralism in international arenas

LSTLA almost inevitably have a supra-national dimension, which raises the question of how relevant a legal pluralist approach is in international arenas. Many scholars maintain that it certainly is relevant, either explicitly (Berman, 2007; Anders, 2003; Snyder, 2006; Wanitzek and Woodman, 2004) or implicitly (Plançon, 2009; Szablowski, 2007; Barrière, 2006).

The adoption of a legal pluralist approach, which emphasizes individuals' multiple identities, is clearly valid when dealing with issues that cross national borders. Indeed, people's belonging to different social groups has take on an increasingly transnational dimension, due to migration, worldwide communication capacities and global economic interaction (Berman, 2007; Long, 2001b). Besides increasingly international identities, it is also clear that the international normative orders of certain social spaces have an influence on the national orders of other social groups (and vice versa)3. This is illustrated by Barrière's analysis (2006) of an African environmental law. He distinguishes two types of normative order: the first are internal to local social groups (he refers here to local norms and rules that govern natural resource management); the second are external to them (he refers here to all national norms and rules, as well as international commitments that play a role in natural resource management). Barrière's argument is interesting in its relation to the link between social spaces and individuals' multiple identities. For instance, we cannot say that a poor farmer from Madagascar belongs to the same social group as private international investors. However, their social spaces do actually overlap when the international investment in question directly or indirectly affects this farmer (and vice versa). The concept of a connection between global and local levels is defended by several authors. For instance, in their study on the importance of patron-client relationships in developing countries, Leonard et al. (2010) claim that patronage is also a current international phenomenon. More precisely, they state that patron-client relations characterize the relationships between the governments of poor and rich countries. Similarly, international

[2] These social spaces are called 'semi-autonomous social fields' by Moore (1978), 'societies' by Vanderlinden (2003) or 'normative communities' by Berman (2007)
[3] For a discussion of social fields and geographical levels, see Anders (2003)

NGOs also tend to act locally as the new patrons for local populations. More generally, Long (2001b) argues that a two-way relationship exists between the global and the local, where global structural changes influence and are influenced by local changes. Long takes this rationale even further when he terms this process 'relocalization', which means "the 'reinvention' or creation of new local social forms that emerge as an integral part of the process of globalization" (ibid, 2001b:223).

As far as issues related to access to land and natural resources are concerned, the concept discussed above implies that land rights are no longer defined only at local level or even at national level. Instead, depending on the multiple identities of rights holders and claimants, social spaces from several geographical levels can participate in the definition and enforcement of land rights, in a process where the global becomes part of the local, and vice versa.

3. The implications of adopting legal pluralism for the analysis of LSTLA

3.1. Challenging the concept of geographical spaces and adopting the concept of cross-geographical social spaces

Initially, an automatic relation appears to exist between land rights management and geographical scale. Indeed, a piece of land is a physical place where several resources can be found. Thus, rights to certain resources can be considered specific to the geographical space to which they belong. Additionally, each geographical space can be considered part of another, larger geographical space (e.g. the community is part of the municipality, which is part of the country, which is part of the planet). Such a representation easily leads to the idea that there is a direct connection between geographical spaces and levels of governance. In line with Ostrom's design principles (Ostrom, 1990) for natural resource management, this suggests that in order to achieve adequate resource management, there is a need to combine a degree of local autonomy with the adequate design of supralocal norm definition and enforcement between various nested, hierarchical scales. In the context of African land right management, Lavigne Delville and Chauveau (1998) argue for the need to acknowledge multi-level arbitration institutions, to clarify their respective mandates and to establish clear appeal procedures between scales of land management.

We do not deny the importance of geographical scales or the relevance of a discussion of levels of governance. However, we believe that ascribing too much importance to geographical scales may confine discussion to too rigid a hierarchical vision, in which the superposition of geographical spaces corresponds to a superposition of hierarchical normative orders and governance institutions. In this vision, the normative orders of the lower levels must be encompassed within the normative orders of the higher levels, and the governance institutions of the lower levels must respond to the governance institutions of the higher levels. This can be directly associated with the legal centralist approach to law, where no normative orders can be superior to the law of the state and where local customary rights should be recognised and validated by the state legal system in compliance with international law.

Adopting legal pluralism entails a departure from this geographic approach towards a more social approach (e.g. an approach based on the existence of several social and non-hierarchical spaces, operating and interacting on different geographical scales, and their interactive attempts to mainten and promote their normative orders). A legal pluralist approach proposes a polycentric perspective of (often cross-cutting translocal) social spaces and not simple, superimposed geographical spaces for the study of the norms related to natural resources and the struggles between social actors as they design and enforce these norms[4]. This does not imply that geographical levels are to be excluded from the scope of analysis. Indeed, geographical levels have to be taken into consideration, not as hierarchical levels for regulation generation and enforcement, but as spaces in which social relations define which rules are considered legitimate and/or legal (Plançon, 2009; Szablowski, 2007; Barrière, 2006). Therefore, the selection of the rules that will be respected or enforced does not depend on a supposed hierarchical ranking of normative orders but on power relations and social struggles taking place at all levels, ranging from the local to the international. Here, the legal pluralist approach can be related to Hart's 'critical ethnography' approach (2006). Hart argues for the adoption of

[4] Recently, Ostrom has also argued that there is a need for more complex, polycentric governance systems, instead of the simple hierarchies of nested institutions which have come to be associated with her design principles (Ostrom & Cox, 2011).

"critical conceptions of spatiality" (ibid, 2006:996) where boundaries between spaces of study are not physical but socially constructed, and where the "focus is on how [objects, events, places or identities] are constituted in relation to one another through power-laden practices in the multiple interconnected arenas of everyday life" (ibid, 2006:996).

3.2. Reconceptualizing the role of the state

3.2.1. What is the state's role in a legal pluralist framework?

Legal pluralist scholars never consider the state a meaningless actor. On the contrary - they are usually one of the principal subjects of study in research related to the legal pluralist approach (e.g. Berman, 2007; Bastiaensen et al., 2006). However, adopting legal pluralism entails an acknowledgement that the state is only one of the many forms of order that exist in society, and that the alleged superiority of the state as a social actor (as well as the superiority of state law in relation to other normative orders) is to be contested. For instance, Merry (1988) and Younes (2003) argue that what matters when examining states in legal pluralist frameworks is a sufficient analysis of the way in which the state's normative order actually relates to other normative orders.

These perspectives can be related to Migdal's discussion of the 'state in society'. Migdal (2001) argues that "[s]tates are no different from any other formal organization or informal social grouping" (ibid., 2001:12). He also describes them as "field[s] of power marked by the use and threat of violence and shaped by (1) the image of a coherent, controlling organization in a territory, which is a representation of the people bounded by that territory, and (2) the actual practices of its multiple parts" (ibid., 2001:15-16). This would imply that states are not homogeneous or coherent entities. Instead, they are composed of a multiplicity of actors, and are characterized by internal social struggles between these actors, which also affect the way in which state law is actually interpreted and enforced by given state actors. Neither are states independent from other forms of organization or from social actors outside of the state. Migdal argues that the power of the state (and of certain actors inside the state, in particular) compared with other organizational forms will depend on both the 'image' that the national state presents and the practices of the state actors. These 'images' and practices may overlap or be contradictory, depending on: the state's social relations and existing power structures; relations and power structures between the state and other social actors; and especially the interests of the state's most powerful actors.

3.2.2. The importance of the state's recognition of non-state normative orders

The acknowledgement that a multiplicity of (sometimes contradictory) norms and rules exist concerning land rights, due to the existence of a multiplicity of social spaces, necessitates that an important issue of the theoretical debate be the extent and modalities of state recognition of non-state normative orders. This has long been the subject of study, particularly in an African context, where some authors argue for the decentralization of land management and the recognition of locally defined rights and management entities as the best option for securing land rights (Le Roy et al., 1996; Lavigne Delville, 1998). Several African countries have also attempted to adopt this decentralization perspective in their policies and legal frameworks (Lavigne Delville, 2000; Alden Wily, 2003).

It is important not only to understand the extent to which the state recognizes other normative orders governing land rights management, but also to understand how this (non-)recognition affects the ability of local populations to defend their rights in conflict with

more powerful external actors. In developing countries, we contend that the relation between state law and other normative orders depends on two important factors: the country's legal traditions, and their colonial history.

For many scholars, one important legacy of colonization is that it created a dualistic tenure system where statutory and customary regimes coexisted, the former being a result of the imposition of a colonial state and the latter relating to evolving pre-colonial tenure regimes (Lavigne Delville, 2000; Alden Wily, 2003; Cousins, 2002; Knight (2010)). In line with our theoretical approach, we challenge this argument. As demonstrated above, considering land rights a bundle of rights implies recognizing the existence of a multiplicity of tenure regimes. Thus, the pluralistic nature of tenure regimes can be said to be a reality in any context worldwide.

Nevertheless, it is clear that colonial policies have played a key role in the evolution of pre-colonial authorities' position and power in managing land rights. Here, a difference can be discerned between the French rationale of assimilation and the English principle of indirect rule. Cousins (2002) explains that in Anglophone African territories, the colonial state's policy was to preserve traditional chiefs' authority, particularly in relation to land rights management. French colonial policies, on the other hand, aimed at imposing a central, hierarchical authority based on state institutions, which required the undermining of traditional authorities. Obviously, this does not mean that the English colonial process caused no changes in the way that traditional authorities exercised their power, nor that the French colonial process led to the disappearance of traditional authorities (Cousins, ibid.). Nevertheless, these differences had important implications for the ability of traditional chiefs to maintain control over natural resources. They also go some way to explaining traditional authorities' current power roles in relation to other actors, especially state institutions and individuals. In the context of LSTLA, these differences will have consequences in terms of which local actors (state institutions, traditional chiefs recognized by the statutory tenure system or rights holders recognized by the customary system) are considered legitimate in the transferral of land rights to international investors.

Legal traditions also determine the state's approach to land rights and the concept of 'property'. In this respect, there is a crucial difference between the English legal tradition (i.e. common law and equity systems) and the Roman-Germanic tradition (i.e. civil law systems)[5]. This paper will not enter into the details of these differences, but we consider it relevant to briefly outline those aspects that may influence LSTLA. To begin with, it is important to note that the existence of private, exclusive and freely alienable rights over one piece of land is recognized in both the French and British systems (Galey, 2004). However, this apparent similarity conceals very different conceptual approaches. It also leads to misunderstandings when talking about 'property rights' in English or 'propriété'[6] in French (Galey, 2004; David and Jauffret-Spinosi, 1988; Plançon, 2009).

These differences are discussed eloquently by Galey (2004, 2007), who explains that, in the French system, the notion of 'propriété' refers to a direct link between human beings and one specific good (in this case, a piece of land). More precisely, 'propriété' is a right held over a good and free of any obligations. It is linked to the capacity to freely use ('usus'), enjoy the benefits of ('fructus') and dispose of ('abusus') the good. According to this approach, all of the 'propriétaires' hold an exclusive right to a piece of land and have equivalent status. This right

[5] We acknowledge the existence and importance of other legal traditions (e.g Islamic, Indian, Chinese law). However, an analysis of all of these systems is unfortunately beyond the scope of this paper.
[6] The French word is used to emphasize the difficulty of finding an adequate translation in other languages; every possible translation (ownership, freehold, property rights) seems inadequate because of its historical and conceptual baggage.

can be divided (e.g. the rights to use the property can be transferred to another person), which allows for the recognition of other rights holders but only within the limits of the law (David and Jauffret-Spinosi, 1988). Here, holding exclusive and freely alienable rights is defined as 'absolute ownership', and this is considered an ideal7.

The approach of the English system is not based on the links between human beings and one good, but on the social relations between human beings. In this case, 'property rights' do not correspond to rights over one specific piece of land, but to various temporal interests related to it. Moreover, these interests are tied to their relations and obligations to other social actors. This concept has evolved directly from the English feudal system, where "every land is ruled by a lord to whom reverence and services are given in return for a legitimate and guaranteed tenure" (Galey, 2004:689, authors' translation). We can deduce from Galey's work that this kind of approach allows for the recognition of several rights holders over one piece of land in a much broader way than the division of the right of 'propriété' that is possible in the French system. A good illustration of this is the concept of a trust in the English system. Very broadly, a trust provides that land is managed by one or more people (trustees) in the interests of others ('cestuis qui trust'). David and Jauffret-Spinosi (1988) explain that this concept cannot easily be understood in a civil law framework, because the right held by a trustee is quite similar to the right of 'propriété' (e.g. the 'usus', 'fructus' and 'abusus' features are present). The only limitations on this right are moral. Such limitations can be enforced, however, at least to a certain extent, by referring to the equity aspect of the English legal framework. As a result, through the trust, the English system differentiates between 'legal ownership', related to the trustee's rights, and 'equitable ownership', linked to the 'cestuis qui trust' rights. Such a differentiation is inconceivable in the French system.

3.3. Reconceptualizing the role of international law

Relevant international law can be divided into two key domains: economic arenas and human rights regulations (Delmas-Marty, 1998; Chemiller-Gendreau, 2009). The are significant differences between the two as regards the actors that are subject to the regulations (e.g. individuals, states), and their levels of enforceability. More precisely, the human rights domain is characterized by attempts to design universalized norms and rules (essentially through international conventions and treaties), but also by having little capacity for enforcement. The economic domain, on the other hand, comprises a larger variety of normative orders (national investment codes, bilateral investment treaties, investment contracts, free trade agreements) that are often applicable to a limited number of actors but with a higher level of enforceability8.

The relevance of international law analysis in the context of LSTLA lies in two points. First, international law - essentially human rights - is often used as a lens through which the fairness of LSTLA can be assessed (e.g. De Schutter, 2009, 2010 and 2011). Second, some authors argue that a binding international framework is both possible and necessary for regulating these processes in order to protect and benefit the majority, with a special need to make international human rights laws compulsory, even if this means challenging the principle of state sovereignty (Chemiller-Gendreau, 2009; CTFD-MAEE, 2010; Delmas-Marty, 1998).

Following our legal pluralist framework, we are less optimistic about the possibility of such legal engineering from within the international space. Our approach implies that it is the social relations and struggles between social actors in a context of several, co-existing normative orders that matter. International law is just one of the several normative orders that have an

[7] For a description and critique of the concept of property in civil law tradition see Comby (1997, 2002)
[8] For instance, through international arbitration entities such as the World Bank's Centre for Settlement of Investment Disputes

influence on the strategies of social actors. Of course, this does not mean that international law does not matter, or does not merit our attention. However, international law does not necessarily outweigh any other normative order. Its influence in specific contexts will depend on the social struggles within and between different social spaces. Therefore, to understand its real impact on LSTLA we inevitably have to examine empirically its role in the specific social struggles surrounding land rights.

3.4. Re-politicizing the debate

3.4.1 Local practices as a result of social relations

Legal pluralism acknowledges the existence of several social spaces with competing and often contradictory normative orders. However, huge differences can exist between this multiplicity of normative orders and the practices that are actually implemented in local contexts. Indeed, local practices, i.e. the rules and norms that play an active role in governing people's behaviour in a specific geographical space, are constructed and enforced locally as the result of the power-laden mediation between different social fields and their associated norms and rules in particular arenas. A geographical space can therefore be said to be influenced by a kind of evolving mix of norms and rules that potentially come from all of normative orders that influence the relationships taking place there. They may be very different from one context to the next, and evolve and change at different paces[9]. By drawing attention to these social struggles, which shape local practices, legal pluralism places the political dimension at the centre of the analysis.

Plançon (2009), Szablowski (2007) and Barrière (2006) argue that the local level encompasses the practices that govern social life, whereas the national and international levels encompass the law as it is written in books and codes, and the so-called formal 'legality'. Most importantly, they suggest that there is always a struggle in the local arenas to define which norms will be legitimate in the concrete management of natural resources. Plançon (2009) claims that legitimacy is space and context specific, which means that a rule will only be considered legitimate when a particular set of social processes occurs in a particular geographical space-time environment, and in a particular context where national and global scales are always present. In the context of LSTLA, this point is acknowledged by the French Ministry of Foreign and European Affairs' Technical Committee for Land Tenure and Development (CTFD-MAEE) (2010), which stresses that local populations often have legitimate but not legally recognized rights. As a consequence, land often comes to be considered part of the public domain, thus giving the state a legal right to transfer land rights, though such transfers may be fiercely contested at the local level.

3.4.2 The blackboxing process

A legal pluralist approach invites us to focus on the factors that condition the bargaining and conflicts surrounding land rights.This necessitates an understanding of evolving social relations and power structures, and of the mechanisms that strengthen or weaken the positions of weaker actors in the face of changing rules and/or their relative enforcement.

In the LSTLA literature, one of these mechanisms appears to be the discursive attempts of social actors to define what is considered natural, important, fair, legal or legitimate.

[9] This can be related to the concept of 'rules in use' which is employed within the Institutional Analysis and Development Framework (McGinnis, 2011) in the context of natural resources management, or to the concept of 'practical norms' introduced by Olivier de Sardan (2008) in his analysis of African states and African political elites' behaviour.

For instance, at the international conference on global land grabbing organised by the LDPI at the University of Sussex in 2011, several scholars explicitly dealt with the mechanisms that are used by governments and investors to naturalize LSTLA and the ensuing dispossession of the poor's land rights. In relation to a case of large-scale land acquisition in Laos by a Vietnamese corporation, Kenney-Lazar (2011) argues that besides repressive measures, the dispossession of subsistence farmers was also achieved through hegemonic 'ideological force', conditioned by the power differentials between local populations, the Lao govenment and the Vietnamese firm. Understanding what Long (2001a) termed 'blackboxing', i.e. the ability of certain social actors to present and gain (apparent) acceptance of certain views as if they were 'natural' and undisputed, thereby shaping 'reality' to their interests in order to enlist others in their own projects, should be central to the analysis. Adopting a legal pluralist approach brings us closer to unravelling these blackboxing processes, which are determined partly by the socio-cultural conditioning of the actors' human territories (the rules and norms characteristic of several social spaces) and partly by the actors' social relations and relative power.

More precisely, the literature indicates two main topics around which this process of blackboxing takes place. Firstly, there is the obvious discursive debate over the concept of available ('virgin' or 'idle') land that justifies LSTLA. Most of the work by the WB is constructed around the argument that there is still a huge quantity (445 million ha) of land available worldwide that could be transformed in agricultural areas (Deininger and Byerlee, 2011). These authors refer to the Agro-Ecological Zoning method, on the basis of which they define 'available land' as land that is non-forested, non cultivated and with a population density of less than 25 inhabitants per km². However, despite using the term 'available', the authors recognize that this land is not free of existing claims or rights. It is this contradiction between social claims over land resources and a technocratic argument about supposedly productive use which lies at the centre of the debate :

> *"[C]oncepts such as 'idle' land often reflect an assessment of the productivity rather than existence of resource uses: these terms are often applied not to unoccupied lands, but to lands used in ways that are not perceived as 'productive' by governments. Perceptions about productivity may not necessarily be backed by economic evidence […]. Low-productivity uses may still play a crucial role in local livelihood and food security strategies." (Cotula et al., 2009:62)*

Secondly, and more importantly, there are a number of discursive conflicts within LSTLA processes in relation to contrasting visions of agricultural development and the desired evolution of agrarian structures. Indeed, "[t]he land rush draws attention to a wider question: what is the future of agricultural production in the developing world […], and what is the role of the smallholder farmer in the future?" (Huggins, 2011:47). This is actually a conflict between two visions of the agriculture-development nexus.

The first of these visions is based on the combined ideas that development will come from private investment (whether national or foreign) because of its positive effect on growth and employment; that so-called traditional agricultural systems are (and will remain) under-productive; and that the development of rural areas should therefore be based on a transition towards a capitalist entrepreneurial model of production, which usually takes the form of a large-scale, chemical, mechanized, export-oriented production system. A recent survey of private financial sector actors, active in agriculture and/or large-scale project investments,

clearly reflects the narrative of a multiplier effect on employment and the ability to introduce "a new dynamism in the local economy" (HighQuestPartners, 2010:21). The second vision defends family-based agricultural systems as a basis for agricultural development and emphasizes food safety and the benefits of autonomy and self-employment. This approach is often supported by civil society movements, such as the Via Campesina, for example in their participation in the Dakar Appeal Against Land Grabbing (AGTER, 2011). Rosset (2011) and De Schutter (2010 and 2011) also argue that promoting and developing small-scale family-based agriculture is the best way of achieving strong and equitable development and of combating poverty and food insecurity. As a result, they argue for policies that promote family farming and agrarian reforms, and oppose the large-scale, export-oriented agricultural production models related to LSTLA10.

3.4.3. Adopting a socio-institutional approach to poverty

From the discussion above, it is clear that we need to focus our analysis of LSTLA on the bargaining processes that take place between social actors, recognizing both their embeddedness in particular socio-institutional contexts and the distribution of social power. The results of such bargaining processes are rarely balanced, and there are always winners and losers. The task that arises is therefore to understand who the losers are and why they lose. We believe that an adoption of legal pluralism requires an acknowledgement that the processes we are analyzing are quintessentially political-relational issues, i.e. the result of socio-institutional processes in which, as stated by Bastiaensen et al. (2005:981): "the poor are those human beings who, for one reason or another, almost systematically end up at the losing end of the multiple bargains that are struck around available resources and opportunities". In the context of our study, local households at risk of being dispossessed of their rights through LSTLA are the ones at the 'losing end' we wish to examine. This approach allows us to negotiate the complexity of the processes that might allow the poor to stop being poor. For the poor to end up at the 'winning end', it appears necessary to level the playing field upon which these bargaining processes take place. This is rather difficult in practice, however, because it requires significant changes in both the power structures and the socio-institutional contexts themselves (e.g. the existing normative orders and the blackboxing processes that can weaken the poor's position).

[10] Evidently, several intermediate positions can also be found in the literature. One particularly relevant and (discursively) interesting example is taken up by WB scholars Deininger and Byerlee (2011). They recognize the superiority of family farming and also argue that it should be the mainstay of poverty reduction and agricultural growth. Yet this does not preclude their arguing that LSTLA may create benefits for local populations, provided that adequate partnerships between small- and large-scale production groups are constructed (no concrete examples are given, however). According to this model, large-scale production projects should exploit their ability to create employment, and proper land compensation should be given to people who have lost their rights.

4. Putting the model to work: study of cases from Ghana and Madagascar

The theoretical discussion above has highlighted several key concerns for the analysis of our cases of international land rights transfers. First, we will approach land rights using the concept of bundle of rights. Then, we will adopt a legal pluralist perspective, especially trying to understand the power relations and social struggles within and between social spaces, as well as the factors that influence the bargaining positions of the social actors participating in these social struggles. Finally, we will widen the scope of the study to include not only local but also international arenas.

4.1. The context of land rights in Ghana and Madagascar

The literature indicates that Madagascar and Ghana are characterized by complex land management systems with a multiplicity of normative orders participating in the definition and enforcement of land rights[11]. Individuals belong to overlapping kinship and territorial groups and their behaviour are influenced by the norms and rules that are designed and enforced within each of these groups. This multiplicity of groups corresponds to a multiplicity of social spaces participating in land rights management and enforcement. It generates a complex reality that cannot be fully apprehended in a short country-level study such as the present paper. As a result, we do not attempt to provide an exhaustive description of the land management practices surrounding LSTLA in either country, but instead attempt to demonstrate the potential of our conceptual framework by indicating how the different (types of) normative orders we have identified participate and interact in political arenas related to LSTLA.

4.1.1 Non-state normative orders

The first type of normative orders are defined locally in social spaces such as the village, the community, the family, kinship groups, or religious movements. They refer largely to what are considered customary norms and rules, characterized as unwritten and informal, and managed by traditional authorities. Several of these normative orders may co-exist within one geographical location and influence people's behaviour in different ways. In Ghana, for example, a complex system based on individuals' membership to overlapping social groups (e.g. extended families, communities, villages and broader territorial areas) is in effect (Kasanga and Woodman, 2004). Concrete land management is mainly carried out at a level closest to the use of the resources (in the village, and further down in the family). Traditional chiefs hold the management rights at this level and are subject to a certain 'customary' controls (e.g. local controls carried out by the Council of Elders).

In both cases, the prevailing normative orders are very complex, context-specific and inter-related, as explained by Leisz (1998), Ralalamaringa (2010), Muttenzer (2006) and Maldidier (1999) for Madagascar, and by Alhassan (2006), Kasanga and Kotey (2001) and Knox (1998) for Ghana. This complexity exists because these non-state normative orders arise in contexts where social structure and geographies of power vary, and because it is recognized that "different people have different rights to land and natural resources" (Leisz, 1998:225). The rights also cover a wide range of possibilities, from individual to collective rights and from temporary to ancestral rights. All of this also depends on other factors, such as the characteristics of the agrarian system being used (slash and burn, irrigated areas); the environmental context (forest

[11] For Madagascar, see: Muttenzer (2006 and 2010), Leisz (1998), Ralalarimanga (2010), Teyssier et al. (2007) and Maldidier (1999); for Ghana, see: Knox (1998), Alhassan (2006), Kasanga and Kotey (2001), Alden Wily (2003), Kasanga and Woodman (2004), Rochegude and Plançon (2009) and Ubink and Quan (2008)

areas, dry savanna, mountains); the natural resources available and their use (e.g. forest, non-timber products, water); the history of migration (established settlement or newly settled area); and/or the attributes of the rights holders (age, gender, ethnicity). In Ghana, it is quite common that several types of rights and rights holders have a claim to one piece of soil (Alhassan, 2006). These rights can comprise individual use rights, whether time-limited (corresponding to lease and sharecropper agreements) or "secure alienable and inheritable rights" (Kasanga and Kotey, 2001:13) for group members; individual management rights held by traditional authorities; and/or communal rights, such as grazing rights. Ghanian forests are also characterized by a multiplicity of superimposed, articulated rights and rights holders, ranging from individual to collective rights and from use rights concerning tree production and biodiversity to overall management rights (Abayie Boaten, 1998; Appiah-Opoku and Hyma, 1999; Sarfo-Mensah and Oduro, 2007). Similar realities are also present in Madagascar (see e.g. Muttenzer (2006)).

4.1.2. State normative orders

4.1.2.1. Madagascar

In Madagascar, the state normative order has been characterized by the concept that 'all land comes from the state' (Leisz, 1998:223). It is thus legally assumed that the state is the primary owner of all land. Although this original legal principle was challenged by the 2005 land reform, its implications are still being felt in Malagasy society (Pelerin and Ramboarison, 2006; Teyssier at al, 2007, Maldidier, 1999). The origin of the principle of state ownership can be traced back to the Merina monarchy in the 19th century, before colonization (Pelerin and Ramboarison, 2006; Leisz, 1998; Maldidier, 1999). In this period, the king had primordial rights over the land. He could assign land to individuals or groups and issue recognized use rights to local communities. The decision as to which actors' rights took primacy over others was later absorbed by the French colonial regime in order to facilitate the installation of foreign settlers, and in this case the holder of primordial rights became the French state. The French regime linked this to the Torrens system, which is based on the concept that land is free of rights until it is titled and registered by the state. Consequently, the only rights legally recognized were those registered and titled by the state. As a result of the difficulty that local populations encountered having their existing rights recognized by the colonial state, large amounts of land remained outside of state registration and titling and thus belonged formally to the colonial state, which had significant discretionary power in managing and assigning land rights. This situation was largely maintained after independence. Even when conditions for state recognition of local populations' existing rights were relaxed (local populations could title and register their rights by demonstrating the 'mise en valeur des terres', i.e. the permanent productive usage of the land), little actual registration and titling took place. Pelerin and Ramboarison (2006) therefore conclude that the post-colonial era was characterized by formal state ownership of all unregistered land, with the state recognizing and enforcing only those property rights of rights holders who had a registered land title. A reform of this inherited state normative order was begun in 2005, motivated by the acknowlegdement that state regulations were unable to respond to the high demand from both local populations and capitalist investors to secure land rights. This was primarily due to the time-consuming and costly nature of having land rights recognized by a centralized land management system, which was also very sensitive to power pressures and corruption (Pelerin and Ramboarison, 2006; Teyssier et al., 2007). An important shift in state land policy was thus initiated (Ministry of Agriculture Livestock and Fisheries, 2005; Pelerin and Ramboarison, 2006; Teyssier et al., 2007). Since 2005, an effort has been made to

decentralize land management, with the creation of municipal land offices ('guichets fonciers') which are responsible for managing local land rights. These offices are able to issue and update 'land certificates' through which the state formally recognizes the 'exclusive ownership'12 of local populations using the land. As a result, state-secured land rights are expected to be cheaper, more accessible for local populations, more easily updated and better adapted to specific local contexts. At a more fundamental level, the changes also challenged the concept that the state is the primary owner of all the land, and implied the recognition of de facto possession rights. The reform movement has introduced a new category of land in the state legal framework: land that is privately owned, whether individually or collectively, but not titled or registered (here, privately owned means that the land is actually used by someone).The far-reaching consequence of this is that the state has lost its previous control over land which is occupied and used without being titled or registered. From now on, state-owned lands are supposed to correspond exclusively to land which is explicitly titled to public actors, or which is unoccupied, i.e. on which there is no individual or collective valorization of resources.

4.1.2.2. Ghana

In Ghana, land is legally distributed in two categories: state/public lands and customary lands (Ubink and Quan, 2008; Alhassan, 2006). The first of these categories comprises "land which has been compulsory acquired for a public purpose or in the public interest [...] and land which has been vested in the President, in trust for a landholding authority" (Kasanga and Kotey, 2001:1). Here, the aim of the state normative order is to directly manage land rights. The second category, customary land, is recognized by the state legal framework as being directly operated by traditional authorities according to local practices.The statutory system's goal is to control and supervise this local management (Kasanga and Kotey, 2001, Alden Wily, 2003; Alhassan, 2006). These features of the statutory system, combined with the state's ability to make compulsory land acquisitions of customary lands (i.e. expropriation) in cases of public interest (Alhassan, 2006), have led some authors, such as Rochegude and Plançon (2009), to argue that the Ghanaian statutory system occupies a hierarchically superior position with respect to land rights and that the state is the real master of land. However, this interpretation fails to take into account the fundamental features of the Ghanaian statutory system, which is based upon the principles of common law and indirect rule introduced by British colonization and maintained after independence (Lentz, 2010, Amamor, 2010; Kasanga and Woodman, 2004).

More specifically, two main features play key roles in differentiating the approaches taken by the Malagasy and Ghanaian state normative orders with respect to land rights systems. First, whereas the historical Malagasy system (before 2005) assumed that all non-titled and non-registered land was owned by the state and that all rights were derived from this primordial state right, the Ghanaian system acknowledges, at least in the texts, that land rights do not come from the state alone and that legitimate locally based land rights exist (Lentz, 2010). Historically, this has its roots in the imposition of a colonial system based on indirect rule, which implied a certain respect for and recognition of local rights and their administration by traditional authorities (Knox, 1998)13. This may help to explain why the principle that 'there is no land without an owner' remains valid in Ghana (Ahwoi, 2010; Rochegude and Plançon,2009).

[12] The strong influence of the French civil law approach can be seen here, particularly in the concept of 'propriété' (absolute property, see above), i.e. the existence of private, exclusive freely alienable rights

[13] Obviously, these observations have to be read with caution and seen in the context of the specific application of state policies and practices, particularly in the colonial period (see Lentz (2010) for an illustration of the conflicts surrounding the choice of traditional authorities, and of the rules and norms recognized by colonial authorities that have resulted in the weakening of some traditional authorities in relation to others)

This perspective can be linked directly to the recognition of other normative orders and their authorities by the fundamental nature of the statutory system introduced by British indirect rule, and still largely valid today. The Ghanaian Constitution of 1992 also states that customary lands are "managed according to the fiduciary duty of the traditional authorities towards their people on the basis of the customary law which is recognized as a source of Ghanaian law" (Ubink and Quan, 2008:199)14.

Second, the consequences of implementing a common law framework must be fully acknowledged. Here, the utilization of the concept of 'trust' is key. In particular, it implies that the concept of 'absolute ownership', which is a central aspect of the Malagasy case, has less relevance in Ghana. The concept of trust is applied to customary land in order to recognize that the land belongs to a common group (extended family, clan), but is actually managed by a particular authority, the 'trustee' (traditional authorities):

> *"The 1992 Constitution vests all customary lands […] in the appropriate stool, skin or land owning family*15 *on behalf of and in trust for their people" (Ubink and Quan, 2007:199).*
>
> *"Communities own the land while the traditional authorities hold it in trust for their benefit" (Knox, 1998:1969)*

The utilization of the concept of 'trust' is very important because it acknowledges the existence of several land rights holders. For instance, the 'trustee' holds management rights, whereas members of the common groups can enjoy (several) use rights. It also allows the statutory system to recognize that there is no absolute owner of the land. Nevertheless, even if the existence of several rights holders is theoretically acknowledged, little reference is found in current debates to the rights over other resources that are attached to a piece of land. It is interesting to note, for example, that Alden Wily (2003) considers the lack of references to grazing rights one of the main limitations of the statutory system in Ghana.

Our analysis thus shows that the Ghanaian and Malagasy state normative orders differ somewhat significantly (Table 1), with - at least prior to the 2005 Malagasy reforms - an historically higher level of recognition of non-state normative orders and local authorities found in Ghana than in Madagascar.

Table 1: Main differences between Malagasy and Ghanaian state normative orders

	Madagascar	**Ghana**
Colonial history	French colonization and direct rule principle	English colonization and indirect rule principle
Legal tradition	French civil law system	English common law system
Approach to 'property'	Ideal of the 'absolute ownership' principle	Recognition that land rights are a bundle of rights, and predominance of the concept of 'trust'

[14] However, the authors explain that the practices linked to this theoretical approach present some limitations as regards the interpretation made by statutory authorities about what can be considered customary.
[15] 'Stool' and 'Skin' correspond to several ways to refer to traditional chiefs in Ghana

4.1.3. Other normative orders

Logically, in the case of LSTLA, external and international actors (e.g. international investors and banks, foreign states) also participate actively in the land rights management processes that concern them. These actors' behaviour is influenced not only by Ghanaian or Malagasy state and non-state normative orders but also by normative orders which correspond to other supra-national social spaces. International investors are guided by bilateral/multilateral investment treaties, trade agreements and state laws in their home countries, and also by informal norms and rules pertaining to their business worlds. As indicated above, this obliges us to take the international level into account as well as adding a third type of social space to our analysis, comprised of foreign actors. Due to a distinct lack of concrete information on this aspect in the literature, however, we are,unable to present a detailed description of these normative orders.

4.1.4. Interrelated social spaces and normative orders: vying for control

The normative orders described above are not independent and several relationships have been identified between them. The Malagasy case exemplifies a two-way relationship between state and non-state normative orders. Firstly, Pelerin and Ramboarison (2006) and Teyssier et al. (2007) describe a system of 'little pieces of papers' used locally in an attempt to secure land rights transfers. The process consists of an elaboration of informal papers corresponding to rights transfers, realized according to a non-state normative order (e.g. sale of a parcel), which is followed by the sealing of these papers by a formal local authority. Both research teams interpret this system as a means of legalizing locally-legitimate rights transfers. They also argue that these documents provide important local tenure security (as they represent local legitimacy plus a degree of formal recognition), though they can still be inadequate when rights are questioned by powerful external actors (state, community foreigners). Secondly, the Malagasy case also demonstrates an example of non-state normative orders influencing the design and implementacion of land and natural resources law reforms, especially the 2005 reform, which introduced considerable changes in state land regulations (Pelerin and Ramboarison, 2006; Teyssier et al., 2007). As explained above, the two central pillars of this reform consist in the decentralization of land management and state recognition of non-titled, non-registered individual possession rights. This corresponds to an attempt to recognize both local land rights management structures (in some way, the functioning of the land offices represents the recognition of customary authorities in the local identification of land rights) and the existence of locally defined land rights that do not come directly from the state.

The Ghanaian context also provides evidence for relationships between state and non-state frameworks. The Ghanaian state normative order attempts to integrate parts of the non-state system via the formal recognition of certain customary norms and rules as sources of law. However, the most important feature in rural Ghana remains the authority of traditional chiefs, who are responsible for managing land rights in non-state normative orders (Kasanga and Woodman, 2004; Alhassan, 2006; Knox, 1998; Ubink and Quan, 2008; Kasanga and Kotey, 2001). Ubink and Quan (2008) describe how powerful chiefs are in comparison to public servants at all levels in the state institutions, and also refer to several testimonies in which public servants express their fear of questioning decisions taken by chiefs. Moreover, the authors present cases where state authorities have attempted to improve the legitimacy of certain 'official' or 'legal' documents by obtaining chiefs' signatures, in a way that contrasts starkly with the system used in Madagascar.

Finally, as explained in Section 3.4.1, local practices in both the Malagasy and Ghanaian cases emerge from local power geographies through interaction with local norms and social fields and how they are recognized by the state normative order. They are the result of historical changes and evolutions in agricultural systems and economic and social contexts as well as in state and non-state normative orders16. This leads Kasanga and Kotey to discuss "modern customary tenancies" (2001:21) in relation to current land rights systems in Ghana. Similarly, Kasanga and Woodman refer to these local practices as 'living laws', and describe them as follows: *"The living laws of today are derived historically from the indigenously generated living laws which were followed before the inception of the colonial period, although the people have adapted these laws radically to modern circumstances" (2004:161)*

4.2. Large-scale transnational land acquisitions in Ghana and Madagascar

In order to grasp the extent and characteristics of LSTLA processes in Ghana and Madagascar, we have consulted several sources: i) press articles found on websites that specialize in monitoring the phenomenon (ILC, 2011; GRAIN, 2011); ii) case studies and research and policy papers (Üllenberg (2009), Cotula et al. (2009), Teyssier et al. (2010), Andrianirina-Ratsialonana et al. (2011) for Madagascar, and Schoneveld et al. (2010), Cotula et al. (2009), Ahwoi (2010), Tsikata and Yaro (2011), German et al. (2011) for Ghana); iii) official data collected by the Ghanaian Investment Promotion Center (GIPC) (GIPC, n.d.).

In Madagascar, the most recent study reports the occurence of 52 large-scale land acquisition projects (corresponding to at least 3 million ha) since 2005, 66% of which involve direct foreign investments (Andrianirina-Ratsiolonana et al., 2011). In the last five years, however, the number of projects that have actually been implemented is much lower than the number of projects formally approved (approximately 25%). Of the total number approved, 30% have been abandoned, 30% are still in the preparation phase, and for the remainin 15% no information was available. According to the study's authors, this can be explained by the current financial crisis, by the technical flaws of some of the projects, and above all by the political and social crises the country has been facing since 2008 (which have resulted in a change of government). Furthermore, two LSTLA projects have actually played a role in the crises, namely the Daewoo and Varun projects17. These highly publisized cases provided key destabilization leverage against the former government, and one of the first decisions taken by the new government was inevitably to cancel these projects (Teyssier et al., 2010).

In Ghana, it appears more difficult to grasp the details of the LSTLA processes. According to official data (GIPC, n.d), 29 new agricultural projects involving foreign investment were registered with the state between January 2009 and April 201118. As the majority of projects are not registered with the state (Schoneveld et al., 2010), however, the phenomenon is likely to have much larger proportions in reality, as suggested by the large number of press articles dealing with the issue (ILC, 2011; GRAIN, 2011). With regard to the amount of land involved, no country-wide study has been carried out to date, but the studies of Schoneveld et al. (2010) and Cotula et al. (2009) conclude that the areas in question are not negligible. Indeed, the first study, which examined 17 agrofuel production projects, claims that the area already secured by

[16] See specific examples in Muttenzer (2006, 2010) for Madagascar, and in Amamor (2010), Ubink and Quan (2008) and Kasanga and Woodman (2004) for Ghana.
[17] Daewoo is a South Korean company that sought to acquire 1.3 millon ha for the production of palm oil for agrofuels and maize for export. Varun, from India, planned the use of 465,000 ha to produce rice, maize and dal essentially for export markets.
[18] In the official reports, data is missing for the period 01/10/2009 to 31/12/2009

investors exceeds 1 million ha, while the second study, which deals with only three projects, provides a figure of 452,000 ha. As in Madagascar, however, the amount of land actually being cultivated seems to be rather limited, and most projects are still in the preparation phase. Schoneveld et al. (2010) report that only 10,000 ha of the one million secured by investors was actually being cultivated at the time their paper was being written.

It is interesting to note that the projects being implemented in both countries are characteirized by a number of common features: most concern agrofuels production; almost all are export-oriented; the envisaged type of production is generally large-scale and mechanized with high input demand; and European investors have an important presence, which can be related to European agrofuel quota policies.

Both cases also present important differences with respect to the types of rights transfers that take place between local actors and foreign investors. In Madagascar, two kinds of transfer can be identified. The first concerns land rights transfers from the state to international investors, and the second is related to transfers from individual landholders to international investors (Burnod et al., 2011). Moreover, in the second case, it appears that transfers are facilitated by the intervention of 'mayors', who are local state authorities playing an intermediary role (ibid.). On the other hand, LSTLA in Ghana essentially take place between traditional local authorities, i.e. chiefs, and international investors, often with the intervention of local middlemen who broker the deals between the two actors (Schoneveld et al., 2010; Cotula et al., 2009).

4.3. Super-imposed political arenas surrounding land and large-scale transnational land acquisitions in Ghana and Madagascar

A number of actors participate in or are affected by LSTLA processes in Ghana and Madagascar: holders of use rights over the land and natural resources, traditional authorities who manage local practices and their normative frameworks, the state and its servants, national middlemen and investors, international investors, and other international actors (international banks, migrants, NGOs and international organizations). All are part of one or more of the social spaces described above; they make different claims to land and - as the literature reveals - frequently come into conflict over the claims they make.

A first sphere of conflict corresponds to disputes within the social space of foreign investors competing for land in Madagascar (Andrianirina-Ratsialonana et al., 2011; Teyssier et al., 2010). Their aim is generally to implement large-scale agro-industrial projects, which require large areas of good quality land in terms of its agronomic properties and access to water as well as its proximity to all-weather roads or ports. Areas with such characteristics are likely to be occupied already and locating unoccupied land of this type is difficult. For this reason, foreign investors often find themselves competing for the same pieces of land. When we consider the relative scarcity of land alongside the types of investors interested in the area, certain relevant insights can be drawn into the social struggles that ensue between investors. Two key fields of interest can be identified in the investment logic (Andrianirina-Ratsialonana et al., 2011): firstly, we see investment from emerging economies aimed at food production, and secondly, we see investment in agrofuels production, mainly from Europe. Fierce competition between these two domains is common. One technique frequently used in the discursive conflict around land is to question the legitimacy of the other domain's purpose, as illustrated by the different treatment given to the Daewoo and Varun cases by the media from each of the two domains (Andrianirina-Ratsialonana et al., 2010; Teyssier et al., 2010). The Financial Times, claiming to

have been the first to 'uncover' it, stressed the risks of the Daewoo project's aiming to produce food for export in a food-insecure country where 70% of people lived below the poverty line (Blas et al., 20/11/2008). The newspaper emphasized that this project was only one of several processes implemented by Chinese and South Korean investors with the aim of appropriating land in African countries. Finally, it expressed doubts about the project's ability to provide any benefit to the Malagasy people. However, no reference was made to investments made in Madagascar by European investors, although these represented more than 50% of foreign land investments in the country at the time (Andrianirina-Ratsialonana et al., 2010) . On the other side of the conflict, the Courrier Diplomatique (Eun-jin, 24/11/2008) transcribed the South Korean newspapers' treatment of the same deal. There, it was stressed that additional fiscal income would accrue to local authorities, that technology would be transferred, employment created and investments made in infrastructure. Neither did they hesitate to compare the legitimacy of European investments with those from South Korea:

> *"In Madagascar, the English own a huge farm where they produce Jatropha oil for agro-fuels. Are they well positioned to accuse South Korea of neo-colonialism when this country imports cereals and is only looking to feed its population? (Joongang Ilbo in Eun-jin, 24/11/2008, own translation)*

A second sphere of conflict concerns the social space in which the actual implementation of the state normative order is defined. Indeed, in both Madagascar and Ghana, state law is ambiguous, attempting to promote local management of land rights and foreign investment in agriculture simultaneously. Therefore, different state servants and state institutions may enter into conflict depending on the perspective from which they approach LSTLA. In Madagascar, the state normative order has been evolving to improve its recognition (and therefore protection) of local peoples' land rights since the reform of 2005. Yet, the Malagasy state has also designed a regulatory framework that attracts foreign investment, assisting and accompanying investors to acquire land for the purpose of their investments (Üllenberg, 2009; Andrianirina-Ratsialonana, 2010; Teyssier et al., 2010). This framework allows foreigners to buy land, provided that they create a company in the Malagasy territory19. It has also created a special state office which supports investors in the acquisition process. The idea behind this policy framework is to facilitate foreign investors' access to state-owned land, while largely employing the pre-2005 historical view that all land that is not titled or registered is state-owned. This contradicts the 2005 reform, which recognizes the rights of people who actually occupy the land (even without title or registration) and thus significantly reduces the state-owned domain and the state's capacity to facilitate access to land for investors. Even if the process of land rights transfers from the state to foreign investors includes procedurial steps to check the 'availability' of the land involved, numerous limitations undermine the validity of such processes (see below for comments on so-called 'recognition missions'). Teyssier et al. (2010) argue that this duality within the state's legal framework compromises the legal feasibility of the projects, and even creates intra-state conflicts by allowing the 'state' to transfer land rights for areas where the 'state' itself has already recognized the rights of others. This clearly illustrates how the 'state' itself is not a coherent and comprehensive actor, but another arena of conflict. The situation is comparable in Ghana. The Ghanaian state normative order demonstrates a high level of recognition of local practices and traditional authorities in land rights management, which should - in theory - protect the rights of local smallholders. However, like in Madagascar,

[19] The Malagasy constitution states that foreigners cannot acquire land in the country (Üllenberg, 2010)

a very attractive legal framework for foreign investments is also in effect, where public servants and public services are mobilized to actively facilitate and support international land transfers (Cotula et al., 2009; Ahwoi, 2010).

A third sphere of conflict comprises the social spaces where non-state normative orders are governed. This can best be illustrated using the Varun case in Madagascar (Andrianirina-Ratsialonana et al., 2011; Üllenberg, 2009; and Teyssier et al., 2010). In theory, one part of that project was to consist of a long-term contract farming scheme covering almost 171,000 ha of land that was already occupied by individual farmers. In order to implement this long-term contract with local landholders, Varun hired a consultancy firm which subsequently created 13 peasant organizations, with whom they negotiated and concluded the contracts in just 15 days. The contracts signed by the representatives of these organizations transferred the use rights (i.e. the right to occupy the land and carry out agricultural activities on it) of all group members (and their descendants) to Varun for a period of 50 years20. Varun was able to employ this kind of contract not only because of the differences in knowledge and power between the foreign investors and the local peasants but also because of the struggles and conflicts going on within local communities, which could be exploited in order to serve external interests. Indeed, the self-declaration of artificially created local organizations able to negotiate land rights with external actors could be interpreted as a sign of the contested reinvention of practices that traditionally govern land rights management, particularly - depending on the legitimacy (and power) of local authorities. In the same way, the Ghanaian case exemplifies a complex situation at local level, where (i) several social groups compete to gain access to natural resources in the same territory; (ii) struggles over management rights may exist between a number of traditional authorities (see Lentz (2010) and Ubink and Quan (2008) for specific examples); and (iii) differential power relations between traditional authorities and local populations, combined with the erosion of customary institutions, may lead some chiefs to behave like full owners rather than trustees, acting in their own interests alone. Kasanga and Kotey (2001) describe a case in which two traditional authorities are important: the chiefs and the 'tendamba'. The former term refers to 'general' authorities that play an important role in communicating with the formal authorities, whereas the latter refers to religious authorities. Historically, the 'tendamba' have held land management rights in this region, but it seems that with increased pressure over land, the ability to manage land allocation is becoming increasingly important in locally-defined power relations. As a result, some chiefs now claim that it is they, not the tendamba, who are the traditional holders of management rights over the land.

Finally, more generally, there are the obvious disputes between actors belonging to different social spaces, who claim a right to the same piece of land. As a crude simplification, we could say that, in the scope of LSTLA, these struggles oppose use rights holders, management rights holders (e.g. local authorities and the state) and international investors. Even if these struggles are not often explicitly addressed in the literature, evidence for their existence can be found in almost all sources that give specific examples of LSTLA, both in Ghana (AllAfrica, 07/09/2009; Bruce, 23/07/2010; Nnanna, 08/02/2010; Nyari, 2008; Schoneveld et al., 2010, German et al., 2011; Tsikata and Yaro, 2011) and Madagascar (Andrianirina-Ratsiolonana et al., 2011; Burnod et al., 2011; Eun-jin, 24/11/2008; Üllenberg, 2009). This literature also reveals that other international actors can participate more or less indirectly in these struggles. The Malagasy diaspora, for example, played a crucial role in combating the Dawoo and Varun projects, mobilizing migrant associations in foreign debates and using internet-based tools

[20] It was this kind of dubious manipulative manoeuvres that were strongly resisted and ultimately brought the new government to cancel the entire deal.

(blogs, discussion forums and webpages) (Teyssier et al., 2010; Burnod et al., 2011). Another example is the struggle between NGO ActionAid and Norwegian company BiofuelAfrica with respect to a large-scale Jatropha project in the North of Ghana (Nyari, 2008, Nnanna, 09/02/2010, Bruce, 30/03/2009, 23/07/2010). The important point to stress here is the level of involvement that international actors have in the conflict surrounding land rights management at local level, beyond the participation of investors and actors actually living in the geographical area concerned. In sum, this confirms that land rights are designed, enforced and managed in political arenas where a multiplicity of social struggles and bargaining processes - involving a multiplicity of social actors - take place.

4.4. Winners and losers in the struggles surrounding land rights

The task that now arises is to understand the factors that influence actors' bargaining positions in the struggles surrounding land rights in the context of LSTLA in Ghana and Madagascar. This section aims at tackling this issue and attempts to provide some insights into why certain actors routinely find themselves at the losing end of these bargaining processes.

4.4.1. The non-recognition of multiple land rights and land rights holders, or the 'invisibilization of the powerless'

In general, negotiations related to LSTLA seem to be driven by the idea that one sole actor holds all rights on a piece of land and can therefore transfer them. This causes investors to negotiate land rights transfers with the actor they consider the legal and legitimate owner of the land.

In Madagascar, these 'supposed' legal and legitimate land owners are essentially of two types: the state, or individuals who possess a state-issued title or a land certificate provided by decentralized land management institutions (Andrianirina-Ratsialonana et al. 2010). The latter are supposed to be entitled to transfer their rights to the piece of land that is affected by a land title or land certificate, whereas the state itself can transfer its rights to the land titled in the name of state actors, or land that is unoccupied and therefore considered to belong to the state. The examples of the cancelled Daewoo and Varun projects illustrate this point (Üllenberg, 2009; Andrianirina-Ratsialonana et al., 2010). It appears that Daewoo negotiated directly with the state in order to gain access to areas of land that were supposed to be unoccupied (through long-term 99-year leases). In the Varun case, the company also negotiated with the state to gain access to a supposedly state-owned area, but, in addition, it also dealt with farmers' groups in order to gain access to land that had already been individually appropriated. This approach by international investors often leads to problems in contexts where one piece of land is invested with a multiplicity of rights. The Daewoo case is interesting in this respect. Üllenberg (2009) notes that some areas involved in the Daewoo project were characterized by high population density, and also that most of the arable land was actually being cultivated, which casts considerable doubt upon the supposedly unoccupied nature of the targeted state-owned land. Moreover, the land areas that were apparently unused or underexploited were still being used as grazing lands during certain parts of the year. In both cases, it therefore seems misguided to consider the state the only rights holder, since other local actors were also using the land.

In the Ghanaian case, the situation appears to be quite similar, but the supposed sole owner of the land is different. Indeed, as almost all international land rights transfers involve customary land, investors often negotiate and acquire land rights directly from the chiefs to whom the land has been granted on behalf of the community (Schoneveld at al., 2010; Cotula et

al., 2009). However, this also often leads to the non-recognition of other rights holders. The study of Schoneveld et al. (2010) uses one case to provide an interesting overview of this process. The authors describe a process of land acquisition implemented by a foreign company in which the company negotiated with local chiefs for the lease of a large area of land, 55% of which was forest. As a result of this process, several local households lost the use rights they had previously held. First, since part of the area allocated to the international investor by the traditional authorities was already being cultivated by some households, these households lost their previous right to cultivate this land. Only a small number of them were given access to replacement areas, which was actually inferior in quality and quantity. Interestingly, during the process, a distinction was drawn between members of the original group of land holders and migrants that had come from the north in the 1980s. The latter group were affected by the loss of rights much more severely than the former, indicating the existence of uneven power and bargaining relations between original and 'migrant' use rights holders in the local community. Second, by allocating forest areas to the foreign company for transformation into Jatropha plantations, the local households also lost the collective rights they held over the forest. Even though forest areas appear not to be individually appropriated, the local population actually exploited the forest's resources, including shea nuts (important raw materials for off-season production of shea butter), fruits, medicinal plants and wood. The transfer of the forest ownership thus affected related rights in a similarly negative way.

As a result, several rights and rights holders have often not been taken into account in LSTLA processes. It is as if they have been made 'invisible', and because of this, there is obviously a risk that they will be the main losers in the bargaining processes surrounding land rights in LSTLA contexts. The 'invisibilization' of these actors implies that their chances of having their rights respected is weakened in relation to other actors, whose own rights are strengthened in the process and are thus taken more fully into account.

4.4.2. The causes of 'invisibilization': characteristics of normative orders and uneven social relations

A detailed analysis of the causes of the 'invisibilization' process presented above is beyond the scope of this paper. However, the literature consulted leads us to the conclusion that two main issues are at play in this process: i) the predominance of the concept of 'absolute ownership'; and ii) the deficiencies of the envisaged processes in creating the necessary checks and balances, whether within local practices, or within state or international normative orders.

The analysis carried out above of land rights management systems in Madagascar provides some insights into the way in which these factors participate in the 'invisibilization' of weaker actors in LSTLA contexts. Despite the 2005 legal reform, the Malagasy context remains characterized, somewhat paradoxically, by an undeniable weakening of non-state-based management systems and an undermining of local traditional authorities. Indeed it seems that in the current Malagasy context (e.g. individualization of land rights due to market development, and competition for land rights with powerful actors who have access to costly state regulation schemes) local authorities are losing more and more influence over land rights management compared to the influence that the state has in its capacity to enforce land rights (Maldidier, 1999; Teyssier et al., 2007). This implies that the weight of the state in land rights management is significant, and still increasing, while the power of land rights holders based on local practices is being weakened. As demonstrated above, the state's normative order is influenced by the concept that all land rights come from the state, leading to low recognition

of non-state normative orders and adherence to the concept of 'absolute ownership'. Even the 2005 land reform, which initially appears to decentralize land management and recognize certain local population rights through land certificates, ultimately fails in this respect. Clearly, it is still in the early stages and covers only a small part of the country, with only 350 local land offices (out of 1550 municipalities) installed at the beginning of 2010 (Andrianirina-Ratsialonona et al, 2010). Further scrutiny also reveals, however, that reform does not imply total state recognition of local practices. In particular, the existence of a multiplicity of land rights and land rights holders has not been fully addressed. Technical documents (Medina Jarquin, 2009; Thierry and Prouin, 2008) which analyze specific cases from local land offices underline how a lack of clarity about the types and nature of the local land rights that can be recognized when issuing land certificates can lead to the exclusion of several important rights (e.g. rights of way, water rights or temporary user's rights for pasture areas). This leads Muttenzer (2010) to argue that the reform still views 'absolute ownership' as the rule. As a consequence, the reform has failed to recognize the full complexity of local land management practices, which involve a larger variety of types of rights and rights holders. With respect to the specific context of LSTLA, Andrianirina-Ratsialonana et al. (2010) notice that, in Madagascar, most of the projects concern areas where no local land office has yet been established. In order to solve this problem - and avoid the transfer of rights in areas appropriated by certain actors - the state regulations provide for the realization of a 'recognition mission', in cooperation with national and municipal authorities as well as community leaders. The objective is to check whether or not the targeted area is occupied. However, the authors argue that for a multitude of reasons, ranging from organizational problems (e.g. missions not being realized at all) and lack of information (e.g. local populations not being informed, community leaders not being aware of the changes made since the 2005 reform) to imbalances in participants' power (e.g. community leaders coming under pressure from investors or state authorities), these 'recognition missions' often fail to reach their objective. Evidently, there are a number of potential pitfalls in the new state land management scheme's capacity to recognize the multiplicity of local land rights practices. This may result in certain actors (essentially the state and its authorities, but also holders of land certificates or land titles) maintaining the authority to transfer land rights and act as 'absolute owners' of the land.

In Ghana, the situation is different because the state normative order is characterized by a higher level of recognition of non-state normative orders' autonomy and implicitly includes the recognition of the multiplicity of land rights and rights holders via the concept of trust. Furthermore, traditional authorities have clearly managed to maintain significant capacity to manage land rights. Nevertheless, just as in the Malagasy case, the multiplicity of land rights and land rights holders does not appear to be properly recognized within LSTLA contexts. Indeed, the evolution of local practices within a context of changes in social and power relations, whether due to economic, political or demographic factors, has led some actors (in this case traditional chiefs) to freely re-allocate land rights. A the same time, it has become difficult for other rights holders (essentially use rights holders) to protect and maintain their rights. This process can be associated with privatization of the land at the hands of traditional authorities, who increasingly act as 'absolute owners' and manage land rights according to their own interests rather than the interests of the group they belong to, thereby violating the concept of 'trust'. This phenomenon has been clearly identified by several authors, whether studying the specific processes of LSTLA (Schnoneveld et al. 2010; German et al. 2011; Tsikata and Yaro, 2011) or otherwise (Alhassan, 2006; Lentz, 2010; Ubink and Quan, 2008). This leads us to conclude that some kind of de facto

hierarchical scale of land rights exists or is emerging in Ghana, and that use rights occupy a lower position on this scale than do management rights. This is confirmed by German et al. (2011) when they write that "[c]ustomary land users treat [...] land access not as a right or entitlement but as a benefit which one acquires subject to the benevolence of the chief" (ibid, 2011:30). However, in normal circumstances, both state and non-state normative orders should provide for checks and balances that ensure that traditional management rights holders act in the interests of their constituencies. State norms require local communities to be consulted in order to validate land rights transfers, as explained by Cotula et al. (2009) and German et al. (2011). However, these authors also state that such a validation process rarely takes place, and as a result many use rights holders are not taken into consideration during land rights negotiations. A lack of both ability and willingness to really enforce this norm on the part of state servants, who seem to be convinced that international investment will bring 'modern' economic development and is thus deserving of all kinds of support, may explain this reality. German et al. (2011) also argue that those processes which are intended to ensure chiefs' downward accountability are weak. This leads chiefs to act "based on chances for personal gain rather then collective interest" (ibid, 2011:30). Tsikata and Yaro (2011) explain that the amount paid by investors in exchange for access to land is rarely interpreted as collective income. Instead, it is used and distributed by the chiefs in a discretionary way. Altogether, this leads to situations where traditional use rights holders are unaware of the conditions of the deals and negotiation processes (German et al., 2011), which in turns leads to them losing their rights (Schoneveld et al., 2010; Nnanna, 08/02/2010; Nyari, 2008, German et al., 2011; Tsikata and Yaro, 2011). However, it would be incorrect to surmise that all traditional chiefs have a clear, generalized stance in favor of LSTLA and that all use rights holders are against it. In fact, certain examples in the literature demonstrate the importance of uneven power relations in the positions taken by these actors in particular cases. Economic vulnerability seems to be one factor that weakens actors' bargaining positions. An example of this can be found in Nyari (2008), who describes a process of land acquisition in which a situation of economic deprivation and high vulnerability (several bad harvests, illiteracy) led local populations and chiefs to trade their rights to land for the jobs promised by the foreign investor.

In summary, it appears that in both Ghana and Madagascar, the main losers in LSTLA processes are those rights holders whose rights are based on local practices, particularly where secondary rights are concerned. This is because they are frequently invisibilized and overlooked due to their weak position in the poltical arenas surrounding land rights. As a result, they are at severe risk of being dispossessed of the historical rights they are entitled to.

4.4.3. Blackboxing as a means of naturalizing land rights dispossession

Both the Malagasy and Ghanaian cases illustrate the earlier point about blackboxing, evidence for which can be found in the discursive struggles taking place around the visions of rural development in both countries.

As regards Madagascar, Teyssier et al. (2010) and Andrianirina-Ratsiolonana et al. (2010) rightly argue that what is really at issue in the debate on LSTLA is the nature of future agricultural development, as demonstrated by the two broad visions of the agriculture-development nexus introduced in Section 3.4.2. As far as Ghana is concerned, several examples can be found in the literature of conflicting visions of rural development in a context of international land rights transfers, as exemplified by the two contradictory positions on agrofuels production presented below. Firstly, on the website of Norwegian company BiofuelAfrica, who were investing in Ghana, we find the following:

> *"There are some in the development world who believe that small scale production is the only thing that is necessary in northern Ghana. Ghana has been fed for decades by small scale producers, often to the detriment of themselves and their families. While assistance for small scale producers is to be encouraged and should continue, we must guard against the kind of myopia that causes us to fight against anything new or different from what we are used to. Should our people never have the opportunity [...] of paid employment?" (Bruce, 30/03/2009)*

Secondly, we find a contrasting position in the words of a representative from the Ghanaian Agricultural Workers Union, cited in a press article:

> *"How would we justify an essentially agrarian country importing most of the food that it eats and then using our lands to produce something else that we don't eat? [...] Why should we be encouraged to lease large tracts of land for biofuel production that we are not eating to make money and use that money to import food?" (cited in Nnanna, 08/02/2010)*

These discursive disputes are significant, since they ultimately justify or reject the land transfers and the dispossession of certain actors' rights in the name of progress or of another uncontestable human goal. Moreover, certain actors' ability to enlist the support of others by convincing them that their position is natural and undisputed results in a strengthening of their bargaining position in land rights struggles.

One example of this can be found in the work of German et al. (2011), who explain that foreign investors have gained the support of many state officials since the latter seem to be convinced "that large-scale (foreign) investment is the most effective pathway for economic development and poverty alleviation through improving the balance of trade, enhancing technology spillovers and linkages to other sectors of the economy, and stimulating rural development" (ibid, 2011:29). Meanwhile, transnational land deals and investors in overseas land, in particular, meet their strongest opposition in actors who do not support their concept of rural development. These include many NGOs, for example, and social movements such as the French 'Coordination Sud', who have positioned themselves in favour of rural development based on family farming production systems (Allaverdian, 2010), and all who have signed the Dakar Appeal Against Land Grabbing.

Additionally, it should be noted that international debate on visions of development also influence normative orders that govern land rights locally. The effects produced by international actors' adoption of different visions of rural development is an example of this kind of process. On the one hand, the design and implementation of land rights management decentralization processes seem to have received important technical and financial support from foreign actors, whether international organizations, donors or NGOs (Pelerin and Ramboarison, 2006). On the other hand, however, Andrianirina-Ratsialonana (2010) notes that in 2005 the World Bank gave a very negative assessment of Madagascar's climate for direct foreign investment. As a consequence, the legal framework was changed to create more favorable conditions for foreign investment, including the creation of a special state office that would support foreign investors (funded by the World Bank until 2009). This example demonstrates how two international actors have been able, because of the powerful positions they hold in relation to the Malagasy state, to shape the state normative order in two different ways according to their own visions of what development should be.

5. Some conclusions and comments

The primary objective of this paper was to design an analytical framework for studying the complexity of the processes involved in international land rights transfers that would reintroduce the political dimension into the debate. We have proposed a framework based on a dual approach which adopts both a social definition of land rights and a legal pluralist perspective. This framework allows for the recognition of a multiplicity of land rights and rights holders, and also for the existence of several normative orders that govern land rights. Besides this, it also reveals that what is at issue when dealing with land rights are generally the power relations and social struggles going on inside the various political arenas related to land. We illustrate these ideas with a preliminary analysis of the contexts and realities of LSTLA in Madagascar and Ghana. Our work is an exploratory, mainly conceptual exercise, calling for further research efforts to provide specific recommendations for particular cases in Madagascar, Ghana or elsewhere. More extensive, systematic field work is required in order to grasp the complexity of the social relations and power structures that overlap and interact at the local, national and international levels whenever there is a dispute over land rights. The ultimate objective of achieving such an understanding would be to propose concrete recommendations that could level the playing field in favour of the poor.

However, a number of conclusions can already be drawn from our preliminary study of the Ghanaian and Malagasy cases. They both *confirm* that a variety of social spaces with their own normative orders participate in land rights management. International, state and non-state normative orders interact to define which local practices are to be adhered to and enforced at particular times and places. The cases also demonstrate that legal traditions and colonial histories play an important role in shaping the formal norms and rules surrounding land rights. As a crude simplification we could state that Madagascar is characterized by a tendency to adopt the concept of 'absolute ownership' and the idea that all land rights come from the state (at least prior to the reform of 2005). The Ghanaian statutory system, on the other hand, is more likely to embrace the concept of common heritage and to acknowledge the existence of historically and locally defined rights. Our study also suggests a more ambiguous situation in relation to the effect of state recognition of non-state norms and rules. Indeed, it has been shown that both countries recognize locally defined land rights to a certain extent. In Madagascar, this recognition is rather recent and still somewhat limited (since the 2005 reform). There is also an obvious bias towards the recognition of agricultural plots that are continuously cultivated, because of the concept that untitled land tenure can be recognized only if it is 'valorized', to the detriment of other secondary rights attached to the land. At the same time, however, our analysis confirms that Ghana is rightly considered to be one of the African countries where non-state normative orders are best recognized .

Nevertheless, these clear and important differences between the Ghanaian and Malagasy situations do not make a substantial difference to the poor's ability to protect their rights during LSTLA processes. Many local households have actually lost land rights as a result of international land rights transfer processes in both countries. These household are mainly use rights holders who base their claims on local practices. Thus, securing land rights goes well beyond the state's formal recognition of local practices. In fact, the analyses of our two cases demonstrate the importance of power and social relations, not only between local populations and the state but also within the local communities. There is therefore a need to recognize and attempt to counterbalance these inequaties explicitly. Moreover, we have shown that these

social processes vary significantly from one context to another. For instance, in Madagascar, the state is responsible for most LSTLA, whereas in Ghana local chiefs are key players. Logically, social relations play out quite differently in the two situations. In Madagascar, the relations and tensions between local communities and the state occupy centre stage, whereas in Ghana, relations and struggles between actors within the local communities dominate the political arenas surrounding land. This confirms that securing land rights is a political, or perhaps relational, process. Additionally, the analysis suggests that this political process occurs in several social spaces among different social actors (depending on the context and comprising local, national and international levels). Therefore, the defense of the poor's rights will depend on their capacity to participate and play an active role in these political/relational processes, underlining again the relevance of the social approach to poverty introduced above.

In the context of international land rights, it is therefore necessary to focus on the following issues. Attention should be paid to the extent to which normative orders may strengthen or weaken the bargaining power of certain social actors during disputes over land rights. For instance, in the Ghanaian case, the favorable legal framework intended to attract investment and the high level of recognition that chiefs enjoy in the management of land rights are obviously factors that weaken the position of use rights holders. Similarly, in Madagascar, the lack of clarity surrounding the concept of having untitled rights recognized via valorization of the land serves to weaken the bargaining power of the poor and enable the state to grab land that is in fact used extensively (for instance, pasture lands) and reallocate it to foreign investors. It is also necessary to focus on other processes that influence social actors' bargaining positions, particularly the knowledge creation processes directly related to discursive struggles around land and their role in development. Finally, we should also examine the extent to which normative orders are able (or unable) to create adequate spaces for the poor to participate and appeal during LSTLA processes, in order to balance power relations.

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