

SUSTAINABLE INVESTMENT AND LAND GRABBING

Mirko Camanna
University of Pavia



INDEX



- What is land grabbing
- Land grabbing & sustainable development: conflicting fields
- Land grabbing and International Investment Law
 - Main concerns
 - Potential advantages
 - How to solve the conflict? Potential solutions using IIAs
- Conclusions

WHAT IS LAND GRABBING

WHAT

- Large-scale investments in land
- By foreign investors

Tirana Declaration (International Land Coalition):

acquisitions or concessions that are one or more of the following:

- (i) in violation of human rights, particularly the equal rights of women;*
- (ii) not based on free, prior and informed consent of the affected land-users;*
- (iii) not based on a thorough assessment, or are in disregard of social, economic and environmental impacts, including the way they are gendered;*
- (iv) not based on transparent contracts that specify clear and binding commitments about activities, employment and benefits sharing, and;*
- (v) not based on effective democratic planning, independent oversight and meaningful participation.*



WHEN

- Colonialism
- Reduction in post-colonial phase
- Increasing after food crisis in 2007/2008 and still growing



WHERE

- Mainly in developing States



HOW

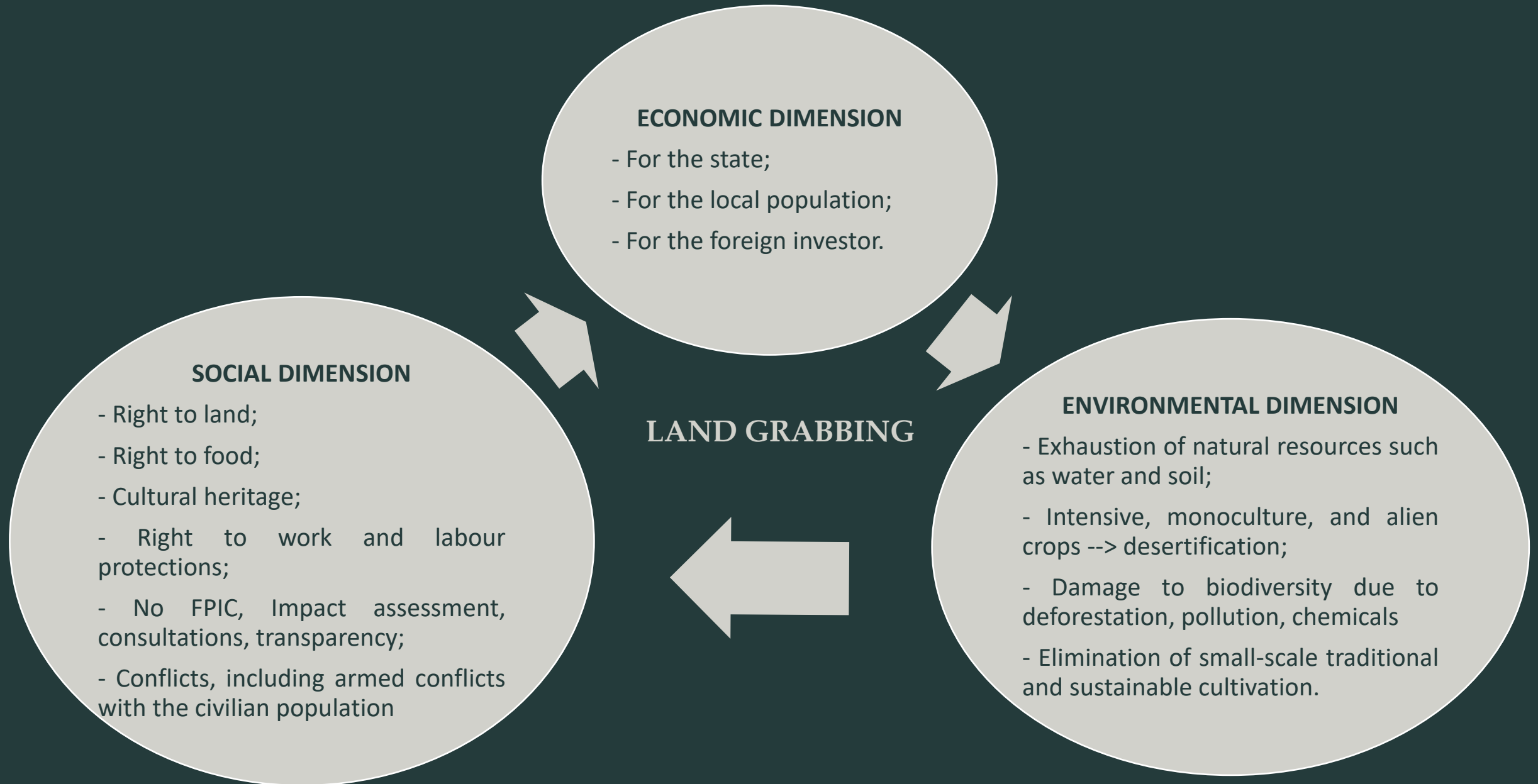
- Contracts between States and investors (land deals)

WHAT IS LAND GRABBING

WHY

- Growing demand for food, energy and raw materials.
- Expanding global food chain.
- Consequence of liberalisation, global trade and globalisation.
- Development opportunity for the host state, its economy and population.
- Structural adjustments required by international economic institutions.

LAND GRABBING & SUSTAINABLE DEVELOPMENT: CONFLICTING FIELDS



LAND GRABBING & INTERNATIONAL INVESTMENT LAW

Main sources of land acquisitions:

- Contracts between states and companies (land deals)
- International Investment Agreements (IIAs)
- National law
- Other sources of international law (hard and soft law)

LAND GRABBING & INTERNATIONAL INVESTMENT LAW

IIIL is investor-oriented → protection for farmland and land investors, even in case of land grabbing

- General agreements, not specific for land concerns;
- Prohibition of performance requirement;
- Stabilization and freezing clauses;
- Public policies such as expropriations or denials of concessions/renewals for activities responsible for land grabbing or human rights and environmental problems → Foreign investors invoke IIAs (FET, expropriations...);
- No exceptions or limits to IIAs standard of protection;
- Lack of transparency and public participation;
- Complicity and irresponsibility of Host States;
- Chilling effect and interferences in public policies.

LAND GRABBING & INTERNATIONAL INVESTMENT LAW

- Growing number of ISDS regarding farmland investors:
 - At least 52 cases, among decided and pending;
 - Specific cases related to land grabbing;
 - Potential growing: high number of failures, public policies related to environment and HR;
 - Examples of fossil fuels and mining sectors.

EcoDevelopment in Europe AB and EcoEnergy Africa AB v.

United Republic of Tanzania, ICSID Case No. ARB/17/33

- Sugar company, Agro EcoEnergy was given a 99 year lease to 20 thousand hectares of land;
- Land already in use by small-scale farmers and cattle herders. The first phase of the project would have meant 300 people lost their homes, while another 1000 lost land.
- EcoEnergy offered compensation but --> no FPIC, no agreement.
- EcoEnergy made promises of jobs but --> small number of jobs, many of the jobs were as 'outgrowers', which obliges small-scale farmers to take on huge debts.
- In 2016, the Tanzanian government revoked the land title.
- NOTE: not on the grounds of the land grab but because of the potential impacts on water sources for wildlife in a neighbouring national park.
- EcoEnergy sued Tanzania to ISDS for cancelling its land lease.
- Different points, but in particular: 'failure to provide land free of encumbrances'. The land was not empty because of the rights the people living there have over the land.
- **Decided in favor of EcoEnergy**



LAND GRABBING & INTERNATIONAL INVESTMENT LAW

Potential advantages of IIL:

From investor-oriented IIL to sustainable development – oriented IIL

- Regulate, select and target investments in a way that promotes economic and social development.
- Exclude investments that are not in line with sustainable development objectives.
- Ensure sustainable investor protection.
- Achieve the developmental needs of host countries

Potential solutions

- **Obligations to foreign investors**
 - Reducing limits to performance requirements;
 - Imposing CSR, due diligence;
 - Impact assessment clause (social and environmental);
- **Sanctions/exclusion of protection for investors who commit land grabbing**
 - E.g. denial of protection or annulment of land deals
- **Limits to IIAs protections**
 - Exceptions and carve-out, right to regulate clauses, interpretative instruments as preamble
- **Introducing references to soft law or other instruments**
 - FAO Guidelines, 2014 Committee on World Food Security Principles for Responsible Investment in Agriculture and Food Systems, Paris Agreement...

CONCLUSIONS

- Land grabbing is currently an obstacle and problem for sustainable development.
- International investment law currently seems to favor, rather than hinder, forms of land grabbing that are detrimental to the environment and human rights.
- There are several potential reforms that could make international investment law more in line with sustainable development and prevent/punish land grabbing.
- International investment law, in any case, is neither the sole source of the problem nor the solution that could resolve it on its own.
- Solutions also involve the use of other tools and parts of international law, as well as cooperation in development and support for states and businesses.

**THANK YOU FOR THE
ATTENTION**

