



INTERNATIONAL  
LAND  
COALITION

# **Increasing commercial pressure on land: Building a coordinated response**

*Discussion paper*

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## List of acronyms

<b>AfDB</b>	African Development Bank
<b>AGTER</b>	Association pour l'Amélioration de la Gouvernance de la Terre, de l'Eau et des Ressources naturelles
<b>AU</b>	African Union
<b>CEPES</b>	Centro Peruano de Estudios Sociales
<b>CIRAD</b>	Centre de Coopération Internationale en Recherche pour le Développement
<b>CSD</b>	Commission on Sustainable Development
<b>DWHH</b>	Deutsche Welthungerhilfe
<b>FAO</b>	Food and Agriculture Organisation
<b>FDI</b>	Foreign Direct Investment
<b>FIAN</b>	FoodFirst Information and Action Network
<b>GTZ</b>	Gesellschaft für Technische Zusammenarbeit
<b>IAASTD</b>	International Assessment of Agricultural Knowledge, Science and Technology for Development
<b>IFAD</b>	International Fund for Agricultural Development
<b>IFC</b>	International Finance Corporation
<b>IFPRI</b>	International Food Policy Research Institute
<b>IIED</b>	International Institute for Environment and Development
<b>IISD</b>	International Institute for Sustainable Development
<b>ILC</b>	International Land Coalition
<b>MIGA</b>	Multilateral Investment Guarantee Agency
<b>OECD</b>	Organisation for Economic Co-operation and Development
<b>OPEC</b>	Organization of the Petroleum Exporting Countries
<b>PRSP</b>	Poverty Reduction Strategy Paper
<b>REDD</b>	Reducing Emissions from Deforestation and Degradation
<b>ROPPA</b>	Réseau des Organisations Paysannes et de Producteurs de l'Afrique de l'Ouest
<b>RRI</b>	Rights and Resources Initiative
<b>SPLA</b>	Sudanese People's Liberation Army
<b>UNCCPR</b>	United Nations Covenant on Civil and Political Rights
<b>UNECA</b>	United Nations Economic Commission for Africa

# Increasing commercial pressure on land: building a coordinated response

## Introduction

The food price crisis of 2007-2008 brought to public attention a wave of large-scale acquisitions of land in developing and transition countries by foreign investors. The predominant investors in these deals have been governments and government-backed institutions; the dominant rationale to secure national food and energy supplies. The food price spike in 2007-2008 is said to have been a “wake-up call” for many food importing, capital-rich countries, provoking attempts by such countries to circumvent the open world market and to secure dedicated sources of imports.<sup>1</sup> At the same time, there are reports that farmland ownership is increasingly being seen as a vehicle for investment by agribusiness, and also by the financial industry.<sup>2</sup>

Investment in farmland for offshore food production (often in food insecure countries) is one face of a much wider trend of increasing demand for land for not only food, but also fuel, fibre, tourism, mining and ecosystem services such as carbon sequestration. Expected long-term trends in all of these sectors are promoting investor interest in land that was previously marginal to economic interest, driving rising land prices globally. Increasing competition over such land between investors, local communities and others carries high risks of conflict, as the recent clashes over resource concessions in indigenous territories in Peru have demonstrated.

Investors interested in exploiting the commercial potential of land and natural resources are more and more coming into direct competition with local populations, for whom such resources are a critical source of livelihoods. The current wave of large-scale land acquisitions is seen as posing both threats and opportunities. It is suggested that they pose a threat to the land rights of the poor, particularly to customary and common-property rights-holders; to the food security of the host countries; and to the environment. Alternatively, these acquisitions may be seen as bringing investment into a sector and into regions that badly need it, perhaps helping to achieve poverty reduction and development goals, and to meet the world's food needs.

The global rush for land has prompted renewed attention at a global scale on questions of rights to land and natural resources and their place in efforts to overcome hunger and poverty. This attention is welcomed by many members of the International Land Coalition (ILC), who formed the coalition in 1995 at a time when land issues had to a large extent fallen off the development agenda, despite the ongoing – and largely invisible - struggles of millions of poor women and men over rights to land. The challenge is to build an adequate response to large-scale transnational investments in land, whilst not losing sight of the everyday struggles of millions of poor land users, in the face of a wide variety of pressures, to retain secure access to land and to the natural resources on which their livelihoods depend.

Since 2007, when members decided that ILC's engagement in the 16<sup>th</sup> and 17<sup>th</sup> sessions of the Commission on Sustainable Development (2008-9) should focus on the implications of rising commercial pressures on land, ILC's members have increasingly expressed their concern that such pressures threaten to accelerate the displacement of poor land users, and that the manner in which many investments are taking place is likely to exclude poor land users from taking advantage of possible opportunities. At ILC's global assembly in Kathmandu in April 2009, members and partners

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1 “Cornering foreign fields”, *The Economist*, May 21<sup>st</sup>, 2009.

2 O'Keefe, B. “Betting the farm”, *Fortune/CNN*, June 10, 2009.

[http://money.cnn.com/2009/06/08/retirement/betting\\_the\\_farm.fortune/](http://money.cnn.com/2009/06/08/retirement/betting_the_farm.fortune/)

declared that:

*'Land is becoming an increasingly globalised commodity, fuelled by rising demand for food and agrofuels, for minerals, for tourism, and for ecosystem services including carbon sequestration. Resource-poor land users are facing increased competition for land with other land users, national elites and global investors. We call for urgent action to ensure transparency and disclosure in large-scale land transactions by governments and corporations. There should be full consultation of all stakeholders, particularly local land-users, in such transactions'.<sup>3</sup>*

This paper takes stock of current understandings of, and responses to, commercial pressures on land by organisations within and beyond ILC's membership. It outlines key **current initiatives** to engage with the phenomenon; comments on **recent trends** in land transactions; discusses **ten myths** that are commonly associated with 'land grabbing'; outlines key **emerging concerns** that responses to the phenomenon should address; and puts forward some **key considerations and questions for building a coordinated response**.

## Current initiatives

The recent rise in commercial pressures on land has prompted the involvement of a wide variety of organisations concerned with rural development, including farmer's organisations and social movements such as ROPPA and La Via Campesina, International Financial Institutions such as the World Bank and IFAD, the UN system including FAO and the Special Rapporteur on the Right to Food, research organisations such as IFPRI, CIRAD, AGTER, and IIED, academic institutions such as the Universities of Utrecht, Groningen and St Johns, trade policy organisations such as IISD and 3D, advocacy organisations such as FIAN and GRAIN, donors including most members of the Global Donor Platform,<sup>4</sup> and civil society organisations including DWHH, Oxfam-Novib and a wide variety of organisations in countries where processes of land concentration are taking place. Political parties in a number of investor countries, including USA and Germany, have also attempted to introduce motions to regulate transnational investment in land.<sup>5</sup>

Specific initiatives relating to commercial pressures on land include:

### 1. Tracking of land-based investments

- GRAIN's recently re-launched website [www.farmlandgrab.org](http://www.farmlandgrab.org), which documents over 180 reports of land-related investments for food production.
- ILC's blog [www.landcoalition.org/cpl-blog](http://www.landcoalition.org/cpl-blog), which documents reports on wider land-related investments, categorised by keywords.

### 2. Desk-based research papers

- IIED/FAO study on the 'Biofuels Boom and Poor People's Access to Land', released in June 2008 to coincide with the High-Level Conference on World Food Security.
- AGTER/ILC conceptual framework for commercial pressures on land, released in April 2009.
- Global study on Commercial Pressures on Land, being undertaken by over twenty members and partners of ILC, with both desk-based and empirical components, due to be

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3 <http://www.landcoalition.org/>

4 Transnational investments in land are to be the focus of a seminar on 14<sup>th</sup> July by the Global Donor Platform

5 In June 2009 a motion was introduced to the 16<sup>th</sup> electoral term of the Bundestag by the Greens Parliamentary Group on *Strengthening land rights – preventing land grabbing in developing countries*. The motion was defeated. Similar issues are being introduced by congress members in USA into debates on the Global Food Security Act

released in April 2010.

### 3. *Empirical research*

- IIED/FAO/IFAD study on 'Land grab or development opportunity? Agricultural investment and international land deals in Africa' involving empirical research in five African countries, released in June 2009.
- World Bank 30-country study on 'Large-scale acquisition of land rights for agricultural or natural resource-based use, due to be completed in December 2009.
- GTZ case-studies of foreign investment in land in four countries in Asia and Africa, due to be completed in August 2009.
- OECD secretariat/Club du Sahel West Africa planned regional study on land-based investment, to be undertaken as part of the ILC Commercial Pressures on Land study, due to be released in April 2010.
- Case studies of commercial pressures on land by members of the Asia and Latin America regional platforms of ILC, due to be released in April 2010.
- FIAN country-case studies with selected in-country partners.

### 4. *Briefing notes/position papers/statements*

- IISD brief on 'A Thirst for Distant Lands: Foreign investment in agricultural land and water', released May 2009.
- IFPRI brief on "'Land Grabbing" by Foreign Investors in Developing Countries: Risks and Opportunities', released April 2009.
- Special Rapporteur on the Right to Food statement on 'Large-scale land acquisitions and leases: A set of core principles and measures to address the human rights challenge', released June 2009.
- DWHH brief on 'Land Grabbing: "The land is pulled away from under the poor's feet"', released April 2009.

### 5. *Initiatives to provide guidelines on land-related development*

- The IFPRI April 2009 study calls for a code of conduct on foreign land acquisition, and outlines key elements that such a code should address, although it does not elaborate such a code.
- FAO Voluntary Guidelines for responsible governance of tenure of land and other natural resources. The consultation process to prepare the Guidelines began in 2009. They are intended to provide practical guidance to States, civil society and the private sector on the responsible governance of tenure as a means of alleviating hunger and poverty, enhancing the environment, supporting national and local economic development, and reforming public administration.
- African Union/Economic Commission for Africa/African Development Bank Framework and Guidelines for Land Policy in Africa. These are expected to be adopted at the July Summit of African Heads of State, and address the full range of land policy issues, including foreign investment in land.
- The Government of Japan has announced an initiative at the July G8 summit to develop "a global platform to agree on principles and compile good practices". It has outlined a number of points that "non-binding principles" might include.<sup>6</sup>

These initiatives represent an important contribution to the growing body of information and analysis on commercial pressures on land, and provide a foundation for informing the consideration of options that could be pursued by stakeholders to mitigate potential negative consequences and enhance

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6 Taro Aso, "The world must learn to live and farm sustainably", Financial Times, 5 July 2009.  
<http://www.ft.com/cms/s/0/d6e93cf6-6995-11de-bc9f-00144feabdc0.html>

opportunities for local stakeholders in land-related investments.

## 2009: Recent trends in land-based investments

ILC's Commercial Pressures on Land blog has been tracking studies and media reports on the issue of international land acquisitions since the start of 2009. A preliminary analysis of the 450 articles and papers on the blog suggests that foreign investment in land is continuing apace, perhaps intensifying, although there are signs of increasing caution on the part of African governments.

The blog reveals a continuing media focus on the activities of Sovereign Wealth Funds (which have proved highly controversial in a number of countries), despite evidence from the IIED/FAO/IFAD study that the private sector may be playing a larger role, and that domestic "land grabs" may also be significant. The Gulf states and Libya continue to feature prominently. Perhaps in response to the high profile of the issue, some countries have been openly inviting investment, including Turkey, Pakistan and Brazil.<sup>7</sup> In recent months, the main target of Gulf interest is less apparently Africa, more Southeast Asian countries such as Thailand and the Philippines.

After the collapse of the Daewoo-Madagascar deal, China and South Korea have been less in the spotlight. Indian investments in Africa, by contrast, are continuing to draw attention.<sup>8</sup> There has also been continued reporting of investment by Western financial institutions in farmland ("agricultural real-estate" being treated as an "investment vehicle"). This is reported to be a growing trend, with a major conference focused on agricultural investment being held in June.<sup>9</sup> The focus of such investments is mostly on developed, transition and Latin American emerging economies such as Canada, US, Australia, New Zealand, Ukraine and Argentina and Brazil.

There are increasing signs of wariness among African governments. The new military-backed president of Madagascar has promised to review all foreign land acquisitions,<sup>10</sup> while the 10 million hectare, 99 year lease of land to South African farmers by the Republic of Congo has been put on hold until after the forthcoming presidential election.<sup>11</sup> The president of the Alliance for a Green Revolution in Africa has been quoted as saying that there is a de-facto moratorium on large-scale land deals.<sup>12</sup> In Asia, a very public rejection of land acquisition by foreigners by the Government of Thailand was, however, according to one editorial, empty posturing.<sup>13</sup>

Investors have also taken note of the widespread backlash. The Indian Yes Bank, which has invested in Tanzania and is considering investments in Mozambique, Malawi, Madagascar, Angola and Namibia,

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- 7 "Choose and take what you want," Cumhuriyet, 13 June 2009. <http://haber.turk.net/ENG/2288097/Turkey-Press-Scan-2->; "Pakistan opens more farmland to foreigners", Reuters, 18 May 2009. <http://in.reuters.com/article/southAsiaNews/idINIndia-39682520090517?sp=true>; "Brazil's Lula urges closer Saudi economic ties", 17 May 2009. <http://www.google.com/hostednews/afp/article/ALeqM5hyA8iSL23OZ2O8WuZqk5mb273YiQ>; ed refs for all!!
  - 8 "India cultivates Africa", Mail Today, 25 June 2009. <http://epaper.mailtoday.in/epaperhome.aspx?issue=2562009>
  - 9 "Flow of investment dollars to farms seen growing", Reuters, 23 June 2009. <http://epaper.mailtoday.in/epaperhome.aspx?issue=2562009>
  - 10 "Rajoelina orders foreign contracts review", Daily Nation, 31 March 2009. <http://www.landcoalition.org/cpl-blog/?p=1454>
  - 11 "Congo Republic delays finalising S. Africa farm deal", Reuters Africa, 31 May 2009. <http://www.landcoalition.org/cpl-blog/?p=2160>
  - 12 "Africa becoming wary of farm deals – land activist", Reuters, 9 June 2009. <http://www.reuters.com/article/homepageCrisis/idUSL9584860.CH.2400>
  - 13 Supanida Sakulthangphaisal, "Thailand says no to farm investment by foreigners", Reuters, 23 June 2009. <http://www.landcoalition.org/cpl-blog/?p=2400>; Sanitsuda Ekachai, "Our fear of the foreigner on the farm", Bangkok Post 25 June 2009. <http://www.bangkokpost.com/opinion/opinion/19078/our-fear-of-the-foreigner-on-the-farm>

has denied it is involved in land grabbing, stating that it does not acquire land but works with local farmers as outgrowers.<sup>14</sup> Japan, after first announcing its interest in supporting the purchase and lease of overseas farmland to enhance its food security, then stated that its products will be sold on the world market, and then that it will spearhead a move at the G8 to promote responsible investment in agriculture, in the face of 'land-grabbing'.<sup>15</sup>

## Ten myths concerning commercial pressures on land

The emotive and ideological nature of debates on land rights and 'land grabbing' in an era of increasing landlessness, hunger and global trade have encouraged widespread interest, with the media playing a prominent role in informing debate. There is consensus that commercial interest in land and natural resources has risen considerably in the past few years. However, prevailing viewpoints are liable to a number of misconceptions, in part due to the low levels of transparency that characterise many large-scale land acquisitions. The nascent but growing body of empirical research that is emerging provides an important contribution to a more accurate conceptualisation of the current wave of land-based investment. This research allows the debunking of a number of commonly-held myths that need to be overcome when considering adequate responses to the 'global land grab'.

### 1. **Abundant 'unused' land is available for agricultural investment**

The assumption that agricultural land is available that is 'empty', 'unused', 'idle', or 'wasteland' is an underlying factor in much investor interest in acquiring land. It is a myth often driven by host governments, such as those of Mozambique, Tanzania and Indonesia, who have attempted to quantify such land available within their borders in an effort to attract investors.

This myth has, however, been challenged in all empirical studies of the phenomenon, noting that all usable land is very likely to be already occupied or used by local communities in a variety of ways important to livelihoods and food security, if not cultural identity. In particular, local populations who use the land for non-arable uses such as pastoralism or hunting and gathering are liable to be ignored. In addition to direct local usage, the ecosystem services provided by such lands to the wider population appear often to have been ignored.

*Virtually no large-scale land allocations can take place without displacing or affecting local populations.*

### 2. **Investors are involved in 'Land Grabbing'**

"Land Grabbing" has become the term most commonly used to characterise the current wave of large-scale land transactions. "Land grabbing" implies accumulation of landholdings through illegal and/or illegitimate means. In some cases, "land grabs" are clearly illegal, such as the reported acquisition by Jarch Capital of 400,000Ha in southern Sudan from an SPLA General,<sup>16</sup> or reported paramilitary seizures of privately-held land in Colombia.<sup>17</sup> In most cases, however, land allocations do not violate domestic legal systems. Most large-scale land leases are of state land, which is administered by

14 Wendell Roelf, "INTERVIEW – India Yes Bank sees first Africa farm project start 2011", Reuters, 15 June 2009. <http://www.landcoalition.org/cpl-blog/?p=2290>

15 "Japan to promote farm investment overseas for food security", Bloomberg, 27 April 2009. <http://www.bloomberg.com/apps/news?pid=20601012&sid=akj4F3JyDUrl>; "Japanese jitters grow over food security", Financial Times, 28 April 2009. <http://www.landcoalition.org/cpl-blog/?p=1862>; "G8 move to halt 'farmland grabbing'", Financial Times, 26 May 2009. <http://www.landcoalition.org/cpl-blog/?p=2124>

16 <http://www.sudantribune.com/spip.php?article30891>

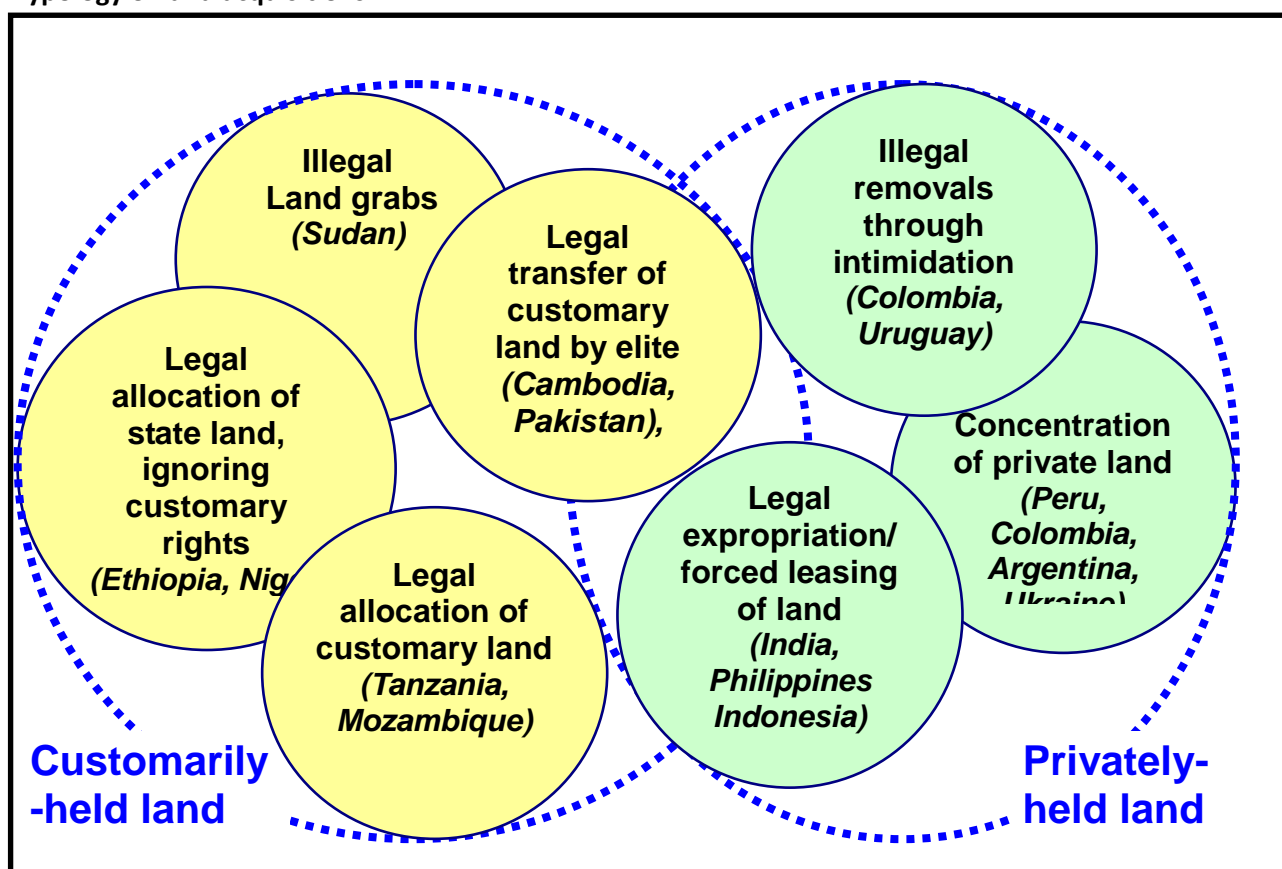
17 <http://rainforestportal.net/shared/reader/welcome.aspx?linkid=77259&keybold=biofuel%20policy%20Congress>

government according to statute, including the right to lease it to tenants. Where the customary rights of local land users are ignored, this is a function of land legislation not recognising customary use rights, rather than outright illegal allocation or acquisition.

In addition, significant land purchases by agribusiness companies from small and medium-scale landowners are occurring on privately-held land, particularly in transitional countries and in Latin America. Widespread processes of concentration through market mechanisms are resulting in high inequalities of land ownership, documented, for example, in Peru by ILC member CEPES, where inequality in land-holding in the coastal region is now higher than before the land reform of the mid-1970s.<sup>18</sup>

The typology below provides examples of the different forms of land acquisition, illustrating the diversity of land tenure regimes and transactions involved.

**Typology of land acquisitions:**



*“Land Grabbing” is misleading in characterising the wide variety of ways in which investors are acquiring land, many of which do not explicitly violate land policies or laws.*

**3. ‘100 land deals’**

A number of attempts have been made to quantify the extent of land globally that is under consideration for investment, including visual illustrations of source and host countries. A source of much media information has been GRAIN’s catalogue of over 100 land deals under consideration.<sup>19</sup>

18 “Cuarenta años despues de la reforma agraria, la concentración de la propiedad de la tierra reaparece”, *La Revista Agraria*, n. 107, May 2009. <http://www.cepes.org.pe/revista/r-agra107/portada.htm>

19 [www.grain.org/front\\_files/landgrab-2008-en-annex.pdf](http://www.grain.org/front_files/landgrab-2008-en-annex.pdf)



This figure is probably accurate for what it claims to be – reports of deals under consideration. However, interpreting these as reliable figures of land transactions, as has been implied in a number of media reports, would be erroneous. In reality, the lack of transparency that characterises most land deals means that it is virtually impossible to arrive at an accurate figure. Evidence indicates that many of the deals that are under consideration in fact do not reach completion, and also the large number of smaller-scale land acquisitions – particularly by domestic investors – are not taken into account in such estimates. The recent IIED/FAO/IFAD study in five African countries (documenting 2,492,684 Ha of acquisitions over 1,000 Ha each), and the ongoing World Bank study in thirty countries, provide two important examples of verified – though incomplete – data on land transactions for investment.

*Although a body of verified data on investment-related land transactions in particular countries is growing, the true extent of the phenomena remains unknown.*

#### **4. Transnational investment in land is a new phenomenon**

Foreign investment in agricultural land is not a new phenomenon, as noted in a number of recent studies on the current phenomenon. During the colonial period and early post-colonial period, large foreign-owned plantations were set up in many parts of Africa, Asia and Latin America. These were used to produce crops such as bananas, sugar, tea, groundnuts and cocoa. The lull in the 1980s and 1990s signified a shift towards contract farming and investment in other aspects of agricultural production—including seeds, fertilizers, machinery, processing, manufacturing and retail.<sup>20</sup> However, increasing investment opportunities in the fuel and food sectors over the last five years, combined with a general decrease in trade and investment barriers, have prompted a renewed interest in transnational land-based investments. In some cases, investors report that land acquisition for its speculative value is an important aspect of their wider agricultural investment strategy. While transnational investments in land are therefore not a new phenomenon, the current wave can be characterised by:

- The size of land acquisitions, in many cases over 100,000Ha;
- Food and energy security as a key driver, and not necessarily economies of scale from large-scale production;
- A severe lack of transparency and low levels of public consultation; and
- The increasing involvement of governments, or government-related agencies, in negotiations for land.

*Although the current phenomenon has particular characteristics, large-scale transnational investment in land is not new.*

#### **5. Agricultural land is the main focus of investment interest**

The main focus of attention has been on the acquisition of land for agricultural production; for food and agofuels. Undoubtedly, these have been key drivers of the upsurge in land-related investments. They have also provoked most public interest due to the questionable ethics of exporting agricultural commodities from food insecure countries. However, agricultural investments should not be seen in isolation from wider commercial pressures on lands previously seen as “marginal”. The Rights and Resources Initiative has warned that new markets in carbon, such as those proposed under REDD initiatives, are likely to lead to large-scale disenfranchisement of forest-dwellers, driven by private sector and government capture of forests for their carbon sequestration value.<sup>21</sup> This is an aspect of

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20 Smaller, C. and Mann, H., “A Thirst for Distant Lands: Foreign investment in agricultural land and water”, IISD, May 2009.

21 Rights and Resources Initiative (RRI) 2009. *From Exclusion to Ownership? Challenges and opportunities in advancing forest tenure reform*

the wider trend of commoditisation of environmental services, giving a market value to standing biomass resources that were not previously subject to rent or profit-seeking behaviour. In addition, investor interest in land for tourism, mineral extraction and timber are reported by ILC members as significant drivers at the local level of investor interest in land.

*The 'rush for the world's farmland' is one component of a wider convergence of investment-related opportunities on land and natural resources that is attracting interest in waagricultural, forest, mineral-rich, and tourism-related lands.*

## **6. Large-scale mechanised agriculture is the most efficient**

Many large-scale investments in agriculture are driven by the assumption that large-scale mechanised agricultural production will be more efficient than the small-scale production it may replace. While economies of scale can be achieved in processing and marketing, this is less common in production, particularly for perennial crops. Family-operated farms are widely accepted to be economically much more efficient than plantations operated by wage labour; in many cases outgrowing has historically been chosen as a preferred method of production by agribusiness firms. Family farming is also known to have a much larger employment effect – creating more jobs – than large-scale mechanised agriculture; an important consideration for government poverty reduction strategies. Notably, this is an increasingly clear message from the World Bank, in both the 2008 World Development Report, and in two briefs issued in 2009 on investment in agriculture.<sup>22</sup> It is in investors' interests to consider alternative forms of production to large-scale mechanised agriculture, over and above the environmental and local-livelihood concerns that such production models present. The International Assessment of Agricultural Knowledge, Science and Technology for Development (IAASTD) report,<sup>23</sup> launched in April 2008 by 64 governments and authored by 400 scientists from 100 countries, provides a clear rationale and framework for supporting family farming as a central pillar of future agricultural production.

*Large-scale mechanised agriculture is often not the most efficient form of production, over and above the significant social, environmental and political risks it poses.*

## **7. Foreign investors are the primary "land grabbers"**

The most visible large-scale land acquisitions involve foreign investors. However, foreign investors often act in partnership with domestic investors, in a relationship where the land acquisition aspect of the investment may be led by the domestic partners. The IIED/FAO/IFAD study, for example, notes that the majority of agricultural investments in Ethiopia are by domestic investors. Speculative accumulation of land by local elites, particularly through the privatisation of previously commonly-held land, is noted by many ILC members working at the local level in Africa, Asia and Latin America as the main driver of land alienation from local land-users. Such speculation by domestic elites may be in anticipation of possible partnerships with foreign investors, or it may be for direct investment by elites themselves. Speculative land acquisition by domestic investors is commonly for smaller land parcels, but the scale at which it is occurring makes it a significant factor at the local level in comparison with foreign direct investment.

*Land acquisitions by domestic investors appear to be a significant contributor to the alienation of land from local land users, while domestic partners are also often integral to "foreign investment".*

## **8. Transnational investment in land was driven by the food price crisis, and will decline with the financial crisis**

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22 World bank Agriculture and Rural Development Notes, Issue 45, January 2009 and Issue 48, June 2009.

23 [www.agassessment.org](http://www.agassessment.org)

The surge of transnational investments in land has been associated with the food price spike of 2008. It has thus been assumed that the easing of food prices, in conjunction with the decline in availability of investment capital caused by the financial crisis, will lead to a decline in land-based investment. These factors may indeed lead to an easing of the pace of investment, as may more realistic assessments of the political and social risks involved, yet predictions of demand for food and fuel over the longer-term indicate that there is likely to be sustained demand for land for investment in food, fuel, fibre and environmental services. The FAO Food Outlook predicts that global food demand will double by 2050.<sup>24</sup> While fuel demands will also increase, the demand for land for agrofuel feedstock production is more uncertain, as the profitability of agrofuels are significantly influenced by subsidy and policy regimes. Moreover 'third generation' agrofuels may be produced from biomass such as algae which could require significantly less land for production.

*Long-term predictions of trends in demand for food, fuel, fibre and environmental services indicate that while there might be short-term fluctuations in investor demand for land, commercial pressures on land will continue to increase over the long term.*

### **9. Investment in land is a sovereign issue, under the sole jurisdiction of host countries**

Host States have jurisdiction over investor activities within their borders. In exercising this jurisdiction they nonetheless have obligations under the international human rights instruments to which they are Party. The UN Special Rapporteur on the Right to Food has outlined how large-scale land acquisitions and leases relate to the right to food; the rights to freedom from forced eviction; the rights of indigenous peoples; the rights of self-determination and to development; and the rights of agricultural workers.<sup>25</sup> He also notes that these rights imply obligations not just for host States but also for investors and for the home States of investing firms. Likewise, the IIED/FAO/IFAD study notes that business entities are interpreted as having direct responsibilities, "*to respect human rights, including through carrying out due diligence about possible adverse human rights impacts, in addition to compliance with national laws.*"<sup>26</sup> Recognising the responsibilities of investors is perhaps all the more important in a context in which investment contracts, agreements and treaties, complete with stability clauses and other protections for investors, are increasingly taking *de facto* precedence over domestic law, giving investors "hard", enforceable rights in countries where local people's rights may be poorly defined and weakly enforced.<sup>27</sup>

*Not only host States but also private investors and their home countries have an obligation to respect a range of human rights in connection with foreign direct investment in land.*

### **10. Land is the main resource of investor interest**

Where sale or lease agreements have been examined in detail, such as by the IIED/FAO/IIED study, it is clear that land has been the focus of the transaction. Water requirements for agricultural production are generally not explicitly considered, even though high levels of water extraction for irrigation may be required. Increasingly, the value of water (received for free) may exceed the value of the land. As such, hidden behind the rush for land may be a significant rush for water. Not only is the value of the

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24 <http://www.fao.org/docrep/011/ai474e/ai474e13.htm>

25 Olivier de Schutter, "Large-scale land acquisitions and leases: A set of core principles and measures to address the human rights challenge," Report of the Special Rapporteur on the Right to Food, 11 June 2009.

26 Reference is made to Ruggie, J., "Protect, Respect, and Remedy: A Framework for Business and Human Rights", Report of the Special Representative of the Secretary-General on Human Rights and Transnational Corporations and Other Business Enterprises, 7 April 2008, A/HRC/8/5. [http://www2.ohchr.org/english/issues/trans\\_corporations/reports.htm](http://www2.ohchr.org/english/issues/trans_corporations/reports.htm).

27 See the recent IISD report, Smaller, C. and Mann, H., "A Thirst for Distant Lands: Foreign investment in agricultural land and water", IISD, May 2009.

water to be used not taken into account in the drafting of agreements, but its potential impact on water-users downstream can become a source of conflict. In addition to water extraction, opportunities to profit from timber extraction on forest land granted for agricultural investments may be a significant factor in investor interest in acquiring land. This was apparent in the failed attempt by the Sugar Corporation of Uganda to acquire a portion of the Mabira Forest for sugar cane production in 2007. It has also been reported by the Norwegian Centre for Human Rights that companies acquiring leases of forest land for palm oil production in Indonesia have cleared the land for timber extraction, and then failed to invest in agricultural production.<sup>28</sup>

*Allocations of land for investment may legitimise extraction of other renewable and non-renewable natural resources, especially water, whose significant value may not be taken into account in investment agreements.*

## Emerging key concerns for mitigating risks and promoting opportunities

### 1. Ensuring the fair sharing of benefits, particularly opportunities to benefit from growing economic rents

In the work done so far on international land acquisitions, it has been quite common to suggest that a “fair sharing of benefits” is essential if projects are to avoid stirring up local resentment and manage the considerable political risks involved. Yet this begs a question: What is a fair share? In fact the problem of how to allocate returns from land-based production has a long history in economics as an important policy question. It centres on the concept of “economic rent”.

The IIED/FAO/IFAD study of land deals in selected African countries indicates that the primary motivation of host countries has been the economic development promised by the projects, including the creation of new jobs and infrastructure. They appear to be receiving little or no fees for the lease or sale of land. This is not necessarily unreasonable. Profit-seeking investment can create win-win scenarios benefiting both investors and local populations, metaphorically creating a larger cake so that all can get a larger slice.

However, projections of rising agricultural commodity prices, reversing the dominant trend of the last half century, imply a market that may generate massive “economic rents”. The scope for rent-seeking behaviour is magnified when one considers the role of agricultural investment in transforming land from a virtually free commodity held for the common good to a privately-held and marketable commodity. Indeed, this is arguably what is driving much investor interest. Economic rent refers to income earned by the producer above the amount that is theoretically needed in order to make the production happen. In the example of Ricardian “differential rent”, when marginal agricultural costs rise (e.g. through expansion into less fertile or more distant lands), world food prices will rise and intramarginal producers (those on more fertile, less marginal lands) will gain extra income, even though they were prepared to produce for lower returns. The “unearned” extra income is “rent”. The concept of “scarcity rent” applies where a product price rises above marginal costs because of natural scarcity (sometimes a factor in land markets, e.g. urban real estate), or because of artificial scarcity created by market manipulation (e.g. the OPEC cartel, all monopolistic and monopsonistic behaviour).<sup>29</sup> In general, market manipulation can be seen as “rent-seeking”.

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<sup>28</sup> Presentation by Norwegian Centre for Human Rights at ‘The Global Land Grab: a Human Rights Approach’ seminar, Geneva, 16<sup>th</sup> May 2009

<sup>29</sup> Neoclassical economics has sought to generalise the concept of economic rent as the difference between actual income and the opportunity cost of not pursuing the next best use of the labour and capital employed. In another variation, rent

Large-scale foreign investment in agriculture may create opportunities to capture rent in the following ways:

- Excess profits attained by individuals and firms directly engaged in farming, attributable to high farm gate prices;
- Income received by land-owners from tenants (contractual rent, share of crops, etc.);
- Speculative gains from buying land and selling it at a higher price;
- Excess profits attained by agricultural suppliers (e.g. of seed of patented crop varieties) because of monopoly or oligopoly conditions;
- Excess profits attained by buyers of agricultural commodities because of monopsony or oligopsony (e.g. supermarket chains, estates using smallholders as out-growers);
- Food or fuel importing countries attaining below-world-market prices because of control land resources in other countries, giving them monopsonistic power over the price of produce from that land; and
- Decision-makers or public officials attaining income through corruption relating to planning decisions or the sale or lease of public lands (in effect, an exercise of monopoly power).

The classical analysis of rent is generally used to argue that taxation should seek to capture rents because such taxation should, by definition, create no disincentive for work or the investment of capital, unlike a tax on income or wealth. A pro-poor policy should, by extension, ensure either that rents are captured by the state on behalf of the poor, or that they are directly captured by the poor themselves.

While profit-seeking investment can, as was said, create a win-win situation, a competition for economic rent is a zero-sum game creating opposing interests; a bigger slice of the cake for one actor means a smaller slice for another. This is important when assessing the impacts of foreign land acquisitions. It may be possible to demonstrate benefits for local populations (e.g. jobs, infrastructure), yet at the same time, any capture of rent by investing firms or countries will represent a loss – an opportunity cost – for local populations who might have captured these rents under a different scenario. It is thus not enough to say that “everyone is now better off”; where economic rents are generated, it is important to know how they are shared.

## **2. Ensuring that foreign investment in land does not adversely impact on host country food security**

Many organisations have raised the issue of how the outsourcing of food production by capital-rich, food-importing countries will affect the food security of the host countries, particularly when the hosts themselves are, as in many cases, dependent on food imports if not food aid, and particularly in the context of possible future food price fluctuations. The Special Rapporteur on the Right to Food has recommended that investment agreements 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 proportions to be agreed in advance, if the prices of food commodities on international markets reach certain levels.”*<sup>30</sup>

The economic and food security effects of “export home” provisions can be investigated further. From an economic perspective, securing supplies of food is simply a matter of paying what the market

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may be conceptualised also as the difference between an actual price and the price that would occur under conditions of perfect competition.

demands; investor countries are therefore seeking to secure supplies *that they can afford*, or that are simply cheap. The interest of investor countries can be re-stated as an interest in capturing rent through paying less than they would have pay on the open market. Any rent captured in this way is an opportunity cost for the host country; in the worse case, the host country might end up importing at world market prices and exporting below them. From a global perspective, such arrangements could have the perverse effect of giving wealthier countries access to cheaper food supplies than poorer ones, something that could decrease global food security by decreasing the efficiency with which agricultural commodities are distributed and with which land is employed.<sup>31</sup> Such a situation would clearly seem to contravene Article 11, 2 (b) of the International Covenant on Economic, Social and Cultural Rights: “Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.”

### 3. Recognising the land rights of the poor as a starting point when considering land-based investments

The most widespread concern is that large-scale land acquisitions could lead to the wholesale dispossession of the rural poor of the land resources they use under customary, common property, or otherwise not-formally recognised tenure systems. Even individuals and communities with legally recognised rights are seen as at risk because of inaccessible, ineffective or corrupt land administration systems. The basis for the consultation, participation and empowerment of local land users within investment decision-making is therefore the recognition of their legitimate rights to land and natural resources.

Of course, securing tenure over land resources, particularly for women and marginal groups such as pastoralists, indigenous people and common-property users is a huge challenge, requiring an array of strategies and actions. The IIED/FAO/IFAD study suggests that the collective registration of community lands can be a powerful tool for protecting local land rights in this situation. Securing the land rights of the poor should be central from both a human rights perspective (freedom from eviction, right to food) and from a pro-poor perspective that seeks to maximise the benefits poor producers obtain from any economic rents generated by future market conditions. Helping the poor to hold onto their land should be a priority.

In this context, we also need to be concerned about direct the negotiations between communities and investors. The World Bank has suggested such negotiations are preferable to government involvement. A variety of factors may induce the rural poor to enter into sale or lease contracts at prices that significantly undervalue both the speculative and productive value of their land. These include:

- **Capital availability:** The poor may lack the capital (including credit) to take advantage of market opportunities, or indeed to overcome economic distress without selling.<sup>32</sup>
- **Policy bias towards large-scale producers:** Small-scale farmers may realistically predict low returns from their holdings, but this may have less to do with the intrinsic efficiency of their farms than with policy (as regards credit, extension services, rural infrastructure, land administration, etc.) and whether this favours large or small-scale producers;
- **Market manipulation in the supply chain:** monopoly or monopsony tactics by suppliers, processors or marketers may reduce the returns of smallholders, inducing them to sell for low prices to large-scale investors that may not face such constraints;
- **Access to information:** large-scale investors are likely to have privileged access to information

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31 The ability of *low income* countries to restrict exports in times of domestic food insecurity can, however, be expected to have a net positive effect on global food security, being likely to reduce the price of food paid by the poor domestic consumers and to increase the efficiency with which food supplies meet nutritional needs.

32 On this point, see also the report of the Special Rapporteur on the Right to Food, Olivier de Schutter, *ibid.*, p. 8.

(e.g. on future trends and infrastructure development);

- **Lack of negotiating capacity:** the rural poor may lack individual and collective negotiating capacity, as well as capacity in legal affairs; and
- **“Arm-twisting”:** force, intimidation, misinformation and false promises.

The risk is that even where the land rights of small-scale producers are formally recognised, direct negotiations with investors may still lead to a bad deal for the former, leading to the undervaluation of smallholders' lands, land concentration, and the capture of very substantial rents by the new owners or leaseholders. Helping small-scale producers benefit from rising demand for land-related commodities thus also implies a positively supportive policy environment for smallholder production and for collective strategies to enhance their negotiating capacity and bargaining power.

In fact, given the current uncertainty about future price trends, but the strong possibility that food and land prices will rise considerably in the future, the sale and simple, long-term leasing of land may be generally problematic. Communities and host governments should seek to capture rents that arise, yet investors cannot be expected to pay high fees for land that does not, today, offer corresponding rates of return. On the other hand, retaining the ability to capture rents in the future, through taxation or flexible contractual rent, creates political risks for investors and may be rendered impossible by investment agreements and treaties. There is a need for a more flexible form of leasehold or investment contract which could describe *at the outset* an appropriate formula for benefit sharing. Such a contract could, for example, stipulate a profit threshold, above which the state or local communities would be entitled to a large share of profits, allowing the latter to capture what might be regarded as “rent” or “excess profit”, whilst also enshrining the right of the investor to a rate of return necessary as an incentive for investment.

#### 4. Ensuring more inclusive and transparent processes for decision-making

Another, more or less universal, area of concern is the lack of information about major land acquisitions, the opacity of the processes through which they are decided, and the related issue that they rarely include direct consultation with the local people who will be affected. At the national level, the secrecy with which many deals are shrouded is seen as preventing much-needed public debate and scrutiny. It is the exclusion of local affected peoples, however, on which studies have focused. The IIED/FAO/IFAD study notes that, *“Even in the minority of countries where legal requirements for community consultation are in place, processes to negotiate land access with communities remain unsatisfactory. Lack of transparency and of checks and balances in contract negotiations creates a breeding ground for corruption and deals that do not maximise the public interest.”*<sup>33</sup> The authors suggest that principles and procedures for free, prior and informed consent should provide guidance (a point echoed by IFPRI), particularly as developed in the forestry and extractive sectors. The World Bank publications have focused on the centralisation of the planning and negotiation process by host states and calls for decentralisation to improve transparency and land governance in general, preferring direct negotiations between investors and communities (the latter needing training and support).

The IFPRI policy brief warns that smallholders are often in a very weak bargaining position - especially when investors' aspirations are supported by a host state or local elite. DWHH notes how compensation payments in such contexts can often function more as a way of splitting communities and neutralising resistance than as a way of achieving a fair sharing of benefits. In response to the difficulties faced by communities, IFPRI emphasises the role that collective action plays in improving the negotiating capabilities of smallholders, e.g. in collective marketing structures. They also emphasise the role of civil society organisations in providing support. The IIED/FAO/IFAD paper calls

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33 Lorenzo Cotula et al., “Land grab or development opportunity? Agricultural investment and international land deals in Africa”, IIED, FAO and IFAD, 2009, p. 7.

for civil society legal support to communities in this context, ranging from, “*legal literacy training, para-legal programmes, legal clinics, legal advice and representation in negotiations with government and investors, training on negotiating skills, through to public interest litigation.*”<sup>34</sup>

The IIED/FAO/IFAD, DWHH and World Bank publications also share a perception that deals are being entered into without proper assessment of the options, of the viability of the proposals, or of their costs and benefits. DWHH calls for economic, social and ecological cost benefit assessments to take place, and with the participation of affected people and the civil society organisations that represent them. The World Bank policy note suggests the need for basing investment upon local land use plans – developed locally but possibly building on satellite imagery - that would allow for informed decision-making by all sides and could prevent land being held for purely speculative purposes. The IIED/FAO/IFAD paper calls for effective monitoring of land deals by the development community using tools such as maps, inventories and databases, to enhance public scrutiny as well as the access to information of investors and host countries.

## 5. Developing and promoting alternative models for agricultural investments

A final key concern of a wide range of organisations like IFPRI and DWHH is that foreign land acquisitions are promoting a model of large-scale agriculture that is unsustainable, displaces former land users and generates little employment. The World Bank policy note suggests that investors may mistakenly assume that large-scale farms and plantations are more efficient than smallholdings, and therefore that acquiring large tracts of land is necessary. It suggests that implicit subsidies such as low land prices and tax exemptions may thus be a mistake.

The alternatives proposed by IFAD, IIED, IFPRI and others are forms of partnerships between external investors and smallholders including contract farming or 'outgrowing', securing the land rights of smallholders and avoiding possible conflicts through benefit-sharing. DWHH, on the other hand, has suggested that contract farmers are often worse off than they were before. Indeed, land ownership is not enough on its own to ensure that smallholders retain any increased benefit from rising land-related commodity prices; rents will be captured by which ever actors in the supply chain are able to exert 'market power' or negotiating power. As noted above, such power can be exerted by firms with monopoly or oligopoly control over inputs (such as patented seed varieties, agro-chemicals) or by firms with monopsony or oligopsony control of processing facilities or market access, including firms that outsource production to smallholders. Research by Sawit Watch and Forest Peoples Programme into the conditions of some of Indonesia's 4-4.5 million oil palm smallholders has revealed that they are often effectively forced to sell to a particular company. As a consequence they often receive below market prices and suffer from practices such as questionable product grading and late payment.<sup>35</sup>

Where production is of crops that do not favour outgrowing schemes, such as some cereals, other alternatives such as leasing of land by smallholders to investors, or granting smallholders equity in the company on the basis of land provision, could be considered. Again, even under such arrangements smallholders may find themselves worse off unless they are empowered to negotiate a more favourable share of benefits. As noted in the IFPRI policy brief, the ability of the rural poor to do so is greatly enhanced through forms of collective action, including through civil society organisations.

## The way forward: Key elements of a coordinated response by the development

34 Ibid., p. 11.

35 “Ghosts on our own land: Oil palm smallholders in Indonesia and the Rountable on Sustainable Palm Oil”, Forest Peoples Programme and Sawit Watch, November 2006.

[http://www.forestpeoples.org/documents/prv\\_sector/bases/oil\\_palm.shtml](http://www.forestpeoples.org/documents/prv_sector/bases/oil_palm.shtml)



### 1. Continued research and monitoring to enable an evidence-based response

Recent and ongoing research into the scale and nature of the investment that is taking place provides an important starting point for informing an evidence-based response. Looking forward, research will need to expand its focus to analyse further the social and environmental impacts of land acquisitions. It will also need to focus on learning lessons from successful examples of socially and environmentally responsible land-based investments.

Monitoring of trends and impacts is currently taking place primarily through media reports and scattered field studies. Increasingly, monitoring will need to be systematised to provide a coherent picture of impacts. To some degree this could be incorporated into wider land-monitoring initiatives, such as the World Bank's ambitious Land Governance Assessment Framework, currently in piloting phase. It can also be integrated into regional civil society initiatives to monitor land trends, such as Landwatch Asia and the Andean land Observatory, initiatives of ILC members under the Land Reporting Initiative of ILC. However, in the longer term there may be a need to develop a dedicated monitoring mechanism that will focus specifically on investment-related processes, including adherence of investors to contractual and other commitments and standards of conduct.

#### *Considerations:*

- *How can the expanding number of diverse research and monitoring initiatives on land transactions develop greater coherence that allows comparability, without compromising on the legitimate differences in priority or focus?*
- *Is an empirically-based global monitor on investment-related land transactions and their impacts feasible?*

### 2. A code of conduct for investors and host governments

There is widespread support for the idea of developing guidelines, standards or a code of conduct for investors and host governments. These actors need guidance that sets out their existing obligations under international law and human rights covenants in relation to foreign investment in agriculture. A code of conduct or standards would embody the key points of these obligations, but also go further in enshrining best practices and in creating a global regime which encouraged adherence to them.

Several existing initiatives have been put forward as possible models or starting points for a new code of conduct. The IIED/FAO/IFAD report suggests that the ongoing processes to produce Voluntary Guidelines for Responsible Governance of Land and Other Natural Resources, led by FAO, and the Framework and Guidelines for Land Policies in Africa being developed under the leadership of the African Union, the UN Economic Commission for Africa and the African Development Bank, could be useful starting points. IFPRI emphasises that a code of conduct must have 'teeth'; it refers to Transparency International's success in making bribery a legal issue not just in the country where a bribe is paid, but in the bribe paying corporation's home country. The World Bank policy note puts forward the governance framework of the Extractive Industries Transparency Initiative, or the IFC's Equator Principles on good practice in project finance as possible models. It suggests that adherence to a code of conduct could be used to establish eligibility for MIGA insurance against political risk (including export bans).

Based on the statements of IFPRI, the Special Rapporteur on the Right to Food and the Government of Japan, elements of a code of conduct placing (non-binding) obligations on investors and governments

might include: transparency in negotiations; respect for existing land rights, including customary and common property rights; sharing of benefits; promotion of socially and environmentally appropriate farming systems; adherence to national trade policies; and protection of labour rights.

Yet while suggestions are being put forward on the content of a code of conduct, less attention has been given to ensuring that a code is accepted and effective. It has been suggested that a good code is a negotiated code. For a code of conduct to have any chance of being accepted/implemented, it may be absolutely necessary that its formulation be as inclusive as possible.

*Considerations:*

- *Will current initiatives on land and development, particularly FAO's Voluntary Guidelines for Responsible Governance of Land and Other Natural Resources, and AU/UNECA/AfDB's Land Policy Framework and Guidelines provide an adequate code, or are these a starting point for a more targeted code of conduct?*
- *Do existing investment-related codes of conduct, such as the Equator Principles, existing international investment law, and existing international conventions provide clear and adequate guidance for land-related investments?*
- *How can we ensure that a code of conduct attracts adequate adherence and support from all key stakeholders, including investors, home and host governments and civil society?*

### **3. Developing guidelines and tools for good decision-making by investors, governments and local communities**

There is a further role for broader, advisory guidance and information tools that could help governments, investors and communities make good decisions when faced with investment options. It is a common concern that host governments are dealing with investment proposals on an *ad hoc* basis, without an overall strategy, with little consideration of poverty reduction and food security issues, and without needed national debate and due process. The IIED/FAO/IFAD study on land deals in five African countries notes that important strategic issues, like the balancing of investment goals with broader food security concerns, have been hardly touched upon in most agreements. DWHH has suggested the need to link decisions on foreign investment in agriculture into national strategies for poverty reduction and the processes for developing PRSPs.

While a code of conduct should, at best, be relatively simple in order to make compliance verifiable, guidance can be more detailed and extensive. It can be linked in to capacity building strategies for the staff of host governments, for local communities and for the civil society organisations that represent them. The recommendations made in the IIED/FAO/IFAD study are a step in this direction. Tools for good decision-making also means enhancing the quality and quantity of information that all sides can access. The World Bank Policy note has drawn attention to the interest of investors in having reliable information both about land resources and about existing claims to the land. It has suggested the usefulness of satellite imagery-based systems in supporting the development of both local land registries and local land-use plans. This is one area in which development agencies could provide input. In addition, methodologies to facilitate consultations with local communities to establish Free, Prior and Informed Consent could be developed for voluntary use by investors and governments, as a means of enabling informed decisions on land-based investment to be made by affected communities.

*Considerations:*

- *If Japan's proposal at the G8 to develop a global platform to agree on the principles and compile relevant information and good practices is realised, how could civil society stakeholders best engage with the process?*
- *What kind of decision-making tools could be developed for investors, governments and local*

*communities, and how can they be developed in a manner that maximises the likelihood of their use?*

- *Is it a feasible proposition to apply the principle of Free, Prior and Informed Consent to all local communities (including non-indigenous) before land is converted to new uses? If so, how could it be facilitated?*

#### **4. Improving, documenting and promoting alternative models of agricultural investment that do not involve transfers of land ownership**

There is growing concern in the development community that the large-scale, capital intensive, mechanised model of agriculture implied by most foreign investment in agriculture is unsustainable and ill-suited to meeting the needs of the world's poor. Instead of being seen as obstacles to investment in agriculture, local people should be seen as valuable investment partners, bringing with them the land resources under their tenure and the local agricultural and resource management know-how that they possess.

Increased investment in agriculture, particularly in regions like Africa, is absolutely needed. A key aim should be to harness the current wave of investor interest to the goal of enabling small-scale producers to sustainably enhance productivity and capture benefits from rising agricultural commodity prices. The development community can play a particularly valuable role in achieving this in helping to develop, pilot and promote models of investor-community partnership, including contract farming and other forms of joint venture. As was noted above, however, particular attention must be paid to enhancing the negotiating power of local people, including wage labourers and contract farmers, both at the outset of an investment project and throughout its lifespan.

Guidance can be provided on how to minimise political risks through a fairer sharing of benefits, thereby increasing the probability of sustainable returns, as opposed to seeking to maximise possible economic returns in a manner that maximises political risks, thus rendering investments highly speculative.

*Considerations:*

- *How can private and state-backed investors be encouraged to act as partners in developing and piloting forms of community-investor partnership?*
- *How can the commercial viability of these partnerships be ensured and demonstrated? How do you put a price on reduced political risk?*
- *How can small-scale producers be empowered in relation to global markets, beyond the lifespan of pilot projects?*

#### **5. Assisting in securing the land rights of the poor**

In providing input to the 17<sup>th</sup> session of the Commission on Sustainable Development, ILC members, on the basis of their experiences in working towards secure tenure for the poor, defined seven key policy options and practical measures to secure access to land and natural resources.<sup>36</sup> Considering the vastness of the challenge, a strategic focus among these would be on the collective registration of land rights. This is because the most vulnerable to loss of land through investment projects are the estimated 1-2 billion people<sup>37</sup> dependent on Common-Pool Resources. Most users of common land

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36 [http://www.landcoalition.org/pdf/09\\_01\\_ILC\\_Workshop\\_Bangkok.pdf](http://www.landcoalition.org/pdf/09_01_ILC_Workshop_Bangkok.pdf)

37 Making the Law Work for Everyone, Report of the Commission on Legal Empowerment of the Poor 2008

are, in land law, tenants of the state and thus have little legal protection of their land rights. The lack of existing legal claims to much common-land means that it is often perceived by investors as available freely or cheaply through non-market mechanisms. Formal registration of land rights should be accompanied by empowerment processes to ensure that formal titling, combined with a poor understanding of legal issues, does not in fact enhance the vulnerability of poor land users.

Innovative, bottom-up approaches and low-cost methodologies for collective land registration have been developed and tested in countries such as Mozambique, Tanzania, and Philippines, whose legal systems are supportive of collective tenure rights. A challenge in rapid up-scaling of collective tenure rights is to meet the required urgency without compromising on the need for adequate participation and without thus risking the further marginalisation and dispossession of groups such as mobile resource users.

*Considerations:*

- *How up-scalable are current approaches to low-cost collective land titling, particularly to countries whose land law may not explicitly support collective registration of land rights?*
- *How can intergovernmental and regional agencies, who advise and support governments on land law and its implementation, promote a rapid scaling up of tenure registration? What role can bilateral donors and civil society organisations play in this?*
- *How could initiatives for tenure registration of local land users be targeted strategically to the people and areas most vulnerable to dispossession?*

## **6. Building the capacity for collective action and negotiation of local land users**

For community-investor partnerships to be successful in 'sharing benefits', small scale producers need to be well informed and organised in order to be able to negotiate successfully. In the context of agricultural supply chains, poor producers may be able to counter rent-seeking activity by other actors particularly through the formation of processing and marketing cooperatives. Within plantation systems, unionisation enhances opportunities for collective bargaining. The building of organisations of farmers, landless people and other interest groups is a vital step in enabling and strengthening collective action. There is nonetheless an urgent need for targeted capacity building for particular communities who face investor interest in land that they use. Preliminary experiences are, for example, emerging from an initiative by FAO, IFAD and other partners in Mozambique to strengthen community capacities for more equitable negotiations with investors.

*Considerations:*

- *How can civil society organisations, especially trade unions, producer federations, indigenous people's organisations and social movements play a leading role in building the capacity of local stakeholders for collective action?*
- *How can intergovernmental agencies and donors provide targeted support to capacity building and promote the up-scaling of positive experiences?*

## **Conclusion: Beyond the headline-grabbing 'land grabs'**

A series of very large-scale land acquisitions in developing countries by capital-rich countries has caught the world's attention and focused interest on the land rights of the rural poor in a way that is unprecedented. But problems of insecure land rights, landlessness and disadvantaged smallholder agriculture are not limited to spectacular instances of agricultural FDI. These deals are not a cause but a symptom of the wider issue of increasing commercial pressures on land. Global trends are creating markets for land and land-related commodities that have the potential to generate massive rents.

Attention is needed to all the ways in which various actors can attempt to capture these rents, and to the more general problem of how these increasing commercial pressures can become an opportunity for the rural poor, and not just a driver of marginalisation, unsustainable resource use and social conflict.

Thus there is a need for coordinated action to develop, agree and enforce a global code of conduct governing transnational land acquisitions, but this should also draw our attention to wider issues of domestic investment in land, land concentration and smaller-scale 'land grabbing' that are driven by the same trends. The 'land grabbing' phenomena can be used as a springboard for coordinated efforts to scale up and advance efforts at land rights registration, particularly of collective rights, but this should go beyond the immediate contexts of high profile investment projects. Attention needs to be given to all the ways in which land resources are alienated from the poor, including through domestic land markets.

Agricultural investment projects may provide a unique opportunity to pilot models of agricultural production that provide win-win benefits to investors and smallholders, but it is also necessary not to lose sight of all the ways in which small-scale producers may be disadvantaged in competitions for land-based revenues and rents, including through monopsonistic outgrowing practices. The issues brought to light by large-scale land deals are illustrative of the need to build the capacity of poor land users for collective action and effective negotiation.

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## **Annex One: Outcomes of stakeholder working group on commercial pressures on land, Utrecht, 9<sup>th</sup> July 2009**

The discussion paper was prepared in advance of a seminar hosted by Oxfam-Novib, ILC and University of Groningen on 8<sup>th</sup> July 2009 entitled **Commercial pressures on land: Rethinking policies and practice for development**. The outcomes of this conference are available at <http://www.landcoalition.org/cpl-blog/?p=2561#more-2561>. On 9<sup>th</sup> July, a working group convened to consider steps ahead in responding to increased commercial pressures on land. The outcomes of this working group are included here as an Annex to the discussion paper as a valuable record of priorities to be addressed, as defined by members of the working group.



### **'Looking Forward: what lies ahead in responding to increased global commercial pressures on land?' Summary of Stakeholder Working Group meeting, Utrecht, 9<sup>th</sup> July 2009**

#### **Background**

Following the seminars organized by the Universities of Utrecht and Groningen, Oxfam-Novib and the International Land Coalition on 7<sup>th</sup> and 8<sup>th</sup> July on 'land grabbing' and 'commercial pressures on land', a smaller working group convened on the morning of 9<sup>th</sup> July to: consider what broad areas of response are needed to mitigate negative consequences and take advantage of opportunities of increased commercial demand for land; identify possibilities for improved collaboration between stakeholders in existing initiatives; and propose any new/additional areas for action to fill possible gaps. Various recommendations were made, focusing on actions that could be undertaken by stakeholders present; civil society, multilaterals and EU development agencies.

The working group was composed of 26 participants from civil society organizations in Africa, Asia, Latin America, Europe, as well as from IFAD, CTA and OECD within the multilateral system.

At the end of the meeting, the working group members met with the members of the EU land working group to share the outcomes of the meeting.

#### **Summary of discussions**

In general, participants noted that focusing narrowly on large-scale foreign investments for offshore food or agrofuel production ignores the reality that in many cases investors are domestic. This was particularly emphasised by participants from India. Moreover, the cumulative effect of the large number of small-scale land acquisitions or grabs is also a significant overall factor on the tenure security of small-scale users. It was therefore agreed that responses to commercial pressures on land should be framed within this wider understanding of the phenomenon.

There are clearly roles for all key stakeholders in developing an adequate response; including civil society (particularly social movements and producer organizations), multilateral organizations,

governments and the private sector. Civil society organizations present noted that although a degree of suspicion exists between them and large multilaterals such as the World Bank, as well as with the private sector, they are committed to finding ways to work together productively in achieving solutions.

The following four areas were discussed specifically:

## **1. Expanding the evidence base on commercial pressures on land**

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Participants welcomed the increased amount of research being undertaken on the trends and impacts of commercial pressures on land. It was agreed that there is an urgent need to expand the evidence base for understanding increased commercial pressures on land, its impacts and opportunities, and how to respond to these. It was noted that there are many perspectives on what such research should involve, and thus it is important that civil society stakeholders are able to contribute to research, thereby increasing its multi-vocality.

The following **recommendations** were made on research:

- 1.1 *A mechanism should be developed that allows **greater involvement of civil society in undertaking research** on case studies on commercial pressures on land. In particular, gaps that should be focused on include perspectives from local, national and regional levels on evidence of impacts of investments and lessons of good investment practice. Important lessons could also be learnt from earlier experiences of investment in plantations. Funders, such as EU, can play a role in **making research funds available** both to widen the involvement of stakeholders in research and to promote dissemination of results.*

*Large research projects – particularly that of the World Bank, as the largest - should give opportunities for **local civil society stakeholders to contribute to the shaping of the research** where possible. Generally IGOs follow uniform research strategy, and participation of NGO/CSOs in the collection of evidence would add new and meaningful dimensions to the process. CSOs could also contribute by validating and commenting upon the outcomes in countries where the research takes place.*

## **2. A code of conduct on agricultural-based investments**

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It was noted that various discussions are currently ongoing on a possible code of conduct, for example those by the World Bank and the governments of Japan and Saudi Arabia. Little information is available as to how such a code might be developed, what its purpose may be, and what it may contain. Participants that had already been involved in the development of voluntary standards between civil society and the private sector, such as the Roundtables on Sustainable Palm Oil and Soya, noted that ensuring adequate participation is a challenge, and that it is a lengthy process.

It was also noted that a number of mechanisms already exist, particularly international human rights and environmental conventions, as well as investment treaties, which could be used to guide and even enforce good practice.

The following **recommendations** were made on a code of conduct:

- *The **11 principles of the statement by the Special Rapporteur on the Right to Food** provide a widely shared framework for responsible land-based investments, and should provide a starting point for any elaboration of a code of conduct or benchmark of best practice*

- *With uncertainty about a code of conduct and the role civil society may or may not play in it, and considering the urgency in addressing land acquisitions, a medium-term process is proposed for developing a **civil society charter on land-based investments**, particularly relating to the right to food. This would consolidate civil society positions and enable their voices to be better heard in considerations over a code of conduct or similar mechanism*
- **Regional or subregional negotiation** on a code of conduct / charter should be encouraged (i.e the project of a West African, Land Charter led by the Economic Community of West African States)
- If a Code of Conduct is developed, attention should be given to **reporting and appeal mechanisms** in case of violations. This could be a Joint Body, where representatives of People's Organization are given an equal position.
- EU development agencies can play a role in **ensuring that existing guidelines on trade and investment are respected**, including the EU Land Policy Accountability should be exercised to ensure investors from the EU undertake adequate impact assessments of proposed projects, covering the right to food, and social, cultural and environmental aspects of the investment. The application of can play a role in this. The same is true of land-based investments funded by IFIs such as the World bank and IFAD, which are perceived in some cases to have gone against the priorities of local populations.

### **3. Strengthening the land rights of the poor**

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It was agreed that foundational to enabling local land users to benefit from investment is the recognition of their land rights. It is therefore essential to upscale the registration of land rights – particularly for users of common property - in a manner that is efficient, cost-effective and appropriate to local tenure systems.

The following **recommendation** was made on strengthening the land rights of the poor:

- 3.1 *Multilateral and bilateral development partners should work together with governments in countries where agricultural investment is taking place to **upscale the registration of land rights of the poor**. This should be strategically focused on:*
- *Areas and people most vulnerable to dispossession*
  - *Collective rather than individual registration as a first step*
  - *Using innovative and cost-effective methodologies*

### **4. Building the capacity of local land users**

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Building the capacity of local land users for collective action, so as to engage on a more equal level with investors in negotiating joint ventures and ensuring accountability for commitments undertaken by investors was noted as a key ingredient of success in achieving more equitable benefit-sharing. No specific recommendations were made on this point due to time shortage. Nonetheless, it was indicated that development partners should focus on supporting such capacity building, including learning lessons from where this is already being done, such as in Mozambique, and building the capacity of local land users in terms of taking effective part in local governance. It was also noted that support needs to be given to support communities to access justice where their loss of land is clearly a violation of their human rights. Finally, it was suggested that an emphasis should be put on the role of the civil society as a watch dog to ensure better degree of transparency in land related deals.



## Participants

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