

## **Global land grabbing: issues and solutions**

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**September 2010**

**Paper prepared for Pain pour le Prochain**

### **I. INTRODUCTION**

Recent years have witnessed an unprecedented upsurge in foreign investment in agriculture either through purchase or leasing of large areas of land in developing countries, especially among some of the poorest countries in Southern Africa. Some of the most publicized investment deals had as principal motives the security of food or energy supplies to the rich countries of investors, in competition with the food security needs of the host countries which continued to receive food aid from multilateral and bilateral donors. This scandalous investment trend has given rise to strong outcry from civil society organizations which have dubbed these large-scale foreign investments in agriculture land as “land grabs” from poor countries.

Furthermore, these investment deals have generally been characterized by a lack of transparency, to the point where there has been informal complaint that legal contracts either did not exist or have not been made available to government officials responsible for foreign investment or to local communities and stakeholders.<sup>1</sup> This casts doubt on government accountability and raises serious concerns on government corruption and inappropriate acts, which can have a negative impact on access to land, water and food for individuals and communities affected by these investment deals.

The chance is that this land investment trend would not subside in the future, as the underlying cause deriving from the pressure of global demand for food and energy will not go

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<sup>1</sup> As reported in Carin Smaller and Howard Mann : « A Thirst for Distant Lands: Foreign Investment in Agriculture Land and Water”, International Institute for Sustainable Development, May 2009, p.3.

unabated. Indeed, the upsurge of foreign land investment was triggered by growing concerns for food and energy security in cash-rich countries, in the context of highly volatile commodity markets. Rather than relying on commodity markets for their imports, these rich countries are choosing to secure their supplies directly through the control of production which is repatriated to investing countries. Looming in the background is also the appropriation of scarce water resources.

The danger is real that poor rural people will be deprived of their means of subsistence and of their right to food. Civil society organizations have strongly protested against this land grabbing and in some cases local movements have succeeded in stopping some big deals between foreign investors and governments, as in the cases of Madagascar and the Philippines. But so far, responses have been diverse and there has not been a systematic pressure on governments to have a clear policy in this regard, which would protect the poor from dispossession and displacement and guarantee the domestic food security. Many organizations, either intergovernmental or non-governmental, as well as some donor governments have put forward codes of conduct guiding foreign investors or proposals for alternative forms of investment which would be more beneficial for local peasants. Host country governments have not come up with any clear position or policy to protect the rural poor, being in general inclined to implement a land liberalization agenda.

In this paper, we will review the issues stemming from the impacts of such foreign investment on the economic, social and environmental conditions in host countries. We will then review some initiatives floated by intergovernmental and non-governmental organizations, as well as donor governments. We will analyze in greater details the solutions or approaches proposed to address some issues raised by foreign land investment. We will conclude by indicating some tentative way forward which would focus on the primary responsibility of host country governments to implement a pro-poor land policy agenda.

## **II. ISSUES AND CONCERNS**

The recent foreign investments in land have raised several issues which, for lack of precise information, have yet to be further analyzed. Based on several case studies and anecdotal evidence reported in a number of studies published by international organizations (FAO, IFAD, World Bank, UNCTAD) and by NGOs (GRAIN, ILC, IFPRI, IISD, IIED, FIAN, etc.), we will briefly review the issues and concerns raised by such investments. In short, the first concern is caused

by the sheer size of these investments. While arguments are advanced by investors and international organizations (notably World Bank and UNCTAD) in favor of foreign investment which would bring economic growth through increases in agricultural production, exports and employment, as well as upgrading of technology, opponents to foreign investment argue that these benefits are slow to come, if there is any benefit to reckon, while there are negative impacts in terms of threat to domestic food security, dispossession and displacement of poor rural population, environmental degradation and depletion of water resources, loss of policy space because of obligations entailed by international investment contracts and legal agreements. In this section, each of the issues raised will be briefly reviewed.

## **II.1 The scale of foreign investment in land**

Given the lack of transparency on the investment deals it is impossible to know the exact amount of hectares of land which were sold or leased to foreign investors. Some estimates oscillate between twenty and fifty million hectares, but this has to be carefully checked. A recent estimate posted by the United Nations Convention to combat Desertification (UNCCD)<sup>2</sup> informed that between 2004-2009, in five Sub-Saharan countries, Ethiopia, Ghana, Sudan, Madagascar, Mali and Sudan, the area of farmland bought or leased amounted to 2.5 million hectares, for a value of US\$ 920 million. The size of individual investment varied between 5000 hectares and 100 000 hectares.

To put things in perspective, it is worth mentioning that the majority of the 81 countries classified as low-income food-deficit countries (FAOSTAT 2005) have less than 3 million hectares of land that is arable or under permanent crops. In Sub-Saharan Africa, 98 per cent of agricultural holdings have less than 10 hectares and in Asia 88 per cent of agricultural holdings have less than 2 hectares.

Countries which are targets of foreign investors are generally cash-poor low-income countries which have arable land and usable water resources. In Africa, they include Sudan, Mozambique, Mali, Madagascar, Ethiopia, Sierra Leone, Democratic Republic of Congo, Cameroon and Benin. In Asia, countries being targeted are mainly Cambodia and the Philippines, and to some extent also Indonesia and Laos.

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<sup>2</sup> UNCCD News, Issue 2-3, May-June 2010 : « The great land grab », p.2-8.

It has also been reported that Swedish, British and Russian investors have bought up more than 800 000 hectares of land in Ukraine.

The types of investors involved in these deals are mainly private investors, including agri-businesses, investment banks, hedge funds and commodity traders, sometimes backed by their governments in the negotiations with host countries. But increasingly states have set up investment funds targeting land purchases abroad. Major countries active in land investment abroad include Gulf States (Saudi Arabia, Kuwait, Qatar, United Arab Emirates), other Arab States such as Libya and Egypt, Asian countries such as China, India, Japan, Republic of Korea.

An extensive account of deals which have been ascertained as signed deals is provided by IFPRI<sup>3</sup> and Pain pour le Prochain concerning Swiss investors<sup>4</sup>. It is understood that the list reported is far from being exhaustive.

## **II.2 Potential benefits of foreign investment**

Arguments advanced by investors and international organizations (such as the World bank and UNCTAD) to highlight the potential benefits derived from foreign investment in land usually refer to increases in agricultural production and exports, increase in employment, improvement in productivity as a result of modern technology, increases in government taxes.

Underlying these arguments is the view that large scale agricultural projects which need large amounts of foreign investment are generally beneficial because of economies of scale, enhanced access to international markets through integration in multinational value chains, enhanced capacity to adhere to rigorous foreign consumer standards, use of modern technology and seeds and fertilizer. Implicit is the schema of large scale production for exports to global markets, mainly in the context of buyer value chains, which would increase foreign exchange earnings and employment for the rural population (often also through contract farming and outgrower arrangements, or joint ventures with local communities).

The reality of recent foreign investment in land in low-income countries does not match this schema. The majority of these investments serves to secure the food and energy security of investing countries. Agricultural production resulting from these large scale investment is not

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<sup>3</sup> International Food Policy Research Institute (IFPRI): ““Land Grabbing” by Foreign Investors in Developing Countries: Risks and Opportunities”, by Joachim von Braun and Ruth Meinzen-Dick, IFPI Policy Brief 13, April 2009.

<sup>4</sup> Pain pour le Prochain : « L'accaparement des terres : La course aux terres aggrave la faim dans le monde », Collection Repères 1/2010.

sold on global markets, but is rather appropriated by original investing countries. It is not clear how this circuit of “agricultural repatriation” is being organized: will the production be valued and declared at international prices? Will the foreign investors pay taxes to host governments on declared fair value of production, or will taxes not be paid at all as a result of original arrangements with governments? Whatever tax revenues can be grasped by governments, these would certainly not fully compensate for the loss of food production for domestic consumption, especially in countries which are suffering from food shortages (as is the case of many Sub-Saharan countries which are targets of foreign investment).

In terms of employment, when the projects are fully owned and controlled by investors, they may bring their own national workers. Furthermore, large scale projects are generally highly mechanized, thus not generating much employment for the local small farmers or landless peasants.

Other benefits often promised by foreign investors are the building of infrastructure such as roads and ports to facilitate export logistics, and the development of social infrastructure such as schools, health centers and water services. It has been reported, notably by the World Bank, that these benefits did not materialize in many cases or at least were very slow to come. Host governments have no power to put pressure on foreign investors to fulfill their promises.

And finally, many studies have shown that the productivity of large scale agricultural projects is not greater than small holder farms which have received enough investment to enhance their productivity. Family-operated farms can be economically more efficient than big farms or plantations operated by wage labour.

### **II.3 Threat to food security**

The sharp increases in food prices in 2007 and 2008 have highlighted the importance of food security for the world and have led to a number of initiatives at the international level aiming at finding solutions to ensure global food security, targeting especially the hungry and malnourished people<sup>5</sup>. In order to secure global food security, the world needs to address two challenges: (1) how to increase food supplies on a sustainable basis in response to the growing world demand for food resulting from increases in world population and income; (2) how to

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<sup>5</sup> Notably: The UN secretary General High-level Task Force on Global Food Security Crisis set up in July 2008; G8 Summit July 2009 and L’Aquila “Declaration, Agriculture and food security at the core of the international agenda”; FAO World Summit on Food Security in November 2009.

assure access to adequate food for the more than one billion people who suffer from hunger and malnutrition.

- (1) Concerning the first challenge, FAO projects that by 2050 food production (net of food used for liquid biofuels) must increase by about 70 per cent in order to satisfy the increase in global demand for food resulting from the growth in world population, which will reach 9.1 billion in 2050, and from an increase in world income levels. FAO projections also predict that most of the growth in food demand will come from developing countries. Furthermore, 90 percent of the necessary production increases will need to come from increases in yields and cropping intensity and only 10 per cent from expansion of arable land.

According to FAO data, the **area of land** that can be expanded for crop production is estimated to be about 2 billion ha, 80 per cent of which is located in sub-Saharan Africa (especially Western and Central Africa) and in South America.<sup>6</sup> Half of these cultivable land reserves are found in just seven developing countries: In sub-Saharan Africa: Angola, Democratic Republic of Congo, Sudan; in South America: Argentina, Bolivia, Brazil and Columbia.<sup>7</sup>

However, FAO estimates that the extent to which these “reserve lands” can become suitable for crop production is rather limited. Some of these lands currently not cultivated have important ecological functions that would otherwise be forgone. They are also located in areas where lack of access and infrastructure could limit their use at least in the short term. Taking these limitations into account, FAO projects that by 2050 the net increase of the arable land area will be just 70 million ha, or about 5 per cent of the current area.<sup>8</sup>

On the other hand, the growth in the population engaging in agriculture considerably reduces the land-to-population ratio. Landlessness and land fragmentation are growing in developing countries.<sup>9</sup> For example, in India, the size of average landholding fell from 2.6 ha in 1060 to 1.4 ha in 2000 and is still falling. In Cambodia, rural landlessness rose from 13 per cent in 1997 to 20 per cent in 2004, or even close to 30 per cent currently. Similarly, in East and Southern

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<sup>6</sup> FAO (2008) : *The State of Food and Agriculture – Biofuels : Prospects, risks and Opportunities*, FAO, Rome, p.60

<sup>7</sup> G. Fischer and others (2001) : *Global Agro-ecological Assessment for Agriculture in the 21st Century*, FAO and International Institute for Applied Systems Analysis (IIASA), Laxenburg, Austria, p.21.

<sup>8</sup> FAO, World Summit of Food Security, Rome 16-18 November 2009 : *Feeding the World, Eradicating Hunger*, Background note WSFS 2009/INF/2, p.5.

<sup>9</sup> The information in this paragraph is taken from IFAD (2009) : *The growing demand for land, risks and opportunities for smallholder farmers*, Discussion paper for Round Table 2, Governing Council, 18-19 February 2009, p.5.

Africa, cultivable land per capita has halved over the last generation, and in a number of countries, the average cultivated area amounts to less than 0.3 ha per capita.

At the same time, FAO notes that much of natural resource base, including land and water, shows worrying signs of degradation. As quoted by IFAD<sup>10</sup>, FAO estimates that land degradation is increasing in severity in many parts of the world, involving more than 20 per cent of all cultivated areas, 30 per cent of forests and 10 per cent of grassland. By 2020, an estimated 135 million people may be driven from their land as a result of soil degradation, with 60 million in sub-Saharan Africa alone.

Concerning fresh-water reserves for the required production growth, FAO estimates that although there are sufficient capacities at the global level, these are very unevenly distributed. An increasing number of countries, especially in Middle East/North Africa and South Asia, are reaching alarming levels of water scarcity and 1.4 billion people live in areas with declining ground-water levels. Water scarcity is likely to worsen as a result of climate change in many regions.

According to FAO, biodiversity, another essential resource for agriculture and food production, is threatened by urbanization, deforestation, pollution, overfishing, and the conversion of wetlands.

As noted above, the increase on world food production will need to come mostly (for 90 per cent) from an increase in production yields and crop intensity. The future of agriculture and the ability of the world food system to ensure food security for a growing world population depend very much on reversing degradation of critical natural resource inputs. According to FAO, the aim must be to stop over-exploitation, degradation and pollution, promote efficiency gains and expand overall capacities as appropriate. In such a scenario, there is a need to intensify investment and production in the smallholder farming sector, in order to counterbalance the over-exploitation and environmental degradation resulting from large-scale mono-crop farming.

There are two additional threats to global food security, resulting from the negative impacts of climate change and the competition of biofuel production for available scarce land.

**Climate change** will have negative impact on agriculture through higher temperatures, precipitation changes, lower water availability, pests and disease pressure. This impact will be

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<sup>10</sup> IFAD (2009), op.cit., p.5

unevenly distributed among regions. For example, FAO estimates that climate change will have an immediate and severe impact on food security in the Southern hemisphere, where food supply could be below current, already insufficient levels. Pressure on water demand will also be enormous. According to FAO, all current quantitative assessments show that climate change will adversely affect food security. Food prices are expected to rise due to climate change.

The second threat lies in the increase in the production of **liquid biofuel** based on agricultural commodities. Biofuel production increased more than threefold from 2000 to 2008. The production of biofuel was encouraged by some countries in a move to reduce carbon emission from the use of fossil fuel. Thus countries, especially developed countries, adopted various policy measures such as mandated blending of liquid biofuels with fossil fuels, as well as subsidies, tax incentives and import restrictions. The rise in crude oil prices has provided another incentive. The drastic increases in prices of key food commodities such as maize, wheat, rice and soybeans in 2007/2008 mirrored the increase in prices of energy products.

FAO maintains that a further rise in the production of liquid biofuels, particularly from food commodities, could create a real risk for food security. Already in 2007/2008, the production of ethanol took a significant share of roughly 10 per cent of total production of coarse grains. According to OECD-FAO projections, global liquid biofuel production may roughly double in 2018, thus, significantly adding to the demand for agricultural feedstocks (sugar, maize, oilseeds) and putting upward pressure on food prices.

Global land use for the production of fuel crops recently covered about 2% of global cropland (about 36 million ha in 2008).<sup>11</sup> Some estimates of land requirements for future biofuel production gave a range between 35 million ha and 166 million ha in 2020. Other estimates indicated that about 118 to 508 million ha would be required to provide 10% of the global transport fuel demand with first generation biofuels in 2030 (this would equal to 8% to 36% of current cropland).<sup>12</sup> Given the scarcity of cropland, this growing claim on land requirements by biofuel production will inevitably displace the production for food, thus putting a significant threat on global food security.

This real threat on food security has also to be evaluated against the current assessment by scientists that, while mitigating climate change is a major driver behind biofuel support, the mitigation potential of first generation biofuels to-date is rather minimal overall and the costs

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<sup>11</sup> UNEP (2009): *Assessment of biofuels*, UNEP, Nairobi, p.18.

<sup>12</sup> UNEP (2009), op.cit.

so far seem disproportionately high.<sup>13</sup> Concern has been growing about negative implications of growing feedstocks for biofuel production. According to UNEP (2009), “current biofuels are often made from feedstock crops that also serve as food. Hence, there is a potential risk for competition between food and fuel, and consequences on food prices as a result. Another risk identified is expansion of biofuel feedstock production into areas that provide valuable ecosystems that support high biodiversity and services that are crucial to our economies and human life. Moreover, as a consequence of land use change associated with expanding agriculture, the envisaged positive effects on climate mitigation could turn out to have the opposite effect.”<sup>14</sup>

As quoted by FAO<sup>15</sup>, a recent IFPRI study estimates that continued rapid expansion of biofuel production up to 2050 could lead to the numbers of undernourished pre-school children in Africa and South Asia being respectively 3 million and 1.7 million higher than would have been otherwise the case.

- (2)** Concerning the second challenge relating to food security, despite the positive growth trend of global food production, the number of chronically undernourished people has grown. The global financial crisis of 2008 has worsened the situation and by 2009 the number of undernourished in the world was estimated at 1.02 billion, according to FAO.

Many food-importing low-income countries have received food assistance from multilateral and bilateral donors. It is highly disturbing to note that among countries which have ceded their land to foreign investors, many are classified as food insecure and have received food aid from the World Food Programme, such as Cambodia, Tanzania, Sudan, Ethiopia, or have received food security grants from the World Bank, such as Sierra Leone. Sudan, for example, is the largest beneficiary of the World Food Programme, and, at the same time, has hosted the largest land deals with foreign investors, allowing the latter to export on average 70% of the crops grown in the country (if not all in the cases of some investors).

The persistence of hunger and malnutrition is due to the lack of growth of the agriculture sector, the lack of income opportunities for the poor and absence of effective safety social nets. It has to be noted that 75% of the poor in developing countries live in rural areas and derive significant parts of their livelihoods from agriculture.

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<sup>13</sup> UNEP (2009), op.cit., p.20.

<sup>14</sup> UNEP (2009), op.cit., p. 23.

<sup>15</sup> FAO WSFS 2009/INF/2, op.cit., p.15.

Addressing the challenge of food security for the poor and malnourished requires not only short term measures to provide assistance and safety nets to the poor to secure their access to adequate food, but also longer term measures to provide the poor the means to earn income to buy their food.

Based on the right to food, “food security exists when all people, at all times, have physical and economic access to sufficient, safe and nutritious food to meet their dietary needs and food preferences for an active and healthy life”. Under this light, the need to improve food and nutrition security worldwide involves adoption by individual states and the international community of measures which go well beyond immediate emergency responses. The UN High-Level Task Force on the Global Food Security Crisis recommends scaling up safety nets that improve productivity and promoting agricultural investments that focus on smallholder farmers and rural development.

The UN High-Level Task Force recommends a two-track response<sup>16</sup>:

- To meet the immediate needs of vulnerable populations, four types of actions are needed: 1) emergency food assistance, nutrition interventions and safety nets to be enhanced and made more accessible; 2) smallholder farmer food production to be boosted; 3) trade and tax policies to be adjusted; 4) macroeconomic implications to be managed.
- To build resilience and contribute to global food and nutrition security in the longer-term, four additional measures are proposed: 1) social protection systems to be expanded; 2) smallholder farmer-led food availability growth to be sustained; 3) international food markets to be improved; 4) international biofuel consensus to be developed.

Actions need to be taken at all levels, at the country level, at the regional level, and at the international level involving global partnership and development assistance.

The recommended menu of actions to sustain smallholder agriculture production includes:

a) improve the enabling policy framework by reviewing current macroeconomic, budget, trade and sectoral policy impacts on incentives for smallholder production and development of input and output markets serving smallholders;

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<sup>16</sup> UN High-Level Task Force on Global Food Security Crisis : *Comprehensive Framework for Action*, July 2008.

- b) stimulate private investment in agriculture, especially investments in businesses which provide inputs and services to smallholders and in agricultural marketing and processing enterprises which integrate smallholders into domestic and international food supply chains;
- c) ensure secure access to and better management of natural resources, including land, water, and biodiversity;
- d) invest in agricultural research on food crops, animal production, and inland fisheries, including in the promotion of approaches to information, knowledge sharing and learning that are better adapted to the needs of small farmers;
- e) improve rural infrastructure such as roads, irrigation and electrification to remove bottlenecks in marketing, reduce transaction costs and boost productivity;
- f) ensure sustained access to competitive, transparent and private-sector-led markets for food produce and quality inputs, focusing on the key commodity chains (from producer to consumer) and their stakeholders (producers, traders, processors, government, etc.);
- g) support development of producer organizations;
- h) strengthen access of smallholders and other food chain actors to financial and risk management instruments.

It is interesting to note some initiatives already introduced to purchase produce of smallholder farmers for the delivery of food assistance. Thus, the World Food Programme (WFP) launched in 2008 the initiative Purchase for progress (P4P), using WFP's ability to buy food as a tool to both stimulate production and link small farmers to agricultural markets. By the end of 2009, the P4P project had started implementation in 19 of 21 selected pilot countries, with 39 000 metric tons of staple crops purchased from 80 farmers' organizations in 13 countries.<sup>17</sup> Likewise, the Brazilian government's Brazilian Food Acquisition Programme, a component of the Zero Hunger strategy, purchased produce from family farmers to redistribute it to poor families.<sup>18</sup>

In conclusion, the challenge of global food security needs to be addressed by a radical change in the approach to agricultural development. Investments for the development of rural sectors need to focus on smallholder producers in order to enhance their productivity and to expand

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<sup>17</sup> World Food Programme (2010): *Fighting Hunger Worldwide, Annual Report 2010*, World Food Programme, Rome, Italy; p. 7.

<sup>18</sup> FAO WSFS 2009/INF/2, op.cit., p. 13.

income opportunities for the poor. The focus on smallholder production also allows a more sustainable mode of agricultural production.

#### **II.4 Water resources and environmental impact**

Food security is the main driver for some (cash-rich) investing countries which can no longer produce enough crops for their population as they are facing a situation of acute water scarcity. This is particularly the case of Arab Gulf States which use around 80% of their total water supply for agriculture. Saudi Arabia, for example, in the past 30 years has invested in large-scale irrigated and highly subsidized agriculture which has used up scarce water resources. Saudi Arabia announced in January 2008 that it would phase out wheat and agricultural production in the course of the next eight years, as water scarcity and ecological constraints have rendered large scale irrigated production schemes unsustainable. Qatar and the United Arab Emirates followed suit. The Gulf States then initiated an aggressive strategy to invest in agricultural lands in other developing countries, mostly in Sudan and Pakistan, to produce food crops which will be repatriated. The King Abdullah Initiative for Saudi Agricultural Investment Abroad (KAISAIA) was launched in January 2009, led by the Ministry of Commerce and Investment with the purpose to bring support to large-scale (of more than 1000 ha) investment by private sector in foreign countries. The Saudi company for Agricultural Investment and Animal Production was launched as part of KAISAIA, with US\$ 800 Million to support the private sector in transport costs, and other technical and logistics aspects.

Other investing countries are also pursuing the quest for water resources to expand industrial production of crops for food or biofuel exports. Transplanting a model of large-scale and highly irrigated agricultural production runs the risk of depleting the precious water resources of host countries. The risk of water scarcity in countries such as sub-Saharan countries which rely on irrigated agriculture rather than rain-fed agriculture may be exacerbated in the future by climate change impact.

In addition to the problem of depletion of water resources, large scale investment in agriculture also have negative environmental consequences such as depletion of the soil nutrients at an unsustainable rate (especially in the case of mono-crops production), over utilization of fossil fuel-based fertilizer, and destruction of biodiversity (especially when large areas of forest have been cleared to provide land for large scale agriculture).

## **II.5 Dispossession and displacement of rural population**

Proponents of foreign investments in land have justified these deals by referring to the lands which were sold or leased as “marginal or unused” land. However, according to IFPRI<sup>19</sup>:

“In some cases, the land leases are justified on the basis that the land being acquired by the foreign investor is “unproductive” or “underutilized”. In most instances, however, there is some form of land use, often by the poor for purposes such as grazing animals and gathering fuelwood or medicinal plants. These uses tend to be undervalued in official assessments because they are not marketed, but they can provide valuable livelihood sources to the poor. Large-scale land acquisitions may further jeopardize the welfare of the poor by depriving them of the safety-net function that this type of land and water use fulfils.”

An example was given by Spieldoch and Murphy (2009)<sup>20</sup>, citing another study surveying food security for the poor in Asia.<sup>21</sup> “A recent survey of 50 families in 10 Bangladeshi villages reveals that uncultivated food provides an average of 65 per cent of the food (by weight) and 100 per cent of the feed and fuel needs of the poorest households (those with no land), and 34 per cent and 20 per cent respectively for the better-off households (those with some land of their own).

In Africa, the land considered as idle or uninhabited is in fact used by local communities for agricultural purposes, including fallow cycles and pastoralism. This land belongs to local communities by customary law, but in the absence of well-defined land rights, the government claims ownership of such land.

In other cases, despite having some land rights, poor peasants have been displaced from their land, because of poor bargaining power with foreign investors. The local smallholders may have little say and little compensation if they are forced out of their land. They may be relocated to more marginal land or be simply turned into poorly paid laborers for foreign agricultural

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<sup>19</sup> IFPRI Policy Brief 13 (April 2009), Joachim von Braun and Ruth Meinzen-Dick : « *Land Grabbing* » by *Foreign Investors in Developing Countries: Risks and Opportunities*, International Food Policy Research Institute (IFPRI), Washington D.C. , p.2.

<sup>20</sup> A. Spieldoch and S. Murphy (2009) : « *Agricultural Land Acquisitions : Implications for Food Security and Poverty Alleviation* », in M. Kugelman and S.L. Levenstein, editors: *Land Grab? The Race for the World's Farmland*, Woodrow Wilson International Center for Scholars, Washington D.C., 2009, p.45

<sup>21</sup> Farhad Mazhar et al. (2007) : *Food Sovereignty and Uncultivated Biodiversity in South Asia : Essays on the Poverty of Food Policy and the Wealth of the Social Landscape*, Academic Foundation and International Development Research Council, New Delhi and Ottawa, <http://www.idrc.ca/openebooks/337-9/>

complex. Examples abound on such cases of eviction or displacement in such countries as Argentina, Paraguay, Columbia, Brazil, Indonesia and Mozambique.

## **II.6 Policy space in the context of investment contracts and agreements**

One important aspect often forgotten in the debate around foreign investment in land is the legal implications resulting from investment contracts and agreements, which restrict the ability of host governments to implement policies to pursue objectives of national development and interest. Inasmuch as the interests of local actors, such as smallholders, poor rural population and communities, are not protected by domestic law and authorities, the interests of foreign investors are firmly protected by investment contracts and agreements signed by host governments. This, by itself, reinforces the asymmetric balance of power enjoyed by foreign investors, especially when domestic land tenure rights, water rights, environmental protection rules, labour law on farms and other regulations in the agricultural sector are weak or absent.

These legal implications are very complex and sometimes are not fully understood by host governments. Their analysis would need a full report. In this section, we will briefly review<sup>22</sup> the main legal implications resulting from investment contracts and investments agreements signed at the bilateral, regional or multilateral level (notably in the framework of the WTO).

By signing international treaties, states limit their sovereign autonomy in domestic policy making, the more so as international legal obligations usually prevail over domestic rules. In the area of foreign direct investment, the policy space of states is restricted by legal obligations resulting from the provisions of the contracts signed with foreign investors and of the bilateral, regional and multilateral trade and investment agreements signed by their governments. Some contracts between foreign investors and host states even include “stabilization clauses” that either preclude the application of, or require compensation for, new or changed regulatory measures that affect the investments. These clauses imply drastic restrictions of the rule making power of the state and they may apply for a certain period, or for the full life of the contract and any renewal period.

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<sup>22</sup> An overview of the legal problems resulting from investment contracts and agreements is found in : C. Smaller and H. Mann: *A Thirst for Distant Lands: Foreign investment in agricultural land and water*, International Institute for Sustainable Development, Winnipeg, Canada, May 2009.

The implications for domestic policies concerning foreign investment are multiple. Two policy areas have particular relevance for the foreign investment in agricultural land: operational measures and the right to regulate.

**Host country operational measures**, usually taking the form of restrictions or performance requirements, aim at influencing the operations of foreign investment in order to increase its benefits to the domestic economy and can cover all aspects of investment (ownership and control, hiring of personnel, procurement of local inputs, exports, etc.). For example, governments can include in the contracts with foreign investors certain requirements to contribute to the local economy, through hiring local workers, purchasing a minimum percentage of local inputs, transferring technology and knowledge to local farmers, purchasing from local production through contract farming, restricting exports and allocating a minimum percentage of production to local markets, etc.

However, the capacity of host countries to impose operational measures on foreign investment has been much restricted by various provisions contained in the WTO Agreement on Trade-Related Investment Measures (TRIMs), in bilateral and regional trade and investment agreements that countries have signed with their trade partners. Thus, the TRIMs Agreement prohibits the use of local content requirements and export controls (as well as trade-balancing requirements and foreign exchange restrictions). Likewise, other bilateral and regional agreements may restrict or prohibit the use of export restrictions, local employment requirement, transfer of technology requirement, etc. Governments should be aware of all these restrictions to their policy space when they enter into treaty agreement with other partner countries.

In the area of the **right to regulate**, international treaty obligations will subject the government's right to regulate investments to international rules, unless exceptions and safeguards are enclosed in such treaties. Safeguards and exceptions apply to various provisions of investment treaties. It is worth mentioning here five particular aspects which can be of relevance for agricultural land investment: definition of investment, treatment standards, protection of investment from expropriation, national security, and dispute settlement.<sup>23</sup>

In **defining the types of investments that are protected** by the investment treaties, states safeguard their developmental and other interests by excluding certain types of investments.

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<sup>23</sup> Except for national security, the other areas of the right to regulate are suggested by M. Sornarajah: "Right to regulate and safeguards", in UNCTAD: *The development dimension of FDI: Policy and rule-making perspective*, (Proceedings of an expert meeting), United Nations, New York and Geneva, 2003, p. 205-209.

For example, In South-East Asian investment treaty practice, it is common to grant protection only to investments “specifically approved in writing”. Other treaties provide protection only to investments made “in accordance with the laws and regulations of the host State”. If such safeguards are built in international investment agreements, the host State will retain its ability to move out certain types of investments from the scope of the treaty. It can be envisaged that certain types of large-scale agricultural investments (for example those made for purposes of food security and energy security of investing countries) can, thus, be excluded from the scope of investment treaties.

Concerning the **treatment standards**, the most common standards are the most-favoured nation (MFN), national treatment and “fair and equitable” treatment standards. The MFN and national treatment standards are meant to ensure nondiscrimination between foreign investors from different countries in the case of the former, and between foreign and domestic investors in the case of the latter. The national treatment implies a commitment by the host state to treat foreign investors that are “in like circumstances” to domestic investors in a manner no less favourable than the domestic investors. The key issue is what is meant by the term “in like circumstances”. If the large foreign commercial farmer is considered as “in like circumstances” as the domestic small farmer, the government cannot therefore discriminate the large foreign investor by providing support to its small-scale farmer.

The purpose of the fair and equitable treatment is not quite clear. It is often referred to as the minimum international standards of treatment and includes elements of government transparency in decision making and a prohibition of arbitrary and discriminatory acts. The interpretation of this standard can be very broad, and in many instances tribunals have considered the “legitimate expectations” of the investor as part of the standard.<sup>24</sup> Thus, foreign investors may have the “legitimate expectations” to have access to the necessary means of production such as access to water, even if this right may conflict with existing or future local needs for potable water, small-scale farming, small industries or subsistence uses.<sup>25</sup>

Concerning the protection of foreign investment from **expropriation**, this provision is meant to provide broad scale protection to foreign investors, contemplating not only direct and indirect taking (or expropriation) but also anything tantamount or equivalent to a taking, entailing the requirement that full compensation be paid and that certain conditions be satisfied. In the context of international litigations, the issue which has been much debated is whether

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<sup>24</sup> See C. Smaller and H. Mann (2009): “A Thirst for Distant Lands”, op. cit., p.12.

<sup>25</sup> H. Mann : *International Economic Law : water for money's sake ?*, International Institute for Sustainable Development, Winnipeg, Canada, September 2004.

regulatory taking to protect the environment or other public interests such as health, morals, poverty alleviation and human rights, would also be subject to the payment of compensation. Given the uncertainty of this interpretation, many international legal experts have defended the view that, as much as in the area of international trade, international investment agreements should include the general exception of measures taken to protect public interests and objectives. Indeed, increasingly governments are including provisions in international investment agreements that specify that public health, safety and environmental measures do not, or do not generally, constitute an indirect taking. However, care should be given that “stabilization clauses” should not be included in contracts.

Concerning **national security**, almost all investment treaties have provisions that allow the obligations in the treaty to be superseded by national security concerns, which refer generally to policing or military concerns. However, the interpretation of the notion of national security can be left to the invoking state, which can broaden the limit of national security to other concerns such as food security or social peace linked to poverty alleviation.

Concerning **dispute settlement**, the great majority of international investment agreements include the provision related to investor-state arbitration, which specify special dispute resolution processes. These processes allow a private foreign investor to initiate an arbitration to determine whether the provisions of the agreements have been breached. The arbitration will apply the provisions of the investment agreement(s) over the domestic law. When there is an inconsistency between the two, the provisions of the international agreement(s) will prevail. This arbitration right of the foreign investor has led to concerns that there is a considerable erosion of sovereignty as a result of such a provision. International legal experts have called for safeguards against these trends being taken to extremes. Sornarajah (2003) stated that:” The old rule regarding exhaustion of local remedies at least provided a check in that it ensured that the dispute was first identified and a remedy attempted under local law by local courts. A return to such a position would safeguard sovereign interests.”<sup>26</sup>

In view of the issues reviewed in this section, it is clear that the legal implications of international investment contracts and treaties may considerably restrict the policy and rule making power of governments and add difficulties and obstacles to their efforts to undertake land policy reform, to take measures to promote and protect smallholder farmers, to secure domestic food security, to regulate the use of water and other natural resources, to protect the rural environment, and so on. It is imperative that governments be aware of these implications

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<sup>26</sup> Sornarajah (2003) : « Right to regulate and safeguards », op.cit., p.209.

and be better prepared to negotiate with international investors when disputes arise. Careful screening of foreign investment in agricultural land should be the first step.

### III. SOME INTERNATIONAL INITIATIVES

Various actors, including international organizations, donor governments, non governmental organizations (NGOs) have put forward initiatives and proposals to address some of the issues raised above. These initiatives will be reviewed in this section.

#### III.1 Proposals by the UN Human Rights Special Rapporteur on the Right to Food, Mr. Olivier De Schutter<sup>27</sup>

The Special Rapporteur on the Right to Food states that large-scale investments in farmland can work to the benefit of all parties concerned, but that presupposes that an appropriate institutional framework is in place. Agreements to lease or cede large areas of land should under no circumstances be allowed to trump the human rights obligations of the States concerned, both host and home States.

The right to adequate food is recognized under article 25 of the Universal Declaration of Human Rights and under article 11 of the International Covenant on Economic, Social and Cultural Rights, every State is obliged to ensure for everyone under its jurisdiction access to the minimum essential food which is sufficient, nutritionally adequate, and safe to ensure their freedom from hunger. States would be acting in violation of the human right to food if, by leasing or selling land to investors (whether domestic or foreign), they were depriving the local population of access to productive resources indispensable to their livelihoods. They would also be violating the right to food if they negotiated such agreements without ensuring that this will not result in food insecurity.

The minimum principles<sup>28</sup> listed below seek to ensure that State responsibilities in relation with the right to food are met.

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<sup>27</sup> United Nations General Assembly, Human Rights Council, thirteenth session: *Report of the Special Rapporteur on the right to food, Olivier De Schutter, Addendum: large-scale land acquisitions and leases: A set of minimum principles and measures to address the human rights challenge*, A/HRC/13/Add.2, 28 December 2009.

<sup>28</sup> In this section we have summarized the principles presented by the Special Rapporteur.

**Principle 1:** The negotiations leading to investment agreements should be conducted in a fully transparent manner, and with the participation of the local communities whose access to land and other productive resources may be affected as a result of the investment agreement.

**Principle 2:** In general, any shift in land use can only take place with the free, prior and informed consent of the local communities concerned. Forced evictions are only allowable under international law when they are in accordance with the locally applicable legislation, when they are justified as necessary for the general welfare, and when they are accompanied by adequate compensation and alternative resettlement or access to productive land.

**Principle 3:** States should adopt legislation protecting the rights of local communities and specifying in detail the conditions according to which shifts in land use, or evictions, may take place, as well as the procedures to be followed. Moreover, States should assist individuals and local communities in obtaining individual titles or collective registration of the land they use, in order to ensure that their rights will enjoy full judicial protection.

**Principle 4:** The local population should benefit from the revenues generated by the investment agreement. Investment contracts should prioritize the development needs of the local population and seek to achieve solutions (preferably contract farming) which represent an adequate balance between the interests of all parties.

**Principle 5:** In countries facing important levels of rural poverty and in the absence of employment opportunities in other sectors, host States and investors should establish and promote farming systems that are sufficiently labour-intensive to contribute to employment creation.

**Principle 6:** Host States and investors should cooperate in identifying ways to ensure that the modes of agricultural production respect the environment, and do not accelerate climate change, soil depletion, and the exhaustion of freshwater reserves.

**Principle 7:** Whatever the content of the arrangement, it is essential that the obligations of the investor be defined in clear terms, and that these obligations be enforceable, for instance by the inclusion of predefined sanctions in case of non-compliance. For this mechanism to be effective, independent and participatory ex post impact assessments should be made at predefined intervals.

**Principle 8:** In order to ensure that they will not increase food insecurity for the local population, investment agreements with net food-importing countries should include a clause

providing that a certain minimum percentage of the crops produced shall be sold on local markets , and that this percentage may increase, in proportion to be agreed in advance, if the prices of food commodities on international markets reach certain levels.

**Principle 9:** In order to highlight the consequences of investment on the enjoyment of the right to food, impact assessments, involving the participation of all stakeholders, should be conducted prior to the completion of the negotiation on: a) local employment and incomes, disaggregated by gender and, where applicable, by ethnic group; b) access to productive resources by local communities, including pastoralists or itinerant farmers; c) the arrival of new technologies and investments in infrastructure; d) the environment, including soil depletion, the use of water resources and genetic erosion; and e) access, availability and adequacy of food.

**Principle 10:** Under international law, indigenous people have been granted specific forms of protection of their rights to land. States shall consult and cooperate in good faith with the indigenous peoples concerned in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources.

*Comment:*

Principles 8 and 9 may not be applicable because performance requirements are prohibited by the WTO TRIMs Agreement (export restriction) and other bilateral investment agreements that host countries may have signed.

### **III.2 Principles for Responsible Agricultural Investment that Respects Rights, Livelihoods and Resources (FAO, IFAD, UNCTAD and WORLD BANK)**

The international organizations which have undersigned these principles recognize that private foreign investment in the agricultural sector can bring significant benefits to host countries in terms of better access to capital, technology and skills, generation of employment and productivity increases. Moreover, new technology, the emergence of value chains, demands for traceability, the needs to adhere to rigorous standards, and consumer demands arguably favour greater scale and integration. Some large investments have managed to achieve broad-based benefits via contract farming, other outgrower arrangements, and joint ventures with local communities, by leasing rather than acquiring the land or by formulating innovative schemes for sharing both risks and rewards.

On the other hand, where rights are not well defined, governance is weak, or those affected lack voice, there is evidence that such investment can carry considerable risks of different types. Risks include displacement of local populations, undermining or negating of existing rights, increased corruption, reduced food security, environmental damage in the project area and beyond, loss of livelihoods or opportunity for land access by the vulnerable, nutritional deprivation, social polarization and political instability. Sometimes mistaken beliefs in economies of scale rather than value addition and better linkages to markets have saddled several countries with subsidy-dependent large farm sectors that provided few economic or social benefits.

The following principles are recommended:

**Principle 1: Existing rights to land and associated natural resources are recognized and respected**

Existing use or ownership rights to land, whether statutory or customary, primary or secondary, formal or informal, group or individual, should be respected. This requires: (i) the identification of all rights holders; (ii) legal recognition of all rights and uses, together with options for their demarcation and registration or recording; (iii) negotiation with land holders/users, based on informed and free choice, in order to identify the types of rights to be transferred and modalities for doing so; (iv) fair and prompt payment for all acquired rights; and (v) independent avenues for resolving disputes or grievances.

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

Whenever there are potential adverse effects on any aspect of food security (availability, access, utilization or stability), policy-makers should make provisions for the local or directly affected population such that: (i) equivalent access to food is assured; (ii) opportunities for outgrower involvement and off-farm employment are expanded to protect livelihoods and raise incomes; (iii) dietary preferences are taken into account if the mix of products grown may change; and (iv) strategies to reduce potential instability of supply are adopted. Moreover, whenever the proposed project is large enough to affect food security at the national level, project design and approval should also consider these four kinds of aggregate impact.

**Principle 3: Processes for accessing land and other resources and then making associated investments are transparent, monitored, and ensure accountability by all stakeholders, within a proper business, legal, and regulatory environment.**

To create a proper enabling environment, policies, laws, and regulations affecting the investment climate should be benchmarked against and brought into line with globally accepted best practices, and institutions responsible for implementing them be strengthened. Specific steps include: (i) ensuring that all relevant information, including land potential and availability, core elements of prospective investments, and resource flows or tax revenues, be publicly available; (ii) helping institutions that handle investment selection, land transfers and incentives to follow principles of good governance, develop the capacity to operate efficiently and transparently, and be regularly audited; and (iii) making sure that an independent system to monitor progress towards a better investment climate is in place.

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

To make consultative processes more effective: (i) definitional and procedural requirements in terms of who represents land holders and what is a quorum for local attendance need to be clarified; (ii) the content of agreements reached in such consultations (e.g. by providing model agreements/contracts) should be documented and signed off by all parties; and (iii) methods for enforcement and sanctions for non-compliance should be specified. Incentives to adopt such a process can be greatly enhanced if taxes to be paid by investors are clearly specified, independently monitored, and accrue at least in part to local governments responsible for making available local public goods.

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

As far as the investors are concerned, aside from conducting proper due diligence and project analysis, they should be expected to : (i) comply with laws, regulations, and policies applicable in the host country (and ideally with all relevant international treaties and conventions); (ii) adhere to global best practices for transparency, accountability and corporate responsibility in all sensitive areas; and (iii) strive not only to increase shareholder value but also to generate significant and tangible benefits for the project area, affected communities, and host country.

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

Social sustainability can be enhanced if: (i) relevant social issues and risks, as well as strategies to mitigate these and increase social benefits, are identified during project preparation and adequately addressed by government and investors; (ii) the interests of vulnerable groups and

women are considered explicitly; and (iii) generation of local employment, transfer of technology, and direct and indirect (e.g. via taxes) provision of local public goods is part of project design.

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

Investors and government need to collaborate to ensure that: (i) independent environmental impact analysis to identify potential loss of public goods, such as biodiversity or forests, is conducted prior to approval; (ii) preference be given to reclaiming or increasing productivity on areas already used rather than clear new land; (iii) the most appropriate production system is selected to enhance the efficiency of resource utilization while preserving the future availability of current resources; (iv) good practices in agriculture, processing and manufacture are followed; (v) provision of desirable ecosystem services is encouraged; and (vi) negative impacts are addressed through regularly environmental management plans and compensated where appropriate.

*Comment:*

The approach inherent to the principles outlined above is that foreign direct investment in land (whatever the form and objective of such investment) is a potential opportunity for rural development which needs much additional investment, and whatever risks may arise therefrom should be harnessed so as to avoid or minimize negative social and environmental impacts. In order to manage better these risks, a two-pronged strategy, defining the responsibilities of host government on one hand and of foreign investors on the other hand, is recommended. Host country should adopt a proper policy framework so as to provide an “enabling environment” to attract foreign investment, to identify, clarify and register a legal recognition of rights to land and associated natural resources, to consult with all stakeholders concerned in a “transparent” manner. Foreign investors are encouraged to adopt a corporate responsibility behavior by respecting the rule of law, following “industry best practice”, mitigate any undesirable social impact.

This is broadly speaking a foreign investment promotion approach. Host country government should have an investment-friendly policy framework, and clarify the legal regime for land rights in such a way as to facilitate the transfer of these rights to foreign investors. Any form of foreign investment is *a priori* good as it brings much needed investment capital and supposedly

new technology, notwithstanding the fact that the objective of some large scale investments is to grab land and water resources of host countries to secure food and energy security of rich investing countries. Let foreign investment come in, and the potential risks resulting from such investment can be managed by host country government in an *ex post* manner. Should a threat to food security of local population materialize, it is the responsibility of the host government to take measures to provide access to food for its population. As far as foreign investors are concerned, there are no binding responsibilities (through contracts); they are simply encouraged to adopt a good code of conduct which is in no way enforceable.

The least that can be said is that it may be very costly for host government to correct ex post negative economic, social and environmental effects resulting from predatory foreign investment in domestic land. The cost may at the end exceed by far any potential benefit that may be derived from such investment. Instead, if foreign investment is necessary (and only in certain circumstances, such as to better integrate in the global food chain and enhance domestic export capability), host country government should *ex ante* conduct impact assessments on economic, social and environmental environments, so as to fully integrate beforehand foreign investment in domestic development strategy and food security strategy.

### **III.3 Position of NGOs: Declaration against World Bank principles (22 April 2010)**

La Via Camoesina, FIAN, Land Research Action Network, GRAIN and numerous other NGOs, among which Pain pour le Prochain, strongly rejected the principles proposed by the World Bank and other undersigned international organizations. Their position is that these principles are just a smoke screen used to legitimize the large scale acquisitions of land by foreigners. Transferring to foreign investors the land which belong to rural communities is totally unacceptable. The current food security crisis will not be resolved by large scale agricultural production.

Large scale land grabbing -even if it is not accompanied by forced evictions- deprives local communities of their land, destroys livelihoods, gives less importance to agricultural policies which are centered on peasants, and distorts markets by facilitating the concentration of markets in the hands of global agribusiness, rather than promoting a sustainable agriculture centered on peasants, local and national markets and future generations.

Land grabbing should be stopped immediately. The undersigned NGOs recommend the following:

1. Keep the land in the hands of local communities and implement an agricultural reform with the view to assuring an equitable access to land and natural resources;
2. Strongly support an environmentally sustainable agriculture, small scale fishing and animal husbandry, participatory agricultural research programmes and training programmes, to increase the volume and quality of production of smallholder farmers;
3. Structurally reform the agricultural and marketing policies in order to protect food sovereignty and local and regional markets which bring benefits to local population;
4. Promote agricultural and food production systems based on the control by local communities of natural resources such as land, water and biodiversity. Apply strict and compulsory regulations which limit access by business and other public and private actors to agricultural land, coastal and wet land, pastoralist zones and forests.

*Comment:*

NGOs totally reject foreign investment in land and promote the modes of small scale agricultural production by small farmers and local communities.

#### **III.4 France: Transfers of agricultural assets to foreign investors in developing countries**

The French State Secretary of the Department on Prospective and Digital Economy, Ms. Nathalie Kosciusko-Morizet, has commissioned a study by the Center of Strategic Analysis which submitted in June 2010 its report entitled: “Les Cessions d’actifs agricoles à des investisseurs étrangers dans les pays en voie de développement. Eléments de diagnostic et pistes de recommandations”.

Although the recommendations have not been officially endorsed by the French Government, it is worth mentioning here as they reflect the thinking of an official research center and were discussed by senior officials in the office of the Prime Minister.

**The diagnostic:**

1. It is possible to feed 8 billion people from now to 2030, provided investment in agriculture is scaled up and equality in access to food is achieved.
2. Development policies at the national and international level have failed in securing food for the whole population and in reducing poverty in a number of developing countries, and in most of the least developed countries, particularly in sub-Saharan Africa.

3. The transfers of agricultural assets to private domestic or international investors in developing countries will increase further in the future.
4. These investments, if not well prepared and implemented or if they are driven by short-term profit-seeking motive, can have serious social and environmental negative effects, can worsen the poverty of rural population and weaken the food security of host countries. This will result in social instability and reputational damage for the investor.
5. In many developing countries current land policy and its governance do not provide secure rights to land users without property title and to investors.
6. There is no unique mode of agricultural production: experience has shown that it is possible, in the framework of contract farming, to reconcile the respect of the rights of land users, the improvement of food security, the development of the rural sector and the investor interest.
7. International regulations of transfers of agricultural assets to foreign investors would be desirable but not achievable. International governance would therefore have to take the form of non-binding principles (chart, guideline for best practice, voluntary code of conduct) or special agreements (conditionalities, contractual obligations...)

#### **Recommendations:**

1. France and European countries should abide by the principles of good practice defined by the World Bank/UNCTAD/FAO/IFAD, as well as by the UN Special Rapporteur on the right to food, and by the OECD. However, the following recommendations should also be taken into account.
2. An increase in investment is needed to assure world food security. International institutions should therefore:
  - Encourage investments (including transfers of agricultural assets), if these investments are responsible;
  - Propose assistance to host countries to strengthen their negotiating capacity, to securitize investments, and to integrate investments within policy frameworks on land, agriculture and food security.
3. France and the European Union can propose to host countries the signature of bilateral agreements with the objectives of developing the agricultural sector and securitizing investments. These agreements can also include a technical or financial assistance for:
  - The implementation of policies on land, agriculture and food security, and an adequate governance;
  - Education and training;

- Agricultural innovation;
- Creation of downstream agribusiness;
- Building of infrastructure.

These agreements can include the development of biofuel.

4. France should support agricultural land reforms in host countries in respect of the rights to land of local users. Foreign investors should also respect the rights of local users in order to avoid conflicts and securitize their investments.
5. The foreign investor should follow a responsible process. He should undertake *ex ante* impact assessments on environmental, economic, social conditions, as well as food security in host country. These evaluations should be audited by an independent organization. The investor should establish a dialogue, as transparent as possible, with national authorities, land communities and local population. The European Union and France can create a label “Agro Responsible Investment” which could be granted by the EU or FAO to investors who respect the principles elaborated above.
6. The financial sector and the sovereign investment funds which participate in the financing of transfers of agricultural assets should adopt the Equator Principles. The social and environment impact assessment, as required by the second principle, could be made public and communicated to local population. “Sustainable” investment funds could be established to support local producers or “responsible” projects.
7. Within the framework of the WTO, France and the European Union should agree to the request made by the least developed countries and their regional groupings to benefit from more flexible rules concerning agricultural products. Such flexible rules would allow the creation of regional markets protected by minima prices, as well as redistributive mechanisms and tariff barriers to defend these prices. On a more general ground, France and the European Union should encourage the adoption of an international governance on food security and a global partnership on agriculture and food security, as recommended by the G8 Summit in July 2008.

*Comment:*

This is clearly an investing country position. Foreign investment is good and necessary, because the agricultural sector in developing countries is underinvested. But foreign investment should be “responsible”, i.e. should respect the rights of local land users and undertake *ex ante* impact assessments on food security, social, economic and environmental conditions.

This text does not raise any ethical question about the fact that cash-rich countries invest in poor and food insecure countries in order to safeguard the food and energy security of investing countries. Moreover, impact assessments are undertaken by investors, and not by

host countries whose priorities may be different from those of investors. Host countries have the responsibility to have clear policies on land, so as to “securitize” the rights of foreign investors.

### **III.5 Germany: Development Policy Stance on the Topic of land Grabbing**

The German Federal Ministry for Economic Cooperation and Development published in August 2009 a position paper on the subject of land grabbing.<sup>29</sup> It recognized that foreign direct investments in land entail far-reaching risks, but also offer opportunities, although if certain conditions prevail and necessary norms and laws are drafted, passed and enforced.

Risks include:

- Exacerbation of land conflicts, rural exodus, resettlement or displacement of the local population;
- Threat to food security;
- Marginalisation of smallholder farming, threat to traditional grazing rights, water rights and the right to collect wild plants;
- Negative environmental and social impacts of large-scale agro-industrial plantations;
- No new, additional income opportunities for local population;
- Loss of biodiversity, soil erosion, over-use of water resources, increased emission of greenhouse gases due to intensive agricultural production, particularly monoculture.

Opportunities include:

- Increased investments in the agricultural sector, but these investments should be pro-poor, and be guided by the needs and priorities of local population and be gender sensitive;
- Additional employment and income opportunities for local population, if foreign investments are tied to poverty reduction strategies;
- Through fair procedures such as contract farming, foreign investments can provide participating smallholder farmers access to innovations, agricultural services, inputs and markets.

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<sup>29</sup> German Federal Ministry for Economic Cooperation and Development : *Development Policy Stance on the Topic of Land Grabbing-the Purchase and leasing of large Areas of Land in Developing Countries*, Discourse 015, August 2009.

- By effectively involving the local population in the planning, contract negotiations and the implementation of the investments, it is possible to make sure that their requirements in terms of income and food security are taken into account;
- In order to motivate foreign investors to make sustainable, development-oriented investments in agriculture, they must have secure rights of use over the developed resources for their own planning security.

**Six basic principles:**

1. Participation of all relevant stakeholders and transparency in the negotiations;
2. Respect of existing land use rights, including non-formal and traditional rights, of the local population, and most particularly of indigenous people;
3. Compensation on the basis of the livelihood value of the land lost;
4. Fair sharing with local population of the benefits of the investment;
5. Ecological sustainability must be ensured in addition to economic and social sustainability;
6. The human right to food must take precedence over all other forms of land use (such as production of biofuels)

A realistic assessment of the risks and opportunities associated with foreign direct investments in land should be carried out before the negotiations begin. In addition, there must be close monitoring to ensure that the above principles are observed during the implementation of the investment and an evaluation must be made of the impact of such investment on sustainability and poverty reduction. The findings of studies and evaluations must be made available not only to political decision-makers and investors, but also to the people directly affected and to the broad public.

**Need for action:**

There is a need for political action at the following levels:

- a) International policy dialogue, using such frameworks as the G8 Partnership with Africa, the Heiligendamm-L'Aquila Process, the OECD/DAC and the EU- Africa Partnership, with the view to reaching binding guidelines for sustainable and responsible investments in land and agriculture;
- b) Participation of and control by civil society: civil society has an important function in terms of disseminating information and monitoring contract negotiations and their final outcomes;

- c) Establishing a solid information base and transparency in the contract negotiations: comprehensive information and transparency regarding investments that are planned or have already been made are needed to provide a basis for judging what further action may be required and for planning support measures in line with sustainable development;
- d) Strengthening and supporting national land policies and pertinent legislation, including institution building;
- e) Binding international guidelines- Code of Conduct- for sustainable and responsible investments in land: the aim is to draw up a code of conduct based on the above six principles that becomes legally binding for all countries and players involved in such transactions;
- f) Making more consistent use of existing international law: this includes enforcing the human right to food, observing international environmental standards, protecting against forced displacement, adhering to the ILO conventions with regard to both the protection of the land rights of indigenous people and to international labour laws and the ILO core labour standards, abiding by the commitments arising from international trade and investment agreements.

*Comment:*

There are interesting and progressive ideas contained in the German position paper. It supports an *ex ante* impact assessment of foreign investment on economic, social and environmental conditions of host countries, with the active participation of local population and civil society alongside national authorities and investors. Furthermore, the investment should be pro-poor, be guided by the needs and priorities of local population and be gender sensitive, and should respect existing local land use rights. The human right to food must take precedence on all other investment objectives. A fair sharing of benefits with local population is also recommended.

**III.6 Declaration by Heads of States and Governments of the African Union on Land Issues and Challenges in Africa, 3 July 2009**

The two most important operative paragraphs of this declaration say that the African Heads of States:

**“Undertake to:**

1. Prioritise, initiate and lead land policy development and implementation processes in our countries, notwithstanding the extent of multi-stakeholder contribution to such processes involving civil society, private sector and other stakeholders;
2. Support the emergence of the institutional framework required for the effective development and implementation of land policy;
3. Allocate adequate budgetary resources for land policy development and implementation processes, including the monitoring of progress.

**Resolve to:**

1. Ensure that land laws provide for equitable access to land and related resources among all land users including the youth and other landless and vulnerable groups such as displaced persons;
2. Strengthen security of land tenure for women, which merits special attention.”

*Comment:*

This declaration says nothing about foreign investment in land. The Heads of States made the commitment to develop and implement an equitable land policy.

### **III.7 Framework and guidelines on land policy in Africa**

In 2006, the African Union Commission (AUC), the United Nations Economic Commission for Africa (UNECA) and the African Development Bank (AfDB) initiated the drafting of a continental framework and guidelines on land policy development and implementation for use as a resource by AU member states in their efforts to improve the performance of their various land sectors. Extensive consultations with all relevant stakeholders took place throughout Africa and the final outcome was presented to and adopted by the AU Assembly of Heads of State and Government in July 2009.

The “Framework and guidelines on land policy in Africa” (FGLPA) outlines the fundamental elements of land policy in Africa, as well as the steps for its implementation, including institution building, and the mechanisms for tracking its progress. The main lines of the framework on land policy development are briefly summarized below.

Recognizing the centrality of land in development, African governments need to take appropriate measures to ensure that land plays its primary role in the development process and

more particularly in social reconstruction, poverty reduction, enhancing economic opportunities for women, strengthening governance, managing the environment, promoting conflict resolution and driving agricultural modernization.

Acknowledging the legitimacy of indigenous land rights, land policy processes must also recognize the role of local and community-based land administration/management institutions and structures, alongside those of State.

Better and more productive use of land requires that the land rights of women be strengthened through a variety of mechanisms including the enactment of legislation that allows women to enforce documented claims to land within and outside marriage. This should come hand in hand with equal rights for women to inherit and bequeath land, co-ownership of registered land by spouses and the promotion of women's participation in land administration structures.

Governments should mainstream land in poverty reduction programs. Equally distributed and effectively managed land can be instrumental in eradicating poverty. Securing land tenure, redistributing land, to those in need, improving access to land resources and spreading land related services can also contribute to poverty eradication. In balancing pro-poor priorities with market orientation, adequate measures need to be put in place to ensure that increased market-driven policies of land development do not expose vulnerable groups, particularly women, to further marginalization through speculation and costly land rights transfer systems.

A number of improvements in the land sector will be necessary to ensure that an enabling environment is created for agricultural development. One such improvement is to ensure that the systems of property under which land is held and used is clarified for the variety of agricultural forms and participants in that sector. This is crucial not only for rural farmers, particularly women who produce most of Africa's food crops and whose access to land is based on various indigenous tenure systems, but also for foreign and local commercial investors, some of whom seek to engage in large scale operations.

Another improvement is to promote the development of robust land rights transfer systems and markets, allowing the transfer and exchange of land rights either formally through documented transactions or informally through intra-family or community arrangements.

Beyond agriculture, land is an important factor for many other uses that are increasing in importance to the development of African economies. These include manufacturing, mining, energy development, the development of physical infrastructure in the rural areas, the management of sustainable urbanization, and tourism. These uses require large fiscal, technological and human investments, which are often provided by foreign investors or international financing. If those investing in these activities are to use land in a manner that is environmentally sustainable and cost-effective, government policies will have to be such as to guarantee net gains for African populations.

Overall, African governments will seek to develop land policies in a manner that is inclusive and responsive to the needs of all land users, contribute to political stability, promote gender equity, foster the reduction of conflict, enhance the sustainable management of natural resources, ensure orderly urban development, and which put all stakeholders on the path to higher economic growth and a better quality of life. There is need for a fully gendered, informed and participatory mobilization and continuous engagement of all stakeholders in the land and related sectors at all stages of policy development, implementation and review.

*Comment:*

Although the AU framework talks about pro-poor policies on land and equitable access to land and natural resources (especially for women), there is no mention of the right to food and food security of African countries. Large scale foreign investments (for whatever use of land) are considered as legitimate and can contribute to the economic development of host countries. The only concern is how to guarantee net gains for African populations. Land reforms are necessary and would include the clarification and legislation of land rights, the creation of systems of transfers of land rights.

### **III.8 FAO Voluntary Guidelines on the Right to Food**

Upon the request of the World Food Summit in 2002, the “Voluntary Guidelines to support the progressive realization of the right to adequate food in the context of national food security” were developed by an intergovernmental working group and adopted by the FAO Council in November 2004.

The Voluntary Guidelines represent the first attempt by governments to interpret an economic, social and cultural right and to recommend actions to be undertaken for its realization. These Voluntary Guidelines have taken into account relevant international instruments (Universal Declaration of Human Rights; International Covenant on Economic, Social and Cultural Rights; UN Charter), in particular those instruments in which the progressive realization of the right of everyone to an adequate standard of living, including adequate food, is enshrined.

Food security exists when all people, at all times, have physical and economic access to sufficient, safe and nutritious food to meet their dietary needs and food preferences for an active and healthy life. The four pillars of food security are: availability, stability of supply, access and utilization.

States have obligations under international instruments relevant to the progressive realization of the right to adequate food. Notably, States Parties to the International Covenant on Economic, Social and cultural rights (ICESCR) have the obligation to respect, promote and protect and to take appropriate steps to achieve progressively the full realization of the right to adequate food.

At the national level, a human rights-based approach to food security emphasizes universal, interdependent, indivisible and interrelated human rights, the obligations of States and the roles of relevant stakeholders. It emphasizes the achievement of food security as an outcome of the realization of existing rights and includes certain key principles: the need to enable individuals to realize the right to take part in the conduct of public affairs, the right to freedom of expression and the right to seek, receive and impart information, including in relation to decision-making about policies on realizing the right to adequate food. Such an approach should take into account the need for emphasis on poor and vulnerable people who are often excluded from the processes that determine policies to promote food security and the need for inclusive societies free from discrimination by the State in meeting their obligations to promote and respect human rights.

In the following, the guidelines are grossly summarized. This summary does not do justice to the detailed exposition of actions and steps as contained in each guideline.

**Guideline 1: Democracy, good governance, human rights and the rule of law.**

States should promote and safeguard a free, democratic and just society in order to provide a peaceful, stable and enabling economic, social, political and cultural environment in which individuals can feed themselves and their families in freedom and dignity. States should promote democracy, the rule of law, sustainable development and good governance, and promote and protect human rights and fundamental freedoms.

### **Guideline 2: Economic development policies**

States should promote broad-based economic development that is supportive of their food security policies. States should establish policy goals and benchmarks based on the food security needs of their population. States should consider adopting a holistic and comprehensive approach to hunger and poverty reduction.

States should pursue inclusive, non-discriminatory and sound economic, agriculture, fisheries, forestry, land-use, and, as appropriate, land reform policies.

### **Guideline 3: Strategies**

States should consider adopting strategies which include objectives, targets, benchmarks and time frames; and actions to formulate policies, identify and mobilize resources, define institutional mechanisms, allocate responsibilities, coordinate the activities of different actors, and provide for monitoring mechanisms. Such strategies could address all aspects of the food system, including the production, processing, distribution, marketing and consumption of safe food. Particular attention should be given to the needs of vulnerable and disadvantaged groups, as well as special situations such as natural disasters and emergencies.

In developing these strategies, States are encouraged to consult with civil society organizations and other stakeholders at national and regional levels, including small-scale and traditional farmers, the private sector, women and youth associations, with the aim of promoting their active participation in all aspects of agricultural and food production strategies.

### **Guideline 4: Market systems**

States should, in accordance with their national law and priorities, as well as their international commitments, improve the functioning of their markets, in particular their agricultural and food markets, in order to promote both economic growth and sustainable development.

States should strive to ensure that food, agricultural trade and overall trade policies are conducive to fostering food security for all through a non-discriminatory and market-oriented local, regional, national and world trade system.

States should take into account the shortcomings of market mechanisms in protecting the environment and public goods, as well as providing adequate safety nets for the poor and vulnerable people.

#### **Guideline 5: Institutions**

States, where appropriate, should assess the mandate and performance of relevant public institutions and, where necessary, establish, reform or improve their organization and structure to contribute to the progressive realization of the right to adequate food in the context of national food security.

States should take measures, where and if necessary, to develop, strengthen, implement and maintain effective anticorruption legislation and policies, including in the food sector and in the management of emergency food aid.

#### **Guideline 6: Stakeholders**

States are encouraged to apply a multistakeholder approach to national food security to identify the roles of and involve all relevant stakeholders, encompassing civil society and the private sector.

#### **Guideline 7: Legal framework**

States are invited to consider, in accordance with their domestic legal and policy framework, whether to include provisions in their domestic law, possibly including constitutional or legislative review that facilitates the progressive realization of the right to adequate food in the context of national food security.

#### **Guideline 8: Access to resources and assets**

States should facilitate sustainable, non-discriminatory and secure access and utilization of resources (such as land, water, forests, fisheries and livestock) consistent with their national law and with international law and protect the assets that are important for people's livelihoods. Where necessary and appropriate, States should carry out land reforms and other policy reforms consistent with their human rights obligations and in accordance with the rule of law in order to secure efficient and equitable access to land and to strengthen pro-poor growth. Special attention may be given to groups such as pastoralists and indigenous people and their relation to natural resources.

States should pay particular attention to the specific access problems of women and of vulnerable, marginalized and traditionally disadvantaged groups, including all persons affected by HIV/AIDS.

States should promote agricultural research and development, in particular to promote basic food production with its positive effects on basic incomes and its benefits to small and women farmers, as well as poor consumers.

#### **Guideline 8A: Labour**

States should take measures to encourage sustainable development in order to provide opportunities for work that provide remuneration allowing for an adequate standard of living for rural and urban wage earners and their families, and to promote and protect self-employment. For States that have ratified the relevant instruments, working conditions should be consistent with the obligations they have assumed under the International Covenant on Economic, Social and Cultural Rights, relevant ILO Conventions and other treaties including human rights conventions.

#### **Guideline 8B: Land**

States should take measures to promote and protect the security of land tenure, especially with respect to women, and poor and disadvantaged segments of society, as well as indigenous communities, through legislation and other policy mechanisms that protect the full and equal right to own land and other property, including the right to inherit. Such mechanisms should also promote conservation and sustainable use of land.

#### **Guideline 8C: Water**

Bearing in mind that access to water in sufficient quantity and quality for all is fundamental for life and health, States should strive to improve access to, and promote sustainable use of, water resources and their allocation among users giving due regard to efficiency and the satisfaction of basic human needs in an equitable manner and that balances the requirement of preserving or restoring the functioning of ecosystems with domestic, industrial and agricultural needs, including safeguarding drinking-water quality.

#### **Guideline 8D: Genetic resources for food and agriculture**

States, taking into account the importance of biodiversity, and consistent with their obligations under relevant international agreements, should consider specific national policies, legal instruments and supporting mechanisms to prevent the erosion of and ensure the conservation

and sustainable use of genetic resources for food and agriculture, including, as appropriate, for the protection of relevant traditional knowledge and equitable participation in sharing benefits arising from the use of these resources.

**Guideline 8E: Sustainability**

States should consider specific national policies, legal instruments and supporting mechanisms to protect ecological sustainability and the carrying capacity of ecosystems.

**Guideline 8F: Services**

States should create an enabling environment and strategies to facilitate and support the development of private and public sector initiatives to promote tools, technologies and mechanization in the provision of relevant services, including research, extension, marketing, rural finance and microcredit, to enable more efficient food production by all farmers, in particular poor farmers, and to address local constraints such as shortage of land, water and farm power.

**Guideline 9: Food safety and consumer protection**

States should take measures to ensure that all food, whether locally produced or imported, freely available or sold on markets, is safe and consistent with national food safety standards.

**Guideline 10: Nutrition**

If necessary, States should take measures to maintain, adapt or strengthen dietary diversity and healthy eating habits and food preparation, as well as feeding patterns, including breastfeeding, while ensuring that changes in availability and access to food supply do not negatively affect dietary composition and intake.

**Guideline 11: Education and awareness raising**

States should support investment in human resource development such as health, education, literacy and other skills training, which are essential to sustainable development, including agriculture, fisheries, forestry and rural development.

**Guideline 12: National financial resources**

Regional and local authorities are encouraged to allocate resources for anti-hunger and food security purposes in their respective budgets. States should ensure transparency and accountability in the use of public resources, particularly in the area of food security. States are

encouraged to promote social programmes and expenditures, in particular those affecting the poor and the vulnerable segments of society, and to protect them from budget reductions.

**Guideline 13: Support for vulnerable groups**

Consistent with the World Food Summit commitment, States should establish Food Insecurity and Vulnerability Information and Mapping Systems, in order to identify groups and households particularly vulnerable to food insecurity along the reasons for their food insecurity. States should develop and identify corrective measures to be implemented both immediately and progressively to provide access to adequate food.

**Guideline 14: Safety nets**

States should consider, to the extent that resources permit, establishing and maintaining social safety and food safety nets to protect those who are unable to provide for themselves.

States and international organizations should consider the benefits of local procurement for food assistance that could integrate the nutritional needs of those affected by food insecurity and the commercial interests of local producers.

**Guideline 15: International food aid**

Donor States should ensure that their food aid policies support national efforts by recipient States to achieve food security, and base their food aid provisions on sound needs assessment, targeting especially food insecure and vulnerable groups. Food aid should be provided with a clear exit strategy and avoid the creation of dependency.

**Guideline 16: Natural and human-made disasters**

Food should never be used as a means of political and economic pressure. In the case of natural or human-made disasters, States should provide food assistance to those in need, may request international assistance if their own resources do not suffice, and should facilitate safe and unimpeded access for international assistance in accordance with international law and universally recognized humanitarian principles, bearing in mind local circumstances, dietary traditions and cultures.

**Guideline 17: Monitoring, indicators and benchmarks**

States may wish to establish mechanisms to monitor and evaluate the implementation of these guidelines towards the progressive realization of the right to adequate food in the context of national food security, in accordance with their capacity and by building on existing information systems and addressing information gaps.

States may wish to consider conducting “Right to Food Impact Assessments” in order to identify the impact of domestic policies, programmes and projects on the progressive realization of the right to adequate food of the population at large and vulnerable groups in particular, and as a basis for the adoption of the necessary corrective measures.

**Guideline 18: National human rights institutions**

Human rights institutions should be independent from the government, in accordance with the Paris principles. States should encourage civil society organizations and individuals to contribute to monitoring activities undertaken by national human rights institutions with respect to the progressive realization of the right to adequate food.

**Guideline 19: International dimension**

States should fulfil those measures, actions and commitments on the international dimension as described below, in support of the implementation of the Voluntary Guidelines:

- International cooperation and unilateral measures to combat hunger and malnutrition;
- Role of the international community in assisting developing countries in attaining international development goals, including those contained in the Millennium Declaration;
- Technical cooperation;
- International trade, in the promotion of economic development, and the alleviation of poverty and improving food security at the national level;
- External debt relief measures;
- Official development assistance;
- International food aid;
- Partnership with NGOs/CSOs/private sector;
- Promotion and protections of the right to adequate food;
- International reporting.

*Comment:*

This is a very long and comprehensive set of guidelines on the realization of the right to food. This human-rights based approach gives priority to the needs of the poor and vulnerable people. National economic development and strategies give precedence to food security and access to food and productive resources by the poor and vulnerable groups of people. Although the subject of assessment of the impacts of foreign investment in land on the right to food of

local population and on national food security is not mentioned, it is implicit in this human rights-approach that priority should be given to national food security and to access to agricultural resources by local population, especially smallholder farmers.

#### IV. CONCLUSION: THE WAY FORWARD

Land is the most important asset that a country has: it provides the essential resources and means of existence for local population. Land sovereignty has always been a sensitive issue and is critical for the political identification of a nation. Giving away big pieces of land to foreigners may result in weakening the capacity of local population to feed themselves and in a loss of national identification by future generations.

The recent foreign rush on land in developing countries can have profound impacts on the economies of the host countries. Against uncertain benefits derived from such foreign investments, there are serious negative impacts, in terms of threat to national food security, eviction of local population from the land they have traditional access to, and erosion of water and other natural resources. It falls on the responsibility of national governments to protect the right to food of national population and to provide food security to the whole nation, and most particularly the most vulnerable groups of people. **In countries which are food insecure and which have to rely on food imports or international food assistance, there is clearly the case for stopping or prohibiting foreign investments in land which purport to provide food and energy security for cash-rich countries.**

The case of foodcrops production for biofuels in poor countries should be fundamentally reassessed. It has been found that while mitigating climate change is a major driver behind biofuel development, the mitigation potential of first generation biofuels to-date are rather minimal overall and the costs so far seem disproportionately high. Biofuels are derived from feedstock that also serves as food. Hence, there is a competition between food and fuel, and a rise in food prices as a result. Another risk identified is expansion of biofuel feedstock production into areas that provide valuable ecosystems that support high biodiversity and other ecological services. Given the scarcity of cropland, this growing claim on land requirements by biofuel production will inevitably displace the production for food, thus putting a significant threat on global food security.

Even though most foreign investment in developing country land entails high risks and costs, with minimal benefits, this trend is unfortunately rising. Cash-poor developing countries hope to attract capital and investment in the agricultural sector, which creates employment and exports and which brings new technologies. Under these circumstances, the international community, including civil society organizations (such as Pain pour le Prochain) could assist developing countries in adopting policy approaches and strategies in order to maximize the gains derived from foreign investment and minimize the costs and risks for domestic sectors, and for smallholder farmers in particular.

First and foremost, as outlined in the FAO Voluntary Guidelines on the Right to Food, States have the obligation to respect, promote and protect and to take appropriate steps to achieve progressively the full realization of the right to adequate food. The human right to food must take precedence over all other forms of land use. In this context, States should promote a broad-based economic development strategy focusing on agricultural production and food security, and poverty reduction. In the process of defining and adopting a national development strategy, the government should widely consult with all stakeholders, including civil society, women and indigenous associations, smallholder farmers.

Any decision to allow foreign investment in land should be based on this broad-based development strategy, and the contribution of foreign investment to national food security should be demonstrated. The government should undertake studies to assess the impacts of foreign investment on the economic, social and environmental conditions, as well as the right to food of the poor and vulnerable people. Particular attention should also be given to the sustainability of water resources. External actors could assist in the preparation of these studies. Relevant stakeholders should largely be consulted.

In a second step, existing use or ownership rights to land, whether statutory or customary, primary or secondary, formal or informal, group or individual, should be respected. States should take measures to promote and protect the security of land tenure, especially with respect to women, and poor and disadvantaged segments of society, as well as indigenous communities, through legislation and other policy mechanisms that protect the full and equal right to own land and other property, including the right to inherit. Securing land tenure, redistributing land, to those in need, improving access to land resources and spreading land related services can also contribute to poverty eradication. In balancing pro-poor priorities with market orientation, adequate measures need to be put in place to ensure that increased market-driven policies of land development do not expose vulnerable groups, particularly women, to further marginalization through speculation and costly land rights transfer systems.

In a third step, options and measures should be devised in order to optimize the sharing of benefits with the local economy, in terms of employment creation, supply to local markets, transfer of technologies, upstream and downstream integration in the global food chain, etc. Two policy aspects deserve particular attention. First, States could consider alternative forms of foreign investment, other than land purchase or leasing, which represent business models that provide opportunities for smallholders.<sup>30</sup> These alternative forms of investment include: contract farming, leases and management contracts, tenant farming and sharecropping, joint ventures, farmer-owned businesses, upstream and downstream business links.

The second policy aspect is the negotiation of performance requirements and other favorable conditions in investment contracts, in order to share the benefits of investment. These requirements and conditions should be carefully defined and negotiated, within the policy space allowed by commitments associated with international trade and investment agreements. As outlined in section II.6 above, particular attention should be given to the questions of the right to regulate and safeguards.

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<sup>30</sup> See : Sonja Vermeulen and Lorenzo Cotula : *Making the most of agricultural investment: A survey of business models that provide opportunities for smallholders*, IIED, FAO and IFAD, 2010.

