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A fairer balance for international investments in farmland in developing countries

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International investments play a large part in globalising the economy. In developing countries, they can provide the means to exploit natural wealth. Such investments take the form of companies exploiting mines, forests or farmland. On one hand, they can promote the development of agriculture and better use of unexploited or underexploited land, provide work for the national population, and create wealth which benefits the host country. But they pose serious problems when they lead to the expulsion of local populations from their traditional lands and when they add up to no more than the seizure of natural resources for the benefit of the investors, without sufficient consideration or even the slightest consideration for the economy of the host country. In such cases the term 'grabbing' of land and natural resources is fully justified.

From the legal point of view, international investment and the land-grabbing which may result are governed by the national laws of the country in which the investment is made (investment law, agricultural law, land law, environmental law, etc.) and by bilateral treaties specially drawn up for such investments (the U.N. has inventoried over 3000 of these to date). Consequently, the issues raised call for specific analyses for each country, although general comments and observations may remain valid.

Concerning land law, many countries in which international investments pose problems have laws covering the acquisition and exploitation of land which are based on both customary and "modern" legal systems, functioning side by side. Customary law derives from the practices, rules and ancestral traditions of a community which has been settled on part of a territory since time immemorial. Modern law is based on land registry and private or public property deeds which are indexed, officially recognised and enforceable against all parties.

In such countries, there are in fact three categories of particularly fragile populations:

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- native or indigenous peoples who have lost control of their territory to the benefit of modern States which have gradually encroached on them;
- peasant farmers in developing countries who have no security of tenure on the land where they have lived for generations and from which they draw their livelihoods;
- women farmers, who in many countries, especially in Africa, work land which is owned exclusively by men.

A large number of adjustments would be needed, in several areas of law, to solve the problems encountered by these fragile populations, and so that international investments in the farmland of a developing country benefit the country and its population at least as much as the investors.

Two such adjustments deserve particular attention.

1) Collective ownership is the best means of avoiding discrimination between men and women regarding the ownership of land since, by hypothesis, the land then belongs to every man and woman. It is also the best means of providing security of tenure to organised communities which draw their livelihoods from common land/territory.

For this reason, in countries where traditional community-based occupation of lands and modern individual title deeds coexist, the official recognition of collective property deeds benefiting communities is a necessary element of any solution, whatever form it may take.

2) Any contract of investment in land should, in order to contribute effectively to the development of the host country, satisfy conditions which respect the principles or directives issued by the various international organisations, particularly the FAO.

A “set of clauses” stipulating the obligations and commitments of investors should therefore be drawn up, to be included in all investment contracts. Such obligations relate to:

- involving the population living on the land concerned in the negotiation and implementation of the contract in a way that is effective, public and transparent;
- carrying out, in public, a prior socio-environmental audit;
- employing local farm hands in preference to labour imported by the investor;
- growing a significant proportion of products which are useful for feeding the local population rather than for producing biofuels or raw materials for non-food use (textiles, etc.);
- selling the foodstuffs in the country of production rather than exporting them;
- using methods of working the land which preserve the environment and natural resources, in preference to methods which risk leaving the land exhausted when a long-term contract expires;
- a precise description of the investments made by the investor, with financial guarantees for meeting the commitments undertaken (for example, deposits or bank guarantees payable on first demand);
- financial and economic compensation which is precise, specifically included in the contract and significant for the host country;



- prohibiting selling the contract or sub-leasing the land without the agreement of the sovereign State and the guarantee that the commitments will be taken up by the new operator.

A set of such clauses could be formally included in the national laws on investments, and could also act as a “specification” for an international certification for “responsible or sustainable investment” which the FAO would implement and manage.