

POLICY BRIEF

Large-Scale Land Acquisitions, Human Rights and State Accountability

*“Agreements to lease or cede large areas of land should **under no circumstances** be allowed to trump the human rights obligations of the States concerned.”*

United Nations Special Rapporteur on the Right to Food (2009)

A wide range of **human rights** may be actually or potentially affected by large-scale land acquisitions (LSLAs). They include, but are not limited to, the right to food, the right to housing, the right to water, the right to health, the right to education, the right to participation, the right to be free from discrimination, and cultural rights. This interference with such rights may entail violations of international human rights obligations by States involved in LSLAs.

However, **holding States accountable** for human rights violations stemming from LSLAs is a cause for concern in many countries affected by the phenomenon. In many contexts, at the national level judicial and quasi-judicial mechanisms to seek redress for these violations are non-existent, unavailable or ineffective. In certain settings, regional or international mechanisms become the sole or primary avenue for seeking accountability.

Against this backdrop, regional and international human rights mechanisms have already demonstrated a **willingness to address human rights implications of LSLAs**, with different human rights actors addressing different angles of the phenomenon.

The United Nations Treaty Bodies

The United Nations treaty bodies— in particular the Committee on Economic, Social and Cultural Rights (CESCR), the Committee on the Elimination of Racial Discrimination (CERD), the Committee on the Elimination of Discrimination against Women (CEDAW), and the Committee on the Rights of the Child (CRC) – have tackled the intersection between LSLAs and human rights, and issued recommendations to many States (including Cambodia, Lao PDR, Viet Nam, Ethiopia, Indonesia, Madagascar, India, Suriname, and Colombia). Several common threads can be extracted from these recommendations:

- The actual or potential human rights implications of the **internal displacement** and **evictions** that occur as a consequence to LSLAs, which often threatens **livelihood opportunities**.
- The way in which LSLAs may negatively influence the livelihoods of **indigenous** peoples and populations that are **vulnerable to discrimination** and face conditions of marginalization or disadvantage have been identified as a key concern.
- Land policy reforms financed and promoted through **development assistance** have often been found by the treaty bodies to entail negative impacts on the enjoyment of human rights, i.e. when they focus on individual property rights instead of collective or communal land titles.

Individual Communications

A number of human rights treaties are supplemented by Optional Protocols allowing for the consideration of individual complaints, usually referred to as ‘communications’, provided that the respondent State has ratified the Protocol in question.

At the time of writing, *eight* treaty monitoring bodies established within the UN human rights system can receive communications: CEDAW, CERD, CESCR, the Human Rights Committee, the Committee against Torture, the Committee on Migrant Workers, the Committee on Enforced Disappearances, and the Committee on the Rights of Persons with Disabilities.

There are some examples of views issued by the **Human Rights Committee**, the body entrusted with monitoring the International Covenant on Civil and Political Rights (ICCPR), in which indigenous communities sought to protect their way of life, their economic activities and their means of subsistence in the context of land transactions. These cases, although not dealing necessarily with LSLAs as such, provide some useful **lessons on how these mechanisms may be used in the future** to challenge the actual or potential human rights ramifications of land-grabbing.

The recent entry into force of the **Optional Protocol to the International Covenant Economic, Social, and Cultural Rights** opens us possibilities for communications explicitly grounded on economic, social and cultural rights, which constitute a large part of the violations that emerge in connection with LSLAs.

The United Nations Special Procedures

The engagement of the United Nations special procedures *vis-à-vis* human rights and LSLAs is detectable in the work of **Special Rapporteurs** entrusted by the Human Rights Council with both country mandates and thematic mandates.

⇒ *Country Mandate example:*

While several earlier United Nations reports examined problems generated by land concessions in Cambodia, the 2012 report by the Special Rapporteur on the Human Rights Situation in Cambodia, Surya Subedi, provides a detailed assessment. The focus of the report is on land concessions granted to private companies, both foreign and national, for large-scale agriculture, mining, infrastructure development, tourism, and other purposes and their impact on human rights. Among many recommendations, the Special Rapporteur calls on Cambodia to assess the impact of concessions on livelihood and income-generating opportunities of affected families through a set of concrete actions. Relevant government bodies and business enterprises are urged to comply with legal requirements for public consultations. Standards of free, prior and informed consent must be rigorously applied when consulting with all indigenous peoples.

⇒ *Thematic Mandate example:*

In March 2010, the Special Rapporteur on the right to food submitted a report to the Human Rights Council presenting a set of human rights principles applicable to large-scale land acquisitions and leases. The report's objective was to specify '**minimum human rights obligations**' that States, but also investors and financial institutions, must comply with when negotiating and concluding LSLAs. The Special Rapporteur stresses that the principles **are not optional** - they are firmly anchored in international human rights norms. The Principles state that negotiations leading to LSLAs must comply with a number of procedural requirements, including the informed participation of local communities, that LSLAs must lead to adequate benefit-sharing, and that under no circumstances should LSLAs be allowed to 'trump' the human rights obligations of States.

⇒ *Communications to Special Procedures:*

In fulfilling their role of protecting individuals and groups from violations of human rights, Special Procedures may receive **communications on human rights violations** and engage with the relevant governments and other actors. While filing a communication to a Special Rapporteur cannot be equated to submitting a complaint before a treaty body or a national or regional court, it is still an important tool that can be used to hold States accountable at the international level, as well as to **influence governments** to take action.

Relevant Special Procedures which may be engaged in the context of LSLAs for example include, but are not limited to: Special Rapporteurs on the right to food, water, housing, education, water and sanitation, health, the Special Rapporteur on the rights of indigenous peoples and the Special Rapporteur on extreme poverty and human rights, as well as mandate-holders focusing on countries affected by LSLAs.

Regional Human Rights Mechanisms

At the regional level, human rights mechanisms in Africa and the Americas have displayed increasing activism in enforcing safeguards with respect to transactions or projects that affect indigenous peoples' and other communities' **traditional lands and resources**. While the vocabulary of 'land-grabbing' and LSLAs does not surface as such, several cases offer valuable lessons and disclose possible *entry points for litigation* before the regional human rights mechanisms concerning human rights violations in the context of LSLAs. For example, in the African Commission on Human and Peoples' Rights' *Endorois Case* an indigenous community challenged the establishment of a game reserve and a mining concession on traditional lands on **human rights grounds**. The African Commission found that Kenya had violated, amongst other rights, the Endorois' right to **property**, the right to **development** and the right of peoples to freely dispose of their wealth and **natural resources**.

Policy Messages

International and regional human rights mechanisms offer concrete tools and viable avenues to **hold States accountable** for human rights violations associated with LSLAs, especially in contexts where access to remedies at the national level are non-existent, scarce, or ineffective.

The growing engagement of regional and international human rights actors **must be capitalized** so that:

- *Victims* of human rights violations arising out of LSLAs are empowered: they become aware of their rights and of regional and international avenues to seek redress and make use of these avenues.
- *States, as well as companies*, acquire a stronger understanding of their obligations under international human rights law and the ways in which violations can be prevented.
- *NGOs* gain better knowledge of which international and regional mechanisms can be used and in what way, and what are potential entry points for bringing claims with respect to LSLA-related human rights violations.

A more widespread use of these mechanisms will also contribute to a greater **awareness-raising**, which may help pave the way towards **mainstreaming human rights** in socio-economic and food security analyses of large-scale land acquisitions. This will also contribute to a more wide-ranging acknowledgment of a **compulsory** – as opposed to *optional* or *voluntary* – legal reality for States and companies acquiring land and States agreeing to such transactions. It will reinforce the recognition that States have **legal obligations** under international human rights law to respect, protect and fulfil human rights in the context of LSLAs.

This paper was prepared by

Dr. Christophe Golay: christophe.golay@graduateinstitute.ch

With contributions from Dr. Ioana Cismas: ioana.cismas@graduateinstitute.ch

Further reading:

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Report of the Special Rapporteur on the human rights situation in Cambodia, Surya Subedi, UN Doc. A/HRC/21/63/Add.1, 24 September 2012.

Websites

United Nations Office of the High Commissioner for Human Rights, www.ohchr.org

United Nations, information about ratifications of human rights treaties and optional protocols, <http://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en>

United Nations Treaty Bodies, <http://www2.ohchr.org/english/bodies/treaty>

United Nations Special Rapporteur on the right to food, www.srfood.org

United Nations Special Rapporteur on the right to housing, www.righttohousing.org

Former United Nations Special Rapporteur on the right to food, www.righttofood.org

FAO Right to Food, www.fao.org/righttofood

FIAN International, www.fian.org