

DIRECTORATE-GENERAL FOR EXTERNAL POLICIES  
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**Land grabbing and  
human rights:  
The involvement  
of European corporate  
and financial entities  
in land grabbing  
outside the  
European Union**

DROI



## STUDY

# Land grabbing and human rights: The involvement of European corporate and financial entities in land grabbing outside the European Union

### ABSTRACT

In early research on land grabbing, the initial focus was on foreign companies investing abroad, with a particular focus on those based in countries such as China, Gulf States, South Korea, and India. In recent years, it has become evident that the range of countries land investors originate in is far broader, and includes both North Atlantic - and EU-based actors. In this study, we offer both quantitative and qualitative data illustrating the involvement of EU-based corporate and financial entities in land deals occurring outside of the EU. This study also analyses the global land rush within a human rights framework, examining the implications of particular land deals involving EU-based investors and their impact on communities living in areas where the investments are taking place. The research presented here builds partly on Cotula's 2014 study on the drivers and human rights implications of land grabbing, but differs in that it focuses explicitly on particular cases of possible, actual or potential human rights abuses and violations, in the context of activities involving European corporate and financial entities. In our conclusions, we offer a series of recommendations on how the EU can more effectively address these issues.

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## Table of contents

Abbreviations	5
1 Key messages	7
2 Introduction: Framing human rights in relation to the contemporary global land rush	8
3 European corporate and financial entities involved in land grabbing outside the EU	12
3.1 Data and research methods	12
3.2 A partial and indicative overview of land grabbing data	14
3.3 Understanding investment webs	18
3.4 EU actors and five key land grabbing mechanisms	22
4 Land grabbing and the human rights obligations of the EU and EU Member States	35
4.1 Impacts of land grabbing on affected populations	35
4.2 Extraterritorial human rights obligations of the EU and EU Member States	40
4.3 EU human rights policy	44
4.4 Violence against human rights defenders working on land issues	45
5 The EU's response to land grabbing	50
5.1 EU biofuel policy and the Renewable Energy Directive	51
5.2 The EU's role in the adoption and implementation of the CFS Tenure Guidelines	52
5.3 The G8 Land Transparency Initiative	53
5.4 The EU's response to land grabbing linked to EBA in Cambodia	55
5.5 The EU's reliance on business self-regulation	55
6 Conclusions and recommendations	58
References	67

Annex 1: Reported deals involving EU Member States in non-EU countries	79
Annex 2: Overall intended use of land involved in EU land deals	81
Annex 3: Recorded land deals involving EU-based companies	82
Annex 4: Legal Sources for the Extraterritorial Obligations of the EU and EU Member States	112

## Abbreviations

CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CESCR	Committee on Economic, Social and Cultural Rights
CSO	Civil Society Organisation
EBA	EU Trade Initiative “Everything But Arms”
EC	European Commission
ECHR	European Court of Human Rights
EDFI	European Development Finance Institutions
ELC	Economic Land Concession
ETO	Extraterritorial Human Rights Obligations
ETOP	Maastricht Principles on States’ Extraterritorial Obligations in the area of Economic, Social and Cultural Rights
FPIC	Free, Prior and Informed Consent
GC	General Comment
GSP	Generalised System of Preference
HRD	Human Rights Defender
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labour Organization
MS	Member States
NHRC	National Human Rights Commission of Thailand
TEU	Treaty on the European Union
TFEU	Treaty on the Functioning of the European Union
UDHR	United Nations Universal Declaration of Human Rights
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
UNGPS	United Nations Guiding Principles on Business and Human Rights

## Figures

<b>Figure 1:</b> Number of land deals EU companies are involved in outside of Europe	15
<b>Figure 2:</b> Amount of land controlled by EU companies outside of Europe	15
<b>Figure 3:</b> EU land deals by regions and sub-regions	16
<b>Figure 4:</b> Feronia’s investment web	21

## Boxes

<b>Box 1:</b> The case of Germany-based Neumann Kaffee Gruppe	17
<b>Box 2:</b> The case of Swedish-owned EcoEnergy	17

<b>Box 3:</b> Feronia Inc.	20
<b>Box 4:</b> The case of the Luxembourg-based company SOCFIN	23
<b>Box 5:</b> The case of Dutch private pension fund ABP	24
<b>Box 6:</b> Luxembourg-based African Agricultural Trade and Investment Fund	26
<b>Box 7:</b> The case of the private sector branch of the German Bank for Development	28
<b>Box 8:</b> ‘Everything But Arms’ EU policy and land grabbing in Cambodia	33
<b>Box 9:</b> The murder of Berta Cáceres and Nelson García in the case of the Agua Zarca dam construction project (Honduras), a project backed by several EU actors	46

## 1 Key messages

(i) European Union-based corporate and financial entities are important actors in land deals in countries outside the EU, contributing to and/or are responsible for human rights abuses. Available data shows that the involvement of EU actors in land grabbing is significant in scale and extent, but it is difficult to precisely quantify the level of their involvement. The reality is more fluid and complex than what available databases tell us partly because: (a) land grabbing cannot be understood in a static, technical and restrictive way; (b) land grabs are multi-layered and complex processes, in which a land deal involves many actors via investment webs implicating diverse types of public and private actors (which cannot be clearly separated), and “nationality” of land deals is never a straightforward issue; and (c) EU actors are involved in land grabs and related human rights violations at different points in investment webs. In the process, immediate outcomes, broader implications of particular land deals, and land grab-related human rights violations can occur in a variety of political and economic settings, aside from the iconic scenario where land deals violently expel rural villagers from their land.

(ii) There are five key mechanisms of institutional platforms through which land grabbing that leads to human rights violations or threats of violations occurs, namely: (a) EU-based private companies <sup>(1)</sup> involved in land grabbing through various forms of land deals; (b) Finance capital companies from the EU, including public and private pension funds, involved in land grabbing; (c) Land grabbing via public-private partnerships (PPPs); (d) EU development finance involved in land grabbing; and (e) EU companies involved in land grabbing, which are taking advantage of EU policies and gaining control of resources through the supply chain. A full understanding of these mechanisms is necessary for tackling the human rights challenges in contemporary land grabbing.

(iii) The human rights abuses, violations and impacts of land grabs involving EU actors directly point and relate to the EU’s and EU Member States’ (MS) extraterritorial human rights obligations. For each of the different mechanisms, they have to ensure compliance with their human rights obligations by: (a) Respecting human rights and doing no harm through direct or indirect interference, (b) Protecting human rights, especially through accountability and regulatory mechanisms for corporate and financial actors, and (c) Fulfilling human rights, by creating a conducive environment for the realisation of human rights. The EU and EU MS also must ensure accountability and remedy mechanisms, as part of their obligations to protect and fulfil.

(iv) The EU has consistently responded to such a human rights challenge within, and in relation to, land deals through a variety of policies and initiatives. However, the EU’s response to land grabbing, by acts and by omissions, has not always been in line with the EU’s and EU MS’ human rights obligations. It has fallen short on all three aspects of human rights obligations, namely, respect, protect and fulfil. The EU has been reluctant to acknowledge its extraterritorial obligations in this regard and at times even tends to obstruct efforts at the international level to regulate and hold corporations accountable through binding regulations.

(v) There is ample evidence to show that business self-regulation and corporate social responsibility schemes are insufficient and inadequate for addressing human rights issues in the context of land grabbing. They fail to protect people from human rights abuses and do not ensure accountability of states, legal liability for involved corporate actors, and access to effective

<sup>1</sup> A company that has its headquarters, is registered or domiciled in and/or carries out substantial business activities in one or more EU Member States.



remedies for the affected individuals and communities. In some cases, companies use these schemes to avoid accountability.

(vi) The EU and EU MS have an important role to play to stop land grabbing and address related human rights abuses and violations according to their existing international human rights obligations. The multi-layered character of land grabs, the involvement of different EU actors, and the different mechanisms of land grabbing require a set of regulatory actions by different bodies in the EU and MS.

## 2 Introduction: Framing human rights in relation to the contemporary global land rush

The recent convergence of multiple crises – food, fuel, energy, climate, environmental, and financial – alongside the rise of newer vibrant hubs of economic production, investment, trade and consumption – i.e. BRICS countries and other powerful middle-income countries (MICs) – has brought the issue of land back to the centre stage of development policy discourse. The implicit and explicit assumption is that there is a solution to all these crises and to meeting newer and increasing demands for natural resource-based goods and services. The solution promoted by some powerful actors lies in seizing what is considered to be empty, under-utilized, marginal, and available lands, and putting these into efficient and productive use – as long as there are appropriate regulatory institutions in place (see World Bank, 2010; Deininger, 2011). This is seen as a win-win proposition that both generates profits for corporations, and addresses the interest of national governments to generate both gainful livelihoods and/or employment for their citizens, as well as taxes. These assumptions and goals have partly led to and/or legitimized the already ongoing contemporary global land rush – or 'global land grabbing' <sup>(2)</sup>, as it is commonly referred to in the media.

The target lands are those in the grey area of property systems, which are thus easily claimed by the state. In completing the process of land deal-making, the central state and corporations seem to be engaged in orchestrating a narrative that tries to frame the acquisition of such types of lands – a narrative that claims that the current ways of resource use and property systems are either destructive or inefficient, or both. This evokes an era of climate change issues, as well as a variety of mitigation and adaptation initiatives, and the need to produce more food to feed the growing population <sup>(3)</sup>. Thus, the lands usually targeted are those used by farmers engaging in shifting cultivation, pastoralists, artisanal fisher peoples, and forest dwellers relying on collecting non-timber forest products for their livelihoods.

The property systems in these communities are usually customary tenure. Many of the people implicated in such types of land are indigenous peoples or are coming from ethnic or minority groups. These are spaces where the state usually does not have a history of strong presence. In the dominant narrative, it is thus the national governments and corporations that define what is destructive or inefficient – for example, shifting cultivation contributes to climate change because of regular field/forest burning, is an inefficient use of scarce resources because it inherently uses land extensively, and the subsistence orientation that generally characterises a large part of the production system. The same applies to pastoralist communities. Converting them to sedentary

<sup>2</sup> In this study, we will use the terms land grabs, (large-scale) land investments, and land deals interchangeably, although we are using the term land grabbing from a specific definition discussed further below.

<sup>3</sup> Borras et al. (2016a) argue this in the context of Myanmar.

agriculture evokes the idea that it is a win-win solution: poor people get their land, sometimes even with formal private titles, while the remainder of the pastoralist or shifting cultivation areas are then taken over by the state. Or, entire communities are just as easily relocated, since shifting cultivation and pastoralist fields are often categorized as state-claimed “empty” land.

The state plays a key role in completing a land deal process, by generating a hegemonic narrative on why large-scale land deals are necessary and desirable, by defining what marginal and available land is, by reclassifying, rezoning, and quantifying such lands, by expropriating these so-called marginal and available lands, and through (re)allocation or dispossession processes. In many countries where large land investments occur, only the central state usually has the absolute authority to take the necessary legal and administrative steps in land deal making. In some societies, these steps are done in collaboration with a junior partner, namely, traditional village level chiefs who tend to easily follow the wishes of the central government. In order to govern, it resorts to simplifying complex social relations into something concrete and legible – such as resource access and claims expressed by people in formal cadastre records, defined, executed and maintained by the central states (see Scott, 1998). It deploys its coercive apparatus to pursue its goals and enforce its will in this context, via police, military, courts, and in some cases, paramilitary/militia <sup>(4)</sup>.

Furthermore, communities in most rural societies are heterogeneous in terms of social class, ethnicity, gender and generation. There are dynamic social relations in which a variety of social divides occur. When land deals are executed on the ground, they affect various social groups within the affected communities – not in a uniform way, but in a highly differentiated manner, so that some benefit, while others lose (see Borras and Franco, 2013). Hence, from the outset, in many cases, some sections of the community support a land deal while others oppose it. It is rare to see a solidly unified affected community that either completely supports or completely opposes a land investment. Finally, these various social groups may apply different, and often competing, meanings to land: as an economic resource, community heritage and territory, and so on. Monetizing the 'value' of land is only one perspective in defining the meaning (and value) of land, and the insistence of using just one definition for land in relation to socially differentiated peoples, is a common fault-line that divides key actors from communities involved in land deal processes.

It is the pre-existing social structures and institutional conditions, within which the land being coveted and the people being affected are embedded, that largely shape the politics of land deals (who gets which land, how, how much, why and for what purposes?), and whether the processes and outcomes of any particular deal is likely to result in some form of violation of human rights (of some segments) of the affected communities. Meaning, human rights cannot be seen from a technical, politically neutral context, as they are deeply embedded within the broader context of pre-existing resource politics and dynamic social relations – both within the directly affected community and beyond.

It is important to have a clear, however imperfect, definition of what we mean by 'land grabbing' or 'land deal' in this study, in order for us to establish the institutional backdrop against which we examine human rights. In this study, we define land grabbing as 'control grabbing', following Borras et al. (2012: 851):

<sup>4</sup> For an emblematic large-scale case that demonstrates how the state and corporations frame marginal and available lands, and the justification for gaining control of the villagers' lands is the Gambella region of Ethiopia, see Moreda (2015).

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

When land deals that have the character of a land grab (based on the definition offered above) are carried out in settings where the process, immediate outcomes, and broader, long-term implications are such that they effectively deny land/natural resource-dependent people from exercising or gaining access to land, water and forest to use for livelihoods or spaces to live in, human rights issues may arise. When they do, they must be taken seriously. It is important to situate our discussion of human rights in this more nuanced definition because it also eschews a commonly accepted definition that a land investment is only considered a land grab when it expels people from the land. As we will explain below, while land grabbing that expels people from the land is a common occurrence, it is not necessarily the only path in which central states and corporations pursue resource 'control grabbing' wherein possible human rights violations and abuses can occur.

It is important to understand how and why human rights abuses and violations occur in order to stop and prevent them from happening again, or to seek redress when these are committed (wherever possible in the form of restitution, otherwise through adequate compensation and reparation). It is important to go back to the structural and institutional conditions discussed above – where land deals are carried out in variegated conditions – making the contexts within which human rights violations occur highly differentiated, requiring different treatments in terms of stopping and preventing present and future violations, or to seek redress for violations committed.

There are at least four broad contexts: First, where the land is needed but the people's labour is not, as Li (2011) frames it, the deal will most likely expel people from the land. When they are already expelled, the key human rights demand is to 'restore' their rights to land. This can come in policy forms such as restitution <sup>(5)</sup>.

Second, where the land is needed, and so is cheap labour, people are likely to be incorporated into the emerging business enterprise. The potential human rights issue centres around the terms of the incorporation of the people: who gets inserted into labour or contract farming schemes, why, how and under which conditions?

Third, where poor people still have access to their resources or territory (a place to live and not just a resource to exploit), but such access is being seriously threatened by land deals. The potential human right issue here is for poor people to have the right to have rights in protecting themselves from getting expelled from their land or from having their access to resources (land, water, forest) blocked. In this context, the human rights obligation of states is to 'protect' existing but fragile resource/territorial access and the villagers' rights to benefit from that access <sup>(6)</sup>.

<sup>5</sup> A secondary alternative is to compensate for their expulsion. This approach can however set a dangerous precedent, as companies and states can be drawn into abusive practices, since they can then simply compensate for the expulsion.

<sup>6</sup> Ribot and Peluso (2003) argue this in their discussion of the theory of access.

Fourth, where poor people have long been expelled from their land, either due to extra-economic coercion or through everyday forms of social differentiation, but they were not absorbed into productive sections of the economy in either rural or urban spaces (<sup>7</sup>). The potential human rights issue here is their right to have rights in terms of (re)gaining access to land/resources/territory, in order to be able to at least feed themselves, have a decent place to live, and make a living. Redistributive land reforms and restitution are common policy imperatives in this context. We argue that it potentially constitutes human rights violations (or at least there are compelling moral and ethical issues) in settings where a mass of people desperately need land to live and work, but such lands are instead allocated to corporate entities engaging in labour-saving enterprises to produce goods not needed and which could not be afforded by the poor local population.

The discussion on four broad contexts of potential human rights issues within, and in relation to, the contemporary global resource rush, situates our understanding of human rights not just in the process or outcome of a specific land deal. It compels us to understand both land deal making processes, as well as the immediate outcome and broader, long-term implications of such land deals. It brings us closer to understanding specific human rights abuses by specific corporations and/or human rights violations by government/state agencies, but without deviating from the broader application of human rights, both society - and system-wide. It leads us from deploying human rights instruments only for very defensive and reactive engagements (seeking redress for human rights abuses already committed), to using these in proactive (including preventive) ways as well (the right to have rights, and how to make rights real, as Cousins (1997) puts it).

The broader discussion above consciously frames human beings and social relations as units of inquiry, making them visible and legitimate, positioning their right to have rights in the otherwise problematic structural and institutional conditions they are in. This is to prevent a technical interpretation of what are otherwise deeply political meanings of human rights instruments and other (global) governance instruments, such as free, prior, informed consent (FPIC) (<sup>8</sup>). The broader framing offered also nearly always implicates the central state in the host country as party to land deals implicated in various forms, shades and degrees of human rights violations (see Wolford et al., 2013).

Finally, this framing avoids a situation where concerned international (inter-)governmental and non-governmental groups who want to stop and prevent human rights violations in land deals could – at best – win a case here and there, but losing the broader challenge of human rights system-wide and worldwide. The framework being offered in this study situates the particular cases of land deals within a broader institutional challenge of: "respect, protect, promote, restore, advance" in terms of affected people's human rights in relationship to resource politics (see Franco, Monsalve and Borras, 2015). This means: 'Protect' existing resource/territory access where they still exist but are threatened; 'Promote' resource/territorial access for those who do not have it; 'Restore' resource/territorial access for those who were (violently) expelled from their land by a land deal; and 'Advance' the human rights interests of wage workers/contracted farmers in the emerging land deal enterprises. Due to the grey area status of land being coveted, affected communities are generally declared to have no right to have rights. The first and most

<sup>7</sup> Li (2010) argues this by referring to the rise of 'surplus populations' in relation to current global resource grabs.

<sup>8</sup> In Myanmar, when villagers complained about a mining company destroying the water and soil resources in the village, the company and the government dismissed the claim simply by stating that, according to government records, the village does not exist, and the villagers are thus not a legitimate party to any case (Borras et al. 2016b). See also a critical and relevant discussion on Free Prior and Informed Consent (FPIC) by Franco (2014).

fundamental right then is to respect/protect/recognize their right to have rights, as a fundamental human right.

Having explained how this study frames human rights in the context of global land rush, we now turn briefly to the specific context of this study. During the earliest wave of research on land grabbing, the initial focus was on foreign companies, with emphasis on a set of foreign players (China, Gulf States, South Korea, India, and others). We now know that the range of countries such investors originate in is far broader, and includes North Atlantic-based investors (and EU-based actors). The study done by Cotula (2014) for the European Parliament is instructive about the drivers of land grabbing and how and why human rights are implicated in such land deals. Based on a broad, scoping study, Cotula outlines some of the important institutional bases through which human rights can be violated, while offering a set of useful recommendations on how these can be prevented. Our present study partly builds on Cotula's study, and differs in one important way: we will be focusing explicitly on particular cases of possible, actual or potential human rights abuses and violations in the context of activities by European corporate and financial entities involved in land grabbing outside the EU.

## 3 European corporate and financial entities involved in land grabbing outside the EU

### 3.1 Data and research methods

The relevant data and information used for this study speak directly to the four broad contexts discussed above, as well as for the processes, outcomes and implications of land deals. The most common, and rather casually, used database on land grabs is the Land Matrix (see Land Matrix, 2016; Anseeuw et al., 2013). The Land Matrix is an important database, but is both limited and flawed in relation to the purposes of the present study<sup>9</sup>. While quantification is relevant and important, it is generally limited because: (a) it is not possible to capture the complete picture of the extent of what is happening on the ground<sup>10</sup>, and (b) it is susceptible to capturing and projecting an erroneous perspective of reality. A large part of the methodological problem is how one defines 'land grabbing' that, in turn, brings the issue of what should be included and excluded from quantitative data. The Land Matrix restricts its data to four criteria, which includes land deals that: (i) "Entail a transfer of rights to use, control or ownership of land through sale, lease or concession; (ii) have been initiated since the year 2000; (iii) cover an area of 200 hectares or more; and/or (iv) imply the potential conversion of land from smallholder production, local community

<sup>9</sup> Overall, data in the Land Matrix appears to be very incomplete. Cambodia serves as a good example, as it is likely one of the only countries in the world where data availability from government and civil society organizations (CSOs) is very extensive and well documented. The Land Matrix highlights 104 transnational land deals, most of which are so-called economic land concessions (ELCs), covering 798 207 ha. However, the human rights organization LICADHO documented 274 cases of ELCs with exact boundaries covering 2 120 817 ha. The latest official data underpin that the LICADHO data is highly realistic. A 2015 report by the Cambodian Government (Ministry of Agriculture, Forestry and Fisheries, MAFF) comes to a total of 230 ELCs covering 1 934 896 ha, with an additional 23 withdrawn licenses. Thus, more than half of the existing ELCs granted in the last 15 years (most of which were granted after 2008), and more than half of the affected land area is not included in the highlighted data of the Land Matrix. Only by resetting the default filters in a subpage will the Matrix show 169 deals covering 1 632 000 ha. The hectares discrepancy would be even higher, if Special Economic Zones (SEZs), mining concessions and REDD+ pilots were added – all schemes that frequently lead to the loss of access to land and forest by rural villagers in Cambodia.

<sup>10</sup> The Land Matrix itself states in bold letters that, **"The data should not be taken as a reliable representation of reality."**

use or important ecosystem service provision to commercial use” (Land Matrix, 2016). We see this as too focused on land deal procedures, and an approach that misses a lot of important political and economic dimensions of current land grabbing cases <sup>(11)</sup>.

Another fundamental flaw of the Land Matrix methodology is its overly foreign company-centric unit of tracking. Land deals that seemingly have no link to foreign entities are excluded from the main tables, headlines and messages <sup>(12)</sup>. Furthermore, there is a tendency in the Land Matrix to be too technical and procedural in its treatment of land tenure – excluding pervasive forms of land grabs that come in the form of contract farming/outgrower schemes. Land Matrix data excludes such deals, arguing that, “as the land used by contract farmers outside the area of a land acquisition does not change its tenure status, we do not include this land in our aggregate figures of land acquisitions.” This will effectively exclude a significant number of affected communities and lands worldwide (see also chapter 4.1).

In addition, conservation and climate mitigation schemes, such as REDD+, which affect a vast number of people in similar ways as regular agricultural land concessions do <sup>(13)</sup>, have been excluded from the Land Matrix. While the Land Matrix tends to focus on the extent of land deals almost always measured through the number of hectares affected, it fails to dig deeper into the political economy of financial actors and transactions that are less, and not immediately, traceable via newspaper reports <sup>(14)</sup>. In addition, the Land Matrix excludes failed land deals <sup>(15)</sup>. This is problematic because in many cases, even when a land investment has not been pursued any

<sup>11</sup> Highlighting this, in its re-launch in June 2013, the Land Matrix decided to “temporarily exclude deals based on mining and logging concessions”, and overall the Land Matrix argues that concessions that could provoke conversions in land use and tenure security over large areas, but are unlikely to ever do so over the entire surface of the concession – such as logging and mineral concessions – are now excluded. This means that even if substantial land is transferred and land control has changed, the Land Matrix excludes it from its data, as they do not see this as a “demand for land”. An example: the largest and well known ELC in Cambodia, the Pheapimex concession covering 315 000 ha, is not included in the Land Matrix data. It is unclear under which criteria this exclusion happened. The key is that the overall announcement of the concession holder to plant eucalyptus did not go beyond its initial stage, and over 10 years of logging has been seen as the most relevant activity. Then, in the past 3 years, numerous sub-concessions were given to single investors (with sugar cane and cassava as the dominant crops), and thus this initial transfer of rights has been central in recent land conflicts.

<sup>12</sup> The numbers exclude deals that seemingly have no transnational involvement. The easily accessible figures are also usually those picked up by media and academics. In the overall data set one has to change the default filter setting and add “domestic deals” in order to see all deals. For Cambodia, this increases the number of deals from 1 423 to 1 964 and the land size from 61 875 217 ha to 139 900 495 ha). Illustrative examples include the Amliang sugar cases in Cambodia (Phnom Penh Sugar and Kampong Speu Sugar), which are only found (headed under the L.Y.P. Group) once one resets the default filter setting under the table mode. This is despite the fact that it is well documented, and that the Australian ANZ bank has been involved via a 40 Mio USD loan – a fact which points to the problem of pretending that there is a sharp division between transnational and domestic land deals.

<sup>13</sup> See Fairhead et al.’s (2012) discussion of the concept of ‘green grabbing’.

<sup>14</sup> The Land Matrix thus has limited information regarding the role of shareholders, companies and financing actors. Despite its strong messages regarding the top countries involved, the identification of countries involved (particularly those in the EU) is very limited. For example, Hoang Anh Gia Lai (HAGL) is a Vietnamese company that grabbed land in Cambodia and Laos through its subsidiaries. Deutsche Bank is a key shareholder of HAGL that held shares worth 4.5 Million USD in 2013 (see Global Witness 2013). Such complex shareholding structures are not captured by the database. The case of Cobe Agrivision (Zambia) does not show the links to Norfund (which holds 21 % of the shares of the mother company Agrivision Africa), BMZ, KfW and Deutsche Bank, which gave a loan via AATIF fund (see Box 6 of this study).

<sup>15</sup> Again, this data is not excluded altogether but is excluded from the main tables and headlines, which are easily accessible and commonly used by the media, development practitioners and academics.

further (for various reasons), such a process is likely to have already impacted the affected communities (<sup>16</sup>).

The Land Matrix is not the only relevant database. The NGO GRAIN maintains a database via crowdsourcing (Farmlandgrab.org). The difference between the Land Matrix and GRAIN's initiative is that the latter tends to stay away from making claims about the precise extent of land deals/grabs based on its specific definition. The purpose of GRAIN's databanking is to track cases as they emerge or get spotted in real time – whether it actually exists or is just on-paper in media reports – in order to alert potentially affected communities, their allies and other public interest groups, and to mobilize them to track and monitor potential harm that such investments may cause in local communities (see GRAIN, 2013). This method then is, in a way, less controversial and problematic as compared to the Land Matrix, and has proven to be more useful to human rights watchdogs (<sup>17</sup>).

This study will use all available databases – but is conscious of the limitations and flaws of these. We will supplement its use with data and information that we have gathered through the long standing work of FIAN International on this issue, specifically documenting potential and actual cases of human rights violations in and in relation to land grabs. We will also use published academic works as well as research conducted by NGOs to further support our study (<sup>18</sup>).

### 3.2 A partial and indicative overview of land grabbing data

A few countries have received much of the media spotlight with regard to the global land rush, namely, China, the Gulf States, South Korea and India. There has been comparatively less examination of the role that EU Member States play in the global land grab (<sup>19</sup>), likely partly because many EU-based investors and companies have multiple foreign subsidiaries that make it difficult to trace their roots directly to the EU. However, companies registered in the EU are engaging in numerous land deals, that, when aggregated, add up to vast amounts of land in developing countries. As shown in Annex 1, companies registered in France and the United Kingdom have been involved in 40 to 124 land deals, respectively – as a result, gaining control of 629 953 to 1 972 010 hectares of land in various countries outside the EU. Corporations registered in Belgium, the Netherlands and Italy are not far behind, with 20 to 21 deals each, involving a total of 251 808 to 615 674 hectares of land. Overall, the Land Matrix data alone reports 182 EU-based companies being involved in 323 land deals outside of Europe (see Figure 1). These deals are found in 52 countries in Africa, Asia and Latin America and have contracted a combined total of 5 837 504 hectares of land (see Figure 2) for a wide range of purposes – including agriculture,

<sup>16</sup> For example, while the UK-based ProCana company pulled out of its 30 000 ha sugarcane investment in southern Mozambique, the damage caused by the recasting of social relations and access to land was already done, and had far-reaching impacts on local communities (see Borrás et al. 2011).

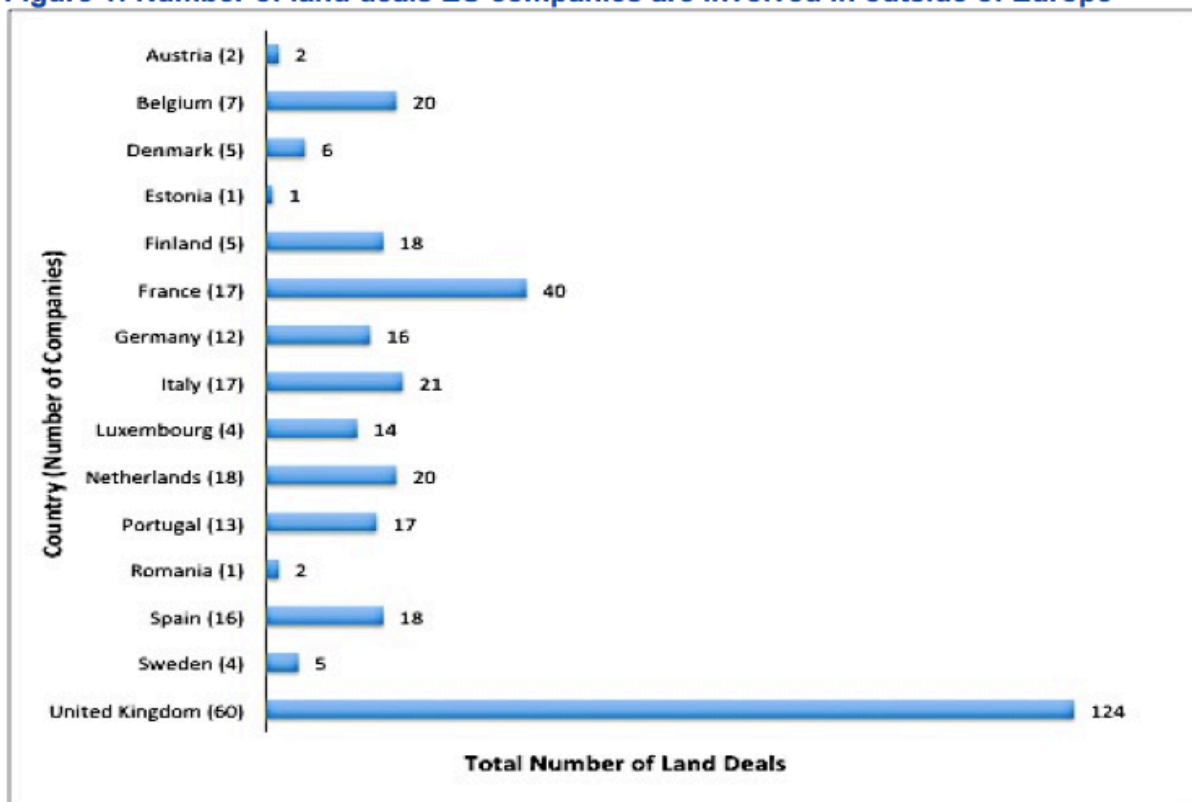
<sup>17</sup> Furthermore, data banking with real time interactive mapping is also central to human rights oriented tracking, such as the series of interactive maps constructed by the human rights organization LICADHO in Cambodia. Its value is that it provides not only a list of cases, but also satellite generated maps situating a particular land case in relation to others. Finally, EJOLT Atlas is another database initiative focused on environmental conflicts. The value of this type of mapping is that it focuses on resource conflicts where human rights issues are pervasive. It is the least developed of all the known databases, perhaps partly because of the inherently fluid character of what it aspires to track: conflict (Martinez-Alier 2016).

<sup>18</sup> For a vibrant scientific debate about methodology in tracking and quantifying land grabs, please refer to the following exchanges: Scoones et al. (2013), Edelman (2013), Oya (2013), Anseeuw et al. (2013), Rulli and O'Dorico (2013).

<sup>19</sup> Some notable exceptions include: Borrás and Franco (2011) and Borrás et al. (2012), among others.

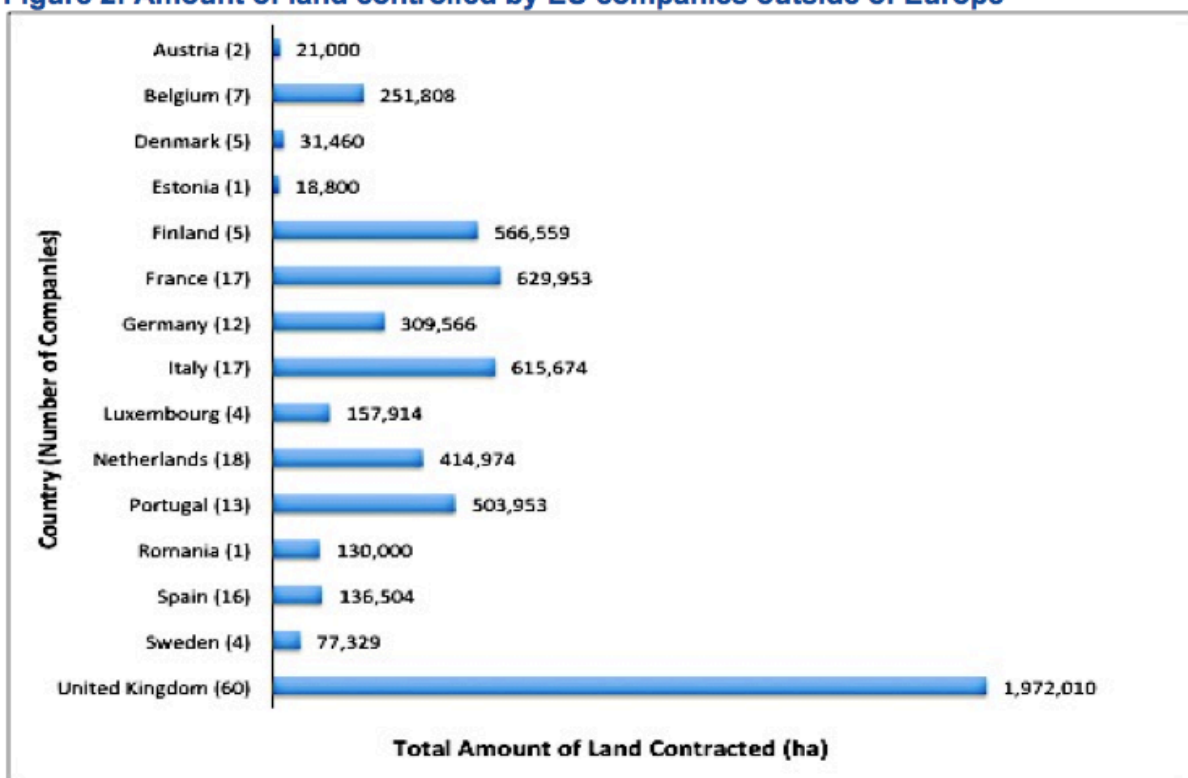
livestock, biofuel production, forestry for carbon sequestration, and conservation projects (see Annex 2).

**Figure 1: Number of land deals EU companies are involved in outside of Europe**



Source: Own elaboration using calculations made from Land Matrix data (2016)

**Figure 2: Amount of land controlled by EU companies outside of Europe**

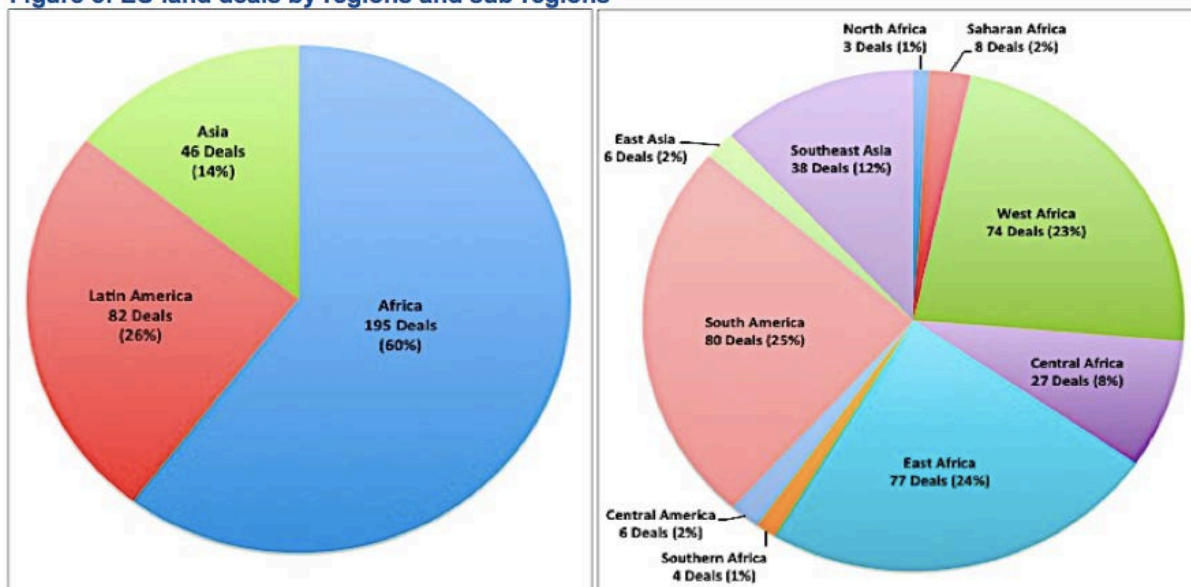


Source: Own elaboration using calculations made from Land Matrix data (2016)



The number of companies involved is significant and is unevenly distributed across the EU. France is the home base of 17 companies involved in a variety of land deals. The Netherlands has some 18 companies operating, either directly or indirectly, in countries outside Europe – from Ethiopia to Brazil to Cambodia. While sixty companies based in the United Kingdom are operating in 30 different countries worldwide (see Annex 3 for more company-specific data). In terms of regional trends, and again with all the caveats discussed earlier, Figure 3 highlights the spread of land deals across the regions of the world that EU companies are targeting – with investments in African countries comprising 60 % of all recorded land deals, while those in Asia and Latin America combined comprise 40 %. When this data is further divided by sub-region, countries in West, Central, and East Africa together account for 55 % of all land EU land deals, suggesting that these areas offer the most appealing investment conditions for EU-registered companies. When looking into the officially declared intended use of the land involved in these deals (see Annex 1), the most immediately visible similarity across all three regions is that the broad category of 'agriculture' (which includes biofuels and food crops) is the most prevalent.

**Figure 3: EU land deals by regions and sub-regions**



Source: Own elaboration using calculations made from Land Matrix data (2016)

The aggregated data provides us with a broad overview of countries in the EU where some of the investing companies are registered, which sectors of the industry they are engaged in, and which regions outside the EU they are investing in. This is relevant – as long as the caveats and warning about using the data are observed. However, this is just a precursor to our intention of looking into their human rights impact. Here, it is important to come back to the four broad contexts discussed above, with attention to process, outcome and implications. In Box 1 and Box 2, we present two illustrative cases. Combined, the two cases demonstrate all the features of the four broad contexts, while also illustrating that land grabs do not necessarily – and in reality rarely – fit into ideal types. Rather, multiple contexts discussed above can be at play in one particular case, as shown in Boxes 1 and 2.

### **Box 1: The case of Germany-based Neumann Kaffee Gruppe**

In August 2001, the inhabitants of the four villages Kitemba, Luwunga, Kijunga and Kiryamakobe (approximately 4 000 people) in Mubende District, Uganda, were violently evicted from their 2 524 hectares of land, on which they had been living for years. Supported by the local authorities, the Ugandan army inflicted violence on the community. The eviction took place after the Germany-based company Neumann Kaffee Gruppe (NKG), negotiated with the Ugandan government about the lease of the land for the establishment of a coffee plantation. The agreement with the Ugandan investment agency included a clause that the land had to be uninhabited and former inhabitants were to be compensated. After the eviction, and without compensation to the evictees, the land was leased to Kaweri Coffee Plantation Ltd., a 100 % subsidiary of the NKG. The establishment of the coffee plantation on the cleared land was supported by the German development agency GIZ (then GTZ) and the African Development Bank (AfDB), which currently has 7 EU MS in its board of directors.

In August 2002, 2 041 of the displaced persons sued the Ugandan government and Kaweri Coffee Plantation Ltd. for damages. When the trial was rejected, the victims initiated a formal complaint against the NKG as the parent company at the German National Contact Point (NCP) for the OECD Guidelines for Multinational Enterprises in 2009. In its concluding observations, the NCP concluded in 2011 that NKG had acted in good faith in assuming to have leased the property free from claims from third parties. However, in a judgment of 28 March 2013, the High Court in Kampala demanded that the lawyers of Kaweri Coffee Plantation Ltd. pay compensation for damages amounting to EUR 11 million. It also harshly criticized the German investor for its disregard of human rights. Kaweri Coffee Plantation Ltd. appealed against the judgment in December 2013. Since then, provision of justice has been delayed. Germany neglected the human rights of the affected people by not assessing the human rights impacts before providing financial support to the plantation. Furthermore, Germany has not ensured that victims of human rights abuses have access to effective remedies. By financially supporting the project through the GIZ and AfDB, Germany also breached its obligation to respect the human rights of the affected people (CorA-Netzwerk et al., 2014; CESCR, 2015; FIAN, 2016).

### **Box 2: The case of Swedish-owned EcoEnergy**

On 9 May 2013, a Swedish-owned company, EcoEnergy, reportedly received a certificate of occupancy from the Tanzanian government, granting it a 99-year lease over 20 374 hectares of farmland in Bagamoyo district, located 70 kilometres north of Dar Es Salaam, the capital city of the country. The company is developing a 7 800-hectare sugar plantation and processing facility, and is planning to source sugar from outgrowers farming a further 3 000 hectares of land. The plantation aims to produce around one million tons of sugar cane per year for food and energy consumption (according to a 2015 report, production is expected to begin in 2016). The land acquired by EcoEnergy comes from the former state farm known as Razaba, which was established in 1976 as part of former President Nyerere's collectivisation policies, and abandoned in 1993. According to research carried out in 2015, project investment may reach USD 500 million, financed mainly by the African Development Bank, the International Fund for Agricultural Development (IFAD), and other development banks – although precise details are not available. The Swedish International Development Agency (Sida) is reportedly providing a loan guarantee to the project worth USD 17.5 million.

EcoEnergy's project is part of the G7 New Alliance for Food Security and Nutrition, a public-private

partnership in 10 African countries enabling private sector investment in key sectors of agriculture. Launched in 2012, it involves 180 transnational and African corporations that plan to invest USD 8 billion in agriculture in 10 African countries. In Tanzania, the EU, as well as the British, French, German, Japanese, Russian, and US governments fund the New Alliance. Besides the direct support it receives from the African Development Bank, IFAD and Sida, the project is also part of the Southern Agricultural Growth Corridor of Tanzania (SAGCOT) a public-private partnership, which aims to put 350 000 hectares under profitable production to serve regional and international markets. The founding partners of SAGCOT include transnational agrifood corporations, foundations, and various donor governments – including several EU MS – support the initiative.

EcoEnergy and the Tanzanian government claim that the sugar project will bring many benefits to the local communities, but research has highlighted numerous problems with it. In the first phases of the project, approximately 1 300 people – mainly farmers – will lose some or all of their land and/or their homes. There will be further displacements in subsequent phases, which could affect hundreds of people according to estimates. The company EcoEnergy has promised compensation in cash or alternative land to affected farmers. However, local people complained about the quality of the land being offered as compensation and the lack of binding commitments from the company. In addition, research found that affected people have not been offered the choice of whether to be resettled or not, but rather only whether they want to receive compensation in cash or land for being resettled.

The project foresees the establishment of an outgrower programme in which 1 500 smallholder farmers would use village land to form 25 to 35 'block farms' where, on average, 50 farmers will plant sugar cane and supply sugar to the company at an agreed price. Yet, interviews indicate that many farmers in the area are unaware of the details of this model, which presents potential risks to local smallholder farmers and involves a major shift in livelihoods and food security in the area. Under the outgrower scheme, each group of 50 smallholder farmers is expected to create its own outgrower company, which will have to take out loans of at least USD 800 000 – a sum that is 30 times the minimum annual agricultural salary in Tanzania. According to company estimates, it will take seven years for the outgrower companies to pay back their loans before they can make a profit. Until this break-even point, the farmers' only earnings would be from their farm labour, which will be low since agricultural minimum wage in Tanzania is only USD 44 a month. The outgrowers are also likely to have little bargaining power when obtaining loans from the banks and in setting the price at which they sell their sugar to the company (ActionAid, 2015) <sup>(20)</sup>. The foreseen outgrower scheme and existing power asymmetries between the company and the communities also entail the risk for communities to lose autonomy by transforming their livelihoods into a dependent relationship with the company.

### 3.3 Understanding investment webs

One aspect that is directly linked to financial investors and indirectly linked to most private companies is the issue of financing and shareholding of actors, which often reveals complex, cascading relations. This means that in one land deal, multiple actors may be involved, and thus certain but distinct responsibilities and related accountabilities can be attributed to them. Indeed, "behind most large-scale agricultural projects is a web of global actors that make the project

<sup>20</sup> Schiavoni et al. (2016) looked into the impact of SAGCOT and its various mechanisms of land deals and outgrowing schemes, paying particular attention to its impact on the 'right to food'.

possible. These actors include banks and companies that are funding the project, and the companies that are buying the produce being grown or processed by it. All of these actors are necessary to the project's success, and all are aiming to earn a profit from it in one way or another" (Blackmore, Bugalski and Pred, 2015).

This is very relevant in order to understand the dynamics of land grabbing and vividly illustrates some of the mentioned problems arising from certain forms of data banking, in as much as it can obscure relevant actors – including those based in the EU. The discrepancy between the data discussed above and the involvement of financial actors can be highlighted by the case of DWS, the fund managers of Deutsche Bank AG. A 2010 study found that "in the case of DWS [...] at least EUR 279 500 000 is invested through their funds in companies directly acquiring agricultural land. These companies actually hold a minimum of 3 057 700 hectares of agricultural land in South America, Africa and Southeast Asia alone" (FIAN Germany, 2010). However, the data from the Land Matrix only points to 300 000 hectares acquired by German actors.

When looking at the investment chains of land deals, there are different types of actors: business managers of the agricultural project; parent companies who (fully or partially) own the business managing the project (subsidiary or local branch); investors/shareholders who invest money in a company in return for shares; lenders who make loans to a project or a company (commercial banks, investment banks, multilateral development banks/IFI, investment funds (hedge funds, pension funds, private equity funds); governments who offer land to the business managing the project and allow a company to be registered and operate in their country or region; brokers who play a role in helping to secure business deals and communicating between or supporting different actors involved; contractors who carry out certain jobs on the ground on behalf of the project; and buyers who buy the produce grown or processed by the project (trading companies, processor/manufacturer, retailer) (see Fairbairn, 2014; Clapp, 2014; Isakson, 2014; Blackmore et al., 2015). These actors are not always based in one single country, which makes attributing accountability to one state inadequate. EU actors can come in at different points of the investment chain – or web. The case of Feronia Inc. (Box 3 and Figure 4) is illustrative of this.

### Box 3: Feronia Inc.

Feronia Inc. is a Canadian company registered on the Toronto stock exchange. All of its operations are carried out in the Democratic Republic of Congo (DRC) through its subsidiary Feronia JCA Limited that is, in turn, registered in the Cayman Islands (GRAIN, 2015). Feronia JCA Limited holds 76 % of Congolese Feronia Plantations et Huileries du Congo (PHC) and 80 % of Feronia PEK sprl. Feronia claims to legally control some 117 897 hectares of land in the DRC through both companies (107 897 and 10 000 hectares respectively) <sup>(21)</sup>. As of March 2015, Feronia Inc.'s largest shareholders were the African Agriculture Fund (AAF, 32.44 %) and CDC Group Plc. (27.43 %), totalling 59.87 %. AAF is a Mauritius-based private equity fund financed by bilateral and multilateral African development finance institutions (DFIs) <sup>(22)</sup>. Its Technical Assistance Facility (TAF) is funded primarily by "the European Commission and managed by the International Fund for Agricultural Development (IFAD). The TAF is co-sponsored by the Italian Development Corporation, United Nations Industrial Development Organisation (UNIDO) and the Alliance for a Green Revolution in Africa (AGRA)" (AAFTAF, 2016). CDC is the UK's Development Finance Institution (DFI), owned by the UK Government. Deutsche Bank AG holds 1.27 % <sup>(23)</sup>.

In addition, development banks from Germany, Belgium and the Netherlands, together with the PPP-fund EIAB issued a loan of USD 49 million in December 2015. In total, institutional investors control 77.7 % of Feronia (Feronia, 2015). Although a corporate entity at first sight, this complex structure poses questions in terms of human rights compliance of the mentioned states. This creates a peculiar situation where one of the biggest palm oil players in Africa (based on its land pool) is owned and mainly controlled by DFIs, with eleven nations <sup>(24)</sup> involved in the case (USA, Canada, Germany, Spain, France, Belgium, The Netherlands, Cayman Islands, Mauritius, UK, RD Congo). This complex 'multilayeredness' can be seen as a possibly characteristic case of land grabs that are even more pervasive than previously assumed. Based on this case, it is more adequate to talk about investment webs rather than investment chains. As a result, attributing responsibilities for human rights violations to each of the countries involved becomes a substantive challenge for those in charge of determining accountability and providing remedies (including parliamentary, quasi-judicial and judicial mechanisms). It also hampers the advocacy work of CSOs, grass roots communities and their advocates seeking justice. Clapp (2013) refers to this as the 'distancing of accountability.'

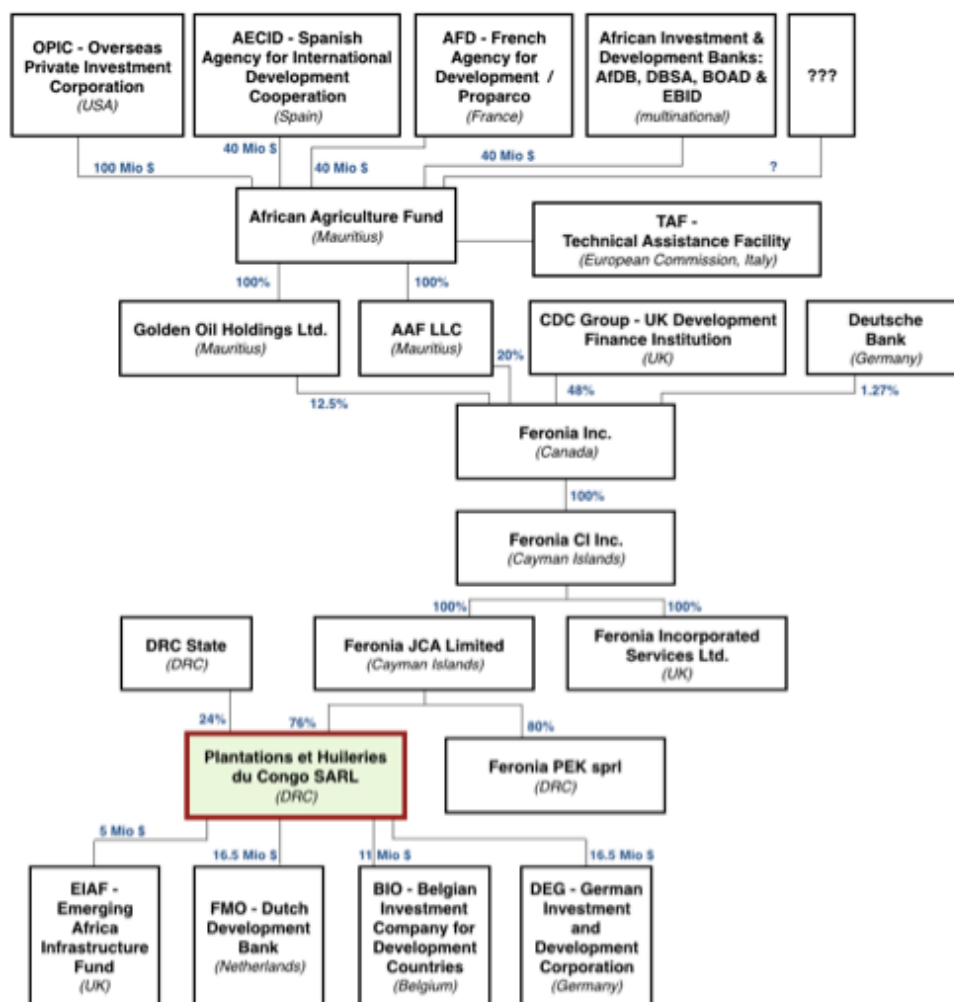
<sup>21</sup> The legitimacy of those land claims are contested by local communities, as well as Congolese and international NGOs (GRAIN, 2015).

<sup>22</sup> Including: USA (OPIC), France (AFD/ FISEA), Spain (AECID) and African development Banks (AfDB, DBSA, BOAD and EBID).

<sup>23</sup> Information Bloomberg database; for details see also Figure 4 and related footnote.

<sup>24</sup> Multilateral banks and the financiers of the Technical Assistance Facility of AAF (especially EC and Italy) are excluded from this list.

**Figure 4: Feronia's investment web**



Source: Own elaboration, based on available information <sup>(25)</sup>

The DWS data, as well as the Feronia case, show that a reference to databases like the Land Matrix has its limits, and is not sufficient to identify EU actors as it would not immediately and directly reveal obvious links between Feronia and EU actors – despite the fact that (a) EU actors (either directly or through AAF) are majority shareholders (owners) of Feronia Inc., and (b) a loan by development banks is linked to distinct obligations of the related states. This leads to a distancing of accountability (Clapp 2013), and makes it more complex to find adequate policy responses targeting EU private and financial investors. For the scope of this study and the data presented above, this also means that the involvement of EU corporate and financial entities in land grabbing outside the EU is even more impressive than the numbers discussed above suggest.

<sup>25</sup> The following aspects must be considered: (1) The data are taken from different sources from different years. The figure might thus not reflect the exact situation as of today. However, this does not impede the purpose of the figure, which is to exemplify the complex investment webs surrounding land grabs. (2) CDC shares are summarized from shares and “benders”, an instrument that can convert loans to shares. (3) Feronia’s website mentions that due to negative perceptions, the Feronia entity in the Cayman Islands entered into voluntary liquidation. During an informational meeting with Belgian NGOs, Feronia and BIO mentioned that Feronia would now register in Belgium.

### 3.4 EU actors and five key land grabbing mechanisms

The ways in which EU corporate and financial entities involved in land grabbing may be implicated in a variety of possible human rights abuses are manifold. A land deal may involve diverse actors, i.e. EU and non-EU, financial and corporate, private and public, which are in turn linked to each other in a variety of ways. These entities act in specific contexts and may be linked to the EU in different ways. In order for the EU and EU MS <sup>(26)</sup> to address the human rights impacts of land grabbing by European corporate and financial entities, it is thus essential to understand the mechanisms through which these entities are involved in land grabbing. This is relevant because different mechanisms point to different measures that have to be taken into account by the EU and MS in order to comply with their human rights obligations. Understanding the mechanisms can contribute to specifying the (institutional bases of) human rights obligations – namely, "respect, protect, fulfill" – at play. These five mechanisms are now discussed in detail, alongside an illustrative case for each.

**(I) EU-based private companies involved in land grabbing through various forms of land deals:** In this type of mechanism, a company that has its headquarters or substantial business activity (or that of its controlling company) in one EU MS, is involved in a land grab and possible human rights abuses. The company can be involved in a land deal at different points of the investment chain/web. It can be a financial institution or company that is involved in the financing of a land deal (shareholder or loan), or a company that is involved in the operational implementation of a given investment project (coordinating or exercising), or a main client of the produced goods. In some cases, the operations on the ground are managed and/or carried out by a locally registered company, usually a subsidiary of the EU based company (the subsidiary may have other shareholders), but business operations are coordinated from the company's headquarter or parent company.

The land may have been acquired by the local company or by the EU-based company through purchase, lease or concession. It may have been acquired from communities, private landowners, or the state of the host country. In the context of large-scale land deals, there is usually the involvement of a state authority or agency. The EU-based company may benefit from support by its home country, through intervention by the embassy or, in the context of support to land acquisitions via development cooperation projects. In these cases, it is up to the EU and MS to regulate business enterprises – and sanction them – where they are in a position to do. For instance, where the corporation, or its parent/controlling company, has its centre of activity or registered or domiciled, or has its main place of business or substantive business activities in the country concerned; and to ensure access to justice and adequate remedy by victims of human rights abuses. The Luxembourg-based company SOCFIN is an illustrative case (see Box 4).

<sup>26</sup> As will be explained in detail in section 4.2, both EU Member States and the EU have concomitant human rights obligations that require them to respect, protect and fulfill human rights in the context of land grabbing in third countries. Member States' obligations extend to their actions and omissions when acting within/through the EU, and complement the international obligations the organization itself has. They must take steps to ensure that the organization acts in compliance with these obligations. See Maastricht Principles 15 and 16, elaborated in De Schutter et al. pp. 23-26.

#### Box 4: The case of the Luxembourg-based company SOCFIN

SOCFIN (Société Financière des Caoutchoucs) is an agro-industrial group specialized in oil palm and rubber plantations. The SOCFIN group is a very complex structure of cross investments and shareholdings. Financial holdings of the group are based in Luxembourg; operational companies are based in Luxembourg, Belgium and Switzerland; and subsidiaries for the management of the plantations are established in a dozen Sub-Saharan and Southeast Asian countries (SOCFIN, 2016). Although SOCFIN is a very old company with its first operations dating back to the Belgian Congo, the company has experienced a significant expansion of its operations in recent years, benefiting from the growing world demand of oil palm for industrial food and biofuels (27).

As of end 2014, SOCFIN was managing 181 000 ha of plantations in Sub-Saharan Africa and Southeast Asia (+20 % since 2011) (28). SOCFIN largely relies on self-financing and commercial loans for the development of its operations, although it has on several occasions benefited from financial and technical support of DFIs like the International Finance Corporation (IFC) of the World Bank Group or the German DEG. It has also benefited from political and technical support from investment promotion agencies, which were supported by the European Commission. For example, in Sierra Leone, SOCFIN acquired its farmland through the Sierra Leone Investment and Export Promotion Agency (SLIEPA), which was decisive in identifying the area for the land investment and in facilitating the lease agreement between the company and national authorities.

Despite SOCFIN's membership to RSPO (Roundtable on Sustainable Palm Oil) and its publicity around CSR (Corporate Social Responsibility) projects, several reports from NGOs and international organisations have demonstrated severe environmental (Greenpeace, 2016) social and human rights impacts (UN, 2006; FIDH, 2011; Oakland Institute, 2012) of SOCFIN's land investments. In different countries this has led to land conflicts, social unrest and criminalisation of local leaders (FIDH, 2016). Since 2010, a complaint has been submitted to 3 National Contact Points (NCP) by several NGOs, for the OECD Guidelines for multinational enterprises for a case in Cameroon. Despite the elaboration of an action plan and several attempts of mediation, the NCPs deplored the lack of collaboration from SOCFIN, which has impeded the institution of "adequate solutions for the workers and neighbouring populations" (Point de Contact National Belgique, 2015).

**(II) Finance capital companies from the EU involved in land grabbing:** Financialisation of land, agriculture and the food system has been a key element of the contemporary global resource rush (see Fairbairn, 2014; Isakson, 2014; Clapp, 2014). Finance capital companies are of a diverse nature and include institutions such as banks, brokerage companies, insurances, financial services, pension funds, hedge funds, investment firms and venture capital funds. There is a clear trend of finance capital companies being increasingly involved in land deals since the beginning of the financial crisis and the food price spike in 2007-2008, as land became a target for financial capital investors who needed to find diversified investment areas as a rampart against investment areas that have become unstable due to the financial crisis. Clear profits could be reaped due to the overall rise of land and commodity prices. Financial actors may not always be very visible in a land deal, as they may be financing land grabs indirectly (e.g. when banks provide credit to companies

<sup>27</sup> The import of oil palm for biofuels in the EU has increased by 365 % from 2006–2012 (Gerasimchuk and Yam Koh, 2013).

<sup>28</sup> This represents only a small part of the land controlled by SOCFIN, as only 45 % of their concession is currently planted (SOCFIN, 2016).



involved in land deals, or when hedge funds and private equity firms buy stakes in overseas companies that control land) (FOE, 2012).

Major financial capital company players with regard to land grabbing are pension funds. At the end of 2014, total private pension assets in the 34 OECD countries were valued at 38 trillion USD and managed mainly by pension funds (OECD, 2015, p. 7). Pension funds are the main financing vehicle for private pension plans, with 25.2 trillion USD of assets under management, which represented 66.8 % of total private pension assets at the end of 2014 (ibid.). They are either public or private funds and, hence, regulated under respectively public or private sector law in the corresponding countries. In many cases, however, and to some extent similarly to development finance institutions, pension funds are often constructed in a way that makes it difficult to clearly distinguish between public and private fund. Public pension funds are under direct public control and must therefore, as a public body, avoid contributing to human rights infringements domestically and extraterritorially <sup>(29)</sup>. As for private pension funds or funds that are of a more embroiled construction, EU Member States have the obligation to regulate them in order to avoid that their funding contributes to human rights abuses abroad, and ensuring effective remedy in case of abuses. The Dutch private pension fund ABP is an illustrative case (see Box 5).

### **Box 5: The case of Dutch private pension fund ABP**

The Dutch private Stichting Pensioenfond ABP, one of the world's largest pension funds, was involved in a land grab in Niassa province in the north of Mozambique. Mozambican company Chikweti Forests of Niassa (hereafter referred to as Chikweti) began operating in Niassa in 2005, acquiring around 45 000 hectares of land in the province and subsequently setting up pine and eucalyptus plantations <sup>(30)</sup>. The company is a subsidiary of Global Solidarity Forest Fund (GSFF), a Sweden-based investment fund. When the tree plantations were established in Niassa, investors from different countries stood behind GSFF, including the Dutch pension fund ABP as major shareholder (54.5 % of the shares).

ABP was also part of a group of institutional investors that launched a set of 'Principles for Responsible Investment in Farmland,' or 'Farmland Principles' in September 2011, with the stated objective of "improving the sustainability, transparency and accountability of investments in farmland." However, from the outset, Chikweti's operations have had severe impacts on the enjoyment of human rights by peasant communities in the project area, whose most important source of livelihood is family agriculture. Local people complained about the loss of farmland, because tree plantations were set up on lands that were previously used for food production. Native forests, which provided additional source of income and food, were cut down to make way for plantations. While Chikweti had announced that it would provide 3 000 jobs, by 2012 only 900 people were employed. Of those who had jobs, many of the contracts turned out to be short-term, seasonal work coinciding with the agricultural season, so workers had to neglect their fields during this important time of the year. Work in the tree plantations is highly intense, with long working hours and low pay. A World Bank report on Land Grabbing states that the Mozambican minimum wage is "insufficient to compensate for lost livelihoods" (Deininger and Byerlee, 2011, p. 65).

<sup>29</sup> See for example CESCR, 2013, in which the Committee recommends, "that the State party ensures that investments by the Norges Bank Investment Management in foreign companies operating in third countries are subject to a comprehensive human rights impact assessment (prior to and during the investment)".

<sup>30</sup> According to the new owner of Chikweti, the Norwegian forestry company Green Resources, it currently operates 17 000 hectares of tree plantations in Niassa.

Workers reported that they did not receive any benefits other than their salary and there were repeated conflicts about delayed payment and non-payment of workers due to absence for health reasons.

The Mozambican Land Law of 1997 guarantees peasant families access to and use of their lands. According to this law, consultation with the community is needed, even if a company has a concession from the national government for use of community land. However, this process was not effectively carried out in the case of the tree plantations established, making it difficult to assess to what extent, on what basis, and under what conditions lands have been ceded to GSFF. Communities complained that their views were not properly heard. An investigation by the Mozambican government in 2010 confirmed the complaints of the local population, finding that Chikweti was, at the time, occupying 32 000 hectares of land illegally, without the required land title. However, the governments involved, including the home countries of the investors, took no adequate or effective measures. Some of the investors behind Chikweti acknowledged that the investment project had not met the requirements of their investment policies and claim that they have taken measures to address the complaints made by affected communities, mostly through community development projects in the context of corporate social responsibility <sup>(31)</sup>. However, affected communities and CSOs from the project area voiced complaints about the project's negative impacts on the enjoyment of human rights (FIAN, 2012; and information based on research from 2015 by the Mozambican peasant union, UNAC).

**(III) Land grabbing via public-private partnerships:** Generally speaking, a public–private partnership (PPP) is an agreement between a public sector authority and a private party, which is funded and operated through a partnership of one or more governments and one or more private sector companies. The International Food Policy Research Institute (IFPRI) defines PPPs as “collaborative mechanisms in which public organizations and private entities share resources, knowledge, and risks in order to achieve more efficiency in the production and delivery of products and services” (Hartwich et al., 2008, p. vii). In the context of land deals, PPPs often involve development cooperation agencies or public funds that invest in investment funds, or companies involved in land deals. In other cases, the public sector ensures an environment that facilitates land acquisitions and subsequent business activities by private corporations through specific policy interventions (see, for instance, the New Alliance for Food Security and Nutrition in Box 2, as well as below).

PPPs are presented by proponents as “win-win affairs” since, in theory, they make it possible to profit from the capacities and resources of private entities and shift some of the risk of service provision to them while anchoring accountability solidly in the public sector. In reality, however, PPPs blur the lines between public and private actors and mix up their respective roles and responsibilities. In the context of PPPs, public goods are increasingly seen as private goods or market commodities and they thus entail the risk that the state will abdicate its public responsibilities and human rights obligations, with important implications for human rights accountability. Indeed, accountability tends to drop out of the picture while corporations manage to evade the bulk of the risks involved in agricultural investment by pushing governments to twist rules and regulations to their advantage. The problems regarding human rights accountability also

<sup>31</sup> This includes Green Resources, the Norwegian company that acquired GSFF and its subsidiary Chikweti in 2014, which publishes regular Environmental and Social Impact Reports.

specifically refer to the reduced ability of affected people to claim their rights, especially in cases of abuses.

States and state institutions involved in PPPs related to land deals have obligations to respect and protect human rights in as much as they are directly involved in such deals. This includes prior assessment, with public participation, of the risks and potential impacts of the activities within the partnership, on the enjoyment of human rights. The results of this assessment must be made public and must inform the measures that states will adopt to prevent violations or ensure their cessation as well as to ensure effective remedies (see chapter 4.2 and annex 4). States also have the obligation to protect affected people from impairments of human rights by the companies involved in PPPs. The Luxembourg-based African Agricultural Trade and Investment Fund (AATIF) is an illustrative case (see Box 6).

### **Box 6: Luxembourg-based African Agricultural Trade and Investment Fund**

Chobe Agrivision Company Ltd. is a commercial farming company in Zambia owned by Mauritius based investment firm Africa Agrivision (formerly Chayton Africa). In 2009, the company signed an Investment Promotion and Protection Agreement with the Government of Zambia, including tax breaks. The overall plan of Chayton is to aggregate 100 000 hectares of land in Zambia and neighbouring countries like Botswana. In 2014, Chayton had acquired seven farms in Zambia totalling 16 916 hectares. Research points to land related conflicts around the Mkushi farm block due to a surge of commercial farming activities. In at least one estate, there exists a longstanding land conflict. Despite promising 1 639 jobs, in 2015 Chobe employed just 165 workers, of which 135 were permanent staff (AATIF, 2015). Since the company took over existing farms, most of these jobs already existed and can hardly be presented as new jobs created by the investment injection. Rather, the takeover of existing large farms was accompanied by job losses as a result of mechanisation.

In August 2011, the African Agricultural Trade and Investment Fund (AATIF) invested 10 Million USD in Chobe Agrivision via Africa Agrivision (then Chayton Africa). The AATIF is an “innovative public-private financing structure” (AATIF, 2015) based in Luxembourg and set up by the German Ministry for Economic Cooperation and Development (BMZ and its financial assistance branch, KfW Development Bank) in cooperation with Deutsche Bank AG. The Fund’s stated mission “is to realize the potential of Africa’s agricultural production, manufacturing, service provision and trade for the benefit of the poor” (AATIF, 2012). Today the fund has a volume of USD 141 million (major shareholders in million USD: 62 BMZ, 26 KfW, 26 DB and 19 religious institutions). It is expected that the returns of the fund will be at a high single-digit level. Because of a cascading fund arrangement (via A, B and C shares) loss of profits will first hit BMZ, then KfW and in the end Deutsche Bank and the other investors. Deutsche Bank manages this fund. In October 2012 the Norwegian Investment Fund for Developing Countries (Norfund, owned by the Norwegian Government) acquired 21 % of Africa Agrivision for 10 Million USD (Hands off the Land Alliance, 2013).

**(IV) EU Development Finance involved in land grabbing:** Development Finance Institutions (DFIs) are important actors in land grabbing, namely as financiers of land deals and investment projects. DFIs are specialised development banks that are usually majority owned by national governments and contribute to the implementation of the latter’s foreign development and co-operation policy. However, information on the activities of DFIs is not easily available to parliaments and the broader public. DFIs invest their own capital and may source additional capital from national or international development funds. They also may benefit from government

guarantees, which ensure their credit-worthiness. DFIs can thus raise large amounts of funds on the international capital markets and provide loans or use equity on very competitive terms – frequently on par with commercial banks. The scale of private sector financing from International Finance Institutions (IFIs) and European DFIs has increased dramatically: in 2010, external investments exceeded USD 40 billion, and were expected to exceed USD 100 billion by 2015 (APRODEV, 2013). This trend, sometimes referred to as “financial deepening”, is part of an on-going process of financialisation (i.e. the increasing importance of financial markets, financial motives, financial institutions and financial elites in the operation of the economy) (Bretton Woods Project, 2014).

The involvement of DFIs in land deals can take different forms: either they give loans to companies, private investors or their projects, they give guarantees or they are involved as shareholders (equity participation) within projects, or enter into joint ventures. In some cases, involvement of different DFIs can result in the majority of a company’s shares being in the hands of DFIs (see Box 3 for an example). Although European DFIs usually have internal guidelines or claim to follow the IFC performance standards to their investments as safeguards in order to ensure that they are not involved in land grabs, a large number of reported land grabs and related human rights abuses and violations involve one or several European DFIs.

It has to be noted that DFIs increasingly invest in financial institutions, as part of an approach that sees the private financial sector as a development actor and bolsters it with public resources. Some European DFIs invest around half of their total portfolios in financial intermediaries, making it extremely difficult to know where this money is then used, thus raising huge problems of accountability<sup>(32)</sup>. While DFIs are financial actors, their position as a link between public and private actors and, often, being majority owned and controlled by states, implies some specificities regarding human rights obligations. While – as with financial and corporate entities in general – human rights obligations comprise the regulation by EU and/or EU MS in order to protect the human rights of people in third countries, EU MS also have a respect obligation, where DFIs are directly linked to states as well as public resources and, thus, to public regulation<sup>(33)</sup>. The case of the private-sector branch of the German Bank for Development, DEG, is illustrative of this (see Box 7).

<sup>32</sup> An example is the German DEG who invests 44.6 % in financial intermediaries, along with the World Bank’s 62 % (FIAN Deutschland, 2014, p. 7).

<sup>33</sup> Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights (2011), principle 12(a); International Law Commission, Report of the Fifty-Third Session, Responsibility of States for Internationally Wrongful Acts, A/56/10 (2001), arts. 5, 8; Concluding Observations of the Committee on Economic, Social and Cultural Rights, Germany, E/C.12/DEU/CO/5 (2011), para. 10, 11. See also chapter 4.2 and annex 4.

### Box 7: The case of the private sector branch of the German Bank for Development

In January 2013, the private-sector branch of the German Bank for Development (DEG), announced that it would invest 25 million euros in the Paraguay Agricultural Corporation (PAYCO) (DEG, 2013) <sup>(34)</sup>. According to PAYCO, DEG holds 15.8 % of the shares of the company. Rioforte, an international private equity firm based in Luxembourg, holds the remaining 84.2 %. According to information provided by DEG, it has negotiated an environmental and social plan with the company that should give insight about how human rights risks are assessed. This plan is, however, classified as confidential under the investment agreement. By referring to this agreement, DEG has repeatedly refused to make this information available, including under the German freedom of information law.

PAYCO manages 135 000 hectares of land in Paraguay, on which the company produces cereals, soy and plantation wood. A part of the land is used for cattle ranching and another part of it is also declared as a natural reserve. The context regarding land in Paraguay is highly sensitive: Paraguay is the country with one of the highest concentrations of land ownership worldwide <sup>(35)</sup>. According to the 2008 agriculture census, 2.6 % of landowners hold 85.5 % of Paraguay's land, while 91.4 % of small farmers hold only 6 % of the agricultural land. The UN Committee on Economic, Social and Cultural Rights (CESCR) highlighted this fact as being problematic in the context of human rights (CESCR, 2008, paras. 12 (b) and 18). Over the last 23 years, the number of undernourished persons increased by a staggering 69.9 % in Paraguay, which makes the country the third most affected by hunger in Latin America and the Caribbean (FAO, 2012, p. 30). In the context of the high percentage of poverty of the rural population (48.9 % of the population lived in poverty in 2010 and 32.4 % lived in conditions of extreme poverty), combined with extreme levels of land concentration, the Paraguayan state's failure to enact agrarian reform constitutes a violation of its obligation to ensure the human right to food (FIAN et al., 2014). In addition, about 20 % of Paraguay's total land area is considered as so-called *tierras malhabidas*, or "ill-gotten lands", which were acquired under problematic circumstances during the dictatorship of Alfredo Stroessner. This fact poses additional human rights issues in the context of land acquisitions.

Accordingly, agrarian reform and access to land is the main demand by landless peasants. Conflicts between rural communities (including Indigenous communities) and large landowners in the country are very violent and characterized by a strong imbalance of power between farmers/indigenous groups and large landowners. In addition to the overall situation regarding land in Paraguay, which makes land investments highly problematic, parts of the land controlled by PAYCO are claimed by indigenous and peasant communities. Local people have complained about unselective sprayings of agro-toxics and resulting health problems in several of the company's holdings. Some of PAYCO's operations are carried out in the Chaco, an environmentally highly fragile region, which has the world's highest deforestation rate. According to statements made by the company, PAYCO further aims to expand its operations (FIAN Deutschland, 2014).

States are under an obligation to create an enabling international environment for human rights (Maastricht Principle 29, UN Charter art. 56, UDHR art. 28). In not providing for adequate regulation of its investors in a sensitive land context, such as the one found in Paraguay, Germany is not living up to its obligation with regard to creating such an environment.

<sup>34</sup> PAYCO was then called PAC.

<sup>35</sup> Gini Coefficient of 0.94 according to UNDP.

**(V) EU companies involved in land grabbing through EU policies and gaining control through the supply chain linked to land grabs:** EU policies, laws and regulations have a substantive impact on land-related human rights issues abroad and therefore are critical when it comes to compliance with the obligation to create an enabling international environment for human rights (see chapter 4.2). These policies and regulations include trade and investment agreements, agriculture and development policies, and energy and bio-economy policies – to name a few <sup>(36)</sup>. Thus, the EU must not only be analysed in its role as “home state” where concrete actors of land grabbing are based, but also with regard to the manner in which it contributes to (facilitates/aids) land grabbing through its domestic policies and the international agreements that it is part of, as well as through its capacity to influence non state actors’ conduct through these policies and laws when acting abroad (see chapter 4.2). The following policies are particularly relevant to the context of land grabbing (see also Cotula, 2014):

**Investment policies:** Since the adoption of the Lisbon Treaty in 2009, the conclusion of international investment agreements has become, alongside with the common commercial policy (international trade), an exclusive EU competence (TFEU, 2007). Contrary to States’ obligation to create an international environment conducive to the universal realisation of human rights, the current international investment regime as promoted by the EU and EU member states contributes, among other serious human rights concerns, to an enabling international environment for land grabbing (TNI 2015, Concord, 2015a). One central concern is the imbalance between the protection offered to foreign investors and the protection offered to communities negatively affected by foreign investments. Investment treaties are by nature one-sided and only investors can invoke the treaty protections and put claims forward against states, even suing them through the use of ISDS mechanisms <sup>(37)</sup>. No similar mechanism exists at the international level for individuals or communities affected by land grabbing to hold foreign investors accountable. A second concern relates to the curtailing of public policy space and interference with measures aimed at the progressive realization of human rights. In recent years the number of investment arbitration cases targeting public interest regulations has increased dramatically causing a “regulatory chill” well beyond the states implicated. As shown by the *Palmital* and *Sawhoyamaya* cases in Paraguay, investment treaties (in this case between Germany and Paraguay) can present significant barriers to implementing measures such as redistributive land reforms that address past injustices and play a vital role in the realization of land related human rights (see *Both Ends*, 2015, for a summary of the cases; see also TNI, 2015).

**Development policies:** Like the external trade policy, the development cooperation policy of the EU falls within its external actions and is hence subject to a wide range of human rights obligations <sup>(38)</sup> (see chapter 4.2). The stated primary objective of the EU development cooperation policy is “the reduction and, in the long term, the eradication of poverty” (TFEU). The TFEU emphasises that the EU will guarantee the coherence of this overall objective with its other policies and that the EU and EU MS “shall comply with the commitments and take account of the objectives they have approved in the context of the United Nations and other competent

<sup>36</sup> While MS policies are also relevant in this regard, a detailed list of relevant MS policies would go beyond the scope of this study. Here, we will showcase relevant examples of EU policies.

<sup>37</sup> Which are decided by private arbitrators outside the official court system in inequitable proceedings, as states, within the scope of Investor-State Dispute Settlement (ISDS) mechanisms, may at no point sue a company for the latter’s human rights abuses. See CEO and TNI, 2012.

<sup>38</sup> See UN Committee on Economic, Social and Cultural Rights, General Comment No. 19: The right to social security (Art. 9 of the Covenant), E/C.12/GC/19 (2008), para. 82. See also chapter 4.2 and annex 4.

international organisations" (TFEU, art. 208(2)). The EU further has committed to Policy Coherence for Development (PCD) since 2005, which is applied to 12 policy areas of the EU. However, a study commissioned by the Committee on Development of the European Parliament concluded that policy coherence between development objectives, on the one hand, and several other EU policies (i.e. trade policy, migration policy, climate change and agricultural policy), on the other hand, remains unsatisfactory (Sarisoy Guerin et al., 2011, pp. 33-37).

In recent years, the EU has increasingly shifted towards a private sector-led approach to development, arguing that private sector engagement and funding is an indispensable complement to EU development assistance (EC, 2014). However, so-called "partnerships" with the corporate sector carry major risks, in particular when conflicts of interest are not adequately addressed<sup>39</sup>). Without going deep into the discussion, which would exceed the scope of this study, such partnerships tend to shift the focus towards interventions that are beneficial/profitable to the corporations involved, thereby diverting attention from the root causes and the strengthening of rights of the supposed beneficiaries. At times, they end up promoting precisely the actions that are at the heart of the problem (e.g., liberalization of markets for land and seeds, commodification of food and promotion of the agro-industry). A study conducted by family farmers' organizations in Africa concluded that resources are targeted towards industrial agriculture and that PPPs are not an appropriate instrument for supporting the family farms that are the foundation of African food security and sovereignty (EAFF, ROPPA and PROPAC, 2013).

The private sector focus of the EU's development cooperation has also been criticized in the context of the New Alliance for Food Security and Nutrition (New Alliance), a PPP initiative launched at the G8 Summit in 2012 (see Box 2). The New Alliance includes all G8 members, plus the EU as founding members (New Alliance, 2014; see also McKeon, 2014). Presented as an initiative to "leverage the potential of private investment" to support development goals and "help lift 50 million people out of poverty in Africa by 2022" (New Alliance, 2016), a growing number of studies and statements have heavily criticised the New Alliance, pointing out to fundamental human rights concerns regarding the process of elaboration of the New Alliance country frameworks as well as its policy commitments, which foremost enable corporations to advance their interests, including by facilitating large-scale land deals. At a Hearing on the New Alliance in the Committee for Development (DEVE) in the European Parliament in December 2015, De Schutter presented an expert study, which raises six major concerns regarding the New Alliance, including the fact that within the New Alliance, "speculation over land increases, and so does land concentration: foreign investors are mostly interested in developing large-scale plantations, that are relatively non-labour-intensive and contribute relatively little to rural development; and conflicts over land increase as land becomes a valuable asset" (De Schutter, 2015). The human rights impacts of the New Alliance, including those related to land deals, have led to strong calls, especially by African peasant organisations, to stop the implementation of the New Alliance frameworks, including calls upon the involved donor countries to withdraw support to the initiative (Call of Civil Society Organizations, 2015; CSM, 2013; AFSA et al., 2013; Letter from African Civil Society, 2012).

**Bioenergy policies and the EU Renewable Energy Directive (RED):** The RED aims at reducing greenhouse gas emissions through the significant scaling up of forms of energy classed as

<sup>39</sup> For a discussion on conflicts of interest in the context of public-private partnerships, see Marks, 2014; Peters and Handschin, 2012.

renewable, including agrofuels. It states that the incentives it lays out encourage increased production of biofuels and bioliquids worldwide. Indeed, agrofuels have been identified early on as one of the main drivers of land grabbing. As stated by Cotula, “biofuels have played an important role in the land rush” and recent studies have found that oilseed crops for agrofuels are one of the most important drivers underlying renewed interest in land deals, especially in Africa (Cotula, 2014, p. 11; Diop et al., 2013). European companies and financial investors have been important actors in land deals for agrofuel production (Cotula, 2014, pp. 13 and 30).

Civil society organisations have repeatedly pointed to the direct link between land grabbing and documented the human rights impacts and the EU biofuel policy (and its biofuels mandates in particular), as well as the involvement of European companies as important actors in land grabbing in this context (see *EuropAfrica*, 2011), urging the EU to drop its biofuels target and to exclude bioenergy from the next EU Renewable Energy Directive (see, for example, NOAH et al., 2015). Different institutions, including the World Bank, echoed these reports and the links between the EU bioenergy policy and land deals were also confirmed by a study commissioned by the European Commission in 2013 (Cotula, 2014, pp. 30-31).

However, since the RED was adopted in 2009 and entered into force in 2010, the EU and EU MS have not taken concrete and direct measures to ensure that their biofuel policy does not engender negative social, environmental and human rights impacts (see chapter 5.1). This is even more concerning when we view the political economy of some of the key feedstocks used for agrofuels, and as 'flex crops and commodities' (<sup>40</sup>).

**Trade policies, including the EU's Everything But Arms Initiative (EBA):** According to the TFEU (Art. 3), the common commercial policy – i.e. external trade policy – is an exclusive competence of the European Union (<sup>41</sup>). The TFEU further establishes that the EU's common commercial policies have to be conducted in the context of the principles and objectives of the Union's external action, which include human rights. The most recent EU trade and investment strategy, “Trade for all. Towards a more responsible trade and investment policy” (EC, 2015), specifies that one of the aims of the EU is “to ensure that economic growth goes hand in hand with social justice, respect for human rights, high labour and environmental standards, and health and safety protection” (EC, 2015, p. 22).

However, several studies point to conflicts between EU trade policy and the EU's human rights obligations, including with regard to the human right to food (Paasch, 2011; Concord, 2015b). With regard to land grabbing, a central concern relates to the incentives created through EU trade agreements for large-scale land acquisitions in countries outside the EU to produce crops for the EU market. Currently, there are no adequate mechanisms in place to assess and monitor EU trade agreements with regard to their potential and actual human rights effects and adjust them to ensure human rights compliance. Sustainable impact assessments (SIAs) were first developed in 1999 within the scope of the WTO Doha Development Agenda (DDA). However, human rights were not integrated there, neither were they in 2006 when DG Trade published its Handbook for Trade Sustainable Impact Assessment (European Commission, 2006). Human rights have been

<sup>40</sup> See Borrás et al. (2016b), Alonso-Fradejas et al. (2016), McKay et al. (2016), Oliveira and Schneider (2016) and Gillon (2016).

<sup>41</sup> Trade agreements are negotiated by the European Commission, in collaboration with national governments and the European Parliament and within the scope of WTO rules.



taken into account in EU-led SIAs only from 2012 onwards<sup>(42)</sup>, and they are also part of SIAs under the Better Regulation agenda (adopted by the Commission on 19 May 2015), among others by issuing specific Guidelines on the analysis of human rights impacts in impact assessments for trade-related policy initiatives (EC, 2015a). Yet, potential human rights impacts are still not being considered in a systematic fashion as required by human rights standards (see Bürgi Bonanomi, 2013)<sup>(43)</sup>.

While the revision of the SIA handbook from 2006 and inclusion of human rights as one assessment criteria is an important step of the EU towards complying with its human rights obligations in the context of international trade agreements, the draft revised handbook still has major shortcomings that need to be addressed in order to be effective in preventing negative human rights impacts, in particular as concerns participation of civil society and the ability of results to effectively influence negotiations<sup>(44)</sup>. The EU still does not systematically carry out ex ante human rights impact assessments (HRIA) that are independent; include human rights experts and broad consultations with civil society. This has largely been criticised by CSOs and the EU ombudsperson (European Ombudsman, 2016; FIDH, 2015).

While most bilateral trade agreements of the EU include human rights clauses, the standard human rights clause as currently applied is inadequate for ensuring human rights compliance of the EU's trade agreements (Bartels 2014; Hachet 2015). The focus, rather than being on avoiding negative human rights impacts of the agreements in the partnering countries, as required by the EU's extraterritorial obligations under the TEU and the TFEU, tends to be on the other countries' compliance with their human rights obligations.

An illustrative example of how trade policies can act as a driver/trigger for land grabs is the EU's Everything But Arms Initiative (EBA). The initiative was adopted in 2001 by the EU with the stated intention of promoting development in the world's least developed countries (LDCs) by granting duty-free and quota-free access to the European market. Market access for sugar was fully liberalized by October 2009, which is especially relevant as the EU guarantees a minimum sugar price higher than the world market price (Equitable Cambodia et al., 2013, p. 20). The EU has claimed that the EBA has had positive effects but the case of Cambodia shows that this initiative has been a driver of land grabbing and human rights violations in Cambodia (see Box 8).

<sup>42</sup> The first time that an EU-led SIA took into account potential human rights impacts was within the scope of the "Trade Sustainability Impact Assessment in support of negotiations of a DCFTA between the EU and Georgia and the Republic of Moldavia" (Ecorys and Case 2012).

<sup>43</sup> The former Special Rapporteur on the Right to Food, Olivier De Schutter has developed guidelines for States on how to conduct HRIAs in the context of trade and investment agreements, see De Shutter, 2011.

<sup>44</sup> See for example comments by CIDSE in the context of the consultation conducted by the European Commission on the updated handbook (EC, 2015b).

### Box 8: 'Everything But Arms' EU policy and land grabbing in Cambodia

EBA has been a key driver of land grabbing for sugar cane plantations in Cambodia. According to the companies involved in sugar cane plantations, the EU initiative EBA has been a primary motivator for their land acquisitions and operations in Cambodia (Equitable Cambodia et al., 2013, p. 22). And while sugar cane holding were negligible before EBA became effective, today around 100 000 hectares of land are under agro-industrial sugar cane production. Consequently, all exports have been progressively directed towards the EU.

**Cambodian sugar exports to the EU:**

	2008	2009	2010	2011	2012	2013
Total sugar exports to EU, in thousands of dollars	28	51	3 851	13 229	10 614	51 615
Sugar exports to EU compared to total sugar exports, in percentage	6.5 %	30 %	90 %	94 %	100 %	-
Sugar exports to EU, in tons	-	-	10 000	22 500	15 501	64 917

Since 2010 affected communities, national and international CSOs called on the European Commission to investigate the human rights impact of its EBA <sup>(45)</sup>. As the Commission rejected these calls <sup>(46)</sup>, NGOs did their own comprehensive human rights impact assessment, concluding that some 10 000 people were negatively affected by the expansion of sugar cane plantations (Equitable Cambodia et al., 2013, pp. 25-29). The serious and systematic human violations documented included forced evictions, loss of land and water and criminalisation of human rights defenders. While Thai sugar TNCs and national Cambodian elites are the dominant actors in this sugar cane expansion, the German Deutsche Bank Group, through its fund managers DWS held 10.9 Million Euro equity shares in the involved Thai Sugar Company Khon Kaen Sugar (KSL) via three different funds (FIAN, 2010, p. 11). In 2013, 200 affected villagers from Koh Kong – with support from NGOs – also filed a complaint at the UK High Court of Justice against the UK-based company Tate & Lyle Sugars (sold in October 2010 to the US sugar titan ASR Group) which signed contracts with a KSL subsidiary to purchase its output from Cambodia <sup>(47)</sup>.

The Thai Human Rights Commission investigated the case of the two sugar concessions in Koh Kong province related to KSL and stated in its final report that “the impact of these human rights violations are a direct responsibility of Khon Kaen Sugar” (NHRC, 2015). The human rights impact assessment on the sugar cases referred to above highlighted that in Koh Kong Province alone, 456

<sup>45</sup> Demands have first been formally raised in a letter from 30 August 2010 to the European Union Delegation to Cambodia. This was followed-up by meetings with them and a first letter on 7 January 2011 directly asking Trade Commissioner De Gucht for an investigation.

<sup>46</sup> In early 2015, the EU delegation to Cambodia, together with the Government, launched an audit process to assess all claims of people affected by sugar cane concessions. This process is contested among the affected communities and its outcomes are highly unclear.

<sup>47</sup> Claim submitted on 28 March 2013. Defense and Counterclaim submitted on 2 May 2013. See: Business and Human Rights Resource Centre (2015).

families owned land on the concessions granted for sugar cane plantations. They were not informed or consulted about the project. Villagers came under attack in 2006 when demolition workers with bulldozers and excavators, accompanied by armed police and military police, arrived without warning and began clearing their land and crops. Most of the farmers lost all their vegetable land holdings. The two community forests, totalling 1 800 ha were completely destroyed. Over the following months, land clearances continued, with villagers injured or gunshot wounded during evictions. One community activist was found axe murdered after documenting and actively protesting the evictions. Only 23 families were compensated, ranging between USD 75 and 750. Local communities also have less access to water as local resources have been blocked, polluted, covered over with earth or excessively used for irrigation of the new plantations.

What the discussion on EU policies, and specifically RED and EBA, partly shows is that the already complicated task of tracking human rights footprints in a global commodity chain has become even more complex with the rise of 'flex crops and commodities' – crops that have multiple, flexible and interchangeable/substitutable uses: food, feed, fuel, industrial and commercial uses because a commodity can always be claimed to be agrofuel or not, food or not (Borras et al., 2016b). Tracking via a single global commodity chain has become limited, as what has emerged is more of a chain of chains – a web – that requires more complex approaches to (global) governance, but where the principles of human rights have become even more relevant (<sup>48</sup>). Thus, in the case of oil palm and the widespread land grabs occurring from Colombia to Indonesia, from Myanmar to Nigeria, the debate about the complicity of the EU RED policy and human rights violations in these places remains highly relevant, and the documentation of human rights abuses so far calls for the adoption of a precautionary approach. The EBA story is indicative of the complexity of ongoing processes and mechanisms: involving EBA and a flex crop, in the case of sugarcane in Cambodia.

The explained complexities allow concluding that existing human rights obligations, in order to achieve their original aim, have to be interpreted in good faith, in a way that allows the protection gaps (produced by the new realities described) to be addressed. It is necessary that states, individually or as part of inter-governmental and supra-national organizations, are proactive in strictly complying with their human rights obligations and accepting more progressive, effective and pro persona interpretations. They should also develop new required standards and mechanisms to comply with their obligation to create an enabling environment for human rights and to ensure monitoring, accountability and effective remedy mechanisms to all rights holders under their jurisdiction, even if this extends beyond their territorial borders. The following section will look closer into the links between land grabbing and human rights.

<sup>48</sup> See Borras et al. (2016b); Alonso-Fradejas et al. (2016); McKay et al. (2016).

## 4 Land grabbing and the human rights obligations of the EU and EU Member States

### 4.1 Impacts of land grabbing on affected populations

This section looks at the impacts of land deals, including those involving European corporate and financial entities, on affected people and communities. It is necessary to clearly analyse the impacts of land grabbing from a human rights perspective as human rights provide a clear framework to guide all competent bodies of the EU to formulate the appropriate policy responses. As stated by Cotula, there is a “substantial and growing body of scholarly writing on ‘land grabbing’ and human rights” (Cotula, 2014) and a large number of case studies done by civil society organizations. The human rights impacts of land grabbing have also been addressed “in the work of (UN) Special Rapporteurs; and in sessions of UN bodies that receive and comment on periodic reports submitted by states on the implementation of human rights treaties” (ibid.). Within the scope of this study, it is not possible to do an in-depth analysis of all cases of land deals that involve European corporate and financial entities. However, a large number of these cases are well documented, which enables us to provide an overview of the impacts of land deals on the human rights of affected people and communities.

#### 4.1.1 Loss of access to and control over land and other natural resources

The most frequent and most immediate impact of land deals are land conflicts as well as the loss of access to and control over land and land-related resources by local people and communities. This loss does not always imply the loss of land rights, especially understood as formalised private property rights. In fact, access to and control over land is, in many countries, governed, managed and used through informal or customary systems that are not recognised or effectively protected by formal legal systems. Indeed, in the context of land grabbing, “many people [...] lose land without being formally expropriated” (Cotula, 2014, p. 15). Moreover, loss of land does not necessarily occur through illegal practices or through the use of violence, but may happen in more subtle or indirect ways. However, displacements – often violent – and forced evictions take place in many cases of land deals, including those involving European corporate and financial entities. An emblematic case is the Neumann Kaffee Gruppe case (see Box 1) where about 4 000 people in Mubende District, Uganda, were violently evicted from their land of 2 524 hectares on which they had been living for years. Another more recent example directly implicates the EU's 'Everything But Arms' (EBA) policy (see Box 8), and is equally iconic case that involves the forcible eviction of hundreds of villagers in Cambodia in 2006 and 2010-2012, paving the way for the establishment of sugarcane plantation. Several villagers were injured or wounded by gunshots during eviction and as they protested against the destruction of their vegetable land holdings and community forests (<sup>49</sup>).

The second aspect to be highlighted is that the loss of land often refers, at least partly, to areas that are considered as “non-used,” “fallow” or “vacant” lands, but which are used by communities for different purposes, such as grazing lands and transit routes used by herders or forests for food and wood supply, among others. Although some of these uses are at times described as being “secondary uses” of land, they are essential for the livelihoods of many communities. These areas

<sup>49</sup> See McKay et al. (2016); Schneider (2011); Equitable Cambodia et al. (2013).

are often publicly owned lands and forests that are collectively used and managed, sometimes referred to as “commons”. In some regions, communities also apply practices that include rotation of cultivated areas so that lands that lay fallow for a while are still part of their agricultural lands – and access to them is lost when land deals happen.

An example is the case of tree plantations in Niassa, Mozambique, which involves several European corporate and financial actors, and where land conflicts merged as tree plantations were established on lands that lay fallow and were considered as not used by the company Chikweti Forests of Niassa (see Box 5). Land deals and the establishment of projects frequently also limit the freedom of movement of local people because access to or transfer through acquired lands is denied and/or the establishment of projects cuts off roads and paths used by local people for different purposes. Finally, even where communities and households do not lose all of their land, also the partial loss of land has severe impacts on the enjoyment of their human rights.

#### 4.1.2 The human rights impacts of land grabbing

Land and related natural resources are the condition for the realisation of several human rights, including the right to adequate food and nutrition, the right to water and sanitation, the right to health, the right to housing, the right to work, the right not to be deprived of one’s means of subsistence and the right to taking part in cultural life<sup>50</sup>). Women’s rights, including the rights of rural women (CEDAW, art. 14 and General Recommendation No. 34 on the Rights of Rural Women), and the rights of indigenous peoples (UNDRIP, 2007) are closely linked to secure, stable and equitable access to land and related resources. Regarding the human right to food (UDHR, art. 25; ICESCR, art. 11; CEDAW, art. 12; CDC, art. 24; CESC GC 12) many land deals directly destroy – entirely or partly – the possibility of people to produce or collect their own food and ensure adequate nutrition. This also applies to water bodies used as fishing grounds and to forest areas that provide fruit and are used for hunting. Increased food and nutrition insecurity and impairments of the right to food and nutrition are the most frequent complaints of affected people in the context of land deals. In many cases, agricultural products are also a main source of income, which allows families to complement their diets and to satisfy other basic needs.

Moreover, several land deals jeopardise the human right to housing (UDHR, art. 25; ICESCR, art. 11; CESC GCs 4 and 7) of communities, especially where families or entire communities are displaced or evicted. Especially in cases where land deals have led to displacements and forced evictions, violence by public or private security forces has led to impairments of the right to the enjoyment of the highest attainable standard of physical and mental health (UDHR, art. 25; ICESCR, art. 12). These are most concrete in the cases of the EBA-inspired sugar plantations in Cambodia (Box 5) and the Neumann Kaffee Gruppe case in Mubende District, Uganda (Box 1). Given the close spiritual and cultural ties of many communities with the land they live on, land deals frequently also impair people’s human right to take part in cultural life (ICESCR, art. 15(1)). There are numerous cases where, for example, cultural and spiritual sites of local communities, including cemeteries, have been bulldozed, or face the threat of being bulldozed, by investors, as in the case of ProCana in Mozambique (Borras et al., 2011).

<sup>50</sup> So far, international human rights treaty law has recognized land as a human right for indigenous and tribal peoples (ILO Convention No. 169 and UNDRIP). However, an ever-increasing body of soft law instruments and recommendations/observations by UN Human Rights treaty bodies recognises the inextricable connection between land and human rights, and there are strong voices calling for a clear human rights perspective to land in the international human rights framework. See De Schutter (2010).

People's enjoyment of the human right to water (ICESCR, art. 11; UN General Assembly resolution 64/292; CESCR GC 15; CEDAW, art. 14(2); CRC, arts. 20, 26, 29, 46) is impaired by land deals when they lose the access to safe drinking water and water sources. These may be situated inside an acquired area or the roads/paths to access water are cut off by an investment project. In other cases, the availability of water is diminished or destroyed (for example due to extraction of water and/or deviation of water streams in the context of investment projects) and/or the water quality is diminished due to pollution). Again, the EBA-inspired sugar plantations in Cambodia (Box 5) are an illustrative example, where local water resources of the population have been blocked, polluted, covered over with earth or excessively used for irrigation of the new plantations.

Another example is the Marlin mine in Guatemala, which involves Swedish pension funds owning shares in the Canadian mining company Goldcorp (which runs the mine through its subsidiary Montana Exploradora), which is extracting up to 45 000 litres per hour, according to the company, leading to water shortages affecting the local population (FIAN Sweden, 2016; FIAN, 2010). Pollution of land, water and air, as well as environmental impacts of investment projects in general, also impairs the enjoyment of the human right to health. Deforestation or the cutting down of trees and forests is often one of the first actions undertaken after land acquisitions, in order to prepare the land for the investment project. Pollution is also an important impact in the context of mining projects through the massive use of chemicals, as in the already mentioned case of the Marlin mine in Guatemala. Large-scale agricultural projects almost always establish monocultures. The intensive use of pesticides, which contaminate land, water (water bodies as well as underground water) and the air, reduce and even destroy biodiversity.

Many land deals, including those involving EU actors, also lead to impairments to the human right to work (ICESCR, art.6) which entitles everyone to freely chose or accept an activity that allows him or her to earn a living. On the one hand, this right is impaired in cases where this activity is agriculture, or any other activity that requires secure and stable access to land but where people are deprived of this access. On the other hand, jobs created in the context of land deals do often do not provide for alternative livelihoods. While "jobs are often presented as a – or even the – main local economic benefit created by large-scale land deals" (Cotula, 2014), when looking into concrete cases, reality turns out to be different. In many cases, the number of jobs created in the context of land deals has been considerably below what was promised and communities frequently complain about low wages, long working days, temporary or seasonal employment contracts and poor working conditions in general. See, again, the case of tree plantations in Niassa, Mozambique (Box 5) and the case of Chobe Agrivision in Zambia, backed by the AATIF (Box 6). The Niassa case is also illustrative of the fact that, where only some members of communities are employed and others not, division and conflicts arise in the communities, which affect peace and freedom.

Another example is the Singapore-based palm oil company Wilmar in Nigeria, which is financed by EU finance institutions such as HSBC (UK), BNP Paribas (France), Rabobank (Netherlands), DZ Bank (Germany) – all giving loans -- ABP (Netherlands), Pensioenfonds Zorg & Welzijn (Netherlands), Anima (Italy), Deutsche Bank (Germany), Aviva (UK), Helaba (Germany) – all shareholders. The company created much less jobs than announced and, according to reports based on testimonies by affected people, pays less than minimum wage (Friends of the Earth US/Environmental Rights Action-Friends of the Earth Nigeria, 2015a and 2015b). Instead of contributing to development – as claimed by many promoters and defenders of large-scale land acquisitions – land deals thus often lead to adverse incorporation of people and communities into increasingly globalised value chains. In many cases, they end up in situations of dependency from one company and complete

loss of autonomy, or even infringements against their right to self-determination. Several examples also reveal that different forms of outgrower schemes (such as contract farming) are not necessarily beneficial for communities – despite often being promoted as an alternative to land acquisitions that leads to so-called “win-win situations.” The example of Sweden-based company EcoEnergy’s activities in the context of the G7 New Alliance for Food Security and Nutrition in Africa is one illustrative example (see Box 2) <sup>(51)</sup>.

Land grabbing also has severe impacts on the civil and political rights of affected people. As stated by Cotula, “At root, ‘land grabbing’ is an issue of democratic governance – who makes decisions, whose voices are heard, and what space is available for dissent” (Cotula, 2013, p.21). The issue of lack of consultation of local people is indeed a major issue in many land deals (Vermeulen and Cotula, 2010). In most documented land deals, affected communities complain about not having been appropriately involved in decisions about land deals that affect them, directly or indirectly. Secrecy surrounds many land deals and people are poorly, if at all, informed about them.

The situation becomes even worse when it comes to involving affected people in decisions on land deals. Companies and private investors often claim that consultations have been carried out and that local communities have given consent. Yet, there are many cases where major problems exist regarding the way consultations have been carried out and documented, including agreements that may have been achieved. Most of the time, there is little evidence to assert that affected people actually have the possibility to refuse the establishment of a project. Previously mentioned cases of EU financed palm oil plantations by Wilmar in Nigeria, the case of tree plantations in Niassa, Mozambique as well as Sweden-based EcoEnergy’s investment in Bagamoyo, Tanzania, illustrate this (see Box 2). All of these issues impair the right of people to take part in the conduct of public affairs (ICCPR, art. 25), the right to access to information (ICCPR, art. 19), the right to self-determination of peoples and the freedom of expression (ICCPR, art. 19). It is also a breach of the principle of free, prior and informed consent (FPIC).

In this context, it is important to underline that in some cases, communities, or some community members, may have agreed to land deals or investment projects, but it then turns out that commitments made by companies and investors, e.g. regarding the creation of jobs, are not fulfilled, or expected development outcomes do not materialize as promised. Also resettlement and compensation may not be complied with or not in the conditions that guarantee that communities continue to enjoy their human rights. In these cases, also the right to an effective remedy (UDHR, art. 8; ICCPR, arts 2(3), 14(1)) is impaired when there are no effective accountability and liability mechanisms in place, or if these are not accessible to affected people. Effective, impartial and accessible remedy mechanisms are also a condition for redress where people have been dispossessed without proper compensation as well as for reparation where people’s rights have been impaired. Reparation is also a major issue in many cases where investment projects related to land have failed and projects are shut down.

Indeed, in cases where human rights abuses and violations have occurred, communities face major difficulties in obtaining adequate and just reparation. Damage done by the respective project and adverse human rights impacts often continue to affect people even after the end of a project and projects usually do not foresee redress and reparation for abuses and violations suffered. This can be seen partly in the case of ProCana in Mozambique where the company stopped operations in

<sup>51</sup> For a general discussion on outgrower schemes from a human rights perspective, see De Schutter (2011) and HLPE (2013).

2012, but only after bulldozing a large part of the affected communities and creating so much social and political disturbance and displacement in the communities. This problematic situation did not stop or were not put back in their prior condition even after the company stopped operation and left. Instead, the Mozambican government has been busy looking for a new investor (FIAN, 2010).

Another illustrative example is Addax Bioenergy's sugar plantations in Makeni District, Sierra Leone. Addax is a subsidiary of the Swiss company Addax and Oryx Group (AOG), which produces sugarcane on 10 000 hectares for bio-ethanol for the export to Europe and for domestic use, as well as 'green' electricity from a biomass-fuelled plant. The project has faced resistance from local people from the outset and is supported by a diverse group of development finance institutions, which have become co-funders and/or co-shareholders, lending significant funds to the project. EU actors include the German DEG, UK-based Emerging Africa Infrastructure Fund (EAIF), the Netherlands Development Finance Company (FMO, equity partner), the Belgian Development Bank (BIO), Swedfund International AB (equity partner) and, until 2014, the Austrian Development Agency (ADA) (Addax Bioenergy, 2016).

In 2015, Addax announced that it had scaled down operations in Makeni for economic reasons, saying that it will conduct a review of all options for the future. The impact of the scale down of the project caught communities by surprise and has dramatic impacts on them, since the project has made a part of the population dependent after losing their economic autonomy when it arrived. According to local CSOs, the main consequences for the communities are disruption of farming activities, food production is expected to be on the lowest level, most workers (mainly youth) were laid off and received only partial salary, many local petty traders are now jobless<sup>(52)</sup>. Reports from local CSOs point out that the scale down also left the communities in uncertainty about their future livelihoods as it is unclear what will happen if the project will be shut down, including regarding the land leased by Addax. The plots where local communities used to grow rice have been transformed into circular fields watered by pivot irrigation, and can thus not be easily reconverted to former use.

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<sup>52</sup> Information from field visits conducted by the Sierra Leone Network on the Right to Food (SiLNoRF) in August 2015.



## 4.2 Extraterritorial human rights obligations of the EU and EU Member States <sup>(53)</sup>

The described impacts of land grabbing involving European corporate and financial actors on local people and communities relate, directly or indirectly, to the EU and its Member States. The European Union and its Member States have obligations under international and European (Union) law to respect, protect and fulfil human rights both within the European Union and with regard to people living in third countries. Regarding the EU, the entry into force of the Lisbon Treaty in 2009 elevated the status of the Charter of Fundamental Rights of the European Union (EU Charter) to primary law and introduced specific human rights obligations, both domestic and extraterritorial, into the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU) (Bartels, 2014).

Article 3(5) of the TEU requires the EU to “uphold and promote its values” in its relations with the wider world. Respect for human rights is one of the foundational values of the EU <sup>(54)</sup>. Article 21(2b) TEU adds that the EU “shall define and pursue common policies and actions, and shall work for a high degree of cooperation in all fields of international relations in order to [...] consolidate and support democracy, the rule of law, human rights and the principles of international law”. These principles and objectives shall moreover be “respected and pursued” in the “development and implementation of the different areas of the Union’s external action [...] and of the external aspects of its other policies” <sup>(55)</sup>.

In other words, the TEU imposes on the EU obligations to respect, protect (“uphold”) and fulfil (“promote” and “pursue”) human rights in its foreign relations and to cooperate to this effect <sup>(56)</sup>. Importantly, the treaty establishes that both the EU’s external action, as well as its domestic policies with extraterritorial effect must be developed and implemented in line with and in pursuance of human rights <sup>(57)</sup>. The TFEU in article 205 reiterates that the EU’s actions on the international scene must be guided by, compliant with and pursuant of human rights, among other principles and objectives described in the TEU (Annex 4: 1).

In addition to the obligations imposed by the TEU and TFEU, the EU and its institutions are bound by the human rights obligations enshrined in the Charter of Fundamental Rights of the EU (EU Charter) and must respect the fundamental rights contained in the European Convention on Human Rights (ECHR) and derived from the constitutional traditions common to Member States which constitute general principles of EU Law under the Lisbon Treaty <sup>(58)</sup>. The EU Charter, which is

<sup>53</sup> This sub-chapter contains an important number of juridical references that are important to show that the statements made are based on a legally consolidated basis. In order to guarantee an easy reading of this sub-chapter, all references regarding extraterritorial obligations are listed in a separate annex enclosing thematic sections (Annex 4: Legal Sources for the Extraterritorial Obligations of the European Union and EU Member States). All in-text references starting with “(ANNEX 4: [...])” are explicitly referred to and explained in Annex 4. E.g., “ANNEX 4: 1” refers to the first juridical reference mentioned under Annex 4). Seen the importance of ETOs and in to clarify the basis for statements made in this chapter, all 69 juridical references are listed in Annex 4.

<sup>54</sup> Article 2 of the TEU states: “The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities.”

<sup>55</sup> Article 21, paragraph 3.

<sup>56</sup> Different views persist as to whether article 3(5) entails also protect obligations (see Bartels 2014, Cannizzaro 2015, and Bürgi 2014). The EU is, however, in any case bound by the ECHR (TEU art. 6) and therefore, alongside EU MS, bound by extraterritorial protect obligations. See: Kirshner, 2015, p. 24; Augenstein, 2010, p. 16, para. 39; Douglas-Scott, 2011.

<sup>57</sup> For a comprehensive analysis, see Bartels 2014(a) and 2014(b).

<sup>58</sup> TEU Article 6, para. 1 and 3.

binding for both EU institutions and Member States when applying EU law, contains no jurisdictional or territorial conditions. Past pronouncements by the European Commission and Parliament have supported the extraterritorial scope of the Charter's provisions (Annex 4: 2-3). Similarly, in regard to EU MS, the protect obligations under the ECHR as well as the duty to provide access to judicial remedies for victims of human rights violations (article 6) have been interpreted broadly by the European Court on Human Rights, with jurisdiction extending to situations of both extraterritorial conduct and domestic measures with extraterritorial impacts <sup>(59)</sup>.

The human rights obligations of the EU complement and reinforce the obligations of its Member States (Annex 4: 4-8). All Member States of the EU have ratified the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention on the Rights of the Child, as well as several ILO Conventions. In doing so, they have agreed to be bound by the obligations established under these treaties in relation to the rights protected. These include the rights mentioned in the previous chapter that are intimately linked to land and natural resources. Also the Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests, which were adopted by the UN Committee on World Food Security in May 2012 (including all EU MS), provide an authoritative international interpretation and guidance on how to implement existing binding international human rights obligations related to land and natural resources (FAO, 2012).

International human rights law imposes both domestic and extraterritorial obligations on States (Annex 4: 9-17). The latter have been summarized in the Maastricht Principles on States' Extraterritorial Obligations in the Area of Economic, Social and Cultural Rights (ETOP) (Annex 4: 18). The Maastricht Principles are based on underlying principles of international law and constitute an international expert opinion adopted by international law experts from all regions of the world, including current and former members of international human rights treaty bodies, regional human rights bodies, former and current special rapporteurs of the Human Rights Council and recognized scholars (Maastricht Principles, pp. 3-4). These principles are a source of international law, in line with articles 38 c) and d) of the Statute of the International Court of Justice. Furthermore, rather than establishing new elements of international law, the principles clarify extraterritorial obligations of States on the basis of standing international law, as explained in the Commentary to the Maastricht Principles, and are therefore a useful and valid tool when analysing the extraterritorial obligations of States (De Schutter et al., 2012).

Importantly, EU Member States remain bound by their international human rights obligations when transferring competences to the EU (Annex 4: 4). They must thus take all reasonable steps to ensure that the EU acts in compliance with these obligations and must object to measures that could result in human rights infringements, including in the context of land grabbing. They cannot hide behind the EU but remain fully responsible for their acts and omissions within the organisation. In this sense, the human rights obligations applicable to EU Member States also apply by extension to the EU (for the areas in which the EU has competence) (OHCHR, 2015).

Both the EU and EU Member States must, firstly, avoid causing harm in other countries (Annex 4: 19-20). They must take concrete measures to prevent their domestic and international policies and actions from directly or indirectly contributing to land grabbing and interfering with the

<sup>59</sup> See Augenstein, 2010, pp. 23-25. See also Kirshner 2015, pp. 24-25. See *Ilascu and Others v. Moldova and Russia*, 48787/99, Council of Europe: European Court of Human Rights, 8 July 2004, para. 314.

enjoyment of human rights (Annex 4: 19, 21-25). Direct interference refers to conduct that directly impairs the human rights of persons abroad. With regard to the mechanisms of EU actors' involvement in land grabbing, this refers particularly to mechanism (iv), as DFIs are public entities. It also refers to mechanism (iii) in as much as states, or their institutions, engage in PPPs that contribute to land grabbing related human rights violations <sup>(60)</sup>.

Indirect interference encompasses conduct by the EU and EU MS that reduces the ability of another state to comply with its human rights obligations, or that assists or puts pressure on that state to breach its obligations, including its obligations to protect communities against land grabbing (Annex 4: 22, 26). Examples include international investment and trade agreements that reduce the policy space of states to implement measures required to progressively realise economic, social and cultural rights (such as redistributive land reforms), or force them to adopt retrogressive measures <sup>(61)</sup>. Avoiding harm through indirect interference refers particularly to mechanisms (v) and may also apply to (iii), where PPPs contribute to creating an environment that is detrimental to the realisation of human rights, such as in the context of the G7 New Alliance for Food Security and Nutrition in Africa, which promote land acquisitions by private and institutional investors.

One step to avoid harm in other countries is the conduct of prior human rights impact assessments (HRIAs) and the monitoring of the extraterritorial human rights impacts of policies, laws and practices, in particular where the risk of adverse impacts is high (Annex 4: 27) <sup>(62)</sup>. Such assessments must be conducted under public participation, and their results be made public and inform measures to prevent, cease, and remedy the harm (Annex 4: 28-33).

The obligation to avoid harm also requires the EU and MS to elaborate, interpret and apply international agreements, including in the area of trade, investment, finance, development cooperation, and climate change, in a manner consistent with their human rights obligations (Annex 4: 34-35). The EU and EU MS should ensure, including through regular review of relevant policies and agreements, not only that these do not negatively affect human rights in other countries, but also that they are conducive to the universal realisation of human rights (Annex 4: 36-40).

When engaging in international cooperation, including development cooperation, the EU and EU MS must ensure that their policies and practices respect human rights principles and priorities, including that they prioritise the rights of marginalised and disadvantaged population groups (Annex 4: 41-42, 25), observe the right to participation and self-determination, and avoid retrogressive measures (Annex 4: 43).

Secondly, the extraterritorial human rights obligations of EU MS, and to some extent of the EU, place obligations on them to establish the necessary regulatory mechanisms to ensure that private corporations, including transnational corporations, and other non-state actors that they are in a position to regulate do not impair the enjoyment of human rights in other countries, including

<sup>60</sup> The need for states to ensure that land investments made or promoted by them are consistent with their human rights obligations is also highlighted by paras. 3.2 and 12.15 of the Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests.

<sup>61</sup> For an analysis on how international investment rules affect States' ability to address land grabbing, see TNI, 2015b; Both Ends, 2015.

<sup>62</sup> The need for independent impact assessments in the context of land investments is also highlighted by para. 12.10 of the Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests.

through land grabbing (Annex 4: 44-49, 25, 50-52). This means concretely that Member States must adopt and enforce measures to protect human rights from abuses by corporations involved in land grabbing wherever a corporation has its centre of activity, is registered or domiciled, or has its main place of business or substantial business activities, in the State concerned (Annex 4: 53-54, 46). Moreover, the EU and MS should use their influence, for example through public procurement and diplomacy, to protect human rights (Annex 4: 55-56). EU MS must, moreover, cooperate in regulating and holding TNCs and other non-State actors accountable for human rights abuses and ensuring effective remedies for those affected (Annex 4: 57, 50-54) <sup>(63)</sup>. The obligation to regulate corporate and financial actors refers to the mechanisms (i) and (ii) outlined above, as well as mechanisms (iii) and (iv) in particular, in as much as DFIs are directly linked to states and, thus, state regulation, and PPPs involved in land deals as they directly involve public institutions which, consequently, are in a position to directly influence acts and omissions of non-state actors (Annex 4: 58).

Adequate and effective regulation of the extraterritorial activities of corporate and financial entities remains a crucial issue in order to address land grabbing by EU actors. In this regard, the UN Guiding Principles on Business and Human Rights, adopted by the UN Human Rights Council in 2011 and considered by the EU as the authoritative framework for addressing human rights abuses of businesses, have considerable shortcomings. These Guiding Principles are non-binding and voluntary, and thus compliance depends solely on the goodwill of businesses to abide by the Principles and the willingness of individual States to regulate them to respect human rights. Regarding protect obligations vis-à-vis people affected by operations of business enterprises, they recognize “the State duty to protect human rights” in their first pillar but a gap persists when it comes to legal accountability of business actors.

Thirdly, the human rights obligations of EU MS and the EU require them to establish accountability mechanisms in order to ensure that individuals and communities affected by land grabbing have access to effective remedies, including judicial remedies where necessary (Annex 4: 59-69, 46). They must cooperate with other States to this effect. Access to effective remedy relates to all mechanisms of EU actors’ involvement in land grabbing mentioned above.

Moral-duty-based and non-judicial grievance mechanisms have in many cases proven to be ineffective addressing human rights abuses, and businesses indeed use them to strategically avoid victims from taking legal action, for example, by including legal waivers in which victims accepting private non-judicial remedies cannot initiate legal proceedings (Feeney, 2016). An example is Acacia Mining, a British subsidiary of Barrick Gold Corporation, whose remedy programme for the victims of excessive use of violence by the mine’s security personnel has failed to meet its obligations and required complainants to waive their right to seek judicial remedy in order to access the remedy package (Mining Watch, 2016).

State-based judicial remedy is thus crucial and human rights obligations call for EU MS to advance their judicial system, opening it up and guaranteeing full access to civil, administrative and criminal effective justice systems to all victims of corporate human rights abuses, wherever they occur, including in the context of land grabbing. The EU should support such a process within its competence. Such a process needs to take into account the needs and experiences of victims. In

<sup>63</sup> The obligation of home states to ensure that businesses are not involved in abuse of human rights and legitimate tenure rights and to provide effective juridical remedies is also highlighted by para. 3.2 of the Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests.

addition to ensuring access to remedies at the national level, EU MS should develop judicial remedies at the international level. Current efforts in the context of the UN Human Rights Council to develop an international binding instrument on the regulation of transnational corporations and other business enterprises present a crucial step in this direction, which the EU and EU MS should support. So far, however, the EU has not been playing a constructive role in this process, but has rather tried to obstruct its advancement during the opening session of the Intergovernmental Working Group (IGWG) established by UN Human Rights Council Resolution 26/9 (see FIAN et al. 2015). This despite the fact that the EP has called “for the establishment of a legally binding framework for companies, including transnational corporations with a grievance mechanism” in a recent resolution (EP, 2015b, par. 35) and has called specifically upon the EU and its MS to engage in the current process at the Human Rights Council (EP, 2015a, par. 32).

Under the Brussels I Regulation, national courts of EU MS are mandated to provide extraterritorial jurisdiction in civil liability cases where the defendants are domiciled in the forum state (Skinner et Al. 2013). However, jurisdiction for cases that relate to the activities of foreign subsidiaries of EU companies is not regulated at EU level but by the law of MS, which have different approaches on the issue (ibid.). Removing the existing obstacles to EU MS’ courts is of major relevance for addressing the human rights abuses arising from land grabbing by European corporate and financial entities outside the EU. The jurisprudence of the European Court of Human Rights has already suggested that article 6 of the European Convention of Human Rights supports extraterritorial jurisdiction and some EU MS have drawn on article 6 to assume extraterritorial jurisdiction in cases involving companies (Kirshner, 2015).

### 4.3 EU human rights policy

The EU has human rights policies and guidelines in which it details the steps to implement its human rights obligations. Indeed, the European Union describes itself ‘as a global force for human rights’. The EU has a Special Representative (EUSR) for Human Rights, who works closely with the EEAS and whose flexible mandate is based on the EU’s objectives regarding human rights (as set out in particular by the TEU, the EU Strategic Framework on Human Rights and Democracy and the EU Action Plan on Human Rights and Democracy) and whose role is to contribute to better coherence and consistency of the EU’s policies and actions in the area of protection and promotion of human rights, among others by enhancing the effectiveness and visibility of EU human rights policy.

Among the existing EU human rights instruments, the EU Action Plan on Human Rights and Democracy 2015-2019 (henceforth EU Action Plan) has to be highlighted in this context <sup>(64)</sup>. It reaffirms that the EU “will [...] ensure a comprehensive human rights approach to preventing and addressing conflicts and crises, and further mainstream human rights in the external aspects of EU policies in order to ensure better policy coherence, in particular in the fields of migration, trade and investment, development cooperation and counter terrorism.” Commitments from this Action Plan are relevant in the context of land grabbing by EU actors, especially in the context of the mechanisms described above <sup>(65)</sup>.

<sup>64</sup> This Action Plan’s purpose is to continue implementing the EU Strategic Framework on Human Rights and Democracy 2012-2014.

<sup>65</sup> The Action Plan mentions land grabbing in point 17c.

Regarding trade and investment policies, the EU has committed to develop a robust and methodologically sound approach to the analysis of human rights impacts of trade and investment agreements, in ex ante impact assessments, sustainability impact assessments and ex post evaluations, as well as explore ways to extend the existing quantitative analysis in assessing the impact of trade and investment initiatives on human rights<sup>(66)</sup> EU MS committed to strive to include in new or revised Bilateral Investment Treaties (BITs) provisions related to the respect and fulfilment of human rights, in line with those inserted in agreements negotiated at EU level. Finally, the EU aims at systematically including in EU trade and investment agreements the respect of internationally recognised principles and guidelines on Corporate Social Responsibility, such as those contained in the OECD Guidelines for Multinational Enterprises, the UN Global Compact, the UN Guiding principles on business and human rights (UNGPs), the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, and ISO 26000. Concerning points iii) and iv), and as mentioned before, the EU so far relies exclusively on voluntary measures and guidelines when it comes to corporate accountability in cases of corporate crimes and offences against human rights, instead of human rights accountability and liability of EU companies, as their human rights obligations would require, in order to close existing gaps in protection, which especially affect the most marginalized and disadvantaged groups of the population.

Concerning development policy, the EU Action Plan foresees a rights-based approach to development that contains, amongst others, the stated objectives of implementing the EU commitment to move towards a rights based approach to development cooperation, encompassing all human rights by pursuing its full concrete integration into all EU development instruments and activities. Also EU MS have committed to will work towards increasingly integrating a human rights based approach in their development cooperation policies. The EU will further explore the possibility to further implement a human rights based approach into non-development related external activities.

While the EU Action Plan, thus, takes up some of the issues that are relevant to address adverse human rights impacts in the context of its acts and omissions, the provisions will likely not be sufficient in order to address them adequately and close existing gaps regarding the respect, protection and fulfilment of human rights.

## 4.4 Violence against human rights defenders working on land issues

### 4.4.1 Land rights defenders at risk

Human rights violations and abuses occur also especially in cases where communities and people protest and resist against land grabbing. Several studies and reports clearly reveal that violence against land rights defenders has increased over the last years and that this development is directly linked to land grabbing and the surge of land deals (OBS, 2016a; UNGA, 2015). Violence against human rights defenders (HRDs) working on land and natural resources has thus to be considered as a crosscutting issue in the context of land grabs. Several documented cases relate to deals that involve European corporate and financial entities. An example are the activities of SOCFIN in Sierra Leone whose severe environmental, social and human rights impacts have led to

<sup>66</sup> As mentioned in chapter 3.4 the EU does not systematically carry out human rights impact assessments.

land conflicts and resistance, in the context of which local leaders have been criminalised (see Box 4) (OBS, 2016b). The murder of Berta Cáceres, a Honduran defender of land, environmental and indigenous peoples' rights, as well as of Nelson García is also linked to a project involving EU actors.

### **Box 9: The murder of Berta Cáceres and Nelson García in the case of the Agua Zarca dam construction project (Honduras), a project backed by several EU actors**

This emblematic case gives wide-ranging evidence of the significant criminalisation of and fierce violence, including killing, against HRDs in Honduras. The construction of the Agua Zarca dam on Rio Gualcarque is situated on the land of the Lenca, an indigenous people in Honduras. Very early on, the Lenca people got organised and opposed this project, as it would affect their living conditions in many regards. Desiccation of traditional Lenca land was feared as well as an impediment to their customary elementary connection with flowing water, amongst many others. According to reports, the Agua Zarca dam project has infringed several international human rights standards, such as ILO's Convention 169, the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), the ICESCR, the American Convention on Human Rights (ACHR) and the ICCPR (International Rivers et al, 2015). The Civil Council of Popular and Indigenous Peoples of Honduras (Consejo Cívico de Organizaciones Populares e Indígenas de Honduras, COPINH) was a longstanding opponent of the Agua Zarca project and identified it as the probably most symbolic of the nearly 50 megaprojects they have been struggling against. As a means of manifest support of this megaproject, the Honduran authorities have strongly militarised the region. This resulted in repeated death threats, harassment, criminalisation, sexual abuses and even murders of opponents of this project, above all of indigenous people and members of COPINH. Berta Cáceres, co-founder and coordinator of COPINH, was murdered on 3 March 2016 in her home. Shortly afterwards, Nelson García, another member of COPINH, was killed during an eviction on 15 March 2016. In 2006, the Inter-American Commission on Human Rights (IACHR) had granted precautionary measures to protect Ms Cáceres (OAS 2016). Yet, Honduran authorities did not implement these, as Ms Cáceres repeatedly claimed (IACHR, 2016). A recent report shows that Honduras is the most deadly country per capita to be an environmental activist for the last five years, with 111 activists killed between 2002 and 2014, including 12 in 2014 (Global Witness, 2015).

Several EU actors are involved in the Agua Zarca dam project: Voith GmbH is a German engineering company active at global level in different sectors such as raw materials, energy, transport, oil and gas. One of its four Group Divisions is the Voith Hydro Holding GmbH and Co. Within the scope of a joint venture, the Germany-based technology company Siemens AG is associated with Voith Hydro in the hydroelectric dam construction project Agua Zarca in the department of Santa Barbara in Honduras. For the construction of the dam, Siemens is to provide turbines and other technical equipment. EU-based financial actors supporting this project were the national Development Banks FMO from the Netherlands and Finnfund from Finland. Next to a USD 24.4 million investment by the Central American Bank for Economic Integration (CABEI) in 2012 (Environmental Justice Atlas, 2016), FMO's and Finnfund's financial support of this project amounted to respectively USD 15 million and USD 5 million in 2014 (Bank Track, 2016). Siemens AG and Voith Hydro have repeatedly been informed about the serious human rights abuses and violations committed within the scope of this project, and were asked to withdraw from the project. Only after the recent killings of Ms Cáceres and Mr García, FMO and Finnfund have suspended their support to this project in the course of March 2016.

The European Parliament very recently adopted a resolution on the situation of HRDs in Honduras, referring explicitly to the case and calling upon the EU delegation and Embassies of EU Member States in the country "to further step up efforts to engage with human rights defenders currently in danger" (European Parliament, 2016).

Another example is the already described case of Feronia in DRC. Reports on the company's activities, which are financed by several European DFIs (see Box 3), pointed to cases of brutal

repression from the security services of the company against opponents to the project, including criminalisation of local leaders (RIAO-RDC/GRAIN, 2015; Frontline Defenders, 2015). Resistance from local indigenous people and allegations of human rights violations have also accompanied the activities of the Marlin mine in Guatemala, which is backed by a Swedish pension fund, from the outset in 2005. Since then, multiple attacks as well as intimidation of human rights defenders, community representatives, researchers and people connected to the church, who have spoken out against the Marlin project have been documented. In the beginning of 2005 as, people tried to block the passage of heavy mining equipment headed toward the mine an indigenous farmer, was killed and many others were injured in a clash between the protesters and the Guatemalan security forces, consisting of members of the army and the police (FIAN and Misereor, 2005).

Even where EU entities are not directly involved in violence against land rights defenders, they are often operating in countries and areas where the general context is characterised by abuses and violations of the rights of human rights defenders, and lack of protection for this group. For example, several EU actors are involved in operations in Brazil, a country with an extremely difficult environment for human rights defenders working on land issues, in particular indigenous peoples. In 2014 alone, there were 138 cases of homicides against indigenous peoples in Brazil, 41 cases of which against communities of the Guarani-Kaiowá in Mato Grosso do Sul. In the period from 2000 to 2014, 55 % of all national indigenous homicides occurred against Guarani-Kaiowá in Mato Grosso do Sul, amounting to more than 400 cases, i.e. one homicide every 12 days (Conselho Indigenista Missionário, 2014). Guarani-Kaiowá communities in Mato Grosso do Sul were even attacked right after the UN Special Rapporteur on Indigenous Peoples visited those areas as part of her recent official visit to Brazil, in March 2016 (Tauli-Corpuz, 2016).

Land rights defenders are subject to different forms of violence that include threats to them and their families, harassment, illegal surveillance, slander<sup>(67)</sup>, obstacles in the course of their work, criminalization, attacks, enforced disappearances, arbitrary arrest and detention as well as killings (See Box 9). This impairs their rights to freedom of expression, assembly and association, the right to the enjoyment of the highest attainable standard of physical and mental health, the right to life, the right to freedom of movement and the right to liberty and security of person. Given the inextricable links between land and human rights, land rights defenders have to be considered as human rights defenders. According to the definition of the “Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms” from 1998 – commonly known as the “Declaration on Human Rights Defenders” – HRDs are those individuals, groups and organs of society that promote and protect universally recognised human rights and fundamental freedoms. The definition does not cover those individuals or groups who commit or propagate violence or those who seek to destroy the rights of others<sup>(68)</sup>. Based on this definition, the Observatory for the Protection of Human Rights Defenders defines land rights defenders as “the subset group of human rights defenders who seek to promote and protect human rights related to land” (OBS, 2016a).

<sup>67</sup> The term “slander” refers to the denigration of human rights defenders, their work and their reputation by various actors who attempt to portray their human rights work negatively. Labels such as “enemies of development”, “enemies of the State”, “radicals”, “terrorists”, and “gang members” seek to stigmatize individuals and communities that speak out against land deals (OBS, 2014).

<sup>68</sup> This definition is also used by the EU Guidelines on the Protection of Human Rights Defenders (see below).



While human rights defenders working on land issues share the characteristics of HRDs, they also present some particularities and face specific risks and threats. Generally speaking, land rights defenders form a heterogeneous group. They include land users affected by practices or policies negatively impacting on their access to land, and who have committed themselves to the promotion and protection of the land rights of larger groups (amongst whom leaders or members of communities). Particularly in cases where land rights are held collectively they are also often defended as such. Thus, land rights defenders can refer to groups from the affected communities that organise collectively in order to claim respect for the human rights of one, several or all communities. Indeed, as underlined by the former UN Special Representative on Human Rights Defenders, “defenders working on land rights often organise themselves in the form of social movements. These are usually broad grassroots-based movements with a more horizontal organizational structure than for instance most NGOs” (UNHCR, 2007).

However, land rights defenders can also be professionals who are not personally affected by a land conflict but act as allies of those who seek respect for their right to land and related human rights, such as representatives and/or members of non-governmental organisations (NGOs), lawyers or journalists. Land rights defenders use the same type of activities as those who defend other human rights, such as investigation of human rights violations, documented reports, communications with national and international bodies, litigation, advocacy at national and international levels, peaceful demonstrations, and other forms of protest. However, land rights defenders also use specific forms of protest such as the refusal to comply with an eviction order, the occupation of a house or piece of land as a symbolic act to oppose eviction or reclaim rights (“land occupation”), the blocking of roads or the entrance of a project site, or other forms of direct action (OBS, 2014, p. 11).

Human rights defenders working on land issues further often operate in remote areas, meaning that they have more difficult access to justice. They are often disconnected from traditional human rights organisations and, as a consequence, also less frequently resorting to international and regional protection mechanisms for human rights defenders. In many cases, they are members of already marginalised groups, including ethnic minorities. Individuals and communities opposing land deals also face risks linked to the existence of significant power imbalances as land conflicts often involve high financial stakes. Data indicates that land rights defenders are among the groups most exposed to violence. The former UN Special Representative on Human Rights Defenders identified defenders working on land rights and natural resources as being “the second most vulnerable group when it comes to the danger of being killed because of their activities in the defence of human rights” (UNHCR, 2007). A report from 2015 revealed that in 2014 alone over 116 human rights defenders were killed, reaching an average of more than two a week (see Global Witness 2015). The vulnerability of land rights defenders further increases with the rampant impunity of crimes committed against them in many countries and the failure of states to hold perpetrators accountable, either by their action or their omission.

Accordingly, the EU Action Plan foresees to step up efforts to protect HRDs, mentioning explicitly those working “on issues related to land rights [...] including those of indigenous peoples, in the context of inter alia 'land grabbing' and climate change” (EU Action Plan, para. 16 b). Also the UN Human Rights Council has very recently adopted a landmark resolution on the protection of human rights defenders working to promote economic, social and cultural rights, expressing grave concern regarding the situation of this group of HRDs specifically and calling for states to take the necessary measures to ensure the rights and safety of HRDs, including combatting impunity of attacks against them.

#### 4.4.2 EU Guidelines on Human Rights Defenders

The protection of human rights defenders is part of the human rights obligation of any state, including the EU and EU MS. Given its dimension and crosscutting nature, particularly in the context of land grabbing, it is an issue that requires specific attention by the EU and EU MS. The EU has specific Guidelines on Human Rights Defenders, which were adopted in 2004 and updated by the EU Foreign Ministers Council in 2008. While the EU Guidelines are not a binding legal document, they represent a strong political commitment by EU Member States at ministerial level to advancing the work of HRDs in the EU's external relations and provide guidance for the European External Action Service's (EEAS) and EU Missions' (Embassies and Consulates of EU Member States and European Union Delegation) work with HRDs. They provide specific recommendations on how EU Missions should proactively play their important role in putting into practice the EU's policy towards human rights defenders. The EEAS has set up focal points of human rights and democracy within EU delegations that should take up issues related to HRD. In some countries, EU missions have elaborated Local Implementation Strategies (LIS) for the EU Guidelines on HRDs (as foreseen by para. 11 of these Guidelines).

In a very recent resolution on the situation of HRDs in Honduras, the European Parliament calls upon the EU delegation and Embassies of EU Member States "to further step up efforts to engage with human rights defenders currently in danger" (European Parliament, 2016, point 8), a recommendation on which the EU and EU MS must be consistent in all countries. In practice, however, experience shows that the implementation of these guidelines varies significantly from one mission to another and between MS, lastly depending on the political will of the respective head of mission or ambassador. Some missions tend to give more importance to the advancement of the EU's or EU MS' economic interests and their relation with the private sector over their human rights obligations. Some missions also proposed to incorporate the participation of companies in dialogue processes between a state and affected communities, and even suggest that they should be part of mechanisms to protect HRDs from violence caused by the activities of companies, proposals that have been rejected by HRDs (Act Alliance et al., 2015).

The EUSR on Human Rights' mandate includes enhancing the effectiveness and visibility of EU human rights policy regarding HRDs. In addition, the European Instrument for Democracy and Human Rights (EIDHR) also has a strong focus on HRDs and provides urgent direct financial or material support for human rights defenders at risk through some of the projects it finances. The European Parliament can issue "resolutions on cases of breaches of human rights, democracy and the rule of law" for cases of human rights violations outside the EU. Although such resolutions do not have legal character, they can be a very useful instrument for advocacy efforts related to land conflicts (among others), because they explicitly underline the fact that a land conflict situation is a human rights issue.

The listed documents and procedures provide some tools for protection of HRDs by EU and EU MS, including in the context of land grabbing. A particular responsibility regarding HRDs arises where European corporate and financial entities are involved in land grabbing and related human rights abuses. When applying these tools, the EU should avoid any double standards and also undertake these crucial steps vis-à-vis 'powerful' countries.

Recently, the EU Commissioner for International Cooperation and Development announced the creation of a new European Union Human Rights Defenders Mechanism, which is intended to become one of Europe's key tools to assist human rights defenders at high risk, including in remote areas, running until 2018. Through the new mechanism, the EU will provide human rights

defenders at risk with short-term, medium-term and long-term support, including physical protection, legal and medical support, trial and prison monitoring, urgent advocacy and relocation, monitoring of their situation, early warning of risks, training on risk prevention and security (including digital security), support to national networks, advocacy, lobbying and development of strategies to counter restrictions and sanctions imposed on human rights defenders by states. A consortium of twelve international Non-Governmental Organisations (NGOs) manages this mechanism. While this new tool for the protection of HRDs has to be welcomed in principle, it has to be seen to what extent this tool entails the risk of the EU dispensing its responsibility under human rights law to NGOs, albeit the fact that the selected organisations have longstanding experience and are renowned for their work on HRDs.

## 5 The EU's response to land grabbing

The issue of land grabbing and its human rights impacts were brought to the attention of the EU – both the EU and MS – very early and was also taken up fairly soon by officials. Already in June 2009, the then Director-General for aid and development at the European Commission, Stefano Manservigi, expressed concern about the trend of foreign investors and countries acquiring large tracts of farmland in developing countries to guarantee their own food security, highlighting that this trend might pose a risk to developing countries. Land grabbing was also one of the key issues evoked at the European Development Days that same year, which were held under the Swedish presidency of the EU in October 2009, in order to show that the EU was starting to take the problem seriously. Land grabbing was also taken up early at the level of EU MS, by several countries, including Germany and France, among others during the UN World Summit on Food Security, held in November 2009 (see Graham et al., 2010, pp. 62-64). Still in 2009, the EU re-activated its Working Group on Land Issues, which, among other topics, discussed land grabbing with the intention of developing a common EU position (ibid.)<sup>(69)</sup>. Since then, land issues and land grabbing have been regularly addressed by different EU entities in different contexts, which represents a major shift after interest in land and rural development had not figured very prominently in the development and, even less, human rights discourse.

It has to be underlined that civil society has been playing an important role in bringing the attention of the EU and its MS to land grabbing and its impacts on the human rights of affected people. Apart from a growing body of studies and reports on land grabbing in general since 2009, some of which also include cases linked to European corporate and financial entities<sup>(70)</sup>, several reports analysed specifically the role of the EU-based actors and formulated concrete proposals and recommendations to the EU and EU MS to comply with their human rights obligations in this regard<sup>(71)</sup>. However, these proposals have not adequately, if at all, been taken into account by the relevant EU bodies. In many cases, the EU and EU MS have been particularly hesitant to accept that their human rights obligations also apply extraterritorially, including in the context of land

<sup>69</sup> The EU Land Working Group is now part of the Global Donor Working Group on Land, which is part of the Global Donor Platform for Rural Development (2016).

<sup>70</sup> For examples of cases involving European corporate and financial entities see chapter 2.3.

<sup>71</sup> One of the earliest examples is a monitoring report submitted to the European Parliament's DEVE Committee by the European NGO confederation for relief and development (CONCORD) on the European Commission's 2007 Communication on "Advancing African Agriculture" (AAA). See Graham et al., 2010).

grabbing, and that they include the obligation to effectively regulate companies and financial actors in order to protect human rights in third countries <sup>(72)</sup>.

More recently, the EU has, however, given more attention to the issue of land grabbing. Although not very prominently, land grabbing is mentioned in the EU Action Plan on Human Rights and Democracy 2015-2019, with particular reference to HRDs working on land issues (Point 17 c). The European Parliament has also commissioned reports and issued own-initiative opinions on the issue, both on land grabbing inside the EU, as well as outside the EU (Cotula, 2014; European Economic and Social Committee, 2015; Transnational Institute, 2015). Human rights and land grabbing have also been one of the main topics taken up during the 15th EU-NGO Forum on Human Rights in December 2013 (which is part of the EIDHR), under the overarching topic of accountability. However, the EU must urgently take concrete steps in order to address land grabbing and its human rights impacts.

As it is not possible in the scope of this study to do a comprehensive assessment of the EU's response to land grabbing, what follows are some examples of steps the EU has taken to address the issue. The objective is to critically assess experience so far and identify some of the shortcomings that persist in order to overcome them.

## 5.1 EU biofuel policy and the Renewable Energy Directive

One example, which illustrates how the EU and MS have been reluctant to adequately address land grabbing, is the EU's biofuel policy and, specifically, the EU Renewable Energy Directive (RED). As discussed in chapter 3.4, despite the fact that agrofuels have been identified early on as one of the main drivers of land grabbing and European companies and financial investors have been important actors in land deals for agrofuel production, the EU and EU MS have resisted to fundamentally review the RED and to acknowledge their obligation to address human rights impacts <sup>(73)</sup>.

The arguments brought forward by the Commission to justify this omission are, among others (EuropAfrica, 2011) a "win-win" narrative according to which the EU policy would benefit poor people in developing countries, by maximizing the benefits for local communities as well as the opportunities for business; the claim that land grabbing is first and foremost an issue linked to weak governance in the countries concerned and thus an issue that must be tackled by the host countries of land deals; the belief that technical innovation (second and third generation biofuels) will bring the solution to the problem; the reference to international trade rules under the WTO, which would impede actions by the EU; and scepticism (if not refusal to consider it at all) towards information provided on the links between the EU biofuels policy and adverse human rights impacts in the context of land grabbing. This approach has laid the burden of proof on those affected and CSOs to prove that occurred human rights violations are directly linked to agrofuels consumed in the EU under the RED. These direct links are extremely difficult to prove in the context of prevailing market mechanisms, and this approach does not consider at all the role the

<sup>72</sup> Examples of resistance by EU and EU MS to accept their extraterritorial human rights obligations in land grabbing cases involving EU actors are the cases of Germany-based Neumann Kaffee Gruppe's involvement in a case of eviction in Uganda as well as the case of tree plantations in Niassa, Mozambique, involving the Dutch pension fund ABP (see Boxes 1 and 5). In both cases, German and Dutch officials have denied responsibility to hold the companies accountable as of their human rights obligations.

<sup>73</sup> In 2015 new rules came into force, which amend the current legislation on biofuels – including the RED – to reduce the risk of indirect land use change. However, the RED as such was not revised.

RED has played in triggering land grabs, even in cases where deals have been of a purely speculative nature and no significant amounts of biofuels have been imported by the EU (Cotula, 2014, p. 31). The EU has thus adopted a technical approach to the issue instead of applying the precautionary principle in the light of reported human rights abuses and violations.

Accordingly, much of the discussion around agrofuels and the RED has happened on a very technical level. Much of it has focused on indirect land use change (ILUC), a discussion which, itself, has focused on the carbon emissions associated with clearing new land and ways of measuring them, while neglecting impacts on human rights of affected people (Cotula, 2014, p. 31). The EU has constantly denied the need for a revision of the RED, claiming that possible negative side effects are sufficiently addressed through a common sustainability scheme that relies on voluntary certification standards that are adopted by the European Commission as well as a monitoring mechanism, which requires the EC to report regularly to the European Parliament and the Council on a number of consequences of the EU biofuel policy<sup>(74)</sup>.

Although this monitoring mechanism has been the central argument of the EU to defend that it controls the negative social and human rights impacts of its biofuel policy, the conclusion drawn from the 2012 progress report still questions the contribution of EU biofuels demand to “any abuse of land use rights” (EC, 2013). However, several reports have unveiled the direct link between land grabbing and the EU biofuel policy and documented human rights impacts (see Diop et al., 2013; EuropAfrica, 2011), leading to calls for the EU to drop its biofuels target. Notwithstanding the presented documentation, the EU has not taken effective regulative measures in order to address adverse human rights impacts on affected people in the context of the EU biofuel policy and European corporate and financial entities involved in land deals for agrofuel production.

## 5.2 The EU’s role in the adoption and implementation of the CFS Tenure Guidelines

The EU and several EU MS played an important and positive role in the process that led to the adoption of the Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests by the UN Committee on World Food Security (CFS) in May 2012 (FAO, 2012). The importance of these Guidelines lies in the fact that they are the first comprehensive international instrument on the governance of land and natural resources, based on human rights. They provide an authoritative international interpretation and guidance on how to implement existing binding international human rights obligations related to land and natural resources. The Tenure Guidelines are, strictly speaking, not a direct response to land grabbing in as much as they were developed in a process that goes back to times before the debate on the newest wave of land grabbing started (especially the 2006 International Conference on Agrarian Reform and Rural Development – ICARRD) and because they address the issue of land and natural resources tenure in a comprehensive way, linking it with investment, agriculture, food policies, rural development, and with other international policies. As a matter of fact, governments and FAO itself pointed out repeatedly throughout the negotiation process that it was not about developing ‘guidelines against land grabbing’ (Seufert, 2013). However, the negotiations took part in the context of a new

<sup>74</sup> These include: 1) the impact on social sustainability in the Community and in third countries of increased demand for biofuel; 2) the impact of Community biofuel policy on the availability of foodstuffs at affordable prices, in particular for people living in developing countries; 3) wider development issues; and 4) the respect of land-use rights.

wave of land grabbing, and CSOs clearly emphasized the link between the Tenure Guidelines and this reality and the impacts on communities around the world <sup>(75)</sup>.

The EU and several EU MS significantly supported the process of the Guidelines, including financially. The support also specifically aimed at the participation of social movements and CSOs throughout all stages of the process, including several CSO consultations. The inclusive process which ensured the autonomous and self-organized participation of civil society – especially of social movements – as well as the Guidelines' grounding in human rights makes them more legitimate than other proposed responses to land grabbing. Social movements of small-scale food producers have welcomed the adoption by the Tenure Guidelines and expressed their hope that they will serve their purpose of advancing the human rights of local people, including in the context of land grabbing. The EU and EU MS have also been significantly supporting the efforts towards implementation of the Tenure Guidelines since their adoption in 2012. This support has, again, included initiatives aimed at making them accessible for communities and people affected by land conflicts and land grabbing, among others through specific capacity building programmes for grassroots communities.

The Global Donor Working Group on Land, of which the EU and several EU MS are members, has set up a data base and map on projects related to the implementation of the Tenure Guidelines. The programmes listed there by the EU and those EU MS that provided information account (as of 15 April 2016) to a total number of 426 out of a total number of 714 programmes. However, when looking into specific programmes, it is not always clear in how much they actually support the implementation of the Guidelines in line with existing human rights obligations and prioritising the most vulnerable and marginalized groups.

In a recent statement, several international social movements and CSOs involved in the Guidelines process have expressed concerns that current efforts towards the implementation of the Guidelines, including some of those carried out by the EU and EU MS, are focusing on making them a useful tool for companies and private investors involved in land deals, instead of focusing on the rights and needs of communities affected by land grabbing. There is thus a tendency to focus on corporate and private investments understood as land acquisition in a corporate social responsibility framing, instead of using the Tenure Guidelines as a tool to address the roots of land grabbing, starting from the rights and needs of marginalised people, as the EU and EU MS's human rights obligations require. It is also problematic that the EU and some of its MS claim to be contributing to implement the Tenure Guidelines with PPPs as the New Alliance for Food Security and Nutrition in Africa and multi-stakeholder initiatives which do not clearly distinguish the roles of states, civil society and the private sector.

### 5.3 The G8 Land Transparency Initiative

One year after the adoption of the Tenure Guidelines, the EU and several EU MS <sup>(76)</sup> were involved in an initiative of the G8 that aimed at promoting transparency with regard to land acquisitions by national and international investors in order to support and increase what the G8 called, in one of the drafts, "productive investments in land". The Land Transparency Initiative (LTI) was supposed

<sup>75</sup> One of the main tools of resistance against land grabbing has been the Dakar Appeal against the Land Grab, which was issued during the World Social Forum in Dakar in February 2011, by social movements, small-scale food producers' organizations and other civil society organizations. It was then signed by more than 900 organizations from all around the world and served as a main reference for civil society during the negotiation of the Tenure Guidelines.

<sup>76</sup> The initiative was strongly promoted by the governments of the UK and Germany.

to be launched as a global initiative at the G8 summit in June 2013. Presented as a response to global and growing pressure on land for food and fuel, the initiative was fiercely criticized by civil society for not presenting an adequate response to land grabbing, as it was not clear how it would arrest on-going trends and human rights violations. Critique of the LTI targeted, among others, the fact that it relied exclusively on voluntary disclosure of information about land deals by the investors themselves, by civil society and by the governments of G8 and those of selected developing countries, as well as the fact that transparency alone does not address land grabs and its human rights impacts (and could even facilitate additional land deals), if not linked to accountability mechanisms. The G8 also faced criticism that the initiative undermined international agreements, particularly the Tenure Guidelines by duplicating processes instead of focusing on coordinated and coherent efforts towards their implementation according to their human rights obligations. While the LTI was presented as an initiative to implement the Tenure Guidelines, some elements rather geared towards serving the interests of investors by facilitating land deals (La Via Campesina et al., 2013).

The LTI did eventually not materialise as initially planned. However, the G8 committed at its 2013 summit to support greater transparency in land transactions and to establish partnerships with developing countries, including relevant international organisations, to accelerate and target support to countries' existing land governance programmes in conjunction with businesses, in particular farmers, and civil society. Since then, so-called Land Partnerships have been signed between G7/8 countries (including the EU) and several African countries <sup>(77)</sup>. The fundamental concerns raised regarding the LTI have, however, not been addressed by the G7. While the land partnerships refer to the Tenure Guidelines and are presented as a means of their implementation, some partnerships explicitly aim for making land available for companies and investors. The land partnership between Germany, the UK, the USA and Ethiopia in particular also raises serious questions regarding the conditions for implementation of these Tenure Guidelines, given the fact that Ethiopian civil society organizations are severely constrained to freely defend the human rights of pastoralists, indigenous peoples and other rural peoples who have been seriously affected by large-scale agricultural investments projects <sup>(78)</sup>. Under these circumstances, it is questionable whether Ethiopia offers the very basic conditions for civil society to engage in a meaningful process on how to implement the Tenure Guidelines in the country.

<sup>77</sup> Seven pilot country partnerships were signed in 2013 with Burkina Faso (US), Niger (EU), Nigeria (UK), Senegal (France), South Sudan (EU), Tanzania (UK) and Ethiopia (UK, US, Germany). Additional partnerships have been added since then (see Global Donor Platform for Rural Development, 2016).

<sup>78</sup> Ethiopian civil society organizations are, for instance, not allowed to directly or indirectly relate to international human rights organizations working on land issues, based on the provisions contained in the Charities and Societies Proclamation no. 621/2009. A recent case of arrested pastoralists shows that these provisions are applied in concrete cases related to land, see Human Rights Watch, 2015.

## 5.4 The EU's response to land grabbing linked to EBA in Cambodia

While EC highlights the “leading role” of the European Parliament in the promotion of human rights, “in particular through its resolutions, the EBA case shows a somewhat different picture. In 2012 and 2014 the EP has demanded through such resolutions that the European Commission (DG Trade) shall investigate in human rights violations linked to the agro-industrial expansion of sugar cane plantations. The case was also repeatedly brought to the attention of the EU High Representatives Catherine Ashton and her successor Federica Mogherini. Delegations of affected community members also repeatedly met with EEAS and DG Trade and EU Member states ministries. Recommendations were also made under the 15th EU-NGO Human Rights Forum in December 2013, an activity under the EU Action Plan for Human Rights and Democracy <sup>(79)</sup>.

While the Commission still neglects an official investigation under EBA/GSP scheme, it has, commissioned an audit of the human rights impact, 5 years after the affected first demanded action from the EU and criticized by the affected of being silent on “how the audit will be implemented” <sup>(80)</sup>. This points to severe problems to address human rights violations in the context of EU policies. The experience with EBA shows that the current threshold for action on human rights violations linked to EU initiative EBA is too high. In addition, it is problematic that the accused party (DG Trade) is also the one that interprets the threshold, instead of an independent body. A monitoring role of the EP could play an important monitoring role in addressing some of these issues.

## 5.5 The EU's reliance on business self-regulation

As already mentioned before, the EU and its Member States have been very reluctant so far to introduce binding regulation on corporate and financial actors, including effective accountability and remedy mechanisms. Instead, the EU has largely been relying on voluntary commitments by companies to apply standards for responsible investments. The EU itself has endorsed a series of voluntary guidelines and principles on which it has built its Corporate Social Responsibility (CSR) Strategy, such as the United Nations Global Compact, the United Nations Guiding Principles on Business and Human Rights, ISO 26000 Guidance Standards on Social Responsibility, the International Labour Organization Tripartite Declaration of Principles concerning Multinational Enterprises on Social Policy and the OECD Guidelines for Multinational Enterprises <sup>(81)</sup>. The EU claims that its mix of voluntary policy measures and, where necessary, complementary regulation is widely supported by businesses and MS. This approach has nonetheless proven to be insufficient in providing effective human rights protection and legal remedies to victims of corporate human rights abuses, including in the context of land grabbing.

As already stated, non-binding frameworks such as the UN Guiding Principles on Business and Human Rights fail, among others, to ensure corporate liability and in providing people whose human rights have been impaired with access to legal remedies (Skinner et al., 2013). The cases of

<sup>79</sup> “All European Union authorities including DG Trade should fully recognize that UN Special Rapporteurs, especially country specific Rapporteurs are relevant monitoring bodies so that their reports are seen as particularly important evidence which can trigger off EU investigation procedures of the impacts or possible impacts of the Everything but Arms initiative (EBA) and Generalized Scheme of Preferences (GSP)”.

<sup>80</sup> Quote from an NGO letter to Commissioner Malmstrom and High Representative Mogherini (18 January 2016).

<sup>81</sup> See the Communication from the Commission to the European Parliament, the Council, the European Commission and Social Committee and the Committee of the regions: A renewed EU strategy 2011-2014 for Corporate Social Responsibility.



Mubende, involving the Germany-based company Neumann Kaffee Gruppe, and the activities of SOCFIN (see Boxes 1 and 4) show the limits of the OECD Guidelines for Multinational Enterprises as they have not provided remedy to affected communities. In the case of SOCFIN, the Belgian national contact point for the OECD Guidelines has deplored the lack of collaboration by the company (Point de Contact National Belgique, 2015), thus pointing to the fact that the application of the Guidelines depends entirely on the good-will of companies, thus raising serious concerns about their effectiveness in terms of ensuring accountability.

CSR and voluntary guidelines and schemes have been used as an argument to avoid binding regulations on the activities of transnationally operating companies. The EU has, for instance, recently pointed to the voluntary UN Guiding Principles on Business and Human Rights in order to obstruct the process towards an international legally binding instrument on transnational corporations with respect to human rights that is currently happening at the UN Human Rights Council.

The situation is even more critical when it comes to voluntary self-regulation by business and all kinds of multi-stakeholder initiatives that have flourished during the past years and that are presented by the private sector as means to address the human rights impacts of land grabs. Examples are the Roundtable on Sustainable Palm Oil (RSPO), the Roundtable on Sustainable Biofuels (RSB), the Roundtable on Responsible Soy (RRS) and the Bonsucro/Better Sugar Cane Initiative, which have all their own certification schemes. Membership in these consortia has not stopped companies from being involved in land grabs and alleged human rights abuses. This also applies for companies with links to EU actors, such as Wilmar, who is backed by several EU finance institutions and whose palm oil plantations in Nigeria have led to human rights abuses, according to reports (Friends of the Earth US/Environmental Rights Action-Friends of the Earth Nigeria, 2015a and 2015b). Another example is the already mentioned company SOCFIN, which is member of the RSPO and does much publicity around its CSR projects but whose operations have severe environmental, social and human rights impacts (see Box 4). What has to be kept in mind is that standards and certification most of the time rely on private contracts between companies and consultancies of their choice, a process that makes independence literally impossible. Another big problem with self-regulation by business is the often highly unequal power relations between corporations and communities that raise big concerns about the terms under which all sorts of agreements between companies and affected people come about, that are frequently used by companies to underline how they are dealing with conflicts that may arise in the context of their operations, including human rights abuses.

Another example are the Principles for Responsible Investment in Farmland (Farmland Principles), which were launched in September 2011 by a group of institutional investors, with – according to its promoters – “the goal of improving the sustainability, transparency and accountability of investments in farmland”<sup>(82)</sup>. The principles, which the investors that sign up to them commit to implement in all farmland investments include, inter alia, the promotion of environmental sustainability (Principle 1); the respect of labour and human rights (Principle 2); and the respect of existing land and resource rights (Principle 3). Several EU actors have signed this initiative. However, examples show that the self-regulation of investors has not prevented human rights abuses in the context of land deals. One example is the already mentioned case of tree plantations in Niassa province, Mozambique, which involved the Dutch pension fund ABP, one of the initiators

<sup>82</sup> In August 2014 the Farmland Principles were incorporated in the Principles for Responsible Investment (PRI).

of the Farmland Principles, as a major shareholder when operations started. When affected people made allegations of human rights abuses, ABP admitted that the forestry projects did not comply with its responsible investment policy, but announced that it would not withdraw its investments (FIAN, 2013, p. 31; see also Box 5).

Another founding member of the Farmland Principles initiative is the Second Swedish National Pension Fund AP2, which has invested in farmland in Brazil through a global farmland fund named TIAA-CREF Global Agriculture LLC (TCGA). Managed through a complex structure including different national and foreign companies and leases, land deals have been made in the states of São Paulo, Mato Grosso, Maranhão and Piauí and involve large scale industrial production of soy, sugar cane, cotton and maize on 60 000 hectares. AP2 has not been willing to disclose any detailed information concerning the location of the land purchased by TCGA, referring to fear of competition. This makes any transparent verification about the impacts on the land deals impossible. The investments have been made in areas where big land conflicts have been reported. Investigations have furthermore uncovered how TCGA is using a complex company structure enabling it to evade Brazilian laws restricting foreign investments (Rede Social de Justiça e Direitos Humanos et al., 2015). The deeper issue with the Farmland Principles is that it is not at all clear what it means to adhere to these principles, as there are no documents or statements available clarifying on land issues. The complete absence of clarity and accountability is well illustrated by a very recent statement by TIAA-CREF (also founding member of the Farmland Principles). When confronted with concerns regarding its investments in Brazil, the fund dismissed the concerns referring to “the high standards of responsible investing principles to which we hold ourselves accountable”<sup>(83)</sup>.

An example of an initiative led by a private company is Coca-Cola’s “zero tolerance policy” on land grabbing. Although Coca-Cola is not an EU company, it has many subsidiaries, sellers and end consumers in the EU and the case is illustrative for the fundamental problems with self-regulation schemes of companies. The announcement by the company of its zero tolerance policy on land grabbing was broadly acclaimed as a success in ensuring responsible investments throughout the supply chain. However, in the context on the EBA-inspired land grabs for sugar plantations in Cambodia, the corporation failed to undertake serious due diligence on its major sugar supplier, Mitr Phol, which was found to be responsible for human rights abuses by the Thai Human Rights Commission<sup>(84)</sup>. The fundamental flaws of private voluntary schemes is epitomized by the fact that, after having been excluded from the Bonsucro/Better Sugar Cane Initiative, Mitr Phol’s was eventually readmitted and was granted Bonsucro’s Sustainability Award – only two weeks after the Thai Human Rights Commission issued its findings, while reportedly almost 470 families were still fighting to regain land and compensation.

What these examples illustrate is that self-regulation schemes have failed to address human rights abuses in the context of land grabbing. Additionally, companies are using CSR schemes, due diligence and non-judicial grievance mechanisms to whitewash their operations and to dismiss responsibility of abuses (RAID, 2015). Moreover, it is the genuine duty of states, as of their human

<sup>83</sup> Official statement by TIAA-CREF from February 2016 to the involved German pension scheme ÄVWL communication, after they requested a clarification of allegations made by an NGO report in November 2015.

<sup>84</sup> In October 2015, after a two year investigation, Mitr Phol was found by the Thai Human Rights Commission to be responsible for violating international obligations and rights of victims in Cambodia, who saw their land seized, homes destroyed and livestock killed to make way the company’s plantations between 2008 and 2009 (see Inclusive Development International, 2016).

rights obligations, to ensure adequate regulation to make sure that business enterprises do not abuse human rights. This includes accountability and effective remedy through justifiability of human rights. The EU and EU MS must thus take action in order to comply with their human rights obligations.

## 6 Conclusions and recommendations

The EU and EU MS have an important role to play to stop land grabbing and actively address related human rights violations and abuses. An adequate response to these issues is required in order to comply with their human rights obligations, especially their extraterritorial obligations. Due to the 'multilayeredness' of land grabs, the involvement of different EU actors and mechanisms, a set of regulatory actions by different bodies in the EU (EP, EC, Council and MS) is needed. This complex issue cannot be dealt with by a 'silo' regulatory approach nor by superficial approaches that tackle the symptoms, instead of the root causes, of the problems. Responses by the EU and its MS will thus have to reflect this complexity, embedded in the political economic context, and should have components to prevent land grabbing through regulation and respond to violations and abuses, with a special attention to ensuring access to prompt and effective remedy mechanisms for those affected. The approach pursued by the EU should be to pro-actively contribute to the universal realisation of human rights, creating an enabling environment for this, rather than being only defensive. Finally, land grabbing is characterized by huge power imbalances, and EU private and financial actors are clearly the powerful vis-à-vis the communities threatened or affected by land grabbing. The responses of the EU should be framed within this political context.

What follows is a set of recommendations addressed to policy makers at EU and MS level to tackle land grabbing of EU corporate and financial actors, based on their corresponding specific obligations to respect, protect and fulfil human rights and the general obligation to adopt measures as soon as possible and to the maximum of available resources, to not discriminate, and to cooperate. These recommendations have been developed in a way to be mutually reinforcing and should thus be seen as interconnected.

### **1. Ensuring compliance with human rights obligations and making the EU's human rights agenda more proactive and responsive to land grabbing**

The EU's commitment to human rights and its human rights obligations has recently been reiterated by the Communication "Keeping human rights at the heart of the EU agenda" and the related EU Action Plan on Human Rights and Democracy for the period 2015 – 2019. We recommend the following actions to the EU and EU MS:

- 1) Formally acknowledge and commit to implementing their extraterritorial obligations including, in the case of the EU, through Communications and Directives, and by incorporating them into human rights policies and guidelines.
- 2) Comply in good faith with their extraterritorial human rights obligations including in the context of land grabbing by EU corporate and financial actors.
- 3) Tap the full potential of the EU Special Representative (EUSR) on Human Rights and this flexible mandate by assessing and elaborating reports on cases of human rights abuses related to European corporate and financial actors. Land grabbing by European corporate and financial actors should be included under Point 18 of the EU Action Plan on Human Rights and Democracy at the Action Plan's mid-term implementation review; and annual reports by (an) independent HR expert(s),

complemented by reporting by the EUSR on Human Rights should be produced on the topic.

- 4) Ensure better and closer collaboration between the EUSR on Human Rights and the UN Special Procedures.
- 5) Produce operational tools (such as toolkit or logbooks, as foreseen in para. 30b of the EU Action Plan) on land grabbing for staff in the EU headquarters, EU Member States' capitals, EU Delegations, Representations and Embassies in order to provide guidance for the protection and promotion of human rights in the context of land grabbing, especially when involving EU actors.

## 2. Toward human rights compliant policies

- 1) Some EU policies facilitate and/or encourage, directly and indirectly, land grabs of European corporate and financial actors. This in turn implicates the EU's and EU MS' extraterritorial human rights obligations. We recommend the following actions to the EU and EU MS in their respective fields of competences:
  - (a) Elaborate, interpret and apply policies and international agreements in a manner consistent with their human rights obligations in order to avoid potential negative effects on human rights abroad; and include binding human rights criteria and accountability mechanisms into their policies that affect land abroad.
  - (b) Adjust human rights clauses in trade and investment agreements, among others, to guarantee the participating states' policy space for implementing measures aimed at the realisation of human rights, to provide for regular reviews and adjustment (or elimination) of provisions that conflict with human rights, and allow for complaints by individuals and groups whose human rights have been negatively affected. This entails the exclusion of ISDS mechanisms from all investor protection chapters in trade and investment agreements.
  - (c) Systematically carry out prior human-rights impact assessments (*ex ante* HRIAs) and regularly assess and revise agreements, laws and policies (including in the area of trade, investment, finance, development cooperation, and climate change) in order to ensure that they do not negatively affect human rights – which includes that they do not curtail policy space to implement measures required for the realisation of human rights – and are conducive to the universal realisation of human rights (*ex post* HRIA), applying a sound methodology, building upon paras. 24b and 27 of the EU Action Plan. Prior HRIAs must be conducted by an independent body and with public participation, and their results be made public and inform measures to prevent, cease, and remedy the harm. This requires that information on planned agreements are accessible to MPs and MEPs as well as the public and that assessments are carried out at an early stage of negotiations in order to allow for influencing on-going negotiations. The inclusion of human rights criteria in the revised EU handbook on trade SIAs is an important step, but it is central that the mentioned standards are met. Regarding monitoring of existing EU policies, agreements and actions, human rights compliance should be at

the centre of formal monitoring and evaluation processes and they should involve independent human rights bodies/experts, the European Parliament as well as those affected by policies. Monitoring should include the collaboration with national human rights institutes in countries affected by land grabbing.

- (d) The European Parliament and the Council should carry out their own human rights impact assessments, in addition to Commission impact assessments, where needed (e.g. when policies and actions are likely to have considerable human rights impacts or where such policies and actions involve countries where human rights abuses and violations have been documented, among others), according to the standards referred to above, as foreseen in Inter-Institutional Common Approach to Impact Assessment and the Provisional text of the proposed inter-institutional agreement on better regulation.
- (e) Adopt all necessary measures, as soon as possible, to provide adequate and effective complaint and remedy mechanisms for individuals and groups whose human rights have been negatively affected EU policies beyond EU borders. The thresholds to access these mechanisms must allow for victims to access these mechanisms.

Where recommendations are directed directly to the EU in so far as policy areas are concerned that are exclusive or shared competences of the EU (such as trade and investment) and for which the EU carries direct human rights obligations, MS must nevertheless take steps to ensure that the EU acts accordingly (as they remain bound by their human rights obligations when transferring competences to the EU).

- 2) Regarding specific policies that are particularly relevant for land grabbing by EU actors we recommend the EU and EU MS to:
  - (a) Substantially reduce the thresholds for existing human rights clauses in the EU's *Everything But Arms* trade initiative (EBA).
  - (b) Drop the biofuel target and exclude bioenergy from the next EU Renewable Energy Directive (RED).
  - (c) Withdraw support of the New Alliance for Food Security and Nutrition in Africa; stop the implementation of the cooperation frameworks of the New Alliance, and the negotiation of new frameworks that undermine sustainable small-scale food production and local food systems.
  - (d) Support the implementation of the CFS Guidelines on the Responsible Governance of Tenure of Land Fisheries and Forests in accordance with existing human rights obligations, focusing on the rights and needs of communities and the most marginalised. This entails to apply these Guidelines in projects of the EU (DEVCO) and EU MS in all development projects that may impact tenure rights, as well as to ensure compliance of activities by corporate and financial actors by regulating them according to the Guidelines.

### **3. Accountability and regulation of corporate and financial actors**

1. Adequate and effective regulation of corporate and financial entities remains a crucial issue in order to address land grabbing by EU actors. As of their human rights obligations, the EU and its MS have to, in accordance with their respective competences, protect people from abuses by third parties. The extraterritorial human rights obligations of the EU and MS place obligations on them to establish the necessary regulatory mechanisms to ensure that private corporations, including transnational corporations, and other non-state actors that they are in a position to regulate, do not impair the enjoyment of human rights in other countries, including in the context of land grabbing. Failure to do so represents a breach of human rights obligations. In order to ensure accountability, victims have to have full access to adequate and effective remedy mechanisms independent of where human rights abuses have occurred. Experience shows that corporate social responsibility and voluntary regulation schemes fail to prevent land grabbing, do not protect people from human rights abuses and do not ensure accountability. We recommend the following actions to the EU and EU MS:
  - (a) Given the non-transparency, which surrounds many land deal processes, the first step to holding investors accountable is for the EU to proactively track and monitor land deals involving EU actors. This could happen in form of a registry at EU level of all EU actors involved in land deals abroad. Mandatory disclosure rules should require these EU actors to provide all information relevant to assess human rights risks and impacts in relation to their business activities, and to report on their subsidiaries, wherever incorporated and operating, and their business relationships.
  - (b) EU delegations and embassies of EU MS should proactively monitor and report on the activities of EU companies in the respective countries, particularly where there are indications that these are involved in human rights abuses, as well as monitor compliance of EU companies with national law as well as human rights standards, including the Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests (contributing to overall application of these Guidelines, see recommendation 2.2.d). The monitoring reports by EU delegations and EU MS embassies should be provided to all relevant EU institutions, including the EP (particularly DROI and AFET), the EEAS and the European Commission (e.g. DG Trade).
  - (c) EU MS should develop policies and frameworks for the conduct of corporations over which they have jurisdiction (adapting existing regulations or introducing new regulations) to effectively regulate EU corporate and financial actors, through a process of dialogue with individuals and communities affected by human rights abuses, taking into account their experiences and needs. Civil, administrative and criminal regulation should clearly define the duties of corporations and financial actors, including rules on impact assessments, responsibility of due diligence and victim centred criteria for the determination of liability, and contain clear provisions on legal accountability by these actors for human rights abuses and crimes. The frameworks for conduct should impose a

legal duty on parent companies to exercise due diligence by controlling their subsidiaries to prevent HR abuses and make it a criminal offence for companies to contribute to human rights abuses abroad.

- (d) The EU should take steps within its competence to develop common standards at the EU level for corporate regulation by MS in line with recommendation 3.1 (c). The proposal by the European Commission to add a forum necessitates provision to the Brussels I Regulation should be re-introduced so that it becomes mandatory for MS courts to exercise jurisdiction in situations where no other forum ensuring the right to a fair trial exists and there is a sufficient link with the MS concerned.
  - (e) EU MS have to ensure victims' access to effective judicial remedies, including by assuming jurisdiction in cases of corporate human rights abuses committed by EU-based actors and removing obstacles for people affected abroad to bring a case in the home state of the business or the state in which controlling companies are domiciled and/or develop activities, based on the Brussels Regulation. MS courts should, in situations where the legal protection offered in the state where the harm occurred is insufficient, apply the law of the country in which the case is heard. They should also allow for collective actions, including class actions and public interest litigation.
  - (f) The current process of an own-initiative report by the European Parliament on "Corporate liability for serious human rights abuses in third countries" which is produced in the Committee on Foreign Affairs (AFET) should be used in order to advance in this regard, remembering that all human rights abuses and violations have to be tackled by effective accountability mechanisms.
  - (g) EU MS and the European Commission should explore options for providing financial support to individuals from abroad to bring claims to EU MS courts.
  - (h) The EU and MS should consider the creation of an EU-wide independent complaint mechanism for individuals and communities whose rights have been negatively affected by EU actors, which can complement judicial remedies at MS level.
2. Where the EU and EU MS are directly involved in land grabbing, they also have to comply with their obligation to respect human rights. This is the case, among others, where land grabs take place with the involvement of development finance institutions (DFIs), public pension funds and public-private partnerships (PPPs).
- (a) In these cases, the EU and EU MS have to ensure public scrutiny of the involvement of public and state-related entities in land deals, systematically carrying out independent *ex ante* and *ex post* human-rights impacts assessments of these deals and withdraw from investment projects/land deals where substantial human rights risks have been identified or violations have occurred. In the latter case, states must provide for effective remedy mechanisms.

- (b) While the EU is directly responsible for ensuring that EU development finance and public-private partnerships do not contribute to human rights abuses, MS carry a responsibility to ensure that the EU acts accordingly.
- (c) Parliaments of MS and, in the case of European development finance, also the EP, have to be able to effectively monitor the activities of DFIs, for instance through a parliamentary commission that has access to all the business records of DFIs and that meets regularly.
- (d) DFIs should establish accessible complaint mechanisms for victims of human rights abuses and violations, which ensure that such complaints are investigated independently and ensure ways of effective remedy.
- (e) The EU and its Member States should withdraw any form of support (including financial and diplomatic) from companies involved in human rights abuses and use their influence to prevent such.

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

EU MS' human rights obligations also apply when they engage in multilateral bodies. They have to ensure that both their acts and omissions in these bodies do not lead to breaches of their obligations. Furthermore, EU MS should contribute to advance human rights within/through the international bodies they engage in and/or transfer competences to. The EU must equally act in line with its own and MS' human rights obligations when engaging in international bodies. We recommend the following actions to EU MS and, where applicable, to the EU:

- (a) Support and engage in good faith in the on-going process towards the adoption of an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights at the UN Human Rights Council, in order to define clear and obligatory international standards on duties of transnational corporations and other business, including rules on impact assessments, due diligence and liability, and hold them legally accountable for human rights abuses and crimes (contributing to adequate regulation of corporate and financial entities and accountability, see recommendation 3.1).
- (b) Support and adopt the United Nations Declaration of the Rights of Peasants and other people working in rural areas, which is currently developed in the UN Human Rights Council, in order to increase protection of the human rights of these groups, including in the context of land grabbing.
- (c) Support the establishment of a robust and innovative monitoring mechanism within the UN Committee on World Food Security (CFS) and contribute in a constructive way to the global monitoring event during the 43rd CFS session in 2016, in order to ensure a comprehensive and thorough assessment of the use and application of the Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests (contributing to improved accountability and to overall application of the Tenure Guidelines, see recommendations 3 and 2.2.d).



## **5. Continue and scale up support/protection for human rights defenders**

Violence of all forms against human rights defenders (HRDs) is a cross-cutting issue of land grabs and needs special attention because of the specific risks faced by HRDs working on land and land-related issues. The EU and EU MS should continue existing support and increase mechanisms to protect HRDs, based on the EU Guidelines on human rights defenders. Para. 31 of the EU Action Plan establishes a focus on the implementation of EU Human Rights Guidelines, including awareness raising, dissemination and training of staff in EU Delegations and Member State Embassies as well as more systematic reporting on their implementation. The protection of human rights defenders falls under the responsibility of the European External Action Service. The EP has a specific responsibility as it monitors the work of the EEAS. We recommend the following actions to the EU and EU MS:

- (a) EU delegations and embassies of EU MS should develop local implementation strategies of the EU Guidelines on HRDs in each country (as foreseen by paragraph 11 of these Guidelines), which include specific reference to defenders of land, water and environmental rights, based on the specific risks these groups face. The local implementation strategies should be developed in cooperation with HRDs and CSOs and include activities such as monitoring, reporting and assessment as well as direct support and protection of HRDs, among others. EU delegations and embassies of EU MS should assess with HRDs and CSOs whether these strategies should be made available to the public. The EEAS and the EP should make sure that EU delegations develop these strategies and implement them. The effectiveness and the outcomes of the implementation strategies should be regularly assessed, including through evaluation meetings with HRDs and CSOs.
- (b) EU delegations and embassies of EU MS should take active steps for the protection of HRDs, by, among other steps: issuing public statements supporting HRDs and organisations that support them; proactively making direct contact with HRDs; making visits to HRDs as well as their organisations; making visits to communities of HRDs, especially in remote and rural areas; making visible their support for the work of HRDs in events organized by the missions/embassies; following up on specific cases of violence against and criminalisation of HRDs and speaking out publicly on them; assisting as observers at hearings in cases of HRDs that are prosecuted and/or arbitrarily arrested, and visit detainees in prison, urging for their release.
- (c) Mechanisms to protect HRDs must be based on existing human rights obligations and be designed, implemented and monitored free from corporate influence. Corporations/the private sector should be excluded from participation in dialogues with HRDs and communities as well as from mechanisms for the protection of HRDs.
- (d) Based on Article 6 of the Treaty of the EU; and the principle of coherence of EU policies and international instruments ratified by the EU Member States, EU delegations and embassies of EU MS should: (i) Insist on the cancellation, repeal or amendment of rules allowing the criminalisation of

the defence of human rights and whose application contravenes international and regional state obligations in this matter; (ii) Include in the cooperation programs aimed at strengthening the juridical systems the training of national human rights institutions and institutions for legal defence and designate sufficient resources for monitoring of the proper and equal application of justice, respect for the presumption of innocence and the right to a fair trial and to the competent authority; (iii) Identify, support and urge governments to implement existing recommendations related to the criminalisation of human rights defenders, such as those issued by: a) regional human rights systems; b) special mechanisms of the United Nations (Committees and Rapporteurs) and c) the United Nations Human Rights Council's Universal Periodic Review; (iv) base its activities to protect human rights defenders on states' human rights obligations in this regard, which included to not promote business involvement in dialogues with communities or their participation in institutions for the protection of human rights defenders.

- (e) The EU and its MS should contribute to the diverse mechanisms on human rights defenders in the frame of the UN Human Rights System, including financial and political support to the OHCHR, to ensure capacity for its work in this topic.
- (f) The EU and its Member States should support all actions taken in the frame of the UN Human Rights Council to improve the protection of HRDs working on economic, social and cultural rights, including land rights defenders. This includes the adoption of new resolutions, the support to statements of the presidency and the constitution of inquiry commissions for specific cases of violence against HRDs.
- (g) The recent creation of a new European Union Human Rights Defenders Mechanism, which is intended to become one of Europe's key tools to assist human rights defenders at risk, including in remote areas, is to be welcomed. However, it should not entail an outsourcing of the EU's and EU MS' obligations regarding the protection of HRDs.

## **6. Strengthen the monitoring role of the European Parliament**

With the adoption of the Lisbon Treaty, the European Parliament has been given greater power regarding the EU's external policies. This strengthened role gives the EP an important role in addressing land grabbing by EU corporate and financial entities. We recommend the following actions to the EP:

- (a) Contribute to the monitoring of the human rights impacts of EU policies and actions, among others by scrutinising Commission impact assessments and considering the possibility to conduct own impact assessments (see recommendations 2.1.c and 2.1.d), as well as monitoring the work of the EEAS, including monitoring reports of EU delegations on the activities of EU companies in other countries and on the situation of human rights defenders (see recommendations 3.1.b and 5).
- (b) Proactively fulfil its mission and use its right to request proposals for legislation from the Commission, and subsequently legislate, together with

the Council of the European Union, in order to 1) prevent extraterritorial human rights abuses and violations by EU actors and 2) provide effective remedy, complaint and sanction measures when human rights abuses and violations occur.

- (c) Until legislation and related mechanisms (see recommendation 6.b) are in place to prevent extraterritorial human rights abuses and violations by EU actors, the EP (e.g. DROI and AFET) should actively engage in assessing human rights impacts, amongst others, by requesting detailed information from relevant EU institutions (e.g. DG Trade, EEAS etc.), MS and European corporate and financial entities.
- (d) Set up a committee of inquiry (by making use of Rule 198 of the EP's Rules of Procedure) in order to investigate alleged breaches of the EU's extraterritorial human rights obligations in the context of land grabbing in third countries and related human rights abuses and violations by EU actors.

We recommend the following actions to the EU and EU MS:

- (e) Provide the EP with adequate information on human rights impact related to the involvement of European corporate and financial entities in land grabbing abroad (based on recommendation 3.1.b) and information directly retrieved from the European entities concerned.

## **7. Enhance the role of civil society**

Civil society has played an important role in bringing the issue of land grabbing to the agenda of the EU. While different processes and fora exist at EU level for the participation of civil society organisations (CSOs), their participation should be more systematic and guided by clear rules of engagement, also reflecting a clear understanding of different types of CSOs. We recommend the following actions to the EU:

- (a) Launch an inclusive process to discuss the promotion and implementation of a permanent mechanism that facilitates and guarantees the effective participation of CSOs, in developing, implementing and monitoring EU policies and actions, including those leading to land grabbing and human rights violations or abuses outside the EU. The discussion could be inspired by the Civil Society Mechanism established under the UN Committee on World Food Security (CFS), frequently quoted as being the most inclusive international and intergovernmental platform for policymaking.
- (b) Organise regular hearings at the EP in order to hear the voices of those affected by EU policies and the activities of EU actors, including in the context of land grabbing, as well as CSOs.

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## Annexes

### Annex 1: Reported deals involving EU Member States in non-EU countries

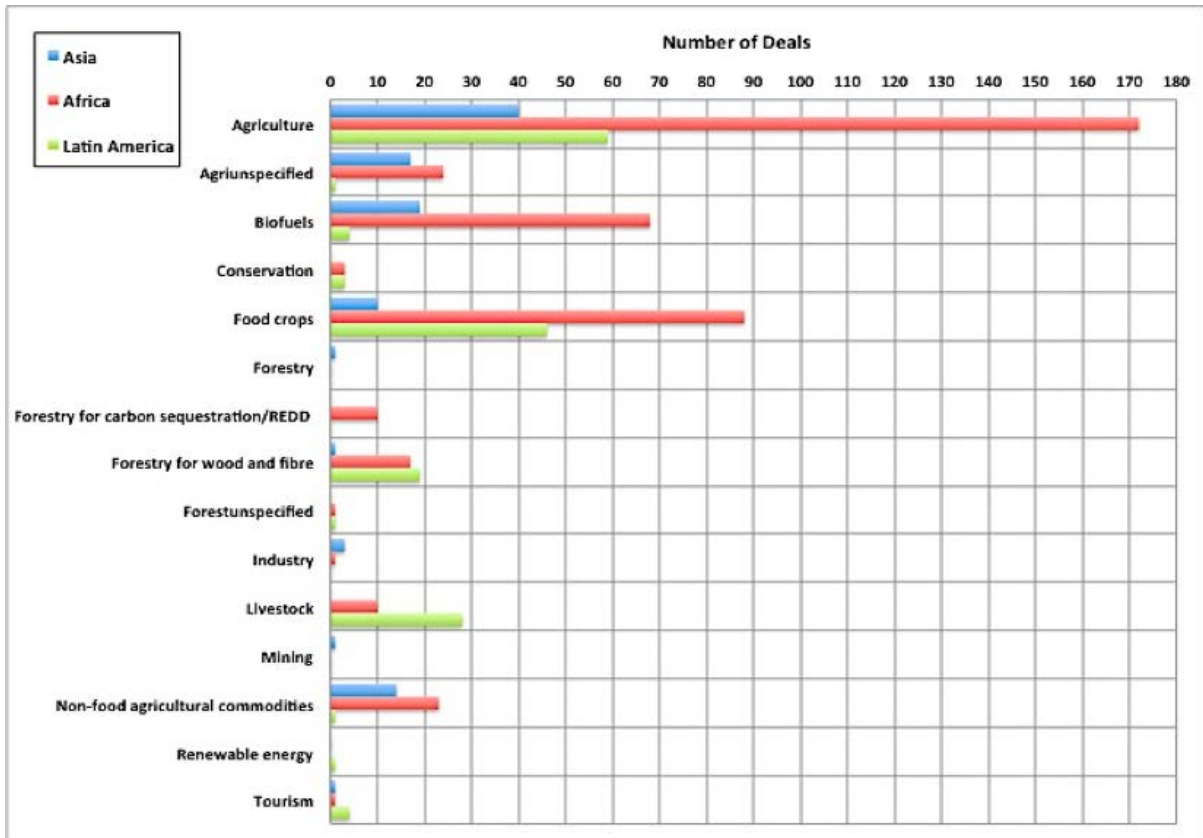
Investing Country	Number of Companies	Targeted Countries (Number of Deals)	Total Number of Deals	Total Amount of Land Under Contract (ha)	Intended Use of Land
Austria	2	India (1), Ethiopia (1)	2	21.000	Agriculture, Biofuels, Food crops, Non-food agricultural commodities
Belgium	7	Tanzania (1), Democratic Republic of Congo (3), Nigeria (3), Cote d'Ivoire (3), Gabon (1), Indonesia (8), Argentina (1)	20	251.808	Agriculture, Food crops, Agriunspecified, Forestry for carbon sequestration/REDD, Conservation, Non-food agricultural commodities, Livestock, Tourism
Denmark	5	Peru (2), Mali (1), Zambia (1), Ethiopia (1), Cambodia (1)	6	31.460	Agriculture, Food crops, Non-food agricultural commodities, Biofuels, Forestry
Estonia	1	Mozambique (1)	1	18.800	Agriculture, Food crops, Non-food agricultural commodities, Agriunspecified
Finland	5	South Sudan (1), Tanzania (1), Sierra Leone (1), China (1), Uruguay (14)	18	566.559	Forestry for wood and fibre and for carbon sequestration/REDD, Agriculture
France	17	Burkina Faso (1), Mali (2), Guinea (1), Argentina (2), India (1), Ethiopia (1), Cambodia (1), Senegal (4), Ghana (1), Cameroon (2), Madagascar (1), Niger (1), Nigeria (1), Liberia (1), Uruguay (8), Cote d'Ivoire (1), Gabon (1), Central African Republic (1), Tunisia (1), Indonesia (1), Paraguay (1), Argentina (3), Brazil (3)	40	629.953	Agriculture, Biofuels, Food crops, Industry, Tourism, Forestry for carbon sequestration/REDD, Forestry, Forestunspecified, Non-food agricultural commodities, Livestock, Agriunspecified, Conservation
Germany	12	Zambia (3), Uganda (2), Zimbabwe (1), Tanzania (1), Mozambique (1), Thailand (1), Madagascar (2), Ghana (3), Sierra Leone (1), Ethiopia (1)	16	309.566	Agriculture, Food crops, Livestock, Agriunspecified, Forestry for wood and fibre, Biofuels, Industry, Non-food agricultural commodities
Italy	17	Ghana (1), Tanzania (1), Mozambique (6), Senegal (3), Angola (1), Congo (1), Liberia (2), Ethiopia (3), Nigeria (1), Guinea (1), Madagascar (1)	21	615.674	Agriculture, Biofuels, Forestry for carbon sequestration/REDD, Food crops, Forestry for wood and fibre, Non-food agricultural commodities
Luxembourg	4	Ethiopia (1), Argentina (4), Peru (2), Sierra Leone (1), Liberia (1), Democratic Republic of Congo (1), Guinea (1), Cambodia (1), Sao Tome and Principe (1), Nigeria (1)	14	157.914	Agriculture, Biofuels, Food crops, Agriunspecified, Non-food agricultural commodities



Netherlands	18	Ethiopia (3), Senegal (2), Tanzania (2), Liberia (1), Mozambique (2), Malawi (1), Sierra Leone (1), Brazil (3), Costa Rica (2), Ghana (1), Cambodia (1), Kenya (1)	20	414.974	Agriculture, Non-food agricultural commodities, Biofuels, Food crops, Forestry for carbon sequestration/REDD, Conservation, Forestry for wood and fibre, Forestunspecified, Forestry, Tourism, Livestock, Renewable energy
Portugal	13	Mozambique (12), Angola (3), Paraguay (1), Brazil (1)	17	503.953	Agriculture, Food crops, Non-food agricultural commodities, Biofuels, Livestock, Forestry for wood and fibre, Renewable energy, Agriunspecified
Romania	1	Gambia (1), Senegal (1)	2	130.000	Agriculture, Biofuels
Spain	16	Philippines (2), Mexico (1), Chile (2), Brazil (1), Guinea-Bissau (1), Congo (1), Guatemala (1), Colombia (2), Nicaragua (1), Argentina (1), Ghana (1), Gambia (1), South Africa (1), Tunisia (1), Morocco (1)	18	136.504	Agriculture, Biofuels, Renewable energy, Food crops, Tourism, Forestry for wood and fibre, Agriunspecified
Sweden	4	Tanzania (2), Ethiopia (1), Mozambique (2)	5	77.329	Agriculture, Biofuels, Forestry for wood and fibre, Food crops, Renewable energy
United Kingdom	60	Mozambique (9), Tanzania (9), Ghana (9), Sierra Leone (7), Kenya (2), Indonesia (18), Philippines (2), Namibia (2), Malawi (4), Peru (2), Rwanda (2), Liberia (3), Guinea (4), Madagascar (2), Zambia (4), Democratic Republic of Congo (2), Nigeria (5), Argentina (4), Cameroon (1), Angola (1), Mali (1), South Sudan (2), India (3), Malaysia (1), Uganda (1), Honduras (1), Paraguay (1), Uruguay (15), Brazil (3), Ethiopia (1)	124	1.972.010	Forestry for carbon sequestration/REDD, Agriculture, Food crops, Renewable energy, Non-food agricultural commodities, Biofuels, Agriunspecified, Livestock, Forestry for wood and fibre
Total	<b>182</b>	<b>52</b>	<b>323</b>	<b>5.837.504</b>	
	<b>Companies</b>	<b>Countries Targeted</b>	<b>Deals</b>	<b>Hectares</b>	

**Source:** Own elaboration using calculations made from Land Matrix data (2016).

## Annex 2: Overall intended use of land involved in EU land deals



**Source:** Own elaboration using calculations made from Land Matrix data (2016).

### Annex 3: Recorded land deals involving EU-based companies

Source: Own elaboration using calculations made from Land Matrix data (2016).

<i>Investing Country</i>	<i>Investing Company</i>	<i>Target Country</i>	<i>Domestic Primary Investor</i>	<i>Intention of Investment</i>	<i>Deal Status</i>	<i>Size of Land</i>	<i>Nature of Deal</i>
<b>EASTERN EUROPE (2 Deals)</b>							
<b>Romania</b>	Ovidiu Tender	Gambia	Unknown	Agriculture, Biofuels	Concluded, contract signed; [2011] Startup phase, no production	30.000 ha [intended size]; 30.000 ha [contract size]	Lease/Concession
<b>Romania</b>	Ovidiu Tender	Senegal	Unknown	Agriculture, Biofuels	Concluded, contract signed; [2011] Startup phase, no production	100.000 ha [intended size]; 100.000 ha [contract size]	Lease/Concession
<b>NORTHERN EUROPE (154 Deals)</b>							
<b>Denmark</b>	Arne Hensel Berg	Peru	Danper Trujillo S.A.C	Agriculture, Food crops, Non-food agricultural commodities	[2003] Concluded (Contract signed); In operation (production)	unknown [intended]; 1.640 ha [contract]	Outright purchase
<b>Denmark</b>	Arne Hensel Berg	Peru	Danper Trujillo S.A.C	Agriculture	[2012] Concluded (Contract signed); [2012] Startup phase (no production)	unknown [intended]; 1.000 ha [contract]	Outright purchase
<b>Denmark</b>	Danish Folkecenter for Renewable Energy	Mali	Mali Folkcenter	Agriculture, Biofuels	Concluded (Contract signed); In operation (production)	unknown ha [intended size]; 1.000 ha [contract size]	Unknown
<b>Denmark</b>	Denbia	Zambia	Chulumenda	Agriculture, Food Crops, Livestock	[2003] Concluded (Contract signed); In operation (production)	3.000 ha [intended]; 3.000 ha [contract]; 1.000 ha [in production]	Unknown

<b>Denmark</b>	I.D.C Investment	Ethiopia	Unknown	Agriculture, Biofuels	Concluded (Contract signed); [2007] In operation (production)	unknown [intended size]; 15.000 ha [contract size]	Unknown
<b>Denmark</b>	International Woodlands Company A/S	Cambodia	Grandis Timber Ltd.	Forestry	[2009] Concluded, contract signed	Unknown [intended size]; 9.820 ha [contract size]	Lease/Concession
<b>Estonia</b>	Trigon Capital	Mozambique	Trigon Mozagri Spv	Agriculture, Food crops, Non-food agricultural commodities, Agriunspecified	Concluded (Contract signed); In operation (production)	18.800 ha [intended]; 18.800 ha [contract]; 1.000 ha [in production 2014]	Lease/Concession
<b>Finland</b>	Stora Enso	China	Guangxi Stora Enso Forestry Co. Ltd.	Forestry for wood and fibre, Industry	Concluded, contract signed; [2005] in production	120.000 ha [intended size]; 90.286 ha [contract size]	Lease/Concession
<b>Finland</b>	Stora Enso	Uruguay	Montes del Plata (Silver Forests)	Forestry for wood and fibre	[2009] Concluded (Contract signed); [2009] In operation (production)	unknown [intended]; 66.659 ha [contract]; 39.146 ha [in production 2012]	Outright purchase
<b>Finland</b>	Stora Enso	Uruguay	Montes del Plata (Silver Forests)	Forestry for wood and fibre	[2009] Concluded (Contract signed); [2009] In operation (production)	unknown [intended]; 69.957 ha [contract]; 37.508 ha [in production 2012]	Outright purchase
<b>Finland</b>	Stora Enso	Uruguay	Montes del Plata (Silver Forests)	Forestry for wood and fibre	[2009] Concluded (Contract signed); [2009] In operation (production)	unknown [intended]; 40.269 ha [contract]; 23.231 ha [in production 2012]	Outright purchase
<b>Finland</b>	Stora Enso	Uruguay	Montes del Plata (Silver Forests)	Forestry for wood and fibre	[2009] Concluded (Contract signed); [2009] In operation (production)	unknown [intended]; 23.614 ha [contract]; 15.824 ha [in production 2012]	Outright purchase
<b>Finland</b>	Stora Enso	Uruguay	Montes del Plata (Silver Forests)	Forestry for wood and fibre	[2009] Concluded (Contract signed); [2009] In operation (production)	unknown [intended]; 15.626 ha [contract]; 10.864 ha [in production 2012]	Outright purchase
<b>Finland</b>	Stora Enso	Uruguay	Montes del Plata (Silver Forests)	Forestry for wood and fibre	Concluded (Contract signed); [2012] Startup phase (no production)	unknown [intended]; 366 ha [contract]	Outright purchase
<b>Finland</b>	Stora Enso	Uruguay	Montes del Plata (Silver Forests)	Forestry for wood and fibre	[2009] Concluded (Contract signed); [2009] In operation (production)	unknown [intended]; 5.186 ha [contract]; 3.142 ha [in production 2012]	Outright purchase
<b>Finland</b>	Stora Enso	Uruguay	Montes del Plata (Silver Forests)	Forestry for wood and fibre	[2009] Concluded (Contract signed); [2009] In operation	unknown [intended]; 4.695 ha [contract]; 2.755 ha [in	Outright purchase

					(production)	production 2012]	
<b>Finland</b>	Stora Enso	Uruguay	Montes del Plata (Silver Forests)	Forestry for wood and fibre	[2009] Concluded (Contract signed); [2009] In operation (production)	unknown [intended]; 1.153 ha [contract]; 702 ha [in production 2012]	Outright purchase
<b>Finland</b>	Stora Enso	Uruguay	Montes del Plata (Silver Forests)	Forestry for wood and fibre	[2009] Concluded (Contract signed); [2009] In operation (production)	unknown [intended]; 1.816 ha [contract]; 421 ha [in production 2012]	Outright purchase
<b>Finland</b>	UPM	Uruguay	Unknown (M-Real, Metsäliitto)	Forestry for wood and fibre	Concluded (Contract signed); In operation (production)	140.000 ha [intended size]; unknown [contract size]	Outright purchase
<b>Finland</b>	UPM	Uruguay	Forestal Oriental S.A.	Forestry for wood and fibre	[2011] Concluded (Contract signed); [2011] In operation (production)	unknown [intended] 7.000 ha [contract]; 7.000 ha [in production 2011]	Lease/Concession
<b>Finland</b>	UPM	Uruguay	Forestal Oriental S.A.	Forestry for wood and fibre	[2011] Concluded (Contract signed); [2011] In operation (production)	unknown [intended]; 11.000 ha [contract]; 11.000 ha [in production 2011]	Lease/Concession
<b>Finland</b>	Fenno Caledonian	South Sudan	Unknown	Forestry for wood and fibre	[2010] Intended (Under negotiation); unknown current status	160.000 ha [intended]; unknown ha [contract]	Unknown
<b>Finland</b>	Finnish Fund for Development Cooperation (Finnfund)	Tanzania	Kilombero Valley Teak Company (KVTC)	Forestry for wood and fibre and for carbon sequestration/REDD	[2011] Concluded (Contract signed); [2011] In operation (production)	28.132 ha [intended]; 28.132 ha [contract]; 4.748 ha [in operation 2012]	Lease/Concession
<b>Finland</b>	Finnish Fund for Industrial Cooperation	Sierra Leone	Goldtree (SL) Ltd.	Agriculture	[2011] Concluded (Contract signed); [2013] In operation (production)	5.058 ha [intended]; 800 ha [contract 2011]	Lease/Concession
<b>Finland</b>	UPM	Uruguay	Forestal Oriental S.A.	Forestry for wood and fibre	[2009] Concluded (Contract signed); [2009] In operation (production)	unknown [intended size]; 200.000 ha [contract size]; 200.000 ha [in production 2013]	Outright purchase; Lease/Concession
<b>Sweden</b>	Bio Massive	Tanzania	Unknown	Agriculture, Biofuels	[2009] Failed (Negotiations failed); [2009] Project abandoned	50.000 ha [intended]; unknown [contract]	Unknown
<b>Sweden</b>	Bio Massive	Ethiopia	Unknown	Agriculture, Biofuels	Intended (Under negotiation);	50.000 ha [intended size];	Unknown

Land Grabbing and Human Rights:  
The Involvement of European Corporate and Financial Entities in Land Grabbing Outside the EU

					unknown current status	unknown [contract size]	
<b>Sweden</b>	Diocese of Vasteras Church of Sweden	Mozambique	LevasFlor, Lda	Forestry for wood and fibre	[2005] Concluded (Contract signed); In operation (production)	unknown [intended]; 46.240 ha [contract]	Unknown
<b>Sweden</b>	EcoEnergy Africa AB	Tanzania	Agro EcoEnergy Tanzania Limited	Agriculture, Biofuels, Food crops, Forestry for wood and Fibre, Renewable energy	[2009] Concluded (Contract signed); [2012] In operation (production)	28.000 ha [intended]; 22.300 ha [contract]; 200 ha [in production 2012]	Lease/Concession
<b>Sweden</b>	Silvestria Utveckling AB	Mozambique	Luambala Jatropa Lda	Agriculture, Biofuels	[2008] Concluded (Contract signed); In operation (production)	8.789 ha [intended]; 8.789 ha [contract]	Unknown
<b>United Kingdom</b>	African Timber and Farming Co	Mozambique	ATFC (Mozambique) Madeiras e Agricultura, Lda	Forestry for carbon sequestration/REDD	[2009] Concluded (Oral Agreement); In operation (production)	30.000 ha [intended]; 30.000 ha [contract]	Unknown
<b>United Kingdom</b>	AgDevCo	Tanzania	Sasamua Holdings Limited	Agriculture, Food Crops	[2012] Concluded (Contract signed); Startup phase (no production)	2.500 ha [intended]; 7.295 ha [contract]; 1.000 ha [in production 2012]	Unknown
<b>United Kingdom</b>	AgDevCo	Ghana	Unknown (Government of Ghana)	Agriculture, Food crops	[2012] Intended (Under negotiation); unknown current status	4.500 ha [intended]; unknown [contract]	Unknown
<b>United Kingdom</b>	AgDevCo	Ghana	Unknown (Government of Ghana)	Agriculture, Food crops	[2012] Intended (Under negotiation); unknown current status	unknown [intended]; 2.310 ha [contract]	Unknown
<b>United Kingdom</b>	Agriterra Ltd.	Sierra Leone	Tropical Farms Limited	Agriculture, Food crops	[2011] Concluded (Contract signed); [2008] In operation (production)	unknown [intended]; 1.550 ha [contract]; 200 ha [in production 2013]	Unknown
<b>United Kingdom</b>	Aldwych International Limited	Kenya	Lake Turkana Wind Power Ltd	Renewable energy	[2009] Concluded (Contract signed); [2014] Project not started	16.187 ha [intended]; 16.187 ha [contract]	Lease/Concession
<b>United Kingdom</b>	Anglo-Eastern Plantations Plc	Indonesia	Unknown (Anglo-Eastern Plantations Plc)	Agriculture, Biofuels, Food crops, Non-food agricultural commodities	[2004] Concluded (Contract signed); [2005] In operation (production)	unknown [intended]; 5.200 ha [contract]; 4.873 ha [in production 2014]	Unknown

<b>United Kingdom</b>	Anglo-Eastern Plantations Plc	Indonesia	Unknown (Anglo-Eastern Plantations Plc)	Agriculture, Biofuels, Food crops, Non-food agricultural commodities	[2007] Concluded (Contract signed); unknown current status	unknown [intended]; 7.000 ha [contract]	Unknown
<b>United Kingdom</b>	Anglo-Eastern Plantations Plc	Indonesia	PT Kahayan	Agriculture, Biofuels, Food crops, Non-food agricultural commodities	[2010] Concluded (Contract signed); unknown current status	unknown [intended]; 17.500 ha [contract]	Unknown
<b>United Kingdom</b>	Bronzeoak Group	Philippines	Unknown	Agriculture	Concluded (Contract signed); In operation (production)	11.000 ha [intended]; 9.000 ha [contract]	Unknown
<b>United Kingdom</b>	Farm Lands of Guinea Limited	Guinea	Land & Resources	Agriculture, Food crops	[2010] Concluded (Contract signed); [2011] Project not started	8.815 ha [intended size]; 8.815 ha [contract size]	Lease/Concession
<b>United Kingdom</b>	Farm Lands of Guinea Limited	Guinea	Land & Resources	Agriculture	[2010] Concluded (Contract signed); Project not started	1.500.000 ha [intended size]; unknown [contract size]	Unknown
<b>United Kingdom</b>	Formako Farms	Ghana	Formako Company Ltd.	Agriculture, Food crops	Concluded (Contract signed); [2004] In operation (production)	405 ha [intended]; 405 ha [contract]	Lease/Concession
<b>United Kingdom</b>	G4	Kenya	Unknown	Agriculture, Biofuels, Food crops	[2009] Under negotiation; [2011] Failed (Negotiations failed); unknown current status	28.991 ha [intended size]; unknown [contract size]	Lease/Concession
<b>United Kingdom</b>	Hawkwood Capital LLC	Democratic Republic of the Congo	Congo Biofuels (CBF)	Agriculture, Food crops, Forestry for wood and fibre	Concluded (Contract signed); Startup phase (no production)	10.000 ha [intended]; 10.000 ha [contract]	Lease/Concession
<b>United Kingdom</b>	Hawkwood Capital LLC	Democratic Republic of the Congo	Congo Biofuels (CBF)	Agriculture, Food crops, Non-food agricultural commodities, Forestry for wood and fibre	[2008] Concluded (Contract signed); Project not started	12.700 ha [intended]; 12.700 ha [contract]; 3.676 ha [in production]	Lease/Concession
<b>United Kingdom</b>	Herdon Investments	Zambia	Unknown	Agriculture, Food crops	[2003] Concluded (Contract signed); In operation (production)	unknown [intended]; 650 ha [contract]	Lease/Concession
<b>United Kingdom</b>	InfraCo Limited	Zambia	Chanyanya Infrastructure Company	Agriculture, Food crops	[2006] Concluded (Contract signed); [2009] In operation (production)	1.575 ha [intended]; 1.575 ha [contract]; 148 ha [in production 2008]	Lease/Concession

Land Grabbing and Human Rights:  
The Involvement of European Corporate and Financial Entities in Land Grabbing Outside the EU

<b>United Kingdom</b>	Jacoma Estates Ltd AgDevCo African Agricultural Capital Fund	Malawi	Tropha Ltd.	Agriculture, Food Crops	[2014] Concluded (Contract signed); [2014] Project not started	518 ha [intended]; 518 ha [contract]	Lease/Concession
<b>United Kingdom</b>	Justin Sugar Ltd.	Cameroon	Justin Sugar Mills	Agriculture, Biofuels, Food crops, Non-food agricultural commodities	[2013] Concluded (Contract signed); [2014] Startup phase (no production)	54.632 ha [intended]; 54.632 ha [contract]	Lease/Concession
<b>United Kingdom</b>	Lion Mountains Agrico Ltd.	Sierra Leone	Unknown	Agriculture, Food crops	Concluded (Contract signed); [2014] Project not started	unknown [intended]; 14.000 ha [contract]	Lease/Concession
<b>United Kingdom</b>	Lukulilo Farm Holdings	Tanzania	Lukulilo Farm Holdings	Agriculture, Food crops	[2012] Concluded (Oral Agreement); Project not started	5.000 ha [intended] 5.000 ha [contract]	Unknown
<b>United Kingdom</b>	M.P. Evans Group PLC	Indonesia	PT Pangkatan Indonesia	Agriculture, Agriunspecified	Concluded (Contract signed); In operation (production)	unknown [intended]; 2.586 ha [contract]; 2.427 ha [in production 2012]	Unknown
<b>United Kingdom</b>	M.P. Evans Group PLC	Indonesia	PT Bilah Plantindo	Agriculture, Agriunspecified	Concluded (Contract signed); In operation (production)	unknown [intended]; 2.961 ha [contract]; 2.856 ha [in production 2012]	Lease/Concession
<b>United Kingdom</b>	M.P. Evans Group PLC	Indonesia	PT Sembada Sennah Maju	Agriculture, Agriunspecified	Concluded (Contract signed); In operation (production)	unknown [intended]; 1.813 ha [contract]; 1.681 ha [in production 2012]	Unknown
<b>United Kingdom</b>	M.P. Evans Group PLC	Indonesia	PT Teguh Jayaprima Abadi	Agriculture, Agriunspecified	[2007] Concluded (Contract signed); [2007] In operation (production)	unknown [intended]; 18.600 ha [contract]; 2.527 ha [in production 2013]	Unknown
<b>United Kingdom</b>	MedEnergy Global	Mozambique	Unknown	Agriculture, Agriunspecified	[2010] Concluded (Contract signed); Startup phase (no production)	10.000 ha [intended]; 10.000 ha [contract]	Lease/Concession
<b>United Kingdom</b>	Merlin Partners LLP	Malawi	Malawi Mangoes Limited	Agriculture, Food crops	Concluded (Contract signed); [2013] In operation (production)	3.434 ha [intended]; 434 ha [contract]	Lease/Concession
<b>United Kingdom</b>	NEOS Resources PLC	Indonesia	PT D1 Oils Indonesia	Agriculture, Non-food agricultural commodities	[2007] concluded, contract signed; project abandoned	Unknown [intended size]; 500 ha [contract size]	Unknown
<b>United Kingdom</b>	NEOS Resources PLC	Philippines	Atlas Consolidated Mining and	Agriculture, Biofuels	[2005] under negotiation; [2008] project abandoned	7.000 ha [intended size]; unknown [contract size]	Unknown



				Development Co.				
<b>United Kingdom</b>	NEOS Resources PLC	Mozambique	Mocambique Inhlavuka	Agriculture, Biofuels	[2007] Concluded (Contract signed); Project abandoned	unknown [intended]; 5.348 ha [contract]	Unknown	
<b>United Kingdom</b>	NEOS Resources PLC	Zambia	D1 Oils Ltd. (Malawi)	Agriculture, Biofuels	[2006] Concluded (Contract signed); [2012] Project abandoned	860 ha [intended]; 860 ha [contract]	Lease/Concession	
<b>United Kingdom</b>	Peak Palm Oil PLC	Guinea	Unknown	Agriculture, Agriunspecified	Concluded (Contract signed); In operation (production)	100.000 ha [intended]; 5.000 ha [contract]; 2.000 ha [in production]	Lease/Concession	
<b>United Kingdom</b>	SABmiller	Honduras	Unknown	Agriculture, Food crops	Concluded (Contract signed); Startup phase (no production)	3.644 ha [intended]; unknown [contract]	Unknown	
<b>United Kingdom</b>	Solvia Investment Management	Uruguay	CalyxAgro	Agriculture, Food Crops, Livestock	[2008] Concluded (Contract signed); [2008] In operation (production)	unknown [intended]; 1.010 ha [contract]	Outright purchase	
<b>United Kingdom</b>	Solvia Investment Management	Uruguay	CalyxAgro	Agriculture, Food Crops, Livestock	Concluded (Contract signed); In operation (production)	unknown [intended]; 611 ha [contract]	Outright purchase	
<b>United Kingdom</b>	Solvia Investment Management	Uruguay	CalyxAgro	Agriculture, Food Crops, Livestock	[2009] Concluded (Contract signed); [2009] In operation (production)	unknown [intended]; 708 ha [contract]	Outright purchase	
<b>United Kingdom</b>	Solvia Investment Management	Uruguay	CalyxAgro	Agriculture, Food Crops, Livestock	Concluded (Contract signed); In operation (production)	unknown [intended]; 1.659 ha [contract]	Outright purchase	
<b>United Kingdom</b>	Solvia Investment Management	Brazil	CalyxAgro	Agriculture	Concluded (Contract signed); [2013] In operation (production)	unknown [intended]; 7.786 ha [contract]	Outright purchase	
<b>United Kingdom</b>	Solvia Investment Management	Brazil	CalyxAgro	Agriculture, Food crops	Concluded (Contract signed); [2009] In operation (production)	unknown [intended]; 10.853 ha [contract]; 8.637 ha [in production 2009]	Outright purchase	
<b>United Kingdom</b>	Solvia Investment Management	Brazil	CalyxAgro	Agriculture, Food Crops	[2008] Concluded (Contract signed); [2008] In operation (production)	unknown [intended]; 8.758 ha [contract]; 6.745 ha [in production 2008]	Outright purchase	
<b>United Kingdom</b>	Sunbird Bio Energy Limited	Nigeria	Obax Worldwide Limited	Agriculture, Biofuels	[2014] Concluded (Contract signed); unknown current status	20.000 ha [intended]; 20.000 ha [contract]	Lease/Concession	
<b>United Kingdom</b>	Trans4mation	Nigeria	Unknown	Agriculture, Food Crops	[2008] Concluded (Contract signed); Project abandoned	300.000 ha [intended]; unknown [contract]	Lease/Concession	

Land Grabbing and Human Rights:  
The Involvement of European Corporate and Financial Entities in Land Grabbing Outside the EU

<b>Kingdom</b>	Agritech					signed); unknown current status	10.000 ha [contract]	
<b>United Kingdom</b>	Trans4mation Agritech	Nigeria	Transformation Agritech Nigeria Limited (T4M)	Agriculture, Food Crops, Livestock		[2009] Concluded (Contract signed); [2013] In operation (production)	10.000 ha [intended]; 10.000 ha [contract]	Lease/Concession
<b>United Kingdom</b>	Trans4mation Agritech	Ghana	Unknown	Agriculture, Food crops		[2009] Intended (Under negotiation); unknown current status	100.000 ha [intended]; unknown [contract]	Lease/Concession
<b>United Kingdom</b>	Union Groups (UK) LLP	Uruguay	Unión Group	Agriculture	Agriculture, Food Crops, Livestock	Concluded (Contract signed); In operation (production)	unknown [intended]; 25.524 ha [contract]; 23.989 ha [in production]	Outright purchase
<b>United Kingdom</b>	Union Groups (UK) LLP	Uruguay	Unión Group	Agriculture	Agriculture, Food Crops, Livestock	Concluded (Contract signed); In operation (production)	unknown [intended]; 10.178 ha [contract]; 10.016 ha [in production]	Outright purchase
<b>United Kingdom</b>	Union Groups (UK) LLP	Uruguay	Unión Group	Agriculture	Agriculture, Food Crops, Livestock	Concluded (Contract signed); In operation (production)	Unknown [intended]; Unknown [contract]; 2.666 ha [in production]	Outright purchase
<b>United Kingdom</b>	Union Groups (UK) LLP	Uruguay	Unión Group	Agriculture	Agriculture, Food Crops, Livestock	Concluded (Contract signed); In operation (production)	Unknown [intended]; Unknown [contract]; 15.693 ha [in production]	Outright purchase
<b>United Kingdom</b>	Union Groups (UK) LLP	Uruguay	Unión Group	Agriculture	Agriculture, Livestock	Concluded (Contract signed); In operation (production)	unknown [intended]; 7.064 ha [contract]; 7.064 ha [in production]	Outright purchase
<b>United Kingdom</b>	Union Groups (UK) LLP	Uruguay	Unión Group	Agriculture	Agriculture, Food Crops, Livestock	Concluded (Contract signed); In operation (production)	unknown [intended]; 9.262 ha [contract]; 9.262 ha [in production]	Outright purchase
<b>United Kingdom</b>	Union Groups (UK) LLP	Uruguay	Unión Group	Agriculture	Agriculture, Food Crops, Livestock	Concluded (Contract signed); In operation (production)	unknown [intended]; 1.192 ha [contract]; 1.192 ha [in production]	Outright purchase
<b>United Kingdom</b>	Union Groups (UK) LLP	Uruguay	Unión Group	Agriculture	Agriculture, Food Crops, Livestock	Concluded (Contract signed); In operation (production)	unknown [intended]; 15.458 ha [contract]; 13.052 ha [in production]	Outright purchase
<b>United Kingdom</b>	Union Groups (UK) LLP	Uruguay	Unión Group	Agriculture	Agriculture, Livestock, Forestry for wood and fibre	Concluded (Contract signed); In operation (production)	unknown [intended]; 11.502 ha [contract]; 769 ha [in production]	Outright purchase

<b>United Kingdom</b>	Union Groups (UK) LLP	Uruguay	Unión Group	Agriculture	Agriculture, Food Crops, Livestock	Concluded (Contract signed); In operation (production)	unknown [intended]; 6.889 ha [contract]; 5.217 ha [in production]	Outright purchase
<b>United Kingdom</b>	Union Groups (UK) LLP	Uruguay	Unión Group	Agriculture	Agriculture, Livestock	Concluded (Contract signed); In operation (production)	unknown [intended]; 922 ha [contract]; 922 ha [in production]	Outright purchase
<b>United Kingdom</b>	Unknown	Ghana	Gold Coast Fruits Ltd.		Agriculture, Food Crops	[2005] Concluded (Contract signed); [2007] In operation (production)	500 ha [intended]; 500 ha [contract]; 400 ha [in production 2010]	Lease/Concession
<b>United Kingdom</b>	Volta Red	Ghana	Unknown		Agriculture, Agriunspecified	[2013] Concluded (Contract signed); [2010] In operation (production)	3.750 ha [intended]; 3.750 ha [contract 2013]; 2.050 ha [in production 2012]	Lease/Concession
<b>United Kingdom</b>	Volta Red	Ghana	Unknown		Agriculture, Agriunspecified	[2013] Concluded (Contract signed); [2015] In operation (production)	650 ha [intended]; 650 ha [contract]	Lease/Concession
<b>United Kingdom</b>	Agrica	Tanzania	Kilombero Plantations Ltd.		Agriculture, Food Crops	[2006] Concluded (Contract signed); [2010] In operation (production)	11.018 ha [intended]; 5.818 ha [contract]; 4.178 ha [in production 2011]	Outright purchase
<b>United Kingdom</b>	Agricapital	Sierra Leone	Agricapital Sierra Leone Ltd		Agriculture, Food Crops	[2011] Concluded (Contract signed); unknown current status	unknown ha [intended]; 1.250 ha [contract]	Lease/Concession
<b>United Kingdom</b>	Agricapital	Sierra Leone	Red Bunch Ventures (SL)		Agriculture	[2011] Concluded (Contract signed); Project not started	45.000 ha [intended]; 45.000 ha [contract]	Lease/Concession
<b>United Kingdom</b>	Agriterra Ltd.	Mozambique	Mozbife		Agriculture, Livestock	[2010] Concluded (Contract signed); In operation (production)	23.650 ha [intended size]; 21.000 ha [contract]	Unknown
<b>United Kingdom</b>	Anglo-Eastern Plantations Plc	Indonesia	Unknown (Anglo-Eastern Plantations Plc)		Agriculture, Biofuels, Food crops, Non-food agricultural commodities	[2007] Concluded (Contract signed); [2007] In operation (production)	unknown [intended]; 5.536 ha [contract]; 1.629 ha [in production 2007]	Unknown
<b>United Kingdom</b>	Anglo-Eastern Plantations Plc	Indonesia	Unknown (Anglo-Eastern Plantations Plc)		Agriculture, Biofuels, Food crops, Non-food agricultural commodities	[2007] Concluded (Contract signed); [2007] In operation (production)	unknown [intended]; 4.470 ha [contract]	Unknown

Land Grabbing and Human Rights:  
The Involvement of European Corporate and Financial Entities in Land Grabbing Outside the EU

<b>United Kingdom</b>	Anglo-Eastern Plantations Plc	Indonesia	PT Riau Agrindo Agung (RAA)	Agriculture, Biofuels, Food crops, Non-food agricultural commodities	[2008] Concluded (Contract signed); unknown current status	unknown [intended]; 15.000 ha [contract]	Unknown
<b>United Kingdom</b>	Anglo-Eastern Plantations Plc	Indonesia	PT Empat Lawang Agro Perkasa (ELAP)	Agriculture, Biofuels, Food crops, Non-food agricultural commodities	[2008] Concluded (Contract signed); unknown current status	unknown [intended]; 14.100 ha [contract]	Unknown
<b>United Kingdom</b>	Anglo-Eastern Plantations Plc	Indonesia	PT Karya Kencana Sentosa Tiga (KKST)	Agriculture, Biofuels, Food crops, Non-food agricultural commodities	[2008] Concluded (Contract signed); unknown current status	unknown [intended]; 16.000 ha [contract]	Unknown
<b>United Kingdom</b>	Bronzeoak Group	Philippines	Bronzeoak Philippines Inc.	Agriculture, Biofuels	Concluded, contract signed; Project not started	10.000 ha [intended size]; 5.000 ha [contract size]	Unknown
<b>United Kingdom</b>	Bronzeoak Group	Philippines	San Carlos Bioenergy	Agriculture, Biofuels	Concluded (Contract signed); [2009] In operation (production)	unknown [intended]; 5.000 ha [contract]	Unknown
<b>United Kingdom</b>	CAMS Global	Tanzania	CMC Agriculture Bio-Energy Tanzania	Agriculture, Biofuels, Food crops, Renewable energy	[2013] Intended (Under negotiation); unknown current status	45.000 ha [intended]; unknown [contract]	Unknown
<b>United Kingdom</b>	Caparo Group	Namibia	Namibia Agriculture and Renewables (NAR)	Agriculture, Food Crops	[2010] Intended (Under negotiation); Project abandoned	30.000 ha [intended]; unknown current status	Lease/Concession
<b>United Kingdom</b>	Cru Investments	Malawi	Unknown	Agriculture, Food crops	[2009] In operation (production); [2010] Failed (Contract canceled); [2010] Project abandoned	unknown [intended]; 2.321 ha [contract]	Unknown
<b>United Kingdom</b>	Demeter International	Namibia	LIH Demeter Agribusiness (LDA)	Agriculture, Food Crops	[2009] Under negotiation; [2010] Failed (Negotiations failed); unknown current status	10.000 ha [intended]; unknown [contract]	Lease/Concession
<b>United Kingdom</b>	Deutsche Bank Ag London	Peru	Camposol S.A.	Agriculture, Food crops	[2006] Concluded (Contract signed); [2006] Startup phase (no production)	unknown [intended size]; 3.778 ha [contract size]	Outright purchase
<b>United Kingdom</b>	Deutsche Bank Ag London	Peru	Camposol S.A.	Agriculture, Food Crops	[2003] Concluded (Contract signed); [2003] In operation (production)	unknown [intended]; 7.700 ha [contract]	Outright purchase; Exploitation license

<b>United Kingdom</b>	DOS Palm Oil Production Limited UK	Ghana	DOS Palm Oil Production (Ghana Ltd)	Agriculture, Agriunspecified	Agriculture [2007] Concluded (Contract signed); [2013] Startup phase (no production)	3.000 ha [intended]; 700 ha [contract]; 600 ha [in production 2013]	Lease/Concession
<b>United Kingdom</b>	Eco-Positive Ltd.	Rwanda	Rwanda Biofuels Ltd.	Agriculture, Biofuels	[2009] Concluded (Contract signed); unknown current status	100.000 ha [intended]; 10.000 ha [contract 2009]	Lease/Concession
<b>United Kingdom</b>	Equatorial Palm Oil Plc	Liberia	Liberian Operations Inc.	Agriculture	[2008] Concluded (Contract signed); [2012] In operation (production)	24.079 ha [intended size]; 13.962 ha [contract size]; 5.600 ha [in production 2014]	Lease/Concession
<b>United Kingdom</b>	Equatorial Palm Oil Plc	Liberia	Liberian Operations Inc.	Agriculture	[2008] Concluded (Contract signed); [2012] In operation (production)	38.957 ha [intended size]; 54.550 ha [contract size 2008]; 2.000 ha [in production 2012]	Lease/Concession
<b>United Kingdom</b>	Equatorial Palm Oil plc	Liberia	Liberian Operations Inc (LIBINC)	Agriculture	[2012] Intended (Under negotiation); unknown current status	80.000 ha [intended]; unknown [contract]	Lease/Concession
<b>United Kingdom</b>	Farm Lands of Guinea Limited	Guinea	Land & Resources	Agriculture, Food crops	[2010] Concluded (Contract signed); [2011] Startup phase (no production)	98.400 ha [intended size]; 98.400 ha [contract size]	Lease/Concession
<b>United Kingdom</b>	Fuel Stock	Madagascar	Fuelstock Madagascar	Agriculture, Biofuels, Food crops	[2012] Concluded (Contract signed); [2009] In operation (production)	30.000 ha [intended size]; 2.000 ha [contract size]; 300 ha [in production 2013]	Lease/Concession
<b>United Kingdom</b>	Hawkwood Capital LLC	Zambia	African Crops Ltd.	Agriculture, Food Crops, Livestock, Non-food agricultural commodities	[2008] Concluded (Contract signed); In operation (production)	27.087 ha [intended]; 27.087 ha [contract]	Lease/Concession
<b>United Kingdom</b>	Highbury Finance	Mozambique	Sun Mozambique	Agriculture, Biofuels	[2011] Concluded (Contract signed); [2007] In operation (production)	5.800 ha [intended]; 5.800 ha [contract]; 2.310 ha [in production 2011]	Lease/Concession
<b>United Kingdom</b>	Hunter Resources PLC	Madagascar	Green Energy Madagascar	Agriculture, Biofuels	[2005] Concluded (Contract signed); [2012] Project abandoned	550.000 ha [intended size]; 495.000 ha [contract size]; 55.737 ha [in production 2011]	Lease/Concession
<b>United Kingdom</b>	InfraCo Limited	Mozambique	Envalor Limitade	Agriculture, Biofuels, Food crops	[2011] Concluded (Contract signed); unknown current status	25.000 ha [intended]; 17.000 ha [contract]	Lease/Concession

Land Grabbing and Human Rights:  
The Involvement of European Corporate and Financial Entities in Land Grabbing Outside the EU

<b>United Kingdom</b>	Jan-Kasal Company	Nigeria	Unknown	Agriculture, Biofuels, Food crops, Renewable energy	Concluded (Contract signed); In operation (production)	5.000 ha [intended]; 5.000 ha [contract]	Lease/Concession
<b>United Kingdom</b>	Jatropha Africa	Ghana	Unknown	Agriculture, Biofuels	Concluded (Contract signed); In operation (production)	120.000 ha [intended size]; 50.000 ha [contract size]; 5 ha [in production 2013]	Exploitation licence
<b>United Kingdom</b>	Joseph Lewis and his son Charles Lewis	Argentina	Unknown	Tourism	Concluded (contract signed); Startup phase (no production)	Unknown [intended size]; 15.000 ha [contract size]	Outright purchase
<b>United Kingdom</b>	Kilimanjaro aloe vera plantation Ltd. British	Tanzania	Kilimanjaro aloe vera plantation Ltd.	Agriculture, Food Crops	Concluded (Contract signed); [2008] Startup phase (no production)	unknown [intended]; 400 ha [contract]	Unknown
<b>United Kingdom</b>	Lion's Head	Tanzania	Sun Biofuel Tanzania Ltd.	Agriculture, Biofuels	[2009] Concluded (Contract signed); Project abandoned	18.000 ha [intended]; 8.211 ha [contract 2009]	Lease/Concession
<b>United Kingdom</b>	Lion's Head	Tanzania	Mtanga Farms Limited	Agriculture, Food Crops, Livestock	[2008] Concluded (Contract signed); In operation (production)	2.200 ha [intended]; 2.200 ha [contract 2012]	Lease/Concession
<b>United Kingdom</b>	Lonrho Plc	Angola	Unknown	Agriculture, Food Crops	[2009] Concluded (Contract signed); unknown current status	25.000 ha [intended size]; 25.000 ha [contract size]	Lease/Concession
<b>United Kingdom</b>	Lonrho Plc	Mali	Unknown	Agriculture, Biofuels, Food crops	Intended (Under negotiation); unknown current status	100.000 ha [intended size]; unknown ha [contract size]	Lease/Concession
<b>United Kingdom</b>	M.P. Evans Group PLC	Indonesia	PT Simpang Kiri	Agriculture, Agriunspecified	Concluded (Contract signed); unknown current status	unknown [intended]; 2.500 ha [contract]	Unknown
<b>United Kingdom</b>	M.P. Evans Group PLC	Indonesia	PT Prima Mitrajaya Mandiri	Agriculture, Agriunspecified	[2007] Concluded (Contract signed); [2007] In operation (production)	unknown [intended]; 21.500 ha [contract]; 9.424 ha [in production 2012]	Unknown
<b>United Kingdom</b>	M.P. Evans Group PLC	Indonesia	PT Gunung Pelawan Lestari "GPL"	Agriculture, Agriunspecified	[2005] Concluded (Contract signed); [2012] In operation (production)	unknown [intended]; 10.000 ha [contract]; 6.875 ha [in production 2015]	Unknown
<b>United Kingdom</b>	M.P. Evans Group PLC	Indonesia	PT Agro Muko	Agriculture, Non-food agricultural commodities, Agriunspecified	Concluded (Contract signed); In operation (production)	unknown [intended]; 22.952 ha [contract]; 19.495 ha [in production 2014]	Unknown

<b>United Kingdom</b>	M.P. Evans Group PLC	Indonesia	PT Kerasaan Indonesia	Agriculture, Agriunspecified	Concluded (Contract signed); In operation (production)	unknown [intended]; 2.362 ha [contract]; 2.098 ha [in production 2014]	Unknown
<b>United Kingdom</b>	Maris Capital	South Sudan	Equatoria Company	Teak Forestry for wood and fibre	[2006] Concluded (Contract signed); In operation (production)	unknown [intended]; 18.640 ha [contract]; 1.489 ha [in production]	Lease/Concession
<b>United Kingdom</b>	Maris Capital	South Sudan	Equatoria Company	Teak Forestry for wood and fibre	[2007] Concluded (Contract signed); unknown current status	51.850 ha [intended]; 1.850 ha [contract]	Lease/Concession
<b>United Kingdom</b>	Nandan Cleantc PLC	India	Nandan Bio Energy Pte Ltd.	Agriculture, Biofuels	Concluded, contract signed; In operation (production)	100.000 ha [intended size]; 40.800 ha [contract size]; 71.000 ha [in production 2014]	Lease/Concession
<b>United Kingdom</b>	Nandan Cleantc PLC	India	Bharat Renewable Energy Limited	Agriculture, Biofuels	Concluded, contract signed; [2010] In operation (production)	Unknown [intended size]; Unknown [contract size]	Unknown
<b>United Kingdom</b>	Narborough Plantations Public Limited Company	Malaysia	Narborough Plantations Public Limited Company	Agriculture	Concluded (Contract signed); In operation (production)	unknown [intended]; 564 ha [contract]; 555 ha [in production 2014]	Lease/Concession
<b>United Kingdom</b>	NEOS Resources PLC	Malawi	D1 Oils Ltd.	Agriculture, Biofuels	Concluded (Contract signed); [2011] Project abandoned	7.000 ha [intended]; 7.000 ha [contract]	Lease/Concession
<b>United Kingdom</b>	New Forests Company Holdings	Rwanda	Unknown (Agri-Vie)	Forestry for wood and fibre	[2011] Concluded (Contract signed); unknown current status	10.000 ha [intended]; 10.000 ha [contract 2011]	Lease/Concession
<b>United Kingdom</b>	New Forests Company Holdings	Tanzania	New Forests Company Tanzania UK Ltd.	Forestry for wood and fibre and for carbon sequestration/REDD	[2009] Concluded (Contract signed); [2009] Startup phase (no production)	30.000 ha [intended]; 8.098 ha [contract]; 4.699 ha [in production 2014]	Outright purchase; Lease/Concession
<b>United Kingdom</b>	New Forests Company Holdings	Uganda	Unknown	Forestry for wood and fibre	[2013] Concluded (Contract signed); [2013] In operation (production)	20.000 ha [intended]; 20.000 ha [contract]; 10.400 ha [in operation 2011]	Exploitation licence
<b>United Kingdom</b>	Obtala Resources Ltd.	Mozambique	Montara Continental	Agriculture, Food Crops	[2010] Concluded (Contract signed); In operation (production)	63.653 ha [intended]; 9.875 ha [contract]	Lease/Concession
<b>United Kingdom</b>	Obtala Resources Ltd.	Tanzania	Unknown	Agriculture, Food Crops	[2014] Concluded (Contract signed); [2014] Project not started	204 ha [intended]; 204 ha [contract]	Lease/Concession

Land Grabbing and Human Rights:  
The Involvement of European Corporate and Financial Entities in Land Grabbing Outside the EU

<b>United Kingdom</b>	Pacific Bio-Fields Corp	Philippines	BioEnergy Luzon Inc.	Northern	Agriculture, Biofuels	[2008] concluded, oral agreement; [2009] startup phase, no production	400.000 ha [intended size]; unknown [contract size]	Unknown
<b>United Kingdom</b>	Principle Capital	Mozambique	Mozambique Principle Limitada	Energy	Agriculture, Biofuels	[2013] Failed (Contract canceled); [2010] Project abandoned	23.000 ha [intended]; 18.000 ha [contract]	Unknown
<b>United Kingdom</b>	PZ Cussons International	Nigeria	PZ Wilmar		Agriculture	[2011] Concluded (Contract signed); In operation (production)	50.000 ha [intended]; 29.964 ha [contract 2012]	Lease/Concession
<b>United Kingdom</b>	SLGreen Oil Corporation	Sierra Leone	Unknown		Agriculture, Biofuels, Forestry for carbon sequestration/REDD	Concluded (Contract signed); unknown current status	unknown [intended]; 121.406 ha [contract]	Lease/Concession
<b>United Kingdom</b>	Solvia Investment Management	Paraguay	CalyxAgro		Agriculture, Food crops, Conservation	[2008] Concluded (Contract signed); [2008] In operation (production)	unknown [intended size]; 2.859 ha [contract size]; 760 ha [in production 2008]	Outright purchase
<b>United Kingdom</b>	Solvia Investment Management	Argentina	CalyxAgro		Agriculture, Food Crops	[2013] Concluded (Contract signed); [2013] In operation (production)	unknown [intended]; 1.082 ha [contract]	Outright purchase
<b>United Kingdom</b>	Solvia Investment Management	Argentina	CalyxAgro		Agriculture, Food Crops, Livestock	[2013] Concluded (Contract signed); [2013] In operation (production)	unknown [intended]; 3.365 ha [contract]	Outright purchase
<b>United Kingdom</b>	Solvia Investment Management	Argentina	CalyxAgro		Agriculture, Food Crops, Livestock	[2013] Concluded (Contract signed); [2013] In operation (production)	unknown [intended]; 4.638 ha [contract]	Outright purchase
<b>United Kingdom</b>	Sun Biofuels Energy Limited	Ethiopia	National Corporation	Biodiesel	Agriculture, Biofuels	Concluded (Contract signed); Project abandoned	unknown [intended size]; 80.000 ha [contract size]	Lease/Concession
<b>United Kingdom</b>	Vedanta Resources	India	Sesa Sterlite Limited		Mining, Industry	Concluded, oral agreement; [2007] In operation (production)	Unknown [intended size]; 1.494 ha [contract size]; 834 ha [in production 2014]	Lease/Concession
<b>United Kingdom</b>	Viridesco	Mozambique	Unknown		Agriculture, Biofuels	Concluded (Contract signed); [2008] Startup phase (no production)	10.000 ha [intended]; 200 ha [contract]; 50 ha [in production]	Unknown
<b>United Kingdom</b>	Viridesco	Zambia	Unknown		Agriculture, Biofuels	Agriculture Failed (Contract canceled); unknown current	1.000 ha [intended]; 300 ha [contract]	Lease/Concession



					status		
<b>United Kingdom</b>	Whitestone Charles Anderson	Sierra Leone	Whitestone Limited (SL)	Agriculture, Biofuels	[2010] Concluded (Contract signed) [2010] Project not started	525.000 ha [intended]; 115.000 ha [contract]	Lease/Concession
<b>United Kingdom</b>	Windcliffe	Sierra Leone	Win-Agri Sierra Leone	Agriculture, Food Crops	[2011] Intended (Under negotiation); unknown current status	20.000 ha [intended]; unknown [contract]	Unknown
<b>SOUTHERN EUROPE (55 Deals)</b>							
<b>Italy</b>	Agroils	Ghana	Smart Oils	Agriculture, Biofuels	[2008] Concluded (Contract signed); [2012] In operation (production)	4.000 ha [intended]; 6.699 ha [contract]; 1.400 ha [in production 2014]	Lease/Concession
<b>Italy</b>	Arkadia Ltd	Tanzania	Unknown	Agriculture, Biofuels	Concluded (Contract signed); Project not started	25.000 ha [intended]; 500 ha [contract]; 500 ha [in production 2012]	Lease/Concession
<b>Italy</b>	AVIA Spa (Aviam)	Mozambique	Aviam Lda	Agriculture, Biofuels	[2008] Concluded (Contract signed); [2008] Startup phase (no production)	10.000 ha [intended]; 10.000 ha [contract]; 150 ha [in production 2012]	Lease/Concession
<b>Italy</b>	Bioenergy Production s.r.l. Carbon Sink Group S.R.L. Agroils Technologies SpA	Senegal	African National Oil Corporation Sarl	Agriculture, Biofuels, Forestry for carbon sequestration/REDD	[2009] Concluded (Contract signed); [2013] In operation (production)	2.750 ha [intended]; 2.750 ha [contract]; 574 ha [in production 2011]	Lease/Concession
<b>Italy</b>	Development Agroindustrial Investment Spa	Mozambique	Unknown (Company Agro Social Igo Sammartini)	Agriculture	[2010] Concluded (Contract signed); Startup phase (no production)	20.000 ha [intended]; 3.000 ha [contract]	Lease/Concession
<b>Italy</b>	ENI	Angola	Unknown (ENI and Sonangol)	Agriculture, Biofuels	[2008] Intended (Under negotiation); unknown current status	12.000 ha [intended]; unknown [contract]	Lease/Concession
<b>Italy</b>	ENI	Congo	Ministry of Agriculture and	Agriculture, Biofuels, Food crops	[2009] Intended (Under negotiation); unknown current	70.000 ha [intended]; unknown [contract]	Lease/Concession

Land Grabbing and Human Rights:  
The Involvement of European Corporate and Financial Entities in Land Grabbing Outside the EU

			International Organisations		status		
<b>Italy</b>	Euro - Liberia Logging	Liberia	Euro - Liberia Logging	Forestry for wood and fibre	[2009] Concluded (Contract signed); unknown	253.670 ha [intended]; 253.670 ha [contract]	Lease/Concession
<b>Italy</b>	Fri-El Green Power	Ethiopia	Fri- El Ethiopia Farming and Processing	Agriculture, Biofuels, Food crops	[2007] Concluded (Contract signed); [2012] Startup phase (no production)	30.000 ha [intended]; 30.000 ha [contract]	Lease/Concession
<b>Italy</b>	Fri-El Green Power	Nigeria	Fri- El Ethiopia Farming and Processing	Agriculture, Biofuels	[2009] Concluded (Contract signed); [2008] In operation (production)	100.000 ha [intended]; 11.292 ha [contract]	Lease/Concession
<b>Italy</b>	Gruppo Api Gruppo Industriale Maccaferri	Mozambique	SAB Mozambique/ Inveragro	Agriculture, Biofuels	[2010] Concluded (Contract signed); [2013] Project abandoned	40.000 ha [intended]; 6.300 ha [contract]; 310 ha [in production 2010]	Lease/Concession
<b>Italy</b>	Malavasi Logging	Liberia	Ej & J Investment Corporation	Forestry for wood and fibre	[2008] Concluded (Contract signed); [2010] In operation (production)	57.202 ha [intended]; 57.202 ha [contract]	Lease/Concession
<b>Italy</b>	Moncada Energy Group SRL	Mozambique	BIOENERGIA MOÇAMBIQUE	Agriculture, Biofuels	[2008] Concluded (Contract signed); [2014] In operation (production)	15.000 ha [intended]; 15.000 ha [contract]	Lease/Concession
<b>Italy</b>	Nuove Iniziative Industriali srl	Guinea	Guinee Energia S.A.	Agriculture, Biofuels, Non-food agricultural commodities	[2010] Concluded (Contract signed); [2013] Project not started	710.000 ha [intended]; 74.504 ha [contract]	Lease/Concession
<b>Italy</b>	Nuove Iniziative Industriali srl	Senegal	Senergie S.A.	Agriculture, Biofuels	[2010] Concluded (Contract signed); [2011] In operation (production)	50.000 ha [intended]; 50.000 ha [contract]	Lease/Concession
<b>Italy</b>	Nuove Iniziative Industriali srl	Ethiopia	O.B.M. Ethio Renewable Energy	Agriculture, Biofuels	Concluded (Contract signed); In operation (production)	40.000 ha [intended]; 40.000 ha [contract]	Lease/Concession
<b>Italy</b>	Piccolo Renato	Ethiopia	Unknown	Agriculture	[2005] Concluded (Contract signed); [2006] In operation (production)	unknown [intended]; 500 ha [contract]	Lease/Concession
<b>Italy</b>	Sogein	Mozambique	South African Oils	Agriculture, Food crops	[2011] Concluded (Contract signed); unknown current status	1.000 ha [intended]; 1.000 ha [contract]	Lease/Concession
<b>Italy</b>	Tempieri Financial	Senegal	Senhuile	Agriculture, Biofuels	[2012] Concluded (Contract signed); [2014] In operation	26.500 ha [intended]; 25.000 ha [contract]; 2.000 ha [in	Lease/Concession

	Group			Food crops	(production)	production 2015]	
<b>Italy</b>	Tozzi Renewable Energy	Madagascar	Tozzi Green	Agriculture, Biofuels, Food crops	[2012] Concluded (Contract signed); [2012] In operation (production)	100.000 ha [intended]; 6.558 ha [contract]; 3.500 ha [in production 2014]	Lease/Concession
<b>Portugal</b>	Américo Amorim group	Mozambique	Agromoz	Agriculture, Food crops, Non-food agricultural commodities	[2014] Concluded (Contract signed); [2014] In operation (production)	9.000 ha [intended]; 9.000 ha [contract]; 1.600 ha [in production 2014]	Lease/Concession
<b>Portugal</b>	Atlantica Group	Angola	AfriAgro	Agriculture, Biofuels	Agriculture Concluded (Contract signed); unknown current status	20.000 ha [intended]; 5.000 ha [contract]	Lease/Concession
<b>Portugal</b>	Companhia Industrial do Monapo	Mozambique	Companhia Industrial do Monapo	Agriculture, Food crops	[2010] Intended (Under negotiation); unknown current status	2.000 ha [intended]; unknown [contract]	Unknown
<b>Portugal</b>	Galp Energia	Mozambique	Galp Buzi	Agriculture, Biofuels, Food crops	[2004] Concluded (Contract signed); [2004] Startup phase (no production)	30.000 ha [intended]; 15.000 ha [contract]	Unknown
<b>Portugal</b>	Galp Energia Companhia do Buzi, SARL	Mozambique	MocamGalp	Agriculture, Biofuels	[2010] Concluded (Contract signed); Startup phase (no production)	unknown [intended]; 10.000 ha [contract]; 200 ha [in production]	Unknown
<b>Portugal</b>	Gleinol	Angola	Unknown	Agriculture, Biofuels	Concluded (Contract signed); unknown current status	unknown [intended]; 13.000 ha [contract]	Unknown
<b>Portugal</b>	Grupo Espirito Santo	Paraguay	Ganadera Corina Campos y Haciendas SA	Agriculture, Livestock	[2012] Concluded (Contract signed); [2013] In operation (production)	unknown ha [intended]; 12.732 ha [contract]	Outright purchase
<b>Portugal</b>	Grupo Portucel Soporcel	Mozambique	Portucel Moçambique Lda	Forestry for wood and fibre	[2009] Concluded (Contract signed); [2012] Startup phase (no production)	unknown [intended]; 173.327 ha [contract]	Unknown
<b>Portugal</b>	Grupo Portucel Soporcel	Mozambique	Portucel Moçambique Lda	Forestry for wood and fibre, Renewable energy	[2011] Concluded (Contract signed); [2012] Startup phase (no production)	212.000 ha [intended]; 182.886 ha [contract]; 2.000 ha [in production 2013]	Lease/Concession
<b>Portugal</b>	Horta Boa	Mozambique	Unknown	Agriculture, Food crops	[2008] Concluded (Contract signed); [2014] In operation (production)	350 ha [intended]; 350 ha [contract]	Lease/Concession
<b>Portugal</b>	Indivest	Mozambique	Unknown	Agriculture, Food crops	[2014] Concluded (Contract signed); [2014] Project not	50.000 ha [intended]; 30.000	Lease/Concession

Land Grabbing and Human Rights:  
The Involvement of European Corporate and Financial Entities in Land Grabbing Outside the EU

					started	ha [contract]	
<b>Portugal</b>	José Adelino Nogueira Aires Alves	Mozambique	Agro Alfa S.A.R.L	Agriculture, Agriunspecified	[2013] Concluded (Contract signed); In operation (production)	2.650 ha [intended]; 650 ha [contract]	Lease/Concession
<b>Portugal</b>	Quifel Holdings	Angola	Quifel Agribusiness Ltd	Agriculture, Biofuels, Food crops	[2010] Concluded (Contract signed); Startup phase (no production)	40.000 ha [intended]; 10.000 ha [contract]	Lease/Concession
<b>Portugal</b>	Quifel Holdings	Mozambique	Partrouge Moçambique Lda	Agriculture, Food crops	Intended (Under negotiation); unknown current status	5.000 ha [intended]; unknown [contract]	Lease/Concession
<b>Portugal</b>	SGC Energia	Mozambique	Enerterra	Agriculture, Biofuels	[2009] Concluded (Contract signed); [2013] Project abandoned	unknown [intended]; 18.508 ha [contract]	Unknown
<b>Portugal, Italy</b>	Sociedade de Desenvolvimento Agro-Industrial S.A. (DAI) SFIR Group	Mozambique	Companhia Agro-emresarial de Mocambique	Agriculture, Biofuels, Agriunspecified	[2010] Concluded (Contract signed); unknown current status	15.000 ha [intended]; 15.000 ha [contract]	Lease/Concession
<b>Portugal</b>	Galp Energia	Brazil	Belém Bioenergia Brasil S.A	Agriculture, Biofuels	[2011] Concluded (Contract signed); [2011] In operation (production)	60.000 ha [intended]; 8.500 ha [contract]; 3.144 ha [in production 2011]	Lease/Concession
<b>Spain</b>	Abengoa SA	Philippines	Unknown	Agriculture, Biofuels	[2007] Intended (Under negotiation); [2007] Project not started	50.000 ha [intended]; unknown [contract]	Unknown
<b>Spain</b>	Acciona Energia Mexico (filial de Acciona Energia, Espana)	Mexico	Unknown	Renewable energy	[2009] Concluded (Contract signed); In operation (production)	unknown [intended]; 2.500 ha [contract]	Lease/Concession
<b>Spain</b>	Aceites Borges Olivo Noble S.A.	Chile	Unknown	Agriculture, Food crops	Concluded (Contract signed); In operation (production)	unknown [intended]; 600 ha [contract]	Unknown
<b>Spain</b>	Afirma/Quabit Inmobiliaria SA	Brazil	Unknown	Tourism	Intended (Under negotiation); unknown current status	3.100 ha [intended]; unknown [contract]	Unknown
<b>Spain</b>	Agrogeba	Guinea-Bissau	Unknown	Agriculture, Food crops	[2010] Concluded (Contract signed); In operation (production)	unknown [intended]; 1.214 ha [contract]; 210 ha [in production 2013]	Lease/Concession

<b>Spain</b>	Biocongo Global Trading	Congo	Unknown	Agriculture, Biofuels	[2012] Concluded (Contract signed); unknown current status	60.000 ha [intended]; 60.000 ha [contract]	Lease/Concession
<b>Spain</b>	Cie Automotive S.A.	Philippines	Unknown	Agriculture, Biofuels	[2007] Intended (Under negotiation); unknown current status	100.000 ha [intended]; unknown [contract]	Unknown
<b>Spain</b>	Cie Automotive S.A.	Guatemala	Unknown (Bionor Group)	Agriculture, Biofuels	[2007] Concluded (Contract signed); [2007] Startup phase (no production)	unknown [intended]; 473 ha [contract]	Outright purchase
<b>Spain</b>	Grupo Corona	Colombia	Madeflex S.A.	Forestry for wood and fibre	Concluded (Contract signed); In operation (production)	unknown [intended]; 4.000 ha [contract]	Exploitation License
<b>Spain</b>	Grupo Pescanova	Nicaragua	Río Real Empresa de Camarón S.A.	Agriculture	[2006] Concluded (Contract signed); In operation (production)	unknown [intended]; 498 ha [contract]	Lease/Concession
<b>Spain</b>	Grupo Torres	Chile	Unknown	Agriculture, Food crops	Concluded (Contract signed); In operation (production)	unknown [intended]; 800 ha [contract]	Outright purchase
<b>Spain</b>	Infinita Renovable Isolux Corsán Group	Argentina	Infinita Renovable	Agriculture, Biofuels	[2007] Concluded (Contract signed); In operation (production)	unknown [intended]; 50.000 ha [contract]	Outright purchase
<b>Spain</b>	J. García-Carrión	Ghana	Unknown	Agriculture, Food crops	Concluded (Contract signed); Project not started	10.000 ha [intended]; 10.000 ha [contract]	Unknown
<b>Spain</b>	Mercatalonia	Gambia	Mercatalonia Banjul Co. Ltd	Agriculture, Biofuels, Agriunspecified, Food crops, Renewable energy	Intended (Under negotiation); unknown current status	200.000 ha [intended]; unknown [contract]	Lease/Concession
<b>Spain</b>	Poligrow	Colombia	Poligrow	Agriculture, Biofuels	[2013] Concluded (Contract signed); [2013] In operation (production)	unknown [intended]; 4.800 ha [contract]	Lease/Concession, Exploitation License
<b>Spain</b>	SanLucar Fruit Sl	South Africa	SanLucar South Africa Citrus (Pty) Ltd	Agriculture, Food crops	[2012] Concluded (Contract signed); [2012] In operation (production)	3.000 ha [intended]; 608 ha [contract];	Outright purchase
<b>Spain</b>	SanLucar Fruit Sl	Tunisia	SanLucar Tunisia	Agriculture, Food crops	[2008] Concluded (Contract signed); [2008] In operation (production)	4.000 ha [intended]; unknown [contract]	Outright purchase

Land Grabbing and Human Rights:  
The Involvement of European Corporate and Financial Entities in Land Grabbing Outside the EU

<b>Spain</b>	Sovena Group	Morocco	Soprolives	Agriculture, Food crops	[2006] Concluded (Contract signed); [2007] In operation (production)	unknown [intended]; 1.011 ha [contract]; 800 ha [in production]	Unknown
<b>WESTERN EUROPE (110 Deals)</b>							
<b>Austria</b>	Energiea GmbH	India	Unknown (Naturöl BioEnergy Ltd)	Agriculture, Biofuels, Food crops, Non-food agricultural commodities	[2005] Intended (Under negotiation); [2012] In operation (production)	120.000 ha [intended]; unknown [contract] ; 1.000 ha [in production 2008]	Unknown
<b>Austria</b>	Mima Holding GmbH	Ethiopia	Unknown	Agriculture, Non-food agricultural commodities	[2007] Concluded (Contract signed); In operation (production)	unknown [intended]; 20.000 ha [contract]	Unknown
<b>Belgium</b>	FELISA	Tanzania	Unknown	Agriculture, Food crops	[2008] Concluded (Contract signed); [2014] In operation (production)	5.000 ha [intended]; 4.258 ha [contract]; 100 ha [in production 2014]	Outright purchase
<b>Belgium</b>	Group Sopex	Democratic Republic of the Congo	Gecamines Developpement Katanga (GDK)	Agriculture, Food crops, Agriunspecified	[2005] Concluded (Contract signed); [2006] In operation (production)	2.500 ha [intended]; 2.500 ha [contract]; 1.400 ha [in production 2015]	Lease/Concession
<b>Belgium</b>	La région de Bruxelles la Capitale	Democratic Republic of the Congo	Unknown	Forestry for carbon sequestration/REDD, Conservation	Intended (Under negotiation); unknown current status	109.000 ha [intended]; unknown [contract]	Lease/Concession
<b>Belgium</b>	Nocafex	Democratic Republic of the Congo	Nocafex SPRL	Agriculture, Food crops, Non-food agricultural commodities, Agriunspecified	Concluded (Contract signed); In operation (production)	37.800 ha [intended]; 37.800 ha [contract]; 4.500 ha [in production]	Lease/Concession
<b>Belgium</b>	Siat	Nigeria	Siat Nigeria Ltd.	Agriculture, Non-food agricultural commodities, Agriunspecified	[2011] Concluded (Contract signed); In operation (production)	16.000 ha [intended]; 16.000 ha [contract]; 16.000 ha [in production 2011]	Lease/Concession
<b>Belgium</b>	Siat	Nigeria	Presco Plc	Agriculture, Agriunspecified	[2002] Concluded (Contract signed); In operation (production)	7.495 ha [intended]; 7.495 ha [contract]	Outright purchase

<b>Belgium</b>	Siat	Côte d'Ivoire	Compagnie Hévécicole de Cavally (CHC)	Agriculture, Non-food agricultural commodities	[2007] Concluded (Contract signed); [2007] In operation (production)	(Contract operation	13.700 ha [intended]; 7.700 ha [contract]	Lease/Concession
<b>Belgium</b>	Siat	Gabon	Siat Gabon	Agriculture, Livestock, Non-food agricultural commodities, Agriunspecified, Tourism	[2004] Concluded (Contract signed); [2004] In operation (production)	(Contract operation	119.400 ha [intended]; 119.400 ha [contract]; 17.300 ha [in production]	Unknown
<b>Belgium</b>	Siat	Côte d'Ivoire	Compagnie Hévécicole de Prikro (CHP)	Agriculture, Food crops, Non-food agricultural commodities	[2013] Concluded (Contract signed); [2014] Project not started	(Contract not started	unknown [intended]; 5.000 ha [contract]	Lease/Concession
<b>Belgium</b>	Siat	Nigeria	Presco Plc	Agriculture, Non-food agricultural commodities, Agriunspecified	[2014] Intended (Under negotiation); unknown current status	(Under negotiation)	17.000 ha [intended]; unknown [contract]	Lease/Concession
<b>Belgium</b>	SIPEF	Côte d'Ivoire	Plantation J. Eglin SA	Agriculture, Food crops, Non-food agricultural commodities	[2003] Concluded (Contract signed); In operation (production)	(Contract operation	1.762 ha [intended]; 1.440 ha [contract]	Unknown
<b>Belgium</b>	SIPEF	Indonesia	PT Agro Muko	Agriculture, Non-food agricultural commodities, Agriunspecified	Concluded (Contract signed); In operation (production)	(Contract operation	unknown [intended]; 22.952 ha [contract]; 9.495 ha [in production 2014]	Unknown
<b>Belgium</b>	SIPEF	Indonesia	PT Kerasaan Indonesia	Agriculture, Agriunspecified	Concluded (Contract signed); In operation (production)	(Contract operation	unknown [intended]; 2.362 ha [contract]; 2.098 ha [in production 2014]	Unknown
<b>Belgium</b>	SIPEF	Indonesia	PT Toton Usaha Mandiri	Agriculture, Agriunspecified	[2005] Concluded (Contract signed); In operation (production)	(Contract operation	unknown [intended]; 1.199 ha [contract]; 1.135 ha [in production 2012]	Lease/Concession
<b>Belgium</b>	SIPEF	Indonesia	PT Mukomuko Agro Sejahtera	Agriculture, Agriunspecified	[2010] Concluded (Contract signed); In operation (production)	(Contract operation	unknown ha [intended]; 3.187 ha [contract]; 1.116 ha [in production 2014]	Unknown
<b>Belgium</b>	SIPEF	Indonesia	PT Citra Sawit Mandiri	Agriculture, Agriunspecified	[2007] Concluded (Contract signed); In operation (production)	(Contract operation	unknown [intended]; 3.947 ha [contract]; 1.346 ha [in production 2014]	Unknown
<b>Belgium</b>	SIPEF	Indonesia	PT Agro Kati Lama	Agriculture,	[2011] Concluded (Contract	(Contract	unknown [intended]; 7.568	Unknown

Land Grabbing and Human Rights:  
The Involvement of European Corporate and Financial Entities in Land Grabbing Outside the EU

				Agriunspecified	signed); Startup phase (no production)	ha [contract]; 736 ha [in production 2014]	
<b>Belgium</b>	SIPEF	Indonesia	PT Agro Muara Rupit	Agriculture, Agriunspecified	[2014] Intended (Under negotiation); unknown current status	12.309 ha [intended]; unknown [contract]	Unknown
<b>Belgium</b>	SIPEF	Indonesia	PT Agro Rawas Ulu	Agriculture, Agriunspecified	[2011] Concluded (Contract signed); In operation (production)	unknown [intended]; 9.000 ha [contract]; 240 ha [in production 2014]	Unknown
<b>Belgium</b>	Hubert Gosse (Belgium, Private company)	Argentina	Hubert Gosse	Tourism	Concluded (Contract signed); unknown current status	unknown [intended]; 11.000 ha [contract]	Outright purchase
<b>France</b>	Agro Energy Développement	Burkina Faso	Unknown	Agriculture, Biofuels	[2007] Concluded (Contract signed); unknown current status	200.000 ha [intended]; 200.000 ha [contract]	Lease/Concession
<b>France</b>	Agro Energy Développement	Mali	Unknown	Agriculture, Biofuels	[2007] Concluded (Contract signed); unknown current status	30.000 ha [intended]; 30.000 ha [contract]	Lease/Concession
<b>France</b>	Agro Energy Développement	Guinea	Unknown	Agriculture, Biofuels	[2007] Concluded (Contract signed); unknown current status	100.000 ha [intended]; 100.000 ha [contract]	Lease/Concession
<b>France</b>	Agro Energy Développement	Mali	Unknown	Agriculture, Food crops	[2007] Intended (Under negotiation); unknown current status	2.605 ha [intended]; unknown [contract]	Unknown
<b>France</b>	AgroGeneration	Argentina	AgerAustral S.A	Agriculture, Food crops	[2012] Concluded (Contract signed); [2010] In operation (production)	unknown [intended]; 14.000 ha [contract]	Outright purchase, Lease/Concession
<b>France</b>	AgroGeneration	Argentina	AgerAustral and La Suerte Agro	Agriculture, Food crops	[2012] Concluded (Contract signed); unknown current status	unknown [intended]; 16.000 ha [contract]	Lease/Concession
<b>France</b>	Areva S.A.	India	Unknown (Nuclear Power Corporation of India Ltd)	Industry	[2015] Concluded (Contract signed); Project not started	1.000 ha [intended]; 938 ha [contract]	Unknown
<b>France</b>	Castel Winery Plc	Ethiopia	BGI Ethiopia	Agriculture, Food crops	[2008] Concluded (Contract signed); [2011] In operation (production)	unknown [intended]; 450 ha [contract]; 120 ha [in production 2008]	Lease/Concession
<b>France</b>	CityStar	Cambodia	Unknown	Other, Tourism	Concluded (Contract signed); [2013] Startup phase (no	unknown [intended]; 204 ha [contract]	Outright purchase



					production)		
<b>France</b>	Compagnie fruitière	Senegal	Grands Domaines du Sénégal (GDS)	Agriculture, Food crops	[2003] Concluded (Contract signed); In operation (production)	371 ha [intended]; 300 ha [contract]; 200 ha [in production]	Lease/Concession
<b>France</b>	Compagnie fruitière	Ghana	Golden Exotics Limited (GEL)	Agriculture, Food crops	[2003] Concluded (Contract signed); [2012] In operation (production)	4.700 ha [intended]; 3.500 ha [contract]; 1.200 ha [in production 2012]	Lease/Concession
<b>France</b>	Compagnie fruitière	Cameroon	Plantations du Haut Penja (PHP)	Agriculture, Food crops	[2014] Concluded (Contract signed); [2014] Project not started	800 ha [intended]; 800 ha [contract]	Lease/Concession
<b>France</b>	Compagnie Agricole de St. Louis	Senegal	Unknown	Agriculture, Food crops	[2013] Intended (Under negotiation); unknown current status	4.500 ha [intended]; unknown [contract]	Lease/Concession
<b>France</b>	Danone Grouï Orbeo SAS	Senegal	Unknown	Forestry for carbon sequestration/REDD, Conservation	[2011] Concluded (Contract signed); [2009] In operation (production)	10.000 ha [intended]; 10.000 ha [contract]; 10.000 ha [in production 2012]	Lease/Concession
<b>France</b>	DRT	Madagascar	SMCTR Société Malgache de Collecte et de Transformation de la Résine	Forestry	[2007] Concluded (Contract signed); [2007] In operation (production)	15.000 ha [intended]; 10.000 ha [contract]	Lease/Concession
<b>France</b>	Eco-Carbone	Niger	Unknown	Non-food agricultural commodities, Forestry for carbon sequestration/REDD	Intended (Under negotiation); unknown current status	18.000 ha [intended]; unknown [contract]	Unknown
<b>France</b>	Michelin	Nigeria	Rubber Estates Nigeria Ltd (RENL)	Agriculture, Non-food agricultural commodities	[2006] Concluded (Contract signed); In operation (production)	12.000 ha [intended]; 12.000 ha [contract]	Lease/Concession
<b>France</b>	Michelin	Liberia	Cavalla Rubber Corporation (CRC)	Agriculture, Non-food agricultural commodities	[2008] Concluded (Contract signed); [2008] In operation (production)	35.000 ha [intended]; 35.000 ha [contract]; 4.500 ha [in production 2012]	Lease/Concession
<b>France</b>	Pergam Finance	Uruguay	Unknown	Agriculture, Food crops, Livestock	[2008] Concluded (Contract signed); In operation (production)	unknown [intended]; 6.561 ha [contract]	Outright purchase
<b>France</b>	Pergam Finance	Uruguay	Unknown	Agriculture, Food crops,	[2006] Concluded (Contract	unknown [intended]; 6.939	Outright purchase

Land Grabbing and Human Rights:  
The Involvement of European Corporate and Financial Entities in Land Grabbing Outside the EU

				Livestock	signed); unknown current status	ha [contract]	
<b>France</b>	Pergam Finance	Uruguay	Unknown	Agriculture, Food crops, Livestock	[2007] Concluded (Contract signed); In operation (production)	unknown [intended]; 6.261 ha [contract]	Outright purchase
<b>France</b>	Pergam Finance	Uruguay	Unknown	Agriculture, Food crops, Livestock	[2006] Concluded (Contract signed); In operation (production)	unknown [intended]; 3.504 ha [contract]	Outright purchase
<b>France</b>	Somdiaa	Côte d'Ivoire	SUCAF CI	Agriculture, Food crops	[2010] Concluded (Contract signed); [2010] In operation (production)	14.600 ha [intended]; 14.600 ha [contract]; 14.600 ha [in production 2012]	Unknown
<b>France</b>	Somdiaa	Gabon	Sucaf Gabon	Agriculture, Food crops	[2010] Concluded (Contract signed); [2010] In operation (production)	4.400 ha [intended]; 4.400 ha [contract]; 4.400 ha [in production 2010]	Unknown
<b>France</b>	Somdiaa	Central African Republic	SUCAF RCA	Agriculture, Food crops	[2003] Concluded (Contract signed); [2003] In operation (production)	5.317 ha [intended]; 5.317 ha [contract]	Unknown
<b>France</b>	SPPH	Cameroon	Sud-Cameroun Hevea S.A.	Agriculture, Non-food agricultural commodities, Agriunspecified	[2013] Concluded (Contract signed); [2013] Startup phase (no production)	65.000 ha [intended]; 45.000 ha [contract]	Lease/Concession
<b>France</b>	Talleyrand	Tunisia	Talleyrand Tunisie	Agriculture, Food crops	Concluded (Contract signed); unknown current status	15.000 ha [intended]; 2.700 ha [contract]	Lease/Concession
<b>France</b>	Vicat Group	Senegal	Sococim Senegal	Agriculture, Biofuels	[2007] Concluded (Contract signed); [2012] Project abandoned	11.000 ha [intended]; 150 ha [contract]; 150 ha [in production 2008]	Lease/Concession
<b>France, Switzerland</b>	Louis Dreyfus Group Pictet Private Equity Investors	Indonesia	Unknown	Agriculture, Biofuels, Food crops, Non-food agricultural commodities	Concluded (Contract signed); In operation (production)	unknown [intended]; 58.000 ha [contract]; 58.000 ha [in production 2013]	Unknown
<b>France, Switzerland</b>	Louis Dreyfus Group Pictet Private Equity Investors	Paraguay	CalyxAgro	Agriculture, Food crops, Conservation	[2008] Concluded (Contract signed); [2008] In operation (production)	unknown [intended]; 2.859 ha [contract]	Outright purchase

<b>France, Switzerland</b>	Louis Dreyfus Group Pictet Private Equity Investors	Argentina	CalyxAgro	Agriculture, Food crops	[2013] Concluded (Contract signed); [2013] In operation (production)	unknown [intended]; 1.082 ha [contract]	Outright purchase
<b>France, Switzerland</b>	Louis Dreyfus Group Pictet Private Equity Investors	Argentina	CalyxAgro	Agriculture, Food crops, Livestock	[2013] Concluded (Contract signed); [2013] In operation (production)	unknown [intended]; 3.365 ha [contract]	Outright purchase
<b>France, Switzerland</b>	Louis Dreyfus Group Pictet Private Equity Investors	Argentina	CalyxAgro	Agriculture, Food crops, Livestock	[2013] Concluded (Contract signed); [2013] In operation (production)	unknown [intended]; 4.638 ha [contract]	Outright purchase
<b>France, Switzerland</b>	Louis Dreyfus Group Pictet Private Equity Investors	Uruguay	CalyxAgro	Agriculture, Food crops, Livestock	[2008] Concluded (Contract signed); [2008] In operation (production)	unknown [intended]; 1.010 ha [contract]	Outright purchase
<b>France, Switzerland</b>	Louis Dreyfus Group Pictet Private Equity Investors	Uruguay	CalyxAgro	Agriculture, Food crops, Livestock	Concluded (Contract signed); In operation (production)	unknown [intended]; 611 ha [contract]	Outright purchase
<b>France, Switzerland</b>	Louis Dreyfus Group Pictet Private Equity Investors	Uruguay	CalyxAgro	Agriculture, Food crops, Livestock	[2009] Concluded (Contract signed); [2009] In operation (production)	unknown [intended]; 708 ha [contract]	Outright purchase
<b>France, Switzerland</b>	Louis Dreyfus Group Pictet Private Equity Investors	Uruguay	CalyxAgro	Agriculture, Food crops, Livestock	Concluded (Contract signed); In operation (production)	unknown [intended]; 1.659 ha [contract]	Outright purchase
<b>France, Switzerland</b>	Louis Dreyfus Group Pictet Private Equity Investors	Brazil	CalyxAgro	Agriculture	Concluded (Contract signed); [2013] In operation (production)	unknown [intended]; 7.786 ha [contract]	Outright purchase
<b>France, Switzerland</b>	Louis Dreyfus Group Pictet Private Equity Investors	Brazil	CalyxAgro	Agriculture, Food crops	Concluded (Contract signed); [2009] In operation (production)	unknown [intended]; 10.853 ha [contract]; 8.637 ha [in production 2009]	Outright purchase

Land Grabbing and Human Rights:  
The Involvement of European Corporate and Financial Entities in Land Grabbing Outside the EU

<b>France, Switzerland</b>	Louis Dreyfus Group Pictet Private Equity Investors	Brazil	CalyxAgro	Agriculture, Food crops	[2008] Concluded (Contract signed); [2008] In operation	unknown [intended]; 8.758 ha [contract]; 6.745 ha [in production 2008]	Outright purchase
<b>Germany</b>	Amatheon Agri Holding N.V.	Zambia	Amatheon Agri Zambia Limited	Agriculture, Food crops, Livestock	[2011] Concluded (Contract signed); [2013] In operation (production)	60.000 ha [intended]; 38.760 ha [contract]	Lease/Concession
<b>Germany</b>	Amatheon Agri Holding N.V.	Zambia	Katonga Farm Ltd	Agriculture, Food crops	[2015] Concluded (Contract signed); [2015] Project not started	2.700 ha [intended]; 2.700 ha [contract]	Lease/Concession
<b>Germany</b>	Amatheon Agri Holding N.V.	Uganda	Amatheon Agri Uganda Limited (AAUL)	Agriculture, Food crops, Agriunspecified	[2013] Concluded (Contract signed); [2014] In operation (production)	6.030 ha [intended]; 6.030 ha [contract]; 1.700 ha [in production 2015]	Lease/Concession
<b>Germany</b>	Amatheon Agri Holding N.V.	Zimbabwe	Amatheon Agri Zimbabwe	Agriculture, Food crops, Livestock, Agriunspecified	[2013] Concluded (Contract signed); [2014] In operation (production)	900 ha [intended]; 900 ha [contract]; 500 ha [in production 2014]	Lease/Concession
<b>Germany</b>	DWS GALOF	Tanzania	Unknown	Agriculture, Food crops, Livestock	Concluded (Contract signed); In operation (production)	5.000 ha [intended]; 5.000 ha [contract]	Lease/Concession
<b>Germany</b>	Elaion AG	Mozambique	Elaion Africa Limitada (Ltd.)	Forestry for wood and fibre	[2007] Concluded (Contract signed); [2010] Project abandoned	1.000 ha [intended]; 1.000 ha [contract]	Unknown
<b>Germany</b>	Flora EcoPower Holding AG Acasis AG	Thailand	Unknown	Agriculture, Biofuels	[2008] Intended (Under negotiation); unknown current status	120.000 ha [intended]; unknown [contract]; 46.000 ha [in production 2008]	Unknown
<b>Germany</b>	GEXSI	Madagascar	Platinum Madagascar SARL	Agriculture, Biofuels	[2013] Intended (Under negotiation); In operation (production)	15.000 ha [intended]; unknown [contract]; 150 ha [in production 2012]	Lease/Concession
<b>Germany</b>	Jatro Solutions	Madagascar	JatroGreen S.A.R.L.	Agriculture, Biofuels	[2007] Concluded (Contract signed); In operation (production)	3.000 ha [intended]; 3.000 ha [contract]; 420 ha [in production 2012]	Unknown
<b>Germany</b>	Mann Ferrostaal	Zambia	Unknown (Deulco, Mann Ferrostahl)	Agriculture, Biofuels, Industry	[2009] Concluded (Contract signed); [2012] Startup phase (no production)	191.103 ha [intended]; 191.103 ha [contract]; 8 ha [in production 2012]	Unknown
<b>Germany</b>	Neumann Kaffee	Uganda	Kaweri Coffee	Agriculture, Food crops	[2001] Concluded (Contract signed); In operation	2.510 ha [intended]; 2.511 ha [contract]; 1.801 ha [in	Lease/Concession

	Group		Plantation Ltd.		(production)	production]	
<b>Germany</b>	Symboil AG	Ghana	Symboil Ghana Ltd	Agriculture, Biofuels, Food crops	[2007] Concluded (Contract signed); [2007] Startup phase (no production)	13.500 ha [intended]; 7.000 ha [contract]	Lease/Concession
<b>Germany</b>	Unknown	Ghana	Gold Coast Fruits Ltd	Agriculture, Food crops	[2005] Concluded (Contract signed); [2007] In operation (production)	500 ha [intended]; 500 ha [contract]; 400 ha [in production 2010]	Lease/Concession
<b>Germany</b>	YONEC GmbH & Co. Naturenergie KG	Ghana	Biotic Oil Company Ltd	Agriculture, Food crops, Non-food agricultural commodities, Agriunspecified	Concluded (Contract signed); unknown current status	1.000 ha [intended]; 1.000 ha [contract]	Lease/Concession
<b>Germany</b>	BHB GmbH Projektmanagment	Sierra Leone	Vedico Mange Bureh Farm Ltd.	Agriculture, Food crops	[2008] Concluded (Contract signed); [2008] Startup phase (no production)	50.000 ha [intended]; 110 ha [contract]	Lease/Concession
<b>Germany, Luxembourg</b>	Acazis AG Athanor Equities	Ethiopia	Acazis Agro-Industry	Agriculture, Biofuels, Food crops	[2007] Concluded (Contract signed); [2012] In operation (production)	56.000 ha [intended]; 3.800 ha [contract]; 1.000 ha [in production 2012]	Lease/Concession
<b>Luxembourg</b>	Adecoagro S.A.	Argentina	Unknown (El Tejar SA)	Agriculture, Food crops	Concluded (Contract signed); unknown current status	unknown [intended]; 10.877 ha [contract]	Outright purchase
<b>Luxembourg</b>	Adecoagro S.A.	Argentina	Unknown (El Tejar SA)	Agriculture, Food crops	Concluded (Contract signed); In operation (production)	unknown [intended]; 15.451 ha [contract]	Outright purchase
<b>Luxembourg</b>	Adecoagro S.A.	Argentina	Unknown (El Tejar SA)	Agriculture, Food crops	Concluded (Contract signed); In operation (production)	unknown [intended]; 5.236 ha [contract]	Outright purchase
<b>Luxembourg</b>	Adecoagro S.A.	Argentina	Simoneta S.A.	Agriculture, Agriunspecified	[2011] Concluded (Contract signed); In operation (production)	unknown [intended]; 4.633 ha [contract]	Unknown
<b>Luxembourg</b>	CLEARSTREAM BANKING S.A.	Peru	Camposol S.A.	Agriculture, Food crops	[2006] Concluded (Contract signed); [2006] Startup phase (no production)	unknown [intended]; 3.778 ha [contract]	Outright purchase
<b>Luxembourg</b>	CLEARSTREAM BANKING S.A.	Peru	Camposol S.A.	Agriculture, Food crops	[2003] Concluded (Contract signed); [2003] In operation (production)	unknown [intended]; 3.200 ha [contract 2005]; 7.700 ha [contract 2007]	Outright purchase, Exploitation license
<b>Luxembourg</b>	SOCFIN	Sierra Leone	Socfin Agricultural Company Sierra	Agriculture, Non-food agricultural	[2011] Concluded (Contract signed); [2013] In operation	30.000 ha [intended]; 9.300 ha [contract]; 3.125 ha [in	Lease/Concession

Land Grabbing and Human Rights:  
The Involvement of European Corporate and Financial Entities in Land Grabbing Outside the EU

			Leone Ltd.	commodities, Agriunspecified	(production)	production 2013]	
<b>Luxembourg</b>	SOCFIN	Liberia	Salala Rubber Corporation (SRC)	Agriculture, Non-food agricultural commodities	[2007] Concluded (Contract signed); [2007] In operation (production)	8.000 ha [intended]; 8.000 ha [contract]; 4.297 ha [in production 2013]	Lease/Concession
<b>Luxembourg</b>	SOCFIN	Democratic Republic of the Congo	Brabanta SPRI	Agriculture, Agriunspecified	[2007] Concluded (Contract signed); Project not started	28.261 ha [intended]; 28.261 ha [contract]	Lease/Concession
<b>Luxembourg</b>	SOCFIN	Guinea	Soguipah	Agriculture, Non-food agricultural commodities, Agriunspecified	Concluded (Contract signed); [2011] Startup phase (no production)	22.000 ha [intended]; 22.000 ha [contract]	Lease/Concession
<b>Luxembourg</b>	SOCFIN	Cambodia	Socfin-KCD	Agriculture, Non-food agricultural commodities	[2010] Concluded (Contract signed); [2008] In operation (production)	10.58 ha [intended]; 26.978 ha [contract]; 4.062 ha [in production 2012]	Outright purchase
<b>Luxembourg</b>	SOCFIN	Sao Tome and Principe (African island nation)	Agripalma	Agriculture, Agriunspecified	[2010] Concluded (Contract signed); [2011] In operation (production)	5.000 ha [intended]; 5.000 ha [contract]	Lease/Concession
<b>Luxembourg</b>	SOCFIN	Nigeria	Okomu Oil Palm Company	Agriculture, Agriunspecified	[2014] Concluded (Contract signed); [2014] Project not started	11.400 ha [intended]; 11.400 ha [contract]	Outright purchase
<b>Netherlands</b>	Afriflora	Ethiopia	Sher Ethiopia PLC	Agriculture, Non-food agricultural commodities	[2005] Concluded (Contract signed); In operation (production)	1.000 ha [intended]; 500 ha [contract]	Lease/Concession
<b>Netherlands</b>	Bioking	Senegal	Unknown	Agriculture, Biofuels	[2006] Concluded (Contract signed); [2008] Project abandoned	60.000 ha [intended]; 3.000 ha [contract]	Unknown
<b>Netherlands</b>	Bioshape Holding	Tanzania	BioShape Tanzania Ltd	Agriculture, Biofuels	[2005] Concluded (Contract signed); [2010] Project abandoned	81.000 ha [intended]; 34.000 ha [contract]; 70 ha [in production 2009]	Lease/Concession
<b>Netherlands</b>	Buchanan Renewables	Liberia	Buchanan Renewables (Monrovia) Power Inc	Renewable energy	[2009] Concluded (Contract signed); [2013] Project abandoned	250.000 ha [intended]; 250.000 ha [contract]	Exploitation license

<b>Netherlands</b>	BXR Group	Mozambique	Hoyo Hoyo	Agriculture, Biofuels, Food crops	[2009] Concluded (Contract signed); [2013] In operation (production)	23.000 ha [intended]; 10.000 ha [contract]; 800 ha [in production 2013]	Lease/Concession
<b>Netherlands</b>	BXR Group	Malawi	Malawi Limited	Mangoes Agriculture, Food crops	Concluded (Contract signed); [2013] In operation (production)	3.434 ha [intended]; 434 ha [contract]	Lease/Concession
<b>Netherlands</b>	Drie Wilgen Development B.V., Ellemeet; Local Genesis Farm Limited	Sierra Leone	Unknown	Agriculture, Food crops	Concluded (Contract signed); [2010] In operation (production)	450 ha [intended]; 200 ha [contract]; 50 ha [in production 2010]	Unknown
<b>Netherlands</b>	Dutch Jatropha Consortium	Mozambique	Niqel Lda	Agriculture, Biofuels	[2008] Concluded (Contract signed); In operation (production)	50.000 ha [intended]; 7.500 ha [contract]	Unknown
<b>Netherlands</b>	FACE Foundation	Senegal	Unknown	Forestry for carbon sequestration/REDD, Conservation	[2012] Intended (Under negotiation); unknown current status	1.000 ha [intended]; unknown [contract]	Unknown
<b>Netherlands</b>	FIAM N.V. - Forestry Investment and Asset Management N.V	Brazil	RDF Empreendimentos Imobiliários Ltda	Forestry for wood and fibre	[2007] Concluded (Contract signed); unknown current status	unknown [intended]; 40.000 ha [contract]	Outright purchase
<b>Netherlands</b>	Floresteca Holding N.V.	Brazil	Unknown	Forestry for wood and fibre	Concluded (Contract signed); In operation (production)	unknown [intended]; 37.000 ha [contract]	Unknown
<b>Netherlands</b>	Forest Returns	Brazil	Unknown	Forest unspecified, Forestry	[2007] Concluded (Contract signed); [2007] In operation (production)	unknown [intended]; 7.000 ha [contract]	Unknown
<b>Netherlands</b>	Forest Returns	Costa Rica	Unknown	Agriculture, Food crops, Forestry, Tourism, Conservation	[2004] Concluded (Contract signed); [2004] In operation (production)	unknown [intended]; 1.114 ha [contract]	Outright purchase
<b>Netherlands</b>	Form International Ltd.	Ghana	Form Ghana Ltd.	Forestry for wood and fibre and for carbon sequestration/REDD	[2007] Concluded (Contract signed); [2013] In operation (production)	20.000 ha [intended]; 3.500 ha [contract]; 3.500 ha [in production 2012]	Lease/Concession
<b>Netherlands</b>	Global Agri-Development Company	Ethiopia	GADCO Enterprise Plc	Agriculture, Food crops	[2005] Concluded (Contract signed); In operation (production)	unknown [intended]; 500 ha [contract]	Lease/Concession

Land Grabbing and Human Rights:  
The Involvement of European Corporate and Financial Entities in Land Grabbing Outside the EU

<b>Netherlands</b>	Green Capital	Costa Rica	Unknown	Forestry for wood and fibre	Concluded (Contract signed); In operation (production)	unknown [intended]; 267 ha [contract]	Unknown
<b>Netherlands</b>	ING	Cambodia	Unknown (AZ Group, Daun Penh Construction Group, ING, SMEC)	Other	[2011] Concluded (Contract signed); [2014] In operation (production)	unknown [intended]; 2.572 ha [contract]; 341 ha [in production 2014]	Lease/Concession
<b>Netherlands</b>	K.I. Samen B.V.	Tanzania	Unknown (Holland Dairies)	Agriculture, Livestock	[2009] Concluded (Contract signed); [2012] In operation (production)	1.000 ha [intended]; 1.000 ha [contract]; 1.000 ha [in production 2012]	Lease/Concession
<b>Netherlands</b>	Kooy Bioflow B.V.	Ethiopia	Unknown (Kooy Bioflow B.V., Mekiya Agri Mechanization Service PLC)	Agriculture, Biofuels	Concluded (Contract signed); unknown current status	50.000 ha [intended]; 200 ha [contract]; 200 ha [in production 2008]	Lease/Concession
<b>Netherlands</b>	KP&P BV Africa	Kenya	Lake Turkana Wind Power Ltd	Renewable Energy	[2009] Concluded (Contract signed); [2014] Project not started	16.187 ha [intended]; 16.187 ha [contract]	Lease/Concession



## **Annex 4: Legal Sources for the Extraterritorial Obligations of the EU and EU Member States**

This Annex thematically lists the juridical references that underpin the arguments developed in Chapter 4.2 (“Extraterritorial human rights obligation of the EU and EU Member States”). The references below refer to the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights (ETO Principles) and to other legal sources.

### **CHAPTERS OF JURIDICAL REFERENCES**

- A. Human rights obligations in the context of intergovernmental organisations
- B. Do no harm
  - a) Respect obligations
  - b) Impact assessments/due diligence
- C. International agreements and cooperation
  - a) Human rights compliance of international agreements
  - b) Enabling international environment
  - c) International cooperation
- D. Protect obligations
  - a) Regulation of non-state actors
  - b) Regulation of state-controlled DFIs
- E. Remedy

### **A. Human rights obligations in the context of intergovernmental organisations**

#### **1. Principles and Objectives referred to in Title V, Chapter 1, para 1 & 2 of the TEU**

The principles and objectives referred to include democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law.

#### **2. Statement by European Commission and High Representative (2011)**

“EU external action has to comply with the rights contained in the EU Charter... as well as with the rights guaranteed by the European Convention on Human Rights.”

#### **3. European Parliament Resolution of 22 October 2009 on the institution aspects of setting up the European External Action Service (2009/2133(INI))**

The European Parliament “[recalls] that the EEAS must guarantee full application of the Charter of Fundamental Rights in all aspects of the Union's external action in accordance with the spirit and purpose of the Lisbon Treaty” (§5).

#### **4. ETO Principle 15: Obligations of States as members of international organisations**

As a member of an international organisation, the State remains responsible for its own conduct in relation to its human rights obligations within its territory and extra territorially. A State that transfers competences to, or participates in, an international organisation must take all reasonable steps to ensure that the relevant organisation acts consistently with the international human rights obligations of that State.

For a comprehensive analysis of States' extraterritorial obligations in the context of intergovernmental organisations, see ETO Consortium (2014) "Extraterritorial Obligations in the Context of International Financial Institutions". Available at: [http://www.etoconsortium.org/nc/en/main-navigation/library/documents/?tx\\_drblob\\_pi1\[downloadUid\]=131](http://www.etoconsortium.org/nc/en/main-navigation/library/documents/?tx_drblob_pi1[downloadUid]=131) (accessed on 14 April 2016); The European Union and Human Rights: An International Law Perspective, Tawhida Ahmed and Israel de Jesús Butler, *The European Journal of International Law*, Vol. 17 no.4, 2006, p. 781.

## **5. ETO Principle 16: Obligations of international organisations**

The present Principles apply to States without excluding their applicability to the human rights obligations of international organisations under, inter alia, general international law and international agreements to which they are parties.

## **6. General Comment No. 2: International Technical Assistance Measures, CESCR, E/1990/23 (1990), para. 9**

A matter which has been of particular concern to the Committee in the examination of the reports of States parties is the adverse impact of the debt burden and of the relevant adjustment measures on the enjoyment of economic, social and cultural rights in many countries. The Committee recognizes that adjustment programmes will often be unavoidable and that these will frequently involve a major element of austerity. Under such circumstances, however, endeavours to protect the most basic economic, social and cultural rights become more, rather than less, urgent. States parties to the Covenant, as well as the relevant United Nations agencies, should thus make a particular effort to ensure that such protection is, to the maximum extent possible, built-in to programmes and policies designed to promote adjustment. Such an approach, which is sometimes referred to as "adjustment with a human face" or as promoting "the human dimension of development" requires that the goal of protecting the rights of the poor and vulnerable should become a basic objective of economic adjustment. Similarly, international measures to deal with the debt crisis should take full account of the need to protect economic, social and cultural rights through, inter alia, international cooperation. In many situations, this might point to the need for major debt relief initiatives.

## **7. General Comment No. 14: The Right to the Highest Attainable Standard of Health, CESCR, E/C.12/2000/4 (2000), para. 39)**

To comply with their international obligations in relation to article 12, States parties have to respect the enjoyment of the right to health in other countries, and to prevent third parties from violating the right in other countries, if they are able to influence these third parties by way of legal or political means, in accordance with the Charter of the United Nations and applicable international law. Depending on the availability of resources, States should facilitate access to essential health facilities, goods and services in other countries, wherever possible, and provide the necessary aid when required. States parties should ensure that the right to health is given due attention in international agreements and, to that end, should consider the development of further legal instruments. In relation to the conclusion of other international agreements, States parties should take steps to ensure that these instruments do not adversely impact upon the right to health. Similarly, States parties have an obligation to ensure that their actions as members of international organizations take due account of the right to health. Accordingly, States parties which are members of international financial institutions, notably the International Monetary Fund, the World Bank, and regional development banks, should pay greater attention to the protection of the right to health in influencing the lending policies, credit agreements and international measures of these institutions.

## **8. General Comment No. 15: The Right to Water, CESCR, E/C.12/2002/11 (2003), para. 36**

States parties should ensure that their actions as members of international organizations take due account of the right to water. Accordingly, States parties that are members of international financial institutions, notably the International Monetary Fund, the World Bank, and regional development banks, should take steps to ensure that the right to water is taken into account in their lending policies, credit agreements and other international measures.

## **9. Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights, Maastricht, Netherlands (September 2011)**

The Maastricht Principles are available at <http://www.etoconsortium.org/en/main-navigation/library/maastricht-principles/> (accessed on 14 April 2016).

## **10. UN Charter, Article 56**

All Members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55.

## **11. UDHR, Article 22**

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

## **12. ICESCR, Article 2(1)**

Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

## **13. Convention on the Rights of Persons with Disabilities, Article 32**

1. States Parties recognize the importance of international cooperation and its promotion, in support of national efforts for the realization of the purpose and objectives of the present Convention, and will undertake appropriate and effective measures in this regard, between and among States and, as appropriate, in partnership with relevant international and regional organizations and civil society, in particular organizations of persons with disabilities. Such measures could include, inter alia:
  - (a) Ensuring that international cooperation, including international development programmes, is inclusive of and accessible to persons with disabilities;
  - (b) Facilitating and supporting capacity-building, including through the exchange and sharing of information, experiences, training programmes and best practices;
  - (c) Facilitating cooperation in research and access to scientific and technical knowledge;
  - (d) Providing, as appropriate, technical and economic assistance, including by facilitating access to and sharing of accessible and assistive technologies, and through the transfer of technologies.

2. The provisions of this article are without prejudice to the obligations of each State Party to fulfil its obligations under the present Convention.

#### **14. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 9(1)**

States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of any of the offences referred to in article 4, including the supply of all evidence at their disposal necessary for the proceedings.

#### **15. International Convention for the Protection of all Persons from Enforced Disappearance, Annex, Article 15**

States Parties shall cooperate with each other and shall afford one another the greatest measure of mutual assistance with a view to assisting victims of enforced disappearance, and in searching for, locating and releasing disappeared persons and, in the event of death, in exhuming and identifying them and returning their remains.

#### **16. Optional Protocol to the Convention on the Rights of the Child in Armed Conflict and on the Sale of Children, Child Prostitution and Child Pornography, Annex I, Article 10**

1. States Parties shall take all necessary steps to strengthen international cooperation by multilateral, regional and bilateral arrangements for the prevention, detection, investigation, prosecution and punishment of those responsible for acts involving the sale of children, child prostitution, child pornography and child sex tourism. States Parties shall also promote international cooperation and coordination between their authorities, national and international non-governmental organizations and international organizations.
2. States Parties shall promote international cooperation to assist child victims in their physical and psychological recovery, social reintegration and repatriation.
3. States Parties shall promote the strengthening of international cooperation in order to address the root causes, such as poverty and underdevelopment, contributing to the vulnerability of children to the sale of children, child prostitution, child pornography, and child sex tourism.
4. States Parties in a position to do so shall provide financial, technical or other assistance through existing multilateral, regional, bilateral or other programmes.

#### **17. Optional Protocol to the Convention on the Rights of the Child in Armed Conflict and on the Sale of Children, Child Prostitution and Child Pornography, Annex II, Article 10**

The Optional Protocols to the Convention on the Rights of the Child outline States' extraterritorial obligations to international cooperation. States have an obligation to cooperate to prevent and punish child prostitution, child pornography, the sale of children and the involvement of children in armed conflict.

#### **18. Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights, Maastricht, Netherlands (September 2011)**

The Principles have been adopted on September 28, 2011 by leading experts in international law and human rights; they can be accessed at: <http://www.etoconsortium.org/nc/en/main-navigation/library/maastricht-principles/> (see above). See also O. De Schutter, A. Eide, A. Khalfan, M. Orellana, M. Salomon, I. Seiderman (2012) for the official commentary to the Principles, available at <http://www.icj.org/wp-content/uploads/2012/12/HRQMaastricht-Maastricht-Principles-on-ETO.pdf>

## **B. Do no harm**

### **a) Respect obligations**

#### **19. ETO Principle 13: Obligation to avoid causing harm**

States must desist from acts and omissions that create a real risk of nullifying or impairing the enjoyment of economic, social and cultural rights extraterritorially. The responsibility of States is engaged where such nullification or impairment is a foreseeable result of their conduct. Uncertainty about potential impacts does not constitute justification for such conduct.

#### **20. Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996, p. 226, para. 29**

The Court recognizes that the environment is under daily threat and that the use of nuclear weapons could constitute a catastrophe for the environment. The Court also recognizes that the environment is not an abstraction but represents the living space, the quality of life and the very health of human beings, including generations unborn. The existence of the general obligation of States to ensure that activities within their jurisdiction and control respect the environment of other States or of areas beyond national control is now part of the corpus of international law relating to the environment.

#### **21. ETO Principle 20: Direct interference**

All States have the obligation to refrain from conduct, which nullifies or impairs the enjoyment and exercise of economic, social and cultural rights of persons outside their territories.

#### **22. ETO Principle 21: Indirect interference**

States must refrain from any conduct which:

- a) Impairs the ability of another State or international organisation to comply with that State's or that international organisation's obligations as regards economic, social and cultural rights; or
- b) Aids, assists, directs, controls or coerces another State or international organisation to breach that State's or that international organisation's obligations as regards economic, social and cultural rights, where the former States do so with knowledge of the circumstances of the act.

#### **23. UN Charter Article 74**

Members of the United Nations also agree that their policy in respect of the territories to which this Chapter applies, no less than in respect of their metropolitan areas, must be based on the general principle of good-neighbourliness, due account being taken of the interests and well-being of the rest of the world, in social, economic, and commercial matters.

#### **24. Concluding Observations CESCR on Belgium, UN Doc.E/C.12/bel/co/4 (2013), para. 22**

The Committee is concerned by reports that the State party's policy for promoting agrofuels, in particular its new Agrofuels Act of 17 July 2013, is likely to encourage largescale cultivation of these products in third countries where Belgian firms operate and could lead to negative consequences for local farmers (art. 11).

***The Committee recommends that the State party systematically conduct human rights impact assessments in order to ensure that projects promoting agrofuels do not have a negative***

***impact on the economic, social and cultural rights of local communities in third countries where Belgian firms working in this field operate.***

**25. CEDAW, General Recommendation No. 34 on the Rights of Rural Women, para. 13**

States parties should regulate the activities of domestic non-State actors within their jurisdiction, including when they operate extraterritorially. GR 28 (2010) on the core obligations of States parties under article 2, reaffirms the requirement under article 2(e) to eliminate discrimination by any public or private actor, which extends to acts of national corporations operating extraterritorially. States parties should uphold extraterritorial obligations with respect to rural women, *inter alia*, by: not interfering, directly or indirectly, with the enjoyment of their rights; taking regulatory measures to prevent any actor under their jurisdiction, including private individuals, companies and public entities, from infringing or abusing the rights of rural women outside their territory; and, ensuring that international cooperation and development assistance, whether bilateral or multilateral, advance the rights of rural women outside their territory. Appropriate and effective remedies should be available to affected rural women when a State party has violated its extraterritorial obligations.

**26. International Law Commission, Report of the Fifty-Third Session, Responsibility of States for Internationally Wrongful Acts, U.N. Doc. A/56/10 (2001), arts. 16-18.**

This document can be accessed at:

[http://legal.un.org/ilc/texts/instruments/english/commentaries/9\\_6\\_2001.pdf](http://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf) (commentaries on pp. 65-70).

**Article 16: Aid or assistance in the commission of an internationally wrongful act**

A State which aids or assists another State in the commission of an internationally wrongful act by the latter is internationally responsible for doing so if:

- a) That State does so with knowledge of the circumstances of the internationally wrongful act; and
- b) The act would be internationally wrongful if committed by that State.

**Article 17: Direction and control exercised over the commission of an internationally wrongful act**

A State which directs and controls another State in the commission of an internationally wrongful act by the latter is internationally responsible for that act if:

- a) That State does so with knowledge of the circumstances of the internationally wrongful act; and
- b) The act would be internationally wrongful if committed by that State.

**Article 18: Coercion of another State**

A State which coerces another State to commit an act is internationally responsible for that act if:

- a) The act would, but for the coercion, be an internationally wrongful act of the coerced State; and
- b) The coercing State does so with knowledge of the circumstances of the act.

**b) Impact assessments/due diligence**

**27. Guiding principles on human rights impact assessments of trade and investment agreements**

The former UN Special Rapporteur on the Right to Food, Olivier De Schutter, has developed guidelines for States on how to conduct HRIAs in the context of international trade and investment agreements that

can provide useful guidance to the EU in the design and implementation of such assessments. See De Schutter (2011): Guiding principles on human rights impact assessments of trade and investment agreements. A/HRC/19/59/Add.5. Available at: [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-59-Add5\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-59-Add5_en.pdf)

## **28. ETO Principle 14: Impact assessment and prevention**

States must conduct prior assessment, with public participation, of the risks and potential extraterritorial impacts of their laws, policies and practices on the enjoyment of economic, social and cultural rights. The results of the assessment must be made public. The assessment must also be undertaken to inform the measures that States must adopt to prevent violations or ensure their cessation as well as to ensure effective remedies.

## **29. Concluding Observations CESCR on Austria (E/C.12/AUT/CO/4), Norway (E/C.12/NOR/CO/5) (2013)**

### **CESCR Concluding Observations on Austria**

11. The Committee is deeply concerned that the State party's official development assistance provides support to projects that have reportedly resulted in violations of economic, social and cultural rights in recipient countries. It is further concerned that the State party's agriculture and trade policies, which promote the export of subsidized agricultural products to developing countries, undermine the enjoyment of the right to an adequate standard of living and the right to food in the receiving countries (arts. 2 and 11).

***The Committee calls upon the State party to adopt a human rights-based approach to its policies on official development assistance and on agriculture and trade, by:***

- (a) Undertaking a systematic and independent human rights impact assessment prior to making funding decisions;***
- (b) Establishing an effective monitoring mechanism to regularly assess the human rights impact of its policies and projects in the receiving countries and to take remedial measures; and***
- (c) Ensuring that there is an accessible complaint mechanism if violations of economic, social and cultural rights occur in the receiving countries.***

12. The Committee is concerned at the lack of oversight over Austrian companies operating abroad with regard to the negative impact of their activities on the enjoyment of economic, social and cultural rights in host countries (art. 2).

***The Committee urges the State party to ensure that all economic, social and cultural rights are fully respected and rights holders adequately protected in the context of corporate activities, including by establishing appropriate laws and regulations, together with monitoring, investigation and accountability procedures to set and enforce standards for the performance of corporations, as underlined in the Committee's statement on the obligations of States parties regarding the corporate sector and economic, social and cultural rights (E/2012/22, annex VI, section A).***

### **CESCR Concluding Observations on Norway**

6. The Committee is concerned that the various steps taken by the State party in the context of the social responsibility of the Government Pension Fund Global have not included the institutionalization of systematic human rights impact assessments of its investments.

***The Committee recommends that the State party ensure that investments by the Norges Bank Investment Management in foreign companies operating in third countries are subject to a comprehensive human rights impact assessment (prior to and during the investment). The Committee also recommends that the State party adopt policies and other measures to prevent human rights contraventions abroad by corporations that have their main offices under the jurisdiction of the State party, without infringing the sovereignty or diminishing the obligations of the host States under the Covenant. The Committee draws the attention of the State party to its statement on the obligations of State parties regarding the corporate sector and economic, social and cultural rights (E/2012/22, annex VI, section A).***

### **30. Large-scale land acquisitions and leases: A set of minimum principles and measures to address the human rights challenge**

Report of the Special Rapporteur on the right to food, Olivier De Schutter (A/HRC/13/33/Add.2), 2009.

The report accessed at: [http://www.srfood.org/images/stories/pdf/officialreports/20100305\\_a-hrc-13-33-add2\\_land-principles\\_en.pdf](http://www.srfood.org/images/stories/pdf/officialreports/20100305_a-hrc-13-33-add2_land-principles_en.pdf)

### **31. General Comment No. 34: Article 19: Freedoms of Opinion and Expression, U.N. Human Rights Committee., 102nd Sess., para. 18-19. U.N. Doc. CCPR/C/GC/34 (2011)**

#### **Right of access to information**

18. Article 19, paragraph 2 embraces a right of access to information held by public bodies. Such information includes records held by a public body, regardless of the form in which the information is stored, its source and the date of production. Public bodies are as indicated in paragraph 7 of this general comment. The designation of such bodies may also include other entities when such entities are carrying out public functions. As has already been noted, taken together with article 25 of the Covenant, the right of access to information includes a right whereby the media has access to information on public affairs and the right of the general public to receive media output. Elements of the right of access to information are also addressed elsewhere in the Covenant. As the Committee observed in its general comment No. 16, regarding article 17 of the Covenant, every individual should have the right to ascertain in an intelligible form, whether, and if so, what personal data is stored in automatic data files, and for what purposes. Every individual should also be able to ascertain which public authorities or private individuals or bodies control or may control his or her files. If such files contain incorrect personal data or have been collected or processed contrary to the provisions of the law, every individual should have the right to have his or her records rectified. Pursuant to article 10 of the Covenant, a prisoner does not lose the entitlement to access to his medical records. The Committee, in general comment No. 32 on article 14, set out the various entitlements to information that are held by those accused of a criminal offence. Pursuant to the provisions of article 2, persons should be in receipt of information regarding their Covenant rights in general. Under article 27, a State party's decision-making that may substantively compromise the way of life and culture of a minority group should be undertaken in a process of information-sharing and consultation with affected communities.

19. To give effect to the right of access to information, States parties should proactively put in the public domain Government information of public interest. States parties should make every effort to ensure easy, prompt, effective and practical access to such information. States parties should also enact the necessary procedures, whereby one may gain access to information, such as by means of freedom of information legislation. The procedures should provide for the timely processing of requests for



information according to clear rules that are compatible with the Covenant. Fees for requests for information should not be such as to constitute an unreasonable impediment to access to information. Authorities should provide reasons for any refusal to provide access to information. Arrangements should be put in place for appeals from refusals to provide access to information as well as in cases of failure to respond to requests.

### **32. Társaság a Szabadságjogokért v. Hungary, Appl. No. 37374/05, para. 26, 35 (2009)**

26. The Court has consistently recognised that the public has a right to receive information of general interest. Its case-law in this field has been developed in relation to press freedom which serves to impart information and ideas on such matters (see *Observer and Guardian v. the United Kingdom*, 26 November 1991, § 59, Series A no. 216, and *Thorgeir Thorgeirson v. Iceland*, 25 June 1992, § 63, Series A no. 239). In this connection, the most careful scrutiny on the part of the Court is called for when the measures taken by the national authority are capable of discouraging the participation of the press, one of society's "watchdogs", in the public debate on matters of legitimate public concern (see *Bladet Tromsø and Stensaas v. Norway* [GC], no. 21980/93, § 64, ECHR 1999-III, and *Jersild v. Denmark*, 23 September 1994, § 35, Series A no. 298), even measures which merely make access to information more cumbersome. Available at: <http://hudoc.echr.coe.int/eng?i%3D001-92171#%22itemid%22:%22001-92171%22>]

### **33. Other legal sources with regard to the requirement of a prior environmental assessment**

The requirement of a prior environmental assessment is also enshrined in

- The Convention on Biological Diversity,
- The UN Framework Convention on Climate Change, and
- The UN Convention on the Law of the Sea.

## **C. International agreements and cooperation**

### **a) Human rights compliance of international agreements**

#### **34. ETO Principle 17: International agreements**

The present Principles apply to States without excluding their applicability to the human rights obligations of international organisations under, inter alia, general international law and international agreements to which they are parties.

#### **35. Other recent pronouncements or court decisions on the obligation that international agreements must be consistent with States' human rights obligations**

- CESCR Concluding Observations Canada (E/C.12/CAN/CO/6), General Comments 22 (E/C.12/GC/22)
- CEDAW General Recommendation on Rural Women (CEDAW/C/GC/34)
- *Bosphorus v. Ireland*, App. No. 45036/98 2005 Eur. Ct. H.R. at para. 154
- *Sawhoyamaya Indigenous Community v. Paraguay*, Judgment, Inter-Am. Ct. H.R. (ser.C), Report No. 146, para. 140 (29 Mar. 2006)

### **b) Enabling international environment**

#### **36. ETO Principle 29: Obligation to create an international enabling environment**

States must take deliberate, concrete and targeted steps, separately, and jointly through international cooperation, to create an international enabling environment conducive to the universal fulfilment of economic, social and cultural rights, including in matters relating to bilateral and multilateral trade, investment, taxation, finance, environmental protection, and development cooperation.

The compliance with this obligation is to be achieved through, inter alia:

- a) Elaboration, interpretation, application and regular review of multilateral and bilateral agreements as well as international standards;
- b) Measures and policies by each State in respect of its foreign relations, including actions within international organisations, and its domestic measures and policies that can contribute to the fulfilment of economic, social and cultural rights extraterritorially.

**37. De Schutter et Al. (2012), Commentary to the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights, p. 24.**

When Member States transfer competences to the EU, such as in the area of trade and investment, they must make sure that agreements negotiated and implemented by the EU are compliant with their human rights obligations and must oppose agreements/ provisions that present a real risk to the enjoyment of human rights in third countries.

**38. General Comment No. 3: The Nature of States Parties Obligations, CESCR, E/1991/23 (1991), para. 2**

1. Article 2 is of particular importance to a full understanding of the Covenant and must be seen as having a dynamic relationship with all of the other provisions of the Covenant. It describes the nature of the general legal obligations undertaken by States parties to the Covenant. Those obligations include both what may be termed (following the work of the International Law Commission) obligations of conduct and obligations of result. While great emphasis has sometimes been placed on the difference between the formulations used in this provision and that contained in the equivalent article 2 of the International Covenant on Civil and Political Rights, it is not always recognized that there are also significant similarities. In particular, while the Covenant provides for progressive realization and acknowledges the constraints due to the limits of available resources, it also imposes various obligations, which are of immediate effect. Of these, two are of particular importance in understanding the precise nature of States parties' obligations. One of these, which is dealt with in a separate general comment, and which is to be considered by the Committee at its sixth session, is the "undertaking to guarantee" that relevant rights "will be exercised without discrimination..."]

2. The other is the undertaking in article 2 (1) "to take steps", which in itself, is not qualified or limited by other considerations. The full meaning of the phrase can also be gauged by noting some of the different language versions. In English the undertaking is "to take steps", in French it is "to act" ("s'engage à agir") and in Spanish it is "to adopt measures" ("a adoptar medidas"). Thus while the full realization of the relevant rights may be achieved progressively, steps towards that goal must be taken within a reasonably short time after the Covenant's entry into force for the States concerned. Such steps should be deliberate, concrete and targeted as clearly as possible towards meeting the obligations recognized in the Covenant.

**39. Universal Declaration of Human Rights, Article 28**

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

**40. Declaration on Right to Development, A/RES/41/128, (1986), art 3(1)**

States have the primary responsibility for the creation of national and international conditions favourable to the realization of the right to development.

### **c) International cooperation**

#### **41. General Comment No. 3: The Nature of States Parties Obligations, CESCR, 5th Sess., para. 12, U.N. Doc. E/1991/23 (1991)**

Similarly, the Committee underlines the fact that even in times of severe resources constraints whether caused by a process of adjustment, of economic recession, or by other factors the vulnerable members of society can and indeed must be protected by the adoption of relatively low-cost targeted programmes. In support of this approach the Committee takes note of the analysis prepared by UNICEF entitled "Adjustment with a human face: protecting the vulnerable and promoting growth, the analysis by UNDP in its *Human Development Report 1990* and the analysis by the World Bank in the *World Development Report 1990*.

#### **42. Concluding Observations on Austria, CESCR, 2013, UN Doc. E/C.12/AUT/CO/4**

Accessed at: <https://www.bka.gv.at/DocView.axd?CobId=54260>

#### **43. ETO Principle 32: Principles and priorities in cooperation**

In fulfilling economic, social and cultural rights extraterritorially, States must:

- a. Prioritize the realisation of the rights of disadvantaged, marginalized and vulnerable groups;
- b. Prioritize core obligations to realize minimum essential levels of economic, social and cultural rights, and move as expeditiously and effectively as possible towards the full realization of economic, social and cultural rights;
- c. Observe international human rights standards, including the right to self-determination and the right to participate in decision-making, as well as the principles of non-discrimination and equality, including gender equality, transparency, and accountability; and
- d. Avoid any retrogressive measures or else discharge their burden to demonstrate that such measures are duly justified by reference to the full range of human rights obligations, and are only taken after a comprehensive examination of alternatives.

### **D. Protect obligations**

#### **a) Regulation of non-state actors**

#### **44. ETO Principle 24: Obligation to regulate**

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 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.

#### **45. General Comment No. 14: The Right to the Highest Attainable Standard of Health, CESCR, 22nd Sess., U.N. Doc. E/C.12/2000/4, para. 31 (2000)**

The progressive realization of the right to health over a period of time should not be interpreted as depriving States parties' obligations of all meaningful content. Rather, progressive realization means that

States parties have a specific and continuing obligation to move as expeditiously and effectively as possible towards the full realization of article 12.

**46. Statement on the Obligations of States Parties Regarding the Corporate Sector and Economic, Social and Cultural Rights, CESCR, para. 5, U.N. Doc. E/C.12/2011/1 (2011)**

Protecting rights means that States Parties effectively safeguard rights holders against infringements of their economic, social and cultural rights involving corporate actors, by establishing appropriate laws and regulations, together with monitoring, investigation and accountability procedures to set and enforce standards for the performance of corporations. As the Committee has repeatedly explained, non-compliance with this obligation can come about through action or inaction. It is of the utmost importance that States parties ensure access to effective remedies to victims of corporate abuse of economic, social and cultural rights, through judicial, administrative, legislative or other appropriate means. States parties should also take steps to prevent human rights contraventions abroad by corporations which have their main offices under their jurisdiction, without infringing the sovereignty or diminishing the obligations of the host States under the Covenant. For example, in its general comment No. 15 (2002) on the right to water, the Committee states “steps should be taken by States Parties to prevent their own citizens and companies from violating the right to water of individuals and communities in other countries”. It also emphasizes that “where States Parties can take steps to influence other third parties to respect the right, through legal or political means, such steps should be taken in accordance with the Charter of the United Nations and applicable international law.” In its general comment No. 18 (2005) on the right to work, the Committee underlines that private enterprises, both national and multinational, “have a particular role to play in job creation, hiring policies and non-discriminatory access to work. They should conduct their activities on the basis of legislation, administrative measures, codes of conduct and other appropriate measures promoting respect for the right to work, agreed between the government and civil society.” In its general comment No. 19 on the right to social security, the Committee underscores that “States Parties should extraterritorially protect the right to social security by preventing their own citizens and national entities from violating this right in other countries”.

**47. Consideration of Reports Submitted by States Parties Under Article 9 of the Convention: Concluding Observations, CERD, 70th Sess., para 17, U.N. Doc. CERD/C/CAN/CO/18 (2007)**

The Committee notes with concern the reports of adverse effects of economic activities connected with the exploitation of natural resources in countries outside Canada by transnational corporations registered in Canada on the right to land, health, living environment and the way of life of indigenous peoples living in these regions (arts 2. 1(d)d), 4 (a) and 5(e)).

***In light of article 2.1 (d) and article 4 (a) and (b) of the Convention and of its general recommendation no. 23 (1997) on the rights of indigenous peoples, the Committee encourages the State party to take appropriate legislative or administrative measures to prevent acts of transnational corporations registered in Canada which negatively impact on the enjoyment of rights of indigenous peoples in territories outside Canada. In particular, the Committee recommends that the State party explore ways to hold transnational corporations registered in Canada accountable. The Committee requests the State party to include in its next periodic report information on the effects of activities of transnational corporations registered in Canada on indigenous peoples abroad and on any measures taken in this regard.***

**48. General Comment No. 22: The Right to Sexual and Reproductive Health, CESCR, 57th Sess., U.N. Doc. E/C.12/GC/22, para. 60 (2016)**

States must effectively monitor and regulate specific sectors, such as private health care providers, health insurance companies, educational and child-care institutions, institutional care facilities, refugee camps, prisons and other detention centres, to ensure that they do not undermine or violate individuals' enjoyment of the right to sexual and reproductive health. States have an obligation to ensure that private

health insurance companies do not refuse to cover sexual and reproductive health services. Furthermore, States also have an extraterritorial obligation to ensure that the transnational corporations, such as pharmaceutical companies operating globally, do not violate the right to sexual and reproductive health of people in other countries, for example through non-consensual testing of contraceptives or medical experiments.

**49. General Comment No. 23: The Right to just and favourable conditions of work, CESCR, 57th Sess., U.N. Doc. E/C.12/GC/23, para. 70 (2016)**

States parties should take measures, including legislative measures, to clarify that their nationals as well as enterprises domiciled in their territory and/or jurisdiction are required to respect the right throughout their operations extra-territorially. This responsibility is particularly important in States with advanced labour law systems as home-country enterprises can help to improve standards for working conditions in host countries. Similarly, in conflict and post-conflict situations, States parties can have an important regulatory and enforcement role and support individuals and enterprises to identify, prevent and mitigate risks to just and favourable conditions of work through their operations. States parties should introduce appropriate measures to ensure that non-State actors domiciled in the State party are accountable for violations of the right to just and favourable conditions of work extra-territorially and that victims have access to a remedy. States parties should also provide guidance to employers and enterprises on how to respect the right extra-territorially.

**50. General Comment No. 16 on State obligations regarding the impact of the business sector on children's rights, CRC, 62nd Sess., U.N. Doc. CRC/C/GC/16 (2013), para. 38- 46**

38. Business enterprises increasingly operate on a global scale through complex networks of subsidiaries, contractors, suppliers and joint ventures. Their impact on children's rights, whether positive or negative, is rarely the result of the action or omission of a single business unit, whether it is the parent company, subsidiary, contractor, supplier or others. Instead, it may involve a link or participation between businesses units located in different jurisdictions. For example, suppliers may be involved in the use of child labour, subsidiaries may be engaged in land dispossession and contractors or licensees may be involved in the marketing of goods and services that are harmful to children. There are particular difficulties for States in discharging their obligations to respect, protect and fulfil the rights of the child in this context owing, among other reasons, to the fact that business enterprises are often legally separate entities located in different jurisdictions even when they operate as an economic unit which has its centre of activity, registration and/or domicile in one country (the home State) and is operational in another (the host State).

39. Under the Convention, States have the obligation to respect and ensure children's rights within their jurisdiction. The Convention does not limit a State's jurisdiction to "territory". In accordance with international law, the Committee has previously urged States to protect the rights of children who may be beyond their territorial borders. It has also emphasized that State obligations under the Convention and the Optional Protocols thereto apply to each child within a State's territory and to all children subject to a State's jurisdiction.

40. Extraterritorial obligations are also explicitly referred to in the Optional Protocol on the sale of children, child prostitution and child pornography. Article 3, paragraph 1, provides that each State shall ensure that, as a minimum, offences under it are fully covered by its criminal or penal law, whether such offences are committed domestically or transnationally. Under article 3, paragraph 4, of Optional Protocol on the sale of children, child prostitution and child pornography, liability for these offences, whether criminal, civil or administrative, should be established for legal persons, including business enterprises.

This approach is consistent with other human rights treaties and instruments that impose obligations on States to establish criminal jurisdiction over nationals in relation to areas such as complicity in torture, enforced disappearance and apartheid, no matter where the abuse and the act constituting complicity is committed.

41. States have obligations to engage in international cooperation for the realization of children's rights beyond their territorial boundaries. The preamble and the provisions of the Convention consistently refer to the "importance of international cooperation for improving the living conditions of children in every country, in particular in the developing countries". General comment No. 5 emphasizes "implementation of the Convention is a cooperative exercise for the States of the world". As such, the full realization of children's rights under the Convention is in part a function of how States interact. Furthermore, the Committee highlights that the Convention has been nearly universally ratified; thus realization of its provisions should be of major and equal concern to both host and home States of business enterprises.

42. Host States have the primary responsibility to respect, protect and fulfil children's rights in their jurisdiction. They must ensure that all business enterprises, including transnational corporations operating within their borders, are adequately regulated within a legal and institutional framework that ensures that they do not adversely impact on the rights of the child and/or aid and abet violations in foreign jurisdictions.

43. Home States also have obligations, arising under the Convention and the Optional Protocols thereto, to respect, protect and fulfil children's rights in the context of businesses' extraterritorial activities and operations, provided that there is a reasonable link between the State and the conduct concerned. A reasonable link exists when a business enterprise has its centre of activity, is registered or domiciled or has its main place of business or substantial business activities in the State concerned. When adopting measures to meet this obligation, States must not violate the Charter of the United Nations and general international law nor diminish the obligations of the host State under the Convention.

44. States should enable access to effective judicial and non-judicial mechanisms to provide remedy for children and their families whose rights have been violated by business enterprises extraterritorially when there is a reasonable link between the State and the conduct concerned. Furthermore, States should provide international assistance and cooperation with investigations and enforcement of proceedings in other States.

45. Measures to prevent the infringement of children's rights by business enterprises when they are operating abroad include:

- a. Making access to public finance and other forms of public support, such as insurance, conditional on a business carrying out a process to identify, prevent or mitigate any negative impacts on children's rights in their overseas operations;
- b. Taking into account the prior record of business enterprises on children's rights when deciding on the provision of public finance and other forms of official support;
- c. Ensuring that State agencies with a significant role regarding business, such as export credit agencies, take steps to identify, prevent and mitigate any adverse impacts the projects they support might have on children's rights before offering support to businesses operating abroad and stipulate that such agencies will not support activities that are likely to cause or contribute to children's rights abuses.

46. Both home and host States should establish institutional and legal frameworks that enable businesses to respect children's rights across their global operations. Home States should ensure that there are effective mechanisms in place so that the government agencies and institutions with responsibility for implementation of the Convention and the Optional Protocols thereto coordinate effectively with those

responsible for trade and investment abroad. They should also build capacity so that development assistance agencies and overseas missions that are responsible for promoting trade can integrate business issues into bilateral human rights dialogues, including children's rights, with foreign Governments. States that adhere to the OECD Guidelines for Multinational Enterprises should support their national contact points in providing mediation and conciliation for matters that arise extraterritorially by ensuring that they are adequately resourced, independent and mandated to work to ensure respect for children's rights in the context of business issues. Recommendations issued by bodies such as the OECD national contact points should be given adequate effect.

**51. Concluding observations on the sixth periodic report of Canada, CESCR, 57th Sess., U.N. Doc. E/C.12/CAN/CO/6, para. 16 (2016)**

The Committee recommends that the State party strengthen its legislation governing the conduct of corporations registered or domiciled in the State party in their activities abroad, including by requiring those corporations to conduct human rights impact assessments prior to making investment decisions. It also recommends that the State party introduce effective mechanisms to investigate complaints filed against those corporations, and adopt the legislative measures necessary to facilitate access to justice before domestic courts by victims of the conduct of those corporations. The Committee further recommends that the State party ensure that trade and investment agreements negotiated by Canada recognize the primacy of its international human rights obligations over investors' interests, so that the introduction of investor-State dispute settlement procedures shall not create obstacles to the full realization of Covenant rights.

**52. Concluding observations on the combined eighth and ninth periodic reports of Sweden, CEDAW, 63rd Sess., U.N. Doc. CEDAW/C/SWE/CO/8-9, para. 35 (2016)**

The Committee recommends that the State party intensify its efforts to ensure equal opportunities for women in the labour market, including traditionally male-dominated sectors, such as information technologies and science, create more opportunities for women to gain access to full-time employment, increase the incentives for men to use their right to parental leave and take specific and proactive measures to eliminate occupational segregation and to reduce the gender pay gap. The State party should take into account the needs of disadvantaged groups of women and consider the use of temporary special measures, such as financial incentives, in this regard. The Committee recommends that the State party ratify the International Labour Organization Convention no. 189 (2010) concerning decent work for domestic workers. It further recommends that the State party uphold its due diligence obligations to ensure that companies under [...] its jurisdiction or control respect, protect and fulfil women's human rights when operating abroad.

**53. ETO Principle 25c: Bases for Protection**

States must adopt and enforce measures to protect economic, social and cultural rights through legal and other means, including diplomatic means, in each of the following circumstances:

c. As regards business enterprises, where the corporation, or its parent or controlling company, has its centre of activity, is registered or domiciled, or has its main place of business or substantial business activities, in the State concerned [.]

**54. Restatement (Third) of the Foreign Relations Law of the United States § 402 (2) (1987)**

"[A] state has jurisdiction to prescribe law with respect to [...] (2) the activities, interests, status, or relations of its nationals outside as well as within its territory."

**55. ETO Principle 26: Position to influence**

States that are in a position to influence the conduct of non-State actors even if they are not in a position to regulate such conduct, such as through their public procurement system or international diplomacy, should exercise such influence, in accordance with the Charter of the United Nations and general international law, in order to protect economic, social and cultural rights.

**56. General Comment No 15 on the Right to Water, CESCR, 29th session, 2003, UN Doc. E/C.12/2002/11, para. 33**

Steps should be taken by States parties to prevent their own citizens and companies from violating the right to water of individuals and communities in other countries. Where States parties can take steps to influence other third parties to respect the right, through legal or political means, such steps should be taken in accordance with the Charter of the United Nations Charter and applicable international law.

**57. ETO Principle 27: Obligation to cooperate**

All States must cooperate to ensure that non-State actors do not impair the enjoyment of the economic, social and cultural rights of any persons. This obligation includes measures to prevent human rights abuses by non-State actors, to hold them to account for any such abuses, and to ensure an effective remedy for those affected.

**b) Regulation of state-controlled DFIs**

**58. ETO Principle 12a: Attribution of State responsibility for the conduct of non-State actors**

State responsibility extends to:

- a) Acts and omissions of non-State actors acting on the instructions or under the direction or control of the State.

**E. Remedy**

**59. ETO Principle 37: General obligation to provide effective remedy**

States must ensure the enjoyment of the right to a prompt, accessible and effective remedy before an independent authority, including, where necessary, recourse to a judicial authority, for violations of economic, social and cultural rights. Where the harm resulting from an alleged violation has occurred on the territory of a State other than a State in which the harmful conduct took place, any State concerned must provide remedies to the victim.

To give effect to this obligation, States should:

- a) Seek cooperation and assistance from other concerned States where necessary to ensure a remedy;
- b) Ensure remedies are available for groups as well as individuals;
- c) Ensure the participation of victims in the determination of appropriate remedies;
- d) Ensure access to remedies, both judicial and non-judicial, at the national and international levels; and
- e) Accept the right of individual complaints and develop judicial remedies at the international level.

**60. ETO Principle 38: Effective remedies and reparation**



Remedies, to be effective, must be capable of leading to a prompt, thorough and impartial investigation; cessation of the violation if it is on-going; and adequate reparation, including, as necessary, restitution, compensation, satisfaction, rehabilitation and guarantees of non-repetition. To avoid irreparable harm, interim measures must be available and States must respect the indication of interim measures by a competent judicial or quasi-judicial body. Victims have the right to truth about the facts and circumstances surrounding the violations, which should also be disclosed to the public, provided that it causes no further harm to the victim.

#### **61. Universal Declaration of Human Rights (Article 8)**

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

#### **62. International Covenant on Civil and Political Rights (Article 2 (3))**

Each State Party to the present Covenant undertakes:

- a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
- b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
- c) To ensure that the competent authorities shall enforce such remedies when granted.

#### **63. Convention against Torture and other Forms of Cruel, Inhuman or Degrading Treatment or Punishment (Articles 13 and 14)**

##### **Article 13**

Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill treatment or intimidation as a consequence of his complaint or any evidence given.

##### **Article 14**

1. Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation.
2. Nothing in this article shall affect any right of the victim or other persons to compensation, which may exist under national law.

#### **64. International Convention on the Elimination of All Forms of Racial Discrimination (Article 6)**

States Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the

right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.

#### **65. Convention on the Rights of the Child (Article 39)**

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment, which fosters the health, self-respect and dignity of the child.

#### **66. European Convention on Human Rights (Articles 5 (5), 13 and 41)**

##### **Article 5: Right to liberty and security**

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.

##### **Article 13: Right to an effective remedy**

Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

##### **Article 14: Prohibition of discrimination**

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

#### **67. Charter of Fundamental Rights of the EU (Article 47)**

##### **Article 47: Right to an effective remedy and to a fair trial**

Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented. Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice

#### **68. Vienna Declaration and Program of Action (Article 27)**

Every State should provide an effective framework of remedies to redress human rights grievances or violations. The administration of justice, including law enforcement and prosecutorial agencies and, especially, an independent judiciary and legal profession in full conformity with applicable standards contained in international human rights instruments, are essential to the full and non-discriminatory realization of human rights and indispensable to the processes of democracy and sustainable development. In this context, institutions concerned with the administration of justice should be properly funded, and an increased level of both technical and financial assistance should be provided by the international community. It is incumbent upon the United Nations to make use of special programmes of advisory services on a priority basis for the achievement of a strong and independent administration of justice.

**69. Concluding observations on the fourth periodic report of Austria, E/C.12/AUT/CO/4 (2013), para. 11-12**

11. The Committee is deeply concerned that the State party's official development assistance provides support to projects that have reportedly resulted in violations of economic, social and cultural rights in recipient countries. It is further concerned that the State party's agriculture and trade policies, which promote the export of subsidized agricultural products to developing countries, undermine the enjoyment of the right to an adequate standard of living and the right to food in the receiving countries (arts. 2 and 11).

***The Committee calls upon the State party to adopt a human rights-based approach to its policies on official development assistance and on agriculture and trade, by:***

***(a) Undertaking a systematic and independent human rights impact assessment prior to making funding decisions;***

***(b) Establishing an effective monitoring mechanism to regularly assess the human rights impact of its policies and projects in the receiving countries and to take remedial measures; and***

***(c) Ensuring that there is an accessible complaint mechanism if violations of economic, social and cultural rights occur in the receiving countries.***

12. The Committee is concerned at the lack of oversight over Austrian companies operating abroad with regard to the negative impact of their activities on the enjoyment of economic, social and cultural rights in host countries (art. 2).

***The Committee urges the State party to ensure that all economic, social and cultural rights are fully respected and rights holders adequately protected in the context of corporate activities, including by establishing appropriate laws and regulations, together with monitoring, investigation and accountability procedures to set and enforce standards for the performance of corporations, as underlined in the Committee's statement on the obligations of States parties regarding the corporate sector and economic, social and cultural rights (E/2012/22, annex VI, section A).***

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