



**DIRECTORATE-GENERAL FOR EXTERNAL POLICIES**  
**POLICY DEPARTMENT**



# **ADDRESSING THE HUMAN RIGHTS IMPACTS OF 'LAND GRABBING'**

**DROI**

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2014





DIRECTORATE-GENERAL FOR EXTERNAL POLICIES OF THE UNION

**DIRECTORATE B**

POLICY DEPARTMENT

STUDY -

**ADDRESSING THE HUMAN RIGHTS IMPACTS OF 'LAND -  
GRABBING' -**

**Abstract**

This Study discusses the human rights issues raised by large-scale land deals for plantation agriculture ('land grabbing') in low and middle-income countries. Firstly, the Study takes stock of available data on large land deals, their features and their driving forces. It finds that 'land grabbing' is a serious issue requiring urgent attention. Secondly, the Study conceptualises the link between land deals and human rights, reviews relevant international human rights law and discusses evidence on actual and potential human rights impacts. It finds that important human rights dimensions are at stake, and that compressions of human rights have been documented in some contexts. Thirdly, the Study identifies the areas of EU policy that are most directly relevant to addressing the human rights impacts of 'land grabbing', and in so doing it also briefly discusses developments in home and host countries as well as internationally. Fourthly, the Study proposes courses of action by which the EU, and the European Parliament in particular, can further prevent or remedy human rights violations linked to large-scale land deals.

This study was requested by the European Parliament's Subcommittee on Human Rights.

### **AUTHOR:**

Lorenzo COTULA, Principal researcher in law and sustainable development, International Institute for Environment and Development (IIED), UNITED KINGDOM

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### **ADMINISTRATOR RESPONSIBLE:**

Benjamin REY  
Directorate-General for External Policies of the Union  
Policy Department  
SQM 03Y83  
rue Wiertz 60  
B-1047 Brussels

Editorial Assistant: Pia VANNESTE

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## ACRONYMS

ACHPR	African Charter on Human and Peoples' Rights
ACHR	American Convention on Human Rights
AU	African Union
BIT	Bilateral investment treaty
CEDAW	Convention for the Elimination of All Forms of Discrimination Against Women
CFS	Committee on World Food Security
EBA	Everything But Arms
EEAS	European External Action Service
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
EU	European Union
EUTR	EU Timber Regulation
GSP	Generalised System of Preferences
HRCS	Human Rights Country Strategies
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labour Organization
ILUC	Indirect land use change
LPI	Land Policy Initiative
NGO	Non-governmental organisation
OECD	Organisation for Economic Co-operation and Development
PCD	Policy Coherence for Development
RAI	Principles on Responsible Agricultural Investment
RED	Renewable Energy Directive
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
UDHR	Universal Declaration of Human Rights
UN	United Nations
US	United States
VGGT	Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security
WTO	World Trade Organization

## EXECUTIVE SUMMARY -

Recent years have seen renewed private and public sector interest in developing country agriculture. A new wave of large-scale acquisitions of farmland for plantation agriculture has taken place in Africa, Asia and Latin America, fuelled by changing agricultural commodity prices, expectations of rising land values and public policies to promote long-term food and energy security.

Dubbed 'land grabbing' in the media and the critical literature, this global land rush has sparked much polarised debate, partly reflecting different positions on agricultural development pathways and the role of small, medium and large-scale farming. Irrespective of the positions taken, it is clear that large land deals have the potential to increase competition for land, a vital resource in many recipient countries. It is also clear that fundamental human rights are at stake, and compressions of human rights have been documented in some contexts.

Multiple channels link land deals in low and middle-income countries to the European Union. Evidence indicates that European companies have played a key role in land acquisition. There is also evidence that at least some produce sourced from plantation developments is or will be imported into the EU, and that European financial institutions have been involved in financing land deals. The EU supports development aid programming in several countries where large-scale land deals are being signed, and is negotiating trade or investment treaties with some of these countries. The EU is engaged in human rights dialogues at relevant country or regional levels.

Given these multiple areas of interface with large-scale land deals, the EU can and should play an important role in helping to address the human rights impacts of 'land grabbing'. This involves activation of a wide range of policy levers, including through the EU's human rights work, its development aid programming (including on land governance and on private sector development), its trade and investment policies, and its policies in the areas of energy and commodities, and of finance and corporate governance. The following recommendations provide more specific pointers for action by the European Parliament and other relevant stakeholders.

The **European Parliament** should:

- Ensure that 'land grabbing' issues are given greater prominence in the EU's human rights work, including the work on human rights defenders, through the ongoing review by the Council, the Commission and EU Member States of the 2012 EU Action Plan on Human Rights and Democracy, and through mainstreaming of 'land grabbing' issues in the EEAS' human rights work.
- Monitor and report on the EU's development programming and budget spending related to land governance, with a view to ensuring it promotes human rights and addresses the challenges underlying 'land grabbing', notably by increasing local control over land use through stronger land rights, more inclusive decision making and more effective accountability and redress mechanisms.
- Monitor and report on the EU's development programming and budget spending related to private sector development, with a view to ensuring it complies with the VGGT, the RAI principles should these be adopted, and guidance stemming from regional initiatives. Should specific concerns about direct or indirect involvement of EU aid in controversial land evictions or other forms of human rights abuse arise, hold the Commission and relevant authorities to account. If appropriate, and as a consequence of such concerns, promote changes in EU programming and project implementation.

- Ensure that human rights issues, including in relation to ‘land grabbing’, are mainstreamed in the EU’s instruments relating to trade and investment, including trade and investment treaties and the EU’s GSP.
- Scrutinise the Commission’s periodic progress reports on renewable energy, including by probing analysis on land rights impacts. Push for stricter and more transparent procedures for the recognition of voluntary certification schemes, and for ongoing monitoring of the effectiveness of approved schemes.
- Commission research to improve understanding on the involvement of European financial institutions in the financing of ‘land grabbing’, and to make recommendations on ways to strengthen legislation as needed.
- Through its relations with partner countries’ Parliaments, promote ways and means of improving the transparency, accountability and governance of agribusiness investments in partner countries. Encourage partner country Parliaments to produce their own domestic reports on this issue and, in particularly worrying cases involving links to the EU, consider sending a European Parliament mission, or a joint parliamentary commission of inquiry, to investigate cases of abuse.
- Take due note of the views of European and Southern NGOs and civil society groups on this issue. Where appropriate, organise hearings and information sessions to ensure that their views are adequately articulated and presented.
- Inform all appropriate Parliamentary Committees of the findings of this Study.

The **European Commission**, notably DEVCO, TRADE, AGRICULTURE, ENVIRONMENT, ENERGY, ENTERPRISE, should:

- Ensure that EU aid programming and subsequent programmes and projects on land governance address the challenges underlying ‘land grabbing’, notably by increasing local control over land use through stronger land rights and more inclusive decision making, as well as the integration of human rights aspects, including through sustained investment in capacity building, accountability systems and redress.
- Over and above the recent Commission Communication on Private Sector Development, develop clear, specific criteria for private sector engagement in agriculture and consider grievance mechanisms for the EU private sector programming, to ensure that such programming complies with the VGGT, the RAI principles should these be adopted and guidance stemming from regional initiatives.
- Promote mainstreaming of human rights considerations in EU decisions on the negotiation of trade and investment treaties, strengthen human rights clauses in trade treaties, ensure that these clauses apply to ‘land grabbing’ issues, and consider options for addressing regulatory space and responsible investment issues in the framing of investment treaties.
- Integrate a human rights impact assessment into future reviews of the EU’s GSP. Include an assessment of the feasibility of introducing human rights due diligence for agricultural and other produce imported into the EU under the GSP or its key components (such as the EBA). Establish an EU-wide system for dealing with human rights violators, and a grievance mechanism.
- In relation to bioenergy, develop stricter and more transparent criteria and procedures for the recognition of any new certification schemes; periodically review the list of approved schemes; and undertake ongoing monitoring of the effectiveness of certification in pursuing the EU’s sustainability goals.

- Assess the feasibility and options for legislation to increase transparency and good governance principles in relation to agribusiness investments, and to restrict importation of illegally produced commodities, and propose legislation should that assessment lead to positive outcomes.
- Report regularly to the European Parliament on progress in the areas above, and on action and measures taken to follow up on the Parliament's resolutions relating to 'land grabbing' in different areas of EU policy.

The **EEAS** should:

- Give greater prominence to 'land grabbing' issues, and more generally issues relating to social, economic and cultural rights, in the EU's human rights work, including through proper integration of land issues, where relevant, in human rights dialogues and in the EU's work on human rights defenders.
- Ensure that such issues feature, where appropriate, in the regular annual reviews of human rights in partner countries, and consider issuing guidance to EEAS staff on how to deal with 'land grabbing' issues.
- In cases of abuse, ensure that the policies and programmes promoted by the EEAS are fully respected and acted upon.
- Report regularly to the European Parliament on progress in the areas above.

**EU Member States** (the Council) should:

- Review the current work of the EU institutions on 'land grabbing', and more generally on issues relating to social, economic and cultural rights, for more effective integration in the EU's human rights work. Where appropriate this should be incorporated into the ongoing review of the 2012 EU Action Plan on Human Rights and Democracy.
- Ensure coherence between the work done at a European level and work done by individual EU Member States on this issue.
- Consider whether work carried out in other fora, such as the OECD or various UN bodies, could provide useful insights for the EU's work.

The European private sector should:

- Champion the private sector's contribution to inclusive and sustainable development in third countries, through supporting and implementing greater transparency, more inclusive models of agribusiness investment, and higher standards of community engagement, business operations and accountability mechanisms.
- Review existing voluntary and non-voluntary codes of practice that relate to 'land grabbing' to examine whether self-regulation could reduce the current negative consequences of 'land grabbing'.
- Ensure that the quality standards applied in this area by European companies within the EU are matched or exceeded in their investments outside the EU.

**NGOs** and representatives of civil society should:

- Remain vigilant and step up advocacy for greater consideration of human rights issues linked to 'land grabbing' in the policy areas identified above, and for more inclusive involvement of civil society in sustainable development.

- Develop appropriate methodologies and practices to hold EU institutions to account.
- As regards European and Southern NGOs and civil society, continue engagement in third countries, working with local NGOs and representatives of civil society, to champion and support efforts to increase local control over land use, secure local land rights and strengthen local voices, and to improve governance, transparency, accountability and redress in investment processes.

## 1. INTRODUCTION

Recent years have seen renewed private and public sector interest in developing country agriculture. A new wave of large-scale acquisitions of farmland for plantation agriculture has taken place in Africa, Asia and Latin America, fuelled by changing agricultural commodity prices, expectations of rising land values and public policies to promote long-term food and energy security.

Dubbed 'land grabbing' in the media and the critical literature, this global land rush has sparked much polarised debate, partly reflecting different positions on agricultural development pathways and the role of small, medium and large-scale farming. While some emphasise the positive role that large-scale investment can play in 'modernising' agriculture and raising productivity, others argue that the deals threaten local livelihoods, marginalise small-scale farming and contribute little to the development of recipient countries.<sup>1</sup> Irrespective of the positions taken, it is clear that large land deals have the potential to increase competition for land, a vital resource in many recipient countries. It is also clear that fundamental human rights are at stake – the rights to food, to property and to housing being just three examples.

This Study discusses the human rights issues raised by 'land grabbing' in low and middle-income countries. It synthesises evidence and makes recommendations to prevent and remedy human rights violations in connection with agribusiness investments in low and middle-income countries. The recommendations target the European Parliament but also, more generally, the institutions of the European Union (EU). The Study takes a socio-legal approach, dealing with human rights issues and EU legal instruments in their socioeconomic contexts. It draws on a review of the literature and on an analysis of relevant law and standards, including the extensive jurisprudence developed by international human rights bodies. The Paper also draws on a few interviews and email exchanges with EU officials, EU Member State officials, non-governmental organisations (NGOs), academics and other resource persons. The interviews and exchanges were primarily aimed at ensuring that the recommendations made in the Paper build on past and ongoing efforts.

A few clarifications are in order. 'Land grabbing' is a contested term. Not all land deals have been contested as 'land grabs'. Attempts have been made more clearly to define 'land grabbing', a notable example being the Tirana Declaration adopted by the International Land Coalition<sup>2</sup>. However, there is no universal consensus on all key parameters. Alternative formulations have been used in the literature, including the more neutral 'large-scale land acquisitions', 'large-scale land deals' and 'global land rush'. The Study uses these terms interchangeably, and 'land grabbing' as a short-hand for the acquisition of rights to land, including ownership but also long-term use rights. The Study does not assume that the deals are necessarily bad. However, use of the expression 'land grabbing' is in line with the Terms of Reference for this Paper, and is justified by the fact that this expression is what many readers may more immediately relate to, as a result of sustained media reporting that has used this terminology.

Assessing the scale of individual land deals is inevitably context specific: the significance of a 1,000-hectare deal, for example, will vary depending on local socioeconomic and ecological factors, including

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<sup>1</sup> Cotula and Oya (2014).

<sup>2</sup> The Tirana Declaration defines 'land grabbing' as 'acquisitions or concessions that are one or more of the following: i) in violation of human rights, particularly the equal rights of women; (ii) not based on free, prior and informed consent of the affected land-users; (iii) not based on a thorough assessment, or are in disregard of social, economic and environmental impacts, including the way they are gendered; (iv) not based on transparent contracts that specify clear and binding commitments about activities, employment and benefits sharing, and (v) not based on effective democratic planning, independent oversight and meaningful participation' (para. 4). The Declaration was adopted by the International Land Coalition's Assembly of Members on 27 May 2011. See <http://www.landcoalition.org/fr/node/1109>.

population density. Even very small deals can increase pressures on land in some contexts. However, the Study focuses on the larger deals, and the internationally used threshold of 200 hectares provides a useful parameter of scale<sup>3</sup>. The land rush is a global phenomenon, but the Study focuses on low and middle-income countries in Africa, Asia and Latin America. Pressures on land in these countries are increasing as a result of multiple forces, including extractive industry developments, but the Paper only discusses land deals for plantation agriculture.

Section 2 takes stock of available data on large land deals, their features and their driving forces. Section 3 conceptualises the link between land deals and human rights, provides a brief overview of relevant international human rights norms, and discusses available evidence on actual and potential human rights impacts. Section 4 identifies five areas of EU policy that are most directly relevant to addressing the human rights impacts of 'land grabbing', and in so doing it also briefly discusses developments in home and host countries as well as internationally. Section 5 proposes courses of action by which the EU, and the European Parliament in particular, can further prevent or remedy human rights violations linked to large-scale land deals.

## **2. 'LAND GRABBING': A BIRD'S EYE VIEW OF THE EVIDENCE**

A vast and growing literature has generated evidence on the scale, geography, drivers, features and early outcomes of 'land grabbing'. Yet the evidence base remains patchy, and there is still much uncertainty on key issues. This Section briefly recalls some key knowns and unknowns of the global land rush.

### **2.1 Scale and trends**

Figures about the aggregate scale of 'land grabbing' are contested, and it is virtually impossible to develop accurate estimates. There are several reasons for this. Lack of transparency is a major problem, and access to data remains restricted in most countries. Many parties – from government officials concerned about the sensitivity of information to companies concerned about commercial confidentiality, through to corrupt officials – have a vested interest in keeping the deals out of the public domain. In addition, existing estimates of how much land has been acquired, where and by whom vary widely, partly because datasets rely on different sources and methodological approaches. All approaches involve major methodological challenges that tend to undermine the accuracy of figures<sup>4</sup>. In addition, land deals are signed, cancelled, restructured or transferred, so the figures change all the time and require continuous updating.

Conceptual difficulties are also involved. For example, a convention of establishment may commit the government to allocate land, but it may not be followed up by an actual land lease, or the lease may concern a smaller area. There are arguments for both including and excluding land areas covered by establishment conventions but not by land leases: actual impacts on local land rights may be limited, yet the security of those rights could be undermined, and if the land cannot be allocated to other uses the host country bears significant opportunity costs. Different criteria for inclusion or exclusion in datasets can result in considerable differences in aggregate scale. In most countries, providing estimates of scale through defining a range is likely to be a more realistic option than seeking to develop a single figure.

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<sup>3</sup> This is the threshold used by the Land Matrix, an international database of land deals discussed further below - ([www.landmatrix.org](http://www.landmatrix.org)). -

<sup>4</sup> On these methodological challenges, see Cotula and Polack (2012), Oya (2013a) and Schoneveld (2011, 2014). -

Despite these uncertainties, all evidence indicates that there has been an increased volume of large-scale land deals for agribusiness investments in the period starting from 2005, and with renewed momentum following the food price hike of 2007-2008, including in sub-Saharan Africa, Southeast Asia and Latin America<sup>5</sup>. This new surge follows earlier waves of land acquisition dating back to colonial times, particularly in Africa<sup>6</sup>. It represents a new shift in corporate agrifood production, with some companies that had traditionally focused on processing and trading now taking more direct control over agricultural production<sup>7</sup>.

There is some evidence to suggest that the new wave of land acquisition peaked in 2009-2010, with a slowdown in the pace of deal making in subsequent years<sup>8</sup>. This slowdown appears to have been linked to financing difficulties in the aftermath of the financial crisis in the West, and to policy change in a number of host countries – including partial or full moratoria on new deals, for example in Cambodia, Ethiopia, Laos and Tanzania. However, on current trajectory global demand for agricultural commodities will most likely to continue to rise in the longer term, and so will demand for the land necessary to produce those commodities. Africa, Latin America and Asia are perceived to host much of the world's 'available' land, so pressures on land in these regions are expected to increase. Continued media reporting on corporate plans to invest in developing country agriculture, regularly collated in the database [farmlandgrab.org](http://farmlandgrab.org), compound these perceptions<sup>9</sup>.

While the evidence points to a phenomenon of substantial magnitude by historical standards, the latest figures of aggregate scale are considerably smaller than earlier estimates. Developments in the Land Matrix database illustrate this. The Land Matrix is an international database that tracks land acquisition worldwide since 2000, developed by an international consortium led by the International Land Coalition<sup>10</sup>. Improved accuracy over time has resulted in considerable downscaling of aggregate data in the Land Matrix. As of late 2011, the database included reported deals for over 200 million hectares worldwide, including cross-checked deals for over 70 million hectares of land<sup>11</sup>. As of December 2012, the aggregate figure was down to 48 million hectares, and new revisions in June 2013 and January 2014 brought the figure to some 32 million hectares and 31 million hectares, respectively<sup>12</sup>.

Land Matrix data indicates Papua New Guinea, Indonesia, South Sudan, Democratic Republic of Congo, Mozambique, Liberia, Sudan, Sierra Leone, Ethiopia and Argentina as top recipient countries by aggregate land area transacted, including both agricultural and non-agricultural land uses<sup>13</sup>. With regard to land deals for plantation agriculture, the Democratic Republic of Congo, Ethiopia, Ghana, Liberia, Mali, Mozambique, Senegal, Sierra Leone and Tanzania have been widely reported as being key recipient countries in Africa; Cambodia, Indonesia, Laos and Myanmar, in Asia; and Argentina, in Latin America. But other countries that have received less public attention may also have experienced significant volumes of deal making. With the exception of a large oil palm project, Cameroon has

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<sup>5</sup> See, among the many multi-country quantitative assessments, Cotula et al (2009); GTZ (2009); Deininger and Byerlee - (2011); Schoneveld (2011, 2014); Anseeuw et al (2012); Locke and Henley (2013); Land Matrix (2014). -

<sup>6</sup> Alden Wily (2012); Amanor (2012). -

<sup>7</sup> UNCTAD (2009a); Vermeulen and Cotula (2010). -

<sup>8</sup> Anseeuw et al (2012); Cotula and Oya (2014). -

<sup>9</sup> <http://farmlandgrab.org/>. -

<sup>10</sup> <http://landmatrix.org/>. -

<sup>11</sup> Anseeuw et al (2012). -

<sup>12</sup> Land Matrix (2013, 2014). As of 22 June 2014, the Land Matrix website featured the somewhat higher figure of 36 million - hectares. -

<sup>13</sup> Land Matrix (2014). -

received relatively little public attention in international debates, yet a recent inventory points to significant levels of land acquisition<sup>14</sup>.

At the country level, the scale of land acquisition may account for a small share of national land suitable for agriculture. For example, total land transacted in the period 1 January 2005 to 31 August 2012 was estimated to account for between 1.1% and 1.9% of land suitable for rain-fed agriculture in Ethiopia, Ghana and Tanzania<sup>15</sup>. This finding puts into perspective claims that 'land grabbing' signals a rapid, transformational transition from small to large-scale farming<sup>16</sup>. Long-term demographic and socioeconomic change can have a greater impact on evolving land relations than large-scale land deals.

However, the deals are often concentrated in specific districts or regions, and can therefore exacerbate competition for land in specific places. In Mali, for example, land acquisition was heavily concentrated in the Office du Niger area, where irrigation potential is greatest<sup>17</sup>. In Ethiopia, the deals are concentrated in 'peripheral' regions, partly driven by geopolitical considerations,<sup>18</sup> while in Ghana most projects appear to be located in a fertile, central belt that runs through the Ashanti, Brong Ahafo and Northern Regions<sup>19</sup>. In addition, agribusiness investments may intervene in contexts where demands on land are already increasing from other sources, including extractive industries and growing land concentration driven by local and national elites. So even a smaller aggregate scale of land acquisition can significantly increase pressures on land. And quantitative measures of land acquired say little about differences in the quality, value and use of the land transacted, and about the implications of the deals for socioeconomic change in local and national contexts (Scoones et al, 2013). There is no doubt that issues raised by 'land grabbing' need to be taken very seriously.

## 2.2 Drivers

It is widely recognised that (expectations of) growing demand for agricultural commodities have been a key driver of large-scale land acquisition. Changes in commodity demand have significantly improved expectations of returns from agriculture. This includes changes in global demand driven by demographic growth and economic development in emerging economies, but also changes in local and national demand in recipient countries themselves, linked to urbanisation and rising middle classes.

Despite much rhetoric associating large-scale land deals with the imperative to feed the planet's growing population, crops other than food, and multi-purpose crops that can be used for food, fuel or other uses (such as sugar cane and oil palm),<sup>20</sup> have been important drivers of the land rush. Biofuels have played an important role in the land rush,<sup>21</sup> although the relative importance of biofuels appears to have now decreased<sup>22</sup>. A recent study found oilseed crops (including oil palm and jatropha) to account for some 60 per cent of land acquired in Africa since 2015, and sugar cane for some 13 per cent, with biofuels being 'the most important driver underlying the renewed investor interest in these crops'<sup>23</sup>.

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<sup>14</sup> Nguiffo and Sonkoue (2014). -

<sup>15</sup> According to systematic national inventories discussed by Cotula and Oya (2014). The inventories only covered land deals over 1,000 hectares. -

<sup>16</sup> Cotula and Oya (2014). -

<sup>17</sup> Djiré (2012). -

<sup>18</sup> Mosley (2012). -

<sup>19</sup> Cotula and Oya (2014). -

<sup>20</sup> Borras et al (2014). -

<sup>21</sup> See for example Cotula et al (2008, 2009); Schoneveld (2011 and 2014); German et al (2011); Deininger and Byerlee (2011). -

<sup>22</sup> Locke and Henley (2013); Cotula and Oya (2014). -

<sup>23</sup> Schoneveld (2014:6). -

While these factors may explain the renewed interest in agriculture, the question remains as to why this interest has translated into land acquisition for large-scale plantation agriculture. In the period from the 1950s and 60s, many companies had moved away from plantation agriculture and towards contract farming arrangements. This was partly a response to growing unionisation and to nationalisation programmes<sup>24</sup>. The surge in land deals constitutes a new shift in the opposite direction. It is linked to both market and policy forces.

Let us start from market forces. Changing agricultural commodity prices are shifting the distribution of risks and returns in global value chains<sup>25</sup>. Higher prices boost returns from farming, meaning that becoming directly involved with agricultural production now pays better than it used to. Higher and more volatile agricultural commodity prices also increase the risks that processors and traders face in relation to the security of their supplies. Companies that trade in agricultural commodities or that manufacture goods from those commodities are faced with the risk of not being able to source the supplies they need. As a result of these shifts, many companies – including both well-established processors and new entrants in the industry – are directly taking up farming in order to both increase profits and secure supplies.

In addition, quality, safety and traceability requirements have become stricter, partly as a result of standards imposed on suppliers by large supermarkets in the global North. Today, a company must be able to show where its products come from and whether they comply with standards imposed by legislation or buyers<sup>26</sup>. Traceability and compliance are easier to ensure if the company directly controls farming activities, or sources supplies from few large producers.

Technological innovation has made it easier for companies to manage large farms, for instance through remote sensing and sophisticated farm machinery. The land rush is associated with crops that lend themselves to mechanisation, such as sugar cane, cereals and oil palm. Recent technological developments in processing have also pushed towards larger plantations. Today, a single processing facility for palm oil can absorb produce from up to 70,000 hectares of land<sup>27</sup>. Large processing facilities require considerable investment, and without secure supplies the factory risks operating below capacity and not being viable. Quality, timeliness and reliability of supplies are deemed easier to attain if the company directly controls farming.

Finally, the role of speculation should not be underestimated. Anecdotal evidence suggests that many investors and companies are interested in acquiring farmland as a strategic economic asset. Most analysts expect land values in Africa to rise owing to growing scarcity, productivity increases driven by agribusiness investment, and higher returns from farming caused by rising agricultural commodity prices. In fact, historically, farmland values have tended to increase in developed countries too. In the United Kingdom and the United States, farmland prices have outperformed stock markets in the past few years<sup>28</sup>. Today, farmland investments in developed countries are low-risk but also low-return, because prices are already high and unlikely to increase much. In 'frontier markets' such as Africa, risks are higher, but potential for land values to rise is much greater.

In addition to market forces, public policy has also been an important driver of large-scale land deals, particularly with regard to host country policies to make 'idle' land available to investors on favourable terms. Many agricultural development policies appear to equate agricultural 'modernisation' with large-

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<sup>24</sup> UNCTAD (2009a). -

<sup>25</sup> Selby (2009). -

<sup>26</sup> Dolan and Humphrey (2004); Reardon et al (2009). -

<sup>27</sup> Deininger and Byerlee (2012). -

<sup>28</sup> Hawkins (2010). -

scale, mechanised farming. There appears to be a widespread feeling that ‘conventional’ agricultural practices have failed, and are too slow to adjust and meet predicted demands<sup>29</sup>. However, while productivity levels on small-scale farms are often lower than they might be,<sup>30</sup> this often has to do with the historical lack of adequate policy support for the small-scale farming sector, particularly after structural adjustment programmes often led to cuts in extension and farm support services. Effective policies can go a long way towards enabling small-scale farmers to meet predicted demands<sup>31</sup>.

### 2.3 Actors, features and early outcomes

While much international attention has focused on transnational land deals, systematic national inventories of deals in selected countries point to an important role being played by local nationals<sup>32</sup>. This primarily involves national elites – politicians, civil servants, entrepreneurs. But it can also involve parastatals. For example, in Ethiopia much land acquisition is led by national parastatal agencies to develop sugar cane plantations<sup>33</sup>.

Where foreign investment is involved, research findings challenge enduring perceptions that investors from China and the Middle East are the leading land acquirers. Hard evidence of substantial land acquisition by China in Africa is hard to come by, and many reported deals have proved inflated, non-existent or discontinued,<sup>34</sup> although China appears to be an important land acquirer in Southeast Asia<sup>35</sup>. Indian and Southeast Asian companies have also been active in Africa, and the top-end figure for a single land deal by a Singapore-listed company in Gabon accounts for more land than that acquired by China in the whole of sub-Saharan Africa<sup>36</sup>.

But it is important to recognise that Western companies have played a central role in land acquisition, particularly in biofuels investments, and particularly in Africa. There are numerous examples of reported land acquisitions directly led by European companies, or by foreign-owned companies with a significant presence in the EU (e.g. headquarters, stock exchange listing). For example, large-scale palm oil developments – rehabilitating and expanding colonial plantations, or establishing new ones – have reportedly been implemented by British companies in Liberia, French firms in Cameroon, Portuguese companies in Sierra Leone, and Italian companies in Congo-Brazzaville<sup>37</sup>. *Jatropha* projects have been initiated by Dutch companies in Tanzania,<sup>38</sup> British companies in Tanzania and Mozambique,<sup>39</sup> and Italian companies in Senegal and Ghana<sup>40</sup>. Sugar cane is also a popular crop, with activities led by companies from the United Kingdom, for example in Mozambique;<sup>41</sup> from Switzerland, for example in Sierra Leone;<sup>42</sup> and from Sweden, for example in Tanzania<sup>43</sup>. A number of these deals have now collapsed.

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<sup>29</sup> Anseeuw et al (2012). -

<sup>30</sup> Deininger and Dyerlee (2011). -

<sup>31</sup> Vorley et al (2012). -

<sup>32</sup> Deininger and Byerlee (2011); Cotula and Oya (2014). -

<sup>33</sup> Keeley et al (2014). -

<sup>34</sup> See the extensive work of Deborah Bräutigam (<http://www.chinaafricarealstory.com/>). See also Cotula (2013) and Schoneveld (2014). -

<sup>35</sup> Smaller et al (2012). -

<sup>36</sup> Calculation developed in Cotula (2013). -

<sup>37</sup> According to Pearce (2012). -

<sup>38</sup> Sulle and Nelson (2009). -

<sup>39</sup> Sulle and Nelson (2009); Nhantumbo and Salomão (2010). -

<sup>40</sup> Re:Common (2012) and personal observation. -

<sup>41</sup> Nhantumbo and Salomão (2010). -

<sup>42</sup> Pearce (2012). -

<sup>43</sup> Sulle and Nelson (2009). -

It is difficult to quantify with precision the extent of land acquisition by companies linked to Europe. One study found that Europe accounts for 40 per cent of all land acquired in Africa since 2005, followed by North America with 15 per cent<sup>44</sup>. In other words, over half the total land area acquired in Africa was taken up by Western companies, with European firms accounting for much of the action. According to that study, the United Kingdom, the United States and Norway were the world's first, second and fourth largest acquirers of Africa's land<sup>45</sup>. All figures must be taken with great caution, but these figures do point to the significant role played by European companies.

European involvement in 'land grabbing' can also take forms other than direct land acquisition. Evidence suggests that European banks have been involved in financing some deals,<sup>46</sup> though the extent of this phenomenon and its specific modalities remain unclear. Sourcing by European agrifood companies from (non-European) companies involved with large-scale land acquisition is also a likely form of European exposure to 'land grabbing', though again exact figures of scale are not available. Importation into the EU of commodities produced on land acquired in low and middle-income countries has already triggered NGO campaigns<sup>47</sup>.

Patterns of land acquisition vary significantly in different contexts. Land tenure is a key driver of these patterns. Where land is mainly or wholly owned or controlled by the state, as in many African countries but also for example in Cambodia and Laos, land deals are primarily in the form of long-term leases allocated by government agencies. The situation looks different where land is owned by customary or private entities. For example, in Ghana, where much land is owned by clans and families, customary chiefs have been leading the deal making. Land purchases and complex financial transactions appear to be more common in Latin America, although some governments have tightened restrictions on foreign acquisition of land ownership.

In many countries, lack of proper legal recognition and documentation of local land rights is a recurring problem – not only because it exposes local landholders to the risk of dispossession, but also because it exposes companies to the risk of contestation and conflict<sup>48</sup>. Even a deal that complies with national law may be contested by affected people and by NGOs on the ground that government or customary authorities may have allocated land without considering local land claims. While these claims are not always legally recognised, they may be seen as legitimate in local societies, and may be very important to local livelihoods.

Multiple challenges make it difficult to rigorously assess the socioeconomic outcomes of large land deals. Many land deals are recent and are only just getting established. Many have fallen behind schedule, others are on track but their investment targets are spread over long timeframes. The full impacts of an investment may only become apparent a long time after full-scale implementation begins. The time distribution of costs and benefits is often uneven, so looking at short-term outcomes alone may result in a skewed picture: negative impacts – loss of land, for instance – are often felt first, while jobs, opportunities for local businesses and government revenues may only fully materialise at a later stage. Important distributional effects may be difficult to document and assess, as land deals may create winners and losers (e.g. those who lose land and those who get jobs may not be the same people). For many recent agribusiness investments in Africa, it is just too early to tell. And while much research has been carried out on land acquisitions, studies are of varying quality, and data remains patchy.

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<sup>44</sup> Schoneveld (2014). An earlier study by the same author indicated similar figures (Schoneveld, 2011). -

<sup>45</sup> Schoneveld (2014), again confirming findings from Schoneveld (2011). -

<sup>46</sup> Global Witness (2013); Cotula and Blackmore (2014). -

<sup>47</sup> See e.g. Equitable Cambodia and IDI (2013). -

<sup>48</sup> The Munden Project (2013). -

However, the evidence available thus far points to predominantly negative outcomes, at least in the short term. In addition to contestation about negative impacts on local land rights, discussed below, evidence suggests that failure rates in the latest wave of agribusiness investments have been high, though it is impossible to quantify the phenomenon with precision. Difficulties in obtaining financing and in setting up large plantations in difficult terrains appear to be among the key factors behind the high failure rates<sup>49</sup>. In addition, slow implementation has marred ongoing investments. A global study on large-scale land deals published by the World Bank found that ‘progress with implementation [was] surprisingly limited’<sup>50</sup>. Land Matrix data suggests that only 2.5 million hectares, out of a total of 32 million hectares transacted, are under cultivation<sup>51</sup>. This represented a significant increase compared to the 1.7 million hectare figure documented in 2013,<sup>52</sup> but overall levels of implementation appear to remain very low. While more in-depth research is needed, these findings offer a cautionary tale on the potential of large land deals to contribute to poverty reduction and inclusive development in recipient countries.

### **3. ‘LAND GRABBING’ AND HUMAN RIGHTS**

As discussed in Section 2, it is too early to provide a definitive assessment of the long-term development outcomes of the latest wave of agribusiness investments. Should the development promises underlying the deals be fully realised, there could be potential for change that can improve enjoyment of human rights, including the rights to health, education, work and an adequate standard of living.

However, the modalities and early outcomes of large-scale land deals, coupled with the poor governance prevailing in many recipient countries and the major power imbalances associated with the deals, have triggered important concerns about adverse human rights impacts. These concerns are reflected in the work of advocacy groups;<sup>53</sup> in a substantial and growing body of scholarly writing on ‘land grabbing’ and human rights;<sup>54</sup> in the work of United Nations (UN) Special Rapporteurs;<sup>55</sup> and in sessions of the UN bodies that receive and comment on periodic reports submitted by states on the implementation of human rights treaties<sup>56</sup>.

This Section identifies relevant human rights, conceptualises their relationship with ‘land grabbing’, and discusses some evidence on actual and potential human rights impacts. Space constraints prevent an exhaustive discussion of the interface between the multiple aspects of ‘land grabbing’ and the many human rights at stake, and what follows should be treated as being for illustrative purposes.

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<sup>49</sup> Anseeuw et al (2012). -

<sup>50</sup> World Bank (2011:67). -

<sup>51</sup> Land Matrix (2014). -

<sup>52</sup> Land Matrix (2013). -

<sup>53</sup> For an explicit human rights perspective, see Oakland Institute (2011a-e); Oxfam (2011); Human Rights Watch (2012a, - 2012b); FIAN (2012); FIDH (2013). -

<sup>54</sup> For writing that specifically takes a human rights perspective, see for example Borras and Franco (2010); CHR&JI (2010); - Monsalve Suárez (2012); Cotula (2012); Golay and Biglino (2013); Wisborg (2013); von Bernstorff (2013); Gilbert (2014). -

<sup>55</sup> See the many documents cited in this Section. UN Special Rapporteurs are part of the so-called ‘Special Procedures’ - established by the UN Human Rights Council. They are mandated to address specific human rights or thematic issues, or - specific country situations. -

<sup>56</sup> For example, human rights issues linked to loss of land for resource development projects emerged during the discussion - of the initial report of Indonesia on the implementation of the International Covenant on Economic, Social and Cultural - Rights (ICESCR). See ‘Committee on Economic, Social and Cultural Rights Considers Report of Indonesia’, 1 May 2014, - [http://www.unog.ch/unog/website/news\\_media.nsf/\(httpNewsByYear\\_en\)/A4CBCCBA68B5915CC1257CCB0054F0C8?OpenDocument](http://www.unog.ch/unog/website/news_media.nsf/(httpNewsByYear_en)/A4CBCCBA68B5915CC1257CCB0054F0C8?OpenDocument). -

### 3.1 Land rights and human rights

Much public discourse on the human rights impacts of 'land grabbing' has focused on the loss of access to land and resources. It is impossible to find reliable figures of how many people have lost land to large-scale land deals worldwide. However, there have been numerous reports of land dispossession and evictions associated with 'land grabbing', for example in Cambodia,<sup>57</sup> Ethiopia,<sup>58</sup> Ghana,<sup>59</sup> Laos,<sup>60</sup> Liberia,<sup>61</sup> Mali,<sup>62</sup> Mozambique,<sup>63</sup> Uganda,<sup>64</sup> and Tanzania<sup>65</sup>. Much of this evidence is from case studies, including NGO reports and academic publications. Some of this literature has taken an explicit human rights lens<sup>66</sup>. The quality of research on 'land grabbing' varies considerably. Figures on loss of land rights may be hotly contested – bold claims may prove exaggerated, while attempts by companies to play down the extent of dispossession may fail to recognise local land claims, or neglect far-reaching indirect impacts.

Some factors would suggest that, overall, current evidence could underestimate the scale of the impact. Whether a land deal attracts public attention often depends on fortuitous circumstances: while the impacts of some deals have received much public attention, many others have remained below the public radar. In addition, national law may not recognise that the land belongs to affected people in the first place. In many jurisdictions, land ownership is vested with the state, and farmers, herders and foragers have conditional use rights<sup>67</sup>. The law often conditions legal protection upon evidence of productive use, and some important forms of resource use are not deemed to be productive. So land that villagers are not visibly using at the time of the acquisition, perhaps because they use it for grazing or wood gathering, or because they have set it aside for future generations, or else because they have no standing crops due to seasonal land use patterns, may be treated as 'empty' even though villagers may claim rights over it and the growing village population may increasingly need that land to sustain itself. As a result, many people may lose land without being formally expropriated. In yet other cases, pastoralists may not lose their grazing grounds, but agribusiness developments may block livestock corridors of critical importance for herds to access water and dry-season grazing. In addition, evidence of dispossession needs to be understood in light of the limited implementation of many land deals, discussed above: should the deals concluded so far be fully implemented, the scale of dispossession is likely to increase.

The intensity of the dispossession, not just its scale, influences human rights impacts. There is huge variation in contexts as well as in government and corporate practice. However, contestation around lack of transparency and consultation, forced evictions, inadequate compensation and inaccessible redress has been a recurring feature of the latest wave of land acquisition. In some cases, loss of land has been accompanied by significant disruption and trauma for local groups. In Mali, for example, a large irrigation project reportedly resulted in the following outcomes:

The construction of the 40-km-long irrigation canal and adjacent road resulted in massive disruption in the region of Kolongo. Houses were razed, market gardens and orchards bulldozed, animal trails

<sup>57</sup> Global Witness (2013); Equitable Cambodia and IDI (2013). -

<sup>58</sup> Oakland Institute (2011b); Human Rights Watch (2012a, 2012b). -

<sup>59</sup> Schoneveld et al (2011); Tsikata and Yaro (2011); Wisborg (2012). -

<sup>60</sup> Global Witness (2013). -

<sup>61</sup> Deininger and Byerlee (2011). -

<sup>62</sup> Oakland Institute (2011c). -

<sup>63</sup> Nhantumbo and Salomão (2010); FIAN (2012). -

<sup>64</sup> Oxfam (2011). -

<sup>65</sup> Sulle and Nelson (2009). -

<sup>66</sup> See for example FIAN (2012); Equitable Cambodia and IDI (2013). -

<sup>67</sup> Cotula (2007); Alden Wily (2011). -

obstructed and the broad canal now divides single villages. A cemetery was unceremoniously unearthed in the village Goulan-Coura. Local people there were shocked to find human remains scattered about the construction site before the contractors then plowed them into the ground<sup>68</sup>.

This situation has far-reaching human rights implications. A starting point for discussing these implications involves exploring the close if complex connection between land rights and human rights. From a legal perspective, the two concepts need to be clearly distinguished. Land rights include rights to hold, access, use, manage or transact a particular piece of land. They are granted to identified legal or natural persons, or to identified groups, by national law or local ('customary' but continuously evolving and reinterpreted) tenure systems. Human rights, on the other hand, protect fundamental goods that are inherent to human dignity, and are recognised to all human beings by international law and national constitutions<sup>69</sup>.

There has been debate about whether international law recognises a human right to land. Activists have argued for the recognition of a human right to land as a mechanism to respect, protect and fulfil existing or even prospective land rights, for example within the context of agrarian reform. The 'right to land and territory' features prominently in the Declaration of Rights of Peasants – Men and Women adopted by international peasant movement La Via Campesina<sup>70</sup>. La Via Campesina is now advocating for the adoption of an international instrument on the rights of peasants at the United Nations Human Rights Council<sup>71</sup>. This is a reminder that the catalogue of internationally recognised human rights is the product of historically determined negotiation processes, and that there may be scope for future evolutions that, similarly to the development of international instruments on indigenous peoples' rights, depart from the traditional Western human rights canon<sup>72</sup>. However, while multiple human rights are relevant to the protection of land rights, existing international human rights law does not recognise a human right to land as such: no treaty affirms such a right in general terms, and there is little jurisprudence to suggest that a shift may be underway<sup>73</sup>.

That said, it is widely recognised that land rights are closely linked to the realisation of several human rights. The right to property protects land rights from adverse interference, including in the context of 'land grabbing'. This right is recognised in the Universal Declaration of Human Rights (UDHR),<sup>74</sup> but it is absent from the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). As a result, the international protection of

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<sup>68</sup> Oakland Institute (2011c). -

<sup>69</sup> Wisborg (2013). -

<sup>70</sup> <http://viacampesina.net/downloads/PDF/EN-3.pdf>. -

<sup>71</sup> See <http://www.ohchr.org/EN/HRBodies/HRC/RuralAreas/Pages/FirstSession.aspx>. See also the interview with Henry - Saragih, then international coordinator of La Via Campesina, featured in Monsalve Suárez (2013:278-279). -

<sup>72</sup> Monsalve Suárez (2013). -

<sup>73</sup> In a similar direction, see Wisborg (2013) and Gilbert (2014). De Schutter (2010) develops comparable analysis but talks of - an 'emerging' human right to land. For an example of international jurisprudence favouring the emergence of a human - right to land, see Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate - Standard of Living, Miloon Kothari, 5 February 2007, UN Doc. A/HRC/4/18, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/106/28/PDF/G0710628.pdf?OpenElement>. The report states that the Special Rapporteur - 'strongly believes that the Human Rights Council should consider devoting attention to the question of the human right to - land and should conduct studies in this regard which build on the work of organized peasant and indigenous peoples' - movements' (para. 31). -

<sup>74</sup> Article 17. -

the right to property hinges primarily on regional human rights systems,<sup>75</sup> although global human rights treaties do prohibit discrimination in property relations for example based on race or gender<sup>76</sup>.

Many have regarded the right to property as a 'conservative' right, insofar as it can protect the assets of the rich and powerful against public-interest action<sup>77</sup>. Perhaps for this reason, the right to property has been largely neglected in 'land grabbing' debates. However, international jurisprudence has consistently recognised the collective right to property of indigenous and tribal peoples over their ancestral lands, and showed how the right to property can be relied on to challenge a government's award of natural resource concessions encroaching upon those lands<sup>78</sup>. This jurisprudence has made it clear that the right to property applies irrespective of whether rights are formally recognised as property under national law. The specific contours of the legal protection of the right to property (compensation requirements and standards, for example) vary depending on applicable regional treaties. Broadly speaking, however, expropriations must be non-discriminatory, for a public purpose and accompanied by payment of compensation<sup>79</sup>. Therefore, arbitrary, uncompensated or discriminatory takings of customary or statutory land rights aimed at making land available to agribusiness investors are likely to violate the right to property.

Where people depend on land and natural resources for their food security, secure land rights are essential to the progressive realisation of the right to adequate food<sup>80</sup>. A few statistics highlight the importance of land rights for the right to food: 115 of the 183 communications sent by two consecutive UN Special Rapporteurs on the Right to Food over the period 2003-2009 concerned land rights, and a public appeal by the previous UN Special Rapporteur on the Right to Food calling for evidence on the interface between land rights and the right to food resulted in 117 case submissions<sup>81</sup>. To realise the right to food, the state must refrain from infringing on the ability of individuals and groups to feed themselves, and must also protect this ability from infringements by third parties, including agribusiness firms<sup>82</sup>. So 'land grabbing' would violate the right to food if people who depend on land for

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<sup>75</sup> Among other instruments, see Article 1 of Protocol 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR); Article 21 of the American Convention on Human Rights (ACHR); and Article 14 of the African Charter on Human and Peoples' Rights (ACHPR). -

<sup>76</sup> Article 5(d)(v) of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD); Articles 15(2) and 16(1)(h) of the Convention for the Elimination of All Forms of Discrimination Against Women (CEDAW). -

<sup>77</sup> See the discussion in Golay and Cismas (2010). -

<sup>78</sup> See for example *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Judgement, 31 August 2001, Inter-American Court of Human Rights, <http://www1.umn.edu/humanrts/iachr/AwasTingnicase.html>; and *Saramaka People v. Suriname*, Judgement, 28 November 2007, Inter-American Court of Human Rights, [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_172\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_172_ing.pdf). More generally on the protection of indigenous peoples' land rights through the collective right to property, see *Indigenous Community Yakye Axa v. Paraguay*, Judgement, 17 June 2005, Inter-American Court of Human Rights, [http://www.escri-net.org/caselaw/caselaw\\_show.htm?doc\\_id=405985](http://www.escri-net.org/caselaw/caselaw_show.htm?doc_id=405985); *Sawhoyamaya Indigenous Community v. Paraguay*, Judgement, 29 March 2006, Inter-American Court of Human Rights, <http://www1.umn.edu/humanrts/cases/12-03.html>; *Centre for Minority Rights Development and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya*, Decision of 25 November 2009, Communication No. 276/2003, African Commission on Human and Peoples' Rights, <http://www.achpr.org/communications/decision/276.03/>. -

<sup>79</sup> For a more detailed discussion, see Cotula (2012). -

<sup>80</sup> Report of the Special Rapporteur on the Right to Food, Olivier De Schutter, 11 August 2010, UN Doc. A/65/281. This report is specifically devoted to the relationship between land access and the right to food. Among other sources, the right to food is recognised as part of the broader right to an adequate standard of living by Article 25 of the UDHR and Article 11 of the ICESCR. -

<sup>81</sup> Figures from Report of the Special Rapporteur on the Right to Food, Olivier De Schutter, 11 August 2010, UN Doc. A/65/281, para. 5. -

<sup>82</sup> General Comment No. 12, 'The Right to Adequate Food (Article 11)', Committee on Economic, Social and Cultural Rights, 12 May 1999, UN Doc. E/C.12/1999/5, <http://www.unhcr.ch/tbs/doc.nsf/0/3d02758c707031d58025677f003b73b9>. -

their livelihoods are deprived of their land without a suitable alternative<sup>83</sup>. The previous UN Special Rapporteur on the Right to Food, Olivier de Schutter, vocally articulated the link between ‘land grabbing’ and the right to food, and developed a set of principles to ensure that large-scale land deals are consistent with the right to food. Among other things, these principles call on states to adopt legislation to secure local land rights, and for the application of the principle of free, prior and informed consent<sup>84</sup>.

The right to adequate housing, which like the right to food is part of the wider right to an adequate standard of living,<sup>85</sup> has implications for security of land rights, which have been elaborated on by the UN Special Rapporteur on the Right to Adequate Housing,<sup>86</sup> and also in General Comments developed by the UN Committee on Economic, Social and Cultural Rights<sup>87</sup>. The expropriation of lands that provide the basis of traditional ways of life could also violate *the right of minorities to enjoy their own culture, affirmed in Article 27 of the International Covenant on Civil and Political Rights*<sup>88</sup>. Where indigenous peoples are involved, ‘land grabbing’ can violate the rights recognised to indigenous peoples by International Labour Organization (ILO) Convention No. 169 of 1989 concerning Indigenous and Tribal Peoples in Independent Countries. These rights include the principle of good faith consultation with a view to securing free, prior and informed consent for developments affecting these people<sup>89</sup>. Several other human rights also have important implications for the protection of land rights, but space constraints prevent a comprehensive analysis.

Discussion of the concrete human rights impacts of land acquisitions for agribusiness investments has featured prominently in the work of some UN Special Rapporteurs with a country mandate. This is particularly the case of the Special Rapporteur on the Situation of Human Rights in Cambodia, and of his counterpart responsible for Myanmar. In a report specifically devoted to economic land concessions, the UN Special Rapporteur on the Situation of Human Rights in Cambodia documented the human rights impacts of land concessions, including ‘lack of consultation with local communities, contributing to their marginalization and conflicts with companies and local authorities’; ‘encroachment on farm land and areas of cultural and spiritual significance’; and ‘forced evictions, displacement and relocation of people from their homes and farm lands, creating difficulties with funding or sustaining employment / income-generation and access to basic services’<sup>90</sup>. Similarly, the Special Rapporteur on the Situation of Human Rights in Myanmar has elaborated on the fact that national land legislation in Myanmar leaves

<sup>83</sup> 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’, 28 December 2009, UN - Doc. A/HRC//13/33/Add.2, para. 4. The same point is made by Cotula (2008) and Gilbert (2014). -

<sup>84</sup> See previous footnote, Principles 2 and 3. -

<sup>85</sup> Article 25 of the UDHR and Article 11 of the ICESCR. -

<sup>86</sup> See for example Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate - Standard of Living, Miloon Kothari, 5 February 2007, UN Doc. A/HRC/4/18, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/106/28/PDF/G0710628.pdf?OpenElement>. -

<sup>87</sup> General Comment No. 7, ‘The Right to Adequate Housing (Article 11 of the Covenant): Forced Evictions’, Committee on - Economic, Social and Cultural Rights, 20 May 1997, -

[http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/959f71e476284596802564c3005d8d50?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/959f71e476284596802564c3005d8d50?Opendocument). According to the - General Comment, forced evictions constitute *prima facie* violations of the right to housing. -

<sup>88</sup> General Comment No. 23, ‘Article 27 (Rights of Minorities)’, Human Rights Committee, 8 April 1994, UN Doc. - HRI/GEN/1/Rev.1, <http://www.refworld.org/docid/453883fc0.html>, para. 7. See also the cases *Ivan Kitok v. Sweden*, - Communication No. 197/1985, CCPR/C/33/D/197/1985 (1988), <http://www1.umn.edu/humanrts/undocs/197-1985.html>; and - *Chief Bernard Ominayak and the Lubicon Lake Band v. Canada*, UN Human Rights Committee, CCPR/C/38/D/167/1984, 26 - March 1990, <http://www1.umn.edu/humanrts/undocs/session45/167-1984.htm>. -

<sup>89</sup> Articles 6 and 16. ILO Convention No 169 has been ratified by 20 states so far. See also Articles 10 and 19 of the 2007 UN - Declaration on Indigenous Peoples’ Rights. -

<sup>90</sup> Report of the Special Rapporteur on the Situation of Human Rights in Cambodia, Surya P. Subedi, ‘A Human Rights - Analysis of Economic and Other Land Concessions in Cambodia’, 24 September 2012, UN Doc A/HRC/21/63/Add.1, para. 129. -

people vulnerable to forced evictions and loss of livelihood within the context of natural resource development projects<sup>91</sup>.

### 3.2 Beyond land rights

While loss of land rights is a central part of the interface between 'land grabbing' and human rights, other human rights issues are also at stake. It may be useful to mention a few examples.

Firstly, 'land grabbing' can increase pressures not only on land, but also on other natural resources and more generally on the environment. Large land deals for irrigated agriculture place demands on water, and some contracts grant investors priority rights to water<sup>92</sup>. Use of agrochemicals may lead to the contamination of water sources<sup>93</sup>. These processes can undermine access to water for agriculture for small-scale producers. Insofar as they can also undermine access to water for personal use, they can infringe upon the human right to water. The latter is defined as the right of everyone 'to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses'<sup>94</sup>. Pollution and environmental degradation can also both affect livelihoods that depend on natural resources, and undermine enjoyment of important human rights – including the right to a healthy environment,<sup>95</sup> the right to health,<sup>96</sup> and the right to respect for private and family life<sup>97</sup>.

Secondly, labour is a central and much neglected issue in 'land grabbing'<sup>98</sup>. Jobs are often presented as a – or even *the* – main local economic benefit created by large-scale land deals. Yet in many recipient countries labour rights are weak or poorly enforced, and the agricultural sector raises specific concerns due to the importance of casual and seasonal labour. Issues affect rights connected with basic employment terms, but also with trade unionism and collective bargaining. These rights are recognised in a number of ILO conventions, as well as in the 1998 ILO Declaration on Fundamental Principles and Rights at Work. The latter declaration is widely recognised as a key international reference on basic labour rights, which all ILO member states must adhere to by virtue of their membership. The Declaration's core principles and rights include freedom of association and the effective recognition of the right to collective bargaining; elimination of all forms of forced or compulsory labour; the effective abolition of child labour; and the elimination of discrimination in respect of employment and occupation.

There are no reliable, comprehensive assessments of job creation and labour standards in the latest wave of agribusiness investments. But numerous concerns have been raised about the quality of the

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<sup>91</sup> Report of the Special Rapporteur on the Situation of Human Rights in Myanmar, Tomás Ojea Quintana, 23 September 2013, UN Doc A/68/397, para. 29. -

<sup>92</sup> Borras et al (2011); Skinner and Cotula (2011); Jägerskog et al (2012); Mehta et al (2012); Woodhouse (2012). -

<sup>93</sup> Report of the Special Rapporteur on the Situation of Human Rights in Cambodia, Surya P. Subedi, 'A Human Rights - Analysis of Economic and Other Land Concessions in Cambodia', 24 September 2012, UN Doc A/HRC/21/63/Add.1, paras. - 154-157. -

<sup>94</sup> Committee on Economic, Social and Cultural Rights, General Comment No. 15, 20 January 2003, UN Doc. E/C.12/2002/11, - para. 2. -

<sup>95</sup> Article 24 of the ACHPR. -

<sup>96</sup> Article 12 of the ICESCR. -

<sup>97</sup> In cases decided under Article 8 of the ECHR, the European Court of Human Rights held that a government's failure to - manage the pollution risks related to economic activities, or to provide information about those rights, can violate the right - to respect for private and family life. See for example *Lopez Ostra v. Spain*, Judgment, 9 December 1994, Application No. - 16798/90, [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57905#{"itemid":\["001-57905"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57905#{); *Guerra and Others v. Italy*, Judgment, 19 February 1998, Application No. 116/1996/735/932, -

[http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-58135#{"itemid":\["001-58135"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-58135#{). -

<sup>98</sup> Li (2011). -

(often short-term, uncertain, low-paid, low-skilled) jobs created,<sup>99</sup> although misperceptions about the reality of employment creation in agriculture are also at play<sup>100</sup>. Some national laws also exclude agriculture from the application of legislation on freedom of association and collective bargaining<sup>101</sup>. In addition, contract farmers – independent farmers contracted to supply the company – are often outside the protection of labour law, although some countries have adopted or announced legislation specifically aimed at protecting the rights of contract farmers.

Thirdly, 'land grabbing' has been associated with major concerns about political rights, including the rights of freedom of expression, assembly and association. At root, 'land grabbing' is an issue of democratic governance – who makes decisions, whose voices are heard, and what space is available for dissent. Many deals are happening in contexts where governance is poor, government is authoritarian or security forces may not have been properly trained. In some instances, authorities have resorted to force in order to quell local resistance or silence activists. The rights to life and to physical integrity of land rights defenders have also been on the line, and there have been numerous documented cases of repression, intimidation or harassment of land rights defenders<sup>102</sup>. These issues have been raised by many NGOs,<sup>103</sup> and by several UN Special Rapporteurs. The Special Rapporteur on the Situation of Human Rights in Cambodia cited evidence of militarisation of land concessions, with armed personnel providing security to plantation companies; of arbitrary detentions of protesters; of armed personnel having 'used live fire in confrontation with villagers' who were protesting against encroachment on their land; and of the shooting in 2012 of an outspoken activist<sup>104</sup>. The Special Rapporteur on the Situation of Human Rights in Myanmar found that peaceful protests against forced evictions and land confiscations had been subjected to 'excessive use of force by the police, arbitrary arrest and detention and criminal prosecution'<sup>105</sup>. In Laos, the disappearance of a prominent activist working on 'land grabbing' led to the several UN Special Rapporteurs writing a public letter to the government of Laos<sup>106</sup>.

Fourthly, 'land grabbing' raises human rights issues in relation to redress mechanisms. There are two dimensions to this issue. The first relates to the fact that international human rights instruments can provide people affected by large-scale land deals with access to international redress, or at least to international processes that can amplify local demands. This includes the work of UN Special Rapporteurs, cited above, and also international judicial or quasi-judicial bodies, such as the African Court on Human and Peoples' Rights or the Inter-American Court on Human Rights. However, effective mechanisms to encourage governments to comply are often lacking and some governments have ignored rulings or recommendations. In addition, access to these international mechanisms remains constrained for most due to both practical and legal barriers. The second dimension relates to 'land

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<sup>99</sup> See for example Anseeuw et al (2012). -

<sup>100</sup> For example, agricultural ventures are often inherently associated with seasonal and casual labour (Oya, 2013b). -

<sup>101</sup> According to International Labour Office (2008). -

<sup>102</sup> FIDH (2013). -

<sup>103</sup> See for example Human Rights Watch (2012a, 2012b), reporting on alleged arbitrary arrests and detentions, beatings and mistreatment in Ethiopia, and FIDH (2013), specifically on land rights defenders. -

<sup>104</sup> Report of the Special Rapporteur on the Situation of Human Rights in Cambodia, Surya P. Subedi, 'A Human Rights - Analysis of Economic and Other Land Concessions in Cambodia', 24 September 2012, UN Doc A/HRC/21/63/Add.1, paras. - 129 and 159-160. -

<sup>105</sup> Report of the Special Rapporteur on the Situation of Human Rights in Myanmar, Tomás Ojea Quintana, 2 April 2014, UN - Doc A/HRC/25/64, para. 27. -

<sup>106</sup> [https://spdb.ohchr.org/hrdb/23rd/public - UA Laos 20.12.12 \(3.2012\).pdf](https://spdb.ohchr.org/hrdb/23rd/public_-_UA_Laos_20.12.12_(3.2012).pdf). The letter was signed by the UN Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances, the UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, the UN Special Rapporteur on Freedom of Peaceful Assembly and of Association and the UN Special Rapporteur on the Situation of Human Rights Defenders. Replies from the government of Laos are available at [https://spdb.ohchr.org/hrdb/22nd/Lao 03.01.13 \(3.2012\).pdf](https://spdb.ohchr.org/hrdb/22nd/Lao_03.01.13_(3.2012).pdf) and [https://spdb.ohchr.org/hrdb/23rd/Lao 25.03.13 \(3.2012\).pdf](https://spdb.ohchr.org/hrdb/23rd/Lao_25.03.13_(3.2012).pdf). -

grabbing' resulting in violations of the human right to a remedy: in contexts where people affected by the deals have no access to effective, impartial redress mechanism, large-scale land deals can violate the right to a remedy. Again, this issue has been raised by UN Special Rapporteurs<sup>107</sup>.

## 4. ONGOING INITIATIVES AND WAYS TO STRENGTHEN THEM

This Section explores selected areas of EU policy and law making that have most direct bearing on addressing the human rights impacts of 'land grabbing'. These selected areas reflect the different ways in which the EU is exposed to 'land grabbing' – as an importer of commodities, as a source of finance and agribusiness investment, as a provider of aid, and as a promoter of human rights. For each area, the Section discusses relevant developments in the policy, law and practice developed by EU institutions. Where relevant, it also refers to developments in non-EU states and internationally.

### 4.1 Human rights

The Treaty on European Union (TEU) has reaffirmed the EU's commitment to promote human rights worldwide<sup>108</sup>. The adoption of the EU Strategic Framework and Action Plan on Human Rights and Democracy in 2012 has provided new momentum to mainstreaming human rights in all policy areas, including aid and international trade<sup>109</sup>. In the same year, the appointment of a EU Special Representative on Human Rights, the first thematic Special Representative, also added momentum to the EU's work to promote human rights. Bilateral human rights dialogues with third countries constitute a key part of the EU's external action on human rights<sup>110</sup>. In 2013, the EU held human rights dialogues and consultations with 30 partner countries<sup>111</sup>. The European External Action Service (EEAS) supports these bilateral dialogues and has been preparing Human Rights Country Strategies (HRCS) for each non-EU country. The HRCS, most of which have now been adopted by the Council, are to inform the EU position on human rights in relation to that country.

The EU is also actively engaged in multilateral human rights fora, particularly at the United Nations. For example, the EU has supported the process underpinning the development and implementation of the UN Guiding Principles on Business and Human Rights, elaborated by the former Special Rapporteur to the Secretary-General on Business and Human Rights, John Ruggie, and endorsed by the UN Human Rights Council in 2011<sup>112</sup>. In some areas, for example in relation to torture and the death penalty, the EU plays a very important and progressive role.

This context would appear to provide fertile ground for effective action to tackle the human rights impacts of 'land grabbing'. As discussed in Section 3, there is a strong connection between human rights and 'land grabbing', and the latter can involve human rights violations. Given that 'land grabbing' often entails a contractual relationship between a company and a host government, and more generally given the role of business in 'land grabbing', the UN Guiding Principles on Business and

<sup>107</sup> Report of the Special Rapporteur on the Situation of Human Rights in Cambodia, Surya P. Subedi, 'A Human Rights - Analysis of Economic and Other Land Concessions in Cambodia', 24 September 2012, UN Doc A/HRC/21/63/Add.1, paras. 177-184. -

<sup>108</sup> Articles 3(5), 21(1) and 21(2)(b). -

<sup>109</sup> EU Strategic Framework and Action Plan on Human Rights and Democracy, Council of the European Union, 25 June 2012, - [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/EN/foraff/131181.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/131181.pdf), points 10 and 11. -

<sup>110</sup> See EU Guidelines on Human Rights Dialogues with Third Countries, - [http://eeas.europa.eu/human\\_rights/guidelines/dialogues/docs/16526\\_08\\_en.pdf](http://eeas.europa.eu/human_rights/guidelines/dialogues/docs/16526_08_en.pdf). -

<sup>111</sup> Council of the European Union (2014). -

<sup>112</sup> Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' - Framework, developed by the Special Representative to the Secretary-General on the Issue of Human Rights and - Transnational Corporations and Other Business Entities, John Ruggie, 21 March 2011, UN Doc. A/HRC/17/31, and endorsed - by the UN Human Rights Council on 16 June 2011. -

Human Rights are particularly relevant – particularly their emphasis on the states’ duty to protect and on businesses’ responsibility to respect including through human rights due diligence.

‘Land policies and rights’ issues have already emerged in some of the EU’s human rights work. For example, this issue came up in a recent session of the EU-Laos Working Group on Human Rights and Governance, held in Brussels on 19 May 2014<sup>113</sup>. The recent *EU Annual Report on Human Rights and Democracy in the World in 2013* refers to ‘ECSR [economic, social and cultural rights], including labour rights, land rights, business and human rights and extractive industry transparency, [having been] addressed in many human rights dialogues’<sup>114</sup>.

However, ‘land grabbing’ appears not to have emerged as a focus area in some other important dialogues, including in contexts where concerns about ‘land grabbing’ have been raised by many. For example, human rights issues mentioned in the Joint Communiqué issued at the 10<sup>th</sup> African Union – European Union Human Rights Dialogue include death penalty, freedom of association, electoral observation and the rights of migrants<sup>115</sup>. The issue of land rights appears to have been raised at a civil society seminar that preceded this dialogue,<sup>116</sup> but it is not clear what follow-up, if any, was given to this issue. Given the scale of recent land acquisition in Africa, and given the prominent role of European companies in that process (discussed in Section 2), ‘land grabbing’ might be expected to be a relevant topic for human rights dialogue between Europe and Africa. Similarly, the EU Special Representative on Human Rights has showed a strong interest in the business and human rights agenda, but there appears to have been limited explicit engagement on transnational investment issues thus far, including in relation to ‘land grabbing’. Moving forward, there is significant scope for giving more prominence to land and investment issues in the EU’s human rights work.

The European Parliament has been very vocal on human rights issues over the years. Through the European Instrument on Democracy and Human Rights, the European Parliament has a justifiably proud record on promoting human rights issues amongst the EU’s partners. The Parliament monitors the work of the European External Action Service, and can encourage the EEAS to pay greater attention to ‘land grabbing’ in its human rights work. The European Parliament can also ensure that the EU strategies and thematic priorities linked to all external relation budget lines have a strong human rights focus. A review of the 2012 Action Plan on Human Rights and Democracy is ongoing, with a view to leading to a new document in early 2015. There might be a window of opportunity for the European Parliament to promote greater integration of ‘land grabbing’ issues, and more generally issues relating to social, economic and cultural rights, in the revised Action Plan<sup>117</sup>.

As discussed in Section 3, land rights and human rights defenders have been subjected to repression in some contexts. Due to the very nature of their work, land rights defenders often challenge powerful economic interests and as such are particularly vulnerable to repression and intimidation<sup>118</sup>. The EU Guidelines on Human Rights Defenders have stepped up the EU’s ambition for work in this area<sup>119</sup>. Protecting the rights of human rights defenders constitutes a major area of the EU’s human rights work,

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<sup>113</sup> [http://www.eeas.europa.eu/statements/docs/2014/140521\\_02\\_en.pdf](http://www.eeas.europa.eu/statements/docs/2014/140521_02_en.pdf). -

<sup>114</sup> Council of the European Union (2014:44). -

<sup>115</sup> Joint Communiqué, 10<sup>th</sup> AU-EU Human Rights Dialogue, 20 November 2013, [http://www.africa-eu-partnership.org/sites/default/files/documents/10th\\_au-eu\\_dialogue\\_communique\\_en.pdf](http://www.africa-eu-partnership.org/sites/default/files/documents/10th_au-eu_dialogue_communique_en.pdf). -

<sup>116</sup> *Ibid.*, p. 2. -

<sup>117</sup> While point 9 of the 2012 Strategic Framework and Action Plan does refer to social, economic and cultural rights, civil and - political rights continue to be prominent in the EU’s human rights work. -

<sup>118</sup> FIDH (2013). -

<sup>119</sup> EU Guidelines on Human Rights Defenders, [http://eeas.europa.eu/human\\_rights/guidelines/defenders/docs/16332-re02\\_08\\_en.pdf](http://eeas.europa.eu/human_rights/guidelines/defenders/docs/16332-re02_08_en.pdf). -

accounting for some €120 million in 2013<sup>120</sup>. Given the important connection between 'land grabbing' and human rights, it is important to ensure that the EU's work on human rights defenders attaches due priority to land rights defenders. Human rights organisations have called on the EU to speak out unambiguously in support of land rights defenders, involve land rights defenders in human rights dialogues, systematically denounce attacks on land rights defenders and promote access to redress where violations occur<sup>121</sup>. The European Parliament has already adopted resolutions that made an explicit link between human rights defenders and 'land grabbing'<sup>122</sup>. It can play an important role in ensuring this issue is high on the agenda, and that work on land rights defenders is properly resourced.

## 4.2 Development aid

The EU prides itself with being the world's largest donor of official development assistance, when total contributions from EU institutions and EU Member States are aggregated (European Commission, 2013). The Council Conclusions on a Rights-Based Approach to Development Cooperation expressed support for linking development aid to promotion of human rights<sup>123</sup>. Several aspects of EU development aid policy and programming are directly relevant to addressing the human rights impacts of 'land grabbing'. This Section focuses on land governance and on private sector development.

The EU has been an active player in land governance for several years. In 2003, the EU established a Working Group on Land to improve coordination among land tenure programming of EU Member States, though this group appears to have been less active in recent years. In 2004, the EU adopted the EU Land Policy Guidelines to provide guidance to land policy development and programming in developing countries<sup>124</sup>. Since then, the EU has financed numerous development projects on land tenure, covering areas as diverse as legislation and regulation, reform of land management and administration, and conflict resolution<sup>125</sup>. In April 2014, the Commission announced a new €33-million programme to improve land governance in ten African countries<sup>126</sup>.

At the international level, the EU has been supporting key multilateral and regional initiatives on the governance of land and investment. The EU financially supported the negotiation of the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT)<sup>127</sup>. In their Article 12, the VGGT specifically deal with large-scale land deals, although their scope is substantially broader to cover a wide range of tenure issues. The VGGT were endorsed in 2012 by the Committee on World Food Security (CFS), which is the top UN body in matters of food security, following negotiation by UN member states, the CFS Private Sector Mechanism and the CFS Civil Society Mechanism. The VGGT received extensive expressions of support, including in a Communiqué adopted by the G8 in 2013<sup>128</sup>. The CFS is currently hosting the negotiation of Principles

<sup>120</sup> Council of the European Union (2014). -

<sup>121</sup> <https://www.fidh.org/en/human-rights-defenders/>. -

<sup>122</sup> For example, Resolution of 16 January 2014 on the situation of rights defenders and opposition activists in Cambodia and Laos (2014/2515(RSP), <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2014-0044&language=EN&ring=P7-RC-2014-0033>). -

<sup>123</sup> Adopted on 19 May 2014, [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/EN/foraff/142682.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/142682.pdf). -

<sup>124</sup> [http://ec.europa.eu/development/icenter/repository/EU\\_Land\\_Guidelines\\_Final\\_12\\_2004\\_en.pdf](http://ec.europa.eu/development/icenter/repository/EU_Land_Guidelines_Final_12_2004_en.pdf). -

<sup>125</sup> European Commission (2014a). -

<sup>126</sup> European Commission (2014b). The ten countries are Angola, Burundi, Côte d'Ivoire, Ethiopia, Kenya, Malawi, Niger, - Somalia, South Sudan and Swaziland. Ethiopia, Kenya and at one point South Sudan have been major recipients of large-scale land deals. -

<sup>127</sup> According to European Commission (2014a), EU support comprised €400,000 for the third and final round of - negotiations, and €1.2 million for their early implementation. -

<sup>128</sup> 2013 Lough Erne G8 Leaders' Communiqué, 18 June 2013, -

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/207771/Lough\\_Erne\\_2013\\_G8\\_Leaders\\_Communique.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/207771/Lough_Erne_2013_G8_Leaders_Communique.pdf), paras. 44-45.

on Responsible Agricultural Investment (RAI). An EU Open-Ended Working Group coordinates the position of EU Member States in this process and negotiates with one pre-negotiated EU voice for the 28 EU Member States and the Commission.

The EU is also providing financial support to the African Land Policy Initiative (LPI), a joint initiative established by the African Union (AU), the African Development Bank and the UN Economic Commission for Africa to implement the Framework and Guidelines on Land Policy in Africa, which were endorsed by the AU Heads of African States in 2009. LPI is currently developing Guiding Principles on Large-Scale Land-Based Investments<sup>129</sup>. Finally, the EU is supporting the G8 Land Transparency Initiative, an initiative launched in 2013 to increase transparency of large-scale land deals. The initiative is to be operationalised through country partnerships with seven countries, two of which (South Sudan and Niger) are followed by the EU.

The EU's links into these multilateral and regional processes make it well placed to step up efforts to address the human rights impacts of 'land grabbing'. Its significant investment into land governance interventions provides an opportunity to help translate international guidance into real change. European Parliament monitoring of implementation can help ensure human rights issues in 'land grabbing' are addressed. Monitoring is particularly critical in the following areas:

- Ensuring that land governance programming addresses the governance challenges at stake in 'land grabbing'. While local contexts are very diverse, broadly speaking this would require increasing local control over land governance and investment processes, through stronger local rights to land and natural resources, and through more effective mechanisms for transparency, public participation and accountability. There is much experience that aid interventions can build on, including legislative reforms to strengthen local land rights;<sup>130</sup> ways to record and delimitate community land rights;<sup>131</sup> mechanisms to facilitate disclosure of land concessions,<sup>132</sup> and more generally of information about land deals;<sup>133</sup> approaches for implementing free, prior and informed consent;<sup>134</sup> work to increase the accessibility and effectiveness of redress mechanisms; and support to informed and inclusive national dialogue on land governance, particularly where NGO coalitions or fora are in place<sup>135</sup>. However, it is also important to maintain a balance among multiple land governance challenges, and to avoid that 'land grabbing' unduly detracts attention from other important challenges (e.g. gender issues).
- Ensuring that human rights are a central part of the EU's land governance work. This would be in line with the 2012 EU Strategic Framework and Action Plan on Human Rights and Democracy,

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<sup>129</sup> <http://www.uneca.org/lpi>. -

<sup>130</sup> See for example progressive land legislation adopted in several African countries since the mid-1990s, including - Mozambique's Land Act of 1997 and Tanzania's Village Land Act of 1999. Among other things, these laws protect customary land rights irrespective of whether there are formally registered, allow for collective land registration and devolve important land management responsibilities to 'local communities' (Mozambique) or local governments (Tanzania; Knight, 2011). For - guidance on legal reform to strengthen land rights, see also Pritchard et al (2014). -

<sup>131</sup> See the work of the Community Land Fund (<http://www.itc.co.mz/>), of the international NGO Namati - (<http://www.namati.org/>), and of national NGOs (e.g. Centro Terra Viva, <http://www.ctv.org.mz/>) in Mozambique. -

<sup>132</sup> On Liberia, see the Liberia Extractive Industries Transparency Act of 2009, which covers agriculture, and [www.leiti.lr.org/](http://www.leiti.lr.org/). - See also the advocacy work of Global Witness (<http://new.globalwitness.org/>). -

<sup>133</sup> See the national land observatories being supported by the International Land Coalition, including in Tanzania, - Madagascar and Laos (<http://landportal.info/topic/land-observatory>). For experience with an online database of land deals - in Cambodia, see <http://www.opendevelopmentcambodia.net/>. -

<sup>134</sup> See the work of the Forest Peoples Programme (<http://www.forestpeoples.org/publications/results/taxonomy%3A342>). -

<sup>135</sup> Examples include the Land Core Group and the Land in Our Hands coalition in Myanmar; the Land Issues Working Group in Laos; the Civil Society Coalition on Land in Ghana; and the Cadre de Réflexion et d'Action sur le Foncier au Sénégal in - Senegal. -

which calls for integrating human rights in EU development aid<sup>136</sup>. 'Land grabbing' has been associated with significant activism from local to global levels, including from a human rights perspective<sup>137</sup>. The EU can play an important role in supporting this work.

- Ensuring effective coordination with the land governance programming of EU Member States. Member States are supporting land governance work in some of the ten African countries targeted by the new EU initiative. Ensuring proper coordination can increase impact, and it could also reduce administrative costs if it results in streamlined processes (e.g. alignment of EU and EU member state reporting to CFS). The Global Donor Working Group on Land and the Global Donor Platform's database of land governance programming are useful resources in this regard<sup>138</sup>.

Besides the EU's work on land governance, other areas of EU aid policy are also relevant. A recent Private Sector Development Communication from the Commission proposes a strategic framework for strengthening the role of the private sector in achieving inclusive and sustainable growth<sup>139</sup>. The strategic framework envisages catalysing private sector development in developing countries, with agriculture being a priority area. The framework is a first step in EU policy making in this area, and will be reflected in the programming of EU development assistance for 2014-2020.

In relation to agriculture, the Private Sector Development Communication emphasises linking farmers to markets and supporting small and medium-scale enterprises, as well as inclusive public-private partnerships and business models. The growing international trend to emphasise public-private partnerships in agriculture has raised concerns that aid money might be used in ways that are detrimental to local land rights<sup>140</sup>. This situation calls for robust mechanisms to ensure that EU aid money will not be used to support, directly or indirectly, any compressions of human rights in connection with 'land grabbing'. It requires clear criteria to guide any financing decisions involving support to private sector operators. The Private Sector Development Communication identifies some general criteria relevant across sectors (measurable development impact, additionality, neutrality, shared interest / co-financing, demonstration effect, adherence to social, environmental and fiscal standards). Given the particular sensitivities that exist in agriculture, it would be important to develop more specific criteria tailored to private sector development in the agribusiness sector, to ensure that any EU-supported activities comply with the VGGT and in Africa LPI.

The European Parliament can play a central role in ensuring that the EU aid budget is well spent; influencing next steps in the EU's private sector development strategy; encouraging the Commission to develop clear, specific criteria for private sector engagement in agriculture; ensuring that EU private sector programming complies with the VGGT and guidance stemming from regional initiatives; and establishing grievance mechanisms and/or early alert systems for alleged violations. Should there be specific concerns about direct or indirect involvement of EU aid in controversial land evictions, the European Parliament can hold the Commission to account and push for change in EU development programming.

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<sup>136</sup> Point 10. -

<sup>137</sup> See e.g. Equitable Cambodia and IDI (2013) and the campaigning work developed by these two organisations. -

<sup>138</sup> <http://landgov.donorplatform.org/>. -

<sup>139</sup> 'A Stronger Role of the Private Sector in Achieving Inclusive and Sustainable Growth in Developing Countries', COM(2014) - 263, 13 May 2014. -

<sup>140</sup> Provost et al (2014). -

### 4.3 Trade and investment

Legal frameworks governing trade and investment have a direct bearing on large-sale land deals. Investment protection treaties aim to promote investments, which would include agribusiness investments, by European companies in the other states (and vice versa), while trade arrangements affect opportunities for agribusiness companies to export produce to the EU. Evidence suggests that EU trade preferences for least developed countries under the EU Generalised System of Preferences (GSP) have resulted in significant increases in exports of sugar from these countries into the EU, and that investment by companies from non-eligible countries was likely to be a factor<sup>141</sup>.

The Treaty on the European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU) go a long way towards mainstreaming human rights considerations in the EU's trade and investment policies. Article 207(1) of the TFEU states: 'The common commercial policy shall be conducted in the context of the principles and objectives of the Union's external action'. Article 21 of the TEU includes promotion of compliance with human rights among these principles and objectives. In addition, the EU Strategic Framework and Action Plan on Human Rights and Democracy identifies actions to 'make trade work in a way that helps human rights'<sup>142</sup>. Since 1995, EU has had a policy of including human rights clauses in international economic treaties<sup>143</sup>.

The EU has concluded numerous preferential trade agreements that include human rights clauses, allowing the withdrawal of benefits under the agreement if the other state commits human rights violations<sup>144</sup>. Since 2009, the EU has tended to include human rights clauses in a framework cooperation agreement, rather than in a trade treaty directly<sup>145</sup>. The EU has activated these human rights clauses on twenty-three occasions, for instance through redirecting development aid funding<sup>146</sup>. These cases mainly related to military coups and electoral fraud, leading some commentators to argue that human rights clauses effectively operate as 'political clauses'<sup>147</sup>. In legal terms, human rights violations connected to large land deals would qualify under human rights clauses, but as yet there have been no known cases where trade benefits have been suspended in connection with human rights abuses related to 'land grabbing'. Trade treaties concluded by the EU do not allow individual petitions to initiate investigations into alleged violations of labour and environmental obligations.

A recent report on human rights clauses in trade and investment treaties, commissioned by the European Parliament, provided detailed recommendations on how to tighten up these clauses in future treaties, including in terms of coverage, essential elements, monitoring and enforcement<sup>148</sup>. Recommendations include establishing dedicated committees to oversee human rights issues, including representatives from the European Parliament and its counterparts and from civil society, as well as from government; requiring the European Commission or the EEAS to report regularly to the European Parliament on compliance of partner countries; and enabling individuals, NGOs and EU institutions, including the European Parliament, to request the European Commission to initiate a formal investigation into alleged human rights violations<sup>149</sup>. These suggestions seem relevant to

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<sup>141</sup> UNCTAD (2009b). See also Equitable Cambodia and IDI (2013). -

<sup>142</sup> Point 11. -

<sup>143</sup> Bartels (2014). -

<sup>144</sup> See Bartels (2012). -

<sup>145</sup> Bartels (2014). -

<sup>146</sup> Bartels (2014). -

<sup>147</sup> Bartels (2014). -

<sup>148</sup> Bartels (2014). -

<sup>149</sup> Bartels (2014). -

addressing the human rights impacts of 'land grabbing', with the additional consideration that 'land grabbing' issues should be properly factored in the implementation of human rights clauses.

In addition to international treaties, the EU has also established unilateral schemes of trade preferences, namely through its GSP programme, including the 'Everything But Arms' (EBA) initiative for least developed countries<sup>150</sup>. Under the EBA, imports from least developed countries are free of duties and quotas, with the sole exception of armaments. EU legislation empowers the European Commission to suspend these preferences, in whole or in part, including in cases where an investigation documents 'serious and systematic violations' of internationally recognised human rights<sup>151</sup>. The European Commission has rarely used these powers (examples include Myanmar in 1997, Belarus in 2007 and Sri Lanka in 2010), partly due to sensitivities about the use of trade sanctions against partner countries<sup>152</sup>.

Unlike the EU's trade treaties, the GSP Regulation allows individuals, NGOs and the European Parliament, among others, to bring information about alleged human rights violations to the attention of the European Commission<sup>153</sup>. However, the GSP Regulation does not require the Commission to initiate the investigation, although if the Commission does initiate an investigation it must take account of the information provided<sup>154</sup>. These procedures have been activated with regards to alleged human rights violations connected to 'land grabbing', for example in Cambodia. Because sugar produced in Cambodia is exported to the EU under the EBA, campaigners have taken alleged violations of the land rights of people affected by sugar cane developments in Cambodia to the European Commission, calling for an investigation and the suspension of EBA benefits<sup>155</sup>. The European Parliament has also called on the European Commission to investigate allegations of human rights abuses in connection with economic land concessions in Cambodia, and to 'suspend EBA preferences on agricultural products from Cambodia in cases where human rights abuses are identified'<sup>156</sup>. The Commission has so far refrained from initiating a full investigation. The European Parliament could 'flex its muscle' more in asking the Commission to report on progress with following up on the Parliament's resolutions.

This experience highlights some of the challenges at stake in the GSP and EBA. These trade preferences were designed as tools to promote development in poorer countries, yet trade can also foster economic activities that have adverse human rights impacts affecting poorer and more marginalised groups in those countries. This creates the need to develop mechanisms for ensuring that the commercial operations encouraged by EU trade preferences are not involved with human rights abuses. A report on the human rights impacts of sugar cane operations exporting from Cambodia to the EU under the EBA called for an ex post comprehensive human rights impact assessment of the EBA in all eligible countries, with the VGGT providing a useful resource in these assessments; for the introduction of a system of human rights due diligence for all products imported into the EU under the EBA, possibly in conjunction with existing efforts to monitor compliance with rules of origin; for mechanisms to exclude human

<sup>150</sup> Regulation No. 978/2012 of 25 October 2012 (GSP Regulation). -

<sup>151</sup> Article 19 of EU Regulation No. 978 of 2012, and Article 15 of its predecessor EU Regulation No. 732 of 2008, which was - applicable until 31 December 2013. -

<sup>152</sup> APRODEV (2012). -

<sup>153</sup> Articles 14(3) and 15(3) of the GSP Regulation. -

<sup>154</sup> Article 19(3) and (6) of the GSP Regulation. -

<sup>155</sup> Equitable Cambodia and IDI (2013). Between 2012 and 2013, a consortium of NGOs including international and - Cambodian organisations wrote three letters to the European Commissioner responsible for trade, citing findings from - reports by the UN Special Rapporteur on the Situation of Human Rights in Cambodia. -

<sup>156</sup> Resolution of the European Parliament of 26 October 2012 on the situation in Cambodia, -

[http://www.europarl.europa.eu/meetdocs/2009\\_2014/documents/dase/dv/1129\\_13\\_epres\\_cambodia\\_10oct12\\_/1129\\_13\\_epres\\_cambodia\\_10oct12\\_en.pdf](http://www.europarl.europa.eu/meetdocs/2009_2014/documents/dase/dv/1129_13_epres_cambodia_10oct12_/1129_13_epres_cambodia_10oct12_en.pdf), para. 6. See also Resolution of the European Parliament of 16 January 2014 on the - situation of rights defenders and opposition activists in Cambodia and Laos, - <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2014-0044&language=EN&ring=P7-RC-2014-0033>, paras. J, 5 and 12.

rights violators from benefiting from GSP; and for an effective grievance mechanism allowing victims to bring complaints<sup>157</sup>. Future reviews of the EU GSP would provide opportunities for assessing the human rights impacts of the EU scheme of trade preferences and for exploring WTO-compatible mechanisms through which these recommendations could be implemented. Parliament can encourage the Commission to ensure that human rights issues are properly factored into these reviews.

With the Lisbon Treaty, the EU has acquired the competence to negotiate investment treaties with non-EU states. Several negotiations are currently underway, including with countries where large-scale land deals have raised concerns. This raises several issues. One relates to the formulation of investment treaties. There is some experience with including reference to internationally recognised standards of corporate social responsibility in investment treaties, for instance in recent bilateral investment treaties (BIT) concluded by Canada and by the US with third states<sup>158</sup>. The broad formulations typically used would appear to cover instruments such as the RAI principles, should these be adopted, or the provisions on investor responsibility included in the VGGT. These investment treaty clauses are typically framed in non-binding, non-enforceable terms, and there is a question about the extent to which they can make a difference. Even so, these clauses provide a clear statement of principles and can have significant political value. Should the EU have competence to negotiate on the topics covered by the VGGT (an issue that would require further analysis of EU law, which is beyond the scope of this Study<sup>159</sup>), consideration may be given to exploring the feasibility of including reference to a commitment by the states parties to implementing the VGGT within their jurisdiction, and encouraging compliance with the VGGT by land-related investments emanating from their jurisdiction. More generally, it is important that investment protection standards are carefully formulated so as to preserve regulatory space and enable governments to change legislation and take action over time without incurring liabilities – even more so in countries where regulatory frameworks are weak.

A more fundamental issue relates to how EU authorities should factor human rights considerations into decisions on whether and when to negotiate a trade and/or investment treaty with a third country. This issue has already catalysed civil society mobilisation. For example, after the EU launched investment treaty negotiations with Myanmar, 223 Myanmar NGOs issued a public statement against concluding an investment treaty at this time, citing several concerns including concerns about the land rights of Myanmar citizens<sup>160</sup>. Considering human rights issues before launching new trade and/or investment negotiations seems an area where additional policy tools and clearer criteria for guiding EU decision making would be beneficial<sup>161</sup>. Existing tools, particularly the Sustainability Impact Assessments of trade agreements, are usually activated *after* a decision to negotiate has been taken, and focus on the social, economic and environmental impacts of proposed trade deals – rather than on the human rights situation of a partner country before the deal is negotiated. Effective links with the Human Rights Country Strategies would be desirable in this context.

The European Parliament holds considerable power in these matters, as treaties would need to be approved by it. In the past, the Parliament has not shied away from providing guidance to the European

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<sup>157</sup> Equitable Cambodia and IDI (2013). -

<sup>158</sup> See e.g. Article 15(2) of the Cameroon-Canada BIT of 2014, <http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/fipa-apie/cameroon-agreement-cameroun.aspx>. -

<sup>159</sup> Article 345 of the TFEU states that the EU treaties 'shall in no way prejudice the rules in Member States governing the system of property ownership'. -

<sup>160</sup> The statement is available at <http://www.tni.org/declaration/cso-statement-myanmar-investment-treaties>. On large-scale land deals in Myanmar, see Woods (2011) and Global Witness (2014). -

<sup>161</sup> See point 11 of the EU Strategic Framework and Action Plan on Human Rights and Democracy, which calls for - 'develop[ing] methodology to aid consideration of the human rights situation in third countries in connection with the - launch or conclusion of trade and/or investment agreements'. -

Commission on the negotiation of investment treaties, including in relation to corporate social responsibility and human rights<sup>162</sup>. Continued engagement by the European Parliament can make a difference, both in relation to individual negotiations and with regards to developing clearer guidance for consideration of human rights issues before launching negotiations.

#### 4.4 Energy and commodities

The EU has long had legislation to promote renewable energy. The 2003 Biofuels Directive established a biofuels consumption target of 5.75 per cent of all petrol and diesel used for transport in the European Union, a target to be met by 2010<sup>163</sup>. The more recent 2009 Renewable Energy Directive (RED) requires increasing the share of transport fuels from renewable sources to at least 10 per cent by 2020<sup>164</sup>. In June 2014, the Council reached political agreement on a proposed Indirect Land Use Change Directive, which would amend the RED<sup>165</sup>. The proposed Directive sets a cap whereby only 7% out of the overall 10% target for 'renewable energy in transport' could come from the conventional crop-based biofuels ('first generation biofuels'). First generation biofuels are those associated with large-scale land deals. In September 2013, a first reading by the European Parliament had set the cap at the more stringent 6%. The draft Directive is now expected to go back to Parliament to resolve differences.

There has been considerable debate on the extent to which the EU biofuel mandates have been a driver of large-scale land acquisition in low and middle-income countries. As discussed in Section 2, evidence points to biofuels having been an important driver, at least in the earlier phase of deal making, and to European companies having been an important actor. Many analyses have made an explicit connection between biofuels mandates and large-scale land deals. For example, an authoritative World Bank study identified 'demand for biofuel feedstocks as a reflection of policies and mandates in key consuming countries' as one of the main drivers of the global expansion of cultivated area<sup>166</sup>.

There is also some evidence that specifically links EU biofuel legislation to land deals in low and middle-income countries, although different studies have reached conflicting conclusions on this point. Research by NGOs has consistently emphasised the significant 'land footprint' of the EU's bioenergy legislation<sup>167</sup>. A report produced for the Commission (ECOFYS et al, 2012) found limited evidence of impact of EU mandates on land deals overseas, but it also acknowledged that timing played a role in this<sup>168</sup>. However, a subsequent study, also commissioned by the European Commission, documented a

<sup>162</sup> See for example the European Parliament resolution of 9 October 2013 on the EU-China negotiations for a bilateral investment agreement (2013/2674(RSP)),

<http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P7-TA-2013-411>.

<sup>163</sup> Directive 2003/30/EC of the European Parliament and of the Council of 8 May 2003 on the Promotion of the Use of Biofuels or Other Renewable Fuels for Transport, Article 3(b)(ii).

<sup>164</sup> Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the Promotion of the Use of Energy from Renewable Sources, Article 3.

<sup>165</sup> Proposal for a Directive of the European Parliament and of the Council amending Directive 98/70/EC relating to the quality of petrol and diesel fuels and amending Directive 2009/28/EC on the promotion of the use of energy from renewable sources – Political agreement, 3 June 2014,

<http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2010300%202014%20INIT>.

<sup>166</sup> Deininger and Byrlee (2011:11). See also other sources cited in Section 2.2.

<sup>167</sup> See e.g. ActionAid (2012); Friends of the Earth Europe (2014).

<sup>168</sup> The report states: 'Given the time lapse between land deals and actual crop production, it is almost impossible to link these deals with the EU biofuel consumption. Based on scrutiny of the largest land deals in developing countries and on assumptions about how much land deals may have eyed the EU market, we estimate that between 0.05 and 0.16 Mha of land deals with concerns about socio-economic impacts and land-use rights could be linked to the EU market. We expect that in the future more information will come available about the source regions of biofuels as a result of sustainability reporting requirements. Attention needs to be paid to the developments and biofuel imports in the 2011-2012 and onwards period.' See ECOFYS et al (2012), p. vi.

'clear link' between the EU bioenergy policy and land deals overseas<sup>169</sup>. Overall, given the important role played by European companies in land acquisition, particularly in Africa, and given the prominence of biofuels at least in the early phase of deal making (see Section 2.2), it seems likely that EU legislation on renewable energy has been a driver of land acquisition. The slow implementation of many land deals and the high failure rate among agribusiness ventures, including in connection with untested biofuels feedstocks such as jatropha, could be relevant factors in explaining why significant levels of land acquisition overseas have not (yet) translated into significant levels of biofuel imports into the EU market from these operations.

The Renewable Energy Directive requires the Commission regularly to report to the European Parliament (and to the Council) 'on the impact on social sustainability in the Community and in third countries of increased demand for biofuel', including with regards to respect for land rights<sup>170</sup>. These reports provide an opportunity for the European Parliament to monitor the knock-on effects of biofuel developments on land rights in third countries. The latest progress report from the Commission drew on ECOFYS et al (2012) to conclude that 'is not yet clear if EU biofuels demand contributes any abuse of land use rights' (sic)<sup>171</sup>. This conclusion was critiqued by NGOs<sup>172</sup>. The European Parliament can play an important role in scrutinising the Commission's progress reports, including by probing the analysis of the land rights impacts of biofuels developments.

Consideration of indirect land use change (ILUC) is an important aspect, as expanding agricultural land use for biofuel production can have knock-on effects at the local level (e.g. where a new plantation displaces farmers who then clear new land) but also at the transnational level (e.g. if new biofuel developments in Europe increase food imports, the production of which has land use implications overseas). Policy debates on ILUC have focused on the carbon emissions associated with clearing new land, but consideration of impacts on land rights also seems important. Action to limit the ILUC effects of biofuels can indirectly help protect land rights in low and middle-income countries. In considering the draft ILUC Directive, the European Parliament can play an important role in ensuring that the land rights implications are fully considered.

An important issue relates to the integration of land rights and human rights issues in sustainability standards. Article 17 of the RED states that biofuels can only be counted towards consumption targets if they comply with specified sustainability criteria. These emphasise environmental considerations, to the exclusion of social aspects. Since the adoption of the Renewable Energy Directive, the EU has recognised as compliant with EU sustainability standards a number of voluntary certification standards. A comparative analysis recently developed by WWF indicates that these standards vary considerably in scope and in the effectiveness of monitoring and enforcement<sup>173</sup>. Overall, schemes developed through multi-stakeholder processes (such as the Roundtable on Sustainable Biomaterials, RSB; and the Roundtable on Sustainable Palm Oil, RSPO) tend to be more comprehensive, and to go beyond the legal requirements imposed by the RED including through addressing social sustainability and land

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<sup>169</sup> 'Energy markets are a significant driver in the overall trend of large scale land acquisition. A clear link can be established - between the EU bioenergy policy and the strong interest of European companies to acquire agricultural land in developing - countries, especially in Africa. This also entails that the development of conventional biofuel production has an impact on - access to natural resources, such as land and water and often leads to an increase in land concentration to the detriment of - smallholder farming practices.' See Diop et al (2013), p. 1. -

<sup>170</sup> Article 17(7). -

<sup>171</sup> Available at <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52013DC0175&from=EN>, p. 11. -

<sup>172</sup> Kropiwnicka (2013). -

<sup>173</sup> Schlamann et al (2013). -

rights issues; while some other certification schemes are more tightly focused on the environmental sustainability criteria identified in the RED, and do not cover social aspects and land rights issues<sup>174</sup>.

The European Parliament can encourage the European Commission to develop stricter and more transparent criteria and procedures for the recognition of any new certification schemes in future; to periodically review the list of approved schemes to ensure that the schemes meet the objectives of the RED; and to undertake ongoing monitoring of the effectiveness of certification in pursuing the EU's sustainability goals.

The RED covers the period ending in 2020. A new instrument will have to be adopted for the period 2020-2030. The Commission has indicated that the EU will not be providing public support to first generation biofuels after 2020, focusing instead on energy efficiency and on second and third generation biofuels, among other options<sup>175</sup>. The European Parliament can play an important role in ensuring that this approach is upheld.

There has also been reflection on the extent to which EU legislation on timber legality can provide lessons for possible legislative measures relating to agricultural commodities<sup>176</sup>. The EU Timber Regulation (EUTR) prohibits the importation of timber (and products derived from such timber) that has been harvested illegally according to legislation applicable in the country of origin. It also requires companies to establish due diligence procedures to minimise the likelihood of their importing illegal products<sup>177</sup>. In other words, the EUTR focuses on legality considerations, rather than sustainability criteria. The two may overlap but can also diverge, for example where applicable law does little to ensure sustainability.

In principle, this type of legislation could be extended to cover agricultural commodities. It has been noted, however, that legality requirements in relation to agricultural commodities arise in different ways compared to timber<sup>178</sup>. Many contested 'land grabbing' deals may comply with national law: as discussed in Section 2, national legislation may vest land ownership and land allocation authority with the central government, making it legal for governments to allocate large areas of land with little local consultation. Even if such land deals contravene national legislation, they might still be considered 'legal', because they are allocated and managed under official licence from government agencies. Nevertheless, legislation restricting the importation of illegally produced commodities might be relevant to farm produce sourced from operations responsible for human rights abuses.

Any legislation on agricultural commodities developed along the lines of the EUTR would require proper thinking through and careful adaptation effectively to address the human rights impacts associated with 'land grabbing'. The European Parliament can encourage the Commission to explore feasibility of, and options for, legislation aimed at promoting legality in agricultural commodities.

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<sup>174</sup> Schlamann et al (2013). See also ClientEarth (2013) and IUCN (2013), raising similar issues. -

<sup>175</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – A Policy Framework for Climate and Energy in the Period from 2020 to 2030, - COM(2014) 15 final, 22 January 2014, [http://ec.europa.eu/energy/doc/2030/com\\_2014\\_15\\_en.pdf](http://ec.europa.eu/energy/doc/2030/com_2014_15_en.pdf), p. 6-7. -

<sup>176</sup> Brack with Bailey (2013). -

<sup>177</sup> Regulation (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32010R0995&from=EN>, Article 4. -

<sup>178</sup> Brack with Bailey (2013). -

## 4.5 Corporate governance and finance

Transparency in land governance and transaction is an important theme in the VGGT<sup>179</sup>. While many initiatives emphasise the role of host governments in improving transparency, there is much that the investors' home country governments can do. As discussed in Section 2, European companies have played an important role in large-scale land acquisition. The EU could contribute to addressing the human rights impacts of 'land grabbing' by increasing transparency in the governance of companies that are based in the EU and acquire land use rights overseas.

In 2013, the EU adopted a new Accounting Directive that requires disclosure of payments to governments for companies listed on EU-regulated stock exchanges, and also for unlisted companies that meet certain size criteria (turnover, total assets or number of employees). This legislation applies to extractive industry companies and to firms active in the logging of primary forests<sup>180</sup>. Similar legislation has been adopted in other countries too. In the United States, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 requires disclosure of payments to the US or foreign governments made by oil, gas and mining companies listed on US stock exchanges. Regulations in Hong Kong also require disclosure of payments to governments made by extractive industry companies listed on the Hong Kong stock exchange<sup>181</sup>. EU legislation is broader in that it covers logging firms, and unlisted companies under specified circumstances.

The government payments reporting requirements in the EU Accounting Directive do not apply to agribusiness. An argument could be made that the concerns that led to the adoption of legislation aimed at promoting transparency in extractive industries also apply to 'land grabbing': transparency is a vehicle for improving governance, standards and accountability, particularly in contexts where governance is weak.

In principle, the Accounting Directive could be extended to cover agribusiness. This would require thinking through the scope of reporting obligations. US and EU legislation concerning extractive industries has focused on government payments. This may help deal with issues of corruption, for example. However, important human rights issues cannot be addressed merely by improving transparency in revenue management. Arrangements for disclosing information about how much land a company has acquired, where, from whom, how and for what purposes would be more useful in enabling more effective public scrutiny of large land deals, including to address human rights issues. It is worth noting that in April 2014 the European Parliament approved a proposed Directive amending the Accounting Directive. The proposed Directive is now being considered by the Council. It strengthens disclosure requirements relating to non-financial information, including performance in environmental and social matters and 'respect for human rights'<sup>182</sup>. The European Parliament can monitor how these new requirements, if adopted, are implemented, including in relation to the extent to which human rights and 'land grabbing' issues are considered.

The Accounting Directive requires the Commission to review the government payments disclosure requirements by 21 July 2018, and to submit the report to the European Parliament<sup>183</sup>. Among other things, the review 'shall consider the extension of the reporting requirements to additional industry

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<sup>179</sup> See Articles 1.2(3), 3B.8, 6.9, 7.4, 10.5, 12.3, 15.9, 17.2, 18.3, 18.5 and 19.3 of the VGGT. -

<sup>180</sup> Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, - consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of - the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC, Articles 41-48. -

<sup>181</sup> Gormley (2013). -

<sup>182</sup> This point is based on a EU press release ([http://europa.eu/rapid/press-release\\_MEMO-14-301\\_en.htm](http://europa.eu/rapid/press-release_MEMO-14-301_en.htm)). The author did - not have access to the proposed Directive. -

<sup>183</sup> Article 48. -

sectors<sup>184</sup>. While the review is not due for a few years, it may provide a natural entry for assessing potential for extending the disclosure requirements to agribusiness – defined broadly to include tree crops, perennial agriculture crops, annual crops, varying scales and levels of processing on site, and production for food, fuel, fibre or other uses. Before then, the European Parliament has the powers to ask the Commission to assess feasibility and options for legislation to increase transparency in relation to large-scale land acquisition and to propose legislation should that assessment lead to positive outcomes. Measures to increase transparency through reporting requirements can only be effective as part of a wider package of measures to deal with the multiple aspects of human rights in 'land grabbing'.

As discussed in Section 2, evidence suggests that European financial institutions have been involved in financing land deals, directly or indirectly<sup>185</sup>. While the scale and features of this involvement remain little understood, there is a need to assess whether there is potential for increasing the effectiveness of legal requirements to integrate consideration of human rights in investment or lending decisions. The European Parliament is well placed to commission research aimed at improving understanding and at developing recommendations, and to follow up with the Commission to act on those recommendations.

## **5. RECOMMENDATIONS**

It is clear that 'land grabbing' is a serious issue that requires urgent attention. Important human rights dimensions are at stake, and major compressions of human rights have been documented in some contexts. The EU can use multiple policy levers to help address the human rights impacts of large-scale land deals. The European Parliament holds considerable power, and can take effective action to ensure those levers are used to their full potential. This Section outlines recommendations for moving the debate forward, distilling specific action points from the analysis developed in the previous sections and setting out ways in which all stakeholders involved can play their own, unique role in bringing positive change.

'Land grabbing' issues cut across multiple areas of EU policy – from human rights to trade and investment, through to energy and corporate governance, and to private sector development. Ensuring greater coherence amongst these different policy areas can be a powerful tool for addressing the human rights impacts of large-scale land deals. This Study has mentioned several examples of this – from greater cross-fertilisation between the EU's work on human rights and on land governance to use of the VGGT in assessing the human rights impacts of trade preferences, through to exploring how the Accounting Directive might be reviewed to integrate transparency requirements relating to land deals. Given the momentum behind the EU's Policy Coherence for Development (PCD) initiative, and the relevance of 'land grabbing' to the PCD priority themes (especially food security, and trade and finance), ensuring coherence of EU policies relevant to 'land grabbing' can provide an important contribution to the wider PCD agenda.

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<sup>184</sup> Article 48. -

<sup>185</sup> Global Witness (2013); Cotula and Blackmore (2014). -

The European Parliament should:

- Ensure that 'land grabbing' issues are given greater prominence in the EU's human rights work, including the work on human rights defenders, through the ongoing review by the Council, the Commission and EU Member States of the 2012 EU Action Plan on Human Rights and Democracy, and through mainstreaming of 'land grabbing' issues in the EEAS' human rights work.
- Monitor and report on the EU's development programming and budget spending related to land governance, with a view to ensuring it promotes human rights and addresses the challenges underlying 'land grabbing', notably by increasing local control over land use through stronger land rights, more inclusive decision making and more effective accountability and redress mechanisms.
- Monitor and report on the EU's development programming and budget spending related to private sector development, with a view to ensuring it complies with the VGGT, the RAI principles should these be adopted, and guidance stemming from regional initiatives. Should specific concerns about direct or indirect involvement of EU aid in controversial land evictions or other forms of human rights abuse arise, hold the Commission and relevant authorities to account. If appropriate, and as a consequence of such concerns, promote changes in EU programming and project implementation.
- Ensure that human rights issues, including in relation to 'land grabbing', are mainstreamed in the EU's instruments relating to trade and investment, including trade and investment treaties and the EU's GSP.
- Scrutinise the Commission's periodic progress reports on renewable energy, including by probing analysis on land rights impacts. Push for stricter and more transparent procedures for the recognition of voluntary certification schemes, and for ongoing monitoring of the effectiveness of approved schemes.
- Commission research to improve understanding on the involvement of European financial institutions in the financing of 'land grabbing', and to make recommendations on ways to strengthen legislation as needed.
- Through its relations with partner countries' Parliaments, promote ways and means of improving the transparency, accountability and governance of agribusiness investments in partner countries. Encourage partner country Parliaments to produce their own domestic reports on this issue and, in particularly worrying cases involving links to the EU, consider sending a European Parliament mission, or a joint parliamentary commission of inquiry, to investigate cases of abuse.
- Take due note of the views of European NGOs and civil society groups on this issue. Where appropriate, organise hearings and information sessions to ensure that their views are adequately articulated and presented.
- Inform all appropriate Parliamentary Committees of the findings of this Study.

The **European Commission**, notably DEVCO, TRADE, AGRICULTURE, ENVIRONMENT, ENERGY, ENTERPRISE, should:

- Ensure that EU aid programming and subsequent programmes and projects on land governance address the challenges underlying 'land grabbing', notably by increasing local control over land use through stronger land rights and more inclusive decision making, as well as the integration of human rights aspects, including through sustained investment in capacity building, accountability systems and redress.

- Over and above the recent Commission Communication on Private Sector Development, develop clear, specific criteria for private sector engagement in agriculture and consider grievance mechanisms for the EU private sector programming, to ensure that such programming complies with the VGGT, the RAI principles should these be adopted and guidance stemming from regional initiatives.
- Promote mainstreaming of human rights considerations in EU decisions on the negotiation of trade and investment treaties, strengthen human rights clauses in trade treaties, ensure that these clauses apply to 'land grabbing' issues, and consider options for addressing regulatory space and responsible investment issues in the framing of investment treaties.
- Mainstream consideration of human rights issues in decisions on the negotiation of trade and investment treaties, strengthen human rights clauses in trade treaties, extend application of these clauses to 'land grabbing' issues, and consider options for addressing responsible investment issues in the framing of investment treaties.
- Integrate a human rights impact assessment into future reviews of the EU's GSP. Include an assessment of the feasibility of introducing human rights due diligence for agricultural and other produce imported into the EU under the GSP or its key components (such as the EBA). Establish an EU-wide system for dealing with human rights violators, and a grievance mechanism.
- In relation to bioenergy, develop stricter and more transparent criteria and procedures for the recognition of any new certification schemes; periodically review the list of approved schemes; and undertake ongoing monitoring of the effectiveness of certification in pursuing the EU's sustainability goals.
- Assess the feasibility and options for legislation to increase transparency and good governance principles in relation to agribusiness investments, and to restrict importation of illegally produced commodities, and propose legislation should that assessment lead to positive outcomes.
- Report regularly to the European Parliament on progress in the areas above, and on action and measures taken to follow up on the Parliament's resolutions relating to 'land grabbing' in different areas of EU policy.

The **EEAS** should:

- Give greater prominence to 'land grabbing' issues, and more generally issues relating to social, economic and cultural rights, in the EU's human rights work, including through proper integration of land issues, where relevant, in human rights dialogues and in the EU's work on human rights defenders.
- Ensure that such issues feature, where appropriate, in the regular annual reviews of human rights in partner countries, and consider issuing guidance to EEAS staff on how to deal with 'land grabbing' issues.
- In cases of abuse, ensure that the policies and programmes promoted by the EEAS are fully respected and acted upon.
- Report regularly to the European Parliament on progress in the areas above.

**EU Member States** (the Council) should:

- Review the current work of the EU institutions on 'land grabbing', and more generally on issues relating to social, economic and cultural rights, for more effective integration in the EU's human

rights work. Where appropriate this should be incorporated into the ongoing review of the 2012 EU Action Plan on Human Rights and Democracy.

- Ensure coherence between the work done at a European level and work done by individual EU Member States on this issue.
- Consider whether work carried out in other fora, such as the Organisation for Economic Co-operation and Development (OECD) or various UN bodies, could provide useful insights for the EU's work.

The European private sector should:

- Champion the private sector's contribution to inclusive and sustainable development in third countries, through supporting and implementing greater transparency, more inclusive models of agribusiness investment, and higher standards of community engagement, business operations and accountability mechanisms.
- Review existing voluntary and non-voluntary codes of practice that relate to 'land grabbing' to examine whether self-regulation could reduce the current negative consequences of 'land grabbing'.
- Ensure that the quality standards applied in this area by European companies within the EU are matched or exceeded in their investments outside the EU.

**NGOs** and representatives of civil society should:

- Remain vigilant and step up advocacy for greater consideration of human rights issues linked to 'land grabbing' in the policy areas identified above, and for more inclusive involvement of civil society in sustainable development.
- Develop appropriate methodologies and practices to hold EU institutions to account.
- As regards European NGOs and civil society, continue engagement in third countries, working with local NGOs and representatives of civil society, to champion and support efforts to increase local control over land use, secure local land rights and strengthen local voices, and to improve governance, transparency, accountability and redress in investment processes.

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