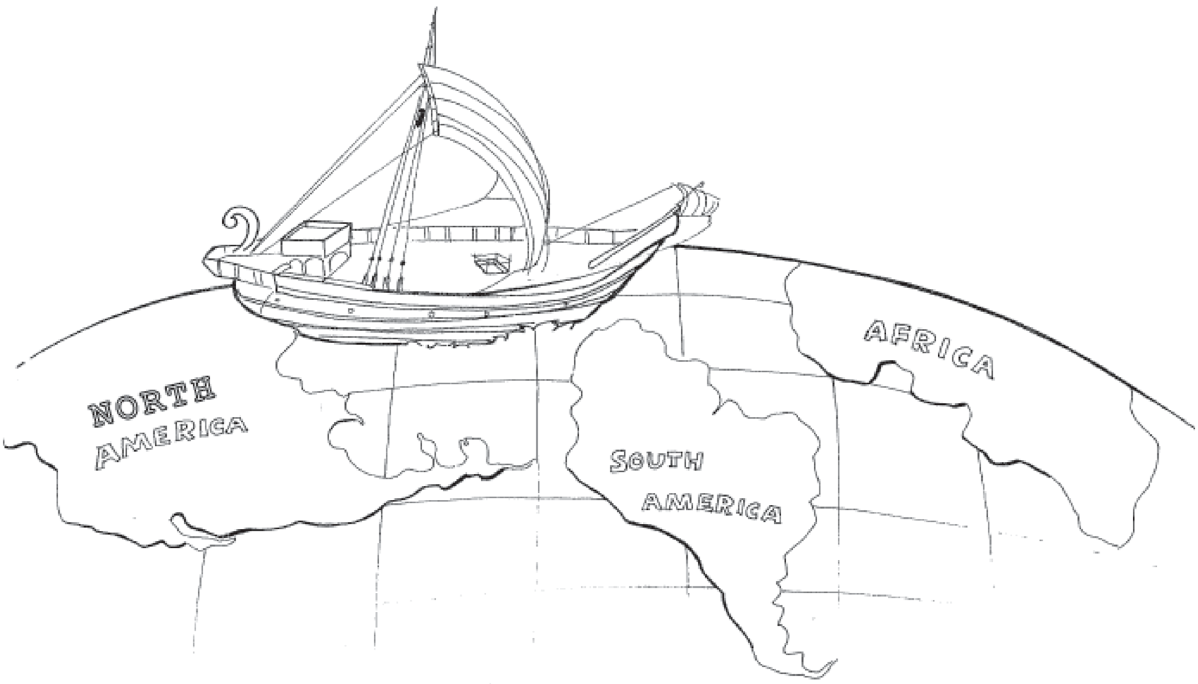
Toward a Code of Conduct in Foreign Land Deals



The foreign acquisition of agricultural land is a trend that is driven by the food and biofuel needs of wealthy nations that have the capital to invest but have sparse land and water resources to produce enough for their own needs. These deals, whether in the form of purchases or leases, have many economic, social, and political implications for both the investor and host countries.

SOURCE:

Meinzen-Dick, R. and H. Markelova. 2009. *Necessary Nuance: Toward a Code of Conduct in Foreign Land Deals.* In *Land Grab? The Race for the World's Farmland*, Kugelman, M. and S. Levenstein, eds. Washington, D.C.: Woodrow Wilson Center.

Foreign investment and acquisition of agricultural land in other countries have historical precedent, but this recent wave of land acquisitions has a different scale, new drivers, and a new set of players. In the post-colonial era, the private sector was the main actor, generally buying land from private land owners in the host countries. While private investors remain major actors today, many of the new deals are between governments, or involve governments backing private investments. While the private sector has traditionally invested to maximize profit, food and energy security concerns are the drivers of these recent land deals.

Proponents of these land deals claim that there is an abundance of arable land to be used for agriculture and "unused" or "unproductive" lands to be used for agrofuel cultivation. However, in many cases, these lands are already being used or claimed. This is especially the case in Africa, where up to 90 percent of land is under customary tenure: formally held as state land but used by communities, often for generations. In addition, even though the amount of land that is potentially available for expanded rain-fed crop production is estimated to be about 1.5 billion hectares, half of these reserves are found in just seven developing countries: Angola, DRC, Sudan, Argentina, Bolivia, Colombia, and Brazil.

These estimates also do not take into account population growth, which in the last 40 years has reduced per capita land availability. The availability of marginal and abandoned lands may be higher, but there are often reasons behind their availability and limitations for crop or agrofuel cultivation: lack of adequate water resources, inaccessibility to markets, and ecological unsuitability. Many of these lands are also being used by rural communities for important livelihood activities such as animal grazing, collection of fuel wood, biomass, and fruit production, and access to water sources.

Table 1. Post-Colonial vs. Present-Day Foreign Land Deals

	Post-Colonial Era	Present
Who sells? Who buys?	Private investors buy from private land owners.	Private investors backed by government or government-to-government deals.
How much?	Limited scale.	Large scale.
What?	Tropical commodities, e.g. bananas.	Basic staple crops and biofuel crops.
Why?	Profit.	Food and energy security of foreign interests.

Opportunities and Threats

Proponents of foreign investment in agricultural land point to a number of potential opportunities through which both investors and host country can benefit. However, there are concerns that this "win-win" outlook is unfounded and may not lead to agricultural development or benefit the host countries and their poorest citizens. They present opportunities but also pose threats to the livelihoods of the communities where the land deals are happening. Opportunities may include:

- increased investment in rural areas;
- generation of new farm and of farm employment and livelihood diversification opportunities;
- making new agricultural technologies available in rural areas;
- rehabilitation and upgrades of rural infrastructures (roads, bridges, etc.);
- construction of new health posts and schools;
- local capacity building.

On the other hand, there are plenty of warnings that large-scale land acquisitions may also be detrimental to the socio-economic development of the host countries.

Many of the major benefits, especially payments and infrastructure investments, go to the domestic economies at large, and even these are often subsidized through investor companies being granted general subsidies and tax breaks.

The benefits to local people in terms of employment or increased output prices must be weighed against the number of people who are deriving their livelihoods from the land, in order to assess the net benefits or losses of livelihoods for resource-dependent communities.

Many of the possible benefits for local populations actually depend on their security of land tenure. If the existing land users have secure land tenure and can negotiate with outside investors, there is at least some compensation. Even in these cases, there are concerns over whether the local land owners are adequately informed of fair prices or the full implications of selling their land, or are subjected to undue pressure to transfer their land. In Latin America, in particular, such sales are leading to high levels of land concentration in some countries. The experience in Central America during the coffee boom of the late 19th century, when privatization of customary lands led to the concentration of lands in a few hands, provides a cautionary tale.

Increased investment in food and agrofuel production can have important benefits for the economies of developing countries.

However, if the land is officially designated as state land and existing land users have only customary land rights, negotiations are between the state and the investors, and local people may have little say in the deals and receive little compensation if they are forced off their lands. This lack of attention to existing users who do not necessarily have formally recognized claims to land has already resulted in a number of evictions and contributed to landlessness and impoverishment. This has been especially acute in land acquisitions for agrofuel production. Moreover, the lands often allocated for such use are those designated as "underutilized," but of crucial importance for mobile populations and women. Without formally recognized rights, these groups face a higher risk of displacement.

In addition to the unrecognized rights to resources, local resource users have low bargaining power and virtually no presence in the negotiations over land deals. Even if some form of compensation is agreed upon, it becomes difficult to monitor investor compliance with the agreed terms of compensation and other proposed benefits for the communities. The rapid pace with which many of these deals are being made does not allow the time necessary to establish sound governance mechanisms, especially because of international forces at play.

The ecological sustainability of land and water resources is another important concern, especially considering the relatively short-term orientation of foreign investors versus the long-term outlook needed in considering the environmental impacts of land uses. Large-scale intensive agricultural production can threaten biodiversity, carbon stocks, and the availability of land and water resources. Land that is perceived as "unused" is often in long-fallow cultivation cycles because some tropical soils may be unsuitable for intensive cultivation. If the land is already marginal, further cultivation may lead to further degradation. Moreover, irrigation on these large plantations may divert water from the local users or from environmental flows.

Lastly, large-scale land acquisitions may have a negative effect on the wider socio-political and economic contexts of the host country. These deals touch on the already politically contentious issue of land allocation and land rights, so they carry a possibility of exacerbating existing tensions. Besides, many of these developing countries are already net importers of food and receive large amounts of food aid. For example, Sudan is the site of the largest operations of the World Food Programme; however, it is also the site of some of the larger land deals and is letting investors export 70 percent of the crops grown in the country. This raises concerns about the implications of the foreign land acquisitions on the internal food security of host countries, as high-quality land may be diverted from local food production, livestock grazing, and other livelihood activities of the local communities.

The state does not usually involve customary claimants of lands in negotiations with investors. Without formally recognized rights, formally recognized land users face a higher risk of displacement.

Evaluating Foreign Land Deals

Asking the following questions can help in assessing the extent and distribution of benefits from land deals, and can possibly provide the key to long-term sustainability of investment.

Current Land Use. How is the land being used currently (agricultural production, pastoralism, or biodiversity conservation)? Who are the current users? Are they communities or individuals? What other vital resources (water and forests) are being used in conjunction with the land? If the land is fallow, what are the reasons for this (unsuitable for agriculture, conservation purposes, etc.)? Are these unused lands being used for purposes other than agriculture? These questions will pinpoint who will be affected and will help determine the real value of net benefits of the land deal.

Land Tenure Arrangements. What property rights do current users have? Are these individual or communal rights? Are these recognized by the state and the outside investors? Are there any indigenous groups using the land under customary tenure, and what are their livelihood sources?

Lands under customary tenure are especially prone to expropriation in a manner that is considered legal under statutory law but not legitimate by local people. If the land is under private owner-

Situations of customary land tenure are especially prone to expropriation of the land in a manner that is legal under statutory law but not legitimate by the local people.

ship, the existing users are more likely to have a say in the arrangements and derive a benefit, unless tenancy is widespread. In some cases, indigenous people are especially disadvantaged; in other cases they may be better organized and have stronger land rights than other poor households.

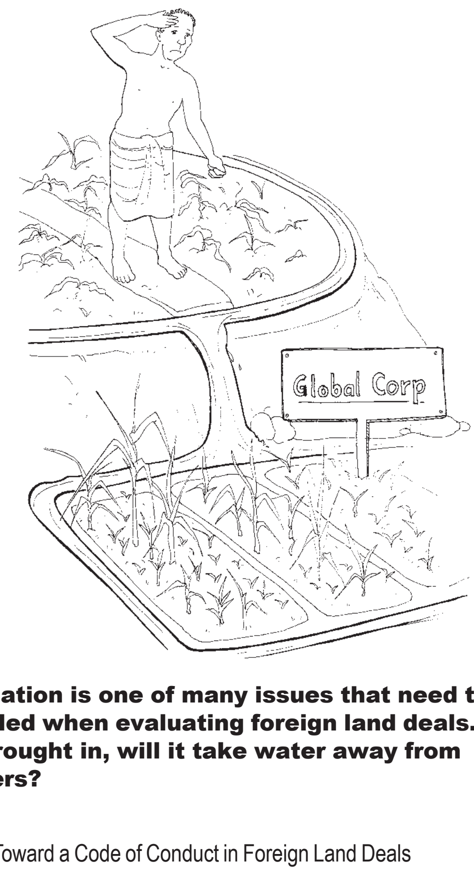
Proposed Land Use and Livelihood. A realistic assessment of the proposed investment patterns on the land is needed to assess the likely scale of benefits and how the benefits from foreign land acquisitions will be shared. It is important to ask if there are opportunities for smallholders to participate (e.g. through smallholder contract farming) and whether improved technologies will be shared with local farmers. Will the new land uses generate more and better livelihoods (through employment, contract farming, and increased local agricultural output prices) and generate more income than from previous sources?

Food Security. It is critical to look at the food security situation in the host country and the region. Will the food produced on the land be exported (all or in part) or sold domestically? What happens if there are food shortages in the host country, and especially in the food producing region? Exporting food while there is hunger not only harms local people, but is likely to cause unrest, undermining the sustainability of the land deals.

Toward a Code of Conduct

A code of conduct for international acquisitions of agricultural land would provide a mechanism to ensure that these projects are economically, socially, and ecologically sustainable. Elements of such a code should include:

- Transparency in negotiations
- Respect for existing land rights, including customary and common property rights
- Sharing of benefits
- Environmental sustainability
- Adherence to national trade policies



Irrigation is one of many issues that need to be settled when evaluating foreign land deals. If it is brought in, will it take water away from others?

Ecological Conditions. Are the proposed productivity increases achievable and sustainable? Will they impose positive or negative externalities? Why is the land currently not under intensive cultivation? What are the production constraints? Can an injection of capital and knowledge really result in sustainable production increases? Will there be land degradation over time, as when most tropical forests are cut for cultivation? If irrigation is brought in, will it take water away from others? Is the irrigation likely to be sustainable or will it lead to salinization over the long term? Will these farming practices reduce biodiversity? Environmental costs need to be weighed against any projected productivity increases, as they not only undermine the long-term sustainability of the foreign farms, but also can harm others.

Transparency. To what extent are existing land users informed and involved in the negotiations over land deals? What compensation or share of benefits do they get? Free, prior and informed consent will create greater legitimacy for foreign land deals.

Terms of Agreement. The nature of the contracts and agreements will shape the distribution of benefits between the investors, the host government, and local people. Is the land sold or leased to the foreign investors? Compared to sales, leases offer reversibility of the arrangements and a revenue stream each year, instead of a lump-sum payment, but short-term leases, in particular, may not create a strong incentive for investors to consider long-term environmental sustainability. Are there other investments such as infrastructure development (roads, bridges) in the terms of the agreement? What revenue do the state and local people receive from sale, rental, or other infrastructure investment, and what tax relief or other incentives are they offering to investors?

Enforceability. Agreements are one thing, delivering on them is another. Therefore, it is important to consider what provisions for enforcement of the terms of the deal are included in the contract. Who will monitor compliance and enforcement? What measures will be used as enforcement mechanisms? Are there arbitration or conflict management institutions that are accessible to local people (who often lack the resources to challenge large companies in court)? Enforcement is especially problematic when there are large power asymmetries between the investors, the host government, and local people, so credible measures are needed to improve confidence in the arrangements.

Not only would such a code provide guidelines to develop land projects, but also its widespread dissemination would help to equip local people, host governments, and investors for constructive negotiations. It may be naïve to think that a code of conduct would level power asymmetries, but even having such a code to appeal to could help in the negotiations. Further, institutional require-

ments to deliver on this include an international system to enforce the code on the investor as well as host country, and host governments that monitor and safeguard local people's rights.

Nevertheless, the international and national government structures alone are not sufficient. There will remain an important role for the media to increase transparency on land deals, and civil society to keep pressure against unjust expropriation. Just as we need to look beyond blanket pronouncements about foreign land acquisitions, we also need to look beyond simple prescriptions for their governance, and engage with multiple types of institutions to forge sustainable, mutually beneficial increases in agricultural productivity.

Conclusion

Examining land deals can help to move beyond blanket pronouncements about foreign investments. Showcasing those cases that are relatively beneficial—and shaming those that are not—can help show investors that it is in their long-run interests to ensure that their investments are not just legal, but also legitimate, by attending to the impacts on local people and the environment. The next step beyond stopping bad cases is to try to ensure that all future foreign investments in agricultural land take into account cost and benefits for all stakeholders and the environment.

Suggested readings

Cotula, L., Vermeulen, S., Leonard, R., and Keeley. 2009. *Land Grab or Development Opportunity? Agricultural Investment and International Land Deals in Africa.* London and Rome: International Institute for Environment and Development, UN Food and Agriculture Organization, and International Fund for Agricultural Development. Available from ftp://ftp.fao.org/docrep/fao/011/ak241e/ak241e.pdf.

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