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ABBREVIATIONS

AfDB	African Development Bank
AIF	Agricultural Investment Fund
ANC	African National Congress
AGRA	Alliance for a Green Revolution in Africa
Agri SA	South African Agricultural Union
BASIC	Brazil, South Africa, India and China Group
BEE	Black Economic Empowerment
BBBEE	Broad-Based Black Economic Empowerment
BIPPA	Bilateral Investment Promotion and Protection Agreement
BIT	Bilateral Investment Treaty/Treaties
CAADP	Comprehensive Africa Agriculture Development Programme
CDD	Community Driven Development
CDE	Centre for Development and Enterprise
CTV	Centro Terra Viva, Mozambique
DAFF	Department of Agriculture, Forestry and Fisheries
DCD-DAC	Development Cooperation Directorate-Development Assistance Committee
DRDLR	Department of Rural Development and Land Reform
EU	European Union
FAO	Food and Agriculture Organization of the United Nations
FDI	Foreign Direct Investment
FTLRP	Fast Track Land Reform Programme
GDP	Gross Domestic Product
IDC	Industrial Development Corporation
IEG	Independent Evaluation Group
IFAD	International Fund for Agricultural Development
IFC	International Finance Corporation
IISD	International Institute for Sustainable Development
GAFSP	Global Agriculture and Food Security Program
IIED	International Institute for Environment and Development
IMF	International Monetary Fund
LRAD	Land Redistribution for Agricultural Development Programme

MAFISA	Micro Agricultural Finance Institution
MDG	Millennium Development Goals
MFN	Most-Favoured-Nation
MIGA	Multilateral Investment Guarantee Agency
MLAR	Market-Led Agrarian Reform
NEPAD	New Partnership for Africa's Development
NGO	Non-Governmental Organisation
NIIF	NEPAD Infrastructure Investment Facility
NPO	Non-Profit Organisation
NT	National Treatment
OECD	Organisation for Economic Co-Operation and Development
PLAAS	Programme for Land and Agrarian Studies
PLAS	Proactive Land Acquisition Strategy
PPP	Public-Private Partnership
RADP	Recapitalisation and Development Framework
RDP	Reconstruction and Development Programme
SACAU	Southern African Confederation of Agricultural Unions
SADC	Southern African Development Community
SAG	South African Government
SALRP	South African Land Redistribution Programme
SDC	Swiss Agency for Development and Cooperation
SIP	Small Investment Program
SME	Small or Medium Enterprise
SSA	Sub-Saharan Africa
SOE	State-Owned Enterprise
SPV	Special Purpose Vehicle
SRLRTSF	SADC Regional Land Reform Technical Support Facility
SWF	Sovereign Wealth Fund
UK	United Kingdom
UNCTAD	United Nations Conference on Trade and Development
USAID	United States Agency for International Development
WBWS	"Willing Seller, Willing Buyer"

Foreign investment: A potential source of funding land redistribution in South Africa?

1 Introduction

The South African Land Redistribution Programme (SALRP), based on the World Bank model of market-led agrarian reform (MLAR), 'Willing Buyer, Willing Seller' (WBWS) model, has been plagued by various problems since its introduction in 2004.[1] Although there is no consensus amongst commentators as to the main constraint to the SALRP, a strong argument has been the inappropriateness of the MLAR, WBWS model,[2] and the lack of funding.[3 4 5 6 7] In South Africa specifically, this has been interpreted to mean that the South African Government's (SAG) budget has become a 'key constraint' to the successful implementation of the SALRP.[8] Funding constraints within land redistribution sphere is not a new problem and it has been observed, based on international evidence, that land reform, as a whole, is usually 'under-funded'.[9]

It has also been argued that one way to alleviate the SAG's SALRP's funding burden is through 'substantial investment', not only in acquiring land but also infrastructure and 'post-transfer support'.[10] Given this and the dynamics between the agricultural sector and land redistribution, the author is of the view that agriculture investment could be a potential alternative source of funding the SALRP.

It has been reported that the SAG wants to attract foreign capital investment for its food processing sectors.[11] At the 5th Africa Economic Forum held in Cape Town on 9 March 2011, the sentiment that agriculture in Africa requires investment both from the private and public sector was echoed by Jorge Maia, head of the research and information department at the IDC.[12] NEPAD has also identified the need for investment in the African agricultural sector[13] and has identified agricultural productivity as one of eight priority areas for Africa.[14] More recently, land redistribution projects in South Africa have also been regarded as agricultural

[1] Hall R & Lahiff E. 2004.Budgeting for land reform. Policy brief debating land reform and rural development, .p13.
[2] Kariuki, S. 2004. Creating the black commercial farmers in South Africa. African Studies Centre Leiden, The Netherlands Working Paper, 56, pp 63 – 65.
[3] Hall, R. 2010. Two Cycles Of Land Policy In South Africa: Tracing The Contours. (In Anseeuw, W & Alden, C (eds.) The Struggle Over Land In Africa Conflicts, Politics & Change, p181.
[4] Hall, R. & Lahiff, E. 2004. Budgeting for land reform. 13, p1.
[5] Hall, R. 2004. A political economy of land reform in South Africa. Review of African Political Economy. 31, 219 - 220.
[6] Department of Rural Development & Land Reform strategic plan 2010 – 2013. [Online]. Available: http://www.info.gov.za/view/DownloadFileAction?id=123854 [30 August 2010].
[7] The Centre for Development and Enterprise. 2008. Land reform in South Africa: Getting back on track. 16, p 23.
[8] Hall, R., Ntsebeza, L. & others. 2007. Transforming rural South Africa? Taking stock of land reform. (in Ntsebeza, L. & Hall R (eds.) The Land Question in South Africa. The Challenge of Transformation and Redistribution, p 101.
[9] Van den Brink, R. (ed), Thomas, G. & Binswanger, H. & others. 2006. Consensus, Confusion and Controversy. Selected Land Reform Issues in Sub-Saharan Africa. Washington D.C.: The International Bank for Reconstruction and Development / The World Bank, p29.
[10] Hall, R. 2004. A political economy of land reform in South Africa. Review of African Political Economy. 31, p220.
[11] Carey, G. 2010. South Africa, Mozambique seek Saudi infrastructure, agriculture investment. [Online]. Available: http://www.bloomberg.com/news/2010-12-04/south-africa-mozambique-seek-saudi-agriculture-food-investment.html. [18 March 2011].
[12] Mannak, M. 2011.Food price hikes 'may trigger farming investment' [Online]. Available: http://www.businesslive.co.za/incoming/2011/03/09/food-price-hikes-may-trigger-farming-investment. [18 March 2011].
[13] [Online]. Available: http://www.nepad.org/foodsecurity/agriculture/about. [9 March 2011].
[14] The International Bank for Reconstruction and Development / The World Bank. Management Response. [Online]. Available: http://siteresources.worldbank.org/EXTASSAGRISUBSAHAFR/Resources/mr_text.pdf. [9 March 2011].

investment opportunities.[15]

Recent literature has taken the view that land redistribution transactions are agricultural investment opportunities.[16]

Recent agricultural investment trends show that there has been an increase in agricultural investment[17] centred on foreign direct investment in land.[18]

This raises the question, whether foreign investment could be a potential source of funding land redistribution in South Africa?

Without delving into the detail of the historical context and legal framework of the SALRP, nor proposing that foreign investment is necessarily the sole answer to the funding problem experienced with the SALRP, and without disregarding that there are other potential alternative sources of funding, this paper will explore foreign agricultural investment as a potential alternative source of funding the SALRP. The paper will further, albeit in a limited manner, assess two problems relevant in the South African context that may hinder the introduction of foreign agricultural investment into the SALRP.

2 Funding of the SALRP and legal framework

The legal framework of the SALRP is built on the *White Paper on South African Land Policy* of 1991. In terms of this *White Paper on South African Land Policy* of 1991, the SAG promulgated the Abolition of Racially Based Land Measures Act 108 of 1991, which repealed the land and related acts in existence in order to abolish the restrictions these pieces of legislation represented.[19]

Land reform is entrenched in the Constitution of the Republic of South Africa, 1996 and is captured in section 25 of the Constitution.[20] [21] [22] [23]

The Constitution also empowers the SAG to expropriate property,[24] provided that a 'just and equitable amount' of money is given as compensation.[25] The procedural aspects of expropriation are regulated by the Expropriation Act 63 of 1975.

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[15] Vermeulen, S. & Cotula, L. 2009. Making the most of agricultural investment: A survey of business models that provide opportunities for smallholders. [Online]. Available: http://pubs.iied.org/pdfs/12561IIED.pdf. [28 March 2011].

[16] Vermeulen, S. & Cotula, L. 2009. Making the most of agricultural investment: A survey of business models that provide opportunities for smallholders. [Online]. Available: http://pubs.iied.org/pdfs/12561IIED.pdf. [28 March 2011].

[17] Kugelman, M. & Levenstein, S.L. (eds.) & others. 2009. Land Grab? The Race for the World's Farmland. Washington, D.C.: Woodrow Wilson International Center for Scholars.

[18] Miller, C. Richter, S. & McNellis, P. & others. 2009. 'Agricultural investment funds for developing countries. [Online]. Available: http://www.ruralfinance.org/servlet/BinaryDownloaderServlet/71360_Investment_fund_pape.pdf?filename=1270826402324_investment_funds.pdf&refID=71360. [2 September 2010].

[19] De Klerk, M. 1991. Rural aspects of the White Paper on land reform and four accompanying Bills.Transformation i15, p104. [Online]. Available: http://archive.lib.msu.edu/DMC/African%20Journals/pdfs/transformation/tran015/tran015008.pdf. [27 January 2011]. De Klerk observed that the White Paper on South African Land Policy of 1991 recorded the consensus reached between the then National Party and the ANC, but He also pointed out that one of the areas that consensus was not reached on was the need for the SALRP and compensation for present or past owners of land

[20] This section 25 of the Constitution is commonly referred to as 'the property clause'.

[21] s25(5) states: 'The state must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis.'.

[22] Rugege, S. 2004. Land reform in South Africa: An overview. [Online]. Available: http://ccs.ukzn.ac.za/files/LandreforminSouthAfrica.pdf. [1 August 2010]. This section has been interpreted as: imposing a 'positive obligation' on the SAG to 'enhance accessibility to land' and creating a socio-economic right for those in need of land to call on the SAG to act and make land accessible.

[23] Lahiff, E. & Rugege, S. 2002. A critical assessment of land redistribution policy in the light of the Grootboom judgment. 6 Law, Democracy and Development 6, p280.

[24] In terms of s25(4)(b) Constitution of the Republic of South Africa, 1996 'property' is not limited to land.

[25] s25(2) and s25(3) Constitution of the Republic of South Africa, 1996.

There are various other pieces of legislation that form part of the legal framework. Without considering each and everyone, notably these include the Provision of Land and Assistance Act 126 of 1993, which can be regarded as the enabling legislation[26] and the BBBEE Act.[27]
There is currently a draft Green Paper before parliament which is intended to culminate in a new land policy framework and an 'omnibus of legislation' which should see the consolidation of all land-related laws.[28]

3 Funding of the SALRP

The SALRP is heavily reliant on grant funding[29] and the current mechanism is the Framework for Recapitalisation and Development Programme (RADP). The RADP is however a departure from the traditional grant funding and the funding model of the RADP is, however, not only grant-based and a combination of grants and private sector investments is envisaged.[30]

The manner in which the SALRP is funded in South Africa is tied to the manner in which the individual projects are designed and how it is structured. This structuring is generally referred to as 'business models'. The author submits that the business models are merely commercial legal principles applied to structure a commercial transaction; thus, a business model is the end product of a commercial structuring exercise.

Notwithstanding this, the business model types in South Africa can generally be grouped into the following main categories:[31] [32]

3.1 individual production with 'individuals, families or small groups obtaining farms and farming them as a single commercial entity';

3.2 group access to land for large-scale agriculture, with 'large groups obtaining farms and farming collectively'; and

3.3 joint ventures and contractual arrangements which include 'large groups obtaining farms and farming collectively as a single commercial entity' and variations thereof.

In addition, the author submits that, based on commercial principles, variations or hybrids of the three categories above could constitute a fourth category.

4 Dynamics between SALRP and Agricultural sector

The SALRP cannot be viewed in isolation from agriculture and one of the main answers to the

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[26] Section 10 of the Provision of Land and Assistance Act 126 of 1993 specifically provides for the rendering of financial assistance by the SAG to implement the SALRP.
[27] Lahiff, E. 2008. Land Reform in South Africa: A Status Report. PLAAS Research Report, 38, p8.
[28] Speech by the Minister of Rural Development and Land Reform, Mr G Nkwinti. 2010. Debate on the budget vote of the Department of Rural Development and Land Reform. [Online]. Available: http://www.pmg.org.za/briefing/20100324-minister-rural-development-and-land-reform-budget-speech [4 February 2011].
[29] Vote 32 Rural Development and Land Reform 661 [Online]. Available: http://www.treasury.gov.za/documents/national%20budget/2010/ene/vote32.pdf. [22 March 2011].
[30] Department: Rural Development and Land Reform. 2011. Policy Framework for the Recapitalisation and Development Programme of the Department of Rural Development and Land Reform. para 7.
[31] Hall, R. (ed) & others. 2009. Land reform for what? Land use, production, and livelihoods. (In Another Countryside? Policy Options for Land and Agrarian Reform in South Africa). Bellville: (PLAAS) Institute for Poverty, Land and Agrarian Studies, School of Government, University of the Western Cape, p25.
[32] Lahiff E. 2007. Business models in Land Reform. PLAAS (Programme for Land and Agrarian Studies) Research Report 27.

question posed in this paper lies in the link between SALRP and the agriculture sector. Overtime, and in particular since 1913, Black people were dispossessed of the 'best' agricultural land..[33] [34] [35] [36] [37] [38] It has also been asserted that the dispossession was used as a means to reduce competition within the agricultural sector and to create a pool of cheap labour to support this industry and others.[39]

It has been said that the significance of the SALRP is rooted in the dualistic agricultural sector, comprising of large-scale commercial farming on the one hand and small-scale, generally subsistence-oriented farming on the other, created as a result of the dispossession discussed above.[40]

The significance of both the SALRP and the agricultural sector in South Africa is based on their role in the economy.[41] The 'agro-industrial sector' comprises about 12 percent of GDP.[42] [43]

Both the SALRP and the agricultural sector are also important because of their contribution to employment in South Africa.[44] Aside from the creation of employment and poverty alleviation, the SALRP and the South African agricultural sector is also geared towards addressing food security concerns.[45] [46] [47] [48]

The Department of Agriculture has also recognised the relationship between the agricultural sector and land redistribution and have noted that 'the process of economic empowerment in

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[33] The most significant of these were the Native Trust and Land Act 68 of 1936 which extended the 'reserves' allocated; the Natives Laws Amendment Act 46 of 1937 which prohibited Africans from buying land in urban areas; the Group Areas Act 41 of 1950; the Blacks Resettlement Act 19 of 1954 which empowered the then SAG to remove black people from any area in Johannesburg and adjacent areas; the Prevention of Illegal Squatting Act 52 of 1951; the Reservation of Separate Amenities Act 49 of 1953; the Promotion of the Bantu Self-Government Act 49 of 1959; the Bantu Homelands Citizens Act 26 of 1970; and the National States Constitution Act 27 of 1971.
[34] Our land…Our life. [Online]. Available: http://www.sahistory.org.za/pages/governence-projects/land-disposession/01_intro.htm. [27 January 2011].
[35] [Online]. Available: http://www.google.co.za/search?q=history+of+land+dispossession+in+south+africa&hl=en&sa=X&biw=1126&bih=449&tbs=tl:1,tl_num:35,tll:1900,tlh:1949&prmd=ivns&ei=PxdBTeSDM4ruuAOtrYzBAw&ved=0CL8BEMkBKAY [27 January 2011].
[36] Kariuki, S. 2004. Creating the black commercial farmers in South Africa. African Studies Centre Leiden, The Netherlands Working Paper 56, p6.
[37] Baldwin, A. 1975. Mass removals and separate development. Journal of Southern African Studies, 1, pp215 – 227.
[38] Rugege, S. 2004. Land reform in South Africa: An overview. [Online]. Available: http://ccs.ukzn.ac.za/files/LandreforminSouthAfrica.pdf. [1 August 2010].
[39] Thwala, W. 2006. Land and agrarian reform in South Africa. (In Rosset, P., Pate,l R. & Courville, M. (eds.) Promised Land: Competing Visions of Agrarian Reform. Oakland, California: Food First Books, p 59.
[40] Hall, R. 2004. A political economy of land reform in South Africa. Review of African Political Economy. 31, 219 – 220, p213.
[41] World Development Indicators. 2009. [Online]. Available: http://www.google.com/publicdata?ds=wb-wdi&met=nv_agr_totl_zs&idim=country:zaf&dl=en&hl=en&q=south+african+agriculture+gdp [21 April 2011].
[42] [Online]. Available: http://www.southafrica.co.za/about-south-africa/environment/agriculture-forestry-and-land/. [21 April 2011].
[43] Hall, R (ed) & others. 2007.Dynamics in the commercial farming sector. (In Ntsebeza, L. & Hall, R. (eds.) The Land Question in South Africa. The Challenge of Transformation and Redistribution Cape Town: Human Sciences Research Council Press, p121.
[44] The agricultural sector accounts for 8 percent of South Africa's total employment. South Africa Online. [Online]. Available: http://www.southafrica.co.za/about-south-africa/environment/agriculture-forestry-and-land/. [21 April 2011].
[45] South Africa Online. [Online]. Available: http://www.southafrica.co.za/about-south-africa/environment/agriculture-forestry-and-land/. [21 April 2011].
[46] The White Paper on South African Land Policy of 1997 para 4.3.
[47] Binswanger-Mkhize, H.P., Bourguignon, C., Van den Brink, R. (eds.) & others. 2009. Agricultural Land Redistribution: Towards a Greater Consensus. Washington D.C.: The International Bank for Reconstruction and Development / The World Bank pp 7 – 14.
[48] Aliber, M., Reitzes, M. & Roefs, M. 2006.Assessing the alignment of South Africa's land reform policy to people's aspirations and expectations: A policy - oriented report based on a survey in three provinces. pp19 - 20. A study conducted by the HSRC regarding people's expectations of the SALRP; and an important finding was that of those people who wanted to own land, being able to grow food for own consumption, that is food security, is the main reason for wanting to own land.

South African agriculture starts with improved access to land …'.[49]

Lahiff and Cousins argue that land redistribution, enhanced state support to existing black smallholders and reform of agricultural markets and land reform, as a whole, have 'the potential to underpin a revitalised system of smallholder production, in tandem with a transformation of the agricultural sector in ways that would promote economic development and reduce poverty in the rural areas'.[50] This again illustrates that progress of the agricultural sector as a whole could hold value for land redistribution.

The relationship between agriculture and land reform has also been recognised at the level of the African Union and recorded in the Maputo Declaration on Agriculture and Food Security in Africa (Maputo Declaration).[51] [52] Pursuant to the resolutions of revitalising the agricultural sector and targeting small scale and traditional farmers in rural areas and the creation of enabling conditions for private sector participation[53] and accelerating the establishment of the African Investment Bank and investment in agricultural production, the Maputo Declaration could hold potential alternative sources of funding for the SALRP, depending on how the SAG implements its commitment to the Maputo Declaration.[54]

5 Alternative sources of funding to grant funding

5.1 Subsidies

Pre-1994 white farmers received considerable agricultural subsidies, which were removed by the late 1990s.

The *White Paper on South African Land Policy* of 1997 records that land reform beneficiaries expected the SAG to raise subsidised finance and interest subsidies as was made available to commercial farmers' pre-1994. At the time, the SAG was of the view that such subsidies would place a strain on the fiscus; moreover that it would increase the demand for land, increasing the market price of land without the productive worth.[55]

Thus new emerging commercial black farmers borne out of the SALRP are not given the same state support as their white counterparts had enjoyed, making the task more challenging. Of course, land grants, constituting financial assistance from the SAG to the beneficiaries, are also a type of subsidy. However, this is not without problems and can become expensive [56]

There has reportedly been a shift from ''anti-agriculture bias'' to governments being encouraged to play a stronger role in supporting 'policy and economic conditions to support the growth of agriculture along a more equitable path'.[57] According to PLAAS, pursuant thereto, subsidies for small farmers

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[49] The strategic plan for South African agriculture para 5.1.
[50] Lahiff, E. & Cousins, B. 2005. Smallholder agriculture and land reform in South Africa. IDS Bulletin, 36, p127.
[51] Phillips, L. 2007. Zuma – 'Agricultural investment in Africa a necessity. Farmers Weekly. [Online]. Available: http://www.farmersweekly.co.za/index.php?p[IGcms_nodes][IGcms_nodesUID]=c71f2b8d66d1297930aeceb59f3e8749. [24 April 2011].
[52] Assembly of the African Union Second Ordinary Session 10 - 12 July 2003 Maputo, Mozambique Assembly/AU/Decl.7 (II) 1.
[53] Assembly of the African Union Second Ordinary Session 10 - 12 July 2003 Maputo, Mozambique Assembly/AU/Decl.7 (II) resolution 1 1.
[54] Assembly of the African Union Second Ordinary Session 10 - 12 July 2003 Maputo, Mozambique Assembly/AU/Decl.7 (II) resolution 7 1.
[55] The White Paper on South African Land Policy of 1997 para 4.5.6.
[56] Borras, S. & McKinley, T. 2006. The unresolved land reform debate: Beyond state-led or market-led models. International Poverty Centre Policy Research Brief, 2, p2.
[57] Hall, R. (ed) & others. 2009. Land reform for what? Land use, production, and livelihoods. (In Another Countryside? Policy Options for Land and Agrarian Reform in South Africa). Bellville: (PLAAS) Institute for Poverty, Land and Agrarian Studies, School of Government, University of the Western Cape, p48.

are ‘back on the agenda for states concerned with rural poverty’.[58]

This links to the relationship between land redistribution and agriculture. However, notwithstanding this shift, subsidies in agriculture are generally accepted as being quite controversial, especially because of the potentially trade distorting effects it can have.
The author submits that, unless these agricultural subsidies come from a source other than the SAG’s coffers, the burden on the SALRP’s budgetary constraints would not necessarily be alleviated by subsidies.

5.2 Subdividing agricultural land

Lahiff argues that one of the reasons that the WBWS model is the most contentious problem for South Africa is because of its failure to subdivide large holdings.[59] However, although the Subdivision of Land Act 70 of 1970 places restrictions on the subdivision of agricultural land, land reform projects are exempted from these restrictions.[60] This exemption essentially provides for the ‘fast tracking’ of the SALRP through making more land available for redistribution.

It has been argued that subdivision of land would assist in making land available in smaller parcels suited to the needs of potential beneficiaries, either by land owners subdividing their land and selling smaller parcels of land or the SAG itself acquiring large tracts of land and subdividing it so that smaller parcels of land can be redistributed.[61] The difficulty is, though, that smaller land parcels may mean ‘small projects’, which means ‘little money’.[62] However, this could potentially dampen the market price of land for redistribution, alleviating the budget pressures of the SAG. Thus, even though the subdivision of agricultural land does not constitute a potential source of alternative funding in the strict sense, it could alleviate the SALRP’s budgetary constraints because of smaller pockets of land being redistributed at lesser cost.

5.3 Expropriation

Although not necessarily a direct source of funding, it has been argued that expropriation could alleviate the burden on government to fund land redistribution.[63] It is also a ‘well-known’ option of financing land redistribution in East Asia.[64]

Some commentators maintain that expropriation below market value is one way that land owners can contribute to land reform.[65] Lahiff argues that one of the reasons that the WBWS model is the most contentious problem for South Africa is because it failed to initiate expropriation as an element to

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[58] Hall, R. (ed) & others. 2009. Land reform for what? Land use, production, and livelihoods. (In Another Countryside? Policy Options for Land and Agrarian Reform in South Africa). Bellville: (PLAAS) Institute for Poverty, Land and Agrarian Studies, School of Government, University of the Western Cape, p48.
[59] Binswanger-Mkhize, H.P., Bourguignon, C., Van den Brink, R. (eds.) & others. 2009. Agricultural Land Redistribution: Towards a Greater Consensus. Washington D.C.: The International Bank for Reconstruction and Development / The World Bank, p178.
[60] S10(3) Provision of Land and Assistance Act 126 of 1991.
[61] Hall, R. (ed) & others. 2009. Land reform for what? Land use, production, and livelihoods. (In Another Countryside? Policy Options for Land and Agrarian Reform in South Africa). Bellville: (PLAAS) Institute for Poverty, Land and Agrarian Studies, School of Government, University of the Western Cape, p39.
[62] Hall, R. (ed) & others. 2009. Land reform for what? Land use, production, and livelihoods. (In Another Countryside? Policy Options for Land and Agrarian Reform in South Africa). Bellville: (PLAAS) Institute for Poverty, Land and Agrarian Studies, School of Government, University of the Western Cape, p39.
[63] Deininger, K. 2004. Land Policies for Growth – poverty reduction: key issues and challenges ahead. Proceedings of the UN, F19 PC Idea Inter-regional Special Forum on the Building of Land Information Policies in the Americas, Agila Scalientes, Mexico, 26 – 27 October 2004, p17.
[64] Borras, S. & McKinley, T. 2006. The unresolved land reform debate: Beyond state-led or market-led models. International Poverty Centre Policy Research Brief, 2, p2.
[65] Van den Brink, R. (ed), Thomas, G. & Binswanger, H. & others. 2009. Consensus, Confusion and Controversy. Selected Land Reform Issues in Sub-Saharan Africa Washington D.C.: The International Bank for Reconstruction and Development / The World Bank, p40.

balance the acquisition of land.[66]

The author, however, is not convinced of this argument and submits that whether expropriation could alleviate a government's burden of funding land redistribution programme is debateable as it will depend on how the expropriation is compensated and how the ancillary costs such as legal process costs are funded. As some commentators have pointed out, the legal process can be 'lengthy and costly', which adds to the costs of expropriation.[67] Case in point is the way Zimbabwe went about its expropriation; resulting in legal battles that outweighed the value of the process and resulted in scaring off investors.[68]

Others, like Hall, echo this reservation and have argued that even if the SAG implemented non-market methods of land acquisition, or expropriation at below market value along with private sector commitments and resources, additional government funding would still be required in order for the SAG to afford the SALRP.[69]

In South Africa expropriation would require compensation that is 'just and equitable, reflecting an equitable balance between the public interest and the interests of those affected'[70] and should be 'agreed to by those affected or decided or approved by a court'.[71]

A formula has been suggested which acts as a guideline for the manner in which 'just and equitable compensation' could be determined.[72] The formula fundamentally suggests that historical factors such as subsidies should be deducted from the market value of the property. There is a debate as to whether 'just and equitable compensation', using this formula, would result in a market value of the property[73] or whether it would be below market value.[74]

This formula holds various challenges, least of all how past agricultural subsidies are to be deducted. Further, if past agricultural subsidies are taken into account, what about other issues, such as the value that has been lost as a result of dispossessing black commercial farmers? A full analysis of this debate is beyond the scope of this paper. What is important is if 'just and equitable' compensation is interpreted to mean compensation at market value, it would not serve the purpose of alleviating the pressure on the SAG's budget unless, for example, the Constitution was amended to expressly provide otherwise.[75] If, however, 'just and equitable' compensation was interpreted as being below market value, expropriation could alleviate the SALRP budgetary constraints.

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[66] Binswanger-Mkhize, H.P., Bourguignon, C., Van den Brink, R. (eds.) & others. 2009. Agricultural Land Redistribution: Towards a Greater Consensus. Washington D.C.: The International Bank for Reconstruction and Development / The World Bank, p178.

[67] Van den Brink, R. (ed), Thomas, G. & Binswanger, H. & others. 2009. Consensus, Confusion and Controversy. Selected Land Reform Issues in Sub-Saharan Africa Washington D.C.: The International Bank for Reconstruction and Development / The World Bank, p33.

[68] Van den Brink, R. (ed), Thomas, G. & Binswanger, H. & others. 2009. Consensus, Confusion and Controversy. Selected Land Reform Issues in Sub-Saharan Africa Washington D.C.: The International Bank for Reconstruction and Development / The World Bank, p33.

[69] Hall, R, Ntsebeza, L & others. 2007.Dynamics in the commercial farming sector. (In Ntsebeza, L. & Hall, R. (eds.) The Land Question in South Africa. The Challenge of Transformation and Redistribution Cape Town: Human Sciences Research Council Press, p102.

[70] South Africa. 1996. s25(3) *Constitution of the Republic of South Africa,* 108 of 1996.

[71] South Africa. 1996. s25(2)(b) *Constitution of the Republic of South Africa,* 108 of 1996.

[72] Hall, R, Ntsebeza, L & others. 2007. Land redistribution in South Africa: the property clause. (In Ntsebeza, L. & Hall, R. (eds.) The Land Question in South Africa. The Challenge of Transformation and Redistribution Cape Town: Human Sciences Research Council Press, p122. This view is based on the 'Gildenhuys formula' devised by Judge Gildenhuys.

[73] Hall, R., Ntsebeza, L. & others. 2007. Land redistribution in South Africa: The property clause revisited. (In Ntsebeza, L. & Hall, R. (eds.) The Land Question in South Africa. The Challenge of Transformation and Redistribution Cape Town: Human Sciences Research Council Press, p122.

[74] Hall, R., Ntsebeza, L. & others. 2007. Transforming Rural South Africa? Taking stock of land reform. (In Ntsebeza, L. & Hall, R, (eds.) The Land Question in South Africa. The Challenge of Transformation and Redistribution Cape Town: Human Sciences Research Council Press, p100.

[75] Borras, S.M. & Franco, J.C. 2008. How land policies impact land-based wealth and power transfer. *Oslo Governance Centre Brief* 3, p1.

If the property expropriated belongs to foreigners, it would not only be governed by local legislation but also by BITs and the compensation would not only be for the loss of land but could also be for the loss of operational income.[76] Expropriation in an environment where foreign investors have made agricultural investments in land could mean that the SAG would be facing more compensation than the market value of land which they would have budgeted for, which can have a negative impact on the already challenged budget. The SAG would have to ensure that they put the necessary plans in place for such an eventuality.

Implementing expropriation is a difficult political decision. Movements in this direction would be hamstrung by tensions between AgriSA and the SAG and the debates about nationalisation, threats of expropriation at no compensation[77] and fears that the SALRP would end up like Zimbabwe's.[78] If South Africa considers this as an option, as part of its SALRP funding strategy, the SAG must ensure that it obtains the buy-in of all stakeholders, in particular organised agriculture.

5.4 Land Tax

A land tax imposed on land owners by government has been suggested as another means of governments funding their land redistribution programmes.[79] [80] South Africa considered the introduction of a land tax but, this was never implemented.[81]

As an alternative to his argument that expropriation can alleviate government's burden in respect of funding land redistribution, Deininger suggests the introduction of a land tax to address a government's lack of adequate sources of revenue that hinders their ability to respond to land issues.[82] He also argues that a land tax has the following advantages: it causes minimal distortions, encourages more intensive land use and can strengthen the accountability of local government to the public.[83]

Lahiff argues that another reason that the WBWS model is the most contentious problem for South Africa is because it failed to introduce a land tax to discourage speculation and bring down land

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[76] Smaller, C. & Mann, H. 2009. A thirst for distant lands: Foreign investment in agricultural land and water. [Online]. Available: http://www.iisd.org/pdf/2009/thirst_for_distant_lands.pdf. [28 March 2011].
[77] SAPA. 2010. 'Agri SA slams Malema over land call. Mail & Guardian Online. [Online]. Available: http://www.news24.com/SouthAfrica/News/Agri-SA-slams-Malema-over-land-call-20100827. [14 April 2011].
[78] Cousins, B. (undated). Why land invasion will happen here too. [Online. Available: www.oxfam.org.uk/resources/learning/**land**rights/downloads/saziminv.rtf. [21 February 2011].
[79] Borras, S. & McKinley, T. 2006. The unresolved land reform debate: Beyond state-led or market-led models. International Poverty Centre Policy Research Brief, 2, p2.
[79] The International Bank for Reconstruction and Development / The World Bank. Agriculture Investment Sourcebook. 2010. [Online]. Available: www.worldbank.org/agsourcebook. [30 August 2010].
[79] Deininger, K. 2004. Land Policies for Growth – poverty reduction: key issues and challenges ahead. Proceedings of the UN, F19 PC Idea Inter-regional Special Forum on the Building of Land Information Policies in the Americas, Agila Scalientes, Mexico, 26 – 27 October 2004, p17.
[79] Deininger, K. 2004. Land Policies for Growth – poverty reduction: key issues and challenges ahead. Proceedings of the UN, F19 PC Idea Inter-regional Special Forum on the Building of Land Information Policies in the Americas, Agila Scalientes, Mexico, 26 – 27 October 2004, p12.
[79] Deininger, K. 2004. Land Policies for Growth – poverty reduction: key issues and challenges ahead. Proceedings of the UN, F19 PC Idea Inter-regional Special Forum on the Building of Land Information Policies in the Americas, Agila Scalientes, Mexico, 26 – 27 October 2004, p19.
[79] Borras, S. & McKinley, T. 2006. The unresolved land reform debate: Beyond state-led or market-led models. International Poverty Centre Policy Research Brief, 2, p2.
[80] Van den Brink, R. (ed), Thomas, G. & Binswanger, H. & others. 2009. Consensus, Confusion and Controversy. Selected Land Reform Issues in Sub-Saharan Africa Washington D.C.: The International Bank for Reconstruction and Development / The World Bank, p40.
[81] Karumbidza, B.J. 2002. 'Redistributionist' versus 'Productionist' land reform: Contested priorities in donor funded land reform in South Africa with comparisons to Zimbabwe. [Online]. Available: http://www.networkideas.org/feathm/may2002/donor_13.pdf. [21 March 2011].
[82] Deininger, K. 2004. Land Policies for Growth – poverty reduction: key issues and challenges ahead. Proceedings of the UN, F19 PC Idea Inter-regional Special Forum on the Building of Land Information Policies in the Americas, Agila Scalientes, Mexico, 26 – 27 October 2004, p12.
[83] Deininger, K. 2004. Land Policies for Growth – poverty reduction: key issues and challenges ahead. Proceedings of the UN, F19 PC Idea Inter-regional Special Forum on the Building of Land Information Policies in the Americas, Agila Scalientes, Mexico, 26 – 27 October 2004, p19.

prices.[84]

Even though a land tax can be a good source of revenue for a government, implementing a land tax is a difficult political decision[85] and, if not administered correctly and not dealt with adequately from a political point of view, it would serve no purpose. Deininger recommends that the land tax mechanism be designed properly in order for it to be beneficial and to work optimally.[86]

The author is of the view that a land tax would need to be considered with much of the same sensitivity as expropriation. In the author's view, with the current political tensions regarding land issues in South Africa[87] and the changes of the SALRP grant structure encouraging private sector investment, with the introduction of the RADP, the climate is still not yet ripe for a land tax to be implemented.

5.5 Stakeholder contributions and donor funding

Moyo notes that internationally the WBWS model typically relies on government grants and/or loan funding to help beneficiaries purchase land through voluntary sales.[88]
Although they maintain that government's own fiscal resources should be the primary source of funding, Van den Brink, Thomas, Binswanger, Bruce and Byamugisha note that donor funding is another source of funding.[89]

Borras and McKinley also argue that multilateral and bilateral donors can make a big contribution to land redistribution. They note that these were 'prominent features' of the success stories of Japan, the Republic of Korea and Taiwan'.[90]

Karumbidza has raised some concerns with donor funding. In advancing his argument, he points out that foreign aid in development usually leads to the donor countries having 'leverage' on the policy direction and discourse of the recipient countries, and much of the time with 'deleterious effects'.[91] He, however, concludes that the donor negotiated land reforms have ensured adequate financial compensation for current land owners who transfer whole and subdivided farms to resettlement

[84] Binswanger-Mkhize, H.P., Bourguignon, C., Van den Brink, R. (eds.) & others. 2009. Agricultural Land Redistribution: Towards a Greater Consensus. Washington D.C.: The International Bank for Reconstruction and Development / The World Bank, p178.
[85] The International Bank for Reconstruction and Development / The World Bank. Agriculture Investment Sourcebook. 2010. [Online]. Available: www.worldbank.org/agsourcebook. [30 August 2010].
[86] Deininger, K. 2004. Land Policies for Growth – poverty reduction: key issues and challenges ahead. Proceedings of the UN, F19 PC Idea Inter-regional Special Forum on the Building of Land Information Policies in the Americas, Agila Scalientes, Mexico, 26 – 27 October 2004, p19.
[87] De Lange, D. 2011. Malema: White people are criminals. Independent Online News. [Online]. Available: http://www.iol.co.za/news/politics/malema-white-people-are-criminals-1.1065708. [8 May 2011].
[88] Binswanger-Mkhize, H.P., Bourguignon, C., Van den Brink, R. (eds.) & others. 2009. Agricultural Land Redistribution: Towards a Greater Consensus. Washington D.C.: The International Bank for Reconstruction and Development / The World Bank, p353.
[89] In Kenya and Algeria former land owners were compensated for their farms by British and French governments. The World Bank also funded the Kenyan land reform programme with loan financed complementary investments and the land reform is hailed as 'highly successful', as well as the land reform programmes in Brazil, Guatemala, India, Malawi and the Philippines. Van den Brink, R. (ed), Thomas, G. & Binswanger, H. & others. 2009. Consensus, Confusion and Controversy. Selected Land Reform Issues in Sub-Saharan Africa Washington D.C.: The International Bank for Reconstruction and Development / The World Bank, p41.
[90] Borras, S. & McKinley, T. 2006. The unresolved land reform debate: Beyond state-led or market-led models. International Poverty Centre Policy Research Brief, 2, p3.
[91] Karumbidza, B.J. 2002. 'Redistributionist' versus 'Productionist' land reform: Contested priorities in donor funded land reform in South Africa with comparisons to Zimbabwe. [Online]. Available: http://www.networkideas.org/feathm/may2002/donor_13.pdf. [21 March 2011].

programmes, at the expense of increasing public debt incurred to finance such transfers.[92] On balance, though, he highlights that the policy direction taken by the SAG was not a result of force by the donors or lenders, but a result of its policy direction towards creating conditions conducive for attracting foreign investment.[93]

Thus, notwithstanding the concerns raised, if the SAG continues to hold its position of not allowing its policies to be influenced by donors, this could still remain a viable way for the SAG to complement its budget available for the SALRP.

5.6 Bilateral and Multilateral donors

According to the Independent Evaluation Group (IEG), agriculture in Africa has been supported by multilateral donors such as the World Bank, IFAD, FAO and African Development Bank (AfDB) and bilateral donors such as Development Co-operation Directorate (DCD – DAC).[94]

However, the Organization for Economic Co-Operation and Development (OECD), under which the DCD-DAC falls, does not grant funds or advance loans.[95] Accordingly, the DCD-DAC would not constitute a potential donor funder of the SALRP.

The World Bank's assistance to the agricultural sector in Africa has been driven by the aim of alleviating rural poverty and promoting rural development.[96] The World Bank[97] is acutely aware that if Africa is to achieve the MDGs, agriculture must be used more effectively for development.[98] Pursuant to this commitment, the World Bank has developed a separate strategy for agriculture in Africa, namely its Africa Action Plan for 2010-12, in recognition of the agricultural sector as a potential driver of growth[99]. SSA is one of the priority areas, with 'raising agricultural productivity for smallholders' being a key focus.[100]

The main focus of the World Bank in relation to land related investments has been formalising land rights through registration and improving access to land.[101] The World Bank recognises that land redistribution is important to promote competition in agriculture.[102]

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[92] Karumbidza, B.J. 2002. 'Redistributionist' versus 'Productionist' land reform: Contested priorities in donor funded land reform in South Africa with comparisons to Zimbabwe. [Online]. Available: http://www.networkideas.org/feathm/may2002/donor_13.pdf. [21 March 2011].

[93] Karumbidza, B.J. 2002. 'Redistributionist' versus 'Productionist' land reform: Contested priorities in donor funded land reform in South Africa with comparisons to Zimbabwe. [Online]. Available: http://www.networkideas.org/feathm/may2002/donor_13.pdf. [21 March 2011].

[94] The International Bank for Reconstruction and Development / The World Bank. World Bank Assistance to Agriculture in Sub-Saharan Africa: An IEG Review. [Online]. Available: http://stuffedandstarved.org/drupal/files/ag_africa_eval.pdf. [9 March 2011].

[95] OECD Budget. [Online]. Available: http://www.oecd.org/pages/0,3417,en_36734052_36761854_1_1_1_1_1,00.html. [20 March 2011].

[96] The International Bank for Reconstruction and Development / The World Bank. World Bank Assistance to Agriculture in Sub-Saharan Africa: An IEG Review. [Online]. Available: http://stuffedandstarved.org/drupal/files/ag_africa_eval.pdf. [9 March 2011].

[97] The World Bank includes the following five agencies: International Bank for Reconstruction and Development (IBRD), International Development Association (IDA), International Finance Corporation (IFC), Multilateral Investment Guarantee Agency (MIGA) and International Centre for Settlement of Investment Disputes (ICSID)).

[98] [Online]. Available: http://siteresources.worldbank.org/EXTASSAGRISUBSAHAFR/Resources/mr_text.pdf. [9 March 2011].

[99] The International Bank for Reconstruction and Development / The World Bank. World Bank Assistance to Agriculture in Sub-Saharan Africa: An IEG Review. [Online]. Available: http://stuffedandstarved.org/drupal/files/ag_africa_eval.pdf. [9 March 2011].

[100] The International Bank for Reconstruction and Development / The World Bank. World Bank Agriculture Acton Plan for 2010 – 2012. [Online]. Available: http://web.worldbank.org/wbsite/external/topics/extard/0,,contentmdk:22330055~menupk:1307965~pagepk:210058~pipk:210062~thesitepk:336682,00.html. [30 August 2010].

[101] The International Bank for Reconstruction and Development / The World Bank. Agriculture Investment Sourcebook. 2010. [Online]. Available: www.worldbank.org/agsourcebook. [30 August 2010].

[102] The International Bank for Reconstruction and Development / The World Bank. Agriculture Investment Sourcebook. 2010. [Online]. Available: www.worldbank.org/agsourcebook. [30 August 2010].

The World Bank identified that, amongst other issues, 'incomplete land reform' was a key constraint to developing agriculture in Africa.[103] The World Bank is open to supporting MLAR, the development of viable 'productive' agricultural enterprises, and well-conceived and executed land reform programmes based on compulsory acquisition of land or redistribution.[104] Thus, aside from supporting agriculture in Africa, the World Bank could be a potential source of funding land reform.[105]

The World Bank has three kinds of financing options for land reform. The land reform financing options include: grant funding; loan funding; or a combination of the two. Grant funding is preferred to loan funding to acquire land purchases and investments.[106] It is also able to disburse funds against land purchases as well as credit for technical assistance or grants to fund business plans.[107]

Until recently, because of policy constraints, the World Bank's financial contribution to MLAR has been limited to supporting the 'non land acquisition costs'.[108] Recent policy changes allow the World Bank to fund land acquisition for land reform purposes if: i) it can be demonstrated that the land purchase is an efficient means of acquiring land; ii) the land is purchased by beneficiaries in terms of MLAR; iii) the program results in increased productivity; iv) there is a strategy to deal with market distortions; and v) there are plans in place to make management arrangements covering the use of funds, monitoring and evaluation, and analysis of political risk.[109] India and Malawi are among the first countries in which the World Bank has funded the acquisition of land.[110]

In addition, those losing land can be compensated according to the Bank's Safeguard Policy on Involuntary Resettlement. Brazil has made use of this mechanism, with the Federal Government being funded by the World Bank, enabling it to acquire large blocks of land compulsorily for its state land reform program.[111] Thus the World Bank could also fund land redistribution by means of providing expropriation compensation finance.

Another way of attracting FDI through the World Bank is with the Multilateral Investment Guarantee Agency (MIGA). Under its Small Investment Program (SIP), MIGA is able to provide guarantees to investments in the non-financial sector, provided the investment relates to the establishment of a small or medium enterprise (SME), or made into an existing SME, in a developing member country. The terms are that the SME must fulfil two out of three of the following criteria: no more than 300 employees; total annual sales should not be more than US$15 million; and/or total assets should not be

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[103] The International Bank for Reconstruction and Development / The World Bank. World Bank Assistance to Agriculture in Sub-Saharan Africa: An IEG Review. [Online]. Available: http://stuffedandstarved.org/drupal/files/ag_africa_eval.pdf. [9 March 2011].

[104] The International Bank for Reconstruction and Development / The World Bank. Agriculture Investment Sourcebook. 2010. [Online]. Available: www.worldbank.org/agsourcebook. [30 August 2010].

[105] In Kenya and Algeria former land owners were compensated for their farms by British and French governments. The World Bank also funded the Kenyan land reform programme with loan financed complementary investments and the land reform is hailed as 'highly successful', as well as the land reform programmes in Brazil, Guatemala, India, Malawi and the Philippines. Van den Brink, R. (ed), Thomas, G. & Binswanger, H. & others. 2009. Consensus, Confusion and Controversy. Selected Land Reform Issues in Sub-Saharan Africa Washington D.C.: The International Bank for Reconstruction and Development / The World Bank, p41.

[106] The International Bank for Reconstruction and Development / The World Bank. Agriculture Investment Sourcebook. 2010. [Online]. Available: www.worldbank.org/agsourcebook. [30 August 2010].

[107] The International Bank for Reconstruction and Development / The World Bank. Agriculture Investment Sourcebook. 2010. [Online]. Available: www.worldbank.org/agsourcebook. [30 August 2010].

[108] The International Bank for Reconstruction and Development / The World Bank. World Bank Assistance to Agriculture in Sub-Saharan Africa: An IEG Review. [Online]. Available: http://stuffedandstarved.org/drupal/files/ag_africa_eval.pdf. [9 March 2011].

[109] The International Bank for Reconstruction and Development / The World Bank. Agriculture Investment Sourcebook. 2010. [Online]. Available: www.worldbank.org/agsourcebook. [30 August 2010].

[110] Van den Brink, R. (ed), Thomas, G. & Binswanger, H. & others. 2009. Consensus, Confusion and Controversy. Selected Land Reform Issues in Sub-Saharan Africa Washington D.C.: The International Bank for Reconstruction and Development / The World Bank, p41.

[111] The International Bank for Reconstruction and Development / The World Bank. Agriculture Investment Sourcebook. 2010. [Online]. Available: www.worldbank.org/agsourcebook. [30 August 2010].

more than US$15 million.[112]

MIGA guarantees have also been granted in respect of investments into South African agricultural products. One such project is the investment by MKV Holdings LLC of the United States in Kanu Vineyards (Pty) Ltd in South Africa, a wine-making and export company. MKV Holdings LLC received a MIGA guarantee of US$7.86 million for a period of up to ten years, guaranteeing its investment in Kanu Vineyards (Pty) Ltd against the risks of transfer restriction, expropriation, and war and civil disturbance.[113]

5.7 Agricultural investment

There is no formal definition for agricultural investment as such. Agricultural investment is defined with reference to land acquisition but also varying levels of equity acquisition in agricultural operating companies or land owning companies. For purposes of this paper, 'land acquisition' refers to both land purchases and alternative means of acquiring land.

Some commentators are of the view that agricultural investment can be divided into two broad categories: investing in agricultural funds available on the market; and investing directly into agricultural land.[114]

Eventhough, agricultural investments has been regarded as "risky",[115] it has been observed that the private sector is leading these investments (funded by government or sovereign wealth funds (SWFs)) as well as government to government investments and investments by SWFs (to a lesser degree).[116] [117] The main institutional private sector investors comprise SWFs in partnership with private firms, as well as state owned enterprises (SOEs), microfinance providers and investment managers (which include pension funds, hedge funds, private equity and banking institutions and financial institutions).[118]

There are a number of factors that have triggered the increase in foreign investment in developing country agriculture. The growing phenomenon has been attributed to the recovery in respect of FDI generally after the economic crisis.[119] Other reasons for increased foreign agricultural investment include the perceived availability of land in Africa,[120] the need for investors to diversify their investment strategies and seek out other assets and opportunities to invest in,[121] growing interest in

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[112] Multilateral Investment Guarantee Agency. Investment Guarantees. Guarantee Overview. [Online]. Available: http://www.miga.org/guarantees/index_sv.cfm?stid=1661. [15 March 2011].

[113] Multilateral Investment Guarantee Agency. Sectors. Agribusiness, Manufacturing, Services. [Online]. Available http://www.miga.org/sectors/index_sv.cfm?stid=1536&sectid=1. [15 March 2011].

[114] Garner, D. 2010. The best agricultural investment of 2010? Ezine Articles. [Online]. Available: http://ezinearticles.com/?The-Best-Agricultural-Investment-of-2010?&id=3663197. [8 March 2011].

[115] Miller, C. Richter, S. & McNellis, P. & others. 2009. Agricultural investment funds for developing countries. [Online]. Available: http://www.ruralfinance.org/servlet/BinaryDownloaderServlet/71360_Investment_fund_pape.pdf?filename=1270826402324_investment_funds.pdf&refID=71360. [2 September 2010].

[116] Hallam, D. 2009. International investments in agricultural production. (In Kugelman, M. & Levenstein, S. (eds.) *Land Grab? The Race for the Worlds' Farmland*. Washington, D.C.: Woodrow Wilson International Center for Scholars, p30.

[117] Highquest Partners United States. 2010. Private financial sector investment in farmland and agricultural infrastructure. OECD Food, Agriculture and Fisheries Working Paper 33, p1.

[118] McNellis P. 2008. Foreign investment in developing country agriculture – the emerging role of private sector finance. FAO Working Paper 28, p5.

[119] United Nations Conference on Trade and Development. 2010. World Investment Report 2010: Investing in a low-carbon economy. [Online]. Available: http://www.unctad.org/en/docs/wir2010_en.pdf. [23 March 2011].

[120] Cotula, L., Vermeulen, S. & Leonard, R. 2009. Land grab or development opportunity? Agricultural investment and international land deals in Africa. [Online]. Available: http://pubs.iied.org/pdfs/12561IIED.pdf. [28 March 2011].

[121] Highquest Partners United States. 2010. Private financial sector investment in farmland and agricultural infrastructure. OECD Working Paper 33, p5.

biofuels[122] and alternative energy sources,[123] return on investment generally,[124 125] return on investment on emerging carbon markets,[126] population growth,[127] increasing rates of urbanisation,[128] and developmental reasons.[129] The widely held view is that the trend can be attributed to food security concerns of investor countries who have limited water and arable land to maintain agricultural production in their own countries.[130 131 132 133 134 135 136 137 138]

From the host developing country's perspective, foreign agricultural investment has been encouraged in the hope that the FDI will build infrastructure, bring new technology, create employment, and give smallholder farmers more choice, access and control, and support local systems.[139]

These investments are however a catch-22. The reason for this is because the food insecure countries are leasing or selling land to rich countries to alleviate their future food security challenges, while at the same time the host countries often have food security concerns of their own.[140]

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[122] Mhlanga, N. 2010. Private sector agribusiness investment in Sub-Saharan Africa. Agricultural management. [Online]. Available: www.fao.org/ag/ags/publications/docs/AGSF.../K7443e.pdf updated to http://www.fao.org/fileadmin/user_upload/ags/publications/K7443e.pdf. [2 September 2010].
[123] Smaller, C. & Mann, H. 2009. A thirst for distant lands: Foreign investment in agricultural land and water. [Online]. Available: http://www.iisd.org/pdf/2009/thirst_for_distant_lands.pdf [28 March 2011].
[124] McNellis, P. 2009. Foreign investment in developing country agriculture – the emerging role of private sector finance.FAO Working Paper 28, p10.
[125] Mhlanga, N. 2010. Private sector agribusiness investment in Sub-Saharan Africa. Agricultural management. [Online]. Available: www.fao.org/ag/ags/publications/docs/AGSF.../K7443e.pdf updated to http://www.fao.org/fileadmin/user_upload/ags/publications/K7443e.pdf. [2 September 2010].
[126] Cotula, L., Vermeulen, S. & Leonard, R. 2009. Land grab or development opportunity? Agricultural investment and international land deals in Africa. [Online]. Available: http://pubs.iied.org/pdfs/12561IIED.pdf. [28 March 2011].
[127] Vermeulen, S. & Cotula, L. 2009. Making the most of agricultural investment: A survey of business models that provide opportunities for smallholders. [Online]. Available: http://pubs.iied.org/pdfs/12561IIED.pdf. [28 March 2011].
[128] Vermeulen, S. & Cotula, L. 2009. Making the most of agricultural investment: A survey of business models that provide opportunities for smallholders. [Online]. Available: http://pubs.iied.org/pdfs/12561IIED.pdf [28 March 2011].
[129] Miller, C. Richter, S. & McNellis, P. & others. 2009. Agricultural investment funds for developing countries. [Online]. Available: http://www.ruralfinance.org/servlet/BinaryDownloaderServlet/71360_Investment_fund_pape.pdf?filename=1270826402324_investment_funds.pdf&refID=71360 [2 September 2010].
[130] McNellis, P. 2009. Foreign investment in developing country agriculture – the emerging role of private sector finance.FAO Working Paper 28, p5.
[131] Miller, C. Richter, S. & McNellis, P. & others. 2009. Agricultural investment funds for developing countries. [Online]. Available: http://www.ruralfinance.org/servlet/BinaryDownloaderServlet/71360_Investment_fund_pape.pdf?filename=1270826402324_investment_funds.pdf&refID=71360. [2 September 2010].
[132] Mhlanga, N. 2010. Private sector agribusiness investment in Sub-Saharan Africa. Agricultural management. [Online]. Available: www.fao.org/ag/ags/publications/docs/AGSF.../K7443e.pdf *updated to* http://www.fao.org/fileadmin/user_upload/ags/publications/K7443e.pdf. [2 September 2010].
[133] Hallam, D. 2009. International investments in agricultural production. (In Kugelman, M. & Levenstein, S. (eds.) *Land Grab? The Race for the Worlds' Farmland*. Washington, D.C.: Woodrow Wilson International Center for Scholars, p27.
[134] Spieldoch, A. & Murphy, S. 2009. Agricultural land acquisitions: Implications for food security and poverty alleviation. (In Kugelma,n M. & Levenstein, S. (eds.) *Land Grab? The Race for the Worlds' Farmland.* Washington, D.C.: Woodrow Wilson International Center for Scholars, p42.
[135] Cotula, L., Vermeulen, S. & Leonard, R. 2009. Land grab or development opportunity? Agricultural investment and international land deals in Africa. [Online]. Available: http://pubs.iied.org/pdfs/12561IIED.pdf. [28 March 2011].
[136] Vermeulen, S. & Cotula, L. 2009. Making the most of agricultural investment: A survey of business models that provide opportunities for smallholders. [Online]. Available: http://pubs.iied.org/pdfs/12561IIED.pdf. [28 March 2011].
[137] Smaller, C. & Mann, H. 2009. A thirst for distant lands: Foreign investment in agricultural land and water. [Online]. Available: http://www.iisd.org/pdf/2009/thirst_for_distant_lands.pdf. [28 March 2011].
[138] Zvomuya, F. 2006. Agricultural investment: The key to food security. Farmers Weekly. [Online]. Available: http://www.farmersweekly.co.za/index.php?p[IGcms_nodes][IGcms_nodesUID]=b9af7a1dcc1a216292f58f2de9ce6344. [24 April 2011].
[139] Spieldoch, A. & Murphy, S. 2009. Agricultural land acquisitions: Implications for food security and poverty alleviation. (In Kugelma,n M. & Levenstein, S. (eds.) *Land Grab? The Race for the Worlds' Farmland.* Washington, D.C.: Woodrow Wilson International Center for Scholars, p41.
[140] Hallam, D. 2009. International investments in agricultural production. (In Kugelman, M. & Levenstein, S. (eds.) *Land Grab? The Race for the Worlds' Farmland*. Washington, D.C.: Woodrow Wilson International Center for Scholars, p27.

In Africa it has been found that it is not only 'market forces' that have given rise to this trend in agricultural investment and the large-scale land acquisitions that are coupled with it, but rather that governments in countries with 'high agricultural potential' and 'competitive advantage' are encouraging renewed commercial investment from domestic and foreign investors. One such example is the government of Ethiopia, who reportedly in July 2009 marked out 1.6 million hectares of land, extendable to 2.7 million hectares, for investors willing to develop commercial farms.[141] Other examples include Ghana, Malawi, Mozambique, Malawi, Nigeria, Tanzania and Uganda, which have actively encouraged foreign private sector participation in agriculture, even in the production of their staple crops.[142]

5.7.1 Agricultural investment sources

Agricultural investment trends also reveal that SWF's are taking to investing in agriculture.[143] [144] The structure of the investment for these SWFs in recent years has been to enter into partnerships of some kind with private institutions and investors in order to make joint investments abroad.[145]

It has also been observed that food importing countries, such as Saudi Arabia, driven by food security concerns have created 'policy incentives' for agricultural investment in the form of land acquisitions in foreign countries overseas as part of broader national food security strategies'.[146]

It has also been found that in some cases SOEs invest in 'primary agricultural production' in foreign countries.[147] An example of an SOE investing in the agricultural sector of an African country is that of Zad Holding Company on SOE of Qatar establishing a joint venture to produce food in Sudan for export to Arab markets.[148]
In the author's view, SWFs or SOEs are potential alternative source of funding the SALRP. If pursued by the SAG, the SAG's approach should be to leverage off the comparative advantage it has in respect of its agricultural sector, over food importing countries, to explore ways that these countries may offer funding to the SALRP.

Other sources include banking institutions, micro financing institutions, agricultural investment funds and investment managers.
The increasing trend of investment in agriculture is also as a result of a new phenomenon of foreign investors investing in developing world agriculture through AIFs.[149] [150] AIFs used to finance

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[141] Cotula, L., Vermeulen, S. & Leonard, R. 2009. Land grab or development opportunity? Agricultural investment and international land deals in Africa. [Online]. Available: http://pubs.iied.org/pdfs/12561IIED.pdf. [28 March 2011].
[142] Mhlanga, N. 2010. Private sector agribusiness investment in Sub-Saharan Africa. Agricultural management. [Online]. Available: www.fao.org/ag/ags/publications/docs/AGSF.../K7443e.pdf *updated to* http://www.fao.org/fileadmin/user_upload/ags/publications/K7443e.pdf. [2 September 2010].
[143] United Nations Conference on Trade and Development. 2010. World Investment Report 2010: Investing in a low-carbon economy. [Online]. Available: http://www.unctad.org/en/docs/wir2010_en.pdf. [23 March 2011].
[144] McNellis, P. 2009. Foreign investment in developing country agriculture – the emerging role of private sector finance.FAO Working Paper 28, p3.
[145] McNellis, P. 2009. Foreign investment in developing country agriculture – the emerging role of private sector finance.FAO Working Paper 28, p3.
[146] Vermeulen, S. & Cotula, L. 2009. Making the most of agricultural investment: A survey of business models that provide opportunities for smallholders. [Online]. Available: http://pubs.iied.org/pdfs/12561IIED.pdf. [28 March 2011].
[147] Cotula, L., Vermeulen, S. & Leonard, R. 2009. Land grab or development opportunity? Agricultural investment and international land deals in Africa. [Online]. Available: http://pubs.iied.org/pdfs/12561IIED.pdf. [28 March 2011].
[148] Cotula, L., Vermeulen, S. & Leonard, R. 2009. Land grab or development opportunity? Agricultural investment and international land deals in Africa. [Online]. Available: http://pubs.iied.org/pdfs/12561IIED.pdf. [28 March 2011].
[149] Miller, C. Richter, S. & McNellis, P. & others. 2009. 'Agricultural investment funds for developing countries. [Online]. Available: http://www.ruralfinance.org/servlet/BinaryDownloaderServlet/71360_Investment_fund_pape.pdf?filename=1270826402324_investment_funds.pdf&refID=71360 [2 September 2010].
[150] Mhlanga, N. 2010. Private sector agribusiness investment in Sub-Saharan Africa. Agricultural management. [Online]. Available: www.fao.org/ag/ags/publications/docs/AGSF.../K7443e.pdf *updated to* http://www.fao.org/fileadmin/user_upload/ags/publications/K7443e.pdf. [2 September 2010].

agricultural projects include setting up of a 'whole scheme' that involves the purchase of land, equipment and storage facilities.[151] Some AIFs complement their finance with technical assistance (which includes training on business expertise, business management, expertise, technology training and transfer, financial literacy training for borrowers and corporate) to strengthen the business capacity of the projects they invest in.[152] This trend has been attributed to the macro-investment trend in the "emerging market asset class".[153]
Many AIFs are set up as public private partnerships (PPPs).[154]

Interestingly, there are about ten AIFs operating in SSA.[155] In order for AIFs to be a means of investing in agriculture and a potential alternative source of funding for the SALRP, AIFs that are not purely commercial and have a social or development focus for developing countries would need to be considered. Most AIFs have a return on investment focus; few have an 'altruistic focus'.[156] An in-depth review of the various AIFs specifically targeting the SSA is beyond the scope of the paper, but three examples of AIFs that operate in Africa will be briefly introduced. These are the African Agricultural Capital (AAC) (the first agribusiness-focused investment fund), African Seed Investment Fund (ASIF) and Root Capital.

This entails investment by private sector and public sector. PPPs are not a new concept in South Africa at a national or local government level. However, it has mostly been used in relation to investment in the tourism sector. The combination of public and private funds is not new to the SALRP, the SAG is encouraging private investment, albeit it local private investment. Further, the notion of 'strategic partners' is also envisaged by the SAG. Thus the author is of the view that, subject to legislative and policy requirements, PPPs with public and foreign private sector funding could be a viable option for funding the SALRP.

Commentators and research organisations such as the United Nations Conference on Trade and Development (UNCTAD), the International Institute for Sustainable Development (IISD), Institute for Agriculture and Trade Policy (IATP), the IIED,[157] IFAD,[158] FAO,[159] [160] [161] Swiss

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[151] Miller, C. Richter, S. & McNellis, P. & others. 2009. 'Agricultural investment funds for developing countries. [Online]. Available: http://www.ruralfinance.org/servlet/BinaryDownloaderServlet/71360_Investment_fund_pape.pdf?filename=1270826402324_investment_funds.pdf&refID=71360 [2 September 2010].

[152] Miller, C. Richter, S. & McNellis, P. & others. 2009. 'Agricultural investment funds for developing countries. [Online]. Available: http://www.ruralfinance.org/servlet/BinaryDownloaderServlet/71360_Investment_fund_pape.pdf?filename=1270826402324_investment_funds.pdf&refID=71360 [2 September 2010].

[153] Miller, C. Richter, S. & McNellis, P. & others. 2009. 'Agricultural investment funds for developing countries. [Online]. Available: http://www.ruralfinance.org/servlet/BinaryDownloaderServlet/71360_Investment_fund_pape.pdf?filename=1270826402324_investment_funds.pdf&refID=71360 [2 September 2010].

[154] Miller, C. Richter, S. & McNellis, P. & others. 2009. 'Agricultural investment funds for developing countries. [Online]. Available: http://www.ruralfinance.org/servlet/BinaryDownloaderServlet/71360_Investment_fund_pape.pdf?filename=1270826402324_investment_funds.pdf&refID=71360 [2 September 2010].

[155] Miller, C. Richter, S. & McNellis, P. & others. 2009. 'Agricultural investment funds for developing countries. [Online]. Available: http://www.ruralfinance.org/servlet/BinaryDownloaderServlet/71360_Investment_fund_pape.pdf?filename=1270826402324_investment_funds.pdf&refID=71360 [2 September 2010].

[156] Miller, C. Richter, S. & McNellis, P. & others. 2009. 'Agricultural investment funds for developing countries. [Online]. Available: http://www.ruralfinance.org/servlet/BinaryDownloaderServlet/71360_Investment_fund_pape.pdf?filename=1270826402324_investment_funds.pdf&refID=71360 [2 September 2010].

[157] Cotula L, Vermeulen S & Leonard R 'Land grab or development opportunity? Agricultural investment and international land deals in Africa' 19 Available: http://pubs.iied.org/pdfs/12561IIED.pdf. [28 March 2011].

[158] Cotula, L., Vermeulen, S. & Leonard, R. 2009. Land grab or development opportunity? Agricultural investment and international land deals in Africa. [Online]. Available: http://pubs.iied.org/pdfs/12561IIED.pdf. [28 March 2011].

[159] McNellis, P. 2009. Foreign investment in developing country agriculture – the emerging role of private sector finance.FAO Working Paper 28, p1.

Agency for Development and Cooperation (SDC)[162], OECD[163] and the World Bank[164] have noted that the geographic focus of agricultural investment interest has shifted to Africa and Brazil, with Brazil being recognised as the 'new frontier' for new farmland development in the world.[165] [166]

South-South investment trends have also been noted in the agricultural investment sphere.[167] [168]

The renewed interest in agricultural investment by private institutions, AIFs, SWFs and other types of investors has mainly focussed on purchasing farmland in lower- and middle-income countries or what the media has termed 'land grabbing'.[169] [170][171] [172] [173] [174] [175] Some commentators, such as the IIED, FAO, IFAD and SDC, have criticised these transactions as not being models that promote agricultural investment and 'maximise opportunities for local smallholders'.[176]

Various commentators have suggested that land rental within the context of land redistribution is an alternative to land purchases, but still has the effect of creating agricultural productivity and poverty alleviation.[177] This land lease model has been found to be the preferred mode of investment in Africa

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[160] Miller, C. Richter, S. & McNellis, P. & others. 2009. 'Agricultural investment funds for developing countries. [Online]. Available: http://www.ruralfinance.org/servlet/BinaryDownloaderServlet/71360_Investment_fund_pape.pdf?filename=1270826402324_investment_funds.pdf&refID=71360 [2 September 2010].

[161] Mhlanga, N. 2010. Private sector agribusiness investment in Sub-Saharan Africa. Agricultural management. [Online]. Available: www.fao.org/ag/ags/publications/docs/AGSF.../K7443e.pdf *updated to* http://www.fao.org/fileadmin/user_upload/ags/publications/K7443e.pdf. [2 September 2010].

[162] Cotula, L., Vermeulen, S. & Leonard, R. 2009. Land grab or development opportunity? Agricultural investment and international land deals in Africa. [Online]. Available: http://pubs.iied.org/pdfs/12561IIED.pdf. [28 March 2011].

[163] [Online]. Available: http://www.oecd-ilibrary.org/docserver/download/fulltext/5km7nzpjlr8v.pdf?expires=1297145346&id=0000&accname=guest&checksum=c5c94ce87d3687190b985f088decf8ec. [8 February 2011].

[164] United Nations Conference on Trade and Development. 2010. World Investment Report 2010: Investing in a low-carbon economy. [Online]. Available: http://www.unctad.org/en/docs/wir2010_en.pdf. [23 March 2011].

[165] Highquest Partners United States. 2010. Private financial sector investment in farmland and agricultural infrastructure. OECD Food, Agriculture and Fisheries Working Paper 33, p13.

[166] Hallam, D. 2009. International investments in agricultural production. (In Kugelman, M. & Levenstein, S. (eds.) *Land Grab? The Race for the Worlds' Farmland*. Washington, D.C.: Woodrow Wilson International Center for Scholars, p30.

[167] Spieldoch, A. & Murphy, S. 2009. Agricultural land acquisitions: Implications for food security and poverty alleviation. (In Kugelma,n M. & Levenstein, S. (eds.) *Land Grab? The Race for the Worlds' Farmland.* Washington, D.C.: Woodrow Wilson International Center for Scholars, p42.

[168] Highquest Partners United States. 2010. Private financial sector investment in farmland and agricultural infrastructure. OECD Food, Agriculture and Fisheries Working Paper 33, p5.

[169] Vermeulen, S. & Cotula, L. 2009. Making the most of agricultural investment: A survey of business models that provide opportunities for smallholders. [Online]. Available: http://pubs.iied.org/pdfs/12561IIED.pdf. [28 March 2011].

[170] Vermeulen, S. & Cotula, L. 2009. Making the most of agricultural investment: A survey of business models that provide opportunities for smallholders. [Online]. Available: http://pubs.iied.org/pdfs/12561IIED.pdf. [28 March 2011].

[171] McNellis, P. 2009. Foreign investment in developing country agriculture – the emerging role of private sector finance.FAO Working Paper 28, p1.

[172] McNellis, P. 2009. Foreign investment in developing country agriculture – the emerging role of private sector finance.FAO Working Paper 28.

[173] Mhlanga, N. 2010. Private sector agribusiness investment in Sub-Saharan Africa. Agricultural management. [Online]. Available: www.fao.org/ag/ags/publications/docs/AGSF.../K7443e.pdf *updated to* http://www.fao.org/fileadmin/user_upload/ags/publications/K7443e.pdf. [2 September 2010].

[174] Spieldoch, A. & Murphy, S. 2009. Agricultural land acquisitions: Implications for food security and poverty alleviation. (In Kugelma,n M. & Levenstein, S. (eds.) *Land Grab? The Race for the Worlds' Farmland.* Washington, D.C.: Woodrow Wilson International Center for Scholars, p40.

[175] McNellis, P. 2009. Foreign investment in developing country agriculture – the emerging role of private sector finance.FAO Working Paper 28, p3.

[176] Smaller, C. & Mann, H. 2009. A thirst for distant lands: Foreign investment in agricultural land and water. [Online]. Available: http://www.iisd.org/pdf/2009/thirst_for_distant_lands.pdf. [28 March 2011]., pp5 - 11.

[177] Deininger, K. 2004. Land Policies for Growth – poverty reduction: key issues and challenges ahead. Proceedings of the UN, F19 PC Idea Inter-regional Special Forum on the Building of Land Information Policies in the Americas, Agila Scalientes, Mexico, 26 – 27 October 2004, p20.

because outright ownership is not necessarily possible due to various legalities involved. Accordingly, long term concessions with central governments, which include commitments by investors to provide financial support for social projects between five to 15 year periods, have emerged as an applied business model.[178]

Amidst this land purchase trend and because of issues and risks associated therewith, some commentators have turned their focus to researching alternative ways of structuring agricultural investments that do not involve land acquisitions by foreigners so that 'land rights remained vested with local farmers' but that may also achieve food security objectives.[179] [180] [181] This is not a new phenomenon and there has been a shift since as far back as the 1980s from pure land purchases to other modes, such as contract farming, to facilitate foreign investment.[182]

A combination of land purchases or long-term leases and contractual arrangements or 'mixed models' is also possible.[183] The IIED, FAO, IFAD and SDC also found that there were alternatives to land purchases, namely contract farming, management contracts, tenant farming and sharecropping, joint ventures and farmer-owned business.[184]

In South Africa, the manner in which the SALRP is funded in South Africa is tied to the manner in which the individual projects are designed and how it is structured, the so called 'business models'. The author submits that the business models are merely commercial legal principles applied to structure a commercial transaction; thus, a business model is the end product of a commercial structuring exercise. This is an important theme to bear in mind, as one considers the foreign agricultural investment options.

5.7.2 Business models

Although business models have almost been categorised as alternative sources of agricultural investment per se, and although the author agrees that they are alternatives to divesting local smallholders or farmers of their land rights, the author does not regard the IIED, FAO, IFAD and SDC's argument as innovative as they might want to suggest. First, because although not labelled as 'making the most of agricultural investment' or 'alternatives to land acquisition' business models are not new innovations and have been applied in the SALRP, this is how the private sector's contribution to land redistribution is currently facilitated. Second, although there is not a divestment of land rights, depending on the business model used to structure the commercial transaction, there could still be a divestment of ownership which could have the same net effect as a land acquisition. When private or institutional investors acquire major or controlling shareholdings in companies that may be land owning companies, they effectively acquire the land. Thus, the author is of the view that the business models *can be* alternative to land acquisitions because, depending on what the transaction variables are, the net result might be land acquisition.

What is new for South Africa is that there are business models that are not currently part of its suite of

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[178] Highquest Partners United States. 2010. Private financial sector investment in farmland and agricultural infrastructure. OECD Food, Agriculture and Fisheries Working Paper 33, p11.

[179] Vermeulen, S. & Cotula, L. 2009. Making the most of agricultural investment: A survey of business models that provide opportunities for smallholders. [Online]. Available: http://pubs.iied.org/pdfs/12561IIED.pdf [28 March 2011].

[180] Hallam, D. 2009. International investments in agricultural production. (In Kugelman, M. & Levenstein, S. (eds.) *Land Grab? The Race for the Worlds' Farmland*. Washington, D.C.: Woodrow Wilson International Center for Scholars, pp34 - 37.

[181] Cotula, L. & Leonard, R. 2010. Alternatives to land acquisitions: Agricultural investment and collaborative business models. [Online]. Available: http://pubs.iied.org/pdfs/12567IIED.pdf. [10 August 2010].

[182] Smaller, C. & Mann, H. 2009. A thirst for distant lands: Foreign investment in agricultural land and water. [Online]. Available: http://www.iisd.org/pdf/2009/thirst_for_distant_lands.pdf. [28 March 2011].

[183] Hallam, D. 2009. International investments in agricultural production. (In Kugelman, M. & Levenstein, S. (eds.) *Land Grab? The Race for the Worlds' Farmland*. Washington, D.C.: Woodrow Wilson International Center for Scholars, pp34 – 35.

[184] Vermeulen, S. & Cotula, L. 2009. Making the most of agricultural investment: A survey of business models that provide opportunities for smallholders. [Online]. Available: http://pubs.iied.org/pdfs/12561IIED.pdf. [28 March 2011].

business models.[185] [186]

A high level review of the different models applied in each country reveals the following:
In the Ghanaian example[187] a co-operative model was shared, with ownership vesting in the members of the co-operative, being the farmers. Thus they have influence over management decisions and various participation forums. The members bear the risk, but also benefit from the rewards.[188] The members have to seek the necessary funding for the project as well as business and/or funding partners.
Although the model has various strengths, some of the weaknesses include: the high cost of maintaining the democratic participation structures; the costs associated with monitoring and the difficulty in organising members; and the joint liability of members meeting fair trade standards.[189]

The model applied in the Ugandan project[190] was that of a typical contract farming scheme or outgrower model.[191] Although the benefits appear to outweigh the problems, the outgrowers have little influence in how much they can benefit.[192] The weakness with this model applied to this particular project includes lack of competition, given that the company is the only legitimate buyer in the district. Thus the company can inflate the charges and, if the outgrowers do not make enough land available, the company may have to run the processing facility under capacity.[193]

In India one of the business models shared was that of a franchise model applied by Nandan Biomatrix Limited (NBL). Franchisees, who are locals, are appointed to assist in the management of contract farming and in buy-back of jatropha seed produce post-harvesting. The franchisee would also be responsible for providing and coordinating services to the farmers.[194] Thus it is a variation of the contract farming model. NBL also facilitates the provision of finance by public sector banks. NBL also provides insurance to cover the jatropha crop. NBL also gives the farmers training, technical know-how and knowledge, typical in a franchise arrangement.[195] Interestingly, the risks associated with the crop are borne by NBL (through the insurance cover). As for reward, the farmers received a performance-linked commission. Although the farmers own the land, they have no influence in the

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[185] Cotula, L. & Leonard, R. 2010. Alternatives to land acquisitions: Agricultural investment and collaborative business models. [Online]. Available: http://pubs.iied.org/pdfs/12567IIED.pdf. [10 August 2010]. These business models include the Ghanaian farmer owned business model, the contract farming model of Uganda, the joint venture business model of Mozambique, the National Smallholder Farmers Association of Malawi supporting smallholders in Malawi, India with its variations of franchisee/contract farming and joint venture and hybrid business models applied in India, the hybrid business model applied in Tanzania and the 'inclusive' business model of Madagascar. Interestingly, South Africa also participated in sharing its 'sale and leaseback' business model applied in the Mondi land restitution project.
[186] Cotula, L. & Leonard, R. 2010. Alternatives to land acquisitions: Agricultural investment and collaborative business models. [Online]. Available: http://pubs.iied.org/pdfs/12567IIED.pdf. [10 August 2010].
[187] Kuapa Kokoo Farmers Union.
[188] Cotula, L. & Leonard, R. 2010. Alternatives to land acquisitions: Agricultural investment and collaborative business models. [Online]. Available: http://pubs.iied.org/pdfs/12567IIED.pdf. [10 August 2010].
[189] Cotula, L. & Leonard, R. 2010. Alternatives to land acquisitions: Agricultural investment and collaborative business models. [Online]. Available: http://pubs.iied.org/pdfs/12567IIED.pdf. [10 August 2010].
[190] Kinyara Sugar factory.
[191] The land is owned by the outgrowers and the company owns the production equipment. The outgrower and company conclude and agreement regulating their relationship. Pursuant to this contractual arrangement, the company undertakes to support the outgrowers in production activities and other contractually agreed activities. The outgrowers undertake to sell all their products to the company, which pays the outgrowers the contractually agreed price. Cotula, L. & Leonard, R. 2010. Alternatives to land acquisitions: Agricultural investment and collaborative business models. [Online]. Available: http://pubs.iied.org/pdfs/12567IIED.pdf. [10 August 2010].
[192] Cotula, L. & Leonard, R. 2010. Alternatives to land acquisitions: Agricultural investment and collaborative business models. [Online]. Available: http://pubs.iied.org/pdfs/12567IIED.pdf. [10 August 2010].
[193] Cotula, L. & Leonard, R. 2010. Alternatives to land acquisitions: Agricultural investment and collaborative business models. [Online]. Available: http://pubs.iied.org/pdfs/12567IIED.pdf. [10 August 2010].
[194] Cotula, L. & Leonard, R. 2010. Alternatives to land acquisitions: Agricultural investment and collaborative business models. [Online]. Available: http://pubs.iied.org/pdfs/12567IIED.pdf. [10 August 2010].
[195] Cotula, L. & Leonard, R. 2010. Alternatives to land acquisitions: Agricultural investment and collaborative business models. [Online]. Available: http://pubs.iied.org/pdfs/12567IIED.pdf. [10 August 2010].

business operations of NBL and this is perhaps the main weakness of this model.[196]

The Malawian example shared was not a business model as such, but rather explained the role of the National Smallholder Farmers Association of Malawi (NASFAM). NASFAM is a private company wholly owned by over 100,000 smallholders and essentially provides lobbying and other support services to its 'members'.[197]

The Tanzanian business model shared was that of a combination of the combined large-scale farming with outgrower scheme, what is referred to as a "hybrid", applied in its sugar industry.[198] Challenges associated with this hybrid model include the lack of influence by the outgrowers in the business of the company and so called "land grabbing" by foreign land owners.[199]

The Madagascan examples were essentially contract farming schemes, but with a land purchase or lease component. As a result of various challenges, the projects were not implemented.[200]

The Mozambican business model involved investor community partnerships, but is specific to Mozambique because of its "land use and benefit right" system.[201] Although the principles of negotiating with local communities are good, given the dependency on the land policy, the author is of the view that it may not necessarily be a model that can be easily replicated.
A high level review of these models, however, does not do justice to the subject matter. An in-depth review into the business operations, land rights policies and other transaction variables would need to be conducted in respect of these business models in order to determine whether they could be replicated for purposes of the SALRP.

In the same way that the manner in which the SALRP is structured is closely linked to how it is funded, the manner in which agricultural investment is funded determines how it is structured. The investigation into different business models does give rise to different ways to structure investments in land deals, which could attract different potential investors. However, these business models are merely commercial legal tools of structuring commercial transactions in general and not potential alternative sources of funding for land redistribution.

6 Foreign Agricultural Investment: Problems and Opportunities

6.1 South Africa's position regarding foreign land ownership

Commentators such as Cotula have observed that very large land deals inevitably impact on existing land rights of the local people.[202] This could be no different for South Africa and a potentially big

[196] Cotula, L. & Leonard, R. 2010. Alternatives to land acquisitions: Agricultural investment and collaborative business models. [Online]. Available: http://pubs.iied.org/pdfs/12567IIED.pdf. [10 August 2010].
[197] Cotula, L. & Leonard, R. 2010. Alternatives to land acquisitions: Agricultural investment and collaborative business models. [Online]. Available: http://pubs.iied.org/pdfs/12567IIED.pdf. [10 August 2010].
[198] Cotula, L. & Leonard, R. 2010. Alternatives to land acquisitions: Agricultural investment and collaborative business models. [Online]. Available: http://pubs.iied.org/pdfs/12567IIED.pdf. [10 August 2010].
[199] Cotula, L. & Leonard, R. 2010. Alternatives to land acquisitions: Agricultural investment and collaborative business models. [Online]. Available: http://pubs.iied.org/pdfs/12567IIED.pdf. [10 August 2010].
[200] Cotula, L. & Leonard, R. 2010. Alternatives to land acquisitions: Agricultural investment and collaborative business models. [Online]. Available: http://pubs.iied.org/pdfs/12567IIED.pdf. [10 August 2010].
[201] Cotula, L. & Leonard, R. 2010. Alternatives to land acquisitions: Agricultural investment and collaborative business models. [Online]. Available: http://pubs.iied.org/pdfs/12567IIED.pdf. [10 August 2010]
[202] Cotula, L. 2010. Why it makes more sense to invest in farmers than farmland. [Online]. Available: https://www.iied.org/pubs/display.php?o=17082IIED. [10 August 2010].

hurdle for the SALRP.

In 2007 the then Minister of the DRDLR commissioned the Panel of Experts on the Development of Policy Regarding Land Ownership by Foreigners in South Africa (Panel) to investigate and examine the question of foreign ownership of land in South Africa. The panel raised several concerns some of which apply to land redistribution and made several recommendations[203] [204]

The concerns raised regarding the pitfalls of foreign ownership of land are not unfounded. The author is of the view that it would be prudent for South Africa to prepare for the risks that could unfold. However, not all investments in agriculture by foreigners are 'illegitimate' and it has been suggested that it can result in positive benefits for rural communities.[205]

This report and the recommendations seemed to have been suspended for some time, but has resurfaced; is receiving increasing attention in South Africa and has progressed to the point where the SAG are contemplating placing restrictions on foreign ownership of land in South Africa.[206] [207] [208] The author submits that it is this pending reality that could make foreign agricultural investment by means of land acquisition quite controversial and make the SALRP more complex than it is.

The SAG has taken a stance that 'deepening of capitalist relations within the agricultural sector and its deracialisation, together with foreign investment, is to pave the way for economic growth'.[209]

The challenge would be to find alternatives to land ownership by foreigners while still attracting foreign agricultural investment into South Africa's agriculture sector that could also present potential alternative sources of funding the SALRP and not perpetuate South Africa's history of dispossession.[210] This would be subject to upholding the beneficiaries' land rights, public interest and the SALRP objectives.

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203 Report and Recommendations by the Panel of Experts on the Development of Policy Regarding Land Ownership by Foreigners in South Africa presented to the Minister of Agriculture and Land Affairs, Hon. Lulu Xingwana, August 2007 7. The panel found inter alia that foreign natural persons own around 3 per cent of land in the categories of erven (land used for residential housing), agricultural holdings, farm land and sectional titles. They noted that the percentage was 'significantly higher' in coastal and game farming areas.

204 Report and Recommendations by the Panel of Experts on the Development of Policy Regarding Land Ownership by Foreigners in South Africa presented to The Minister of Agriculture And Land Affairs, Hon. Lulu Xingwana, August 2007 8 -11. These include: i) compulsory disclosure of nationality, race and gender and other information so that the SAG is able to keep better records of foreign ownership; ii) special ministerial approval (with or without conditions) for certain changes in land use in general and for disposal of certain categories of land to foreigners – 'especially where such change of use or disposal to foreigners have the potential to negatively impact on the state's constitutional obligations to effect land reform…'; iii) the establishment of a permanent Inter-Ministerial/-Departmental Oversight Committee should be established to monitor trends in foreign ownership of land and changes in land use, and to recommend appropriate corrective interventions to the SAG; iv) outright prohibition on foreign ownership in classified/protected areas; v) limited temporary moratorium on the disposal of state land to foreigners; vi) the SAG and all organs of state ought to lead by example in implementing the regulatory regime on foreign land ownership and a general prohibition on disposal or change in land ownership which may undermine land reform and compromise the sovereignty of the state; and vii) the SAG may consider medium- and long-term leases of public land as a viable mechanism for acquisition of land use by foreigners.

205 Liversage, H. Responding to 'land grabbing' and promoting responsible investment in agriculture. [Online]. Available: http://us-cdn.creamermedia.co.za/assets/articles/attachments/31891_land_grabbing_ifad.pdf. [23 April 2011].

206 SAPA. 2010. Changes in Foreign Ownership of SA Land. Mail & Guardian Online. [Online]. Available: http://www.mg.co.za/article/2010-08-17-changes-in-foreign-ownership-of-sa-land. [30 March 2011]. The DRDLR was reported as saying that foreigners would not be able to own land without the consent of local communities.

207 Isaac, H. 2011. South Africa Could Curb Foreign Land Ownership President Zuma Says Measure Likely to Fasten Land Transfer Reforms to Black Majority. African Business Review. [Online]. Available: http://www.africanbusinessreview.co.za/tags/south-african-president-jacob-zuma/south-africa-could-curb-foreign-land-ownership. [1 April 2011].

208 Overseas Property Mall 'South Africa moves to ban foreign property ownership' IB Times 1 March 2011 Available: http://www.ibtimes.com/articles/117410/20110301/south-africa-moves-to-ban-foreign-property-ownership.htm [1 April 2011].

209 Hall, R. 2004. A political economy of land reform in South Africa. *Review of African Political Economy*. 31, p221.

210 Makunike, C. 2009. Large-scale agricultural investment in Africa: Points to ponder. (In Kugelman, M. & Levenstein, S. (eds.) *Land Grab? The Race for the Worlds' Farmland*. Washington, D.C.: Woodrow Wilson International Center for Scholars, pp86 - 89.

It has been suggested that foreign agricultural investments facilitated by business models are alternatives to outright land purchases.[211]

In advancing their argument for more inclusive business models for promoting investment in agriculture, the IIED, FAO, IFAD and SDC made three broad recommendations, namely that: i) there should be improved understanding of the business models that can be used to structure agricultural investment; ii) national and local policies should be improved so that it can support the local smallholders and promote the inclusive business models and iii) 'action' is required at an international level for more guidance on agricultural investment on how to apply the business models to maximise agricultural investment.[212]

The author agrees with this line of reasoning and submits that one of the key elements in overcoming the foreign ownership of land restrictions, while at the same time attracting foreign agricultural investment, lies in the use of the correct business model, that is this requires applying the applicable commercial principles skilfully. Careful consideration would need to be given to the various business model options vis-á-vis the transaction variables to structure a suitable and appropriately designed business model (whether a single or hybrid model). It has been pointed out that inappropriately designed business models can fail because 'the local farmer only has "nominal influence" over key decisions and little profit or dividends to show for their efforts'.[213] Thus this would also have to be taken into account in structuring the transaction.

Leases are one type of business model. Although this has been criticised,[214] South Africa has been promoting lease agreements as part of the SALRP. One way of addressing this would be to redistribute land to the beneficiaries and allow the beneficiaries to lease the land to foreign investors.

It has been observed that another business model that has become popular, as an alternative to land acquisition in the small scale farming sector, is the contract grower model. Makunike maintains that some of the challenges in respect of this business model are that: i) it does not suit all crops; ii) investors do not have the patience to commit to this type of model in the long term because of the 'in-depth' research required; iii) the 'paradigm shift' that investors have to undergo when partnering with small scale farmers; and iv) working closely with the community that cannot simply be employed and dismissed at will and who may also requiretraining and related technical other support.[215] Aside from these challenges, which the author submits can manifest in local private sector investments as well, the author would add compliance with local legislation as another challenge.

The author has herself been involved in land redistribution projects with a foreign investment component. The author is also aware of other land redistribution projects, such as the Solms-Delta land redistribution project.[216] [217] [218] These projects were all structured as share-equity schemes with

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[211] Cotula, L. 2009. Why it make more sense to invest in farmers than in farmland. [Online]. Available: https://www.iied.org/pubs/display.php?o=17082IIED. [10 August 2010].

[212] Vermeulen, S. & Cotula, L. 2009. Making the most of agricultural investment: A survey of business models that provide opportunities for smallholders. [Online]. Available: http://pubs.iied.org/pdfs/12561IIED.pdf. [28 March 2011].

[213] Cotula, L. 2009. Why it make more sense to invest in farmers than in farmland. [Online]. Available: https://www.iied.org/pubs/display.php?o=17082IIED. [10 August 2010].

[214] Kleinbooi, K. 2010. What is happening with land reform? [Online]. Available: http://anothercountryside.wordpress.com/2010/10/27/%E2%80%98i%E2%80%99m-losing-my-land-to-the-department-of-land-affairs%E2%80%99/. [5 May 2011].

[215] Makunike, C. 2009. Large-scale agricultural investment in Africa: Points to ponder. (In Kugelman, M. & Levenstein, S. (eds.) *Land Grab? The Race for the Worlds' Farmland*. Washington, D.C.: Woodrow Wilson International Center for Scholars, p92.

[216] Due to the limited nature of this paper the author adopted a literature based research methodology. As a result, the author has not conducted interviews and case studies and has not personally verified the exact details of the transaction. Solms-delta community development in the cape winelands. [Online]. Available: http://www.solms-delta.co.za/2010/01/community-development-in-the-cape-winelands/. [14 November 2010].

[217] Carte Blanche: Solms-Delta Community' [Online]. Available: http://winetimes.co.za/2010/11/14/carte-blanche-solms-delta-community/. [22 April 2011].

the investor acquiring a minority shareholding. The author has also found that this business model, with slight modifications, suits most types of agriculture and private investors are more amenable to this type of business model.

The author submits that a further key element to overcoming the challenge would be the type of investor. The type of investor ultimately determines the type of investment that will be made.

The author submits further that finding agricultural investors that: are socially responsible; would want to play a role in the SALRP; would want to provide capital to programmes such as the SALRP and are amenable to business models such as outgrower models or business models where they acquire shareholding that is not equal or more than majority shareholding in an entity without compromising the commercial sense, ultimately drives the investment.

The SAG would do well to keep this in mind while it refines its position on foreign land ownership and it may consider embarking on an exercise of assessing the different business models in detail. It should analyse: 'contractual arrangements and economic and financial structure; how a particular business model came to be chosen compared with alternative options; what conditions made the operation of that business model possible; what factors constrained it and how they were addressed by the company and smallholders; socio-economic performance and outcomes, including economic performance and the actual impacts on local livelihoods, incomes and empowerment'.[219]

In doing so, it would hopefully ensure that agricultural investment is not hamstrung but rather creates an opportunity for attracting foreign agricultural investment to serve as a potential alternative source of funding for the SALRP.

6.2 FDI Regulatory framework

No investment, in particular FDI, operates outside of a regulatory environment. Investment in agriculture or agricultural land is no exception. Land acquisition transactions fall into the bilateral and regional investment agreements framework.[220] Serious consideration must be given to the legal implications before embarking on foreign agricultural investments.[221]
According to the IISD, host states usually have 'insufficient or unclear' domestic law concerning, inter alia, land rights and the international law framework provides 'hard rights' for foreign investors. They contend that this 'layering' has significant impacts.[222]

The sources of law that would relate to foreign investment in land redistribution would be South African domestic law, international investment contracts and the international treaty law on investment.[223] Generally, the latter takes the form of bilateral investment treaties (BITs).

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[218] Van Wyk, M. Picking the fruits of our labour: Equity-sharing schemes on wine farms in South Africa. [Online]. Available: http://www.consultancyafrica.com/index.php?option=com_content&view=article&id=470:picking-the-fruits-of-our-labour-equity-sharing-schemes-on-wine-farms-in-south-africa&catid=90:optimistic-africa&Itemid=295. [14 November 2010].
[219] Vermeulen, S. & Cotula, L. 2009. Making the most of agricultural investment: A survey of business models that provide opportunities for smallholders. [Online]. Available: http://pubs.iied.org/pdfs/12561IIED.pdf [28 March 2011].
[220] Smaller, C. & Mann, H. 2009. A thirst for distant lands: Foreign investment in agricultural land and water. [Online]. Available: http://www.iisd.org/pdf/2009/thirst_for_distant_lands.pdf. [28 March 2011].
[221] Smaller, C. & Mann, H. 2009. A thirst for distant lands: Foreign investment in agricultural land and water. [Online]. Available: http://www.iisd.org/pdf/2009/thirst_for_distant_lands.pdf. [28 March 2011].
[222] Smaller, C. & Mann, H. 2009. A thirst for distant lands: Foreign investment in agricultural land and water. [Online]. Available: http://www.iisd.org/pdf/2009/thirst_for_distant_lands.pdf. [28 March 2011].
[223] Smaller, C. & Mann, H. 2009. A thirst for distant lands: Foreign investment in agricultural land and water. [Online]. Available: http://www.iisd.org/pdf/2009/thirst_for_distant_lands.pdf. [28 March 2011].

South Africa has adequate legislation dealing with land redistribution. Although South Africa has signed several BITs with various potential investor countries, it has limited local investment law legislation and the rules are recorded in several pieces of legislation.[224]

The IISD highlight that, although domestic law would be the primary law, international investment contracts and BITs would prevail over domestic law, unless the BIT was silent on certain provisions.[225]

BITs typically include provisions protecting the investor against expropriation; non-discrimination provisions which require host countries to treat foreign investors no less favourably from their domestic counterparts (the so-called principle of 'national-treatment' (NT)) and which preclude host countries from discriminating between its foreign trading partners (the so-called principle of 'most-favoured-nation treatment' (MFN)); and on treatment standards like 'fair and equitable treatment', 'full protection and security', rights to export the products produced, safeguards, national security and dispute settlement.[226] [227]

In considering different cases in South Africa, Zimbabwe and Namibia, Peterson and Garland argue that foreign agricultural investment by way of land acquisition subject to BITs may actually complicate efforts by the SAG to pursue the SALRP objectives.[228] In support of their argument, they point out that BITs signed by South Africa do not contain a reference to the importance of land reform. Thus there is no congruency between the two legislative frameworks.

Peterson and Garland also allude to another risk being the possibility of local agricultural investment vehicles transacting with foreign investors, and structuring their investments in such a manner that such investment vehicles are regarded as FDI, which means that such investment vehicle would be afforded protection under a BIT.[229] This is a bit of a jaundiced view, but admittedly it cannot be ruled out as a risk completely.

The author submits that of the non-discrimination principles, the NT principle could be most problematic for foreign agricultural investment in the SALRP. The rationale behind this is that compliance with the NT principle could restrict the SAG from imposing conditions on foreign investors to further its land redistribution targets.[230]

International investment contracts also contain inter alia provisions relating to local procurement and other clauses which are aimed at addressing changes in domestic law for the duration of an investment. The local procurement provisions require the investor to contribute to the local community in 'economic terms'.[231] The IISD also point out that BITs often also include 'pre-establishment rights', which are an extension of the NT provisions. It essentially requires foreign investors to invest in agricultural land on the same terms and conditions as local investors,

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[224] The Bilateral Investment Treaty Policy Framework Review (GN 961 in GG 32386 of 7 July 2009) 6 referred to South Africa's investment approach to both inward and outward Foreign Direct Investment (FDI) as being informed by a 'patchwork of general policy considerations'.
[225] Smaller, C. & Mann, H. 2009. A thirst for distant lands: Foreign investment in agricultural land and water. [Online]. Available: http://www.iisd.org/pdf/2009/thirst_for_distant_lands.pdf. [28 March 2011].
[226] Smaller, C. & Mann, H. 2009. A thirst for distant lands: Foreign investment in agricultural land and water. [Online]. Available: http://www.iisd.org/pdf/2009/thirst_for_distant_lands.pdf. [28 March 2011].
[227] Cotula, L., Vermeulen, S. & Leonard, R. 2009. Land grab or development opportunity? Agricultural investment and international land deals in Africa. [Online]. Available: http://pubs.iied.org/pdfs/12561IIED.pdf. [28 March 2011].
[228] Peterson, L.E. & Garland, R. 2010. Bilateral Investment Treaties and Land Reform in Southern Africa. [Online]. Available: http://www.dd-rd.ca/site/_PDF/publications/BITS_land_reform_en.pdf. [27 August 2010].
[229] Peterson, L.E. & Garland, R. 2010. Bilateral Investment Treaties and Land Reform in Southern Africa. [Online]. Available: http://www.dd-rd.ca/site/_PDF/publications/BITS_land_reform_en.pdf. [27 August 2010].
[230] This has been observed in the land tenure context. Spieldoch, A. & Murphy, S. 2009. Agricultural land acquisitions: Implications for food security and poverty alleviation. (In Kugelman, M. & Levenstein, S. (eds.) *Land Grab? The Race for the Worlds' Farmland* Washington, D.C.: Woodrow Wilson International Center for Scholars, p45.
[231] Smaller, C. & Mann, H. 2009. A thirst for distant lands: Foreign investment in agricultural land and water. [Online]. Available: http://www.iisd.org/pdf/2009/thirst_for_distant_lands.pdf. [28 March 2011].

accompanied by provisions prohibiting governments from imposing 'performance requirements' on investors.[232] This could pose a problem for agricultural investment in the SALRP because it potentially restricts the SAG from imposing targets such as procurement or local employment targets on foreign investors, which can have a more far-reaching impact on the livelihoods of the beneficiaries and the local communities.

Where local procurement targets are set, it would be governed by domestic law. However, there is also the issue whether the local community would be able to enforce them or whether it would only be the contracting government that would have that right.[233] The author proposes that in the South African context the answer to this issue may be the privity of contract rule, which in essence provides that the terms of a contract can only be enforced by the parties thereto. Thus, if the SAG wanted to extend these rights to the local community, the local communities would have to be parties to the relevant international investment agreement or these provisions could be extended to the beneficiaries by accepting these provisions as benefits to a third party, what is also known as a stipulatio alteri. Unfortunately, given the nature of these agreements, this may not be simple to achieve and due consideration would have to be given to all the implications and legal rules at play.

The inclusion of stabilisation clauses could mean that the SAG would be precluded from introducing legislation that may emphasise the importance of land redistribution or land reform as a whole. This is a real risk for South Africa because of its fragmented investment legislation and would defeat the purpose of exploring foreign agricultural investment opportunities for the SALRP. It also means that the SAG would need to keep a close eye on all its other legislation incorporating investment provisions, including the BBBEE Act, so as to avoid finding itself in a situation of breach.[234] The IISD maintain that identifying the linkages and addressing it expressly, including by limiting any stabilisation clauses, are 'essential ingredients' to address this.[235] Although this recommendation is reasonable, it may prove more difficult to implement, considering certain the institutional capacity challenges experienced in the DRDLR.

The NT principle vis-á-vis the BBBEE Act has been tested. In the matter between Italy mining investors and South Africa, a group of Italian mining investors challenged South Africa's BEE legislation on the basis that it breached the South Africa – Italy BIT.[236] This matter gives an indication of how the FDI disputes could be handled within the South Africa land reform context.[237]

Another issue arising from the FDI legal framework is the concern that it gives rise to a situation of unequal bargaining power between (wealthy) investor multinational corporations, (wealthy) investor countries and host country governments and the host country people.[238] The concern is that it reinforces the disadvantages suffered by smallholder producers who lack bargaining power access to markets, resources and land rights. This is compounded by the fact that communities are divided and there are differing class levels within the local communities themselves.[239] This concern is not

[232] Smaller, C. & Mann, H. 2009. A thirst for distant lands: Foreign investment in agricultural land and water. [Online]. Available: http://www.iisd.org/pdf/2009/thirst_for_distant_lands.pdf. [28 March 2011].
[233] Smaller, C. & Mann, H. 2009. A thirst for distant lands: Foreign investment in agricultural land and water. [Online]. Available: http://www.iisd.org/pdf/2009/thirst_for_distant_lands.pdf. [28 March 2011].
[234] Smaller, C. & Mann, H. 2009. A thirst for distant lands: Foreign investment in agricultural land and water. [Online]. Available: http://www.iisd.org/pdf/2009/thirst_for_distant_lands.pdf. [28 March 2011].
[235] Smaller, C. & Mann, H. 2009. A thirst for distant lands: Foreign investment in agricultural land and water. [Online]. Available: http://www.iisd.org/pdf/2009/thirst_for_distant_lands.pdf. [28 March 2011].
[236] Peterson, L.E. & Garland, R. 2010. Bilateral Investment Treaties and Land Reform in Southern Africa. [Online]. Available: http://www.dd-rd.ca/site/_PDF/publications/BITS_land_reform_en.pdf. [27 August 2010].
[237] Peterson, L.E. & Garland, R. 2010. Bilateral Investment Treaties and Land Reform in Southern Africa. [Online]. Available: http://www.dd-rd.ca/site/_PDF/publications/BITS_land_reform_en.pdf. [27 August 2010].
[238] Spieldoch, A. & Murphy, S. 2009. Agricultural land acquisitions: Implications for food security and poverty alleviation. (In Kugelman, M. & Levenstein, S. (eds.) *Land Grab? The Race for the Worlds' Farmland* Washington, D.C.: Woodrow Wilson International Center for Scholars, p43.
[239] Spieldoch, A. & Murphy, S. 2009. Agricultural land acquisitions: Implications for food security and poverty alleviation. (In Kugelman, M. & Levenstein, S. (eds.) *Land Grab? The Race for the Worlds' Farmland* Washington, D.C.: Woodrow Wilson International Center for Scholars, p43.

unfounded and the Daewoo Affair serves as an example of what can happen if this situation is allowed.

A further problem identified by the IISD is that BITs may actually provide investors with additional rights in respect of securing its operations, such as providing water in the agricultural investment space.[240]

The challenge for South Africa would thus be to carefully manage the problems that the FDI regulatory framework presents in order to facilitate agricultural investment for its agricultural sector and the SALRP.

Arising from, inter alia, the need to conduct an assessment of the risks posed by the BITs,[241] the most promising development in addressing the FDI regulatory issues lies in the fact that South Africa has initiated a process of reviewing its BITs.[242] [243] The objective of the review is to '… make recommendations to Cabinet in respect of the policy and legal considerations which will impact on any future decisions taken by the executive in respect of the protection and promotion of investments, both from an inward and outward foreign direct investment perspective'.[244]

The Bilateral Investment Treaty Policy Framework Review notice notes, soberly, that the outcome of the review will not necessarily be a 'panacea for all other FDI problems'.[245] The author approves of this cautious approach and regards this as a positive step towards addressing the FDI regulatory problems. This indicates that the SAG has become vigilant when negotiating international investment agreements and is ensuring that its domestic law contains clear provisions regarding these issues.

An instructive finding by the IISD is that generally international law does not give foreign investors (automatic) rights to invest in land in another state; it is a matter of domestic law.[246] This is quite important in the South African context and could address the issue raised by Peterson and Garland that BITs signed by South Africa do not contain a reference to the importance of land reform as it would enable the SAG to apply its domestic law in a controlled manner, keeping land rights issues of the SALRP at the forefront and, so doing, ensure that the significance of land redistribution is maintained vis-á-vis foreign agricultural investment.

Two of the major recommendations of Kugelman, Lovenstein, Hallam, Spieldoch, Murphy, Makunike, Meinzen-Dick, Markelova and Montemayor include: i) developing a clear and comprehensive farmland investment framework that reflects national and local interests; and ii) not outsourcing ultimate responsibility for rural development policies to foreign investors.[247] Coupled with the farmland investment framework is monitoring and governments should ensure that local land rights are protected, especially against dispossession.[248]

South Africa currently has an investment framework regulating private sector investment into land reform, but it does not currently include a foreign investment component. Expanding the investment framework to include foreign investment may be a way of addressing some issues in the BITs.

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[240] Smaller, C. & Mann, H. 2009. A thirst for distant lands: Foreign investment in agricultural land and water. [Online]. Available: http://www.iisd.org/pdf/2009/thirst_for_distant_lands.pdf. [28 March 2011].
[241] The Bilateral Investment Treaty Policy Framework Review (GN 961 in GG 32386 of 7 July 2009) 5.
[242] United Nations Conference on Trade and Development 'World Investment Report 2010' 85.
[243] The Bilateral Investment Treaty Policy Framework Review (GN 961 in GG 32386 of 7 July 2009).
[244] The Bilateral Investment Treaty Policy Framework Review (GN 961 in GG 32386 of 7 July 2009).
[245] The Bilateral Investment Treaty Policy Framework Review (GN 961 in GG 32386 of 7 July 2009).
[246] Smaller, C. & Mann, H. 2009. A thirst for distant lands: Foreign investment in agricultural land and water. [Online]. Available: http://www.iisd.org/pdf/2009/thirst_for_distant_lands.pdf. [28 March 2011].
[247] Kugelman, M. & Levenstein, S.L. & others. 2009. *Land Grab? The Race for the World's Farmland*. Washington, D.C.: Woodrow Wilson International Center for Scholar, pp18 – 19.
[248] Kugelman, M. & Levenstein, S.L. & others. 2009. *Land Grab? The Race for the World's Farmland*. Washington, D.C.: Woodrow Wilson International Center for Scholar, pp20 – 21.

The IISD cautions that the host government must ensure that 'legitimate expectations' should not be created and periodic reviews of 'additional rights' granted to foreign investors should be undertaken to ensure that additional protection is not given to the foreign investors that may conflict with the rights of locals.[249] This links in with the Bilateral Investment Treaty Policy Framework Review undertaken by the SAG and the author would endorse this advice for periodic reviews.

Although, the Principles for Responsible Agricultural Investment that Respects Rights, Livelihoods and Resources (the Principles), have been criticised,[250] [251] the SAG may also wish to leverage off the work done in respect of these Principles, in an effort to mitigate risks associated with agricultural investment.[252] [253]

7 Conclusion and recommendations

With a view to addressing the budgetary constraints that have plagued the SALRP since 1994, the objective of the paper was to explore whether there are potential alternative funding methods, mechanisms or approaches available, as alternatives or complementary to government grant funding, as a means of funding the SALRP in the agricultural sector.

Finding potential alternative sources of funding a land redistribution programme is a complex issue. There are various issues and challenges that would need to be considered and addressed. This paper has not dealt with those issues.

Drawing on the relationship between agriculture and land redistribution, it was shown that there has been an increase in agricultural investment, with a renewed focus on Africa internationally and regionally. The main driver behind these investments is food security concerns; poverty alleviation, return on investment, population growth and increasing rates of urbanisation being secondary drivers.

Amidst other sources of alternative funding, such as subsidies, and taxes, subdivision, donor funding, (private) foreign agricultural investment was identified as a potential alternative source of funding for the SALRP.

Land acquisition emerged as the trend for making these investments in agriculture. Land acquisition transactions by means of land purchases are not always implemented due to sensitivities and complexities around divesting local land owners, in particular smallholders, of their land rights.

There are alternatives that do not divest the land owner of its land rights. In the absence of outright land purchases, the type of capital deployed includes equity and loan funding to acquire shareholding. The alternatives involve the use of business models to structure the agricultural investment and the injection of funding but with locals retaining the agricultural land ownership. The alternatives are by and large the business models employed by the SALRP involving private sector or other funding.

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[249] Smaller, C. & Mann, H. 2009. A thirst for distant lands: Foreign investment in agricultural land and water. [Online]. Available: http://www.iisd.org/pdf/2009/thirst_for_distant_lands.pdf. [28 March 2011].

[250] La Via Campesina FIAN Land Research Action Network GRAIN. Stop land grabbing now!! Say NO to the principles of "responsible" agro-enterprise investment promoted by the World Bank. [Online]. Available: http://www.landaction.org/spip/spip.php?article499. [17 March 2011].

[251] La Via Campesina FIAN Land Research Action Network GRAIN. Stop land grabbing now!! Say NO to the principles of "responsible" agro-enterprise investment promoted by the World Bank. [Online]. Available: http://www.landaction.org/spip/spip.php?article499. [17 March 2011].

[252] FAO, IFAD, UNCTAD & the World Bank Group. 2010. Principles f. [17 March 2011].

[252] La Via Campesina FIAN Land Research Action Network GRAIN. Stop land grabbing now!! Say NO to the principles of "responsible" agro-enterprise investment promoted by the World Bank. [Online]. Available: http://www.landaction.org/spip/spip.php?article499. [17 March 2011].

or responsible agricultural investment that respects rights, livelihoods and resources. [Online]. Available: http://siteresources.worldbank.org/INTARD/214574-1111138388661/22453321/Principles_Extended.pdf. [17 March 2011].

[253] United Nations Conference on Trade and Development. 2010. World Investment Report 2010: Investing in a low-carbon economy. [Online]. Available: http://www.unctad.org/en/docs/wir2010_en.pdf. [23 March 2011].

Given the SALRP's objective of redistributing land, outright land purchases would not be feasible, but the alternative business model facilitated funding would be. Of the structures identified, the author submits that private equity funds such as the AECF and AIFs with a social focus would be the most feasible structures for the SAG to explore as a means to fund the SALRP.

Foreign investment in land has recently been the subject of much controversy; this is no different for South Africa and should be approached with caution. The paper also examined the two problems that could impact on foreign agricultural investment in South Africa, namely, South Africa's position regarding foreign ownership of land and the FDI regulatory framework that South Africa would need to consider if it explored foreign agricultural investment as a potential alternative means of funding the SALRP.

There are limited ways that these problems and the associated challenges can be turned into opportunities. South Africa's position regarding foreign ownership of land and its history of dispossession that gave rise to the need for land redistribution rule out agricultural investment in the form of land purchases for the SALRP. However, applying a different business model, such as leases between the land redistribution beneficiaries and foreign investors, may be the key to addressing this problem.

The fact that the significance of land reform is not recorded in BITs, coupled with other issues such as the NT principle, could be problematic for South Africa if it invited foreign agricultural investment into the SALRP. These problems could be overcome but may require policy changes and creating room for foreign agricultural investment in the DRDLR's investment framework.

The author submits that foreign agricultural investment could be the most feasible potential alternative source of funding for the SALRP. Accordingly, but cognisant of the SAG's challenge of balancing further investment, the public interest and the SALRP's objectives, the author recommends that the SAG deviate from traditional sources of funding the SALRP and explore foreign agricultural investment as a potential alternative source of funding for the SALRP.