



# Land Grabbing and Human Rights:

*The Role of EU Actors Abroad*

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The full study is available here:

[http://www.europarl.europa.eu/thinktank/en/document.html?reference=EXPO\\_STU\(2016\)578007](http://www.europarl.europa.eu/thinktank/en/document.html?reference=EXPO_STU(2016)578007)

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## Key Messages

- 1 EU-based actors play a significant role in land grabbing and related human rights abuses outside of Europe, yet the full extent of their involvement is difficult to quantify.
- 2 This brief identifies five key mechanisms in which EU actors are involved in land grabbing, and which can cause human rights abuses or threats. A full understanding of these mechanisms is crucial for tackling the human rights challenges emerging from land grabbing.
- 3 The EU and its Member States' extraterritorial obligations require them to take concrete steps to prevent and remedy human rights abuses and violations in the context of land grabbing.
- 4 The EU has responded to land grabbing-related human rights challenges through a variety of policies and initiatives. However, the EU's response to land grabbing, by acts and omissions, has been insufficient to meet its human rights obligations.
- 5 Business self-regulation and corporate social responsibility schemes have proved to be insufficient for addressing land grabbing-related human rights issues.
- 6 The EU and its Member States can play an important role in preventing land grabbing, and addressing related human rights abuses and violations, by implementing a set of policy regulations.

# Framing Human Rights in the Global Land Rush

The recent convergence of food, fuel, energy, climate, environmental, and financial crises, alongside the rise of newer hubs of economic production, investment, trade and consumption – such as the BRICS (Brazil, Russia, India, China, South Africa) countries – has brought land back to the centre of development policy discussions. The solution promoted by many global (political and economic) powers, is to seize what is considered to be empty, under-used, available lands, and give them an efficient ‘climate smart’ and productive use.<sup>1</sup> This is presented as a win-win solution that both produces profits for corporations, and allows national governments to generate taxes and employment for their citizens. These ‘solutions’ have partly caused and legitimized the on-going contemporary global land rush – or ‘global land grabbing’, as it is often referred to in the media.

## BOX 1

### What is land grabbing?

“Contemporary land grabbing is the capturing of control of relatively vast tracts of land and other natural resources through a variety of mechanisms and forms that involve large-scale capital that often shifts resource use orientation into extractive character, whether for international or domestic purposes, as capital’s response to the convergence of food, energy and financial crises, climate change mitigation imperatives, and demands for resources from newer hubs of global capital.”<sup>2</sup>

The targeted lands are usually already being used by farmers (for shifting cultivation and pastoralism), artisanal fisher peoples, and forest dwellers (who collect non-timber products). The property systems in these communities are often based on customary tenure, and the inhabitants are often indigenous, or come from ethnic minority groups. These are spaces where the state has historically not had a strong presence. Yet, the state plays a key role in land deals by creating a narrative about why these deals are necessary; defining ‘marginal’ and ‘available’ land; reclassifying, rezoning, and quantifying such lands; expropriating land; and through (re)allocation or dispossession processes.

Human rights issues arise when the **process, immediate outcomes, and broader, long-term implications** of land deals deny natural resource-dependent people access to land, water and forests to use for livelihoods or as spaces to live in. It is commonly understood that a land deal is only considered a ‘land grab’ if it expels people from the land. However, this is not the only way states and corporations pursue resource ‘control grabbing’.



Old and new oil palms on Feronia's plantation in the Democratic Republic of Congo.

## BOX 2

# Four contexts for potential human rights abuses and violations

- 1 Land is required but people's labour is not, so people are expelled from the land. The key human rights demand is to restore their rights to land, through policies such as land restitution.
- 2 Land and cheap labour are required, so people are often incorporated into the company that has bought or leased the land. The potential human rights issue stems from how the people are incorporated, the terms and conditions of labour, and the impacts this has on their human rights.
- 3 People still have access to their resources but land deals are seriously threatening their access. The potential human rights issue here is for people to have the right to protect themselves from expulsion from their land, or from having their access to resources (land, water, forest) blocked. The human rights obligation of states is to protect existing, fragile resource and land access, and the inhabitants' rights to benefit from that access.
- 4 People are expelled from their land, and are not able to find employment in rural or urban productive sectors. The potential human rights issue here relates to their people's to (re)gain access to land and resources to feed themselves in an adequate way and make a living. Redistributive land reforms and restitution are common policies applicable in this context.

These four contexts allow us to move from using human rights instruments *defensively* and *reactively* (e.g. seeking reparations for human rights abuses already committed), to using them *proactively* (e.g. pursuing the right to have rights, and making those rights a reality).<sup>3</sup> A human rights focus provides a framework both for analysis and for policy responses to stop, prevent and roll back land grabbing.

# The Impacts of Land Grabbing on Human Rights

The most frequent and immediate impact of land deals is the loss of access to and control over land and land-related resources by local communities. Such loss does not necessarily imply the loss of land rights (especially understood as formalised private property rights), since in many countries land is governed by informal or customary systems that are not recognised or protected by formal legal systems. Consequently, many people lose land without formally being expropriated. Even though displacements and evictions take place (often violently) in many land grabbing cases, loss of land does not *necessarily* occur through illegal practices or using violence. It may occur in more subtle or indirect ways. Even if the land concerned is often considered as being ‘un-used,’ ‘fallow’ or ‘vacant’, it is used by communities for grazing lands, by herders for transit routes, or as forests for food and wood supply. Although some of these activities are sometimes described as ‘secondary uses’ of land, they are essential for the livelihoods of many communities.

Access to, use of, and control over land and related natural resources are necessary conditions for the realisation of human rights for the people living off these resources. This includes the right to food and nutrition, the right to water and sanitation, the right to health, the right to housing, the right to work, the right not to be deprived of one’s means of subsistence, and the right to take part in cultural life. The rights of women and Indigenous Peoples are also closely linked to secure, stable and equitable access to land and related resources. Regarding the human right to food, many land deals destroy the possibility of people to produce or collect their own food, and ensure a diversified and nutritious diet for themselves and their families.

Land grabbing also has severe impacts on civil and political rights. The lack of consultation and free, prior and informed consent (FPIC) of local people is a major issue in many land deals. In instances where consultations are

carried out, power asymmetries are rarely addressed. In cases where human rights abuses have occurred, communities face major difficulties in obtaining adequate and just reparation, since there are often no effective (or accessible) accountability and liability mechanisms in place.

*Human rights defenders (HRDs) working on land-related issues are among the most affected by increasing violence and criminalisation.*

For a more detailed discussion on violence against land rights defenders – including the 2016 murder cases of Berta Cáceres and Nelson García in Honduras – see **Chapter 4, pages 45 to 48** of the full study.



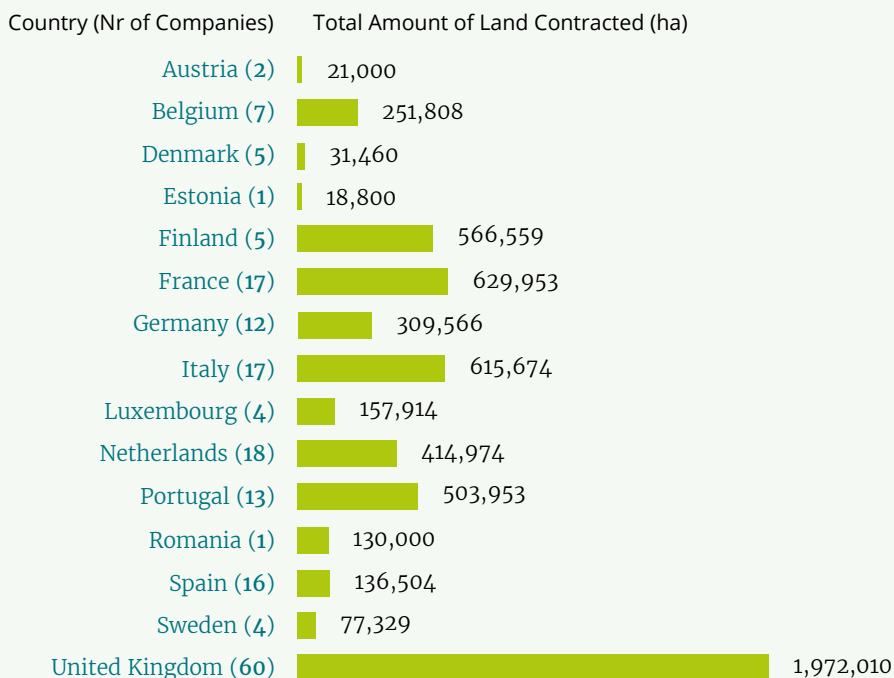
Gathering of a community affected by land grabbing in Mpongwe district, Zambia.

# EU Actors' Involvement in Land Grabbing

The role of the EU and its Member States in the global land grab has received comparatively less attention than the role of investment players like China and the Gulf States. This may be partly because many EU-based investors and companies have multiple foreign branches, making it difficult to trace their roots directly to the EU. However, EU-registered companies are engaging in hundreds of land deals, which together add up to enormous amounts of land in developing countries (see Figures 1 and 2).

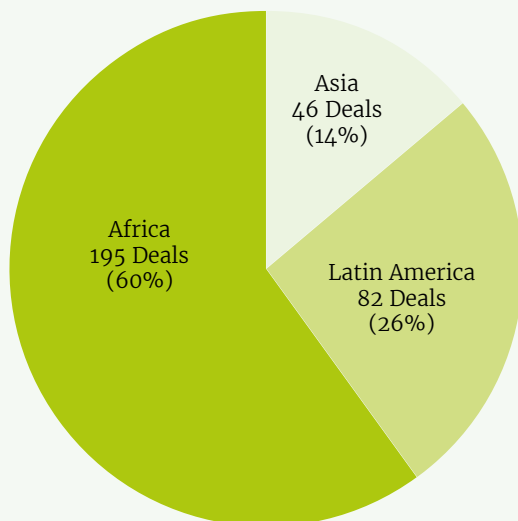
Figure 1

## Amount of Land Directly Controlled by EU Companies outside of Europe



Source: Authors' elaboration using Land Matrix data collected in December 2015

Figure 2  
EU Land Deals by Region



Source: Authors' elaboration using Land Matrix data collected in December 2015

This data was compiled from several available databases and is used to provide a broad overview of where some EU-based companies are registered, and which regions they are targeting. It is, however, conscious of the limitations and flaws of attempts to represent the reality of land grabbing using technical data alone (see Box 2). So for the purposes of the analysis in this paper, available data was supplemented with information gathered through the long-standing work of FIAN International on land grabbing, specifically documenting cases of human rights abuses and violations. The study also uses published academic work and research conducted by NGOs.

For a more detailed discussion of the data on land deals discussed here, see Chapter 3, pages 14 to 16 of the full study.

### BOX 3

## The limitations of databanking

Since the debate about land grabbing emerged in 2009, there have been several initiatives to quantify the phenomenon, using different approaches. While quantification is useful and important, it is generally limited because it is both impossible to capture the complete picture of what is actually happening on the ground, and susceptible to projecting a distorted perspective of reality. The most commonly used database on land grabs is the Land Matrix, which is relevant, but both limited and flawed when looking at the human rights impacts of land grabbing. While the Land Matrix acknowledges that its data “should not be taken as a reliable representation of reality”, in most cases this is precisely what is happening with the data.

A large part of the problem is how ‘land grabbing’ is defined – raising the issue of what should be included and excluded from quantitative data. The Land Matrix restricts its data to four criteria, which include land deals that: (1) “Entail a transfer of rights to use, control or ownership of land through sale, lease or concession; (2) have been initiated since the year 2000; (3) cover an area of 200 hectares or more; and/or (4) imply the potential conversion of land from smallholder production, local community use or important ecosystem service provision to commercial use”.<sup>4</sup> These four criteria focus too narrowly on land deal procedures, and miss many of the important political, structural and economic dimensions of land grabbing, as well as the impacts on affected people.

Another flaw of the Land Matrix methodology is its overly foreign company-centric approach to tracking land deals. Agreements that *appear* not to be linked to foreign actors are excluded from the main data tables and headlines – failing to take into account the complex web of actors involved in many land grabs. The Land Matrix also has a tendency to be

too technical and procedural when addressing land tenure, and excludes contract farming/outgrower schemes – a prevalent form of land grabbing which affects a significant number of communities worldwide. While the Land Matrix tends to measure the extent of land deals by the number of hectares affected, it fails to dig deeper into the political and economic factors of companies and transactions. This is problematic because, even when a land deal is cancelled, the process is likely to have already affected communities. There is also discrepancy between different data sets, in which additional research documents much larger amounts of land than what the Land Matrix reports.<sup>5</sup>



A peasant woman clears an area where a tree plantation will be established in Niassa province, Mozambique.

## Understanding Investment Webs

Importantly, “behind most large-scale agricultural projects is a web of global actors that make the project possible. These actors include banks and companies that are funding the project, and the companies that are buying the produce being grown or processed by it.”<sup>6</sup> Some investors and companies are thus directly or indirectly linked to land deals via financing schemes and shareholder agreements, which often involve complex cascading relationships. This is very relevant for understanding the dynamics of land grabbing and vividly illustrates some of the highlighted issues arising from certain forms of data banking, due to the fact that it can obscure relevant actors – including those based in the EU. The case of the agribusiness company Feronia, which “occupies over 100,000 ha of disputed lands in the Democratic Republic of the Congo”<sup>7</sup>, illustrates such investment webs and the prominent role of European Development Finance Institutions (DFIs) (see Figure 3).

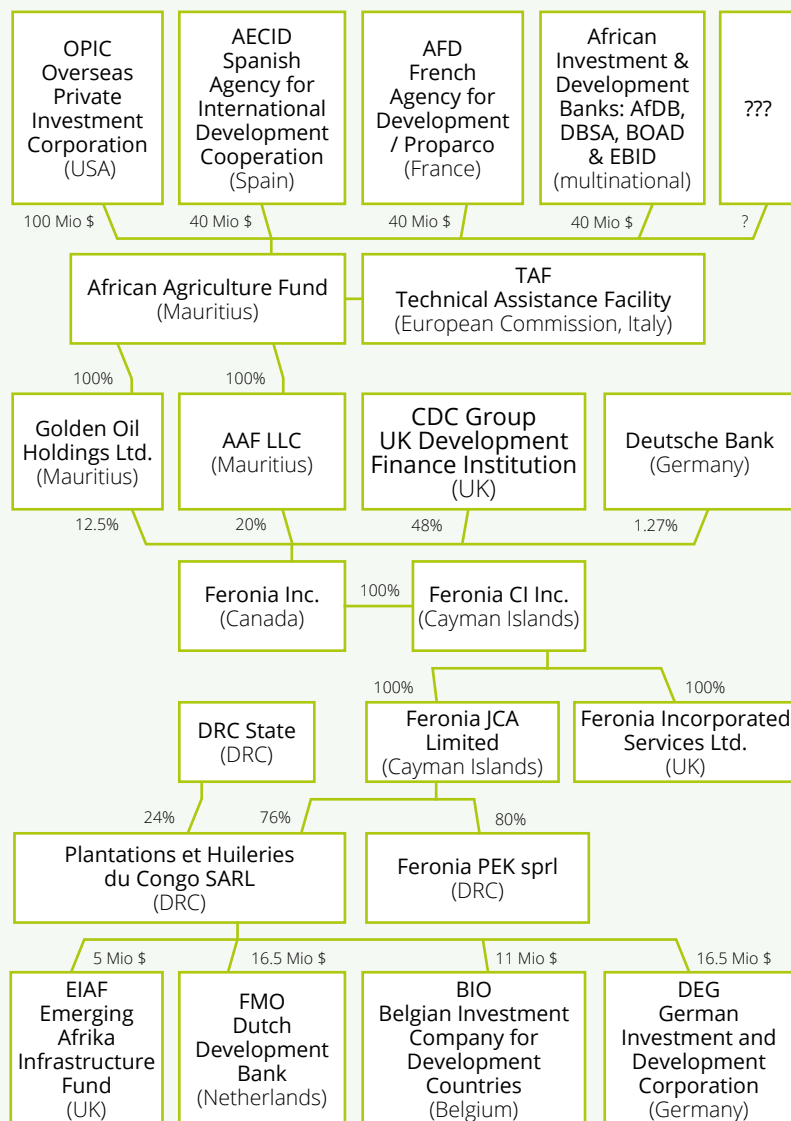
For a more detailed discussion on investment webs, see **Chapter 3, pages 18 to 21** of the full study.



A family stands in front of the remnants of their house which was destroyed during a forced eviction in Mubende district, Uganda.

Figure 3

## Feronia's Investment Web



Source: Authors' elaboration based on available information<sup>8</sup>

# Five Mechanisms Linking the EU to Land Grabs

EU actors may be implicated in land grabbing-related human rights abuses via five main mechanisms. As noted, many land deals involve diverse actors (e.g. EU, non-EU, financial, corporate, private, public), which are linked to each other, and to the EU, in a variety of ways. In order for EU Member States to address land grabbing, it is first essential to understand the mechanisms that connect these actors to such cases. Each of the five mechanisms point to specific measures that states must take in order to comply with their human rights obligations.

## Mechanism 1:

### EU-based private companies

A company that has substantial business activity, or has its headquarters, in the EU is involved in a land grab at different points in the investment chain/web.<sup>9</sup> It can be a bank or company involved in financing a land deal; a company involved in the operation of the project; or the main buyer of the goods produced. In some cases, a locally registered company manages operations on the ground, but business operations are coordinated from the company's European headquarters. The land may be acquired through purchase, lease or concession, from communities, private landowners, or the host country's government. In the context of large-scale land deals, a host state authority or agency is usually involved in some way – either directly as party to a deal or indirectly by providing incentives or establishing investment promotion schemes, for example. Depending on the case, the EU-based company may also receive support from its home country, via intervention by the local embassy, or through development cooperation projects.

#### BOX 4

### The case of the Germany-based coffee company Neumann Kaffee Gruppe

In 2001, the inhabitants of four villages in Mubende District, Uganda, (approximately 4,000 people) – were violently evicted from the 2,524 hectares of land they had been living on for years. Supported by the local authorities, the Ugandan army evicted the community after a German company, Neumann Kaffee Gruppe (NKG), and the Ugandan Government negotiated the lease of the land to Kaweri Coffee Plantation Ltd. (a branch of NKG) to establish a coffee plantation. The agreement included a clause that the land had to be uninhabited at time of handover and former inhabitants were to be compensated – but they did never receive compensation.

In 2002, 2,041 of the evictees sued the Ugandan government and Kaweri Coffee Plantation Ltd. for damages. The trial was delayed, so in 2009 the victims together with FIAN initiated a formal complaint against NKG at the German National Contact Point (NCP) for the OECD Guidelines for Multinational Enterprises – which concluded in 2011 (after only one meeting with all parties involved) that NKG had acted in good faith in leasing the property. However, in 2013, the High Court in Kampala backed the rights of the evictees, criticized NKG for its disregard of human rights and demanded that 11 million EUR be paid in compensation for damages. Later that year, Kaweri Coffee Plantation Ltd. appealed against the judgment, which was eventually set aside by the Court of Appeal and the case referred back to the High Court. Since then, court proceedings have been delayed and the villagers have still not given back their lands nor received compensation.<sup>10</sup>

For more details on this case, see page 17 of the full study.

## Mechanism 2:

### EU-based finance capital companies

Finance companies (such as banks, brokerage companies, insurance companies, financial services, pension funds, hedge funds, investment firms and venture capital funds) are a specific type of corporation that are becoming increasingly involved in land deals. Since the financial crisis and food price spike in 2007-2008, the overall price of land has made it a highly profitable target for financial investors. The “financialisation” of land, agriculture and the food system has been a key element of the global land rush.<sup>11</sup> Financial actors are not always visible in a land deal, since they may finance land grabs indirectly – such as when banks provide credit to companies involved in these deals, or when hedge funds and private equity firms buy shares in foreign companies controlling land.<sup>12</sup> Pension funds, made up of public and/or private funds (and are therefore regulated by public or private sector law, depending on the structure), play a particularly big role in land investments. For instance, the 2014 private pension assets of 34 OECD countries equaled 38 trillion USD.<sup>13</sup>

#### BOX 5

### The case of the Dutch private pension fund ABP

In 2005, the Mozambican company Chikweti Forests of Niassa acquired around 45,000 hectares of land to establish pine and eucalyptus plantations in Niassa province. The company was, at the time, a subsidiary of Global Solidarity Forest Fund (GSFF), a Sweden-based investment fund. When the tree plantations were established, shareholders from several countries financially supported GSFF – including the Dutch private Stichting Pensioenfond ABP, which held 54.5 % of the shares. Chikweti's operations have had severe impacts on the human rights of peasant communities in the project area – whose most important source of livelihood is family agriculture. Local people complained that farmland and native

forests previously used for food production and income had been lost to the tree plantations. Although Chikweti had promised to create 3000 jobs only 900 people were employed by 2012. Those who did get jobs, were given short-term, seasonal contracts, and were forced to neglect their own fields during planting and harvesting season. Work in the tree plantations was also very intense, involving long working hours and low pay that provided insufficient compensation for lost livelihoods.<sup>14</sup>

According to the 1997 *Mozambican Land Law*, consultation with local communities is necessary, even if a company has a concession from the national government to use community land. However, in this case the communities complained that they were not consulted. In 2010, the Mozambican Government investigated the communities' complaints, and found that Chikweti was illegally occupying 32,000 hectares of land, without the required land title. However, the governments involved (including the investors' home countries, particularly Sweden and the Netherlands) took no significant actions and affected communities and CSOs have complained that the tree plantations are still negatively affecting the human rights of communities.<sup>15</sup>

For more details on this case, see page 24 of the full study.

### Mechanism 3:

#### Public-Private Partnerships

Public-Private Partnerships (PPP) are partnerships between public sector bodies and one or more private sector companies. PPPs are collaborative agreements that allow public and private actors to share resources and risks – with the declared aim of producing/delivering products and services more efficiently.<sup>16</sup> In the context of land deals, PPPs often involve development cooperation agencies or public funds that financially support private investment funds or companies. In some cases, the public sector

facilitates land acquisitions by private corporations through specific policy interventions. Proponents present PPPs as “win-win situations”, arguing that they allow public sector actors to access the resources of the private sector, which can generate more investment and jobs. In reality, however, PPPs often result in confusion between the roles and responsibilities of public and private actors. This has important implications for human rights accountability. Corporations tend to ignore the risks involved in agricultural investment by pushing governments to bend rules and regulations in their favour. Since public goods are also increasingly seen as private/market commodities, this creates a risk that the state will neglect its public responsibilities and human rights obligations.



A Zambian woman shows the land that her community used before it was claimed by Agrivision.

## BOX 6

### The case of Luxembourg-based AATIF

Agrivision Zambia (formerly Chobe Agrivision Company Ltd.) is a commercial farming company in Zambia owned by the Mauritius-based investment firm Africa Agrivision (formerly Chayton Africa). In 2009, the company signed an agreement with the Government of Zambia, which provided the company with tax breaks and export rights. By 2016, Agrivision Zambia had acquired at least seven farms in Zambia – totalling some 18,000 hectares. Land-related conflicts erupted around the Mkushi farm block, sparked by the surge of commercial farming activities. Recent efforts to acquire additional land lead to a denial of access to land for a local community that depends on it to cultivate food as well as threats of eviction and threats to destruction of houses. In Mpongwe, an additional land conflict with a bigger community is still ongoing. By the end of 2015, despite promising 1,639 jobs, Agrivision only employed 208 workers (12 employees at management level, 126 fixed-term and 70 casual workers),<sup>17</sup> and since the company took over existing farms, most of these jobs already existed.

In 2011, the African Agricultural Trade and Investment Fund (AATIF) invested 10 Million USD in Agrivision Zambia through Africa Agrivision. The AATIF is a public-private financing tool based in Luxembourg, which was set up by the German Ministry for Economic Cooperation and Development (BMZ), The German Development Bank (KfW), and Deutsche Bank AG. The fund currently includes 141 million USD, which Deutsche Bank manages.<sup>18</sup> Other EU-based investors involved are the Austrian Development Bank (OeEB) and the European Commission.<sup>19</sup>

For more details on this case, see page 26 of the full study.

## Mechanism 4:

### EU-based Development Finance Institutions

Development Finance Institutions (DFIs) are mainly involved in land grabbing as financiers of land deals and investment projects. DFIs are specialised development banks, often controlled by national governments, which partially implement States' development cooperation policies. However, information on DFIs' activities is not readily available to governments and the public. DFIs invest their own capital and may get additional funds from national or international development sources and credit. Their involvement in land deals can take different forms: they give loans to companies or private investors; they are involved as project shareholders; or they enter into joint ventures. Although European DFIs usually have internal guidelines, or claim to follow the International Finance Corporation's (IFC) performance standards, a large number of reported land grab-related human rights abuses involve at least one European DFI. In addition, some DFIs invest about half of their total funds in intermediaries, making it extremely difficult to see how this money is used, which raises serious concerns about accountability.<sup>20</sup> While DFIs are financial actors, their position as a link between public and private actors implies that they have important human rights obligations.

## Mechanism 5:

### EU policies and international agreements

EU policies and international agreements have a significant impact on land-related human rights issues abroad. These include trade and investment agreements, agriculture and development policies. The following four policies and international agreements<sup>21</sup> are particularly relevant in this context:

- 1 **Investment:** Contrary to EU Member States' obligations to create an international environment conducive to the universal realisation of human rights, the EU currently promotes an investment agenda that facilitates land grabbing.<sup>22</sup> One central concern is the imbalance between the

## BOX 7

### The case of Germany's DEG in Paraguay

In 2013, DEG, the private sector branch of the German Bank for Development (KfW), announced that it would invest 25 million EUR in the Paraguay Agricultural Corporation (PAYCO).<sup>23</sup> DEG holds 15.8% of PAYCO's shares and Rioforte, an international private equity firm based in Luxembourg, holds the remaining 84.2%. DEG stated that it has negotiated a confidential environmental and social plan with the company that discusses how to assess human rights issues. However, DEG has repeatedly refused to make the plan available to the public. PAYCO manages 135,000 hectares of land in Paraguay, which it uses to produce cereals, soy, and plantation wood.

The context of DEG's joint venture is important: Paraguay has one of the highest concentrations of land ownership in the world. According to the 2008 agriculture census, 2.6% of landowners control 85.5% of Paraguay's agricultural land, while 91.4% of small farmers own just 6%. Additionally, around 20% of the country's land was acquired irregularly by companies and individuals during the dictatorship of Alfredo Stroessner. The UN Committee on Economic, Social and Cultural Rights (CESCR) highlighted Paraguay's land concentration as highly problematic for the realisation of human rights (especially the human right to food).<sup>24</sup> Yet, the Paraguayan government has failed to address the issue – violating its human rights obligations.<sup>25</sup> Conflicts between rural communities and large landowners have been very violent, and PAYCO has contributed to this, since part of the land it controls is claimed by indigenous and peasant communities. Local people have also complained about health problems caused by the unsafe spraying of agro-toxics on these lands. PAYCO is also engaging in activities in the Chaco – an environmentally fragile region, which has the world's highest deforestation rate – and has plans to expand its operations in the area.<sup>26</sup>

For more details on this case, see page 28 of the full study.

protection offered to foreign investors, and the protection offered to communities affected by foreign investments. Investment treaties are very one-sided, since only investors can bring claims against states under Investor-State Dispute Settlement (ISDS) mechanisms.<sup>27</sup> No similar mechanism exists at the international level for individuals or communities to hold foreign investors accountable. A second concern relates to decreasing public policy space and interference with measures intended to protect human rights. There are several cases where investment treaties have been barriers to redistributive land reforms aimed to address past land grabbing-related injustices.<sup>28</sup>

#### BOX 8

### The EU's Everything But Arms policy facilitates land grabs in Cambodia

The EU's Everything But Arms (EBA) policy was adopted in 2001, aiming to promote development in the world's least developed countries (LDCs) by granting free access to the European market. The EU has claimed that the EBA has had a positive impact, but in Cambodia, it has facilitated land grabbing and human rights abuses. Before EBA existed, there were few agro-industrial sugar cane plantations in Cambodia, and now about 100,000 hectares are used for this purpose. Several sugar cane companies operating in Cambodia have stated that EBA has been a primary motivator for them to pursue land deals.<sup>29</sup> Three years after the 2009 liberalisation of the EU sugar market, 100% of Cambodia's sugar was being exported to Europe (compared to 6.5% in 2008) – worth a total of 10 million USD (compared to 28,000 USD in 2008). Importantly, under the EBA, the EU guarantees a minimum sugar price which is higher than the world market price.<sup>30</sup> One of the largest sugar companies operating in Cambodia – the Thai company, Khon Kaen Sugar (KSL) – is, in addition, partly funded by the German Deutsche Bank Group (which has 10.9 million EUR in shares).<sup>31</sup>

After the European Commission rejected calls from civil society to investigate the human rights impact of EBA, NGOs did their own comprehensive assessment – concluding that at least 10,000 people had been negatively affected by the expansion of sugar cane plantations.<sup>32</sup> The documented abuses included forced evictions, loss of land and water, and criminalisation of human rights defenders. The Thai Human Rights Commission investigated the case of the two KSL sugar concessions, and stated that the impairment of human rights (involving 456 families) were the direct responsibility of the company.<sup>33</sup> In one case, demolition workers, the military and armed police, attacked communities without warning, clearing their cropland and destroying two community forests. Throughout 2006, villagers were injured and even shot – with one community activist found murdered after documenting the evictions.

For more details on this case, see page 33 of the full study.

- 2 **Development policies:** The EU's development cooperation policy is part of its external actions, which are subject to a wide range of human rights obligations. The stated primary objective of this policy is to reduce, and eventually eradicate, poverty. In recent years, the EU has shifted towards a private sector-led approach to development, arguing that this is necessary to strengthen development assistance. However, these “partnerships” with the corporate sector carry major risks, and tend to shift the focus toward interventions that are profitable to the corporations involved, instead of strengthening the rights of the supposed beneficiaries. The EU's focus on private sector development cooperation has been criticized – for example, in the context of the New Alliance for Food Security and Nutrition in Africa.<sup>34</sup>

- 3 **Bioenergy policies and the Renewable Energy Directive (RED):** The RED aims to reduce greenhouse gas emissions by offering incentives to increase the use of renewable energies. Agrofuel production, for example, is one of the main drivers of land grabbing, due to the increasing value of oilseed crops. European companies and investors have played a big role in agrofuel-related land deals.<sup>35</sup> Civil society organisations have repeatedly pointed to the link between the EU's bioenergy policy, land grabbing, and documented human rights abuses,<sup>36</sup> urging the EU to drop its biofuels target and to exclude bioenergy from the next EU RED.<sup>37</sup> However, since the 2010 adoption of RED, the EU has not taken any direct action to ensure that their biofuel policy does not cause negative social, environmental and human rights impacts.
- 4 **Trade policies:** The most recent trade and investment strategy specifies that one of the EU's aims is "to ensure that economic growth goes hand in hand with social justice, respect for human rights, high labour and environmental standards, and health and safety protection."<sup>38</sup> However, there are many documented cases of conflict between the EU's trade policy and its human rights obligations – especially in the context of the human right to food.<sup>39</sup> Incentives, created through EU trade policies, to produce crops for the EU market via large-scale land deals are a key concern. There are currently no adequate mechanisms in place to assess and monitor the potential human rights impacts of EU trade agreements, or to adjust them accordingly. While most of these trade agreements include human rights clauses, they usually focus on partner countries' compliance with human rights obligations, and not the EU's.<sup>40</sup>

# The Extraterritorial Obligations (ETOs) of the EU and its Member States

Cases of land grabbing involving EU-based actors directly implicate the human rights obligations of the EU and its Member States, which under international and EU law, both have obligations to respect, protect and fulfil human rights. These obligations are summarized in the *Maastricht Principles on States' Extraterritorial Obligations in the Area of Economic, Social and Cultural Rights* (ETOP).

In 2009, the Lisbon Treaty upgraded the *Charter of Fundamental Rights of the European Union* (EU Charter) to primary law, and introduced specific (domestic and international) human rights obligations into the *Treaty on European Union* (TEU), and the *Treaty on the Functioning of the European Union* (TFEU).<sup>41</sup> The TEU requires the EU to respect, protect (“uphold”) and fulfil (“promote” and “pursue”) human rights in all its foreign relations. It also highlights that both the EU’s external actions and domestic policies (with international implications), must be developed and pursued in accordance with human rights. In addition, the EU and its institutions are bound by the human rights obligations put forward in the EU Charter and must respect the fundamental rights enshrined in the *European Convention on Human Rights* (ECHR).<sup>42</sup> The European Court on Human Rights has determined that the obligation to protect and provide access to remedy under the ECHR applies to both extraterritorial activities and domestic activities with extraterritorial impacts.<sup>43</sup>

The direct human rights obligations of the EU complement and reinforce the obligations of its Member States. All Member States have ratified the international human rights covenants and conventions.<sup>44</sup> In doing so, they have agreed to be bound by the obligations established under these treaties in relation to the rights protected. Importantly, Member States remain bound by their international human rights obligations when acting

within or transferring competences to the EU, and must ensure that the EU acts in compliance with these obligations. The human rights obligations of EU Member States thus apply, by extension, also to the EU.

In the context of land and natural resources, the *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests*, approved by the UN Committee on World Food Security (and all involved Member States) in May 2012, provide an authoritative international interpretation and guidance on how to implement existing binding international human rights obligations.

#### BOX 9

### ETOs related to land grabbing

- 1 **Avoid causing harm in other countries.** The EU must prevent their domestic and international policies and actions from contributing to land grabbing and interfering with people's human rights. This refers both to activities that directly impair the human rights of people abroad, and indirectly interfere, e.g. by decreasing another state's ability to comply with its human rights obligations. Conducting human rights impact assessments (HRIAs) and monitoring the extraterritorial human rights impacts of policies, laws and practices are important steps for avoiding harm.
- 2 **Establish regulations that ensure that transnational corporations do not impair human rights in other countries.** Measures to protect human rights must be adopted and enforced in all states that are in a position to regulate a corporation.<sup>45</sup> Effective regulation of the extraterritorial activities of companies is a crucial issue for addressing land grabbing, and both the EU and its Member States are required to use their influence to protect human rights abroad through diplomacy and cooperation.

3 Hold corporations legally accountable for human rights abuses and crimes, and establish accountability mechanisms so affected communities can access effective remedies (e.g. judicial). In many cases, moral-duty-based and non-judicial grievance mechanisms have proven to be insufficient for addressing human rights abuses, and companies often use them strategically to prevent victims from taking legal action. Therefore, state-based judicial remedies are crucial and the human rights obligations of EU Member States require them to open up their judicial systems, guarantee all victims of corporate human rights abuses have full access to civil, administrative and criminal justice systems, among others.

For a more detailed discussion of the EU and its Member States' ETOs, see Chapter 4, pages 40 to 44 of the full study. Annex 4 (pages 112 to 130) also contains a list of legal sources regarding ETOs.

## The EU's Response to Land Grabbing to Date

Although the EU and its Member States were made aware of the human rights impacts of land grabbing many years ago, and have responded via a variety of policies and initiatives, the response has not yet been sufficient to meet their human rights obligations. The EU and its Member States have, for instance, resisted against fundamentally reviewing the RED, and the European Commission has refused to carry out an official investigation of EBA despite pressure from affected communities and resolutions from the European Parliament.<sup>46</sup>

In 2012, several EU Member States played an important role in adopting the *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests* – as part of the UN Committee on World Food Security (CFS). However, the EU and its Member States have been reluctant to accept that their human rights obligations also apply extraterritorially and that they include the obligation to regulate companies in foreign countries effectively. Instead, the EU has largely been relying on voluntary commitments by companies to carry out investment ‘responsibly’ and has endorsed a series of voluntary self-regulation schemes as part of its Corporate Social Responsibility (CSR) Strategy. However, since non-binding frameworks fail to ensure corporate liability, this approach has been inadequate for effectively protecting human rights and providing legal remedies to victims in cases of land grabbing. There are several examples of companies that have continued to engage in land grabs using CSR schemes and non-judicial grievance mechanisms to whitewash their activities and ignore their responsibility for abuses.<sup>47</sup> This highlights the critical need for the EU and its Member States to take concrete steps to ensure regulation.



This land is ours! In 2013, the Sawhoyamaya indigenous community in Paraguay re-occupied their ancestral lands, which were in the hands of a German land owner.

# Conclusions & Recommendations

The EU and its Member States have an important role to play in preventing land grabbing and actively addressing related human rights abuses. Their extraterritorial human rights obligations require them to respond in an appropriate and effective manner to these issues. Due to the complexity of land grabs, different EU bodies (European Parliament, European Commission, Council and Member States) must all be actively involved in this response and a set of regulatory actions is required. Rather than acting only defensively, the EU's responses should focus on pro-actively contributing to the universal realisation of human rights. The following recommendations are addressed to policymakers at the EU and Member State levels, and are based on their corresponding obligations to respect, protect and fulfil human rights:

## 1 Ensure the EU's human rights agenda more proactively addresses land grabbing:

The EU and its Member States must formally commit to implementing their extraterritorial human rights obligations by incorporating them into human rights policies and guidelines. They should also make better use of the EU Special Representative (EUSR) on Human Rights, who should assess and elaborate reports on human rights abuses in the context of land grabbing and collaborate closer with the UN Special Procedures. Furthermore, land grabbing by EU actors should be part of the mid-term implementation review of the EU Action Plan on Human Rights and Democracy. Operational tools should provide guidance for staff in the EU headquarters, EU Member States' capitals, EU Delegations, Representations and Embassies regarding the protection and promotion of human rights in the context of land grabbing, especially when involving EU actors.

## 2 Work toward human rights compliant policies:

The EU and its Member States are required to elaborate, interpret and apply all policies and international agreements in a manner consistent with their human rights obligations. For instance, this requires them to systematically carry out human rights impact assessments (HRIAs) and regularly assess and revise agreements, laws and policies. Such assessments must be conducted under public participation, and their results be made public and inform measures to prevent, cease, and remedy the harm. The EU and its Member States are further required to provide effective complaint and remedy mechanisms for people whose rights have been violated. The EU and its Member States must also address the problems of policies and initiatives which have facilitated land grabbing, such as the EU's *Everything But Arms* (EBA) trade initiative, the EU Renewable Energy Directive (RED) or the New Alliance for Food Security and Nutrition in Africa. They must further apply the CFS *Guidelines on the Responsible Governance of Tenure of Land Fisheries and Forests* in all development projects that may impact tenure rights.

## 3 Enforce accountability and regulation of EU-based actors:

Adequate and effective regulation of corporate and financial actors is crucial in order to address land grabbing by EU actors and a key element of the EU's and its Member States' extraterritorial human rights obligations. This requires them to proactively track and monitor land deals involving EU actors and report on these activities, including through EU delegations and Member State embassies in the respective countries. EU Member States must develop policies and frameworks for the conduct of corporations (over which they have jurisdiction) to effectively regulate EU corporate and financial actors, clearly defining the duties of these actors and establishing clear provisions on legal accountability for human rights abuses and violations. Regulation at national level should be accompanied by common EU standards for corporate regulation.

EU Member States are also required to ensure victims' access to effective judicial remedies, including by assuming jurisdiction in cases of corporate human rights abuses committed by EU-based actors and removing obstacles for people affected abroad to pursue a case in the business' home state. Effective access by victims to judicial remedies in EU Member States should be complemented by the creation of an EU-wide independent complaint mechanism for individuals and communities whose rights have been negatively affected by EU actors.

The EU and its Member States is required to withdraw any form of support (including financial and diplomatic) to companies involved in human rights abuses and use their influence to prevent such abuses. In cases where the EU and its Member States are directly involved in land grabbing (e.g. land grabs involving development finance institutions, public pension funds and public-private partnerships), they also must comply with their obligation to respect human rights. This requires them to ensure public scrutiny of such land deals by conducting independent human rights impacts assessments (prior to and after an investment has been made), and to withdraw from deals where substantial human rights risks or violations have been identified. The activities of DFIs in particular must be effectively monitored, for instance by establishing parliamentary commissions that have regular access to DFI's business records and monitors their activities. DFIs also must establish accessible complaint mechanisms for victims of human rights abuses.

#### **4 Advance human rights in international/multilateral bodies:**

The EU Member States' human rights obligations also apply when they engage in multilateral bodies. They should contribute toward advancing human rights within the international bodies they engage in and/or transfer competences to a body that can. In order to address land grabbing, the EU Member States (and, where applicable, the EU) should therefore support the on-going process to adopt a legally binding international

human rights instrument for transnational corporations and other companies as well as the process to adopt a United Nations *Declaration on the Rights of Peasants and other People Working in Rural Areas*, which are both currently underway at the UN Human Rights Council. They should also contribute to monitoring the implementation of the *Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests* in the CFS and human rights bodies.

## 5 Increase support and protection for human rights defenders:

In the light of alarming amount of violence against human rights defenders (HRDs) working on land and land-related issues, the EU and its Member States must increase support and protection for them. This includes developing local implementation strategies for the *EU Guidelines on human rights defenders*, which include specific attention to the risks facing defenders of land, water and environmental rights. EU delegations and embassies of EU Member States should issue public statements supporting HRDs, proactively seek contact with them and their communities, speak out on cases of violence and criminalisation of HRDs, and act as observers at their trials. The EU and its Member States must also contribute to and support the diverse mechanisms on HRDs in the frame of the UN Human Rights System. The European Parliament has a specific responsibility in this regard as it monitors the work of the European External Action Service (EEAS), which is responsible for the protection of HRDs.

## 6 Strengthen the monitoring role of the European Parliament:

With the adoption of the Lisbon Treaty, the European Parliament has been given greater power regarding the EU's external policies. This requires the EP to monitor the human rights impacts of EU policies and actions using the European Commission's impact assessments, requesting detailed information from relevant EU institutions (e.g. DG Trade, EEAS), EU Member States and European corporate and financial actors,

and conducting independent assessments. A committee of inquiry in the European Parliament should investigate alleged breaches of the EU's extraterritorial human rights obligations in the context of land grabbing in third countries. The EP should also proactively request legislation proposals from the Commission, and work with the Council of the European Union to create legislation that prevents extraterritorial human rights abuses and provides effective remedy for abuses. EU institutions and Member States must provide the EP with adequate information on human rights impacts related to the involvement of European actors in land grabbing.

## 7 Enhance the role of civil society:

Civil society has played an important role in bringing the issue of land grabbing to the EU's agenda. The participation of civil society organisations (CSOs) in processes to address land grabbing must be more systematic and guided by clear rules of engagement – which also reflect a clear understanding of different types of CSOs. To this effect, the EU should launch an inclusive process to establish a mechanism that facilitates the effective participation of CSOs in developing, implementing and monitoring EU policies and actions in relation to land grabbing. The EU should also organise regular hearings at the European Parliament in order to hear the voices of those affected by land grabbing involving EU policies and actors.

For a more detailed discussion of the recommendations, see **Chapter 6, pages 58 to 66** of the full study

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- 44 In particular the International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Convention on the Rights of the Child (CRC), as well as several ILO Conventions.
- 45 This obligation applies wherever a corporation has its center of activity, is registered or domiciled, or has its main place of business or substantial business activities, in the State concerned.
- 46 On 26 October 2012, the European Parliament passed an urgent resolution calling upon the Commission to "investigate the escalation of human rights abuses in Cambodia as a result of economic land concessions being granted for agro-industrial development linked to the export of agricultural goods to the European Union, and to temporarily suspend EBA preferences on agricultural products from Cambodia in cases where human rights abuses are identified" (see: <http://www.boycottbloodsugar.net/whos-involved/everything-but-arms/>). The European Parliament also passed a resolution on 16 January 2014 on the situation of rights defenders and opposition activists in Cambodia and Laos (2014/2515(RSP) (see: <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2014-0044&format=XML&language=EN>)
- 47 For examples, see pages 55 to 57 of the full study.



Hands on the Land for Food Sovereignty (HotL4FS) is a collective campaign by 16 partners, including peasants and social movements, development and environmental NGO, human rights organisations and research activists aiming to raise awareness on the use and governance of land, water and other natural resources and its effects on the realisation of the right to food and food sovereignty.

[www.handsontheland.net](http://www.handsontheland.net)



FIAN International was founded in 1986 as the first international human rights organisation to advocate for the realisation of the right to adequate food and nutrition. FIAN's vision is a world free from hunger, in which every woman, man and child can fully enjoy their human rights in dignity, particularly the right to adequate food, as laid down in the Universal Declaration of Human Rights and other international human rights instruments. FIAN consists of national sections and individual members in over 50 countries around the world. FIAN is a not-for-profit organisation without any religious or political affiliation and has consultative status to the United Nations.

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