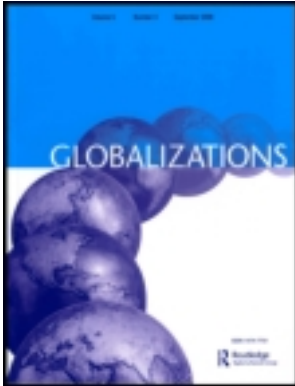


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The Minimum Human Rights Principles Applicable to Large-Scale Land Acquisitions or Leases

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ABSTRACT *In June 2009, Olivier De Schutter, the United Nations Special Rapporteur on the right to food, put forward a set of 11 principles to address ‘the human rights challenge’ of large-scale acquisitions and leases of land. This article briefly outlines the main elements of the Minimum Principles, their objective, as well as the context in which they were released. It also presents a critical analysis of their impact, based on the controversies that they sparked among various stakeholders.*

Keywords: land grabbing, human rights, global governance

In June 2009, Olivier De Schutter, the United Nations Special Rapporteur on the right to food, put forward a set of 11 principles to address ‘the human rights challenge’ of large-scale acquisitions and leases of land. The call by the Special Rapporteur to discipline land grabbing came at a time when there was no clear guidance from the international community as to how to address the emerging phenomenon of land grabbing. It was also unclear whether new norms were needed, or whether existing national laws and international standards were sufficient to regulate what some observers viewed as a simple resurgence of investments typical of the colonial era.

The Human Rights Issues Raised by Land Grabs

Large-scale investments in land emerged as a key trend during the 2008 global food crisis. They rapidly proved to pose important threats, primarily to the food security of populations living in areas targeted by large-scale acquisitions—such as smallholder farmers or pastoralists—but also to the ability of consumers in those regions to access food at decent prices, as a significant proportion of the local food production could be diverted from domestic markets.

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Land grabs soon received the attention of a large number of stakeholders involved in the global governance of food security, including multilateral institutions, developing countries, social movements and non-governmental organizations (NGOs), and investors themselves. Media interest was tremendous, and, as a result, stakeholders with divergent views engaged in a polarized debate on the advantages and risks of large-scale investments in land.

A process was initiated at the global level to address the issue of land grabs, but this process was fragmented and its general direction unclear. At the July 2009 L'Aquila Summit, G8 governments expressed their readiness to initiate negotiations on the governance of investments in agriculture (see Stephens, 2013, pp. 187–191). The World Bank was closely associated to this initiative, but did not publicly circulate a proposal for 'Principles for Responsible Agro-investment' until September 2009, before issuing, in 2010, the *Principles for Responsible Agricultural Investment that Respects Rights, Livelihoods and Resources* (PRAI), in conjunction with the Food and Agriculture Organization of the United Nations (FAO), the International Fund for Agricultural development (IFAD) and the United Nations Conference for Trade and Development (UNCTAD) (FAO et al., 2010). Earlier on, in 2008, the FAO had initiated a process to develop the *Voluntary Guidelines on the Responsible Governance of Tenure of Land and other Natural Resources* (VGs) (see McKeon, 2013, pp. 105–122; Seufert, 2013, pp. 181–186), but the initiative addressed a much broader scope of land issues such as access to land and the governance of land tenure.

Thanks to his mandate as independent expert under the Human Rights Council of the United Nations, the Special Rapporteur on the right to food was able to move swiftly. He issued his set of *Minimum Principles and Measures to Address the Human Rights Challenge of Large-Scale Land Acquisitions or Leases* (hereafter 'Minimum Principles') before the multilateral institutions above finalized and presented their proposals (De Schutter, 2009a). The Minimum Principles, targeted at host states and investors alike, presented a clear interpretation of existing international norms applicable to large-scale land investments agreements, with a view to set a baseline for the various governance initiatives that were about to be released by dominant institutional actors. The Minimum Principles were issued just six months after the Special Rapporteur on the right to food released his report on the World Trade Organization that demonstrated how international trade should be reformed so as to respect and integrate the human right to adequate food (De Schutter, 2009b). With the Minimum Principles the Special Rapporteur on the right to food sought to demonstrate that international human rights law, and in particular the normative and analytical framework provided by the human right to adequate food, applied to concrete food security issues, which were usually addressed without taking into account human rights. Indeed, while acknowledging the importance of investments in agriculture for the realization of the right to food, the Minimum Principles interpreted the possible negative impacts of land grabbing as a human rights issue. They made clear that the human right to food would be violated if communities depending on land for their livelihoods lost access to land, without suitable alternatives; if local incomes were insufficient to absorb the increases in food prices that might result from the shift to export crops; or if the revenues of local small food producers were to fall as a result of the arrival on local markets of cheaply priced food, produced on more competitive large-scale plantations (De Schutter, 2009a, p. 3).

Key Features of the Minimum Principles

The Minimum Principles are grounded in the right to self-determination, the right to development, and the right to food. They insist that negotiations leading to investment agreements be

conducted in a transparent fashion, with the participation of potentially affected local communities, and that host governments explore whether other uses could be made of the land available, that could better contribute to the food security of local populations (principle 1). The principles emphasize that forced evictions should only be allowed to occur in the most exceptional circumstances, and that shifts in land can only take place with the consent of the local communities concerned (principle 2). To protect communities against the appropriation of their land and ensure their full judicial protection, the principles advise states to assist individuals and communities in obtaining individual titles or collective registration of the land they use (principle 3), while recognizing the limits of individual titling schemes (De Schutter, 2009a, p. 11).

The principles are progressive in that they extend the principle of free, prior, and informed consent—already recognized in international human rights law for indigenous peoples (principle 10)—to non-indigenous rural constituencies (principle 3). The principles urge host states to impose clear and enforceable obligations for investors, with attached sanctions in case of non-compliance of the commitments made in the agreement, such as the generation of local employment and compliance with labor rights (principle 7). But the Minimum Principles go beyond the negotiation and adequate monitoring of land deals. They urge host states and investors to establish and promote, in priority, agricultural development models that respect the environment (principle 6), increase the food security of local populations (principle 8), and are sufficiently labor-intensive to contribute to employment creation (principle 5).

The Minimum Principles are not the result of an international negotiation process. They were built independently by the Special Rapporteur on the right to food following a series of exchanges held in 2008 and 2009 with various experts and constituencies. The Minimum Principles can be seen as summarizing and aggregating the relevant and applicable existing human rights obligations of states. In that sense, they differ from the voluntary nature of the PRAI, which are not grounded in human rights, and the VGs, which were adopted by the Committee on World Food Security (CFS) in May 2012 (and are grounded in human rights and the result of an intergovernmental negotiation process). The Minimum Principles do not contain any type of new implementation mechanism at the national or international level. At national level, compliance with the Minimum Principles is the responsibility of states, which are called to set up appropriate institutional frameworks to ensure that laws and policies governing land investments will not be curtailed by corporate interests (De Schutter, 2009a, p. 14). At the international level, the Minimum Principles describe some of the extraterritorial obligations and duties that apply to states and investors involved in the negotiation of agreements and that need to be taken into account.

The influence of the Minimum Principles, as well as the other new global land governance instruments to emerge in the last few years, is difficult to assess. In our view, it has been relatively modest so far: the PRAI failed, for example, to acknowledge the binding nature of certain principles, such as the necessity to respect the rights of existing land users. However, the CFS is now launching its own broad and inclusive consultation process on principles guaranteeing responsible investment in agriculture from a food security viewpoint, and the Minimum Principles have already been invoked in that context. The Minimum Principles were also referred to, as a baseline, during the negotiations of the VGs, mostly by civil society organizations.

Controversial Issues

Although the Minimum Principles were repeatedly discussed in a number of international arenas and intergovernmental processes, their endorsement by states has been limited. This is not

surprising considering the high requirements they place on both investor and host states when negotiating and implementing land deals. Opposition to the Minimum Principles by some actors can be explained by their grounding in international human rights law and the right to food in particular, and by their focus on the extraterritorial dimensions of states' obligations—and the fact that they insist quite strongly on the obligations of investors to respect the human rights of local populations.

Endorsement by civil society organizations too has been limited. Transnational agrarian movements such as La Vía Campesina, NGOs such as GRAIN, and several human rights groups (including FIAN, see Künnemann and Monsalve Suárez, 2013, pp. 123–139) feared that the Minimum Principles would 'legitimize' the very practice of land grabs rather than block it. Whereas most social movements and NGOs working on land issues adopted a strong oppositional stance to land grabbing,¹ the Minimum Principles were interpreted as falling within the dominant 'win–win' narrative argued elsewhere by Borras and Franco (2010, p. 510) on investments in land. Indeed, the Minimum Principles were perceived by social movements as indirectly and indiscriminately encouraging foreign investments in agriculture (without expanding much on the type and scale of the investments at stake) and as suggesting that it was possible for investments to respect the criteria outlined in the Minimum Principles. Civil society's skepticism was strong despite the fact that the Special Rapporteur on the right to food insisted that large-scale investment in land was not to be considered justified simply because it complied with the Minimum Principles (De Schutter, 2009a, p. 5). The stance taken by the Special Rapporteur on the right to food was also considered by many CSOs to be naïve—considering the weak governance mechanisms in place at the national level and the power relations between investors, host states, and local land users—and strategically dangerous.

A second tension that was sparked by the Minimum Principles was the controversial issue of whether or not contract farming schemes (and other similar business models) represented a viable or desirable alternative to the transfer of rights over land. Despite the fact that the Special Rapporteur on the right to food later spelled out criteria that contract farming and similar business models should be required to meet in order to support the realization of the right to food (De Schutter, 2011b), his message was understood by social movements as promoting contract farming as an alternative to large-scale investments of land (De Schutter, 2009a, p. 5). The Special Rapporteur on the right to food's position on this issue was criticized by several CSOs, which generally argued against the incorporation of small farmers into global supply chains, and alerted to the unfair repartition of risks and benefits that these schemes often imply.

These two areas of tensions find their source in the obviously distinct institutional roles held by the various actors involved and hence in distinct strategies. Yet, they also point to diverging conceptions of social change. Social movement activists tend to be quite skeptical as to the possibility that states or global institutions could be vectors of social change, while not shying away from institutional goals. In reaction to the global land grab phenomenon, organizations such as FIAN and La Vía Campesina have demanded new human rights. For example, they have advocated for a Declaration on the Rights of Peasants to be discussed at the UN system (see Claeys, 2012; Edelman and James, 2011) and for the recognition of a human right to land (Künneman and Monsalve Suárez, 2013, this volume).

For his part, the Special Rapporteur on the right to food and many right to food defenders have directed their efforts into making the right to food 'operational'. The right to food has become increasingly associated with a number of criteria against which global and national development, trade, financial and agricultural policies are to be tested. This is evident in the advocacy efforts

for states to undertake human rights impact assessments. At the same time, efforts have been made to apply the right to food framework to a broad range of issues pertaining to agricultural and rural development, touching on the very issue of which economic model best serves the realization of human rights. The positions outlined by the Special Rapporteur on the right to food in his reports on agroecology (De Schutter, 2011a), on access to land (De Schutter, 2010b, 2011c) and on international trade (De Schutter, 2010) point to the importance of a paradigm shift and of reinvesting in smallholder agriculture (De Schutter and Vanloqueren, 2011). The Minimum Principles should be interpreted in light of such reports, which situate the land grabbing phenomenon within the broader issue of rural development. Nevertheless, the Principles raise the issue of the extent to which small-scale, relocalized, equitable food systems can co-exist with large-scale intensive/industrial agriculture.

Note

- 1 This position was announced by La Vía Campesina and GRAIN in their statement 'Les paysans et les mouvements sociaux disent non à l'accaparement des terres' delivered at a press conference in Rome on 16 November 2009.

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