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# Foreign investment into agriculture: Investment Treaties and the ability of governments to balance rights and obligations between foreign investors and local communities

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## **Foreign investment into agriculture: Investment Treaties and the ability of governments to balance rights and obligations between foreign investors and local communities.**

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A number of countries are offering large tracts of farmland to foreign investors as demand for arable land soars. These countries are driven by a desire to attract foreign investment in an increasingly important resource, agricultural land. The investors, however, are seeking an even scarcer resource: long term access to water rights. While the host states also hope that the foreign investment will bring greater yield of food produce through better farming techniques both for the domestic and foreign markets, the investors often seek guarantees of low labour and operating costs and the right to repatriate all of the production, a significant portion of which may be for biofuels.

The presentation will share experiences from Pakistan, where spiraling food prices and a desire to promote foreign investment has prompted the government to offer large tracts of land to foreign investors. At the same time, the country's growing population of over 180 million people faces water scarcity, low crop yield and food inflation, raising critical issues on whether this foreign investment in agriculture land and water rights will contribute to development or lead to additional conflict? What happens when the government's ability to balance rights and obligations between foreign investors and local communities is restrained by international law obligations?

The current framework of international investment law aims to protect foreign investors when they operate abroad, including their investments in land and water rights. There are three main regimes impacting foreign investment—domestic laws and regulations, contracts and international investment treaties. This presentation discusses the implications of the investment treaties. Do these treaties allow governments to harness the development benefits from foreign investment in the agricultural land, or do they constrain the ability of governments to regulate this foreign investment to benefit local communities and address food security issues? How do they impact the preservation of the traditional rights of local water users? What happens if water quality is impacted as well as water quantity?

In cases where domestic laws and regulations in the host state are weak or vague, local communities and land users are left with little or no legal protection for their land, water, food and work. By contrast, foreign investors have hard (and often absolute) legal rights under contracts and international investment treaties to fall back on before international arbitral tribunals. For example, when a foreign investor acquires long-term rights to land, aside from acquiring the land tenure, it may also acquire rights to water and other natural resources needed to operationalize its investment. Indeed, this is exactly what many such investors appear to count on. Additionally, investors may acquire the right to export all the production, even when the host country is food insecure, or they may have a so-called 'legitimate expectation' regarding these rights. All such rights are typically protected under investment treaties, and any government action affecting those rights, may be challenged as violations of international law, triggering claims by foreign investors for compensation before international tribunals. Therefore, in some instances, government intervention in case of a food crisis or to otherwise protect the local population, may trigger a violation of often broad protection guarantees in international investment treaties, resulting in the government having to pay compensation to the investor.

There has been a proliferation of international investment treaties over the past few years, especially between countries where land deals are currently taking place. Understanding the legal implications of international investment treaties, and their impact on restraining the ability of governments to manage foreign investment in an important area like agricultural

land and water rights will help governments and communities to take informed decisions in developing an investment strategy that contributes to sustainable development. The presentation will present important lessons from Pakistan in this context, which are likely to be relevant to a number of developing countries considering land deals.