

LARGE-SCALE LAND ACQUISITIONS AND LEASES – THE RIGHT TO FOOD VERSUS THE RIGHT TO DEVELOPMENT



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The global rush for land created a situation where under the pretext of the right to food for the increasing world population, the right to development for rural and poor people is threatened to become the puppet of global trade interests.

The fight for land is not a new phenomenon but has recently reached a new dimension. Recently, countless reports of human rights violations in the course of large-scale acquisition of farmland in Africa, Latin America, and Central- and Southeast Asia have been reported making the phenomenon of the so called 'Land Grabbing'¹ a global political issue. This article aims to shed light on the development and the consequences of 'Land Grabbing' for development and human rights.

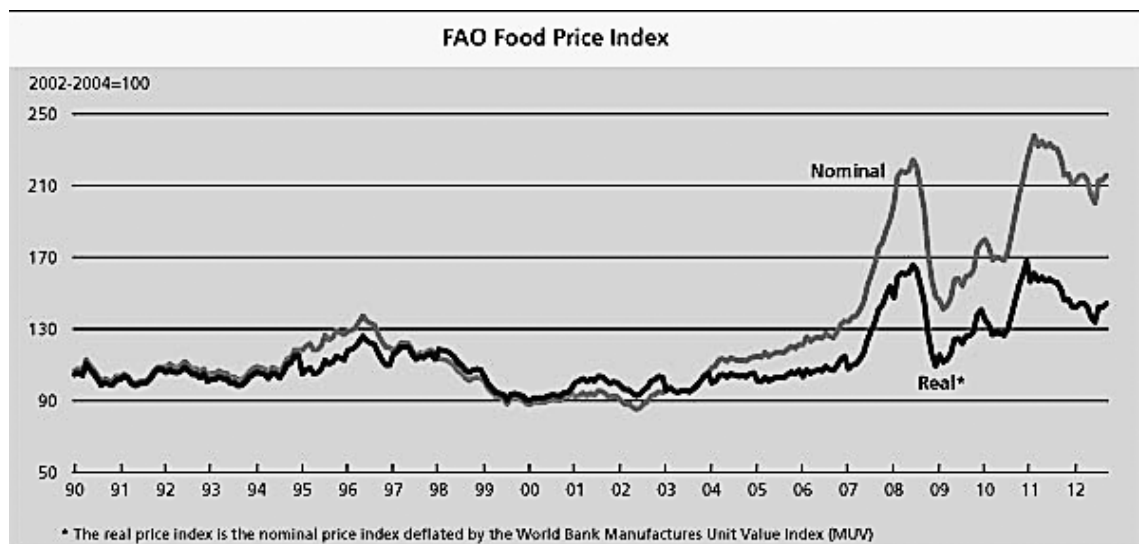
In most developing countries land conflict was and is intrinsically tied to social dispute, as it is in the Philippines. (cf. Tjepmar, Trötzer; Keienburg this issue) In the course of urbanization² and increasing diversification of national economies one might suggest a decline

in the conflict potential for land. Instead, the interest for investment in agricultural land of private, semi-public and state companies increased globally because of two³ main reasons:

First, the rising demand for food and fodder combined with an on-going speculation in global food commodity markets are leading to a dramatic rise in global food prices. Since 2007 the food prices frequently have reached a critical level as shown by the Food Price Index⁴ of the Food and Agriculture Organisation of the United Nations (FAO) (see diagram 1).

Secondly, the rising demand for energy and the use of biomass for industrial and energy production is an important reason for competing

Diagram 1: Development of the monthly food price in US\$ 1990 – 2012. Source: www.fao.org/worldfoodsituation/en/



1) The judgmental 'Land Grabbing' describes the ruthless grab of agricultural land and other natural resources including water, by foreign or national investors.
2) In the case of the Philippines, no more than 12 percent of the Philippine gross domestic product (GDP) is produced by the agricultural sector, 40 percent of the population depends on it, under it 75 percent of the poor.

3) Further reasons could also be expected profits in consequence of uncertainties in agricultural production due to limited access to water and arable land, bottlenecks in storage and distribution, increasing urbanisation rates, as well as climatic circumstances like droughts. Furthermore land can be seen as alternative investment in the result of the financial crisis.

4) The FAO Food Price Index measures the monthly change in international prices of a basket of food commodities in US\$ (<http://www.fao.org/worldfoodsituation/wfs-home/foodpricesindex/en/>).

land and crop use and is responsible for rising food prices (cf. Ajanovic 2010). Government consumption targets and financial incentives (like in the European Union) caused demand for land continues to increase. The impact of biofuel expansion on food security is much-debated.

Foreign direct investment and large-scale land acquisition become a real problem.

Although it is generally accepted that increased agricultural investment is needed in order to reduce hunger and poverty, the new rush for land has not yet shown positive effects. Instead, various non-governmental but also governmental organisations (cf. BMZ 2012) have expressed their concern that, without further regulations the current rush will even threaten the livelihoods and other basic human rights of those whose families have used the acquired land for centuries.

'FDI [Foreign direct investment] in land by a foreign company or state is based on a lasting interest in taking control over land use rights. The transaction includes either rights of land-use or land-ownership.' (GTZ 2009: 9) In most developing countries like the Philippines foreign investors are not allowed to acquire property, but leasing agreements for terms up to 99 years produce similar results. (cf. Cotula et al. 2009: 8)

Moreover, the phenomenon is not limited to foreign investors but also includes local and national elites. The relevance of the global phenomenon has been pointed out by the world's

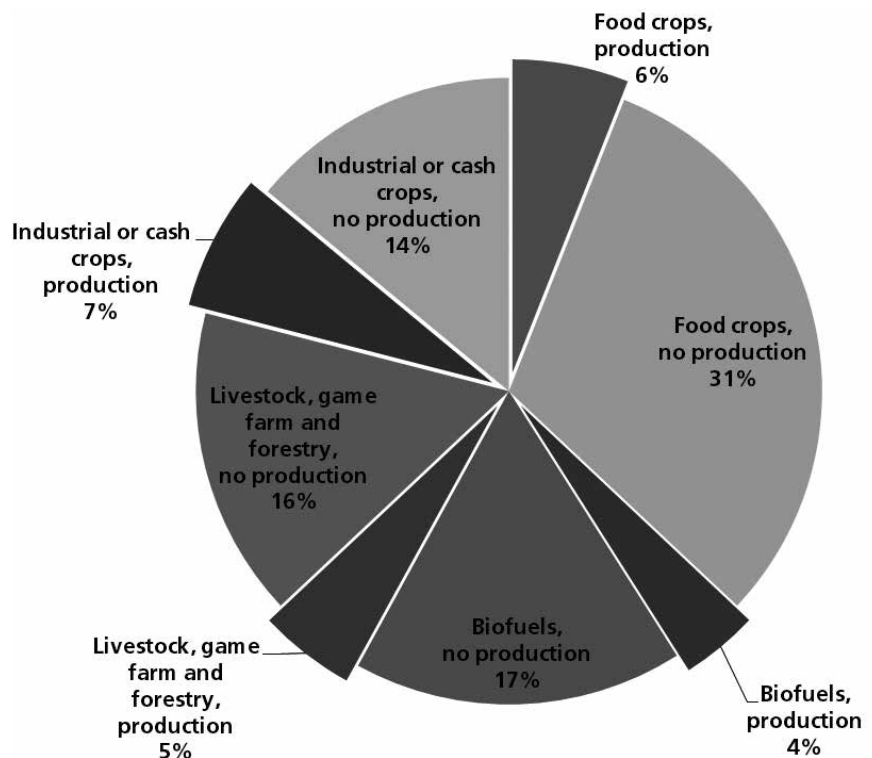


Diagramm 2: Commodity and production status of large-scale land acquisitions worldwide. Source: Deininger/Byerlee 2011: 53.

largest public database of the 'Land-Matrix Project'⁵ – currently listing 924 reported large national and international land deals worldwide covering a total area of 48.8 Mio. hectares of land.⁶ 'In many cases, national investors, domestic elites or companies in the developing countries are involved in land acquisition [...] to acquire land for their own purposes.' (GIZ 2012:1)

The Right to Food. But to whom?

In order to guarantee national food security investors from countries with bounded agricultural land (Japan, South Korea), with high population pressure (China, Singapore) or extreme water shortage (Saudi Arabia, United Arab Emirates) tend to out-

source their agricultural production to third party countries. As the findings of Land Matrix clearly show, most of the acquired land lies in the Global South.⁷

In anticipation of surging prices for agricultural land, land increasingly became an object of speculation. As diagram 2 shows, only a small fraction of the area concerned is cultivated. The percentage of areas actually cultivated with food crops (6 percent) and livestock (5 percent) are quite limited.⁸ As an investment property large areas lie fallow. This situation neither leads to impetuses in development through knowledge transfer stimulating local consumption etc., nor will it create positive effects on security anywhere.⁹ ■

5) The open source Project is a partnership between the International Land Coalition (ILC), Centre de Coopération Internationale en Recherche Agronomique pour le Développement (CIRAD), Centre for Development and Environment (CDE), German Institute for Global and Area Studies (GIGA) and Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) (www.landportal.info/landmatrix).

6) These data are reported deals since they cover 200 ha or more and since a conversion of land use has taken place. The availability of reliable data as well as the examination is a long process. Nevertheless, they show the relevance of the worldwide rush on land. Recently, the Land Matrix only lists 7 (crosschecked) deals with an overall area of 1.1 Mio. hectares of land in the Philippines, far less than the number of actual land deals. Report land deals to reportlanddeal@landportal.info.

7) 46 percent of reported land deals in Asia, 35 percent in Africa, 14 percent in America, 4 percent in Europe, and 1 percent in Oceania.

8) According to the findings of the Land Matrix 21 percent of the land deals suppose to be cultivated with Jatropha, 10 percent are for palm oil, 6 percent for sugar, 6 percent corn, 2 percent rice, and in 55 percent the usage is unknown.

9) Anticipated spill-over effects for the local development among other things remain due to cases of non-compliance to investment in local infrastructure.



© IPON | Even though small farmers recently were identified as important development partners in third world countries the massive sell-off of farmland to huge companies continues.

What is the legal basis at international level?

Under international law, the Right to Adequate Food is outlined within the General Declaration of Human Rights but also within the International Covenant on Economic, Social and Cultural Rights (Art. 11, ICESCR) – currently ratified by 151 states. Due to its historical context of the Cold War, the ICESCR-rights were not considered as enforceable rights but as objectives to be attained.

In 2004, the 187 member states of FAO unanimously adopted the Voluntary Right to Food Guideline (FAO 2004). Even though it is a soft law¹⁰ instrument, this guideline strengthened the Right to Food but also the interpretation of ICESCR-rights in general. It includes exact descriptions of the necessary general conditions and requirements to be met by government policies. Since 2008, with the optional protocol for individual complaints and inquiry procedure, the progress of suability for ICESCR-rights is in flux.¹¹

10) In contrast to binding covenants, soft law is the term for non-binding guidelines, declarations, etc. Its absence of accountability is usually compensated by its flexibility in achieving policy objectives.

11) As of now, in one out of three individual cases at the Inter-American Court of Human Rights, the land was given back to the indigenous group in Paraguay.

In spring 2012, the FAO adopted the Voluntary Guidelines on Responsible Land Use (FAO 2012). In addition to emphasizing the state's duty to guarantee access to nutrition relevant resources, the guideline stresses the rights of marginalized groups like indigenous people. The state is obliged to insure inclusiveness and transparency of investments while including all stakeholders in decision making processes in a free, prior and informed consent (FPIC) (cf. Keienburg this issue) way. Group-rights or the so-called 'third dimension on human rights' thereby seem to become more and more important in international law.

How international governance mechanism can be used to assess investment in land

Due to differing concepts of land ownership (individual, state, communal, traditional and informal), on a human rights perspective the problem of 'Land Grabbing' is extremely complex (cf. Schonecke/Kurzke-Maasmeier 2009: 3).

Under which conditions 'Land Grabbing' can be considered as human rights abuse/violation? In most cases, large-scale land acquisitions are not illegal according to positive law¹².

In specific cases like forced evictions, in the absence of a just compensation to clearly identified land holder shortcomings in human rights are obvious.

But in most of the cases, the lack of legal certainty regarding (overlapping) land rights leads to a situation where the informal and participation rights of small farmers and other members of the local community are ignored. This can lead to devastating effects on their food security and overall well-being. Aggravating this situation, in many cases the decisions of poor farmers to leave their land is not free. Resettlements to urban areas destroy the local community and social cohesion.

Besides proactive efforts by the international community, the target country's government still has a key role to play in order to guarantee the rights of potentially affected groups and to insure food security.

'Although on paper some countries have progressive laws and procedures that seek to increase local voice and benefit, big gaps between theory and practice, between statute books and reality on the ground result in major

costs being internalised by local people – but also in difficulties for investor companies.' (Cotula et al. 2009: 7) This general statement is also characteristic for the overall situation in the Philippines as it is shown in this issue. ■

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12) In contrast to natural law, positive law is man-made law, regardless general feeling amongst the population about what is fair or just.

NEWSTICKER +++

In October 2011 the leasing contract on Hacienda Carmenchica in Pontevedra expired. Soon after, the human rights defenders (HRDs) decided to cultivate their land independently. Since then they have faced repressions and human rights abuses by the former landowner and his employees as well as human rights violations by responsible state actors.

- + 13.11.11 – destruction of nipa huts, warn shots are fired
- + 26.11.11 – 9 hectares of land are plowed, warn shots are fired again, chicanes and physical threats, present police doesn't intervene
- + 27.11.11 – police refuses to accept blotter (complaint)
- + 28.11.11 – attempt to destroy nipa huts, present police remains inactive
- + 17.02.12 – destructions of HRDs properties
- + 17.02.12 – since then, HRDs have not entered their fields because they are intimidated
- + 01.10.12 - fields of HRDs are harvested in the presence of private security guards
- + 03.10.12 – presence of more than a dozen security guards during night in front of houses of the HRDs, HRDs are afraid
- + 09.10.12 – verbal threats increase feeling of insecurity
- + 11.10.12 – tense situation caused by the presence of security guards

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