Large-Scale Land Acquisitions

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The commodification of land

The dramatic increase in demand for large-scale land acquisitions in developing countries from investors, often with no background in agriculture was first noted by the Spanish NGO GRAIN, in the context of the global food price crisis in 2007 and 2008.[1]

The global food crisis cannot be separated from the global financial crisis. Jayati Ghosh argued for example that the impact of financial speculation on world trade prices and food, the promotion of biofuels as an alternative and the neglect of agriculture and agricultural research due to the market orientated neo-liberal market were all contributory factors.[2]

Although there is controversy over the figures, the World Bank estimates that in one year alone - 2008/09 - there was a 14 fold increase in the number of deals announced.[3] The pace at which the demand for land intensified from 2008, as well as the size of the acquisitions, the long-term nature of the deals, and the global scope of the phenomenon, all make the current 'land rush' distinctive. Typically, the type of contracts involved in the recent wave of land acquisitions are long leases, of between 50 and 99 years, and involve acquisitions in excess of 10,000 hectares.[4] Deals have taken place across the developing world in Asia, Latin America, and in Africa.

The phenomenon of a rush of large-scale land acquisitions is not new. Colonial periods were characterised by a 'land rush', in which vast areas of land were acquired by colonial governments, and also by foreign or domestic corporations.[5] Some of the core ideas used to justify these practices in the past remain central to the current debate. Efficiency arguments focus on the need to organise land systems and secure it as exclusive property under local law. Public interest in developing countries (rather than colonial interest) is now been used to legitimise the seizing of land for land deals. Designating lands as 'vacant', 'empty', or 'under-utilised' has been a feature in the facilitation of recent large-scale land deals.[6] This process has been described as a new wave of 'enclosures' in developing countries.

The new enclosures

The enclosure of lands and dispossession of peasants in England in the 16th century led to massive social and economic transformation.[7] The Highland Clearances of Scotland in the 18th and into the 19th centuries to facilitate more profitable sheep farming saw the removal of 'surplus' tenants leading to mass migration.[8] Over a century later post-war development thinking globally was mostly dominated by a focus on small-scale farming and redistribution of land, in stark contrast to colonial practices.

Another change came from the 1980s when neoliberal reforms, privatisation and the promotion of agricultural exports as a motor of growth reversed the small-scale focus, paving the way for large-scale land acquisitions. The 'new enclosures' threaten to have a rapid and devastating impact on agrarian economies, transforming livelihoods and social relations and changing power dynamics in developing countries.[9] The dispossession of the poor, without new forms of employment to compensate the loss of livelihoods, risks undermining development.

Christian Aid's 2008 Report on Fighting Food Shortages highlighted the role of heightened demand for cash crops and biofuels amongst some of the factors in the food price crisis.[10] EU and US policies promoted the development of large-scale corn production to make ethanol and of soybeans and palm oil industrial plantations to make biodiesel, primarily in developing countries. International initiatives to address climate change, which attempt to place a value on natural resources, including the Reducing Emissions from Deforestation and Forest Degradation (REDD+) scheme have also driven government and commercial interests in land.[11]

The 2008 global financial crisis and ensuing recession, which primarily affected developed countries, drove investors to look for alternative sources in the form of commodity bundles of food and fuel for their profit.[12]

Declining returns from investment in industry led investors – including international financial organisations, and regional development banks – to seek 'safer' ventures:

> **A notable consequence has been the decisive shift of investment capital into speculative ventures in land, food and biofuels. International capital markets gravitated towards agriculture as a relatively safe investment haven for the relatively long-term.**[13]

Critical accounts of the current phase highlight the dangers posed by the commodification of land.[14] Land performs a variety of economic roles: it is a factor of production needed for activities such as food production, grazing and human settlement. But when investors and fund managers invest in land, they seem to be after something else. Investing in land as a financial asset does not necessarily translate into new jobs that may have been promised as part of the deal. Despite the rapid increase in the number of deals struck, the actual implementation of many of the projects announced has proceeded at an extremely slow pace, suggesting that many recent investments have been speculative, and that the primary interest of financial investors will be to wait for the value to appreciate.[15] In peri-urban areas, agricultural land may also be transformed into commercial or residential land. These trends have potentially disastrous consequences for food security in developing countries. Without long-term land tenure security, small-scale farmers are unable to make the long-term investment decisions that are necessary for the transition to climate resilient agriculture. This would require strengthening the land tenure rights of small-scale farmers, tenant farmers and pastoralists and protecting these from encroachment, appropriation and other forms of 'land grabbing' by state and private sector interests.

Even when land is turned into productive projects, there may be further implications for food security, related to the nature of global food systems. Investment in land by wealthy countries with limited agricultural land may offer greater potential for the creation of jobs and rural development, but only if land deals are designed to meet the needs of people as well as investors. Christian Aid's 2011 report Hungry for Justice: fighting starvation in an age of plenty on hunger explains the consequences of the race for Foreign Direct Investment and biofuels production in developing countries.[16] This report highlights that when governments facilitate investors' acquisition of land where poor people live; it robs them of their single most important asset. Instead, better results for poor people can be gained when small-holder farmers are put at the heart of biofuels production.

The report argues that all such transactions must benefit the existing land users, that alternative use of the land by smallholders must be considered, and where large farms are allowed, workers must be allowed to organise and should enjoy good wages and conditions.[17] Since 2008, large-scale land acquisitions have been associated with disproportionate benefits accruing to foreign investors and multi-national corporations.

The effects of the land rush in developing countries

The rush for land is also seen to exacerbate the water crisis facing developing countries, by increasing demand for water for agricultural production.[18] Christian Aid's 2008 report Fighting Food Shortage: hungry for change on food shortages argues that natural resources such as seeds, agricultural land and water should be protected in the face of competition from cash crops and climate change.[19] Just how much land is available for agriculture but currently unused is a key question: much of this expansion may be at the expense of forests, and local livelihoods:

> **Small-scale subsistence farmers – including the more vulnerable, especially women and members of marginalized groups such as ethnic minorities – have been worst hit by the effects of such policies. In the most extreme cases they have been driven off their land and denied access to water and other resources. Instead of protecting these vulnerable people, and pursuing pro-poor policies to tackle exclusion, inequality and hunger, governments have focused increasingly on 'export-led growth'.**[20]

Christian Aid partner Action for Large-scale Land Acquisition Transparency (ALLAT) in Sierra Leone has documented the social and economic impacts of large-scale land investments in Sierra Leone in three lease areas where communities were displaced from their land to make way for sugar cane and palm oil plantations. Community focus groups in all three areas reported that the costs of the new investments outweighed the benefits. They felt that the increase in job opportunities, corporate social programmes and land rents did not compensate for the lost income from their oil palm trees, increased cost of living, lower food and nutrition security, loss of self-sufficiency and independence, and social and cultural breakdown experienced by many displaced households.[21]

The former UN Special Rapporteur on the Right to Food, Olivier De Schutter, has explicitly linked the commodification of land and associated land acquisitions to human rights, arguing that states are in violation of the human right to food if land appropriation deprives people of access to life sustaining resources.[22]

He has argued that:

> **Large-scale mono-crop developments mean a wholesale shift in land use and land access. All too often, this is to the detriment of existing land users. If the environment they depend upon is repurposed, degraded and placed off limits, their ability to produce or to procure food – and thus their right to food – will be severely threatened.**

La Via Campesina, an international movement coordinating peasant organisations of small and middle-scale producers, agricultural workers, rural women, and indigenous communities from Asia, Africa, the Americas and Europe,[23] has stated that:

> **Land grabbing – even where there are no related forced evictions – denies land for local communities, destroys livelihoods, reduces the political space for peasant oriented agricultural policies and distorts markets towards increasingly concentrated agribusiness interest and global trade rather than towards sustainable peasant/small-hold production for local and national markets.**[24]

At the same time, however, it is argued by many, including the FAO and the World Bank, that large-scale land acquisitions offer new opportunities for agriculture and development. Developing country governments are actively promoting large-scale land acquisitions as a developmental strategy. The International Federation of Agricultural Producers (IFAP), representing the interests of the middle-income farmers in the developing world, firmly believes that sustainable biofuel production is not a threat to food production, but that it is an opportunity to achieve profitability and to revive rural communities.[25]

The disputed development benefits of the land rush and evidence of the subordination of human rights to commercial interests, demonstrates how large-scale land acquisitions intersect with many major debates about development. These include the role of agriculture and the right to food, the right to shelter and adequate housing, governance and state-society relations, participation of the poor and environment sustainability. It is clear too that the dynamics of large-scale land acquisitions involve not just international actors, but a range of national and local agents.[26]

A closer examination of what we know about the nature and scale of land deals, and how they happen can identify the ways in which these issues intersect, and the roles of different actors.

Land rush, land grab?

The use of the term 'land grabbing' has become synonymous with the acceleration and scale of recent land deals. Jacques Diouf, the former head of the FAO, claimed that such land deals are a form of neo-colonialism, with poor states producing food for the rich at the expense of their own hungry people.[27] Other terms used include 'outsourcing's third wave'[28] and 'the 21st-century land rush'.[29] Determining a precise definition of what constitutes a large-scale land deal – and assessing the ethics of that deal – is challenging. It is not clear what should be included or excluded from a definition, or how to count land deals and measure the extent of the phenomenon.[30] Contested elements include: the size of the deal, the purpose of the land acquisition - for example biofuel production - whether actors are national or international, and legal issues of ownership and process.[31] Broad definitions of the recent wave of land deals focus on acquisition:

> **Land acquisition including not only the purchase of ownership but also the acquisition of use rights leases or concession whether short or long term.**[32]

Many reports focus on the role of international actors – including governments – but exclude domestic investors. The emphasis on 'large' also presupposes a certain threshold when discussing these deals:

> **Large-scale, cross border deals or transactions that are carried out by transnational corporations or initiated by foreign governments.**[33]

Drawing from empirical evidence of the nature of large-scale land deals others focus more explicitly on the development context, and on the implications for food:

> **The purchase or lease of vast tracts of land by wealthier food-insecure nations and private investors from mostly poor, developing countries in order to produce crops for export.**[34]

This echoes the approach taken by the Spanish NGO GRAIN in 2008, which attracted international attention for its report on 'land grabbing':

> **The acquisition (through lease, concession, outright purchase) by corporations or states of large farmland (over 10,000 hectares) in another country and on a long-term basis (often from 30 to 99 years), for the production of basic foods that will then be exported.**[35]

'Land grabbing', has had an impact for activist purposes, drawing attention to the scale of changes and to evidence of unethical practices. Yet the term is problematic: it has been criticised for its lack of precision, and for focussing primarily on the potential negative impacts of land deals. Others insist that 'land grabbing' can only be used to describe an illegal action,[36] of gaining possession of land unfairly or fraudulently. It is not straightforward to judge when a land acquisition lacks transparency and accountability[37] – calling it a 'grab' prejudges the situation and assumes that outcomes can be known. A generalised 'catch-all'[38] reference to 'grabbing' can obscure vast differences in the legality, structure and outcomes of commercial land deals. In sum, while there is evidence that there have been unethical practices in some land acquisitions might constitute a 'land grab', this is not the case for all land transactions in the global land rush.

The focus on international actors also risks deflecting attention away from the roles of domestic elites and governments as partners, intermediaries, and beneficiaries of land deals, whether working on their own or with international partners.[39] A focus on who controls the land and how it is used can reveal these dynamics, beyond the exchange of land ownership, and should cover all land acquisitions, regardless of size, and whether driven by domestic or foreign demand. The overall scale of land deals, global trends and prominence of international actors should not distract from understanding the potential impact of land transactions in specific national and local contexts, nor should it obscure the role of national actors in facilitating and directly driving land acquisitions.

At a 2011 conference in Tirana, Albania, the International Land Coalition,[40] a global alliance of civil society and farmers' organisations, United Nations agencies, NGOs and research institutes, specifically defined 'land grabbing' – as opposed to large-scale land acquisitions – to capture the negative aspects at the centre of the debate.

The development of a specific definition for land grabbing provides a touchstone against which to examine evidence of the impact of land deals on the poor, and with reference to human rights. Human rights provide standards for evaluating the processes and outcomes of specific land deals and for determining if they are ethically unacceptable "land grabs".[41]

The Tirana declaration is also a strong statement against corruption in the context of land deals,[42] relating to bribery, but also misuses of power, like fraud; extortion; money laundering; embezzlement; collusion; conflicts of interest; revolving doors (when an individual exploits their repeated changes in jobs between public office and private companies), violence and other forms of intimidation. This report refers to land acquisitions and land deals, to avoid prejudging the ethics and power relations in particular deals.

Tirana Declaration Definition of Land Grabbing

Land acquisitions or concessions that are one or more of the following:

1. in violation of human rights, particularly the equal rights of women;
2. not based on free, prior and informed consent of the affected land-users;
3. not based on a thorough assessment, or are in disregard of social, economic and environmental impacts, including the way they are gendered;
4. not based on transparent contracts that specify clear and binding commitments about activities, employment and benefits sharing, and;
5. not based on effective democratic planning, independent oversight and meaningful participation.

How much land is involved?

Estimates of the scale of land deals vary widely. GRAIN has highlighted 100 farmland acquisition cases worldwide, between 2006 and 2009, stating that in all of them an estimated 15-20 million hectares of land has resulted in business interests worth US$20-30 billion. This is an area the equivalent to the size of France's agricultural land and a fifth of all the farmland of the European Union.[43] This report, and further research and activism, generated an intense debate about what constitutes a land deal, and on the actual scale of land deals that have taken place.

In 2012 the Land Matrix, a global independent initiative for monitoring land deals, developed an evolving database on large-scale land acquisitions using crowd-sourcing techniques. The Land Matrix features land deals reported in the media or discussed in published research, it offers cross-verification of the data that is made public, and a reliability assessment of information it contains. The data collected by these research projects have been used in a number of reports that have produced contradictory results and cited different figures.

It states that it can verify deals totalling 67 million hectares. The potential area that they can't completely verify could however be up to 227 million hectares. This latter figure was used by Oxfam in its Briefing Paper Land and Power campaign on the issue, in which it claimed that an area the size of Western Europe had been sold or leased since 2001.[44] Global Witness estimated that as much as 203 million hectares of land has changed hands over the last decade eight times the area of the United Kingdom.[45]

The World Bank drew on the Land Matrix data for its 2011 report on rising interest in farmland. The report states that before 2008 annual expansion of global agricultural land was on average 4 million hectares; before the end of 2009 alone 56 million hectares in land deals were announced. Yet from its investigation, farming had only started on less than a fifth of these deals.[46] In contrast to the NGO activism, the emphasis of the World Bank's report is on how increasing agricultural productivity can help reduce poverty and hunger.

However there are concerns that the attempts to quantify the global land deals are inaccurate, and may have been exaggerated.[47] The database managed by the Land Matrix is challenged by poor documentation. The dynamic nature of land deals means that deals can be made, implemented and even cancelled very rapidly.[48] Official information on land deals is scant, or non-existent. Land tenure systems are dated, incomplete and often politicised. Official approaches often fail to capture the complexities of land use, even when customary land rights are acknowledged.

Reform of state cadastral (maps and records of land ownership) systems has been slow, and has not favoured the protection of the poor, or capturing the multiple dimensions of land tenure. Inadequate capacity to record and publish information in developing countries can be compounded by deliberate secrecy, on the part of both officials and commercial interests involved. Negotiations typically occur behind closed doors, and only a few contracts are in the public domain. Even access to land registries is often constrained. In addition, important features of the deals, including their scale and level of implementation, can evolve very rapidly, as projectsmay be announced, terminated or transferred. This makes it difficult for any system for ongoing monitoring to keep data up-to-date. that publicly available information remains limited, and reliability is often a challenge. However, several revisions to the Matrix dataset and less reliance on media reports have increased its accuracy over time.[49]

In the absence of official information, the quality of the sources used to generate information about land deals can be unreliable, overly depending on anecdotal or media reports. The variety in the quality of sources makes a rigorous aggregation of accounts into a single picture of the scale of land acquisitions problematic. Selection bias may also be an issue: land deals may only be reported because they are judged to be problematic, and as a result the negative impacts are over-reported. In many cases land deals have fallen through, in part because switching land use turns out to be more difficult than anticipated.[50] Current approaches may also significantly underestimate land acquisitions by local nationals, and overemphasise the involvement of foreign governments, especially China.[51] Overall, these figures may underestimate the levels of land dispossession going on because of narrow definitions: for example, land usurped in the context of conflict would not be reflected in these figures.

The debate over the scale of land deals means that contracts cannot be regarded with complacency is,[52] even if there is a move away from producing "killer facts" about the absolute geographical scale of "land grabs".[53] Instead there is greater attention to generating high quality evidence over time of processes, actors and the impact of changes in land use, and of avoiding assumptions about winners and losers.[54] The recent proliferation of analyses and case studies demonstrates greater focus on appropriate methods of gathering data and evidence. [55] This report responds to this by focussing on power relations, and individual case studies in order to better understand the nature and impact of land deals and the actors involved at local, national and international levels.

Can land deals work for small farmers?

At the very minimum, large-scale investments in agriculture and other land deals should 'do no harm'. The rights of local communities and workers must be respected. But there may be scope to go beyond this and ensure that land deals in fact 'do more good'. [56]

A survey by the IIED of business models for smallholders called 'Making the Most of Agricultural Investment'[57] explored how land deals might be made to work for small farmers and identified six potential alternatives for managing changes:

1. **Contract farming**, where farmers remain on their land and have supply agreements with buyers. In return, companies provide support, for instance in the form of credit, pesticides, fertilisers and technical advice (the cost of which may be deducted from later payments for produce), and also agree to buy the produce, usually for a specified price.

2. **Management and lease contracts**, under which a farmer or management company works someone else's land on their behalf, often in return for a share of profits instead of a fixed fee.

3. **Joint ventures**, which involve co-ownership, for instance by a company and a farmers' organisation sharing the financial risks, benefits and decision-making.

4. **Farmer-owned businesses** such as cooperatives in which assets are pooled for conducting operations such as processing or marketing.

5. **Business links** between farmers and businesses such as those that process and/or market their crops.

6. **Tenant farming and sharecropping**; the former involves the farmer paying the landowner a fixed rental fee and the latter involves the crop (or the proceeds of selling it) being split between farmer and landowner according to a pre-agreed percentage.

IIED highlighted that the potential benefits of such schemes could include better access to credit, technology and technical advice about farming, improved access to markets, the security of an agreement that produce will be purchased at a particular price and a share in the investor's profits. No one optimum model is proposed because the contexts differ so much. Instead the IIED argues that factors such as the status of people's rights related to land, the relevant laws, history, culture, the natural environment and the nature of the local community had all to be taken into account[58] to ensure equitable outcomes. In particular, small-scale farmers should be active and never minority share owners in the venture, fully represented on all decision-making bodies and legally empowered to veto any measure that threatens to undermine their long-term land security.

Small-scale farmers need the capacity to link up with each other so that their negotiating power can be higher and they are not subject to being played off against each other. Hence unions or associations can be important counterbalancing powers to landowners, investors etc.

Results will depend on the company concerned, the host government, and smallholders' negotiating power. These, in turn will be strongly shaped by the status of their rights and access to crucial information such as their legal rights, market trends and how product prices, royalties and dividends were to be calculated. Development agencies, advocacy groups, and public-interest lawyers will have an important role to play in supporting smallholders and tackling 'the power asymmetries' affecting their dealings with agribusiness, which has the best lawyers and negotiators at its disposal. An examination of how land deals happen, including the actors involved, is essential for revealing the power relations around land deals, and the potential for benefits to be realised.

The actors involved in large-scale land acquisitions

Governments and state agencies are the central actors in land transactions. Developing country governments facilitate and promote land deals, and are responsible for making decisions on land deals, which in some cases have led to dispossession and even forced removal of local landholders and users. Yet, states are not unitary actors.[59] Beyond government ministers and officials, a range of state agencies are usually involved in facilitating, negotiating and implementing land deals, including specific state agencies, legislators, regulators, the judiciary, and local government. In addition, powerful interests – international and domestic - can influence and penetrate decision-making and implementation of state functions. Public policies and taxpayer money have been used to promote land deals, including through enticements to investors such as tax holidays and tariff waivers.[60]

Land deals draw on national and international laws. Contracts are at the heart of land deals: signing contracts means that a decision has been taken to make land change hands, and contracts offer protection to the parties involved by defining the terms and the way the risks, costs and benefits are distributed.[61] Generally, contracts are highly context-specific as they reflect national and sub-national legal systems and the specificities of each particular deal. This makes it difficult to compare contracts and generalise across cases. Nonetheless, many contracts have been found to be short and unspecific in the terms, and have been drawn up in contexts where the legal safeguards are weak, leading to real concerns that some contracts are not fit for purpose.[62]

Other actors involved in land acquisitions include the investors, lenders and insurers. Much attention has been given to foreign investors – especially multi-national corporations (MNCs). Land deals also often involve consortia made up of foreign and local companies, companies operating on behalf of foreign governments and in some cases, shell companies, that are designed as a front for the activities of MNCs. Lending agencies, insurers and international financial organisations can also play an important part in the negotiation of contracts.

Developing countries are more open to Foreign Direct Investment as a result of liberalisation under Structural Adjustment Programmes of the 1990s led by the World Bank and International Monetary Fund, and the increasing number of bilateral and regional trade and investment agreement in more recent times. This brings a danger that any profits made are taken by investors outside the country, generally to an off-shore tax jurisdiction. International bilateral, regional and multilateral trade agreements have reduced tariffs and other barriers to imports in most countries around the globe and have enabled the movement of capital across borders.[63] The General Agreement on Trade in Services, and Trade Related Investment Measures, and the World Trade Agreements, operate alongside bilateral investments treaties and free trade agreements.

The World Bank and regional development banks have taken some steps encouraging developing country governments to facilitate land deals.[64] In the past the World Bank has voiced the need for improved transparency and governance in tenure, natural resources management and investment. Yet the same entities are also promoting an approach to agriculture and food production based on large-scale farming, financed by foreign and domestic investors. There are concerns that these commitments focus on facilitating large-scale investment for food production, cutting red tape and clarifying property rights for investors.

For example, Ghana has committed to, by 2015, pilot models of 5,000 hectare land agreements, and Burkina Faso will develop a fast-forward resettlement policy.[65] More recently, there are indications that the World Bank will dilute the safeguards on rights related to land.[66]

One example of this is the 'New Alliance for Food and Nutrition' launched by the US at the 2012 G8 (now the G7 without Russia) summit. In both Burkina Faso and Malawi, governments have committed to set aside large areas of land for industrial-scale agricultural investments. However, in both countries, current land laws – which have been fast tracked for reform under the New Alliance framework - are inadequate to protect the rights of communities to use the land being targeted for these investments. Their land use is often managed in customary systems, and therefore unrecognised and unregistered. In both countries, efforts are under way to reform land use registration. While land governance reforms are major priorities in both countries and still being contested, they are now being fast-tracked in both countries to attract new land investments. Smallholder farmers and their representative organisations have not participated in any meaningful way in deciding on government policy and investment priorities under the New Alliance framework in either country.

In Malawi, a report by a Christian Aid partner shows that the government's policy priority under the New Alliance, which includes fast-tracked land reform to facilitate large-scale agricultural investments, has been shaped primarily by agri-business interests.[67] In both countries, civil society and farmer organisations are calling on their governments and donors who support the New Alliance to implement the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests, and to improve the mechanisms for consultation with and participation of civil society and farmer organisations in developing and monitoring the implementation and impact of New Alliance policies and priorities.[68]

Legal frameworks protect the investors

A sophisticated international legal and policy framework facilitates land deals.[69] Therefore, while the state is a key actor, land deals are governed by international legal norms upheld by international financial institutions. These legal norms tend to promote and protect the interests of foreign investors.[70]

Three sources of law that make land deals 'legal' have been identified by Smaller and Mann in their paper A Thirst for Distant Land: Foreign Investment in Agricultural Land and Water: the domestic framework, and two sources of international law.[71] All of these sources of law are dominated by a market-based approach to land focused on leveraging the maximum commercial value from the land, and protecting the investor.

- At **domestic level**, this refers to laws governing foreign direct investment, taxation, property, water, environmental health and safety and labour laws. In developing countries laws that facilitate foreign investment and protect foreign investors are often well-developed, while regulation is weak. Meanwhile, laws in other areas are patchy at best, with little regulation. In particular, domestic law governing land, access to water and environmental controls may be unclear.

- **International investment contracts** govern the relationship between the host state and the investor, and offer 'hard' rights to investors that are layered over domestic law. This undermines the position of local landholders even further, especially once contracts have been signed. Investment contracts can further strengthen the rights of investors, for example through stabilisation clauses. These clauses mean that in case of a new regulatory measure, investors are entitled to compensation – which acts as a deterrent to government seeking to strengthen and improve regulatory systems to meet, for example, human rights objectives or environmental standards. In some cases these clauses preclude the application of new measures altogether. Contracts also determine which law applies in the event of dispute – national courts, domestic arbitration or international arbitration.

- **International investment agreements** offer a further layer of law, and even harder protection for investors from government measures. The most common type of agreement is a Bilateral Investment Treaty, but Regional Trade Agreements and Free Trade Agreements are also commonly used as the overarching framework for land acquisitions.

  In a recent briefing, Traidcraft[72] highlighted the growing controversy over these agreements and the excessive protection they offer for investors through regulatory chill (when the threat of a claim by an investor against a policy decision stops the government from implementing its policy- for example if a land reform measure seeking to redistribute land would affect land owned by an investor), locking-in liberalisation. The briefing also highlights the detrimental effects to domestic firms, and the high costs facing developing country governments if policy decisions are taken to international arbitration.

Studies of the legal aspects of land acquisitions have highlighted that although legal, because affected communities are excluded, many deals lack legitimacy and this brings considerable risks to the investor. Unresolved conflicts over land can significantly augment the costs for investors,[73] and more importantly, the long period of land leases may in fact be unsustainable unless there is some level of local satisfaction. These factors may explain why the agricultural development of lands appears to be lagging behind the rate of formal land transfers.

Lack of transparency in land deals exposes local groups to risks of dispossession. But this also exposes investors to contestation and potentially outright opposition. External actors can become caught up in existing tensions over land , or new land acquisitions may foment local opposition that even overwhelms the position of state actors. Issues of image and reputational risk are not insignificant:[74] in a high profile case in Madagascar, the South Korean company Daewoo pulled out of a large deal to cultivate an area comprising half the country in 2009 when the head of the Madagascar government was forced to resign over the controversial project.[75]

International mechanisms for protecting human rights

The international legal framework for protecting investors is strong, but the corresponding mechanisms for protecting human rights related to land deals, especially for those affected, are extremely weak. A number of international initiatives have emerged in response to activism around land grabs that attempt to overcome this tension.

The International Food Policy Research Institute (IFPRI), the World Bank (WB), the Food and Agriculture Organisation of the United Nations (FAO), the International Fund for Agricultural Development (IFAD), and the United Nations Conference on Trade and Development (UNCTAD) have argued that by regulating land deals, negative impacts can be mitigated, and, at the same time, opportunities can be maximised.

For example, the FAO "win-win" strategies[76] propose that the interests of foreign investors can be easily reconciled with those of the developing countries: through the land purchase, or lease, new jobs are created and the new investments and technological advances brought in the target country can be used to either directly or indirectly boost the local economy.

Together these organisations, led by UNCTAD, have proposed a set of seven principles for "responsible" agricultural investment. These Principles for Responsible Agriculture Investment (PRAI) aim to provide a framework for national regulations, international investment agreements, global corporate social responsibility initiatives, and individual investor contracts, as follows:[77]

Principles for Responsible Agriculture

Principle 1: Existing rights to land and associated natural resources are recognised and respected.

Principle 2: Investments do not jeopardize food security but rather strengthen it.

Principle 3: Processes relating to investment in agriculture are transparent, monitored, and ensure accountability by all stakeholders, within a proper business, legal, and regulatory environment.

Principle 4: All those materially affected are consulted, and agreements from consultations are recorded and enforced.

Principle 5: Investors ensure that projects respect the rule of law, reflect industry best practice, are viable economically, and result in durable shared value.

Principle 6: Investments generate desirable social and distributional impacts and do not increase vulnerability.

Principle 7: Environmental impacts of a project are quantified and measures taken to encourage sustainable resource use, while minimising the risk/magnitude of negative impacts and mitigating them.

The Principles have been criticised for being heavily skewed towards an economic agenda. Implicitly, this supports "vacant land" arguments used to justify the acquisitions or purchase of large tracts of land in developing countries. Foreign Direct Investment (FDI) is seen as a solution to the lack of capital needed for developing rural areas in poorer countries. In contrast, rights-based activists do not view the large-scale land deals as an opportunity for growth and development, but instead claim that these deals can violate human rights.

Civil society organisations (CSOs) have rejected the PRAI and attacked them for being vague and non-committing for governments and investors, seeking to legitimise land grabbing as a ''corporate (foreign and domestic) takeover of rural people's farmlands''.

The FAO-hosted Committee on World Food Security consists of all FAO member states, non-governmental organizations and CSOs, international agencies and the private sector. The committee's mandate is to improve the global governance of food and it represents the most important intergovernmental and multi-stakeholder platform for food security and nutrition. This Committee has developed Voluntary Guidelines on governance of land tenure.[78] These aim to provide guidance, especially to governments of target countries, on how to improve the development and implementation of rights related to land and tenure governance systems.

The guidelines emphasise universal, interdependent, indivisible and interrelated human rights. The principles of participation, accountability, non-discrimination, transparency, human dignity, gender equity, empowerment and the rule of law apply to such human rights-based approach of responsible governance. This human rights approach has the potential to get closer to the structural and power dynamics that perpetrate poverty[79] by forcing international institutions to think more broadly about the impacts of land deals, and to consider the impacts on livelihoods for current and future generations, rather than focusing on the technicalities of a particular deal.

The former Special Rapporteur on the Right to Food, Olivier De Schutter went further, explicitly putting the rights of vulnerable communities ahead of the commercial interests involved in land deals.[80] He has argued that it is the international community's duty to control this phenomenon in order to preserve the rights of the poorest populations. To do this, he set out eleven principles to oversee large-scale agricultural land acquisitions,[81] based on international human rights laws, including the right to food.

These principles emphasise the state's responsibility to ensure access to food in sufficient quantity and quality to all individuals under its jurisdiction. De Schutter has also proposed an alternative programme of agricultural investment.

The principles developed by the Special Rapporteur remain an agenda for action and do not inform international practice, nor yet form the basis for the regulation of large-scale land deals. Furthermore, neither the PRAI nor the Voluntary Guidelines establish legally binding obligations, and they do not replace existing national or international laws, treaties or agreements. As a result, the international response to human rights issues relating to land deals remains incomplete, contested and skewed in favour of protecting investors. Of themselves, normative frameworks of this sort will not secure the necessary action and change to regulate land deals effectively.

At national level, little protection for the poor

Land deals, and their impact on poor and rural communities, are being made irrevocable given the legally binding ways in which deals are being made. The historical context for this is in the structural adjustment programmes of the 1990s, with the focus on land titling and on changing laws to facilitate international investment. Although customary rights were given legal force in many countries, the procedures for formalising land tenure are weak and have been overridden in practice once the demand from foreign investment escalated from 2007.[82] For example, Christian Aid's 2009 report on biofuel production highlighted the danger to the rights of indigenous people and pastoralists who may depend on land for their livelihoods but who may lack a recognised formal claim to the land.[83]

Global normative standards for consultation, consent and recompense, are framed by the principle of free, prior and informed consent (FPIC), and highlighted in the Tirana Declaration. Land deals demonstrate the weak enforcement of human rights by recipient and investor states.[84] The focus on human rights, as well as on natural resource management and environmental concerns, is minimal.

At domestic level, political systems in developing countries are generally weak at creating a policy and legal environment for the enforcement of human rights and strengthening land tenure, even while the legal frameworks for facilitating foreign investment and land acquisitions have been strengthened.

Land deals affect the right to food: at minimum this requires that the loss of food security and land should be offset by alternative livelihood assets.[85] Current practice in developing countries falls far short of normative standards. Local land users are generally in a highly unfavourable negotiating position with respect to investors. In real negotiations government agencies invariably align with the investor rather than the local land users, since they are driven by the investment imperative. In this, communities' constitutional rights and international legal commitments are overlooked or ignored. As a result, targeting benefits of land acquisitions to local populations is generally vague and dispersed, and certainly not related to the right to food. This gives local landholders uncertain rights from the outset.

Negotiations usually happen behind closed doors and the process, or the final contract, are rarely publicly available. Even rarer are cases where local landholders have a say in the negotiation process. The central control over land exercised by governments and, in some cases, by specific state agencies established to act as a "one-stop shop" for foreign investors to cut through red tape, also creates real risks that local people are marginalised from decision-making. Lack of transparency and weak governance facilitates corruption, and undermines public interest.[86] Forms of corruption include manipulation of existing cadastral systems, payment of bribes to officials to advance the investor project and interests, lack of transparency around compensation and payment to unaccountable chiefs or leaders, and extortion.

Unless national policy and legal frameworks provide and implement adequate safeguards for local land and resource rights, as well as effective mechanisms for local level participation in decision making, the supposed opportunities of agricultural investment will not materialise, and instead lead to increased marginalisation. In contexts characterised by weak political representation and accountability, and post-conflict situations, the potential for government abuse of the power to authorise forced evictions and make land deals is intensified. Furthermore, the characterisation of opponents of land deals as 'anti-development' exacerbates this.

The historical view that peasants are lazy, backward and resistant to change remains influential and has been used to mobilise support in favour of land deals and isolate those advocating alternative approaches to agriculture and development.

The international response to human rights issues relating to land deals remains incomplete, contested and skewed in favour of protecting investors. Of themselves, normative frameworks of this sort will not secure the necessary action and change to regulate land deals effectively.

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