

UNHEARD VOICES

THE HUMAN RIGHTS IMPACT OF LAND INVESTMENTS ON
INDIGENOUS COMMUNITIES IN GAMBELLA



The Oakland Institute

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This briefing paper is dedicated to all those individuals and communities in Ethiopia who are struggling to ensure their right to dignified livelihoods.

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Executive Summary

When the Ethiopian government met with [investors], the local people were never consulted and were never compensated. Literally the decision was made without involving the people. . . .

To the Anuak, land is everything: it's the material to build homes, to find medication, the instruments for music and song. . . . [The Anuak] depend on land for survival. When their land is taken away, they have nothing.¹

—Obang Metho, Executive Director, Solidarity Movement for a New Ethiopia

Millions of acres of Ethiopia's most fertile land are being made available to investors, often in long-term leases and at giveaway prices.² Although proponents of these investments call them "win-win" deals,³ the reality proves much different. To make way for agricultural investment, and through its so-called villagization program, the Ethiopian government has forcibly displaced hundreds of thousands of indigenous people from their lands.⁴ This relocation process has destroyed livelihoods. It has rendered small-scale farmers and pastoralist communities dependent on food aid and fearful for their own survival.⁵ Ethiopian officials have also beaten, arrested, and intimidated individuals who have refused to comply with relocation policies.⁶ These actions are in direct contravention of Ethiopia's obligations under international human rights law.

This briefing paper provides an overview of the human rights impacts of land investment and the villagization process on the indigenous Anuak community in Ethiopia's Gambella region. The struggle of the Anuak in Gambella is emblematic of the struggles of other communities in Ethiopia that are being forcibly displaced to make way for large-scale land investors.

The briefing paper concludes with a set of recommendations that call upon the Ethiopian government, private investors, and foreign donors to take immediate steps to address the human rights abuses arising in connection with large-scale land investments and the villagization process in Ethiopia.



Methodology

This briefing paper draws on the Oakland Institute's extensive work and in-country research on land investment deals generally and in Ethiopia particularly.⁷ The briefing paper also cites the results of in-country research conducted by Human Rights Watch on human rights abuses associated with Ethiopia's villagization program. Additionally, it draws on the expertise of New York University School of Law's International Human Rights Clinic in the area of international human rights law, including the human rights impacts of large-scale agricultural land investments in the developing world.⁸

This briefing paper offers the personal testimonies of prominent human rights defenders Obang Metho and Nyikaw Ochalla. Metho is the Executive Director of the Solidarity Movement for a New Ethiopia, a diverse, non-political, social justice movement of Ethiopians that seeks to hold the Ethiopian government to account for myriad human rights violations.⁹ Ochalla is the Coordinator of Anywaa Survival Organization, a non-profit organization that raises awareness about the impact of land grabs on Ethiopia's indigenous populations, and seeks justice for those deprived of their fundamental human rights.¹⁰ Metho and Ochalla are both Anuak community members and maintain close ties with the Anuak. The quotes that appear in this briefing paper reflect testimonies, as told to Metho and Ochalla, of Anuak who have been affected by villagization and land investment during 2010-2012.

Metho and Ochalla live in political exile and pursue human rights advocacy work that would not be possible in Ethiopia. Ethiopia's legal restrictions on human rights work and its use of anti-terrorism laws to arrest and imprison journalists and members of the political opposition have stifled human rights fact-finding in-country and have contributed to a general fear of reprisals among dissenters and activists.¹¹ These harsh political conditions make the voices of those living in exile ever more valuable and demonstrate the need for the Ethiopian government, as well as other actors involved in large-scale land investments, to take immediate action against ongoing human rights abuses.

Context

LAWS AND POLICIES FAVORABLE TO LARGE-SCALE LAND INVESTMENTS IN ETHIOPIA

Since early 2008, the Ethiopian government has embarked on a process to award millions of hectares (ha) of land

to foreign and national agricultural investors.¹² The government claims that these investments will allow for much-needed foreign currency to enter into the economy, and will contribute to long-term food security through the transfer of technology to small-scale farmers.¹³ The Ethiopian government attracts investors by making what it claims are "unused," contiguous plots of land easily available through its centralized land-leasing bank.¹⁴ The government negotiates contracts with investors directly, in effect streamlining the process for investors to obtain large plots of cheap, fertile land.¹⁵ In addition, the Ethiopian government has created a tax, regulatory, and legal environment favorable to foreign investment. Tax rates and regulatory requirements are minimal.¹⁶ Additional tax exemptions are offered to firms investing in the regions of Gambella, Benishangul Gumuz, Afar, and Somali¹⁷—some of the same regions that are targeted by the villagization program.¹⁸ Investors are also provided protections against investment risks, including expropriation, and have access to forums for international settlement of investor disputes.¹⁹

The Ethiopian government is not the only actor encouraging foreign investment in agricultural land. Development agencies and international financial institutions have played a critical role in facilitating large-scale agricultural land transfers in the developing world. The World Bank Group, for instance, has actively encouraged these deals by supporting the creation of investment-friendly climates and land markets in developing countries.²⁰ The United Nations Food and Agriculture Organization (FAO) suggests that these investments can engender a "win-win" situation for investor states and host states alike.²¹ Land investment deals, the FAO argues, allow foreign states access to fertile land for increased food production while providing host states with valuable investment in agriculture, employment opportunities, and access to new technologies.²²

Corporations, fund managers, and foreign governments also see land investments as opportunities to boost global food production, meet biofuel requirements, and reap profits as food resources become scarcer. Increasingly, investors have come to see farmland as a secure and profitable place for their capital. Some countries, particularly in Asia and the Middle East, recognize their own shortage of land or water resources for food production and have begun looking offshore for arable land—often in Africa—to assure their own future food security. In addition, new quotas for the use of biofuels in the European Union and the United States have contributed to the global land rush as corporations



scout out the vast land (and water) resources needed to produce crops that can be converted to fuel.²³ Foreign governments may also encourage these investments through their own tax law and agricultural policies. India, the origin of most foreign investors in agricultural land in Ethiopia,²⁴ taxes agricultural imports at a cheaper rate than agricultural goods produced domestically, thereby providing an incentive to cultivate agricultural crops abroad and bring them to India for consumption.²⁵

As examined below, these policies and prescriptions gloss over critical issues such as the human rights, food security, and human dignity of local populations, and also overlook the fact that land investment deals often fail to deliver on their promised benefits.

DISPARITIES IN REAPING THE BENEFITS OF AGRICULTURAL LAND INVESTMENTS

*The products [from] this land are not going to be locally consumed; they are going to be exported. According to the government, the program is going to create jobs for the population, but these people have been farming. What kind of jobs are you talking about? . . . The government is talking about doing what's good for the country, but what it is doing is contradictory to its policy.*²⁶

—Nyikaw Ochalla,
Coordinator, Anywaa Survival Organization

Touted as an opportunity to revolutionize food production,²⁷ proponents of land investments predict benefits for numerous parties. The Ethiopian government claims that land investment can increase foreign direct investment, help improve infrastructure, and lead to technology transfers²⁸ and employment opportunities.²⁹ Investors will reap the benefits of profitable produce, and businesses connected to the agricultural sector are well positioned to benefit as well.³⁰

The parties who benefit from land investment, however, are not the same parties who bear the costs. For those who already rely on the land, land investments can lead to the loss of self-sufficiency, the loss of communal areas and ancestral lands, water scarcity, and environmental

degradation.³¹ Land investments in Ethiopia's Gambella region have already exacted a punishing toll on indigenous populations.

The land that the government has made available for investment is the same land inhabited by indigenous communities³² and slated for villagization.³³ The government maintains that land available for investment is “unused,” in effect refusing to recognize pastoralism, shifting cultivation, or socio-cultural relationships with land as legitimate or productive uses.³⁴ Villagization is an official government policy that “voluntarily” resettles indigenous populations from scattered places to villages of 400-500 families, ostensibly in the name of providing infrastructure and better social services.³⁵ Through its villagization program, the Ethiopian government plans to move over 1.5 million people by the latter half of 2013, including 225,000 people from Gambella alone.³⁶

As detailed below, the government not only has failed to keep its promises and deliver services and infrastructure,³⁷ but also has perpetrated human rights abuses in resettling indigenous communities in Gambella to allow for land investment deals to move forward.³⁸

Human Rights Impacts and Obligations

Although Ethiopian officials claim that villagization is a voluntary program, investigations reveal that the government has forcibly resettled indigenous communities from land earmarked for commercial agricultural development, rendering them food insecure and fearful for their survival.³⁹ These and other human rights abuses are detailed in this section.

FORCED DISPLACEMENT, BEATINGS, AND ARRESTS

*When the Ethiopian government met with [the investors], the local people were never consulted and were never compensated. Literally the decision was made without involving the people. . . . [But] no one can come and say, ‘I will take without asking.’ It doesn't work that way. For the indigenous people, [their land,] their one identity and existence as a people for their survival has been taken away by the very government that is supposed to protect them.*⁴⁰

—Obang Metho

Despite the centrality of land to the lives and livelihoods of indigenous communities in Gambella, the Ethiopian government has not meaningfully consulted with indigenous communities before evicting them from their ancestral lands.⁴¹ To the contrary, the government has forcibly evicted indigenous communities using fear, violence, and intimidation.⁴² The Oakland Institute has not found a single incidence of community consultation in connection with land investment,⁴³ and Human Rights Watch reports that government officials often simply announce that people will be relocated as a result of the villagization program.⁴⁴ Sometimes officials notify people in advance of the date of moving; other times they instruct people to get up and move the same day.⁴⁵

Ochalla and Metho underscored these findings. Drawing on testimony gathered from members of the Anuak community, Ochalla commented that there is “no consultation at all” when the government tells the Anuak that they have to leave:

When [the government] comes to take their land, it is without their knowledge, and in fact [the government] says that they no longer belonged to this land, [even though] the Anuak have owned it for generations. . . . [In one instance] the government told the Anuak people to load their cattle, goats, and chickens onto trucks so that they could be moved to outside villages.⁴⁶

“The government sends agents to the village [from] where people will be displaced,” Metho adds. “The government will tell [the villagers]: ‘We have plans for you to go to a different location. In a few months, you’ll be told more.’”⁴⁷ When villagers ask why they must leave, they are told that they will be given services at the new location: hospitals, clinics, running water.⁴⁸ As discussed below, the government has yet to provide these services.

The Ethiopian government has used force and violence to silence dissent and compel acquiescence with the villagization program. According to Human Rights Watch, Ethiopian police and soldiers have beaten and arrested those who question these policies, releasing them only on the condition that they support the program.⁴⁹ Metho notes that “[t]he government sends men in uniform who go from door to door to intimidate [the villagers].”⁵⁰ Fear of state-sponsored assault and retaliation continues to be palpable among villagers even after resettlement. Human Rights Watch, for instance, reports that parents are afraid to send their children to school because of the increased

army presence. Parents worry that their children will be assaulted.⁵¹

The Ethiopian government has failed to answer for these abuses.⁵² It has also failed to compensate individuals for their loss of livelihood and land. The Oakland Institute did not find any instances of government compensation being paid to indigenous populations evicted from their lands.⁵³ Ochalla and Metho confirmed that the Anuak received no compensation. Even if compensation were provided, it is unclear how it could make up for the irreversible consequences of villagization, such as food insecurity and the loss of traditional livelihoods, which rely on the fertile grounds that the Anuak have worked and occupied for centuries. It may also be impossible for indigenous communities to return to their lands. According to Metho, when some villagers tried to return, they found that “their homes were destroyed and the land was completely changed.”⁵⁴ Others found their ancestral burial grounds completely destroyed.⁵⁵

FOOD INSECURITY AND LOSS OF LIVELIHOOD

For the Anuak, land is essentially everything. . . . Land is identity and is survival for the community. . . . They use the land, forest, and river; everything is very vital to their survival. For the Anuak, the environment is their food source, for hunting, for fishing, for medicinal purposes. . . . The government is depriving the Anuak people of their memories, homeland, and traditional farming system. And the Anuak are leaving behind homes [they have lived in] for generations.⁵⁶

—Nyikaw Ochalla

By moving indigenous populations away from valuable farming, forest, and water resources, the Ethiopian government’s villagization program has stripped indigenous populations of their sources of livelihood and has exposed them to food insecurity.⁵⁷ According to Human Rights Watch, the government has resettled indigenous populations during the harvest season, preventing them



from harvesting their crops—and instead, forcing them to leave their crops behind.⁵⁸ The Oakland Institute found numerous examples where investors cleared shifting cultivation plots and large tracts of forest.⁵⁹ In many parts of Gambella, families farm on sedentary plots along the riverbanks and practice shifting cultivation on higher ground; the former protecting them against poor harvests on the latter, and forest resources serve to supplement low crop yields generally. Clearing these lands deprives indigenous populations of important sources of food, not to mention medicinal plants used to treat ailments common to the area.⁶⁰

Resettled on different terrain, indigenous populations in Gambella lack the tools to clear new land and the know-how to farm in a different environment.⁶¹ The Anuak's shifting cultivation practice involves farming on one plot of land for several years before moving on to another. They return to the original plot in seven to 10 years and begin the process again.⁶² Yet once they are sent to live in villages, the static lifestyle and lack of water sources render the Anuak unable to practice this traditional form of farming. Further, the government has failed to provide training to the Anuak to learn new forms of cultivation.⁶³ "The Anuak are now mov[ed] to a land that cannot be inhabited, with no water, and no access to education. This has created so much impact on their livelihoods," Ochalla explains.⁶⁴

Unable to feed and care for themselves and their families, shifting cultivators fear they will not survive.⁶⁵ As one displaced individual told Human Rights Watch, "The government is killing our people through starvation and hunger . . . we are just waiting here for death."⁶⁶ Ochalla echoes this fear, "Now they have nothing—no forests, no way to find medication [from the plants in the forest], no way to find things to build homes."⁶⁷ Metho adds:

[The Anuak] used to live on riverbanks, but they are now in a place where there is no river. They are taken far away from fish, and they can't fish at all. Land is their identity—it is what they breathe, and they're taken away from that. Even now, some people are so stressed. They sit in camp and do nothing. Their way of living and their existence has been taken from them.⁶⁸

Metho concludes that villagization perpetuates a "backwards" system of development: "Before, the people had food, but now they are pushed to depend on food

aid [provided by international donors to the government]. The system is backwards to make the self-reliant people dependent on the government."⁶⁹

Ethiopia's Human Rights Obligations

*[The Anuak's] dignity has been robbed. What [the Anuak] need is just to be left alone and to live life. Right now they live with fear and intimidation—the fear that the government will come and take away their land—and that fear will not go away. . . . Give them decency and protection—that is something the Anuak can settle for.*⁷⁰

—Obang Metho

In its rush to encourage agricultural investment, the Ethiopian government has contravened a number of its international human rights obligations.⁷¹ Ethiopia has formally bound itself to comply with a number of human rights treaties, including the International Covenant on Civil and Political Rights ("ICCPR");⁷² the International Covenant on Economic, Social and Cultural Rights ("ICESCR"); the International Convention on the Elimination of All Forms of Racial Discrimination ("ICERD"); the Convention on the Rights of the Child ("CRC"); the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment ("CAT"); and the International Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW").⁷³ Moreover, Ethiopia has acceded to or ratified certain regional human rights treaties, including the African Charter on Human and Peoples' Rights, the African Charter on the Rights and Welfare of the Child, and the Convention Governing the Specific Aspects of Refugee Problems in Africa.⁷⁴

Collectively, these treaties cover an expansive range of human rights, and the Ethiopian government has an obligation to respect, protect and fulfill them all.⁷⁵ That means that not only must the government eschew policies that threaten or violate human rights, but it must also shield its people from the adverse behavior of third parties, including private investors.⁷⁶ Further, the government must take positive steps to bring about the fulfillment of

those rights that are inadequately provided for at present. Even in the realm of social, economic and cultural rights, where progressive realization at a measured pace is acceptable, the government must take immediate steps to provide for a minimum core of enjoyment of each right;⁷⁷ and international law would almost never permit Ethiopia to regress, or dilute the current realization of these rights.⁷⁸ Moreover, the government must ensure nondiscrimination in the provision of human rights.⁷⁹ Additionally, inherent in this set of obligations is the duty to investigate abuses and provide an effective remedy when human rights violations have taken place.⁸⁰

The comportment of the Ethiopian government stands out sharply against the background of its legal obligations. Rather than taking steps to uphold its obligations under international human rights law, the Ethiopian government, in enforcing its villagization policies, has routinely threatened or directly violated a number of human rights. Though by no means exhaustive, this section provides an overview of key rights that have been affected.

KEY RIGHTS AFFECTED

The ICCPR prohibits arbitrary arrests and beatings—such as those carried out against individuals who question the government’s resettlement plans⁸¹—as well as the mistreatment of those who are held in government custody.⁸² The repressive atmosphere, in which the government responds forcefully to those who dissent against villagization, also suggests violations of the freedoms of expression and peaceful assembly, both of which are also guaranteed by the ICCPR.⁸³ The government has also violated or jeopardized the economic and social rights of many of the people it has resettled in order to clear land for investors. By removing people to areas that lack housing and infrastructure, separating them from their crops, grazing lands, and other forest and water resources, the government has destroyed the livelihoods of those who rely on such resources—such as shifting cultivators, like the Anuak. As a result, large populations that previously produced their own food have now been rendered food insecure, suffering violations of their rights to food, housing and adequate standard of living, all of which are enshrined in the ICESCR.⁸⁴ These are especially galling violations given that the publicly stated purpose of villagization is to promote the wellbeing of those it has attempted to resettle.⁸⁵ Similarly, in moving children to areas where continuing their schooling is not an option, the government also undermines their right to education, as codified in the ICESCR and CRC.⁸⁶ Likewise, in moving people to areas without medical facilities and without

access to traditional sources of medicine, the government interferes with the right to health, which is guaranteed under the ICESCR generally,⁸⁷ and to women and children respectively under CEDAW and the CRC.⁸⁸

FORCED EVICTIONS

Of particular relevance to the situation in Gambella are the international legal standards governing forced evictions. Under international law, forced evictions can only be carried out if they comply with specific standards. The relevant standards derive from a variety of different sources; and they require states to ensure that evictions serve a legitimate public purpose, that they meet the requirements of due process, and that they are accompanied by fair compensation. The testimony of affected individuals compels the conclusion that these evictions are forced, and in violation of international law.⁸⁹

The African Charter on Human and Peoples’ Rights offers protection against the arbitrary deprivation of property.⁹⁰ Additionally, the ICESCR enshrines the right to adequate housing.⁹¹ The Committee on Economic, Social and Cultural Rights (ESCR Committee)—a committee established under the ICESCR in part to clarify the scope of the rights contained in the treaty—has specifically described the incompatibility of the right to adequate housing with the practice of forced evictions.⁹² More specifically, the Committee’s view is that states bound by the ICESCR must not only abstain from forcibly evicting people to the extent possible, but must also preempt and punish third parties who engage in the practice under improper circumstances.⁹³ Preconditions for acceptable use of forced evictions include the exhaustive consideration of feasible alternatives—in consultation with affected individuals—as well as legal remedies for those who are displaced and mechanisms for ensuring the payment of adequate compensation.⁹⁴

INDIGENOUS PEOPLES’ RIGHTS

Above and beyond the restrictions on forced evictions, international human rights law offers special protections for the rights of indigenous peoples to maintain access and ties to their ancestral lands. As noted above, Ethiopia (and the Gambella region in particular) houses a number of indigenous peoples like the Anuak—each with a long, rich and distinctive history of using particular swaths of land for its survival. Yet, through its villagization program, the government has been evicting numerous indigenous communities in order to clear space for investors.



Indigenous peoples' rights stem from key treaties already ratified by Ethiopia, such as the CRC and ICERD.⁹⁵ Further, the United Nations has laid out conditions for forced evictions of indigenous groups in its 2007 Declaration on the Rights of Indigenous Peoples. This Declaration reflects an international trend in state attitudes coalescing around the notion that indigenous groups possess certain group rights to preserve their cultures and the lands that they have traditionally occupied.⁹⁶ The Declaration specifically provides that: "[n]o relocation shall take place without the *free, prior and informed consent* of the indigenous peoples concerned. . . ."⁹⁷

Recent jurisprudence by the African Commission on Human and Peoples' Rights—which was established by the African Charter on Human and Peoples' Rights—has also addressed indigenous people's rights. In a February 2010 case concerning the creation of a gaming reserve on the ancestral lands of a Kenyan indigenous group, the Commission ruled that the Kenyan government needed to secure the free, prior and informed consent of the affected indigenous group before it could legally enact development or investment plans with substantial effects in the group's territory.⁹⁸ More fundamentally, the Commission held that the indigenous group had the right of ownership to its ancestral lands, and was entitled to restitution for loss of access to the land and its resources.⁹⁹

These standards bind the Ethiopian government in its handling of agricultural land investments that affect indigenous populations, including the Anuak. The Ethiopian government's actions are therefore in violation of international law: it has failed to show proof that alternative policies have been properly considered and rejected, failed to secure free, prior and informed consent from displaced indigenous communities, failed to provide affected groups with mechanisms for redress, and failed to provide anything approximating fair compensation.

Human Rights Obligations of Investors and Foreign States

Human rights obligations also attach to additional actors involved in large-scale land deals. International financial institutions, which facilitate and finance these deals, are bound by international human rights law, as part of general international law.¹⁰⁰ Non-state actors, such as private investors, have not traditionally been viewed as directly bound by international human rights law, but support has recently emerged for the "Protect, Respect, Remedy"¹⁰¹ framework, which would require corporations and other business enterprises to avoid infringing on human rights

and address the negative human rights impacts of their operations.¹⁰² In 2011, the U.N. Human Rights Council endorsed the "Guiding Principles for Business and Human Rights," which outline: (1) the duty of the State "to protect against human rights abuses by third parties, including business enterprises"; (2) the responsibility of a corporation to *respect* human rights; and (3) the need for greater access to both judicial and non-judicial *remedies* for human rights abuses.¹⁰³

In fulfilling their responsibility to respect human rights, the Guiding Principles state that transnational corporations and other business enterprises should "avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved."¹⁰⁴ Second, corporations should also "[s]eek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts."¹⁰⁵ Third, corporations must exercise due diligence to "become aware of, prevent and address adverse human rights impacts."¹⁰⁶

Foreign states that encourage and facilitate agricultural investments in Ethiopia also have extraterritorial human rights obligations vis-à-vis the Ethiopian populace. The Maastricht Principles—which were adopted in September 2011 by a group of experts in international law—"aim to clarify the content of extraterritorial State obligations to realize economic, social and cultural rights with a view to advancing and giving full effect to the object of the Charter of the United Nations and international human rights."¹⁰⁷ The Principles clarify that at minimum governments have an obligation to avoid causing harm in foreign countries,¹⁰⁸ and should assess "the potential extraterritorial impacts of their laws, policies and practices on the enjoyment of economic, social and cultural rights."¹⁰⁹

RECOMMENDATIONS

If you see someone robbing the blind, it is your moral duty to say it's wrong; don't do that. For the investors, I ask them to not be opportunistic and to have a moral conscience. . . . The investors should put themselves in the shoes of the local people. . . . Just because the Ethiopian government says you can rob these people, that doesn't make it right."¹¹⁰

—Obang Metho

The Oakland Institute calls upon relevant actors to take immediate and active steps to comply with their obligations under international human rights law and to respond effectively to human rights abuses arising in connection with large-scale land investments and the villagization process in Ethiopia. The below recommendations are offered as first and essential steps and do not exhaust relevant obligations under international human rights law, especially given the complexity of problems faced by indigenous communities in Ethiopia.¹¹¹

The Oakland Institute calls on the Ethiopian government to:

- Ensure that all agricultural investment policies are carried out in accordance with Ethiopia's obligations under international human rights law.
- Ensure the rights of indigenous peoples, including securing their free, prior and informed consent, before enacting any development or investment-related plans that affect indigenous groups' territories.
- Investigate and prosecute government and military officials implicated in human rights violations arising out of the villagization program.
- Allow independent human rights organizations and the media to operate freely in Ethiopia, and conduct investigations in the Gambella region.
- Extend invitations to relevant U.N. Special Rapporteurs to conduct independent investigations into the abuses taking place in connection with land investments and the

villagization process, thereby demonstrating the government's commitment to human rights as a new member of the U.N. Human Rights Council.

The Oakland Institute calls on foreign donors to:

- Ensure that no foreign aid or assistance is used, directly or indirectly, to support villagization activities and programs that result in human rights abuses.

The Oakland Institute calls on investors to:

- Respect human rights by ensuring that any applicable investments do not infringe on the human rights of indigenous peoples and other affected communities.
- Exercise due diligence by conducting impact assessments both prior to and during investment activity in order to mitigate and address potential adverse human rights impacts.

The Oakland Institute calls on the home states of investors to:

- Regulate the activities of investors operating in Ethiopia to help ensure that these investments respect human rights.¹¹²

As this briefing paper makes clear, the rights of indigenous communities affected by land investments must finally take center stage. In order for the voices of these communities to be heard, agricultural investment and development policies must be carried out in line with the human rights obligations of all actors concerned.



Endnotes

- 1 Interview with Obang Metho, Executive Director, Solidarity Movement for a New Ethiopia (Nov. 20, 2012).
- 2 See Oakland Institute, Understanding Land Investment Deals in Africa, Country Report: Ethiopia, 3 (2011) [hereinafter Oakland Institute], available at <http://www.oaklandinstitute.org/land-deals-africa-ethiopia>. See also John Vidal, *How Food and Water Are Driving a 21st-century African Land Grab*, The Observer, March 6, 2010, available at <http://www.guardian.co.uk/environment/2010/mar/07/food-water-africa-land-grab/print>.
- 3 Oakland Institute, *supra* note 2, at 3 (citing Food and Agriculture Organization (FAO) of the United Nations, "From land grab to win-win: Seizing the opportunities of international investments in agriculture," FAO: Economic and Social Perspectives Policy Brief 4, June 2009, <ftp://ftp.fao.org/docrep/fao/011/ak357e/ak357e00.pdf> (last visited Jan. 22, 2013), available at <http://www.oaklandinstitute.org/land-deals-africa-ethiopia>).
- 4 Oakland Institute, *supra* note 2, at 38 (documenting displacement and loss of livelihood of over 650,000 people).
- 5 Oakland Institute, *supra* note 2, at 40-41 (noting losses of critical food buffers and fears of food insecurity as a result of relocation).
- 6 See Interview with Obang Metho, Executive Director, Solidarity Movement for a New Ethiopia (Nov. 20, 2012); Interview with Nyikaw Ochalla, Coordinator, Anywa Survival Organization (Nov. 20, 2012). See also Human Rights Watch, "Waiting Here for Death": Displacement and "Villagization" in Ethiopia's Gambella Region, 25-27 (2012) [hereinafter Human Rights Watch], available at <http://www.hrw.org/reports/2012/01/16/waiting-here-death>.
- 7 See generally Oakland Institute, <http://www.oaklandinstitute.org/land-rights-issue> (last visited Jan. 22, 2013). To read the Oakland Institute's in-depth report on land deals in Ethiopia, see Oakland Institute, *supra* note 2.
- 8 Human Rights Watch, *supra* note 6; International Human Rights Clinic, NYU School of Law, <http://chrgj.org/clinics/international-human-rights-clinic/>; Center for Human Rights and Global Justice, Foreign Land Deals and Human Rights: Case Studies on Agricultural and Biofuel Investment (New York: NYU School of Law, 2010) (report produced by International Human Rights Clinic), available at <http://chrgj.org/wp-content/uploads/2012/07/landreport.pdf>.
- 9 Solidarity Movement for a New Ethiopia, <http://www.solidaritymovement.org/>.
- 10 Anywa Survival Organisation, <http://www.anywaasurvival.org/>.
- 11 The Charities and Societies Proclamation prohibits civil society and non-governmental organizations that receive more than 10% of their funding from foreign country sources from engaging with human rights issues—specifically "the advancement of human and democratic rights"; "the promotion of equality of nations, nationalities and peoples and that of gender and religion"; "the promotion of the rights of the disabled and children's rights"; and "the promotion of conflict resolution or reconciliation." Penalties for violating the Act include significant fines and imprisonment. Further, the Charities and Society Agency, established by the Act, has the power to obtain documents related to the activities described above, threatening confidentiality and safety of witnesses and victims of human rights abuses. The Agency also has the power to dissolve any organizations conducting prohibited activities. Charities and Societies Proclamation No. 621/ 2009, available at <http://www.unhcr.org/refworld/country,,NATLEGBOD,,ETH,,4ba7aocb2,o.html>. See also Amnesty International, *Oral Statement to the Special Rapporteur on Human Rights Defenders in Africa: Ethiopia, Statement Before the African Commission of Human and Peoples' Rights*, 50th Session (Oct. 24 – Nov.6, 2011), available at <http://www.achpr.org/sessions/50th/ngo-statements/8/>. For a full report on the impact of the Charities and Societies Proclamation, see Amnesty International, *Stifling Human Rights Work: The Impact of Civil Society Legislation in Ethiopia* (2012), available at <http://files.amnesty.org/archives/af250022012eng.pdf>. The government has used the Anti-Terrorism Proclamation, which was adopted in 2009, as a tool to arrest journalists, political opposition, and human rights defenders, in effect criminalizing dissent and stifling freedom of expression. See, e.g., *Ethiopia's anti-terrorism laws must not be misused to curb rights* – UN, UNNewsCentre, Feb. 2, 2012, available at <http://www.un.org/apps/news/story.asp?NewsID=41112#.UPmR4fLyZ40>. See generally Human Rights Watch, World Report 2012: Ethiopia (2012), available at <http://www.hrw.org/world-report-2012/ethiopia>. In addition, Ethiopia's Freedom of the Mass Media and Access to Information Proclamation hinders media work by imposing criminal penalties for libel and by authorizing the impoundment of documents that purportedly threaten national security or involve cases of extreme emergency. See Freedom of the Mass Media and Access to Information Proclamation No. 590/2008, available at <http://www.unhcr.org/refworld/docid/4ba7a6bf2.html> (last visited Jan. 24, 2013). See also Human Rights Watch, *Submission on Ethiopia: 2012 Report of the UN Special Rapporteur on human rights defenders to the General Assembly: Questionnaire on the use of legislation, including criminal legislation, to regulate the activities and work of human rights defenders*, 8 (2012), available at http://www.ohchr.org/Documents/Issues/Defenders/Answers/NGOs/Africa/Ethiopia_HRW.pdf.
- 12 Oakland Institute, *supra* note 2, at 1, 18. The government has made 3.6 million ha of land available for lease in Ethiopia, 1.2 million ha of which is available for lease in Gambella. Oakland Institute, *supra* note 2, at 21; see also *Land Grabbing in Ethiopia - Foreign Investors and Famine*, Precise Consult International LLC, http://www.ethiopiainvestor.com/index.php?view=article&catid=1%3Alatest-news&id=2389%3Aland-grabbing-in-ethiopia-foreign-investors-and-famine-&option=com_content (last visited Jan. 17, 2013). At least 3,619,509 ha of land have been transferred to investors as of January 2011. Oakland Institute, *supra* note 2, at 1, 18.
- 13 Oakland Institute, *supra* note 2, at 1, 20.
- 14 See Oakland Institute, *supra* note 2, at 1, 16 (describing the federal land bank), 26 (noting that the government claims lands are "unused"). The government records and leases contiguous plots of fertile land above 5,000 hectares (ha) to investors. See Oakland Institute, *supra* note 2, at 16.
- 15 See Oakland Institute, *supra* note 2, at 16 (enumerating the reasons Ethiopia is attractive to foreign investors, including the federal land bank), 21- 22 (noting investors see the federal land bank as an "effective and efficient process for granting large-scale parcels of land to foreign investors").
- 16 See Oakland Institute, *supra* note 2, at 16-17. Ethiopia has relaxed standards for minimum capital requirement, and the Ethiopian foreign direct investment policy does not require foreign investors to meet specific performance goals or guidelines in terms of export, foreign exchange restrictions for imports, minimum local content levels in manufactured goods, or employment limits on expatriate staff. Oakland Institute, *supra* note 2, at 17.
- 17 Bureau of Economic and Business Affairs, U.S. Dep't of State, 2012 Investment Climate Statement – Ethiopia (2012), available at <http://www.state.gov/e/eb/rls/othr/ics/2012/191146.htm>.
- 18 See Human Rights Watch, *supra* note 6, at 19 (identifying Gambella, Benishangul Gumuz, Afar, and Somali as the regions targeted for villagization); see Oakland Institute, *supra* note 2, at 39-41 (identifying Gambella, Benishangul Gumuz, and Southern Nations, Nationalities, and People's Region as the regions targeted for villagization).
- 19 These protections are provided through Ethiopia's participation in international legal regimes, such as the Convention on the Settlement of Investment Disputes between States and Nationals of Other States. Oakland Institute, *supra* note 2, at 16.
- 20 For a detailed analysis of how the World Bank promotes land investment, see Oakland Institute, Understanding Land Investment Deals in Africa: The Role of the World Bank Group (Land Deal Brief) (2011), available at <http://www.oaklandinstitute.org/land-deal-brief-role-world-bank-group>.
- 21 Oakland Institute, *supra* note 2, at 3 (citing Food and Agriculture Organization (FAO) of the United Nations, "From land grab to win-win: Seizing the opportunities of international investments in agriculture," FAO: Economic and Social Perspectives Policy Brief 4, June 2009, <ftp://ftp.fao.org/docrep/fao/011/ak357e/ak357e00.pdf> (last visited Jan. 22, 2013), available at <http://www.oaklandinstitute.org/land-deals-africa-ethiopia>).
- 22 Food and Agriculture Organization of the United Nations, From Land

- Grab to Win-Win: Seizing the Opportunities of International Investments in Agriculture (Policy Brief) (2009), available at <ftp://ftp.fao.org/docrep/fao/011/ak357e/ak357e00.pdf> (discussing the potential upsides of land investment in agriculture).
- 23 Oakland Institute, *supra* note 2, at 3.
- 24 Oakland Institute, *supra* note 2, at 22.
- 25 See Rick Rowden, *India's Role in the New Farmland Grab: An Examination of the Role of the Indian Government and Indian Companies Engaged in Overseas Agricultural Land Acquisitions in Developing Countries*, 16 (2011).
- 26 Interview with Nyikaw Ochalla, Coordinator, Anywaa Survival Organization (Nov. 20, 2012).
- 27 Beth Hoffman, *Saudi Company Leases Ethiopian Land for Rice Export*, The World, Dec. 27, 2011, available at <http://www.theworld.org/2011/12/saudi-arabia-leased-ethiopia-land-rice-export>.
- 28 See Oakland Institute, *supra* note 2, at 20.
- 29 Employment opportunities will likely go to able-bodied highlanders, mainly males. Oakland Institute, *supra* note 2, at 33.
- 30 Oakland Institute, *supra* note 2, at 33.
- 31 Oakland Institute, *supra* note 2, at 33. An influx of outsiders can also have potentially negative social impacts. Oakland Institute, *supra* note 2, at 33.
- 32 See Oakland Institute, *supra* note 2, at 26.
- 33 Oakland Institute, *supra* note 2, at 39-41.
- 34 See Oakland Institute, *supra* note 2, at 1, 26, 47.
- 35 Oakland Institute, *supra* note 2, at 39-40; Human Rights Watch, *supra* note 6, at 12.
- 36 See Human Rights Watch, *supra* note 6, at 19-20. In 2010, the first year of the program, 20,243 people were resettled in Gambella. See Human Rights Watch, *supra* note 6, at 21.
- 37 Human Rights Watch, *supra* note 6, at 21-22. Good practice, according to the Development Assistance Group, a consortium of over 20 development agencies that provides aid to Ethiopia, is to ensure that infrastructure and services are in place *before* resettlement occurs. However, the Ethiopian government failed to put these services in place before villagization in the majority of villages. Combined with lack of consultation, consent, and compensation, Human Rights Watch describes the Ethiopian government's actions as an example of "worst practice." Human Rights Watch, *supra* note 6, at 63.
- 38 These abuses are well-documented by the Oakland Institute, Human Rights Watch, and the Guardian. See Oakland Institute, *supra* note 2, at 39-41; Human Rights Watch, *supra* note 6, at 25-60; and John Vidal, *Ethiopia at centre of global farmland rush*, The Guardian (March 20, 2011), available at <http://www.guardian.co.uk/world/2011/mar/21/ethiopia-centre-global-farmland-rush>.
- 39 See Oakland Institute, *supra* note 2, at 39-41; Human Rights Watch, *supra* note 6, at 25-60.
- 40 Interview with Obang Metho, Executive Director, Solidarity Movement for a New Ethiopia (Nov. 20, 2012).
- 41 See Human Rights Watch, *supra* note 6, at 25-26, 29 (explaining that government officials informed indigenous communities of relocation rather than sought their meaningful consent and used force to silence opposition to villagization).
- 42 See Human Rights Watch, *supra* note 6, at 29.
- 43 Oakland Institute, *supra* note 2, at 1, 30-31.
- 44 See Human Rights Watch, *supra* note 6, at 25.
- 45 See Human Rights Watch, *supra* note 6, at 26.
- 46 Interview with Nyikaw Ochalla, Coordinator, Anywaa Survival Organization (Nov. 20, 2012).
- 47 Interview with Obang Metho, Executive Director, Solidarity Movement for a New Ethiopia (Nov. 20, 2012).
- 48 *Id.*
- 49 See Human Rights Watch, *supra* note 6, at 29.
- 50 Interview with Obang Metho, Executive Director, Solidarity Movement for a New Ethiopia (Nov. 20, 2012).
- 51 See Human Rights Watch, *supra* note 6, at 49.
- 52 See Letter from Dr. Shiferaw Teklemariam, Minister of Federal Affairs, to Human Rights Watch, *reprinted in* Human Rights Watch, *supra* note 6 (denying that villagization was involuntary and failing to acknowledge that villagization has led to food insecurity among the Anuak).
- 53 Proclamation 455/ 2005 provides for compensation for expropriation, equal to the value of the land plus the value of any improvements. However, to receive compensation, legal title is necessary. Indigenous communities in Gambella lack legal title and hence have received no compensation of which OI is aware. Moreover, compensation would be insufficient to provide livelihoods, and the compensated groups would remain landless because land cannot be purchased in Ethiopia. Oakland Institute, *supra* note 2, at 44.
- 54 Interview with Obang Metho, Executive Director, Solidarity Movement for a New Ethiopia (Nov. 20, 2012).
- 55 Interview with Nyikaw Ochalla, Coordinator, Anywaa Survival Organization (Nov. 20, 2012).
- 56 *Id.*
- 57 Oakland Institute, *supra* note 2, at 40-41.
- 58 Human Rights Watch, *supra* note 6, at 40.
- 59 Oakland Institute, *supra* note 2, at 36.
- 60 Oakland Institute, *supra* note 2, at 42.
- 61 Oakland Institute, *supra* note 2, at 40.
- 62 Oakland Institute, *supra* note 2, at 40.
- 63 Oakland Institute, *supra* note 2, at 40. Regional governments promised to provide training on agricultural techniques suitable to the land on which Anuak were resettled. However, the Oakland Institute noted that "villagers are skeptical" and fear the starvation of their communities. Oakland Institute, *supra* note 2, at 40.
- 64 Interview with Nyikaw Ochalla, Coordinator, Anywaa Survival Organization (Nov. 20, 2012).
- 65 See Human Rights Watch, *supra* note 6, at 48.
- 66 See Human Rights Watch, *supra* note 6, at 45.
- 67 Interview with Nyikaw Ochalla, Coordinator, Anywaa Survival Organization (Nov. 20, 2012).
- 68 Interview with Obang Metho, Executive Director, Solidarity Movement for a New Ethiopia (Nov. 20, 2012).
- 69 *Id.*
- 70 *Id.*
- 71 See Human Rights Watch, *supra* note 6, at 70-78 (documenting some of these human rights abuses).
- 72 Ethiopia has not signed either optional protocol to the ICCPR. See United Nations Treaty Collection, Optional Protocol to the International Covenant on Civil and Political Rights, http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-5&chapter=4&lang=en (last visited Jan. 24, 2013) (omitting Ethiopia from the list of signatories); United Nations Treaty Collection, Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-12&chapter=4&lang=en (last visited Jan. 24, 2013) (omitting Ethiopia from the list of signatories).
- 73 See Ratification of International Human Rights Treaties – Ethiopia, University of Minnesota Human Rights Library, <http://www1.umn.edu/humanrts/research/ratification-ethiopia.html> (last visited Jan. 24, 2013). More complete information is available by conducting a search through the United Nations Office of the High Commissioner for Human Rights, which is available at <http://www2.ohchr.org/english/>.
- 74 See Ratification of International Human Rights Treaties – Ethiopia, University of Minnesota Human Rights Library, <http://www1.umn.edu/humanrts/research/ratification-ethiopia.html> (last visited Jan. 24, 2013). Ethiopia has also accepted a series of other human rights (and humanitarian or military law) treaties. These include a group of treaties that protect laborers (ensuring some measure of wage equity, the right to create unions, and so forth); a host of treaties that sharpen the laws of armed conflict and restrict the means by which the state can combat



- terrorism; a convention (and its protocol) on the protection of refugees; a protocol that protects migrants from being smuggled across state borders; and a treaty giving special recognition to the United Nations. *See id.* (providing a substantial, albeit not comprehensive, list of Ethiopia's human rights treaties). Again, more complete information can be located through the United Nations Office of the High Commissioner for Human Rights. *See supra* note 73.
- 75 *See* Office of the High Commissioner for Human Rights, International Human Rights Law, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/InternationalLaw.aspx> (last visited Jan. 14, 2013) (asserting that “[t]he obligation to respect means that States must refrain from interfering with or curtailing the enjoyment of human rights. The obligation to protect requires States to protect individuals and groups against human rights abuses. The obligation to fulfill means that States must take positive action to facilitate the enjoyment of basic human rights.”)
- 76 *See, e.g.*, International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171, art. 2(2) [hereinafter ICCPR], *available at* <http://www2.ohchr.org/english/law/ccpr.htm> (noting that “[w]here not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.”).
- 77 *See* Office of the High Comm’r for Human Rights, Comm. on Econ., Soc. & Cultural Rights, General Comment No. 3: The nature of States parties obligations (Art. 2, ¶ 1 of the Covenant), U.N. Doc. E/1991/23 (Dec. 14, 1990), ¶ 10, *available at* [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/94bdbaf59b43a424c12563ed0052b664?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/94bdbaf59b43a424c12563ed0052b664?Opendocument) (noting that “the Committee is of the view that a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights is incumbent upon every State party.”).
- 78 *See id.* ¶ 9 (noting that “any deliberately retrogressive measures in that regard [rather than progressive realization] would require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources.”).
- 79 *See, e.g.*, International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3, art. 2(2) [hereinafter ICESCR], *available at* <http://www2.ohchr.org/english/law/icescr.htm>.
- 80 *See, e.g.*, ICCPR, *supra* note 76, at art. 2(3) (laying out these obligations).
- 81 *See* ICCPR, *supra* note 76, at art. 9.
- 82 *See* ICCPR, *supra* note 76, at arts. 9-10. The Convention Against Torture specifically prohibits mistreatment that rises to the level of torture. *See* Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, 1465 U.N.T.S. 85, art. 2, *available at* <http://www2.ohchr.org/english/law/cat.htm>.
- 83 *See* ICCPR, *supra* note 76, at arts. 19, 21.
- 84 *See* ICESCR, *supra* note 79, at art. 11.
- 85 *See supra* note 35 and accompanying text.
- 86 *See* ICESCR, *supra* note 79, at art. 13; Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3, art. 28 [hereinafter CRC], *available at* <http://www2.ohchr.org/english/law/crc.htm>.
- 87 *See* ICESCR, *supra* note 79, at art. 12(2)(d).
- 88 *See* CRC, *supra* note 86, at art. 24; Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13, arts. 12, 14(2)(b) [hereinafter CEDAW], *available at* <http://www2.ohchr.org/english/law/cedaw.htm>.
- 89 The Committee on Economic, Social and Cultural Rights has defined “forced evictions” as “the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection.” Office of the High Comm’r for Human Rights, Comm. on Econ., Soc. & Cultural Rights, General Comment No. 7: The Right to Adequate Housing, ¶ 3, U.N. Doc. E/1998/22 Annex IV (1997) [hereinafter General Comment No. 7], *available at* <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=47a70799d&page=search>.
- 90 *See* African [Banjul] Charter on Human and Peoples’ Rights, OAU Doc. CAB/LEG/67/3 rev. 5, art. 14, June 27, 1981, *reprinted in* 21 I.L.M. 58 (1982), *available at* http://www.africa-union.org/official_documents/treaties_%20conventions_%20protocols/banjul%20charter.pdf.
- 91 *See* ICESCR, *supra* note 79, at art. 11(1).
- 92 *See* General Comment No. 7, *supra* note 89, ¶ 1 (concluding “that forced evictions are prima facie incompatible with the requirements of the Covenant.”).
- 93 General Comment No. 7, *supra* note 89, ¶ 8.
- 94 General Comment No. 7, *supra* note 89, ¶ 13. Additional guidance on forced evictions is available in various other sources of international human rights law. Most fundamentally, the Universal Declaration on Human Rights guarantees everyone’s basic property rights. *See* Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948), art. 17, *available at* <http://www.un.org/en/documents/udhr/index.shtml>. Further, the U.N. Special Rapporteur on adequate housing as a component of the right to an adequate standard of living has weighed in specifically on forced evictions, noting that such evictions can only be justified “for the purpose of promoting the general welfare,” should be “reasonable and proportional,” and should be “regulated so as to ensure full and fair compensation and rehabilitation.” Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, *Basic Principles and Guidelines on Development-Based Evictions and Displacement*, U.N. Doc. A/HRC/4/18, ¶ 21, *available at* http://www2.ohchr.org/english/issues/housing/docs/guidelines_en.pdf.
- 95 *See* CRC, *supra* note 86, at arts. 17, 29-30; Office of the High Comm’r on Human Rights, Comm. on the Elimination of Racial Discrimination, General Recommendation No. 23: Indigenous Peoples, in U.N. Doc. A/52/18 Annex V (1997), *available at* [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/7398429dfeao22b802565160056fe1c?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/7398429dfeao22b802565160056fe1c?Opendocument). *See also* Human Rights Watch, *supra* note 6, at 75 (making and elaborating on the same point).
- 96 *See generally, e.g.*, United Nations Declaration on the Rights of Indigenous Peoples, G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007), *reprinted in* 46 I.L.M. 1013 (2007), *available at* http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf (providing a powerful description of the importance of indigenous groups, and affirming a wide range of protections to ensure the continuation of their traditional practices).
- 97 *Id.* at art. 10 (emphasis added).
- 98 Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya, Afr. Comm’n on Human and Peoples’ Rights, 276 / 2003, ¶ 291 (2010), *available at* http://www.hrw.org/sites/default/files/related_material/2010_africa_commission_ruling_o.pdf.
- 99 *Id.* at 80, Rec. 1(a).
- 100 Special Rapporteur on the right to food, Addendum to Report of the Special Rapporteur on the right to food, *Large-scale Land Acquisitions and Leases: A Set of Minimum Principles and Measures to Address the Human Rights Challenge*, delivered to the 13th Session of the Human Rights Council ¶ 5, U.N. Doc. A/HRC/13/33/add.2 (Dec. 28, 2009) [hereinafter *Large-scale Land Acquisitions and Leases*], *available at* http://www.srfood.org/images/stories/pdf/officialreports/20100305_a-hrc-13-33-add2_land-principles_en.pdf.
- 101 *See generally* Special Representative on the issue of human rights and transnational corporations and other business enterprises, *Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie: Guiding Principles on Business and Human Rights: Implementing the “Protect, Respect and Remedy” Framework, delivered to the 17th session of the Human Rights Council*, U.N. Doc. A/HRC/17/31 (Mar. 21, 2011), *available at* <http://www.ohchr.org/documents/issues/business/A.HRC.17.31.pdf> [hereinafter *Guiding Principles*].
- 102 The corporation’s obligation to respect human rights can sometimes extend to the activities of actors over whom the corporation has leverage. Special Representative on the issue of human rights and transnational corporations and other business enterprises, *Protect, Respect and Remedy: A Framework for Business and Human Rights: Report of the Special*

Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, ¶¶ 68, 72, *delivered to the 8th session of the Human Rights Council*, U.N. Doc. A/HTC/8/5 (Apr. 7, 2008), available at <http://www.reports-and-materials.org/Ruggie-report-7-Apr-2008.pdf> [hereinafter *Protect, Respect and Remedy*] (noting that the responsibility to exercise leverage is not engaged in all circumstances but rather “depends on the potential and actual human rights impacts resulting from a company’s business activities and the relationships connected to those activities.”). “Where a business enterprise contributes or may contribute to an adverse human rights impact, it should take the necessary steps to cease or prevent its contribution and use its leverage to mitigate any remaining impact to the greatest extent possible. Leverage is considered to exist where the enterprise has the ability to effect change in the wrongful practices of an entity that causes a harm.” *Guiding Principles*, *supra* note 101, at 18. Moreover, in order to comply with its obligations under the “Remedy” prong of the Ruggie “Protect, Respect, Remedy” framework, corporations and other business enterprises “should establish or participate in effective operational-level grievance mechanisms for individuals and communities who may be adversely impacted.” *Guiding Principles*, *supra* note 101, at 25. See generally Center for Human Rights and Global Justice, Every Thirty Minutes: Farmer Suicides, Human Rights, and the Agrarian Crisis in India (New York: NYU School of Law, 2011) (report produced by International Human Rights Clinic), available at <http://www.chrgj.org/publications/docs/every30min.pdf>.

103 *Guiding Principles*, *supra* note 101, ¶ 6.

104 *Guiding Principles*, *supra* note 101, ¶ 6, Annex ¶ 11.

105 *Guiding Principles*, *supra* note 101, Annex ¶ 13.

106 *Protect, Respect and Remedy*, *supra* note 102, ¶ 56. In order to perform adequate due diligence, companies should: adopt human rights policies, which must be integrated throughout the company; conduct human

rights impact assessments of their proposed plans “to address and avoid potential negative human rights impacts on an ongoing basis”; track human rights compliance performance; and facilitate “initiatives [that] can promote [the] sharing of information, improvement of tools, and standardization of metrics” on a global scale. *Guiding Principles*, *supra* note 101, ¶¶ 60-64. Furthermore, “[f]or the substantive content of the due diligence process, companies should look, at a minimum, to the international bill of human rights [i.e. the Universal Declaration of Human Rights, as well as the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights] and the core conventions of the ILO, because the principles they embody comprise the benchmarks against which other social actors judge the human rights impacts of companies.” *Guiding Principles*, *supra* note 101, ¶ 58. Furthermore, “[a]ddressing adverse human rights impacts requires taking adequate measures for their prevention, mitigation and, where appropriate, remediation.” *Guiding Principles*, *supra* note 101, Annex ¶ 11. See also *Guiding Principles*, *supra* note 101, Annex ¶¶ 13, 17.

107 Maastricht Conference, Sept. 26-28, 2011, *Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights*, Preamble (Sept. 28, 2011), available at http://www.rtfn-watch.org/uploads/media/Maastricht_ETO_Principles__EN.pdf.

108 *Id.* at Principle 13.

109 *Id.* at Principle 14.

110 Interview with Obang Metho, Executive Director, Solidarity Movement for a New Ethiopia (Nov. 20, 2012).

111 Human Rights Watch has made similar recommendations. See Human Rights Watch, *supra* note 6, at 6-8.

112 See *Large-scale Land Acquisitions and Leases*, *supra* note 101, ¶ 5 (noting that the home States of private investors “are under an obligation to regulate the conduct of these investors abroad, particularly if the host state appears unwilling or unable to do so.”).



