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## *Going public to improve investment in agriculture*

**Carin Smaller**

The public began to hunger for information about investment in the agriculture sector when a massive wave of foreign investment in farmland and water was triggered, in 2008, by a confluence of the biofuels boom, global food crisis, sharp spike in oil prices and the financial crisis. Alarming information started to emerge in the media. The Korean company Daewoo was exposed for trying to take over half the arable land of Madagascar, free of charge. An American Wall Street investor was found to have acquired vast tracts of farmland from a notorious Sudanese warlord. The Chinese government negotiated a lease on millions of hectares of land for palm oil plantations in war-stricken Congo. And the Indian company, Karturi Global, secured 300, 000 hectares of land to export food from famine-prone Ethiopia.

Some of the media reports were later found to be unsubstantiated, exaggerated or false, but the sheer scale and consequences of these investments unleashed a major drive to uncover the truth and ensure responsible and sustainable investment in the agriculture sector.

Today, there is a comprehensive body of information confirming the scale and consequences of recent agricultural investments, thanks to the investigative work of journalists, UN agencies, the World Bank, and a vibrant civil society. The World Bank found that reported land deals in 2009 alone, amounted to 45 million hectares. The top targets for investors were countries with weak land governance and often in conflict or post-conflict situations. They include Sudan (4 million hectares), Mozambique (2.7 million hectares), Liberia (1.6 million hectares) and Ethiopia (between 1.3 and 3.6 million hectares).

Despite the information that emerged, governments and foreign investors are still reluctant to be transparent about their investment activities, particularly when it comes to disclosing the details of the contracts. In most cases, the investor-state agreements, also known as host government contracts, remain strictly confidential.

The culture of secrecy that surrounds agricultural land deals raises concerns about government conduct in relation to issues of public interest. The lack of transparency undermines government accountability, and increases the opportunities for corruption and other inappropriate acts. It raises concerns about the right to information (Article 19 of the UN Covenant on Civil and Political Rights). It has potential implications for access to land, water and food for individuals and communities, impacting their human right to an adequate standard of living (the backbone of the UN Covenant on Economic, Social and Cultural Rights, Article 11).

There is a growing global consensus in favor of contract transparency. This year, both the International Bar Association and the UN Special Representative on Business and Human Rights, explicitly called for transparency in contracts. A set of principles for responsible agricultural investment, prepared by the World Bank, FAO, IFAD and UNCTAD, also

call for transparency in accessing land and making investments. The UN Special Rapporteur on the right to food calls for full transparency in land leases and purchases.[4] The NGO, Grain, is making a major contribution to the drive for transparency, by regularly leaking investment contracts on their website. Twenty four contracts are currently available.

Importantly, there are a few governments who have started publishing contracts or improving legislation on transparency. Liberia is leading the way. When President Ellen Johnson Sirleaf came to power in 2006, she initiated a review and renegotiation of all extractive industry concessions and contracts in the country (agriculture, mining, oil and forestry). In 2009, Liberia introduced the Liberia Extractive Industry Transparency Initiative Act (the LEITI Act), which requires all payments by individual companies and operating contracts and licenses to be published and reviewed on the LEITI website. This bold step has not deterred investors.

Ghana started publishing contracts in the oil sector, and countries such as East Timor, Peru and Ethiopia and Ecuador, have started making certain contracts public. A number of countries, for example, Sierra Leone, Ghana and Liberia, require large investment projects to be ratified in parliament, ensuring a layer of public scrutiny.

While certain provisions in contracts can contain sensitive commercial information that may require a level of confidentiality, this can be resolved through restricted confidentiality clauses. It does not justify keeping all information about large-scale agricultural projects outside the public domain. In fact, the scale of these projects and the extensive use of land and water resources, go beyond simple business transactions. They form the basis of the host country's economic and social development strategy, and therefore require public participation and scrutiny. If contracts are made public, there is a much greater chance that the terms of the deals will be more fair and balanced. There is less risk for corruption and bribery, and more likelihood for community support. Ensuring that foreign investment operates within a sound economic, legal and public policy framework is essential. Being open and transparent is a good starting point.

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