



Human rights mechanisms to safeguard the food/land rights of people confronted with land use conversions



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The topic of this brief is to explore whether and how human rights mechanisms can provide access to mechanisms to prevent and/or remedy human rights violations generated through large-scale investments in agriculture. After exploring the linkages between human rights law and such investments, the study¹ takes stock of national, regional, and UN-level human rights instruments and the complaints mechanisms they provide.

At the **national level**, courts throughout the world have dealt with a range of different claims related to the right to food, sometimes directly invoking this right, sometimes framing violations to duties stemming from the right to food as violations of other rights, such as the right to life, the right to land, or respect for human dignity. Providing access to justice is a component of the FAO Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security (FAO Right to Food VG).

At the **regional level**, the study discusses the European, Inter-American, and African regional human rights systems as well as the emerging system under the Arab Charter on Human Rights. The African and the Inter-American systems in particular have a track record on jurisprudence protecting the right to food, the Inter-American system in particular in relation to indigenous peoples.

At the **UN level**, civil society organizations can take an active role in the Universal Periodic Review and in collaborating with the Special Rapporteurs. Treaty-based mechanisms establish both state reporting and individual communication procedures, but only for those states that have ratified the relevant convention and have agreed to receive individual

complaints. The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (OP-ICESCR) was opened for signature in 2008 and, once it enters into force, will provide for an individual complaints mechanism for violations of the right to adequate food.

Policy recommendations

- In accordance with Guideline 7 of the FAO VG, states should create a remedy mechanism that is adequate, effective, and prompt as well as accessible to vulnerable groups.
- In accordance with CESCR General Comment 12, victims of violations of the right to food should have access to effective judicial or other appropriate remedies at both national and international levels. To this end, states may consider ratifying the OP-ICESCR establishing a complaints procedure for breaches of the rights contained in the Covenant, including the right to food.
- States and civil society organizations can actively support the preparation and adoption of the FAO Voluntary Guidelines on Responsible Governance of Tenure of Land and Other Natural Resources, with the aim of providing practical guidance on strengthening the right to land and the legal protection of tenure arrangements.
- Countries entering into agreements for large-scale land-based investments should consider prioritising business models that do not involve any change being made in rights over the land. Where this is unavoidable, they should, at a **minimum**, adhere to the 11 human rights principles formulated by the Special Rapporteur on the right to food, Olivier De Schutter, which are appended.

Appendix: Minimum human rights principles applicable to large-scale land acquisitions or leases, elaborated by the Special Rapporteur on the right to food, Olivier De Schutter¹

¹ Available at http://www.landcoalition.org/sites/default/files/publication/903/WEB_WTI-SOMO-ON_instruments_final_layout.pdf

PRINCIPLE 1: The negotiations leading to investment agreements should be conducted in a fully transparent manner, and with the participation of the local communities whose access to land and other productive resources may be affected as a result of the investment agreement.

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In considering whether or not to conclude an agreement with an investor, the host government should always balance the advantages of entering into such an agreement against the opportunity costs involved, in particular when other uses could be made of the land available, which could be more conducive to the long-term needs of the local population concerned and the full realization of their human rights.

PRINCIPLE 2: In general, any shifts in land use can only take place with the free, prior, and informed consent of the local communities concerned. This is particularly important for indigenous communities, in view of the discrimination and marginalization to which they have historically been subjected. Forced evictions should only be allowed to occur in the most exceptional circumstances. They are only allowable under international law when they are in accordance with the locally applicable legislation, when they are justified as necessary for the general welfare, and when they are accompanied by adequate compensation and alternative resettlement or access to productive land. Prior to carrying out any evictions or shifts in land use which could result in

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depriving individuals of access to their productive resources, States should ensure that all feasible alternatives are explored in consultation with the affected persons, with a view to avoiding, or at least minimizing, the need to resort to evictions. In all cases, effective legal remedies or procedures should be provided to those who are affected by eviction orders.

PRINCIPLE 3: In order to ensure that the rights of local communities will be safeguarded at all times, States should adopt legislation protecting these and specifying in detail the conditions according to which shifts in land use, or evictions, may take place, as well as the procedures to be followed. Moreover, States should assist individuals and local communities in obtaining individual titles or collective registration of the land they use, in order to ensure that their rights will enjoy full judicial protection. Such legislation should be designed in accordance with the basic principles and guidelines on development-based evictions and displacement presented in 2007 by the former Special Rapporteur on the right to adequate housing as a

component of the right to an adequate standard of living (A/HRC/4/18, annex I.) and with general comment No. 7 (1997) of the Committee on Economic, Social and Cultural Rights on the right to adequate housing (article 11 (1) of the Covenant): forced evictions.

PRINCIPLE 4: The local population should benefit from the revenues generated by the investment agreement.

Investment contracts should prioritize the development needs of the local population and seek to achieve solutions which represent an adequate balance between the interests of all parties. Depending on the circumstances, arrangements under which the foreign investor provides access to credit and improved technologies for contract farming, against the possibility to buy at predefined prices a portion of the crops produced, may be preferable to long-term leases of land or land purchases, although contract farming itself should comply with the conditions set out in the report of the Special Rapporteur on agribusiness and the right to food (A/HRC/13/33, paragraphs 43-45).

States should adopt legislation protecting the rights of local communities and specifying conditions according to which shifts in land use may take place

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PRINCIPLE 5: In countries facing important levels of rural poverty and in the absence of employment opportunities in other sectors, host States and investors should establish and promote farming systems that are sufficiently labour-intensive to contribute to employment creation. Labour-intensive modes of production can be highly productive per hectare. Investment agreements should contribute to the fullest extent possible to reinforcing local livelihood options and in particular provide access to a living wage for the local population affected, which is a key component of the human right to food.

Host states and investors should establish and promote farming systems that contribute to employment creation

PRINCIPLE 6: Host States and investors should cooperate in identifying ways to ensure that the modes of agricultural production respect the environment, and do not accelerate climate change, soil depletion, and the exhaustion of freshwater reserves. Depending on local conditions, they may have to explore low external input farming practices as a means to meet this challenge.

Host states and investors should cooperate in identifying ways to ensure that agricultural production respects the environment

1 Report of the Special Rapporteur on the right to food, Olivier De Schutter. Addendum. *Large-Scale Land Acquisitions and Leases: A set of minimum principles and measures to address the human rights challenge*. UN Doc A/HRC/13/33/Add.2 (28 December 2009).

PRINCIPLE 7: Whatever the content of the arrangement, it is essential that the obligations of the investor be defined in clear terms, and that these obligations be enforceable, for instance by the inclusion of predefined sanctions in case of non-compliance. For this mechanism to be effective, independent and participatory ex post impact assessments should be made at predefined intervals. The obligations of the investor should not be limited to the payment of rents, or – in the case of land purchases – to a monetary sum. They should include clear and verifiable commitments related to a number of issues which are relevant to the long-term sustainability of the investment and to its compliance with human rights. In particular, such commitments may relate to the generation of local employment and compliance with labour rights, including a living wage as far as waged employment is concerned; to the inclusion of smallholders

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PRINCIPLE 8: In order to ensure that they will not increase food insecurity for the local population, particularly as the result of increased dependence on international markets or food aid in a context of higher prices for agricultural commodities, investment agreements with net food-importing countries should include a clause providing that a certain minimum percentage of the crops produced shall be sold on local markets, and that this percentage may increase, in proportions to be agreed in advance, if the prices

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PRINCIPLE 9: In order to highlight the consequences of investment on the enjoyment of the right to food, impact assessments should be conducted prior to the completion of the negotiations on (a) local employment and incomes, disaggregated by gender, and, where applicable, by ethnic group; (b) access to productive resources by local communities, including pastoralists or itinerant farmers; (c) the arrival of new technologies and investments in infrastructure; (d) the environment, including soil depletion,

the use of water resources, and genetic erosion; and (e) access, availability, and adequacy of food. Only through such impact assessments, which should include a participatory dimension, can it be ensured that the contracts providing for the lease or sale of land will distribute the benefits equitably between the local communities, the host State, and the investor.

PRINCIPLE 10: Under international law, indigenous peoples have been granted specific forms of protection of their rights to land. States shall consult and cooperate in good faith with the indigenous peoples concerned in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization, or exploitation of mineral, water, or other resources.

PRINCIPLE 11: Waged agricultural workers should be provided with adequate protection and their fundamental human and labour rights should be stipulated in legislation and enforced in practice, consistent with the applicable ILO instruments. Increasing protection of this category of workers would contribute to enhancing their ability, and that of their families, to procure access to sufficient and adequate food.

Impact assessments should be conducted prior to the completion of negotiations

States should consult with indigenous peoples to obtain their free and informed consent prior to the approval of any project affecting their lands

Waged agricultural workers should be provided with adequate protection

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This policy brief is derived from a wider initiative on Commercial Pressures on Land (CPL). If you would like further information on the initiative and on the collaborating partners, please contact the Secretariat of the International Land Coalition or visit www.landcoalition.org/cpl.

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