

**RIGHT TO FOOD
ISSUES BRIEF 2**

Land Tenure, Investments and the Right to Food

- ✦ Investment in agriculture, whether public or private, is crucial for increasing productivity levels in developing countries and for creating economic and social benefits that contribute to the eradication of hunger.
- ✦ If agricultural investment projects are negotiated with affected communities and are coherent with national food security and rural development strategies it is more likely that they will be sustainable and centered on a right to food approach.
- ✦ Security of land tenure is critical for the realization of the right to food, as well as for ensuring that investments do not arbitrarily displace local populations from their lands.
- ✦ Achieving the right to food requires responsible governance of land tenure. As such, it is essential that States guarantee compliance with human rights obligations through the elaboration of strategies, policies and legal frameworks that can be enforced by judicial and administrative recourse mechanisms.

Present-day Realities

Competition over natural resources

The escalating rate of competition over natural resources has reached important levels. Data on leases and acquisitions of large tracts of land varies across sources. According to the High Level Panel of Experts of the Committee on World Food Security (CFS)¹, negotiations are currently underway for the transfer of 50 to 80 million hectares to mainly private foreign investors. The World Bank report revealed that 56 million hectares of large-scale farmland deals were announced before the end of 2009². Yet other data reveals that the amount of land under current negotiations corresponds to 227 million hectares³.

Food insecurity and poverty in rural areas

Despite increasing urbanization, poverty remains largely a rural problem. Of the 1.4 billion people living in extreme poverty (defined as those living on less than

US\$1.25/day) in 2005, approximately 1 billion – around 70% – lived in rural areas⁴. According to FAO estimates, 925 million people suffer from hunger in the world⁵ and approximately 75% of the food insecure live in rural areas⁶. Moreover, food security in rural households is further challenged in the context of rising food prices which surged between 2006 and 2008 and again in 2010. The gender dimension of food insecurity is critical considering that women comprise, on average, 43% of the agricultural labour force in developing countries; nevertheless, they have less access than men to productive resources and opportunities. It is estimated that if women were to be given the same access to productive resources as men, thereby increasing levels of production, the number of hungry people in the world would be reduced by 12–17%⁷.

Insufficient investment in agriculture

Recent studies suggest that by 2050 the planet will be populated by 9.1 billion persons; in order to feed this population, global agricultural output would

1 CFS, HLPE. 2011. *Land Tenure and international investments in agriculture*. Rome.

2 World Bank. 2011. Deininger, K., Byerlee, D. with Lindsay J., Norton, A., Selod, H. & Stickler, M. *Rising global interest in farmland. Can It Yield Sustainable and Equitable Benefits?* Washington, D. C.

3 Oxfam. 2011. *Land and power, the growing scandal surrounding the new wave of investments in land*. Oxford.

4 IFAD. 2011. *Rural Poverty Report*, p. 47. Rome.

5 FAO. 2010. *The State of Food Insecurity in the World*. Rome.

6 FAO. 2005. *The State of Food Insecurity in the World*, p. 5. Rome.

7 FAO. 2011. *The State of Food and Agriculture in the World 2010-2011*. Rome.

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need to grow by 70%⁸. However, the last decades have witnessed a significant decrease in agricultural investments⁹. According to FAO data, the share of Official Development Assistance (ODA) to agriculture has dropped significantly, falling from a peak of 17% in 1979 to a low of 3.5% in 2004¹⁰; concurrently, the share of public spending in the agricultural sector has fallen by an average of 7% in developing countries¹¹. G-20 leaders recognized the urgency of increasing public and private investment in agriculture, as an indispensable step towards the eradication of hunger, during the Seoul Summit on 11-12 November 2010.

Actions to realize the right to food

Building consensus at the international level

The consequences of the 2008 food crisis revealed the importance of international cooperation to enhance governance of food security and nutrition. For example, the CFS reform has been pivotal in engaging all stakeholders in dialogue and coordination to tackle the current challenges of ensuring coherent global responses to realize the right to food¹².

With regard to access to land, FAO and other agencies are supporting the process of elaborating and adopting the *Voluntary Guidelines on responsible governance of tenure of land, fisheries and forests in the context of national food security*. Meanwhile, the CFS decided to start an inclusive process of consideration of principles for responsible agricultural investment, within CFS, taking note of the ongoing process of developing Principles for Responsible Agricultural Investment that Respect Rights, Livelihoods and Resources¹³ (*RAI principles*) undertaken by FAO, IFAD, UNCTAD and the World Bank. Moreover, the Special Rapporteur on the right to food has provided guidance to ensure that large-scale land acquisitions and leases comply with human rights¹⁴. His recommendations build on States' obligations derived from international law, and delineate the concomitant implications on governance and public policy making. Finally, the Declaration of Tirana of May 2011 (*Securing land access for the poor in times of intensified natural resources competition*)¹⁵, gathered more than 150 representatives from the civil society who called on all

actors to actively promote pro-poor, people-centered and environmentally sustainable governance of land and other natural resources.

Security of land tenure

Vulnerability to food insecurity in rural areas is higher when there is no security of land tenure. Moreover, in countries with mixed tenure systems, whether statutory and/or customary, user rights (including access/use and management of natural resources) are often neither recognized nor respected. Governments and public agencies whose mandate it is to promote investments, frequently consider land as unoccupied and therefore, as being transferrable to national or foreign investors. Such land is, in most cases, collectively utilized and essential for people's access to food.

Pastoralists, indigenous peoples and fishermen are some of the people most affected by the lack of recognition of their rights over such resources. From a right to food approach, guaranteeing access to natural resources for the most vulnerable populations is the first essential step for realizing this human right. To ensure such access, government, policies and legal frameworks should address territorial rights over natural resources. Furthermore, it is crucial that participatory mapping of rural areas is a recognized government priority in order to identify: i) the effective use and management of land and ii) the populations that are the most vulnerable to food insecurity. Land titling schemes have often been considered the best option for providing security of tenure. It is evident, however, that land titling does not always provide the most appropriate solution¹⁶. Private ownership can exclude some segments of the population, thereby obstructing the collective use of such land. Additionally, in some contexts land titling schemes can be a source of conflict. Ultimately, participatory community land delimitation and public registry/cadastre of those rights might constitute an adequate way for communities to decide on land use to ensure their livelihoods and have a stronger footing in dealing directly with outside investors.

Uncompensated forced eviction commonly occurs as a result of the State's desire to satisfy the aims of national or foreign investors, and particularly in countries where governance is weak. Since forced eviction strongly affects peoples' access to food, it should be considered only in exceptional cases and should be strictly compliant with the conditions established by law¹⁷. In cases of arbitrary evictions affecting peoples' access to natural resources and food, individuals should be able to claim justice, remedial action and effective reparation through adequate mechanisms of recourse.

8 FAO. 2009. *Issues Brief. How to Feed the World in 2050*. Rome.

9 UNCTAD. 2011. *World Investment Report*, p. 103. Geneva.

10 FAO Investment Centre website.
<http://www.fao.org/investment/whyinvestinagricultureandru/en>

11 FAO. 2009. *Issues Brief. How to Feed the World in 2050. Investment*. Rome.

12 The reform document of the CFS explicitly states that Right to Food Guidelines should be applied in this context.

13 See <http://www.responsibleagroinvestment.org/rai/node/256>

14 A/HRC/13/33/Add.2. Special Rapporteur on the right to food. *Large-scale land acquisitions and leases: A set of core principles and measures to address the human rights challenge*. May 2010.

15 See http://www.landcoalition.org/sites/default/files/aom11/Tirana_Declaration_ILC_2011_ENG.pdf

16 IFAD. 2008. *Improving access to land and tenure security*, p. 6. Rome.

17 A/HRC/4/18 *Basic Principles and Guidelines on Development-based Evictions and Displacement*. Annex 1 of the report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living.

Obligations and responsibilities

The primary guarantor for individual and collective rights is a State's government. The business sector is also an important actor contributing to social development by providing capital for the development of local populations. However, while the business sector's actions should be compliant with the law, enterprises do not have the mandate to guarantee people's human rights. This obligation belongs to governments and it will have to be achieved by defining a balance between the incentives and the restrictions applied to public and private actors within the law.

The right to food is recognized in international treaties as delineating different types of obligations for States. Firstly, the State should **respect** people's access to food and should abstain from taking measures that may negatively affect or deteriorate the food security of populations. For example, in countries where food supply is insufficient for local demand, the practice of selling large tracts of land through investment agreements aimed at exporting food production may be a violation of the right to food. Furthermore, States also have the obligation to **protect** people's effective access to food against negative actions from individuals or private companies. Undertaking labor inspections to evaluate the conditions of work and assess compliance with labour law (fair salaries, social security) is an example of the obligation to protect. Also, if populations are arbitrarily and forcefully evicted, the State is obliged to provide accessible and adequate recourse mechanisms. Lastly, the State should **fulfill** the right to food by putting in place adequate policies, programs and projects as well as legal frameworks that aim at guaranteeing the right to food. People's right to food can only be guaranteed when key actors understand their responsibilities and obligations.

Identifying an appropriate agricultural model

With the rate of large-scale land acquisitions in developing countries growing, the debate over appropriate models of development for ensuring food security has come again to the forefront of international forums. Different models characterize this debate.

The CFS High Level Panel of Experts highlights, in its recommendations, the need to support small-scale farming and to explore more inclusive and environmentally sustainable alternative agricultural models¹⁸ (currently, approximately 5 to 10 million hectares of arable land are lost per year due to environmental degradation)¹⁹. Furthermore, the HLPE emphasizes the need for governments to find an equilibrium between the different models, prioritizing the integration of small-scale producers in value chains through just and equitable contractual agreements. Contract farming is

an example of the different types of arrangements that could be established to integrate those different models of agriculture.

Contract farming

From a right to food approach, the success of contract farming depends on how fair the clauses are in the definition of terms for integrating small-scale producers into value chains. Some of the advantages of this contractual arrangement include inputs and production services (often supplied by the buyer); it often introduces new technology and also enables farmers to learn new skills. Moreover, farmers' price risk is often reduced as many contracts specify prices in advance and finally, contract farming can open up new markets, which would otherwise be unavailable to small farmers. However, the lack of empowerment and the weak organization among producers make them fragile in bargaining with buyers who frequently impose their conditions. The price is often determined by the buyer and the risks are generally assumed by the producer²⁰. Better knowledge of legislation would make farmers more capable of negotiating appropriate clauses in order to define working conditions that are conducive to accessing food in a dignified manner.

Key elements for realizing the right to food

In order to contribute to the realization of the right to food and by keeping coherence with the national food security and nutrition policy, public investments in agriculture must respond to previously identified needs and strategic objectives, established in consultation with civil society. Private investments are an indispensable component for the transfer of technology, job creation and infrastructural innovation, as well as strengthening local markets and integrating small farmers into the supply chain. However, only when private investments comply with agreed standards do they reach their full potential of contributing to the realization of the right to food. The terms and conditions of investment agreements must be public, transparent, and take account of the affected communities, in accordance with the principle of *free, prior and informed consent* (FPIC). FPIC is firmly established in various international instruments such as the UN Declaration on the Rights of Indigenous Peoples and the ILO Convention 169. In international law, FPIC has been recognized as mandatory for indigenous peoples, but it could be used as a principle applying to all local communities in national law. FAO has been promoting the importance of a participatory approach in the stage of negotiating investment agreements in order to ensure approval based on a dialogue among public institutions, representatives

18 CFS, HLPE. 2011. *Land Tenure and international investments in agriculture*. Rome.

19 IFAD. 2008. *Improving access to land and tenure security*. Rome.

20 FAO. 2001. Eaton C, and W. Shepherd A, *Contract farming. Partnerships for growth*. FAO Agricultural Services Bulletin. Rome.

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of civil society and local communities²¹. Furthermore, it is paramount that the benefits of investment projects i) be clearly and explicitly mentioned in the agreements ii) be integrated in established strategies of food and nutrition security, and iii) be subject to effective and transparent mechanisms of accountability. Monitoring and evaluation must be conducted by an independent entity, in line with established and appropriate indicators, in order to evaluate outputs, measure socio-economic and environmental impacts and assess the degree to which these are contributing to the realization of the right to food. Finally, investment agreements should explicitly mention legislative frameworks that are relevant and that will be applied (including human rights law and access to natural resources legislation) as well as mechanisms of redress in the case of non-compliance with contractual stipulations, which provides a legal safeguard for all parties.

Training and capacity development

Numerous factors must be considered when investing in the agricultural sector, including appropriate research, scientific innovation, capacity development, technical training, organizational management as well as local conditions (local institutions and social and economic conditions); all of which must be taken into account in order to ensure the efficiency and sustainability of the investment project. Knowledge sharing and partnerships with the local population is particularly important for assuring a positive impact. Indeed, it is crucial for decision makers in agricultural investment to consider a wide variety of modalities, which create synergies between foreign capital and expertise with local/traditional knowledge.

Creating coherent regulatory regimes

In at least 51 countries, international human rights treaties hold equivalent status with respect to that of the national constitution. In these contexts, investment contracts cannot contain any clause that might contradict human rights treaties ratified by the country; if so, the contract could be nullified for non-compliance with public policy interests (or public order provisions).

21 FAO. 2005. *An approach to Participatory and Negotiated Territorial Development (PNTD)*. Rome.
http://www.fao.org/sd/dim_pe2/docs/pe2_050402d1_en.pdf

Currently, 56 constitutions protect the right to food either implicitly or explicitly as a justiciable right²², which must be translated into policy. As such, the incentives and protection provided to an investor cannot, at any time, undermine the fundamental human rights of the population. Currently, 160 states have ratified the International Covenant on Economic Social and Cultural Rights (ICESCR) that recognizes the right to food and other human rights without which the human being is not able to have an adequate standard of living. While States should continue strengthening the national legislation applicable to agricultural investments, legal safeguards related to human rights should be taken into account during the negotiation and the signature phases of an investment contract. These safeguards should also be explicitly mentioned within investment agreements since they will determine the limitations and boundaries of actions by investors and States.

Conclusion

Approximately 75% of the food insecure live in rural areas²³. As confirmed in the recent food crisis, in most cases hunger is not the result of insufficient food production but rather a question of unequal conditions for accessing food. Currently, an important number of the world's hungry base their livelihoods on access to land and other natural resources²⁴. Awareness of these realities is the starting point for defining priorities in public policies and orienting the governance of land tenure towards the realization of the right to food. From a human rights-based approach, investment is not an end but a means towards the eradication of hunger. The real challenge that now confronts us is that of identifying types of investments which can be administered at the right time, in the right place, with the right partners, and most importantly - doing this in a participatory manner which gives priority to the demands of the most vulnerable people.

22 Knuth, L & M. Vidar. 2011. *Constitutional and legal protection of the right to food around the world*. FAO. Rome. (This reference also applies to the number of 51 countries mentioned before).

23 FAO. 2005. *The State of Food Insecurity in the World*, p. 5.

24 See *Land access and rural development: new challenges, new opportunities*, 9th Brussels Development Briefing. 2009.



This product was developed in the context of the project "Coherent Food Security Responses: Incorporating Right to Food into Global and Regional Food Security Initiatives" funded by Spain.

www.fao.org/righttofood/governance_en.htm

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