

HAKI ZETU

ESC rights in Practice

Land and Human Rights

Haki Zetu is Swahili for Our Rights

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FIAN International is an international human rights organisation that has advocated for the realisation of the right to food and nutrition for more than 25 years. FIAN consists of national sections and individual members in over 50 countries around the world. FIAN is a not-for-profit organisation without religious or political affiliation and has consultative status with the United Nations. FIAN's mission is to expose violations of people's right to food wherever they occur and to help secure people's access to the resources they need in order to feed themselves, now and in the future.

The Handbook series has been developed and produced by the produced by the **Human Rights Capacity-Building Programme (HURICAP)**, formerly the Special Programme on Africa (SPA), of Amnesty International Netherlands. HURICAP works together with African partners to make human rights more meaningful to people at the community level.

The programme aims to contribute to:

- The growth of human rights activism in Africa, with an emphasis on making human rights work in and for rural communities; and
- Innovation of strategies and methods as a means of increasing their effectiveness and making a meaningful contribution to the promotion, protection, respect and fulfilment of human rights.

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Wim de Regt of Amnesty International Netherlands' Human Rights Capacity-Building Programme (HURICAP) managed the development and production of this book.

The Haki Zetu handbook series is developed by Amnesty International in partnership with others. It is an educational tool and not an Amnesty International policy text. Facts and case examples are directly taken from quoted sources and not corroborated by Amnesty International.

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A West African saying

The land belongs to:

- *those who are dead, to hold them in our memory;*
- *those who are living, to use for our livelihoods;*
- *those that are still to be born, to whom we must leave a legacy.¹*

Access to land is central to realising several human rights. Africa has recently been portrayed as a continent with vast land reserves and plenty of vacant or under-utilised lands.² The reality, however, looks different: a growing population, an economy that is going through transformation processes, large scale land acquisitions by private companies and foreign governments, increasing environmental degradation and other effects of climate change are leading to a situation where less land is available per person, the inequality in land access is increasing and rural landlessness is on the rise. At the same time, the majority of the African population remains largely dependent on farming, livestock keeping, gathering and other land-based livelihoods for their survival. In Africa generally, people continue to be very attached to their lands. Frequently this land is closely connected to the construction of their social and cultural identity and to their religious and spiritual life.³

Despite the large land mass, lack of access to land has generated conflicts. These have arisen over the continued use of inappropriate > land tenure regulations of former colonies, lack of security of tenure, ethnic conflicts, and increasing pressure on land resources coupled with land scarcity.⁴ Conflicts have led to internal displacement and emigration. Climate change and discrimination against women resulting in their unequal access to land are further causes of concern.

Terms indicated by an arrow > are defined in the Glossary.

Human rights, particularly Economic, Social and Cultural (ESC) rights, play a central role in land-related issues. However, there is no such thing as a 'human right to land'. Those who face threats to their land rely on other rights, such as the right to food, the right to water, the right to housing and the right to work.

Over the years, the understanding that access to land is closely linked to human rights is deepening. Important legal developments have taken place at national, regional and international levels. After an inclusive and participatory process, the African Union

(AU) has adopted its 'Framework and Guidelines on Land Policy in Africa'⁵ which aim to strengthen access to and control of land (see Box 1), enhance productivity and improve livelihoods. The UN Committee on World Food Security has also developed Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests⁶ which, among other things, promote the recognition and protection of customary land rights. The African Commission on Human and Peoples' Rights issued in November 2013 a groundbreaking resolution on women's right to land and other productive resources.⁷ Increasingly, national constitutions, laws and policies deal explicitly or specifically with land.

Box 1: Use of the terms 'land rights', 'access' and 'control'

In international human rights law the meaning of the term 'land rights' is unclear, as land is not mentioned in the main human rights conventions and there are no treaties or declarations specifically on the right to land. This booklet nevertheless uses the term 'land rights' to refer to any right to use or control land, whether legally or customarily defined (not necessarily > codified or recorded in written form), described in international guidelines, inferred in human rights instruments, or in national or local legal codes or documents. See also > land rights in the Glossary.

'Access to land' refers to various rights and arrangements which enable a person or a community to use land for housing, growing crops, grazing, gathering forest products and other livelihoods.

'Control over land' refers to various rights and arrangements for making decisions on how the land should be used; and to control the benefits from land use such as the sale of crops. Control over land includes the power to reallocate usage and control rights, such as the right to sell, mortgage and inherit the land.

This booklet aims to respond to the increasing pressure on land in Africa by offering information and tools to address land-related problems from a human rights angle. On the one hand, it is meant to assist civil society activists and organisations to use the human rights framework (especially ESC rights) to tackle land issues. On the other hand, it could assist human rights activists and organisations to work on land issues. In order to protect human rights, activists and organisations could be involved in monitoring the development and implementation of land policies and convincing governments to follow the UN and African Union Guidelines. In conjunction with the Haki Zetu Main Book and other Haki Zetu booklets, this handbook provides information, methods and tools (checklists) to enable the users work towards protecting the rights of those affected by land grabbing, land conflicts and other land-related problems.

This booklet is divided into three sections and four appendices:

- Section 1 introduces the topic by explaining the issues relating to land in Africa, how the issues relate to human rights, and how these are particularly important for different marginalised groups. It focuses on three areas:
 - The causes and effects of the current land situation in Africa;
 - The relation of land and land-related issues with human rights and how human rights can play a role in fostering people's access to and control over land in Africa; and
 - Which specific groups have least access to land and natural resources and why.

- Section 2 provides an overview of steps that need to be taken by CSOs before deciding how to deal with a particular land-related issue. It explains:
 - How to identify governmental obligations relating to ESC rights that apply to land;
 - The role of non-State actors in land issues;
 - How to learn about national legislation and policies relating to land;
 - How to identify violations of ESC rights relating to land; and
 - How to identify and plan strategies for action.

- Section 3 identifies a number of actions that CSOs can take in their efforts to realise ESC rights relating to land. The actions include:
 - Raising awareness and understanding about the relationship between land and human rights;
 - Exercising rights through practical, self-help actions;
 - Monitoring and assessing a particular State's land policies and programmes;
 - Advocating for appropriate land laws and policies and participating in policy development;
 - Seeking to claim rights and redress adverse situations; and
 - Making use of the international arena working on land-related issues.

- At the end of the book there are Acronyms, a Glossary and Endnotes.

- There are four appendices:
 - A list of relevant international and regional human rights laws and standards;
 - Land in national legislation of different African countries;
 - Sources and resources on land and human rights; and
 - A list of African and international CSOs working on land issues in Africa.



Section 1: Understanding land issues and the relationship between land and human rights

This section gives an overview of the current land situations found in various parts of Africa and the major challenges that its people and communities are facing to maintain or regain control over their lands. It also shows how, in many cases, access to land is essential for realising human rights such as the rights to work, housing and food, particularly in rural areas.

1.1 Land issues in Africa

Different forces have shaped the current context of land tenure systems in Africa. These include:

- Different forms of colonialism;
- Different indigenous cultural and social systems;
- Different national legal regimes and policies relating to land tenure, land use and the natural environment; and
- Different economic systems.

In addition, the control and utilisation of land has been shaped by different social structures, including those based on age, class, gender, region, culture, ethnicity, and nationality. These factors have, in many places, resulted in conflicts over land and resources.

The above factors are mentioned in the African Union's Framework and Guidelines on Land Policy, which then provides a 'toolkit' for developing regional land policies and programmes.

It sets out various principles for the development and implementation of land policies and land reform in Africa which could, if implemented, "*strengthen access to and control over land, enhance productivity and secure livelihoods for the majority of the continent's population*".

The AU Framework and Guidelines are available online: www.uneca.org/sites/default/files/uploaded-documents/fg_on_land_policy_eng.pdf

1.1.1 Land tenure systems in Africa

Most African countries have diverse histories of colonial rule. Each coloniser appropriated land in a particular way, established new institutions and laws to manage land and grafted those onto indigenous systems and practices. Since independence from colonial rule,

> land reforms and land policy making have been carried out in all countries with the aim to redress colonial injustices such as discrimination in land access, insecure land tenure and unequal land ownership. These reforms have taken different shapes ranging from > nationalisation of lands, to > land titling to individuals and groups, and land acquisition through market-based compensation, among others. In some cases, land reforms intended to 'modernise' land tenure by eliminating customary forms of land ownership, which were perceived as backward. In recent years, there is an increasing recognition that > customary tenure systems have value and, when they are consistent with human rights, should be protected.

Today, access to land in Africa is governed by:

- 1) Customary systems which are community-based and rooted in tradition, but which also change and adapt to new circumstances in the course of time; and
- 2) Legal regimes inherited from the colonial past and which have been reformed to different degrees since independence.

Both systems co-exist and interact with each other. Depending on the context, they can compete and contradict, or cooperate and build on each other. Each type of system varies among countries (and in the case of customary systems, among communities) and may or may not be in line with human rights standards.

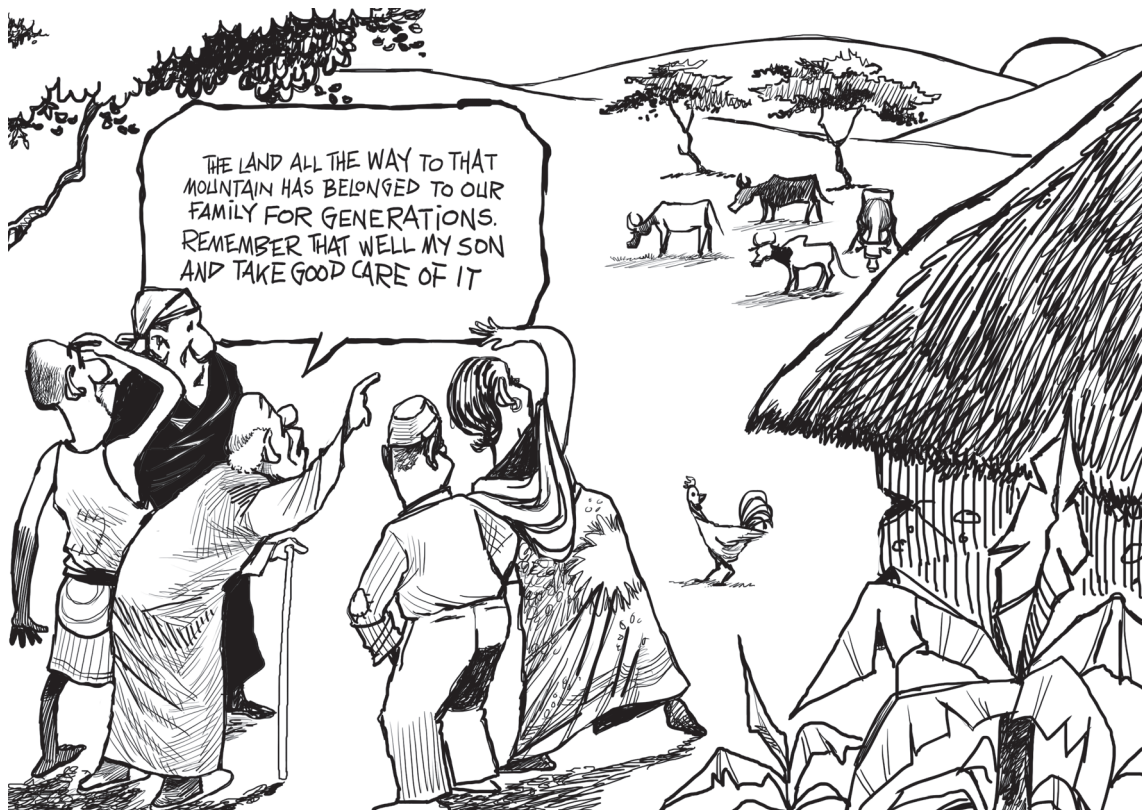


Table 1: Some countries where customary land rights are recognised under State law

Country	Key laws
Angola	Constitution, 1992; Land Law, 2004
Benin	Land Law, 2007
Botswana	Tribal Lands Act, 1968 (amended 1986, 1993)
Burkina Faso	Land Law, 2009
Ghana	Constitution, 1992; Registration of Land Titles Act, 1986
Madagascar	Law No. 019 of 2005; Law No. 031 of 2006; Decree No. 1109 of 2007
Mozambique	Constitution, 1990; Land Law, 1997
South Africa	Constitution, 1996; Interim Protection of Informal Land Rights, 1996; Communal Property Associations Act, 1996; Communal Land Rights Act, 2004
South Sudan	Interim Constitution, 2005; Draft Constitution, 2011; Land Act, 2009; Draft Land Policy, 2011
Tanzania	Land Act, 1999; Village Land Act, 1999; Land Use Planning Act, 2007; Forest Act 2002
Uganda	Constitution, 1995; Land Act, 1998; Land (Amendment) Act, 2010; National Land Policy, 2013

Sources: Selection of countries taken from: Alden Wily, Liz. 2012. *The Status of Customary Land Rights in Africa Today*. Rights to Resources in Crisis: Reviewing the Fate of Customary Tenure in Africa. Brief #4, P. 3-13, Table 1: The legal status of customary land rights today.

African customary tenure systems are currently undergoing change and facing several challenges. In contexts of war, massive displacements and migration, the authority of clan heads and traditional family structures has broken down. At the same time, the increased economic interest in land is also challenging customary systems in several ways:

- First, governments may take advantage of a situation where the State formally owns or controls the land (and underlying natural resources) by allocating both family and communal lands held and used under customary systems to foreign or domestic companies and other > investors. This is particularly worrying since the vast majority of rural lands in Africa, especially unfarmed forests, > rangelands and > marshlands, are under customary control. Such common resources are a major asset of many rural communities and are often the main source of livelihood for the > land-poor and landless.⁸
- Secondly, investors may try to persuade the authorities to establish and strengthen

clear property rights, for example by acquiring formal land titles, which can conflict with and undermine customary systems. As described in more detail in Section 1.1.3 below, land has become an attractive investment option not only for > agribusiness and energy companies interested in agricultural production, but also for international investment or pension funds which see land as a > commodity to include within their investment portfolios. This process is often referred to as > financialisation of land and agriculture. Thus the trend towards comprehensive land titling and considering land and natural resources as mere commodities has increased in recent years leading to further > privatisation, commercialisation and (re-)concentration of land.⁹

Box 2: Land titles

Land titles (or more correctly: ‘title > deeds’) are formal property documents, which are often registered by governmental land registration bodies. Land titles under the > freehold system are proof that the holder has the largest ‘bundle of rights’ of ownership (including the right to enjoy all that is on, beneath or above the land, the right to use and even to waste the land) until he/she decides to sell or give away the land. A > leasehold title is a contractual document giving the holder a fixed number of rights for a definite period, usually 50 or 99 years. These systems and the titles are derived from European (often English) land laws, and such formal written documents are often non-existent in African customary systems. Many African governments and companies promote land titling, to make investments in land more secure and to use land as a guarantee for loans. However, most small-scale land users lose out because they have no access to the bureaucratic structures and facilities to get their rights properly registered. Experience has shown that the more powerful (companies, governments, elite individuals) manage to get more secure titles before anyone else, and women often lose out because in most systems titles (even ‘certificates of customary ownership’¹⁰) are only registered in the name of the household heads which are often men. Therefore, many NGOs do not promote land titling, but other means of securing land tenure for the poor (for example, through more accessible, less formal registration of customary and family land boundaries; see also Box 4).

Sources:

- FAO Multilingual thesaurus on land tenure (available online: <ftp://ftp.fao.org/docrep/fao/005/x2038e/x2038e00.pdf>)
- Report of the Special Rapporteur on the right to food, Olivier de Schutter, on access to land, 2010, paragraphs 14-24. UN Document A/65/28. (available online: www.srfood.org/images/stories/pdf/officialreports/20101021_access-to-land-report_en.pdf)

- Thirdly, customary institutions such as chiefdoms or clan leaders can face severe pressures to transfer land rights from local people to outsiders. It is not uncommon

for those entrusted by customary institutions with authority to manage lands, such as the head of a family, clan or village, to abuse their power and sell or lease customary lands to middlemen and investors without sufficient prior consultation with relevant individuals, including other family, clan or village members. This can provoke either resistance, or more sales by other members of the community. In such cases there is thus a competition at community level between different members that eventually makes the governance and management of the land difficult to understand. Children of community members, for instance, may sell or lease land without their parents' knowledge. This competition, which is motivated by monetary gains, favours the acquisition and appropriation of land on a large scale by outside actors. New actors arriving in the communities also use the inconsistencies, the room for interpretation and the loopholes in the land laws.¹¹

Box 3: The changing face of customary land tenure: an example from Ghana

In some cases, strengthening customary tenure has been interpreted as increasing the control of traditional chiefs over land. Chiefs have been empowered by the State to transform customary tenure systems in order to serve the interests of elites. In Ghana, traditional chiefs have been asked to create reforms that will enable lands to be released to commercial mango farmers, at the expense of the local population. Local youth are seen as providers of labour for agribusiness. As a result they lose the land which formerly provided them with an independent livelihood. These reforms and changes are difficult to challenge, since they are authenticated by customary authorities with power to define and redefine land rights. The customary law (as represented by chiefs) is thus misused to seize land and turn it into a commodity for sale which appears to be carried out with the agreement of members of traditional communities.

Source: Kojo Amanor. 2008. *The changing face of customary land tenure* P. 77-78, in *Contesting Land and Custom in Ghana. State, Chief and the Citizen*. Edited by Janine M. Ubink and Kojo S. Amanor. Leiden University Press.

Despite the above mentioned problems and pressures, customary tenure systems often remain fundamental to guarantee the livelihoods of African rural populations. They are the result of African people's own histories and socio-environmental relationships. These systems provide easier access to land than the State legal systems (in which people have to acquire formal titles, often through a long and bureaucratic process). They could provide more accessible justice (in case of land conflicts) and ensure participatory and equitable governance at local level. However, customary systems still face the challenge to overcome discriminatory practices (for example, against women). Another challenge is to integrate customary systems in State law in a manner that is consistent with human rights and that strengthens tenure security and people's control over land.

1.1.2 Discrimination in women's access to land

On average, African women are responsible for growing 80 percent of > staple foods. Despite their fundamental role in local and national economies, women control only approximately 15 percent of the landholdings.¹² On average, women's land holdings are smaller and of poorer quality than men's.¹³ Moreover, in many cases women's access to and control over land is considered 'secondary', which means that women hold land through male relatives and not in their own right. This makes many women dependent on their male relatives. They risk losing their access to land if they get divorced or are widowed, or when male relatives dispose of land, or change the use of women's lands without their consent. In addition, women have limited access to credit, markets, training and technology, and agrarian reforms. Also, land laws tend to favour men's interests. Despite some progress, gender discrimination in access to and control over land continues to be one of the major human rights problems in Africa. In many countries, national constitutions guarantee equality in land access for women and men, yet these constitutional provisions are often disregarded, and discriminatory land laws and customs remain in force.¹⁴



Box 4: Women's land and inheritance rights in Kenya

"In some parts of Kenya, when a woman is widowed she doesn't just lose a husband, father and source of income. The property, home and assets she shared with her husband are often stripped from her by her in-laws, who will actually evict the grieving woman and her children

> continued

from the home. If her husband died from HIV/AIDS, his wife might be accused of giving him the virus and expected to die soon afterwards. Orphans who lose both their parents to HIV/AIDS can similarly be evicted from their home by their deceased father's family. This is called > property disinheritance, property stripping or > land grabbing.

Property disinheritance is common, but illegal according to Kenyan > statutory law. While Kenya's statutory laws prohibit discrimination against women and uphold gender equality, the country is not governed by statutory laws alone, but also colonial, customary and religious laws. Furthermore, the 'personal' statutory laws that apply to marriage and other family matters, such as inheritance, are often difficult to interpret or apply, and include many legal exceptions. Thus, the few statutes that could advance women's property rights defer instead to religious and customary property laws that privilege men over women."

Source: www.grootskenya.org

While some customary norms and practices prevent women from having equal rights to land and to decision-making related to land, it is important to note that customary systems can also provide varying degrees of recognition and protection of women's rights to land; this usually differs between married women, divorced women with and without children, widows, and single women. Customary institutions can evolve in order to respond to changing socio-economic and environmental conditions. In some countries, advocates of women's increased and sustained access to and control over land constructively engage with customary institutions in order to promote more gender equality.

Box 5: Strengthening women's customary land rights in Uganda

The Land and Equity Movement of Uganda (LEMU) took up the problem of land grabbing, which particularly affected widows, divorced and separated women. LEMU discovered that land grabbing was carried out by powerful members of families and neighbours. It interviewed women and found that 50 percent of widows, between 80 and 90 percent of divorcees and almost 100 percent of separated women had suffered land grabbing. Research carried out by LEMU found that, contrary to what is commonly believed, women's land rights are guaranteed under the customary law of most ethnic groups of Northern Uganda. Abuse of land rights is the issue. LEMU claims that this may be true for many other African customary systems.

"Most violations of women's land rights under customary tenure occur by reference to a constructed myth which distorts customary law. These myths are that "in customary law, women have no rights to land" and "women cannot own land". Rights violators use these

> continued

myths to silence opposition, and the authorities which should act to prevent the abuses are remaining silent, and turning a blind eye, because they feel powerless to act, their roles are unclear and they are confused by the myths. This myth is based on false understanding of what constitutes land ownership in customary law. To say 'this land belongs to X', does not mean that X has all the rights over that land. It means that X is the 'manager' or steward of the land with the duty to protect it, and to ensure all his (or, if a widow, her) family can enjoy their land rights because the married women gain rights through marriage and children have birth rights. This stewardship which is a management role takes place at different levels, so that a family head and even a clan can both be said to be the 'owner' of the same private land. This means the land may have been allocated to a family member or household, and they have permanent rights akin to ownership, but that it falls under the supervision of a particular family head, and under a particular clan's protection, or 'sovereignty' - and the clan elders should intervene if anyone's rights are violated on that land."

LEMU found that it was critical to have clans, as the highest authorities in local culture, articulate and put in writing the original customary laws, involve government authorities to legitimise the process, and then popularise such laws. By the time of writing, four major ethnic groups in Northern Uganda have formulated and published their 'Principles, Practices, Rights and Responsibilities (PPRR) of Customary Land Tenure'. In addition, LEMU started promoting the demarcation of land boundaries by specific traditional trees, and drawing sketch maps with names of all family members, which are then signed by all neighbours, clan and local leaders, in order to prevent conflicts between families and individuals. These documents could be presented as official documents in a court of law. As a result, LEMU has been able to secure land rights for families, and especially for widows, divorced and unmarried women, orphans, children of unmarried and divorced women.

Sources: LEMU's research reports and policy briefs, information leaflets from Lango, Teso and Acholi subregions of Uganda at www.land-in-uganda.org. Also see Adoko and Levine, *Falling Between Two Stools: How Women's Land Rights are Lost between State Law and Customary Law - Lessons from Apac district, Northern Uganda* in Englert and Daley (eds., 2008) *Women's Land Rights & Privatization in Eastern Africa*. Oxford: James Currey.

Women also tend to be at risk of exploitation, oppression and discrimination in conflicts around land and natural resources, and are disproportionately affected by massive land conversions and land grabbing. With the increasing > commodification of land, women's customary access to land is facing enormous pressure. Women often have rights over land through male family members, for example through fathers or brothers or because of their (former) marriage with their husbands (this is sometimes called 'secondary land rights'), and these rights may then be ignored when selling or leasing lands: that way many women lose their lands as well as related livelihoods, knowledge and homes.

1.1.3 Large scale land acquisitions

Conflicts and struggles for access to land and natural resources in Africa are not new phenomena. For a long time, peasants, pastoralist communities and indigenous peoples in a number of countries have seen their land taken over by external actors, especially colonial powers, their governments, national elites or corporations. In this connection, article 21.5 of the African Charter on Human and Peoples' Rights (ACHPR) states: *"All peoples shall freely dispose of their wealth and natural resources. This right shall be exercised in the exclusive interest of the people. In no case shall a people be deprived of it. [...] State Parties to the present Charter shall undertake to eliminate all forms of foreign exploitation, particularly that practised by international monopolies so as to enable their peoples to fully benefit from the advantages derived from their national resources."*

However, more recently, there has been a significant increase in the number of investors who conclude agreements with governments to take ownership or control of large areas of land for purposes such as investment, growing crops and timber for export, or extracting natural resources. This process is most commonly referred to as land grabbing, and is leading to increased > land concentration. Local communities may lose direct access to their source of livelihood, or to water resources and forests which are essential for their livelihoods.

Related to this process there are other domestic forms of land grabbing when, for instance, corrupt officials grab lands to be sold later to urban developers, or when women lose their land use rights because male relatives or clan leaders lease the lands to investors.



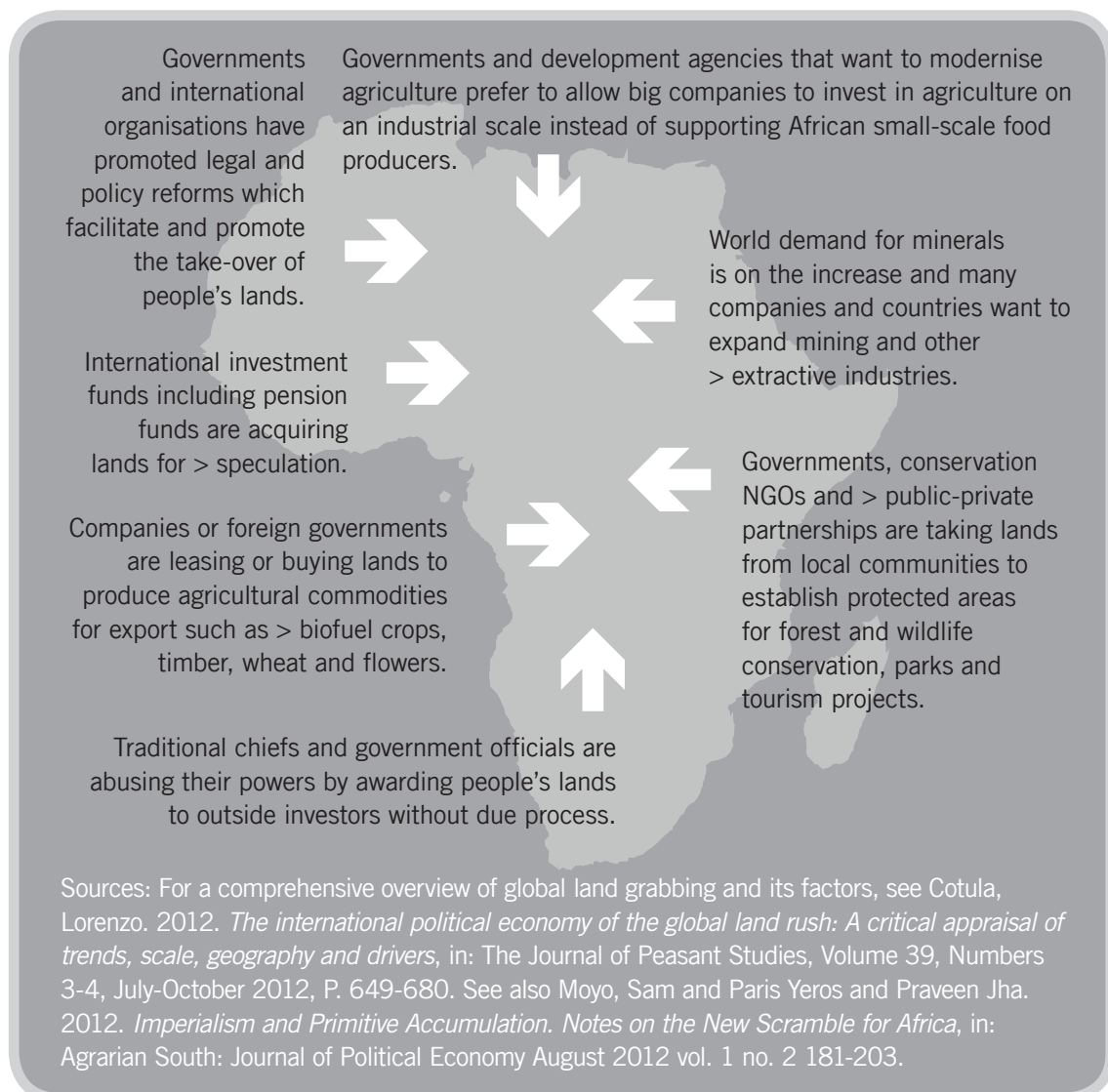
Precise details on the land deals are hard to come by because the agreements are often kept secret. Numbers on the exact magnitude of this new land rush therefore have to be treated with caution. The High Level Panel of Experts for Food Security and Nutrition (HLPE) estimated in 2011 that globally between 50 and 80 million hectares of good

farmland have been transferred to business corporations and other investors in the last few years.¹⁵ Some NGOs even speak about more than 200 million hectares.¹⁶ Africa is one of the main targets of land grabbing: the Global Land Project (which studies the impact of humans on the environment) calculated that 63 million hectares changed hands in just 27 countries of the continent¹⁷, while other calculations speak of 56 million hectares, and thus 4.5 percent of the continent's agricultural land.¹⁸

A significant share of contemporary land grabbing is occurring on lands that are formally owned or controlled by the State and where occupying communities enjoy different degrees of recognition and protection of their customary/ancestral/informal land rights. The new land rush thus reinforces the likelihood of rural communities losing their land.

The High Level Panel of Experts for Food Security and Nutrition (HLPE) was created in 2009 as part of the reform of the UN Committee on World Food Security (CFS). It provides independent advice based on comprehensive research on, and assessments of, the world food situation.¹⁹

Figure 1: The new scramble for land in Africa and its underlying factors



1.1.4 Land degradation and the effects of climate change

It is estimated that approximately 65 percent of agricultural land, 35 percent of permanent pastures and 19 percent of forest and woodland in Sub-Saharan Africa are affected by some form of > land degradation.²⁰ This means that lands lose their ability to retain nutrients in the soil, and to filter and absorb water, resulting in the loss of soil fertility and > vegetation. Land degradation is caused to a great extent by the way land is used and managed, and by chemical contamination and pollution. > Demographic pressure from growing populations can also contribute to land degradation, for example when people cut down trees to provide shelter or fuel. Land degradation and further > desertification is a serious threat to the livelihoods of Africa's population. Moreover, Africa will be one of the regions in the world most affected by climate change. It is estimated that the West African Sahel, rangelands, the Great Lakes, coastal areas and islands of eastern Africa and the drier zones of southern Africa will be hit hardest.²¹ People in these regions are likely to face the impacts of flooding and drought. This may result in people fleeing (so-called 'climate refugees') to other places which are already occupied, thereby increasing the pressure on the available land in Africa.

1.1.5 Land as a source of conflict

The factors mentioned above (historical injustices, unequal redistribution of land after independence, commercial interests and increased competition over land, population pressure and land degradation) are generating increased tension and conflict around land in Africa. Depending on the specific contexts and histories, land conflicts take different shapes. Conflicts can arise:

- Between families;
- Within/inside communities and/or between neighbouring communities over land rights and boundaries;
- Between ancestral residents and immigrants;
- Between traditional authorities and new mechanisms and forms of governance over land;
- Between youth and the older generations about land use and control of its benefits;
- Between men and women over land access, land use and control of its benefits;
- Between farmers and pastoralists; and
- Between ethnic groups.

In the cases of Kenya and Rwanda, among others, the politicisation of ethnicity and the unequal and discriminatory colonial patterns of land distribution among ethnic groups led to a situation of severe unrest and violent conflict. In countries such as Uganda, Burundi and Somalia long-standing conflicts have led to large numbers of internally displaced persons, while in former settler colonies such as Zimbabwe and South Africa historical claims linked to colonial dispossession and unequal patterns of land ownership continue to be a major source of conflict. These examples show that land management and land rights are critical factors in ensuring peace and security in Africa.



1.2 Land and human rights

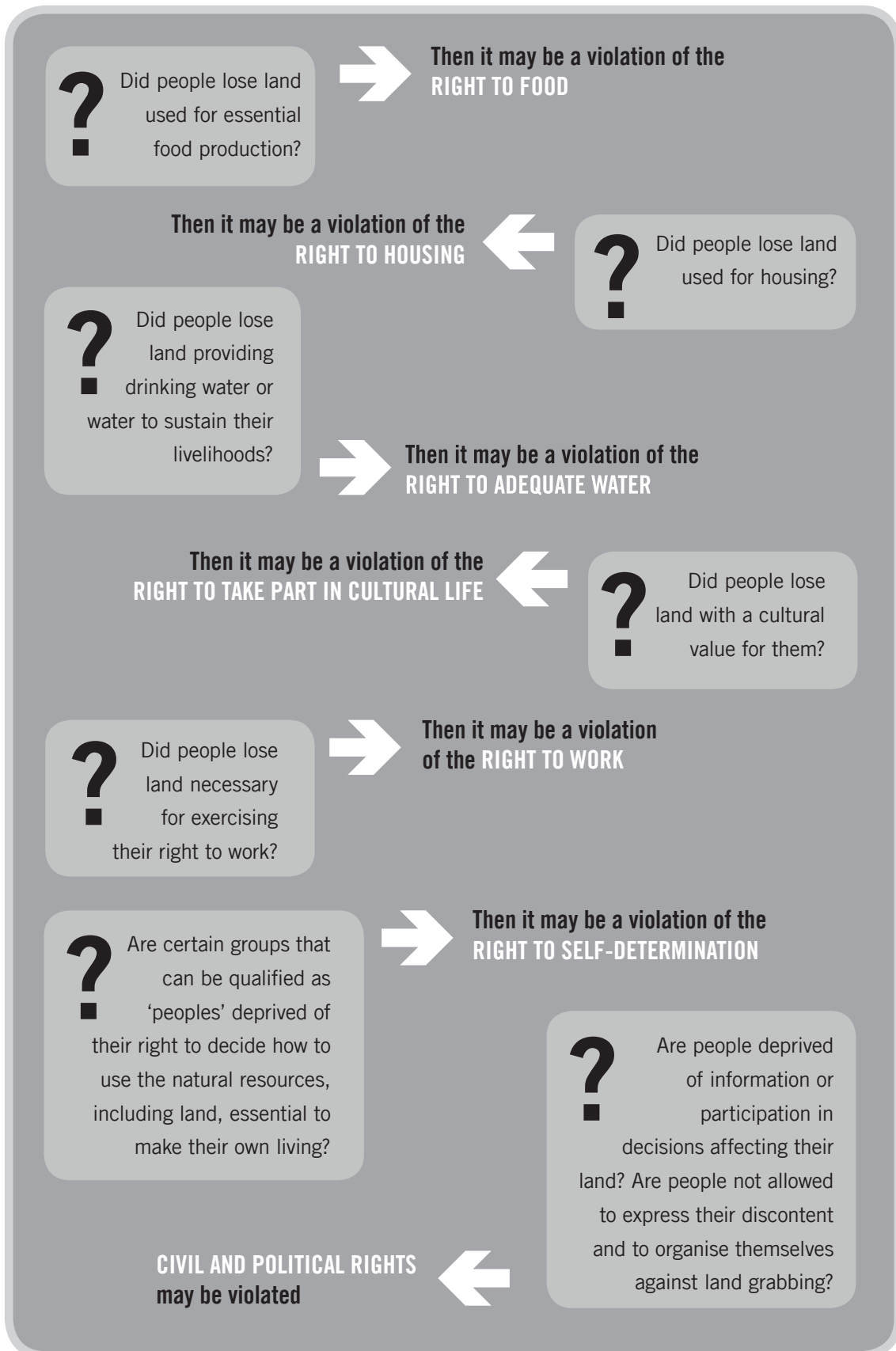
Land is indispensable for the fulfilment of various economic, social and cultural rights, such as the rights to food and housing, the right to an adequate standard of living, the right to culture, the right to work and the right to self-determination.

1.2.1 Land and the right to adequate food

According to General Comment No. 12 of the Committee on Economic, Social and Cultural Rights (CESCR), *“The right to adequate food is realised when every man, woman and child, alone or in community with others, has physical and economic access at all times to adequate food or means for its procurement.”*²² This includes the use of land and other natural resources to obtain food and income, and/or functioning distribution systems that can move food from the site of production to where it is demanded. The ability to individually or communally use land for cultivation, livestock keeping, fishing, hunting and gathering is part of the basic content of the right to adequate food which must be respected, protected and fulfilled by States. For a majority of the population in Africa, access to land and tenure security are essential for the enjoyment of the right to food. Groups or individuals who face particular difficulties in accessing land and security of tenure, such as women, are more likely to also face violations of the right to food.

General Comments are developed by UN human rights committees, and contain explanations of the content or meaning of rights as well as detailed advice to States on how to fulfil their obligations. See Appendix 1 for quotations from international human rights standards on land and the right to food. See also the Haki Zetu Main Book and the booklet on the right to adequate food.

Figure 2: How land is linked to different human rights



Box 6: The work of the Special Rapporteur on the right to food

“One billion people are hungry today. For the vast majority – smallholders or agricultural workers, herders, > artisanal fisherfolk and members of indigenous communities – access to land is a condition for the achievement of a decent standard of living. [...] Access to land is thus closely related to the right to adequate food.”²³

The Special Rapporteur on the right to food explained in detail the connection between access to land and the right to food in one of his reports (see www.srfood.org/images/stories/pdf/officialreports/20101021_access-to-land-report_en.pdf). The report says that States should, as a priority, avoid types of development that could lead to evictions, disruptive changes in land rights and increased land concentration. Furthermore, the report recommends that States and the international community should strengthen customary land tenure systems and tenancy laws in order to improve the protection of land users. It also recommends that they redistribute land and implement agrarian reforms in contexts of highly unequal land ownership and food insecurity.

The Special Rapporteur on the right to food also issued a set of minimum principles and measures to address the human rights challenge posed by land grabbing in order to ensure that negotiations leading to land acquisitions and leases comply with a number of procedural requirements to protect human rights (see www.srfood.org/images/stories/pdf/officialreports/20100305_a-hrc-13-33-add2_land-principles_en.pdf)

To find out about the work of a Special Rapporteur, see the Main Book, Part 1, Section 3.5.3.

1.2.2 Land and the right to adequate housing

The right to adequate housing encompasses the right to live in security, peace and dignity. To realise this right, governments have an obligation to guarantee > security of tenure (which essentially means a set of arrangements in the context of housing and land that will protect the occupant from forced evictions and other threats and harassment. According to General Comment No. 7 of the CESCR, forced evictions are defined as the removal of individuals, families and/or communities from the homes and/or lands they occupy, on either a permanent or temporary basis, without offering appropriate measures of protection, legal or otherwise, or allowing access to these protection measures (paragraph 3). Increasing access to land by landless or impoverished segments of the society constitutes a central policy goal under the right to housing.

See Appendix 1 for quotations from international human rights standards on land and the right to housing. See also the Haki Zetu booklet on the right to adequate housing and the Amnesty International publication: *Know Your Obligations: A Guide to Preventing Forced Evictions* (ACT35/009/2012).

Box 7 : The work of the Special Rapporteur on adequate housing

The Special Rapporteurs on adequate housing have also abundantly elaborated on the relationship between land and the right to housing (see briefing about homelessness and landlessness and their causes, www.un.org/News/briefings/docs/2005/kotharibrf050511.doc.htm).

More recently, the Special Rapporteur raised attention about a global tenure insecurity crisis which manifests itself through forced evictions, displacement resulting from development, natural disasters and conflicts and land grabbing (see http://direitoamoradia.org/wp-content/uploads/2014/01/A-HRC-25-54_en.pdf).

The UN Basic Principles and Guidelines on Development-Based Evictions and Displacements developed by the Special Rapporteur on adequate housing are one of the most useful human rights tools to protect people's land rights in the context of development projects (see www.ohchr.org/Documents/Issues/Housing/Guidelines_en.pdf).

1.2.3 Land and the right to adequate water

The human right to water guarantees everyone sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses. Besides personal and domestic uses, water is also required to produce food, to ensure environmental hygiene (to reduce the impacts of harmful substances that are released to the environment) and for cultural practices. In rural areas, in many cases people's access to water depends on access to land so that they can use the groundwater, rivers and lakes for their livelihoods. Both land and water are elements that constitute the > ecosystems that sustain human life. Paragraph 16 of General Comment No. 15 of the CESCR requires States to protect access to traditional water sources in rural areas for different groups including nomadic communities. Moreover, it calls on the State to ensure that the access of indigenous peoples to water resources on their ancestral lands is protected from encroachment and pollution; and to provide resources for indigenous peoples to design and control their access to water.

See Appendix 1 for quotations from international human rights standards on land and the right to water. See also the Haki Zetu booklet on the right to water and sanitation.

1.2.4 Land and the right to work

The right to work includes *“the right of everyone to the opportunity to gain a living by work which s/he freely chooses or accepts.”*²⁴ Work in the sense of the ICESCR is not limited to wage labour, but includes any activity ‘to gain a living’. For millions of people in Africa this activity is the cultivation of food and other agricultural products, fishing, livestock keeping and gathering. Land and land-based livelihoods are for them essential for realising the right to work.

See Appendix 1 for quotations from international human rights standards on the right to work. See also the Haki Zetu booklet on the right to work and livelihoods.

1.2.5 Land and the right to take part in cultural life

Culture is a broad and changing concept. It includes the different ways people live, the methods of production or technologies they use, and their natural and man-made environments. It also includes what people eat and the way they clothe and shelter themselves. Culture moreover refers to people's arts, religion, customs and traditions. Individuals and communities express through them the meaning of their lives. This is recognised in General Comment No. 21 of the CESCR (paragraph 13) as well as in the Universal Declaration of Human Rights (UDHR), art. 27. According to General Comment No. 21, an element of the right to take part in cultural life is the availability of "*cultural goods and services that are open for everyone to enjoy and benefit from, including [...] nature's gifts, such as seas, lakes, rivers, mountains, forests and nature reserves, including the flora and fauna found there*" (paragraph 16).

For many individuals and communities, especially in Africa, land is the very material basis upon which they develop their culture, and a key element of cultural identity and sense of belonging. The link between families, generations, lineages and communities is ultimately defined through the land resource that they share and control. The right to the lands, territories and resources which indigenous peoples have traditionally owned or occupied is an essential part of the right to culture of indigenous peoples. Land, fishing grounds and forests have cultural and spiritual value for indigenous peoples and many other communities. For indigenous peoples in particular, these resources are crucial to maintain the links with their ancestors and contain sacred sites.

The Convention on Biological Diversity (CBD) acknowledges how important it is for local and indigenous communities to maintain access to their lifestyles and traditional knowledge. Article 8(j) of the CBD obliges States to protect and promote the traditional knowledge of indigenous peoples with a view to conservation and sustainable use of biological diversity.

See more about indigenous peoples in Section 1.3.1.

1.2.6 Land and the right to self-determination

Both the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR) as well as the African Charter (ACHPR) state that 'peoples' have the right of self-determination; that all peoples may freely dispose of their natural wealth and resources and that in no case may a people be deprived of its own means of > subsistence (making a living). The covenants do not say how the term 'people' is defined, however. Indigenous peoples have the right to self-determination (Art. 3 of the United Nations Declaration on the Rights of Indigenous Peoples), and the African Commission on Human and Peoples' Rights, in its > case law, has found that certain ethnic groups qualify as peoples and therefore enjoy the rights the charter confers on peoples (including self-determination).²⁵

Under colonialism, the right to self-determination of all peoples was often interpreted as the right of a people to have its own State, and as a right to > secession. With the achievement of independence of almost all colonies, the interpretation of the right to self-determination has changed. Self-determination thus no longer refers only to the right of a people to have its own State, but also to the internal self-determination within a State in terms of the rights of individuals in community with others. Regarding land, this means that individuals and communities have the right to decide on how to use their natural resources, including land.

See also the Main Book, Part I, Section 4.4.7.

As stated in Section 1.1.3, the ACHPR is very clear in this respect and enshrines in article 21 the duty of the State to protect the natural resources of peoples and to eliminate all forms of foreign economic exploitation in order to enable peoples to fully benefit from the advantages derived from their natural resources. The right to self-determination thus has to be understood as the right of people to pursue freely their economic, social and cultural development without outside interference. This is strongly linked to the right of every citizen to take part in the conduct of public affairs at any level.

Box 8: An emerging human right to land?

As noted in the Introduction, international human rights law does not include a 'right to land' for everyone. Existing international human rights law explicitly recognises the right to land for indigenous and tribal peoples only. The reason for this is rooted in the context of their historical relationship with that land, and their spiritual connection to it. When these peoples are removed from their land, and offered equivalent land as compensation, that is not considered a solution that allows for their continued viability as a community. According to current international law, this is a distinct situation to that of other rural communities. Nevertheless, some civil society groups have argued in favour of a human right to land for all. Many communities nowadays suffer similar threats in relation to their lands as indigenous and tribal peoples have always faced. The debate on whether the right to land should be recognised as a human right has been reinforced in the context of the current wave of land grabbing.

Several UN Special Rapporteurs (the former Special Rapporteur on economic, social and cultural rights, Danilo Türk, the former Special Rapporteur on adequate housing, Miloon Kothari, and the former Special Rapporteur on the right to food Olivier de Schutter) have called for a recognition of a right to land. The Special Rapporteur on the right to food highlighted the following elements of an emergent right to land:

- Access to land by current land users -including tenants- is protected through the right to

> *continued*

property, while depriving land users of access to land would interfere with their enjoyment of the right to food;

- User rights derived from customary tenure should be recognised and protected by the legal system;
- The State's obligation to respect and protect the special relationship of indigenous peoples to the land, territories and resources that they traditionally use should be extended to at least certain traditional communities that entertain a similar special relationship to the lands and territories centered in the community as a whole (a principle that is supported by the Inter-American Court ruling in the Saramaka case); and
- Strengthening access to land may be necessary in the presence of widespread landlessness or poverty among smallholders or other groups who depend on access to such resources, and if land ownership is concentrated. Such access could be strengthened by implementing a strategy for land reform that is appropriate for making progress towards a more equitable access to land. It could then be considered an obligation for States to design and implement such a strategy.

Sources: Reports of the former Special Rapporteur on economic, social and cultural rights, Danilo Türk (UN Document E/CN.4/Sub.2/1990/19), of the former Special Rapporteur on adequate housing, Miloon Kothari, (UN Document A/HRC/4/18) and of the former Special Rapporteur on the right to food, Olivier De Schutter (UN Document A/65/281). An article of Olivier de Schutter is entitled "*The Emerging Human Right to Land*" (International Community Law Review 12 (2010) 303–334).

1.2.7 Land and the right to property

According to the Universal Declaration of Human Rights (UDHR), Article 17, "*everyone has the right to own property alone as well as in association with others, and no one shall be arbitrarily deprived of his/her property.*" The African Charter on Human and Peoples' Rights (ACHPR) states in Article 14: "*The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws.*" These limitations for 'public interest' are often applied for land and natural resources, as in many cases these assets are considered of strategic national value, and they also relate to environmental or social justice interests. It is often difficult to contest 'public interests', and the arguments are applied differently under different national legal systems. When the right to property is limited, the deprived owner has to be fairly compensated. The public interest could contribute to the realisation of economic and social rights, including the right to housing, to food and to social security. For example, under certain conditions a land owner may be deprived of part of his/her land for such 'public purposes' as housing schemes or water supply installations. According to the rulings of the African Commission on Human and Peoples' Rights²⁶, the right to property includes the collective right of indigenous peoples to their ancestral lands. The ACHPR further provides that

in case of > spoliation the dispossessed people shall have the right to the lawful recovery of its property or to an adequate compensation.

1.2.8 Land and civil and political rights

All human rights are interdependent, indivisible and interrelated. While land is essential for the enjoyment of a range of ESC rights, land is also related to civil and political rights. By providing the basis for their livelihoods and cultural identity, in some cases, access to land empowers people to effectively exercise their civil and political right to participate in the administration of public affairs. In turn, the civil and political rights to freedom of expression, to access information, to freedom of assembly and association among others, are absolutely crucial to protect and claim ESC rights related to land. Recognition and support of social and grassroots movements defending and struggling for land and natural resources is of utmost importance. This is all the more so since, according to the Special Rapporteur on the situation of human rights defenders, the second most at risk group of human rights defenders are those working on land, natural resources and environmental issues.²⁷ Global Witness recently reported a significant rise in killings of people protecting land and environmental rights.²⁸

On the right to information and participation: see the Haki Zetu Main Book Part I, Section 6.5, esp. Box 26.

1.2.9 Land, international humanitarian law (IHL) and displacement

In cases of armed conflict, IHL aims to protect the civilian population, including civilians in occupied territories and their means of subsistence from the consequences of war. Article 54 of the First Protocol to the Geneva Conventions related to the protection of victims of international armed conflicts provides: *“It is thus forbidden to attack, destroy, remove or render useless objects indispensable to the survival of the civilian population, such as agricultural areas for the production of foodstuffs, drinking water installations and supplies and irrigation works.”* IHL also requires the protection of the natural environment in warfare against widespread, long-term and severe damage.

The right to restitution and compensation goes beyond armed conflict and applies to any displacement including forced evictions. See also paragraphs 18-23 of the Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law. See Appendix 1. Also see the Main Book, Part I, Section 4.7.

Besides this, the UN Principles on Housing and Property Restitution (sometimes referred to as the Pinheiro Principles) protect the land rights of refugees and displaced persons.²⁹ They state in Principle 2 that all refugees and displaced persons who have been arbitrarily deprived of their housing, land and/or property in the course of an armed conflict have the right to > restitution and return. If restoration and/or return is not possible, refugees and displaced persons have the right to be compensated. According to internationally accepted principles, States should prioritise the right to restitution and to return as the preferred remedy for displacement. This means that compensation should only be used when restitution and return is not practically possible.

1.2.10 Land and business

> Transnational corporations and other business enterprises are increasingly having a

major impact on the way land resources are allocated and used in Africa. Their activities can severely impair the enjoyment of ESC rights related to land. Thus it is important to recall that States have a duty to protect against human rights abuses by third parties such as companies and that companies have an independent responsibility to respect all internationally recognised human rights, as clarified by international laws and standards and a series of bodies and documents. Particularly relevant are:

1. The Guiding Principles on Business and Human Rights, elaborated by the former Special Representative of the UN Secretary-General, John Ruggie (sometimes referred to as the 'Ruggie Principles'), which implement the UN Protect, Respect and Remedy Framework. These Principles and the Framework are briefly described in Section 2.2.
2. Guidance issued by the Organisation for Economic Co-operation and Development (OECD), including the OECD Guidelines for Multinational Enterprises and the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, which reflect the corporate responsibility to respect human rights. These guidelines can be called upon if the company's > home State is an OECD country or adherent (see <http://mneguidelines.oecd.org/ncps/>)
3. The CFS Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, which specifically call on business to respect human rights in the context of tenure of land, fisheries and forests (see Box 10 and Section 2.2 for further details).
4. The Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights (see Section 2.1.4), which emphasise particularly the obligation of States to regulate business enterprises so as to ensure that they do not nullify or impair the enjoyment of ESC rights (see principles 24 and 25).

1.3 Land and specific groups of people

Different persons and segments of the population have specific needs and ways to relate to land in order to realise their ESC rights. For pastoralists, mobility is an essential feature of their relationship to land. For fisherfolk it is the interface between water and land which is key for their livelihood. The categories sometimes overlap, for example some groups of hunter-gatherers and pastoralists are also indigenous peoples. Landless tenants may also be peasants. Some groups engage in multiple forms of livelihoods, for example when peasants farm, fish and keep livestock. Moreover, for historical, cultural, socio-economic and political reasons, there are groups suffering from multiple forms of discrimination in accessing land. In this Section only some major categories are described. The issue of women's access to land in general was described earlier, although women from particular groups may face difficulties accessing land because of both their gender and their membership of that group, for example indigenous women. Another large crosscutting group is youth, who sometimes face problems in accessing land because of customary inheritance norms and because less land is available to ensure proper livelihoods.

Appendix 1 contains quotations from international human rights standards protecting the rights of all specific groups mentioned below.

1.3.1 Indigenous Peoples

In Africa, various groups of pastoralists, hunter-gatherers and some groups of small-scale farmers identify themselves as indigenous. The ACHPR, through its Working Group on Indigenous Populations/Communities in Africa, understands indigenous peoples to generally possess the following characteristics: having cultures and ways of life that differ considerably from the dominant society, their cultures are under threat, and the survival of their particular way of life depends on access and rights to their traditional lands and the natural resources thereon. They suffer from discrimination, they often live in inaccessible regions, and suffer from various forms of marginalisation. Indigenous peoples are *“groups who have been left on the margins of development, who are perceived negatively by dominant mainstream development paradigms [models] and whose cultures and lives are subject to discrimination and contempt.”*³⁰ The effective enjoyment of indigenous peoples’ collective rights to land, territory and natural resources is a matter of fundamental importance for these groups.

According to the UN Declaration on the Rights of Indigenous Peoples³¹, indigenous peoples have a right *“to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired”*. ILO Convention 169 states that *“The rights of ownership and possession of the [indigenous and tribal] peoples concerned over the lands which they traditionally occupy shall be recognised”*. See also the Main Book, Part I, Section 4.4.7.

It is important to understand the principle of self-identification. This means that a group can identify itself as ‘indigenous’, but its claim needs to be substantiated. The Committee on the Elimination of Racial Discrimination has addressed the issue of how individuals are identified as being members of a particular racial or ethnic group or groups, and has stated that *“such identification shall, if no justification exists to the contrary, be based upon self-identification by the individual concerned”*.³² For indigenous peoples, this process of self-identification is collective rather than individual. Importantly, it is not for the State to decide in an arbitrary way who belongs to a minority or indigenous group.

Box 9: Free, prior and informed consent

The UN Declaration on the Rights of Indigenous Peoples states that *“States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.”* Free, prior and informed consent (FPIC) has been identified by indigenous activists as a crucial principle to be respected in their relationship with governments and companies that are interested to operate on their lands.³³ The three elements of this principle are:

- Free – the decision to give consent (or not) must be made without coercion, threats,
> *continued*

blackmail or other physical or verbal use of force;

- Prior – indigenous peoples must be allowed sufficient time to consult fully within their communities, according to their traditional decision-making processes, before any measures are taken that affect them and their lands; and
- Informed – all information on the measures proposed, in particular the impact on the human rights, culture, and land rights of the community, and including any alternatives that have been considered, must be provided in a form that they can understand.

The FAO Technical Guide on FPIC states: *“FPIC is most clearly articulated in relation to indigenous peoples’ rights. At present, international law is much less clear about the land and resource rights of other individuals or groups who may not recognize themselves as ‘tribal’ or ‘indigenous’ but who nevertheless gain access to lands and resources through customary law, traditional inheritance or other informal processes. The Guidelines require active, free, effective, meaningful and informed consultation and participation with all those affected, including indigenous peoples and other communities with customary tenure.”* FPIC has increasingly gained authority as a model to be applied for any measures or development projects affecting land held by any community. International organisations like the World Bank and corporations interpret the concept of consent as mere ‘consultation’ without any rights of communities to withhold consent, which the FAO and legal experts recognise as key.³⁴

Source: FAO Technical Guide No. 3 *“Respecting free, prior and informed consent”*. Available online: www.fao.org/3/a-i3496e.pdf

Box 10: Indigenous peoples of Africa

“The Pygmies of the Great Lakes Region, the San of southern Africa, the Hadzabe of Tanzania and the Ogiek, Sengwer and Yakuu of Kenya can all be mentioned as examples of hunter-gatherer communities who identify themselves as indigenous peoples. Similarly, pastoralist communities such as the Pokot of Kenya and Uganda, the Barabaig of Tanzania, the Maasai of Kenya and Tanzania, the Samburu, Turkana, Rendille, Endorois and Borana of Kenya, the Karamojong of Uganda, the Himba of Namibia and the Tuareg, Fulani and Toubou of Mali, Burkina Faso and Niger can all be mentioned as examples of pastoralists who identify as indigenous peoples. Additionally, the Amazigh of North Africa also identify as indigenous peoples.”

Source: ACHPR, 2006. *Indigenous Peoples in Africa: The Forgotten Peoples?* The African Commission’s Work on Indigenous Peoples in Africa. Banjul. P. 11. Available online: www.achpr.org/files/special-mechanisms/indigenous-populations/achpr_wgip_report_summary_version_eng.pdf

Indigenous peoples face a number of challenges which range from forced evictions due to development projects, discrimination, a failure to respect and support indigenous modes of production such as pastoralism and subsistence hunting/gathering, dismissal of their customary systems of governing land and other natural resources, and disregard of their sacred sites and the spiritual relationship with their lands. Indigenous peoples' traditional lands are often in remote areas that have fragile ecosystems. This makes them vulnerable to natural disasters.



However, many national constitutions recognise indigenous peoples' rights. Also, the African Commission's Working Group on Indigenous Populations/Communities in Africa has mechanisms in place to promote and defend the rights of these communities.

1.3.2 Pastoralists

Several African countries are home to a significant population of > pastoralists (shepherds or herders). > Nomadic pastoralism is especially important in arid (dry) and semi-arid zones. Access to land is marked through customary systems. In most cases, pastoralists do not individually own land, but access it via specific mechanisms of cooperation and customary practice. These rules apply not only to land, but also to surface and groundwater. Mobility is central to many pastoralist tenure systems, but these groups also often rest at defined places in different times of the year.

Although pastoralism is one of the most effective and economically viable ways of utilising natural resources in arid and semi-arid lands in Africa,³⁵ pastoral production is often depicted

as economically irrational and environmentally destructive. Therefore, the customary land rights of pastoralist communities are in many cases not recognised in statutory law and pastoralist livelihoods and forms of production are not protected. This means pastoralists can be at risk of being forcibly evicted from or denied access to grazing lands or pastures and to violations of a wide range of other ESC rights. Now there are further threats from land grabbing, as pastoralists' communal lands are being eyed up by investors, speculators and wildlife conservationists as places to transform into new private business opportunities; this is for example the case in the Gambella and Southern regions of Ethiopia.³⁶ In addition, climate change and its impacts affect pastoralists by making it more difficult to find the scant resources that exist in pastoral areas; severe droughts in for example Northern Kenya have made it increasingly difficult for pastoralists to access grazing lands and water sources.

1.3.3 Hunters, gatherers and forest dwellers

> Hunter-gatherers represent around two percent of the total African population. Although they are a diverse group of peoples living in a wide range of conditions, many hunter-gatherers are forest dwellers, for example in Central Africa. Some forest peoples self-identify as indigenous peoples, such as the Batwa. Their livelihoods and cultures remain inextricably tied to the forest areas, which provide their environmental, social, economic and political resource base. Hunter-gatherer and forest communities are often victims of negative stereotyping (describing them as ignorant, primitive and lacking in proper culture), which goes hand in hand with segregation and a denial of their rights, including the rights of access to the land where they hunt and gather. Forest people are also frequently not protected or supported by governments or development agencies unless they are willing to give up their way of life. In Africa, ownership of forests largely remains with the State or State agencies. Forest dwelling communities and hunter-gatherers use forests through collective use, which may not be recognised in statutory law. They therefore need recognition of their customary and collective rights of access and use.

Forests and woodlands have always been seen as valuable resources by States. This has led to evictions of forest peoples from the forest or denial of access to forest resources as States prioritise forests for commercial logging or conservation tourism. In the process, customary rights have been lost on a large scale. In recent years, forest dwelling hunter-gatherers' rights have increasingly been threatened by land grabbing for large-scale commercial production or development. These lands are then converted for agriculture, the building of roads, dams and railways, logging and extractive activities, but also for enclosures for conservation (reserves) or carbon credit mechanisms for combating climate change (for example, industrial tree plantations for > Reduction of Emissions from Degradation and Deforestation (REDD)). Various studies have shown that forests managed by communities are better conserved, and that legal forest rights for communities and government protection of their rights tend to lower carbon dioxide emissions and deforestation.³⁷

1.3.4 Fisherfolk

Indigenous and small-scale fishing communities need secure rights to access, use and sustainably manage living resources in the sea, on the sea-shore between the high tide and low tide marks ('inter-tidal zones') and in inland waters. They also need secure rights to coastal lands for several purposes, such as housing, landing their catch, launching their vessels, cleaning and processing their catch, and storing their equipment. Many fishing communities also engage in small-scale farming activities to feed themselves and supplement their diets. Many indigenous and local fishing communities have developed customary institutions and norms governing the use of natural resources, including land.

The rights of fishing communities to coastal lands and resources are increasingly under threat as coasts and coastal lands come under pressure from tourism and real estate developments, > aquaculture (for example, industrialised shrimp farms), energy and other industrial developments as well as the expansion of protected areas in aquatic (water) habitats. Losing access to coastal lands often means that communities are unable to pursue their fisheries-based livelihoods.

1.3.5 Peasants

Peasants are women and men who cultivate lands using only or mostly family labour. They are also referred to as small-holder farmers. They are called so because their resource base (land, water, finance) is small. In Africa food production is largely carried out by peasants, many of them women. In order to feed themselves and others, peasants depend on secure access to land and water. In Africa, there are many different tenure systems, but most peasants own or take care of the lands they work on through customary systems; in such systems, land usually belongs to families (with family heads considered land managers), with clans maintaining powers of oversight and control.

Peasants' access to and control over land is increasingly under threat. Through land grabbing, many African peasants lose access to lands that are transformed for other uses, such as plantations for biofuels, mining and infrastructure projects. In many cases, peasants get evicted from their lands. In others, they keep their land but become contract farmers. These are farmers who work their own lands but have contracts with agribusiness. The company decides what crops the farmer should grow and may also provide fertiliser or farm machinery. The negative aspects of contract farming could include:

- Lack of security of tenure and risk of forced evictions;
- Reduction of food security – large areas used for a single crop (monoculture) for export take up land and labour. Contract farmers do not have time to grow their own food; and
- Monocultures use chemicals which can cause pollution and make the land less fertile.

See the Haki Zetu booklet on the right to food, Section 1.5, Box 6, and the booklet on the right to adequate housing, about forced evictions.

Through land grabbing, peasants may also lose access to rivers and forests, whose products they need for many purposes, such as wood as construction material, fruits and fish to complement their diets, or medicinal plants. Because of their dependence on small-scale rain-fed agriculture, peasants are most vulnerable to the effects of climate change, such as increased floods and droughts, irregular rainfall and extreme weather events, soil erosion as well as the salinisation (increased salt content) of groundwater and soils.

Box 11: CFS/FAO Guidelines on Responsible Governance of Tenure of Land, Fisheries and Forests

In May 2012, the UN Committee on World Food Security (CFS) adopted the *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security*. This is a set of global guidelines aimed at giving guidance to governments to safeguard the rights of people to own or access land, forests and fisheries. These guidelines, also known as ‘Tenure Guidelines’, outline principles and practices that governments can refer to when making laws and administering land, fisheries and forests to ensure that people’s rights of access to land and other resources are protected. The Guidelines were drafted in an inclusive consultation process, started by the Food and Agricultural Organisation (FAO) in 2009 and then finalised through CFS-led intergovernmental negotiations that included participation of government officials, civil society organisations, private sector representatives, international organisations and academics. The Tenure Guidelines are the first international instrument negotiated by States which put the issue of tenure of land and natural resources in the context of human rights.

See the Tenure Guidelines at www.fao.org/docrep/016/i2801e/i2801e.pdf. For a detailed overview on the contents of the Guidelines, see Appendix 1.

1.3.6 Landless people

Landless people include farmers who do not have their own land, and families whose land holding is insufficient for subsistence farming. Therefore landless farmers work on the land of others, for instance as farm workers. Landless people often belong to the most deprived sectors of the population: they find it difficult to make a living and maintain their families and communities, and are often forced to migrate to cities and other countries. Landlessness can also arise when people lose their land, for instance through forced evictions. In these cases, they need restitution of their lands, > relocation on lands of comparable size and quality, or compensation to make up for the livelihoods they have lost. Landlessness is often found in areas where most of the land is privately owned and monopolised by few persons. This is known as land concentration.

1.3.7 Tenants

Generally speaking, > tenant farmers reside on and cultivate land owned by a > landlord. Usually tenants are small-scale or landless farmers working the land of larger-scale agribusinesses or other farmers. In tenant farming the tenant usually pays a fixed rental fee to the landlord.

The difficulties of tenant farming include a lack of access to advanced tools or adequate storage for the crops. Another form of tenant farming is 'share-cropping'. This is very common, for instance, in the Birim North district of Ghana. The land owner gives the tenant a portion of his/her land to cultivate. At the end of a specified period, the tenant receives a percentage of the profit.³⁸

The rights the tenant has over the land and the form of the payment varies across systems and regions. In many cases, tenants have no legal claim to the land,³⁹ or registration that even recognises them as tenant farmers. This puts them in a weak position vis-à-vis the landlord; they are under constant threat of being evicted if they do not comply with the conditions imposed by the landlord or company.

Sometimes frameworks are in place to enable tenants to purchase land they cultivate through cash and > collateral, but often owners are able to thwart the system to hold on to land.

1.3.8 Refugees and displaced persons

Africa hosts 28 percent of the world's refugees and 67 percent of the world's internally displaced persons.⁴⁰ While many of them, particularly those living in camps, depend on food aid, they need a safe place to stay, and the AU Convention for the Protection and Assistance of Internally Displaced Peoples in Africa obliges States to promote their self-reliance and sustainable livelihoods.

All refugees and displaced persons that were arbitrarily deprived of their housing, land and/or property in the course of an armed conflict have a right to a remedy which includes the right to restitution or, in the event restitution is not possible, compensation of their land (according to the UN Principles on Housing and Property Restitution for Refugees and Displaced Persons and the UN Guiding Principles on Internal Displacement; see further Appendix 1).

1.3.9 Urban slum dwellers

Rural migrants often end up living in urban slums without security of tenure. They usually do not own the land where their houses are built and can be forcibly evicted. Poor neighbourhoods are also threatened by land grabbing and forced evictions when their lands are needed for urban development projects such as industrial zones, buildings

for special events (such as the Olympic Games), shopping malls and housing projects for wealthier residents.

Urban dwellers need access to land in the cities for housing and other purposes. In cases of self-employment and informal economic activities, people need places for their workshops, markets, and community facilities; where possible they should have access to land for small gardens. This section describes the following:

See the Haki Zetu booklet 'The Right to Adequate Housing', Sections 1.3 and 1.4.



Section 2: Preparing to take action

This Section outlines what elements should be considered before taking action to realise ESC rights related to land. Civil society and human rights workers need to study and analyse government obligations and national laws and policies, as well as the responsibilities of non-State actors, and understand their own role and the roles of other stakeholders. Therefore, this Section describes the following:

- How to identify government obligations under ESC rights related to land;
- How to identify and seek remedies for violations of ESC rights related to land;
- How to understand the role of non-State actors;
- Where to find relevant national laws and policies; and
- How to develop strategies for action.

2.1

Identifying government obligations relating to ESC rights which apply to land

Based on the general explanation presented in the Main Book, Part I, Section 4.1, about what governments' human rights obligations are, this section shows how to identify government obligations that apply to land.⁴¹

States have the general obligations of immediate application (based on general human rights principles, the ICESCR and General Comment No. 3):

- Not to destroy or interfere with existing access to land for growing food, for housing or any other human right, or take retrogressive measures (backward steps) which would diminish the possibility to access these rights;
- To apply non-discriminatory policies and programmes related to the exercise of rights related to land;
- To protect and give priority to specific groups at risk of discrimination, such as women, landless and indigenous peoples (General Comment No. 3, par. 12); and
- To take deliberate and concrete legislative and administrative measures to ensure that ESC rights related to land are being realised.

In addition to the general obligations, the following Sections show States' specific obligations.

2.1.1 Obligation to respect

The obligation to respect requires, when applied to land (drawing on general human rights principles and standards from existing ESC rights), that governments:

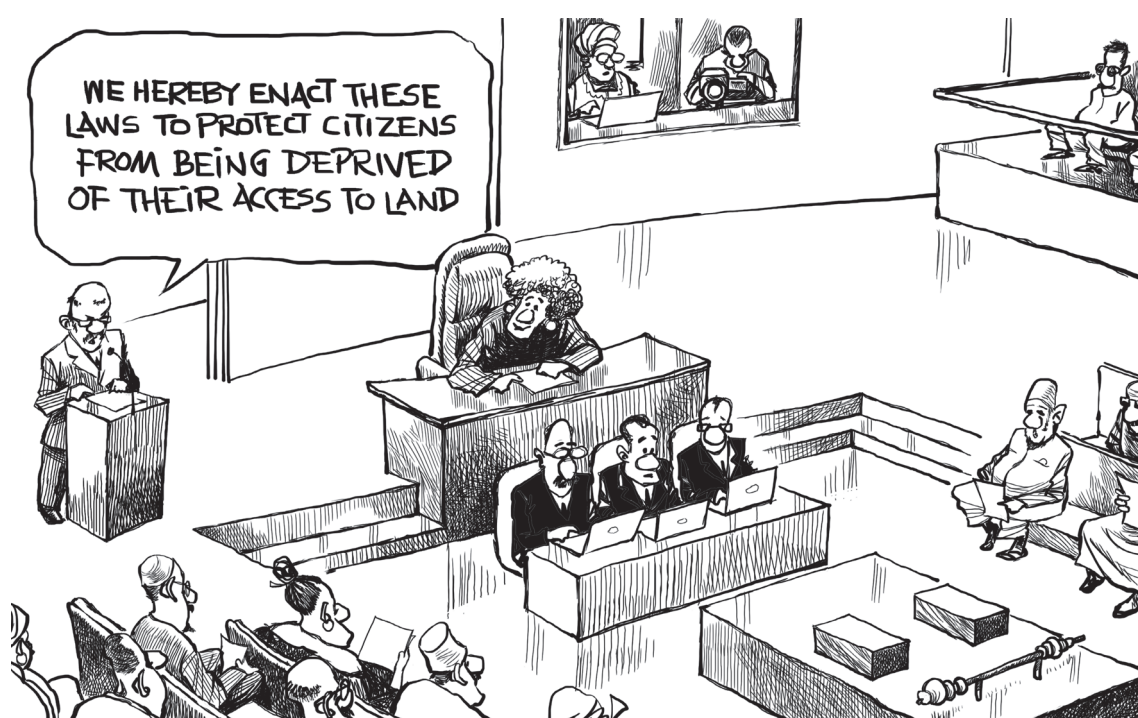
- Do not deprive people of their access to land which is indispensable for the realisation of ESC rights (such as the right to food, water, housing and work) by, for instance, conducting forced evictions;
- Do not prevent people from seeking access to land for their livelihoods;
- Respect people's right to participate in decision-making about land governance and how to dispose of the country's natural wealth and resources;
- Respect the right of indigenous peoples to free, prior and informed consent in relation to any measure which may affect their ancestral lands.

See Housing booklet, Part I, Section 1.3 which explains when evictions may be legal.

2.1.2 Obligation to protect

The obligation to protect requires, when applied to land, that governments:

- Adopt effective measures to ensure that third parties (such as private companies, landlords, traditional chiefs or male relatives) do not deprive people of their access to land for the realisation of ESC rights and that their activities are regulated accordingly;
- Ensure that the rules and mechanisms governing access to land (such as land markets, inheritance and tenancy laws, > matrimonial property law, customary tenure systems) do not operate in discriminatory ways and do not contribute to, or operate in a way that may lead to concentrating land access to the disadvantage of individuals or groups; and
- Ensure that land policies comply with international human rights law and standards and that all actors comply with those policies.



2.1.3 Obligation to fulfil (facilitate and promote)

The obligation to fulfil requires, when applied to land, that governments:

- Adopt effective measures to facilitate access to land for those who depend on land-based livelihoods by, for instance, conducting redistributive reforms (reforms that identify unused or badly used land and distribute it among those most in need) with a view to guaranteeing ESC rights;
- Ensure the restitution of ancestral lands to indigenous peoples and to marginalised groups whose lands have been unlawfully taken from them;
- Prioritise the allocation of public lands to marginalised groups;
- Support sustainable land-based livelihoods of marginalised groups;
- Facilitate people's participation in decision-making about development policies;
- Take steps to ensure that there is appropriate education concerning people's rights to access land; and
- Ensure that people's land rights, including elements of customary law which respect human rights, are fully recognised and protected by national laws.

2.1.4 Extraterritorial obligations

States have obligations to respect, protect and fulfil ESC rights within and beyond their national territory. Extraterritorial obligations require that States must not act or fail to act in a way that might impair the enjoyment of ESC rights of people living outside their territories. This includes the State's obligations to ensure that non-State actors do not abuse or impair the enjoyment of ESC rights in-country or abroad.⁴²

Land grabbing, for instance, often involves foreign companies or investors. The Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights highlight that the > home States of companies also have an obligation to take necessary measures to ensure that companies headquartered, domiciled or registered or having substantial business activities in their country do not abuse the ESC rights of persons both within that State's territory and extra-territorially (outside the State's territory).

Extraterritorial obligations also require the State not to carry out developments in their own country which may affect the rights of people in a neighbouring country, for example by using river water without regard for the rights of people in the neighbouring country who depend on the same river for their livelihoods.



Box 12: The case of the European Union's biofuel policy and its human rights impacts in Africa

The cultivation of maize, palm oil or sugar cane to produce biofuel requires large tracts of land, thereby creating incentives for land grabbing. Biofuel production has therefore been identified as an important driver of land grabbing, particularly in Africa.

The European Union (EU) decided in 2009 that 10 percent of fuel for road transport should consist of biofuels by 2020. This biofuel policy is supported by various other EU instruments, including in the areas of trade, development cooperation and diplomacy. The EU biofuel policy drives the rush for land in Africa in at least three ways:

- *“First, an increasing amount of African land is being acquired by foreign investors to produce agrofuels for export to the EU.*
- *“Second, as a result of the increased demand for biofuels in the EU, some of the land formerly used to grow food or animal feed in EU Member States is being turned over to growing agrofuel feedstocks, and thus more food has to be produced outside of the EU and imported.*
- *“Third, the EU biofuel policy artificially boosts the economic value of land and generates additional interest on the part of speculators. This is the so-called phenomenon of ‘land banking’, whereby investments in land are made not to produce crops, but to speculate with the prospect of a juicy future added value.*

> continued

“Agrofuel projects violate a range of human rights. In particular, the food security and the right to food of African people are affected because of reduced and insecure access to land for small-scale farmers to produce locally consumed food, and because agrofuels stimulate high and volatile food prices at the global level.”

“[It] appears that the EU and EU member States violate human rights first, by not having conducted an adequate assessment of the impact of the EU biofuel policy on human rights; second, by directly harming people’s rights in Africa through this policy; and third, by not regulating, sufficiently, agro-industrial companies based in the EU that can harm human rights in Africa without being brought to justice. Furthermore, victims of human rights violations in Africa should have access to remedies in the EU if the violations were committed with involvement of European actors, but there does not seem to be any efficient avenue for them at the moment.”

Source: Aubry, Sylvain, 2011, *(Bio)Fueling Injustice? Europe’s responsibility to counter climate change without provoking land grabbing and compounding food insecurity in Africa*. The EuropAfrica 2011 Monitoring Report on EU Policy Coherence for Food Security. Rome. Available online: www.europafrika.info/en/publications/biofueling-injustice

2.1.5 Seeking remedies for violations of ESC rights related to land

International human rights standards provide for a right to remedy when human rights including ESC rights are violated.⁴³ There should be a range of options for those seeking remedies for the violation of the right to land and territory of indigenous peoples and tribal groups, and for the violation of land-related ESC rights. Victims of such violations can take their case to local courts/tribunals or national courts with the help of a lawyer. In many African countries there are also customary institutions and mechanisms for land dispute resolution in place. Victims can also file complaints with other authorities such as:

- Human rights commissions;
- Ombudsman offices;
- Commissions working for gender equality;
- Parliamentary inquiry commissions;
- Anti-corruption offices; and
- Citizen’s advice offices.

If all the possible domestic remedies fail to give justice to the victims, they may take their complaints to sub-regional, regional or international systems such as the Court of Justice of the Economic Community of West African States (ECOWAS), the African Commission of Human and Peoples’ Rights or to the UN CESCR if the State in question has accepted the new complaint mechanism.

See the Main Book Part I, Section 3.5; and Part II, Section 10.

Box 13: The case of the Endorois people

The Endorois are an indigenous community of about 60,000 people who have lived for centuries in the Lake Bogoria area in Kenya. This is a region of fertile lands, providing green pasture and medicinal salt deposits, which are important for raising cattle and for the pastoralist livelihood of the Endorois. Moreover, Lake Bogoria is central to the Endorois' religious and traditional practices. In 1978 the community was forcibly evicted from their ancestral lands without proper prior consultations, adequate and effective compensation, after the government decided to create the Lake Bogoria Game Reserve. Additionally, in 2002 the government gave parts of the Endorois ancestral lands to third parties, including a mining company, incurring a high risk of polluting the waters used by the community with chemicals. The Endorois were thus forced to move from fertile lands to semi-arid areas. They have also been divided as a community and displaced from their traditional and ancestral lands jeopardising the community's pastoral livelihood and putting at risk its cultural integrity.

Since the Endorois were unable to have access to a remedy at national level, the Centre for Minority Rights Development (Kenya) and Minority Rights Group (on behalf of Endorois Welfare Council) brought a complaint to the African Commission. In November 2009, the Commission found that Kenya was in violation of several articles of the African Charter including the right to free disposal of wealth and natural resources and the right to economic, social and cultural development. It recommended that the government should:

- Recognise the Endorois' rights of ownership and restitute their ancestral land;
- Ensure that the Endorois community would have unrestricted access to Lake Bogoria and surrounding sites for religious and cultural rites and for grazing their cattle;
- Pay adequate compensation to the community for all the loss suffered; and
- Engage in dialogue with the complainants for the effective implementation of these recommendations.

Source: ACHPR case 276/03 Centre for Minority Rights Development (Kenya) and Minority Rights Group (on behalf of Endorois Welfare Council) / Kenya, verdict reached at ACHPR 46th Ordinary Session, 11-25 November 2009, Gambia.

Available online: www.achpr.org/communications/decisions/276.03/

Unfortunately the implementation of this ruling is still pending. The Endorois continue mobilising support to urge the Kenyan government to immediately restore ownership of their ancestral lands. See www.minorityrights.org/11191/press-releases/two-years-on-from-african-commissions-ruling-kenya-continues-to-drag-its-feet-in-recognising-indigenous-peoples-ownership-of-wildlife-park-mrg-urges-government-to-act.html

2.2 The role of non-State actors

Non-State actors, such as transnational corporations and other business enterprises, play an increasingly significant role in determining access to and control of land in Africa. Their activities can severely impair the enjoyment of ESC rights related to land. Though non-State actors also include NGOs, international organisations, armed groups and private citizens, this Section focuses on the role of the business sector.

As mentioned in Section 1.2.10, the responsibility of businesses to respect human rights has been affirmed in various international standards including the UN Guiding Principles on Business and Human Rights. These Guiding Principles implement the UN ‘Protect, Respect and Remedy Framework’⁴⁴, which articulates:

- The State’s duty under international human rights law to protect people against human rights abuses within their territory and/or jurisdiction by third parties, including business, through appropriate policies, legislation, regulations, and adjudication;
- The responsibility of business to respect human rights, which means that they should avoid infringing on the rights of others and should address adverse human rights impacts with which they are involved. To meet this responsibility, business enterprises should put various policies and processes into place, including human rights > due diligence to identify, prevent, mitigate and account for how they address their impacts on human rights;
- As part of its duty to protect, the State’s obligation to take appropriate steps to ensure that those affected by business-related human rights abuses within their territory and/or jurisdiction have access to effective remedies, both judicial and non-judicial; and
- That business enterprises should establish or participate in effective operational-level grievance mechanisms for individuals and communities who may be adversely affected by their activities.

In addition, the CFS Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests further asserted, in paragraph 3.2, that all non-State actors, including business enterprises, have a responsibility to respect human rights and legitimate tenure rights. In particular, business enterprises should include appropriate risk management systems to prevent and address adverse impacts on human rights and legitimate tenure rights.⁴⁵

The CFS Guidelines also articulate that:

- With respect to transnational corporations, their home States have ‘roles to play’ in assisting these corporations and > host States to ensure that businesses are not involved in abuses of human rights and legitimate tenure rights (in addition, see Section 2.1.4 as to the position in the Maastricht Principles); and
- States should, in accordance with their international obligations, provide access to effective judicial remedies for negative impacts on human rights and legitimate tenure rights by business enterprises.

2.3 Land in national legislation and policies

Before taking any action to protect or claim human rights related to land, it is important to know what the national laws and policies say about them. As mentioned in Section 1.1.1, land is governed by customary systems and statutory laws in Africa. Since the 1990s there has been an intense process of land reform and the development of laws on land and natural resources management, including constitutional provisions. Some constitutions outline tenure systems (such as the Constitution of Uganda), others provide a framework for protecting land rights (such as the 2010 Constitution of Kenya) and establishing principles for land management. However, often land is only linked to the right of property.⁴⁶

Appendix 2 gives some examples of land provisions in the constitutions of various African countries.

Box 14: The Framework and Guidelines on Land Policy in Africa of the African Union, the UN Economic Commission for Africa and the African Development Bank

The Framework and Guidelines were developed in a participatory process which involved representatives from ministries and departments responsible for land, civil society, private sector, research and academia. They provide an overview of the historical, political, economic and social background of the land question in Africa. They state that *“Equitable access to land, secure land rights, gender equity, improved governance in the land sector and reduction of land-related conflicts, are fundamental aspirations of African people as together they pave the way to secure livelihoods and prosperity. Land is also an important resource for the development of other sectors of the economy, in addition to being part of the cultural heritage and social identity of African peoples.”* The Framework and Guidelines are based on best practices in land policies development and implementation across Africa and reflect a consensus on land issues. They aim to provide African countries with a framework to strengthen land rights, enhance productivity and secure livelihood by reviewing and revising their national land legislations.

The Land Policy Initiative (LPI), a joint initiative by the African Union, the UN Economic Commission for Africa and the African Development Bank, is now moving toward the effective implementation of the ‘Declaration of the African Heads of State and Government on Land’, which calls for the effective use of the Framework and Guidelines on land policy in Africa to inform land policy processes at national, regional and continental levels. The strategic plan and road map of the LPI contains several elements, including dialogue with civil society on land related issues and monitoring.

Available online: <http://au.int/en/dp/rea/sites/default/files/Framework%20and%20Guidelines%20on%20Land%20Policy%20in%20Africa.pdf>



It is important to identify which institutions deal with land matters at national or provincial level and what are their > mandates. The arrangements are specific to each country. In countries such as Kenya and Zambia ministries of lands are in charge of > surveying and > cadastres, spatial planning and land administration and adjudication. In others, such as in Mozambique, the ministries of agriculture are in charge of managing agricultural and forest lands; while in other countries, such as the Democratic Republic of the Congo, forests are administered by the ministry of environment and conservation.

2.4 Identifying violations of ESC rights related to land

The following case example explains the process of analysing a situation in order to determine:

- The ESC right or other rights that may be affected by the land issue at stake;
- Whether the government has failed to meet any specific ESC rights obligation related to land and if so;
- Whether this amounts to a human right violation.

Box 15: Case study - Identifying ESC rights violations related to land

The following case is derived from the study *“Lords of the Land: Preliminary Analysis of the Phenomenon of Land Grabbing in Mozambique”*.

> continued

The report states:

- A company is dedicated to the planting of eucalyptus and pine trees for timber in Niassa province in Mozambique;
- The company is controlled by a foreign investment fund and a Mozambican government agency, created in 2005 with the aim of promoting and facilitating private investment for development in the areas of agriculture, wildlife and tourism. The foundation is funded by the Swedish Agency for International Development Cooperation (SIDA);
- The tree planting company's management asserts that the project occupies areas that have been abandoned by the local people (non-productive areas);
- However, members of the community of Cavago in the District of Sanga, allege that the company has over-stepped the limits of its > concessions, invading cultivated fields and community areas and causing conflicts at a community level;
- Community members further complain that the company held no community consultations but simply made contact with leaders and the government in order to acquire permission to occupy land; and
- Some company representatives held a couple of meetings after conflict arose but these were ineffective because the plantations continued to expand.

Exercises:

- On the basis of this information, assess whether or not there have been violations of ESC rights related to land.
- Consider the rights related to land (Section 1.2) and assess whether or not the government may be responsible for, or involved in:
 - Depriving people (directly or through a third party) of access to land which they need for cultivation and housing;
 - Failure to provide protection against forced eviction;
 - Failure to provide protection against destruction of crops, housing, or water sources by the company;
 - Destroying forest-based livelihoods and work;
 - Destroying cemeteries, sacred places and other sites of special cultural or spiritual value;
 - Failure to ensure that the community was fully informed about the project and given an adequate opportunity for consultation with the company;
 - Failure to support the development of existing people's livelihoods; and
 - Failure to facilitate people's participation in decision-making about development policies.

1. Identify the areas that need further research

- Which national laws, including customary laws, apply? Would indigenous rights standards apply?
- Are the existing laws discriminatory against individuals or groups?
- Which regional and international standards apply?

> continued

- Which ministries and government bodies are involved in this case?
- What mechanisms (legal and non-legal) exist for people to complain? Have people been able to complain? What barriers exist to people obtaining access to justice and an effective remedy?
- What has been the response of the government to the community's complaints?
- Are other companies involved in the case? Which ones? Where are they incorporated? Who ultimately owns the company (for example, is it part of a multinational group)? Has the company caused or contributed to any human rights abuses? Do they have monitoring and complaint mechanisms in place to prevent/redress human rights abuses?
- Are there foreign governments involved in the case (for example, through direct intervention, development cooperation, as home States of companies)? Have they breached their extraterritorial obligations?
- Who in the community has complained? (Leaders, women and/or men from the community? Is the community divided in its opinion?) and
- How does the situation affect different sections of, or groups within, the Cavago community? For example, do women, men, the elderly, persons with disabilities, children and other groups experience different human rights violations? Do they have different interests?

2. Explain the violations clearly

- What national laws and policies state precisely which ESC (and other) rights have been broken (or not applied) and how?
- In case no laws have been broken, explain why existing laws are discriminatory and unjust for marginalised groups, inadequate or not compliant with international law and standards;
- Identify and describe the acts and omissions of the government (national and foreign, if relevant) which have violated rights related to land (regional and international standards); state precisely which ESC (and other) rights have been impaired;
- Explain how the government (national and foreign, if relevant) has failed to comply with its obligations regarding each single ESC (and other) right; and
- With respect to the company, consider the specific abuses of rights that the company is causing or contributing to and what action it is failing to take to ensure that it does not do so.

Refer to the name and article of the law, treaty or principles/guidelines containing these obligations and responsibilities; and, as appropriate, to General Comments or to case law.

Source: Justiça Ambiental and the National Farmers Union of Mozambique (UNAC), *Lords of the Land: Preliminary Analysis of the Phenomenon of Land Grabbing in Mozambique*, Maputo, March 2011. Available online: www.open.ac.uk/technology/mozambique/sites/www.open.ac.uk.technology.mozambique/files/pics/d131619.pdf

2.5 Identifying and planning strategies for action

The Planning Box in Appendix 1 of the Haki Zetu Main Book outlines the steps necessary for identifying and planning strategies for action.

An alternative version of working on land-related human rights issues is:

- Stage 1: Identifying the problem(s) and demands of people, setting goals and objectives;
- Stage 2: Gathering information (researching the issue);
- Stage 3: Analysing the information based on human rights standards;
- Stage 4: Setting objectives, indicators and planning actions;
- Stage 5: Claiming and defending the rights; and
- Stage 6: Evaluating the outcomes of the action and the achievements.

Social movements, grassroots organisations and other CSOs defending and claiming human rights related to land can follow these steps when deciding on the types of actions to undertake to realise ESC rights related to land.

During all these steps, it is crucial to ensure vibrant and ongoing participation of the people and communities affected. Be aware that different groups within the affected communities may have different views on the problem and priorities for action. Ensure consultation and effective participation across the community, making sure to include women, elderly people, youth and other sections of the population whose participation might be overlooked. In most of the cases where ESC rights related to land have been violated, experience has proven the importance of organisation and unity among those affected. The authorities and other responsible actors often use disagreement among community members to evade their responsibilities.



Section 3: Actions to realise ESC rights related to land

This section suggests ways to work with communities to realise ESC rights related to land. See also the Main Book, Part II, Sections 3 and further.

Different types of action include:

- Increasing everyone's understanding about the human rights dimensions of land issues;
- Working to exercise land rights through practical, self-help actions;
- Supporting community groups to advocate for appropriate land policies and laws, and participating in policy development;
- Monitoring and assessing national land policies and programmes; and
- Seeking to claim ESC rights related to land through appropriate national institutions or courts.

The actions described in this section refer to many of the topics explained in Sections 1 and 2. Throughout this section there are illustrative examples about how to support self-help, advocacy efforts and actions to defend and claim land. There are also practical checklists on how to monitor the actions of State and non-State actors.

3.1 Raising awareness and understanding about land and human rights

Raising awareness about the fact that people are rights holders is often a crucial action in any human rights strategy. Depending on the relationship to land, the loss of access to or control over land may impact the human rights of affected people differently. Deeper awareness empowers victims of human rights violations to organise and stand up for restoring their dignity. It also encourages people to develop and articulate their own ways to exercise rights. In this sense, conducting a needs assessment followed by appropriate grassroots capacity-building about the rights of the population in relation to land is one of the key actions in the agenda of any organisation working for land rights. This may also include customary rights since these can sometimes provide important protection and may be used in support of an emancipatory agenda by critically but constructively engaging with them.

There are many ways to raise awareness about land and human rights. They include:

- Community talks with elders and customary leaders, government officials. Often, the majority of these will be men. Find out about other influential people, for example leaders of women's groups;
- Workshops at grassroots level about government laws. Be as inclusive as possible, including by researching potential barriers to participation by specific groups and putting in place measures to overcome these. For example, holding workshops at times of day when women are not busy with domestic chores; and
- Radio programmes, formal trainings of community leaders, among others.

Advice on engagement with local and national officials as well as non-State actors is given in the Main Book, Part II, Section 9.3.



In addition to the relevant advice in the Main Book, topics for raising awareness within the community could include:

- ESC rights related to land;
- Information about national laws and regulations on land;
- Planning (urban and rural);
- The right to participate in decisions about land use;
- Land degradation and how to contribute to conservation;
- The rules on compulsory land acquisition;
- The right not to be forcibly evicted;
- The right to effective remedy; and
- The right to non-discrimination.

3.1.1 Raising awareness among government and judicial authorities

Not all government officials working on land issues and management of natural resources and the judiciary are likely to be aware of the link between land and human rights. It is therefore necessary to work towards increasing State authorities' understanding of their human rights obligations concerning land. Land offices consider applications for the use of land, set out zones for different land use, for example residential or commercial land, and ensure that land is managed responsibly. In cases where customary rights are recognised, it may be important to make government officials aware of customary land tenure.

National human rights institutions can be of great help in organising joint seminars with judges, officials from cadastres, ministries of agriculture, mining, environment, revenue, spatial planning, customary authorities and civil society organisations.

Moreover, the promotion of ESC rights related to land is linked to the promotion of the right to information. Social and grassroots movements and other CSOs working on land rights must have access to relevant official documents, including those relating to development and investment projects. On the basis of this information, CSOs can participate in policy development; monitor how the government is carrying out its obligations; and ensure accountability for violations of ESC rights related to land.

3.1.2 Mapping

In the box below, the experience of community mapping is highlighted as a powerful way of awareness raising.

Box 16: Mapping with the 'rainmakers' in Venda, South Africa

The Venda in South Africa is the home to the indigenous vhaVenda, known as the "Rainmakers". Much of the group's ecological knowledge is held by women known as Makhadzi. The Makhadzi are also custodians of sacred natural sites and are responsible for the associated community practices and rituals to keep order in the community and the ecosystem. According to the Gaia Foundation, *"The impact of colonisation and the industrial process has fragmented communities, changed power relations and destroyed the rich biodiversity and forests of the [...] Soutpansberg mountains, in which their territory is located, in northeastern South Africa. Industrial plantations, mining and tourism are some of the major forces of destruction in the area."*

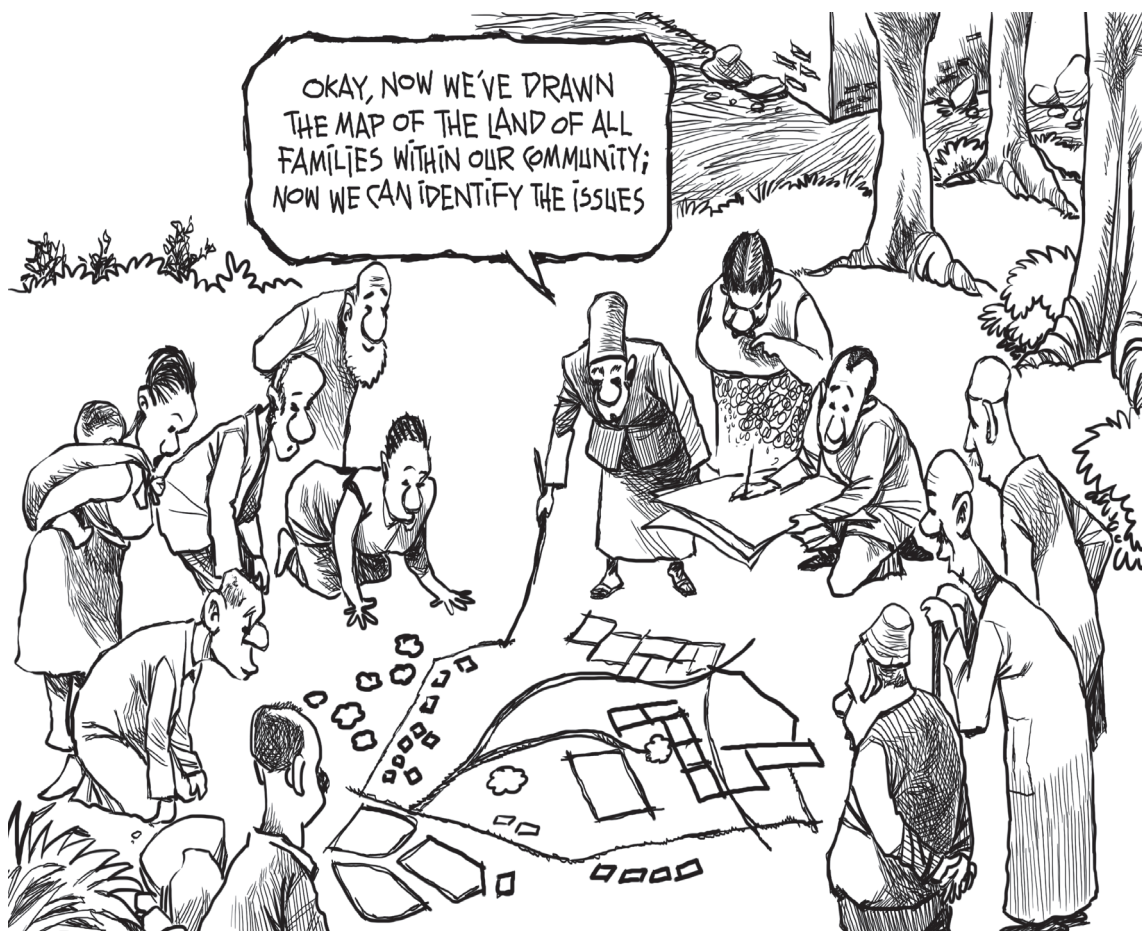
> continued

The Makhadzi along with the Mupo Foundation “began a process of reviving their knowledge and practices to protect the sacred sites and the associated tradition of seed diversity, bringing young people and the chiefs on board.” Women, men, and youth mapped “the relationship between the sacred sites, showing how these sites are critical places within the ecosystem - natural springs, forest, wetlands, river basins and waterfalls - which maintain the health and resilience of their ancestral territory.”

The mapping process enabled the community to appreciate their traditional ecological knowledge and to develop more detailed maps around sacred sites. These maps would help the community negotiate with the government to recognise and protect the sites.

Source: www.gaiafoundation.org/galleries/albums/mapping-rainmakers-venda-south-africa

Watch the video about this experience at www.gaiafoundation.org/galleries/videos/reviving-our-culture-mapping-our-future



Mapping does not necessarily require a high level of skill, but it does require attention to detail. Community members can carry out mapping by systematically inspecting an area and recording important details such as numbers of families, their means of survival, their access to land, the quality of the land, and their access to water, forests or markets that are necessary for their lives. The mapping should be repeated at intervals to record changes in the circumstances. The data gathered should be presented to the appropriate authorities with recommendations for improvements.

Mapping can also help to identify boundaries of family lands under customary tenure. As land boundaries in such systems are often not recorded, sketch maps can help to prevent disputes over land boundaries, especially if they are signed by all neighbours and customary leaders.

See Main Book, Part II, Section 4.2.2 for more information on mapping.

3.2 Working to claim and exercise rights through practical, self-help actions

Organisations working on land rights have learned that one of the most effective ways to improve lives is for people to organise and empower themselves. Self-help activities aim at claiming rights directly, without relying on the government. While self-help activities can empower people and facilitate their participation in planning and decision-making, it is advisable to remain in contact with government actors to encourage them to assist self-help efforts, as governments remain the primary duty-bearers.

The first task is to ensure that people are familiar with the ESC rights relating to land. Self-help actions could include protecting land and water sources from pollution or forming cooperatives to make better use of arable land. Where the government is not fulfilling its obligations, communities could unite to claim their rights.

Using the human rights-based approach (HRBA), or claiming rights as human rights, could add value to this approach. See Main Book, Part II, Section 11.2.

Some examples of self-help activities are presented in Sections 3.2.1 to 3.2.3.

3.2.1 Actions to defend customary and/or informal tenure

As explained in Section 1.1.1, many individuals and communities in Africa access, occupy and use land through customary systems which are often not fully recognised and protected by national law and which face a series of challenges. Rural communities and CSOs therefore may have to mobilise people to defend customary and informal tenure, in accordance with human rights standards, and make their governments respect and protect these rights. For example, in Uganda efforts are undertaken by NGOs to write up customary rules, to

mark land boundaries with specific types of trees, and to make sketch maps of family lands under customary tenure, while lobbying the government to recognise these practices.

Box 17: The Ogoni Bill of Rights

The Ogoni people of the Niger Delta have a longstanding history of organising to defend their lands, territory and environment against various threats. Facing the problems of oil exploitation from the mid 1950s on, the Ogoni people started a difficult process of uniting and organising. In this process, the adoption of the Ogoni Bill of Rights was key. Following a broadly inclusive process, all the clans of Ogoni Kingdom participated in drafting this Bill which was adopted by the community in 1990 and presented to the Nigerian Government.

“The Bill of Rights called for political control of Ogoni affairs by Ogoni people, control and use of Ogoni economic resources for Ogoni development, adequate and direct representation of Ogoni people in Nigerian national institutions and the right to protect the Ogoni environment from further degradation. With emphasis on the right of the Ogoni to self-determination and community control over natural resources, the Bill of Rights represented a direct challenge to the structure of Nigerian State and the performance of its government.” The government failed to respond.

However, the launch of the Bill of Rights, often referred to as “the bible of the Ogoni struggle”, marked a turning point in efforts by the Ogoni to reverse decades of discrimination and prejudices. The Nigerian government and oil companies continued to face frequent accusations by Ogoni people that they were not complying with the Ogoni Bill of Rights. *“It has served as a rallying point for many Ogoni leaders, and served to guide many partnerships and collaborations with different organisations and institutions. Following the adoption of the Bill of Rights, the Ijaw ethnic group, the Akalaka people and several other ethnic groups also announced declarations of their rights. There were approximately twelve such pronouncements in the years following the launch of the Ogoni Bill of Rights. The Bill also contributed to changes in attitudes held by non-Ogoni people, resulting in more respectful treatment and a more favorable public recognition of their demands within Nigerian public opinion”.*

Source: Gelbspan, Thea and Fernando Prioste, 2013, *Land in the Struggle for Justice. Social movements’ strategies to secure human rights*. Terra de Direitos and ESCR-Net. Curitiba. P.43. Available online: www.escr-net.org/sites/default/files/Land_Justice.eng_.pdf

3.2.2 Actions to promote gender equality in land

As mentioned in Section 1.1.2, discrimination against women remains an issue of concern in many African countries, especially with regard to women's access to and control over land. While women are those who produce most food, their access to and control of land is often weak or not recognised. Women have the right to access land on an equal basis with men. Therefore, actions to promote gender equality in land are crucial in order to promote and realise human rights.

A video about an initiative in Mozambique to strengthen women's rights to land: *Right to land - Right of men and women: experiences with paralegals*, available at www.youtube.com/watch?v=sDoBZam-FWc

Box 18 : Justice for Widows and Orphans Project (JWOP), Zambia

Justice for Widows and Orphans Project (JWOP), Zambia is an NGO formed by widows and orphans. It is composed of nine self-help groups who work to address property and inheritance rights and livelihoods survival.

One of JWOP's most successful strategies is to hold theatrical or 'mock' tribunals: plays that are based on real court cases, where actors are 'tried' before an entire community. The audience (residents of the community) have a say in judging the case. Real examples of rights abuses are presented to traditional leaders or judges.

JWOP's theatrical land tribunals are informal mechanisms for social advocacy and informal accountability, particularly on the issues of inheritance rights for widows and reversing evictions. They allow widows to raise awareness about their cases and invite community dialogues about solutions that work best for all involved.

"After the tribunals, JWOP follows up on each case until property is returned to the widows and does not limit its assistance to just those widows who testified during the tribunal. JWOP held a mock tribunal in the Kafue District, whereby 100 people learnt about the Law of Succession in Zambia, 15 widows received professional counseling, and eight widows testified that their property had been grabbed by their in-laws. After the mock tribunal, JWOP worked with the local leadership in the district to continue to pursue cases of property grabbing in the area. JWOP has also strengthened the impact of tribunals by producing a booklet of case studies on disinheritance and the importance of tribunals. Members of the community are using this booklet as a tool in solving cases in their own communities."

Source: Huairou Commission. Grassroots Women's Tools for Securing Land and Property. March 2011.

Available online: http://huairou.org/sites/default/files/WLLA2011PrintfinalMarch23_0.pdf

Box 19: A Women First approach

A team of NGOs from Uganda and the US has developed what they call their “Women First approach” for securing women’s land rights under customary tenure. Based on experiences in Northern Uganda, they published a Toolkit. The approach starts with the premise that effectively addressing women’s land tenure issues requires a nuanced understanding of women’s particular challenges, needs, opportunities, and aspirations regarding land. The Toolkit presents a step-by-step process for designing, implementing and evaluating projects, and describes how to make use of volunteer Community-Based Facilitators, how to engage individual women, groups and communities (including community leaders), by training them and supporting their dissemination of knowledge and skills, and how to monitor and share the outcomes.

Source: “A Women First Approach; Improving Land Tenure Security for Women”, Landesa Center for Women’s Land Rights; available online at www.landesa.org/toolkit; this website also contains all the tools/documents to be used and adapted in such a process. Alternatively, see the newly established Center for Gender and Resource Equity.

3.2.3 Taking the lead in decisions about development - how communities can develop their own plans

People know best what their needs are and what kind of support they require in order to be able to develop their livelihoods and realise their rights and aspirations. Under favourable conditions, people invest their work and knowledge into their land-based livelihoods with impressive results for the overall economy.⁴⁷ By encouraging communities to formulate their own priorities and plans of development, CBOs and NGOs can assist people to take the initiative and enter into dialogue with governments and external investors about the kind of projects that should be promoted on their lands. Communities can start a participatory process of internal discussion and agreement about their own development priorities. These should include all members of the community and ensure that women’s opinions have equal value to men’s. The agreements can be recorded in written form. They can set down the type of economic activities that the community itself wants to develop. If there are areas that the community would be willing to hand over to external investors, communities can define these areas and set their own conditions on the transfer. They can elect their own representatives to conduct talks with external investors about investment proposals.

Once a community has a clear picture about their development needs and priorities, it is better prepared to enter a process of engagement with public or private investors. In many African countries, community consultation about intended projects is a legal requirement for investors especially when transfer of tenure rights is implied. Unfortunately, there are hardly any precise domestic legal standards on how these consultations should be

held so that in many cases a single meeting with self-picked community leaders (usually men) is declared as ‘consultation’. ‘Consultation’ does not necessarily mean that ‘consent’ is acquired; where FPIC applies (see Box 8), the FAO and legal experts have stated that this implies ‘the right to withhold consent’.⁴⁸ It is of utmost importance to be aware of the widespread risk of manipulative (controlling) and opaque (unclear) consultations. See Box 20.



Box 20: Genuine community consultations over development plans

The following elements can be taken into account in order to decide whether a consultation is authentic:

- A consultation process should be conducted before any decision about project approval is taken. The very decision for approval should depend on the outcome of such a consultation;
- Before a consultation process starts, the project proposer should disclose all relevant information, in a form and manner that is accessible to the affected people, about the intended project, such as the exact location of the selected project site, the business plan, the expected creation of employment and revenue for local governments, the anticipated (social, environmental) impacts and how they will be mitigated and managed;
- Governments should ensure that consultations are conducted in accordance with certain minimum standards about:

> continued

- Being transparent in relation to all the steps and procedures that the consultation will include particularly on how to feed community's input into the project design and how to reach community's consent;
- Clarifying who are the legitimate representatives of the community;
- Including all people who might be directly or indirectly affected by a project or policy measure - especially ensuring diverse opinions from different members of the community and building in mechanisms to facilitate women's participation - in the consultation;
- Recording and monitoring binding agreements reached during the consultation;
- Providing legal recourse in case the standards of consultation are not respected;
- Communities need to establish their own internal process of consultation that runs in parallel with the consultation with the company. These internal consultations are necessary in order to debate the project at hand and to reach consensus within community members about their collective positions and proposals. Encouraging ways to internally resolve tensions or conflicts of interest is of utmost importance. Presenting a united position will increase the bargaining power of the community. Disagreement among community members is often used by investors and governments to impose projects.

Sources and resources: For detailed guidance about community engagement with investors, see South Sudan Law Society - *Handbook on Community Engagement*. Available online: www.mokoro.co.uk/files/13/file/Iria/1985-SSLS-Handbook-on-Community-Engagement.pdf. The FAO Technical Guide no. 3 on Free, Prior and Informed Consent (www.fao.org/3/a-i3496e.pdf) also contains valuable guidance.

Also relevant is Amnesty International's publication: *Know Your Obligations: A Guide to Preventing Forced Evictions*. ACT35/009/2012. Available online: www.amnesty.org/en/library/info/ACT35/009/2012/en

3.3

Monitoring and assessing the State's land policies and programmes

The checklists in this section are tools for monitoring and investigating ESC rights related to land. By 'monitoring' we mean observing over a period of time the actions that the government or non-State actors are taking either to realise or to obstruct rights. 'Investigating' means gathering facts about a specific situation/topic, such as forced eviction and displacement, landlessness, land degradation.

Monitoring and investigation are often grouped together because they can happen at the same time. These actions play a key role in analysing a land rights situation, identifying human rights violations and enabling CSOs working on land issues to identify other actions to help realise rights (such as advocacy actions, assistance to victims, mediation or legal redress).

Box 21: How to use checklists

Checklists should be used in collaboration with the community, following advice in the Main Book, Part II, Sections 5 and 6.

Note that:

The checklists do not cover every situation, nor do they cover every aspect of a situation. Sometimes two or more checklists can be used to monitor a specific situation, for example to monitor the rights of indigenous women as an aspect of the right to access land.

Use Appendix 1 to find relevant extracts from regional or international human rights standards.

- Checklist 1 is for monitoring access to and control over land in general. It is quite a general checklist that can be used to explore land issues, while checklists 2-5 are for more specific issues;
- Checklist 2 is about monitoring women's access to and control over land;
- Checklist 3 is about monitoring the impact of business activities on ESC rights related to land;
- Checklist 4 is about monitoring the extraterritorial obligations of foreign States and Inter-Governmental Organisations (IGOs) involved in policies and projects with impacts on land; and
- Checklist 5 is about monitoring land conflicts.

The checklists are designed to collect information to make reports that can be used for further action, such as advocating with governments, campaigning with media and the general public.



Checklist 1. Monitoring access to and control over land in general



Objectives

To identify:

- Patterns of violations of rights;
- Immediate State obligations that are not being met;
- How and where community/CSO work could make a difference; and
- To make communities, CSOs and the authorities more aware of ESC rights related to land.



Tasks

Check

1. Initial preparations

a) Identify aspects to monitor, for example:

- Landlessness and distribution of land
- Insecurity of tenure and forced evictions (for a detailed way to monitor this, see the Haki Zetu booklet on the right to adequate housing, Section 3)
- Recognition and protection of customary tenure
- Access to and control over land by different groups such as women, pastoralists, fishing communities, indigenous peoples, peasant farmers, urban communities, migrants, refugees and displaced persons
- Land degradation

NOTE: Keeping knowledge up to date is an ongoing task.

b) Find out about relevant land policies and laws:

- Obtain and read/scan copies of:
 - The Constitution, land and land-related policies and laws (such as agricultural, water, forestry, fisheries, environmental and conservation, tourism, energy and mining, infrastructure, industry development, > spatial planning, urbanisation policies and laws, land reform legislation), and > sectoral land-related budgets
 - The overall development and poverty reduction strategy
 - Reports: news articles, academic research, NGO publications, websites
 - Relevant information may also be found through land registration institutions, such as cadastres and documented/codified customary tenure regulations

Check

- Find out whether the State has ratified international treaties dealing with the ESC right affected by the land issue (this could include the ICESCR, the African Charter, or other specific treaties such as the UN Convention to Combat Desertification)

Practical advice

While constitutional provisions apply to all situations, not all land-related policies and laws are always relevant for a certain situation. Land-related laws may be found in different government departments, including those responsible for planning, infrastructure, agriculture, industry and housing and under the administration of local government authorities.

If you decide to monitor what the government is doing, for instance, in relation to landlessness, you may need to find out:

- What are the drivers/causes of landlessness or land concentration;
- Whether the Constitution includes provisions guaranteeing an equitable distribution of land;
- Whether a redistributive land reform policy is in place and whether it is being effectively implemented;
- Whether the institutions tasked with addressing landlessness are well equipped and have enough capacity and resources; and
- Whether development policies in the agricultural, mining or industrial sector are fuelling landlessness and land concentration.

- Find out the role and responsibilities of different authorities, including local and customary ones, with a say in land governance and management
- Which customary rules apply to the situation you are looking into?
- Is customary land tenure recognised by the State? How?
- Are customary laws written or codified? Study them, and/or what is written about them
- Are the different authorities acting in a coordinated and coherent manner?

2. Participatory research involving affected groups/communities

- Identify which rights are at stake in the situation/issue being monitored (see Section 1)
- Identify cases of discrimination against individuals or groups (on the basis of ethnicity, religion, age, gender, etc)
 - Carry out mapping (see the Main Book, Part II, Section 4.2.2) to identify groups suffering discrimination in access to land be it in policies and laws (for example, when women are not allowed by law to inherit property) or ‘de facto’ which means, for instance, that despite laws providing for equal treatment, women actually do not inherit land in real life

Check

- Do in-depth individual and collective interviews to determine the causes of such discrimination and its impacts

For more information on participatory research, monitoring and fact-finding, see the Main Book, Part II, Sections 5.4 to 6.10.

- Identify whether the government prioritises the most marginalised groups with respect to land in relevant policies and programmes:
 - Find out what mechanisms for participation exist for the most marginalised groups ...
 - Are these mechanisms accessible, transparent and effective?
 - Do the existing policies and programmes impacting on land address the needs of the most marginalised groups?
 - Has the government taken any backward steps which would diminish access to land particularly by marginalised groups?

3. Participatory research with communities – Monitoring the State’s obligations to respect and protect ESC rights related to land

Obligation to respect:

- Do State officials encroach or allocate land that is used for people’s food or livelihood security or to violate any other right mentioned in Section 1?
- Do State officials conduct forced evictions (see Section 1.2.2 and the booklet on the right to adequate housing, Section 1.3 for the definition of forced evictions)? If so, who has been affected?
- Do State officials make efforts to ensure that people are able to stay on their lands? What laws and policies are in place to guarantee security of tenure (see booklet on the right to adequate housing, Section 1.4 for the definition of security of tenure)?
- Are the rules and laws governing access to land (such as land markets, inheritance and tenancy laws, matrimonial property law, customary tenure systems, etc.) operating in discriminatory ways and concentrating land access to the disadvantage of marginalised groups such as women?
- Does the government respect people’s land rights when establishing environmental conservation areas?
- Have indigenous peoples been properly consulted about any plans that will affect their ancestral lands? Have they given their free, prior and informed consent (see Box 9) to those plans?
- In cases of armed conflict and occupation, does the military/government destroy and/or prevent access to agricultural lands, irrigation facilities and housing by the civilian population?

Check

Obligation to protect:





- Are third parties including local elites, companies and business enterprises interfering with people's access to land?
- Is the government taking measures to prevent or stop encroachment of land (essential for food or livelihood security or for indigenous peoples) by third parties?
- Are third parties, such as companies, operating in discriminatory ways when they are relocating or compensating people, or when providing jobs or services to the local population?
- What are the appropriate administrative, legislative or judicial officials doing about these alleged violations?

4. Participatory research – Monitoring the State's obligations to fulfill ESC rights related to land

- Has the State enacted land laws or developed land policies? Are these laws and policies in line with international human rights standards especially those relating to the rights to food, health, housing, water and work?
- Has the State identified landless and > land-scarce groups?
- Has it taken adequate measures to facilitate access to land to landless and land-scarce people by, for instance, conducting redistributive land reforms?
- Does the State prioritise the allocation of public lands to marginalised groups? If so, how?
- Are there tenancy laws in place which effectively guarantee security of tenure by tenants?
- Are there effective regulations or programmes in place to prevent land degradation and are they enforced?
- Do people have effective access to remedies for abuses of ESC rights related to land (through institutions such as customary authorities, local or national courts/tribunals, national human rights commissions, an ombudsman office, parliamentary inquiry commissions, etc.)? Do people have access to legal aid and lawyers in order to access their right to an effective remedy?
- Has the State adopted measures to restore ancestral lands to indigenous peoples and other ethnic groups? If so, which measures?
- Does the State ensure the right to restitution and return of refugees and displaced persons whose lands were unlawfully taken from them?
- What regulations are included in land reform policies to ensure that women have equal access to land as well as to agricultural extension projects, equipment and advice?
- Are there adequate public policies in place to promote labour-intensive, land-based livelihoods such as peasant farming, artisanal fishing, livestock keeping, artisanal mining, agro-forestry, and the like?
- Do the development and investment policies in place benefit marginalised groups?
- Does the government support > agro-ecology and other sustainable forms of land use?
- Which policies are in place to address the impacts of climate change?
- Does the State promote education and awareness about people's land rights?

Check 

5. Progressive realisation of ESC rights related to land - Monitoring policies and outcomes over time

- Identify specific aspects or policies to monitor and a time frame. For example, monitoring gender discrimination in land access, landlessness, budget allocation for restitution or land degradation over a five-year period 
- Policies should contain indicators and benchmarks to track progress towards policy goals. Either use official indicators and benchmarks or, if these are unavailable, use authoritative indicators from established institutions (see Box 22). Indicators define how progress or regress is measured (for example, the number of landless people). Benchmarks set specific goals to be achieved in the observed period (for example, the number of landless people reduced by 10 percent in three years' time) 
- Assess the situation before you start and then measure it again at the end of the period 
- Gather your own disaggregated data, that is data that can be sorted by different categories or groups (for example, women and men). This can be done through household surveys or individual or group interviews 

On indicators, see also the Main Book, Part II, Section 7.3 Box 30.

6. Analysing results and taking action

The results of this exercise will be useful for actions on different human rights aspects of land as set out in the following sub-sections of this booklet.

Box 22 : Examples of land indicators

There are several types of land indicators.

The FAO collects and analyses land data relevant for land use and management planning. FAO's land indicators and statistical data can be found at <http://faostat3.fao.org>.

The World Bank developed a Land Governance Assessment Framework (LGAF). It is a diagnostic tool for the evaluation of land governance at the national level.
<http://elibrary.worldbank.org/doi/book/10.1596/978-0-8213-8758-0>

CSOs have also developed their own land indicators. They focus primarily on issues such as forced evictions and security of tenure, landlessness and land conflicts. These are two examples:

1. The International Land Coalition's Land Reporting Initiative:

- Indicators to assess access to land:
 - Distribution or concentration of land ownership;
 - Other forms of access to land (including secondary or use rights);
 - Land grabbing and displacement of smallholders;
 - Affordability of land and housing; and
 - Landlessness, homelessness and squatting.
- Indicators to assess tenure security:
 - Frequency, severity and nature of disputes;
 - Frequency of evictions; and
 - Perception of security or insecurity of tenure (anticipation of conflict, confidence in administration).
- Indicators to assess the functionality of land markets (how land markets work):
 - Number of transactions and acreage of land involved;
 - Level of informal land transactions (an estimate of the number and acreage);
 - Availability of information on land prices.

Source: Bending, Tim, 2010, *Land Monitoring Handbook. Monitoring Secure Access to Land: Progress and Prospects*, ILC. Available online:

www.landcoalition.org/sites/default/files/publication/735/monitoring_secure_access_to_land_final.pdf

2. The International Planning Committee for Food Sovereignty developed indicators to assess compliance with the final declaration of the International Conference on Agrarian Reform and Rural Development (ICARRD). Some indicators to assess access to resources are:

- Number of landless and near-landless households;
- Percentage of certain rural groups (women, indigenous peoples, ethnic groups, fishers, forest communities, pastoralists, etc.) with or without sufficient access to and control over land and related resources;

> *continued*

- Degree of concentration of land ownership;
- Percentage of specific rural groups (women, indigenous peoples, ethnic groups, fishers, forest communities, pastoralists, etc.) benefiting from governmental programmes for access to land;
- Number of persons (disaggregated by gender) forcibly evicted from rural land within the past five years;
- Percentage of rural people involved in conflicts over land and natural resources within the past five years;
- Loss of land suitable for agriculture, of forest and fisheries due to non-ecological reasons like change of land, forest and fisheries use to other purposes within the past five years; and
- Percentage of indigenous lands officially recognised and demarcated.

Source: Monsalve Suárez, Sofia and Sandra Ratjen, 2006, *Reporting Guidelines to Monitor the Implementation of the Final Declaration of the International Conference on Agrarian Reform and Rural Development (ICARRD)*, Working paper by the International Planning Committee for Food Sovereignty (IPC), Rome, October 2006. Available online: www.fian.org/en/library/publication/detail/reporting_guidelines_international_conference_on_agrarian_reform_and_rural_development





Checklist 2: Monitoring women's access to and control over land



Objectives:

- To identify patterns of discrimination against women;
- To make women, communities and CSOs more aware of women's right to equal access to land;
- To hold governments accountable for their failure to ensure gender equality in access to land; and
- To identify ways to improve women's access to and control over land.



Tasks

Check

1. Initial preparations – finding out about national and local government policies and laws on gender equality and checking whether these meet international human rights standards:

- Does the Constitution guarantee gender equality/equal rights for men and women?
- Does national law guarantee gender equality in access to land, inheritance rights and land ownership?
- Are there policies/strategies/programmes to improve women's rights, especially with respect to access to and control over land?
- Does national and local law (community by-laws and principles of customary laws) maintain the principle of gender equality, particularly as it relates to land and security of tenure?
- What customary provisions recognise and protect women's right to access land?
- What State institutions monitor and address gender equality, particularly as it relates to land and legal security of tenure and freedom from dispossession?
- What independent and/or non-governmental institutions exist (such as customary authorities, human rights commissions, ombudsman offices, NGOs) addressing gender equality with respect to land rights?

2. Participatory research – monitoring women's land rights

- What are the main problems that women face in relation to land?
- Can women be formal owners or > custodians of land? Is it dependent on their marital status?

Check

- Is land registered in the name of husband and wife? If not, in whose name?
- Can women be registered owners of land solely in their own name?
- If land is not registered, how are rights established, and who decides in the case of disputes?
- Do land titles or certificates contain the names and/or photographs of wife and husband?
- Marriage law and divorce:
 - Does local law (formal and customary) on marriage and divorce provide equal rights to men and women?
 - Does a wife have the right to prevent her husband from renting out or selling part of the household's land?
 - How is land of a household shared among husband and wife upon divorce?
 - After divorce, can the wife or husband claim land from their parents/relatives?
 - Is the amount of land the wife has brought into marriage taken into consideration in case of divorce?
- Inheritance law:
 - Does local law on inheritance provide equal rights to women with children, women without children, girls, men and boys of all ages?
 - Who inherits the land of the household in case of the death of a husband or wife?
 - Can a married woman inherit land from her parents?
- Communal lands:
 - What kind of usage rights do women have in communal lands?
 - What decision-making power do women have over communal lands?
- If laws and/or policies to promote equal tenure rights are in place, are these known among local communities and administration?
- What customary and official complaint mechanisms exist where women can claim their land rights?

3. Participatory research – monitoring women's access to land in reality

- Do in-depth individual and collective interviews with different groups of women in a community (such as young women, elderly, widows, women farmers, women fishers, women from different ethnic groups), with community authority figures (elders, religious leaders, chiefs, traditional judges), with men in the community, with landlords and government officials (local authorities, governmental agencies, police, judges) to find out about everyday discrimination against women as well as its causes and impacts. It is important to also conduct interviews with only women, individually or in groups.
 - Have women faced forced eviction or have they been threatened with it?
 - What regulations govern women's custodianship of land, inheritance of land or use rights in communal lands? Do these differ from the actual practice experienced by women in the community?

Check

- Do women have decision-making power over whether to rent out or sell part of the household's land? Do women contribute to decision-making?
- Do women face harassment or threats that keep or try to keep women away from their lands? Do such harassment or threats differ from those experienced by men? ...
- Who inherits the land in case of death in the family? Do daughters inherit land from their parents equally with sons? Do women retain access to their late husbands' lands? Do they and their children then receive land from their own relatives?
- How is the land of a household shared upon divorce? In cases of divorce, do women get back the same (amount of) land that their relatives brought into marriage?
- Can women participate in decision-making related to the use of their family and communal lands?
- Do women get government support, such as access to credit, for developing their livelihoods?
- Has the government taken any measure which would diminish access to land by women?
- How are women's land rights cases treated by customary authorities settling land complaints and disputes?

Practical advice

Be aware that certain cases, especially those related to harassment and eventual sexual violence in the context of land conflicts, require an appropriate method of investigation and careful preparation to allow affected women and girls to be willing and confident enough to talk about these issues. Interviews with survivors of sexual violence should not be conducted unless appropriate mechanisms are in place to provide support to the interviewee in the event that the interview causes retraumatisation. See, for instance, the *WHO Ethical and safety recommendations for researching, documenting and monitoring sexual violence in emergencies*, available online: www.who.int/gender/documents/OMS_Ethics&Safety10Aug07.pdf

4. Analysing results and taking action

- Identify and record discrimination against women
- Ensure the participation of the affected women in decision-making on the next steps and where appropriate take complaints to the relevant authorities
- Send information to local and national authorities, the African Commission on Human and Peoples' Rights, the CEDAW, the CESC, the Special Rapporteurs on housing, food, indigenous peoples (see Main Book, Part II, Section 10.1)



Checklist 3: Monitoring the impact of business activities on ESC rights related to land

Practical advice

Finding out precise and reliable information about business activities can be a very challenging task. Government authorities might prefer not to disclose relevant information to the public. Check whether a right to information act exists in your country so that you can demand disclosure of relevant information. If not, try to get the support of government officials (for example, members of parliament or human rights commissions) who can request the disclosure of the requested information. Companies sometimes do not disclose information on their operations referring to norms of confidentiality of commercial and industrial information. You might need the support of specialised journalists and watchdog groups in the home States of the business at stake in order to be able to gather the information needed or to work on strategies to demand disclosure. See Appendix 4 for some links to corporate watchdog organisations.



Objectives

- To establish that business activities have caused or contributed to abuses of ESC rights related to land;
- To identify ways to increase the accountability of business enterprises;
- To enhance the ability of victims of corporate-related human rights abuse to obtain effective remedy; and
- To ensure greater protection against corporate-related abuses of ESC rights relating to land.



Tasks

Check 

1. Initial preparations – general information gathering

- Identify an allegation of business involvement in ESC rights abuses related to land which requires further investigation. It could be a specific project such as the construction of large hydropower dam, a large-scale plantation, or a specific sector, such as the mining sector, or the agribusiness sector



Check

- Try to obtain copies of:
 - The company's report about its structure of governance and accountability mechanisms, its directors, its owners and shareholders, funding sources and its investment plans or its internal policy documents or codes of conduct (some companies publish this information in the internet or it can be obtained through information filed on the websites of regulatory agencies such as the US Securities and Exchange Commission). Look for this information also in newspapers and other reports about the company and on company or trade registries in the country where each company is incorporated
 - The official document that allows the company to operate in the country or to realise a particular project (for example, a contract between the government and the company for the setting up of a plantation or a permit to carry out mining activities)
- Try to find out:
 - The company's current plans and what operations it is undertaking (particularly if it is using or releasing toxic or harmful substances)
 - The land and water permits/concessions/deeds obtained by the company to run the project
 - The exact location, the type of land and the extent (hectares) of land acquired by the company, including whether this implies that water, fisheries or forest rights have also been acquired or occupied by the company
 - Whether or not social and environmental > impact assessments have been or will be carried out, and whether these are prepared on an ongoing basis, and review the impact assessment reports, including whether there has been any attempt to assess human rights impacts (check also whether impact assessments are legally required)
 - Whether there are plans to displace people from the land and if so, how many people will be affected and what steps would be taken to avoid a forced eviction and ensure an adequate resettlement and compensation
 - Whether the company is supported by international financial institutions such as the World Bank (which finances companies through the International Finance Corporation) or the African Development Bank; by investor support agencies from other States or by international investment funds
 - Whether the company or another member of its corporate group has a history of similar issues
 - The extent of the company's relationship with the State and any public officials.

2. Participatory research – monitoring decision-making about business activities

Together with the affected community, find out and document, as relevant:

- What kind of legal procedure is necessary for a company to set up the project/business at stake? Which authorities are involved?

Check

- What human rights due diligence has the company undertaken to identify, prevent, mitigate and account for how they address any adverse human rights impacts of the project?
- Has the company disclosed/made public all relevant information about the project and its risks and impacts on people and the environment?
- Was the community informed and genuinely consulted about this project? How were the consultations carried out (who organised the meetings, were authorities involved, who from the community was invited)? Were there objections? If so, how were they addressed? And were the participants satisfied with the response?
- Were the land and water permits/concessions/deeds acquired legally? If not, what irregularities happened?
- Did the company use violence or other means of coercion to get control of the land?

3. Participatory research – establishing/monitoring the impacts of business operations

Together with the community, try to find out the following information, as relevant:

- How did the situation of the community change after the beginning of business operations? Interview different sub-groups of the community (women and men farmers, pastoralists, women and men fishers, the elderly, boys and girls, indigenous peoples, slum dwellers, migrants, refugees) to collect information concerning changes and their impact. It is not always necessary to interview all these groups in depth. Identify the most important ones for this purpose. Shorter interviews can be conducted with the other sub-groups
- Were there evictions? If so, were they forced evictions (see booklet on the right to adequate housing, Section 1.3 for the definition of forced evictions)? Who has been affected? Where did those evicted move to? Did they get adequate alternative land and accommodation or compensation? If they moved on the basis of promises of alternative accommodation/land or compensation, has this been provided?
- Have people lost access rights to land or water (such as access to seasonal grazing lands; forest for gathering and hunting; to rivers, lakes and coastal areas for fishing)? If so, is this because the company does not allow people to trespass on its property or because its operations are affecting access to land or water? Is the company violating any laws or failing to uphold international business and human rights standards?
- What impact has this had on the people's lives and livelihoods? How did it affect different groups within the community differently? Have women lost access to and control over the land they held (alone or through male relatives)?
- Has the company taken control over lands which people used for subsistence food production or for natural resource extraction (for example, as artisanal miners) or for important cultural and spiritual practices?
- Is the pattern of land distribution being substantially changed in the course of business operations? Is landlessness on the increase?
- What has been the impact on the local economy? Have the business activities

Check

contributed to the realisation or impairment of ESC rights of the most marginalised sectors of the population (income/food/work, housing, water and sanitation, health, education, etc.)?

- Are the business operations causing environmental damages such as land degradation, pollution and destruction of water sources, deforestation? Have operations had an impact on health or livelihoods of the community (for example, through polluting groundwater or soil or affecting fish and livestock)?

Try to ensure that you have documentary evidence (including photos and video) to support your findings, and that your evidence is from the most authoritative source available.

4. Analysing results and taking action

In collaboration with community members:

- Identify and record any human rights abuses: how has the government and/or the company breached / failed to fulfil their obligations / responsibilities under international law and standards?
- Develop an advocacy and lobbying strategy towards local and national government, but also consider the possibility to use judicial remedies or the company's own accountability mechanisms or other business monitoring mechanisms. If relevant, link with advocacy groups in the home States, if the company involved is a foreign company or, in the case of a multinational, is owned by a foreign company
- If the World Bank, through the International Finance Corporation (IFC), is supporting the company, consider using its complaint mechanism called the 'Compliance Advisor Ombudsman (CAO)' (www.cao-ombudsman.org)
- Take complaints to the appropriate authorities (be aware that host States may be unwilling or unable to act against the company and that complaints may need to be taken to the authorities/courts of the home State – see Checklist 4 below)
- If remedies are not available locally or nationally, send information to the ACHPR, the CDESCR, or the Special Rapporteurs on housing, food and indigenous peoples (see Main Book, Part II, Section 10.1)

For links on sources and resources on land and human rights, as well as CSOs working on land issues in Africa see Appendices 3 and 4.



Checklist 4: Monitoring Extraterritorial obligations of foreign States and IGOs involved in policies and projects with impacts on land



Objectives

- To assess the impact of home States of companies and IGOs involved in policies and projects on the enjoyment of ESC rights related to land in the host country (your country); and
- To identify ways to increase the accountability of international actors.

This checklist is complementary to the previous checklists.



Tasks

Check

1. Information gathering

- Identify aspects to be monitored, such as landlessness, lack of security of tenure, land degradation or business activities
- Identify what role the home State or the IGO plays in the issue at stake. This could be by, for instance:
 - Not regulating to ensure that national companies or foreign companies based in, or operating from their country are required under their national law to avoid causing harm abroad
 - Not prosecuting national companies which have caused harm in the host country;
 - Providing Official Development Assistance (ODA) to development or policy reform projects which are harmful for ESC rights related to land
 - Providing funding/subsidies/ODA or any other form of support to the business activity that fails to respect ESC rights related to land
 - Not respecting either its own country's regulations on avoiding actions that may be harmful, or the regulations of the host State
- Try to find out:
 - Whether the company causing harm is owned by a State, and in which State it has its head office. If so, find out which authority in the home State and host State country is responsible for managing or overseeing the foreign company's activities
 - If any ministry or governmental agency in the home State is providing funding or any other form of support to the company causing harm in the host State

Check

- If the government of the home State has failed to regulate the company causing harm in the host State
- Which donors provide ODA to your country? Are they involved in development projects or policy fields such as investment and land and forestry reform? What impacts do these policies have? Were impact assessments of these policies conducted before putting them into practice?

Practical advice

Finding out information about the status of regulation of business in the home States of companies or laws that can be used to hold businesses to account for human rights abuses is a task that might need to be supported by specialised NGOs and researchers in those countries. See Appendix 4. The development of mandatory and extraterritorial human rights regulation of business is uneven across countries and in many cases these regulations and laws are not specific to human rights. Examples of regulation include clauses in investment rules related to the behaviour of investors or laws that apply to trafficking or bribery. Examples of laws that can be used to hold businesses to account include the Alien Tort Claims Act (ATCA) which allows non-U.S. victims of international human rights abuses to sue the perpetrators, including companies, in U.S. courts. In jurisdictions where there are no laws specific to human rights, victims can instead rely on other causes of action such as > tort or delict. Also consider persuading State authorities to pursue criminal investigations against companies involved in illegal conduct that is or contributes to human rights abuses.

2. Analysing results and taking action

In collaboration with community members:

- Link up with civil society actors in the foreign State. See Appendix 4. This might also be necessary in the phase of information gathering since finding out about the precise involvement of foreign States might need research in that country
- Develop an advocacy and lobbying strategy, linking up with advocacy groups in the foreign States or those with expert knowledge on IGOs
- Take complaints to the appropriate authorities in the foreign/home State working in partnership with other CSOs, lawyers and the media
- Send information to the ACHPR, CESCR or other relevant treaty bodies, and to the Special Rapporteurs on Housing, Food and Indigenous Peoples as relevant (see Main Book, Part II, Section 10.1)



Checklist 5: Monitoring land conflicts

Note: Land conflicts can be violent. CSOs should not act in any way that endangers their own safety or the safety of others.

This checklist may be used to monitor non-violent land conflicts or conflicts that have involved only minor incidents of violence. CSOs can also gather information from people fleeing the conflict. In this case, CSOs should follow the advice given in the Main Book Part II, Section 6.



Objectives

- To find out about the nature of land conflicts in a specific, limited area, and their impact on the enjoyment of ESC rights and other human rights;
- To document one or more of these conflicts; and
- To identify ways to protect affected individuals and groups in situations of conflict.



Tasks

Check

1. Initial preparations – general information gathering

- Collect information about land conflicts – try to find out:
 - How many land conflicts have taken place within the last year or so or are continuing in the country or in the region selected?
 - Where/in which regions are the conflicts taking place?
 - Approximately how many people have been involved in the conflicts?
 - What are the main reasons for these conflicts, for example development projects, establishment of natural reserves, industrial agriculture, mining activities, conflicts between ethnic or livelihood groups?

Use all available sources of information: traditional media (newspapers, television, etc.), blogs and websites, publications by grassroots organisations or CSOs working on this subject, etc.

- Find out about policies and laws related to access to and use of land in the area, including:
 - Customary law;
 - Traditional courts and dispute resolution mechanisms;

Check

- Relevant civil and political rights such as the right to personal integrity, the right to information, to freedom of assembly and to a fair trial, as enshrined in the national constitution or national laws;
- Laws and standards related to protection from forced evictions.

2. Participatory research – get your own data on specific conflicts

Collect all relevant information, including from news sources and those fleeing the conflict, on a specific situation relating to a conflict around land. Try to find out and document the following:

- What is the conflict exactly about? Describe in as much detail as possible the roots of the conflict and all important events (such as evictions, meetings with officials, land occupations). How many persons/families are affected?
- What is the impact of the conflict?
- Who are the affected communities or victims? Find out about their ethnic background, main economic activity, socio-economic conditions, etc.;
- Are specific groups affected, for example due to their ethnicity, age, socio-economic status, health conditions, disabilities, production activities, geographic location (for example, indigenous peoples, blind people, pastoralists, fisherfolk, migrants)? Are women and girls particularly affected?
- Who are the different parties involved in the conflict (for example, peasant communities, State authorities, companies, private persons)? What are the claims of each of the different parties?
- What are the claims of the affected communities or individuals? What is the status of the land rights of the affected people: do they have land titles (individually or as community), do they have customary land rights? What kind of customary land rights?
- Have the affected people or those supporting them been threatened or have they suffered physical violence? If so, by whom (for example police, military, private security guards)? If people have been injured, document with photos and/or medical diagnosis, if possible;
- Have the affected people or those supporting them been threatened or have they been taken to court due to their actions in defence of their land rights?
- What are the damages that communities or individuals have suffered? Make detailed lists with the affected people of damages to their houses, destroyed farm plots, destroyed/lost objects and so on. If a conflict is still ongoing, assist or advise affected individuals to make lists of all their belongings. This may help them to claim compensation;
- Have there been evictions? If so, who carried them out (fighting parties, police, army, private security forces or others)? Have they been carried out according to human rights standards (see Housing booklet, Section 1.3)? Can people claim compensation? If so, have people received compensation?
- Have affected people had access to justice? Can they go to > alternative dispute mechanisms (for example, clan mediation) or courts to present the facts?

Check

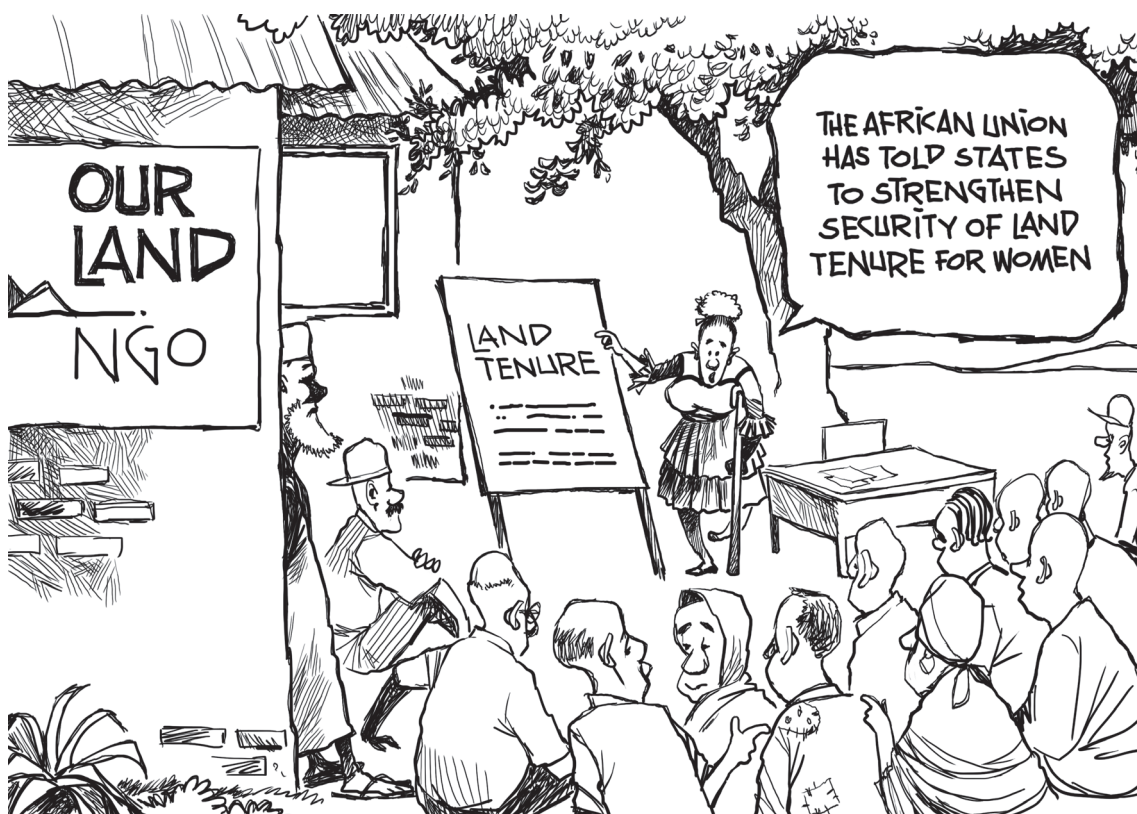
- Find out what the authorities are doing or have done to end the conflict;
- Keep track of and document all events that take place, including meetings or letters the affected communities receive or send. Note down time and place.

Apart from writing down the above, it is also helpful to evidence of facts by taking photographs or audio or video files.

3. Analysing results and taking action

In collaboration with community members:

- Record land conflicts and identify human rights violations. These may be related to ESC rights (for example, loss of access to farmland) or to civil and political rights (for example, arbitrary detention, right to physical integrity);
- Take complaints to the appropriate authorities, traditional and State courts, etc.;
- Identify actions that could be taken to end the conflict (mediation can be helpful, but be aware that in case bad faith is involved, mediation can result in a compromise where victims may still lose part of their land);
- Lobby the authorities to take appropriate measures;
- Send information, as appropriate, to the African Commission, the CESCRC and/or CCPR, the Special Rapporteurs on housing, food, indigenous peoples and human rights defenders (see Main Book, Part II, Section 10.1);
- Raise public attention on conflicts through the media, if the community agrees.



3.4 Advocating for appropriate land policies and laws and participating in policy development

The effective protection and enjoyment of ESC rights related to land can often be improved by adapting the laws. This may include:

- Identifying unjust and discriminatory land laws and making proposals for their amendment;
- Identifying land policy gaps;
- Ensuring the coherence of all laws and policies impacting on land; and
- The adoption of legal frameworks that empower people to exercise their land rights.

NGOs and CBOs could identify areas where the law is inadequate, provide examples how this has affected people's lives and lobby the government for changes in the law.

The following example from Kenya illustrates some of the constraints and opportunities to lobbying and participating in the development of land policies and programmes.

Box 23: Land rights in Kenya

In the late 1990s Kenya witnessed the emergence of a strong land rights movement, the Kenya Land Alliance.⁴⁹ As a result of the mounting pressure to address endemic land issues such as evictions and dispossession, the Kenyan government decided, in 2004, to launch a process of drafting a National Land Policy. Kenyan CSOs were able to effectively participate in this process and to advocate for addressing key land policy issues such as the redress of historical land injustices, the recognition of the land rights of women and other vulnerable groups, the restriction on land holding by foreigners, the recognition of community rights and public land and the overhaul of the land administration and management system. The new Kenyan constitution, adopted in 2010, includes a chapter on land in which several of these issues were addressed.

Hakijamii, a Kenyan human rights organisation working for the realisation of ESC rights, has drawn the following lessons in terms of successfully participating in developing land laws:

- To counter the power of the groups benefiting from existing imbalances, it is extremely important that land reformers join forces so that they can build a strong movement capable of eliciting meaningful response from the political class;
- The land rights agenda cannot be divorced from the politics of the day. The struggle for land rights ought to be linked with the ongoing political processes so that emerging opportunities in the political agenda can be seized;
- Research and advocacy must go hand in hand so as to counter arguments against change;

> *continued*

- Reliance on donor funding is not always sustainable as some of the main donors can easily be pressurised by the government to withdraw their support because of the sensitive nature of land reforms. Mainstream CSOs who rely largely on donor funding for their activities must thus invest more in supporting organic grassroots movements by creating trust and credibility with them;
- CSOs lobbying for land reforms do not always agree. Some have narrow interests informed by the professional concerns of their membership while others may have broader interests that take account of the needs of the poor; and
- CSOs should develop a flexible strategy of engagement with the government to be able to respond effectively to changing circumstances. Lobbying by closely aligning with the government is very demanding and complex since the relationship between co-optation and strategic engagement is very thin and often blurred. Outreach and communication are also very important to ensure constant visibility of the land rights agenda and to increase public support.

Source: Opiata, Odindo, 2012, *Effective Civil Society Work on Land Rights. Lessons for the Land Sector in Kenya*. Paper for AI/SPA Land rights expert meeting, September 2012.

3.5 Campaigning and alliance building against land grabbing and evictions

CSOs, NGOs and rural social movements can work together to resist loss of access to land and put pressure on authorities to make policies and programmes comply with human rights principles.

Experience shows that it is helpful to start working together with other organisations at the local level and then include other organisations at national and international levels. Organising joint conferences and campaigning actions with petitions and declarations helps to ensure agreement and have a strong voice that raises attention from the media, from governments and the international community.

Box 24: The Malian Coalition against Land Grabbing

In October 2008 the Malian government leased 100,000 hectares of arable land in Macina, in the Ségou region, to a Libyan company, Malibya, for fifty years for growing rice for export. The lands were already in use by local communities. The entire project was planned and decided behind closed doors.

> *continued*

Following a request by local farmers' associations, the National Coordination of Farmers' Organisations in Mali (CNOP is its French abbreviation) sent a fact-finding mission from 7 to 10 July 2009 to investigate the extent of the development of the project and its effects on the local population. A forty-kilometer irrigation canal with an access road alongside was built to irrigate the rice paddies. The building of this canal led to the destruction of the houses and fields of about 150 families. In addition, local producers suffered reduced access to water from the Niger River, the main source of irrigation water in the region. This was a result of granting Malibya priority access to water during the dry season, when water levels are low.

The affected community set up a commission to inform village authorities and make the broader public aware of the problems caused by the project. CNOP soon discovered that this was not the only case where the Malian State had leased land to investors. It is estimated that the Malian government has granted around 800,000 hectares in this region. Complaints by other communities facing similar human rights abuses started reaching CNOP. For this reason, CNOP and three other farmers' organisations (AOPP, SEXAGON, FANRANSISSO) and other CSOs considered it necessary to develop a broader agenda for action, including the following measures:

- Continue intensively working on raising awareness about the problems and the rights of those affected at the local level;
- Bring the claims to the Malian National Assembly in Bamako and other national authorities;
- Organise in July 2010 a march from Macina to Bamako (the capital) to draw the government's attention to the issue of land grabbing;
- Hold in November 2010 a national gathering in Kolongotomo where victims of land grabbing from the entire 'Office de Niger' region shared their testimonies and developed a common plan of action;
- Build a coalition of Malian organisations against land grabbing based on the agreements of the Kolongotomo forum in order to continue sharing information, conduct fact-finding missions on the ground, and strengthen social cohesion and unity in the communities.
- Take legal action against several companies; and
- Liaise with the African and international movement against land grabbing. See Box 25 below.

Source: www.cnop-mali.org

Box 25: The Global Alliance against Land Grabbing

In 2011, the Global Alliance against Land Grabbing issued the following statement:

“Stop Land-Grabbing Now!

We, women and men peasants, pastoralists, indigenous peoples and their allies, who gathered together in Nyeleni from 17-19 November 2011, have come from across the world for the first time to share with each other our experiences and struggles against land grabbing. One year ago we supported the Kolongo Appeal from peasant organisations in Mali, who have taken the lead in organising local resistance to the take-over of peasants’ lands in Africa. Now we came to Nyeleni in response to the Dakar Appeal, which calls for a global alliance against land grabbing. For we are determined to defend food sovereignty, the commons and the rights of small scale food providers to natural resources. Our lands are not for sale or lease. [...] Recalling the Dakar Appeal, we reiterate our commitment to resist land grabbing by all means possible, to support all those who fight land grabs, and to put pressure on national governments and international institutions to fulfill their obligations to ensure and uphold the rights of peoples.*

Specifically, we commit to:

- *Organise rural and urban communities against land grabs in every form.*
- *Strengthen the capacities of our communities and movements to reclaim and defend our rights, lands and resources.*
- *Win and secure the rights of women in our communities to land and natural resources.*
- *Create public awareness about how land grabbing is creating crises for all society.*
- *Build alliances across different sectors, constituencies, regions, and mobilise our societies to stop land grabbing.*
- *Strengthen our movements to achieve and promote food sovereignty and genuine agrarian reform.*

We call all organisations committed to these principles and actions to join our Global Alliance against Land-Grabbing, which we solemnly launch today here in Nyeleni.”

Source: See full declaration and plan of action at <http://viacampesina.org/en/index.php/main-issues-mainmenu-27/agrarian-reform-mainmenu-36/1127-stop-land-grabbing-now>

* The Dakar Appeal against land grabbing was released by social movements, organisations of small food producers and other CSOs during the World Social Forum in Dakar in February 2011. It has been signed by more than 900 organisations from all over the world and has become an important tool against land grabbing by global civil society.

3.6 Seeking to claim and redress rights through appropriate national institutions or courts

Complaints about violations of ESC rights related to land can be brought to national human rights institutions. Moreover, complaints can be filed at national courts taking into account both international human rights standards and the constitutional and national legislation on land matters.

For a brief compilation of national land legislation in several countries in Africa, see Appendix 2.

National courts are usually the main mechanism to provide remedies for victims of violations of ESC rights related to land. However, rural people face a number of challenges in accessing justice: courts may be distant from rural areas; courts rely on written titles which are often non-existent in cases of customary tenure; judges sometimes lack independence and impartiality and are often not familiar with applying human rights law to land conflicts. Resolution of cases can drag on for a long time. Filing cases in court is one key element in the search for justice but it needs to be part of a broader and comprehensive strategy of claiming rights. Government authorities are the ones in charge of executing court rulings but they often lack the political will to do so. Victims of violations of ESC rights need to be prepared to continue their advocacy efforts and mobilisation of the public in order to persuade the government to implement court rulings.



Box 26: Ugandan court orders compensation be paid to evictees of the Kaweri coffee plantation

In August 2001, the government of Uganda forcibly evicted more than 2,000 persons from their land in the Mubende District in Central Uganda. The land was given to the German coffee company Neumann Kaffee Gruppe (NKG) under its local subsidiary, which used the land to establish the first large-scale coffee plantation in Uganda. The legal action undertaken by the evictees to reclaim their land and properties has been continuously obstructed and delayed. At the time of writing, the lawsuit had lasted 11 years.

The High Court in Kampala ordered on March 28, 2013 that compensation to the amount of approximately eleven million Euros be paid to the 2,041 evictees. The judgment clearly condemns the irresponsible acts of the Kaweri-Coffee-Plantation: *“The German investors had a duty to ensure that our indigenous people were not exploited. They should have respected the human rights and values of people and as honorable businessmen and investors they should have not moved into the lands unless they had satisfied themselves that the tenants were properly compensated, relocated and adequate notice was given to them,”* the judgment states. Furthermore, the judge clearly states that the evictees were lawful occupants of the land prior to the leasehold of the land by NKG.

Currently the judgment is under intense debate in the Ugandan media because the judgment was issued primarily against the lawyers who were not parties to the case. Furthermore it is unclear why the judge would acquit the Ugandan government of all responsibility for the eviction carried out by the Ugandan Army, even though the officer in charge declared that the Resident District Commissioner, the regional representative of the government, had ordered the eviction.

Source: FIAN press release 11 April 2013; Available online: www.fian.org/data/newsletter/press-releases/press-release-ugandan-court-orders-compensation-be-paid-to-evictees/

Box 27: How to work with the regional and international human rights system

Information about submitting reports to the different human rights bodies is given in the Main Book, Part II, Section 10.1. Organisations interested in providing information to these bodies should refer to the reporting guidelines of the CESCR (see www.ohchr.org/EN/HRBodies/CESCR/Pages/CESCRIndex.aspx).

The African Commission uses a similar process. For more information, refer to their website at www.achpr.org/communications/.

3.7 The international arena

While it may be difficult or sometimes impossible for local groups and organisations to participate in international fora, groups working on ESC rights related to land should be aware of the following major processes and events:

- The Land Policy Initiative for Africa (LPI) which is a joint programme of the tripartite consortium constituted by the African Union Commission (AUC), the UN Economic Commission for Africa (ECA) and the African Development Bank (AfDB), in support of national and regional land policy processes aiming at implementing the AU Framework and Guidelines on land policy in Africa. LPI is also in charge of following up on the Nairobi Action Plan on Large-Scale Land-Based Investments in Africa. See www.uneca.org/lpi;
- The UN Committee on World Food Security (CFS) which is charged with monitoring governance of tenure using the CFS/FAO Guidelines on Responsible Governance of Tenure of Land, Fisheries and Forests. The participation of civil society organisations to the CFS is organised through the Civil Society Mechanism. See www.csm4cfs.org; and
- The Global Land Tool Network (GLTN) which aims to contribute to poverty alleviation and the Millennium Development Goals through land reform, improved land management and security of tenure. The GLTN originates from requests made by Member States and local communities worldwide to the United Nations Human Settlements Programme (UN-HABITAT). See www.gltm.net.

Practical links to these and similar organisations and networks are provided in Appendix 3.

ACHPR	African Charter/Commission on Human and Peoples' Rights
AU	African Union
CAO	Compliance Advisor Ombudsman (of the World Bank/IFC)
CBD	Convention on Biological Diversity
CBO	Community-Based Organisation
CCPR	Committee on Civil and Political Rights, or 'Human Rights Committee'
CEDAW	Convention/Committee on the Elimination of Discrimination against Women
CESCR	Committee on Economic, Social and Cultural Rights
CFS	UN Committee on World Food Security
CSO	Civil Society Organisation
ECOWAS	Economic Community of West African States
ESC rights	Economic, Social and Cultural rights
ETO(s)	Extraterritorial human rights obligations
EU	European Union
FAO	Food and Agriculture Organisation of the UN
FIAN	FoodFirst Information and Action Network
FPIC	Free, Prior and Informed Consent
GLTN	Global Land Tool Network
HLPE	High Level Panel of Experts for Food Security and Nutrition
ICARRD	International Conference on Agrarian Reform and Rural Development
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IFC	International Finance Corporation
IGO	Intergovernmental Organisation (such as UN organisations, the World Bank, etc.)
IHL	International Humanitarian Law
IUCN	International Union for Conservation of Nature
LPI	Land Policy Initiative for Africa
NGO	Non-Governmental Organisation
ODA	Official Development Assistance
OECD	Organisation for Economic Co-operation and Development
REDD	Reduction of Emissions from Degradation and Deforestation
TNC	Transnational company/corporation
UDHR	Universal Declaration on Human Rights
UN	United Nations
WHO	World Health Organisation (of the UN)

A number of the below definitions are taken from the *FAO Multilingual thesaurus on land tenure* (available online: <ftp://ftp.fao.org/docrep/fao/005/x2038e/x2038e00.pdf>), which includes more detailed descriptions of concepts.

Terms in *italics* represent entries found elsewhere in the Glossary.

A

Agribusiness

The business or industry of (commercial) agricultural production and farming, including the manufacture and distribution of farm equipment and supplies, and the processing, storage, and distribution of farm commodities.

Agro-ecology

Discipline that uses ecological theory to study, design, manage and evaluate agricultural systems that are productive but also conserve natural resources (by not depleting them or ensuring their regeneration).

Alternative dispute mechanism

A dispute resolution process aiming to help disagreeing parties to come to an agreement, without formal litigation (outside of formal courts).

Aquaculture

The farming/cultivation of aquatic organisms such as fish, seafood such as shrimps, and aquatic plants.

Artisanal fishers

Fishers using low-technology, small-scale commercial or subsistence fishing techniques.

B

Biodiversity / Biological diversity

The diversity of animal and plant life, especially the number and types of species inhabiting an area.

Biofuel crops

Crops/plants that can be used to make fuel for cars or other motors. Biofuel crops are often exported to rich countries.

C**Cadastre**

An official register showing details of ownership, boundaries, and value of land, made for taxation purposes.

Case law

Law based on judicial decisions, rather than on statutes (legislative/parliamentary acts, laws).

Codification

The creation of codes, which are compilations of written statutes, rules, and regulations that inform the public of acceptable and unacceptable behaviour. In common language, this often relates to writing up unwritten laws or regulations (for example, African customary laws), and/or making them part of the written legal codes of the land; the latter could also refer to making separate laws for issues that were previously only part of *case law*.

Collateral

The pledge of a borrower of specific property or other assets to a lender, in order to secure repayment of a loan.

Commodity / Commodification of land

A commodity is a material good. The commodification of land refers to the fact that land is increasingly being treated as a material good that has a financial value and can be traded as a commercial product rather than for being used for its social, environmental and cultural value.

Concession

A grant or lease of land or property, including the contractual right to carry on a certain kind of business or activity (such as the exploration or extraction of minerals or other natural resources), mostly by a government, in return for services or for a particular use.

Custodian

A person who has the responsibility for taking care of or protecting something.

Customary *land tenure*

The relationship between people and their lands as defined by customs, traditions and ancestry. This relationship determines who can use what (land-based) resources for how

long, and under what conditions. Who holds/uses which land is normally not registered through formal land titles, but it is common knowledge among members of ethnic groups and administered by clan heads or governing bodies within the community.

D

Deed

A legal document that shows who owns a building or piece of land.

Demographic pressure

Population pressure, or an increasing number of inhabitants in a certain area, which is affecting the environment.

Desertification

The process of land degradation resulting in the advancement of the desert.

Due diligence

Human rights due diligence for companies refers to the steps that a company should take (such as putting in place robust, transparent and participatory systems, policies and procedures) to identify, prevent, mitigate and address the adverse impacts of its global operations on human rights, as elaborated in various international standards such as the UN Guiding Principles on Business and Human Rights and the OECD Due Diligence Guidance on Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas. The scope of that due diligence should be adapted to reflect the potential risk and scope of impact of the company's operations. (Also see "Due diligence" in the Glossary of the Main Book)

E

Ecosystem

The combination of living organisms like plants, animals and microbes, and non-living elements like water, air or minerals, which interact together as a system and compose our environment.

Extractive industries

The exploration for and detection of minerals, oil and natural gas deposits, developing those deposits and extracting the minerals, oil and natural gas.

F

Financial instrument / Financialisation of land

Documents representing a certain asset, worth some kind of (fluctuating) value in money;

examples are stocks, bonds, etc. which represent a part of the value of an enterprise, a product, a volume of raw materials or a piece of land. If land is increasingly bought for purposes of investment for accumulating financial returns rather than for direct use, we can speak of the financialisation of land.

Freehold tenure

A system that allows the owner absolute possession of the land without interference from others; it provides the owner the largest 'bundle of rights' of ownership, including the right to enjoy all that is on, beneath or above the land, the right to use and even to waste the land.

H

Home State

The State in which a company is incorporated or registered or has its legal address (domicile) or registered office. For a *transnational company*, the home State will be the State in which the ultimate parent or controlling company is incorporated or registered or has its legal address (domicile) or registered office.

Host State

Any State, apart from its *home State*, in which a company operates or carries out business activities, often through a local subsidiary.

Hunter-gatherers

People who obtain most or all of their food from hunting wild animals and collecting wild plants, usually in forests.

I

Impact assessment

The process of identifying and assessing the impact of a particular planned activity or a proposed change in the circumstances. Impact assessments could include the impact of the activity/project on the environment and ecology of an area (environmental impact assessments) and on the lives, health, food security and livelihoods of people in the area (sometimes called social impact assessments). Having assessed the impacts, the study should also cover steps that would be taken to mitigate the negative impacts of the proposed activity/project/change in circumstances.

Imprescriptible

Cannot be taken away.

Investor

A person who invests (commits money in order to earn a financial return) in land or other

assets. They may be domestic or foreign, public actors (States or State actors such as government bodies or agencies) or private actors (non-State actors such as corporations, investment funds, individuals or international financial institutions).



Land concentration

The process of land passing into the hands of a smaller number of people than previously.

Land degradation

The process whereby land is losing its value for crop production or its environmental value, as it loses its ability to retain nutrients in the soil, to filter and absorb water; this results in the loss of *vegetation*. Land degradation is caused by extreme weather conditions, such as droughts, heavy rain or floods, and by human activities such as deforestation and monocultures (the continuous plantation of just one crop species on a big plot of land).

Land grabbing

The process of taking over, buying or leasing land against the wish of the current users. This can be done by the State, by companies, or by private people, even by neighbours or family members. ‘Land grabbing’ is not a neutral term and acquiring land against the wish of current users may still be legal (compulsory acquisition, though this requires safeguards), but the term has become widely used to refer to land acquisition for commercial or *investment* purposes, thereby displacing or restricting access for current/traditional users.

The International Land Coalition defines ‘land grabbing’ as “*acquisitions or concessions that are one or more of the following: (i) in violation of human rights, particularly the equal rights of women; (ii) not based on free, prior and informed consent of the affected land-users; (iii) not based on a thorough assessment, or are in disregard of social, economic and environmental impacts, including the way they are gendered; (iv) not based on transparent contracts that specify clear and binding commitments about activities, employment and benefits sharing, and; (v) not based on effective democratic planning, independent oversight and meaningful participation.*” (see www.landcoalition.org/en/tirana-declaration)

Land-poor

People owning limited, unprofitable land but lacking capital to improve or maintain it.

Land reform

A generic term for modifications in the legal and institutional framework governing land policy. The most common types of land reform deal with reallocations of land and redistributing legal rights of ownership. Land reform is invariably a part of agrarian reform,

which also includes reforms to the production structure and the service structure.

Land rights

Rights, legally or customarily defined, with respect to land that are held by individuals or communities. These can be rights to use land for housing, growing crops, grazing, gathering forest products and other livelihoods; rights to control land, its uses and benefits; rights to transfer land which includes rights to sell or mortgage the land, to transmit the land to heirs through inheritance, and to reallocate usage and control rights.

Land-scarce people

People lacking sufficient land to be able to attain an adequate standard of living.

Land tenure

The relationship between people and their lands, determining who can use what (land-based) resources for how long, and under what conditions. Land tenure systems comprise the set of possible bases under which land may be used. It encompasses both rural and urban tenures and includes ownership, tenancy and other arrangements for the use of land. Commonly, tenure systems comprise *freehold*, *leasehold* and *customary tenure*.

Land titling

A type of *land reform* in which private individuals and families are given formal property rights (by way of 'title *deeds*', formal documents which evidence or prove ownership of the property) for land which they have previously occupied informally or used on the basis of *customary land tenure*.

Landlord

The owner of a house, real estate or land which is rented or *leased* to an individual or business.

Leasehold / Lease

The land or real estate which is the subject of a lease (a written rental agreement for an extended period of time).

M**Mandate**

An official order or authority to do a certain thing.

Marshland

An area that is dominated by marshes, swamps, bogs etc. (wet and soft land).

Matrimonial property law

Legal regime on property ownership between spouses, providing for the creation or absence of a marital estate (common assets in a marriage). If a marital estate is created, it governs which properties are included in that estate, how and by whom it is managed, and how it will be divided or inherited at the end of the marriage.

N

Nationalisation

The process of taking a private industry or private assets into public (State) ownership by a State or national government.

Nomads / Nomadic *pastoralists*

People who have no fixed residence but move from place to place, usually seasonally and within a well-defined territory. Nomadic *pastoralists* move their households together with their animals, in search of grazing land and water.

P

Pastoralists

People who make a living by taking care of animals, those called shepherds or herders.

Privatisation

The process of transferring ownership of a business, public service or public property from the public sector (the government, or the clan, in the case of *customary land tenure*) to the private sector. This could be a private, wealthy individual, a business that operates for a profit or a non-profit organisation.

Property disinheritance

To exclude from inheritance or the right to inherit property (such as land).

Public-private partnerships

Projects or enterprises which are set up by, and with shared governance by, public or State institutions and private enterprises.

R

Rangeland

Land that naturally produces forage plants suitable for grazing but where rainfall is too low or irregular to grow crops.

Reduction of Emissions from Degradation and Deforestation (REDD)

REDD is a mechanism under the UN Framework Convention on Climate Change, in which governments, companies or forest owners in the South can be rewarded for keeping their forests instead of cutting them down.

Relocation

Moving people to another location.

Restitution

To compensate for loss or injury by giving back property or otherwise to restore the situation to how it was.

S

Secession

The act of separating from a nation or State and becoming independent.

Sectoral land-related budget

Budget of sectoral ministry or department relating to land.

Security of *land tenure*

The degree of (legal) recognition and guarantee of continued access, control or ownership of land. Security of *land tenure* should provide protection to the tenure holder against forced evictions and harassment, including arbitrary rent increases.

Spatial planning

Policies and regulations for planning and determining the distribution of buildings and activities in a certain geographical space. This includes land use planning, in which the State usually defines how land can be used (for example, as residential area, for business development, for agriculture or for nature conservation).

Speculation

Trading in an asset or conducting a financial transaction that has a significant risk of losing most or all of the initial investment, but with the chance of a substantial gain.

Spoliation

Negatively affecting someone's property beyond reclaim.

Staple food

Food that is eaten regularly and in such quantities as to constitute the dominant part of the diet and supply a major proportion of energy and nutrient needs. Different kinds of

staple food are used in different parts of the world. Examples of staple food are cereals like sorghum, millet and rice, tubers like potatoes, yams and cassava, and pulses like beans.

Statutory law

Written law enacted by a legislature (usually a parliament or congress), as opposed from unwritten customary law.

Subsistence (farming)

Making a living; farming to produce food for the survival of one's own family.

Surveying

The study or practice of measuring altitudes, angles and distances on the land surface in order to be accurately plotted on a map.

T

Tenant (farmer)

Someone who hires or rents a property, in this case land.

Tort

Civil wrongs recognised by law as grounds for a lawsuit. These wrongs result in an injury or harm constituting the basis for a claim by the injured party. While some torts are also crimes punishable with imprisonment, the primary aim of tort law is to provide relief for the damages incurred (like loss of earnings capacity, pain and suffering, and medical expenses) and deter others from committing the same harms. (from Cornell University Law School, Legal Information Institute; www.law.cornell.edu/wex/tort)

Transnational companies/corporations (TNCs)

A company or corporation that operates in more than one country either directly or through local subsidiaries or other business relationships.

V

Vegetation

Plant cover (on land).



Appendix 1: International and regional human rights law and standards

This tool consists of a table on the following pages to enable readers to select appropriate quotations on land rights issues from international and regional human rights standards that may be used in reports or recommendations to governments. Quoting the national law and regional or international standards shows that human rights workers are aware of State obligations and increases the impact of their work. For further information about using regional and international standards see the Main Book, Part I, Section 3.3.

How to use the table

Look for the topic of interest in column 1. Column 2 contains relevant articles. It is best to look at the complete texts whenever possible: Internet references are given for this purpose. The quotations have been selected from:

Human Rights Treaties

- African Charter on Human and People's Rights: www.achpr.org/instruments/achpr
- Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa: www.achpr.org/instruments/women-protocol
- AU Convention for the Protection and Assistance of Internally Displaced Persons in Africa: [www.au.int/en/sites/default/files/AFRICAN_UNION_CONVENTION_FOR_THE_PROTECTION_AND_ASSISTANCE_OF_INTERNALLY_DISPLACED_PERSONS_IN_AFRICA_\(KAMPALA_CONVENTION\).pdf](http://www.au.int/en/sites/default/files/AFRICAN_UNION_CONVENTION_FOR_THE_PROTECTION_AND_ASSISTANCE_OF_INTERNALLY_DISPLACED_PERSONS_IN_AFRICA_(KAMPALA_CONVENTION).pdf)
- International Covenant on Economic, Social and Cultural Rights: www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx
- Convention on the Elimination of All Forms of Discrimination against Women: www.ohchr.org/EN/ProfessionalInterest/Pages/CEDAW.aspx
- Protocol Additional to the Geneva Conventions, relating to the Protection of Victims of International Armed Conflicts (Protocol I): www.icrc.org/applic/ihl/ihl.nsf/INTRO/470?opendocument
- Protocol Additional to the Geneva Conventions, relating to the Protection of Victims of Non- International Armed Conflicts (Protocol II): www.icrc.org/applic/ihl/ihl.nsf/INTRO/475?opendocument
- ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries: www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_100897.pdf
- Convention on Biological Diversity, available online: www.cbd.int.

Human Rights standards, advice and interpretations

- Universal Declaration of Human Rights: www.un.org/en/documents/udhr
- General Comments of the Human Rights Committee and the Committee on Economic, Social and Cultural Rights: ICCPR: www.ohchr.org/EN/HRBodies/CCPR/Pages/CCPRIndex.aspx; ICESCR: www.ohchr.org/EN/HRBodies/CESCR/Pages/CESCRIndex.aspx (links to the General Comments can be found in the left columns of these web pages)
- UN Declaration on the Rights of Indigenous Peoples (UN-DRIPS), available online: <http://undesadspd.org/indigenouspeoples/declarationontherightsofindigenouspeoples.aspx>
- UN Guiding Principles on Business and Human Rights: www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf
- Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights: www.etoconsortium.org/nc/en/library/maastricht-principles/?tx_drblob_pi1%5BdownloadUid%5D=23
- UN Guiding Principles on Internal Displacement: www.unhcr.org/43ce1cff2.html
- Principles on Housing and Property Restitution for Refugees and Displaced Persons: www.unhcr.org/refworld/category,LEGAL,UNSUBCOM,,,41640c874,0.html
- Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law: www.ohchr.org/EN/ProfessionalInterest/Pages/RemedyAndReparation.aspx
- Basic Principles and Guidelines on Development-based Evictions and Displacement: www2.ohchr.org/english/issues/housing/docs/guidelines_en.pdf
- FAO Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the context of national food security: www.fao.org/docrep/009/y7937e/Y7937E00.HTM
- CFS/FAO Voluntary Guidelines on Responsible Governance of Tenure of Land, Fisheries and Forests in the context of national food security: www.fao.org/docrep/016/i2801e/i2801e.pdf; also see “Voluntary Guidelines on Governance of Tenure at a Glance”, available online: www.fao.org/docrep/016/i3016e/i3016e.pdf
- Commission on Human Rights. Resolution 2003/22 Women’s equal ownership of, access to and control over land and the equal rights to own property and to adequate housing. Available online: www.ohchr.org/EN/Issues/Housing/Pages/WomenAndHousing.aspx

Decisions of international programmes

- Millennium Development Goals: www.unmillenniumproject.org/documents/ares552e.pdf
- UN Human Settlements Programme (UN-HABITAT): mandate documents, amongst which the Istanbul Declaration: <http://www.unhabitat.org/declarations/default.asp>
- FAO Code of Conduct for Responsible Fisheries: www.fao.org/docrep/005/v9878e/v9878e00.HTM
- International Conference on Agrarian Reform and Rural Development: www.agter.asso.fr/IMG/pdf/ICARRD_final_report_En.pdf

- UN Convention to Combat Desertification in Countries Experiencing Serious Drought and/or Desertification, particularly in Africa:
www.unccd.int/Lists/SiteDocumentLibrary/conventionText/conv-eng.pdf

The following table gives extracts on issues relating to land from relevant human rights instruments. However, it omits extracts on topics that are covered in the Haki Zetu booklets on the right to food and the right to adequate housing. Therefore, this appendix should be used in conjunction with the appendices in these two booklets, or direct reference should be made to the sources available through the links above.

Table : Extracts on land and ESC rights

Topic	Relevant Article(s)
Land and the right to food	<p>ICESCR Art. 11, 1 and 2 (a) and (b) - see contents in the original text, or in other Haki Zetu booklets (<i>The Right to Adequate Food</i> and <i>The Right to Adequate Housing</i>)</p>
	<p>General Comment No. 12, paras. 12 and 13:</p> <p>12. Availability refers to the possibilities either for feeding oneself directly from productive land or other natural resources, or for well-functioning distribution, processing and market systems that can move food from the site of production to where it is needed in accordance with demand.</p> <p>13. Accessibility encompasses both economic and physical accessibility: [...] Socially vulnerable groups such as landless persons and other particularly impoverished segments of the population may need attention through special programmes. [...] A particular vulnerability is that of many indigenous population groups whose access to their ancestral lands may be threatened.</p> <p>Para. 26:</p> <p>26. The strategy [for implementing the right to adequate food] should give particular attention to the need to prevent discrimination in access to food or resources for food. This should include: guarantees of full and equal access to economic resources, particularly for women, including the right to inheritance and the ownership of land and other property, credit, natural resources and appropriate technology; measures to respect and protect self-employment and work which provides a remuneration ensuring a decent living for wage earners and their families (as stipulated in article 7 (a) (ii) of the Covenant); maintaining registries on rights in land (including forests).</p> <p>Also see paras. 6, 15 and 21; consult the original text.</p>
	<p>FAO Voluntary Guidelines to support the progressive realisation of the right to adequate food</p> <p>8.10 States should take measures to promote and protect the security of land tenure, especially with respect to women, and poor and disadvantaged segments of society, through legislation that protects the full and equal right to own land and other property, including the right to inherit. As appropriate, States should consider establishing legal and other policy mechanisms, consistent with their international human rights obligations and in accordance with the rule of law, that advance land reform to</p> <p style="text-align: right;"><i>> continued</i></p>

Topic	Relevant Article(s)
	<p>enhance access for the poor and women. Such mechanisms should also promote conservation and sustainable use of land. Special consideration should be given to the situation of indigenous communities.</p>
<p>Land and the right to housing</p>	<p>ICESCR Art. 11, 1 and 2 (a) and (b)</p>
	<p>General Comment No. 4:</p> <p>7. In the Committee's view, the right to housing should not be interpreted in a narrow or restrictive sense which equates it with, for example, the shelter provided by merely having a roof over one's head or views shelter exclusively as a commodity. Rather it should be seen as the right to live somewhere in security, peace and dignity.</p>
<p>Security of tenure</p>	<p>CFS/FAO Voluntary Guidelines on Responsible Governance of Tenure of Land, Fisheries and Forests</p> <p>(from '<i>Voluntary Guidelines at a Glance</i>', page 6:)</p> <p>In accordance with the general principles, States should:</p> <ul style="list-style-type: none"> • Recognise and respect all legitimate tenure rights and the people who hold them; • Safeguard legitimate tenure rights against threats; • Promote and facilitate the enjoyment of legitimate tenure rights; • Provide access to justice when tenure rights are infringed upon; • Prevent tenure disputes, violent conflicts and opportunities for corruption. <p>Non-State actors (including business enterprises) have a responsibility to respect human rights and legitimate tenure rights.</p>
	<p>General Comment No. 4:</p> <p>8. [...]</p> <p>(a) <u>Legal security of tenure</u>. Tenure takes a variety of forms, including rental (public and private) accommodation, cooperative housing, lease, owner-occupation, emergency housing and informal settlements, including occupation of land or property. Notwithstanding the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. States parties should consequently take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection, in genuine consultation with affected persons and groups [...]</p>

> continued

Topic	Relevant Article(s)
	<p>The Habitat Agenda, para. 75 (also see other relevant paragraphs): Access to land and legal security of tenure are strategic prerequisites for the provision of adequate shelter for all and for the development of sustainable human settlements affecting both urban and rural areas.</p> <hr/> <p>General Comment No. 7, para. 16 (also see para. 8): 16. Evictions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights. Where those affected are unable to provide for themselves, the State party must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available.</p> <hr/> <p>Basic principles and guidelines on development-based evictions and displacement, paras. 25, 40, 41, 46:</p> <p>25. In order to secure a maximum degree of effective legal protection against the practice of forced evictions for all persons under their jurisdiction, States should take immediate measures aimed at conferring legal security of tenure upon those persons, households and communities currently lacking such protection, including all those who do not have formal titles to home and land.</p> <p>40. Prior to any decision to initiate an eviction, authorities must demonstrate that the eviction is unavoidable and consistent with international human rights commitments protective of the general welfare.</p> <p>41. Any decision relating to evictions should be announced in writing in the local language to all individuals concerned, sufficiently in advance. The eviction notice should contain a detailed justification for the decision, including on: (a) absence of reasonable alternatives; (b) the full details of the proposed alternative; and (c) where no alternatives exist, all measures taken and foreseen to minimize the adverse effects of evictions. All final decisions should be subject to administrative and judicial review. Affected parties must also be guaranteed timely access to legal counsel, without payment if necessary.</p> <p>46. Neutral observers, including regional and international observers, should be allowed access upon request, to ensure transparency and compliance with international human rights principles during the carrying out of any eviction.</p>
Forced evictions	<p>General Comment No. 4, para. 17:</p> <hr/> <p>General Comment No. 7, para. 16 - see above, under Security of tenure. <i>> continued</i></p>

Topic	Relevant Article(s)
	<p>Basic principles and guidelines on development-based evictions and displacement, paras. 16, 25, 40, 41, 46, 58, 68, 69</p> <p>16. All persons, groups and communities have the right to resettlement, which includes the right to alternative land of better or equal quality and housing that must satisfy the following criteria for adequacy: accessibility, affordability, habitability, security of tenure, cultural adequacy, suitability of location, and access to essential services such as health and education.</p>
<p>Land and the right to water</p>	<p>General Comment No. 15:</p> <p>7. The Committee notes the importance of ensuring sustainable access to water resources for agriculture to realise the right to adequate food (see General Comment No.12 (1999)). Attention should be given to ensuring that disadvantaged and marginalised farmers, including women farmers, have equitable access to water and water management systems, including sustainable rain harvesting and irrigation technology. Taking note of the duty in article 1, paragraph 2, of the Covenant, which provides that a people may not “be deprived of its means of subsistence”, States parties should ensure that there is adequate access to water for subsistence farming and for securing the livelihoods of indigenous peoples.</p> <p>16. (c) Rural and deprived urban areas have access to properly maintained water facilities. Access to traditional water sources in rural areas should be protected from unlawful encroachment and pollution. Deprived urban areas, including informal human settlements, and homeless persons, should have access to properly maintained water facilities. No household should be denied the right to water on the grounds of their housing or land status;</p> <p>16 (d) Indigenous peoples’ access to water resources on their ancestral lands is protected from encroachment and unlawful pollution. States should provide resources for indigenous peoples to design, deliver and control their access to water.</p> <p>Paras. 21 and 23 (see booklet on the right to water, or original General Comment text).</p>
<p>Land and the right to work</p>	<p>ICESCR Art. 6.1</p> <p>1. The States Parties to the present Covenant recognise the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.</p>

> *continued*

Topic	Relevant Article(s)
<p>Land and the right to self-determination</p>	<p>ICESCR</p> <p>Art. 1.1: All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.</p> <p>Art. 1.2: All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.</p> <hr/> <p>African Charter on Human and Peoples' Rights</p> <p>Art. 21:</p> <ol style="list-style-type: none"> 1. All peoples shall freely dispose of their wealth and natural resources. This right shall be exercised in the exclusive interest of the people. In no case shall a people be deprived of it. 2. In case of spoliation the dispossessed people shall have the right to the lawful recovery of its property as well as to an adequate compensation. 3. The free disposal of wealth and natural resources shall be exercised without prejudice to the obligation of promoting international economic cooperation based on mutual respect, equitable exchange and the principles of international law. 4. States parties to the present Charter shall individually and collectively exercise the right to free disposal of their wealth and natural resources with a view to strengthening African unity and solidarity. 5. States parties to the present Charter shall undertake to eliminate all forms of foreign economic exploitation particularly that practiced by international monopolies so as to enable their peoples to fully benefit from the advantages derived from their national resources.
<p>Land and the right to property</p>	<p>African Charter on Human and Peoples' Rights</p> <p>Art. 14: The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws.</p> <hr/> <p>International Convention on the Elimination of All Forms of Racial Discrimination</p> <p>Art. 5: In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial</p> <p style="text-align: right;"><i>> continued</i></p>

Topic	Relevant Article(s)
	<p>discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: [...] (v) The right to own property alone as well as in association with others; (vi) The right to inherit.</p> <p>Convention on the Elimination of All Forms of Discrimination against Women Art. 16: 1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women: [...] (h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.</p>
<p>Land and International Humanitarian Law</p>	<p>Protocol Additional to the Geneva Conventions relating to the Protection of Victims of International Armed Conflicts (Protocol I) Art. 54: Protection of objects indispensable to the survival of the civilian population: 1. Starvation of civilians as a method of warfare is prohibited. 2. It is prohibited to attack, destroy, remove or render useless objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works, for the specific purpose of denying them for their sustenance value to the civilian population or to the adverse Party, whatever the motive, whether in order to starve out civilians, to cause them to move away, or for any other motive.</p> <p>Protocol Additional to the Geneva Conventions relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) Art. 14: Protection of objects indispensable to the survival of the civilian population: Starvation of civilians as a method of combat is prohibited. It is therefore prohibited to attack, destroy, remove or render useless, for that purpose, objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works.</p> <p style="text-align: right;"><i>> continued</i></p>

Topic	Relevant Article(s)
<p>Land and business</p>	<p>UN Guiding Principles on Business and Human Rights</p> <ol style="list-style-type: none"> 1. States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication. 3. In meeting their duty to protect, States should: <ol style="list-style-type: none"> (a) Enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights, and periodically to assess the adequacy of such laws and address any gaps; (b) Ensure that other laws and policies governing the creation and ongoing operation of business enterprises, such as corporate law, do not constrain but enable business respect for human rights; (c) Provide effective guidance to business enterprises on how to respect human rights throughout their operations; (d) Encourage, and where appropriate require, business enterprises to communicate how they address their human rights impacts. 11. Business enterprises should respect human rights. This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved. 13. The responsibility to respect human rights requires that business enterprises: <ol style="list-style-type: none"> (a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur; (b) Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts. 17. In order to identify, prevent, mitigate and account for how they address their adverse human rights impacts, business enterprises should carry out human rights due diligence. The process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed. Human rights due diligence: <ol style="list-style-type: none"> (a) Should cover adverse human rights impacts that the business enterprise may cause or contribute to through its own activities, or which may be directly linked to its operations, products or services by its business relationships; <p style="text-align: right;"><i>> continued</i></p>

Topic	Relevant Article(s)
	<p>(b) Will vary in complexity with the size of the business enterprise, the risk of severe human rights impacts, and the nature and context of its operations;</p> <p>(c) Should be ongoing, recognising that the human rights risks may change over time as the business enterprise's operations and operating context evolve.</p> <p>25. As part of their duty to protect against business-related human rights abuse, States must take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that when such abuses occur within their territory and/or jurisdiction those affected have access to effective remedy.</p>
	<p>CFS/FAO Voluntary Guidelines on Responsible Governance of Tenure of Land, Fisheries and Forests in the context of national food security</p> <p>3.2 Non-State actors including business enterprises have a responsibility to respect human rights and legitimate tenure rights. Business enterprises should act with due diligence to avoid infringing on the human rights and legitimate tenure rights of others. They should include appropriate risk management systems to prevent and address adverse impacts on human rights and legitimate tenure rights. Business enterprises should provide for and cooperate in non-judicial mechanisms to provide remedy, including effective operational-level grievance mechanisms, where appropriate, where they have caused or contributed to adverse impacts on human rights and legitimate tenure rights. Business enterprises should identify and assess any actual or potential impacts on human rights and legitimate tenure rights in which they may be involved. States, in accordance with their international obligations, should provide access to effective judicial remedies for negative impacts on human rights and legitimate tenure rights by business enterprises. Where transnational corporations are involved, their home States have roles to play in assisting both those corporations and host States to ensure that businesses are not involved in abuse of human rights and legitimate tenure rights. States should take additional steps to protect against abuses of human rights and legitimate tenure rights by business enterprises that are owned or controlled by the State, or that receive substantial support and service from State agencies.</p>
	<p>Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights</p> <p>24. Obligation to regulate</p> <p>All States must take necessary measures to ensure that non-State actors which they are in a position to regulate, as set out in Principle</p> <p style="text-align: right;"><i>> continued</i></p>

Topic	Relevant Article(s)
	<p>25, such as private individuals and organisations, and transnational corporations and other business enterprises, do not nullify or impair the enjoyment of economic, social and cultural rights. These include administrative, legislative, investigative, adjudicatory and other measures. All other States have a duty to refrain from nullifying or impairing the discharge of this obligation to protect.</p>
<p>Land and the rights of women</p>	<p>Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa Art. 15: Right to Food Security States Parties shall ensure that women have the right to nutritious and adequate food. In this regard, they shall take appropriate measures to: a) provide women with access to clean drinking water, sources of domestic fuel, land, and the means of producing nutritious food; Art. 16: Right to Adequate Housing Women shall have the right to equal access to housing and to acceptable living conditions in a healthy environment. Art. 19: Right to Sustainable Development Women shall have the right to fully enjoy their right to sustainable development. In this connection, the States Parties shall take all appropriate measures to: [...] c) promote women's access to and control over productive resources such as land and guarantee their right to property.</p> <p>CEDAW Art. 1.1: States Parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families, including their work in the non-monetised sectors of the economy, and shall take all appropriate measures to ensure the application of the provisions of the present Convention to women in rural areas. Art. 1.2: States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right: [...] (g) To have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes.</p>
<p>Land and the rights of landless people</p>	<p>CESCR General Comment 4 on the right to adequate housing: 8. (e) Accessibility. [...] Within many States parties increasing access to land by landless or impoverished segments of the society should con- > <i>continued</i></p>

Topic	Relevant Article(s)
	<p>stitute a central policy goal. Discernible governmental obligations need to be developed aiming to substantiate the right of all to a secure place to live in peace and dignity, including access to land as an entitlement.</p> <p>CESCR General Comment 12 on the right to adequate food Para. 13: Accessibility encompasses both economic and physical accessibility: [...] Socially vulnerable groups such as landless persons and other particularly impoverished segments of the population may need attention through special programmes.</p> <p>CFS/FAO Voluntary Guidelines on Responsible Governance of Tenure of Land, Fisheries and Forests in the context of national food security Para. 15.3: In the national context and in accordance with national law and legislation, redistributive reforms may be considered for social, economic and environmental reasons, among others, where a high degree of ownership concentration is combined with a significant level of rural poverty attributable to lack of access to land, fisheries and forests respecting, in line with the provisions of Section 15, the rights of all legitimate tenure holders. Redistributive reforms should guarantee equal access of men and women to land, fisheries and forests.</p>
<p>Land and the rights of peasants and other small-scale producers and vulnerable people</p>	<p>CFS/FAO Voluntary Guidelines on Responsible Governance of Tenure of Land, Fisheries and Forests in the context of national food security Art. 1.1: These Voluntary Guidelines seek to improve governance of tenure of land, fisheries and forests. They seek to do so for the benefit of all, with an emphasis on vulnerable and marginalised people, with the goals of food security and progressive realisation of the right to adequate food, poverty eradication, sustainable livelihoods, social stability, housing security, rural development, environmental protection and sustainable social and economic development. All programmes, policies and technical assistance to improve governance of tenure through the implementation of these Guidelines should be consistent with States' existing obligations under international law, including the Universal Declaration of Human Rights and other international human rights instruments.</p> <p>Art. 1.2: These Guidelines seek to:</p> <p>(4) strengthen the capacities and operations of implementing agencies; judicial authorities; local governments; organisations of farmers and small-scale producers, of fishers, and of forest users; pastoralists;</p> <p style="text-align: right;"><i>> continued</i></p>

Topic	Relevant Article(s)
	<p>indigenous peoples and other communities; civil society; private sector; academia; and all persons concerned with tenure governance as well as to promote the cooperation between the actors mentioned.</p>
<p>Land and the right of fishers</p>	<p>FAO Code of Conduct for Responsible Fisheries</p> <p>6.18: Recognising the important contributions of artisanal and small- scale fisheries to employment, income and food security, States should appropriately protect the rights of fishers and fishworkers, particularly those engaged in subsistence, small-scale and artisanal fisheries, to a secure and just livelihood, as well as preferential access, where appropriate, to traditional fishing grounds and resources in the waters under their national jurisdiction.</p> <p>CFS/FAO Voluntary Guidelines on Responsible Governance of Tenure of Land, Fisheries and Forests in the context of national food security</p> <p>The Guidelines apply equally to fisheries as to land and forests.</p> <p>FAO will adopt shortly Voluntary Guidelines on Securing Sustainable Small-Scale Fisheries.</p> <p>Check http://www.fao.org/fishery/ssf/guidelines/en</p>
<p>Land and the rights of pastoralists</p>	<p>Policy Framework of the African Union for Pastoralism in Africa: Securing, Protecting and Improving the Lives, Livelihoods and Rights of Pastoralist Communities</p> <p>4.1 Framework principles</p> <p>4.1.1 Recognise the rights of pastoralists</p> <p>The framework explicitly recognises the rights of pastoralists, and the need to provide security, services, infrastructure and economic opportunities in pastoral areas which are comparable to non-pastoral areas. This principle is articulated as a response to the high levels of conflict in pastoral areas, and the low levels of basic services, of which health and education are particular concerns. It further recognises that under the broad challenges of health and education, are a set of specific barriers of service access for women and girls. The principle relates directly to international human rights conventions and laws, including the right of people to protection from violence, the right to pursue a livelihood of their choice, and the right to education and health.</p> <p>4.2 Framework objectives and strategies</p> <p>Objective 1</p> <p>Secure and protect the lives, livelihoods and rights of pastoral peoples and ensure continent-wide commitment to political, social and economic development of pastoral communities and pastoral areas.</p> <p>Objective 2</p> <p>Reinforce the contribution of pastoral livestock to national, regional and continent wide economies.</p> <p style="text-align: right;"><i>> continued</i></p>

Topic	Relevant Article(s)
<p>Land and the rights of indigenous peoples</p>	<p>African Charter on Human and People's Rights</p> <p>Articles 19-24 apply to indigenous peoples according to the Jurisprudence of the African Commission on Human and Peoples' Rights</p> <p>Art. 20:</p> <ol style="list-style-type: none"> 1. All peoples shall have the right to existence. They shall have the unquestionable and inalienable right to self-determination. They shall freely determine their political status and shall pursue their economic and social development according to the policy they have freely chosen. <p>Art. 21:</p> <ol style="list-style-type: none"> 1. All peoples shall freely dispose of their wealth and natural resources. This right shall be exercised in the exclusive interest of the people. In no case shall a people be deprived of it. 2. In case of spoliation the dispossessed people shall have the right to the lawful recovery of its property as well as to an adequate compensation. 3. The free disposal of wealth and natural resources shall be exercised without prejudice to the obligation of promoting international economic cooperation based on mutual respect, equitable exchange and the principles of international law. <p>Art. 24:</p> <p>All peoples shall have the right to a general satisfactory environment favorable to their development.</p>
	<p>ILO Convention N° 169, Indigenous and Tribal Peoples Convention, 1989</p> <p>Part II. Land</p> <p>Art. 13:</p> <ol style="list-style-type: none"> 1. In applying the provisions of this Part of the Convention governments shall respect the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands or territories, or both as applicable, which they occupy or otherwise use, and in particular the collective aspects of this relationship. 2. The use of the term lands in Articles 15 and 16 shall include the concept of territories, which covers the total environment of the areas which the peoples concerned occupy or otherwise use. <p>Art. 14:</p> <ol style="list-style-type: none"> 1. The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognised. In addition, measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities. Particular attention shall be paid to the situation of nomadic peoples and shifting cultivators in this respect. <p style="text-align: right;"><i>> continued</i></p>

Topic	Relevant Article(s)
	<p>2. Governments shall take steps as necessary to identify the lands which the peoples concerned traditionally occupy, and to guarantee effective protection of their rights of ownership and possession.</p> <p>3. Adequate procedures shall be established within the national legal system to resolve land claims by the peoples concerned.</p> <p>Art. 15:</p> <p>1. The rights of the peoples concerned to the natural resources pertaining to their lands shall be specially safeguarded. These rights include the right of these peoples to participate in the use, management and conservation of these resources.</p> <p>2. In cases in which the State retains the ownership of mineral or sub-surface resources or rights to other resources pertaining to lands, governments shall establish or maintain procedures through which they shall consult these peoples, with a view to ascertaining whether and to what degree their interests would be prejudiced, before undertaking or permitting any programmes for the exploration or exploitation of such resources pertaining to their lands. The peoples concerned shall wherever possible participate in the benefits of such activities, and shall receive fair compensation for any damages which they may sustain as a result of such activities.</p> <p>Art. 16:</p> <p>1. Subject to the following paragraphs of this Article, the peoples concerned shall not be removed from the lands which they occupy.</p> <p>2. Where the relocation of these peoples is considered necessary as an exceptional measure, such relocation shall take place only with their free and informed consent. Where their consent cannot be obtained, such relocation shall take place only following appropriate procedures established by national laws and regulations, including public inquiries where appropriate, which provide the opportunity for effective representation of the peoples concerned.</p> <p>3. Whenever possible, these peoples shall have the right to return to their traditional lands, as soon as the grounds for relocation cease to exist.</p> <p>4. When such return is not possible, as determined by agreement or, in the absence of such agreement, through appropriate procedures, these peoples shall be provided in all possible cases with lands of quality and legal status at least equal to that of the lands previously occupied by them, suitable to provide for their present needs and future development. Where the peoples concerned express a preference for compensation in money or in kind, they shall be so compensated under appropriate guarantees.</p> <p>5. Persons thus relocated shall be fully compensated for any resulting loss or injury.</p> <p style="text-align: right;"><i>> continued</i></p>

Topic	Relevant Article(s)
	<p>UN Declaration on the Rights of Indigenous Peoples (UN-DRIPS)</p> <p>Art. 10: Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.</p> <p>Art. 25: Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.</p> <p>Art. 26: <ol style="list-style-type: none"> 1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired. 2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired. 3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned. </p> <p>Art. 27: States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.</p> <p>Art. 28: <ol style="list-style-type: none"> 1. Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent. 2. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and </p> <p style="text-align: right;"><i>> continued</i></p>

Topic	Relevant Article(s)
	<p>resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.</p> <p>Art. 29:</p> <ol style="list-style-type: none"> 1. Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination. 2. States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent. <p>Art. 30:</p> <ol style="list-style-type: none"> 1. Military activities shall not take place in the lands or territories of indigenous peoples, unless justified by a relevant public interest or otherwise freely agreed with or requested by the indigenous peoples concerned. 2. States shall undertake effective consultations with the indigenous peoples concerned, through appropriate procedures and in particular through their representative institutions, prior to using their lands or territories for military activities. <p>Art. 32:</p> <ol style="list-style-type: none"> 1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources. 2. 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, utilisation or exploitation of mineral, water or other resources. 3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.
<p>Land and the rights of refugees and displaced persons</p>	<p>The UN Principles on Housing and Property Restitution for Refugees and Displaced Persons</p> <p>Principle 2. The right to housing and property restitution</p> <p>2.1 All refugees and displaced persons have the right to have restored to them any housing, land and/or property of which they were arbitrarily or unlawfully deprived, or to be compensated for any housing, land and/or property that is factually impossible to restore as determined by an independent, impartial tribunal.</p> <p style="text-align: right;"><i>> continued</i></p>

Topic	Relevant Article(s)
	<p>UN Guiding Principles on Internal Displacement</p> <p>Principle 21</p> <ol style="list-style-type: none"> 1. No one shall be arbitrarily deprived of property and possessions. 2. The property and possessions of internally displaced persons shall in all circumstances be protected, in particular, against the following acts: <ol style="list-style-type: none"> (a) Pillage; (b) Direct or indiscriminate attacks or other acts of violence; (c) Being used to shield military operations or objectives; (d) Being made the object of reprisal; and (e) Being destroyed or appropriated as a form of collective punishment. 3. Property and possessions left behind by internally displaced persons should be protected against destruction and arbitrary and illegal appropriation, occupation or use. <p>See also: Section V. Principles Relating to Return, Resettlement and Reintegration Principles 28, 29 and 30.</p>
<p>Land and armed conflict</p>	<p>Protocol Additional to the Geneva Conventions, relating to the Protection of Victims of International Armed Conflicts (Protocol I)</p> <p>Art. 54: Protection of objects indispensable to the survival of the civilian population</p> <ol style="list-style-type: none"> 1. Starvation of civilians as a method of warfare is prohibited. 2. It is prohibited to attack, destroy, remove or render useless objects indispensable to the survival of the civilian population, such as food-stuffs, agricultural areas for the production of food-stuffs, crops, livestock, drinking water installations and supplies and irrigation works, for the specific purpose of denying them for their sustenance value to the civilian population or to the adverse Party, whatever the motive, whether in order to starve out civilians, to cause them to move away, or for any other motive. 3. The prohibitions in paragraph 2 shall not apply to such of the objects covered by it as are used by an adverse Party: <ol style="list-style-type: none"> (a) as sustenance solely for the members of its armed forces; or (b) if not as sustenance, then in direct support of military action, provided, however, that in no event shall actions against these objects be taken which may be expected to leave the civilian population with such inadequate food or water as to cause its starvation or force its movement. 4. These objects shall not be made the object of reprisals. 5. In recognition of the vital requirements of any Party to the conflict in the defence of its national territory against invasion, derogation from <p style="text-align: right;"><i>> continued</i></p>

Topic	Relevant Article(s)
	<p>the prohibitions contained in paragraph 2 may be made by a Party to the conflict within such territory under its own control where required by imperative military necessity.</p> <p>Art. 55: Protection of the natural environment</p> <ol style="list-style-type: none"> 1. Care shall be taken in warfare to protect the natural environment against widespread, long-term and severe damage. This protection includes a prohibition of the use of methods or means of warfare which are intended or may be expected to cause such damage to the natural environment and thereby to prejudice the health or survival of the population. 2. Attacks against the natural environment by way of reprisals are prohibited. <p>Protocol Additional to the Geneva Conventions, relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)</p> <p>Art. 14: Protection of objects indispensable to the survival of the civilian population</p> <p>Starvation of civilians as a method of combat is prohibited. It is therefore prohibited to attack, destroy, remove or render useless for that purpose, objects indispensable to the survival of the civilian population such as food-stuffs, agricultural areas for the production of food-stuffs, crops, livestock, drinking water installations and supplies and irrigation works.</p>
<p>Land degradation</p>	<p>UN Convention to Combat Desertification</p> <p>Art. 4: General obligations, para. 2</p> <ol style="list-style-type: none"> 2. In pursuing the objective of this Convention, the Parties shall: <ol style="list-style-type: none"> (a) adopt an integrated approach addressing the physical, biological and socio-economic aspects of the processes of desertification and drought; (b) give due attention, within the relevant international and regional bodies, to the situation of affected developing country Parties with regard to international trade, marketing arrangements and debt with a view to establishing an enabling international economic environment conducive to the promotion of sustainable development; (c) integrate strategies for poverty eradication into efforts to combat desertification and mitigate the effects of drought; (d) promote cooperation among affected country Parties in the fields of environmental protection and the conservation of land and water resources, as they relate to desertification and drought; (e) strengthen subregional, regional and international cooperation; (f) cooperate within relevant intergovernmental organisations; <p style="text-align: right;"><i>> continued</i></p>

Topic	Relevant Article(s)
	<p>(g) determine institutional mechanisms, if appropriate, keeping in mind the need to avoid duplication; and</p> <p>(h) promote the use of existing bilateral and multilateral financial mechanisms and arrangements that mobilise and channel substantial financial resources to affected developing country Parties in combating desertification and mitigating the effects of drought.</p> <p>Art. 7: Priority for Africa In implementing this Convention, the Parties shall give priority to affected African country Parties, in the light of the particular situation prevailing in that region, while not neglecting affected developing country Parties in other regions.</p>



Appendix 2: Land in national legislation

Since the 1990s there is an intense process of reform of land and natural resources management laws throughout Africa. In several countries, land provisions have been included in constitutions, mainly in relation to the right of property, outlining the land tenure system and establishing principles for its management. The following list provides a couple of **examples** of constitutional provisions.

Angola (2010):

- Art. 15 (Land):
 1. Land, which is by origin the property of the state, may be transferred to individuals or corporate bodies, with a view to its rational and full use, under the terms of the Constitution and the law.
 2. Access to and use of land by local communities shall be recognised by law.
 3. The provisions contained in the previous points do not compromise the possibility of expropriation for public use, with just compensation, under the terms of the law.
- Art. 16 (Natural resources):

The solid, liquid and gaseous natural resources existing in the soil and subsoil, in territorial waters, in the exclusive economic zone and in the continental shelf under the jurisdiction of Angola shall be the property of the State, which shall determine the conditions for concessions, surveys and exploitation, under the terms of the Constitution, the law and international law.
- Art. 95 (Public domain):
 1. The following shall constitute property in the public domain: [...]
 - g) Areas of land reserved for the protection of the environment, specifically parks and nature reserves for the preservation of wild flora and fauna, and their infrastructures;
 2. All property in the public domain shall be non-transferable, > imprescriptible and immune from attachment.
- Art. 98 (Land rights):
 1. All land originally belongs to the State and forms part of its private domain, with the aim of conceding and protecting the land rights of individuals or 35/91 corporate bodies and rural communities, under the terms of the Constitution and the law and without compromise to the provision contained in Point 3 of this Article.
 2. The State shall recognise and guarantee the right to private ownership of land,

constituted under the terms of the law.

3. The State shall only grant private ownership of land and its transmission to national citizens, under the terms of the law.

Democratic Republic of the Congo (2006):

- Art. 34:
 - Private property is sacred.
 - The State guarantees the right to individual or collective property, acquired in conformity to the law or to custom.
 - It encourages and sees to the security of private investments, national and foreign.
 - One may only be deprived of his property for reasons of public utility and in return for a just and prior indemnity conceded under the conditions established by the law.
 - One may only have their assets seized by virtue of a decision taken by competent judicial authority.
- Art. 58:

All Congolese have the right to enjoy the national wealth.
The State has the duty to redistribute it equitably and to guarantee the right to development.

Ethiopia (1994):

- Art. 9:

The Constitution is the supreme law of the land. Any law, customary practice, an act of an agency of government or official that contravenes the Constitution is invalid.
- Art. 35:
 7. Women have the right to acquire, administer, control, transfer and benefit from property. In particular they have equal rights with men with respect to access, use, administration and transfer of land. They shall also enjoy equal treatment in the inheritance of property.
- Art. 40:
 1. Every Ethiopian citizen has the right to the ownership of private property. This right shall include the right to acquire, to use and to dispose of such property by means of sale or bequest or by other means of transfer subject to limitations prescribed by law in the public interest and in a manner compatible with the rights of other citizens.
 2. 'Private property', for the purpose of this Article, shall mean any tangible or intangible product produced by the labor, creativity, enterprise or capital of an individual citizen, or association of citizens, which enjoy juridical personality under the law, or, in appropriate circumstances, by communities specifically empowered by the law to own property in common.
 3. The right to ownership of rural and urban land, as well as of all natural resources, is exclusively vested in the State and in the peoples of Ethiopia. Land is a common property of the nations, nationalities and peoples of Ethiopia and shall not be subject to sale or to other means of transfer.

4. Any Ethiopian who wants to earn a living by farming has a right, which shall not be alienated, to obtain, without payment, the use of land. The implementation of this provision shall be specified by law.
5. Ethiopian pastoralists have a right to free land for grazing and cultivation as well as a right not to be displaced from their own land.
6. Without prejudice to the right of nations, nationalities, and peoples to own land, government may grant use of land to private investors on the basis of payment arrangements established by law.
7. Every Ethiopian shall have the full right to the immovable property he builds on the land and to the land and to the improvements he brings about on the land by his labor or capital. This right shall include the right to alienate, to bequeath and where right of use expires, to remove his property, transfer his title, or claim compensation for it. Particulars shall be determined by law.
8. Government has the power to expropriate in the public interest, private property. In all such cases, government shall pay compensation in advance commensurate to the value of the expropriated property.

Ghana (1992):

- Art. 20:
 - (1) No property of any description or interest in or right over any property shall be compulsorily taken possession of or acquired by the State unless the following conditions are satisfied.
 - (a) the taking of possession or acquisition if necessary in the interest of defence, public safety, public order, public morality, public health, town and country planning or the development or utilisation of property in such a manner as to promote the public benefit; and
 - (b) the necessity for the acquisition is clearly stated and is such as to provide reasonable justification for causing any hardship that may result to any person who has an interest in or right over the property.
 - (2) Compulsory acquisition of property by the State shall only be made under a law which makes provision for.
 - (a) the prompt payment of fair and adequate compensation; and
 - (b) a right of access to the High Court by any person who has an interest in or right over the property whether direct or on appeal from other authority, for the determination of his interest or right and the amount of compensation to which he is entitled.
 - (3) Where a compulsory acquisition or possession of land effected by the State in accordance with clause (1) of this article involves displacement of any inhabitants, the State shall resettle the displaced inhabitants on suitable alternative land with due regard for their economic well-being and social and cultural values.
 - (4) Nothing in this article shall be construed as affecting the operation of any general

law so far as it provides for the taking of possession or acquisition of property.

- (a) by way of vesting or administration of trust property, enemy property or the property of persons adjudged or otherwise declared bankrupt or insolvent, persons of unsafe mind, deceased persons or bodies corporate or unincorporated in the course of bent wound up; or
 - (b) in the execution of a judgement or order of a court; or
 - (c) by reason of its being in a dangerous state or injurious to the health of human beings, animals or plants; or
 - (d) in consequence of any law with respect to the limitation of actions; or
 - (e) for so long only as may be necessary for the purpose of any examination, investigation, trial or inquiry; or
 - (f) for so long as may be necessary for the carrying out of work on any land for the purpose of the provision of public facilities or utilities, except that where any damage results from any such work there shall be paid appropriate compensation.
- (5) Any property compulsorily taken possession of or acquired in the public interest or for a public purpose shall be used only in the public interest or for the public purpose for which it was acquired.
- (6) Where the property is not used in the public interest or for the purpose for which it was acquired, the owner of the property immediately before the compulsory acquisition, shall be given the first option for acquiring the property and shall, on such reacquisition refund the whole or part of the compensation paid to him as provided for by law or such other amount as is commensurate with the value of the property at the time of the reacquisition.

Mozambique (2004):

- Art. 109 (Land):
 1. All ownership of land shall vest in the State.
 2. Land may not be sold or otherwise disposed of, nor may it be mortgaged or subject to attachment.
 3. As a universal means for the creation of wealth and of social well being, the use and enjoyment of land shall be the right of all the Mozambican people.
- Art. 110 (Use and Enjoyment of Land)
 1. The State shall determine the conditions under which land may be used and enjoyed.
 2. The right to use and benefit from land shall be granted to individual or corporate persons, taking into account its social or economic purpose.
- Art. 111 (Rights Acquired Through Inheritance or Occupation of Land)

In granting titles for the use and enjoyment of land, the State shall recognise and protect rights acquired through inheritance or by occupation, unless there is a legal reservation or the land has been lawfully granted to another person or entity.

Niger (2011):

- Art. 28:
Any person has a right to property. No one may be deprived of their property except for cause of public utility and subject to a fair and prior indemnification.
- Art. 148:
The natural resources and the subsoil are the property of the people of Niger. The law determines the conditions of their prospecting, their exploitation and their administration.
- Art. 149:
The State exercises its sovereignty over the natural resources and the subsoil. The exploitation and the administration of the natural resources and of the subsoil must be done with transparency and taking into account the protection of the environment, and the cultural heritage as well as the preservation of the interests of present and future generations.
- Art. 150:
The contracts for prospecting and exploitation the natural resources and the subsoil as well as the revenues paid to the State, disaggregated, company by company, are completely published in the Journal Officiel of the Republic of Niger.
- Art. 151:
The State assures itself of the effective implementation of the contracts for prospecting and for exploitation granted.
- Art. 152:
The receipts realised on the natural resources and on the subsoil are divided between the budget of the State and the budgets of the territorial collectivities according to the law.
- Art. 153:
The State sees to invest in the priority domains, notably agriculture, animal husbandry, health and education, and to the creation of a fund for future generations.

Senegal (2001):

- Art. 15:
The right of property is guaranteed by this Constitution. It can only be infringed in the case of legally established public need, subject to a just and prior indemnity. Man and woman have the right to accede to the possession and to the ownership of land within the conditions determined by the law.

South Africa (1996):

- Art. 25 (Property):
 - (1) No one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property.
 - (2) Property may be expropriated only in terms of law of general application
 - (a) for a public purpose or in the public interest; and
 - (b) subject to compensation, the amount of which and the time and manner of payment of which have either been agreed to by those affected or decided or approved by a court.

- (3) The amount of the compensation and the time and manner of payment must be just and equitable, reflecting an equitable balance between the public interest and the interests of those affected, having regard to all relevant circumstances, including:
 - (a) the current use of the property;
 - (b) the history of the acquisition and use of the property;
 - (c) the market value of the property;
 - (d) the extent of direct State investment and subsidy in the acquisition and beneficial capital improvement of the property; and
 - (e) the purpose of the expropriation.
- (4) For the purposes of this section:
 - (a) the public interest includes the nation's commitment to land reform, and to reforms to bring about equitable access to all South Africa's natural resources; and
 - (b) property is not limited to land.
- (5) The State must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis.
- (6) A person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress.
- (7) A person or community dispossessed of property after 19 June 1913 as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to restitution of that property or to equitable redress.
- (8) No provision of this section may impede the State from taking legislative and other measures to achieve land, water and related reform, in order to redress the results of past racial discrimination, provided that any departure from the provisions of this section is in accordance with the provisions of section 36 (1).
- (9) Parliament must enact the legislation referred to in subsection (6).

South Sudan (2011):

- Art. 169 (Land Ownership)
 - (1) All land in South Sudan is owned by the people of South Sudan and its usage shall be regulated by the government in accordance with the provisions of this Constitution and the law.
 - (2) Notwithstanding sub-Article (1) above, and the provisions of Article 28 of this Constitution, the government at all levels, may expropriate land in the public interest as shall be prescribed by law.
- Art. 170 (Land Tenure)
 - (1) The regulation of land tenure, usage and exercise of rights thereon shall be governed by this Constitution and the law.
 - (2) Without prejudice to sub-Article (3) below, the land tenure system in South Sudan

shall consist of:

- (a) public land,
 - (b) community land; and
 - (c) private land.
- (3) Public land shall include, but not be limited to:
- (a) all land owned, held or otherwise acquired by any level of government as defined by law; and
 - (b) all land which are not otherwise classified as community or private.
- (4) Regardless of the classification of the land in question, rights over all subterranean and other natural resources throughout South Sudan, including petroleum and gas resources and solid minerals, shall belong to the National Government and shall be regulated by law.
- (5) Community land shall include all lands traditionally and historically held or used by local communities or their members. They shall be defined, held, managed and protected by law.
- (6) Private land shall include:
- (a) registered land held by any person under leasehold tenure in accordance with the law;
 - (b) investment land acquired under lease from the Government or community for purposes of social and economic development in accordance with the law; and
 - (c) any other land designated as private land by law.
- (7) Rights in land and resources owned, held or otherwise acquired by the Government shall be exercised through the appropriate or designated level of government which shall recognise customary land rights under customary land law.
- (8) All levels of government shall institute a process to progressively develop and amend the relevant laws to incorporate customary rights and practices, and local heritage.
- (9) Customary seasonal access rights to land shall be respected, provided that these access rights shall be regulated by the respective States taking into account the need to protect the environment, agricultural production, community peace and harmony, and without unduly interfering with or degrading the primary ownership interest in the land, in accordance with customary law.
- (10) Communities and persons enjoying rights in land shall be consulted in decisions that may affect their rights in lands and resources.
- (11) Communities and persons enjoying rights in land shall be entitled to prompt and equitable compensation on just terms arising from acquisition or development of land in their areas in the public interest.



Appendix 3: Sources and resources on land and human rights

Organisation	Resource	Where to find it
African Commission on Human and Peoples' Rights	Communications/complaint procedure	www.achpr.org/communications/
	Resolution on the right to adequate housing and the protection from forced evictions	www.achpr.org/sessions/52nd/resolutions/231/
	Working group on indigenous populations/communities in Africa	www.achpr.org/mechanisms/indigenous-populations/
African Union (AU)	Land policy framework	http://rea.au.int/en/content/framework-and-guidelines-land-policy-africa
	<i>Declaration on Land Issues and Challenges in Africa</i> , 3 July 2009	www.uneca.org/sites/default/files/uploaded-documents/au_declaration_on_land_issues_eng.pdf
UN Committee on World Food Security (CFS)	HLPE Report on land tenure and international investment in agriculture	www.fao.org/cfs/cfs-hlpe/en/ www.fao.org/fileadmin/user_upload/hlpe/hlpe_documents/HLPE-Land-tenure-and-international-investments-in-agriculture-2011.pdf
	CFS Voluntary guidelines on the responsible governance of tenure of land, fisheries and forest in the context of national food security	www.fao.org/cfs/cfs-home/en/ www.fao.org/cfs/cfs-home/cfs-land-tenure/en/
UN Office of the High Commissioner on Human Rights (OHCHR)	Toolkit on the Right to Housing	www.ohchr.org/EN/Issues/Housing/toolkit/Pages/RighttoAdequateHousingToolkit.aspx
	<i>Realizing Women's Rights to Land and Other Productive Resources</i> (with UN Women), New York and Geneva	www.unwomen.org/~media/Headquarters/Attachments/Sections/Library/Publications/2013/11/OHCHR-UNWomen-land-rights-handbook-WEB%20pdf.pdf

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Organisation	Resource	Where to find it
	UN ECOSOC: New York, 23 June-18 July 2014, Item 17 (g) of the provisional agenda: Report of the United Nations High Commissioner for Human Rights; a human rights analysis of land-related issues	www.un.org/ga/search/view_doc.asp?symbol=E%2F2014%2F86
Food and Agriculture Organisation of the United Nations (FAO)	Indigenous Peoples Policy	www.fao.org/fileadmin/user_upload/newsroom/docs/FAO_policy.pdf
	Governance of Tenure	www.fao.org/nr/tenure/governance-of-tenure/en/?no_cache=1
	Resources, databases and information systems on land use, management and planning	www.fao.org/nr/land/lr-home/en/
	Gender and Land Rights database	www.fao.org/gender/landrights/en/
	Forestry section includes Regional Forestry Commissions, Committee on Forestry, material on forestry	www.fao.org/forestry/en/ www.fao.org/forestry/publications/en/
	Land studies: <ul style="list-style-type: none"> • <i>Compulsory acquisition of land and compensation (2008)</i> • <i>The state of food and agriculture. Women in agriculture. Closing the gender gap for development (2011)</i> • <i>Gender and law. Women's rights in agriculture (2007)</i> • <i>Statutory recognition of customary land rights in Africa. An investigation into best practices for law making and implementation (2010)</i> 	ftp://ftp.fao.org/docrep/fao/011/i0506e/i0506e00.pdf www.fao.org/docrep/013/i2050e/i2050e.pdf www.fao.org/docrep/005/y4311e/y4311e00.HTM www.fao.org/docrep/013/i1945e/i1945e00.htm
UN Convention to Combat Desertification	Materials on land degradation	www.unccd.int/en/resources/Pages/default.aspx
UN Habitat	Information on land in relation to housing	http://unhabitat.org/urban-themes/land
	Facilitator of the Global Land Tool Network (GLTN)	www.gltn.net

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Organisation	Resource	Where to find it
	<p>Various land studies, amongst which:</p> <ul style="list-style-type: none"> • <i>Secure land rights for all</i> (2008) • <i>Women's rights to land, housing and property in post-conflict situations and during reconstruction; A global overview</i> (1999) • <i>Women's equal rights to housing, land and property in international law</i> (2007) 	<p>Search at: http://unhabitat.org/publications/</p>
UN Special Rapporteur on the right to food	<p>Annual Reports, Reports on country visits, issues in focus, press releases, individual complaints, international standards.</p>	<p>http://www.ohchr.org/EN/Issues/Food/Pages/FoodIndex.aspx</p>
	<p>Material on land and the right to food of previous Rapporteur Olivier de Schutter</p>	<p>www.srfood.org/</p>
UN Special Rapporteur on adequate housing	<p>Annual Reports, Reports on country visits, issues in focus, press releases, individual complaints, international standards.</p>	<p>www.ohchr.org/EN/Issues/Housing/Pages/HousingIndex.aspx</p>
Inspection Panel of the World Bank	<p>Independent complaints mechanism for people who believe that they have been, or are likely to be, adversely affected by a World Bank-funded project.</p>	<p>http://web.worldbank.org/WB-SITE/EXTERNAL/TOPICS/CSO/0,,contentMDK:20098410--menuPK:224055~pagePK:220503~piPK:220476~theSitePK:228717~isCURL:Y,00.html</p>
Land Policy Initiative (LPI)	<p>LPI is a joint programme of the tripartite consortium consisting of the African Union Commission (AUC), the African Development Bank (AfDB) and United Nations Economic Commission for Africa (ECA).</p>	<p>www.uneca.org/lpi</p>
	<p>Publications</p>	<p>www.uneca.org/lpi-0/pages/publications</p>
	<p>Documents (official plans, declarations and guidelines)</p>	<p>www.uneca.org/lpi/pages/documents</p>
FIAN International	<p>Documentation of violations of the right to adequate food, reports on country situations, reports on specific issues such as land grabbing, rights of peasants, agrarian reform. Tools to monitor public policies.</p>	<p>www.fian.org/en/library/publications/</p>

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Organisation	Resource	Where to find it
Hakijamii	Education material and resources on land and housing.	www.hakijamii.com
	<i>Linking the Budget to Policy Implementation: The case of the Lands Sector</i> (Comments on how the Kenyan government uses and misuses its budget allocation and on lack of transparency.)	www.hakijamii.com/publications/budget121.pdf
ActionAid	<i>From Under Their Feet. A think piece on the gender dimensions of land grabs in Africa.</i> April 2012	www.actionaid.org/sites/files/actionaid/land_grabs_report_-_from_under_their_feet.pdf
	<i>The Great Land Heist. How the world is paving the way for corporate land grabs.</i> May 2014	www.actionaid.org/sites/files/actionaid/the_great_land_heist.pdf
African Smallholder Farmers Group	<i>Supporting Smallholder Farmers in Africa: A Framework for an enabling environment</i> 1. Access to land and water	www.asfg.org.uk/framework-report/access-to-land-and-water
Housing and Land Rights Network	Maintaining a database of violations of land rights, monitoring of violations, urgent action appeals, training and capacity building.	www.hlrn.org/activity.php
Oxfam	<i>Promises, Power, and Poverty. Corporate land deals and rural women in Africa.</i> Oxfam Briefing Paper 170, 9 April 2013.	http://oxfamilibrary.openrepository.com/oxfam/bitstream/10546/279252/1/bp170-promises-power-poverty-land-women-090413-en.pdf

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Appendix 4: List of African and international CSOs working on land issues in Africa

Organisation and contact information	Description
<p>ACORD (Agency for Cooperation and Research in Development) P.O. Box 61216 - 00200 Nairobi Kenya Tel: +254 20 272 1186 Fax: +254 20 272 1166 www.acordinternational.org</p>	<p>Guided by the principle that people themselves are the primary actors in their own development, ACORD International works to promote social justice and lift Africans out of poverty. ACORD has a number of country offices in Africa.</p>
<p>ActionAid ActionAid International PostNet suite, Private bag X31 Saxonwold 2132 Johannesburg South Africa Tel: +27 11 731 4500 Fax: +27 11 880 8082 www.actionaid.org</p>	<p>An international anti-poverty agency with its head office based in South Africa. Its mission is to work with poor and marginalised people to eradicate poverty. ActionAid has many country offices in Africa.</p>
<p>African Biodiversity Network ABN Secretariat Morgage House No. 65 PO Box 6271 – 01000 Thika Kenya Tel: +254 (0)20 267 5043 www.africanbiodiversity.org</p>	<p>The African Biodiversity Network (ABN) is a regional network of individuals and organisations seeking African solutions to the ecological and socio-economic challenges that face the continent.</p>
<p>Amnesty International Amnesty International Secretariat 1 Easton Street London WC1X 0DW, UK Tel: +44-20-74135500 www.amnesty.org</p>	<p>Amnesty International is a global movement of more than 3 million supporters, members and activists in over 150 countries and territories who campaign to end grave abuses of human rights.</p>

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Organisation and contact information	Description
<p>Addresses Regional offices in Africa:</p> <ol style="list-style-type: none"> 1. Amnesty International Regional Office for Eastern Africa: Parkfield Place Off Waiyaki Way Opp New Safaricom House Kanjata Road, Westlands Nairobi Kenya Tel: +254 20 4283000 2. Amnesty International Regional Office for Southern Africa: Ground Floor 3 on Glenhove Melrose Estate Johannesburg, 2196 South Africa E-mail: adminjoburg@amnesty.org Tel: +27 11 2836000 3. Amnesty International Regional Office for West and Central Africa 3rd Floor Immeuble Seydi Jamil Ave Cheikh Anta Diop x Rue Leo Frobenius Fann Résidence Dakar, Senegal Telephone: +221 338693003 	
<p>Coalition pour la protection du patrimoine génétique africain - COPAGEN Regional focal point: Inades-Formation International, 08 BP 08 Abidjan 08 Côte d'Ivoire Tel.: +225 22 40 02 16 Fax: +225 22 40 02 30 http://terres-copagen.inadesfo.net/</p>	<p>The Coalition for the Protection of African Genetic Heritage (COPAGEN) is a social and citizen movement that partners with grassroots communities to engage in a campaign for the protection and promotion of the genetic heritage and seeds. It is a network of civil society in Francophone Sub-Saharan Africa struggling for the sustainable management and use of genetic resources of the continent. The members are peasants' organisations, NGOs, consumer associations, development associations, unions, human rights organisations, youth organi-</p> <p style="text-align: right;"><i>> continued</i></p>

Organisation and contact information	Description
	sations, organisations of women, etc. The coalition consists of a regional coordination and national members in several countries.
<p>Corporate Europe Observatory Rue d'Édimbourg 26 1050 Brussels, Belgium Tel: +32 (0)2 893 0930 http://corporateeurope.org/</p>	<p>Corporate Europe Observatory (CEO) is a research and campaign group working to expose and challenge the privileged access and influence enjoyed by corporations and their lobby groups in EU policy making.</p>
<p>CorpWatch P.O. Box 29198, San Francisco CA 94129, USA Tel: +1-415-226-6226 www.corpwatch.org/index.php</p>	<p>CorpWatch is a non-profit investigative group doing research and journalism that works to expose corporate malfeasance and to advocate for multinational corporate accountability and transparency.</p>
<p>Eastern African Farmers Federation (EAFF) Neleon Place Rhapta Road Westlands - Nairobi Kenya Tel: +254-20-4451691 http://eaffu.org/eaffu/</p>	<p>The Eastern African Farmers Federation (EAFF) voices legitimate concerns and interests of farmers of the region with the aim of enhancing regional cohesiveness and social-economic status of the farmers.</p>
<p>Eastern and Southern Africa small scale Farmers' Forum (ESAFF) ESAFF - Regional Coordinator P.O. Box 1782 SUA Road Morogoro Tanzania Tel.: +255713486183 www.esaff.org</p>	<p>The Eastern and Southern Africa small scale Farmers' Forum (ESAFF) is a network of small-holder farmers that advocates for policy, practice and attitude changes reflecting the needs, aspirations, and development of small-scale farmers in east and southern Africa.</p>
<p>Environmental Rights Action – Friends of the Earth Nigeria PO Box 10577 Ugbowo Benin City Nigeria Tel: +234 52 46 70 29 Telefax: +234 52 600 165 Fax: +1 413 431 3512 E-mail: eraction@eraction.org www.eraction.org</p>	<p>ERA is an environmental organisation working on environmental and social issues in Nigeria.</p>

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Organisation and contact information	Description
<p>ESCR-Net 211 East 43rd Street, #906 New York, NY 10017, USA Tel: +1 212.681.1236 Fax: +1 212.681.1241 www.escr-net.org</p>	<p>ESCR-Net seeks to strengthen ESC rights by working with organisations and activists worldwide to facilitate mutual learning and strategy sharing, develop new tools and resources, and engage in advocacy.</p>
<p>ETO Consortium The ETO Consortium Secretariat is currently at FIAN International Willy-Brandt-Platz 5 69115 Heidelberg, Germany Tel.: +49 6221 65300 30 Fax: +49 6221 65300 33 E-mail: secretariat@etoconsortium.org www.etoconsortium.org</p>	<p>The Extraterritorial Obligations (ETO) Consortium is a network of some 80 human rights related CSOs and academics. The purpose of the ETO Consortium is to address the gaps in human rights protection that have opened up through the neglect of ETOs, the human rights obligations of States towards persons outside their territories. The Consortium mainstreams and applies ETOs.</p>
<p>FIAN International PO Box 10 22 43 69012 Heidelberg, Germany Tel: + 49 6221 65300 30 Fax: + 49 6221 65300 33 www.fian.org</p>	<p>FIAN International exposes violations of people's right to food and strives to secure people's access to the resources that they need in order to feed themselves, without discrimination.</p>
<p>Forest Peoples Program 1c Fosseyway Business Centre Stratford Road Moreton-in-Marsh GL56 9NQ England Tel: +44 (0)1608 652893 Fax: +44 (0)1608 652878 www.forestpeoples.org</p>	<p>FPP has expertise in land rights, environment and development and indigenous affairs. Through advocacy, practical projects and capacity building, FPP supports forest peoples to deal directly with the outside powers, regionally, nationally, and internationally, that shape their lives and futures.</p>
<p>Hakijamii Economic and Social Rights Centre (ESRC)- Hakijamii 2nd Floor, Golf Course Commercial Centre Kenyatta Market,P.O,Box 11356 00100 Nairobi Kenya Tel.: 254-020-2731667 Fax: 254-020-2726023 www.hakijamii.com</p>	<p>Hakijamii is a human rights organisation that works with marginalised and vulnerable groups in Kenya to advocate and realise their human rights.</p>

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Organisation and contact information	Description
<p>Housing and Land Rights Network of the Habitat International Coalition (HIC-HLRN) 12 Tiba St., 2nd Floor Muhandisin, Cairo, Egypt Tel/Fax: +20 (0)2 3748–6379 E-mail: hlrn@hlrn.org www.hlrn.org www.hic-mena.org</p>	<p>HIC-HLRN is a human rights network working on land and housing rights particularly in North Africa.</p>
<p>Huairou Commission 249 Manhattan Avenue Brooklyn NY 11211-4905 USA Tel.: 1-718-388-8915 / 6761 Fax: 1-718-388-0285 www.huairou.org</p>	<p>The Huairou Commission empowers grassroots women’s organisations to enhance their community development practice and to exercise collective political power at the global level.</p>
<p>International Institute for Environment and Development (IIED) 80-86 Gray’s Inn Road London WC1X 8NH, UK Tel: +44 (0)20 3463 7399 www.iied.org/land-acquisitions-rights</p>	<p>IIED is a policy research organisation with long standing experience doing analysis on land issues in Africa.</p>
<p>International Land Coalition (ILC) Via Paolo di Dono 44 00142 - Rome, Italy Tel.: +39 06 5459 2445 E-mail: info@landcoalition.org www.landcoalition.org</p>	<p>ILC is a coalition of civil society organisations and intergovernmental organisations such as IFAD and the World Bank working together to promote secure and equitable access to and control over land for poor women and men through advocacy, dialogue, knowledge sharing and capacity building.</p>
<p>Landesa 1424 Fourth Avenue, Suite 300 Seattle, WA 98101, USA Tel.: (206) 528-5880 Fax: (206) 528-5881 E-mail: info@landesa.org www.landesa.org</p>	<p>Landesa works with governments and other local organizations to create tailored approaches to expand land rights to the rural poor. Their work ranges from short-term assignments to long-term engagements, and involves activities including:</p> <ul style="list-style-type: none"> • initial assessments to identify existing laws, policies and cultural conditions; • collaborating with public officials to adopt pro land policies; • assisting in implementation of new laws to benefit landless families; • monitoring and evaluating impact. <p style="text-align: right;">> <i>continued</i></p>

Organisation and contact information	Description
<p>LandNet West Africa 11 BP 146 Ouagadougou 11 Burkina Faso E-mail: graf@fasonet.bf www.landnetwa.org</p>	<p>LandNet WA is a non-profit organisation working to promote a participatory approach to land policies and bring an African perspective in the land policy debate at international level.</p>
<p>La Via Campesina Stand No 197A, Smuts Road Prospect Waterfalls - Harare, Zimbabwe Tel.: +263 4 576221 E-mail: viacampesina@viacampesina.org www.viacampesina.org</p>	<p>La Via Campesina comprises about 164 local and national organisations in 73 countries in Africa, Asia, Europe and the Americas. Altogether, it represents about 200 million farmers.</p>
<p>Mokoro Mokoro Ltd The Old Music Hall 106-108 Cowley Road Oxford OX4 1JE United Kingdom Tel.: +44 (0)1865 403179 Fax: +44 (0)1865 403279 E-mail: mokoro@mokoro.co.uk www.mokoro.co.uk/land-rights-in-africa</p>	<p>Mokoro provides technical, social, legal and economic advice on land, livelihoods, agriculture and natural resources. It hosts the Land Rights in Africa website as a public resource.</p>
<p>Oxfam Oxfam International Secretariat Suite 20 266 Banbury Road Oxford OX2 7DL United Kingdom Tel.: +44 1865 339 100 Fax: +44 1865 339 101 www.oxfam.org</p>	<p>As an international confederation, Oxfam works directly with communities and seeks to influence the powerful to ensure that poor people can improve their lives and livelihoods and have a say in decisions that affect them.</p>
<p>Pambazuka News www.pambazuka.org</p>	<p>Pambazuka News is a digital newsletter produced by a pan-African community of some 2,600 citizens and organisations - academics, policy makers, social activists, women's organisations, civil society organisations, writers, artists, poets, bloggers, and commentators who together produce analyses about social justice in Africa.</p>

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Organisation and contact information	Description
<p>Participatory Ecological Land Use Management (PELUM) PELUM Kenya P.O Box 6123 – 01000 Thika, Kenya Tel.: +254 67 31 686 Fax: +254 20 26 22 674 www.pelum.net</p>	<p>The Participatory Ecological Land Use Management (PELUM) Association works towards sustainable local community empowerment, food security and prosperity by facilitating networking and advocacy.</p>
<p>PLAAS - Institute for Poverty, Land and Agrarian Studies University of the Western Cape Private Bag X17 Bellville 7535 South Africa Tel: +27 (0)21 959 3733 Fax: +27 (0)21 959 3732 www.plaas.org.za</p>	<p>PLAAS does research, policy engagement, teaching and training about the dynamics of chronic poverty and structural inequality in Southern Africa, with a particular emphasis on the key role of restructuring and contesting land holding and agro-food systems in the subcontinent and beyond.</p>
<p>Platform of Peasants' and Agricultural Producers' Organisations of Central Africa (PROPAC) Plateforme Régionale des Organisations Paysannes d'Afrique Centrale (PROPAC) BP. 7445 Yaoundé, Cameroon Tel.: +237 22 23 41 90 Fax: +237 22 23 41 90 http://infopropac.org</p>	<p>The Platform of Peasants' and Agricultural Producers' Organisations of Central Africa (with the French acronym PROPAC) consists of national peasants' organisations and aims at harmonising strategies and actions of national farmers' organisations in Central Africa in order to take their concerns into account in the development, implementation and evaluation of policies and strategies for agricultural and rural development at national, regional and international for a sustainable improvement of the living conditions of rural populations. PROPAC's vision is a modernised and sustainable family agriculture that ensures sustainable economic, social, cultural and ecological aspects for food security and food sovereignty functions.</p>
<p>Réseau africain pour le droit à l'alimentation RAPDA/ANoRF 02 BP 937 Cotonou Benin Tel.: (229) 21 15 04 38 / 90 91 37 48 www.rapda.org</p>	<p>RAPDA/ANoRF is the African Network for the Right to Food, with national members in Benin, Burkina, Faso, Gambia, Mali, Niger, and Togo. RAPDA works to make collective and effective the Right to sufficient and adequate food for all people in Africa.</p>

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Organisation and contact information	Description
<p>Réseau des organisations paysannes et des producteurs agricoles de l'Afrique de l'Ouest (ROPPA) 09 BP 884 Ouagadougou 09 Burkina Faso Tel.: (226) 50 36 08 25 Fax: (226) 50 36 26 13 www.roppa.info</p>	<p>The Network of Peasants' and Agricultural Producers' Organisations of West Africa (ROPPA) works to promote and to defend the values of a competitive and sustainable farming agriculture at the disposal of peasant farming and agricultural production.</p>
<p>Women in Law and Development in Africa (WILDAF) P.O. Box LG488 Legon, Accra Ghana Tel.: 233 302 768349 Fax: 233 302 768349 www.wildaf.org</p>	<p>Women in Law and Development in Africa is dedicated to promoting and strengthening strategies that link law and development to increase women's participation and influence at the local, national and international levels.</p>
<p>World Forum of Fish Harvesters and Fish Workers (WFF) Lungujja Plot 902, Off Kalema Road P.O. Box 33929 Kampala, Uganda Uganda Tel.: +256 414 348 774 Fax: +256 414 348 774 http://worldfisherforum.org/</p>	<p>The World Forum of Fish Harvesters and Fish Workers (WFF) is an international organisation that brings together small scale fisher organisations for the establishment and upholding of fundamental human rights, social justice and culture of artisanal/small scale fish harvesters and fish workers, affirming the sea as source of all life and committing themselves to sustain fisheries and aquatic resources for the present and future generations to protect their livelihoods. Its national members are actively involved in supporting fishing communities facing dispossession of their traditional fisheries and livelihoods.</p>

1. Saying quoted by Mamadou Goita, advisor to the Network of Peasants' and Agricultural Producers' Organisations of West Africa (ROPPA).
2. For example, in Deininger, Klaus and Derek Byerlee 2011. *Rising Global Interest in Farmland. Can it Yield Sustainable and Equitable Benefits?* Washington DC. World Bank.
3. Summarised from the AU Framework and Guidelines on Land Policy in Africa. Available online: <http://rea.au.int/en/content/framework-and-guidelines-land-policy-africa>.
4. See for example Urmilla Bob 2010, *Land-related conflicts in Sub-Saharan Africa*. In African Journal on Conflict Resolution Volume 10 No. 2, 2010.
5. See <http://rea.au.int/en/content/framework-and-guidelines-land-policy-africa>.
6. See www.fao.org/nr/tenure/voluntary-guidelines/en/.
7. See www.achpr.org/sessions/54th/resolutions/262/.
8. See Alden Wily, Liz. 2012. *The Status of Customary Land Rights in Africa Today*. Rights to Resources in Crisis: Reviewing the Fate of Customary Tenure in Africa. Brief #4. Available online: www.rightsandresources.org/publication/rights-to-resources-in-crisis/.
9. For an overview of the pitfalls for smallholder farmers associated with individual land titling, see the report of the Special Rapporteur on the right to food, Olivier de Schutter, on access to land, 2010, paragraphs 14-24. UN Document A/65/281.
10. In a number of countries, such as in Uganda, there are experiments with such certificates, to formalise customary ownership. Alden Wily, Liz and Sue Mbaya (*Land, People and Forests in Eastern and Southern Africa at the Beginning of the 21st Century*, IUCN 2001; table 3) also mention that similar certificates, or even certificates for communal land tenure, are available in Tanzania, Botswana, Mozambique, Malawi and Zambia.
11. See for example Confederation Paysanne du Faso. *L'accaparement des terres à grande échelle au Burkina Faso: acteurs, mécanismes et implications pour l'agriculture familiale et la sécurité alimentaire*. Ougadougou, 2011. Similar processes can be found in Northern Uganda, see for example Adoko et al (2004), *Land Matters in Displacement: The Importance of Land Rights in Acholiland and What Threatens Them*.
12. FAO, 2007. *African Agriculture. African women farmers struggle with the poorly designed hoe*. and FAO, 1995, *A fairer future for rural women*. Rome.
13. FAO, 2007. *Gender and Law. Women's Rights in Agriculture*. FAO Legislative Study 76. Rome. Available online: www.fao.org/docrep/005/y4311e/y4311e00.HTM.
14. FAO, 2007. *Gender and Law. Women's Rights in Agriculture*. FAO Legislative Study 76. Rome. According to the Maputo Protocol, or "Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa", Article 15 Right to food security, States should take

- appropriate measures to provide women with access to land.
15. HLPE, 2011. *Land Tenure and International Investments in Agriculture*. Rome. See www.fao.org/cfs/cfs-hlpe/reports/hlpe-land-tenure-and-international-investments-report-elaboration-process/en/
 16. Oxfam, 2011, *Land and Power. The growing scandal surrounding the new wave of investments in land*. Available online: www.oxfam.org/sites/www.oxfam.org/files/bp151-land-power-rights-acquisitions-220911-summ-en.pdf.
 17. Cecilie Friis & Anette Reenberg, *Land grab in Africa: Emerging land system drivers in a teleconnected world*, GLP Report No. 1, The Global Land Project, Denmark, August 2010.
 18. ILC, 2012, *Transnational Land Deals for Agriculture in the Global South*. Analytical Report based on the Land Matrix Database, April 2012. Available online: www.landcoalition.org/publications/transnational-land-deals-agriculture-global-south.
 19. See www.fao.org/fileadmin/user_upload/hlpe/hlpe_documents/HLPE-Key-elements-online.pdf.
 20. IASSTD. 2009. *Agriculture at a Crossroads*. International Assessment of Agricultural Knowledge, Science and Technology for Development. Volume V Sub-Saharan Africa. Available online: www.unep.org/dewa/agassessment/reports/IAASTD/EN/Agriculture%20at%20a%20Crossroads_Synthesis%20Report%20%28English%29.pdf.
 21. Contribution of Working Group II to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change, 2007. Chapter 9: Africa. www.ipcc.ch/publications_and_data/ar4/wg2/en/ch9.html.
 22. Paragraph 6 of the General Comment No. 12 of the Committee on Economic, Social and Cultural Rights. The right to food is part of the right to an adequate standard of living (ICESCR Art. 11). See Appendix 1.
 23. De Schutter, Report of the Special Rapporteur on the right to food, 11 August 2010. Available online: www.srfood.org/images/stories/pdf/officialreports/20101021_access-to-land-report_en.pdf
 24. ICESCR, Art. 6.1. See Appendix 1.
 25. The African Commission case law suggests this can only be done on a case by case basis, assessing the characteristics of each group. Communication no. 279/03 / 296/05: Sudan Human Rights Organisation & Centre on Housing Rights and Evictions (COHRE) / Sudan. Available online: www.achpr.org/communications/decision/279.03-296.05/.
 26. See www.achpr.org/communications/.
 27. See the reports of the Special Rapporteurs on the situation of human rights defenders: UN Document A/HRC/4/37; UN Document A/HRC/19/55 and UN Document A/68/262.
 28. Global Witness, *Deadly Environment*, 2014. See also www.globalwitness.org/deadlyenvironment/
 29. The Pinheiro principles are available online at www.unhcr.org/50f94d849.html (see also Appendix 1).
 30. ACHPR, 2006. *Indigenous Peoples in Africa: The Forgotten Peoples?* The African Commission's Work on Indigenous Peoples in Africa. Banjul. P. 11.
 31. Available online: www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf (see also Appendix 1).
 32. Committee on the Elimination of Racial Discrimination, General Recommendation No.8. Available online at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCERD%2fGEC%2f7480&Lang=en
 33. Report A/HRC/24/41, *Extractive industries and indigenous peoples*. Report of the United

- Nations Special Rapporteur on the rights of indigenous peoples. Available online: <http://unsr.jamesanaya.org/study/report-a-hrc-24-41-extractive-industries-and-indigenous-peoples-report-of-the-special-rapporteur-on-the-rights-of-indigenous-peoples>.
34. See FAO Technical Guide No. 3: *Respecting free, prior and informed consent* (Available online: www.fao.org/3/a-i3496e.pdf) and A.-J. Motoc and the Tebtebba Foundation (2005). Legal commentary submitted to the Commission on Human Rights Sub-Commission on the Promotion and Protection of Human Rights, Working Group on Indigenous Populations, at the 23rd session, 18-22 July 2005: 12). Also see Jennifer Franco (2014). *Reclaiming Free, Prior and Informed Consent (FPIC) in the context of local land grabs*. Transnational Institute (TNI).
 35. See African Union, 2010. *Policy Framework for Pastoralism in Africa: Securing, Protecting and Improving the Lives, Livelihoods and Rights of Pastoralist Communities*. Addis Ababa. Available online: <http://rea.au.int/en/sites/default/files/Policy%20Framework%20for%20Pastoralism.pdf>.
 36. See for example www.hrw.org/news/2014/02/18/ethiopia-land-water-grabs-devastate-communities and www.hrw.org/news/2012/01/16/ethiopia-forced-relocations-bring-hunger-hardship.
 37. See C. Stevens, R. Winterbottom, J. Springer, K. Reytar, 2014. *Securing Rights, Combating Climate Change; How Strengthening Community Forest Rights Mitigates Climate Change*. World Resources Institute, July 2014 (see www.wri.org/securingrights), and C.R. Bijoy, 2008, *Forest Rights Struggle: The Adivasis Now Await a Settlement*. American Behavioral Scientist August 2008 51: 1755-1773.
 38. Source: http://birimnorth.ghanadistricts.gov.gh/?arrow=atd&_68&sa=1890.
 39. In Mozambique, prior to 1997 tenants did not have legal claim to the land. In South Africa, the Native Land Act of 1913 prohibited African land ownership outside the 'African Reserves' - land reserved for Africans who would provide labour to mines and white farmers (www.sahistory.org.za/control-1910-1948).
 40. UNHCR 2013 figures, see www.unhcr.org/pages/49c3646c11.html.
 41. In the absence of a General Comment on human rights related to land, this section is based on relevant provisions of the General Comments on the rights to food, housing, water, work and forced evictions; and on the interpretative work made by the Special Rapporteurs on the right to food and housing and on selected soft-law instruments. In July 2014, the UN Office of the High Commissioner for Human Rights has published its first human rights analysis of land-related issues. See Appendix 3 (top of page 129).
 42. The extraterritorial obligations of States on the basis of standing international law were clarified in the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights. The Maastricht Principles were issued in 2011 by 40 international law experts from all regions of the world, including current and former members of international human rights treaty bodies, regional human rights bodies, as well as former and current Special Rapporteurs of the United Nations Human Rights Council. See www.etoconsortium.org/nc/en/library/maastricht-principles/?tx_drblob_pi1%5BdownloadUid%5D=23.
 43. See General Comment No. 9 of the CESCR, paragraphs 9-11, on the role of legal remedies.
 44. The UN Guiding Principles on Business and Human Rights are available online: www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf (see also Appendix 1).

45. Elements of the CFS Guidelines are different from the UN Guiding Principles and, with respect to the State relationship with business enterprises, seem to be a slight step backwards (for example, with respect to access to remedy, it says States “should” provide access to effective remedy whereas the UNGPs say that States “must” take appropriate steps to ensure access to effective remedy). However, the CFS guidelines also cover the extraterritorial aspect of State obligations, which the UN Guiding Principles are not strong on.
46. For an excellent overview about the trends in land legislation reforms and about the degree of recognition of customary systems, see Alden Wily, Liz. 2012. *Land Reform in Africa: A Reappraisal* - Brief # 3. *The Status of Customary Land Rights in Africa Today* - Brief #4. Briefs on Reviewing the Fate of Customary Tenure in Africa. Rights and Resources. Available online: www.rightsandresources.org/publication/rights-to-resources-in-crisis/.
47. See HLPE, 2013. *Investing in smallholder agriculture for food security*. Rome. Available online: www.fao.org/fileadmin/user_upload/hlpe/hlpe_documents/HLPE_Reports/HLPE-Report-6_Investing_in_smallholder_agriculture.pdf.
48. See Endnote 34.
49. www.kenyalandalliance.or.ke