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LAND GRABBING UNDER THE COVER OF LAW

ARE *BRICS*-SOUTH RELATIONSHIPS ANY DIFFERENT?

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Land grabbing under the cover of law:
Challenges and Opportunities for South Africa and Africa

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Abstract

BRICS have been heralded as the representatives and interpreters of the long-standing aspirations of the South in global affairs, the five paladins defending the wretched of the earth against Western hegemony. A look at BRICS' investors involvement in the current "global land grabbing", perhaps more than any other issue, belies that myth. This chapter explores how four of the BRICS' governments (Brazil, India, China and South Africa) are following the pattern traditionally adopted by Northern countries of enclosing and exploiting land, both nationally and abroad, to benefit capital and global agro-industrialisation. It also reveals how they are using law and diplomacy in order to facilitate access to foreign land, and foster their own economic interests.

INTRODUCTION

There is a general consensus among academics, politicians and social movements, that BRICS as 'new donors' are increasing both their quantitative and qualitative role in defining what is considered to be 'the world economic order'.[1] In particular, several authors have underlined the importance of BRICS as a challenge to the traditional development paradigm, describing the five countries as proponents of a South-South cooperation which weakens the so-called Washington Consensus [2] because it does not attach policy conditionalities, provides assistance based on a win-win paradigm, and places emphasis on how to ensure economic sustainability of the recipient country. Moreover, such rhetoric is not only produced by academics or international financial institutions,[3] but fostered and reinforced by BRICS themselves. For example, while China especially stresses the need to respect the sovereignty of the receiving country, all the BRICS are trying to create an identity which differs from that of established donors, and claim to promote alternative strategies based on equality, solidarity, mutual development and cooperation.[4] These differences from traditional Northern donors, it is assumed, contribute to more effective cooperation and to a better reception by local populations.

This chapter does not challenge the idea that some differences exist between the way in which Northern donors and BRICS conceive receiving countries' sovereignty and their independence where official development assistance (ODA) is at stake. Rather, it focuses on large-scale investments in foreign land (LaSIL) and concludes that, when access to this scarce resource is at stake, the legal mechanisms, rhetorical approaches and geostrategic positions of the BRICS (with the exception of Russia) toward the South replicate the traditional strategy of Northern countries more than the general narrative about emerging donors may suggest.[5]

Leaving aside the political, economic and social importance that the large-scale industrialisation of agriculture plays in transforming each of the BRICS, this chapter focuses exclusively on the 'global land rush', that is, the attempt to control and exploit land abroad.

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FOREIGN DIRECT INVESTMENTS IN LAND AS LAND GRABBING

The enclosure and private appropriation of large tracts of land, a phenomenon that already Karl Marx called 'land grabbing' in 1867,[6] does not represent anything new in human history.[7] It has been central to the construction of the world economic order as we know it, starting from the industrial revolution and European colonisation, to the conquest of the 'Far West' by North American settlers. However, the current 'global land rush' is characterised by some specific features which make it unique and, if possible, more problematic. It is happening at an unprecedented speed, produced by cumulative local and global forces, and facilitated by a global legal architecture which favours the mobility of capital and goods against the immobility of sovereign states and people (and, of course, land itself). The 'global land rush' has a significant impact on the access to—and use of—land and water, which are increasingly scarce resources; furthermore, is happening in a world inhabited by more than seven billion people, the majority of whose food security is everyday more at risk. The present 'land rush' is almost never the consequence of wars or the occupation of unexplored land beyond the borders of "civilisation", but is taking place within the boundaries of an international legal framework densely occupied by sovereign nation states, international law and diplomacy.

Nevertheless, even though land grabbing is happening on a global scale, it is firmly rooted in local realities. It is these local realities that have to be considered if we want to determine whether BRICS are, or are not, acting any differently from the historical colonisers and the countries of the North. [8]

It is important, first, to clarify the term 'land grabbing', because this notion has been utilised in various ways to define different phenomena, more or less narrowly, and according to the political objectives of the authors. This paper adopts the broad conception of 'land grabbing' recently proposed by Franco et al., according to whom:

> The global land grab is therefore an epitome of an ongoing and accelerating change in the meaning and use of the land and its associated resources (like water) from small-scale, labour-intensive uses like peasant farming for household consumption and local markets, toward large-scale, capital-intensive, resource-depleting uses such as industrial monocultures, raw material extraction, and large-scale hydropower generation—integrated into a growing infrastructure that link extractive frontiers to metropolitan areas and foreign markets.[9]

This interpretation has the merit of going beyond the narrow idea of 'grabbing' as the illegal seizure of customary land, and instead focusing on the concentration of control over scarce resources *and* underlining the social, economic and political aspects linked to a radical shift in the means of production, and in the way in which land is managed.[10] This definition enables an interpretation of the 'global land rush' through the prism of a new global transformation. This signifies the passage from one socio-economic structure—small-scale farming characterised by a certain state-market-community relationship—to another structure—industrialised production, where the state utilises its authority to redefine the relationship between market and community.

However, the broad definition is counterbalanced by a narrower focus. Rather than considering all the social transformations that are taking place within and outside the BRICS by means of large-scale land projects, I refer only to those cases where BRICS and their 'national' investors are active in the 'foreignisation'[11] of land located outside of their national territory. Despite the fact that 'land grabbing' and 'foreignisation' are often considered two sides of the same coin, land grabbing is not only a matter of foreign 'land thieves', but can also conducted by national investors and elites, who in many cases are facilitated by their own nation states in the implementation of large-scale projects (agricultural, industrial, touristic, real estate expansion, etc.).[12] The BRICS are not exempt. Indeed, the Indian,[13] Brazilian[14] and Russian[15] governments seem to be particularly involved in this process of sustaining internal accumulation of land and other resources, a circumstance that van Apeldoorn et al. define as the first step of the construction of the capitalist state.[16]

The exclusive focus on the 'foreignisation'' aspect of land grabbing however enables us to explore whether BRICS provides an alternative to the traditional Northern way of exploiting the South, and to engage with the growing academic discussion of the transformation of the global economic world from bipolarity/uni-polarity to a more complex and challenging multipolarity.[17]

Even so, it is not easy to have reliable data on the extent and dynamics of global land grabbing. For this reason, this analysis cannot provide a detailed mapping of the BRICS investments abroad, nor arrive at an incontestable truth. However, a mixture of different sources does show some patterns for BRICS investors, and provides the quantitative background for the legal analysis.

A June 2011 study by the International Land Coalition suggested that land grabbing involved around 80 million hectares, 64 per cent of which are located in Africa,[18] whereas figures released later that year by the same organisation refers to more than 220 million hectares—that is, eight times the size of Britain, or the entire northwest Europe.[19] According to the most recent data collected by the Land Matrix Initiative and elaborated by Anseuuw et al.,[20] 83.2 million of hectares of land in developing countries have been targeted by investors, 56.2 million of which are located in Africa, 17.7 million in Asia and 7 million in Latin America.[21]

Despite the methodological problems highlighted by some authors,[22] in order to analyse the role and relevance of BRICS investors in the 'global land grab' this paper mainly relies on the data gathered by the Land Matrix Initiative (LMI), integrated with other available sources such as the Grain dataset, and relates these deals with existing investment agreements that are publicly available. Looking at where foreign investments in land originate, the *lack* of a central driving region is striking. Although the data produced by the LMI and other studies point to the United States and the United Kingdom as the two main sources of land-related FDI, the big picture includes actors who assume different forms (public, private and mixed) and are geographically located in the North, in the Gulf States, in emerging economies—including BRICS—and, in some cases, from other Southern countries. On average, investors' countries have a GDP per capita four times higher than target countries, and this difference is even higher when we exclude countries that are both the origin and target of investment flows.[23]

The data shows that BRICS investors play an increasing role in accessing land located outside of the national territory of their home country, representing an alternative to the traditional core-peripheries relation-ship, but also something new compared to the earlier discussions on land grabbing which were focused on the role of the Gulf States.[24] It is possible to identify zones of interest for each country, with a predilection toward neighbouring countries (especially in the case of Brazil, South Africa and China) and areas of the African continent with geographical proximity, regional market integration, or cultural connections. The facility to conduct business, rather than the need for investment of the target countries, appear therefore as a crucial factor underlying the current flow of South-South investments.

As demonstrated by Table 1, the current investment dynamics are characterised by a high level of regional-ism. For example, Indian investors seem to be particularly active in Indonesia, Malaysia and in east Africa (especially Ethiopia and Kenya), while Brazilian operations (according to the LMI) appear exclusively located in east Africa. Interestingly, South African investments are moving all over the continent, not only beyond the borders to Mozambique, Zambia,[25] Zimbabwe[26] and Swaziland,[27] but also farther away to the Democratic Republic of Congo (DRC),[28] Angola, Benin, Congo[29] and Ethiopia.[30] These investments reinforce the idea that South Africa is the doorway to Africa for the rest of the BRICS.

Finally, China appears the most active investor in quantitative terms, with more than five million hectares of land acquired in various continents. In particular, data shows that Chinese capital has a stronger pres-ence in Southern Asia,[31] Oceania and South America, although it also has a strong presence in Africa.[32]

While China and India clearly emerge as the main 'grabbers', if these data are integrated with information provided by other sources, and in particular with local case studies, the picture appears more complex.

In particular, several authors have underlined the increasing presence of Brazilian investors in neighbouring countries and Southern Africa,[33] a circumstance which is not evident from the LMI because the agreements have not been concluded yet, or because the investments have been channeled through third countries. For example, the LMI does not consider the conclusion in 2009 of an agreement with Japan to develop a ten-million-hectare agricultural project in Mozambique,[34] nor the several visits that President Lula has paid to Africa, both as President and more recently as Director of the *Instituto Lula*, to promote democracy, social inclusion and economic development. If continental and intercontinental data are taken into account, and the outlook moved from the present to the next decade, one could conclude that Brazil is leading the pack when it comes to land grabbing.[35]

While conscious of the risk of gross generalisation, and of the need of further empirical studies, we could nevertheless conclude that investors from BRICS countries have already obtained access, via lease or purchase, to millions of hectares located in other Southern countries, directly competing with Northern and Gulf countries for the land and water resources which sustain millions of local communities (to say nothing of the environmental equilibrium and biodiversity).

Table 1: Brazil, India, China and South Africa's Land Grabbing According to the Land Matrix Initiative

Country and Total Land (ha)	Regional Areas and Total Land (ha)	Target Countries
Brazil 28,000	East Africa 28,000 [36]	Mozambique, Ethiopia
India 1,924,509	Central Africa: 15,000 East Africa: 1,761,800 North Africa: 8,020 South East Asia: 139,689	Cambodia, Indonesia, Lao, Philippines, India, Cameroon, Ethiopia, Madagascar, Mozambique, Sudan
China 1,139,282	Central Africa: 10,000 East Africa: 126,171 South America: 348,972 South-East Asia: 628,139 West Africa: 26,000	Cambodia, China, Sudan, Lao, Philippines, India, Bolivia, Peru, Argentina, Benin, Cameroon, Ethiopia, Mali, Democratic Republic of Congo (DRC), Uganda, Zimbabwe[37]
South Africa 1,412,968	Central Africa 340,000 East Africa: 367,174 South America 55,794 West Africa 650,000	Colombia; Angola; Benin; Ethiopia, DRC, Mozambique; Madagascar.

Source: Land Matrix Initiative, www.landmatrix.org/en/

LEGALLY ENHANCED LAND GRABBING: NATIONAL LAW AS A SOURCE OF INCENTIVES

In analysing how large-scale land investments are carried out, a great deal of focus is usually given to the final grabbers: TNCs or corporations are accused of exclusively thinking about their economic interests, and recipient governments are attacked for facilitating the enclosure of their land. Much less attention is paid to the role of source countries—that is, the governments of those countries whose investors look for land abroad—despite their crucial intervention in supporting the internationalisation of their national capital, and the occupation of territory by large-scale projects,[38] Similarly, the current debate around land grabbing is disturbingly lacking appropriate reflection around the role of national and international legal tools in this process.[39] Of course an exclusive focus on source countries does run several risks, including that of identifying capital as originating from one specific country, and falling into what John Agnew defined as the 'territorial trap',[40] to "conflate the grabbers with their countries of origin",[41] or to overlook the complexity of the 'global land grab' as a combination of domestic and foreign capital of distinct origins.[42] Nevertheless, it is clear that the BRICS have taken specific measures in both national law and international legal tools to facilitate large-scale investments abroad.

To better understand the external impact of national law, it is useful to make reference to a recent paper by Dan Danielsen, who explores the "growing significance and 'beyond-borders' implications that 'local rules'—such as Chinese labour law, US financial regulation and Swiss bank secrecy rules—can generate within a system of global economy."[43] According to Danielsen, rather than continuously looking at globalisation as an exogenous phenomenon that cannot be enhanced or curbed by the nation state on its own, we should realise the relevance of individual legal interventions in reproducing the global system, as in the case of land grabbing, and their potential in preventing its further consolidation. Thus, understanding the effects that national law can produce outside the traditional borders of the state, Danielsen claims, can help us to develop new and more complex notions of economic participation, political pluralism and distributive justice in the creation and operation of the national and the international rules that comprise the global economic regulatory order.[44]

Danielsen's argument, which largely focused on the 'positive' spillover effect that can be triggered by changes in national legislation, can be inverted and utilised to look at the 'negative' effects that national legislation can generate beyond the territorial limits of the state. From this perspective, China, India and South Africa appear to have adopted legal reforms that favour the delocalisation of food and energy production outside their borders.[45] More interestingly, Brazil has functionally changed its legislative autonomy in order to limit the access to Brazilian land by foreign investors while using diplomacy to sustain the internationalisation of its 'national capital'.[46]

Looking more closely at the first three countries, the Indian example emerges as the most relevant. In 2010, the Indian Government instituted a working group on agricultural production chaired by the chief minister of the state of Haryana, B. S. Hooda. The working group's goal was to look at ways of boosting agricultural production in India. In accomplishing its task, the Hooda Committee (as it was renamed) proposed a series of recommendations, among which number 33 affirms that, like many other countries who have "shopped for land abroad for growing crops to meet consumption needs(…)We should seriously consider these options for at least two million tonnes of pulses and 5 million tonnes of edible oil for 15-20 years."[47] Thus, several countries were listed as possible targets for Indian investments in land, including Argentina, Myanmar/Burma and other ASEAN countries. However, Table 1 above demonstrates that Indian companies have been targeting several other countries, and especially Ethiopia, to produce pulses and edible oils as recommended by the committee.

Observing the legislative reforms adopted by the Indian Government in recent years, it could be concluded that it has closely followed the recommendations of the Hooda Committee, mainly by issuing a series of legal initiatives that facilitate Indian agricultural companies in their overseas investments in Africa and elsewhere. These include support for conventional greenfield foreign direct investments, the purchase of existing firms, the facilitation of public-private partnerships (PPPs), specific tariff reductions on agricultural goods imported to India[48], and preferred lines of credit (LoC) to partner governments and financial institutions through the Indian Export Import Bank (Exim Bank).[49] The government's intention is to support alternatives to the direct public investments in foreign farmland, so as to avoid being considered neocolonialist. Rather, it is trying to obtain the same objective by facilitating private land deals, as long as "the private players show interest in this."[50] Thus, the Indian case perfectly exposes the central role played by source countries in the current 'global land rush': Rather than being a passive observer, the government has actively used its institutions and legislation to create incentives to private actors and reduce their commercial risks, two crucial actions which intensify the outflow of capital and the inflow of the agricultural production, rather than its placement on the global market.

In the case of China, the pollution of soil and water from factories, and the increased need for food and meat are crucial factors driving the government's search for productive land abroad. However, as Lorenzo Cotula recently noted, the peculiarity of China's system is that the boundary between "state" and "non-state" enterprises is extremely fuzzy, so that it is difficult—if not impossible—to assess the specific roles of capital and state in accessing land abroad.[51] In addition to that, the Chinese government has been strategically using its over-accumulated reserves of foreign currency in order to provide loans and finance large-scale infrastructural investments throughout the South—creating interesting opportunities for Chinese construction enterprises—while improving diplomatic ties. China's 'going out' strategy has seen companies such as COFCO (China National Cereals, Oils and Foodstuffs Corporation) acquiring concession rights in Latin America, southeast Asia and Africa, and starting new agricultural projects to produce food and cash crops.[52] In all these cases, Cotula underlines that the senior staff members are appointed by the state, and the CEOs also have ministerial-level rank. Differently from India, the Chinese government is thus not only sustaining the individual decision of "going global" by providing access to "special credit lines, tax breaks, and possibly favourable interpretation of regulations and priority in allocation of key contracts,"[53] but is also defining the strategy and selecting the target—whether countries or foreign corporations—for their investments.[54]

Another interesting aspect concerns the aggressive Chinese strategy when it comes to taking over existing agricultural and livestock operations, and in particular acquiring food-producing firms and activities located throughout the globe (including the United States). Even if the shift in the ownership of the company does not raise particular concerns in terms of land grabbing (mainly because it does not determine an expansion of the industrialised area, or the transformation from previous small-scale farming), the creation of a series of vertically integrated global production networks[55] under Chinese control could certainly infringe on local food security and reduce the possibility of target states adopting protectionist policies. As discussed below, the foreign ownership of an investment automatically determines the application of Bilateral Investment Treaties (BITs) and of the stronger protection of property rights that they introduce. Certainly, the merger and acquisitions strategy adopted by Chinese firms and funds has triggered different social and legal reactions. For example, the concerns raised in Australia[56] and Argentina[57] do not seem to have emerged in the United States, where control of Smithfield, the biggest USA producer, passed to the China-based Shuanghui International Holdings Ltd. in September 2013.[58]

Shifting to South Africa, the role of the government in sustaining investments in land abroad seems equally relevant, despite the fact that the South African executive has not released official statements to support the expansion of South African farming abroad. However, economic support is not missing. For example, the Minister of Agriculture, Forestry and Fisheries, Tina Joemat-Pettersson, announced in 2010 a fund of six billion South African Rand (ZAR)—about $680 million—to support South African farmers, half of which would be spent on projects beyond South Africa's borders.[59] Moreover, despite the rising concerns about the negative impact of land grabbing, both in South Africa and abroad, the South African state has proposed no legal intervention to require a stronger and more effective respect of international human rights and environmental law by national investors undertaking projects abroad. The African solidarity which is claimed to be the basis of the relationship between South Africa and its neighbours, appears particularly weak when the time comes to support national investments and profit generation.

Brazil's approach toward large-scale investments in land is very strategic, not to say hypocritical. As discussed elsewhere,[60] on the one hand, for almost a year Congress has been debating the introduction of new legislation to prohibit foreign ownership of Brazilian land: pressure against foreign capital has resulted in a change in the General Attorney Office's (GAO) legal opinion, which increased the procedural burden and introduced quantitative limits to foreign ownership (but did not forbid it). On the other hand, internally the country has followed a policy of land concentration and massive industrialisation, and is replicating the same industrial policy abroad. This is evidenced, for example, by the economic and political support provided by the Government to the ProSavana project in Mozambique, and to several projects of ethanol production developed in Angola and in other African countries.[61] Despite some initiatives by the Lula Government that were favourable to small-scale farmers, the Brazilian policy vis-a-vis agricultural production clearly favours large-scale investments, to the detriment of the socio-environmental equilibrium of some of its own regions (such as the Cerrado)[62] and of foreign countries.

CONTINUING THE BILATERALISATION OF INTERNATIONAL RELATIONS AS NEOCOLONIAL STRATEGY

As recently observed by Joseph Stiglitz,[63] the surge in the number of BITs signals how the world economic order is being shaped and constructed. The proliferation of bilateral agreements which are concluded by individual governments with little or no public consultation, represents the codification of the transformation of states' relationships from the universal multilateralism that characterised the post-World War II structure (for example, the IMF or the WTO, notwithstanding their clear bias in favour of richer countries), to a more fragmented bilateralism which accentuates the differences in bargaining power, and reinforces the problems of a "regional domino effect"—which will be discussed below.

The rising importance of BITs can be seen in a longer historical context—based on post-World War II attempts by former colonies to preserve the existing economic inequality by exclusively focusing on the institutionalisation of states as political actors, without addressing the issue of the socio-economic colonial legacy.[64] It is notable that the increase in the number of bilateral agreements occurred after some successful achievements by Southern states in the 1960s and the 1970s, such as a challenge to the Hull Rule as the applicable principle of customary international law in case of expropriation,[65] and the three extremely important resolutions concerning the New International Economic Order[66] and the notion of Permanent Sovereignty over Natural Resources.[67] These events gave a strong signal of the results that Southern states could obtain through cooperation, and led the North to undertake a radical shift from basing international relations on the multilateralism of the United Nations to the bilateralism of investment agreements and special partnerships. This was economically based on massive lending, and legally organised around the imposition of structural adjustment programmes.[68]

From this perspective, the proliferation of BITs since the 1990s appears as the codification of an asymmetrical world where investments are free to move, and thus take advantage of their mobility to force countries into a fierce competition whose outcome is a subordination of the collectivity to the interests and economic needs of the investor. Since 1959—the year of the first BIT between Germany and Pakistan[69] — only 400 BITs were signed worldwide until 1991. However, by mid-2008 more than 2600 bilateral investment treaties had been signed, and BIT-like provisions have been written into a growing number of bilateral and plurilateral free trade agreements (FTAs).[70]

During these years, peripheral countries became counterparts in several agreements concluded with core states, but the proliferation of South-South BITs is a relatively new phenomenon, indicating that emerging Southern countries are following the same path—of economic subordination via bilateralisation—taken by Northern countries. According to the data, in 1990 only 44 South-South BITs were active, while in July 2004 the number reached 653, that is, 28 per cent of the total number of BITs then signed.[71] More recently, the share of South-South BITs concluded annually has ranged from 22 per cent to 30 per cent of the total number of new BITs signed annually.[72]

a) The BRICS and BITs

If we look at the official data provided by the UNDP, the BRICS have been playing a pivotal role in constructing the new BITs-based global economic order. China had already signed BITs starting in the early

1980s, but it is only in the last ten years that it increasingly used international agreements as an instrument to protect its investors abroad, both in Northern—but particularly Southern —countries. According to Malik,[73] sixty per cent of the BITs concluded by China between 2002 and 2007 are with developing states, with an increasing orientation toward African countries. More precisely, China has concluded BITs with Chad, Cote d'Ivoire, Gabon, Libya, Mali, Madagascar, Ethiopia, and Uganda, together with Costa Rica, Cuba, the Republic of Korea, Seychelles, Laos, and Myanmar/Burma. Moreover, it is currently undergoing a series of negotiations with strategic partners both in Asia and outside of the continent.[74]

By 2005, India had signed BITs with 81 countries, 31 one of which were with Southern counterparts, the majority in Asia and Africa.[75] More interestingly, the growing interest of Indian investors toward African resources and markets can be measured by the surge in the number of bilateral investment protection agreements (BIPA) concluded with African countries between 1999 to 2010. By the end of 2013, India had concluded treaties with Djibouti, the DRC, Egypt, Ethiopia, Ghana, Libya, Mauritius, Morocco, Mozambique, Senegal, the Seychelles, Sudan and Zimbabwe.[76] Tracing a link between trade agreements and land grabbing, it is interesting to look at the process through which the India-Ethiopia trade relationship was legally constructed and consolidated. Although a first trade agreement between the governments of India and Ethiopia was signed on March 6, 1997, a subsequent Bilateral Investment Promotion and Protection Agreement (BIPPA) was signed on July 5, 2007, but has yet to come into effect.[77] The picture was then completed with a Double Taxation Avoidance Agreement (DTAA) concluded on May 25, 2011, which provides that business profits will be taxable in the recipient State if the activities of an enterprise constitute a permanent establishment in that territory. When we couple the provisions of the DTAA with the content of the standard concession agreement concluded between Ethiopia and foreign investors—whereby taxes are zero-rated for the entire length of the project[78]—this produces a situation where neither Ethiopia nor India are collecting revenues because the investors pay no tax. In this way, the economic benefit of the investment can hardly reach the people of either country.

South Africa too has been extremely active in signing BITs since the end of the apartheid era, as it re-orients its international relations post-sanctions, and according to the economic needs of its national investors. Interestingly, the replication of the North-South strategy is hidden behind an official rejection of BITs, which are described as an instrument of neocolonialism. As noted earlier, on the one hand the South African state is trying to exercise its increased economic and political power to terminate or re-write existing BITs with some Northern countries,[79] while on the other hand it is adopting the same strategy of bilateralisation in order to subordinate foreign countries' sovereign power to the economic rights of South African investors.

The interest of South Africa in concluding new BITs emerged in a 2009 Review of the South African BITs strategy released by the Trade and Industry Department which explains that:

> The Republic of South Africa (RSA) has also emerged as a capital exporter into the African continent and beyond [and that] RSA companies have established a footprint on the continent, a foray that has been fully endorsed and encouraged by government.(...) Given the sizable intra-Africa investments made by RSA companies, the RSA ought to assess how best such investments by its citizens may be safeguarded.[80]

Moved by the need to defend its investors, since 2009 the South African governments has concluded BIT-type agreements on the promotion and reciprocal protection of investment (plus related protocols) with Angola, Cameroon, the DRC, Gabon, Guinea, Ethiopia, Mauritania, Namibia, Sudan, Tanzania, Zambia and Zimbabwe.[81] As discussed below, these agreements replicate the content of the BITs South Africa had concluded with Northern countries and is now denouncing. In quantitative terms, South Africa is the BRICS country with the highest number of BITs with African counterparts, highlighting the instrumental role of RSA in channelling foreign investments throughout the continent.

When it comes to bilateral investment agreements, Brazil is widely considered the odd-one out. Until now, Brazil has concluded only eight BITs, three of which are with countries from the South, not one of which has yet been ratified.[82] However, data and reports about Brazil show a consistent involvement of Brazilian investors in the current rush to the land, a situation that leads to two possible conclusions: BITs are not essential for attracting and stimulating investments abroad, but do represent a privileged mechanism of external representation and defence of 'national capital';[83] states and investors have other instruments that can be deployed to favour the expansion of national trade and market, including diplomacy, the conclusion of ad hoc bilateral or multilateral partnerships for specific projects, and the strategic use of alliances with other nations as well as subsidiaries to trigger other countries' BITs.[84] The first point is supported by the growing push in favour of a more aggressive international economic policy by the Brazilian government,[85] which would include expanding BITs with Southern countries and even the European Union.[86] On the second point, the case of Petrobras is emblematic: when Bolivia and Ecuador nationalised part of the oil giant's investments, the CEO of the holding company (Petrobras Brazil), discussed the possibility of utilising subsidiaries (Petrobras Argentina and the Dutch subsidiary, PIB BV) to trigger the Argentina-Ecuador BIT and the Netherlands-Bolivia BITs in order to attack the Latin American partners.[87]

Brazilian commercial interests have also been bolstered by the conclusion of a series of bilateral protocols and commercial agreements aimed at increasing the production of agrofuels abroad, with the intention of facilitating their commercialisation on the global market. Although these agreements do not pose international legal obligations, they are bilateral commitments to stimulate the research and implementation of agrofuel production, and in some cases they also require countries to take positive steps to protect intellectual property rights generated by such research.[88] According to Brazil's Ministry of Foreign Affairs, more than forty Memoranda of Understanding of this kind were signed between 2003 and 2010, with both Northern and Southern countries.[89] For example, in 2007 Brazil signed a Memorandum of Understanding with the West African Economic and Monetary Union (UEMOA) to conduct studies on agrofuels production in that region.

Moreover, 2009 was also the year Brazil and Japan concluded an international agreement to launch the Nacala mega-development project in northern Mozambique.[90] The good diplomatic connections between Brazil and African countries, along with the agrofuels know-how that Brazilian enterprises are exporting to the other side of the Atlantic Ocean, are filling the gap left by the absence of BITs, but certainly do not provide Brazilian investors with the same legal privileges that investors from other countries enjoy under BITs. For that reason, an increase in the number of BITs between Brazil and economically weaker countries is expected during the coming years.

In conclusion, if we look at the role that BITs are playing in the geo-strategic decisions of the BRICS, we can conclude that, beside Brazil, the other four have all been actively pursuing Bilateral Investment Agreements with other countries from the South. However, the legal proliferation of the BITs *per se* does not say anything about the relationship between BITs and land grabbing. For that reason, the geographical data contained in Table 1 has been combined with the data concerning South-South BITs, paying particular attention to whether there is any relationship between the existence of a BIT with a Low Income Countries (LIC) and the existence of a land project there. For clarity, the findings are presented in Table 2 below, where Russia and Brazil are kept outside, although for different reasons. The table shows that Indian, Chinese and South African investments in land are more frequent in those Southern countries which have signed an Investment Protection Agreement, and that there are more land investments in LICs which have signed a Bilateral Investment Treaty, rather than those countries which have not.

Table 2. Connecting the Dots: BRICS-South BITs and Global Land Grabbing [91]

Country	BITs with Low Income Countries (LICs)[92]	BITs and Land Investments in LICs	Land Investments in non-LIC with BIT	Land Investments in LIC not covered by BIT	Land Investments outside of LIC not covered by BIT
India	Djibouti, Ethiopia, Ghana, Lao People's Democratic Republic, Mongolia, Sudan, Viet Nam, Yemen, Zimbabwe.	Ethiopia, Sudan, Mozambique, Cambodia.	Madagascar, Cameroon.		Philippines
China	Benin, Bolivia, Cambodia, Cameroon, Ethiopia, Ivory Coast, Georgia, Ghana, Guyana, Laos, Madagascar, Myanmar, North Korea, Uganda, Viet Nam	Benin, Bolivia, Cambodia, Cameroon, Ethiopia, Laos, Uganda	Argentina, Australia, Indonesia, Philippines, New Zealand	Mali, Zimbabwe, DRC	
South Africa	Angola, Cameroon, DRC, Guinea, Ethiopia, Madagascar, Mauritania, Sudan, Tanzania, Zambia, Zimbabwe	Angola, Ethiopia, Tanzania, Zambia, Zimbabwe, Benin			Colombia

Source: By author combining Land Matrix Index and UNCTAD data.

However, the existence of this interesting overlap should not be taken as a demonstration that only BITs attract foreign direct investments, especially because of the relevance of Brazilian investments in land. The decision behind an investment depends on a plurality of factors, including the accessibility of the land, the availability of water, climatic conditions and, according to Oxfam, the low level of governance.[93]

b) BRICS-South BITs as a North-South copycat

Rather than acting as institutional and legal laboratories for testing new legal rules, and instead of constructing a parallel network of bilateral agreements based on new principles and new relationships between investors and states, BRICS-South BITs appear to replicate the same logic and, in some cases, the same wording as North-South BITs. Hypocrisy seems to be lurking in the background, as clearly demonstrated by the case of South Africa mentioned in the previous section. In the same 2009 Official Notice where the Department of Trade and Industry recommended supporting national investment conducted abroad with the conclusion of bilateral investment treaties, it also criticised some of the BITs previously concluded by the post-1994 government, claiming that:

> Existing international investment agreements are based on a 50-year-old model that remains focused on the interests of investors from developed countries. Major issues of concern for developing countries are not being addressed in the BIT negotiating processes. BITs extend far into developing countries' policy space, imposing damaging binding investment rules with far-reaching consequences for sustainable development.(...) New investment rules in BITs prevent developing country governments from requiring foreign companies to transfer technology, train local workers, or source inputs locally. Under such conditions, investment fails to encourage or enhance sustainable development. Various countries are reviewing their BIT regimes, so the RSA is not alone in the process.[94]

On the basis of these legitimate concerns, RSA decided to adopt a policy of not renewing some BITs that had been concluded by the first post-apartheid government, and which they considered imposed a huge burden on the State's prerogatives—such as that with the Belgium-Luxembourg Economic Union.[95] Yet, on November 27, 2012, the South African government concluded a BIT with its neighbour Zimbabwe, which clearly replicates the same legal architecture that it so roundly criticised in the Official Notice. The BIT included an extremely generous expropriation clause, which requires the state to fully compensate at market value in any case of nationalisation, expropriation or equivalent measures, with no exceptions admitted.[96]

Alex Berger also reports that China's post-1998 BITs strategy has been changing in order to accommodate the transition from investment-recipient to investment-exporter country. This has seen China making a gradual shift towards framing its BITs in a way that provides stronger provisions for substantive and procedural protection of foreign investments. As a consequence, Chinese BITs today include almost all the standard provisions found in mainstream European-country BITs,[97] and Chinese investors have broad access to investment arbitration, as demonstrated by the case eventually settled against Gabon and the investment arbitration triggered by Chinese investors against Belgium in the aftermath of the European crisis.[98] A similar conclusion can be made about the bilateral strategy pursued by the Indian government, whose recent BIPPAs with Mozambique, Senegal and Libya contain broad definitions of investments, broad protection against expropriation and other losses for war, armed conflict, state of national emergency and civil disturbances, as well as arbitration as the mechanism of dispute resolution. These benefits granted to investors are not compensated for by any demands made on the investors' or source country's to protect human rights in the recipient country, nor by any special consideration for environmental, fiscal, macroeconomic or other sensitive issues.[99]

That BRICS countries are aware of the strategic role of BITs in enabling economically stronger economies to subordinate capital-recipient countries, is demonstrated by the duality of South Africa, the Chinese shift, the clear reproduction of North-South clauses in the Indian BIPPAs, and the rising pressures for a change in Brazilian policy. However, rather than reversing the past trends or looking at alternative models of cooperation like the schemes proposed by the *Alianza Bolivariana Para Los Pueblos de Nuestra America* (ALBA), BRICS are following the trajectory of the former colonisers, imposing their own expansion and the accumulation of cheap resources over the needs of "the wretched of the earth".[100]

SOVEREIGNTY TO ACCESS PERIPHERAL LAND: ARE *BRICS* ANY DIFFERENT?

This final section examines some cases where land-related concession agreements have been concluded between investors formally originating from BRICS members and another country from the South. The lack of transparency means the analysis is restricted to the content of four investment agreements concluded between Southern countries and investors originating from the BRICS.[101] Although partial, the picture offered by these contracts shows a clear pattern similar to the North-South trend.[102]

a) Legally seeing the land as void and available[103]

One of the crucial elements in the concession agreements concluded by BRICS investors with foreign states is represented by the use of the idea of eminent domain over public land to attribute non-titled land to investors, as though it was void and immediately disposable.[104] In the particular case of sub-Saharan Africa,[105] and despite several studies highlighting that there is no underutilised or void land in the continent, the agreements are drafted with a different reality in mind, which is thus codified and crystallised in a legal contract that the state can enforce against the occupiers.[106] As in the case of the

Karuturi (Ethiopia) agreement, the representatives of the state assume the obligation to "hand over vacant possession of the land" or to "ensure that such lands shall be free from encumbrances at the date of handover of such lands in accordance which the development project," and non-compliance would represent a contractual breach.[107]

From the moment when public land is contractually defined as void and empty—although effectively not so, or simply left fallow after a period of agricultural exploitation—the boundaries between legal and illegal occupations of the land are redefined in favour of the investor, who can further require the state to enforce the contractual disposition over the lived reality. Peasants who do not own a title, who do not commercially exploit nature, those who practice shifting cultivation, nomadic farming or hunting and gathering, suddenly become non-existent in the eyes of the law, and, in some cases, squatters on their own land. [108] Another example is provided by the investment agreement signed between Mali and China Light Industrial Corporation for Foreign Economic and Technical Cooperation (CLETC) for a large-scale agricultural project to be conducted in the area administered by the Office du Niger,[109] according to which the state assumes the obligation to create "land titles in the name of the State before they are attributed to the company."[110] In this way, the government enforces the agreement by dismantling the underlying system of customary rights and replacing it with formalised titles of public property, which is then attributed to the investor for its economic advantage. Even if the non-recognition of customary and non-titled ownership in the contracts may not result in immediate eviction, it still determines the enclosure of land which was part of the traditional property of local communities, and the impossibility of their using it in the future.

However, not all the investments are structured in the same way, as demonstrated by the recent cases of the Chinese investments in Argentina[111] and Russia.[112] These concessions do not specifically require the state to "empty" the land under consideration, but they do concede a determined area to the investor, with no clear definition of the way in which the transformation from public ownership to private lease will be conducted. The lack of a specific indication of the host state's obligations could be evidence that the parties are effectively targeting void land, but perhaps—and more likely—the way in which the investment agreements are drafted could indicate a complete disregard of the possibility of an overlap between the investment area and people's customary land.[113]

From a socio-political perspective, the acceptance of an investment project could represent a means for the host state to find a rapid solution to long-lasting political claims, such as the request for land titling and land redistribution. Thus the support of BRICS countries to their investors may indirectly help the recipient state to dismiss the requests of their citizens, and to adopt a pro-economic growth strategy which neutralises the land-related problems of that country. For example, Brazilian researcher Gustavo Oliveira has recently traced similar processes in the *Terra Legal* 'development project' adopted by the Brazilian federal government. According to Oliveira, by making ineligible land available, that is, by tracing lines, boundaries and guaranteeing property rights in strategic areas of the Cerrado, the executive is not only crystallising the status quo without any consideration for land reform, but also facilitating private access to land and its accumulation by national and international agro-industry.[114] Similarly, the *ex post* recognition of the illegal expansion of agro-industry and livestock production in previously non-titled Amazonian land (*grillagem de terra*), becomes a way of denying the rights of the local communities—seriously undermining their life conditions—and intensifying social tensions between them, the state and the farmers (that is, investors).[115]

b) Transfer of sovereignty over natural resources: BRICS controlling water

A second element exemplifying the subordination of host countries to the economic needs of the investors concerns the transfer of control over water, a scarce resource which is fundamental for agricultural production—as well as life. In order to profitably conduct their large-scale projects, investors usually rely on massive inputs of water. This is frequently diverted from its natural course—with downstream effects—or may place demands on upstream land users, particularly small-scale farmers. Investment contracts are the legal instruments that legitimise the appropriation of water for agro-industrial needs, and the codification of a power asymmetry that is detrimental to people's fundamental rights.

As in North-South investments,[116] South-South agreements also contain clauses that provide investors with unlimited—or extremely extensive—rights over water. For example, Article 3 of the agreement concluded between the India rose producer Karaturi Agro Products Plc. and the Government of Ethiopia, affirms that:

> The issues addressed include the rights of the lessee to develop the land, build infrastructure, *use water from rivers and ground water for irrigation*, administer the land personally or through agency, use mechanisation that the lessee deems fit, and terminate the contract with at least six months of prior notice. (emphasis added)[117]

In addition, Article 3.2 (c) of the same contract states that:

> The provision states the *lessee's rights* to build infrastructure such as dams, water boreholes, power houses, irrigation system [...] at the *discretion of the lessee* upon consultation and submission of permit request with concerned offices subject to the type and size of the investment project *whenever it deems so appropriate*. (emphasis added)[118]

In this way, investors from the South have used the private tool of the contract in order to circumvent individual and collective rights, with little or no public scrutiny. Through the contract, priority of access to water is guaranteed to the investors, thus subordinating the interests and needs of the local population. Moreover, an intervention by the state in favour of the right to water of its citizens—and contrary to the economic interest of the investor—could be judged a violation of the bilateral investment treaty, and open the doors to litigation and economic compensation.

It is also important to highlight that using the water and land resources of foreign countries reduces food and water stress in the source country while adding such stress in target countries. This is particularly relevant in the case of countries like South Africa, which has a moderate water scarcity index of 0.25. As Anseeuw et al. note, if all the investment undertaken by South African investors abroad were implemented in South Africa, the domestic average agricultural water consumption per hectare would double, and the total agricultural water consumption would increase almost six fold (5.8), with a dramatic impact on the national population.[119]

It is again clear that the economic and legal support that some of the BRICS countries are providing to their investors in order to start agricultural projects abroad represents a form of delocalisation of internal problems.

CONCLUSION

In this chapter, the intention has been to look at whether the BRICS rhetoric of "respect of national sovereignty" and the "promotion of solidarity"[120] is valid and applicable, using the issue of the 'global land grab' as a prism. Although Brazil, China, India and South Africa are involved in the global land grab at different levels and with different strategies, the legal analysis demonstrates that all four countries are using national and international law to subsidise, promote and legitimise the expansion of their agro-industry abroad, in a way that replicates the strategy adopted by Northern countries to access foreign resources.

In particular, the four BRICS members have created economic incentives that facilitate acquisition of land abroad—mainly by direct funding, by reducing duties on specific imported products, or by fostering technical cooperation with foreign countries for the expansion of agro-fuels.

China, India, Russia and South Africa's increasing promotion of bilateral investment treaties with Southern countries represents a reality of the multipolar world. This risks leading to a downward spiral of competition between countries—to transform their internal legal order into one more favourable for investors—with the sole interest of competing against neighbouring countries rather than obtaining the best for their people. The extension of this investor-protection regime has been bolstered by investment contracts that codify and crystallise the legal order that best suits the interests of the investors. In many cases investors' interests of economic expansion and the achievement of their own country's food security,[121] is prioritised at the expense of local access to land, sustainable use of natural resources, the fiscal autonomy of foreign countries and their food sovereignty.[122]

Brazil, South Africa, India and even China may "talk the talk" of sustainable development at home, but if we look at their behaviour from below, the consequences of their investments are suffered by the inhabitants of other countries, in particular low-income countries and poorer sectors of the population, especially women.[123]

Given the mounting importance of BRICS investments in land on a global scale, it becomes essential to reconsider the premises and assumptions of the South-South development discourse, and adopt a more critical approach capable of grasping the complexity of a multipolar world with a plurality of Souths and not one "Global South". "South-South" labels should not paper over nor legitimise further exploitation and subordination.With the aim of stimulating more internal research around intra-BRICS relationships and more studies about the origin of the capital which BRICS countries are representing abroad, this chapter concludes with two considerations. This research has revealed tensions in intra-BRICS relations that appear particularly interesting, and will require further analysis. On the one hand, the global stage is witnessing an increase in the cases of intra-BRICS cooperation for accessing land in third countries (as in the case of Chinese investors in South Africa and Russia).[124] Supported by South-South rhetoric, BRICS may access resources and markets more easily and more rapidly.[125] On the other hand, cases like the Chinese investments in Russian land—or the anti-Chinese campaigns in Brazil— show these interests do not always converge. They can, in fact, even generate conflict that results in deepening diplomatic tensions, which could degenerate into a freezing of international relations. BRICS could also increasingly be competitors for the same finite resources located in a third country, which could potentially produce a race to the top in the quality and forms of the investments. Such competition could also—more likely—degenerate into an acceleration of resource grabbing, exacerbating the negative impacts on people and the environment.

The last point is an attempt to understand the real implications of the transnational nature of capital. For while BRICS are using national and international law to represent the interests of capital abroad, it does not seem possible any more to define capital as 'national'.[126] On the contrary, the transnational expansion of capital over the last decades, and in particular the huge amount of foreign direct investments that were channeled into the BRICS, should make us re-think the traditional idea of the state as a mechanism to represent and internationalise 'national capital '. This situation reminds us of Burnham's words, when he writes that:

> As political nodes in the global flow of capital, states are essentially regulative agencies implicated in its reproduction but unable to control this reproduction or represent unambiguously the interests of 'national capital'. Rather, state managers seek to remove barriers to the capital which flows in and through their territories. The fundamental tasks

> of state managers (from welfare to the management of money, labour and trade, etc.) therefore relate directly to ensuring the successful rotation of capital both nationally and internationally.[127]

The BRICS' role in representing the interest of their "national champions" can therefore hide their role in reinforcing the reproduction and consolidation of global capital, and particularly of capital originating from the North. Such a scenario, which is evident when Brazil and Japan conclude an agreement to expand their economic interests in Mozambique, challenges the myth that BRICS will replace the power of Northern TNCs and Northern-based capital with their own.

Rather it seems BRICS-South relationships are functionally oriented to the expansion of capital, reproducing a system based on power asymmetries and subordination that mirrors that of the former colonising powers. When land is lost to agricultural or industrial exploitation, the impact for people, communities and the environment is the same, regardless of their label or source. There is therefore a compelling need to redefine and rethink the confusing notions of BRICS and 'the South' as monolithic entities. We should also challenge the rhetoric that it is possible to achieve a different kind of economic growth while remaining within the same structural setting. If we go beyond state-centric and nationalist perspectives of state and capital, we expose the power dynamics and the state-capital nexuses between what is—too naively—considered horizontal cooperation. Then, we realise that there are no 'good' and 'bad' states, but only a complex mechanism of global accumulation which has to be challenged in all its local manifestations.

Endnotes

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2 Cf. Lancaster, C., *Foreign aid: diplomacy, development, domestic politics*, University of Chicago Press, Chicago (2007); Birdsall, N. and Fukuyama, F., The Post-Washington Consensus: development after the crisis, *Foreign Affairs*, *90:1*, 45–53 (2011); Chaturvedi, S., Fues, T. and Sidiropoulos, E. (eds) (2012). *Development cooperation and emerging powers: new partners or old patterns?*, Zed Books, London.

3 *Mwase, N. and Y. Yongzheng, Y. (2012). Brics' philosophies for development and their implications for LICs,* IMF Working Paper, WP/12/74, *March 2012 2, 2 2012.*

4 Chin and Quadir underline that the construction of a different narrative begins with the choice of vocabulary. "For example", they write "rising states exhibit a reluctance to call themselves 'donors'. Instead, they view themselves as 'Southern development partners' and depict their assistance not as the delivery of 'aid', but rather as a process of building 'development partnership' based on solidarity and mutual respect. South Africa has named its new foreign aid agency the 'South African Development Partnership Agency', while India's forthcoming external aid agency will reportedly be called the 'India Agency for Partnership in Development'." Chin, G. and Quadir, F. (2012). *Introduction: rising states, rising donors and the global aid regime.* 494

5 If we interpreted the transformation from small-scale farming to large-scale industrialised operations as a form of 'internal land grabbing', all BRICS would be grabbers. However, if we only focus on the process of foreignisation of national interests through the access to foreign land by national investors, Russia has to be removed from the picture. For further information about the Russian internal land grabbing, Cf. O. Visser, N. Mamonova and M. Spoor, (2012). Oligarchs, Megafarms And Land Reserves: understanding land grabbing in Russia. *Journal of Peasant Studies*, *39*, 899–931.

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11 See Visser, O., Mamonova, N. and Spoor, M. (2012). *Oligarchs, Megafarms And Land Reserves.*

12 On this point, Ruth Hall notices that "The popular term 'land grabbing', while effective as activist terminology, obscures vast differences in the legality, structure and outcomes of commercial land deals and deflects attention from the roles of domestic elites and governments as partners, intermediaries and beneficiaries." Hall, R. (2011). *The Many Faces of the Investor Rush in Southern Africa: Towards a Typology of Commercial Land Deals*, ICAS Review Paper Series No. 2.

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16 van Apeldoorn, B. de Graaff, N. and Overbeek, H. (2012). The Reconfiguration of the Global State–Capital Nexus. *Globalizations*, 9, 471–486

17 Margulis, M. E. and Porter, T. (2013). Governing the global land grab: multipolarity, ideas, and complexity in transnational governance, *Globalizations*, *10*(1), 65-86; Wily, L. A. (2012). Looking back to see forward: the legal niceties of land theft in land rushes. *Journal of Peasant Studies*, *39,* 751–775

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19 *Land and Power: The Growing Scandal Surrounding the New Wave of Investments in Land.* (2011)..Oxfam Briefing Paper 151, London: Oxfam International.

20 As recently stated by Anseeuw et al., "Since its launch, the Land Matrix has attracted a high degree of attention, and stirred some controversy. It provides valuable lessons on the challenges and benefits of promoting open data on practices that are often shrouded in secrecy". While the dataset cannot be considered a fully reliable source of information, it certainly provides a useful guide to perceive existing trends and to create a more comprehensive picture of the 'global land grabbing'. Anseeuw, W., Lay, J., Messerli, P., Giger, M., and Taylor, M. (2013). Creating a public tool to assess and promote transparency in global land deals: the experience of the Land Matrix, *Journal of Peasant Studies*, *40,* 521–530.

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29 According to Hall, R. (2011). *The Many Faces of the Investor Rush in Southern Africa.* In October 2009 the government of the Congo signed an agreement with AgriSA in which it allocated to a consortium of South African commercial farmers an initial area of 200,000 hectares of former state farms, with the option of expanding to 10 million hectares—an area twice the size of Switzerland.

30 Source *Land Matrix 2012.* http://landmatrix.org/en/ . Accessed November 11, 2012.

31 Mainly in Indonesia, Laos, Philippines, Pakistan. Source: *Seized: The 2008 Land Grab for Food and Financial Security.* (2008). GRAIN; *Land Grab.* (2012). GRAIN; *Collating and dispersing: GRAIN's strategies and methods*, (2013)..

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33 Interestingly enough, Brazil is both a target and source country, as recently evidenced by Borras Jr, S. M. et al, *The Challenge of Global Governance of Land Grabbing: Changing International Agricultural Context and Competing Political Views and Strategies*, *Globalizations*, *10*, 161–179 (2013). However, in the specific case of the Latin American country, the LMI database does not appear to fully represent the relevance of the intra-regional and global land grabbing that is nationally and internationally conducted by Brazilian investors. In particular, Grain (*Seized: The 2008 Land Grab for Food and Financial Security.* (2008). GRAIN; *Land Grab.* (2012). GRAIN; *Collating and dispersing: GRAIN's strategies and methods*, (2013).) reports of investments in Argentina (7,000 ha), Australia (1,876 ha for livestock), Colombia (13,000 ha for agribusiness), Ghana (5,000 ha for rice production), Sudan (100,000 ha for cotton production in cooperation with Agadi, a Sudanese state corporation).

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39 Due to the global network of multinational enterprises, several investors operate through local subsidiaries in order to take advantage of a legal structure that reduces accountability, economic responsibility, and the direct visibility of the mother company. Sassen, S. (2013). *Land Grabs Today*; van Apeldoorn et al. (2012). *The Reconfiguration of the Global State–Capital Nexus*; de Graaff, N. (2012). The Hybridization of the State–Capital Nexus in the Global Energy Order, *Globalizations*, *9,* 531–545; Harvey, D. (2003). *The New Imperialism*. Oxford: Oxford University Press.

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44 Danielsen, D. (2010). *Local rules and a global economy*.

45 See also Ferrando, T. (2013). *Global Land Grab: A European Self-Critique.* July 5, 2013, available on SSRN http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2290352.

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52 Armony, A. C. and Strauss, J. C. (2012). From Going Out (zou chuqu) to Arriving In (desembarco): Constructing a New Field of Inquiry in China–Latin America Interactions. *The China Quarterly, 209,* 1–17. According to a recent article in the *South China Morning Post*, Zhu Zhangjin, a leather entrepreneur and the party secretary of Huafeng village in Zhejiang province, "has quietly bought more than 200,000 hectares of farmland overseas since 2008 in countries such as Brazil and Australia, to ensure product safety, lower production costs and better profits". Chen, S. (2013). Party cadre Zhu Zhangjin pins hopes of food security on overseas farms. *South China Morning Post*, March 24 2013. Available at http://www.scmp.com/news/china/article/1198218/party-cadre-zhu-zhangjin-pins-hopes-food-security-overseas-farms.

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54 COFCO to raise capital to fund acquisitions of overseas sugar firms, *Global Times*, March 9, 2012, *Bloomberg News*, Cofco seeks acquisitions to 'balance' China's food demand, *Bloomberg* , October 21, 2011; Dixon N. (2011). Chinese move on Tully. *The Cairns Post,* April 20, 2011.

55 Henderson J. et al., (2002). Global production networks and the analysis of economic development. *Review of International Political Economy 9,* 436–464; Rainnie, A., Herod A. and McGrath-Champ, S. (2013). Global production networks, labour and small firms, *Capital & Class, 37,* 177–195.

56 Clash of concerns over foreign ownership of Australian agriculture. (2012). *ABC*, May 30, 2013, available from http://www.abc.net.au/news/2013-03-01/clash-of-concerns-over-foreign-ownership-of/4547738?section=business.

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58 Shruti Date Singh and Bradley Olson, Smithfield Receives U.S. Approval for Biggest Chinese Takeover, Bloomberg Online, September 7, 2013, available from http://www.bloomberg.com/news/2013-09-06/smithfield-receives-u-s-regulator-approval-for-shuanghui-deal.html [last accessed July 21, 2014].

59 Hall, R. (2011). *The next Great Trek? South African commercial farmers move north*, International Conference on Global Land Grabbing, quoting *Zim not safe for investments*, (2010) *Farmers Weekly.* May 9, 2010. The same Minister was first quoted saying "If we can't find opportunities for white South African farmers in this country, we must do it elsewhere in the continent".

60 Ferrando, T. (2013). *Mr Brasilia and Dr. Nacala.*

61 Fernandes, B. M., Welch C. A., and Constantino Gonçalves, E. (2010). Agrofuel policies in Brazil: paradigmatic and territorial disputes. *Journal of Peasant Studies*, *37*, 793–819; McMichael, P. (2010). Agrofuels in the food regime. *Journal of Peasant Studies*, *37*, 609–629; White, B. and Dasgupta, A. (2010). Agrofuels capitalism: a view from political economy. *Journal of Peasant Studies*, *37*, 593–607; Oliveira, G. de L.T. (2013). *Land Regularization in Brazil and the Global Land Grab*.; Esteves, C. (2008). Formoso e Trombas: luta pela terra e resistencia camponesa em Goiàs 1950-1964 [Formoso and Trombas: Struggles for Land and Peasant Resistance in Goiàs 1950-1964]. in Motta M. and Zarth, P. (eds). Formas de Resistencia Camponesa*A* [Forms of Peasant Resistance], Sao Paulo: NEAD/MDA/Editoria da UNESP.

62 Cf. Vergara-Camus, L. (2012). The legacy of social conflicts over property rights in rural Brazil and Mexico: Current land struggles in historical perspective. *Journal of Peasant Studies*, *39,* 1133–1158 . The Cerrado, which occupies almost 25 per cent of Brazilian territory, represents the most attractive region for foreign investors. According to recent surveys, the total land in the hands of foreigners within Mato Grosso totals 180.581 square kilometers, which is 20% of the state's land. Cf. Stewart, A. (2012). Brazil's Foreign Land Ownership Saga. *The Progressive Farmer*, January 02, 2012, available from http://www.dtnprogressivefarmer.com/ (last visited Apr 17, 2012); Bao, C. (2011). CGG is setting up a soybean base in Brazil. *China Daily,* November 24, 2011, http://www.chinadaily.com.cn/bizchina/2011-11/24/content_14153948.htm (last visited Apr 17, 2012); Oliveira, G. de L.T. (2013). *Land Regularization in Brazil and the Global Land Grab*. However, a critical analysis should not buy into the 'anti-foreigners' rhetoric of the Brazilian government, and understand that partnerships and national investors are actively involved in an internal and inter-regional land grabbing.

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64 See for example, Anghie, A. (2005). *Imperialism, sovereignty and the making of international law*. Cambridge Studies in International and Comparative Law series, 37, Cambridge/New York: Cambridge University Press; Anghie, A., Chimni, B., Mickelson, K. and Okafor, O. (eds). (2004). *The Third World and International Order: Law, Politics and Globalization.* Developments in International Law series, 45, Leiden/Boston: Martinus Nijhoff.

65 The Hull Rule, named after the US Secretary of State Hull and formulated in 1938, required prompt, adequate and effective compensation in case of expropriation and nationalization of foreign investments. Cf. Guzman, A. T. (1998). Why LDCs Sign Treaties That Hurt Them: Explaining the Popularity of Bilateral Investment Treaties. *Virginia Journal of International Law 38,* 639–688; Minor, M. S. (1994). The Demise of Expropriation as an Instrument of LDC Policy, 1980-1992, *Journal of International Business Studies, 25,* 177–188.

66 G.A. Res. 3201, (1974). U.N. GAOR, 6th Special Sess., Supp. No. 1, at 3, U.N. Doc. A/9599, reprinted in (1974)*I.L.M. 13*, 715 .

67 G.A. Res. 1803, (1962). U.N. GAOR, 17th Sess., Supp. No. 17, at 15, U.N. Doc. A/5217, reprinted in I.L.M. *2,* 223 (1963); G.A. Res 3171, U.N. GAOR, 28th Sess., Supp. No. 30, at 52, U.N., Doc. A/9030 (1974), reprinted in (1974). *I.L.M. 13*, 238. See also Schwebel, S. M. (1953). *The Story of the U.N.'s Declaration on Permanent Sovereignty over Natural Resources, A.B.A.J. 49,* 463.

68 For an accurate analysis of the role of law in reproducing the system of inequality and dependency, Cf., for example,, Mattei, U. and Nader, L. (2008). Plunder: when the rule of law is illegal. London: John Wiley & Sons. See also Shah, A. (2010). Structural Adjustment—a Major Cause of Poverty, *Global Issues,* ; Barwa, S.D. *(1995). Structural Adjustment Programmes and the Urban Informal Sector in Ghana,* Geneva: International Labour Office ; Nyikal, H. (2005). *Neo-Colonialism In Africa: The Economic Crisis In Africa And The Propagation Of The Status Quo By The World Bank/IMF And WTO,* Thesis, Stanford University; Ferrando, T. (2008). *Law and Economics of Megadevelopment Projects*, Thesis, Università degli Studi di Torino, Italy.

69 *World Investment Report* (2006). UNCTAD, 26; Peterson, L., (2009). *Human Rights and Bilateral Investment Treaties*, Montreal: International Centre for Human Rights and Democracy Development.

70 *Recent Developments in International Investment Agreements 2007-June 2008*, (2008). UNCTAD, IIA Monitor, no. 2, 2008, available from www.unctad.org/en/docs/webdiaeia20081_en.pdf.

71 *South-South Investment agreements proliferating.* (2006). UNCTAD, IIA Monitor No. 1 (2005) International Investment Agreements. Available from: http://www.unctad.org/en/docs/webiteiit20061_en.pdf.

72 In 2005, 20 out of the 70 new BITs concluded were between developing countries. In 2006, 23 out of the 73 new BITs were concluded between developing countries; see UNCTAD. (2006). *South-South Investment agreements proliferating.*.

73 Malik, M. (2010). *South-South, Bilateral Investment Treaties: The same old story?* IV Annual Forum for Developing Country Investment Negotiators Background Papers, New Delhi, October 27-29 2010.

74 China is currently in FTA negotiations with Australia, Pakistan, the Southern Africa Customs Union, the Gulf Cooperation Council, Iceland, Norway, and Taiwan. Further down the line there is talk of eventual negotiations with India, Mongolia and a possible three-way deal with Japan and Korea. Cf bilaterals.org, http://www.bilaterals.org/spip.php?rubrique118&lang=en.

75 In Latin America it has BIPPA with Argentina, Colombia, Trinidad & Tobago, Uruguay, and Mexico. Within Asia, it has effective agreements with Republic of Korea, Mongolia, Kuwait, Lao People's Democratic Republic, Oman, Philippines, Qatar, Sri Lanka, Taiwan, Thailand, Turkey, Viet Nam, Yemen, Malaysia, Bahrain, Djibouti, and Indonesia. See UNCTAD. (2006). *South-South Investment agreements proliferating.*

76 Signed but not enforced in most of them—with the exception of Senegal and Mozambique. Source: Ministry of Finance, India, http://finmin.nic.in/bipa/bipa_index.asp?pageid=3

77 Source: The Embassy of India in Addis Ababa, data available from http://www.indianembassy.gov.et/?q=commercial [last visited July 10th, 2013].

78 Ferrando, T. (2013), *The Hidden Grabbing: Large Scale Investments in Land between Accumulation by Dispossession and Tailor-Made Fiscal Havens.* http://papers.ssrn.com/abstract=2251944 (last visited Jun 6, 2013).

79 Leon, P. Veeran, J. and Warmington, E. (2012). South Africa Declines To Renew Bilateral Investment Treaties With European Union Member States, *Mondaq*, October 5, 2012, available from http://www.mondaq.com/x/199586/international+trade+investment/South+Africa+Declines+To+Renew+Bilateral+Investment+Treaties+With+European+Union+Member+States [accessed 2 May 2014].

80 Republic of South Africa, Department of Trade and Industry, Notice 961 of 2009, NO.32386, available from http://www.info.gov.za/view/DownloadFileAction?id=103768

81 *South-South Investment agreements proliferating.* (2006). UNCTAD.

82 Venezuela in 1995; Chile in 1994; Paraguay in 1956.

83 van Apeldoorn et al. (2012). *The Reconfiguration of the Global State–Capital Nexus.*; Brenner, N. and Elden, S, (2009). Henri Lefebvre on State, Space, Territory, *International Political Sociology, 3*, 353–377.

84 de Oliveira, P. A. C. B. (2006), *Brazilian Arbitration Law: Petrobras Arbitration II* , available from http://arbitrationlaw.blogspot.com.br/2006/07/petrobras-arbitration-ii.html (last visited Jul 8, 2013). See also the official statement released by Petrobras in the aftermath of the 2006 nationalization of its investments in Bolivia. *Petrobras rules out natural gas supply problems*, available from http://www.agenciapetrobras.com.br/en_materia.asp?id_editoria=11&id_noticia=1424 (last visited July 8, 2013).

85 Troyjo, M. (2013). Blocless Brazil, *Financial Times.* Beyond-brics blog, Feb 27, 2013, available from http://blogs.ft.com/beyond-brics/author/beyond-brics/; http://blogs.ft.com/beyond-brics/author/beyond-brics/ Hilferding, R. (1981). *Finance Capital: A Study of the Latest Phase in Capitalist Development*, London: Routledge.

86 Members of President Dilma Rousseff's government are considering concluding a free trade agreement with Mexico (which would

automatically project Brazilian goods and investors within the NAFTA area), and getting involved in the EU-USA free trade agreement, which would create the biggest free trade area of the world. However, the turn in the Brazilian strategy is not going as far as functionally utilizing BITs to consolidate the position of economic superiority toward peripheral countries. However, there is pressure for Brazil to change its investment policy in order to attract more investors and not lose ground compared to other Latin American countries. Queiroz Barboza, M. (2013). O Brasil precisa se mexer, *ISTOÉ Independente, Economia & Negócios, 2257*, Feb 15, 2013, available from www.istoe.com.br/reportagens/275957_O+BRASIL+PRECISA+SE+MEXER;Brasil busca acordos para atrair estrangeiro a concessões, *Veja,* April 24 2013, available from www.veja.abril.com.br/noticia/economia/brasil-busca-acordos-para-atrair-estrangeiro-aconcessoes; Guedes Crespo, S. (2012). *Economist: investidores podem trocar Brasil por outros países da AL*, May 17 2012, available from blogs.estadao.com.br/radareconomico/2012/05/17/economist-investidores-podem-trocar-brasil-por-al/

87 See Investment Treaty News (ITN), May 16, 2006, International Institute for Sustainable Development, available from http://www.iisd.org/investment/itn [last access July 21, 2014]

88 Cf. Art. 9, *memorando de entendimento entre o governo da república federativa do brasil e o overno dos países baixos sobre cooperação na área de bioenergia, incluindo biocombustíveis*, (2008) available from http://dai-mre.serpro.gov.br/atos-internacionais/bilaterais/2008/b_54/

89 Schlesinger, S. (2012). *Brazilian* International *Cooperation and Investments The* internationalization *of ethanol and biodiesel*, FASE, Rio de Janeiro Quoting the *2003-2010 Balanço de Politica Externa* issued by the Ministry of Foreign Affairs.

90 Mozambique: Agreement on Nacala Fund. (2012). *AllAfrica*. available from http://allafrica.com/stories/201207061132.html (last visited September 7th, 2012); Ferrando, T. (2013). *Mr Brasilia and Dr. Nacala.* Despite the general silence around the ProSavana project, some information can be gleaned from the media and from the institutions involved in the project.

91 Table elaborated by the author, combining the BRICS-South data concerning BITs produced by UNCTAD with the BRICS' investments in land data as discussed in the previous section of this paper. As anticipated, Brazil and Russia have been voluntarily excluded from this Table, although for different reasons.

92 The 'Low Income Country' category is used as defined by the World Bank, http://glm-lic.iza.org/files/GLM_LIC_Country_List_Phase_2.pdf.

93 *Poor Governance, Good Business: How land investors target countries with weak governance*, Oxfam, 7 February 2013, available from http://www.oxfamnovib.nl/Redactie/Downloads/Rapporten/finalmediabrief%20land%20(1).pdf [last accessed 2 May 2014].

94 Republic of South Africa DTI (Department of Trade and Industry), Notice 961 of 2009, 3 No. 32386, July 7, 2009.

95 The notice of termination was contained in a letter entitled, "Termination of the Bilateral Investment Treaty with the Belgo-Luxembourg Economic Union", from Maite Nkoana-Mashabane, Minister of International Relations and Co-operation, to the Ambassador of the Kingdom of Belgium to South Africa, Johan Maricou, on September 7, 2012. Cf. Green, A. (2012). South Africa: BITs in pieces, *Financial Times*, beyond the brics blog, October 19, 2012, available from http://blogs.ft.com/beyond-brics/2012/10/19/south-africa-bits-in-pieces/#axzz2LNfuwrtp [last visited 19 February, 2013].

96 Cf. Article 5 of the Agreement between the Government of the Republic of South Africa and the Government of the Republic of Zimbabwe for the Promotion and Reciprocal Protection of Investment, signed in Harare on November 27, 2009. Available from http://unctad.org/sections/dite/iia/docs/bits/SA_Zimbabwe.pdf [last visited February 18, 2013].

97 Berger, A. (2008).*China's new bilateral investment treaty programme: Substance, rational and implications for international investment law making*, Paper prepared for the American Society of International Law International Economic Law Interest Group (ASIL IELIG) 2008 biennial conference "The Politics of International Economic Law: The Next Four Years", Washington, D.C., November 14-15, 2008.

98 According to the available information, a Chinese company, Addax Petroleum, had brought the arbitration in December 2012 against Gabon, alleging that Gabon had expropriated its rights to the field by refusing to renew its operating licence earlier in the year. While Addax's claim was worth $330 million, Gabon counterclaimed for double that figure. The state alleged that Addax manipulated the costs of operating the Obangué field and had failed to pay customs duties. Apparently, the two parties agreed on a $400 million payment to Addax. Gabon settles Chinese oil claim. (2014). *Global Arbitration Review*, January 21, 2014, available from http://globalarbitrationreview.com/news/article/32216/gabon-settles-chinese-oil-claim/ [last accessed 2 May 2014].

Simon Rabinovitch and James Fontanella-Khan, Ping An in arbitration claim over Fortis, Financial Times Online, September 24, 2012, available from http://www.ft.com/intl/cms/s/0/87437290-0620-11e2-bd29-00144feabdc0.html#axzz3882Y4Xn8 [last access July 21, 2014].

99 Unfortunately, the India-Ethiopia BIPPA is not yet available. All the BIPPA concluded by India and currently in force can be consulted online, at http://finmin.nic.in/bipa/bipa_index.asp?pageid=3

100 Fanon, F. (1965). *The Wretched of the Earth*. New York: Grove Press.

101 All the documents cited have been obtained through Internet searches. Many more have been concluded, but are not publicly available. Cf. Land Rent Contractual Agreement Made Between the Ministry of Agriculture and Rural Development and Karuturi Agro Products Plc, Executed on October 25, 2010; Convention Particuliere sur les Conditions de Cession et de Bail des Terres au Nouveau Complexe Sucrier du Kala Superiereur (N-Sukala) entre le Gouvernement de la Republique du Mali et la China Light Industrial Corporation for Foreign Economic and Technical Cooperation, June 22, 2009; Acuerdo de Cooperacion para el Proyecto de Inversion Agro alimenticio entre Hellangjiang Beidahuang State Farms Business Trade Group Co., Ltd y el Gobierno de la Provincia de Rio Negro, Argentina; Land Rent Contractual Agreement Made Between Ministry of Agriculture and Hunan Dafengyuan Agriculture Co., Ltd, Executed on November 25, 2010.

102 The lack of transparency represents one of the biggest obstacles in the attempt to provide a comprehensive analysis of the ongoing land rush. Moreover, it raises serious questions about the respect of democratic prerogatives, because in the majority of the cases, the citizens of the state receive information about the contract (when they are informed) only once it has been concluded.

103 The idea of 'seeing' comes from the famous 1998 book by James Scott, where the author indicates that states utilise their authority to transform informal/illegible/illegal situations into institutionalized/legible/legal ones. This same mechanism of homogenisation and simplification that in the past exclusively involved the state, is currently taking place through the conclusion of concession agreements between investors and states. In order to satisfy the economic needs of capital, states look with lenses of formalism and modernity, and remove from the picture anyone who does not belong to that reality. Cf. Scott, J. (1999). *Seeing Like a State: How certain schemes to improve the human condition have failed*. Yale Agrarian Studies, New Haven, CT.: Yale University Press.

104 The myth of land as void and available is reinforced by the World Bank, states and investors. In addition, the idea of eminent domain is a product of the colonial rhetoric of non-occupied land as belonging to the colonial power. Cf. *Rising global interest in farmland: Can it yield sustainable and equitable benefits?* (2010). Washington DC: World Bank.

105 According to the majority of the constitutions of African nations, non-titled land belongs to the public, the nation or the state, that is, the institutionalized authority, which has the duty to manage but can never fully dispose of it. The occupation of the land by people without any official title is thus admitted but not legally recognised, and the state has the legitimate power to dispose of its natural resources.

106 Cf. Franco, J., Borras Jr. S. et al., (2013). *The global land grab: A Primer* ; De Schutter, O. (2011). How not to think of land-grabbing: three critiques of large-scale investments in farmland, *Journal of Peasant Studies, 38*, 249–279; Alden Wily, L. (2010). *Whose land are you giving away Mr. President?* Paper presented to the Annual World Bank Land Policy and Administration Conference, Washington; Alden Wily, L. (2011). *The tragedy of public lands: The fate of the commons under global commercial pressure,* contribution to ILC Collaborative Research Project on Commercial Pressures on Land, Rome; Ferrando, T. (2014). Law and the Exclusionary Essence of Large-Scale Investments in Sub-Saharan Africa Land, *African Journal of Legal Studies, 6*, 315–335.

107 Cf. Article 6.1 of the contract concluded between the Ethiopian government and Karaturi Agro Products Plc. (Rowden, R. (2011). *India's role in the new global farmland grab.*)

108 In Ethiopia, for example, a statement issued by the Ministry of Foreign Affairs in January 2010 affirms that "the Agricultural Investment Support Directorate has identified more than 7 million acres available now for lease [and that] Ethiopia has 74 million hectares of land suitable for agriculture out of its total 115 million hectares, but less than 15 million hectares is currently in use agriculturally." Politically motivated opposition to agricultural investment. (2010). *A Week in the Horn*, FDRE Ministry of Foreign Affairs, January 22, 2010. http://www.mfa.gov.et/Press_Section/Week_Horn_Africa_January_22_2010.htm. See Stebek, E.N. (2012). Between "Land Grabs" and Agricultural Investment: Land Rent Contracts with Foreign Investors and Ethiopia's Normative Setting in Focus. *Mizan Law Review 5*, 175–214.

109 It is a 50-year contract signed on June 22, 2009 concerning 20,000 hectares. The recent political events in Mali have had a repercussion over this specific investment, and over other large-scale investments conducted in the state. However, information is hard to obtain, and often inconsistent.

110 "*Création de Titres Fonciers au nom de l'Etat avant leur attribution à la société"* (unofficial translation made by the author). Article 3.2 of the Mali-CLETC contract.

111 One of the most controversial cases is represented by the already mentioned investment by the state corporation Beidahuang in the Rio Negro Region, which amounted to 320,000 hectares for the production of maize, soya and wheat.

112 The Heilongjiang Province has leased 426,667 hectares for agricultural purposes. Source: *Seized: The 2008 Land Grab for Food and Financial Security.* (2008). GRAIN; *Land Grab.* (2012). GRAIN; *Collating and dispersing: GRAIN's strategies and methods*, (2013).

113 Despite the claims by investors and states that projects are taking place in "available marginal lands"—that is, marginal, underutilised or unused, empty or sparsely populated, geographically remote, and socio-politically and legally available lands— broad evidence shows that land investments around "flex crops" and other food sectors are directly competing for fertile land with the local populations, creating struggles that are silenced by the contracts.Ferrando, T. (2013). *Mr Brasilia and Dr. Nacala.*; Ariza-Montobbio, P. et al., (2010). The political ecology of Jatropha plantations for biodiesel in Tamil Nadu, India. *Journal of Peasant Studies*, *37*, 875–897; Borras, S. M., McMichael, P. and Scoones, I. (2010). The politics of biofuels, land and agrarian change: editors' introduction, *Journal of Peasant Studies*, 37, 575–592; Borras, S. M. et al., (2012). Land grabbing and global capitalist accumulation: key features in Latin America. Canadian Journal of Development Studies/ Revue Canadienne d'Études du Développement, 33, 402–416.

114 Oliveira, G. de L.T. (2013). *Land Regularization in Brazil and the Global Land Grab*; Cf. Ministerio de Desenvolvimento Agrario de Brasil, *Terra Legal entrega 300 títulos a agricultores da fronteira durante Rondônia Rural Show, Secretaria Extraordinária de Regularização Fundiária na Amazônia Legal*, available from http://portal.mda.gov.br/portal/serfal/.

115 Anaya, J. (2009). *Report of the Special Rapporteur on the situation of human rights and fundamental freedom of indigenous people. Report on the situation of indigenous people in Brazil,* United Nations Human Rights Council. Available at http://www2.ohchr.org/english/issues/indigenous/rapporteur/visits.htm.

116 In the Gambella region of Ethiopia, for example, indigenous people are being forced by the government to relinquish their ancestral lands in order to make way for a 10,000 hectare rice plantation operated by the Ethiopian government and Saudi Star Agricultural Development Plc. The rice plantation is situated along the Alwero river, which is also a key source of water for indigenous rural communities that practice fishing, pastoralism and shifting cultivation agriculture. (Mousseau F. and Sosnoff G. (2011). Understanding Land Investment Deals in Africa *Country Report*: *Ethiopia.* Oakland Institute, San Francisco,

117 Although Article 3.3 of the contract affirms that the lessee has the right to use "irrigation water from rivers or ground water respecting present and future environmental and water laws and regulations without any disturbance to the environment with prior permission from responsible federal and regional institutions", it does not require the direct participation of local communities in the management and allocation of water, giving the state the full monopoly over this fundamental element of life.

118 The same disposition is contained in article 3 'Rights of the Lessee' concluded by the Ministry of Agriculture of Federal Democratic Republic of Ethiopia (FDRE) with Hunan Dafengyuan Agriculture Co., Ltd, concerning the 40 years lease contract over 25,000 hectares for development of sugarcane plantation and sugar processing, free of any other land rent.

119 Anseeuw, W. et al. (2013). *Creating a public tool to assess and promote transparency in global land deals.*

120 Mwase, N. and Yongzheng, Y. (2012). *Brics' philosophies for development and their implications for LICs.*

121 Cf. n Giménez, E. H. and Shattuck, A. (2011). Food crises, food regimes and food movements: rumblings of reform or tides of transformation? *Journal of Peasant Studies, 38(*1), 109-144; Patel, R. (2013). The Long Green Revolution, *Journal of Peasant Studies*, 40,1–63.

122 On the interpretations, differences and interactions between food sovereignty and food security, see Patel, R. (2009). Food sovereignty. *Journal of Peasant Studies*, *36,* 663–706; Boyer, J. (2010). Food security, food sovereignty, and local challenges for transnational agrarian movements: the Honduras case, *Journal of Peasant Studies*, *37,* 319–351; Dukehart, M. E. (2012). Security, Sovereignty, and the Lie of Scarcity: a Rhetorical Geography of Global Food Systems. ProQuest, UMI Dissertation Publishing ; Frye, J. and Bruner, M. (eds), (2012). *The Rhetoric of Food: Discourse, Materiality and Power.* London: Routledge.; McMichael, P. (2012). The land grab and corporate food regime restructuring. *Journal of Peasant Studies*, *39:* 681–701.

123 Cf. Kinoti, K., *Land grabs: the threat to African women's livelihoods*, OpenDemocracy.net, (2012), available from http://www.opendemocracy.net/5050/kathambi-kinoti/land-grabs-threat-to-african-women%E2%80%99s-livelihoods; Kinoti, K. (2012). *The Word on Women—Africa's Latest Land Rush: The Effect Of Land Grabs On Women's Rights*, 15 February 2012, available from http://www.trust.org/trustlaw/blogs/the-word-on-women/africas-latest-land-rush-the-effect-of-land-grabs-on-womens-rights; Behrman, J., Meinzen-Dick R. and Quisumbing, A. (2011). *Where is gender in the land grab debate?* International Land Coalition. Available at http://www.commercialpressuresonland.org/opinion-pieces/where-gender-land-grab-debate [last visited 14 March 2013]. For a general analysis of land rush, gender and globalization, See Tsikata, D. and Golah, P. (2010). *Land tenure, Gender and Globalization*: *Research and Analysis from Africa, Asia and Latin America*, International Development Research Center, Ottawa.

124 Analyzing the role of South Africa as gateway to African resources, Ruth Hall affirms that: "Though this trend takes the form of South African deals elsewhere on the continent, the phenomenon cannot be fully understood as 'South African imperialism' in Africa. The interests shaping it, the financing and the destination markets, extend far beyond South Africa. This is global capitalism." Hall, R. (2011). *The Many Faces of the Investor Rush in Southern Africa*; Yong, W. (2012), Harvesting opportunity on foreign soil. *China Daily*, December 4, 2012, available from http://usa.chinadaily.com.cn/epaper/2012-12/04/content_15984493.htm [Accessed December 6, 2012].

125 The anti-North/pro-South positioning emerges, for example, in the words of China's (then) Premier Wen Jiabao during his visit to Africa in 2006. Positioning China on the other side of the spectrum compared to the historical global powers, he reinforced the idea of solidarity and stressed the fact that China, like African countries, had been a victim of colonial aggression for over 110 years. "The Chinese nation knows too well the suffering caused by colonial rule and the need to fight colonialism," he said. Speech cited in Power, M. and Mohan, G. (2010). Towards a Critical Geopolitics of China's Engagement with African Development, *Geopolitics, 15,* 462–495.

126 Let's take as an example the $500 million Japanese investments in Brazilian ethanol production, or the investments by two U.S.-based conglomerates, Monsanto (acquisition of Aly Participacoes) and ADM (joint venture with the Grupo Cabrera) in the same country. In light of this, we should wonder whether it still makes sense to consider Brazilian ethanol as Brazilian, just because it is materially produced in Brazil, or if it would be better to understand and account for the financial complexity which lies behind it. Cf. Hofstrand, D. (20). *Brazil's Ethanol Export,* Iowa University, available from http://www.extension.iastate.edu/agdm/articles/hof/HofMay09.html [last accessed 5 May 2014].

127 Burnham, P. (2001). Marx, international political economy and globalization. *Capital and Class* 25(75), p. 110.

The economic rise of China, India, Brazil and others has been met by most analysts in the North with a mixture of breathless excitement or fear. But what does the rise of these nations mean for local and international social movements committed to economic, social and environmental justice?

Does the emergence of a multipolar global order open up policy space for alternative economic visions and pose a necessary challenge to a US and Northern-dominated global order? Or might it instead reinvigorate capitalism and exploitation by a new constellation of corporate elites? How should social movements respond in a way that embraces needed changes to the post-colonial status quo yet supports communities struggles against the impacts of land grabbing, environmental destruction and rising inequality, this time perpetuated by emerging economy governments?

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SEPTEMBER 2014 /