

# Legal Aspects of Investment in Agriculture

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# ILC: Paper on Legal Aspects

- 1st Chapter: Human Rights
- 2nd Chapter: Trade Regime
- 3rd Chapter: Investment Regime

# HRs & Investment in Agricultural Assets

- Human Rights as Fundament: Setting the Stage
- Many human rights may be concerned:
  - Right to food
  - Rights of land users / property rights
  - Rights of indigenous peoples
  - Labour rights of agricultural workers
  - Right to take part in the conduct of public affairs
  - Right to self-determination
  - Right to development

# Right to Food

## Right to Food: Art. 11 ICESCR

-Protect small farmers' access to productive resources

In conjunction with

-right to property

-rights of indigenous people

*Paraguay Case*

*u<sup>b</sup>*

# Legal Instruments

- National Constitution
- Regional Treaties
- International Treaties  
(UN Charter; Covenant on Civil and Political Rights;  
Covenant on Social, Economic and Cultural Rights)

# Enforceability and Remedies

- Social objectives or enforceable rights? Eg. India
- Implementation: Still problematic; despite of many review mechanisms:
  - Judicial State based mechanisms: Nigeria; Nicaragua
  - Non-judicial State based mechanisms
  - Company-level mechanisms
- Remedies: Compensation; Restitution of Damage; Guarantees of Non-Repetition; Stop in Business Operations; Public Apologies etc.

# Judicial Remedies: Limits

*Mainly:*

Forced eviction: Property rights not respected

*In the case of legal acquisition:*

Participation Rights?

Right to Food? Increase in poverty as a consequence of the deal > Reporting mechanisms (‘blaming’)

>> Human Rights Standards as Safety Ring: Strengthening of review mechanisms required

# Extraterritoriality

## Scope of Human Rights: Art 2 ICESCR

- Not only host state, but also home state of investor bears responsibility
- OECD Program „Policy Coherence for Development“
- Duty to negotiate trade and investment agreements that do not hinder, but promote human rights („mutual supportiveness“)



# Trade

Trade Agreement that provides for an enabling environment for responsible investment?

- WTO Agreement on Agriculture
- WTO Preamble: Reference to Sustainable Development
- Dynamics? > Sustainable Impact Assessments required

# Basic Assumptions

1. Investments in agricultural assets in developing countries need to be increased
2. Investments need to be responsible

> Responsible Trade Regime as Precondition

# Basic Assumptions

A responsible trade regime contributes to a prudent development of the agricultural sector

- Inclusion of small scale sector in process towards higher productivity
- Prudent Policy Orientation towards Trade

# Basic Assumptions

## Prudent Policy Orientation

- Engagement in trade: economic growth, less hunger
- Too intensive export orientation: Vulnerability
- Processed goods: Equitable distribution of rents

# Agreement on Agriculture

- The duty to discipline
- The duty to allow for policy space
- The duty to positively shape

# Trade and Investment

Not lose sight of the whole picture

> Investment Regulations? Katja Gehne