



Corporate “responsibility” and human rights perspectives on the “global land rush”



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Executive summary

The “land rush” phenomenon is an obvious aspect of a much wider network of control over Southern land and labour. As such, it should be analyzed using a broad inter-disciplinary approach, rather than only a “land tenure” lens. This brief seeks to put the “land rush” debate into the context of global systems of trade and investment, which are skewed in favour of industrialized countries. Because of the historical and contemporary pattern of states supporting corporate enterprise and maintaining exploitative international relations, it is argued that a voluntary approach to regulation of commercial pressure on land (CPL) is unlikely to have more than a very limited, superficial impact on the strategies of a few companies in a few countries. A human rights analysis suggests that legal action against commercial land acquisition is possible, though it will involve a difficult and uncertain process by organizations with the capacity and political will to take on the challenge.

Context

Recently, particularly since the rise in agricultural commodity prices in 2008, there has been a marked increase in the acquisition of agricultural land in the global South by multinational firms and foreign state agencies for commercial agricultural production. This commercial pressure on land (CPL) has raised fears regarding potential negative impacts on food security, local community relations, socio-political stability, environmental conditions, and other issues. However, the arguments have often been over-simplified in popular media.

We can only understand these dynamics within their historical context. The structural foundations of agricultural production in the global South were laid in large part by colonial powers, which prioritized export agriculture, rather than domestic food security, socio-economic development, or other populist goals. Colonial governments worked closely with private companies, ensuring that they enjoyed preferential access to resources and markets. In the post-independence period, most countries maintained a broadly similar primary export-oriented economic model, but implemented protectionist policies in order to improve domestic food security (particularly amongst urban populations).

Many governments, particularly in Africa, lost the ability to chart their own policy course during the late 1980s and early 1990s, when crippling levels of foreign debt made them beholden to the World Bank, International Monetary Fund, and other international financial institutions (IFIs). Forbidden to regulate the agricultural sector, many developing countries came to be dominated by foreign agribusiness. The influence of IFIs over agricultural policy-making remains significant. They promote a neoliberal approach to agricultural production, which generally emphasizes the importance of private property rights. This in turn allows

alienation of land from customary controls, as well as the dominant role of the private sector in agriculture and the need for governments to avoid regulation of land and agricultural markets. Nevertheless, Western governments subsidize and regulate their own agricultural systems, resulting in global double standards.

Aspects of neoliberalism have become embedded within “good governance” models. While the Paris Declaration on Aid Effectiveness has limited the cruder forms of aid

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conditionality, the influence of key organizations ensures that the neoliberal agenda is well entrenched. Southern elites benefit from neoliberalism, but inequality is generally increasing. Indeed, in many cases the poor are losing control over land and livelihoods, as local and international corporations gain leases or titles to

land previously held under customary or informal tenure. Powerful corporations and powerful states collaborate to maintain the skewed nature of the global food system.

“Responsible agricultural investment” (RAI) perspectives

Some international organizations argue that the “land rush” could offer benefits to investors and host countries. They urge private industry to take primary responsibility for improving standards. FAO, UNCTAD, IFAD, the World Bank, and a number of governments are collaborating on voluntary principles for “responsible agricultural investment” (RAI):

- 1: Existing rights to land and associated natural resources are recognized and respected.
- 2: Investments do not jeopardize food security but rather strengthen it.
- 3: Processes for accessing land and other resources and then making associated investments are transparent, monitored, and ensure accountability by all stakeholders, within a proper business, legal, and regulatory environment.
- 4: All those materially affected are consulted, and agreements from consultations are recorded and enforced.
- 5: Investors ensure that projects respect the rule of law, reflect industry best practice, are viable economically, and result in durable shared value.
- 6: Investments generate desirable social and distributional impacts and do not increase vulnerability.
- 7: Environmental impacts due to a project are quantified and measures are taken to encourage sustainable resource use while minimizing the risk/magnitude of negative impacts and mitigating them (Government of Japan 2010).

Stating that “existing rights to land” should be respected (principle one) assumes that there is consensus on what those rights involve, and who should define them. In some

countries, the state lacks the legitimacy to resolve such questions, and “land rights” are inherently conflictual. In such circumstances, any large-scale acquisition of land is likely to have negative impacts.

Principle three raises important questions regarding who is able to monitor such processes. The historical development of unequal regimes of trade, aid, and development mentioned in the third principle suggests that few states or international organizations are in any way free from vested interests. Many governments are acting as facilitators for private interests. Governments are also seeking land for state-controlled production. This close relationship between states and flagship corporations has been in existence for at least two centuries. It is therefore very difficult to believe that states could credibly arbitrate around CPL.

It is likely that a secretariat or committee would be established along with systems for monitoring and evaluation. But what of compliance and enforcement measures? If the RAI principles are voluntary, how could companies and governments be held accountable?

Would many corporations sign up to the RAI? Available evidence suggests that corporations flock to countries with governments which lack the political will or the capacity to defend the interests of their citizens. The highest-profile corporations may sign up, as they are most vulnerable to adverse publicity. However, the majority of companies would have few incentives to take part.

Existing examples of voluntary codes of conduct

Proponents of RAI cite the Extractive Industries Transparency Initiative (EITI) as an example of a similar, existing regulatory model (Blas 2010). The EITI was developed in response to concerns over corruption in the oil, gas, and minerals sectors, and is implemented in 31 countries. It requires that government revenues from extractive industries be published, as well as all other payments by companies to governments. Some observers argue that the principles of transparency should be extended to other phases of the cycle of extraction, such as the process of allocating concessions. More profoundly, the EITI is voluntary. Only three countries are full members of the EITI, with the others at a lower stage of compliance (Blas 2010).

The Kimberley Process (KP) may also hold some lessons. It was established in 2003 to control “conflict diamonds”. The KP is an international certification scheme

for rough diamonds, incorporating diamond-producing states, diamond trading companies, and civil society organizations. It includes 75 countries representing 99.8%

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of global diamond production. The KP is voluntary, and human rights groups have argued that, until a mandatory, impartial regime is put in place, conflict diamonds will continue to be traded. The KP has been relatively ineffective in monitoring and enforcing compliance by member states (Partnership Africa Canada/Global Witness 2008). While it has been widely lauded, some member countries seem to openly flout the rules.

These existing models have had some success, in part because the resources in question (diamonds, minerals, oil, and gas) are traded on the global market. There are often “choke-points” in the global systems of distribution where compliance can be monitored. Consumers and governments put pressure on companies through consumer boycotts, confiscation of suspect resources, or other means.

This is not the case for the commodities involved in the “land rush”. In many commercial land deals agricultural produce is not traded globally, but shipped directly back for consumption in a second country. Global consumers or other governments may have no leverage to ensure that principles are honoured.

The KP and EITI both focus on “point” resources that are generally found in high concentrations in geographically limited areas. This is particularly true for oil and gas reserves. It is relatively easy to monitor a few companies operating a small number of oil platforms or mines. Agricultural resources are more geographically dispersed, and monitoring CPL in a single country may involve thousands of farms covering

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millions of hectares and many different crops. The logistics of monitoring and evaluation seem to be potentially more complex than in the case of oil, gas, and diamonds.

These examples suggest that proposed RAI principles may

influence well-known corporations which are vulnerable to consumer criticism. However, most investors are likely to engage in “window-dressing” exercises while conducting business as usual. The World Bank has found that firms are already breaking their promises to host governments (Blas 2010).

Human rights perspectives

Land rights

CPL is often associated with a problem of “ill-defined property rights” (e.g. FAO 2009). This phrase suggests a lack of clarity in existing land tenure systems, and implies a technical-legal solution (a better “definition”). However, property rights are often well-defined by customary systems but are not recognized by the national legal regime. The reality is a land *conflict*, which can only be resolved through a legal-political process, or violent struggle.

Particular concerns arise when land is classified by the government as “marginal”. So-called marginal land is often

of prime importance to particularly poor communities. Appropriation of such land involves the dispossession of the most vulnerable members of society who may rely upon it for agriculture, pastoralism, fishing, or other activities.

The lack of attention to land rights in international agreements has led some experts to claim that land tenure rights, and their administration, are largely unaffected by international law. However, while land rights are not *directly* addressed in international treaties such as the International Covenant on Economic, Social and Cultural Rights (ICESCR), international law does place a number of important restrictions on the ways in which states can deal with the land rights of their citizens. For example, international law outlaws the *arbitrary infringement* of property rights.

Secondly, international customary law (declarations of principles, guidelines, standards, resolutions, etc.) also place certain restrictions on the State’s ability to infringe on the land rights of its citizens. While it is not legally binding, customary law evolves over time, and can eventually become universally accepted as international consensus is reached on its importance (Posey and Dutfield 1999).

Thirdly, international law does provide for specific kinds of rights to land for specific groups, such as indigenous peoples, and women. In particular, the UN Declaration on the Rights of Indigenous Peoples provides significant protection for indigenous rights to land and resources.

The African Charter on Human and Peoples’ Rights is one example of a regional agreement, though few African governments have systematically acknowledged and respected indigenous rights to date.

International law provides greater protection of land rights to indigenous groups than to other citizens. The Inter-American Commission on Human Rights (IAHRCOM) has handed down a number of decisions in favour of indigenous complainants (Golay 2009), as did the African Commission on Human and Peoples’ Rights (Williams 2010). These are positive precedents. However, only a small proportion of the world’s population claims indigenous status, while other poor communities face a continual threat of dispossession. Proponents of rural smallholders’ rights to land do not have a clear process or mechanism at the global level through which they can progress. Instead, they are engaged in evolving and uncertain strategies.

The right to food

The concept of “food sovereignty” redefines sovereignty around the rights and needs of local farmers and pastoralists (particularly small-scale producers) and of agricultural consumers, rather than the nation state. It combines a number of ideas, including the rights of farmers to choose how they use land and produce crops, and the rights of

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consumers to access sufficient food for their needs, produced in ways that they perceive to be culturally, environmentally, and socially appropriate. This concept is gaining ground, but has only a partial foundation in international law.

The right to food, more narrowly conceived, *does* have a basis in international law. The right to food is enshrined under Article 25 of the Universal Declaration of Human Rights (UDHR) as well as Article 11 of the ICESCR, which requires every State to ensure for everyone under its jurisdiction access to the minimum essential food. The Special Rapporteur on the Right to Food has argued that many commercial land deals violate the ICESCR.

General Comment 12 on the ICESCR makes it clear that food-secure countries also have a responsibility to ensure that their actions do not jeopardise access to food overseas (Article 6). This requires countries investing in commercial agricultural investment, for example through a sovereign wealth fund, to ensure that such projects do not undermine food security. In addition, there is a legitimate argument that countries where international agricultural investment firms are registered should monitor and regulate their activities overseas (FIAN 2010, 40).

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In Article 41, General Comment 12 states that IFIs should pay greater attention to the protection of the right to food in their lending policies and credit agreements.

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into practical steps at country level is a notoriously slow process.

Upholding the right to food

Several countries have taken steps to institutionalize the right to food, including recognizing the right to food in the constitution, creating framework legislation, designing national strategies, and creating new institutional frameworks (De Schutter 2010). Despite this progress, the “land rush” continues unabated within some of these same states.

None of the major “investor states” have fulfilled their obligations to monitor, regulate, and restrict land grabbing by companies registered within their territories. In general, states have shown themselves to be unwilling to do anything that would seem to put “their” companies at a disadvantage globally. For this to change, major structural reforms would have to be made to the international trade regime.

Complainants may contest violations of the right to food through a number of mechanisms. At the global level, most relevant treaties do not have a judicial mandate, so the only options are the Committee for the Elimination of Discrimination relative to Women (CEDAW) and the Committee for the Elimination of Racial Discrimination (CERD) (Golay 2009). Neither of these avenues has been pursued to date. The International Court of Justice (ICJ)

has heard violations of the right to food in very specific circumstances (e.g. prisoners in detention) but has not yet ruled on access to food more generally (Golay 2009).

Several regional bodies protect the right to food indirectly, e.g. through the protection of rights to natural resources and the right to health. The African Commission on Human and People’s Rights ruled that the Nigerian government had violated its obligation to protect the right to food of the Ogoni people, failing to monitor and regulate the activities of national and transnational oil companies (Golay 2009).

Awareness and acknowledgement of the right to food is growing around the world, but international jurisprudence lags behind. Legal efforts to prove that commercial land transactions violate the right to food would involve a lengthy and expensive process of research and litigation at multiple levels. However, the beginnings of the necessary institutional and legal architecture are in place.

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Conclusions

Given the history of state/corporate collusion, the idea that a voluntary code of conduct would be sufficient to prevent exploitative deals is dangerously naive. The human rights framework is still emerging, and engaging with CPL through legal means will be complex, resource-intensive, and difficult. However, there are potentials for action, which could represent a precedent and have a deterrent effect.

The “land rush” draws attention to a wider question: if some Southern governments and some international organizations see direct acquisition of land by foreign firms as more beneficial than enhancing local capacity in agricultural production, what has gone wrong to lead us to such an extreme situation? What is the future of agricultural production in the global South, particularly in Africa, and what is the role of the smallholder farmer in the future? Neither governments of the global South, nor international institutions which should be taking the lead on this issue, such as the FAO, have managed to convincingly answer this question. Without a commitment to an equitable and sustainable future for small-scale rural producers, any temporary foreign investment is merely a distraction, not a solution.

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OTHER RELEVANT HUMAN RIGHTS

The right to food is dependent upon fulfilment of other rights, also of relevance to CPL. For example, states need to protect housing and related rights by preventing the denial of such rights by third parties, such as agribusiness interests. Rights to adequate notice of eviction, timely and adequate compensation, and consultation over resettlement options are well established under international law.

Water rights are also very relevant to CPL. However, the right to water often refers to a right to potable water for drinking, and other essential human needs. There is as yet little jurisprudence concerning the right to water for agriculture or livestock production.

Policy recommendations

1. In conjunction with affected communities, human rights organizations should explore legal channels at national and international levels to contest problematic appropriations of land.
2. Bilateral and private donors should support exploratory efforts by individuals and organizations to challenge CPL in various legal forums.
3. Given the consensus on negative impacts of CPL emerging from in-depth studies by the ILC, the World Bank, and other organizations, those institutions supporting an RAI approach should consider whether this is in harmony with their missions, objectives, and the spirit of the various agreements to which they are signatories.
4. "Investor states" should fulfil their obligations to monitor, regulate, and restrict land grabbing by companies registered within their territories.
5. IFIs should consider abuses around CPL when making decisions regarding grants and loans.

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This policy brief is derived from a wider initiative on Commercial Pressures on Land (CPL). If you would like further information on the initiative and on the collaborating partners, please contact the Secretariat of the International Land Coalition or visit www.landcoalition.org/cpl.

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