

DIRECTORATE-GENERAL FOR EXTERNAL POLICIES
POLICY DEPARTMENT

**AN ASSESSMENT OF THE
EFFECTS OF LAND
OWNERSHIP AND LAND
GRAB ON DEVELOPMENT
–WITH A PARTICULAR
FOCUS ON SMALL
HOLDINGS AND
RURAL AREAS–**

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DIRECTORATE-GENERAL FOR EXTERNAL POLICIES OF THE UNION

DIRECTORATE B

POLICY DEPARTMENT

AD-HOC BRIEFING

AN ASSESSMENT OF THE EFFECTS OF LAND OWNERSHIP AND LAND GRAB ON DEVELOPMENT

**–WITH A PARTICULAR FOCUS ON SMALL HOLDINGS
AND RURAL AREAS–**

Abstract

Land ownership and related issues have a distinct and profound impact on poverty reduction and wealth creation in developing countries. The brief first examines different systems of land tenure in the developing world, paying attention to how differences in access to land affect development. The authors discuss the assumption that land ownership increases productivity through access to credit and greater on-land investment. The brief then provides an overview of two political and economic processes that involve a large-scale redistribution of land: land reform and the so-called land-grabbing movement. The study also includes an overview of international governance mechanisms and EU processes currently addressing these land issues. Regarding land reform, we conclude that although it differs widely across countries, it will only be successful when complemented with policies to help small-scale farmers effectively use the land. Similarly, we conclude that land grabbing can only be a win-win situation for both investors and recipient countries if adequate regulations are in place. Finally, the brief provides a series of recommendations for European policy-makers addressing the issue. Our recommendations include strengthening existing EU policy initiatives on land reform and land acquisitions in developing countries, increasing foreign aid dedicated to agricultural development and strengthening the sustainability requirements of imported biofuels.

This ad-hoc briefing was requested by the European Parliament's Committee on Development.

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LINGUISTIC VERSIONS

Original: EN Translations: FR, DE.

ABOUT THE EDITOR

Editorial closing date: 31 March 2011.

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Printed in Belgium

The Information Note is available on the Internet at

<http://www.europarl.europa.eu/activities/committees/studies.do?language=EN>

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EXECUTIVE SUMMARY

Land is a precious resource. Most of the world's undernourished people live in rural areas and most depend on agriculture, including livestock, for their livelihoods. Land also secures the production of food for people not directly involved in agriculture, and is needed for a myriad of other purposes, including infrastructure or human settlements. At the same time, land is a finite resource. Consequently, there are frequent struggles over access to land and conflicts over the best uses to which land should be put. Fertile agricultural land is becoming scarcer as a result of environmental degradation, the impacts of climate change, urbanization and industrialization, to mention the most prominent.

Access to land for the rural poor is essential for food security and economic development in developing countries. Most farms in these countries are relatively small, but large-scale, high-input, export-oriented, commercial farming is also a significant economic sector in many of these countries. However, countries with a more egalitarian distribution of land tend to be characterized by higher levels of economic growth, and such distribution tends to have positive social impacts, such as higher literacy rates. Formal property rights are the exception rather than the rule among small-holders in developing countries. There is some controversy over whether formal property rights are needed to improve small-holders socio-economic situation. Proponents of that thesis hold that formal property rights are an incentive for investments and give poor people access to credit. However, empirical studies have shown that this is only sometimes the case. The evidence suggests that while long-term, secured access to land is an essential tool for pro-poor economic development, this is not to the same extent true for formal, individual property rights.

The past century has seen land reforms in many countries in the world – and also mixed success of these reforms. Reforms will only be successful when land redistribution is complemented by other policies that help small-scale farmers to successfully engage in agriculture, compete in the market and increase their capital. Overall, there is no one-size-fits all approach towards land reforms, because the political, economic, environmental and cultural starting points for land reforms differ widely in different countries. In addition, scholars have also observed a lack of knowledge on how to design effective, pro-poor land policies

A process going in the opposite direction of land reforms are large-scale land acquisitions by foreign investors, exclusively in developing countries and economies in transition. They have in recent years proceeded at an unprecedented pace. There are three main causes behind the strong push for these large-scale land acquisitions: food security, returns on agriculture and bio-fuel production. There are very controversial viewpoints on the benefits and downsides of these large-scale land acquisitions. While mostly civil society organizations and peasant networks from developing countries are concerned over impacts on food security, the environment (water, soil and biodiversity) and human rights, international institutions such as the World Bank welcome increasing investment activities in developing countries as an important step for boosting national and regional economies. In any event, the acquisition of land is currently happening much faster than policies to regulate land deals are adopted. Under current legal, political and institutional frameworks it is doubtful whether positive effects of large-scale land acquisitions can outweigh the negative ones

Although the overall distribution of land is important for development and poverty reduction, land reforms have in recent times received much less political attention at the international level than large-scale land acquisitions. The EU and member states' public sectors mostly play no direct role in land reforms in developing countries or in large scale land-acquisitions. However, through development cooperation, trade policies and their involvement in multilateral financing institutions

such as the World Bank and the IMF, the EU and its member states may still have a significant impact on land distribution and land reforms in developing countries.

The brief recommends that the EU should:

- Actively support the process of setting up the FAO Voluntary Guidelines
- Increase official development assistance (ODA) dedicated to agriculture
- Strengthen the role of the EU Land Policy Guidelines
- Improve reporting and monitoring on large scale land acquisitions involving European investors
- Implement the EU Communication “An EU policy framework to assist developing countries in addressing food security challenges”
- Acknowledge and help implement the findings of the International Assessment of Agricultural Knowledge, Science and Technology for Development (IAASTD)
- Strengthen the sustainability criteria for bio-fuel production in the EU Renewable Energy Directive
- Strengthen human rights in international agreements and treaties
- Support developing countries in decision-making on the framework for investments

1 INTRODUCTION

Land is a precious resource. According to FAO estimates, almost 80 percent of the world's undernourished people live in rural areas and most depend on agriculture, including livestock, for their livelihoods.¹ Land also secures the production of food for people not directly involved in agriculture, and is needed for a myriad of other purposes, including infrastructure and human settlements. At the same time, land is a finite resource. Consequently, there are frequent struggles over access to land and conflicts over how land should be used. From the cry for “Tierra y Libertad – Land and Freedom” during the Mexican revolution at the beginning of the 20th century to post-Apartheid South Africa, movements of small farmers and landless people have frequently demanded a re-distribution of land. Indeed, numerous land reforms – with diverging results – have been carried out over the past century in Asia, Latin America, Africa and Europe. Conflicts over agricultural land are exacerbated by factors such as environmental degradation and the impacts of climate change. According to the International Fund for Agricultural Development (IFAD), environmental degradation reduces agricultural land by 5 to 10 million hectares annually.² Additionally, 19.5 million ha of farmland are converted each year to industrial and real estate use.³

This policy brief provides the EP with an overview of some of the controversies on the impact of land access and ownership on development objectives, notably wealth creation, poverty reduction and food security. It first looks at the development importance of access to land in rural areas and at different forms of ownership and tenureship in the developing world. The subsequent section provides an overview of two types of political and economic processes that involve a large-scale redistribution of land in developing countries: land reforms and large-scale land acquisitions in developing countries (so called land-grabbing). Both will be assessed with a view to their impact on pro-poor sustainable development. Subsequently, the brief gives an overview of important land related international policy processes and of the European Union's (EU) role in land policies in developing countries. It concludes with recommendations for EU policy-making.

Readers should keep in mind that the academic and political debate on appropriate land policies in developing countries has been going on for many decades, thus the present brief can only provide a limited overview of some key points.

2 DEVELOPMENT IMPORTANCE OF ACCESS TO LAND

2.1 The importance of land for the poor

There is substantial evidence that access to land for the rural poor is essential for food security and economic development in developing countries. Such evidence applies to a large number of different countries and socio-economic situations. The basic assumption that access to land is an effective tool for poverty reduction is shared by international organizations, academic researchers and NGOs alike. The UN Special Rapporteur on the Right to Food recognizes access to land as a key means to realizing

¹ Food and Agriculture Organization of the United Nations (FAO), *State of Food and Agriculture*, p. 3.

² International Fund for Agricultural Development (IFAD), *Improving Access to Land and Tenure Security*, p. 7.

³ FAO, *Land Policy and Planning*, accessible at: <http://www.fao.org/nr/land/land-policy-and-planning/en/>.

the Right to Food as set forth in Art. 11 of the International Covenant on Economic, Social and Cultural Rights.⁴

In developing countries, most farms are relatively small. Reports from different countries indicate that the average size of a land holding in developing countries is between half a hectare and a dozen hectares.⁵ While the majority of farmers in developing countries are small-scale farmers, the latter do not hold the biggest share of agricultural land. Instead, a major share of land is in the hands of relatively few landowners.⁶

While small farmers use the land to secure their livelihood and engage in subsistence farming, large-scale, high-input, export-oriented, commercial farming is also a significant economic sector in many developing countries. The agricultural system, including the production of primary goods and commodities, marketing and retailing, is estimated to account for more than 50% of the GDP in developing countries.⁷ Notwithstanding the important economic role of large-scale commercial, farming in developing countries, countries with a more egalitarian distribution of land tend to be characterized by higher levels of economic growth. Such distribution also tends to have positive social impacts, such as higher literacy rates.⁸

2.2 Tenureship patterns and land policies in developing countries

Access to land comes through a wide range of tenure patterns, both individual and communal. Formal tenure is the exception rather than the rule among small-holders in developing countries.⁹ The following is a brief overview of the prevalent patterns of land access (or lack thereof) among small-scale farmers in the developing world:

State owned land is characterized by the assignment of property rights to a public authority, such as a central or decentralized level of government. In some cases, the state holds more land than it can use and therefore leases the land to communities or private entities.¹⁰ In other cases, the state is the official land owner because of property arrangements dating back to colonial times, but it recognises the usage rights of the communities who have cultivated the land for several generations.¹¹ The state

⁴ De Shutter, *Report of the Special Rapporteur on the Right to Food*, p. 4.

⁵ Reported average sizes of landholdings for some countries were 11 ha for the Philippines and 2 ha for Uganda (both figures from: Arnold, J.E.M., 'Tree components in farming systems,' available at: <http://www.fao.org/docrep/t7750e/t7750e06.htm>), 1.4 hectares in India, about 0.5–0.6 hectares in China and Bangladesh, and about 0.8 hectares in Ethiopia and Malawi in 2000 (figures from World Bank, *World Development Report*, p. 85.)

⁶ For example, a land survey conducted in Brazil in 1996 revealed that large holdings (over 1,000 hectares) accounted for 1 percent of the total number of farms and 45 percent of the farmland area, see Sauer, p. 178. For figures on other countries see the Factsheet "World Bank Market Based Land Reform" by Environmental Defense (2002), http://www.edf.org/documents/2367_WorldBankMarketBasedLandReform.pdf

⁷ Wilkinson and Rocha, p. 48. The figure is based on a 2003 study.

⁸ Deininger, *Land Policies for Growth and Poverty Reduction*, p. 19/20. Deininger makes this statement for 1960-2000.

⁹ It is estimated, for example, that in Africa formal tenure covers only 2-10 % of the agricultural land. Deininger, *Land Policies for Growth*, p. xxi.

¹⁰ Economic Commission for Africa, *Land Tenure Systems and their Impacts on Food Security and Sustainable Development in Africa*, p. 36.

¹¹ See Platteau, *Institutions, Social Norms and Economic Development*, pp. 73-120.

extends long-term usage rights to these rural communities.¹² The community, in turn, grants long-term use rights to its members.

This form of **communal land** organisation is quite common in the developing world, especially in rural Africa and parts of Latin America. As the name suggests, communal land is that which a community shares, giving each member a right to use the land independently. Each member might have the right to use the commonly held pasture for his/her own cattle to graze on, for example.¹³ The rights to the land that each family enjoys are usually regulated and enforced through the community authorities, such as elders or local chiefs.

In many cases, neither communal nor state rules are clear about whether **individual members** have a legally recognized right to sell to buyers outside the community. One risk is that the community authorities will sell the land without individual members' consent or without these benefiting from the proceeds.¹⁴ Additionally, when usage rights are not formally recognized, the communities have little, if any, formal protection in a dispute with public authorities.¹⁵ The families that have cultivated the land for several generations could be evicted in case of investments the government considers favourable.¹⁶ This can happen with insufficient or no compensation. At the same time, customary rules are often a cost-effective method for protecting land-holders against claims from other community members.

Aside from these modes of land organization, many rural dwellers in developing countries have no access or only informal access to land. Informal access to land is sometimes directly illegal, as when groups occupy a private or state owned property and "squat" on it regardless of an eviction notice. In other cases, these informal rights to the land are "extra legal", meaning that they are not in violation of the law but not officially recognized by the law either, in particular because they are based on customary law or practice. This is the case, for example, of people who cultivate publicly owned lands without any formal recognition of their usage rights. In addition there is a large group of people who lack any access whatsoever to land for their own cultivation, such as agricultural workers. Overall, it has been estimated that more than 500 million people, or roughly 100 million households in developing countries, lack ownership rights or owner-like rights to the land they farm.¹⁷

The existing inequalities in access to land and the role that access to land play in poverty reduction, have sparked land reforms in many countries in the developing world over the past few decades. While the term land reform always implies a re-distribution of land (rights) in one form or another¹⁸, there are other types of policies that influence land tenureship patterns, too. Some typical examples for past land policies are the following:

¹² Economic Commission for Africa, *Land Tenure Systems and their Impacts on Food Security and Sustainable Development in Africa*, p. 22

¹³ Economic Commission for Africa, *Land Tenure Systems and their Impacts on Food Security and Sustainable Development in Africa*, p. 36.

¹⁴ Economic Commission for Africa, *Land Tenure Systems and their Impacts on Food Security and Sustainable Development in Africa*, p. 36.

¹⁵ Economic Commission for Africa, *Land Tenure Systems and their Impacts on Food Security and Sustainable Development in Africa*, p. 36.

¹⁶ The World Bank, *World Development Report: Agriculture for Development*, p. 139.

¹⁷ United Nations Development Programme (UNDP), *Human Development Report 2003*, p. 81. For a breakdown of the figures see Prosterman/Handstadt, *Land Reform in the Twenty-First Century: New Challenges, New Responses*, p. 773.

¹⁸ See on different uses of the term: El-Ghonemy, *Land reform development challenges of 1963 - 2003 continue into the twenty-first century*, available at: <http://www.fao.org/docrep/006/j0415t/j0415t05.htm>

- re-allocation of land property or tenure rights
- registration of existing land titles
- provision of funds, e.g. for credits or to institutions administering land
- restrictive legal regulations on land property rights, i.e. nationalisation and collectivization, expropriation of land (with or without compensation) on grounds of excessive size, under-utilisation, ownership by absentee landlords and/or foreigners
- abolishment or liberalisation of existing legal regulations, e.g. on foreigners acquiring land

2.3 Importance of property rights – a controversy

The scientific evidence on the extent to which different forms of land tenure reduce poverty in developing countries is contested. This concerns notably the question of whether formal, individual property rights are a pre-condition for economic development. The most prominent current advocate for this position is probably **Hernando de Soto**, a Peruvian economist. He has focused on the importance of property rights in the developing world.¹⁹ In capitalist systems, he argues, the main source of wealth generation is capital. In his view, the problem in developing countries is that the poor and rural poor “have houses but no titles; crops but not deeds; businesses but not statutes of incorporation.”²⁰ In other words, these people sit on dead capital - assets that are neither legally recognized nor tradable outside local communities, useable as collateral for loans, or as shares against investments.²¹ According to him and his followers, formal property titles have at least two main advantages: First, land titles can **increase investment** in land and second, land titles enable the poor to **access credit markets**.

Concerning investments, it is argued that tenure security makes improvements to the land cost-effective.²² As the risk of land expropriation decreases, a so called “assurance” effect arises, and improving the land becomes more attractive.²³ The right to sell the land also gives any improvement or investment in it a greater expected return.²⁴ Such investments are seen as instrumental to improving the land’s productivity. Farmers who do not own the land they cultivate have fewer incentives to invest in land and maximize its productivity. Therefore, de Soto posits, developing countries’ legal property systems should be reformed by streamlining the legalization process, that is, in particular, reducing the high costs and time it takes to register property.

These assumptions have met with some support²⁵ at the empirical level, a study in Thailand found, for example that farmers who squat on unoccupied land are less able to obtain credit from institutions than farmers with legal ownership titles.²⁶ Investments in squatted land were also found to be lower than investments in legally owned land. These results led to the conclusion that land titling in

¹⁹ It should be noted that much of de Soto’s research focused on urban context. His claims are more general, though, a point which has sometimes been criticized, see for example Nyamu-Musembi, *Breathing Life into Dead Theories about Property Rights: de Soto and Land Relations in Rural Africa*, p. 8.

²⁰ De Soto, Hernando, *The Mystery of Capital*, p. 7.

²¹ De Soto, p. 6.

²² Brasselle et al., *Land tenure security and investment incentives: puzzling evidence from Burkina Faso*, p. 374.

²³ Jacoby and Minten, *Is Land Titling In Sub-Saharan Africa Cost-Effective? Evidence From Madagascar*, p. 8.

²⁴ Brasselle et al., p. 374.

²⁵ An study largely following de Soto’s assumptions is an influential report written for the World Bank: Deininger, *Land Policies for Growth and Poverty Reduction*.

²⁶ Feder et al., *Land Policies and Farm Performance in Thailand's Forest Reserve Areas*, p. 484.

Thailand would increase on-farm productivity.²⁷ Some other studies have also shown positive effects of **land titling** on the farmers' ability to make investments as well as on the overall value of investments.²⁸

However, some scholars have also criticised de Soto's assumptions. Notably, the empirical assumptions of the property rights proponents were not found to be accurate in all settings. Instead, studies have shown that welfare improvements for small-scale farmers were a consequence of relatively secure tenure of land, but were not necessarily conditional on property titles.²⁹ Such secure tenure could, for example, be achieved through long-term leases. In Burkina Faso, it has been observed that land rights do not seem to stimulate investment in rural lands. To explain the difference between this and the previously mentioned Thailand case, the authors of the study on Burkina Faso remark that in Thailand there was an institutionalised credit system. The impact of titling on investment was due to the fact that property rights improved the farmers' access to formal credit and not because they eliminated the threat of expropriation. In cases where credit sources were not available, such as in rural sub-Saharan Africa, land titling did not actually affect investment.³⁰ The empirical link between access to credit and formal property rights also has shown to be tenuous in some studies.³¹

The results showing that land rights do not seem to stimulate investment may seem surprising in light of the logical appeal of the "assurance" effect explained earlier.³² A "misperception about the genuine nature of land tenure arrangements as they obtain in agrarian societies in general, and in African rural communities in particular" may lie at the heart of this issue.³³ In these communities, the systems of communal land ownership provide an informal local order that guarantees many villagers' basic rights to use the land. In the presence of these arrangements, state provision of formal land rights is almost superfluous and, thus, has no significant impact on the level of investment and productivity. In another paper on Africa, it is argued that stereotypes of African farmer's inability to transfer land in traditional systems are inaccurate.³⁴ Creating private ownership systems may have the unintended consequence of increasing uncertainty as "family members or peripheral land claimants jockey to see in whose name a parcel will be registered."³⁵ According to communal rules a land sale may only be permissible with the consent of larger social entities, such as a clan or a tribe, irrespective of formal land titles.³⁶ A focus on formal, individual property rights thus likely underestimates the social and cultural context of land ownership and land sales.

²⁷ Feder et al., p. 484.

²⁸ Fort, *The homogenization effect of land titling on investment incentives: evidence from Peru*, p. XX.

²⁹ See Galiani and Schargrodsky, *Property Rights for the Poor: Effects of Land Titling*, p. 2; de Schutter, p. 11.

³⁰ Braselle et al., p. 401.

³¹ Nyamu-Musembi, p. 15; Fort, *The homogenization effect of land titling on investment incentives: evidence from Peru*.

³² Braselle et al., p. 401.

³³ Braselle et al., p. 401.

³⁴ Atwood, *Land Registration in Africa: The Impact on Agricultural Production*, p. 662.

³⁵ Atwood, p. 663.

³⁶ See the example given by Nyamu-Musembi, p. 19.

2.4 Insights from past land reforms

Based on the assumption that property rights are a necessary pre-condition for economic development and the effective use of land, many land reforms have involved **land-titling**. In practice, these programs have had mixed results.

Individual property titles to land may sometimes put rural small scale farmers under pressure to sell their land to larger users or investors, with the effect of becoming landless again. Without capacity building on how to reinvest the cash received in exchange for the land, peasants could easily fall back into poverty.³⁷ Indeed, some studies show that the conferring of individual titles to farmers will increase the likelihood that they will sell their land mainly in areas where there is already extreme land scarcity compounded by other socio-economic pressures. A 1998 study in Rwanda shows that a large percentage of land sales in rural low-income areas are 'distress sales'—land sales motivated by financial emergencies. In a particular village used for the paper's case study, more than 30% of land sales were motivated by "the sheer need for survival" and another 17% were to cover the litigation expenses of land disputes or to pay various fees.³⁸ These distress sales increased income inequality between rural peasants who own land and those who have sold it. In stark contrast, a 2007 study³⁹ in Uganda showed that market transactions mitigated inequality instead of concentrating it in a few hands. The difference was that in Uganda the land markets developed due to large domestic rural-rural migration (motivated by the search for more and better land). In such a market, it was easier for landless peasants to purchase more land, thus decreasing income inequalities.

The gender impacts of formal land-titling programs have also been assessed as rather negative in some settings, given that formal property rights are much more likely to be registered in the name of a male family member than a female one.

In implementing a land titling program, it is also important to consider the costs against the benefits. Land titling often causes substantial costs for the state or for individuals wishing to obtain a land title; this may reduce people's willingness to actually register land titles.⁴⁰ In some cases, this has led to a situation where small-scale farmers hardly benefitted from land titling and existing inequalities were exacerbated rather than levelled.⁴¹ One study carried out in Madagascar found that extending land titles would only have minor economic benefits and the costs of titling would actually exceed the benefits.⁴² A cost-benefit analysis showed that the benefit of obtaining a formal title (as measured by the value of the increase in productivity) only exceeded the cost for holdings larger than 6 hectares. Since few of the plots sampled in Madagascar reached that size, obtaining titles was not advisable.⁴³ Finally, formal land titles, once conferred, would also have to be regularly updated, causing additional costs. If such updating is not done, formal titles may lose much of their value.

³⁷ UNDP, *Human Development Report 2003*, p. 138; de Schutter, p. 11.

³⁸ André and Platteau, *Land relations under unbearable stress: Rwanda caught in the Malthusian trap*, p. 25.

³⁹ Balland et al., *The Distributive Impact of Land Markets in Uganda*, p. 303-304.

⁴⁰ See Miceli et al., *The Demand for Land Title Registration: Theory with Evidence from Kenya* for example note that the demand for registration would be increasing with the value of the land, the education of the landowner, and proximity to the central government.

⁴¹ Brown, *Contestation, confusion and corruption: Market-based land reform in Zambia*, p. 87.

⁴² Jacoby and Minten, p. 23.

⁴³ Jacoby and Minten, p. 23.

Another controversial issue is whether land-reforms should be **market-based** (with some interventions in favour of the poor) or **state-led** and based on expropriations.⁴⁴ Market-based land reforms have been the dominant land reform since the 1980ies⁴⁵ while earlier land reforms often were state-led. Both approaches have some advantages and disadvantages. Land reforms based on expropriations may lead to strong antagonism from land owners expropriated, who are often powerful constituencies within developing countries. Market-based reforms, where land is essentially bought from land-owners at market value and then sold or re-distributed to new owners, may be easier to implement politically. However, enough land may not always be available for sale, the land put to sale is unlikely to be the one of highest agricultural quality, prizes may be inflated and overall state funds may not be sufficient to acquire land in the amount necessary.⁴⁶ In addition, when land reforms are to remedy past injustice (e.g. in South Africa), compensating those that have benefitted from such injustice for the loss of their land at market prices could seem inappropriate to former victims of injustice. In any case, market-based land reforms will require carefully tailored accompanying government policies and sufficient funding to work in favour of the poor and at the desired pace.

Finally, land reforms will only be successful when land redistribution is complemented by other policies that help small-scale farmers to successfully engage in agriculture, compete in the market and increase their capital.⁴⁷ In some cases, land may be distributed to people that had not formerly been farmers; in such cases, secured physical access to land will not be sufficient, but capacity building is also essential. Without such policies, the new land-owners or tenants may find it compelling to sell their land to large estates, thus concentrating land again in few hands. In addition, in settings where commercial farms are re-distributed to small holders, it is necessary to ensure that former farm workers are taken into account in the land reform, because they may otherwise be left without any means to secure their livelihood.⁴⁸

Overall, there are no one-size-fits all approach towards land reforms, because the political, economic, environmental and cultural starting points for land reforms differ widely across countries. Scholars have observed a lack of knowledge on how to design effective, pro-poor land policies.⁴⁹ In cases where informal communal systems are not well established or have vanished and the pressure to access land is high (such as in cases of resettlement, in newly colonized areas or in urban areas), the need for the state to establish formal land ownership becomes much more relevant.⁵⁰ However, in most of sub-Saharan Africa, these conditions do not apply.⁵¹ While it does appear that secured access to land is an essential tool for pro-poor economic development, this is not equally true for formal, individual property rights. Long-term security for farmers (e.g. through long-term leases) and transferable leases have been assessed to be more important for socio-economic development and

⁴⁴ See for an overview of literature on recent market-based reforms in different countries Borras, *Can Redistributive Reform be achieved via Market-Based Voluntary Land Transfer Schemes? Evidence and Lessons from the Philippines*, p. 97.

⁴⁵ Brown, *Contestation, confusion and corruption: Market-based land reform in Zambia*, p. 80. A market-based approach was used, inter alia, in Brazil, the Philippines, Syria, Côte d'Ivoire, Uganda, Malawi, Zambia and South Africa.

⁴⁶ See for example Borras, *Can Redistributive Reform be achieved via Market-Based Voluntary Land Transfer Schemes? Evidence and Lessons from the Philippines*.

⁴⁷ Deininger, *Land Policies for Growth*, p. 146; Gordillo et al., p. 23.

⁴⁸ See for example for Zimbabwe Waeterloos/Rutherford, *Land Reform in Zimbabwe: Challenges and Opportunities for Poverty Reduction Among Commercial Farm Workers*.

⁴⁹ Javry/Platteau/Gordillo/Sadoulet (2001), p. 4.

⁵⁰ Braselle et al., p. 402.

⁵¹ Jacoby and Minten, p. 1.

poverty reduction than property rights.⁵² There is increasing recognition that different forms and combinations of rights to land all have advantages in specific circumstances.⁵³

3 LAND GRABBING

Going in the opposite direction of land reforms is the process of large-scale land acquisitions by foreign⁵⁴ investors ("land-grabbing"). In most cases, investors from industrialized and richer countries buy land from governments in the developing world for a comparably low price or receive exploitation rights for long periods, sometimes up to a hundred years.⁵⁵ Contracts between governments and investors often include additional investor commitments on investment levels, employment creation and infrastructure. Thus, both sides, investors and government authorities, tend to portray land grab deals as win-win situations for investment and for enhancing development in poorer countries. The land, which is bought or leased from governments, is usually used for the production of food or biomass (for biofuels) to be exported to other countries.

Land acquisitions for commercial or strategic purposes are no new phenomenon, but the pace at which they have taken place in recent years is remarkable. According to World Bank estimates⁵⁶, 46.6 million ha of farmland were acquired between October 2008 and August 2009.⁵⁷ In comparison, the average annual expansion of global agricultural land before 2008 had been of 4 million ha. About two-thirds of the purchased farm land, or 32 million ha, equalling almost the size of Germany, is in Sub-Saharan Africa. Additionally, 8 million ha were part of land deals in Southeast Asia, 4.3 million ha in Europe and Central Asia, and 3.2 million ha in Latin America.

However, not all of these land acquisition projects have been completed as expected. In fact, by 2010 when the World Bank's report was published, only 21% of the projects had "initiated actual farming" and even then, it is "often on a scale much smaller than intended."⁵⁸ Of the rest, almost 30% were still awaiting government approval; 18% had been approved but have not started, and another 30 % were at the initial development stage.⁵⁹ Other studies highlight that there are probably far more land deals than reported by the World Bank since such deals are often not registered or published.⁶⁰

⁵² Deininger, *Land Policies for Growth*, p. 186.

⁵³ Gordillo et al., *Access to land, rural poverty, and public action*, p. 2. See also the EU Land Policy Guidelines' statement that informal customary tenure systems have in some settings lead to a very efficient and productive use of land in some instances and to the opposite in others, paras. 5.1.2 and 5.1.3.

⁵⁴ It should be noted that agricultural land is also bought and used for many other purposes in developing countries, e.g. industrial development or growing cities. Land buyers are not always and necessarily foreign. However, the type of large-scale land acquisitions described here involve foreign investors.

⁵⁵ See presentation by Roman Herre to the EP Committee on Development, 2 June 2010, slide 3.

⁵⁶ See for all figures World Bank, *Rising global interest in farmland: can it yield sustainable and equitable benefits?*, Washington, D.C., 2010, available at: http://www.donorplatform.org/component/option,com_docman/task,doc_view/gid,1505, pg. 35. The International Land Coalition (ILC), a network of NGOs, in contrast recorded more than 700 large scale acquisitions so far, with two thirds of them in Africa, see ILC, Presentation to the Committee on Development, 2 June 2010, slide 6.

⁵⁷ The figure was calculated from a database created for a World Bank study which compiled information on 464 land acquisitions in 81 countries.

⁵⁸ World Bank 2010, p. 52.

⁵⁹ World Bank 2010, p. 36.

⁶⁰ The Global Land Project, *Land grab in Africa: Emerging land system drivers in a teleconnected world*, University of Copenhagen, 2010, p. 9.

In order to find out who was purchasing land in these deals, the World Bank surveyed press reports, as searching company registries would have been too arduous. Based on these reports, funds and projects originate from a few countries.⁶¹ The main investor countries include China, the Gulf States (Saudi Arabia, the United Arab Emirates, Qatar, Kuwait and Bahrain), North Africa (Libya and Egypt), Russia, and some developed Western economies, including the United Kingdom, Germany and the United States.

3.1 Underlying causes

There appear to be three main causes behind the strong push for large-scale land acquisition in the developing world: food security, returns on agriculture and biofuel production.

In recent years, food security has once again become a main political topic. According to estimates, the world population will increase by 40 % by 2050, which will require a significant increase in food production to meet the higher demand. In turn, this could require agricultural production in developing countries to double.⁶² In many of the countries investing in large-scale land deals abroad, concerns over food security are mainly related to limited water resources and arable land, such as in the Gulf States.⁶³ The food crisis in 2008 further confirmed these worries, when food prices increased by 83 % on average within three years⁶⁴ and countries with a trade deficit became more aware of their harmful dependency on food imports. In addition, with populations growing, moving to urban areas and becoming wealthier, food demand in new emerging economies like India and China can no longer be met by domestic agriculture. Purchasing land to grow crops in resource-rich, yet investment-thirsty countries ensures a steady supply of food for emerging economies.

Rising agricultural commodity prices also attract financial investors and speculators. After the financial crisis of 2008, financial players identified investments in land as a new source of profit.⁶⁵ To them, land is a “strategic asset” from which they expect to reap high economic returns from adding value to the land through food and fuel crop cultivation. The land purchase would also secure access to two key resources: water and fertile soils, both of which are expected to become scarcer in the future.⁶⁶ Some international agribusiness companies also seek to gain higher market shares by pursuing vertical integration strategies; they aim at being involved in food and fibre production, processing and distribution at the same time.⁶⁷

Another significant driving force for the current interest in land acquisitions is the growing production of biofuels. Between 2004 and 2008, the total area of land used for biofuel production more than doubled, reaching 36 million ha, most of which was in the European Union, United States and Latin

⁶¹ The World Bank notes in its report that this identification of countries may be influenced by reporting bias of the journalists or the strategic use of media sources by some investors. (World, Bank 2010, p. 36)

⁶² World Bank, *Rising global interest in farmland*, p. 9.

⁶³ GRAIN, *Seized: The 2008 land grab for food and financial security*, p. 1.

⁶⁴ World Bank, *Rising food prices. Policy options and World Bank response*. accessible at: http://siteresources.worldbank.org/NEWS/Resources/risingfoodprices_backgroundnote_apr08.pdf

⁶⁵ World Bank, *Rising food prices*, p. 2.

⁶⁶ World Bank, *Rising food prices*. p. 3.

⁶⁷ Cotula et al., *Land grab or development opportunity? Agricultural investment and international land deals in Africa*, p. 4.

America.⁶⁸ The EU set the aim of a 10 % share of all energy needed in the traffic sector to be derived from biofuels by 2020⁶⁹ – an ambitious target, which requires large imports of bio-fuels from other countries. Securing land for the production of energy crops in countries where land prices are low, is therefore an attractive business investment.

Finally, it is important to place these trends in a broader global and political context. Relatively recent policy reforms in African, Asian and Latin American countries have made investments easier. Investment treaties, land reform, improved banking, taxation, and customs regimes, for example, have paved the way for more large scale land acquisition. Furthermore, economic liberalisation, expanded economic relations between developing and developed countries and the increasing globalisation of transport and communications make land acquisitions more attractive.⁷⁰

3.2 How does a land deal happen?

Each land acquisition project involves multiple parties on both sides of the agreement. On the provider side, several government agencies are typically involved, such as the Ministry of Agriculture or the agencies responsible for foreign investment. On the buying side, land deals are often a public-private venture; the purchasing country's government signs and sponsors the land contract, and then brokers a deal with a private entity to implement and carry out productive activities.⁷¹ It is also common that the buyer will involve a number of advisors, consulting firms, and international lawyers to acquire the necessary local knowledge and capacity to carry out the purchase.

The process of concluding a land deal is complicated to the extent that even investors lack a clear overview of exactly what steps are involved.⁷² A current review of 12 land deals found that some of the contracts are short, unspecific documents that grant enforceable, long-term and largely transferable rights to extensive areas of land.⁷³ Moreover, a number of the deals do not address environmental impacts such as water depletion and/or only provide weak safeguards for local interests. Often, local people are not involved in the decision-making processes before the deals are signed. Negotiations and contracts are rarely transparent or made public in a detailed way. Information on the deals is frequently not accessible.⁷⁴

⁶⁸ World Bank, *Rising global interest in farmland*, p. 8.

⁶⁹ Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC, OJ L 140, 5.6.2009, pages 16-62.

⁷⁰ Cotula et al., *Land grab or development opportunity?*, p. 25.

⁷¹ Cotula et al., *Land grab or development opportunity?*, p. 37. For the various ways, in which governments are involved on the buyer side in land deals see, Görgen et al., *Foreign Direct Investment (FDI) in Land in developing countries*, p. 14. The authors also note that it seems that “the investors from oil rich and emerging countries mainly are governments or state enterprises or state funds respectively. In contrast, investors from industrialised countries primarily are private companies investing mainly in agro-fuel projects.”

⁷² Cotula et al., *Land grab or development opportunity?*, p. 68.

⁷³ Cotula, *Land deals in Africa: What is in the contracts?*, p. 20.

⁷⁴ Cotula et al., *Land grab or development opportunity?*, p. 70.

3.3 Risks and opportunities

There are very controversial viewpoints on the benefits and downsides of land grabbing. While mostly civil society organizations and peasant networks from developing countries are concerned over impacts on food security, the environment (water, soil and biodiversity) and human rights, others welcome increasing investment activities in developing countries as an important step for boosting national and regional economies.

One key problem of current land deals identified is that land ownership in developing countries is rarely simple and clear. As described above, land may be owned communally and never be formally registered, being overseen by elders. Thus, a land sale is not a simple exchange of ownership titles. Communities could lose access to the land without due compensation or suitable alternatives.⁷⁵

Many development organizations also criticize that land is sold to investors for export purposes in countries with high malnutrition rates among the local population. Instead of selling off the land, they claim, money has to be spent to enhance local food production and to stabilise local and regional markets. Land grabbing increases competition for land which will likely lead to higher land prices, and in turn, the price of food might also increase. Local communities in developing countries will become less able to afford that food, even though it grows in their own country.⁷⁶

NGOs, such as FIAN, Friends of the Earth, GRAIN, and the Oakland Institute, have also criticised the considerable influence and control granted to the foreign private sector in land purchases. While public officials may be involved in negotiating the deals, the private sector will ultimately be responsible for production and delivery of food and fuel products. From the point of view of these NGOs, private corporations are unlikely to invest in sustainable economic development to the benefit of local populations because they are, by definition, profit-driven. In some cases, state-led investment in agriculture may be preferable, as they allow developing countries to maintain control over the land; donor countries could provide funds for this aim.

In response to the heavy criticism, donor countries, some research institutions and international organizations have argued that land acquisitions can be a “win-win” deal. The International Finance Corporation (IFC) argues that agriculture can be a growth opportunity for developing countries. According to the IFC, increasing the amount of land under agricultural production and improving productivity through technology transfers and economies of scale will benefit host countries financially.⁷⁷ The World Bank also sees a potential for improving productivity through land deals. In countries with vast amounts of suitable land and a large proportion of smallholders with very low productivity, the inflow of foreign investment and technology “could provide large benefits to local populations.”⁷⁸ In the World Bank’s view, local communities can learn new production methods from foreign investor’s expertise and capital in order to utilize their own resources more efficiently and become more productive. However, the World Bank also recognizes that “the risks associated with such investments are immense” mainly because the demand for land is focused on countries with

⁷⁵ Friends of the Earth, *Africa Up For Grabs: The scale and impact of land grabbing for agrofuels*, p. 20.

⁷⁶ Friends of the Earth, *Africa Up For Grabs: The scale and impact of land grabbing for agrofuels*, p. 19

⁷⁷ Shepard and Mittal, *The Great Land Grab*, 2009, p. 6.

⁷⁸ World Bank, *Rising global interest in farmland*, p. xviii.

weak governance and insufficient legal frameworks.⁷⁹ However, if governments implement the right policies the risks can be turned into “equally large opportunities” in the World Bank’s view.⁸⁰ Through the process of selling land, governments can bolster their institutions and create new strategies for growth and development that take advantage of the increased investment in agriculture.

The International Fund for Agricultural Development (IFAD) supports joint-ventures between corporations and local communities. The partnerships could create a knowledge and skills exchange, risk sharing, economies of scale and efficient allocation of resources, argues IFAD.⁸¹ The International Food Policy Research Institute (IFPRI) argues that foreign investment in developing countries is positive, as long as deals are done transparently, land rights are respected, benefits are shared between local communities and the investors and environmental sustainability standards are respected. Better infrastructure and enhanced employment opportunities may then raise living standards for local populations.⁸²

Many of the NGOs that oppose land grabbing recognize, in principle, possible benefits for developing countries. However, they insist that the “win-win rhetoric” proposed by the World Bank and other international organization is misleading. The aim of the contracts, according to them “is not agricultural development, much less rural development, but simply agribusiness development.”⁸³ Moreover, the World Bank’s proposed policy principles are seen as unrealistic.⁸⁴ NGOs are also skeptical about the argument that land deals will foster employment among the local population. Large scale farming, they claim, will push subsistence and rural land-dwellers off the land. These farmers will also lose control of the land to large industrial and far-off corporations.⁸⁵ Furthermore, argue NGOs, large scale industrialized agriculture requires much less labour than small-scale farming and offers few long-term and often badly paid jobs for locals.

In any event, the acquisition of land is currently happening much faster than policies to regulate land deals are adopted. The lack of transparency concerning the process of their adoption and their content is a major problem. This is true in particular in countries with weak governance structures, and lack of civil society involvement. Some observers therefore doubt whether under current legal, political and institutional frameworks positive effects of large-scale land acquisitions can outweigh the negative ones.⁸⁶

⁷⁹ World Bank, *Rising global interest in farmland*, p. 102..

⁸⁰ World Bank, *Rising global interest in farmland*, p. 103.

⁸¹ World Bank, *Rising global interest in farmland*, p. 103.

⁸² von Braum, J. and Meinzen-Dick, R. *Land Grabbing by Foreign Investors in Developing Countries*, p.3.

⁸³ GRAIN, *Seized: The 2008 land grab for food and financial security*, p. 6.

⁸⁴ Scoones, *Investing in land: a commentary on the World Bank report*, accessible at: <http://www.tni.org/article/investing-land-commentary-world-bank-report>.

⁸⁵ Shepard and Mittal, *The Great Land Grab*, p. 13.

⁸⁶ Friis and Reenberg, *Land grab in Africa: Emerging land system drivers in a teleconnected world*, p. 3

4 OVERVIEW OF POLICY INITIATIVES

This section presents the most important current international policy initiatives on large-scale land acquisitions. Although the overall distribution of land is important for development and poverty reduction, land reforms have in recent times received much less political attention at the international level than land-grabbing.⁸⁷ However, the FAO has been working on raising awareness of the importance of good governance of land and natural resource tenure in past few years. In particular, the Committee on World Food Security has given some attention to the issue.⁸⁸ Moreover, the World Bank initiated the International Assessment of Agricultural Knowledge, Science and Technology for Development (IAASTD), an international, intergovernmental process (2005-2007). The IAASTD objective was to assess whether agricultural knowledge, science and technology helped in reducing hunger and poverty, improving nutrition, health and rural livelihoods, and facilitating social and environmental sustainability. The final report “Agriculture at a Crossroads. International Assessment of Agricultural Knowledge, Science and Technology for Development” was adopted during an Intergovernmental Plenary Meeting in Johannesburg in April 2008. The report does not focus on land reform or large-scale land acquisitions in particular, but does acknowledge, for example, that enhancing small-scale farmers’ access to land is an important option for enhancing rural livelihoods.⁸⁹

4.1 International Governance Mechanisms

There are currently two approaches at the international level that aim at regulating large-scale land acquisitions. One is the Principles for Responsible Agricultural Investment that Respects Rights, Livelihoods and Resources (RAI Principles) by the World Bank, the International Fund for Agricultural Development (IFAD), the United Nations Conference on Trade and Development (UNCTAD) and the Food and Agriculture Organisation (FAO). The other are the Voluntary Guidelines for Responsible Governance in Land and Natural Resource Tenure by the FAO.

4.1.1 RAI Principles

The RAI Principles stem back to expert meetings in Rome in 2009.⁹⁰ They are voluntary and not legally binding. They are still under development, but the four institutions who launched them already agreed on the following seven core issues: 1. Land and resource rights, 2. Food security, 3. Transparency, good governance and enabling environment, 4. Consultation and participation, 5. Economic viability and responsible agro-enterprise investing, 6. Social sustainability and 7.

⁸⁷ The last major international conference to have addressed land reforms seems to be the International Conference on Agrarian Reform and Rural Development (ICARRD), organized inter alia by the FAO, <http://www.icarrd.org/sito.html>. The World Food Summit in Rome 2009 also mentioned land in its final declaration, giving greater importance to productivity gains than to access to land, however. See Declaration on the World Summit on Food Security, <ftp://ftp.fao.org/docrep/fao/Meeting/018/k6050e.pdf>

⁸⁸ See for example the report of its 36th session at <http://www.fao.org/cfs/cfs-home/cfs-36/en/>

⁸⁹ IAASTD (2009), Agriculture at a Crossroads, Synthesis Report, p. 5.

⁹⁰ For instance the Expert Meeting on International Investment in Agriculture (30-31 July 2009, Rome, FAO headquarter), see http://www.fao.org/es/esc/en/2/607/highlight_612.html, the Roundtable “Promoting Responsible International Investment in Agriculture” held on the margins of the UN General Assembly (September 2009) or the World Summit on Food Security in Rome (November 2009), see Government of the United States et al.

Environmental sustainability.⁹¹ The RAI Principles are built on the assumption that "any investment - public or private, domestic or foreign - in lower income countries and rural areas that can close this gap [the gap between investments in Africa as opposed to investments in Asia-Pacific and LAC countries] is desirable in principle".⁹²

These principles have been strongly criticised, mainly by academics and NGOs (for instance by FIAN International, Focus on the Global South, La Via Campesina, Social Network for Justice and Human Rights, GRAIN), but also by academics.⁹³ There is some criticism pertaining to the formulation of individual principles (e.g. that 'existing land rights' "do not cover the rights of landless people to (re)gain effective access to land"⁹⁴). At a broader scale, critics maintain that the RAI Principles are the wrong approach to mitigate the negative impacts of large-scale land acquisition since they build on the assumption that large-scale land acquisitions are generally a good thing. Another point of criticism is that the Principles lack legally binding force and do not even include any references to binding legal instruments. In particular, there is no reference to human rights or prior, informed consent of communities affected by land-sales. Furthermore it is criticised that the RAI Principles do not distinguish between the responsibilities of companies and those of states.

In addition, no control mechanisms for complying with the RAI Principles are foreseen so far, not even a requirement for reporting on fulfilling them. Principle 4 refers to 'methods for enforcement and sanctions for non-compliance', establishing sanctions for those who have used the land so far, but not for the investors.⁹⁵ Last but not least the principles are often vaguely formulated. For instance, Principle 6 is about generating 'desirable social and distributional impacts' without naming who or which actor is responsible for the desired social and distributional impacts.

To date, it is not clear in which institutional setting the Principles will be adopted and if the negotiation process will be an intergovernmental negotiation with participation of governments and civil society or will follow a different approach. At a meeting of the Committee of World Food Security (CFS)-Bureau on 13 December 2010, the Belgian representative to the CFS Bureau was appointed to undertake informal consultations and to prepare a roadmap for a consultation process on the RAI Principles by the end of January.⁹⁶ However, at the CSF Bureau meeting at the end of January, he requested that presentation of his proposal concerning a possible way forward for the RAI, be postponed till the next Bureau meeting.⁹⁷ It is so far not clear who should be included in the consultation process, what the format will be or until when it should be finalised (2011 or 2012).⁹⁸

4.1.2 **FAO Voluntary Guidelines**

In November 2008, the FAO launched an initiative to adopt Voluntary Guidelines for Responsible Governance in Land and Natural Resource Tenure (the Guidelines). The Guidelines are meant to set out principles and internationally accepted standards for responsible practices. They provide a framework that states can use when developing their own strategies, policies, legislation,

⁹¹ See <http://www.responsibleagroinvestment.org/rai/node/232>.

⁹² FAO, IFAD, UNCTAD Secretariat and World Bank Group 2010, p. 1.

⁹³ See FIAN International, Focus on the Global South, La Via Campesina, Social Network for Justice and Human Rights (REDE SOCIAL) 2010, <http://www.landaction.org/spip/spip.php?article499> and Borras/Franco 2010.

⁹⁴ FIAN et al. 2010, p. 3.

⁹⁵ FIAN et al. *We Oppose the Principles for Responsible Agricultural Investment (RAI)*, p. 3.

⁹⁶ See <http://foodnutgov.ning.com/group/land/forum/topics/cfs-consultation-on>.

⁹⁷ Committee on World Food Security 2011, p. 3.

⁹⁸ Verbist 2011.

programmes and activities. The Guidelines are not published yet. However, the process of drafting the Guidelines is implemented in a quite transparent manner. It was made clear from the beginning what assumptions guide the elaboration of the Guidelines, what their aims are and how the process to elaborate them would be organised.⁹⁹ Furthermore, a consultation process was designed to accompany the elaboration process from the beginning so that results could be fed into the drafting of the Guidelines.¹⁰⁰

The Guidelines will be voluntary and legally non-binding, similar to the RAI Principles. However, as opposed to the principles, the Guidelines will include references to legally binding instruments and it can be anticipated that they will interpret international law (similar to the Right to Food Guidelines which interpret the International Covenant on Economic, Social and Cultural Rights (ICESCR)).¹⁰¹ Nevertheless, it remains to be seen what the Guidelines will look like once they are published and how they are accepted by the stakeholders.¹⁰²

4.2 The Role of the EU

The EU mostly plays no direct role in land reforms or land policy development in developing countries. One expert opinion is that the EU's involvement in land issues is greater at the regional level than at the national level in the developing world, whereas member states and multilateral institutions such as the World Bank IFAD and FAO are more active at the national level in developing countries.¹⁰³ A reluctance of the EU to deal with land issues through its development cooperation has been observed, with the political sensitivity of land issues as a possible explanation.¹⁰⁴ EU member states public sectors have also not been very involved – as compared to other actors – in large scale land-acquisitions.¹⁰⁵ However, through development cooperation, trade policies and their involvement in multilateral financing institutions such as the World Bank and the IMF, the EU and its member states may still have a significant impact on land distribution and land reforms in developing countries.

In 2004, the Commission published **land policy guidelines**.¹⁰⁶ The guidelines have a broad focus and reflect many of the insights presented above. For example, they state that 'land titling is not always the best way of increasing tenure security, nor does it automatically lead to greater investment and productivity' and recognise that 'land sales markets can lead to greater inefficiency and inequality

⁹⁹ FAO 2009.

¹⁰⁰ FAO, *Outcome document of consultation meetings. Voluntary Guidelines on Responsible Governance of Tenure of Land and other Natural Resources*,

http://www.fao.org/fileadmin/user_upload/nr/land_tenure/pdf/VG_outcome_document_English_corrected.pdf

¹⁰¹ FAO, *Governance of Tenure. Finding Common Ground. Voluntary Guidelines on Responsible Governance of Tenure of Land and other Natural Resources*,

http://www.fao.org/fileadmin/user_upload/nr/land_tenure/images/LandtenureENGpagebypage.pdf, p 4.

¹⁰² An electronic consultation of the drafted Guidelines is foreseen between 18 April and 18 May 2011, see <http://www.fao.org/nr/tenure/voluntary-guidelines/events/en/>.

¹⁰³ Interview with Frits van der Wal, Senior policy officer at the Dutch Ministry for Foreign Affairs. Conducted by Ecologic Institute on March 21st, 2011.

¹⁰⁴ Bergeret, *EU Land Policy and the Right to Food*, p. 8.

¹⁰⁵ There are some exceptions, however. For instance, the case where the German Neumann Kaffee Group acquired land in Uganda is well documented, as well as the ProCana project with in Mozambique with the involvement of the British company BioEnergy Africa (Graham et al.). There is also some evidence that – following the food price crisis of 2007/08 – EU countries were more eager to secure their food supply among others by large scale land acquisitions, see Graham et al., p. 50

¹⁰⁶ EU Task Force on Land Tenure, *EU Land policy guidelines - Guidelines for support to land policy design and land policy reform processes in developing countries*, November 2004,

http://ec.europa.eu/development/icenter/repository/EU_Land_Guidelines_Final_12_2004_en.pdf

through speculation, acquisition of rural land by urban or outside entrepreneurs, and distress sales by the poor¹⁰⁷. They contain a number of recommendations for designing land reforms, such as paying attention to gender aspects or the costs of implementation.

The land policy guidelines were elaborated by the EU Taskforce on Land Tenure. Experts, NGO representatives and Member States representatives participated in the document's drafting. The EU land policy guidelines were also meant to counterweigh the World Bank's report on land policy, which was being written by Klaus Deininger at the same time in Washington, D.C., and provide a perspective on the issues from the other side of the Atlantic.¹⁰⁸

While the guidelines are sensitive to the complexity of land issues and contain useful policy guidance, their impact at the EU level appears to be limited. One observer noted in 2008 that "it is practically impossible to find them on the website of DG DEV. European Commission policy documents on development – even on rural development – only scantily address land issues and systematically fail to refer to the EU guidelines."¹⁰⁹ Still, the land policy guidelines provide a common understanding among EU member states on land policy issues on which further efforts on land policies can build. The EU land policy guidelines have also been intensively used by some member states. The Netherlands, for example, has decided not to create a separate national policy on land tenure but to refer to the Guidelines instead. Dutch ministries and embassies all have a copy of the document and the Ministry of Foreign Affairs assists them in aligning and harmonizing their policies according to the Guidelines.¹¹⁰ On the other hand, other Member States have their own parallel land policies. Development organizations in EU member states may also not always be aware of the guidelines or have not integrated them into their policies. For example, a representative of a German development organization commented that although the guidelines are taken into consideration in the organisation's work, the extent to which they can be used depends on each situation and they do not constitute any a central guidance document for the organisation.¹¹¹

In January 2009, the EU Heads of Agriculture and Rural Development (HARD) re-activated the EU Working Group on Land Issues (formerly EU Task Force on Land Tenure). The Working Group is currently composed of representatives of the Commission and several, but by far not all, Member States and organisations such as the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ). Its tasks are information-sharing and communicating input to the EC for EU positions and recommendations on land policy and reform initiatives in developing countries.¹¹² The group also provides expert input upon request. Among the Working Group's next steps are commenting the draft of the FAO voluntary guidelines and the process of consultations of the RAI principles. The group also intends to follow up on the African Land Policy Initiative, a continent wide effort to strengthen land rights and increase productivity, of which the EU is a significant donor.¹¹³ There are currently no

¹⁰⁷ See EU Task Force on Land Tenure, *EU Land Policy Guidelines - Guidelines for support to land policy design and land policy reform processes in developing countries*, November 2004, p. 6 and 16.

¹⁰⁸ Interview with Frits van der Wal, Senior policy officer at the Dutch Ministry for Foreign Affairs. Conducted by Ecologic Institute on March 21st, 2011.

¹⁰⁹ Bergeret, *EU Land Policy and the Right to Food*, p. 24.

¹¹⁰ Interview with Frits van der Wal, Senior policy officer at the Dutch Ministry for Foreign Affairs. Conducted by Ecologic Institute on March 21st, 2011.

¹¹¹ Interview with Thorben Kruse, member of the EU Working Group on land Issues and Project Officer at GIZ. Conducted by Ecologic Institute on March 23rd, 2011.

¹¹² See <http://capacity4dev.ec.europa.eu/eu-working-group-land-issues/info/eu-working-group-land-issues>

¹¹³ Interview with Thorben Kruse, member of the EU Working Group on land Issues and Project Officer at GIZ. Conducted by Ecologic Institute on March 23rd, 2011. For a detailed description of the EU's contribution see the action fiche for the support

plans to update the land policy guidelines, e.g. with regard to land grabbing. The re-vitalised working group had reviewed the guidelines and concluded that they were still relevant and could appropriately address most of the in-country issues related to processes resulting in land-grabbing.¹¹⁴

In spring 2010, the Commission published the Communication **“An EU policy framework to assist developing countries in addressing food security challenges”**¹¹⁵ which – similar to the land policy guidelines – addresses most of the issues referred to in this brief. The Communication expresses support for smallholder family-based farming. For instance, it states that “enhancing incomes of smallholder farmers and the resilience of vulnerable communities”¹¹⁶ is important or that “sustainable small-scale food production should be the focus of EU assistance to increase availability of food in developing countries”.¹¹⁷ However, at the same time the Communication does not fully address all relevant issues. For example it states that “under the right conditions, public-private partnerships can play an important role in boosting agricultural productivity”¹¹⁸ – without specifying what “the right conditions” are. It also does not refer to regulating large scale investments in farm land.¹¹⁹ It remains to be seen how this Communication is put in practice.

Agriculture, and consequently land policies, has not been a focus of **EU Official Development Aid (ODA)** spending over the past few years. 2009 ODA spending from EU institutions for agriculture, forestry and fishing was EUR 1,766 million, amounting to 11.5% of total ODA. EU member states that are also members of the DAC spent EUR 7,764 million for the same purpose.¹²⁰ The figures were markedly higher in 2009 than in earlier years;¹²¹ the share of agriculture-related EU ODA in total EU ODA had been between 2-4 % in each of the years 2003-2008.¹²² Global total aid to agriculture – defined as official development assistance for the agricultural sector including forestry and fishing – has declined by 43 % between the mid 1980ies and the beginning of this millennium.¹²³ One example for a major EU involvement in land issues in developing countries is African Land Policy Initiative.¹²⁴ This initiative is a process to develop an action framework for land policy and land reform in Africa.

of the EC to the Africa Land Policy Initiative, http://ec.europa.eu/europeaid/documents/aap/2009/af_aap_2009_intra-acp.pdf, Annex 8, p. 141-147.

¹¹⁴ Interview with Frits van der Wal, Senior policy officer at the Dutch Ministry for Foreign Affairs. Conducted by Ecologic Institute on March 21st, 2011.

¹¹⁵ COM(2010)127 final. This Communication is the successor document to an the earlier Communication “Advancing African Agriculture (AAA). Proposal for continental and regional level cooperation on agricultural development in Africa” COM(2007)440 final, which already emphasised the support of smallholder family-based farming and production for local markets. However, observers were not fully satisfied with the progress made on implementing the AAA Communication. As noted in Graham et al., p. 1, “a strong degree of policy incoherence with negative effects on African farmers who should have benefited from EC policy, had AAA been fully implemented”.

¹¹⁶ COM(2010)127 final, p. 3

¹¹⁷ COM(2010)127 final, p. 4.

¹¹⁸ COM (2010)127 final, p. 4.

¹¹⁹ However, the staff working document accompanying the Communication dedicates a section to land acquisitions, see European Commission, Staff Working Document SEC (2010) 379 final, p. 7ff.

¹²⁰ See OECD, ODA by Sector, http://stats.oecd.org/Index.aspx?DataSetCode=ODA_SECTOR

¹²¹ In 1995 the figures were EUR 128 million for the EU and EUR 523 million for member states. In 2000, EU institutions spent EUR 249 million and member states EUR 664 million, see OECD, ODA by Sector, http://stats.oecd.org/Index.aspx?DataSetCode=ODA_SECTOR

¹²² Own calculations based on http://stats.oecd.org/Index.aspx?DataSetCode=ODA_SECTOR

¹²³ See OECD, Measuring Aid to Agriculture, p. 1.

¹²⁴ Interview with Thorben Kruse, member of the EU Working Group on land Issues and Project Officer at GIZ. Conducted by Ecologic Institute on March 23rd, 2011. For a detailed description of the EU’s contribution see the action fiche for the support of the EC to the Africa Land Policy Initiative, http://ec.europa.eu/europeaid/documents/aap/2009/af_aap_2009_intra-acp.pdf, Annex 8, p. 141-147.

The process began in 2006 under the leadership of the Africa Union Commission (AUC), the United Nations Economic Commission for Africa (UNECA), the Africa Development Bank (AfDB) and other regional stakeholders.¹²⁵ As land reforms are implemented throughout Africa, a framework and set of guidelines were considered essential for states and institutions. The work is being supported by donors and multilateral organizations, with the EU as an important donor. The EU supports monitoring and assessment on land policies, information exchange and capacity-building.

Generally, land-grabbing has received much more political attention in recent years than land policies in general. Although the EU and its Member States are rarely directly involved in large-scale land acquisitions, they do have a more indirect impact in several ways. One is **bio-fuel policies**. The EU Directive 2009/28EC (April 2009) requires EU Member States to reach the target of a minimum of 10 % share of renewable energies by 2020. As a result, Member States have introduced support measures for importing bio-fuels¹²⁶. This leads to a demand for biofuels which makes it attractive for investors to provide these biofuels. Furthermore, European development cooperation and European banks promote bio-fuel production in Africa.¹²⁷ The food security Communication does not, however, make the link between the EU's bio-fuel targets and food security. By contrast, it is stated that assistance programmes need not only support policies on agriculture and food security, but also on related areas such as biofuels.¹²⁸

Also of relevance are EU **bilateral investment treaties** (BITs).¹²⁹ BITs aim at providing legal guarantees and stability, and thus "usually include provisions that strengthen the legal power of the investors."¹³⁰ As a result, BITs encourage foreign direct investments by ensuring legal security of private investors. This at the same time may in some cases weaken the capacity of the states where investment takes place to regulate foreign investments, including in land.¹³¹

On a final note, it seems that there is still room for the EU to become more active at the national level in developing countries. As mentioned earlier, the complexity of land issues and the very political nature of the subject have made the EU wary of becoming involved. However, the EU can seize opportunities to raise the political profile of land policy and foster debate about the issue among donors.

¹²⁵ Kandine, Malam Adam; Koné, Mariatou; and Larbi, W. Odame, *Land Policy Initiative—A Framework to Strengthen Land Rights, Enhance Productivity And Secure Livelihoods: Regional Assessment On Land Policy In West Africa*, p. 6.

¹²⁶ See for instance Graham et al., *The Impact of Europe's Policies and Practices on African Agriculture and Food Security: Land Grab study*, p. 48.

¹²⁷ Graham et al., *The Impact of Europe's Policies and Practices on African Agriculture and Food Security: Land Grab study*, p. 49.

¹²⁸ COM(2010)127 final, p. 7.

¹²⁹ For instance, African countries signed eight new BITs with EU countries – in 2008 only.

¹³⁰ Graham et al., *The Impact of Europe's Policies and Practices on African Agriculture and Food Security: Land Grab study*, p. 56.

¹³¹ See for an overview of clauses in BITs that may be relevant to land deals Görden et al., *Foreign Direct Investment (FDI) in Land in developing countries*, p. 16-17.

5 RECOMMENDATIONS

Investments in agricultural production are needed in developing countries in order to boost food security and to improve income opportunities of the rural population. However, there are reasonable concerns whether large-scale land acquisitions, which benefit from unclear land titles and informal tenureship patterns in these countries, are the right way forward. For the win-win situations, which are often claimed by the supporters of land investments, to occur clear and enforceable regulatory measures must be put in place.

We recommend EU policy makers to focus on the following aspects without claiming to be exhaustive:

- **Actively support the process of setting up the FAO Voluntary Guidelines**

The FAO Voluntary Guidelines appear to be the most promising current international attempt to regulate large-scale land acquisitions. They are to include references to legally binding instruments of international law. In its Communication “An EU policy framework to assist developing countries in addressing food security challenges” the EC already refers to “Support national and international initiatives for the definition of principles and codes of conduct governing sustainable large scale domestic and foreign investments in farm land”.¹³² However, the EU should take one step further and actively and publicly promote the FAO Voluntary Guidelines. Furthermore, we recommend that the EU supports the drafting of a legal commentary interpreting these Guidelines in order to help strengthen the link to human rights therein.

- **Increase ODA dedicated to agriculture**

The EU should consider spending more ODA on agriculture in developing countries, including in support of land reforms. In 2009, the EU spent 0.42 % of its gross national income (GNI) for ODA. This is not in line with the EU aim of spending 0.56 % of its GNI to ODA in 2010 as set forth in the EU Sustainable Development Strategy. If the EU fulfilled its self-proclaimed ODA 2010 target, more ODA would be available for agricultural purposes.

- **Strengthen the role of the EU Land Policy Guidelines and the EU’s role in developing countries**

The EU Land Policy Guidelines already provide nuanced and useful guidance for EU land policies. However, they should be given greater political visibility, e.g. through mentioning them in further communications and declarations. In addition, there is still room for the EU to become more active at the national level in developing countries concerning land policies.

- **Improve reporting and monitoring on large scale land acquisitions involving European investors and support further research**

Since detailed information on the involvement of European investors in large-scale land acquisitions is often not accessible, it is difficult to monitor and assess these processes. Consequently, a reporting and monitoring tool should be introduced. For example, an indicator on large scale land acquisition

¹³² COM(2010)127 final, p. 9.

could be included in the monitoring report on the EU Sustainable Development Strategy (e.g. in the chapter on global partnership) in order to make the EU's contribution to large scale land acquisitions visible and to monitor them over time. In general, research initiatives on the issue should be strengthened. Generally, more research on the scale and impacts of large-scale land acquisitions in developing countries is needed and the EU should provide funds for this purpose.

- **Implement the EU Communication “An EU policy framework to assist developing countries in addressing food security challenges”**

This Communication strengthens smallholder farmers but at the same time leaves loopholes, for instance by not addressing the link between food security and bio-fuels or by not referring to the regulation of large-scale land acquisitions. The Communication should thus be both updated and implemented.

- **Acknowledge and help implement the findings of the International Assessment of Agricultural Knowledge, Science and Technology for Development (IAASTD)**

Since the IAASTD report is based on a broad international consensus and has a strong focus on strengthening small-scale farmers, we recommend that the EU acknowledges the findings of this report.

- **Strengthen the sustainability criteria for bio-fuel production in the EU Renewable Energy Directive**

The current set of sustainability criteria does not include social standards for land use. Neither does it refer to the involvement of small-scale farmers in land use decisions and the respect of land rights. We therefore recommend modifying the sustainability criteria for bio-fuel production in the EU Renewable Energy Directive.

- **Strengthen human rights in international agreements and treaties**

The role of human rights, for example the right to food, in international investment law should be strengthened. For example, human rights could be mentioned in EU BITs as a public policy objective that would justify regulations and restrictions on investments by the host states.

- **Support developing countries in informed decision-making on investments**

Developing country governments sometimes take poor investment decisions since they are enthusiastic to attract investments or regulatory and negotiations capacities are weak. We therefore recommend that the EU helps host countries in the decision-making on investments by drafting and providing model contracts for host countries. These model contracts would need to refer to international human rights mechanisms and benchmarks such as the EC Land Policy, the FAO Voluntary Guidelines, the AU Framework and Guidelines for Land Policy in Africa. The EU should support civil society and media in developing countries that work on land issues. They should be enabled to critically monitor and influence decision-making processes on land (re)distributions, land reforms or large-scale land acquisitions.

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