Getting into a bind

How trade and investment agreements block progress on agroecology and food sovereignty

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Investing for food sovereignty*

Time for change!

Investments can help to achieve food security and food sovereignty, but only if they are directed towards policies and projects that directly benefit people, especially small-scale food producers and others living in rural communities. This means that a new and different approach to investing in agriculture is needed from states, because the agribusiness investment model many of them are currently pursuing isn't delivering. Why not?

One key reason is that trade and investment agreements[1] that focus on attracting agribusiness investments are geared towards generating profits for these agribusinesses. This is being done by opening new markets through **trade and investment liberalisation**, using bilateral investment treaties (BITs), free trade agreements (FTAs), conditional loans, and aid agreements.

These agreements **undermine and supersede the sovereignty of states** and hinder their ability to develop or protect their economies, and social and environmental interests.[2] **The backbone of current trade and investment agreements is comprehensive promotion and protection for agribusinesses' profits even if this comes at the cost of states' and peoples' welfare.** For example:

A key instrument is **Investor-State Dispute Settlement** (ISDS). The inclusion of ISDS mechanisms in agreements enables corporations to sue states for billions of dollars in secret arbitration courts for implementing economic, social or environmental policies that may impede profitable activities. The range of benefits granted to foreign investors is very broad in these arbitration systems and it has been found that beneficiaries are overwhelmingly companies with more than US$1 billion in annual revenue, who are lodging outrageous claims against states. Nothing equivalent is generally available for domestic investors or citizens.[3,4]

Investment promotion policies establish **favourable conditions for corporations but the economic, social, and environmental costs of these are not generally factored in by governments.** Policies may include tax-free zones, the exemption of direct and indirect taxes, unilateral tariff reductions, subsidies for the consumption of services (such as electricity and water), subsidies for hiring and training workers, supportive logistical and transport infrastructure, and institutions to assist investors. The implementation of favourable policies is also often insisted upon by donors providing development assistance or food aid.[5]

Trade and investment agreements may also have a **'chilling effect'**, discouraging state intervention to introduce new policies to protect people and the environment, because of the possibility of heavy fines being imposed through the ISDS process.[6,7] Penalties have already been seen in governments adopting regulations intended to protect the environment, promote food security, ensure access to generic and essential medicines, reduce smoking, and raise the minimum wage.[8]

Most investment agreements include a **'National Treatment'** clause, which mandates host states to treat foreign investors no less favourably than they would treat domestic investors. This can impair states' efforts to differentiate between investments based on their impacts in the country or to develop certain domestic sectors.[10]

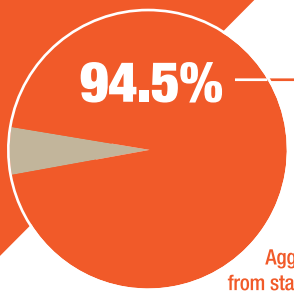
Investment agreements are increasingly banning performance requirements put in place by states, such as requirements to hire from the national workforce or transfer technology.[9]

Most also include a **'Most Favoured Nation'** clause which mandates host states to treat the particular investor no less favourably than it treats investors from other countries. Investors have successfully used this to argue that they are entitled to treatment as favourable as that provided under any other investment treaty the host state has signed.[11]

*__Food sovereignty__ is the right of peoples to healthy and culturally appropriate food produced through ecologically sound and sustainable methods, and their right to define their own food and agriculture systems. It puts the aspirations and needs of those who produce, distribute and consume food at the heart of food systems and policies rather than the demands of markets and corporations. **nyeleni.org**

1 This paper focuses on investment agreements and investment chapters in trade agreements rather than the impacts of trade agreements as a whole.

Who benefits most from ISDS claims?*



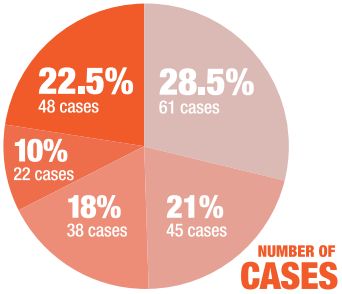
EXTRA LARGE COMPANIES with over US$1billion annual revenue

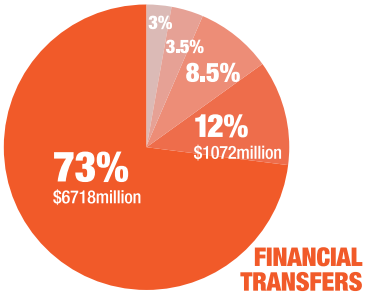
+

SUPER WEALTHY INDIVIDUALS with over US$100million net wealth

Aggregate compensation from states ordered by first-instance ISDS tribunals

Financial transfers from states to investors due to ISDS claims





- From states to extra-large companies
- From states to super wealthy individuals
- From states to large companies
- From states to other individuals
- From states to other companies

Total from states to foreign investors US$9164million in 214 cases

*Van Harten, Gus and Malysheuski, Pavel (2016)

Trade and investment agreements can shrink governments' ability to use public procurement to promote local economies and sustainable agricultural policies. A mega-trade deal including 12 countries around the Pacific, the Trans-Pacific Partnership (TPP), would lead to extensive liberalisation of public procurement in countries party to the agreement, regulating public procurement bidding and making it impossible to discriminate in favour of national or regional suppliers. This threatens government procurement policies such as those intended to foster sustainable local food systems and local production, with requirements for products to be made with local food resources.[12]

Whenever foreign investors choose to bring a claim, the arbitrators are given the power to make final decisions about what a country can do in its sovereign legislative, executive, and judicial capacity.[14]

We draw attention to the potential detrimental impact these treaties and agreements may have on the enjoyment of human rights as enshrined in legally binding instruments, whether civil, cultural, economic, political or social. Our concerns relate to the rights to life, food, water and sanitation, health, housing, education, science and culture, improved labour standards, an independent judiciary, a clean environment and the right not to be subjected to forced resettlement.[13]

I've seen the letters from the New York and DC law firms coming up to the Canadian government on virtually every new environmental regulation and proposition in the last five years. They involved dry-cleaning chemicals, pharmaceuticals, pesticides, patent law. Virtually all of the new initiatives were targeted and most of them never saw the light of day.[15]

How do investment agreements block the achievement of food security & food sovereignty?

They can strangle public policy space for states to develop their domestic agricultural economies and support their agricultural labour force to produce food for local needs.

They can facilitate increased imports of food that destroy and undermine local producers and markets. Countries become structurally dependent on imports and unstable world markets to feed their people.

They lock developing countries into a pre-determined place in the global value chain, where they provide low value-added materials and activities (raw materials, access to abundant and unlimited natural resources, and unqualified, abundant and cheap labour).

Changes to domestic regulations to promote the entry of agribusiness often open new channels for those businesses to access cheap land and labour. They also allow them to monopolise farm input (seeds, fertilisers etc) and trade markets. This often results in land grabbing, the displacement of rural communities, a loss of crop and seed diversity and autonomy, and ever more precarious labour conditions. All of these factors exacerbate hunger.[16] [17]

New mega-trade deals under negotiation—especially the Trans-Pacific Partnership (TPP) and Transatlantic Trade and Investment Partnership (TTIP)—are predicted to lead to the further intensification and corporate concentration of agriculture.[18]

The framework of investment liberalisation for agribusiness entry has permeated aid programmes focused on agriculture, which increasingly come with the same conditionalities. This includes the New Partnership for Africa´s Development (NEPAD), the African Green Revolution Process (AGRA), and the G8 New Alliance for Food Security and Nutrition.[19] [20]

Most land deals from the recent wave of agribusiness investment in low and middle-income countries are protected by at least one investment treaty. This means that when communities go to state judicial systems to fight land grabs, they may come up against investment protection agreements.[21]

The agreements heavily favour industrial agriculture as practiced by agribusiness, which is recognised as generating widespread degradation of land, water and ecosystems; high greenhouse gas (GHG) emissions; biodiversity losses; and persistent hunger and micro-nutrient deficiencies alongside the rapid rise of obesity and diet-related diseases.[22] [23]

Meanwhile, by increasingly concentrating profits, market control, and access to seeds and land amongst a handful of corporations, the industrial agriculture system is impoverishing millions of farmers and workers across the globe.[24]

Investments that transfer resources to agribusiness over local small-scale producers have a strong negative impact on women. Women make up 43% of the agricultural labour force in developing countries and are disproportionately responsible for family nutrition. They already have the least access to productive resources.[25]

Cargill v Mexico

In 2009 US$90.7 million was awarded to Cargill, an agribusiness producer of high fructose corn syrup (HFCS)—a derived sweetener linked to obesity. The investor successfully challenged a Mexican government tax levied on beverages sweetened with HFCS, under the North American Free Trade Agreement (NAFTA). The tax helped safeguard the Mexican cane sugar industry, consisting of hundreds of thousands of jobs, from the post-NAFTA influx of US-subsidised HFCS that threatened those jobs. Mexico also argued that the tax was legitimate as a counter to the US refusal to open its own market to Mexican cane sugar as stipulated by NAFTA. Nevertheless, the ISDS tribunal ruled that the tax was a violation of Cargill's right to fair and equitable treatment.[26]

TTIP v consumer and environmental protection

If TTIP is agreed and implemented the US Department for Agriculture is expected to challenge a number of EU food safety rules as trade barriers, including bans on meat rinses and hormone treated beef. The European Commission is also using TTIP to undermine the EU's own health and safety regulations, arguing that it may have to allow certain genetically modified crops into the EU market without assessment, under pressure from US investors.[27] Similarly the Trans-Pacific Partnership's (TPP) Chapter on Sanitary and Phytosanitary Measures increases the burden of scientific evidence required for food safety standards.[28] This means big agribusiness companies could more easily challenge countries that ban GMO imports, do not promptly approve new GMO crops or even require GMO labelling.

The ProSavana Programme v small-scale food producers

One of the largest multilateral investment projects in Africa is the ProSavana cooperation programme between the Mozambican, Brazilian and Japanese governments. ProSavana aims to channel agribusiness investments into Mozambique. It will include technology transfer packages that will facilitate the expansion of industrial-scale agribusiness, and replace local food crops with 'flex' commodity crops that can be traded internationally. The project involves the acquisition of over 14.5 million hectares of land in Mozambique, to be handed over to large Brazilian and Japanese companies linked to agribusiness (primarily to produce soy, maize, sunflower and cotton). This land is currently in the hands of small-scale farming communities.[29]

The New Alliance for Food Security and Nutrition in Africa

In 2012 the G8 launched a New Alliance for Food Security and Nutrition, aimed at mobilising private investment in African agriculture. It requires sweeping changes to African states' legislation to facilitate the entry of agribusiness. Mozambique, for example, is committed to "systematically ceasing to distribute free and unimproved [non-commercial] seeds to farmers except in emergencies".[30] Similarly evidence from the Côte d'Ivoire's Cooperation Framework outlines promises to reform land laws and make other policy changes to facilitate foreign private investment in agriculture.[31]

Investments in farming or financing land grabs?

The agribusiness to land grabs treadmill

The rapid escalation of land grabbing is an illustration of the problems triggered by using the agribusiness investment model to solve hunger and food price crises.

1 Recurring rises in the price of food over the last decade led to calls for increases in investment in food production, ostensibly to end hunger.

2 Finance and food corporations have promoted themselves as a vehicle for this investment. In reality, the rising prices of food and land had made these sectors very attractive to corporate investors wanting to hedge against their investments in other sectors made more risky by the financial crisis.

3 As a result agribusinesses and financial investors have increasingly taken control of land for its value as a financial investment asset, as well as its potential to produce commodities to trade on global markets.[32]

4 This has exacerbated land grabbing, extended the reach of the industrial agri-food system and increased hunger further, perpetuating a hunger cycle.[33 34]

Food price rises have themselves been caused by the corporate food and farming system—with farmland being turned over to the global production of commodities, including livestock feedcrops and biofuels, instead of local food crops. In addition food prices have been aggravated by natural resource depletion as a result of industrial farming. The industrial food system has turned previously food self-sufficient developing countries into net food importers in the last few decades.[35 36 37]

There is an alternative!

State support for small-scale food producers' investments and agroecological food production is an effective and efficient method of reducing poverty, hunger and environmental damage.

The agribusiness investment model is currently seen by many states as a norm that is apparently unquestionable. However, small-scale food producer movements, supported by an increasing body of research, are demonstrating that an alternative exists.

Smallholder food producers remain the most important and dynamic part of the food system: 70-80% of the food consumed in the developing world is produced by smallholder producers and workers. They play an especially vital role in feeding the most marginalised peoples, with significantly fewer resources.[38 39] Yet due to decades of dwindling investment in small-scale farming, they are also some of the most insecure populations in the world. More appropriate investment could help small-scale food producers to make great strides in terms of reducing hunger.[40 41 42]

More than 80% of smallholders operate in local and domestic food markets and these markets are still where most of the food consumed in the world is bought and sold.[43]

Smallholders themselves remain the most important investors in agriculture, dwarfing any investment from agribusiness.[44]

Small-scale food producer movements are calling for their key role in producing the world's food to be supported and promoted, by transferring investment away from the damaging agribusiness investment model. Instead they are calling for investment in **their model of agroecological production** as an answer to the food, environmental and hunger crises.[46]

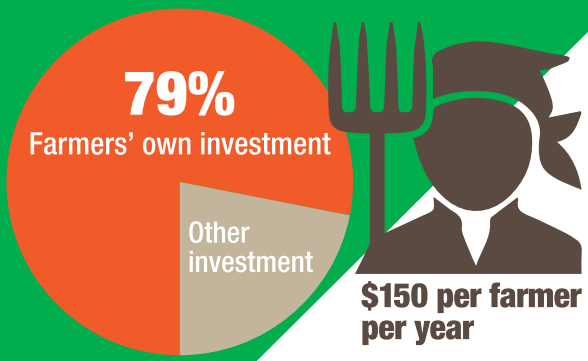
A number of experts are echoing this call showing that agroecology led by small-scale food producers is the best way to produce ample food while boosting agricultural resilience to climate change and regenerating natural resources.[47 48]

"In spite of recent attention to foreign direct investment and official development assistance, and in spite of weak enabling environments faced by many farmers, on-farm investment by farmers themselves dwarfs these sources of investment.[45]

"Our diverse forms of small holder food production based on agroecology generate local knowledge, promote social justice, nurture identity and culture, and strengthen the economic viability of rural areas.[49]

"Small-scale farmers can double food production within 10 years in critical regions by using agroecological methods.[50]

"Research analyzing 286 recent agroecological projects in 57 poor countries found that such interventions increased land productivity on 12.6 millions farms, with an average increase in crop yield of 79%, while improving the supply of critical environmental functions (water use efficiency gains, carbon sequestration and a significant decline in pesticide use).[51]



Farmers in low- and middle-income countries invest more than **$170 billion** a year in their farms.*(Over three times as much as all other sources of investment combined.)

*FAO (2012)

In order for smallholder agroecological production to fulfill its potential, states need to step away from a role of simply managing and facilitating corporate investments. Instead, **states need to make a courageous comeback**, implementing and financing the policies needed to encourage smallholder food production.

Such state interventions could include: **providing security of tenure for small-scale food producers, creating agricultural banks and wage boards, managing supplies and minimum prices, using public procurement to promote agroecology, and providing social protection, infrastructure, and research and technical support for small-scale producers.**

Agroecology is based on the science and traditional knowledge of food producers. As an agricultural practice agroecology mimics natural ecological processes to deliver self-sustaining farming that grows a greater diversity of crops, drastically reduces artificial inputs (such as pesticides, fertilisers and antibiotics) and recycles nutrients (plant and animal waste becomes manure). This has obvious benefits for farmers—reduced costs, autonomy, diversified income streams, risk management for crop failures, and varied produce to improve nutrition. As a socio-economic system agroecology values the wellbeing of people and planet over profits. As a political movement agroecology is an action agenda to achieve food sovereignty led by small-scale food producers.