

# **The Need to Alleviate the Human Rights Implications of Large-scale Land Acquisitions in Sub-Saharan Africa**

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## Table of Contents

A. Introduction.....	874
B. Human Rights Implications of Large-scale Land Acquisitions.....	879
C. Measures Necessary to Alleviate Human Rights Implications of Large-scale Agricultural Concession.....	884
D. Conclusion.....	889

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## Abstract

In the last few years, large agricultural investment ventures in Sub-Saharan Africa have brought their own opportunities and risks. On the one hand, large-scale land investments can offer opportunities for development, given their potential for creating infrastructures and employment, transfer of capital and technology as well as improving food security in the region. On the other hand, uncontrolled agricultural investment ventures primarily undermine the rights related to rural livelihood such as the right to property, development, and the right to self-determination as well as having adverse impacts on the environment. Though there is no easy way out of the paradox related to international agricultural investment ventures, there are a number of things to be done to alleviate the problem. At the international level, international human rights groups and organizations need to highlight the importance of access to land as a human right, work on the coming into effect of an international agreement that stipulates standards and obligations with respect to international agricultural investment ventures, as well as exposing illicit land dealings and making an effort to promote the rights of indigenous groups that have been threatened by 'land grab' activities. At the national level, the most important steps that need to be undertaken to minimize the impact of land grab activities include improving good governance, ensuring the security of rural communities to land entitlement, payment of appropriate compensation, and allowing freedom of association at local the level.

## A. Introduction

In the last few years, the interest of foreign investors for the acquisition of agricultural land in the developing world has shown a marked increase.<sup>1</sup> According to World Bank estimates, direct foreign investment in agricultural farmland amounted to an estimated fifty-six million hectares before the end of 2009.<sup>2</sup> It has also been found that up to twenty million

<sup>1</sup> Special Rapporteur on the Right to Food, *Large-scale Land Acquisitions and Leases: A Set of Minimum Principles and Measures to Address the Human Rights Challenge*, UN Doc A/HRC/13/33/Add.2, 28 December 2009, 5, para. 11 [Special Rapporteur on the Right to Food, *Large-scale Land Acquisitions and Leases*].

<sup>2</sup> K. Deininger *et al.*, *Rising Global Interest in Farmland: Can it Yield Sustainable and Equitable Benefits?* (2005), xiv.

hectares of land have been the subjects of land dealings of foreign investors since 2006.<sup>3</sup> Such agricultural investments have been widely practiced in Latin America, Southeast Asia, Eastern Europe and most significantly, Sub-Saharan Africa.

Due to various political and economic factors peculiar to Sub-Saharan Africa, the adverse implications of land grabs in the region are immense. In the last decade, a number of African countries have been targeted by multinational companies for acquisition of huge plots of agricultural land. The problem of land grabbing is particularly chronic in countries such as Cameroon, Ethiopia, the Democratic Republic of Congo, Madagascar, Mali, Somalia, Sudan, Tanzania, and Zambia.<sup>4</sup> It is believed that “developing countries in general, and Sub-Saharan Africa in particular, are targeted because of the perception that there is plenty of land available, because the climate is favorable to the production of crops, because local labour is inexpensive and because the land is still relatively cheap.”<sup>5</sup> The extent of granting land to foreign companies in some countries is staggering. In Ethiopia for instance, in the period between 2003 and 2009, some 500 foreign investors were granted land amounting to one million hectares either on their own or as part of joint ventures with local business.<sup>6</sup> Until recently, the “Ethiopian government has already transferred about 3.5 million hectares of land to investors and is now taking measures to transfer a similar amount in the next five years.”<sup>7</sup>

Different issues have been raised as triggering factors for the surge of land grabs in the last few years. The primary factor in recent years is challenges related to global food security and the steady increase in the price of food items globally. Some international companies are attracted by the lucrative investment in agricultural food due to such heightened demand in the international market. In addition to this, some of the countries that are involved in land grabs depend on imports of agricultural commodities, and have started to purchase or lease land in developing countries. The demand for biofuels as an alternative source of energy is also another impetus that

<sup>3</sup> Special Rapporteur on the Right to Food, *Large-scale Land Acquisitions and Leases*, *supra* note 1, 5, para. 11.

<sup>4</sup> *Id.*, 5-6, para. 11.

<sup>5</sup> *Id.*, 6, para. 11.

<sup>6</sup> D. Rahmato, ‘Land to Investors: Large-Scale Land Transfers in Ethiopia’ (2011), available at [http://www.landgovernance.org/system/files/Ethiopia\\_Rahmato\\_FSS\\_0.pdf](http://www.landgovernance.org/system/files/Ethiopia_Rahmato_FSS_0.pdf) (last visited 28 January 2013), 12.

<sup>7</sup> *Id.*, 25.

pushed companies to grab land in Africa. This has been particularly facilitated by the policies of Western governments, which provide financial incentives to the private sector for the development of biofuels.<sup>8</sup> It has also been reported that, following the recent financial crisis, different financial companies resorted toward land as a source of solid financial returns.<sup>9</sup> In addition to this, speculation on future rises of the price of farmland has created incentives for multinational companies to engage in land grabs.<sup>10</sup>

In addition to such economic factors, which have increased land dealings in the last few years, many of the countries targeted by international companies are those where there is loose government control and a lack of strong civil society that counter-balances the impacts of such investments. In such countries, it is easier to move quickly since there are few regulations and the regimes are largely unconcerned about the interests of the people and the protection of the environment.<sup>11</sup> Furthermore, the fact that the land dealings in Sub-Saharan Africa are offered at a very low price (twenty dollars per hectare in some cases) contributed to the surge of companies coming to Africa.

Such international agricultural investments have provided some opportunities and posed different challenges. Primarily, large-scale land investments can be an opportunity for development, given their potential for creating infrastructure and employment, increasing public revenues and improving farmers' access to technologies and credit.<sup>12</sup> That is because, for

<sup>8</sup> Under Commission Directive 2009/28EC, OJ 2009 L 140/16, each Member State of the European Union is obligated to adopt a national renewable energy action plan establishing Member States' national targets for the share of energy from renewable sources consumed in transport, electricity and heating and cooling (see L. Cotula *et al.*, *Land Grab or Development Opportunity?: Agricultural Investment and International Land Deals in Africa* (2009), 54).

<sup>9</sup> A. Graham *et al.*, 'Advancing African Agriculture: The Impact of Europe's Policies and Practices on African Agriculture and Food Security' (June 2010), available at [www.future-agricultures.org/papers-and-presentations/doc\\_download/1292-the-role-of-the-eu-in-land-grabbing-in-africa-cso-monitoring-2009-2010-advancing-african](http://www.future-agricultures.org/papers-and-presentations/doc_download/1292-the-role-of-the-eu-in-land-grabbing-in-africa-cso-monitoring-2009-2010-advancing-african) (last visited 28 January 2013), 6.

<sup>10</sup> Special Rapporteur on the Right to Food, *Large-scale Land Acquisitions and Leases*, *supra* note 1, 7, para. 12.

<sup>11</sup> D. Dasgupta, 'India, Once Colonised, has Turned Into a Coloniser' (7 October 2011), available at <http://www.outlookindia.com/article.aspx?278583> (last visited 28 January 2012).

<sup>12</sup> Special Rapporteur on the Right to Food, *Promotion and Protection of all Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right of Development*, A/HRC/12/31, 21 July 2009, 13, para. 21.

many years, agriculture has been neglected both in domestic policies and in development cooperation as well as having failed to attract foreign direct investment.<sup>13</sup> In light of this gap, more investment in rural areas can be particularly effective in reducing poverty, creating employment, improving the access of local producers to the markets, and increasing public revenues through taxation and export duties.<sup>14</sup> The significance of agricultural investment is immense in terms of ensuring food security in Sub-Saharan Africa. Generally, increased investment in agriculture is believed to bring about economic development and improvements in livelihood in rural areas.<sup>15</sup>

Despite the apparent benefits of large agricultural investment in Sub-Saharan African countries, the endeavor has posed different challenges. The major risk of such investments is to the welfare of the rural poor, to whom land is the main asset from which to derive a livelihood. In light of the dependence of the rural poor on the land for their livelihood, it is concerning that the potential impacts of agricultural investment through multi-national companies include the eviction of the rural poor from their land. The selling out of large plots of land to investors is particularly detrimental for farmers and pastoralists who depend on access to land and natural resources for their sustenance.

As governments make land available to investors, the most serious implication of the move is that local people lose access to the land on which they depend for their food security.<sup>16</sup> Ethiopia is a typical instance in this respect. The country has been affected by extreme drought that has recently left some twelve million people in danger of starvation. On the other hand, the Ethiopian government is leasing out large plots of land to foreign firms which risks deteriorating the food security situation of millions of people living in the drought-struck regions of the country.<sup>17</sup> According to a study released by the Oakland Institute, two hundred thousand people might have

<sup>13</sup> Special Rapporteur on the Right to Food, *Large-scale Land Acquisitions and Leases*, *supra* note 1, 12, para. 28.

<sup>14</sup> *Id.*, 7, para. 13.

<sup>15</sup> Cotula *et al.*, *supra* note 8, 15.

<sup>16</sup> *Id.* beginning on page 5.

<sup>17</sup> J. Vaughan, 'Ethiopia Land Lease Risks Displacement: Report', (29 July 2011), available at <http://reliefweb.int/report/ethiopia/ethiopia-land-lease-risks-displacement-report> (last visited 28 January 2012).

been displaced through the leasing out of 300,500 hectares of land since 2008.<sup>18</sup>

The impacts of such large-scale agricultural investments have become more threatening in Sub-Saharan Africa due to the lack of legal and institutional mechanisms to alleviate the spillover risks of such investments. In particular, lack of good governance in the region has complicated the socio-economic problems including the land holding system. The problem of good governance is particularly chronic in relation to the land tenure system and the administration of natural resources in Sub-Sahara Africa. In many countries of Sub-Saharan Africa, due to the fact that much of the land is owned and controlled by the government, the rights of farmers are not properly secured.<sup>19</sup> Such State-owned forms of land tenure system is characterized by insecure use rights, complicated registration procedures, legal lacunas in the legal system, and compensation being paid to expropriation of the land is very limited.<sup>20</sup>

In the absence of a strong land tenure system that provides security to rural farmers, evictions from the land will largely continue without any appropriate redress. Many countries do not have in place legal or procedural mechanisms to protect the rights of local communities in case of eviction. Even in some of the countries where there is a legal requirement for consultations to be undertaken with the community, the process is not largely observed.<sup>21</sup> In addition to this, due to the absence of an accountable system of government, elites exploit the opportunity for short-term benefits rather than focusing on the long term social and economic development of the community.<sup>22</sup> Lack of transparency and checks and balances in contract negotiations has further exacerbated the problems related to land dealings. In light of the opportunities and challenges that large agricultural investment ventures pose in Sub-Saharan Africa, this article attempts to highlight the human rights implications of such ventures and to put forward some measures that may be undertaken at the national and international levels.

<sup>18</sup> *Id.*

<sup>19</sup> Rapporteur on the Right to Food, *Large-scale Land Acquisitions and Leases*, *supra* note 1, 10, para. 23; J. Felicio, 'Global Land Grabbing: The Impact on Human Rights' (12 June 2011), available at <http://wphr.org/2011/jillfelicio/global-land-grabbing-the-impact-on-human-rights/> (last visited 28 January 2012).

<sup>20</sup> Cotula *et al.*, *supra* note 8, 7.

<sup>21</sup> *Id.*

<sup>22</sup> Felicio, *supra* note 19.

## B. Human Rights Implications of Large-scale Land Acquisitions

Throughout the history of mankind, land is considered as a primary source of wealth as well as the foundation for shelter, food, and other economic activities.<sup>23</sup> Particularly, land is the most significant provider of employment opportunities in rural areas. Given that the majority of the population is living in rural areas in many Sub-Saharan African countries, the significance of access to land for rural livelihoods is crucial. Realizing the importance of land to development, the UN reiterates:

“Land [...] cannot be treated as an ordinary asset, controlled by individuals and subject to the pressures and inefficiencies of the market. Private land ownership is also a principal instrument of accumulation and concentration of wealth and therefore contributes to social injustice; if unchecked, it may become a major obstacle in the planning and implementation of development schemes. [...] The provision of decent dwellings and healthy conditions for the people can only be achieved if land is used in the interests of society as a whole. [...] Public control of land use is therefore indispensable [...].”<sup>24</sup>

In light of the significance of land to the overall development of society in general and to the rural poor in particular, large-scale agricultural ventures that are widely practiced in Sub-Saharan Africa have different human rights implications. The implications could be categorized under three broad human right issues: namely rights related to livelihood, environmental rights, and the right to self-determination of peoples.

Large-scale agricultural investment activities in Sub-Saharan Africa have primarily threatened the rights of livelihood of rural families. Such uncontrolled investment ventures seriously undermine the rights related to rural livelihood such as the right to property, development, and food. The right to property is one of the basic human rights principles that are

<sup>23</sup> Food and Agriculture Organization of the United Nations (ed.), *Gender and Access to Land* (2002), 3.

<sup>24</sup> *The Vancouver Action Plan: D. Land*, Preamble, UN Doc A/CONF/70/15, 11 June 1976.

protected by domestic as well as international human rights regimes. Though there is ideological divide between the east and the west on the scope of the right to property, it basically involves entitlement to the peaceful enjoyment of one's possessions and prohibition of any arbitrary denial of the right. Though such rights of property may be limited where the public interest is involved, the right to property involves the right to adequate compensation in case of expropriation. In addition to this, an appropriate system of protecting of property rights significantly contributes toward alleviating poverty and the creation of income for the poor.<sup>25</sup>

In light of this, the arbitrary eviction of the rural poor basically denies their right to property which is essential to their livelihood. Though such evictions may be justified when an overriding public interest is involved, there has to be appropriate compensation made to people who may be affected by the eviction. Many of the countries of Sub-Saharan Africa are selling rural land in the belief that the large investments in agriculture promotes the public interest, since such investments involve the transfer of technology and capital, and enhance production as well as creating job opportunities. Though there are promises made by governments to compensate farmers that may be affected by the process of implementing agricultural investment ventures, such promises have not been largely kept.

The loss of land by rural farmers not only undermines the socio-economic base of the community but also it deprives the people their power of bargain.<sup>26</sup> Since much of the land in Sub-Saharan Africa is controlled by the government, the right of farmers to the land is only an usufruct right that could be terminated at any time. In addition to this, in countries such as Ethiopia, access to land is largely determined by political partisanship rather than merit since land is used as a political weapon. Unless farmers vote for the party in power during elections or refrain from openly expressing their dissent, the regime's political machinery in rural areas threatens farmers with the loss of their land possession rights. In such restrictive political contexts, the land grab rush conducted by multinational companies exacerbates the already deteriorated property rights regime in these countries.

The other implication of the uncontrolled land grab in Africa is that it seriously undermines the right to development of the rural poor. According

<sup>25</sup> K. Boudreaux, 'Paths to Property: Creating Property Rights in Africa' (February 2007), available at <https://www.montpelerin.org/montpelerin/members/documents/KarolBoudreaux.pdf> (last visited 28 January 2013), 3.

<sup>26</sup> Rahmato, *supra* note 6, 26.



to the *Declaration on the Right to Development*, “the right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in [and] contribute to[,] and enjoy economic, social, cultural, and political development[,] in which all human rights and fundamental freedoms can be fully realized.”<sup>27</sup> In rural Africa, it is only through appropriate access to land for rural communities that sustainable development can be achieved as the livelihood of the rural poor is closely linked with access to land. In addition to this, access to land is also an essential element of ensuring food security. Under Art. 11 of the *International Covenant on Economic, Social and Cultural Rights*, every State is obliged to “ensure for everyone under its jurisdiction access to the minimum essential food which is sufficient, nutritionally adequate and safe, to ensure their freedom from hunger.”<sup>28</sup> In light of this international standard, land grab undertakings in Sub-Saharan Africa dispossess the poor from the land on which their food security depends.

The environmental implications of large agricultural concessions are also immense. It is believed that intensive agricultural projects seriously affect the biodiversity, carbon stocks, as well as land and water resources in the area.<sup>29</sup> In particular, aggressive use of land resources by multinational companies has seriously affected the natural environment due to the aggressive use of chemicals and other agricultural technologies to achieve larger output. The environmental implications related to large-scale agricultural investment in Sub-Saharan Africa is further exacerbated by the absence of any appropriate assessment of the environmental impact of such ventures and the absence of capacity on the part of State machinery to regulate the activities of agricultural companies due to a corrupted government system and a lack of trained manpower and resources.

In addition to undermining rights related to the livelihood of the poor and having environmental implications, big agricultural concessions have also serious impacts on the cultural and religious rights of communities. It is believed that “there is a strong correlation in many societies between the

<sup>27</sup> *Declaration on the Right to Development*, Art. 1, GA Res. 41/128 annex, UN Doc A/RES/41/128, 4 December 1986.

<sup>28</sup> *Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights: General Comment 12*, UN Doc E/C.12/1999/5, 12 May 1999, para. 14.

<sup>29</sup> J. v. Braun and R. S. Meinzen-Dick, “‘Land Grabbing’ by Foreign Investors in Developing Countries: Risks and Opportunities” (April 2009), available at <http://www.ifpri.org/sites/default/files/publications/bp013all.pdf> (last visited 28 January 2013).

decision-making powers that a person enjoys and the quantity and quality of land rights held by that person”.<sup>30</sup> Access to land is particularly linked to the right to self-determination of peoples that is widely recognized under national and international human rights instruments. The principle of self-determination is prominently embodied in Article I of the *Charter of the United Nations*. The right is also recognized as a right of all peoples in the first Article of the *International Covenant on Civil and Political Rights* and the *International Covenant on Economic, Social and Cultural Rights*, which both entered into force in 1976. Paragraph 1 of this Article provides “[a]ll peoples have the right to self-determination. By virtue of that right, they freely determine their political status and freely pursue their economic, social and cultural development.” In addition to this, the national constitutions of some countries, such as Ethiopia, provide wider recognition of the right to self-determination. The right to self-determination of peoples has also been recognized in many other international and regional instruments, including the *Declaration of Principles of International Law Concerning Friendly Relations and Co-operation Among States* adopted by the UN General Assembly in 1970, the Helsinki Final Act adopted by the Conference on Security and Co-operation in Europe (CSCE) in 1975, the *African Charter of Human and Peoples’ Rights* of 1981, the *CSCE Charter of Paris for a New Europe* adopted in 1990, and the *Vienna Declaration and Programme of Action* of 1993.

In particular, access to land for indigenous communities has been given specific forms of protection under international law. Articles 13 to 19 of the 1989 ILO *Indigenous and Tribal Peoples Convention* provide principles concerning Indigenous and Tribal Peoples’ right of access to the land. Furthermore, under Article 8 of the *United Nations Declaration on the Rights of Indigenous Peoples*, States are required to provide effective mechanisms for prevention of [...] “[a]ny action which has the aim or effect of dispossessing indigenous peoples of their lands, territories or resources.”<sup>31</sup> Under Article 10 of the Declaration, indigenous groups are guaranteed the right “not to be forcibly removed from their lands or territories [...] [,] [n]o relocation shall take place without the free, prior and informed consent” and any relocation could only be effected after agreement on just and fair compensation.<sup>32</sup>

<sup>30</sup> Food and Agriculture Organization of the United Nations, *supra* note 23, 3.

<sup>31</sup> *United Nations Declaration on the Rights of Indigenous Peoples*, Art. 8 (2) (b), GA Res. 61/295 annex, UN Doc A/RES/61/295, 13 September 2007, 4.

<sup>32</sup> *Id.*, Art. 10, 5.

Furthermore, Articles 25 and 26 of the Declaration recognize the “distinctive spiritual relationship of indigenous peoples with their traditionally owned lands” and their right “to own use, develop and control the[se] lands”.<sup>33</sup> Accordingly, States are required to give legal recognition and protection to these lands, territories, and resources, with due respect to the customs, traditions, and land tenure systems of the indigenous peoples concerned.<sup>34</sup> Article 32 of the Declaration further embodies the principle of free, prior, and informed consent before any action that affects the interests of indigenous communities is undertaken.<sup>35</sup> Article 32 para. 2 further reiterates “States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.”<sup>36</sup>

Despite the availability of such diverse international human rights instruments, agricultural investment ventures of multinational companies continue to undermine the livelihood of indigenous communities. The problem is particularly chronic in Sub-Saharan Africa, where agricultural concessions are largely in areas where indigenous communities are living. The deprivation of indigenous communities’ access to land not only results in the loss of the material possession of their territory but also of the basic foundation for the development of their culture. Since their cultural and religious rituals are enjoyed in relation to their ancestral land, eviction of the indigenous community from the land is simply uprooting the identity of the people from their ancestral heritage.

To illustrate the impact of foreign agricultural interventions to the right to self-determination of indigenous communities in Sub-Saharan Africa, examining the example of the Ethiopian case clarifies the extent of the problem. The unprecedented agricultural land sale in Ethiopia is predominately conducted in a fertile region of Gambella. The region is inhabited by several ethnic minority groups, of which the three major ones are the Annuak, the Nuer, and the Majangir. The customary system of property relations among all three groups is founded on communal ownership of natural resources. The arrival of multi-national companies is

<sup>33</sup> *Id.*, Arts 25 & 26, 7-8.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*, Art. 32 (2), 9.

<sup>36</sup> *Id.*

currently marginalizing and uprooting the people from their land and effectively denying their right to self-determination recognized under the Ethiopian constitution. Even though the Ethiopian constitution provides for the right to self-determination of ethnic groups to self-determination including the right to secession, in practice such arbitrary decisions undertaken by the regime have seriously undermined the right to self-determination of peoples.

### C. Measures Necessary to Alleviate Human Rights Implications of Large-scale Agricultural Concession

In the preceding discussion, it has been established that there are conflicts of interests in relation to the granting of large plots of land to international corporations in Sub-Saharan Africa. On the one hand, large agro-investments have the potential to boost African agricultural performance through increasing agricultural output, transfer of technology, and creating new opportunities. On the other hand, these ventures involve a number of risks. Such projects may not only result in the eviction of the rural poor from their livelihood, but they also have a serious environmental impact and deprive indigenous communities of their right to self-determination. Due to the complexities involved in agro-industry business in Sub-Saharan Africa, there are no ready-made solutions that can effectively balance these two conflicting interests. However, it is important to come up with some remedial policy measures that may greatly alleviate the impacts of land grab activities in Sub-Saharan Africa. Such remedial measures need to be undertaken at the international, national, and local levels.

At the international level, there are a number of measures that need to be undertaken to alleviate the challenges of land grabs in Sub-Saharan Africa. The most significant contribution of the international community to alleviate the adverse impacts of selling out large plots of land to foreign corporations is through setting international standards. In the past, international organizations and civil society groups have been instrumental in setting standards for human rights principles. Since the end of World War II, international human rights principles have largely been developed by the United Nations and other regional institutions. Though there has been controversy over the meaning and scope of human rights in the West and other parts of the world, these international human rights instruments have contributed a lot in terms of widening the concept of human rights through influencing domestic legal systems as well creating global awareness on

human rights issues. In light of such a track record, international organizations primarily need to develop international standards that may serve as guidelines in regulating international agricultural ventures. One such effort that needs to be made is with regard to the development of an internationally recognized convention or system that recognizes the right to land access as a human right. Since there has never been a consensus as to whether access to land is a human right, international recognition of the right could not be achieved. The development of a principle on the right to land may greatly contribute in terms of protecting the rights of the poor in rural communities through providing international standards in light of which national land policies may be measured.

In addition to this, international organizations may play a significant role in terms of developing international norms to be followed by international agricultural investment companies. Though there have been different international rules and systems that aimed at safeguarding and regulating foreign direct investment, there have never been any guidelines that need to be observed by the multinational companies as well as the host States engaged in international agricultural investments. Despite the fact that the rules on international investment are also applicable to agricultural investments, the rules are largely aimed at protecting the interests of the investor rather than the rural poor. International investment rules are increasingly becoming influential by constraining the power of host States to control the activities of multinational companies. In light of the special nature of international agricultural investments and their implications, there is a need to develop a system that balances the interests of the investor on the one hand and the needs of the people that may be affected by such investments on the other. In light of the importance of having international norms on agricultural investment ventures, international organizations may develop some form of convention or treaty that clearly stipulates the rights and duties of the investor as well as the rights of the people who may be affected by such investments.

There have been different attempts made by international institutions to develop principles and codes of conduct to regulate international investment ventures. The most prominent among these is the World Bank-led Principles for Responsible Agricultural Investment that Respect Rights, Livelihoods and Resources (RAI). RAI recognizes different principles such as land and resource rights, participation of those who may be affected by investment projects, transparency of land dealings, and social and environmental sustainability of investments. Not only are the principles non-binding but also the principles are largely denounced by different

groups claiming that the initiative is largely legitimizing the occupation of land by international corporations. The most advanced code of conduct is the one that has been recently developed by the United Nations Food and Agricultural Organization (FAO). The Voluntary Guidelines on the Responsible Governance of Tenure developed in May 2012 deals with the legal recognition and allocation of tenure rights and duties, transfers and other changes to tenure rights and duties, administration of tenure, responses to climate change and emergencies, and promotion, implementation, monitoring, and evaluation.<sup>37</sup>

The principles that have been enshrined in the guideline are significant in terms of alleviating the widespread violations of human rights in relation to agricultural investments in Sub-Saharan Africa. But due to the non-binding nature of the guidelines, the significance of the document is very limited. A more forceful code of conduct on agricultural investments needs to be issued by other influential institutions such as the World Bank. In addition to setting standards, the other important contribution of the international institutions and civil society groups is through conducting advocacy activities for promoting the rights of rural communities.<sup>38</sup>

The most important responsibility of ensuring the rights of the communities affected by land grabs is the host State itself. There are a number of measures that could be undertaken by the government to accrue the benefits of agricultural investment ventures as well as addressing the negative implications of the investments. Primarily, the problem of land grabs in Sub-Saharan Africa is closely related to the absence of good governance. The existence of good governance ensures that “political, social and economic priorities are based on broad consensus in society and that the voices of the poorest [...] are heard in decision-making over the allocation of development resources”.<sup>39</sup> Good governance in particular entails the

<sup>37</sup> Food and Agriculture Organization of the United Nations (ed.), *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security* (2012), iii.

<sup>38</sup> For instance, human rights reports released by human rights groups such as Amnesty International and Human Rights Watch have contributed in terms of checking the human rights records of governments. In the same token, emergence of an established international institution that watches over international agricultural investment may contribute a lot in terms of improving the human rights implications of land grabs in Sub-Saharan Africa.

<sup>39</sup> United Nations Development Programme (ed.), ‘Good Governance and Sustainable Human Development’, available at <http://mirror.undp.org/magnet/Docs/!UN9821.PDF/!GOVERNA.NCE/!GSHDENG.LIS/!sec1.pdf> (last visited 28 January 2012), 3.

existence of efficient and accountable institutions regulating the political, judicial, administrative, and economic activities as well as promoting development, protection of human rights and respect for the rule of law, and ensuring that people are free to participate and be heard on decisions that affect their lives.<sup>40</sup>

Due to the chronic problems of governance in Sub-Saharan Africa, sustainable development has not been achieved in these countries. The problems of good governance in the region have various aspects. First of all, since leaders come to power through deceit or through the barrel of the gun, not only are they corrupt but they are also not accountable to the public or to the law of the land. Secondly, since institutions are weak, their oversight of the activities of government is lacking, and the economic and social policy decisions of the government are largely flawed and ineffective. Thirdly, due to the absence of the rule of law, citizens do not have any effective redress for the acts of maladministration that are committed by government officials. Fourthly, the problem of rampant corruption has made policy initiatives in Africa seriously flawed. In addition to this, problems related to protection of human rights in Africa have made ordinary Africans undergo harassment, unlawful detention, torture, and the restriction of their liberties and democratic rights. In light of such problems in the region, there cannot be any isolated remedy for the challenges of land grabs in Sub-Saharan Africa. Improving the overall problems of good governance and protection of human rights will ultimately assist in addressing the impacts of land grabs in Africa. Improving governance in Africa is thus a fundamental remedy to curb the adverse impact of huge agricultural ventures in the region.

Though the most effective remedy to root out the problems related to land grabs is through improving governance, there are also other specific measures that need to be undertaken in relation to the allocation and regulation of agricultural investment ventures. The primary measure that needs to be implemented is having an effective land tenure system. Since in many of the Sub-Saharan African countries the rural poor do not have security for their entitlement to the land they possess, they are subject to various abuses. Due to a lack of entitlement of land rights guaranteed to farmers, central and regional authorities do not have any obligation to safeguard the rights of indigenous communities. Unless farmers have a

<sup>40</sup> K. R. Hope, 'Toward Good Governance and Sustainable Development: The African Peer Review Mechanism', 18 *Governance* (2005) 2, 283, 285.

guaranteed entitlement to their rural land holding that improves the bargaining position of the rural communities, the poor rural community cannot be in a position to stand for their rights.

The other important measure that needs to be undertaken by the government before granting concessions to multinational companies is conducting an impact assessment on the potential benefits and risks of such investments. Such assessment is particularly helpful to weigh the various advantages and risks of the investment, particularly in terms of alleviating the dislocation of families and the impact of the project to the environment. In addition to this, all project dealings need to be conducted in a transparent fashion. The dealings need to be open to the public, the media, and civil society groups. In many African countries, land dealings and the terms of the contract are largely secretive and without scrutiny by the public, media, or civil society groups. The other measure that may be undertaken by African governments that are involved in an agricultural land lease is to ensure the participation of the people during the implementation of the projects. The projects may be organized in a way to integrate the community into the development process as well as undertaking effective resettlement programs. Particularly, the government has to ensure that appropriate compensation be paid to the families that may be affected by the multinational agricultural projects.

The other vital responsibility of the government is to enhance its capacity to regulate such projects. Unless the government has allocated the necessary resources and manpower to supervise the implementation of the projects, the projects will not only fail to bring about the desired results but also the projects entail far-reaching impacts such as environmental degradation and threatening the livelihood of the poor. Oversight of the projects ensures whether the investment has accrued the desired transfer of knowledge, creation of jobs, or output that may increase earnings in foreign currency to the country. The other important institutions that are essential to address problems of land grabs are civil society groups. Local civil society groups need to be given access to work at the grass-roots level by advocating the rights of rural communities and creating awareness among the rural communities about their rights.

The other important step that may be helpful to alleviate the problems of land grabs is organizing the rural community to stand for their rights. The restrictive measures of governments towards civil and political rights in many Sub-Saharan African countries present a challenge to such freedom of association. In countries such as Ethiopia, local civil society groups or communities are not only barred from raising any human rights violations,



but also any dissent against the government is viewed as a crime. Due to such restrictive measures, rural communities are not allowed to organize themselves to defend their rights; as a result, they are subjected to maladministration and injustices. Relaxing the rights of citizens to organize themselves including in rural communities is thus an essential step that needs to be undertaken by governments in Sub-Saharan Africa.

#### D. Conclusion

Due to the challenges of food security and increasing attention given to biofuels, there has been a surge in land grab activities in Sub-Saharan Africa and elsewhere. The agricultural investment ventures in Sub-Saharan Africa have brought their own opportunities and risks. When such large agricultural investment ventures are properly implemented, they can be used to facilitate the flow of capital and technology as well as improving the food security situation of these countries. But the rush by multinational companies to purchase land in Sub-Saharan Africa has posed a number of challenges. Primarily, large agricultural land concessions have resulted in the eviction of rural communities from their land. In many instances, people are evicted from their land without appropriate compensation or a resettlement program. In addition to this, since access to land for rural communities is essential to enable them to exercise their right to self-determination, the dislocation of families from their ancestral land may result in the violation of their right to self-determination that is recognized in international, regional, and nation human rights instruments. Furthermore, the extensive use of the land by multinational companies using different chemicals contributes toward the serious degradation of the balance of local ecosystems.

Though there is not an easy way out from such deadlock; there are a number of measures that should be undertaken to alleviate the problem. At the international level, international human rights groups and organizations need to highlight the importance of access to land as part of the human rights system, work on the coming into effect of an international agreement that stipulates standards and obligations with respect to international agricultural investment ventures, and make a concerted effort to expose illicit land dealings and promote the rights of indigenous groups that have been threatened by land grab activities. At the national level, the most important guarantee against the adverse impacts of land grab activities in Africa is ensuring good governance in these countries. Due to the absence of

accountability, transparency, and the rule of law at the central and local government level, leadership is largely characterized by dictatorship and rampant corruption. The most important step that needs to be taken to minimize the impact of land grab activities in Sub-Saharan Africa is thus improving aspects of governance at various levels.

In addition to this, important measures such as ensuring the property rights of rural communities to access land, payment of appropriate compensation, allowing farmers to organize themselves and stand up their rights, as well as providing sufficient political space to local civil society groups to promote the rights of rural communities, are also essential measures that need to be undertaken by host States. In conclusion, though the land grab phenomenon is likely to continue due to the crumbling global food security situation, it is argued that the measures that have been pointed out in this article could significantly undermine the adverse impacts of land grab ventures in Sub-Saharan Africa.