

**COMMITTEE ON WORLD FOOD SECURITY****Thirty-seventh Session****Rome, 17-22 October 2011****Agenda Item V****LAND TENURE AND INTERNATIONAL INVESTMENTS
IN AGRICULTURE
EXTRACT FROM THE REPORT OF THE HLPE
SUMMARY AND RECOMMENDATIONS FOR POLICYMAKERS**

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High Level Panel of Experts on Food Security and Nutrition

Extract from the report¹ “Land tenure and international investments in agriculture”

Summary and Recommendations for Policymakers

Context

The Committee on World Food Security (CFS) at its meeting of October 2010 requested the High Level Panel of Experts on Food Security and Nutrition (HLPE) to conduct a study on land tenure and international investments in agriculture and to present the findings at its next session in October 2011. The study of the HLPE is to undertake analysis and formulate policy recommendations in the following three areas:

- (i) *the respective roles of large-scale plantations and of small-scale farming, including economic, social, gender and environmental impacts;*
- (ii) *review of the existing tools allowing the mapping of available land; and*
- (iii) *comparative analysis of tools to align large scale investments with country food security strategies.*

Given the breadth of this topic, the study team chose to focus on large scale investment in land. We recognize that pressures on land stem from both domestic and international investment, and the two are often linked. However, the international dimension is particularly important because of the very unequal access to resources which exists at global level. Land is becoming a global asset to be traded just like any other commodity. Yet land is different, since it provides a livelihood to more than 2 billion smallholders, many of whom are poor and food insecure. Land is also different due to the valuable environmental services it provides, and its strong social, and cultural attributes.

The last five years have witnessed growing investor interest in land and agriculture. While definitive statistics are hard to obtain, widely quoted figures assert that between 50 and 80 million hectares of land have been subject to negotiations by international investors, much of it in low income countries. It is generally agreed that more investment is needed in agriculture to address the needs of current and future generations. The report recognizes the diversity of experience between regions and countries, in terms of land availability, property rights, and public policy. But if such widely quoted figures are correct, there is good reason for concern about the impact of such land acquisitions on the food security of people in many of the countries hosting such investments. Can this large scale investment bring positive outcomes, or is it bound to damage the livelihoods of local people, and generate social and environment costs? Given the central role of government in managing and negotiating such inward investment, their role is key to setting the terms and conditions for ensuring a proper balance

¹ HLPE, 2011. Land tenure and international investments in agriculture. A report by the High Level Panel of Experts on Food Security and Nutrition of the Committee on World Food Security, Rome 2011. Full report available at www.fao.org/cfs/cfs-hlpe

of interests between local land users and investors, and enforcing such contractual agreements. This report sets out recommendations for governments, international institutions and investors to address the serious concerns raised by this heightened interest in land acquisition.

Principal observations

1. Widely quoted figures assert that over recent years an estimated 50-80 million hectares of land in middle and low income countries have been subject to negotiation by international investors, seeking to buy or lease this land. At the same time, close on one billion people are short of food and another billion suffer from various forms of malnutrition in middle and low income countries, despite sufficient global food production. Since late 2010, food prices have risen to levels comparable to the food price spike of 2007-08, pushing more people into hunger.
2. It is widely recognised that increased agricultural investment is needed to raise yields as a means to improve food security in many parts of the world. Can such international investment in land be a means to improve agricultural productivity and rural livelihoods? Evidence from this land rush to date shows very few such cases. Rather, large scale investment is damaging the food security, incomes, livelihoods and environment for local people.
3. Research institutions, CSO and media sources are fast gathering information on large scale land acquisitions. Despite this, accurate data on important aspects, like scale, terms of the contracts and impacts from investment are limited. Roughly two-thirds of the estimated 50-80 million hectares acquired as investments are in sub-Saharan Africa. Data are poor in part because of secrecy from both investors and host governments over the scale of allocations and the terms on which land is acquired.
4. The range of interests behind large scale land investments include multinational companies engaged in a variety of investments including biofuels and extractive industries, foreign governments seeking an assured food supply, commercial farmers expanding into neighbouring countries, and financial institutions wanting to broaden their asset portfolio. Domestic investors are also important in many countries, sometimes in partnership with foreign capital.
5. More than three quarters of the land deals announced have yet to demonstrate tangible investment in terms of agricultural output. Part of this may be due to speculative behaviour. Delays in finalising land transfers, the time taken to raise capital funding, and conclusion of negotiation with governments will also account for some of this gap.
6. In many countries hosting large scale acquisitions, the government claims ownership of land, water and other natural resources. Hence, government is central in encouraging inbound investment, making land available, and negotiating with investors as well as enforcing contractual agreements. Given the scale of international interest in land investment, a number of governments in Latin America are now imposing new controls on foreign land investment to protect citizen interests.
7. Growing demand for food, feed, and biofuels as well as minerals and timber is driving large scale international land investments. Governments of countries that rely on food imports want to secure their nation's food security by buying productive foreign land. Policies to substitute biofuels for petroleum for transport in the EU and elsewhere are generating strong and unsustainable demand for oil palm, sugar cane and jatropha.
8. Ecological stress, such as water shortages and drought, combined with environmental policy, such as nature conservation, and carbon sequestration projects like REDD+, are also prompting increased international investment in land. All of these drivers are likely to increase over the next several decades, and intensify with the shifting impacts of climate change on agricultural production, putting ever greater pressure on land and water resources.
9. The finance sector is a relative newcomer to farmland acquisition. Its interest has been generated by rising prices for food and other agricultural commodities, the perception that the value of land and water is increasing, and the emergence of farmland as a global asset in a

portfolio of other investments, offering a return less affected by the latest international financial crisis.

10. Global surveys of bio-physical potential show that considerable reserves of land exist, especially in Latin America, sub-Saharan Africa and the Former Soviet Union. Yet, such reserves are not necessarily “available”. Much land already has other uses, such as cultivation and livestock grazing, as well as providing vital environmental services (as do tropical forests, grasslands and wetlands). The satellite and aerial imagery used in bio-physical surveys is blind to the rights and institutions that govern how land is actually used on the ground.
11. Much land in middle and low income countries is productively occupied and used, but does not have formal paper title, rendering such customary rights vulnerable to dispossession. Rights of women, social groups relying on the commons (grazing, woodland, wetlands), ethnic minorities and indigenous peoples are particularly insecure.
12. The legal status of land proposed for transfer or actually allocated to investors varies across countries and regions. State ownership is common, though government can also invoke eminent domain, on the grounds that it is acting in the public good, and reclassify private or village land to public land. The terms of acquisition also vary greatly, from short to long term leases, and freeholds. In case of leases, annual rental payments are frequently very low, though investors may be expected to commit capital to investment in infrastructure. Many contracts refer to employment provision, but are often imprecise about the detail or consequences of non-compliance. Equally, there is frequently little in the way of binding agreements on local procurement, processing of produce, and payment of taxes. Given that these contracts are usually kept confidential, it is very difficult for performance to be scrutinised or investors held to account by government agencies, parliament, local people, CSOs, or media.
13. Community consultation is usually required of the investor, but is frequently carried out at speed and without proper information, with benefits oversold and adverse impacts downplayed. The different actors – investor, government, local people – enter the negotiations with highly asymmetric information and power. Consequently, local people usually lose out, and governments lose both revenue and opportunities to achieve long term benefits for their populations.
14. This report was specifically tasked with reviewing the relative roles of small- and large-scale agricultural production systems, and there has been long-standing debate on their relative merits. The evidence shows that most crops can be grown just as productively by smallholders as in large commercial estates, although there may be significant economies of scale in the subsequent processing and marketing. The question therefore arises of whether and how large and small-scale production systems can co-exist and bring benefits to all parties. Disagreement revolves around the feasibility of such “win-win-win” solutions, and ways to ensure the rights and interests of local communities are central to agreements currently drawn up by governments and investors, often in secret. The huge number of smallholders in many middle and low income countries and the role they play in generating food, employment and livelihoods for more than 2 billion people should put them at the heart of agricultural development strategies. Yet they are often ignored. Rather than displacing them, governments should invest financial, human and scientific resources for improving small scale production, assist them achieve the necessary scale to access local and regional markets and improve their living conditions.
15. Many of the problems surrounding international investments in land could be dealt with by ensuring smallholder farmers gain a proper say in choices made about the future of their agricultural system, the terms on which they choose to engage with international investors, and more effective enforcement of existing policy and legislation at local, national and international levels. This report summarises the many measures and tools that can be used to improve the processes and outcomes from international investment in land and agriculture. Some have the force of hard law, while others have softer influence, or aim to harness informed consumer choice. In many cases these last substitute for weak capacity in host country governments.

16. A combination of measures operating on different actors and levels is most likely to be effective. These measures and tools, and the discussion set out here, have guided a list of recommendations. These recommendations must tackle the asymmetry in power wielded by governments and large commercial interests, and often used against small farmers. Weaknesses in governance, institutions and incentives mean that a “win-win-win” solution will not happen unless much stronger action is possible from both local land users and their governments (on their behalf). It also requires appropriate compensation mechanisms. Given the likely increase in pressures on land from international (and domestic) investment, it is vital to get a better balancing of the rights and interests of less powerful groups in negotiations with governments and investors. This approach should align with the broader need to focus public investment on smallholder agriculture and alternative production systems that are socially inclusive and environmentally sustainable.

Recommendations

The actions proposed below must recognise that food security is paramount, and measures must tackle the distinct asymmetry in power wielded by land users/occupiers, governments and large commercial interests. Many of the problems surrounding international investments in land could be dealt with by more effective enforcement of existing policy and legislation at national and local levels. However, current weaknesses in governance, institutions and incentives mean that a “win-win-win” solution will not happen unless much stronger weight is given to the capacities of both local land users and host country governments. Equally, because many of the problems are complex and interconnected, the recommendations for policy need to be similarly differentiated in terms of sector, level and actors concerned. Given the likely increase in pressures on land in future, from international investment (as well as domestic), it is vital to get a better balancing of the rights and interests of less powerful groups, in negotiation with government and investors.

Host country governments

- 1 Decisions taken now will have major repercussions for the livelihoods and food security of many people for decades to come. Much discussion about large-scale land acquisitions has been highly polarised rather than seeing where there might be some common ground. The people who are most directly concerned by such investments must have their say. There is a need for inclusive debate in host countries concerning pathways for agricultural development and land use planning. Governments should open up this debate, rural poor people (small farmers, indigenous peoples, pastoralists, landless labourers, forest dwellers, rural women, among others) must be central to it, and continued scrutiny from autonomous civil society can help make the renewed interest in agriculture work for broad-based sustainable development. Governments should set up appropriate institutions to organize this consultation and vision development. Governments must have clear, transparent equitable land policies that are accessible, allowing for transparent transfers, equitable access, manageable systems of registration and deeds as well as open transparent heritage rights.
- 2 Host governments must recognise that their citizens have the right to free, prior and informed consent in relation to the land and natural resources on which they depend for their livelihoods. Governments must strengthen and secure rights to land for millions of land users who currently have uncertain tenure over their resources. This includes smallholder farmers, pastoralists, shifting cultivators, fisherfolk, indigenous people, and forest dwellers. Particular attention is needed to secure the access and use rights of women, ethnic minorities and indigenous peoples. Given the diversity of contexts, a multiform approach to land tenure is required, which mixes different legal and administrative modalities. Governments should learn from promising low cost decentralised systems for registering and managing rights, at both the household and community level. This must include common pool resources, which are essential for continued mixed farming, pastoral and indigenous livelihood systems in many low income countries. Given the accelerating pace of large scale land investment, and the limited capacity in many government administrations, community rights registration is vital to ensure protection of

livelihoods and associated food security. In settings marked by inequality in land control and ownership, redistributive land policies (such as land reform, land restitution) should be carried out. In Africa, governments should follow the African Union's Land Policy Guidelines, which aim to transform agricultural development by strengthening land rights for smallholder farmers, improving access to land for women, and easing the barriers to land transactions. Systems for grievance and redress need construction at national and regional levels, including for human rights and environment. Robust Environmental and social impact assessments (ESIA) processes are also needed. The impact on women in agriculture needs specific attention, since even a small plot of land in the hands of women strengthens household food and nutrition security

- 3 Governments should prioritize investment in the small farm sector and in alternative food systems that are socially inclusive and just as well as environmentally sustainable, using agro-ecological principles (see Appendix). In places where large-scale land investments are underway, governments interested in promoting investment should encourage business models that involve collaborating with local farmers and generating employment opportunities, not just land acquisition. Given the major asymmetries in expertise that often characterise the negotiation of deals for agricultural investments, there is a need for legal, financial and technical advice to be available for governments as well as for local communities. One option would be for this legal advice to be provided by the FAO Land Tenure Service. Support may also be needed to rigorously scrutinise investment proposals. Robust systems must be in place that subject leases to compliance with investment plans, and existing land policies. Investment contracts should always provide a clause allowing government (on behalf of local communities) to cancel lease agreements or contracts when they fail to comply with agreed terms, or when insufficient compensation mechanisms are in place.

Support for farmer voice and civil society

- 4 Increased support is needed for farmer representation through their own organizations, with priority to social movements of the rural poor: small farmers, landless labourers, women, indigenous peoples and ethnic minorities, pastoralists and forest dwellers. Other civil society organizations who support the direct representatives of the rural poor should also be provided the needed institutional space. The rural poor's social movement organizations and relevant CSOs need to acquire stronger political weight in national and international decision-making structures. These organisations need backing at country level and internationally to ensure effective scrutiny and accountability of both national and international processes.

Improved practice by corporations

- 5 Investors and business enterprises have a legal responsibility to respect human rights, and must act with due diligence to avoid infringing human rights within their sphere of influence. Investing enterprises have the responsibility to provide adequate non-judicial access to remedy, including effective grievance mechanisms for victims of human rights abuses. States have the obligation to protect the enjoyment of human rights from being impaired by actors in their jurisdictions and to regulate business enterprises accordingly; and should provide effective judicial access to remedies from human rights abuse by investors. Home countries of business enterprises and investing nations or nations supporting investments in other nations must ensure that their actions respect and protect human rights in the host country according to applicable international and regional human rights norms and standards.
- 6 States should hold good faith consultations with local communities, before initiating any plan, project, and measure that may affect the land and natural resources on which they depend for livelihood, social and cultural activities. The procedures of these consultations should be in accordance with the Free prior and informed consent (FPIC) principles and related criteria, as well as the customary rules and decision-making structures of local communities. These procedures should facilitate access to the consultations by all affected peoples, ensuring in particular the participation of women and young people. The consultations must be conducted in a climate of trust that favors productive dialogue, according to well-established standards and oversight by independent observers.

Donor governments

- 7 Donors should align more effectively their bilateral and multilateral initiatives in the field of agricultural investment promotion, to achieve positive outcomes for local farmers. For example, some donors argue that improving productivity and market access for smallholder farming is key to achieving the MDGs while multilateral lenders have been promoting and financing inward investment, including large-scale land acquisitions. Donors should also ensure fulfillment of the G8 and G20 commitments on increased funding support to agriculture made over the last 2 years. This should include support for public infrastructure and policy development to create an enabling environment for smallholder agriculture – based on evidence showing that smallholders can be highly dynamic and competitive on global markets, and that small farm development is feasible and desirable for its impacts on poverty reduction.
- 8 International support is needed for a large increase in public funds for agricultural research and development, emphasizing agro-ecological approaches. There are major challenges ahead if we are to meet the food needs of 9 billion by 2050 in ways which can keep within planetary boundaries, address the impacts of climate change and make land use a net carbon sink. Given the need to reduce further expansion of cultivation into forest and pasture land, a particular focus is required on closing the 'yield gap', especially in middle and low income nations without forgetting the increasing need for ecological sustainability. This requires further strengthening of capacity in a range of key skills.

Governments that are home to international investors

- 9 Taking into account that it is the State's obligation to protect the enjoyment of human rights abroad against harm emanating from its own territory, as articulated by Treaty Bodies in the UN Human Rights System, home governments have a responsibility to make sure that their companies operate according to the highest standards in relation to human rights, and environmental management. They should enact legislation which requires compliance with international human rights and environmental standards by their nationals operating overseas, and a mechanism whereby people in the country hosting the investment can hold the company to account for its actions.

The Committee on World Food Security

- 10 The CFS shall ask governments to report each year on actions being taken to align international (and domestic) investment in land with food security concerns, including measures to prevent speculative pressures on land, such as leases conditional on proven investment plans.
- 11 Given the major role played by biofuels expansion in accelerating investments on land, the CFS should demand of governments the abolition of targets on food based fuels, and the removal of subsidies and tariffs on biofuel production and processing.
- 12 Since many deals and investments are so recent and, according to World Bank's prediction "the 'land rush' is unlikely to slow" (World Bank, 2011), following the approval of its Voluntary Guidelines for the Responsible Governance of Land, Fisheries and Forests, the CFS shall seek to establish at the FAO an observatory for land tenure and the 'right to food' to monitor the processes of access to land and the implementation of the Voluntary Guidelines, ensuring that the investments will result in decreased hunger and poverty in host communities and countries.
- 13 The CFS should encourage further support to regional processes, such as the African Union's Land Policy Initiative, to link these to national policy reform (e.g. through the Pan African Parliament and the African Court of Human Rights).
- 14 During the 12 month process for consultation on the principles for responsible agricultural investment being led by the CFS, attention should also be given to the best means by which investment can contribute most effectively to promoting food security, especially in low and middle income countries, and that all players are involved.