

**A rights-based approach to foreign agro-investment governance in  
Cameroon, Uganda and South Africa**

By

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It all starts here <sup>TM</sup>

## **DEDICATION**

To my parents and my creator, for their love.

The research of this study was completed on 30 November 2015. The study reflects the legal positions in Cameroon, Uganda and South Africa as of this date.

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## **PUBLICATIONS AND CONFERENCE CONTRIBUTIONS EMANATING FROM THIS DOCTORAL STUDY**

### **Articles**

Ashukem JCN "Unlocking the potential of the right of access to information in Cameroon: Lessons from Uganda and South Africa" (AHRLJ, under review)

### **Conference presentations**

#### **National**

Ashukem JCN "Population growth, food production and land grabbing: An unlikely decline?" DST/NRF National Global Change Conference Nelson Mandela Metropolitan University, South Africa, December 2014

#### **International**

Ashukem JCN "Included or excluded: An analysis of the application of the free, prior and informed consent principle in land grabbing cases in Cameroon and Uganda" Land Governance for Equitable and Sustainable Development Conference, Utrecht, the Netherlands, July 2015

## **LISTS OF ABBREVIATIONS AND ACCRONYMS**

|                     |                                                                 |
|---------------------|-----------------------------------------------------------------|
| <b>ABN</b>          | African Biodiversity Network                                    |
| <b>ACDEG</b>        | African Convention on Democracy, Election and Governance        |
| <b>ADB</b>          | African Development Bank                                        |
| <b>AER</b>          | American Economic Review                                        |
| <b>AF</b>           | Afrika Focus                                                    |
| <b>AHRLJ</b>        | African Human Rights Law Journal                                |
| <b>AIA</b>          | Access to Information Act 6 of 2005                             |
| <b>AJIL</b>         | American Journal of International Law                           |
| <b>AJPA</b>         | Australian Journal of Public Administration                     |
| <b>AJPIL</b>        | Austrian Journal of Public and International Law                |
| <b>AP</b>           | Administratio Publica                                           |
| <b>APG</b>          | Acholi Parliamentary Group                                      |
| <b>ARER</b>         | Annual Review of Environment and Resources                      |
| <b>ARIBTL</b>       | Asper Review of International Business and Trade Law            |
| <b>AS</b>           | Acta Structtilia                                                |
| <b>AU</b>           | African Union                                                   |
| <b>AUCPCC</b>       | African Union Convention on Prevention and Combating Corruption |
| <b>BCEALR</b>       | Boston College Environmental Affairs Law Review                 |
| <b>BER Business</b> | Ethics Review                                                   |
| <b>BITs</b>         | Bilateral Investment Treaties                                   |

|               |                                                                |
|---------------|----------------------------------------------------------------|
| <b>BJPS</b>   | British Journal of Political Science                           |
| <b>CAADP</b>  | Comprehensive Africa Agriculture Development Programme         |
| <b>CAAU</b>   | Constitutive Act of the African Union                          |
| <b>CBD</b>    | Convention on Biological Diversity of 1992                     |
| <b>CC</b>     | Constitutional Court                                           |
| <b>CDM</b>    | Clean Development Mechanism                                    |
| <b>CEMAC</b>  | Economic and Monetary Community of Central Africa              |
| <b>CHRLR</b>  | Columbia Human Rights Law Review                               |
| <b>CIC</b>    | Cameroon Investment Code                                       |
| <b>CIPA</b>   | Cameroon Investment Promotion Agency                           |
| <b>CIPA</b>   | Cameroon Investment Promotion Agency                           |
| <b>CJDS</b>   | Canadian Journal of Development Studies                        |
| <b>CJIELP</b> | Colombia Journal of International Environmental Law and Policy |
| <b>CJILP</b>  | Colorado Journal of International Law and Policy               |
| <b>CLR</b>    | California Law Review                                          |
| <b>CLR</b>    | Common Law Review                                              |
| <b>CLRA</b>   | Communal Land Rights Act 11 of 2004                            |
| <b>CoE</b>    | Convention of Establishment                                    |
| <b>COES</b>   | Current Opinion in Environmental Sustainability                |
| <b>COPs</b>   | Conference of the Parties                                      |



|               |                                                 |
|---------------|-------------------------------------------------|
| <b>CPA</b>    | Cotonou Partnership Agreement                   |
| <b>CPAA</b>   | Communal Property Association Act 28 of 1996    |
| <b>CR</b>     | Cephal Review                                   |
| <b>CSR</b>    | Corporate Social Responsibility                 |
| <b>DC</b>     | Development and Change                          |
| <b>DEAT</b>   | Department of Environmental Affairs and Tourism |
| <b>DFA</b>    | Development Facilitation Act 67 of 1995         |
| <b>DLB</b>    | District Land Board                             |
| <b>DP</b>     | Development in Practice                         |
| <b>DRC</b>    | Democratic Republic of Congo                    |
| <b>EA</b>     | Expropriation Act 63 of 1975                    |
| <b>EADC</b>   | East African Development Community              |
| <b>EADPGG</b> | East African Draft Protocol on Good Governance  |
| <b>EIA</b>    | Environmental Impact Assessment                 |
| <b>ELR</b>    | Erasmus Law Review                              |
| <b>EP</b>     | Equator Principles                              |
| <b>EPL</b>    | Environmental Policy and Law                    |
| <b>ES</b>     | Ecology and Society                             |
| <b>EU</b>     | European Union                                  |
| <b>FA</b>     | Foreign Affairs                                 |

|              |                                            |
|--------------|--------------------------------------------|
| <b>FAI</b>   | Foreign Agricultural Investment            |
| <b>FAO</b>   | Food and Agricultural Organisation         |
| <b>FCPF</b>  | Forest Carbon Partnership Facility         |
| <b>FDI</b>   | Foreign Direct Investment                  |
| <b>FEDEV</b> | Foundation for Environment and Development |
| <b>FELR</b>  | Fordham Environmental Law Review           |
| <b>FFB</b>   | Food First Background                      |
| <b>FIAS</b>  | Foreign Investment Advisory Service        |
| <b>FIR</b>   | Freedom of Information Review              |
| <b>FMP</b>   | Forest Management Plans                    |
| <b>FPIC</b>  | Free Prior and Informed Consent            |
| <b>GD</b>    | Gender and Development                     |
| <b>GDP</b>   | Gross Domestic Product                     |
| <b>GEP</b>   | Global Environmental Politics              |
| <b>GG</b>    | Global Governance                          |
| <b>GMOs</b>  | Genetically Modified Organisms             |
| <b>GPPR</b>  | Georgetown Public Policy Review            |
| <b>HHRJ</b>  | Harvard Human Rights Journal               |
| <b>HILJ</b>  | Harvard International Law Journal          |
| <b>IA</b>    | International Affairs                      |

|               |                                                                        |
|---------------|------------------------------------------------------------------------|
| <b>IA</b>     | Impact Assessment                                                      |
| <b>ICARRD</b> | International Conference on Agrarian Reform and Rural Development      |
| <b>ICCPR</b>  | International Covenant on Civil and Political Rights of 1966           |
| <b>ICESCR</b> | International Covenant on Economic, Social and Cultural Rights of 1966 |
| <b>ICLQ</b>   | International and Comparative Law Quarterly                            |
| <b>ICLTJ</b>  | International Commercial Law and Technology Journal                    |
| <b>IFAD</b>   | International Fund for Agricultural Development                        |
| <b>IFAP</b>   | International Federation of Agricultural Producers                     |
| <b>IFC</b>    | International Finance Corporation                                      |
| <b>IJGEL</b>  | International Journal of Global Environmental Issues                   |
| <b>IJGLS</b>  | Indiana Journal of Global Legal Studies                                |
| <b>IJHSS</b>  | International Journal of Humanities and Social Sciences                |
| <b>IJSE</b>   | International Journal of Social Economics                              |
| <b>ILO</b>    | International Labour Organisation                                      |
| <b>IMF</b>    | International Monetary Fund                                            |
| <b>IO</b>     | International Organisation                                             |
| <b>IPCC</b>   | Intergovernmental Panel on Climate Change                              |
| <b>IPILRA</b> | Interim Protection of Informal Land Rights Act 31 Of 1996              |
| <b>ISQ</b>    | International Studies Quarterly                                        |

|              |                                                          |
|--------------|----------------------------------------------------------|
| <b>ISSJ</b>  | International Social Science Journal                     |
| <b>JAC</b>   | Journal of Agrarian Change                               |
| <b>JAL</b>   | Journal of African Law                                   |
| <b>JCAS</b>  | Journal of Contemporary African Studies                  |
| <b>JCI</b>   | Journal of Court Innovations                             |
| <b>JD</b>    | Journal of Democracy                                     |
| <b>JEEN</b>  | Journal of European Ethical Networks                     |
| <b>JEEPL</b> | Journal of European Environmental and Planning Law       |
| <b>JEL</b>   | Journal of Environmental Law                             |
| <b>JENRL</b> | Journal of Energy and Natural Resource Law               |
| <b>JHF</b>   | Journal of the Helen Foundation                          |
| <b>JILIR</b> | Journal of International Law and International Relations |
| <b>JJS</b>   | Journal for Juridical Science                            |
| <b>JLA</b>   | Journal of Legal Analysis                                |
| <b>JMAS</b>  | Journal of Modern African Studies                        |
| <b>JPS</b>   | Journal of Peasant Studies                               |
| <b>JR</b>    | Judicial Review                                          |
| <b>JSD</b>   | Journal of Sustainable Development                       |
| <b>JSDLA</b> | Journal of Sustainable Development Law in Africa         |
| <b>KP</b>    | Kyoto Protocol                                           |

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|----------------|----------------------------------------------------------------|
| <b>LAA</b>     | Legal Aid Act 39 of 2014                                       |
| <b>LCB</b>     | Land Consultative Board                                        |
| <b>LCS</b>     | Labour, Capital and Society                                    |
| <b>LDD</b>     | Law Democracy and Development                                  |
| <b>LEADJ</b>   | Law Environment and Development Journal                        |
| <b>LP</b>      | Law and Philosophy                                             |
| <b>LTJ</b>     | Land Tenure Journal                                            |
| <b>MASGCC</b>  | Mitigation and Adaptation Strategies for Global Climate Change |
| <b>MEC</b>     | Member of Executive Council                                    |
| <b>MEPRD</b>   | Ministry of Economy, Planning and Regional Development         |
| <b>MIGA</b>    | Multilateral Investment Guarantee Agency                       |
| <b>MINADER</b> | Ministry of Agricultural and Rural Development                 |
| <b>MINFOF</b>  | Ministry of Forestry and Fauna                                 |
| <b>MJIL</b>    | Michigan Journal of International Law                          |
| <b>MLR</b>     | Modern Law Review                                              |
| <b>MoP</b>     | Meeting of the Parties                                         |
| <b>MoU</b>     | Memorandum of Understanding                                    |
| <b>MS</b>      | Mathematica Scandinavica                                       |
| <b>NEA</b>     | National Environment Act Cap 153 of 1995                       |
| <b>NEM: BA</b> | National Environmental Management Biodiversity Act 10 of 2004  |

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|-----------------|-----------------------------------------------------------------|
| <b>NEM: PAA</b> | National Environmental Management Protected Area Act 57 of 2003 |
| <b>NEMA</b>     | National Environmental Management Act 107 of 1998               |
| <b>NEMA</b>     | National Environmental Management Agency                        |
| <b>NEPA</b>     | New Partnership for Africa's Development                        |
| <b>NFA</b>      | National Forest Act 84 of 1998                                  |
| <b>NFTPA</b>    | National Forestry and Tree Planting Act 8 of 2003               |
| <b>NGO</b>      | Non- Governmental Organisation                                  |
| <b>NLA</b>      | National Land Act Cap 227 of 1998                               |
| <b>NLR</b>      | New Zealand Law Review                                          |
| <b>NRJ</b>      | Natural Resource Journal                                        |
| <b>OECD</b>     | Organisations for Economic Cooperation and Development          |
| <b>OHADA</b>    | Organisation for the Harmonisation of Business Law in Africa    |
| <b>OHCHR</b>    | Office of the High Commission on Human Rights                   |
| <b>OJLS</b>     | Oxford Journal of Legal Studies                                 |
| <b>ORIL</b>     | Oregon Review of International Law                              |
| <b>PAIA</b>     | Promotion of Access to Information Act 2 of 2000                |
| <b>PAIB</b>     | Protocol on the African Investment Bank                         |
| <b>PAJA</b>     | Promotion of Administrative Justice Act 3 of 2000               |
| <b>PEAP</b>     | Poverty Eradication Action Plan                                 |
| <b>PELJ</b>     | Potchefstroom Electronic Law Journal                            |

|               |                                                                                                 |
|---------------|-------------------------------------------------------------------------------------------------|
| <b>PGDT</b>   | Perspectives on Global Development and Technology                                               |
| <b>PIL</b>    | Public Interest Litigation                                                                      |
| <b>PMA</b>    | Plan for the Modernisation of Agriculture                                                       |
| <b>PRAI</b>   | Principle for Responsible Agricultural Investment that Respect Rights, Livelihood and Resources |
| <b>PU</b>     | Political Studies                                                                               |
| <b>PUS</b>    | Public Understanding of Science                                                                 |
| <b>QER</b>    | Quantified Emission Reduction                                                                   |
| <b>RAPE</b>   | Review of African Political Economy                                                             |
| <b>RBA</b>    | Rights Based Approach                                                                           |
| <b>REDD</b>   | Reduced Emissions Deforestation and Forest Degradation                                          |
| <b>RLRA</b>   | Restitution of Land Right Act 22 of 1994                                                        |
| <b>RRI</b>    | Rights and Resource Initiatives                                                                 |
| <b>RS</b>     | Review of Sociology                                                                             |
| <b>RSPO</b>   | Roundtable of Sustainable Palm Oil                                                              |
| <b>SADC</b>   | Southern African Development Community                                                          |
| <b>SAJELP</b> | South African Journal of Environmental Law and Policy                                           |
| <b>SAJHR</b>  | South African Journal of Human Rights                                                           |
| <b>SANBI</b>  | South African National Biodiversity Institute                                                   |
| <b>SAP</b>    | Structural Adjustment Programme                                                                 |
| <b>SAPL</b>   | South African Public Law                                                                        |

|               |                                                         |
|---------------|---------------------------------------------------------|
| <b>SCA</b>    | Supreme Court of Appeal                                 |
| <b>SCFSR</b>  | SADC Charter of Fundamental Social Rights               |
| <b>SCID</b>   | Studies in Comparative International Development        |
| <b>SCLR</b>   | Southern California Law Review                          |
| <b>SDG</b>    | Sustainable Development Goals                           |
| <b>SDLP</b>   | Sustainable Development Law and Policy                  |
| <b>SELJ</b>   | Stanford Environmental Law Journal                      |
| <b>SIA</b>    | Strategic Impact Assessment                             |
| <b>SJIL</b>   | Stanford Journal of International Law                   |
| <b>SPLUMA</b> | Spatial Planning and Land Use Management Act 16 of 2013 |
| <b>TELJ</b>   | Tulane Environmental Law Journal                        |
| <b>TIC</b>    | Tanzanian Investment Centre                             |
| <b>TLCD</b>   | Transnational Law and Contemporary Development          |
| <b>TMWHR</b>  | The Modern World of Human Rights                        |
| <b>TWQ</b>    | Third World Quarterly                                   |
| <b>UIA</b>    | Uganda Investment Authority                             |
| <b>UIC</b>    | Uganda Investment Code                                  |
| <b>ULC</b>    | Ugandan Land Commission                                 |
| <b>ULTRA</b>  | Upgrading of Land Tenure Right Act 112 of 1991          |
| <b>UN</b>     | United Nations                                          |



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|---------------|-----------------------------------------------------------------------|
| <b>UNDHR</b>  | United Nations Declaration on Human Rights of 1948                    |
| <b>UNDRIP</b> | United Nations Declaration of the Rights of Indigenous People of 2007 |
| <b>UNFCCC</b> | United Nations Framework Convention on Climate Change                 |
| <b>USD</b>    | United States Dollars                                                 |
| <b>USSR</b>   | Union of Soviet Socialist Republic                                    |
| <b>VJEL</b>   | Vermont Journal of Environmental Law                                  |
| <b>VLR</b>    | Villanova Law Review                                                  |
| <b>VRÜ</b>    | Verfassung und Recht in Übersee                                       |
| <b>WFR</b>    | Warsaw Framework on RED+                                              |
| <b>WHC</b>    | Western Cape High Court                                               |
| <b>WMELP</b>  | William and Mary Environmental Law and Policy                         |
| <b>WPA</b>    | Whistle-blower Protection Act 6 of 2010                               |
| <b>WPIPWM</b> | White Paper on Integrated Pollution and Waste Management of 2009      |
| <b>YEEL</b>   | Yearbook of European Environmental Law                                |
| <b>YFES</b>   | Yale School of Forestry and Environmental Studies Bulletin            |
| <b>YHRLJ</b>  | Yale Human Rights Law Journal                                         |
| <b>ZAORU</b>  | Heidelberg Journal of International Law                               |

## **ABSTRACT**

The practice of foreign agro-investment (FAI) for the production of food crops and biofuel crops has been a recent phenomenon in sub-Saharan Africa and other developing countries. In fact, the present era of climate change has caused foreign countries to acquire vast tracts of land - often through multinational corporations - in order to propagate biofuel or expand their home industries abroad. Practices of FAI have resulted in a form of land grabbing, as local communities are often evicted from their land without their consent. FAI activities are reported to have considerable impact on people in areas where they occur, which range from environmental to social and economic impacts. There is compelling evidence that FAI land deals are not transparent and inclusive, which raises pertinent concerns with respect to participatory rights, access to information, the compatibility of property rights, environmental protection and the protection of the rights and interests of local communities generally, among other issues. The lack of respect for and protection of local communities' rights and interests during FAI land deals and activities form the crux of this study. In this light, the overall aim of this thesis is to investigate and ascertain how the procedural aspects of a rights-based approach (RBA) could be used to provide adequate protection to local communities' rights and interests during FAI activities in Cameroon, Uganda and South Africa.

The study is premised on the notion of a RBA to FAI governance and captures the procedural aspects of the right to access to information, public participation and the right to access to justice in international, regional, sub-regional and national human rights legal regimes. It is argued that because these rights have the potential to significantly contribute towards the protection of the rights and interests of people that are adversely affected by development activities, their incorporation remains useful and relevant in the FAI context. It is further claimed that the implementation of the procedural RBA in FAI land deals could strengthen the ability and capacity of the state to increase opportunities for more meaningful dialogue with local communities, while concomitantly helping the state to fulfil its international and national obligations as a

duty-bearer to respect, protect and fulfil the rights and interests of its people. In addition, procedural rights encompass elements of good governance and democracy and could be used as a necessary and vital tool to prevent a government's exercise of arbitrary power generally and in the context of development activities. This is predicated on the belief that procedural rights serve *inter alia* to strengthen democratic structures and processes and to curb corruption and the mismanagement of national resources, and ultimately to promote sustainable development. In this study, it is argued that a RBA generally and its procedural aspects specifically could play an important role in setting the standards and defining the processes that are appropriate to repudiate the unacceptable impacts of FAI and simultaneously address distributive concerns with the hope of promoting and ensuring more responsible and sustainable FAI. Conversely, the absence of such a normative baseline suggests that large-scale land transfer under the guise of FAI practices would endlessly levy an unacceptable toll on the fundamental rights of the vulnerable host population.

The first step in this thesis is to analysis the theoretical concepts of governance and good governance in order to establish the eventual objective of what FAI governance and good FAI governance should entail. A further component of the theoretical analysis includes an analysis of a RBA and a RBA to FAI governance. These components are investigated in order to determine a possible solution to the impacts of FAI activities from a rights-based perspective.

Second, the thesis investigates and analyses the procedural aspects of a RBA espoused in international, regional and sub-regional legal regimes. It distils generic characteristics and minimum requirements of the RBA for good FAI governance to be used as benchmarks in the context of project development-related activities, including FAI. As benchmarks, the international, regional and sub-regional legal regimes provide minimum criteria to which the legal frameworks of countries must adhere to and conform with. This part also examines the procedural RBA frameworks in Cameroon, Uganda and South Africa and critically evaluates the legal frameworks in these countries

against the distilled generic characteristics and minimum requirements of the RBA in terms of good FAI governance.

Third, the thesis concludes with a set of recommendations on the procedural RBA frameworks in Cameroon, Uganda and South Africa. These recommendations are meant to address the current *lacunae* in these domestic procedural RBA frameworks, and to propose measures designed to enable a situation where the rights and interests of local communities are better protected in the event that FAI land deals are concluded.

Keywords:

Land grabbing; foreign agro-investment; foreign agro-investment governance; governance; good governance; good foreign agro-investment governance; rights-based approach; procedural rights; public participation; access to information; access to justice; free, prior and informed consent.

## **OPSOMMING**

Die praktyk van buitelandse landbou-belegging (BLB) vir die produksie van voedsel- en biobrandstofgewasse is 'n onlangse verskynsel in sub-Sahara Afrika en ander ontwikkelende lande. In werklikheid het die huidige era van klimaatsverandering buitelandse lande toegang gegee tot groot stukke landbougrond – dikwels deur multinasionale korporasies – om óf biobrandstof te produseer óf hul eie nywerhede uit te brei in Afrika. Dié praktyke het gelei tot 'n vorm van “grondgryp”, wat behels dat plaaslike gemeenskappe gereeld, sonder enige toestemming, van hul land uitgesit word. Daar is dwingende bewyse dat BLB transaksies nie deursigtig en inklusief plaasvind nie, wat moontlik regsbeginsele soos deelnemende regte, toegang tot inligting, beskerming van eiendomsreg, omgewingsbeskerming, asook die beskerming van die belange van plaaslike gemeenskappe in die algemeen, bedreig. Daar word berig dat BLB aktiwiteite 'n aansienlike impak het op mense in die gebiede waar dit plaasvind, wat wissel van omgewingsimpakte tot sosiale en ekonomiese impakte. Die tekort aan respek vir- en beskerming van plaaslike gemeenskappe se regte en belange gedurende BLB transaksies en aktiwiteite vorm die kern van die studie. Dus is die oorkoepelende doel van die tesis om ondersoek in te stel en te bevestig hoe die prosedurele aspekte van 'n regte gebaseerde benadering (RGB) gebruik kan word om genoegsame beskerming aan plaaslike gemeenskappe se regte en belange te bied tydens BLB aktiwiteite in Kameroen, Uganda en Suid-Afrika.

Die studie lê klem op die volgende prosedurele regsaspekte van die RGB: die reg op toegang tot inligting, reg op publieke deelname, en die reg op toegang tot regspleging in internasionale, streeks-, sub-streek- en nasionale regsregimes. Daar word geargumenteer dat omdat dié regte die potensiaal het om 'n merkwaardige bydrae te maak tot die beskerming van die regte en belange van mense wat negatief geraak word deur BLB ontwikkelingsaktiwiteite, hul inkorporering bruikbaar en relevant is tot die BLB konteks. Daar word verder geargumenteer dat die prosedurele implementering van RGB in BLB landbougrondtransaksies die vermoë en kapasiteit van die staat versterk om geleenthede te skep vir meer betekenisvolle dialoë met plaaslike gemeenskappe.

Terselfdertyd, help dié proses ook die staat om sy internasionale en nasionale verpligtinge om die regte en belange van sy mense te beskerm, na te kom. Prosedurele regte bevat ook elemente van goeie regering en demokrasie en kan moontlik gebruik word as 'n kernmeganisme om die regering se beoefening van arbitrêre mag in die konteks van ontwikkelingsaktiwiteite te beperk. Die aanname is gebaseer op die oortuiging dat prosedurele regte gebruik word om, onder andere, demokratiese strukture en prosesse te dien asook korrupsie en die wanbestuur van nasionale hulpbronne te beperk, en om volhoubare ontwikkeling te bevorder. In die studie word daar aangevoer dat 'n RGB oor die algemeen, maar spesifiek sy prosedurele aspekte, 'n belangrike rol kan speel om standaarde daar te stel en prosesse te definieer wat gebruik kan word om die onaanvaarbare impakte van BLB te verminder met die hoop om meer verantwoordelike en volhoubare BLB te verseker. In teenstelling, kan die afwesigheid van 'n normatiewe raamwerk lei tot grootskaalse landbougondtransaksies onder die dekmantel van BLB praktyke, wat 'n oneindige en onaanvaarbare las skep vir die fundamentele regte van die kwesbare gasheergemeenskap.

Die eerste stap in die tesis is 'n teoretiese analise van die konsepte "regulering" en goeie regulering (*good governance*) om uiteindelik vas te stel wat BLB bestuur en goeie BLB regulering hoort te behels. 'n Bykomende komponent van die teoretiese analise behels 'n fokus van 'n RGB en 'n RGB tot BLB regulering. Dié komponent word ondersoek om 'n moontlike oplossing te vind vir die impakte van BLB aktiwiteite vanuit 'n regsgebaseerde perspektief.

Tweedens, analiseer die tesis die prosedurele aspekte van 'n RGB met 'n fokus op internasionale, streeks- en sub-streek regsregimes en die studie distilleer dan die generiese kenmerke en minimum vereistes van die RGB vir goeie BLB bestuur wat gebruik kan word as maatstawwe in die konteks van projek-ontwikkeling verwante aktiwiteite, insluitende BLB. As maatstawwe, dien die internasionale, streek- en sub-streek regsregimes minimumkriteria waaraan die wetgewende raamwerke van 'n land moet gehoor gee en voldoen. Dié deel ondersoek ook die prosedurele RGB raamwerke in Kameroen, Uganda en Suid-Afrika en bekijk krities die wetgewende raamwerke in dié

lande teen die geïdentifiseerde generiese karaktereienskappe en minimale vereistes van die RGB in terme van goeie BLB bestuur.

Derdens sluit die tesis af met 'n stel aanbevelings rakende die prosedurele RGB raamwerke in Kameroen, Uganda en Suid-Afrika. Hierdie aanbevelings beoog om die huidige gapings in binnelandse prosedurele RGB raamwerke aan te spreek, asook om voorstelle te maak ten aansien van maatreëls om 'n regulatoriese omgewing te skep waar die regte en belange van plaaslike gemeenskappe beter beskerm word wanneer BLB plaasvind.

Sleutelterme:

Grondgryping, buitelandse landboubelegging, buitelandse landbou-belegging regulering; goeie regering; goeie buitelandse landbou-beleggingsregulering; regsgebaseerde benadering; prosedurele regte; reg op publieke deelname; toegang op inligting, reg op toegang tot regspleging

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# CHAPTER 1

## INTRODUCTION

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### 1.1 Background

Over the past ten years there has been a steady increase in the practice of land grabbing<sup>1</sup> in and across developing countries. Although the lack of a unique and comprehensive dataset may account for the imprecise statistical data dealing with the scale and distribution of land grabbing,<sup>2</sup> there is an indication that large swathes of potential arable farmland are being allocated to investors on long-term leases, at a rate not seen for decades.<sup>3</sup> For instance, it is reported that since 2006, 15-20 million hectares of arable farmland have been leased in developing countries, particularly in sub-Saharan Africa,<sup>4</sup> and 80-227 million hectares globally to foreign investors.<sup>5</sup> A World Bank study in 2010 reveals that of the 56 million hectares of farmland under negotiation in 2009 globally, about 32 million (approximately 70 per cent) hectares were in Africa.<sup>6</sup> According to the Land Matrix, between 2000 and 2011, a total of 203 million hectares of land have been acquired worldwide for the production of food crops alone.<sup>7</sup> This figure is almost equal to the total size of farmland in France and a fifth of that of the rest of the European Union (EU).<sup>8</sup>

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1 The concept of land grabbing is elaborated in Chapter 2 of this thesis.

2 Deininger *et al* *Rising global interest in farmland* xiv; Vermeulen and Cotula 2010 *JPS* 902; Cotula *Land deals in Africa* 12.

3 Hall 2011 *Policy brief* 1.

4 De Schutter 2009 <http://www2.ohchr.org/english/issues/food/docs/BriefingNotelandgrab.pdf> accessed 27 November 2015; De Schutter 2011 *HILJ* 516.

5 NAPE "A study of the land grabbing cases in Uganda" 9; Borras *et al* 2011 at: <http://www.guardian.co.uk/global-development/poverty-matters/2011/apr/15/risks-over-increasing-global-land-deals> accessed 27 November 2015; Oxfam 2011 <http://www.policy-practice.oxfam.org.uk/publications/land-and-power-the-growing-scandal-surrounding-the-new-wave-of-investment-in-142858> accessed 27 January 2015.

6 Deininger *et al* *Rising global interest in farmland* xiv.

7 Anseeuw *et al* *Land rights and the rush for land* 19.

8 De Schutter 2009 <http://www2.ohchr.org/english/issues/food/docs/BriefingNotelandgrab.pdf> accessed 27 November 2015.

The Food and Agricultural Organisation (FAO) observed in 2003 that an additional 120 million hectares of farmland would be needed to support food production by 2030,<sup>9</sup> which reflects Goal two of the recently adopted Sustainable Development Goals (SDGs, also known as Global Goals).<sup>10</sup> Importantly, the World Bank points out that two-thirds of this land must come from Africa.<sup>11</sup> The Bank based its assessment on the fact that the Guinea Savannah region<sup>12</sup> of Africa constitutes “one of the world’s largest underused land reserves.”<sup>13</sup> Africa would therefore serve an appropriate venue for producing the much-needed food crops to meet the world’s growing population, which is stated to increase to 9 billion people by 2050.<sup>14</sup> This only serves to buttress the belief that the acquisition of arable farmland in developing countries and particularly sub-Saharan Africa is not likely to stop in future. Rather, it may increase. This is clear from the current statistics of land grabbing instances in some sub-Saharan countries, as noted by Grain, an international non-governmental organisation (NGO).<sup>15</sup> These instances includes 67 per cent of farmland in Liberia, 15 per cent in Sierra Leone, 7 per cent in Tanzania, 10 per cent in Ethiopia, 6 per cent in Democratic Republic of Congo (DRC), 8 per cent in Gabon, 11 per cent in Guinea and 6 per cent in Mozambique.<sup>16</sup>

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9 De Schutter 2011 *HILJ* 519; FAO *World agriculture towards 2015/2030* 132.

10 Goal two aims to end hunger, achieve food security and improved nutrition, and promote sustainable agriculture. The sustainable Development Goals (SDGs) consist of 17 goals that aim *inter alia* to progressively end hunger, inequality and justice by 2030. The SDGs was adopted during the United Nations Development Summit on 25<sup>th</sup> September 2015 to complete the work of the Millennium Development Goals at: <https://sustainabledevelopment.un.org/?menu=1300> accessed 16 November 2015.

11 The World Bank Report *Awakening Africa’s sleeping giant* 2.

12 This region stretches across most of inland West Africa to the horn of Africa, through much of Central Africa and the east coast of Mozambique.

13 The World Bank Report, *Awakening Africa’s sleeping giant* 2.

14 The World Bank Report, *Awakening Africa’s sleeping giant* 2; Hall 2011 *Policy brief* 2.

15 Okure 2012 <http://www.afjn.org/focus-campaigns/other/other-continental-issues/161-agriculture/1067-a-new-scramble-for-africa-land-grab-a-dispossession-of-people.html> accessed 6 May 2015.

16 Okure 2012 <http://www.afjn.org/focus-campaigns/other/other-continental-issues/161-agriculture/1067-a-new-scramble-for-africa-land-grab-a-dispossession-of-people.html> accessed 6 May 2015.

These farmlands are leased for very small amounts of money, of between 0.50-7 US dollars per hectare of land per year.<sup>17</sup>

The unsuccessful land lease negotiation between the government of South Korea and Madagascar in 2008 of 1.3 million hectares of land for 99 years signalled the potential foreign investor interest in Africa and its gravity made headlines.<sup>18</sup> Similarly, the 2009 contract for 73,086 hectares of land for 99 years between the government of Cameroon and an American Company, Herakles Farms, has attracted both international and national attention, especially as the project is located in the midst of four biodiversity hotspots.<sup>19</sup>

Also, it is reported in Ethiopia that the government in 2011 leased 25,000 hectares of land to a Saudi Arabian Company, Saudi Star PLC, for 99 years.<sup>20</sup> Worryingly, it has been indicated that this deal, along with others in the country, undermined and continues to undermine indigenous people's and local communities'<sup>21</sup> active participation in decision making, denying them access to key information about land deals, and abrogating their constitutional right to free, prior and informed consent, compensation and legal redress.<sup>22</sup> Equally, in Uganda the government leased 40,000 hectares of land for palm oil plantations on the Bugala Island for 99 years to Singapore

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17 Okure 2012 <http://www.afjn.org/focus-campaigns/other/other-continental-issues/161-agriculture/1067-a-new-scramble-for-africa-land-grab-a-dispossession-of-people.html> accessed 6 May 2015; Hall 2011 *Policy brief* 2.

18 Burnod *et al* 2013 *DC* 357; Burnod *et al* "From international land deals to local informal agreements" 14; Akram-Lodhi 2012 *CJDS* 119-120; Kaarhus *et al* "Agro-investment in Africa" 1.

19 Hoyle and Levang "Oil palm development in Cameroon" 6.

20 Narula "The global land rush" 3. Since 2008 the Ethiopian government has leased out approximately 8.9 million acres of land to both foreign and domestic investors, through investments like the Saudi Star PLC. Another 5.2 million acres is under negotiation through the government's land bank for agricultural investment. See Human Rights Watch 2011 [http://www.hrw.org/sites/default/files/reports/ethiopia0112webwcover\\_0.pdf](http://www.hrw.org/sites/default/files/reports/ethiopia0112webwcover_0.pdf) accessed 26 April 2015.

21 Because indigenous people are a subset of a local community, in this thesis, the term local community is used in the generic sense to include indigenous people.

22 Ochalla 2013 <https://intercontinentalcry.org/ethiopias-land-grabs-stories-displaced-20830/> accessed 13 January 2016.

and Kenyan Companies, Wilmar and Bidco, which has led to severe environmental and social consequences for the local communities of the area.<sup>23</sup>

Although the above may not constitute the only instances of land grabs in sub-Saharan Africa,<sup>24</sup> they indicate the gravity of the phenomenon of land grabbing. As will become evident, large-scale land transfers, whether leased or purchased, considerably undermine local communities' rights of public participation, access to information and access to justice.<sup>25</sup>

Land grabbing is fuelled by three major drivers: the financial, energy and food crises.<sup>26</sup> It is stated that these crises have ushered in a dramatic revaluation of and rush to control land located mostly in poor, developing countries.<sup>27</sup> The need to increase food production, for example, has led to a significant influx of European, American and Asian investors into Africa to acquire land, which has resulted in "a new kind of scramble for Africa."<sup>28</sup> It is reported that two-thirds of the land grabs occur in sub-Saharan Africa and the remaining third is split among Asia, Latin America and Eastern Europe.<sup>29</sup>

A combination of reasons may account for the high rate of land grabbing in sub-Saharan Africa. These include the perception that water and land suitable for cultivation are plentiful in this region;<sup>30</sup> the climatic conditions in sub-Saharan Africa are conducive to crop cultivation; and land and local labour are cheap.<sup>31</sup> Land grabbing in most sub-

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23 FoEI 2012 "Land, life and justice" 10-14.

24 See table 1 in Chapter 2 for other instances of land grabbing in sub-Saharan Africa.

25 Hall 2011 *RAPE* 195-196; Sindayigaya 2011 [http://www.entwicklungshilfe3.de/media/Bilder\\_ZSE/UEber\\_Uns\\_Dateien/Grundlagentexte/Land\\_grab\\_article.pdf](http://www.entwicklungshilfe3.de/media/Bilder_ZSE/UEber_Uns_Dateien/Grundlagentexte/Land_grab_article.pdf) accessed 27 November 2015; Muriisa *et al* "Land deals in Uganda" 2; Kugelman "Introduction" 1; *Cotula et al Land grab or development opportunity* 68-70; Narula "The global land rush" 6; Smaller and Mann 2009 <http://www.fao.org/fileadmin/templates/est/INTERNATIONAL-TRADE/FDSs/A-Thirst-for-distant-lands.pdf> accessed 27 November 2015.

26 See Chapter 2 of this thesis for details.

27 Muriisa *et al* "Land Deals in Uganda" 5.

28 Ingwe *et al* 2012 *JSDA* 29-30.

29 Sindayigaya 2011 [http://www.entwicklungshilfe3.de/media/Bilder\\_ZSE/UEber\\_Uns\\_Dateien/Grundlagentexte/Land\\_grab\\_article.pdf](http://www.entwicklungshilfe3.de/media/Bilder_ZSE/UEber_Uns_Dateien/Grundlagentexte/Land_grab_article.pdf) accessed 27 November 2015 ; Deininger *et al Rising global interest in farmland* xiv.

30 Benjamemisen *et al* "Conservation and land grabbing in Tanzania" 2; Hall 2011 *Policy brief* 2.

31 De Schutter 2009 <http://www2.ohchr.org/english/issues/food/docs/BriefingNotelandgrab.pdf> accessed 27 November 2015; Mann and Smaller "Foreign land purchases for agriculture" 1-2.

Saharan countries occurs in two ways. Firstly, it happens when host governments solicit foreign investors to invest in their countries in order to boost the agricultural sector and increase economic growth.<sup>32</sup> Secondly, it also occurs when governments forcefully take land from local communities and lease the land to foreign investors.<sup>33</sup> Often a greater percentage of the food crops produced is exported back to the investor's country. For example, 75 per cent of the rice cultivated in the *Nanga-Eboko* rice project in Cameroon is exported to China, and only 25 per cent is available for consumption in the local markets.<sup>34</sup> This may reinforce food insecurity issues in Cameroon and particularly in communities subjected to agricultural investment activities.

The objectives of land grabbing take diverse forms, including among others: the expropriation of land for conservation purposes, mine exploration, speculative investments offering a higher rate of return from land investment, the creation of protected reserves which are often used for eco-tourism, and the leasing of land for foreign agro-investment (FAI) purposes.<sup>35</sup> This thesis focuses on FAI specifically as one type of land grabbing.

The practice of leasing land for FAI purposes links FAI inextricably to land grabbing. Although it could be asserted that contract law legally secures land lease for FAI, it is reported, however, that FAI land deals are not often transparent or concluded in a manner that would protect the rights and interests of local communities.<sup>36</sup> The phrase "rights and interests" as used in this study covers the various rights and interests related to and aligned with land tenure security and sustainability interests including socio-economic and environmental considerations. Thus, the lack of transparency in FAI land deals raises serious and pertinent issues in terms, among others, of the compatibility of property rights, the protection of environmental norms, and the

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32 Borras and Franco "Towards a broader view of the politics of global land grabs" 4; NAPE "A study of land grabbing cases in Uganda" 5.

33 NAPE "Land, life and justice" 5.

34 Farmland Grab 2010 <http://farmlandgrab.org/16485> accessed 19 May 2015.

35 NAPE "A study of land grabbing cases in Uganda" 5.

36 Smaller and Mann 2009 <http://www.fao.org/fileadmin/templates/est/INTERNATIONAL-TRADE/FDSs/A-Thirst-for-distant-lands.pdf> accessed 27 November 2015; Cotula *et al Land grab or development opportunity* 68-70; Narula "The global land rush" 6; Kugelman "Introduction" 1.

participatory rights and socio-economic rights of the local communities whose land is forcefully taken and leased to foreign investors for FAI purposes.<sup>37</sup> It has been stated that in areas subject to FAI, the adverse impacts of the investment mostly fall on local communities.<sup>38</sup> These range from environmental impacts to social and economic impacts.<sup>39</sup> Although compelling evidence of the impacts of FAI activities presupposes that investment in agriculture is bad, it is also important to note that FAI offers an excellent way of increasing food crop productivity and ensuring rapid economic growth and food security, and as such may not be bad *per se*. The main problem with FAI seems to lie with its regulation and implementation. What this thesis argues is that the effective regulation of FAI through procedural means as facilitated by the rights-based approach (RBA) could guarantee and protect the interests of local communities' rights and interests during FAI land deals.

## **1.2 FAI in Cameroon, Uganda and South Africa**

As it will become evident in Chapter 2, FAI activities involved a wide range of players or actors including states and non-states alike. Yet, this thesis will only investigate the role of the state in this regard. Because, the state for the most part has absolute power and authority over land and plays the most significant role in the whole governance debate. Thus, states duties and responsibilities that relates specifically to human rights protection are worthy of consideration in effort to demonstrate how the state fulfils this role and particularly so, during FAI activities.

Yet, in order to understand the phenomenon of FAI in the African context, which is often based on a weak land tenure governance system,<sup>40</sup> this thesis focuses geographically on Cameroon, Uganda and South Africa as members of the African Union (AU) and as being representative of three African regional economic communities,

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37 NAPE "Land, life and justice" 5.

38 Cotula *et al* *Land grab or development opportunity* 15; Sindayigaya 2011 [http://www.entwicklungshilfe3.de/media/Bilder\\_ZSE/UEber\\_Uns\\_Dateien/Grundlagentexte/Land\\_grab\\_article.pdf](http://www.entwicklungshilfe3.de/media/Bilder_ZSE/UEber_Uns_Dateien/Grundlagentexte/Land_grab_article.pdf) accessed 27 November 2015.

39 The impacts of FAI are elaborated in Chapter 2 of this thesis.

40 Mabikke "Escalating land grabbing in post-conflict regions of northern Uganda" 1; Muriisa *et al* "Land deals in Uganda" 19.



namely the *Economic and Monetary Community of Central Africa* (CEMAC) in Central Africa, the *East African Development Community* (EADC) in East Africa, and the *Southern African Development Community* (SADC) in Southern Africa.

The reason for this choice is twofold. Firstly, the implementation of the procedural aspects of a RBA to FAI at regional and/sub-regional level may have a correlative impact at the domestic level. This is because regional law influences national law and vice-versa. Secondly, FAI is currently prevailing and posing problems in Cameroon and Uganda. In view of this, an exposition of the rights necessary to form the basis of and inform a RBA, especially procedural rights, could set the basis for the recognition and implementation of a RBA to counter the exigencies of FAI in these countries. Although South Africa also undertakes FAI activities in some African countries and as such constitutes among others investors in FAI within the African context,<sup>41</sup> FAI at present is not a serious concern in the country as it is in Cameroon and Uganda, but it is on the rise.<sup>42</sup> Yet, the country's RBA framework could serve as a good example of the recognition and effective implementation of a RBA to FAI, which is necessary to inform FAI governance in general. This is because the RBA has been firmly entrenched in South Africa's constitutional and statutory framework and it has been fleshed out to a considerable extent by the South African courts. The South African legal system could thus provide a comprehensive and workable solution to some of the challenges experienced by Cameroon and Uganda. This study also focuses on the procedural aspects of the RBA and not on the equally important substantive aspects. The study recognises that procedural and substantive rights are deeply intertwined and that they are often mutually inter-dependent. Due to space constraints, however, the study

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41 Other African countries involved in FAI activities within the African context include: Egypt and Libya. Examples of South Africa's FAI activities in some African countries include among others: a 10.0000 hectares land deals by Agri SA in Mozambique for maize, soy, poultry and the production of dairy products-see Friis *et al* 2010 "Land grabbing in Africa" 34; a 2000 hectares land deal for jatropa plantation by Deulco in Mozambique see Theting and Brekke[http://www.spireorg.no/files/spire/documents/Land\\_investment\\_or\\_land\\_grab08112010.pdf](http://www.spireorg.no/files/spire/documents/Land_investment_or_land_grab08112010.pdf) date of accessed 16/05/2016; an 80,000 land deal for 30 years by Agri SA for food crop production in Congo-see Grain 2012 <https://www.grain.org/article/entries/4575-land-grabbing-and-food-sovereignty-in-west-and-central-africa> accessed 16/05/2015.

42 See Chapter 7 for details.

focuses on only the procedural aspects. An understanding of the rights designed to form the basis of and inform a RBA to FAI governance is important and forms the central research focus of this study.

### 1.2.1 *Cameroon*

It is a requirement of international law that the effective implementation of development projects such as FAI projects should be guided by, and observes, the principle of free, prior, and informed consent (FPIC).<sup>43</sup> This principle allows and provides for the exercise of peoples' fundamental rights, including, for example, the rights of public participation and access to information.<sup>44</sup> However, most FAI land deals do not seem to follow this principle; neither do some foreign investors and host governments adhere strictly to this principle.<sup>45</sup> In Cameroon, the allocation of land for FAI purposes does not, as a general rule, follow this principle.<sup>46</sup> For instance, Romain Roland Eto, Mayor of *Nanga Eboko*, noted with respect to a 99-year rice contract with a Chinese Company, Sino Cam Ltd, that "... the municipality and our administration had not been consulted in the lands' selling."<sup>47</sup> This is particularly worrying for a country that has ratified the *United Nations Declaration of the Rights of Indigenous People* of 2007, which provides for strict adherence to FPIC in socio-economic development projects like FAI.<sup>48</sup>

*Law No 74/1 to lay down the Organisation and Management of Land Tenure in Cameroon* of 1974 established a legal framework regulating land tenure and property

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43 Art 32(2) of the *United Nations Declaration of the Rights of Indigenous People* (UNDRIP) of 2007.

44 In terms of the principle, free implies consent given without coercion or intimidation, prior entails the seeking of consent before the commencement of a particular project, informed means the provision of information relating to the nature, activities and size among others of the proposed activity, and consent implies participation in decision-making. See Anderson *Free, prior, informed and consent* 15-16); arts 10, 18, 19 and 32 of UNDRIP.

45 Annual transparency Report 2012  
<http://www.foresttransparency.info/cameroon/2012/themes/17/115/> accessed 19 May 2015.

46 Annual transparency Report 2012  
<http://www.foresttransparency.info/cameroon/2012/themes/17/115/> accessed 19 May 2015.

47 Afronline 2009 <http://www.afronline.org/?p=2908> accessed 19 May 2015.

48 Art 3, 32 of UNDRIP.

rights.<sup>49</sup> The 1974 law put in place a process for land rights registration and created a framework for the private ownership of property. However, security of tenure remains a serious problem in Cameroon.<sup>50</sup> This is particularly true in that only a relatively small percentage of Cameroonians have registered land rights, as most continue to claim rights based on diverse customary laws.<sup>51</sup> This implies that unregistered land is available for FAI purposes as it falls within the domain of state land, and private individuals can exercise only rights of use and not ownership rights. For example, the 2000-2004 Chad-Cameroon oil pipeline construction led to the eviction of traditional landowners from their land.<sup>52</sup> It could be inferred from this that due to weak land tenure governance in Cameroon, FAI encroaches on local communities' property rights.<sup>53</sup> Local communities also do not participate in negotiating the terms of FAI contracts and the terms of the contracts are not available to them.<sup>54</sup> The lack of community participation in FAI negotiated land deals appear to be a significant barrier preventing local communities from objecting to the infringement of their property rights.<sup>55</sup> The protection of rights to land and natural resources through procedural rights, for example, is fundamental for the protection of local communities' interests; yet it does not seem to be at the order of the day in present day Cameroon as far FAI is concerned.<sup>56</sup>

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49 Law No 74/1 and 74/2 July 5th 1974 to lay down the Organisation and Management of Land Tenure in Cameroon.

50 Javelle 2013 <http://www.focusonland.com/silo/files/cameroon-experiences-with-transferring-forest-rights.pdf> accessed 10 February 2015; Wily-Alden *Whose land is it?* 11.

51 USAID 2011 [http://usaidlandtenure.net/sites/default/files/country-profiles/full-reports/USAID\\_Land\\_Tenure\\_Cameroon\\_Profile.pdf](http://usaidlandtenure.net/sites/default/files/country-profiles/full-reports/USAID_Land_Tenure_Cameroon_Profile.pdf) accessed 10 February 2015; Cotula Land deals in Africa 16; Egbe 2001 JAL 31-32.

52 USAID 2011 [http://usaidlandtenure.net/sites/default/files/country-profiles/full-reports/USAID\\_Land\\_Tenure\\_Cameroon\\_Profile.pdf](http://usaidlandtenure.net/sites/default/files/country-profiles/full-reports/USAID_Land_Tenure_Cameroon_Profile.pdf); Cotula *Land deals in Africa* 16; Egbe 2001 JAL 31-32.

53 Javelle 2013 <http://www.focusonland.com/silo/files/cameroon-experiences-with-transferring-forest-rights.pdf> accessed 10 February 2015; Wily-Alden *Whose land is it?* 11.

54 Anseeuw *et al* *Transnational land deals for agriculture in the global South* 40.

55 Mabikke "Escalating land grabbing in post-conflict regions of northern Uganda" 1.

56 Arts 20, 21, 22 and 24 of the African Charter and Mabikke "Escalating land grabbing in post-conflict regions of northern Uganda" 1; art 3 of UNDRIP.

### 1.2.2 Uganda

Land as property and as a resource is one of the most important assets in Africa, as it occupies a central position in the cultural, political, economic and social organisation of many African nations.<sup>57</sup> The perception and importance of land in Uganda is no different. In Uganda, land is the single greatest resource from which the majority of the population derives their livelihood. This is particularly evident from the fact that the economy is largely agricultural.<sup>58</sup> Because land is an important factor for agricultural production, the government and the law in Uganda need to be clear on how land resources are to be accessed and developed, to whom the land belongs, and who else may lay valid claims to the land.

However, the state of FAI in Uganda is characterised by weak land governance.<sup>59</sup> According to Mabikke, the weak land governance system in Uganda:

Thrives on the failure of the prevailing land tenure systems to respond to the challenges posed by appreciation of land in a way that would enhance effective land tenure and investment security.<sup>60</sup>

What is discernible from the above is that weak land governance does not protect people's right to land,<sup>61</sup> especially within the context of the formal land administration set-up.<sup>62</sup> The situation is further exacerbated by the new National Land Policy<sup>63</sup> which is not clear on how the state and local government will address issues involving land obtained for public welfare, safety, and economic development.<sup>64</sup> Even though the government of Uganda has developed and implemented a number of reforms, such as

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57 Mabikke "Escalating land grabbing in post-conflict regions of northern Uganda" 6.

58 Mabikke "Escalating land grabbing in post-conflict regions of northern Uganda" 1; Kraybill and Kidoido "An analysis of relative profitability of key Ugandan agricultural enterprises by agricultural zones" 1.

59 Mabikke "Escalating land grabbing in post-conflict regions of northern Uganda" 1; Muriisa *et al* "Land deals in Uganda" 19.

60 Mabikke "Escalating land grabbing in post-conflict regions of northern Uganda" 1; Muriisa *et al* "Land deals in Uganda" 19.

61 De Schutter 2011 *HILJ* 504.

62 Mabikke "Escalating land grabbing in post-conflict regions of northern Uganda" 21-22.

63 See the Ugandan *National Land Policy* of 2013.

64 Mabikke "Escalating land grabbing in post-conflict regions of northern Uganda" ii.

the agricultural development policy reform<sup>65</sup> that facilitates land acquisition for FAI purpose, these reforms, it is argued, do not have “any coherent, over-arching policy framework to govern land acquisition or agricultural development.”<sup>66</sup> It is only logical to deduce from the foregoing that improving the land governance system, possibly (also) by means of the incorporation of procedural aspects of the RBA in Uganda, could provide an “over-arching” policy framework for agricultural development and land acquisition. Improving land governance may also imply addressing the land tenure problem.<sup>67</sup> This could provide, promote and ensure transparency, participatory governance and the protection of substantive rights in land deals for FAI purposes in the country.

### 1.2.3 South Africa

In South Africa, the state of FAI is not as serious at this point as in Cameroon and Uganda.<sup>68</sup> The reason is that South Africa has strong laws, policies and governance institutions by comparison. Some of these laws and policies comprise *inter alia* of the *Development Facilitation Act* (DFA);<sup>69</sup> the *Communal Land Rights Act* (CLRA);<sup>70</sup> the *Upgrading of Land Tenure Right Act* (ULRTA);<sup>71</sup> the *Expropriation Act* (EA);<sup>72</sup> the *Spatial Planning and Land Use Management Act* (SPLUMA);<sup>73</sup> the *Communal Property Association Act* (CPAA);<sup>74</sup> the *Restitution of Land Right Act* (RLRA);<sup>75</sup> the *Green Paper on Development and Planning*,<sup>76</sup> and the *White Paper on Land Reform*.<sup>77</sup> The country's

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65 This reform was developed as part of the country's commitment to implement the Comprehensive Africa Agricultural Development Programme (CAADP) of the New Partnerships for Africa's Development (NEPAD) Initiatives established in July 2003, under the auspices of the African Union (AU). For details on the CAADP Initiative visit CAADP at: [www.nepad.org/foodsecurity/agrucluture/about](http://www.nepad.org/foodsecurity/agrucluture/about) accessed 9 December 2015.

66 Stickler “Governance of large-scale land acquisition in Uganda” 10.

67 Mabikke “Escalating land grabbing in post-conflict regions of northern Uganda” 22.

68 Crabtree and Casey “Lay of the land” 61-62.

69 67 of 1995.

70 11 of 2004.

71 112 of 1991.

72 63 of 1975.

73 16 of 2013.

74 28 of 1996.

75 22 of 1994.

76 Green Paper of 1999.

land governance framework ensures and provides for the respect of property rights and the security of tenure through the exercise of procedural rights.<sup>78</sup> However, this does not rule out the possibility or presence of land grabbing instances in the country. For example, in the northern part of South Africa, a Canadian subsidiary Company- Alterna Energy Z.A has acquired vast tracts of land in the province for biochar production.<sup>79</sup>

### **1.3 FAI governance**

FAI governance<sup>80</sup> encompasses the setting of rules, regulations and standards to regulate FAI. It entails the mechanisms, processes and institutions that should permit ordinary citizens and groups to articulate their interests, exercise their fundamental rights (which are substantive and procedural), and mediate their differences.<sup>81</sup> However, foreign investors target African countries with weak governance institutions, and it is possible to infer that a framework for FAI governance and good FAI governance might be lacking in sub-Saharan Africa to effectively regulate FAI land deals both regionally and in specific countries. It seems reasonable to suggest that the rigorous application of a framework of FAI governance could provide better certainty relating among other issues to the identification of land for this purpose and the incorporation and protection of the interests of local communities by both the state and the private sector as agents of governance in the allocation of land for FAI purposes. This framework is not envisioned in many current FAI land deals, as many FAI land deals are argued not to be transparent and exclusionary, making them void of accountability, among other concerns.<sup>82</sup>

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77 White Paper of 2009.

78 S 25 of the *Constitution of the Republic of South Africa*, 1996 (the Constitution); De Jager "Reflecting on experiences in land reform and proposal on alternatives" 1-2.

79 Biochar is fine-grained charcoal that is applied to soils and it is produced through a process called pyrolysis whereby biomass is exposed to high temperatures in the absence of oxygen. Through this process, two types of fuels in addition to charcoal are produced - syngas and bio-oil - which are used either for power or further refined into agrofuels for cars or aviation. See Ernsting *et al* "Biochar land grabbing" 2. Biochar is being promoted as a new geo-engineering solution to climate change.

80 For a detailed elaboration of the concept of FAI governance, see Chapter 3 of this thesis.

81 Simo "Land grabbing, governance and social peace-building issues in Cameroon" 2.

82 Hall 2011 *RAPE* 195-196; Sindayigaya 2011  
[http://www.entwicklungshilfe3.de/media/Bilder\\_ZSE/UEber\\_Uns\\_Dateien/Grundlagentexte/Land\\_gra](http://www.entwicklungshilfe3.de/media/Bilder_ZSE/UEber_Uns_Dateien/Grundlagentexte/Land_gra)

### 1.3.1 *The procedural aspects of a RBA to FAI governance*

The likelihood that FAI land deals may not be transparent and may be exclusionary raises pertinent concerns regarding the absence of the exercise of the local communities' that are affected by the FAI deals participatory rights, the absence of the dissemination of information, and the lack of access to appropriate legal remedies where rights and interests have been infringed. As will become evident in Chapter 4, one plausible way of addressing the impacts of FAI is through a RBA to law and governance applicable to FAI land deals.

The adoption of a RBA would be a way of seeking to develop and reinforce the capacity of people to effectively exercise their fundamental human rights and for those rights to be protected.<sup>83</sup> The RBA to governance could also strengthen the ability and capacity of the state to fulfil not only its international but also its national obligations as duty bearers; that is, the responsibility of states to ensure that their citizens enjoy the protection of their fundamental human rights. The RBA to governance also has the potential of increasing opportunities for more meaningful dialogue with citizens who are rights-holders, and the right of citizens to enjoy certain rights guaranteed by the state.<sup>84</sup> The so-called International Bill of Rights, which consists of the *International Covenant on Civil and Political Rights* (ICCPR),<sup>85</sup> the *International Covenant on Economic, Social and Cultural Rights* (ICESCR),<sup>86</sup> and the *Universal Declaration of Human Rights* (UDHR),<sup>87</sup> contains a variety of rights which can conveniently be grouped into procedural and substantive rights. These rights are also found in the constitutions

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b\_article.pdf accessed 27 November 2015; Muriisa *et al* "Land deals in Uganda" 2; Kugelman "Introduction" 1. See further Smaller and Mann 2009 <http://www.fao.org/fileadmin/templates/est/INTERNATIONAL-TRADE/FDSs/A-Thirst-for-distant-lands.pdf> accessed 27 November 2015; Cotula *et al* *Land grab or development opportunity* 68-70; Narula "The global land rush" 6.

83 Benest "A Rights-based approach to participatory video" 10.

84 Polack *et al* *Accountability in Africa's land rush* 1-2; Cornwall and Nyamu-Musembi 2004 *TWQ* 1418.

85 The *International Covenant on Civil and Political Rights* (1966) 52, UN Doc. A/6316 (1966); 999 UNTS 171; 6 ILM 368 entered into force 1967.

86 The *International Covenant on Economic Social and Cultural Right* (1966) 49 UN Doc. A/6316 (1966); 993 UNTS 3; 6 ILM 368 entered into force 1967.

87 The *Universal Declaration of Human Rights* (UDHR) was adopted on the 10<sup>th</sup> of December 1948, GA Res 127A, U.N. GAOR, U.N.Doc.A/810 (1948) United Nations (UN) Organisation.

and legislation of Cameroon, Uganda and South Africa.<sup>88</sup> The former group of rights includes among others the rights to access to information, public participation in decision-making, and access to courts (and more generally access to justice). The latter includes among others non-discrimination and equal protection of the law, the right to life, the prohibition of force and child labour, freedom of movement and residence, the right to privacy and homes, the right to property, freedom of religion, cultural rights, the right to an adequate standard of living, the right to safe and healthy working conditions, freedom of assembly and expression/opinion, the right to health, the right to the self-determination of people, and the right to a certain environmental quality.<sup>89</sup>

Although both categories of rights are part of the body of fundamental rights applicable to law, this study will focus on procedural rights only, for a number of reasons. Firstly, the vigorous implementation of procedural rights could ultimately contribute to the realisation of substantive rights, and they are often a prerequisite and a final remedy even for properly protecting, promoting and respecting substantive rights.<sup>90</sup> Secondly, it is argued that procedural rights, which are elements of good governance and democracy, could be useful and necessary tools to prevent government's exercise of arbitrary power.<sup>91</sup> Further, procedural rights are a direct counter measure to the non-transparent and exclusionary land deals that seem to characterise FAI practices.

Also, procedural rights could further strengthen democratic structures and processes, curb corruption and the mismanagement of national resources, and ultimately promote sustainable development.<sup>92</sup> In this regard, because local communities and affected stakeholders may not participate in negotiating the terms of FAI land deals and the

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88 See the details in Chapters 5, 6 and 7 of this thesis.

89 Greiber *et al* "Conservation with justice" 13-15.

90 De Schutter concurs with this assessment of the importance of procedural rights and their elements -public participation in decision-making, accountability and access to information - in realising substantive fundamental human rights such as the right to food: "I believe that accountability, participation and empowerment are absolutely key ingredients in the success of food security strategies." De Schutter date unknown <http://blogs.worldwatch.org/nourishingtheplanet/de-schutter-highlights-the-importance-of-a-rights-based-approach-to-food-security/> accessed 13 January 2016.

91 Currie and Klaaren *A commentary* 16; the Preamble of PAIA.

92 Principle 10 of Stockholm Declaration, for example.



relevant information is not made available to them,<sup>93</sup> it could be argued that the exercise of the rights to access to information, public participation and access to justice could provide adequate protection to local communities during FAI and may be a plausible solution to the exigencies of FAI. This is especially true regarding the rights to access to information and public participation, which have the potential of enabling local communities to scrutinise public information and take part in decisions that affect their lives.<sup>94</sup> Against this background, Ebbesson posits:

Whereas access to information could be conceived as a prerequisite to meaningful participation, access to justice is inter alia, a means of enforcing the rights to access to information and participation.<sup>95</sup>

From the above it is clear that the recognition of, and the respect for, and the implementation of these rights within the framework of FAI may set the basis for proper FAI governance,<sup>96</sup> or at least a form of FAI which better protects people's rights and interests.

Within the context of this study, a RBA to FAI governance implies the responsibility and duty of states to respect, protect, and fulfil the procedural rights of local communities and affected stakeholders in agricultural land deals.<sup>97</sup> These responsibilities and duties do not only apply to states, but also to non-state actors such as international corporations, private companies well,<sup>98</sup> involved in FAI. For example, under the United Report's on *Protect, Respect and Remedy: A Framework for Business and Human Rights*

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93 Smaller and 2009 <http://www.fao.org/fileadmin/templates/est/INTERNATIONAL-TRADE/FDSs/A-Thirst-for-distant-lands.pdf> accessed 27 November 2015.

94 Kravchenko 2009 *TELJ* 35-36; Currie and Klaaren *A commentary* 16-17; Du Plessis 1997 *SAJELP* 117-118; Morina "The transposition of the convention of access to information" 10; s 9 of the South African *Promotion of Access to Information Act* 2 of 2000 (PAIA); art 4 of *The Convention on Access to Information, Public Participation in Decision-Making and Access to Justice* (the Aarhus Convention).

95 Ebbesson "Participatory and procedural rights in environmental matter" 1; Devenish *A commentary* 451.

96 Currie and Klaaren *A commentary* 16; the Preamble of PAIA.

97 S 7(2) of the *Constitution of the Republic of South Africa*, 1996.

98 Bilchitz 2010 *IJHR* 199, 203; The United Nations Special Rapporteur's Report on Protect, Respect and Remedy: A Framework for Business and Human Rights <http://www.reports-and-materials.org/sites/default/files/reports-and-materials/Ruggie-report-7-Apr-2008.pdf> accessed 16/05/2016.

(the Ruggie Framework)<sup>99</sup> non-state actors involved in FAI activities have human rights obligations similar to those applicable to states.<sup>100</sup> However, this thesis centres specifically on the state despite the involvement of other role players in the human rights paradigm and who are also actor role players in FAI activities.

Nonetheless, the RBA to FAI essentially concerns the processes and implementation and protection of people's rights and particularly how these rights could and should be exercised by all people of a particular community or region. Put differently, a RBA to FAI governance frames the impacts of FAI as violations of peoples' human rights. As underscored by Olivier De Schutter, the United Nations (UN) Special Rapporteur on the right to food, "many of the detrimental impacts of large-scale agricultural investments are in direct contravention of a number of human rights."<sup>101</sup> This implies that the framing of FAI impacts as violations of fundamental rights, which are substantive and procedural in nature, triggers a stricter measure for the protection of these rights, which could be facilitated through procedural rights in the context of FAI.

Drawing from this brief exposition, it seems that the rights of (a) access to information, (b) access to justice and (c) public participation should be instrumental in forming the basis of and informing a RBA to FAI governance. This is because public participation, access to information and access to justice are interwoven procedural rights that aim to protect people's rights and interests.<sup>102</sup> Consequently, the promotion and implementation of these rights within the framework of FAI could act as a catalyst for the sound governance (and particularly the environmental governance)<sup>103</sup> of natural resources, which is a fundamental ingredient of responsible and sustainable FAI, and of the related rights and interests of local communities that depend on these natural resources for their well-being and general livelihoods.

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99 Named after the Special Rapporteur, of the United Nations on Issues of Human Rights and Transnational Corporations and Other Business Enterprises, John Ruggie.

100 Para 51-54 of the Ruggies Framework.

101 Deng *et al Foreign land deals and human rights* 6.

102 Ebbesson "Participatory and procedural rights in environmental matters" 2.

103 Principle 10 of the *United Nations Conference on Environment and Development* (Rio Declaration) of 1992; Ebbesson "Participatory and procedural rights in environmental matters" 3.

### 1.3.1.1 The procedural aspects of a RBA in international, regional and sub-regional instruments

The procedural aspects of a RBA are a blend of hard and soft laws and principles contained in a plethora of international, regional and sub-regional legal agreements. At the international level, the relevant international conventions that could act as the basis for and inform a RBA to FAI governance include *inter alia*: the *Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters* (the Aarhus Convention),<sup>104</sup> the ICCPR, the ICESCR, the *United Nations Framework Convention on Climate Change* (UNFCCC),<sup>105</sup> the *Kyoto Protocol to the United Nations Framework Convention on Climate Change* (KP),<sup>106</sup> the *International Convention on Environmental Impacts Assessment in a Trans boundary Context* (the Espoo Convention),<sup>107</sup> the *International Labour Organisation Convention 169 on the Rights of Indigenous and Tribal Peoples in Independent Countries* (Convention 169),<sup>108</sup> and the *Convention on Biological Diversity* (CBD).<sup>109</sup>

Relevant international soft law instruments include: the UDHR,<sup>110</sup> the *United Nations Declaration on the Rights of Indigenous People* (UNDRIP),<sup>111</sup> the United Nations Conference on Human Environment (the Stockholm Declaration),<sup>112</sup> the *United Nations*

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104 The *Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matter* (Aarhus Convention), Denmark, June 25, 1998, 38 ILM 517 and entered into force October 20<sup>th</sup> 2001.

105 The *United Nations Framework Convention on Climate Change*, 29 May 1992, A/AC.237/18 (Part II/Add 1, reprinted in (1992) 31 ILM 849 (UNFCCC).

106 *Kyoto Protocol to the United Nations Framework Convention on Climate Change*, 10 December 1997, UNFCCC/CP/1997/L.7/add 1, reprinted in (1998) 37 ILM 22 (KP). The KP was adopted at the Third Conference of the Parties to the UNFCCC held in Kyoto, Japan, in December 1997.

107 *The International Convention on Environmental Impact Assessment in a Trans-boundary Context* (Espoo Convention) 1991, 30 ILM 800, 1991.

108 *The International Labour Organisation Convention 169 Concerning Indigenous and Tribal People in Independent Countries* (ILO Convention 169), 1989 28 ILM 1382.

109 *The Convention on Biological Diversity* (1992) 1760 UNTS 79, 31 ILM 818, 1992.

110 *The Universal Declaration of Human Rights* (1948), G.A Res. 127A (III) No 16, 993 UNTS 3; GOR, 95-20, 6 ILM 368 U.N Doc. A/810 (1948), entered into force.

111 *The United Nations Declaration on the Rights of Indigenous People* (2007) 13th September; 46 ILM 1013 (2007).

112 *The United Nations Conference on Human Environment* (1972) Stockholm, Sweden 11 ILM 876 (1972).

*Conference on Environment and Development* (Rio Declaration),<sup>113</sup> the *Sofia Guidelines on Access to Environmental Information and Public Participation in Environmental Decision-Making*,<sup>114</sup> the *Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises*,<sup>115</sup> the *Food and Agricultural Organisation (FAO) Voluntary Guidelines on the Responsible Governance of Land Tenure, Fisheries and Forests in the context of National Food Security* (Voluntary Guidelines),<sup>116</sup> the *Principles for Responsible Agricultural Investment that Respects, Rights, Livelihoods and Resources* (PRAI),<sup>117</sup> the *Equator Principles*,<sup>118</sup> and the *Johannesburg Declaration on Sustainable Development* (the Johannesburg Declaration).<sup>119</sup>

At the regional level, the relevant hard law instruments related to the RBA to FAI include: the *African Charter on Human and People's Rights* (the African Charter),<sup>120</sup> the *African Charter on Democracy, Elections and Governance* (ACDEG),<sup>121</sup> the *Protocol on the Statute of the African Court of Justice and Human Rights* (the Protocol on the Statute of the African Court),<sup>122</sup> the *African Union Convention on Preventing and Combating Corruption* (AUCPCC),<sup>123</sup> the *Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa* (the Protocol on the rights of women),<sup>124</sup> the *Protocol on the African Investment Bank* (PAIB),<sup>125</sup> and the *Protocol on the Court of Justice of the African Union* (the Protocol on the African Court) of 2003.

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113 The *United Nations Conference on Environment and Development* (1992) Rio de Janeiro 31 ILM 874 (1992) Summit was adopted in 1992.

114 The Guidelines was adopted in 1995.

115 Adopted 25th May 2011.

116 Adopted by the FAO in 2012.

117 The PRAI guidelines were developed in 2010.

118 The Equator Principles (EPs) was negotiated in 2002 by 9 international banks in conjunction with IFC. It was launched in 2003 and updated in 2006; Goetz 2013 *Globalization* 200.

119 Johannesburg Declaration on Sustainable Development (2002) UN Doc . A/CONF. 199/20, Resolution 1.

120 *The African Charter on Human and People's Right* (1981) 5, 21 ILM, 58 entered into force 1982.

121 *The African Charter on Democracy Elections and Good Governance* 1982 21 ILM Adopted in 2007.

122 Adopted in 1998.

123 Adopted in 2003.

124 Adopted in 2003.

125 Adopted in April 2009 by the Joint Conference of Ministers of Agriculture, Land and Livestocks.

Relevant soft law instruments include: the *African Union Framework and Guidelines on Land Policy in Africa* (The African Union Framework and Guidelines),<sup>126</sup> the *Dakar Declaration and Recommendation of the Rights to a Fair Trial* (the Dakar Declaration),<sup>127</sup> the *Johannesburg Principles on National Security, Freedom of Expression and Access to Information* (the Johannesburg Principles),<sup>128</sup> the *African Union Declaration on Freedom of Expression and Access to Information* (the African Union Declaration) and the *African Union Platform on Access to Information* (AUPAI),<sup>129</sup>

In addition, sub-regional conventions include the *Communauté Économique et Monétaire de L'Afrique Centrale* – (the Economic and Monetary Community of Central Africa) (CEMAC), the *Investment Charter* (the Charter of CEMAC),<sup>130</sup> *La Code de L'organisation pour L'harmonisation en Afrique du Droit des Affaires* – (the Code for the Organisation for the Harmonisation of Business Law in Africa (OHADA),<sup>131</sup> the SADC *Protocol on Legal Affairs* (Protocol on Legal Affairs),<sup>132</sup> the SADC *Protocol on the Tribunal and Rules Thereof*, (the SADC Protocol on the Tribunal )<sup>133</sup> the SADC *Protocol on Finance and Investment* (Protocol on Finance and Investment),<sup>134</sup> and the *East African Development Community (EADC) Protocol on Good Governance* (the Protocol on Good Governance).<sup>135</sup>

Relevant sub-regional soft law instruments include: the *Southern Africa Development Community Charter of Fundamental Social Rights* (SADC Charter),<sup>136</sup> the *Cotonou Partnership Agreement* (CPA),<sup>137</sup> and the EADC *Bill of Rights* (the Bill of Rights).<sup>138</sup>

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126 Adopted in 2009.

127 Adopted in 1999.

128 Adopted in 1995.

129 Adopted in 2011.

130 Adopted in 1999.

131 Adopted in 1993.

132 Adopted in 2000.

133 Adopted in 2000.

134 Adopted in 2006.

135 Adopted in 2001.

136 Adopted in 2003.

137 Adopted in 2003.

138 Adopted in 2009.

### 1.3.1.2 The procedural aspects of a RBA in Cameroon, Uganda and South Africa

The international human rights instruments to which Cameroon is a party<sup>139</sup> as well as the *Constitution of the Republic of Cameroon*, 1996 (the Constitution of Cameroon) and legislation are useful to form the basis of and to provide the minimum requirements for the procedural rights necessary to inform a RBA to FAI governance in Cameroon. The rights to access to information, to public participation and access to justice in Cameroon could be found *inter alia* in: the *Constitution of the Republic of Cameroon*, 1996,<sup>140</sup> the 1996 *Law on Environmental Management* (Law No 96/12),<sup>141</sup> the 1976 *Ordinance on the Management of State Land* (Ordinance No 76/166),<sup>142</sup> the 1974 *Law on the Organisation and Management of Land Tenure Cameroon* (Law No 74/01),<sup>143</sup> the 1994 *Forestry Law* (Law No 94/01),<sup>144</sup> the 2009 *Law on Legal Assistance* (Law No 2009/004),<sup>145</sup> and the 2003 *Law on Biotechnology* (Law No 2003/006).<sup>146</sup>

Equally, the international human rights instruments to which Uganda is a signatory, the *Constitution of the Republic of Uganda*, 1995 (the Constitution of Uganda) <sup>147</sup> and subsequent legislation are relevant to consider when investigating which procedural rights could form the basis of a RBA to FAI governance in Uganda. The rights to access to information, public participation and access to justice in Uganda could be found *inter*

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139 The Preamble of the *Constitution of the Republic of Cameroon*, 1996, provides clearly that "Affirming our attachment to the fundamental freedoms enshrined in the Universal Declaration of Human Rights, the Charter of the United Nations and the African Charter on Human and People's Rights and all duly ratified international conventions relating thereto." This provision of the Preamble obligates Cameroon to adhere to all international ratified conventions dealing with human rights violations.

140 The *Constitution of the Republic of Cameroon*, 1996 (the Constitution of Cameroon).

141 Law No 96/12 of 5 August 1996 relating to *Environmental Management in Cameroon* (Law No 96/12).

142 Ordinance No 76/166 of April 25th 1976 laying down the *Management of State Lands in Cameroon* (Ordinance 76/166).

143 Law No 74/1 and 74/2 of July 5th 1974 to lay down the *Organisation and Management of Land Tenure in Cameroon* (Law No 74/1).

144 Law No 94/01 of 20th January 1994 to lay down *Forestry, Wildlife and Fisheries Regulation in Cameroon* (Law No 94/01).

145 Law No 2009/004 of 14th April to *organise Legal Assistance in Cameroon*.

146 Law No 2003/006 of 21st April 2003 to lay down *Safety Regulations Governing Modern Biotechnology in Cameroon* (Law No 2003/006).

147 The *Constitution of the Republic of Uganda*, 1995 (the Constitution of Uganda).

*alia* in: the Constitution of Uganda, the *Access to Information Act* (AIA),<sup>148</sup> the *National Environment Act* (NEA),<sup>149</sup> the *National Land Act* (NLA),<sup>150</sup> the *Whistle-blowers Protection Act* (WPA)<sup>151</sup> and the *National Forestry and Tree Planting Act* (NFTPA).<sup>152</sup>

As in Cameroon and Uganda, in the South African context, a RBA implies the manner in which citizens exercise their fundamental human rights and how these are enforced by the government. In this regard, the *Constitution of the Republic of South Africa*, 1996 (the Constitution of South Africa) and the relevant legislation guarantee a general RBA which is important to inform a RBA to FAI. The right to access to information and access to justice in South Africa could be found *inter alia* in: the *Constitution of the Republic of South Africa*, 1996 (the Constitution) and the *Promotion of Access to Information Act* (PAIA).<sup>153</sup> However, the right to public participation is also an important right in the South African context, though it is not legislated into a specifically designated act like the legislation referred to above. Provisions for public participation are found in sectoral legislation such as the *National Environmental Management Act* (NEMA),<sup>154</sup> the *National Forest Act* (NFA)<sup>155</sup> and the *National Environmental Management: Biodiversity Act* (NEM: BA).<sup>156</sup> Provisions for the right to access to justice are found in some of these laws in addition to the Legal Aid Act (LAA).<sup>157</sup>

## **1.4 Research question**

From the foregoing it is possible to formulate a central research question that will guide this study:

How can the procedural aspects of the RBA be used to provide adequate protection to local communities during FAI practices in Cameroon, Uganda and South Africa?

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148 6 of 2005.

149 Cap 153 of 1995.

150 Cap 227 of 1998.

151 6 of 2010.

152 8 of 2003.

153 2 of 2000.

154 107 of 1998.

155 84 of 1998.

156 10 of 2004.

157 39 of 2014.

In this thesis, adequate protection refers to appropriate, proper and effective protection of local communities' rights and interests during FAI practices.

## **1.5 Objectives of the study**

The primary objective of this study is to investigate how the procedural aspects of a RBA could be used to provide adequate protection to local communities during FAI practices in Cameroon, Uganda and South Africa. Ancillary objectives of this research are:

- (1) Within the context of land grabbing, to discuss FAI, its impacts, extent and meaning generally, and in Cameroon, Uganda and South Africa specifically.
- (2) To analyse the concepts of governance, good governance and the RBA in order to build a theoretical understanding of these for the purpose of good FAI governance.
- (3) To investigate the procedural aspects of the RBA in international, regional and sub-regional conventions and soft law instruments that may contribute to the formulation of an adequate framework for good FAI governance.
- (4) To analyse the regulation of FAI land deals in Cameroon, Uganda and South Africa.
- (5) To investigate and critically assess the procedural aspects of a RBA to FAI governance frameworks in Cameroon, Uganda and South Africa.
- (6) To make comprehensive proposals regarding the contribution of the procedural aspects of a RBA to address FAI in the three national jurisdictions as measured against international, regional and sub-regional law.



## **1.6 Assumptions and hypotheses**

### *1.6.1 Assumptions*

- FAI is set to increase because of the need for development, energy and food security.
- Contract law on its own is insufficient to govern FAI and is often used to exclude people that are directly affected by FAI, thus negating their interests.
- The RBA is generally accepted as an approach to address or improve the procedural deficiencies of governance and to protect and realise substantive entitlements.
- Given that the governments of Cameroon, Uganda and South Africa are parties to some international, regional and sub-regional law instruments that provide for procedural rights, they must protect, respect and fulfil the same within their domestic laws as part of their international obligations.

### *1.6.2 Hypotheses*

- FAI impacts negatively on the rights and interests and of some people in Cameroon, Uganda and South Africa.
- The recognition and implementation of a RBA to FAI, especially through procedural rights, could set the basis for good FAI governance and thus better protect the rights and interests of local communities in Cameroon, Uganda and South Africa.

## **1.7 Research methodology**

This research will be based mainly on a literature review relating to a RBA to FAI. This includes a detailed examination of and reliance on the primary sources of international, regional, sub-regional and national legal frameworks. Secondary sources such as textbooks, journal articles, reports and electronic sources also constitute an essential part of the methodology. The study will critically assessed the legal frameworks of the procedural aspects of the RBA to FAI governance in Cameroon, Uganda and South Africa within the context of the relevant international, regional and sub-regional laws.

This will entail an examination of the rights relating to access to information, public participation, and access to justice against the distilled generic characteristics and minimum requirements of a RBA in terms of good FAI governance. This is to ascertain how and to what extent the procedural aspects in the focal countries of this study conform to these characteristics and requirements generally and within the context of FAI. The critical assessment will enable the making of recommendation on the need to recognise, incorporate and respect the fundamental procedural rights of local communities in the focal countries as far as FAI is concerned.

## **1.8 Structure of the study**

Chapter 2 grounds this study with a comprehensive theoretical background to the concepts of FAI and land grabbing, as well as indicating the relationships between them. The chapter further explores the impacts<sup>158</sup> of FAI in order to illustrate how these impacts constitute probable infringements of peoples' rights and governance issues generally, to lay the basis for a RBA to FAI governance.

Chapter 3 examines the theories of governance, good governance, FAI governance and good FAI governance. The chapter provides insight into the concepts of governance generally and FAI governance in particular, and determines the relevance of FAI governance in land deals, while drawing a link between them. In this chapter, the focus is specifically also on good governance because procedural rights are considered quintessential elements of good governance, thus justifying the need to couch FAI governance in good governance terms and in relation to procedural rights, in doing so, the chapter examines the concept of a RBA, and draws a link between governance and the RBA. It also engages in a discussion of the rights to public participation, access to information and access to justice as interwoven rights necessary to form the basis of and inform a RBA to FAI governance. The existence of this nexus is established by critically analysing the relevance of these rights in international, regional and sub-

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158 These impacts are both positive and negative. For detailed understanding of the impacts of FAI, see Chapter 2 of this thesis.

regional conventions and soft law instruments, in the subsequent Chapter 4. This discussion serves to build a theoretical foundation for the framework of FAI governance formulated in Chapter 4, which offers a detailed examination of the procedural aspects of the RBA in relevant international, regional and sub-regional conventions and soft law instruments, with an emphasis on the three pillars of procedural rights, namely public participation, access to information, and access to justice. It then proceeds to formulate the generic minimum requirements and characteristics for good FAI governance, which is used to test the effectiveness of the procedural legal regimes in the focal countries of this study.

Chapters 5, 6 and 7 provide an analysis of the regulation of FAI in Cameroon, Uganda and South Africa. The purpose of this analysis is to illustrate how contracts and existing approaches to FAI practices negatively impact on the rights and interests of local communities. The chapters then critically assess the procedural rights regimes in the three countries against the generic minimum characteristics and requirements of the RBA formulated in Chapter 4. Chapter 8 provides recommendations and a conclusion. The chapter will also assess the extent to which the domestic legal systems incorporate and adhere to the international, regional and sub-regional RBA frameworks insofar as the regulation and implementation of FAI activities are concerned. The chapter will also make recommendations on the effectiveness of the respect for, protection of and fulfilment of the procedural aspects of a RBA in Cameroon, Uganda and South Africa.

## CHAPTER 2

### CONCEPTUALISING LAND GRABBING AND FAI

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#### 2.1 Introduction

Land's indispensability to agricultural production has led to a significant change in patterns of ownership and the use of land in developing countries.<sup>1</sup> This change often is as a result of the clear lack of protected (registered) land rights<sup>2</sup> by most local communities in sub-Saharan Africa, which has resulted in their eviction from their land.<sup>3</sup> It is reported that local communities in sub-Saharan Africa have been forced off their lands by national governments in favour of large-scale agricultural investment meant for the production of food crops and biofuels.<sup>4</sup> Such eviction of local communities from their land is contrary to the provisions of the UNDRIP.<sup>5</sup>

The practice of FAI is gaining prominence in developing countries and especially in sub-Saharan Africa, where land is generally considered to exist in abundance and to be cheap.<sup>6</sup> This situation has given rise to what is called "land grabbing," which has proven

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- 1 Narula *The global land rush* 1; Narula 2013 *SJIL* 101. See further Robertson and Andersen 2010 *Springer* 271; Friis and Reenberg "Land grab in Africa" 1.
  - 2 On Cameroon, Egbe 2001 *JAL* 31-32; Alden-Wily "The status of customary land tenure in Cameroon" 11. On Ethiopia, art 40 of the *Constitution of the Federal Democratic Republic of Ethiopia*, 1995; Ambaye "Land rights in Ethiopia" 1; Cotula *Land deals in Africa* 16; Gebeyehu "Towards improved transaction of land rights in Ethiopia" 1; Crewett *et al* "Land tenure in Ethiopia" 1; Witten 2007 *AF* 158-159. On Uganda, ss 2 and 3 of the Uganda *Land Act* of 1998; art 237 of the Ugandan Constitution; Adoko *et al* "Understanding and strengthening women's land rights" 1; NAPE "A study of the land grabbing cases in Uganda" 5. On Mali, Djire "Land registration in Mali" 1-4.
  - 3 Cotula *et al Land grab or development opportunity* 15; NAPE "Land, life and justice" 11.
  - 4 NAPE "Land, life and justice" 11; Daniel "The great land grab" 1; Daniel "Land grabbing and potential implication for world food security" 25-26; Borras and Franco "Towards a broader view of the politics of land grab" 2; Borras and Franco 2012 *JAC* 34; NAPE "A study of land grabbing cases in Uganda" 9.
  - 5 Arts 18; 21(2) and 26(1)-(3) of UDRIPS.
  - 6 De Schutter 2009 <http://www2.ohchr.org/english/issues/food/docs/BriefingNotelandgrab.pdf> accessed 27 November 2015; Deininger 2011 *JPS* 223 Daniel "Land grabbing and potential implications for world food security" 29; Borras and Franco 2012 *JAC* 37.

to be a great concern in developing countries.<sup>7</sup> Land grabbing affects people's possession of land as a resource and a means of livelihood.<sup>8</sup> Also, it is reported that most instances of land grabbing occur without the meaningful consultation and participation of local communities.<sup>9</sup> While the demand and acquisition of land in sub-Saharan Africa is not an entirely new phenomenon,<sup>10</sup> the increase in the international demand for and rate of acquisition of land today in sub-Saharan Africa could be attributed to three major recent crises related to financial, food and energy considerations. These crises have led to a dramatic revaluation of and rush to control land in sub-Saharan Africa and developing countries generally.<sup>11</sup> For mainstream economists the putative existence of "reserve agricultural land" in the global South<sup>12</sup> appears to meet the need for agricultural investment for food, animal feed and fuel production, among others.<sup>13</sup> It has been argued that the implementation of this kind of investment has significantly encroached on the human rights of the local communities and affected stakeholders including many substantive and notably procedural rights such as the rights to access to information, public participation and access to justice.<sup>14</sup>

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- 7 Daniel and Mittal *The great land grab* 1; Daniel "Land grabbing and the potential implication for world food security" 25-26; Borras and Franco 2012 *JAC* 34; Borras and Franco "Towards a broader view of the politics of global land grab" 2; NAPE "A study of the land grabbing cases in Uganda" 8.
- 8 De Schutter 2011 *HILJ* 504.
- 9 Kugelman "Introduction" 1; De Schutter 2011 *HILJ* 504; Smaller and Mann 2009 <http://www.fao.org/fileadmin/templates/est/INTERNATIONAL-TRADE/FDSs/A-Thirst-for-distant-lands.pdf> accessed 27 November 2015; Anseeuw *et al Transnational land deals for agriculture in the global South* 40; The Oakland Institute "Understanding land investment deals in Africa" 32; Human Right Watch 2011 [https://www.hrw.org/sites/default/files/reports/ethiopia0112webwcover\\_0.pdf](https://www.hrw.org/sites/default/files/reports/ethiopia0112webwcover_0.pdf) accessed 13 November 2015; art 18 of UNDRIP, which expressly require the participation of indigenous people in decision-making processes on matters that will affect their rights.
- 10 The rush to acquire land in Sub-Saharan African has its root in the colonial era, when European states were scrambling to have territories in Africa to act as a market for their finished products and as a demonstration of the supremacy of their power.
- 11 Muriisa *et al* "Land deals in Uganda" 5; Sindayigaya 2011 [http://www.entwicklungshilfe3.de/media/Bilder\\_ZSE/UEber\\_Uns\\_Dateien/Grundlagentexte/Land\\_grab\\_article.pdf](http://www.entwicklungshilfe3.de/media/Bilder_ZSE/UEber_Uns_Dateien/Grundlagentexte/Land_grab_article.pdf) accessed 27 November 2015.
- 12 Deininger 2011 *JPS* 223.
- 13 Borras and Franco 2012 *JAC* 37.
- 14 De Schutter 2011 *HILJ* 504; Anseeuw *et al Transnational land deals for agriculture in the global South* 40; The Oakland Institute "Understanding land investment deals in Africa" 32; Human Right Watch 2011 [https://www.hrw.org/sites/default/files/reports/ethiopia0112webwcover\\_0.pdf](https://www.hrw.org/sites/default/files/reports/ethiopia0112webwcover_0.pdf) accessed 13 November 2015; art 18 of UNDRIP.

Despite this gloomy picture, though, FAI projects also have some positive impacts, as will be illustrated below.<sup>15</sup>

Against the above background, the aim of this chapter is twofold. Firstly, to describe the impacts of land grabbing and the extent of FAI, and secondly, to illustrate how the impacts of FAI could infringe upon local communities' rights and interests in general. The impacts of FAI are explored to lay the basis for the procedural aspects of a RBA as a plausible and effective solution to the negative impacts of FAI. This chapter is divided into three parts. The first part provides a conceptual background of the Industrial Revolution and the Berlin West African Conference of 1844-1885 in order to show that the current global land rush phenomenon is not entirely unprecedented,<sup>16</sup> but that it is occurring today under a different name, with impacts as severe as those of the colonial era. Also, this historical account will be used to ascertain whether or not the procedural rights of local communities were recognised and respected in previous land deals.

The second part provides an overview of the historical and the current scramble for Africa in order to demonstrate the historical connections between them. The relevance of this historical connection is twofold. In the first instance, it accentuates that investors of FAI are mainly from the developed world despite the involvement of some emerging economies like India and China. In the second instance, it also serves to demonstrate that the search for raw material in sub-Saharan Africa, amidst other factors, appears to be a major contributing force to land grabbing. The last part provides a summary. However, in order to achieve the aim of this chapter, the following questions are addressed.

- (1) To what extent can the Industrial Revolution and the Berlin West African Conference be used to contextualise land grabbing?
- (2) What is the scramble for Africa, and how is it related to the current scramble for Africa?

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<sup>15</sup> See section 2.7.2 below for details.

<sup>16</sup> Byerlee "Are we learning from history?" 21.

- (3) What is land grabbing, and how does it manifest in Cameroon, Uganda and South Africa?
- (4) What are the reasons/motives behind land grabbing?
- (5) What is FAI, and who are the actors involved?
- (6) What are the possible impacts of FAI activities in host countries?

### 2.1.1 *Conceptual background*

The discussion below shows how the Industrial Revolution and the Berlin West African Conference led to the acquisition of territories, land and natural resources in developing countries and sub-Saharan Africa, especially by developed countries.<sup>17</sup>

#### 2.1.1.1 The Industrial Revolution

Like the Industrial Revolution, the current phenomenon of land grabbing suggests that the search for raw materials *inter alia* underpins the acquisition of territories in sub-Saharan Africa. The Industrial Revolution was a period of rapid economic growth in a number of chiefly European states caused by changes in industrialisation practices.<sup>18</sup> Notably, the United Kingdom was respected in the early half of the 18<sup>th</sup> century because of its rapid advancement in industrialisation and its industrial expertise.<sup>19</sup> It was generally referred to as the “workshop of the world.”<sup>20</sup> However, in the later part of the 18<sup>th</sup> century and early 19<sup>th</sup> century, the Industrial Revolution spread to other European countries, Russia<sup>21</sup> and America.<sup>22</sup> The spread of this revolution played a significant role

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17 Byerlee “Are we learning from history?” 21.

18 Henderson *The Industrial Revolution in Europe* ix.

19 Clare *Industrial Revolution* 22.

20 Clare *Industrial Revolution* 40.

21 The Union of Soviet Socialist Republic (USSR) was formed in 1924, 7 years after the Russian Revolution of 1917 by the Bolsheviks, led by Vladimir Lenin, overthrew the monarchy of Czar. Russia under the Czar’s reign was primarily a peasant society with no industrial development. However, after the 1917 revolution, the communists decided to transform the country from a purely agricultural-base to an industrial one. This was made possible with the introduction of a series of 5 year development, beginning in 1928. See Howstuffworks date unknown <http://history.howstuffworks.com/european-history/industrial-revolution4.htm> accessed 13 January 2016. USSR was however dissolved in 1991 under the reign of Mikhail Gorbachev seeking peaceful co-existence with the west (America and Central Europe). USSR comprised of: Russia, Ukraine,

in enabling states to acquire territories (and thus land) outside their own borders. Such acquisition was considered an appropriate strategy for securing raw materials, and a steady market for the goods produced in the home industries.<sup>23</sup> Consequently, Africa acted primarily as a potential source of raw material,<sup>24</sup> and markets for these finished products. European industrialists thus began acquiring land in Africa, and this fast resulted in a scramble to acquire more and more African territories.<sup>25</sup>

#### 2.1.1.2 Berlin West African Conference 1884-1885

The Berlin West African Conference was convened in Berlin, Germany, from 1884-1885 to resolve conflicts among European powers in relation to territorial acquisition and to liberalise free trade in the Congo Basin in order to facilitate Europe's insatiable demand for raw materials and markets in Africa.<sup>26</sup> As a result, Africa was carefully partitioned between European countries and although the Berlin Conference focused on the coast of West Africa, it legally paved the way for the future acquisition of land in the whole of Africa.<sup>27</sup>

Like the current phenomenon of FAI and land grabbing, the Berlin Conference did not include the participation of African countries and people in the deliberative process as they were only nominally represented by their governments. To be sure, the Conference was conducted in secrecy, and prior to the Conference, Africa had already been carefully divided on paper without any meaningful participation of its people.<sup>28</sup>

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Latvia, Slovenia, Albania, Armenia, Lithuania, Georgia, Moldova, Tajikistan, Belarus, Kyrgyzstan, Turkmenistan, Azerbaijan, Kazakhstan, Estonia and Uzbekistan.

22 Clare *Industrial Revolution* 40.

23 Sik "The scramble as a necessary phase" 65-66.

24 These include: oil, coal, gold, copper, and cocoa among others.

25 For example, between 1884-1885 Germany acquired more than 350,000 square miles of territory in Tanganyika (now Tanzania), East Africa, as well as in West and Central Africa, and in 1885 King Leopold of Belgium acquired almost a million square miles in Congo. See Clare *Industrial Revolution* 40-41.

26 Southall "Scramble for Africa?" 5; Crowe "The scramble and the Berlin West African Conference" 23; Brunschwig date unknown [http://www.africafederation.net/Berlin\\_1885.htm](http://www.africafederation.net/Berlin_1885.htm) accessed 18 January 2016.

27 Crowe "The scramble and the Berlin West African Conference" 23.

28 Sik "The scramble as a necessary phase" 66.



The Conference merely provided a platform for the formal implementation of the partition. The fact that the Conference was conducted in secret dovetails with the current state of affairs with FAI land deals, which is essentially also not transparent and exclusionary and is meant to divide African resources among world powers without the actual involvement of local communities.<sup>29</sup> The lack of transparency and exclusion of those that are affected by FAI decisions, it could be argued, have the potential of undermining the rights and interests of local communities and affected stakeholders.<sup>30</sup>

## **2.2 The scramble for Africa**

This section provides a contextual background to the phenomenon of land grabbing in light of the phenomenon called scramble for Africa. The purpose of this background is twofold. It indicates the interconnectedness of the two processes that led to interest in acquiring land in Africa and it supports the argument that despite the increasing involvement of emerging economies such as China and India, investors of FAI as in the era of the scramble for Africa, are essentially from Europe. Despite the fact that most African countries were not states, during the scramble for Africa, the purpose of this interconnectedness is to illustrate the inherent lack of respect for people's rights to and their ability to protect their own rights and interests.

### *2.2.1 The first scramble for Africa 1800-1900*

The scramble for Africa is an often-used term to describe the fight for treasure and territories in Africa in the 18<sup>th</sup> century.<sup>31</sup> The scramble for territories took place with great haste and "bewildered everyone, from the humblest African peasant to the master statesmen of the age."<sup>32</sup> According to historians there are three possible approaches to

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29 Smaller and Mann 2009 <http://www.fao.org/fileadmin/templates/est/INTERNATIONAL-TRADE/FDSs/A-Thirst-for-distant-lands.pdf> accessed 27 November 2015.

30 Ingwe *et al* 2010 *JSD* 30; De Schutter *HILJ* 504; Burnod *et al* 2013 *DC* 357-358.

31 Betts "Introduction" vii.

32 Pakenham *The scramble for Africa* xxi.

explaining the scramble for Africa.<sup>33</sup> These include: the Eurocentric approach, the Afrocentric approach, or a combination of the two.<sup>34</sup>

According to the Eurocentric approach, the “outward movement of European investment is underlain by the drive for capital accumulation,”<sup>35</sup> and it is believed that the accumulation of surplus capital from the Industrial Revolution was transferred into Africa for the acquisition of raw materials, labour and markets and investment opportunities.<sup>36</sup> This created a platform of competition among European powers and the result was a scramble to obtain new land.<sup>37</sup> The Afrocentric explanation stresses sub-imperialism.<sup>38</sup> This means that the expansion of foreign empire was facilitated by the actions of imperialists in Africa (such as Cecil John Rhodes) acting as intermediaries between European powers and African governments. Finally, there is an argument that combines the foregoing points. It considers the scramble either in terms of economic logic or as purely the outcome of diverse historical events emerging from the desire for expansion of the most successful nations at the time.<sup>39</sup> Pakenham argues that the scramble could be understood in terms of the three “Cs” - commerce, Christianity and civilisation.<sup>40</sup> Even though it was believed that trade and not guns would open opportunities for Africa, the informal imperialism proved inadequate and a fourth “C” emerged: conquest.<sup>41</sup>

While political factors may account for the European invasion and partitioning of Africa, the economic factor appears to have been of paramount importance. The economic factor is evident in both the Eurocentric explanation of the scramble for Africa and the motifs of commerce, Christianity, civilisation and conquest. The relevance of the

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33 Southall “Scramble for Africa” 3; Pakenham *The scramble for Africa* xxi.

34 Southall “Scramble for Africa” 3.

35 Southall “Scramble for Africa” 3.

36 Southall “Scramble for Africa” 2-3; Sik “The scramble as a necessary phase” 65-67.

37 Southall “Scramble for Africa” 3.

38 Southall “Scramble for Africa” 3.

39 Pakenham *The scramble for Africa* xxiii; Southall “Scramble for Africa” 2.

40 Pakenham *The scramble for Africa* xxiii; Southall “Scramble for Africa” 2.

41 Pakenham *The scramble for Africa* xxiii; Southall “Scramble for Africa” 2.

economic factor is further evident in the reflections of a British explorer, Henry Morton Stanley, whose observation of the Congo Basin awakened European interests for the acquisition of territories in Africa. Stanley noted that:

I feel convinced that the question of this mighty waterway will become a political one in time ... I could prove to you that the power possessing the Congo, despite the cataracts, would absorb to itself the trade of the whole enormous basin behind. This river is and will be the grand highway of commerce to West Central Africa.<sup>42</sup>

Freund similarly points out that:

New technology immeasurably cheapened the cost of expansion and conquest in Africa ... it was significant too that the commercial expansion of the era of legitimate trade had as one by-product the rise of European-controlled armies of African troops prepared to fight for small wages and the prospect of loot.<sup>43</sup>

As mentioned above, it is evident that the European invasion of Africa was primarily motivated by economic interest, in particular the need to secure a steady supply of raw materials for large growing industries, acting at the same time as a ready market for its products.

### 2.2.2 *The current scramble for Africa: an overview*

The current rush for Africa by developed and emerging economies for the purposes of acquiring raw materials and markets has made headlines and attracted the attention of both the media and statesmen.<sup>44</sup> For example, in 2006 Kofi Annan, the then United Nations (UN) Secretary-General, remarked that although foreign investment in Africa had increased by 200 per cent over the previous five years, Africa still focuses on extracting natural resources and exporting these elsewhere rather than fully developing

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42 Betts "Introduction" viii.

43 Freund *The making of contemporary Africa* 89.

44 New Zealand Herald 2006  
[http://www.nzherald.co.nz/world/news/article.cfm?c\\_id=2&objectid=10389356](http://www.nzherald.co.nz/world/news/article.cfm?c_id=2&objectid=10389356) accessed 18 January 2016;  
Southall 2008 LCS 131; Hainzl date unknown  
[http://www.bundesheer.at/pdf\\_pool/publikationen/sorting\\_out\\_the\\_mess\\_interest\\_inf\\_west\\_africa\\_g\\_hainzl.pdf](http://www.bundesheer.at/pdf_pool/publikationen/sorting_out_the_mess_interest_inf_west_africa_g_hainzl.pdf) accessed 18 January 2016.

local economies.<sup>45</sup> Within this context, the current scramble for Africa is referred to differently by various authors. Melber, for example, describes it as “old wine in new bottles”<sup>46</sup> and Lee calls it a “head-on-collision.”<sup>47</sup> Nevertheless, with the advent of the 2007-2008 food and energy crises, many developed countries as well as emerging economies infiltrated and are still infiltrating the African continent for its raw materials,<sup>48</sup> for food and for biofuels. This mirrors the preceding phenomenon in the 19<sup>th</sup> century, as it represents a new stage of competing interests on the African continent. This present stage of competing interests has resulted in what could be considered to be a re-surfacing of the scramble for Africa.

### 2.2.3 *Historical connections*

According to Lee, the previous and current scrambles for Africa have two faces - the “saving Africa” face and the “naked imperialism” face.<sup>49</sup> The “saving Africa” scenario refers to Africa as a “basket case” that needs to be saved, for which reason it proposes economic programmes that are allegedly designed to save Africa by spearheading economic growth and development to alleviate poverty on the continent.<sup>50</sup> On the other hand, the naked imperialism face is guided by an aggressive, consumer capitalist approach that destroys and exploits people for the purpose of capital accumulation.<sup>51</sup> The original scramble for territories *inter alia* for market and raw material purposes is strikingly similar to the current rush for land in Africa by investors from developed countries to acquire land for the production of food and agrofuel crops.<sup>52</sup> These crops

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45 New Zealand Herald 2006  
[http://www.nzherald.co.nz/world/news/article.cfm?c\\_id=2&objectid=10389356](http://www.nzherald.co.nz/world/news/article.cfm?c_id=2&objectid=10389356) accessed 18 January 2016;  
 Southall 2008 *LCS* 131; Hainzl date unknown  
[http://www.bundesheer.at/pdf\\_pool/publikationen/sorting\\_out\\_the\\_mess\\_interest\\_inf\\_west\\_africa\\_g\\_hainzl.pdf](http://www.bundesheer.at/pdf_pool/publikationen/sorting_out_the_mess_interest_inf_west_africa_g_hainzl.pdf) accessed 18 January 2016.

46 Melber 2007 <http://www.pambazuka.net/en/category.php/comment/39693> accessed 18 January 2016.

47 Lee 2006 *JCAS* 317.

48 See section 2.3 below for details.

49 Lee 2006 *JCAS* 303.

50 Lee 2006 *JCAS* 303-305.

51 Lee 2006 *JCAS* 303-305.

52 Southall “Scrambling for Africa” 13.

are themselves raw materials needed to sustain the growing population of the home country of the investors. Against this background, one might refer to the contemporary land rush in Africa as “a new kind of scramble for Africa.”<sup>53</sup>

In addition, although the new scramble for Africa may be intriguing because of the multiplicity and complexity of emerging economies like China and India which are vying for continued infiltration of and access to Africa’s market and its valuable natural resources,<sup>54</sup> it has been pointed out that FAI investors today are still mainly from Europe.<sup>55</sup> This can be understood in the context of the fact that the motive behind the global rush for potential agricultural farmland in Africa by European investors is an attempt to meet the need to ensure a stable and steady supply of food for their large growing and economically empowered populations.<sup>56</sup> In this regard, it is reasonable to frame the new scramble as a resurfacing of the previous scramble for Africa or, better still, a form of well-disguised colonial exploitation.<sup>57</sup>

It can further be argued that although the earlier scramble for Africa did not focus on monoculture crops<sup>58</sup> like jatropha, wheat, rice, maize, corn, palm oil or sugar cane, the fact that European industrialists saw Africa as a potential source of raw material indicates that the *raison d’être* of the previous scramble for Africa, was to exploit Africa’s rich natural resources.<sup>59</sup> Thus while the type of resources that form the objective of the present day scramble for Africa are changing from (mostly) mineral to agricultural resources, the foreign pursuit of viable opportunities to enrich foreign powers outside of Africa has not changed that much. The scramble for Africa is alive and well and is clearly evident in land grabbing through FAI as we shall see below.

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53 Ingwe *et al* 2010 *JSDLA* 29-30; Melber and Southall “Introduction” xix-xxvii; Southall “Scrambling for Africa” 1-34.

54 Lee 2006 *JCAS* 303.

55 Lee 2006 *JCAS* 303; See Moore 2013 <http://www.arc2020.eu/2013/06/land-and-land-tenure-issues-come-to-the-fore-at-g8-meeting/> accessed 18 January 2016.

56 Kugelman “Introduction” 3.

57 Mabikke “Escalating land grabbing in post conflict regions of northern Uganda” 15.

58 The previous scramble for Africa concentrated on the production of cocoa, banana, and coffee as well as the extraction of oil, coal, copper and gold.

59 Lee 2006 *JCAS* 303.

## 2.3 Land grabbing

The term “land grabbing” has been defined differently by different people. Some authors refer to land grabbing as the “large-scale acquisition of land”<sup>60</sup> while others employ it in terms of narratives such as “transnational commercial land transactions.”<sup>61</sup> The World Bank refers to it as the “rising global interest in farmland.”<sup>62</sup> Despite the terminology used, the fact is that land acquisition is always at stake in these transactions. The term land grabbing has been defined more formally to mean the purchase or lease of vast tracts of land by wealthier nations and private investors from mostly poor, developing countries in order *inter alia* to produce food crops for export to the investor’s home country.<sup>63</sup>

Land grabbing has further been defined to include not only the purchase of ownership rights,<sup>64</sup> but also the acquisition of user rights, via lease or concessions, whether for short- or for long-term purposes.<sup>65</sup> The International Land Coalition (ILC) in the *Tirana Declaration* of May 2011 defined land grabbing on the basis of procedural questions. The ILC notes that land grabbing violates human rights and is neither based on free, prior and informed consent nor on transparent deals.<sup>66</sup>

Along the same lines, for De Schutter land grabbing is:

A global enclosure movement in which large areas of arable land change hands through deals often negotiated between host governments and foreign investors with

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60 For example, Cotula *et al Land grab or development opportunity* 15; Daniel and Mittal *The great land grab* 5.

61 Borras and Franco “Towards a broader view of the politics of global land grab” 2.

62 Hall 2011 *Policy brief* 1; Graham *et al* “The role of EU in land grabbing in Africa” 1.

63 Daniel and Mittal *The great land grab* 1; Daniel “Land grabbing and the potential implication for world food security” 25-26; Borras and Franco “Towards a broader view of the politics of global land grab” 2; Borras and Franco 2012 *JAC* 34; NAPE “A study of land grabbing cases in Uganda” 8; Robertson and Andersen 2010 *Springer* 271; Akram-Lodhi 2012 *CJDS* 125-126; Economic Report “Land Grabbing” 5.

64 FIAN “Land grabbing in Kenya and Mozambique” 8; Borras and Franco 2010 *JAC* 34.

65 Cotula *et al Land grab or development opportunity* 17.

66 Art 4 of the Declaration; the International Land Coalition’s (ILC) Tirana Declaration <http://newsite.landcoalition.org/en/tirana-declaration> accessed 2 December 2015.

little or no participation from the local communities who depend on access to those lands for their livelihoods.<sup>67</sup>

Clearly land grabbing takes place against the backdrop of the absence of the meaningful participation of local communities or indigenous people. This demonstrates a violation of the procedural rights of these people, who are meant to be protected under international, regional sub-regional and national laws. In light of these descriptions and within the framework of this thesis, the term land grabbing is considered to be:

The acquisition of vast portions of land, often through non-transparent and exclusionary land acquisition deals whether purchased or leased that negatively impact on the rights and interests of local communities and affected stakeholders. Such land deals are usually concluded between a foreign investor, which can either be a private company or a foreign government or a financial institution, and the government of a host country, and is often directed towards the eventual production of food crops and increasingly biofuels. This practice can lead to the usurpation of the rights of ownership and use of land of local communities and it can negatively impact on a whole range of social, economic and environmental and related rights and interests. It is this usurpation of rights (both ownership and of use) that is termed land grabbing.

It is important to stress that the reason for the unprecedented rate of land grabbing in sub-Saharan Africa is that land in this area/part of the world is generally considered as “reserved,” “empty,” “marginal,” “underutilised,”<sup>68</sup> “unproductive,” and waste land, amongst other things.<sup>69</sup> Describing African land as such means relieving local communities of their land; an act which has the potential to significantly undermine local communities’ livelihoods.<sup>70</sup> The situation could be exacerbated by the fact that

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67 De Schutter 2011 *HILJ* 504.

68 Borras and Franco “Towards a broader view of the politics of global land grab” 7; Cotula *Land deals in Africa* 16. See further Roudart and Even 2010 [http://agriculture.gouv.fr/sites/minagri/files/documents/pdf/10-09\\_Article\\_Roudart\\_Terres\\_cultivables\\_cultivees-2.pdf](http://agriculture.gouv.fr/sites/minagri/files/documents/pdf/10-09_Article_Roudart_Terres_cultivables_cultivees-2.pdf) accessed 18 April 2015.

69 Kachika 2010 <http://www.oxfamblogs.org/eastafrica/wp-content/uploads/2010/11/Land-Grabbing-in-Africa.-Final.pdf> accessed 27 November 2015; Robertson and Andersen 2010 *Springer* 271.

70 Martiniello “The accumulation of dispossession and resistance in northern Uganda” 16.

land in most African countries is owned and controlled by the state.<sup>71</sup> In Ethiopia, for example, private ownership of land is outlawed as the state has nationalised all land.<sup>72</sup>

Closer to the focus of this thesis, although the government of Uganda holds land in trust for the Ugandan people, the categorisation of land into four classes arguably illustrates the government domination in land ownership in the country.<sup>73</sup> Any unregistered land in Uganda is considered state land and the state, for the purposes of attracting foreign investors and boosting the agricultural sector and the economy in general, may term these lands unoccupied, vacant or underutilised land in order to facilitate the leasing or sale of the land for FAI purposes.<sup>74</sup>

As in Ethiopia and Uganda, and as noted previously in Chapter 1, security of land rights remains a serious problem in Cameroon, as any unregistered land is classified as national land. This is so, although Cameroon Ordinance No 74/01 of 6<sup>th</sup> July 1974 established a legal framework for land tenure and property rights.<sup>75</sup> It is reported that only a relatively small percentage of Cameroonians have registered land rights, as most continue to claim rights based on diverse customary laws.<sup>76</sup> Unregistered land is liable to be treated as if it were available for FAI purposes, since it falls within the domain of national land.

Even though customary land rights are recognised and protected in law, the implementation or actual respect thereof could be problematic where large socio-

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71 Cotula *Land deals in Africa* 16.

72 Art 40 of the *Constitution of the Federal Democratic Republic of Ethiopia*, 1995; Ambaye "Land rights in Ethiopia" 1; Cotula *Land deals in Africa* 16; Gebeyehu "Towards improved transaction of land rights in Ethiopia" 1; Crewett *et al* "Land tenure in Ethiopia" 1; Witten 2007 *AF* 158-159.

73 The four classes of land in Uganda include freehold, customary, leasehold and mailo. See ss 2 and 3 of the Uganda *Land Act* 1998 and art 237 of the Ugandan Constitution; Adoko *et al* "Understanding and strengthening women's land rights" 1.

74 See NAPE "A study of land grabbing cases in Uganda" 5.

75 Alden-Wily "The status of customary land tenure in Cameroon" 11; Ordinance No 74/01 of 6 July 1974 relating to rules governing land tenure in Cameroon classified land into four categories, namely, state land, national land, public land and community or private land.

76 USAID 2011 [http://www.usaidlandtenure.net/sites/default/files/country-profiles/full-reports/USAID\\_Land\\_Tenure\\_Cameroon\\_Profile.pdf](http://www.usaidlandtenure.net/sites/default/files/country-profiles/full-reports/USAID_Land_Tenure_Cameroon_Profile.pdf) accessed 10 February 2015; Cotula "*Land deals in Africa*" 16; Egbe 2001 *JAL* 31-32; art 35 of Law No 94/01.



economic development projects are concerned. As mentioned earlier, most customary land rights are not registered, and the respect for such rights by the host government of FAI land deals may become difficult.<sup>77</sup> The qualification of land as unoccupied or underutilised seems to empower the state as the administrator of the land and the sole legal authority to sign off on land deals for FAI purposes<sup>78</sup> without providing local communities with a chance to be involved and to meaningfully participate in decisions that affect their lives. Kachika argues in this regard:

The very notion of reserve more or less automatically renders such land, by definition, available, amenable to, and appropriate for transformation into global granaries or new oil wells.<sup>79</sup>

It is evident from the above extract that the qualification of African land as reserve, empty or underutilised land implies that these lands can easily be subjected to the production of food crops and biofuels, for example. Flowing from this, the African Biodiversity Network (ABN) illustrates how the concept of reserve or empty land has facilitated the rush for, demand and acquisition of potential agricultural farmland, especially in sub-Saharan Africa. The ABN notes:

The land for large scale fuel production must come from somewhere whether from small farmers' land, communal land, or conservation areas. There is no free land in any of our countries, so communities will inevitably be displaced and denied of their land territories and natural resources.<sup>80</sup>

The above extract lends support to the World Bank's view that most of the land needed today for food crop and biofuel production will have to come from Africa;<sup>81</sup> a view supported by De Schutter, who recognises the risk in the rush and demand for empty

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77 In Mali, for example, though there is legal recognition of customary land rights, it is observed that only a few people (as in Cameroon) have registered rights to their land. Djiré "Land registration in Mali" 1-4.

78 Cotula *Land deals in Africa* 17-18.

79 Kachika 2010 <http://www.oxfamblogs.org/eastafrica/wp-content/uploads/2010/11/Land-Grabbing-in-Africa.-Final.pdf>. accessed 27 November 2015.

80 African Biodiversity Network (ABN) date unknown [http://www.biofuelwatch.org.uk/docs/ABN\\_Agro.pdf](http://www.biofuelwatch.org.uk/docs/ABN_Agro.pdf) accessed 2 December 2015; Perez *et al* 2011 <https://www.oxfam.org/sites/www.oxfam.org/files/dp-sleeping-lions-260511-en.pdf> accessed 05 January 2016.

81 The World Bank Report, *Awakening Africa's sleeping giant 2*.

land in Africa, arguing that empty or idle land risks being sold to potential investors, including foreign investors.<sup>82</sup> This implies that the selling of this land undermines the considerable importance and value it has to local communities. The foregoing underscores the fact that land is indispensable for agricultural production and has arguably caused foreign investors to consider land grabbing as an opportunity for agricultural development, either because "it means more investment and thus productivity gains, or because it will accelerate the development of a market for land rights that could be used by others."<sup>83</sup>

Whereas there is growing consensus that foreign entities are the main investors in land investment deals, it is also important to underscore the prominent role of national elites in the global land rush.<sup>84</sup> In Cameroon, for example, it is stated that national elites in conjunction with local administrators act as intermediaries in facilitating land acquisition through the expropriation and appropriation of community land.<sup>85</sup> This illustrates the point that FAI is not only a result of pure foreign investor intervention, but that it is also facilitated in the host country through individuals and institutions that act within a particular legal and governance framework that should regulate FAI.

## **2.4 Land grabbing in Cameroon, Uganda and South Africa**

As in most African countries, land grabbing in Cameroon, Uganda and South Africa occurs in two ways. Firstly, the governments of some African countries solicit foreign investors to invest in their country with the intention of boosting the country's agricultural sector in order to increase socio-economic growth and development.<sup>86</sup> This could be because the lack of investment in agriculture results in continuous low food

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82 De Schutter 2009 <http://www2.ohchr.org/english/issues/food/docs/BriefingNotelandgrab.pdf> accessed 27 November 2015.

83 De Schutter 2011 *HILJ* 504.

84 Anseeuw *et al* "Land rights and the rush for land" 21; FAO "Trends and impacts of foreign investment in developing countries" 5- 6.

85 Simo "Land grabbing, governance and social peace-building in Cameroon" 1.

86 Narula "The global land rush" 3; Hallam "Foreign investment in developing country agriculture" 2; Cotula and Vermeulen 2009 *JA* 1234.

crop productivity and agricultural development generally in developing countries and in Africa in particular.<sup>87</sup> Secondly, in the absence of soliciting foreign investors, land grabbing may occur through a contractual lease whereby the government forcefully takes land from local communities and leases it to foreign investors for agricultural or biofuel production.<sup>88</sup>

The Comprehensive Africa Agriculture Development Programme (CAADP)<sup>89</sup> serves as a clear indication of African governments playing a major role in promoting land grabbing<sup>90</sup> in an effort to boost and promote agricultural development and economic growth. The main objective of CAADP is to help African countries to increase economic growth through agriculture-led development in order to eliminate hunger, poverty and food and nutrition insecurity, and to enable the expansion of the economy through exports.<sup>91</sup> In order to achieve the aims of CAADP, it is expressly required of member states of the AU to incorporate CAADP's objectives within their agricultural and rural development strategies.<sup>92</sup> The three-way link among CAADP, land as a pertinent factor for agricultural development, and African governments' attempts to boost the agricultural sector, suggests that African governments, including the focal countries of this study are increasingly persuaded to allocate land to foreign investors for this purpose. Consequently, land held by local communities under customary law is often

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87 Hallam "Foreign investment in developing country agriculture" 2; De Schutter 2009 <http://www2.ohchr.org/english/issues/food/docs/BriefingNotelandgrab.pdf> accessed 27 November 2015.

88 NAPE "Land, life and justice" 5.

89 The Comprehensive Africa Agriculture Development Programme (CAADP) was established in July 2003 as part of the New Partnerships for Africa's Development (NEPAD) initiative and focused on improving and promoting agriculture across Africa <http://www.nepad.org/foodsecurity/agriculture/about> accessed 9 December 2015.

90 Kachika 2010 <http://www.oxfamblogs.org/eastafrica/wp-content/uploads/2010/11/Land-Grabbing-in-Africa.-Final.pdf>. accessed 27 November 2015.

91 CAADP <http://www.nepad.org/foodsecurity/agriculture/about> accessed 9 December 2015.

92 CAADP <http://www.nepad.org/foodsecurity/agriculture/about>. Date of use 9 December 2015.

allocated to foreign investors to grow food crops for conversion to biofuel, amongst other crops.<sup>93</sup>

#### 2.4.1 *Land grabbing in Cameroon*

In Cameroon, the government's efforts to attract foreign investment have led to the concession of large numbers of hectares of land to foreign investors for FAI purposes. Examples of such investments include rice cultivation in *Nanga-Eboko* by a Chinese Company, Shaanxi State Farm (operating in Cameroon under Sino-Cam Iko Ltd), palm oil production in Mundemba by an American Company Sithe Global Sustainable Oil operating in Cameroon as SG Sustainable Oils Cameroon/Herakles Farms; and the palm oil project by a Singapore Company Biopalm/SIVA in the Ocean Department of Cameroon, among others. The establishment of these projects, and particularly of Herakles Farm has seriously undermined the rights to information and public participation of local communities and affected stakeholders, and has also had seriously negative impacts on the environment and on people's right to land and its resources.<sup>94</sup> This demonstrates the clear and conspicuous absence of adherence to the principle of free, prior and informed consent,<sup>95</sup> especially as Cameroon has signed and ratified the UNDRIP, that requires member states to provide local communities with accurate and timely information about project development and to allow for their active and full participation in decision-making processes. As indicated earlier in Chapter 1,<sup>96</sup> the fact that only a small percentage of Cameroonians have registered their land rights<sup>97</sup> implies that those whose rights are not registered and who are thus unprotected could be forcefully dispossessed of their land in favour of FAI purposes.

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93 Cotula and Vermeulen 2009 *JA* 1234. In Ethiopia, for example, the government marked out 1.6 million hectares of land to foreign investors willing and prepared to develop commercial farmlands; Reuters 2009 <http://in.reuters.com/article/idINIndia-41407520090729> accessed 15 January 2015.

94 Oakland Institute "Understanding land investment deals in Africa" 3-5.

95 Arts 3, 10 32 of UNDRIP.

96 In 1.2.1 above.

97 Egbe 2001 *JAL* 31-32; Cotula *Land deals in Africa* 16.

#### 2.4.2 *Land grabbing in Uganda*

Similarly, in Uganda<sup>98</sup> the government's keen interest in attracting foreign investment has led to foreign companies moving onto large areas of land for diverse projects, including the palm oil plantation on Bugala Island in the Lake Victoria area.<sup>99</sup> For example, since 2007 the government of Uganda has allocated land in the Amuru district to the Madhvani Group for a large-scale sugar cane plantation of 40.000 hectares of land, for conversion into biofuel.<sup>100</sup> This has led the Acholi Parliamentary Group (APG) to accuse the government of assisting investors to grab land in the northern part of Uganda.<sup>101</sup> As mentioned in Chapter 1, as in Cameroon, land grabbing persists in Uganda due to the weak land tenure system. Given that most local communities in Uganda do not have registered land rights<sup>102</sup> it has been possible for the government to forcefully take these lands and lease them to foreign investors for FAI purposes at will.<sup>103</sup>

#### 2.4.3 *Land grabbing in South Africa*

As indicated in Chapter 1, land grabbing is not that much of an issue in South Africa as it is in Cameroon and Uganda. However, the government's interest in combating climate change and its adverse impacts has led to the concession of potentially arable land to foreign companies to implement and achieve Clean Development Mechanisms (CDM) and Reduce Emission from Deforestation and Forest Degradation (REDDs) objectives.

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98 Within the Uganda context the CAADP framework is implemented via a development strategy and investment plan (DSIP) whose main priority areas for public investment include: (1) enhancing sustainable production and productivity, (2) improving access to markets and value addition, (3) creating an enabling environment, and (4) institutional strengthening in the sector.

99 NAPE "A study on land grabbing cases in Uganda" 5.

100 Mabikke "Escalating land grabbing in post conflict regions of northern Uganda" 20.

101 Mabikke "Escalating land grabbing in post conflict regions of northern Uganda" 20.

102 Mabikke "Escalating land grabbing in post conflict regions of northern Uganda" 1; Kraybill and Kidoido "An analysis of relative profitability of key Uganda agricultural enterprises by agriculture zone" 1.

103 NAPE "A study on land grabbing cases in Uganda" 5.

In Limpopo, for example, a Canadian company has acquired vast tracts of land for biochar production.<sup>104</sup>

Notwithstanding the above, it is important to understand the perceived reasons behind land grabbing. These reasons are examined below.

## **2.5 Motives for land grabbing**

Although the global demand for land is precipitated by a combination of factors such as conservation purposes, protected parks, mining, the high levels of speculative activity, the global food crisis and the commodity price increase in the global markets, there are three main reasons underlying land grabbing globally. These are the surging demand for biofuels and energy, the desire by food-insecure nations to secure their food supply, and the need to invest in the land market by financial investors and banks. These issues are examined in greater detail below.

### *2.5.1 The food crisis and its influence on land grabbing*

According to the World Food Summit Action Plan of 1996, the notion of food security entails physical and economic access at all times to sufficient, safe and nutritious food necessary to meet the diet and food preferences required for an active and healthy life.<sup>105</sup> This implies that food is fundamental to human health, well-being and development. Increased food production that is dependent on agricultural activities, remains a necessary strategy to curb global food insecurity.<sup>106</sup> However, ensuring global

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104 Ernsting *et al* "Biochar and land grabbing" 2.

105 The World Food Summit Plan of Action of 1996 <http://www.fao.org/docrep/003/w3613e/w3613e00.htm> accessed 26 March 2015; Rayfuse and Weisfelt "The international policy and regulatory challenges of food security" 3; Colbran "The financialisation of agricultural commodity futures trading" 168.

106 Misselhorn *et al* 2012 *COES* 7.

food security has not been simple, as “food insecurity has been a recurring problem throughout recorded history.”<sup>107</sup>

Global food prices were stable until recently, when the prices of staple agricultural food crops started to increase dramatically, causing a severe impact on food security generally.<sup>108</sup> The increase in the price of staple food crops implies that there is a shortage in the supply of those crops in the market. The law of supply and demand states that in a free market the price of a commodity depends on the availability of the commodity and the extent to which consumers demand it.<sup>109</sup> Thus, everything being equal, a fall in the supply of basic commodities leads to an increase in the prices of such commodities in the market, consequently resulting in a decrease in the demand of such goods.<sup>110</sup> This is because a fall in supply has created a scarcity of the commodity, which in turn affects the market price of the commodity.

Conversely, an increase in the supply of a commodity leads to a fall in prices, thus increasing the demand for the commodity in the market.<sup>111</sup> Several factors account for a fall in the supply of food crops in the market, including among others changing weather conditions, soil nutrients, and costs of production. Figure 1 below displays the Food and Agricultural Organisation (FAO) food price index for the last twenty years, 1990 to 2010.<sup>112</sup>

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107 Pearson “A Fresh look at the roots of food insecurity” 19; Adesina “Africa’s Food Crisis” 1; Margulis “Global food security governance” 231; Saidul Islam and Carla De Jesus “Regional initiatives on food security” 255.

108 The changes in food prices reflected not so much a movement in the supply of and/or demand for food, but were driven to a significant extent by speculation. De Schutter 2010 [http://www2.ohchr.org/english/issues/food/docs/Briefing\\_Note\\_02\\_September\\_2010\\_EN.pdf](http://www2.ohchr.org/english/issues/food/docs/Briefing_Note_02_September_2010_EN.pdf) accessed 26 February 2015; Baffes and Haniotis “Placing the 2006/08 Commodity Price Boom into perspective” 7-8; Colbran “The financialisation of agricultural commodity future trading” 168-189.

109 Gale 1995 *MS* 155; Hildenbrand 1983, *Econometrica* 997-998.

110 Gale 1995 *MS* 155; Hildenbrand 1983, *Econometrica* 997-998.

111 Gale 1995 *MS* 155; Hildenbrand 1983, *Econometrica* 997-998.

112 Akram-Lodhi 2012 *CJDS* 121.

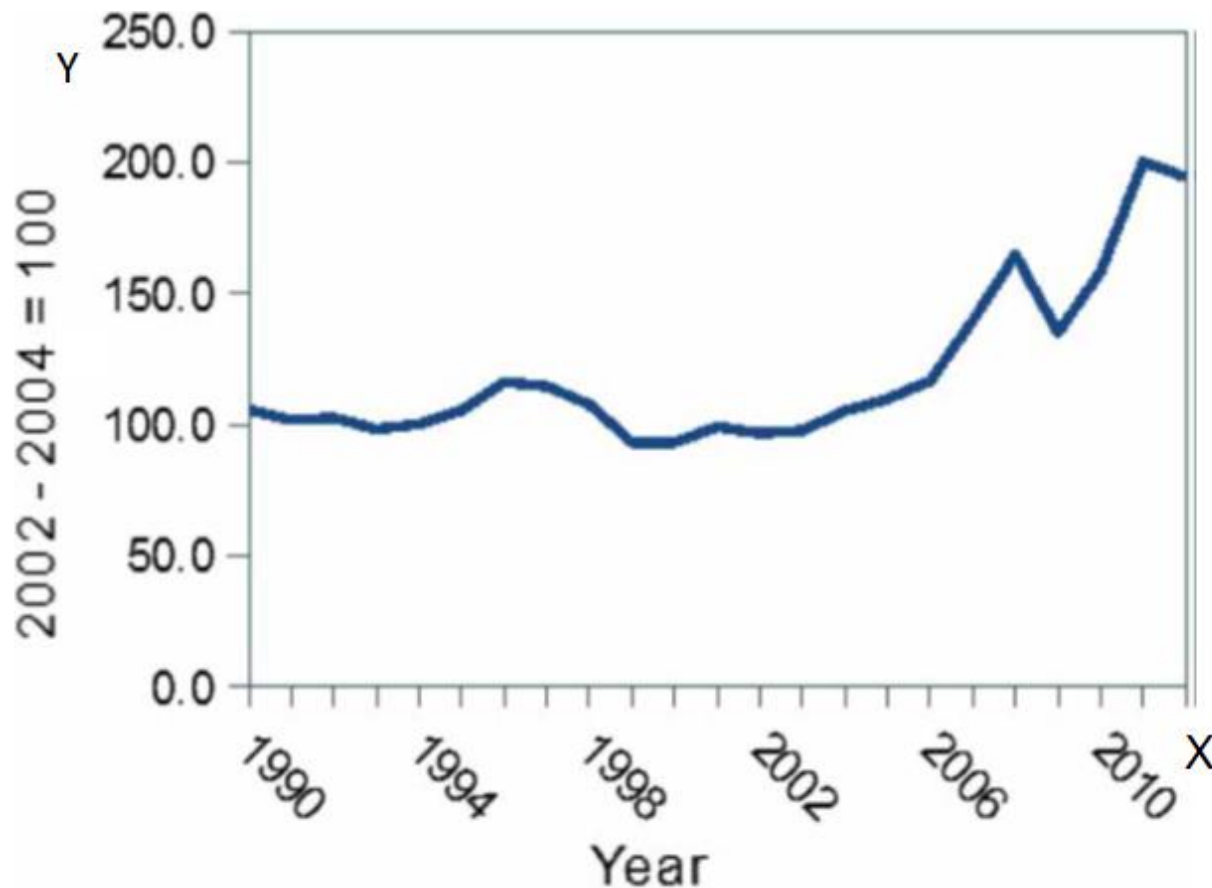


**Figure 1: Graphic Representation of World Food Price Index from 1990 to 2010**

From the above it can be seen that the prices of staple food crops peaked in 2008. This resulted in food insecurity in roughly 30 countries in the world.<sup>113</sup> However, the prices of food crops then saw a decrease, only for them to rise again in 2009 and reach their highest level in 2011.<sup>114</sup> This increase in the price of staple food crops led to a corresponding fall in their supply and to widespread food insecurity problems,<sup>115</sup> igniting a need to invest in agricultural production with the objective of supplementing global food security. Consequently, there is a rush for land, which is indispensable for agricultural production, in developing countries, particularly in sub-Saharan Africa,

<sup>113</sup> Akram-Lodhi 2012 *CJDS* 121.

<sup>114</sup> Akram-Lodhi 2012 *CJDS* 121.

<sup>115</sup> Gale 1995 *MS* 155; Hildenbrand 1983, *Econometrica* 997-998.



where land is considered to be in abundance, uncultivated, underutilised, reserved and empty.<sup>116</sup>

The need to produce more food (which arguably can be realised only via agricultural investment and production) to feed the fast growing world population could clearly be traced back to the 19<sup>th</sup> century. Writing on population studies in the 19<sup>th</sup> century, Malthus underscored the relevance of increasing food production to meet population growth and noted that:

Whereas birth rate grows in a geometrical progression, food production grows in an arithmetical progression and if nothing is done to increase food production, there will be widespread famine and hunger.<sup>117</sup>

Evidently, an increase in food crop production has the potential of curbing famine and hunger. However, increased food productivity implies the utilisation of land, as land itself is a vital factor of food production.<sup>118</sup> Increased food production also suggests increased investment in the agricultural sector with the purpose of increasing food crop yields. Consequently, the acquisition of potential agricultural farmland directed towards food production, especially outside a country's own territory, arguably serves as an appropriate means of securing food for its population.<sup>119</sup> This is particularly true in the light of the fact that food crises may have a significant impact on human survival since people depend on food.<sup>120</sup> The desire to secure a food supply, especially by food-insecure nations, remains a serious problem.<sup>121</sup> This is further exacerbated by the need

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116 Kachika 2010 <http://www.oxfamblogs.org/eastafrica/wp-content/uploads/2010/11/Land-Grabbing-in-Africa.-Final.pdf>. accessed 27 November 2015; De Schutter 2009 <http://www2.ohchr.org/english/issues/food/docs/BriefingNotelandgrab.pdf> accessed 27 November 2015; McKinsey 2010 *Global Institute* 7.

117 Malthus *Essay on the principles of population* 61.

118 Rayfuse and Weisfelt "The international policy and regulatory challenges of food security" 5.

119 Von Braun and Meinzen-Dick "Land grabbing by foreign investors in developing countries" 1; Grain 2012 <https://www.grain.org/article/entries/4479-grain-releases-data-set-with-over-400-global-land-grabs> accessed 15 November 2015; Borras and Franco 2010 *YHRDLJ* 508; Colbran "The financialisation of agricultural commodity future trading" 169.

120 Malthus *Essays on the principles of population* 61; Daniel "Land grabbing and the potential implication for world food security" 30 Colbran "The financialisation of agricultural commodity future trading" 169; Mittal "The 2008 food price crisis" 15.

121 Daniel "Land grabbing and the potential implications for world food security" 30.

to provide food to millions of people who are undernourished.<sup>122</sup> In an attempt to remedy the crisis, world leaders met in Rome in 2008 during the World Food Summit<sup>123</sup> and put forward a two-track approach to address this problem in the Rome Declaration.<sup>124</sup> This includes boosting food crop production through investment in the agricultural sector and ensuring immediate access to food for the poor and the vulnerable in rural and urban areas.<sup>125</sup> It is evident from the above that investment in agriculture directed towards boosting food crop yields particularly outside one's own territory contributes to the current global phenomenon of land grabbing.

According to the Land Matrix, between 2000 and 2011 a total of 203 million hectares of land were acquired worldwide for food production.<sup>126</sup> The food price crisis marked a significant turning point in skyrocketing interest in large-scale land acquisition and investment in agriculture as a potential way of supplementing food production,<sup>127</sup> especially in sub-Saharan Africa.<sup>128</sup> In this regard, countries with abundant uncultivated farmland for agricultural potential have attracted investors' interest.<sup>129</sup> Similarly, countries with weak and poor land governance records that do not protect and enforce customary land tenure<sup>130</sup> also attracted foreign investors' interest.<sup>131</sup>

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122 FAO 2010 [http://www.fao.org/economic/es-policybriefs/briefs-detail/en/?no\\_cache=1&uid=45361](http://www.fao.org/economic/es-policybriefs/briefs-detail/en/?no_cache=1&uid=45361) accessed 14 January 2016; Daniel "Land grabbing and the potential implications for world food security" 30; Rayfuse and Weisfelt "The international policy and regulatory challenges of food security" 3; Colbran "The financialisation of agricultural commodity future trading" 168.

123 The first World Food Summit in Rome (the Rome Declaration) was convened by the FAO in 1996 and called on states to work to halve the number of undernourished people worldwide by the year 2015. This commitment is reinforced by the target set forth by the World Food Summit Plan of Action to be achieved at the international, regional and national levels.

124 Daniel "Land grabbing and the potential implications for world food security" 30-31.

125 Daniel "Land grabbing and the potential implications for world food security" 30-31.

126 Anseeuw *et al* *Land rights and the rush for land* 19.

127 Akram-Lodhi 2012 *CJDS* 121-122; Anseeuw *et al* *Land rights and the rush for land* 24-25; Deininger *et al* *Rising global interest in farmland* xxxii.

128 Deininger *et al* *Rising global interest in farmland* xxxii.

129 Deininger *et al* *Rising global interest in farmland* xxx.

130 Egbe 2001 *JAL* 31-32; Javelle 2013 <http://www.focusonland.com/silo/files/cameroon-experiences-with-transferring-forest-rights.pdf> accessed 10 February 2015; Wily-Alden *Whose land is it?* 11; USAID 2011 [http://usaidlandtenure.net/sites/default/files/country-profiles/full-reports/USAID\\_Land\\_Tenure\\_Cameroon\\_Profile.pdf](http://usaidlandtenure.net/sites/default/files/country-profiles/full-reports/USAID_Land_Tenure_Cameroon_Profile.pdf) accessed 10 February 2015.

It is estimated that by 2050 the world will be consuming 70 per cent more food than it is consuming today,<sup>132</sup> and this implies the need for more food production, especially as over a billion people go to bed hungry each day.<sup>133</sup> Therefore, because land is and remains an important natural resource to be exploited for food production, the practice has been to acquire more land (via land grabbing) in order to increase food crop yields. This may imply that the larger the size of the land, the greater the yields of food crops being produced. In addition, the market demand and supply of food may not only increase the price of food but also put upward pressure on food production.<sup>134</sup> Firms like supermarkets, may both focus and be involved in coordinating the value chain (i.e. via contractual agreements with farmers) or be directly engaged in agricultural production.<sup>135</sup> Given that agricultural production requires land; such firms would have to acquire land in order to produce the necessary food crops.

It can reasonably be inferred that the acquisition of farmland for large-scale food crop production is not likely to slow in future.<sup>136</sup> This is especially true as population growth, rising income,<sup>137</sup> climate change,<sup>138</sup> changing diets and increased urbanisation will continue to grow the demand for certain food crops such as oilseed and livestock, as

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131 Deininger *et al* *Rising global interest in farmland* xxxii. See further Mabikke "Escalating land grabbing in post-conflict regions of northern Uganda" 1; Muriisa *et al* "Land deals in Uganda" 19.

132 Anseeuw *et al* *Land rights and the rush for land* 24.

133 Deininger *et al* *Rising global interest in farmland* xiii.

134 Anseeuw *et al* *Land rights and the rush for land* 26.

135 Anseeuw *et al* *Land rights and the rush for land* 26.

136 Deininger 2011 *JPS* 219; Deininger *et al* *Rising global interest in farmland* xxviii.

137 An increase in wealth has the potential of increasing the demand for, and consumption of an animal-based diet. An animal based diet generally requires more land to produce than vegetarian-diets. Similarly, wealthier people are heavier consumers of food than poorer people. This may increase the demand for potential agricultural land to produce animal-based food and other food crops. See Friis and Reenberg "Land grab in Africa" 5.

138 The impacts of climate change have the potential to make previously fertile land useless, due to lack of rain or changing rain pattern. This could be a motivation for the acquisition of potential fertile land outside one's own territory. China is a clear example of a country whose arable farmland is affected by desertification, making it difficult for local farmers to produce food crops needed by the growing population. The reaction has been to acquire potential agricultural farmland abroad for the production of food crops, Friis and Reenberg "Land grab in Africa" 5.

well as increase the demand for feed and industrial products.<sup>139</sup> Moreover, the rediscovery of the agricultural sector by diverse investors is considered as an opportunity for host governments to “reverse the long-standing underinvestment in agriculture”<sup>140</sup> and thus to boost the backbone of most African economies where, as was noted above, potential agricultural farmland is considered plentiful.<sup>141</sup>

### 2.5.2 *The energy crisis and its influence on land grabbing*

Biofuel<sup>142</sup> development projects as essential sources of energy security, for climate change mitigation and rural development, have in recent years witnessed an unprecedented interest and support by governments and private corporations as global actors.<sup>143</sup> This has led to the search for alternative means of producing biofuel on a larger scale. Many countries and economic blocks have initiated and developed policies that support biofuel development, production and use in the transport industry, for example.<sup>144</sup>

In 2009 the European Union (EU) developed the Renewable Energy Directive (the Directive),<sup>145</sup> and this is said to have significantly contributed to the problem of land grabbing today.<sup>146</sup> The Directive requires a specific percentage of renewable energy to be produced by 2020,<sup>147</sup> and some refer to this as “the most aggressive mandatory

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139 Deininger 2011 *JPS* 219; Deininger *et al* *Rising global interest in farmland* xxviii; Friis and Reenberg “Land grab in Africa” 3-5.

140 Deininger *et al* *Rising global interest in farmland* xxv.

141 Friis and Reenberg “Land grab in Africa” 6.

142 There are basically two major types of biofuel: biodiesel and ethanol. Biodiesel is made from palm oil, jatropha or other plants that produce oil, and ethanol is made from sugar cane, cereals and other cellulosic crops.

143 Mandil and Adnan date unknown [https://www.ief.org/\\_resources/files/events/biofuels-assessment-report/ief-biofuels-report.pdf](https://www.ief.org/_resources/files/events/biofuels-assessment-report/ief-biofuels-report.pdf) accessed 20 November 2015; Franco *et al* 2010 *JPS* 661.

144 Mandil and Adnan “Assessment of Biofuel” 2.

145 The 2009 EU Directive replaced Directive 2003/30/EC, which established the goal of reaching a 50 - 75 per cent share of renewable energy in the transport sector by 2010.

146 Franco *et al* 2010 *JPS* 661. See further Kachika 2010 <http://www.oxfamblogs.org/eastafrica/wp-content/uploads/2010/11/Land-Grabbing-in-Africa.-Final.pdf>. accessed 27 November 2015.

147 According to the Directive, about 20 per cent of energy and 10 percent of member states transport fuel must come from renewable sources, Franco *et al* 2010 *JPS* 661; Cotula and Vermeulen 2009 *IA* 1236; Anon date unknown

targeting” ever of renewable energy production.<sup>148</sup> The Directive demands the large-scale production of agro-fuel<sup>149</sup> crops for conversion into biofuel.<sup>150</sup> EU Member States are obliged to adopt and implement a national renewable energy plan that establishes national targets for energy from renewable sources consumed in transport, electricity, heating and cooling.<sup>151</sup> It is against this background that Britain, for example, has been largely criticised for setting targets for biofuel production that could subject Africa’s land, forests and food to Britain’s huge energy demands.<sup>152</sup>

Similarly, the United States (US) Renewable Fuel Standard of 2007 provides financial incentives and sets the pace for US firms’ active involvement in the acquisition of large-scale agricultural farmland for biofuel production in developing countries.<sup>153</sup> Under the Bush Administration in 2007, a corn ethanol target was set for 35 billion gallons by 2017, with the government providing appropriation for agribusiness companies to expand ethanol production.<sup>154</sup> It could be argued that these subsidies, and in particular the government’s vision for ethanol production, ignited and precipitated an incessant interest in these companies to acquire potential agricultural farmland abroad for the production of corn, cereals and other agro-fuel crops for this purpose.<sup>155</sup> More recently, and as noted in Chapter 1,<sup>156</sup> an American Company, Herakles Farms, signed a contract

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[https://www.tni.org/files/download/european\\_union\\_and\\_the\\_global\\_land\\_grab-a5.pdf](https://www.tni.org/files/download/european_union_and_the_global_land_grab-a5.pdf) accessed 18 May 2015.

148 Borrás and Franco 2010 *YHRDLJ* 509.

149 The term agro-fuel describes liquid fuel derived from food and oil crops produced in large-scale plantation-style industrial production system. These agro-fuels are blended with petrol and diesel for use primarily as transport fuel. This, for example, includes palm oil, sugar cane, corn and jatropha, Canadian Biotechnology Action Network at: <http://www.cban.ca/Resources> accessed 19 November 2015; Grain 2007 <https://www.grain.org/article/entries/597-stop-the-agrofuel-craze> accessed 19 November 2015.

150 The term biofuel is used widely to mean any fuel derived from biological material in contrast to fossil fuel (coal, oil, gas), where plants are cultivated for the purpose of fuel production, Canadian Biotechnology Action Network at: <http://www.cban.ca/Resources> accessed 19 November 2015.

151 Graham *et al* “The role of the EU in land grabbing in Africa” 2.

152 Graham *et al* “The role of the EU in land grabbing in Africa” 2; Grain 2007 <https://www.grain.org/article/entries/606-the-new-scramble-for-africa> accessed 29 November 2015.

153 Cotula and Vermeulen 2009 *JA* 1236.

154 Borrás *et al* 2010 *JPS* 577.

155 Borrás *et al* 2010 *JPS* 577; Cotula and Vermeulen 2009 *JA* 1236.

156 In 1.1 above; Also see section 5.2 below for details.

with the government of Cameroon for the production of palm oil for conversion into biofuel.

It is evident from the above that increased biofuel production targets could significantly contribute to and drive the global phenomenon of land grabbing. In this regard the Gallagher Report estimates that about 500 million more hectares of potentially arable farmland will be required to meet the global demand for biofuel production.<sup>157</sup> While this estimate illustrates the future influences of biofuel production in sub-Saharan Africa, the International Federation of Agricultural Producers (IFAP),<sup>158</sup> for example, view this investment as a profitable venture. For the IFAP, biofuel production does not constitute a threat; rather it is an opportunity to achieve profitability and to revive rural communities. The IFAP notes that the production of food crops and biofuel opens opportunities for new markets; helps diversify risk; promotes rural development; and should not be perceived as being entirely disadvantageous to local communities and affected stakeholders.<sup>159</sup>

Considering that the production of these agro-crops requires land and given that most of Europe has limited potential agricultural farmland,<sup>160</sup> the outcome has been a dramatic rush to sub-Saharan Africa and other developing countries to secure vast portions of potential agricultural land for biofuel production.<sup>161</sup> Consequently, it has been argued that “energy crops” represent a significant driver in the overall trend of the large-scale acquisition or lease of farmland.<sup>162</sup> As previously noted in Chapter 1,<sup>163</sup> the

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157 Anon  
[https://www.unido.org/fileadmin/user\\_media/UNIDO\\_Header\\_Site/Subsites/Green\\_Industry\\_Asia\\_Conference\\_\\_Maanila\\_/GC13/Gallagher\\_Report.pdf](https://www.unido.org/fileadmin/user_media/UNIDO_Header_Site/Subsites/Green_Industry_Asia_Conference__Maanila_/GC13/Gallagher_Report.pdf) accessed 26 March 2015.

158 The International Federation of Agricultural Producers (IFAP) is an organisation founded in 1946, composed primarily of commercially oriented small, medium and rich farmers. Its ideological position on agricultural issues is influenced by middle-rich farmers within this global federation.

159 Borras and Franco “Towards a Broader View of the Politics of Land Grab” 6.

160 Franco *et al* 2010 *JPS* 661.

161 De Schutter 2011 *HILJ* 523; Franco *et al* 2010 *JPS* 661; Grain 2010  
<https://www.grain.org/article/entries/4026-the-world-bank-in-the-hot-seat> accessed 30 November 2015. See further Liverage “Responding to land grabbing” 3; Hangzo and Kuntjoro “Land grabbing” 1.

162 See De Schutter 2011 *HILJ* 523.

Kalagala palm oil plantation in the Lake Victoria district in Uganda provides an illustrative example of the EU's active involvement in the production of agro-fuel crops in sub-Saharan Africa.

The EU has signed bilateral agreements with most developing countries in order to secure sources of agro-fuel. In Latin America, seven EU member states have signed an agreement with Brazil,<sup>164</sup> and in Central Africa, the EU has signed an agreement with Cameroon.<sup>165</sup> Evidently, these bilateral agreements have made investment in agricultural land more attractive to European investors, especially as they facilitate the processes of land acquisition(s) in host countries.<sup>166</sup> It can be inferred from the above that "the prospect of a stable, long-term, lucrative European market for agro-fuels,"<sup>167</sup> represents a major driver of potential FAI and land grabbing by both the EU and countries in other developed regions. Many of these agreements do not seem to encourage and reinforce the exercise of the rights to public participation, access to information and access to justice by local communities in areas subject to land grabbing, since foreign investors primarily focus on countries that have "failed to formally recognise customary land rights."<sup>168</sup> This implies that foreign investors are attracted to policy environments where law and governance frameworks and the protection of local communities are weak.<sup>169</sup> It should be noted that the global response to climate change mitigation and adaptation has also augmented further pressure on the acquisition of potential farmland in sub-Saharan Africa.<sup>170</sup>

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163 In 1.1 above.

164 These include Germany, Italy, Netherland, Sweden, Denmark France and the United Kingdom; Franco *et al* 2010 *JPS* 661-698.

165 For details about this bilateral agreement <http://ec.europa.eu/trade/policy/countries-and-regions/regions/central-africa/> accessed 18 January 2015.

166 Narula "The global land rush" 12.

167 Anon <http://www.fian.at/assets/europeanunionandtheglobalandgrab-a5.pdf> accessed 18 May 2015.

168 Deininger *et al* *Rising global interest in farmland* 55.

169 Narula "The global land rush" 12.

170 Narula "The global land rush" 11; De Schutter 2011 *HILJ* 523; Maguire Global forest governance 5.

A monoculture biofuel crop that is contributing significantly to the acquisition of large-scale arable land in the global South is palm oil.<sup>171</sup> This is especially true of the Congo basin, which is home to the world's second largest rainforest and has in recent years attracted the attention of oil companies and investors to acquire land in Africa for palm oil production.<sup>172</sup> The relevance of palm oil production lies in the fact that globally palm oil has become the most preferred vegetable oil.<sup>173</sup> This is evident from its growing global annual production of 50 million tons, which equates roughly to 39 per cent of the global vegetable oil market.<sup>174</sup> In tandem with the moratorium on palm oil in Indonesia in 2011, foreign investment in palm oil production in sub-Saharan Africa, including the focal countries of this study has attracted global attention. For example, Cameroon is the 13<sup>th</sup> largest palm oil producer,<sup>175</sup> and the combination of the presence of good biophysical conditions, the availability of cheap land and labour, relative political stability and the willingness of the government to develop its agricultural sector, has made Cameroon a favourite among foreign palm oil investors.<sup>176</sup> Since 2011, it is reported that 4 new palm oil production projects have been announced in Cameroon.<sup>177</sup>

Furthermore the government's drive to boost the economy through developing a new source of much-needed renewable energy to complement hydroelectric power generation in the country may further act as a stimulus to persuade foreign investors to invest in the country. During the 2010 end-of-year address to the nation, President Paul Biya publicised his vision for renewable energy to solve the energy shortage when he said:

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171 Table 1 illustrates foreign investors in Africa in search of biofuel crops like palm oil for biofuel purposes.

172 Greenpeace 2012 <http://www.greenpeace.org/usa/wp-content/uploads/legacy/Global/usa/planet3/PDFs/PalmOilsNewFrontier.pdf> accessed 26 March 2015.

173 Hoyle and Levang "Oil palm development in Cameroon" 3.

174 Hoyle and Levang "Oil Palm development in Cameroon" 3.

175 Feintrenie "Transfer of the Asian model of oil palm development" 10; Hoyle and Levang "Oil palm development in Cameroon" 3.

176 Holye and Levang "Oil palm development in Cameroon" 4.

177 Freudenthal *et al* "Th BioPalm oil palm project" 337.



I have instructed the minister of water and energy to explore ways by which we can get alternative energy through the production of renewable energy, especially biofuel and solar energy.<sup>178</sup>

Evidently, such declarations have the potential to attract foreign investors such as Herakles Farms to invest in and acquire potential farmland for the production of biofuel crops such as palm oil, which could be converted into renewable energy.<sup>179</sup> Hence, investment directed towards the production of palm oil further augments pressure on and the demand for land, in addition to a demand for land to be used for food crop cultivation. It has also been argued in this context that the conversion of arable land for biofuel production could exacerbate the problem of climate change;<sup>180</sup> an issue further explored in the section below

The international and domestic response to climate change and environmental protection has triggered an interest in the acquisition of agricultural land in developing countries and particularly in sub-Saharan Africa.<sup>181</sup>

The CDM<sup>182</sup> under the KP provides incentives for some states to launch emission reduction projects abroad in order to meet their commitments under the KP.<sup>183</sup> It is argued that the planting of trees in order to benefit from the CDM “may be easiest in vulnerable communities where eviction can open up space for new forest growth.”<sup>184</sup> Given that CDM schemes offer financial assistance or incentives for the preservation of

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178 Ngalame 2015 <http://news.trust.org//item/20120613125200-pgqk3/?source=dpagerel> accessed 26 March 2015.

179 Hoyle and Levang “Oil palm development in Cameroon” 6-7.

180 Mandil and Adnan date unknown [https://www.ief.org/\\_resources/files/events/biofuels-assessment-report/ief-biofuels-report.pdf](https://www.ief.org/_resources/files/events/biofuels-assessment-report/ief-biofuels-report.pdf) accessed 20 November 2015.

181 Narula “The Global Land Rush” 11; De Schutter 2011 *HILJ* 523; Maguire *Global forest governance* 5; Benjamemise *et al* “Conservation and land grabbing in Tanzania” 2-29.

182 Under the KP, the CDM constitutes one of the ways employed to combat climate change, by requiring states parties to invest in emission reduction projects that generate Certified Emission Reduction Units, which may be traded in emission trading schemes as part of their commitments. See Art 12(1) of the KP.

183 Art 12(2) of the KP. See further Friis and Reenberg “Land grab in Africa” 5-6; De Schutter 2011 *HILJ* 523; Freestone “The international climate change legal and institutional framework” 14-16; Wemaere *et al* “Legal ownership and nature of Kyoto units and EU allowances” 35.

184 De Schutter 2011 *HILJ* 523; Smith 2002 *IJGEI* 322; Bass *et al* “Rural livelihoods and carbon management” 72.

forests, it could be argued that CDM could be a significant driver for land grabbing.<sup>185</sup> The reason is that the planting of trees to preserve a forest entails first the availability of land, and since sub-Saharan Africa is considered to have vast portions of empty land, the result has been the unprecedented demand for and acquisition of these lands by foreign states to mitigate the impacts of climate change by achieving their CDM objectives. This consequently places added further pressure on land.<sup>186</sup> Again, article 12 of the KP expressly requires that non-Annex 1 parties will have to benefit from project activities that result in Certified Emission Reduction (CERs).<sup>187</sup> In this era of FAI, it is logical that CER could also be attainable by means of FAI activities,<sup>188</sup> especially insofar as FAI could enable and allow Annex I parties to use CER benefits as part of their contribution to the Quantified Emission Reduction (QERs) stipulated under article 3.<sup>189</sup>

Consequently, because these CERs are generated by projects that reduce the anthropogenic emissions of designated GHG by sinks, it could be argued that these QERs augment pressure on land. This is because the removal of GHG by sink entails the sequestration of carbon through Land Use, Land Use Change and Forestry (LULUCF) initiatives.<sup>190</sup> Therefore achieving CERs could entail the eviction of local communities from the land to provide space for the planting of trees that would act as carbon sinks. It must be emphasised that although the Reduced Emissions from Deforestation and Forest Degradation (REDD) scheme launched in 2005 was given more impetus at the 12<sup>th</sup> Conference of the Parties to the UNFCCC, convened in Bali, it is has been

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185 Narula "The global land rush" 12; Friis and Reenberg "Land grab in Africa" 5-6; De Schutter 2011 *HILJ* 523.

186 Deininger *et al* *Rising global interest in farmland* xiv; De Schutter 2011 *HILJ* 523.

187 CEU are emissions or carbon credits emerging from CDM projects if approved are counted as a state's emission target. See Art 12(3)(a) of the KP.

188 Art 12(3)(a) of the KP; Freestone "The International climate change legal and institutional framework" 13.

189 Art 12(3)(b) of the KP.

190 LULUCF are emissions and removals of greenhouse gases from human-induced land use, land use change and forestry activities. De Schutter 2011 *HILJ* 523; De Schutter 2010 *ICLR* 308—309; Kelly 2010 *LEDJ* 63; Griffiths 2004 [http://www.forestpeoples.org/sites/fpp/files/publication/2010/01/avoideddeforestationredjun07eng\\_0.pdf](http://www.forestpeoples.org/sites/fpp/files/publication/2010/01/avoideddeforestationredjun07eng_0.pdf) accessed 4 May 2015.

suggested that REDD may also represent a potential threat to forest dwellers, should foreign investors be tempted to appropriate the benefits from carbon sequestration.<sup>191</sup>

Moreover, the 2013 Warsaw Framework on REDD+ (WFR) adopted by signatories to the UNFCCC<sup>192</sup> and the Carbon Funds of the World Bank's Forest Carbon Partnership Facility (FCPF) have recently provided new platforms for the attainment of REDD's objectives. These are achievable by encouraging states to set up designated focal points for REDD in developing countries that will be appropriate for funding to implement REDD's activities. It has been argued that under the World Bank's FCPF, emissions from forests are considered to represent "a new class of assets, which are inextricably linked to property rights of forest land, and yet they can be purchased and transferred separately from other forest rights", and that this might even imply the creation of new property rights to carbon.<sup>193</sup>

From the foregoing, because the respect for and implementation of customary land rights may be problematic with regard to large development projects such as FAI, it could be inferred that the new framework to REDD, together with the carbon rights it creates, could arguably encroach on both the existing statutory and the customary property rights of local communities.<sup>194</sup> This is very worrying in a country like Cameroon, where only a relatively small percentage of people have registered land titles.<sup>195</sup> Perhaps the new platform for the REDD initiative has the potential of relieving local communities in Cameroon of their rights in property, especially considering that FCPF does not state how local communities' property rights should be respected and

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191 De Schutter 2011 *HILJ* 523; De Schutter 2010 *ICLR* 308—309; Kelly 2010 *LEDJ* 63; Griffiths 2004 [http://www.forestpeoples.org/sites/fpp/files/publication/2010/01/avoideddeforestationredjun07eng\\_0.pdf](http://www.forestpeoples.org/sites/fpp/files/publication/2010/01/avoideddeforestationredjun07eng_0.pdf) accessed 4 May 2015.

192 The Warsaw Framework for REDD plus, adopted at the 19th Conference of the Parties (COP19) to the UNFCCC in Warsaw, Poland, November 2013.

193 Almeida *et al*/2014 *RRI* 1.

194 Almeida *et al*/2014 *RRI* 1.

195 Almeida *et al*/2014 *RRI* 5; Egbe 2001 *JAL* 31-32; art 35 of Law No 94/01; Cotula *Land deals in Africa* 16.

protected.<sup>196</sup> Again, as with the lack of transparency of FAI land deals and their measures to exclude interested and affected parties, it has been pointed out that the financial mechanisms required to implement REDD initiatives are usually secretly executed, and this fosters and promotes the lack of transparency and accountability insofar as REDD financial mechanisms are concerned in the focal country.<sup>197</sup>

Notwithstanding the above, this does not suggest an abrupt stop or final end to foreign investment in the forestry sector; especially as such investment serves as an appropriate indication of climate change mitigation and energy security. Rather, the proper and successful application of this framework and the REDD initiative should entail a rigorous respect for and protection of existing rights and interests of local communities (among others) by both foreign investors and host countries.<sup>198</sup> The protection of these rights and interests can be possible only should the procedural rights of local communities be guaranteed and protected. To be sure, the UNFCCC and its KP specifically provide for the recognition of, respect for and protection of the procedural rights of local communities. Article 6 of the UNFCCC, for instance, provides for the promotion of access to information and public participation in addressing climate change by member states.<sup>199</sup> Similarly, under the KP member states are required to facilitate “public access to information” on climate change and to seek and utilise information from NGOs.<sup>200</sup> Consequently local communities should have and be able to scrutinise public information on REDD initiatives and be involved in making meaningful and informed decisions that could enable the protection of their rights and interests.<sup>201</sup>

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196 Almeida *et al*/2014 *RRI* 2.

197 Almeida *et al*/2014 *RRI* 2.

198 Deininger 2011 *JPS* 221.

199 Art 6(a) of the UNFCCC; Kravchenko 2008 *VJEL* 541.

200 Arts 10(e); 13(4)(i); Kravchenko 2008 *VJEL* 541.

201 Kravchenko 2009 *TELJ* 39.

### 2.5.3 *The financial crisis and its influence on land grabbing*

The 2008 financial crisis triggered an interest on the part of private financial investors, investment banks<sup>202</sup> and hedge funds in investing in foreign agricultural farmland, given the investment vacuum created by the international financial crisis and the worldwide collapse of the housing and stock markets.<sup>203</sup> However, this investment vacuum created an opportunity for investment in the agricultural sector.<sup>204</sup> Consequently, with the desire to ensure a steady increase in food production and emerging climate markets, many investors, banks and hedge funds consider agricultural farmland to be an appropriate and safe investment in an otherwise unstable financial climate.<sup>205</sup> Investment in agricultural land was a natural reaction to the failure of the stock market, which was providing low returns on investment in non-tangible assets which were losing their real value. Investing in agricultural farmland was also seen as a way of hedging against inflation.<sup>206</sup> The reality is that foreign investors are aware of the fact that suitable farmland and freshwater sources are strategic assets and may become scarce commodities in the future, and that investing in agricultural land could therefore be highly profitable.<sup>207</sup> With many countries and global corporations seeking lucrative profit seeking opportunities, investment in foreign agricultural land and subsequent activities, are therefore arguably set to increase now and in the future, while at the same time acting as an important driver for FAI.

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202 Examples of investment banks currently involved in FAI include Blackrock Bank (US), Goldman Sachs Bank (US), Deutsche Bank (Germany) and Knight Frank Bank (UK) among others.

203 Robertson and Andersen 2010 *Springer* 273.

204 Friis and Reenberg "Land grab in Africa" 4.

205 Graham *et al* "The role of the EU in Land Grabbing in Africa" 4-5, Daniel and Mittal "The great land grab" 4 and Graham *et al* "Advancing African agriculture" 51; Mann and Smaller "Foreign land purchase for agriculture" 2.

206 De Schutter 2011 *HILJ* 516.

207 De Schutter 2011 *HILJ* 516.

## 2.6 FAI

FAI, as a form of land grabbing, is investment in agriculture that is directed towards the production of food crops and biofuel for export to the home country of the investors.<sup>208</sup> It is important to realise that FAI in itself is not a problem. It becomes a problem only if it is not correctly regulated. Given the need to increase food crop production, FAI through foreign governments and companies, is considered as a neo-colonial push to annex key natural resources in Africa.<sup>209</sup> To this end, FAI serves as a strategic response for guaranteeing food supply, in addition to its being related to global climate change governance and it being a consequence of and reaction to the global financial crisis as was indicated above.<sup>210</sup> Similarly, it is argued that the prevalence of under-investment in the agricultural sector, mostly in developing countries,<sup>211</sup> needed to be revived through FAI. In the late 2000s developing countries (particularly in Africa) began witnessing a substantial increase in the rate of FAI,<sup>212</sup> particularly in view of the fact that about 60 per cent of world's farmland, two-thirds of which is in Africa is uncultivated.<sup>213</sup> A 2013 World Bank Report by Byerlee *et al*<sup>214</sup> suggests that agriculture and agribusiness stand to generate trillions of US Dollars by the year 2030 and that in sub-Saharan Africa especially, investment in agriculture has been at the top of the agenda for economic transformation and development.

Moreover, the fact that lending by commercial banks in sub-Saharan Africa for agricultural purposes is less than 10 per cent and microfinance loans are relatively small, indicate the lack of proper domestic funding for agricultural investment,

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208 Lverage "Responding to land grabbing" 3.

209 Leahy "Agriculture" 5.

210 Hallam "International investment in agricultural production" 27.

211 Liu "Introduction" 3 and FAO "Trends and impacts of foreign investment in developing countries" 8.

212 For example, the rate of foreign investment in sub-Saharan African increased from 17 billion USD in 2005 to 22 billion USD in 2006 and 30 billion USD in 2007. See Cotula *et al* *Land grab or development opportunity* 25; Gordon and Pohl "Freedom of investment process" 3.

213 Mckinsey 2010 *Global Institute* 7.

214 Byerlee *et al* *Growing Africa* viii; Anon <http://www.worldbank.org/en/news/feature/2013/03/04/africa-agribusiness-report> Accessed 23 November 2015.

development and production.<sup>215</sup> It is evident from this that the funds needed to boost the African agricultural sector and to promote economic growth will also have to come from abroad. These funds could either be in the form of development aid or direct investment in the agricultural sector through FAI,<sup>216</sup> which suggests that FAI should act as a catalyst to bridge the investment gap in African countries, especially if the investment is directed at agriculture. Therefore, the challenge is for host governments to maximise the benefits of FAI whilst minimising its risks and negative impacts. For purpose of this thesis and in light of the foregoing FAI is defined as:

Investment in the agricultural sector of a host country by a foreign investor, which could be a foreign government or a corporation, and it is directed towards the production of agricultural produce for use in, among others, the food and energy sectors.

#### *2.6.1 FAI land deals and the actors involved*

FAI encompasses a range of proliferating actors, including governments, multinational companies, sovereign wealth funds, private equity funds and other financial institutions. The recent wave of FAI involves not only European and American actors, but there is also the rise and active involvement of actors in emerging economies like India and China.<sup>217</sup>

The primary parties in FAI are the land acquirer and land provider. Land acquirers are usually from developed countries, which are generally finance rich but resource poor, and where land is at a premium.<sup>218</sup> Land providers are mostly developing countries, which are generally resource rich but financially poor, while having access to vast expanses of land.<sup>219</sup> While a land acquirer could be a foreign company, foreign government or an international organisation such as the World Bank, a land provider could be either a developing country government or the local communities of a

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215 FAO "Trends and impacts of foreign Investment in developing countries" 9.

216 McMichael "Interpreting the land grab" 4.

217 Hall 2011 *Policy brief* 3.

218 Other actors include international finance corporation like the World Bank Group, rich tycoons and hedge funds.

219 Cotula *et al Land grab or development opportunity* 65.

developing country. Most land providers are the governments that own the land in developing countries.<sup>220</sup>

In order to acquire land for agricultural investment, investors engage in contractual leases with the host countries, which are often non-transparent and exclusionary.<sup>221</sup> As said earlier, the conclusion of these deals is marked by a glaring lack of transparency and accountability, and this raises pertinent legal issues in terms of environmental norms, the compatibility of property rights, and recognition and protection of socio-economic rights and participatory rights of the local communities. Following from this, the current approaches to the FAI regulations serve to illustrate the considerable extent to which investors and host governments alike fail to take cognisance of, respect and enforce the fundamental rights of the local communities whose land is leased. Thus, it is apposite to say that while the rights and interests of foreign investors, notably their entitlements to land and its resources, are legally enforced and protected by contract law, those of the local communities, on the other hand, are often infringed.<sup>222</sup> Moreover, since these deals are not transparent and the contractual information is not made available, it is difficult to state with precision how much land is being grabbed and where.<sup>223</sup>

To help increase food crop production through agricultural investment, the World Bank and its affiliated bodies, the International Finance Corporation (IFC) and the Foreign Investment Advisory Service (FIAS), are playing an active role in the global land rush via direct financing and the provision of advisory support for the large-scale development of agribusiness in developing countries, particularly in sub-Saharan Africa.<sup>224</sup> The IFC, for example, provides assistance to developing countries either in the

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220 Cotula *et al* *Land grab or development opportunity* 65.

221 Hall "The many faces of the investors in Southern Africa" 3; Smaller and Mann 2009 <http://www.fao.org/fileadmin/templates/est/INTERNATIONAL-TRADE/FDSs/A-Thirst-for-distant-lands.pdf> accessed 27 November 2015.

222 Cotula *Land deals in Africa* 12.

223 Cotula *Land deals in Africa* 12.

224 Narula "Global Land Rights" 9; Daniel "The role of the international finance corporation" 5; Friis and Reenberg "Land grab in Africa" 17; Daniel and Mittal *The great land grab* 6-7.



form of legislative and policy reform, or through the creation of investment promotion agencies.<sup>225</sup> This is especially true of the IFC's substantial expertise in investment law, which empowers it to contribute to the creation or modification of investment laws in host countries, directed towards allowing and encouraging increased investor access to land and resources.<sup>226</sup>

In Tanzania, for example, with the help of the IFC and FIAS, the Tanzanian Investment Centre (TIC) has been able to set up a land bank that identifies and allocates land to investors for investment purposes.<sup>227</sup> The TIC has identified about 2.5 million hectares of land already for FAI purposes in that country.<sup>228</sup> The IFC and FIAS urge potential investors to take advantage and acquire potential agricultural farmland in Africa, which is achieved by providing to investors information about the availability of land in African countries for investment purposes.<sup>229</sup> Furthermore, a benchmarking Foreign Direct Investment Competitiveness Report provides information about accessing land for the purposes of establishing export production in a number of African countries.<sup>230</sup>

Similarly, foreign governments provide significant financial assistance<sup>231</sup> to foreign investors and help establish the regulatory framework and foreign investment vehicles that govern land deals, for example through inter-governmental agreements like bilateral investment treaties (BITs)<sup>232</sup> and agricultural co-operative agreements.<sup>233</sup>

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225 Oakland Institute "Understanding the land investment deals" 1-2, Narula "Global land rights" 9; Daniel and Mittal "Misinvestment in agriculture" 19; Cotula *et al* *Land grab or development opportunity* 29.

226 Daniel and Mittal "Misinvestment in agriculture" 19.

227 Daniel and Mittal "Misinvestment in agriculture" 19.

228 Daniel and Mittal "Misinvestment in agriculture" 19.

229 Daniel and Mittal "Misinvestment in agriculture" 20.

230 Snapshot Africa- Kenya 2007 Benchmarking Foreign Direct Investment (FDI) Competitiveness. Multilateral Investment Guarantee Agency (MIGA), the World Bank Group, [http://www.fao.org/docs/up/easypol/506/snapshot\\_africa\\_kenya.pdf](http://www.fao.org/docs/up/easypol/506/snapshot_africa_kenya.pdf) accessed 26 March 2015.

231 Such financial assistance involves the establishment of investment funds. The Abu Dhabi Fund for Development provides financial assistance, soft loans, guarantees and insurance for investors to acquire potential large-scale agricultural land. See further Cotula and Vermeulen 2009 *IA* 1234.

232 Bilateral investment treaties (BITs), create enforceable rights for foreign investors, which are instrumental in the acquisition of vast tracts of large-scale agricultural farmland. The number of African countries who have signed BITs increased from 193 in 1995 to 687 in 2006, Cotula *et al* *Land grab or development opportunity* 32.

These inter-governmental deals/agreements are capable of being translated into “committed partnerships underpinned by mutual financial stakes,”<sup>234</sup> directed towards the acquisition of potential agricultural farmland.

Investment and pension funds are also playing an active role in the acquisition of potential agricultural farmland in developing countries.<sup>235</sup> They act as financial injectors in the acquisition of agricultural farmland and are increasingly joining sovereign funds and individual investors in the pursuit of potential agricultural farmland.<sup>236</sup> This appears to suggest a constant increase in the pursuit of potential agricultural farmland. As of 2012 about 14 billion USD of private capital had been injected into agricultural farmland and infrastructure.<sup>237</sup> This amount seems likely to increase substantially in future.<sup>238</sup> Against the background of the above and given the constitutive nature of land and agriculture as new forms of investment with returns of up to 25 per cent, the investment bank JP Morgan notes that physical agricultural assets have become the new focus of investment, as they provide opportunities to access land and its resources.<sup>239</sup> Whether or not agricultural investment could actually resolve the profitability crisis of capital is not important for our present purpose. What is relevant is that financing agriculture and land acquisition are on the increase to ensure future gains in agricultural productivity and that there is a significant drive to increase FAI from all sectors.

As stated earlier, FAI land deals typically involve a range of parties spread across the multifaceted stages of the process, including preparation, negotiation, contracting, and

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233 Cotula *et al* *Land grab or development opportunity* 32-33.

234 Cotula *et al* *Land grab or development opportunity* 33.

235 Narula “The global land rush” 10.

236 The Oakland Institute “Understanding land investment deals in Africa” 1; Cotula and Vermeulen 2009 *JA* 1234-1235.

237 IIED 2012 <http://pubs.iied.org/pdfs/17121IIED.pdf> accessed 26 March 2015; Narula “The global land rush” 10.

238 IIED 2012 <http://pubs.iied.org/pdfs/17121IIED.pdf> accessed 26 March 2015.

239 McMichael “Interpreting the land grab” 1.

the operational phases of the intended FAI project.<sup>240</sup> From the host country perspective, for example, a multiplicity of governmental agencies could be involved. In Cameroon, the Cameroon Investment Promotion Agency (CIPA), which is responsible for the facilitation of land acquisition for FAI purposes, is evidently not the sole government agency involved. Other government departments include various ministries such as the Ministry of Economy and Finance, the Ministry of Agriculture, the Ministry of Environment and Nature Protection and the Ministry of Planning and Regional Development.

Similarly, the Uganda Investment Authority (UIA) together with the Ministry of Finance and Economic Planning, the Ministry of Water and Environment, the Ministry of Agriculture, and the Ministry of Land, Housing and Urban Development all play an active and influential role in FAI projects.<sup>241</sup> The involvement of these governmental agencies may limit co-ordination and transparency, among other things, within FAI processes, with the potential risk of hampering the promotion of and respect for local communities' rights and interests.

It is important to note that FAI land deals are usually concluded in one or more contracts. Such contracts involve agreements that outline the fundamental features of the land deals, and in terms of the contracts the host government is obliged to make land readily available to the investor.<sup>242</sup> Although FAI is necessary to boost the agricultural sector of developing countries in general, and particularly African countries, it is observed that the extent of land-negotiated contracts differs between and among countries, with instruments allocating land tending to be more standardised.<sup>243</sup> Whereas

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240 Cotula *et al Land grab or development opportunity* 66.

241 In Tanzania the Ministries of Agriculture, Land and Housing Development, Environment, and the Tanzanian Investment Agency (TIA) are relevant government agencies in charge of handling FAI projects, Cotula *et al Land grab or development opportunity* 66.

242 For example, art 3 of the Special Agricultural Agreement of 2002 between Syria and South Sudan.

243 Cotula *et al Land grab or development opportunity* 65-66.

a longer lease period may be applicable in some countries,<sup>244</sup> other countries tend to sell the land to the investors.<sup>245</sup> Although the table below does not provide an exhaustive list of the land grabbing cases in sub-Saharan Africa, it does offer some bird's eye view of the magnitude of the land grabbing in terms of the number of hectares acquired in some African countries, including their duration. The duration of these land contracts usually ranges from 25 to 99 years.<sup>246</sup> As is evident in Table 1, biofuel production is more common than food crop production,<sup>247</sup> which suggests that in some respects the pursuit of energy security has become more important than food security.

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244 Generally, land leases for FAI purposes involve a longer lease of 50-99 years, FAO "Trends and impacts of foreign investment developing countries" 4; Cotula *et al Land grab or development opportunity* 8.

245 Hall "The many faces of the investor rush in Southern Africa" 3.

246 FAO "Trends and impacts of foreign investment developing countries" 4; Cotula *et al Land grab or development opportunity* 8.

247 Tim Bending and David Wilson "Land rights and the rush for land" 4; FAO "Trends and impacts of foreign investment in developing Countries" 3.

**Table 1: Summary of various land lease types, hectares acquired/under negotiation and duration in some African host countries<sup>248</sup>**

| <b>Investor country</b>  | <b>Investor Company</b>          | <b>Host country</b> | <b>Type of Investments</b> | <b>Number of Hectares and Duration of lease</b> | <b>Sources</b>                                                                                                                                                                                                                                            |
|--------------------------|----------------------------------|---------------------|----------------------------|-------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Portugal                 | AfriAgro                         | Angola              | Biofuel production         | 58,000 h, unknown                               | <a href="http://www.landmatrix.org/en/get-the-detail/by-target-region/central-africa/?order_by=&amp;starts_with=A">http://www.landmatrix.org/en/get-the-detail/by-target-region/central-africa/?order_by=&amp;starts_with=A</a> accessed 18 January 2016. |
| United Kingdom           | Lonrho                           | Angola              | Food crop production       | 25,000 h, 50 years                              | <a href="http://www.landmatrix.org/en/get-the-detail/by-target-region/central-africa/?order_by=&amp;starts_with=A">http://www.landmatrix.org/en/get-the-detail/by-target-region/central-africa/?order_by=&amp;starts_with=A</a> accessed 18 January 2016. |
| Belgium                  | SOCAPALM                         | Angola              | Biofuel production         | 58,063 h, 60 years                              | Young EM 2012 Food and development 131.                                                                                                                                                                                                                   |
| United States of America | Herakles Farms                   | Cameroon            | Biofuel production         | 73,086 h, 99 years                              | Oakland Institute 2012 "Understanding land investment deals in Africa: Massive deforestation portrayed as sustainable development: The deceit of Herakles Farms in Cameroon" 3.                                                                           |
| China                    | Shaanxi State Farm- Sino Cam Iko | Cameroon            | Food crop production       | 16,000 h, 99 years                              | <a href="http://farmlandgrab.org/16485">http://farmlandgrab.org/16485</a> accessed 18 April 2015.                                                                                                                                                         |
| France                   | SOCAPALM                         | Cameroon            | Biofuel, palm oil          | Unknown, 99                                     | Nguiffo and Watio "Agro-                                                                                                                                                                                                                                  |

248 Table compiled from Internet data, journal articles, reports, conference proceedings and books.

| <b>Investor country</b>  | <b>Investor Company</b>       | <b>Host country</b> | <b>Type of Investments</b>     | <b>Number of Hectares and Duration of lease</b> | <b>Sources</b>                                                                                                                                                                                                                                                                                                     |
|--------------------------|-------------------------------|---------------------|--------------------------------|-------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                          |                               |                     | plantation                     | years                                           | industrial investments in Cameroon" 12.                                                                                                                                                                                                                                                                            |
| United States of America | Cargill                       | Cameroon            | Biofuel production             | 50,000 h, unknown                               | Greenpeace 2012 "Palm oil's new frontier" 23.                                                                                                                                                                                                                                                                      |
| France                   | SOCAPALM (Bolloré)            | Cameroon            | Biofuel production             | 28,027h, 60 years                               | Greenpeace 2012 "Palm oil's new frontier" 23.                                                                                                                                                                                                                                                                      |
| Singapore                | Biopalm Energy Ltd            | Cameroon            | Palm oil/biofuel production    | 200,000h, unknown                               | Greenpeace 2012 "Palm oil's new frontier" 23.                                                                                                                                                                                                                                                                      |
| India and Indonesia      | Siva Group and Biopalm Energy | Cameroon            | Biofuel production             | 200,000 h, unknown                              | Freudental <i>et al</i> "The BioPalm oil palm project in Colchester and Chao (eds) <i>Conflict or consent The oil palm sector at a crossroad</i> 338.                                                                                                                                                              |
| Singapore                | Sud Cameroun Hevea            | Cameroon            | Rubber and palm oil production | 45,200h, unknown                                | Greenpeace 2012 "Palm oil's new frontier" 23.                                                                                                                                                                                                                                                                      |
| Malaysia                 | Sime Darby                    | Cameroon            | Biofuel production             | 430,000 h, unknown                              | Greenpeace 2012 "Palm oil's new frontier" 23.                                                                                                                                                                                                                                                                      |
| Canada                   | MalgIndustries                | Congo               | Eucalyptus/ carbon off-sets    | 68,000h, 50 years                               | Belanger-Gulick 2013 "Canada and the global land rush" <a href="http://www.ccic.ca/_files/en/working_groups/2013-08-21_canada_and_the_global_land_rush_fspg_april_2013.pdf">http://www.ccic.ca/_files/en/working_groups/2013-08-21_canada_and_the_global_land_rush_fspg_april_2013.pdf</a> accessed 18 April 2015. |
| Malaysia                 | Atama Plantation SARL         | Congo               | Palm oil production            | 470,000h, unknown                               | Greenpeace 2012 "Palm oil's new frontier" 24.                                                                                                                                                                                                                                                                      |

| <b>Investor country</b>                                    | <b>Investor Company</b>              | <b>Host country</b>          | <b>Type of Investments</b>       | <b>Number of Hectares and Duration of lease</b> | <b>Sources</b>                                                                                                                                                                                                                                                                                                     |
|------------------------------------------------------------|--------------------------------------|------------------------------|----------------------------------|-------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Italy                                                      | ENI                                  | Congo                        | Palm oil production              | 70,000h, unknown                                | Greenpeace 2012 "Palm oil's new frontier" 24.                                                                                                                                                                                                                                                                      |
| Canada                                                     | Feriona                              | Democratic Republic of Congo | Palm oil and rice production     | 127,000h, unknown                               | Belanger-Gulick 2013 "Canada and the global land rush" <a href="http://www.ccic.ca/_files/en/working_groups/2013-08-21_canada_and_the_global_land_rush_fspg_april_2013.pdf">http://www.ccic.ca/_files/en/working_groups/2013-08-21_canada_and_the_global_land_rush_fspg_april_2013.pdf</a> accessed 18 April 2015. |
| Saudi Arabia                                               | Mohammed al-Amoudi Sheik (AgriNexis) | Ethiopia                     | Biofuel and food crop production | 25,000 h, 99 years                              | Narula "The global land rush" 3.                                                                                                                                                                                                                                                                                   |
| India                                                      | Karuturi Global                      | Ethiopia                     | Food crop and biofuel production | 311,000 h, 90 years                             | Kelbessa "Environmental injustice in Africa" 120.                                                                                                                                                                                                                                                                  |
| Saudi Arabia                                               | Saudi Star PLC                       | Ethiopia                     | Food crop production             | 25,000 h, 99 years                              | Narula "The global land rush" 3.                                                                                                                                                                                                                                                                                   |
| Saudi Arabia/Individual                                    | Saudi Star PLC                       | Ethiopia                     | Food crops production            | 10,000 h, 60 years                              | Oakland Institute 2011 "Understanding land investment deals in Africa: Saudi Star in Ethiopia" 1.                                                                                                                                                                                                                  |
| Singapore                                                  | Olam                                 | Gabon                        | Biofuel production               | 100,000 h, 50 years                             | Greenpeace 2012 "Palm oil's new frontier" 25                                                                                                                                                                                                                                                                       |
| Norway, Sweden, Netherland, United Kingdom, China, Germany | 7 private businesses                 | Ghana                        | Biofuel production               | 55,000 h, unknown                               | <a href="http://www.commercialpressuresonland.org/press/addressing-food-versus-fuel-debate-ghana">http://www.commercialpressuresonland.org/press/addressing-food-versus-fuel-debate-ghana</a> accessed 18 April 2015.                                                                                              |

| <b>Investor country</b> | <b>Investor Company</b> | <b>Host country</b> | <b>Type of Investments</b>         | <b>Number of Hectares and Duration of lease</b> | <b>Sources</b>                                                                                                                                                                                                                                                                                                     |
|-------------------------|-------------------------|---------------------|------------------------------------|-------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| and Brazil              |                         |                     |                                    |                                                 |                                                                                                                                                                                                                                                                                                                    |
| Canada                  | Kimminic                | Ghana               | Jatropha/<br>biofuel<br>production | 68,000h, 50<br>years                            | Belanger-Gulick 2013 "Canada and the global land rush" <a href="http://www.ccic.ca/_files/en/working_groups/2013-08-21_canada_and_the_global_land_rush_fspg_april_2013.pdf">http://www.ccic.ca/_files/en/working_groups/2013-08-21_canada_and_the_global_land_rush_fspg_april_2013.pdf</a> accessed 18 April 2015. |
| Norway                  | Biofuel Africa          | Ghana               | Jatropha/<br>biofuel               | 38,000h,<br>unknown                             | <a href="http://biofuelwatch.org.uk/docs/biofuels_ghana.pdf">http://biofuelwatch.org.uk/docs/biofuels_ghana.pdf</a> .                                                                                                                                                                                              |
| United Kingdom          | G4 Industries Ltd       | Kenya               | Jatropha/<br>biofuel<br>production | 28,000h,<br>unknown                             | Sindayigaya "Foreign investments in agriculture" 4; <a href="http://www.guardian.co.uk/world/2011/jul/02/biofuels-land-grab-kenya-delta">http://www.guardian.co.uk/world/2011/jul/02/biofuels-land-grab-kenya-delta</a> .                                                                                          |
| Qatar                   | Unknown                 | Kenya               | Horticulture<br>production         | 40,000h,<br>unknown                             | FIAN 2010 "Land grabbing in Kenya and Mozambique" 5.                                                                                                                                                                                                                                                               |
| Canada                  | Bedford Biofuel         | Kenya               | Jatropha/<br>biofuel<br>production | 160,000 h, 45<br>years                          | Belanger-Gulick 2013 "Canada and the global land rush" <a href="http://www.ccic.ca/_files/en/working_groups/2013-08-21_canada_and_the_global_land_rush_fspg_april_2013.pdf">http://www.ccic.ca/_files/en/working_groups/2013-08-21_canada_and_the_global_land_rush_fspg_april_2013.pdf</a> accessed 18 April 2015. |
| United Kingdom          | Equatorial Biofuel Ltd  | Liberia             | Biofuel<br>production              | 169,000 h, 50<br>years                          | <a href="https://ejatlas.org/conflict/equatorial-palm-oil-project-stalls-in-bassa-liberia">https://ejatlas.org/conflict/equatorial-palm-oil-project-stalls-in-bassa-liberia</a> .                                                                                                                                  |
| Singapore               | Sime Darby              | Liberia             | Palm oil<br>production             | 220,000h, 63<br>years                           | Greenpeace 2012 "Palm oil's new frontier" 25.                                                                                                                                                                                                                                                                      |



| <b>Investor country</b> | <b>Investor Company</b> | <b>Host country</b> | <b>Type of Investments</b>       | <b>Number of Hectares and Duration of lease</b> | <b>Sources</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|-------------------------|-------------------------|---------------------|----------------------------------|-------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| South Korea             | Daewoo                  | Madagascar          | Food crop and biofuel production | 1,300,000 h, 99 years (deal cancelled)          | <a href="http://www.telegraph.co.uk/news/worldnews/africaandindian-ocean/madagascar/4240955/Land-and-rental-deal-collapses-after-backlash-against-colonialism.html">http://www.telegraph.co.uk/news/worldnews/africaandindian-ocean/madagascar/4240955/Land-and-rental-deal-collapses-after-backlash-against-colonialism.html</a> ; accessed 8 May 2015; Cotula <i>Land grabbing or development opportunity?</i> 76; Sindayigaya "Foreign investments in agriculture" 5; Burnord <i>et al</i> 2013 <i>DC</i> 357; Akram-Lodhi 2012 <i>CJDC</i> 119-120; Burnord <i>et al</i> "From international land deals to local informal agreements" 14. |
| Libya                   | Malibya                 | Mali                | Food crop production             | 100,000 h, 50 years                             | <a href="http://pulitzercenter.org/reporting/africa-mali-land-rights-deal-libya-devil-economy">http://pulitzercenter.org/reporting/africa-mali-land-rights-deal-libya-devil-economy</a> ; <a href="http://www.theguardian.com/world/2010/dec/29/mali-farmers">http://www.theguardian.com/world/2010/dec/29/mali-farmers</a> accessed 8 May 2015.                                                                                                                                                                                                                                                                                              |
| Canada                  | Kijani Energy           | Mozambique          | Jatropha/biofuel production      | 75,000h, unknown                                | Belanger-Gulick 2013 "Canada and the global land rush" <a href="http://www.ccic.ca/_files/en/working_groups/2013-08-21_canada_and_the_global_land_rush_fspg_april_2013.pdf">http://www.ccic.ca/_files/en/working_groups/2013-08-21_canada_and_the_global_land_rush_fspg_april_2013.pdf</a> accessed 18 April 2015.                                                                                                                                                                                                                                                                                                                            |
| United                  | BioEnergy               | Mozambique          | Jatropha/                        | 30,000, 50                                      | FIAN 2010 "Land grabbing in                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |

| <b>Investor country</b>  | <b>Investor Company</b>       | <b>Host country</b> | <b>Type of Investments</b>         | <b>Number of Hectares and Duration of lease</b> | <b>Sources</b>                                                                                                                                                                                                                                                                                                                                                           |
|--------------------------|-------------------------------|---------------------|------------------------------------|-------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Kingdom                  | Africa                        |                     | biofuel production                 | years                                           | Kenya and Mozambique” 6.                                                                                                                                                                                                                                                                                                                                                 |
| United Kingdom           | Sun Biofuels                  | Mozambique          | Biofuel production                 | 40,000 h, 99 years                              | <a href="http://www.aefjn.org/index.php/land-grabbing/articles/Some_cases_of_EU_companies_involved_in_large_piece_of_land_for_biofuels_investment_in_African_countries.html">http://www.aefjn.org/index.php/land-grabbing/articles/Some_cases_of_EU_companies_involved_in_large_piece_of_land_for_biofuels_investment_in_African_countries.html</a> accessed 8 May 2015. |
| Canada                   | Sierra Gold Corporation       | Sierra Leone        | Carbon credit                      | 45,527h, 50 years                               | Belanger-Gulick 2013 “Canada and the global land rush” <a href="http://www.ccic.ca/_files/en/working_groups/2013-08-21_canada_and_the_global_land_rush_fspg_april_2013.pdf">http://www.ccic.ca/_files/en/working_groups/2013-08-21_canada_and_the_global_land_rush_fspg_april_2013.pdf</a> accessed 18 April 2015.                                                       |
| United States of America | Cape Pine Investment Holding  | South Africa        | Forestry, wood and fibre           | 18,000h, unknown                                | <a href="http://www.landmatrix.org/en/get-the-detail/by-target-country/south-africa/?order_by=&amp;starts_with=S">http://www.landmatrix.org/en/get-the-detail/by-target-country/south-africa/?order_by=&amp;starts_with=S</a> accessed 18 January 2016.                                                                                                                  |
| Japan                    | Nippon Paper Group INC        | South Africa        | Forestry                           | 11,000h, unknown                                | <a href="http://www.landmatrix.org/en/get-the-detail/by-target-country/south-africa/?order_by=&amp;starts_with=S">http://www.landmatrix.org/en/get-the-detail/by-target-country/south-africa/?order_by=&amp;starts_with=S</a> accessed 18 January 2016.                                                                                                                  |
| United Arab Emirates     | Al Dahra Agricultural Company | South Africa        | Agriculture/ food crops production | 4,046h, unknown                                 | <a href="http://www.landmatrix.org/en/get-the-detail/by-target-country/south-">http://www.landmatrix.org/en/get-the-detail/by-target-country/south-</a>                                                                                                                                                                                                                  |

| <b>Investor country</b>  | <b>Investor Company</b>         | <b>Host country</b> | <b>Type of Investments</b>            | <b>Number of Hectares and Duration of lease</b> | <b>Sources</b>                                                                                                                                                                                                        |
|--------------------------|---------------------------------|---------------------|---------------------------------------|-------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                          |                                 |                     |                                       |                                                 | africa/?order_by=&starts_with=S accessed 18 January 2016.                                                                                                                                                             |
| Canada                   | Alterna Energy Z.A              | South Africa        | Biofuel, Biochar production           | Unknown, unknown                                | <a href="http://www.gaiafoundation.org/sites/default/files/documents/biocharafricabriefing.pdf">http://www.gaiafoundation.org/sites/default/files/documents/biocharafricabriefing.pdf</a> accessed 15 September 2015. |
| United States of America | Nile Trading and Developing Inc | South Sudan         | Biofuel production and carbon offsets | 600,000, 49 years                               | Oakland Institute 2011 "Understanding land investment deals in Africa" 2.                                                                                                                                             |
| Syria                    | Government                      | South Sudan         | Food crop production                  | Unknown, 50 years                               | Cotula 2009 <i>Land grabbing or development opportunity</i> 76; Sonie <i>et al</i> 2013 <i>International Journal of Strategic Organisation and Behavioural Science</i> 31.                                            |
| Saudi Arabia             | HADCO                           | Sudan               | Food cop production                   | 25,000h, unknown                                | <a href="http://www.grain.org/system/old/front_files/landgrab-2008-en-annex.pdf">http://www.grain.org/system/old/front_files/landgrab-2008-en-annex.pdf</a> accessed 15 September 2015.                               |
| United Arab Emirates     | G2G                             | Sudan               | Food crops and agriculture            | 70,000 unknown                                  | <a href="http://www.grain.org/system/old/front_files/landgrab-2008-en-annex.pdf">http://www.grain.org/system/old/front_files/landgrab-2008-en-annex.pdf</a> accessed 15 September 2015.                               |
| Sweden                   | Bagamoyo Eco- energy Ltd        | Tanzania            | Biofuel production                    | Unknown, 99 years                               | <a href="http://www.ecoenergy.co.tz/get-to-know-us/background/">http://www.ecoenergy.co.tz/get-to-know-us/background/</a> accessed 15 September 2015                                                                  |
| Sweden                   | BioMassive AB                   | Tanzania            | Biofuel production                    | 55,000 h, 66 years                              | FoEI 2010 "Jatrpha: Money doesn't grow on trees" 8. Online at: <a href="https://www.foeeurope.org/sit">https://www.foeeurope.org/sit</a>                                                                              |

| <b>Investor country</b> | <b>Investor Company</b>      | <b>Host country</b> | <b>Type of Investments</b> | <b>Number of Hectares and Duration of lease</b> | <b>Sources</b>                                                                                                                                                                                                                                                                                                                                           |
|-------------------------|------------------------------|---------------------|----------------------------|-------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                         |                              |                     |                            |                                                 | es/default/files/publications/jatropha_FoEireport_Jan2011.pdf accessed 15 September 2015.                                                                                                                                                                                                                                                                |
| United Kingdom          | Sun biofuel                  | Tanzania            | Biofuel production         | 50,000 h, unknown                               | Sulle and Nelson 2009 "Biofuel, land access and rural livelihoods in Tanzania" 12 online at: <a href="http://pubs.iied.org/pdfs/12560IIED.pdf">http://pubs.iied.org/pdfs/12560IIED.pdf</a> ; Date of use 10/11/2015; Oakland Institute 2012 "Understanding land investment deals in Africa" 2-3.                                                         |
| Belgium                 | FELISA                       | Tanzania            | Biofuel production         | Unknown, unknown                                | Sulle and Nelson 2009 "Biofuel, land access and rural livelihoods in Tanzania" 12.                                                                                                                                                                                                                                                                       |
| Dutch                   | Diligent                     | Tanzania            | Biofuel production         | Unknown, unknown                                | Sulle and Nelson 2009 "Biofuel, land access and rural livelihoods in Tanzania" 12                                                                                                                                                                                                                                                                        |
| United Arab Emirate     | Pharos Miro Agriculture Fund | Tanzania            | Food crop production       | 50,000h, 98 years                               | Herren H, 2012 <i>The great food robbery</i> 127; Bakr A, Gulf sovereign funds show interest in farmland fund" online at: <a href="http://m.arabianbusiness.com/gulf-sovereign-funds-show-interest-in-farmland-fund-9431.html">http://m.arabianbusiness.com/gulf-sovereign-funds-show-interest-in-farmland-fund-9431.html</a> accessed 10 November 2015. |

| <b>Investor country</b> | <b>Investor Company</b>               | <b>Host country</b> | <b>Type of Investments</b>           | <b>Number of Hectares and Duration of lease</b> | <b>Sources</b>                                                                                                                                                                                                                                                                                                                                                             |
|-------------------------|---------------------------------------|---------------------|--------------------------------------|-------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Singapore and Kenya     | Oil Palm Uganda Ltd (Wilma and Bidco) | Uganda              | Biofuel production                   | 40,000h, 99 years                               | FoEI 2013 "Land grabbing for oil palm in Uganda" 1-2; Greenpeace 2012 "Palm oil's new frontier" 26.                                                                                                                                                                                                                                                                        |
| United Kingdom          | New Forest Company                    | Uganda              | Carbon-offsets                       | 20,000h, unknown                                | Oxfarm 2011 "Land and power: The growing scandal surrounding the new wave of investment in land" 15.                                                                                                                                                                                                                                                                       |
| United Kingdom          | New Forest Company                    | Uganda              | Pine and eucalyptus trees plantation | Unknown, 50 years                               | <a href="http://www.landmatrix.org/en/get-the-detail/by-target-country/uganda/?order_by=&amp;starts_with=U">http://www.landmatrix.org/en/get-the-detail/by-target-country/uganda/?order_by=&amp;starts_with=U</a> accessed 18 January 2016.                                                                                                                                |
| United Kingdom          | EmVest                                | Zambia              | Food crop production                 | Unknown, 99 years                               | <a href="http://www.emvest.com/Emvest_Livingstone.html">http://www.emvest.com/Emvest_Livingstone.html</a> accessed 10 November 2015.                                                                                                                                                                                                                                       |
| United Kingdom          | D1 Oils                               | Zambia              | Biofuel production                   | 45,000 h, unknown                               | <a href="http://www.aefjn.org/index.php/land-grabbing/articles/Some_cases_of_EU_companies_involved_in_large_piece_of_land_for_biofuels_investment_in_African_countries.html">http://www.aefjn.org/index.php/land-grabbing/articles/Some_cases_of_EU_companies_involved_in_large_piece_of_land_for_biofuels_investment_in_African_countries.html</a> accessed 15 July 2015. |

The following section examines some of the impacts of FAI as a probable infringement on people's rights and associated governance issues generally.

## **2.7 Impacts of FAI**

The ensuing impacts of FAI land projects are both positive and negative. The following section evaluates these impacts based on published materials such as reports, textbooks, journal articles and papers from conference proceedings. The objective with this analysis of the impact of FAI is to illustrate how FAI activities negatively impact on people's substantive and procedural rights-based interests. Yet, it also demonstrates that FAI could have benefits which, if properly regulated, could be meaningfully transferred to a host country and its people.

### **2.7.1 Negative impacts**

FAI could have considerable negative impacts that range from environmental impacts to social and economic impacts.

#### **2.7.1.1 Environmental impacts**

Environmental impacts are often caused by a development, an industrial or infrastructural project, or the release of a substance into the environment. An activity taking place in or a substance released into the environment has the potential of affecting a broad area of the environment<sup>249</sup> via pollution and ecological degradation. Since FAI primarily involves agricultural practices, it is compelling to think that negative environmental impacts could flow from FAI. Agriculture as such is inherently deleterious to the environment. The environmental impacts of FAI projects may include soil pollution, fertilisers' pollution, soil erosion, biodiversity extinction, water shortages, spread of alien invasive species and climate change; in short all activities usually associated with agricultural processes and their related impacts.

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249 S 1 xi of NEMA.

Although not all activities may require the carrying out of an environmental impact assessment (EIA),<sup>250</sup> usually in order to considerably reduce the effect of an activity on the environment, an EIA should be performed. This is worrying in this context, because in some instances of FAI an EIA or a social impact assessment (SIA) is not done.<sup>251</sup> An EIA process provides an appropriate platform for the promotion of and respect for local communities' rights of access to information and public participation and enables these communities to make decisions that affect their lives as well as their rights.<sup>252</sup> The proper implementation of EIA processes would have the potential to strengthen local communities' rights and interests in the context of an FAI development project. As the implementation of an FAI project may lead to significant environmental harm through pollution and ecological degradation, it may be correct to assert that a proper EIA process could act as a catalyst for local communities to assert the protection of their environmental rights and by extension the environmental rights of future generations<sup>253</sup> in the broader context of development projects. By contrast, an improper EIA process or its absence during the implementation of a project could considerably harm local communities' rights and interests. For example, it is stated that during the implementation of the Herakles Farms project the company did not carry out proper EIA and SIA processes as required by Cameroonian legislation.<sup>254</sup>

#### 2.7.1.1.1 Biodiversity extinction and climate change

The logging of trees for the purposes of biofuel, energy and timber may exacerbate the problem of climate change and threaten the extinction of biodiversity in a specific

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250 Glowka *et al* *A guide to the convention on biological diversity* 71.

251 Deininger *et al* *Rising global interest in farmland* xli; Friends of the Earth Europe date unknown <https://www.foeeurope.org/land-grabbing> accessed 6 May 2015.

252 Kravchenko 2009 *TELJ* 35; Kravchenko and Bonnie *Human rights and the environment* 260-261; Principle 10 of Rio Declaration; art 23 of the Cartagena Protocol on Biosafety.

253 For details on the concept of sustainable development and intergenerational equity see generally; The World Commission on Environment and Development, *Our common future* xi; Chapter 39 of Agenda 21; Brown *Building a sustainable society*; Sohn 1973 *HILJ* 423; Weiss *In fairness of future generations*; Weiss 1990 *AJIL* 198; Weiss 1990 *MWHR* 601-616; Woods "The environment, intergenerational equity and long-term investment" 11-12; Beder 2000 *NJEL* 227-243.

254 Nguiffo and Schwartz date unknown [http://www.rightsandresources.org/documents/files/doc\\_4763.pdf](http://www.rightsandresources.org/documents/files/doc_4763.pdf) accessed 11 February 2015.

locality. This occurs when land and more specifically forest areas that are the habitat of particular species are leased or sold for cultivation purposes. This is especially worrying if the land being leased or sold is next to a biodiversity hotspot, and where the land between the two or more parks serves as an essential corridor for animal migration.<sup>255</sup> For instance, as was noted in Chapter 1, the Herakles Farms deal in Cameroon is located in the vicinity of four biodiversity hotspots<sup>256</sup> and the project is stated to have had significant impacts on the protected areas in question.<sup>257</sup> In illustrating the potential impact FAI projects could have on biodiversity and food security, La Via Campesina<sup>258</sup> notes that the current massive production of corn, palm oil, sugar cane and canola, *inter alia*, will neither solve the problem of climate change nor the energy crisis. Instead, it is leading to serious social and environmental consequences.<sup>259</sup>

Moreover, FAI may also lead to the destruction of a country's heritage resources. This may be particularly worrisome if the heritage resource is of symbolic value in terms of the custom and tradition of the people. For example, in Uganda, the Kalangala palm oil plantation destroyed parts of the Bugala Island which serves as an important heritage site for the Buganda Kingdom, and the Lugo forest which is considered sacred and plays an important role in the Buganda tradition and custom.<sup>260</sup>

#### 2.7.1.1.2 Water scarcity

According to the Intergovernmental Panel on Climate Change (IPCC), it is reported that by 2020 agricultural production in many African countries, including the focal countries

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255 Nguiffo and Schwartz date unknown  
[http://www.rightsandresources.org/documents/files/doc\\_4763.pdf](http://www.rightsandresources.org/documents/files/doc_4763.pdf) accessed 11 February 2015.

256 These hotspots are the Korup National Park, the Bayang-Mbo Wildlife Sanctuary and the Rumpi Hills Forest Reserve.

257 Oakland Institute "Understanding land investment deals in Africa" 5.

258 Founded in 1993, La Via Campesina is an international movement of poor peasants and small farmers in developing and industrialised countries. Its ideological position on agrarian issues is motivated by the class interest of its mass base among poor peasants and small-scale farming. La Via Campesina has about 150 local and national organisations in 70 countries in Africa, Asia, Europe and the Americas. La Via Campesina <https://www.viacampesina.org/> accessed 17 January 2015.

259 Borras and Franco "Towards a broader view of the politics of global land grab" 5-6.

260 NAPE "Land, life and justice" 13.



of this study would be severely compromised by climate variability and change, with approximately 75 to 250 million people projected to be exposed to water shortage as a result of the changing climate.<sup>261</sup> In addition, it is belief that by 2030 an estimated temperature rise of 1 to 2.5° c will have serious adverse effect on food crops yields and could result in additional food insecurity.<sup>262</sup>

Given that water is an indispensable component for agricultural productivity because land without water is pointless for agricultural development, it is argued FAI could lead to competing water interests.<sup>263</sup> This is especially true of the cultivation of sugar cane and jatropha, which require a large amount of water to grow.<sup>264</sup> Consequently, water becomes a priority to foreign investors in FAI activities where it is scarce. For example, the acquisition of land in sub-Saharan African countries like Cameroon, where the northern parts witness relatively low rainfall, and where primarily cotton and cereal crops are located may be a potential source of competition for water.<sup>265</sup> This raises serious concerns about local populations having access to drinking water and water to be used for sanitation purposes as a basic need and a human right.<sup>266</sup>

#### 2.7.1.1.3 Soil pollution

Soil is a vital component for agricultural productivity, especially as soils act as “buffers and filters protecting the food chain and water against pollution.”<sup>267</sup> Soil also serves as a key determinant of terrestrial ecosystems and biomes.<sup>268</sup> Soil composition may

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261 Parry *et al* *Climate change 2007* 13.

262 FAO 2008 <ftp://ftp.fao.org/docrep/fao/meeting/013/ai782e.pdf> accessed 4 January 2016.

263 See Woodhouse and Ganho “Is water the hidden agenda?” 1; Anseeuw *et al* *Transnational land deals for agriculture in the global South* 32-34.

264 Mann and Smaller “Foreign land purchase for agriculture” 2; Blesgraaf “Water use of jatropha” 9.

265 FAO 2012  
[http://www.fao.org/fileadmin/user\\_upload/tcsp/docs/Cameroon\\_Country\\_Profile\\_FINAL.pdf](http://www.fao.org/fileadmin/user_upload/tcsp/docs/Cameroon_Country_Profile_FINAL.pdf) accessed 27 November 2015.

266 Woodhouse and Ganho “Is water the hidden agenda” 1; Anseeuw *et al* *Transnational land deals for agriculture in the global South* 32-34.

267 Verster *et al* “Soil” 295.

268 Verster *et al* “Soil” 295.

differ,<sup>269</sup> and bad farming practices resulting from FAI may cause soil erosion.<sup>270</sup> Soil erosion occurs when the rate of soil loss exceeds its formation,<sup>271</sup> and is likely to be more severe under crop farming than under extensive grazing.<sup>272</sup> The problem of soil erosion is further accentuated by the loss of soil nutrients. This means that the cultivated crops will lack plant nutrients.<sup>273</sup> This may lead to famine and hunger since a lack of plant nutrients may lead to the limited availability of food crops in the market.

Again, because FAI often entails the use of high impact agricultural techniques and chemicals, it may be argued that FAI may lead to significant degradation of the ecosystem, land and environment due to the proliferation of modern day by-products of agriculture. This is evident in the context of soil pollution from the liberal use of pesticides and fertilisers. Once pesticides<sup>274</sup> are sprayed, they may not disappear completely.<sup>275</sup> While some may be absorbed by plants, and the rest mixes with water and seeps into the ground, causing soil pollution. Local water sources that supply water may also become contaminated. Also, the use of polluted water for irrigation farming in itself could have significant impacts on the environment and on the crops being produced. In South Africa, for example, it is reported that over 300,000 hectares of land are being irrigated with polluted water and that tonnes of dry sewage are disposed of on agricultural land.<sup>276</sup> This renders the soil less fertile and ultimately decreases its usability and worth.

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269 Soil properties are of two types, the morphological or physical property and the chemical property of soil. See Verster *et al* "Soil" 299-205.

270 Verster *et al* "Soil" 307.

271 Verster *et al* "Soil" 306.

272 Verster *et al* "Soil" 307.

273 Verster *et al* "Soil" 307.

274 Pesticides are substances used by human beings to kill or deter organisms or pests that threaten our health and well-being, and the health and well-being of plants and livestock, or cause damage to crops. See Giliomee "Pesticides" 746.

275 Giliomee "Pesticides" 746.

276 Verster *et al* "Soil" 309-310.

### 2.7.1.2 Social impacts

In view of the fact that FAI projects are generally not transparent and exclusionary, making them less accountable, it has been difficult, if not impossible, for some local communities of host countries to hold their governments accountable for their decisions in relation to FAI.<sup>277</sup>

Accountability within the legal and governance structures of host governments is extremely crucial as it promotes, empowers and ensures democratic decision-making by government officials. It also serves as an appropriate vehicle to combat corruption and promote good governance.<sup>278</sup> However, FAI as a form of land grabbing persists in host countries characterised by weak land governance.<sup>279</sup> Weak land governance means that the land rights of local people are unprotected, whether in formal land administration or customary tenure arrangements.<sup>280</sup> The lack of protection may stem from the consideration that access to justice, for example, which is an important procedural right in enforcing various other rights and interests,<sup>281</sup> may itself be weakly exercised in some sub-Saharan jurisdictions despite constitutional and legislative guarantees, particularly as financial constraints may limit the ability of marginalised people and the poor to access the courts.<sup>282</sup>

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277 Dunn and Gaventa "Building inclusive citizenships and democracies" 1; Mureinik 1993; *Acta Juridica* 35-36; Platteau "Information distortion" 2.

278 Currie and Klaaren *A commentary* 17; Olowu "Public accountability" 1-2. For a detailed understanding of the concept of accountability see generally, Larry "Is the third wave over?" 1996 *JD* 20-36; Moran "Understanding the regulatory state" 2002 *BJPS* 391-413; Braithwaite "Accountability and governance" 1999 *AJPA* 90-97; Kaler "Responsibility, accountability and governance" 2002 *Business Ethics* 327-333; Olowu "Public accountability" 1-21; Kiyaga-Nsubuga "Local democracy, good governance" 61.

279 Mabikke "Escalating land grabbing in Post-conflict regions of northern Uganda" 1; Muriisa *et al* "Land deals in Uganda" 19; Anseeuw *et al* *Transnational land deals for agriculture in the global South* 37; Thaler "Large-scale land acquisition and social conflict in Africa" 1.

280 Mabikke "Escalating land grabbing in post-conflicts regions of northern Uganda" 21.

281 Ebbensson "Participatory and procedural rights" 2; Devenish *A commentary* 451.

282 De Vos 2013: <http://constitutionallyspeaking.co.za/marikana-funding-case-hints-at-larger-problems-with-gaining-access-to-justice/> accessed 13 October 2015.

In addition, land concessions for FAI purposes may also lead to the displacement of local communities in some areas.<sup>283</sup> In Uganda, for example, a total of 24,000 people were evicted following a 2001 land lease contract to establish a coffee plantation in Mubende that was signed between the government of Uganda and Germany's Neumann Kaffee.<sup>284</sup> In the Amuru District of Uganda the establishment of a sugar cane plantation on 40,000 hectares of land has led to the eviction of some 20,000 Acholi people from their land.<sup>285</sup> Similarly, the Herakles Farms deal in Cameroon risks displacing 14,000 people from their homes and farmland.<sup>286</sup> This illustrates the extent to which an entire community could degenerate through the displacement caused by FAI.

FAI may also lead to food insecurity and famine.<sup>287</sup> This may occur in situations where FAI focuses on biofuel and forestation and not food production for local communities. Even if FAI focuses on food production it may create food insecurity and possible starvation in the host country, because most of the produce is in many instances exported back to the investor's country.<sup>288</sup> This could violate the substantive rights to food, water and land and often leads to dire socio-economic impacts such as the displacement of local communities in areas subject to FAI land deals.<sup>289</sup> It is therefore clear that FAI could affect human security, more broadly speaking, in host countries.

FAI as a form of land grabbing may further have potential negative consequences for the political stability of host countries,<sup>290</sup> because FAI may lead to social conflict in the form either of protest riots or of rebellion.<sup>291</sup> Given that there is no suitable example among the focal countries to demonstrate the validity of this statement, reference will

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283 Cotula *et al Land grab or development opportunity* 15.

284 Sindayigaya "Foreign investment in agriculture" 5.

285 Martiniello "The accumulation of dispossession and resistance in northern Uganda" 4.

286 Greenpeace 2013 at: <http://www.greenpeace.org/usa/wp-content/uploads/legacy/Global/usa/planet3/PDFs/HeraklesCrimeFile.pdf> accessed 13 January 2016.

287 IFPRI 2009 and Seized "The land grab for food and financial security" 10.

288 IFPRI 2009 and Seized "The land grab for food and financial security" 10.

289 Cotula *et al Land grab or development opportunity* 15.

290 Daniel and Mittal *The great land grab* 1.

291 Thaler "Large-scale land acquisitions and social conflict in Africa" 2; Hall 2011 *JPS* 848.

be made to the case of Madagascar. As noted in Chapter 1,<sup>292</sup> the government leased 75 percent of the country's land to a South Korean Company, Daewoo, which led to serious opposition and political unrest in the country, and the demise of the government of former president Marc Ravalomanana.<sup>293</sup> The Daewoo case serves to illustrate the politically-related vagaries of land grabbing in two ways. The Daewoo case demonstrates the considerable extent to which FAI and land grabbing could lead to serious political unrest and even violent conflict. Also, it clearly pinpoints the extent to which the lack of respect for, recognition of and enforcement of rights and interests that are connected to political considerations, could intensify opposition to and the rejection of agricultural development projects by foreign investors.<sup>294</sup>

#### 2.7.1.3 Economic impacts

Because FAI contracts are not transparent and investors target countries with weak land governance, the tendency has been for FAI projects to focus primarily on land that is considered by both the investors and the host governments as "empty" land.<sup>295</sup> Although this may be true, because unoccupied or unclaimed land certainly exists, land classified as such is often subject to long-standing rights of use, access and management based on custom.<sup>296</sup> The failure to recognise these rights and interests implies that local communities are deprived of key resources on which their wealth, health, well-being and livelihoods depend. This makes affected local communities and stakeholders economically vulnerable given that FAI affects the ability of local communities to generate money and provide for their families. Furthermore, because local communities may often not participate in negotiating FAI contracts, employment prospects offered by FAI may not have any positive impact on the livelihood of the local

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292 In section 1.1.

293 Burnod *et al* "From international land deals to local informal agreements" 4; Akram-Lodhi 2012 *CJDS* 119-120; Kaarhus *et al* "Agro-investment in Africa" 1; Burnod *et al* 2013 *DC* 357-58; Thaler "Large scale land acquisitions and social conflict in Africa" 2.

294 Ingwe *et al* 2010 *JSD* 30.

295 Cotula *Land deals in Africa* 16; Borras and Franco "Towards a broader view of the politics of global land grab" 7; Kachika "Land grabbing in Africa" 22; Robertson and Anderson 2010 *Springer* 271.

296 Cotula *Land deals in Africa* 16.

community.<sup>297</sup> FAI could therefore exacerbate their poor living conditions and leave the local people considerably worse off. As well, local farmers are often poorly paid, the jobs offered to local communities are usually seasonal, and working conditions on foreign-owned farms could be deplorable.<sup>298</sup>

### 2.7.2 *Positive impacts*

As a contrast to the many negative impacts of FAI described above, FAI may have limited positive impacts, which on balance, arguably do not neutralise the negative impacts.

#### 2.7.2.1 Environmental impacts

One potential positive environmental impact, however, could be related to climate change. It is believed that FAI could assist in combating climate change through mitigation and adaption measures.<sup>299</sup> For example, biochar production is being promoted as a major geo-engineering solution for combating climate change,<sup>300</sup> in part as it is the only agricultural technology mentioned in the draft text for the CoP in Copenhagen.<sup>301</sup> This is because biochar, which is fine-charcoal applied to soils, could replace slash and burn farming with slash and char, which consists of the clearing of the natural vegetation and charring it. This helps to act as a catalyst for carbon sequestration which is instrumental in climate change mitigation.<sup>302</sup> Further, if more crops are planted the area could act as a carbon sink.

Similarly, introduction of modern irrigation technologies and farming techniques that are better suited for the changing climate during FAI processes could be a necessary and significant catalyst for climate change adaption measures. For instance, the Chinese rich project in *Nanga-Eboko* region of Cameroon is reported to used modern farming

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297 Anseeuw *et al Transnational land deals for agriculture in the global South* 45.

298 Anseeuw *et al Transnational land deals for agriculture in the global South* 45.

299 Section 2.5.2 above for detail elaboration.

300 African Biodiversity Network "Biochar land grabbing" 1.

301 African Biodiversity Network "Biochar land grabbing" 9.

302 African Biodiversity Network "Biochar land grabbing" 3-4.

technologies and techniques and improved GMO rice seeds that are resilient to the changing climate.<sup>303</sup> The use of these farming techniques and improved GMO seeds in Cameroon as in elsewhere<sup>304</sup> has the potential to ensure continuous rice production in the likely event of severe drought that may negatively impact on rice production.

#### 2.7.2.2 Social impacts

It has been stated that foreign agricultural investors' commitment to job creation may not involve express provisions predominantly in terms of the numbers of workers, especially in terms of full-time or part-time employment, seasonal or permanent, and skilled or unskilled workers.<sup>305</sup> Nevertheless, FAI may act as a catalyst for the social empowerment of local communities in that it may provide direct and/or indirect employment opportunities for members of communities where FAI takes place.<sup>306</sup>

From a developmental standpoint, some FAI projects require the building of infrastructure in areas where infrastructure does not exist. This could include roads, schools and hospitals, which would entail the provision of potable water and electricity.<sup>307</sup> The construction of this infrastructure as a result of FAI projects not only helps to improve the livelihoods of the local communities in a social setting, but it also improves and augments social development in the country.

Further, from a legal perspective and in contrast to many existing approaches to FAI land deals, FAI projects, if properly contracted and enforced, could significantly curb corruption, promote accountability, and ensure transparency and respect for the fundamental rights of local communities. This could be attainable if both the foreign

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303 Grain 2010 <http://farmlandgrab.org/16485> accessed 5 October 2015.

304 Modern farming techniques, technologies and improved GMO rice seeds has been a useful catalyst for climate change adaptation in Thailand. For details, see Kawasaki 2010 <http://ourworld.unu.edu/en/climate-change-adaptation-for-thailands-rice-farmers> accessed 4 January 2016.

305 Cotula *Land deals in Africa* 26.

306 IFPRI "World Investment Report" xviii; Lverage "Responding to land grabbing" 4. See further Cotula *Land deals in Africa* 26.

307 Cotula *et al Land grab or development opportunity?* 58-59.

investors and the host countries insist on respecting and enforcing the rights of the local communities who bear the burden of many impacts resulting from FAI.<sup>308</sup>

### 2.7.2.3 Economic impacts

Although FAI may deprive local communities of key natural resources on which they depend, it is often argued that FAI could provide a win-win situation and be a viable means of increasing capital flow to the agricultural sector and to the coffers of a country more generally.<sup>309</sup> Also, agricultural and related technology transfer from investors' home countries to host countries may have the potential of substantially increasing agricultural productivity and ultimately food supply and security, including with respect to local markets.<sup>310</sup>

FAI particularly has the potential to considerably increase the GDP of the host countries.<sup>311</sup> Similarly, through FAI local producers could enter into partnership agreements or production contracts with investors for the production of sugar cane and oilseeds, for instance.<sup>312</sup> These partnership agreements could considerably boost local production, generate revenue and ultimately alleviate poverty. They could also lead to capacity building in the agricultural sectors among local producers.<sup>313</sup>

FAI projects may promote, reinforce and enhance economic co-operation between investors and host countries. This could be inscribed in the economic agreements between investors and host countries aimed at facilitating land acquisition for FAI projects. These agreements also have the potential to promote economic development

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308 De Schutter 2009 <http://www2.ohchr.org/english/issues/food/docs/BriefingNotelandgrab.pdf> accessed 27 November 2015; Narula "The global land rush" 27.

309 Friis and Reenberg "Land grab in Africa" 1; Daniel and Mittal *The great land grab* 9-10.

310 Economic Report "Land grabbing" 6.

311 Krumova 2011 <http://www.theepochtimes.com/n3/1493820-land-grabs-in-africa-threaten-greater-poverty/> accessed 26 February 2015.

312 Hall 2011 *RAPE* 206; Haberli and Smith 2013 <http://www.iisd.org/itn/2013/03/22/land-grab-v-food-security-can-global-regulation-cope/> accessed 19 November 2015.

313 Haberli and Smith 2013 <http://www.iisd.org/itn/2013/03/22/land-grab-v-food-security-can-global-regulation-cope/> accessed 19 November 2015.



via the donation of infrastructural and financial aids to assist in improving the living standards in the host country.<sup>314</sup>

Moreover, despite its environmental impacts, FAI enables uncultivated land in the host country to be cultivated, which could aid in increasing the food supply necessary to supplement local and global food security.<sup>315</sup> This is especially true for sub-Saharan Africa, which hosts three-quarters of the world's FAI projects.

Finally, the taxing of leased land generates government revenue.<sup>316</sup> These revenues could be ploughed back into the economy to undertake socio-economic development projects for the benefit of the greater population, to build schools and hospitals, for instance, as well as to provide water and electricity to local inhabitants where this is lacking. Similarly, although most FAI projects do not generate immediate income through tax, it could be argued that income tax incentives generated in the long run from FAI projects could significantly contribute to the public revenue of the host country.

## **2.8 Chapter summary**

This chapter has shown that the rush for potential agricultural farmland by foreign investors in sub-Saharan Africa is not an entirely new phenomenon. Since the 18<sup>th</sup> century, European countries have been invading African territories in the quest for *inter alia*, raw materials, labour and markets. This practice still persists today in the guise of FAI, which is tantamount to land grabbing, and because of the similarities with the contemporary land rush, FAI has been described as a re-surfacing of the scramble for Africa.<sup>317</sup> Although investors in FAI activities are also from emerging economies such as China and India, it is noted that most investors are from Europe. It is observed in this chapter that the major economic crisis of 2007-2008 was primarily responsible for the

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314 Cotula *et al* *Land grab or development opportunity?* 81.

315 Economic Report "Land grabbing" 6.

316 Cotula *Land deals in Africa* 27; Cotula *et al* *Land grab or development opportunity?* 78-80.

317 Ingwe *et al* 2010 *JSD* 29-30; Southall "Scrambling for Africa" 10; Melber and Southall "Introduction" xix-xxvii.

quest for land in developing countries generally and Africa in particular. As there is the perception that land in Africa is free, readily available and abundant, it is noted that the practice of land grabbing is not likely to stop in future. Instead it may accelerate, especially as changing diets, demographic factors, changing climatic conditions, the insatiable demand for biofuel and energy, and the need to produce food crops in a quantity commensurate with the rapidly growing world population, signal the imminence of future pressure on land and its resources.

This chapter defined FAI as Investment in the agricultural sector of a host country by a foreign investor, which could be a foreign government or a corporation, and it is directed towards the production of agricultural produce for use in, among others, the food and energy sectors. The desire of African states to boost their economies and increase economic growth and alleviate poverty has in recently years attracted numerous FAI activities in Africa. The governments of some countries enter into contractual land deals with foreign investors to lease or sell vast hectares of land for these purposes. The foreign investors engaged in these activities are multifaceted and include multinational companies, international organisations like the World Bank, and foreign governments, among others.

It has also been stated that these deals often have serious deficiencies as they significantly undermine people's substantive and procedural rights-based interests. Although it is evident from the above analysis that FAI activities have both positive and negative impacts, the negative impacts of the activities out-weigh the positive impacts. Prevalence of these adverse impacts has motivated a call for the adoption of a RBA as a way to keep the abuses related to FAI in check. This call resonates with the ultimate objective of this study, which is to examine how the procedural aspects of a RBA could be used to provide adequate protection of people's rights and interests during the implementation of FAI practices in Cameroon, Uganda and South Africa. However, in order to understand how this approach could be helpful, it is necessary to examine the nature of a RBA, its link with FAI governance, and its constituent elements. The

subsequent chapter accordingly examines the theory of a RBA in the context and as a critical element of good FAI governance.

## **CHAPTER 3**

### **THEORETICAL FOUNDATIONS**

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#### **3.1 Introduction**

The previous chapter provided an exposition of what FAI entails and noted that the common practice of FAI activities has the potential to significantly undermine the realisation of the rights and interests of local communities. It must be emphasised that the impacts of FAI activities are not limited only to procedural concerns such as access to information and public participation, but also relate to substantive issues such the right to life and the right to a healthy environment. However, concerns about the recognition of and respect for people's procedural rights constitute the main focus of this study, which is to investigate how the procedural aspects of a RBA could be used to better protect people's substantive and other interests from the deleterious effects of FAI, with particular reference to Cameroon, Uganda and South Africa. In support of the central research question of this study, there is a need to interrogate certain concepts that are important and that underpin this study. The present chapter thus has two objectives, namely to provide an understanding of what good FAI governance is and what a RBA to FAI governance entails, as a crucial matter of good FAI governance. In order to achieve this aim, the chapter examines pertinent core concepts such as governance, good governance, FAI governance, good FAI governance, and procedural rights which relate either directly or indirectly to the central theme of this research. The intention, however, is not to undertake a critical or analytical discussion of these concepts as they occur in the comprehensive body of literature, but rather to provide some understanding of the concepts and to make linkages within the context of the central theme of this research. The chapter further examines the meaning of rights, their constituent elements, the notion of a RBA generally, and the strengths and weaknesses of a RBA. It also examines the notion of a RBA to FAI governance and illustrates its relevance in the context of FAI, notably to the extent that the RBA is linked with and could ensure good FAI governance. As will become evident, by

promoting and respecting people's right of access to information, public participation and the right of access to justice during FAI regulation and implementation, a strong regime of governance in the guise of "good FAI governance" could be implemented to protect people's substantive rights-based interests. It is suggested that the implementation of these rights during FAI regulation may act as a possible check to corruption and the lack of accountability and transparency that currently characterises some FAI deals.

In order to satisfy the theoretical premise of the section of this study, the following questions are posed and addressed:

- (1) What is FAI governance and what is its relevance in the context of FAI?
- (2) What is good FAI governance?
- (3) What does a RBA to governance generally entail and what is a RBA to FAI governance?
- (4) Why are rights important and how are they relevant and useful in governance?
- (5) What are procedural rights, what are their constituent elements and how do they relate to substantive rights?
- (6) What are the strength and weaknesses of procedural rights, and how do they link with good FAI governance?

### **3.2 Good FAI governance**

The concept of good FAI governance used in this research relates to the most appropriate manner to regulate FAI activities while respecting and protecting people's rights and interests. The concept emerges from the fusion of an understanding of the notions of governance and good governance. To this end, to understand the meaning of good FAI governance, it is important first of all to understand what governance is on the one hand, and what good governance is on the other hand.

### 3.2.1 Governance

#### 3.2.1.1 Introduction and conceptual background to governance

The concept of governance is very old.<sup>1</sup> The term is derived from the Middle English word *goveranunce* and is used as a synonym for government, administration, rule or authority,<sup>2</sup> or the “act or process of governing.”<sup>3</sup> The concept of governance has been in use since ancient times to “convey the idea of piloting, leading, directing, steering and/or guiding.”<sup>4</sup> During that time the ruler or the governed exerted a certain degree of rule or authority through uncoded rules.<sup>5</sup> The rules were important to manage societies, and the rulers were meant to be accountable to the people they ruled by complying with certain rules, usually established in law.

Governance generally speaking could take two forms. First, it may take the form of participatory governance, which involves the interplay of many actors including the public and private sectors, civil society organisations and NGOs. It can also be self-organising, in which case there is only one actor, the state.<sup>6</sup> Although governance consists of an array of players including the state and non-state actors, emphasis in this thesis is placed on the state in the governance paradigm. The reason for this is that the state most often solely negotiates and conclude FAI deals with foreign investors. As a result, it is important to understand how the state as a duty-bearer establishes rules, principles, guidelines, standards and norms in the regulation and implementation of FAI activities, to the extent that their observance protects people’s rights and interests during FAI activities.

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1 Căjvăneanu “A genealogy of government” 52; Weiss 2000 *TWQ* 795.

2 Căjvăneanu “A genealogy of government” 52.

3 Ali-Khan “The relevance of good governance concept” 2.

4 Kotzé *Global environmental governance* 54.

5 Anghie 2000 *VLR* 897-900.

6 Guy Peters “Is governance for everyone?” 1.

It has been suggested that governance appears to have a strong universal effect, insofar as it acts both as an end and as a means to an end.<sup>7</sup> Governance as an end interrogates for example what government needs to do in order to promote and ensure development for the citizens of a country.<sup>8</sup> For the World Bank, governance is a means, because it ensures and promotes accountability, transparency and respect for the rule of law insofar as development-oriented projects are concerned.<sup>9</sup> The quality of governance in a country is perceived to reflect an essential determinant of a country's economic development.<sup>10</sup> Governance depends on both the political leadership's commitment and the capacity of a state to implement and enforce appropriate development-oriented policies.<sup>11</sup>

By contrast, according to Meier, lack of/or weak governance represents "the primary constraint to moving towards a higher trajectory of development."<sup>12</sup> This would imply, for example, that the state of governance in a country has the potential to reflect the level of legal, institutional and administrative benefits a government provides to its citizens. Thus, while a strong regime of governance provides citizens with powerful measures to protect their fundamental rights as well as the means of exercising these rights, a weak governance regime often provides citizens with little or no protection of their rights,<sup>13</sup> retards economic growth and development, and consequently acts as a facilitator for foreign investors to violate people's human rights, for example.<sup>14</sup> This is predicated on evidence that FAI investors on balance prefer investing in countries with particularly weak land governance structures and practices, such as Cameroon and

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7 Anghie 2000 *VLR* 893.

8 Andrews "An ends-means approach to looking at governance" 3.

9 Lateef *Governance and development* 3, where the Bank defines governance from a purely economic perspective as a necessary means to attain the desired economic growth; Ali-Khan "The relevance of good governance concept" 5.

10 Brautigam 1992 *SCID* 3; Isham *et al* "Governance and the returns to investment" 1; Ahrens *Governance and economic development* 120; Kaufmann and Kraay "Governance indicators" 1.

11 Ahrens *Governance and economic development* 117.

12 Meier *Leading issues in economic development* 65.

13 A system of weak land governance suggests, for example, that the rights of local communities' to their land are be unprotected. See Mabikke "Escalating land grabbing in post-conflict regions of Northern Uganda" 21.

14 Saladin 1999 *TLCP* 194-195; Dadzie 1994 *TLCP* 531-537.

Uganda,<sup>15</sup> which in turn suggests the need for strong governance structures, principles, norms, rules and measures for checks and balances, which could assist in accomplishing the state's various tasks, including the protection of local communities' rights and interests.

In this regard, it has been argued that governance may either involve the manner in which a state adapts to its external environment, or the co-ordination of social systems, and particularly the importance and role of the state in the co-ordination process.<sup>16</sup> The fact that the state remains the sole sovereign authority in governance (despite the continued rise of many non-state governance actors) makes its role critically important for the establishment of rules and regulations, standards, norms and principles to co-ordinate social systems with the aim of delivering acceptable outcomes, including transparency, accountability and inclusive governance practices.<sup>17</sup> To this end, the proper functioning of any society relies on rules and regulation, standards, norms and principles to help nurture human co-operation and foster solidarity in order to achieve sound development.<sup>18</sup>

By contrast, a system or society without rules, policies or standards to monitor and regulate human activity breeds inconsistency, incoherency and destabilisation.<sup>19</sup> Governance sets rules and policies that regulate human activity and provide a platform in terms of which those who rule are accountable to the public in decisions-making processes.<sup>20</sup> Governance has been considered to include the setting of goals for society and the finding of means to reach these goals.<sup>21</sup> Put differently, governance relates to the establishment of rules, mostly encapsulated in law, that people largely depend on in

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15 For Cameroon, Ebge 2001 *JAL* 31-32; Wily-Alden *Whose land is it?* 11. For Uganda, Mabikke "Escalating land grabbing in post-conflict regions of northern Uganda" 1; Muriisa *et al* "Land deals in Uganda" 19; Anseeuw *et al* *Transnational land deals for agriculture in the global South* 37.

16 Pierre "Introduction" 3.

17 Hirst From *statism to pluralism* 3; Hirst "Democracy and governance" 24.

18 Hirst From *statism to pluralism* 3; Hirst "Democracy and governance" 24.

19 Cornell *et al* "The concept of governance" 5.

20 Cornell *et al* "The concept of governance" 3; Fromkin *The question of government* 91.

21 Guy Peters "Is governance for everyone?" 2.



order to co-ordinate their activities and achieve desired goals.<sup>22</sup> The establishment of rules for governance purposes is important for a number of reasons. First, rules illustrate how government makes decisions. Second, rules also demonstrate and specify governance responsibilities and obligations, the type and scope of authority. Third, governance provides an opportunity for people to resolve conflicts and to protect their rights and interests, notably *vis-à-vis* the state.<sup>23</sup>

Therefore, given that the governance structure of most sub-Saharan countries is poor and weakly developed,<sup>24</sup> emphasis needs to be placed on reforming the rules, principles and norms relating to the land governance structure in sub-Saharan Africa. Improving the land governance structure, as stated by the World Bank's Director for Africa, Diop Makhtar, could have many advantages for Africa.<sup>25</sup> First, it could ensure rapid economic growth. Second, it could create more jobs, especially for women, who make up an estimated 70 per cent of Africa's farmers and who are often excluded from the benefits arising from possessing property rights, including the ownership of land. Third, improved land governance tenure in sub-Saharan Africa could have the potential to lead to a significant shift in the current situation in land management, which impinges on the customary land rights of local communities.<sup>26</sup>

### 3.2.1.2 Governance defined

Governance has many definitions<sup>27</sup> and it is difficult to state with precision its exact meaning.<sup>28</sup> The use of the term as a "catchphrase" might be a plausible reason for the

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22 Cornell *et al* "The concept of governance" 3; Fromkin *The question of government* 91.

23 Cornell *et al* "The concept of governance" 4.

24 Anghie 2000 *VL* 893.

25 The World Bank Press Release 2013 <http://www.worldbank.org/en/news/press-release/2013/07/22/how-africa-can-transform-land-tenure-revolutionize-agriculture-end-poverty> accessed 19 January 2016.

26 The World Bank Press Release 2013 <http://www.worldbank.org/en/news/press-release/2013/07/22/how-africa-can-transform-land-tenure-revolutionize-agriculture-end-poverty> accessed 19 January 2016.

27 Stoker 1998 *ISSJ* 18; Rhodes "Governance and public administration" 55. Governance is also related to other concepts such as regulation, government, and management. However, since these concepts mean essentially the same thing but are used in different contexts, they will not be examined in this

lack of a unanimous definition of the concept.<sup>29</sup> It is not the objective of this section to examine all the various definitions of the concept. Instead, some of these definitions will be used to provide an overview of what the concept of governance might entail, specifically in the FAI context.

Governance can be used to refer either to a novel process of governing, or a changed condition of ordered rule.<sup>30</sup> It also refers to new methods by and through which a society is governed.<sup>31</sup> Governance is reported to have at least five uses that refer to the minimal state: corporate governance; the new public management; good governance; socio-cybernetic systems; and self-organising networks.<sup>32</sup> Rhodes considers governance to be a self-organising, inter-organisational network that is principally interdependent, where governance is a synonym for government.<sup>33</sup> It has been argued that self-organising networks of social actors including public and private actors as well as civil society organisations can provide more effective, more humane and more democratic alternatives to governance than top-down and pure state-based institutions.<sup>34</sup> This implies that governance must be perceived as a change in the meaning of “government” to suggest a new process of governing; or a changed condition of ordered rule; or the new open-ended bottom-up method by which a society is governed,<sup>35</sup> taking into consideration that governance does not rely on a single (government) centre, but instead involves multiple centres where non-state actors also play an important role.<sup>36</sup> Although the above may mean limiting governance to a central authority or actor, it must be noted that the responsibility of a central authority remains

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study. For a more complete understanding of this, see Kotzé *Global environmental governance* 191-193; Segger and Khalfan *Sustainable development law* 89-90; Tim *International courts and environmental protection* 7.

28 Ahrens *Governance and economic development* 120; Stoker 1998 ISSJ 18; Rhode 1996 *Ps* 652; Rhodes *Understanding governance* 47.

29 Ahrens *Governance and economic development* 120.

30 Finer *Comparative government* 3-4.

31 Finer *Comparative government* 3-4.

32 Rhodes 1996 *PS* 653; Rhodes *Understanding governance* 47.

33 Rhodes 1996 *PS* 660; Rhodes *Understanding governance* 53; Bonafous-Boucher 2005 *JEEN* 524.

34 Guy Peters “Is governance for everyone?” 1.

35 Rhodes *Understanding governance* 46.

36 Rhodes *Understanding governance* 15.

to enhance the interdependence of the array of actors involved in the social, political and administrative fields.<sup>37</sup> That said, despite a strong move towards a more aggregated understanding of the multifarious governance concept where non-state actors play an increasingly important role, the state remains and probably will remain for the near future, the main governance actor.

The World Bank considers governance from a purely economic-development perspective to denote how power is exercised in the management of a country's economic and social resources for developmental purposes.<sup>38</sup> From this view three aspects of governance are discernible: first, the form of the political regime; second, the process through which authority or power is exercised in the management of a country's resources; and finally, the capacity of a government to design, formulate and implement policies in managing its resources and other interests.<sup>39</sup>

For Kauffman *et al*,<sup>40</sup> governance implies the tradition and institution through which authority in a country is exercised, including processes to select and replace a government, the capacity of the government to formulate and implement policies, and the respect paid to citizens' rights by state institutions, including the management of socio-economic interaction.<sup>41</sup> Along the same lines, governance has been further defined as the capacity of societies working through government and/or through organisations in civil society to steer themselves and to achieve collective goals.<sup>42</sup>

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37 Rhodes "Governance and public administration" 58; Jessop 1995 *ES* 317; Jessop "The governance of complexity and the complexity of governance" 95.

38 Lateef *Governance and development* 3.

39 Lateef *Governance and development* 3.

40 Kauffman *et al* 2010 <http://info.worldbank.org/governance/wgi/pdf/WGI.pdf> accessed 15 January 2016.

41 For other definitions of the concept of governance see generally Frischtak "Governance capacity and economic reform in developing countries" vii; Bratton and Van de Walle "Towards governance in Africa" 30; Hyden "Governance and the study of politics" 7; Kjaer "Governance" 6; Dethier "Governance and economic performance" 5; Bernstein 2005 *PGDT* 652; Pierre "Introduction" 4; Young *International Governance* 15; Falkner 2003 *GEP* 73.

42 Guy Peters "Is governance for everyone" 3.

The Commission on Global Governance (CGG) considers governance a management process that involves both private and public institutions, as well as individuals working in these institutions. For the Commission, governance is:

...the sum of the many ways individuals and institutions, public and private, manage their common affairs. It is a continuing process through which conflicting or diverse interests may be accommodated and co-operative action may be taken. It includes formal institutions and regimes empowered to enforce compliance, as well as informal arrangements that people and institutions either agreed to or perceive to be in their interest.<sup>43</sup>

It is evident here that governance is understood by some to be a management process and that these processes must be transformed to reflect the governing structure of the type of collectivities involved.<sup>44</sup> These collectivities include the state and government, NGOs, transnational corporations and intergovernmental organisations. In this regard, Neuwmann<sup>45</sup> argues that what is material in governance is the type of actors involved and not the processes, particularly as the multiplicities of actors in governance have the potential to strengthen and facilitate democracy and the rule of law, as the latter aspects could potentially promote good governance.<sup>46</sup>

Notwithstanding the above, the definition by CGG highlights some indicators of governance. These include: voice and accountability, political stability and absence of violence, the rule of law, government effectiveness, regulatory quality, and the control of corruption.<sup>47</sup> These indicators are inherently core features of procedural rights whose basis and relevance form the crux of this study within the framework of FAI land deals.

Collectively considering the array of governance ideas discussed above, a working definition of governance developed for the purposes of this research is:

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43 The Commission on Global Governance *Our global neighbourhood 2*; Hirst *From statism to pluralism* 3; Hirst "Democracy and governance" 24.

44 Rosenau "Governance in a new global order" 8.

45 Sending and Neuwmann 2006 *ISQ* 654.

46 Mortia and Zaelke "Rule of law, good governance and sustainable development" 15; Zaelke *et al* "What reasons demands" 29-82; Klein *et al Concepts and principles v*; Johnston date unknown <http://unpan1.un.org/intradoc/groups/public/documents/un/unpan010193.pdf> accessed 21 April 2015.

47 Ali-Khan "The relevance of the concept of good governance" 3.

Governance is a decision-making process, including the mechanisms, institutions and processes that are normatively based on rules, principles, and standards through which authority in a country is exercised in relation to the conduct of public and private affairs; and principally involves the making of problem-solving decisions with respect to developmental issues in the public and private domain. Governance specifically entails the involvement of both public and private actors in decision-making processes, that must be transparent, accountable and efficient, to serve the general public interests.

From the working definition of governance developed in this thesis, it emerges that governance is closely related and akin to authority,<sup>48</sup> notably with respect to questions such as; who has authority and in relation to what? and for present purposes *land authority*. Despite, the multilevel of governance and the actors involved, this thesis focuses on the important role of the state. Because the state the principal and most important actor in governance has absolute control over its sovereign national territory and this has translated into a significant shift over sovereign national territory to land,<sup>49</sup> permitting and allowing the state to have authority over land-related matters and even so during FAI activities. Still, it is important to bear in mind that governance takes many and varying forms, especially to the extent that they might relate to a specific regulatory theme such as corporate governance, environmental governance<sup>50</sup> and, for our present purposes, FAI governance.

### 3.2.2 *Good governance*

#### 3.2.2.1 Introduction and conceptual background to good governance

To properly appreciate the notion of “good FAI governance”, which this research proposes as an important tool for the protection of people’s rights and interests during FAI activities, an exposition of the concept of good governance is necessary to shape an understanding of what “good FAI governance” entails. To this end, it must be noted that good governance is a specific approach to governance which places a high

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48 Margulis *et al* 2013 *Globalisation* 10.

49 Sassen 2013 *Globalization* 27.

50 For details on corporate governance and environmental governance, see generally; Solomon *Corporate governance*; Ticker *Corporate governance*; Walker *A review of corporate governance*; Kotzé *Global environmental governance* 83-119; Kotzé “Environmental governance” 103-125 respectively.

premium on the rule of law including respect for fundamental human rights. To this end, procedural rights, notably as means to achieve and maintain good governance, are necessary and important elements of good governance. The importance of good governance is increasingly being observed in development policies, strategies to speed up development processes, measures to change development institutions, and for the enhancement of the quality of sectoral development interventions.<sup>51</sup> Although the concept emerged around the time of the collapse of the Berlin Wall on 9 November 1989, it has come about much earlier.<sup>52</sup> From the perspective of world governance, following the end of the Cold War there was no need to get the support from or give support to regimes with dubious track records with regard to the manner in which they handled their internal affairs, including human rights issues.<sup>53</sup> Rather, it was time to set conditions to and prescriptions for the manner in which certain "client states"<sup>54</sup> went about the management of their governmental affairs.<sup>55</sup>

To this end, the concept of good governance continues to serve as a guiding principle for donor agencies and international financial institutions and powerful nations,<sup>56</sup> to spur sustainable economic development by demanding adherence to proper administrative processes with regards to the handling of development assistance by recipient governments, mostly in developing countries,<sup>57</sup> and to require them to institute efficient policy instruments for this purpose.<sup>58</sup> Thus, strengthening good governance particularly in developing countries has become both an objective of and a condition for, development assistance.<sup>59</sup> From a World Bank perspective, the foregoing

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51 Wohlmuth "Good governance and economic development in Africa" 6.

52 Doornbos 2001 *JDS* 97.

53 Doornbos 2001 *JDS* 97.

54 A client state is a state that is economically, politically or militarily subordinate to another more powerful state in international affairs. Examples of client states include puppet states, colonies, protectorates, vassal states and tributary states.

55 Doornbos 2001 *JDS* 97.

56 Olowu, "Accountability and good governance" 6-7; Helu "Tradition and governance" 2-3; Larmour "Making Sense of good governance" 3-4; Biyanka 1999 *IJSE* 2-3.

57 Angie 2000 *VLR* 893.

58 Doornbos 2001 *JDS* 93.

59 Santiso 2001 *GPPR* 3.

suggests that good governance is predicated on economic reasons, a system which has been equated with sound development governance<sup>60</sup> because the inefficient and persistently corrupt administration of developing countries led to a failure of the structural adjustment programs (SAP) and acted as an impediment to economic growth.<sup>61</sup> On this basis the World Bank noted that the reason for poor economic growth and development in Africa lies in weak governance,<sup>62</sup> which suggests that should Africa aim at achieving rapid economic growth and development, the “governance crisis” needs to be addressed. Matters requiring attention would be such as the following: officials serving their own interests without being held accountable; reliance on personal networks for survival rather than on holding the state accountable; personalised politics and patronage; illegitimate leadership; and excessive control of the flow of information.<sup>63</sup> However, it has been argued that because the World Bank and other financial institutions such as the International Monetary Fund (IMF) are primarily concerned with facilitating market liberalisation and trade in developing countries, they do not observe and respect people’s rights, especially procedural rights, which are intrinsic features of governance.<sup>64</sup> Given that the concept of good governance is important for donor countries in the context of development co-operation, the African Development Bank outlined three important aspects of the concept that are provided below with regard to development management and state reform in Africa.<sup>65</sup>

Firstly, considering that good governance is considered to be a necessary precondition for sustainable economic growth, in Africa as elsewhere, it is important to create the basic extra-economic conditions such as effective public administration, a functioning

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60 Santiso 2001 *GPPR* 5; De la Harpe *et al* 2008 *PELJ* 3.

61 De la Harpe *et al* 2008 *PELJ* 3; Saladin 1999 *TLCP* 195; Ali-Khan “The relevance of the concept of good governance” 3.

62 Saladin 1999 *TLCP* 195; Ali-Khan “The relevance of the concept of good governance” 3.

63 De la Harpe *et al* 2008 *PELJ* 3-4.

64 Olowu “Public accountability and good governance” 5-6.

65 The African Development Bank (ADB) *African development Report* 176-191; Wohlmuth “Good governance and economic development in Africa” 6.

legal framework, efficient regulatory measures and a transparent system for financial and legal accountability that are crucial for the growth of African economies.

Secondly, good governance has to do with the developmental potentials and the democratic challenges inherent in Africa, including but not limited to accountability, the rule of law, freedom of expression and association, and the public choice of government, all of which are crucial for Africa's development.

Thirdly, despite the fact that development paths may be different in the context of the systems of market oriented economies, good governance indicators may also serve to consolidate market reforms through the adaptation and continuous improvement of market-oriented systems in specific development contexts.<sup>66</sup> Evidently good governance indicators such as transparency and accountability may significantly nurture and promote sustainable development practices, including those related to FAI projects.

### 3.2.2.2 Defining good governance

As with the concept of governance, the concept of good governance has many definitions, and serves as a blanket phrase used for a wide variety of purposes.<sup>67</sup> This seems to indicate that a commonly held definition of good governance is unlikely.<sup>68</sup> The subsequent section considers some of the existing definitions fit for the purposes of this study.

Good governance fundamentally entails the proper process of making and implementing sound decisions.<sup>69</sup> This does not mean that good governance provides a platform to make invariably correct decisions *per se*, but rather that good governance is concerned with the best possible process of making these decisions and the best possible outcomes from the decisions. This is evident in that national policies have long-term

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66 ADB *African development Report* 176-191.

67 Kotzé "Environmental governance" 119; De la Harpe *et al* 2008 *PELJ* 6. For a detailed understanding of the various definitions of good governance, see generally The World Bank *Report on governance* vii.

68 Doornbos 2001 *JDS* 94.

69 Kotzé "Environmental governance" 119.



impacts, especially when they are improperly created and implemented, and when they could lead to harmful effects in future. Hence it is argued that good governance is predominantly concerned with improving the quality of governance, which is usually assessed by examining the state of various indicators such as the rule of law, development and democracy, political stability, anti-corruption measures, accountability and transparency, and the presence of proper administrative procedures, among others.<sup>70</sup> The World Bank *Report on Governance* defines good governance as:

Predictable, open, and enlightened policymaking (that is, transparent processes); a bureaucracy imbued with a professional ethos; an executive arm of government accountable for its actions; and a strong civil society participating in public affairs; and all behaving under the rule of law.<sup>71</sup>

Sheng describes good governance by means of eight major elements or characteristics and states that good governance is participatory, consensus oriented, accountable, transparent, responsive, effective and efficient, equitable and inclusive, and that it is based on the rule of law.<sup>72</sup> It contributes to ensuring that corruption is minimised, the views of minorities are taken into account, and the voices of the most vulnerable are heard in decision-making processes. It is also more responsive to both the present and the future needs of the society.<sup>73</sup>

The African Development Bank considers good governance as a normative concept that includes six elements: the legitimacy of the government, which is based on popular sovereignty and international recognition; an appropriate legal framework that guarantees respect for the rule of law; popular participation that allows for the active involvement of people at all levels of decision-making; freedom of association and expression that allows for the formation of civil society organisations and a critical evaluation of government decisions; bureaucratic accountability and transparency that

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70 Kotzé "Environmental governance" 119.

71 The World Bank *Report on governance* vii.

72 Sheng date unknown <http://www.unescap.org/sites/default/files/good-governance.pdf> accessed 8 October 2015.

73 Sheng date unknown <http://www.unescap.org/sites/default/files/good-governance.pdf> accessed 8 October 2015.

provide for and guarantee impersonality in decision-making by public officials by ensuring a uniform application of the rules of law; and rationality of the governmental organisational structures, which incorporates a public administration system that is highly structured and characterised by impersonality and the predictable behaviour of government officials.<sup>74</sup> It is argued that these elements of good governance are strikingly related to the aims of development projects, including FAI, since they serve to ensure and promote transparency and accountability.<sup>75</sup> In addition, the *White Paper on Integrated Pollution and Waste Management for South Africa* (WPIPWM) considers good governance to depend on mutual trust and reciprocal relations between a government and its people that must be based on the fulfilment of constitutional, legislative and executive obligations and the acceptance of authority, responsibility, transparency and accountability.<sup>76</sup>

What is evident from the above definitions and discussion of good governance is that the concept and practices of good governance encompass core elements which include transparency, democracy, participation, representation, accountability, the rule of law, effectiveness and improved service delivery and, respect for human rights.<sup>77</sup> To this end, good governance makes further demands of the processes of decision-making and the formulation of public policy, in that it requires the public sector to create a legitimate, effective and efficient framework for conducting public policy, which means that public affairs must be managed in a transparent, accountable, participatory and equitable manner.<sup>78</sup>

The link between human rights and good governance is evident because although these elements of good governance are crucial to addressing governance deficiencies, it must be noted that they are also important to address instances where human rights are

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74 ADB *African development Report* 177.

75 Wohlmuth "Good governance and economic development in Africa" 7.

76 The *White Paper on Integrated Pollution and Waste Management for South Africa* 70.

77 Kotzé "Environmental governance" 120; De la Harpe *et al* 2008 *PELJ* 7.

78 Santiso 2001 *GPPR* 5.

threatened.<sup>79</sup> Although human rights empower people to assert their rights, they cannot be respected, protected, promoted and fulfilled in a society that is void of good governance practices.<sup>80</sup> Hence, human rights and good governance are mutually reinforcing, and it is necessary for all states and foreign investors to adhere to good governance during FAI practices in view of the need to respect and protect people's human rights.<sup>81</sup>

The link between human rights and good governance seems to suggest that developing countries are the focal point of human rights concerns, as it is usually the "aberrant developing world that both violates and engages in bad governance."<sup>82</sup> In the area of development activities such as FAI, it is compelling to think that a lack of good governance, and predominantly good land governance, is a possible violation of people's human rights, including the rights to land and food, among others. For example, it has been noted that the weak land governance in Uganda, which lacks institutional capacity, has permitted a number of human rights violations related to the rights to food, land, and environmental rights.<sup>83</sup> On this premise it is reasonable to infer that good governance, and particularly good land governance, may be a plausible way of addressing the many adverse impacts of FAI. For these to be addressed the current weak land governance system of most African countries would have to be reformed and adhere to the procedural minimum requirements of the RBA, including inclusivity in decision-making, transparency and accountability.

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79 For detail understanding of the link between good governance and human rights, see Reif 2000 *HHRJ* 1-72; HRBA Portal date unknown <http://hrbaportal.org/faq/what-is-the-relationship-between-human-rights-and-good-governance> accessed 20 March 2015.

80 HRBA Portal date unknown <http://hrbaportal.org/faq/what-is-the-relationship-between-human-rights-and-good-governance> accessed 20 March 2015.

81 Anghie 2000 *VLJ* 893.

82 Anghie 2000 *VLJ* 895.

83 Mabikke "Escalating land grabbing in post-conflict regions of northern Uganda" 22.

### 3.2.3 FAI governance

As noted in the previous chapter, FAI governance has to do with the setting of rules and standards to regulate agricultural investment by an investor in a foreign country.<sup>84</sup> It entails that the mechanisms, processes and institutions of FAI governance should permit ordinary citizens and groups to articulate their interests, exercise their fundamental rights to meet their obligations, and it must provide a forum in which to mediate their differences.<sup>85</sup> This suggests the creation of both formal and informal institutions responsible for ensuring, promoting and enforcing transparent and accountable governance where FAI is concerned; including creating an enabling environment in which there are clear procedures that guarantee people the freedom to participate in decision-making, and an environment in which information is transparent and where government authorities are accountable.<sup>86</sup> A framework of FAI governance, and particularly good FAI governance, if properly established and applied, could lead to the increased promotion and exercise of the rights of local communities,<sup>87</sup> which because of their marginalisation are unable to exercise their rights. Regrettably, this framework is not detectable in many current FAI land deals, which are not transparent, inclusive, or designed in a way that protects the rights and interests of local communities.<sup>88</sup>

It can be concluded from the above that the rigorous application of a FAI governance framework that is based on the RBA and that seeks to foster good governance has the potential to provide clarity relating to the identification of land, the incorporation of the interests of local communities, and the safeguarding of the fundamental rights of local communities more generally. Therefore, for the purposes of this study, a framework of “FAI governance” that could be called “good” refers to:

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84 See Chapter 1, section 1.3 of this thesis.

85 Simo “Land grabbing, governance and social peace-building issues in Cameroon” 2.

86 OHCHR 2006 <http://www.ohchr.org/Documents/Publications/FAQen.pdf> accessed 20 October 2015.

87 Tomuschat *Human Rights* 55.

88 Hall 2011 *RAPE* 195-196; Muriisa *et al* “Land deals in Uganda” 2; Kugelman “Introduction” 1; Cotula *et al* *Land grab or development opportunity* 68-70; Narula “The global land rush” 6.

Transparent, inclusive and accountable processes and institutions in a formal and informal regulatory setting that govern foreign agricultural land investment initiatives while protecting the rights and interests of local communities and affected stakeholders according to minimum standards set by, among others, law and legal constructs such as human rights.

Much as it could be accepted that investment in agriculture is crucial for enhancing food security, so too is it important and necessary to regulate FAI. The proper regulation of agricultural investment activities has the potential to effectively prevent or at least to mitigate its numerous deleterious impacts on host countries discussed in Chapter 2.<sup>89</sup> It could serve as an appropriate means of ensuring responsible agricultural investment that provides a win-win scenario for both foreign investors and host countries.

In the context of large-scale land acquisition, the relevance of respecting and protecting the rights and interests of local communities and affected stakeholders is expressed in two international soft law instruments which encourage, promote and ensure responsible FAI by means of a governance approach that respects, promotes and protects people's rights and interests in decision-making that may affect their rights to land and its resources. These are principles adopted by both the World Bank and FAO, and include PRAI and the Voluntary Guidelines. Given that these international instruments embody aspects of FAI governance such as transparency and accountability and participatory rights of local communities, these principles promote responsible FAI by calling on both foreign investors and host countries to observe and respect the fundamental human rights of local communities. This indicates, for instance, that all stakeholders within a proper business, legal and regulatory environment should conduct FAI and associated investments in a manner that conforms to the requirements of good governance.<sup>90</sup> The belief that good governance serves to promote and ensure transparent and accountable decision-making processes suggests that in order for there to be transparent and accountable FAI practices, FAI governance would have to provide a platform for establishing specific rules, principles, norms and standards to enable local

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89 In section 2.7.

90 Principle 3 of PRAI.

communities and affected stakeholders to be consulted and to participate in the negotiation of FAI deals.<sup>91</sup>

Nevertheless, the above principles, notably in the context of FAI, have been criticized for a number of reasons.<sup>92</sup> Firstly, they are considered to legitimize FAI and land grabbing. Opponents to applying these principles in the FAI context argue that facilitating the long-term corporate (foreign and domestic) takeover of rural people's farmlands is unacceptable, no matter which guidelines are followed.<sup>93</sup> Secondly, the principles are considered inadequate to regulate FAI because no amount of principles can remedy the effects of FAI and land grabbing.<sup>94</sup> Finally, the principles are thought to be too forgiving and too persuasive.<sup>95</sup> Premised on this, a need remains for host countries of FAI land deals to protect local communities from the deleterious impacts of FAI by making foreign investors to adhere to a set of rules/principles.<sup>96</sup>

### 3.2.4 *Good FAI governance*

Three core notions recur in the definitions of the concepts of governance, good governance and FAI governance. They are transparency and accountability, participation, and efficiency and effectiveness, which is arguably the central tenet of good FAI governance. Considering that FAI practices are often non-transparent and exclusionary, a framework of good FAI governance which promotes and ensures

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91 Principle 4 of PRAI.

92 For a detailed criticism of the PRAI, see De Schutter 2011 *JPS* 249-279; Grain "It's time to outlaw land grabbing and not to make it 'responsible' 1-6; The Global Campaign for Agrarian Reform Land Research Action Network 2010 <http://viacampesina.org/en/index.php/main-issues-mainmenu-27/agrarian-reform-mainmenu-36/927-why-we-oppose-the-principles-for-responsible-agricultural-investment-rai> accessed 19 January 2016.

93 Grain 2010 [https://www.grain.org/bulletin\\_board/entries/4224-stop-land-grabbing-now](https://www.grain.org/bulletin_board/entries/4224-stop-land-grabbing-now) accessed 7 April 2015; De Schutter 2010 <http://www.project-syndicate.org/commentary/responsibly-destroying-the-world-s-peasantry?barrier=true> accessed 7 April 2015; La Via Campesina date unknown <http://www.viacampesina.org/en/index.php/main-issues-mainmenu-27/agrarian-reform-mainmenu-36/1013-dakar-appeal-against-the-land-grab> accessed 14 July 2015; De Schutter 2011 *JPS* 254.

94 De Schutter 2011 *JPS* 254.

95 Focus on the Global South date unknown <http://focusweb.org/content/why-we-oppose-principles-responsible-agricultural-investment-rai> accessed 7 April 2015.

96 Grain 2011 <https://www.grain.org/article/entries/4227-it-s-time-to-outlaw-land-grabbing-not-to-make-it-responsible> accessed 18 January 2016.

transparent and accountable land deals and people's participatory rights in the context of FAI practices could serve as a counter measure to the current *status quo* of FAI deleterious practices. This section illustrates how this framework could be used to facilitate responsible and sustainable FAI practices that promote, respect and protect people's rights and interests.

#### 3.2.4.1 Transparency and accountability

A major factor inherent in all three FAI governance concepts discussed above is the desire to promote and ensure transparency and accountability by ensuring particularly that decision making processes adhere to relevant rules and regulations. Transparency and accountability require that public information is freely available to all those directly affected by a decision, while those making decisions must account for their decisions. Hence, while governance describes a neutral process, *good* governance requires the promotion of democratic values of transparency and accountability generally and in the context of development activities. In terms of FAI governance, because land deals are mostly concluded behind closed doors as it were (demonstrating a lack of transparency and accountability in land deals),<sup>97</sup> it is a requirement of FAI governance that the negotiation of large-scale agricultural land deals be transparent and that the host country should be accountable for its decisions. Consequently, it becomes evident that good FAI governance would require that FAI practices be conducted in a transparent and accountable manner to the extent that due regard is paid *inter alia* to people's human rights.

#### 3.2.4.2 Public participation

The three governance related concepts discussed earlier each employ the notion of participation in decision-making processes. Participatory rights entail the involvement of an array of participants including but not limited to NGOs, the private sector and civil society, as well as the public sector. Thus, participation which serves to highlight

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97 Cotula *The great African land grab?* 3-4.

transparency and accountability in decision-making processes means that good FAI governance requires appropriate measures that provide, allow and ensure local communities and affected stakeholders the opportunity and right to effectively participate in decision-making in FAI deals and practices which, as previously noted, are commonly non-transparent and exclusionary. Hence, a framework for good FAI governance that empowers local communities and affected stakeholders is crucial to enhancing participatory and democratic governance that enables local communities and affected stakeholders to further strengthen and assert both their rights and interests during decision-making and the implementation of FAI activities.<sup>98</sup>

#### 3.2.4.3 Efficiency and effectiveness

Although the three concepts do not directly allude to the notion of the efficiency and effectiveness of governance, it could be argued that they each inherently encapsulate these. This means that good FAI governance must be efficient and effective, especially considering that the processes and institutions responsible for the regulation of the internal affairs of the states and development issues have to meet the needs of society while making the best use of the resources that are available. The predominance of participation, transparency and accountability in good governance practices suggests that, as important goal, good FAI governance must ensure and promote efficiency and effectiveness in decision-making processes.

### **3.3 A RBA**

This part of the chapter draws a link between the RBA and FAI through the formulation of the concept of the RBA to FAI. It explores and provides clarity on what the RBA entails in general, and then it focuses on the relevance of the RBA for FAI. This section begins by exploring the meaning of procedural rights (the primary focus of the thesis), its constituent elements, and its strengths and weaknesses.

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98 Gaventa and Valderrama "Participation, citizenship and local governance" 2.



### 3.3.1 *Explaining a RBA*

It is trite that the international community recognises and acknowledges human rights as representing the inherent attributes of the human person, in part as they are cornerstones of human dignity and represent the maximum claims of society which must be respected in all activities for the attainment of justice.<sup>99</sup> It is important to bear in mind that what is today considered the RBA is akin to what scholars in development-related disciplines have termed “advocacy” and “empowerment work” that aims to build capability and consciousness, or functions in “participatory development” to engage beneficiaries in a more active process of societal transformation.<sup>100</sup> Generally, rights are formulated or recognised by diverse types of legal instruments. International human rights treaties, for example, contain a plethora of internationally guaranteed minimum standards that are understood to be universal, interdependent, and indivisible, and are unconditionally guaranteed to all persons without reservation. A corollary to the RBA is that duty-bearers, including member states to international human rights treaties, have an obligation to respect, protect and fulfil people’s rights as well as to respect international and national norms on the protection of human rights.<sup>101</sup> This is achievable if states adopt and implement a minimum set of public policies, laws and regulations that guarantee and promote people’s rights at the domestic level. National law provides protection for people’s rights against the state and non-state actors and it becomes mandatory for these actors to comply with national laws in respecting and protecting people’s rights *vis-à-vis* their activities, particularly as the equal and inalienable rights of all human beings provide a platform for the foundation of justice, peace and fundamental freedom.<sup>102</sup> It has been argued that even in the clear absence of state

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99 Shelton “A rights-based approach to conservation” 5.

100 Nyamu-Musembi and Cornwall “What is the rights-based approach all about?” 4.

101 UN OCHCHR 2002 Para 230; Shelton “A rights-based approach to conservation” 10.

102 The Preamble of the UDHR; Care About Rights date unknown  
<http://www.scottishhumanrights.com/careaboutrights/whatisahumanrightsbasedapproach> accessed 14 April 2015.

regulation, it is imperative and in the interest of non-state actors to apply the RBA to their activities by conforming to international human rights norms.<sup>103</sup>

The RBA serves as a means to legitimise a more progressive, radical approach to development insofar as the violations of fundamental human rights are concerned.<sup>104</sup> The RBA is considered to focus principally on those who are mostly marginalised, excluded or discriminated against, and it often requires an analysis of gender norms and different norms of discrimination as well as of power imbalances to ensure that the rights of the most marginalised are protected and respected.<sup>105</sup> It implies that the RBA is predominantly about empowering people to know and claim their rights and about increasing the ability and accountability of public officials and institutions to be responsible for respecting, protecting and fulfilling people's rights.<sup>106</sup> The RBA ensures that both the standards and principles of human rights protection are fused into policy making and into day-to-day governance practices.<sup>107</sup> This means that the RBA could involve a new way of thought involving adjusting legal and policy instruments in order to strengthen the link between human rights and economic development for the attainment of sustainable development, especially as it seeks to integrate human rights norms and standards into development with the objective of promoting and protecting human rights with respect to development.<sup>108</sup> This narrative echoes the view of the UN Office of the High Commissioner for Human Rights (OHCHR), that the RBA should and must be seen as a:

Broader conceptual framework for the process of human development that is normatively based on the international human rights standards and operationally

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103 Shelton "A rights-based approach to conservation" 10.

104 Nyamu-Musembi and Cornwall "What is the rights-based approach all about?" 4.

105 Anon <http://www.unfpa.org/human-rights-based-approach> accessed 14 April 2015.

106 Care About Rights date unknown  
<http://www.scottishhumanrights.com/careaboutrights/whatisahumanrightsbasedapproach> accessed 14 April 2015.

107 Care About Rights date unknown  
<http://www.scottishhumanrights.com/careaboutrights/whatisahumanrightsbasedapproach> accessed 14 April 2015.

108 D'Hollander *et al* "Promoting a human rights-based approach" 6; Greiber "Introduction" 2; OHCHR 2006 <http://www.ohchr.org/Documents/Publications/FAQen.pdf> accessed 20 October 2015.

directed to promoting and protecting human rights. It seeks to analyse the inequalities which lie at the heart of development problems and redress discriminatory practices and unjust distributions of power that impede development progress.<sup>109</sup>

The UN Development Group sees the RBA both as a means to an end, which means that human rights are a precondition for sustainable development, and as an end in itself, which implies that human rights could also be a goal of sustainable development and good FAI generally.<sup>110</sup> According to the UN Development Group, the RBA involves three core elements:

- All programmes of development co-operation, policies and technical assistance should further the realisation of human rights as laid down in the UDHR and other international human rights instruments;
- Human rights standards contained in, and principles derived from, the UDHR and other international human rights instruments guide all development co-operation and programming in all sectors and in all phases of the programming process; and
- Development corporations contribute to the development of the capacities of duty-bearers to meet their obligations and/or of rights-holders to claim their rights.<sup>111</sup>

It is reported that there has been a recent broader use of the concept of a RBA to suit different contexts and agendas of development agencies, such as the World Bank, with particular reference to the RBA to development.<sup>112</sup> The RBA, which is grounded in human rights law, makes it imperative for a conceptual framework that is accepted by the international community to guide policy formulation, implementation and evaluation.<sup>113</sup> In doing so it provides an understanding of the extent of compliance with

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109 OHCHR 2006 <http://www.ohchr.org/Documents/Publications/FAQen.pdf> accessed 20 October 2015.

110 D'Hollander *et al* "Promoting a human rights-based approach" 6.

111 HRBA Portal <http://hrbaportal.org/the-human-rights-based-approach-to-development-cooperation-towards-a-common-understanding-among-un-agencies> accessed 2 October 2015; D'Hollander *et al* "Promoting a human rights-based approach" 6-7.

112 Nyamu-Musembi and Cornwall "What is the rights-based approach all about?" 1.

113 Abramovich 2006 *Cepal Review* 33; Cornwall and Nyamu-Musembi 2004 *TWQ* 1415.

human rights norms by development actors. One example of such compliance may be to require development actors to disseminate to the public timeous information about their development activities as well as the potential impacts the activity may have in order for the public to be able to assert the protection of their procedural and substantive rights during decision-making processes. In view of the belief that many of the detrimental impacts of large-scale agricultural investments are in direct contravention of a number of human rights,<sup>114</sup> a RBA to FAI is crucial to facilitate and foster the protection of and respect for people's rights.

The next section of this thesis discusses the RBA to FAI in order to determine how a framework of the RBA to FAI, if applied in the context of development projects, could help to strengthen the respect for, protection of and promotion of people's fundamental rights.

#### 3.3.1.1 A RBA to FAI

Drawing from the exposition of the general meaning of the RBA above, a RBA to FAI as indicated in Chapter 1,<sup>115</sup> denotes the responsibilities of development actors to respect, protect, and fulfil fundamental rights, which are both procedural and substantive, of people that are involved with or affected by foreign agricultural land deals. This suggests that applying a RBA to FAI governance is expected to be a means to ensure and promote inclusive, transparent responsible and sustainable FAI activities in a socio-economic and environmental sense, and in doing so, to protect the interests of those people that are affected by FAI. This proposition is motivated by the following four points: the awareness that environmental quality is a necessary prerequisite to ensuring the enjoyment of a host of internationally and domestically guaranteed legal rights, including, for example, the rights to water, food, and environment.<sup>116</sup> Also, the realisation that the promotion of and respect for the RBA in development activities can

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114 Deng *et al* "Foreign land deals and human rights" 6.

115 In section 1.3.1.

116 Nyamu-Musembi and Cornwall "What is the rights-based approach all about" 2.

lead to better FAI regulation to the extent that the proper implementation of a RBA to FAI governance should serve as a platform to facilitate the achievement of ecologically sustainable environment, inter-and intragenerational equity, and respect for the intrinsic values of nature on which people depend for their socio-economic development.<sup>117</sup> Furthermore, the realisation that respect for a RBA in the context of development activities could be appropriate to respect and protect people's property rights especially as large-scale foreign agricultural activities have the potential to impact people's right to land. Lastly, the realisation that the implementation of a RBA in FAI context has the potential to provide and ensure the continuous upliftment of people's socio-economic situations by ensuring that development activities at least empower local communities when and wherever they occur. In brief, a RBA to FAI governance emphasises the need to protect human rights as well as to achieve certain developmental outcomes such as using human rights to respect, protect and fulfil interests during FAI regulation, and it highlights the many rights aspects of projects, programmes, and activities related to FAI with a view to ensuring sustainable development and protecting the rights and interests of those likely to be affected by FAI. The relevance of a RBA to FAI governance cannot be overemphasised. Nyamu-Musembi and Cornwall<sup>118</sup> provide three justifications for the relevance of a RBA, especially within the context of development. These are the normative, pragmatic and ethical justifications which are considered in the subsequent paragraphs.<sup>119</sup>

With respect to the normative justification, it is argued that rights put values and politics at the heart of development and provide a normative framework to orient socio-economic development. This is achieved through the stipulation of international norms backed by international law that provide a solid basis for citizens to articulate their rights in demanding inclusivity, transparency and accountability with respect to development projects, as well as measures that safeguard their rights and interests in

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117 D'Hollander *et al* "Promoting a human rights-based approach" 6; Greiber "Introduction" 2; OHCHR 2006 <http://www.ohchr.org/Documents/Publications/FAQen.pdf> accessed 20 October 2015.

118 Nyamu-Musembi and Cornwall "What is the rights-based approach all about" 2.

119 Nyamu-Musembi and Cornwall "What is the rights-based approach all about" 2.

development projects.<sup>120</sup> This is because a RBA has its referent in an array of international legal documents to the extent that it potentially provides a more powerful means of setting normative standards that must be adhered to in order to protect people's fundamental rights during development projects such as FAI.<sup>121</sup> This bestows a major responsibility on the state and other relevant actors to ensure particularly that the rights and interests of people are sufficiently respected, protected and fulfilled during development projects, because under international law the state is a duty-bearer with respect to the human rights of the people living within its jurisdiction.<sup>122</sup>

Pragmatically, perhaps the most important value of a RBA is the emphasis it places on accountability not only on policymakers, but also on other actors, including the private sector, whose actions may have a detrimental impact on people.<sup>123</sup> Ferguson argues in this respect that speaking in terms of rights should be perceived as a vehicle for increasing the accountability of government organisations to their citizens and consequently increasing the likelihood that policy measures will be implemented in practice.<sup>124</sup> This may be because rights imply duties, and duties demand accountability.<sup>125</sup> From an ethical perspective, it has been argued that a RBA could help serve as an opportunity to reflect on power dynamics and questions of ethics,<sup>126</sup> especially if to talk of rights is implicit in talking about power and about the obligations of those engaged in development assistance.<sup>127</sup> The reason for this is that a RBA provides an appropriate platform *inter alia* for public participation, and consequently makes a crucial link between participation, accountability and inclusivity in decision-making processes by the citizenry.<sup>128</sup>

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120 Nyamu-Musembi and Cornwall "What is the rights-based approach all about" 2.

121 D'Hollander *et al* "Promoting a human rights-based approach" 6; UN OHCHR 2002 Para 230.

122 UN OHCHR 2002 Para 230.

123 Nyamu-Musembi "What is the rights-based approach all about" 3; UN OHCHR 2002, 23.

124 Ferguson *Global social policy principles* 23.

125 UN OHCHR 2002, 23.

126 Nyamu-Musembi and Cornwall "What is the rights-based approach all about" 3.

127 Nyamu-Musembi and Cornwall "What is the rights-based approach all about" 3.

128 Nyamu-Musembi and Cornwall "What is the rights-based approach all about" 3.

Notwithstanding the above, implementing a RBA to development activities requires a decision whether to follow a procedural RBA or a substantive RBA or both simultaneously. As indicated in Chapter 1, due to constraints of scope and space this study will focus on a procedural RBA. Also, the procedural approach is necessary to ensure substantive rights claims and interests that serve to enhance protection and respect for substantive human rights. To this end, the following paragraph discusses the meaning of procedural rights and shows their relevance in the context of a RBA to FAI governance.

### *3.3.2 Procedural rights*

The international Bill of Rights encompassing the UNDHR, the ICCPR and the ICESCR remains the starting point for the examination of international human rights,<sup>129</sup> and as indicated in Chapter 1,<sup>130</sup> it provides an array of fundamental human rights which can conveniently be grouped or divided into procedural and substantive rights. The questions that come to mind are what the difference between procedural and substantive rights is; what the links between them are; and whether or not procedural rights are merely components of substantive rights with no independent status?<sup>131</sup> This section broadly examines these questions to further strengthen the study's reliance on a RBA, and particularly procedural rights, as a foundational element of an ideal FAI governance paradigm.

Procedural rights refer to constitutional and statutory legal rights that focus on the procedural aspects of governance, and they relate essentially to those rights that are necessary to realise substantive rights.<sup>132</sup> To this end, procedural rights concern methods of decision-making and implementation encompassing public consultation and

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129 Rhona Smith *Textbook on international human rights* 27.

130 In section 1.3.1; Shelton "A rights-based approach to conservation" 10.

131 Alexander 1998 *LP* 19.

132 Alexander 1998 *LP* 23.

participation, information provision, and access to courts.<sup>133</sup> The Aarhus Convention is the most important international instrument on these issues.<sup>134</sup> It provides global standards for the respect of the procedural rights to access to information, public participation and access to justice within the environmental paradigm, to which the Convention has increasingly been used as a benchmark for the respect of these rights. Procedural rights are essentially important in supporting and ensuring the implementation of and compliance with substantive rights.<sup>135</sup> This is taken to mean that without respect for and promotion of procedural rights, the full realisation of substantive rights could be undermined. For example, concerned citizens could require information on issues related to pollution that may affect their livelihoods. The denial of the rights to access to information and public participation in decision-making on activities taking place in the environment may undermine the protection of the right to an environment that is not harmful to human health and well-being.<sup>136</sup> In this regard, it has been argued that states and governments that disregard people's rights to access to information and public participation often insufficiently protect the environment.<sup>137</sup> However, promoting and respecting the procedural rights to access to information, public participation and access to justice may not only serve to produce decisions that are favourable to ensure and guarantee environmental protection, but may also serve to reinforce general respect for human rights, including the rule of law and good governance.<sup>138</sup>

The procedural aspects of a RBA involve principally three elements: access to information, public participation and access to justice. These elements have been

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133 Ebbesson "The notion of public participation in international environmental law" 70-75; Birnie and Boyle *International law and the environment* 261.

134 See Chapter 4 of this thesis for details.

135 Shelton "A rights-based approach to conservation" 13.

136 Principle 10 of the Rio Declaration; art 3 of the United Nations Convention to Combat Desertification of 1994(CCD); art 15(2) of the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade of 1998 (Rotterdam Convention).

137 Osofsky 2005 *SELJ* 71.

138 Shelton "A rights-based approach to conservation" 14.



referred to as the three pillars of procedural rights.<sup>139</sup> It is important to emphasise that these 3 pillars often overlap and are related. They are rarely isolated. Against this background, this thesis focuses on procedural rights, because procedural rights are most commonly observed as the most developed set of rights,<sup>140</sup> and their incorporation in the context of FAI could better protect people's rights and interests during FAI regulation and implementation. The following analysis considers each of these pillars in detail.

### 3.3.2.1 Access to information

It is important to distinguish between the right to information and *access* to information, especially as the latter is a means of realising the right to information by gaining access to information. The right to information is mostly formulated as an access right internationally and in domestic legal systems.<sup>141</sup> Thus, while the former serves to strengthen people's right to access to information and principally embodies the fundamental right to information<sup>142</sup> as encapsulated in article 19 of the UNDHR,<sup>143</sup> it is also taken to imply an aspect of the right to freedom of expression. The right to access to information is perceived to be the practical implementation of the right to information.<sup>144</sup> The right to access to information denotes the procedures and conditions of accessing public information. For this reason, the right to access to information will be foregrounded for the purposes of this thesis.

Although the right to access to information has both a long and a recent history,<sup>145</sup> as is evident from the *Swedish Freedom of Press Act* of 1766 and the South African

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139 Art 3 of the Aarhus Convention; Mason 2010 *GEP* 14-15.

140 Mason 2010 *GEP* 14-15.

141 Hunter *et al International environmental law* 1316-1317; Zaelke *et al* "Introduction" 13.

142 Hunter *et al International environmental law* 1316-1317; Zaelke *et al* "Introduction" 13

143 Also art 19 of ICCPR; art 10 of the European on Human Rights of 2010.

144 Hunter *et al International environmental law* 1316-1317; Zaelke *et al* "Introduction" 13.

145 Banisar "The rights to information and privacy" 3.

*Promotion of Access to Information Act* 2 of 2000,<sup>146</sup> today at least 50 countries have established the right to access to information legislation,<sup>147</sup> with most African constitutions<sup>148</sup> entrenching specific provisions that provide for this right, while obliging the state to take appropriate measures to ensure the realisation of the right.<sup>149</sup> However, provisions for the right to access to information may be absent in the some constitutions, as these constitutions are more inclined to preserve political power, making the conspicuous absence of the guarantee of certain human rights in the constitution possible. In other constitutions such as Cameroon, the right is implicitly provided (in Cameroon, the Constitution does not expressly guarantee the right to access to information,<sup>150</sup> but the right could be inferred from the inscription in the Constitution of the right to freedom of expression).<sup>151</sup>

Generally speaking the right to access to information relates to the right of an information seeker, (usually a private, non-state entity), to have access to public- or government-held information, and increasingly private held-information, including investors of FAI land deals whenever he/she requires this information in relation to the protection of other rights and interests.<sup>152</sup> The right also involves being informed by and keeping abreast of the latest events that affect one or that pertains to one's interest. The right to access to information evokes a close relation with government's

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146 Other analysts trace the history as far back as the rights granted under the Chinese Tang Dynasty of 618-907; Stephen 2002 *FIR* 2-8.

147 Banisar "The rights to information and privacy" 3.

148 Examples of rights to information in constitutions include: s 32(1) of the *Constitution of the Republic of South Africa*; s 41 of the *Constitution of the Republic of Uganda*, 1995; s 21(1)(f) of the *Constitution of the Republic of Ghana*, 1992, art 18(d) of the *Constitution of the Republic of Tanzania*, 1977, as amended in 2005; s 79 of the *Constitution of the Republic of Kenya*, 2008 (revised constitution); s 552 of the United States of America *Freedom of Information Act* 5 of 1966 (FOIA).

149 Other countries that have legislation regulating access to information include the United States of America (USA) *Freedom of Information Act* 5 of 1966; the Canadian *Access to Information Act* of 1982; the Australian *Freedom of Information Act* of 1982; the New Zealand *Official Information Act* of 1982.

150 Fuo and Semie "Cameroon's environmental framework" 83.

151 For example the Preamble of the *Constitution of the Republic of Cameroon*, 1996; art 29(2) of the *Constitution of the Federal Republic of Ethiopia*, 1995.

152 Currie and De Waal *The Bill of Rights handbook* 684; Banisar "The right to information and privacy" 3;s 7(1) of Law No 96/12.

accountability and with the right to freedom of expression.<sup>153</sup> It concerns governmental accountability in the sense that it provides the public with an opportunity to be able to scrutinise government-held information and to monitor the decisions that governments make.<sup>154</sup> Generally speaking, the right to access to information places two duties on government. It requires government to collect and disseminate relevant information about the functioning of governmental departments with regard to the management of public affairs, and it also requires government to make information available to the public on request.<sup>155</sup> This could be achieved, for example, either through letting the public view the original documents requested or copies of government-held information.<sup>156</sup> This is interpreted to mean that the right to access to information is both active and passive,<sup>157</sup> as it were, in that whereas the active form of the right to access to information imposes an obligation on public authorities to collect and disseminate information, the passive form of the right to access to information only requires public authorities to disseminate information on request.<sup>158</sup> The foregoing therefore suggests that host countries of FAI activities are obliged either to actively collect and disseminate information about FAI projects to interested and affected parties, or passively to provide this information whenever it is sought for.

As indicated, public access to information and environmental information generally may either be voluntarily obtained or obtained upon request by members of the public.<sup>159</sup> With regard to voluntary access to information, governmental officials as well as some private bodies are required to either voluntarily or in accordance with statutory obligations disseminate information relating to their actions and decisions to the

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153 Louka *International environmental law* 130.

154 Arts 4; 5 of the Aarhus Convention; Du Plessis "Access to information" 198; Louka *International environmental law* 130.

155 Arts 4; 5 of the Aarhus Convention; Du Plessis "Access to information" 198; Louka *International environmental law* 130.

156 Arts 4; 5 of the Aarhus Convention; Du Plessis "Access to information" 198; Louka *International environmental law* 130.

157 Bruch and Filbey "Emerging global norms of public involvement" 7-8.

158 Bruch and Filbey "Emerging global norms of public involvement" 7-8.

159 Zaelke and Kružíková "Introduction" 14.

public.<sup>160</sup> This is because the information should be freely available in the public domain and accordingly must be made accessible to the public. Information of this nature could be used as a useful measure to facilitate and ensure governance compliance and enforcement and the protection of other substantive rights entitlements.<sup>161</sup>

Conversely, with regard to obtaining information on request, it is noted that where government officials do not voluntarily disseminate information to the public, the public should have access to information only if they request for it, and the requested information must ideally not be refused.<sup>162</sup> Refusing to disseminate information suggests a failure of the state to ensure that government decision-making is democratic, inclusive and participative.<sup>163</sup> Whether information is voluntarily disclosed or disclosed on request to the public, the right to access to information invariably becomes a useful tool to encourage and enhance government accountability generally.<sup>164</sup> It is also thus relevant to the FAI context notably to the extent that access to information could help facilitate accountability, inclusivity and transparency during FAI land deals.

The right to access to information could in some instances be supportive of the right to freedom of expression,<sup>165</sup> because information or government held information is often necessary to express a public view.<sup>166</sup> It has been argued that without information public views cannot be expressed, and transparency and accountability, which are manifestly facilitated by and through access to information, would remain "mere chimera[s]"<sup>167</sup> due to lack of information.<sup>168</sup> In this regard, it suffices to say that an open, transparent and accountable governance process requires that the public has a right to criticise and scrutinise the decisions of public authorities in relation to the use of

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160 Du Plessis "Access to information" 198-199.

161 Du Plessis "Access to information" 199; s 31 of PAIA.

162 Art 5 Aarhus Convention; Du Plessis "Access to information" 205.

163 Mureinik 1993 *Acta Juridica* 35.

164 Louka *International environmental law* 130.

165 Art 19 of the UNDHR.

166 Devenish *A commentary* 439.

167 Devenish *A commentary* 439.

168 Currie and De Waal *The Bill of Rights handbook* 684.

public power in the governance of public affairs. Such criticisms and oversight can be meaningful only if the population has access to governmental and private held-information by a company that empowers them to probe and criticise the conduct of members of the administration.

The right to access to information is increasingly gaining currency, particularly within the environmental field,<sup>169</sup> and access to environmental information<sup>170</sup> has in some cases, on balance, led to a shift in environmental governance towards openness, transparency and accountability.<sup>171</sup> It is also the right to access to information in the environmental context that is particularly important for FAI. The relevance of safeguarding, ensuring and implementing the right to access to environmental information stems from the belief that access to environmental information plays a pivotal role in balancing competing interests in the achievement of sustainable development.<sup>172</sup> This is because proper action required to prevent or mitigate environmental harm relies heavily on the knowledge of environmental conditions,<sup>173</sup> and because the impact of an activity on the environment cannot be properly evaluated and governed without recourse to the condition of the environment.<sup>174</sup> Environmental information requires that public interests in relation to the consequences of an environmentally deleterious activity, be taken into account with a view to protecting the environment and human health,<sup>175</sup> and hence the right to access to information fuses the link between environmental rights and other related human rights.<sup>176</sup> There are

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169 Du Plessis "Access to information" 197.

170 Environmental information is defined to include information in any material form, which specifically includes written, visual, aural and electronic forms. See Ebbesson *et al The Aarhus Convention* 40.

171 Du Plessis "Access to information" 197.

172 The Preamble of the Aarhus Convention; Bell and McGillivray *Environmental law* 296; Agenda 21 of Rio Declaration; Gerrard and Foster *The law of environmental justice* 265; Du Plessis "Access to information" 197.

173 Sand "The right to know" 17.

174 Kiss and Shelton *Guide to international environmental law* 98; Du Plessis "Access to information" 198; Weintraub "Access to information" 265.

175 The Preamble of the Aarhus Convention; Bell and McGillivray *Environmental law* 296.

176 Louka *International environmental law* 129; Mason 2010 *GEP* 10. For a detailed understanding of the link between human rights and the environment, see Boyle and Anderson *Human rights approaches to environmental protection*; Anton and Shelton "Environmental protection and human rights" 1-16.

various ways of providing environmental information and they include environmental reporting, environmental impact assessments, and disseminating environmental information to the consumer, green claims, and eco-labelling.<sup>177</sup> More importantly for the purposes of this study, there are various ways of obtaining information, especially where this is not voluntarily offered by the relevant public authorities or other interested and affected parties. In the context of this study, information about the terms of FAI activities both before and during their implementation could enable aggrieved communities to assert their right to an environment that is not harmful to health and well-being in the decision-making process, and their rights to life, equality and human dignity.

Public access to information and particularly environmental information is an important boost to transparency and accountability,<sup>178</sup> particularly information regarding the way governmental officials undertake environmental decision-making, monitoring, compliance and conduct enforcement.<sup>179</sup> This is so because transparency, expressed through access to information, is considered to be a necessary expression of and condition for democratic and inclusive governance.<sup>180</sup> In contrast, governmental officials will not be accountable if the state monopolises government-held information with respect to its actions and decisions, when the actions and decisions of government officials ought to be informed by rational considerations that are explicable to those affected by the decisions of the authorities.<sup>181</sup> Clearly then, the right to access to information has as its purport the promotion and encouragement of good governance practices, and national legislation that underscores the rationale for this right promotes

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177 Bell and McGillivray *Environmental law* 307-309.

178 Mason 2010 *GEP* 11; Louka *International environmental law* 130.

179 Currie and Klaaren *The promotion of access to information act* 17; Du Plessis "Access to information" 198.

180 Mason 2010 *GEP* 11-14.

181 Currie and Klaaren *The promotion of access to information act* 17.

good governance as well.<sup>182</sup> In the context of FAI, the right to access to information is particularly useful to facilitate good FAI governance.

The right to access to information and environmental information may boost transparency and accountability on the part of the state and help protect human health and the environment, but there are limitations which could restrict the effective exercise of this right. These limitations are not present in all jurisdictions but they occur in many. Chapters 5, 6 and 7 will investigate the extent to which they occur in Cameroon, Uganda and South Africa.

Firstly, the exercise of the right is often restricted to exclude information relating to commercial interests and the privacy of individuals.<sup>183</sup> Secondly, though government officials are obliged to disseminate information to the public, they are not permitted to do so under certain circumstances such as for the protection of national security, and this restricts the exercise of the right in those instances. Thirdly, it has been argued that the exercise of the right to access to information may be limited by time, and government officials may use this as a strategy to deny the effective exercise of the right in crucial circumstances.<sup>184</sup> For the purposes of this study it may be argued that a state could rely on these limitations to restrict local communities' right to access to information, and this might have a significant negative impact on the realisation of other related human rights interests. Consequently, as noted in Chapter 2,<sup>185</sup> in some instances the rights and interests of local communities are unprotected or infringed upon during FAI practices, partly due to the lack of information about FAI activities. Thus, it is evident that rigorous respect for and implementation of the right to access to information in the context of FAI activities could serve to enhance and promote transparency and accountability. Also, respecting local communities' right to access to

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182 Currie and Klaaren *A commentary* 16 Mureinik 1993 *Acta Juridica* 35; *Ex Parte Chairperson of the Constitutional Assembly: In re Certificate of the Constitution of the Republic of South Africa*, 1996 (4) SA 744 (CC) para 85; Preamble of PAIA; s 9(e) of PAIA.

183 Du Plessis "Access to information" 198.

184 Du Plessis "Access to information" 204-205.

185 In section 2.7 on the impacts of FAI.

information during FAI activities could provide a platform for the making of informed decisions during the decision-making processes of FAI projects with the hope of realising the protection of and respect for a broad array of procedural and substantive rights of local communities. This is especially true of the right to access to information which has the potential to inform local communities of the potential impacts a project development activity may have on the environment, with the ancillary effect of enabling local communities to assert their environmental and other substantive rights such as the right to water, food, and health in decision-making.

Notwithstanding the above limitations, Currie and Klaaren argue that a refusal to honour requests for records (at least in the South African context) could be challenged as an unjustifiable limitation of the constitutional right to access to information, insofar as the constitutional right to access to information is a right *tout court*.<sup>186</sup> From the above analysis it is possible to conclude that the right to access to information consists of certain essential elements:

- The right to access to information may be exercised on request or by direct obligation on the state and private bodies to collect and to disseminate information to the public;
- There must be an availability of administrative or judicial remedies for the denial of access to information;
- The disclosure of information must be free or provided at reasonable cost;
- The information requested must be timeously available;
- There must be maximum disclosure and transparency of government and private-held information;
- Exceptions for exercising the right to access to information have to be narrowly drawn, to include limited and justifiable exemptions; and

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186 Currie and Klaaren *The promotion of access to information act* 28.



- States and private bodies are required to ensure that the information requested is readily accessible.<sup>187</sup>

### 3.3.2.2 Public participation

An increase in the awareness of the notion of human rights has resulted in particular awareness regarding the protection of human rights generally and environmental rights specifically.<sup>188</sup> Some fundamental human rights may be worthless if a means of public participation by rights-holders is not guaranteed to protect these rights in decision-making processes and implementation.<sup>189</sup> Although public participation may be manifested in diverse ways such as democratic accountability, direct participation, and the availability of judicial review,<sup>190</sup> it has been argued that public participation which also relies on access to information<sup>191</sup> is necessary to assert *inter alia* a person's right to live in an environment that is adequate to human health and well-being.<sup>192</sup> Considering that FAI practices may also result in the grabbing of land there is a need for interested and affected parties to always take an active part in and to be fully involved in decision-making processes, since the idea that the governed should be engaged in their own governance with respect to environmental matters is "gaining ground and rapidly expanding in both law and practice."<sup>193</sup> Public participation can be defined as the effective and full involvement of all actors in socio-political decision-making processes that potentially affect the communities in which they live and work.<sup>194</sup>

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187 Kravchenko 2009 *ORIL* 228-229.

188 Du Plessis 2008 *PELJ* 2.

189 Van Reenen 1997 *SAJELP* 272.

190 Bell S and McGillivray *Environmental law* 294.

191 Ebbesson "Participatory and procedural rights in environmental matters" 2; Devenish *A commentary* 451; Currie and Klaaren *A commentary* 16; Kravchenko 2009 *ORIL* 228; s 195(g) of the South African Constitution.

192 Verschuuren "Public participation regarding the elaboration" 29; Birnie and Boyle *International law and the environment* 261-265.

193 Pring and Noé "The emerging international law" 11.

194 Picolotti and Taillant *Linking human rights and the environment* 50; Pring and Noe "The emerging international law" 16.

As an illustration, the principle of public participation was given serious attention by the African Commission on Human and Peoples' Rights (African Commission) in the case of *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya*, 2010 (Endorois case), where the Commission clearly stated the purpose of public participation and set the requirement for effective public participation as:

This duty requires the State to both accept and disseminate information, and entails constant communication between the parties. These consultations must be in good faith, through culturally appropriate procedures and with the objective of reaching an agreement.<sup>195</sup>

From the above, the Commission emphasised that an equal bargaining position entails necessary requirements for effective participation, and that public participation must be effective with affected local communities and other interested and affected parties having the opportunity to influence the outcome of a project's implementation.<sup>196</sup> Thus, merely noting an impending project as a *fait accompli* would not amount to effective public participation, since the local communities and affected stakeholders would not have had the chance to influence the outcome of the project.<sup>197</sup>

Public participation is a multi-layered activity that involves participation in decision-making and policy-making, proceedings to challenge the outcome of decision-making, and governance processes more generally.<sup>198</sup> As far back as in the 1970s there was an outcry and need for a "bottom-up," people-centred approach to socio-economic development,<sup>199</sup> as well as for stronger environmental protection,<sup>200</sup> that collectively

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195 Para 289 of the Endorois case.

196 Paras 281-282 of the Endorois case.

197 Para 281 of the Endorois case.

198 Morrow "The court and public participation in environmental decision-making" 141.

199 Spyke 1999 *BCEALR* 269; Morrow "The court and public participation in environmental decision-making" 140.

200 Barton "Underlying concepts and theoretical issues in public participation in resource development" 81-83; Kiss and Shelton *Guide to international environmental law* 102; Foster "Public participation" 225.

gave impetus to public agitation for more democratic and participative governance.<sup>201</sup> This was because the growth of human rights in both legal and political systems heightened people's sense of the value of public participation in governance.<sup>202</sup> The right of people to participate in environmental decision-making, according to the Aarhus Convention, which is the most important international instrument on this issue, constitutes the second pillar of procedural entitlement.<sup>203</sup>

Public participation must be backed by transparency, access to information, and access to justice, and is considered one of the most recognised principles for the achievement of sustainable development,<sup>204</sup> as it helps to balance the three conflicting and interwoven dimensions of sustainable development.<sup>205</sup> This is achieved by broadening the base of decision-making in FAI activities to bring local communities into play, with the hope of influencing and increasing the efficacy and acceptability of the eventual outcome of decision-making and policy implementation in matters that may affect their lives.<sup>206</sup> This has led to public participation becoming an indelible feature of environmental regulatory systems globally,<sup>207</sup> as it involves not only the engagement of states, but also the role of NGOs, women, local communities and individuals.<sup>208</sup> Promoting and ensuring participatory rights in environmental decision-making have produced numerous advantages.

Firstly, from a governance perspective, it is believed that the increased involvement of members of the public reflects an expansive notion of democracy.<sup>209</sup> This is predicated

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201 Pimbert and Wakeford 2001 <http://pubs.iied.org/pdfs/G01305.pdf> accessed 10 April 2015.

202 Barton "Underlying concepts and theoretical issues in public participation in resource development" 81-83.

203 Art 5 of the Aarhus Convention.

204 Segger and Khalfan *Sustainable development law* 156-158; Segger *et al* 2003 *RECIEL* 54; Charnovitz 1997 *MJIL* 183; Agenda 21; Robinson "Reflecting on Rio" 18-19.

205 Ebbesson "The notion of public participation in international environmental law" 59; Steele 2001 *OJLS* 426; Morrow "The court and public participation in environmental decision-making" 140.

206 Morrow "The court and public participation in environmental decision-making" 140; Tribe 1972 *SCLR* 617; Richardson and Razzaque "Public participation in environmental decision-making" 166.

207 Richardson and Razzaque "Public participation in environmental decision-making" 165.

208 Morrow "The court and public participation in environmental decision-making" 139.

209 Ebbesson "Public participation" 687.

on the fact that the involvement of local communities and NGOs in decision-making may serve as an appropriate way of furthering public environmental interests, at once reflecting the ultimate need of protecting this interest in development projects like FAI. Also, public participation enhances the legitimacy of decision-making against the delegitimizing effect of a lack of participation.<sup>210</sup> In this way, public participation continues and further strengthens the democratic process in a country, which could lead to greater legitimacy. Thus, in order to enhance legitimacy in decision-making the full, active and effective participation of local communities and affected stakeholders is required, as restricted participation has the potential to provoke dissatisfaction and possibly violent protests from those excluded.<sup>211</sup>

Secondly, public participation could help to ensure and enhance effective environmental protection. This is because communities' input about the gravity of environmental degradation, at the local level, may reinforce government measures to properly regulate environmental concerns and human health in general.<sup>212</sup>

Importantly, for there to be effective public participation attention must be given to the disparities in society and the need to remove obstacles that may, for instance, hinder or obstruct minority groups or the poor from participating in environmental decision-making.<sup>213</sup> Such obstructions demonstrate the difficulties that may be posed within the public participation context.<sup>214</sup> In this regard, information, education, and an understanding of risk communication are necessary ingredients for local communities and members of the public to discuss issues that may affect them with experts and policy makers.<sup>215</sup> This suggests, for example, that local communities should be free to exercise their right to participation by speaking freely to experts and policy makers

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210 Bodansky "Legitimacy" 717.

211 Bodansky "Legitimacy" 717.

212 Ebbesson "Public participation" 688.

213 Segger and Khalfan *Sustainable development law* 156; Foster "Public participation" 226; Foster 1998 *CLR* 775.

214 Morrow "The court and public participation in environmental decision-making" 138.

215 Jones 1997 *WMELPR* 41-42.

about the issues that affect their existence, health and well-being, among others. This is because, as the most affected and vulnerable groups that could suffer from FAI projects, local communities should have the right to demand greater consultation, participation, and transparent and accountable decision-making relating *inter alia* to land use plans.<sup>216</sup> This is based on the belief that greater citizen input into decision-making processes through public participation has the potential to improve and promote environmental justice and that it helps to fuse ecological and social considerations in governmental decision-making.<sup>217</sup>

Further, Du Plessis<sup>218</sup> contends that it is relevant and necessary to avoid the limitation of public participation at the important issues-formulation stage of decision-making processes, because often with respect to information disclosure, the only information submitted to the public is nothing but a superficial outline of the final form of a project or development already agreed to by government bodies, project developers and other decision-makers.<sup>219</sup> According to Du Plessis, such practices misconstrue the rationale of public participation, and there is an urgent need to prevent this practice in order for public participation "to be a truly significant exercise from as early as issue-identification for decision-making."<sup>220</sup> In the context of FAI regulation and implementation, information about FAI activities should be disclosed as early as possible to local communities and affected stakeholders.

The rationale for public participation is to attempt to influence policies and individual decisions made by governmental bodies.<sup>221</sup> This concerns, for instance, the ability to have access to, to understand, to evaluate, to formulate and to comment on proposals, plans and programmes that are designed to concretise a project development. Public

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216 Lee and Abbot 2003 *MLR* 82-85.

217 Lee and Abbot 2003 *MLR* 82-85.

218 Du Plessis 2008 *PELJ* 7.

219 Wilkinson 1976 *NRJ* 119.

220 Du Plessis 2008 *PELJ* 7.

221 Bell and McGillivray *Environmental law* 311.

participation can take various forms<sup>222</sup> including broad-based participation through representative bodies such as NGOs which speak on behalf of individuals and affected communities. It can also take the form of stakeholder participation through which formulated proposals are circulated for comment to parties interested in and affected by a development project. It can also take the form of deliberative participation that entails agreeing the rules of decision-making. This means involving the public in an effort to determine what policies and strategies could be adopted with regard to the management of public affairs.<sup>223</sup> In this regard, it has been argued that public participation enhances accountability and consequently the acceptability and legitimacy of environmental decision-making,<sup>224</sup> particularly as less litigation, fewer delays and better implementation could be achieved, and because the decisions that government makes are fully shared with, tested by and approved by the public.<sup>225</sup> The fact that the making of public policy decisions has important implications for the outcome of those decisions<sup>226</sup> suggests that through public participation, people can also challenge the outcome of certain decisions.<sup>227</sup>

Popular involvement of the public in decision-making processes generally, and environmental decision-making in particular, has been rationalised from two perspectives.<sup>228</sup> These are the process perspective and the substantive perspective. Whereas the process perspective embodies the view and is based on the argument that public participation improves the substantive outcome of decision-making, the

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222 Bell and McGillivray *Environmental law* 311-312.

223 Arnstein classified public participation into three hierarchical categories. The most is that where the public has the power to negotiate with decision-makers with a view to translating their opinions into practice; Arnstein 1969 *JAIP* 216.

224 Spyke 1999 *BCEALR* 269-270; Morrow "The court and public participation in environmental decision-making" 139.

225 Wirth 1996 *CJILP* 1.

226 Tribe 1972 *SCLR* 617; Richardson and Razzaque "Public participation in environmental decision-making" 166.

227 Morrow "The court and public participation in environmental decision-making" 141.

228 Richardson and Razzaque "Public participation in environmental decision-making" 170.

substantive perspective supports the view that public participation “bolsters the democratic legitimacy of decision-making”.<sup>229</sup>

These two perspectives have resonated with different schools of thought with apparently similar views on the rationale and role of public participation.<sup>230</sup> The “rational elitism,”<sup>231</sup> school of thought considers and treats environmental governance and public participation, as a complex and technical issue. According to rational elitism, decision-making by experts and administrative expertise are paramount, and public participation should therefore be limited or voided when the public holds information that may assist the experts.<sup>232</sup> This could be because technical environmental risk assessments and the economic cost benefits analyses of development projects are areas of exclusive expert competence to which government may attach more reliance than public opinion.<sup>233</sup> This is worrying, because according to the rational elitism a large section of the public are excluded from decision making and often only incorporates a “functional representation” of large strategic groups such as renowned environmental NGOs, trade unions or business councils in decision-making matters.<sup>234</sup> There is a serious flaw in this model of participation. In this regard, Richardson and Razzaque discard the rational elitism approach by arguing that the approach “obfuscates the fundamental way in which social values influence decision-making.”<sup>235</sup> Their view is correct in the sense that public involvement in environmental decision-making helps to guide experts to formulate and make tangible decisions that could better protect the environment and

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229 Richardson and Razzaque “Public participation in environmental decision-making” 170.

230 Richardson and Razzaque “Public participation in environmental decision-making” 170.

231 Elites are relatively small groups of people who dispose of disproportionate power. This power originates from the fact that they occupy specific power-conferring positions or dispose of particularly useful resources; Haller 2008 *RS* 8.

232 Barton “Underlying concepts and theoretical issues of public participation in resource development” 86-87; Richardson and Razzaque “Public participation in environmental decision-making” 170.

233 Barton “Underlying concepts and theoretical issues of public participation in resource development” 86-87; Richardson and Razzaque “Public participation in environmental decision-making” 170.

234 Offe *Contradictions of the welfare state* 167.

235 Richardson and Razzaque “Public participation in environmental decision-making” 171.

human well-being generally.<sup>236</sup> Public participation does not replace expert opinions; rather it informs and shapes these opinions for broader public benefit.

The foregoing is interpreted to mean that administrative experts ought to allow for public involvement in the negotiation/contractual stages of FAI projects as their involvement could provide valuable insights into how a particular FAI project could be regulated and implemented. The reason is that local communities live within and with their natural resources, as it were, and are often more knowledgeable about the dynamics of the natural environment, including their own needs and developmental priorities, than administrative experts.<sup>237</sup> Thus public participation does not consist solely of dealing with people who profess to be experts in the matter to be determined but includes canvassing the opinions of those who may require to be informed and helped to understand the issues under discussion, local communities and affected stakeholders, who may have answers to these problems invisible to those who claim to have greater expertise. Mostly, local communities are familiar with their own needs, desires and aspirations which are set to be affected by any development activity, including those resulting from FAI. Based on their inputs made during participatory processes of FAI projects, it could be said that these inputs could help host countries to better manage natural resources. Without effective public participation, host countries of FAI projects stand a chance to aid and abet foreign investors in the continuous depletion of the natural resources on which people depend for survival and in the further exclusion of these people from decisions and activities that may affect them either positively or negatively. Similarly, the fact that environmental law has been moulded in the "anthropocentric perception of law"<sup>238</sup> - and FAI is an illustrative indication of such anthropomorphically focused development - suggests the need for mankind, the architect of the problems/impacts of FAI activities, to orchestrate

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236 Richardson and Razzaque "Public participation in environmental decision-making" 171.

237 Richardson and Razzaque "Public participation in environmental decision-making" 171.

238 Bosselmann "Ecological justice and law" 130. For a detail understanding of the anthropogenic causes and impacts of environmental harm, see Kotzé *Reimagining global environmental law and governance*.



solutions to environmental and related sustainability problems that also impact socio-economic well-being. Evidently, solutions can be made legitimate, meaningful and appropriate through proper public participation, where local communities and affected stakeholders are given a chance to air their views in terms of the potential impacts a proposed development, like FAI, may have on the environment and on related socio-economic conditions.

Another school of thought for participatory rights is the “liberal democratic” school. This school emphasises the need to consult all NGOs and individuals in decision-making processes. It highlights the relevance of the procedural rights of interested and affected parties, including local communities, in economic development projects.<sup>239</sup> Although it is argued that this traditional approach may have been criticised for failing to resolve conflicting interests,<sup>240</sup> most liberal democratic states have resorted to creating supplementary public consultation and information processes in administrative and legislative decision-making processes.<sup>241</sup> This indicates that the ability and responsibility of modern environmental legislation is to identify factors that are relevant to decision-making agency, one of which evidently should be for purposes of ensuring and promoting the transparency and accountability of decisions made by public bodies, and the in-puts made by the consulted public.<sup>242</sup> To be sure, through procedural reforms, local communities and concerned persons are able to have access to relevant information, to comment on environmental decisions, and to use court actions to enforce these rights.<sup>243</sup> Although the foregoing may seem essential prerequisites for transparency and accountability, it is argued that because citizens’ views are determined against discretionary decision-making, that public opinion may not translate

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239 Richardson and Razzaque “Public participation in environmental decision-making” 171.

240 Offe *Contradictions of the welfare state* 164; Richardson and Razzaque “Public participation in environmental decision-making” 171.

241 Offe *Contradictions of the welfare state* 167.

242 Richardson and Razzaque “Public participation in environmental decision-making” 171.

243 Ebbesson “Participatory and procedural rights in environmental matters” 2; Devenish *A commentary* 451.

into actual implementation.<sup>244</sup> Public views may translate into concrete results only if the views expressed are consistent, with the “seamless web of bureaucratic control and co-ordination.”<sup>245</sup> Another weakness of the liberal democratic approach is that it does not provide for an institutional framework that caters for active public interaction, learning and ethical transformation.<sup>246</sup>

It must be emphasised that whatever approach is adopted for participatory rights, law plays a crucial role in all of these approaches, especially as it “creates a structure for participation that helps crystallise and protect society’s environmental goals.”<sup>247</sup> This is because law provides and stipulates participatory procedures in EIA, for example, and considers public participation a necessary element for effective EIA decision-making. The proper implementation of public participation generally, and in EIA processes particularly, has the potential of ensuring and promoting environmental justice and human well-being, as it helps to balance the needs of both present and future generations in governmental decisions, to integrate environmental consideration in decisions, and to implement as well as to enforce environmental standards.<sup>248</sup> In *FEDEV v China Road and Bridge Corporation*,<sup>249</sup> for example, the Court of First Instance in Widikum, Cameroon, granted FEDEV *locus standi* to institute legal proceedings in the public interest, with a view to compelling the respondents to engage local communities in the EIA process.

Although the above analysis illustrates the relevance of public participation in promoting and influencing decision-making to ensure and promote transparency and accountability in the governance of public affairs, the effective implementation of public participation may be hampered by certain factors. It has been argued that people with *mala fide*

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244 Richardson and Razzaque “Public participation in environmental decision-making” 173.

245 Fraser 1976 *Arena* 147.

246 Richardson and Razzaque “Public participation in environmental decision-making” 173.

247 Richardson and Razzaque “Public participation in environmental decision-making” 167.

248 Birnie and Boyle *International law and the environment* 261; Verschuuren “Public participation regarding the elaboration” 2.

249 2009 Unreported decision No CFIB/004M/09; Fuo and Semie “Cameroon’s environmental framework” 89.

intentions often partake in public participation processes, and because of this the merit of their input could be greatly affected.<sup>250</sup> In addition, it has been argued that public participation has the potential of hampering decision-making progress, as it may prevent expedition in decision-making processes directed towards achieving socio-economic development.<sup>251</sup> This is evident when taking into consideration peoples' different value and cultural systems, different development priorities and needs, and different levels of education. The fusion of these different backgrounds only illustrates the difficulty that may be associated with achieving community involvement in decision-making processes.<sup>252</sup> Moreover, it is argued that public participation is a threat to representative democracy, in part as it leads to delays in the implementation of important projects already decided by democratically elected and controlled authorities.<sup>253</sup> Participation procedures, when followed by court procedures, could hamper decision-making that could benefit and expedite social and economic interests generally.<sup>254</sup> Thus determined, the essential elements of active, effective, and full public participation for the purposes of this study include:

- Effective public participation before the project is a fait accompli;
- An equal bargaining position must be established;
- Literacy and an understanding of the project must be promoted;
- Effective public participation must be made in good faith;
- Effective and full participation of local communities has to be based on, and be facilitated by access to information and other procedural entitlements; and
- Measures that facilitate public participation must be culturally sensitivity.<sup>255</sup>

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250 Du Plessis 2008 *PELJ* 8.

251 Du Plessis 2008 *PELJ* 8; Verschuuren "Public participation regarding the elaboration" 10; Dryzek *Deliberative democracy and beyond* 62.

252 Du Plessis 2008 *PELJ* 8.

253 Verschuuren "Public participation regarding the elaboration" 40.

254 Verschuuren "Public participation regarding the elaboration" 40.

255 Para 289 of the Endorois case.

Public participation could play an important role within the FAI paradigm. It could help foster and promote participatory governance and environmental governance generally. As was noted in Chapter 2, as things stand local communities and affected stakeholders are rarely consulted during some FAI deals, and they do not necessarily participate in decision-making relating to FAI activities. Access to information, consultation and the participation of local communities in decision-making relating to FAI activities could provide an opportunity for these communities to take important decisions on matters that affect them in view of the need to protect and enhance both their procedural and their substantive rights.

### 3.3.2.3 Access to justice

Respect for and the promotion of human rights, whether substantive or procedural, can be effectively guaranteed by means of access to justice. The right to access to justice is based on the fact that rights infringement could be remedied through judicial recourse.<sup>256</sup> When a right is violated access to justice becomes fundamentally important for the injured individual wishing to seek judicial redress. The fact that the right to access to justice is a fundamental human right that is guaranteed in international<sup>257</sup> and national laws<sup>258</sup> means that access to justice is a procedural value with global relevance, although it may vary significantly from context to context.<sup>259</sup> It has been argued that for the right to access to justice to be meaningful it must correspond to the notions of substantive justice and fairness, as substantive justice is achieved only if there is respect for the rule of law. This means that access to justice is an essentially procedural construct with significant positive impact design to ensure protection and realisation of related rights, such as the protection of property, environmental rights, and the right to food and water and *vice-versa*.<sup>260</sup> It must be emphasised that the right

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256 Amos *Human rights law* 285.

257 For example art 8 of the UNDHR and art 7 of the African Charter.

258 The constitution and legislation of most African states provides for this right. For example s 34 of the 1996 South African Constitution; the Preamble of the 1996 Cameroonian Constitution.

259 Gordillo "Access to justice" 363.

260 Gordillo "Access to justice" 363-364.

to access to justice is premised on respect for the rule of law and on the constitutional separation of power, in which courts are independent of the executive and have the power and responsibility to interpret and apply the law independently.<sup>261</sup>

The right to access to justice may also be exercised through public interest litigation (PIL), which involves providing a very wide *locus standi*, and it appears to be the most popular method of seeking judicial redress for the violation of environmental and related rights.<sup>262</sup> PIL is a form of legal proceedings in which redress is sought in respect of injury to the public in general and where there may be no direct specific injury to any individual member of the public.<sup>263</sup> Hence anyone, including an NGO or a third party having a legal interest in protecting the environment, may approach a court for judicial redress for the violation of environmental and other rights, in the interest of the public.<sup>264</sup> In Cameroon, for example, an NGO, FEDEV, was granted *locus standi* to institute legal proceeding against a Chinese Company, China Road and Bridge Corporations, for environmental and other violations that needed to be pursued in the public interest. By enforcing the right to access to justice through PIL, PIL helps to reinforce and promote community empowerment and democratic accountability, as court decisions integrate both social and ecological concerns in developmental decision-making.<sup>265</sup>

Considering that the essence of law is to promote and encourage justice in society, environmental justice becomes crucially important to consider in the context of FAI. As FAI is an activity that impacts the environment and people, it requires both public and private sector actors to protect the environment and people against abuses that may accompany FAI projects. Such protection can be realised through a legal mechanism that conveniently and expeditiously encourages, ensures and promotes citizens' rights to litigation in environmental matters and development projects. The fact that access to

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261 Francioni "The rights of access to justice" 3.

262 Razzaque 2007 *FELR* 587.

263 Sorabjee 1999 *Judicial Review* 128.

264 See Chapters 5, 6 and 7 of this thesis for details.

265 Razzaque 1999 *FELR* 591.

justice underpins the respect of human rights generally may be identified as a cardinal element of good governance, and it tentatively supports the argument that the host countries of FAI projects must endeavour to promote the right to access to justice, thus serving to protect people's rights and interests with regard to FAI activities and democratic governance.

Access to justice in this regard is a means to an end.<sup>266</sup> The right to access to justice gives individuals as well as public interest groups the opportunity to protect through court actions their rights to information and participation and to contest decisions that do not take into account their rights and interests. The right to access to justice further provides potential solutions to citizen objections to decisions that may adversely affect them, and the right facilitates their input into environmental and other human rights protection matters. It can therefore be said that access to justice is an important procedural entitlement to be vigorously implemented in host countries in relation to FAI projects. Access to justice provides a valuable platform to curtail government's abuse of arbitrary power and simultaneously promotes transparency and accountability in the exercise of power by government officials.<sup>267</sup> The right to access to justice may also be strengthened and enforced through judicial review processes,<sup>268</sup> where judicial review is a useful way of curtailing government's exercise of arbitrary power,<sup>269</sup> rendering this right an important and expedient intervention to curtail maladministration and promote transparency and accountability.<sup>270</sup> This view aligns with the dissenting opinion of Judge Chaskalson in *South African Association of Personal Injury Lawyers v Health*,<sup>271</sup> that corruption and maladministration are inconsistent with the operation of the rule of law.

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266 Environmental justice, according to Shelton, is the equitable utilisation of resources, procedural fairness and a safe and healthy environment, Shelton "Environmental justice in the postmodern world" 26; Ebbesson "Procedural and participatory rights in environmental matters" 2.

267 Hoexter *Administrative law* 56; Dean 1986 *SAJHR* 164-165; Halliday *Judicial review* 13.

268 Cane *Administrative law* 28.

269 Hoexter *Administrative law* 60.

270 Hoexter *Administrative law* 63; Plasket "The fundamental rights to just administrative action" 70.

271 *South African Association of personal Injury Lawyers v Health* 2001 (1) SA 883 para 4; *Reuters Group PLC v Viljoen NO* 2001 (2) SACR 519; *Mahambahlala v Member of the Executive Council for Welfare, Eastern Cape Provincial Government* 2001 (9) BCLR 899 (SE); Plasket "The fundamental rights to just administrative action" 71.

Administrative malpractice, if unchecked by means of judicial oversight, has the potential to compromise the protection, fulfilment and promotion of fundamental human rights and freedoms, including those related to the environment.

Judicial review is an element of access to justice and consequently should be perceived as a procedural right, because access to justice provides a standard of review of the administration of justice where the infringement of a right has occurred.<sup>272</sup> Claims to the exercise of the right to access to justice are ineffectual unless the enjoyment of the right is buttressed by a fair and impartial system of justice, including judicial review processes.<sup>273</sup> Judicial review provides people with the possibility of being granted relief with respect to their infringed rights. The Aarhus Convention defines access to justice as “access to a review procedure before a court of law or another independent and impartial body established by law.”<sup>274</sup> This is interpreted to imply that host countries to FAI activities are not only supposed to comply with international requirements that they provide access to justice at the domestic level, but also to provide a system of judicial review through which courts are able to review administrative decisions with regard to FAI land deals. It also implies that the public should have recourse to judicial procedures if for instance a contracting party (the state or a foreign investor) violates or fails to respect peoples’ fundamental rights during the regulation or implementation of FAI.<sup>275</sup> Members of the public may thus passively protect their rights and interests, as administrative bodies will be more broadly accountable for their actions in the knowledge that these actions are subject to review and external perusal. It could also serve to enhance transparency and accountability in FAI negotiations, and ultimately as a final remedy to secure the protection, respect and fulfilment of rights. Hence, the right to access to justice ought to be respected with the aim of ensuring transparency and accountability in the exercise of public functions by public bodies.

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272 Francioni “The rights of access to justice” 1.

273 Francioni “The rights of access to justice” 2; art 28 the of 1995 Ugandan Constitution.

274 Art 9(1) of the Aarhus Convention.

275 Pinedo 2011 *IJHSS* 13.

The right to access to justice could be restricted through limitation by time.<sup>276</sup> It has been argued, though, that for the right to access to justice to be limited by a time constraint, the limitation period must have been rationally determined in relation to a legitimate aim and be consistent with the aim sought to be achieved.<sup>277</sup>

The exercise of the right to access to justice may also be limited by financial constraints, as the high legal and administrative fees involved in bringing an action to court may discourage parties to bring an action to court or another tribunal.<sup>278</sup> In South Africa this has been taken into account and although administrative and court fees are high, there is a government-sponsored legal aid board that provides legal assistance.<sup>279</sup> In addition, the South African Legal Resources Centre and various university law clinics, such as the North-West University, Potchefstroom Campus, Law Clinic, provide free legal assistance to indigent people in an effort to augment the impediments associated with ensuring people has access to judicial recourse.<sup>280</sup>

The following elements essential to the proper exercise of the right to access to justice may be distilled from the above discussion and the supporting literature:

- Access to justice must be affordable and unbiased;
- Access to justice must be appropriate in relation to the parties and the dispute;
- Access to justice must be effective and efficient;
- Access to justice could encompass a claim for judicial review;
- The proper functioning of the right to access to justice must correspond with the notions of substantive justice and fairness;
- The enjoyment of the right to access to justice must be guaranteed by a system of fair and impartial administration of justice; and
- Access to justice must be predicated on respect for the rule of law.

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<sup>276</sup> Amos *Human rights law* 286-287.

<sup>277</sup> Amos *Human rights law* 287.

<sup>278</sup> Razzaque 1999 *FELR* 592; Henninger *et al Closing the gap* 7.

<sup>279</sup> Henninger *et al Closing the gap* 8.

<sup>280</sup> Henninger *et al Closing the gap* 8.



Like the rights to access to information and public participation, the right to access to justice could play an important role in the domain of FAI activities. Since the three pillars of procedural rights overlap and are related, the provision of access to justice may help curb malpractices like corruption, which may be prevalent in FAI activities, given the lack of transparency and accountability during FAI regulation. Proper mechanisms for access to justice for local communities and affected stakeholders may enable them to seek redress both for the violation of their right of access to information and public participation and their substantive entitlements.

It is evident, then, that the adoption of a RBA, and particularly its procedural aspects, could help to promote, protect, and fulfil people's rights, and might therefore be conducive to a country's government being constrained always to act in an accountable and transparent manner.

### *3.3.3 Strengths and weaknesses of procedural aspects of a RBA*

Having now established the core content and elements of the RBA the strengths and weaknesses of the procedural aspects of a RBA will be examined next by focusing on its core principles which are participation, information sharing, access to justice, transparency and accountability, respect for the rule of law, efficiency and effectiveness, and responsiveness.

#### **3.3.3.1 Strengths**

It has been argued that the advantages of a RBA lie in its use in two important contexts for development specialists.<sup>281</sup> These are its use as a claim and as a process. Sengupta<sup>282</sup> describes these two important factors as "ends" and "means". The fact that a RBA encourages a redefinition of the nature and aims of development activities into claims, duties and mechanisms that must promote, respect, and adjudicate the violation

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281 Sengupta 2000 DC 568.

282 Sengupta 2000 DC 568.

of people's rights and interests<sup>283</sup> supports the argument that claims of human rights violations seek to reinforce accountability. This is because at the heart of any RBA to development activities, including FAI activities, are concerns related to mechanisms for accountability. These differentiate charity from claiming a right,<sup>284</sup> especially to the extent that the existence of claims implies the existence of corresponding methods of holding violators of such claims accountable.<sup>285</sup> In addition, premised on a widely agreed set of norms that specify the rights and responsibilities of the actors in FAI land deals, it has been argued that a RBA could increase the legitimacy of proposed FAI activities, programmes and policies through the integration of social concerns with agricultural investment objectives.<sup>286</sup> If, for example, a proposed FAI activity proves detrimental to the environment or to related fundamental rights, a RBA could possibly be effective in ensuring the accountability not only of the host governments but also of agents in the private sector, including foreign investors, multinational corporations, and foreign states with respect to the violation of people's fundamental rights.

Conversely, the implementation of a RBA to development activities would seek to ensure that the processes by which development aims and objectives are pursued also respect, protect, and fulfil human rights. This implies that processes of change that are being promoted through development assistance must be participatory, accountable and transparent, with equity being fostered in decision-making and sharing of the outcomes of the process.<sup>287</sup>

Furthermore, the procedural aspects of a RBA play an important role in determining the standards, processes and manner of the regulation of development activities. It has been argued that such procedural aspects of a RBA could help to preclude the harmful impacts of FAI and also address distributive concerns, especially when analysed from

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283 Uvi 2007 *DP* 602.

284 Uvi 2007 *DP* 602-603.

285 Uvi 2007 *DP* 603.

286 Shelton "A rights-based approach to conservation" 6.

287 Sengupta "Rights to development" 21-22.

the perspective of states' human rights obligations.<sup>288</sup> It is commonly held that the absence of such normative criteria would enable agricultural investment to continue endlessly to levy an unacceptable toll on vulnerable host populations. The framing of harmful FAI impacts as violations of human rights requires the establishment of a strict measure for review, such as through procedural means that privilege the ultimate protection of people's rights and interests during FAI decision-making processes and implementation. For example, the enforcement of peoples' right to public participation could provide a platform for local communities to effectively and meaningfully engage with the relevant authorities during FAI decision-making processes with the hope of preventing the harmful impacts of such developments or seeking redress after the event.

Moreover, the implementation of the procedural aspects of a RBA, notably public participation, may help to illuminate the underlying causes of the (positive or negative) impacts of an activity on people's rights, as well as the impact of the enjoyment or lack of enjoyment of people's rights. This has the potential of allowing better choices for decision-making with regard to FAI projects.

Like public participation, the procedural RBA aspects of the right to access to information may significantly improve FAI outcomes by facilitating synergies and generally improving the governance of FAI contracts.<sup>289</sup> This is because exercising the right to access to information increases people's awareness of the existence of their rights more generally and promotes the protection of their rights in decision-making processes. It seems that without effective respect for and promotion of the procedural rights aspects of access to information, people's rights and interests may not be properly protected or defended either in decision-making processes or in court actions, in part as the right of access to information is the necessary prerequisite for meaningful and effective public participation in decision-making processes.

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288 Narula "The global land rush" 1.

289 Shelton "A rights-based approach to conservation" 6.

### 3.3.3.2. Weaknesses

In addition to the strengths of the procedural rights aspects of RBA (described above), there are some weaknesses with regard to the implementation of this approach.

Although all states have human rights obligations as members of the UN and are therefore bound to comply with the same, it has been argued that not all governments and states promote and ensure the full realisation of human rights domestically.<sup>290</sup> The lack of a clear commitment by states to respect, protect and fulfil people's human rights is an implied restriction and hence a possible weakness in the realisation and enjoyment of human rights. The lack of commitment by non-state actors, including multinational corporations, to respect and promote human rights values in their development activities is questionable and remains a subject of further discussion elsewhere.<sup>291</sup> For example, it is argued that business entities including multinational corporations may challenge efforts to comply with international law, and particularly human rights law.<sup>292</sup> This may hinder the effective implementation and protection of human rights, including the procedural aspects of a RBA to FAI governance.

Moreover, proper information dissemination during EIA processes could be problematic, since some of these processes, particularly those involving major developments such as FAI, may lack adequate provisions for informing the public about the proposed development and its potential impacts. The possibility of classifying some documents as confidential could also hinder the dissemination of information to the public and, as a consequence, transparent governance.<sup>293</sup> The absence of proper information dissemination would be symptomatic of a lack of transparency, which would have the corollary effect of hindering effective and meaningful public participation in this regard.

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290 Shelton "A rights-based approach to conservation" 7.

291 Shelton "A rights-based approach to conservation" 7.

292 Shelton "A rights-based approach to conservation" 7.

293 Kakonge 1996 *IA* 313.

Furthermore, although the Aarhus Convention professes and provides for the respect and enforcement of the rights to access to information, public participation and access to justice in environmental decision-making, the vigorous enforcement of the procedural aspects of a RBA generally and the right to access to information and public participation require substantial resources to build capacity, and the lack of resources such as time, information, and funding may significantly hinder the effective implementation of this approach.

Although access to justice is clearly a means to an end in that it facilitates, incorporates and enforces the rights of local people, it must be borne in mind that the actual realisation of this right by local communities may be difficult because of financial constraints.<sup>294</sup> Further, legislation in many cases provides only for the recognition of and respect for the right to access to justice, and not how local communities and affected stakeholders could exercise this right in the event of financial constraints, especially as it is expensive to approach courts. As such local communities are often poor subsistence farmers; it is often difficult, if not impossible, for them to exercise their right to access to justice. Their inability to exercise their rights could foster their mistrust and misunderstanding of the project authorities and government officials.<sup>295</sup>

Moreover, the fact that legal documents are often drafted in technical terms which could impede the proper understanding of the judicial process and the content of the matter, suggests that illiteracy may bar the effective realisation of procedural rights.<sup>296</sup> Their lack of formal education may make it impossible for members of local communities to read and understand the judicial process and to keep abreast with legal proceedings affecting their rights. With regard to the right to access to information, for example, it is one thing to read a comment and another to be equipped to object to a comment on reasonable grounds during the decision-making processes. Similarly, if

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294 De Vos 2013 <http://constitutionallyspeaking.co.za/marikana-funding-case-hints-at-larger-problems-with-gaining-access-to-justice/> accessed 13 October 2015.

295 Kakonge 1996 *JA* 313.

296 Kakonge 1996 *JA* 313.

local communities do not know that they may seek judicial redress for violation of their rights and interests, their right to access to justice would not be of much value to them.

Again, time constraints are possible barriers to the effective exercise of the right of access to information and public participation as components of environmental justice in EIAs.<sup>297</sup> This is because EIA information is not always released timeously.<sup>298</sup> This delay could prevent local communities from exercising their right to access to information, given that the information they seek may never be made available to them.<sup>299</sup> Such a delay in disseminating environmental information may result in infringement of other fundamental rights, such as the right to an environment that is not harmful to human health and well-being.<sup>300</sup>

#### *3.3.4 A RBA to good FAI governance*

It has been noted above that good governance is concerned with the process whereby public institutions conduct public affairs, manage public resources and guarantee the realisation of human rights in a manner essentially free of abuse and corruption, and with due regard for the rule of law. The true test of governance, and by extension FAI governance, lies in the degree to which its aims and objectives are attained, based on the promise of respecting and promoting people's human rights, including among others civil, cultural, economic, political and social rights insofar as agricultural investment projects are concerned. This implies that good FAI governance and human rights are deeply intertwined, conceptually and in practice. Human rights do not only provide a set of principles to guide the work of governments and other political and

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297 Kidd and Retief "Environmental assessment" 971. The importance of EIA is fully recognised in international, regional and national law. See generally the dissenting opinion of Judge Weeramantry in the International Court of Justice's ruling concerning *Hungary v Slovakia* (1997) ICJ Reports 7; the Espoo Convention; Principle 17 of the Rio Declaration, Hunter *et al International environmental law and policy* 531.

298 Kidd and Retief "Environmental assessment" 1028.

299 Kidd and Retief "Environmental assessment" 1028.

300 Art 1 of the Aarhus Convention; s 24 of the 1996 South African Constitution; the Preamble of the 1996 Cameroonian Constitution; art 39 of the 1995 Ugandan Constitution; art 3 of the UNDHR of 1948.

social actors, but also provide a set of abstract but objective performance standards against which these actors could be held accountable with respect to the governance of the public affairs of a country. Moreover, human rights principles inform the content of FAI governance efforts, in part as they could inform the development of FAI-related legislative frameworks, policies, and programmes, designed to regulate socio-economic development projects, with the ultimate objective of protecting people's rights and interests. Thus without good FAI governance that incorporates and is based on a RBA, people's rights and interests cannot properly be respected, protected and fulfilled in the context of FAI activities.

Furthermore, the aim of good FAI governance is to ensure and promote transparency, inclusivity and accountability in large-scale land acquisitions. Accountability, more particularly, is a corner-stone of the human rights framework<sup>301</sup> that is often used to empower rights-holders to hold a duty-bearer accountable for non-compliance.<sup>302</sup> The foregoing lends support to the argument that both FAI governance and human rights approaches serve to achieve and maintain a form of good FAI governance. By aiming to structurally change development processes through the transformation of state-citizen relationships and through the strengthening of the social contract between citizens and the state, a RBA appears to offer a theory of change and a strategic way of rethinking partnerships and prioritising developmental issues.<sup>303</sup> The implementation of this theory of change entails a shift from supporting service delivery, and instead focuses on strengthening capacity to fulfil human rights obligations, while promoting capacity-building for citizens' empowerment.<sup>304</sup>

A RBA is useful and relevant for governance in that it strengthens the participatory rights of people, a necessary element that is instrumental in ensuring, promoting and

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301 OHCHR 2006 <http://www.ohchr.org/Documents/Publications/FAQen.pdf> accessed 20 October 2015.

302 Uvin 2007 *DP* 601-602.

303 D'Hollander *et al* "Promoting a human rights-based approach" 8.

304 D'Hollander *et al* "Promoting a human rights-based approach" 8.

protecting people's fundamental rights in decision-making processes.<sup>305</sup> Consequently, the observance of human rights standards helps to expand the choices and opportunities of the vulnerable poor within the realm of governance. The fact that the realisation and protection of human rights norms may encompass the goal of all development efforts, including FAI, and because good governance secures development, give credence to the proposal that human rights norms and standards should be deliberately mainstreamed into governance.<sup>306</sup> To this end, because a RBA is a mainstream process that links human rights to governance, it could help to infuse the norms, standards and principles of human rights systems into the plans, policies and processes of FAI governance. Such integration could help to provide a platform through which people's rights and interests could be better protected. This claim is based on the argument that a RBA not only perceives human rights as fundamental rights with universal legal guarantees that protect individuals and groups against actions and omissions of states and development agencies that interfere with fundamental freedoms, entitlements and human dignity, but also explicitly recognises that "human rights and human development share a preoccupation with necessary outcomes for improving people lives and livelihoods".<sup>307</sup> Such a comprehensive grasp of human rights protection provides objective benchmarks, on the basis of internationally agreed human rights standards and norms, for use in monitoring and evaluating the extent to which rights are being realised, with the goal of providing policy-makers with concrete and effective checklists for action.<sup>308</sup> It also has a snowball effect in strengthening governance standards for sustainability, especially considering how these norms and standards are articulated in the governance sphere, to appropriately and correctly manage socio-economic development projects that impact on the environment. A RBA

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305 Nyamu-Musembi and Cornwall "What is the rights-based approach all about" 3.

306 Anon [http://www.chr.gov.ph/MAIN%20PAGES/about%20hr/advisories/pdf\\_files/abthr036.pdf](http://www.chr.gov.ph/MAIN%20PAGES/about%20hr/advisories/pdf_files/abthr036.pdf) accessed 2 October 2015.

307 OHCHR 2006 <http://www.ohchr.org/Documents/Publications/FAQen.pdf> accessed 20 October 2015.

308 D'Hollander *et al* "Promoting a human rights-based approach" 8.



therefore works in FAI governance to facilitate the links between human rights and governance in the following ways:

- It delineates the links between governance functions, programmes and projects with human rights in the economic, political and administrative areas.
- It helps to translate human rights principles, concepts, national and international standards and norms into governance plans, policies, and programmes.
- It applies national and international human rights standards and norms to the practice of decision-making, policy formulation, administrative notices, and development and fiscal planning programmes.
- It applies the concept of obligation on both state and non-state actors, since it sets out the claims of people in terms of rights.<sup>309</sup>

### **3.4 Chapter summary**

This chapter has provided the theoretical and conceptual foundation on which this study is based by detailing an understanding of the meaning of good FAI governance, a RBA generally, and a RBA to FAI governance. It has also provided an understanding of core concepts such as governance, good governance, FAI governance, and the RBA that underpins this study. The chapter has noted that governance is a decision-making processes that involves the interplay of many actors in the public and private sector, and that governance is a widely used term encompassing many issues and disciplines such as economics, political science, and public administration. Governance mainly relates to steering action and behaviour with the desire to reach a specific pre-determined objective(s). Good governance improves the quality of governance, and relies on core principles such as participation, accountability, transparency, information sharing, efficiency and effectiveness, and respect for the rule of law. These principles are features of both “FAI governance” and “good FAI governance.”

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309 Anon [http://www.chr.gov.ph/MAIN%20PAGES/about%20hr/advisories/pdf\\_files/abthr036.pdf](http://www.chr.gov.ph/MAIN%20PAGES/about%20hr/advisories/pdf_files/abthr036.pdf) accessed 2 October 2015.

It is observed in the above analysis that FAI governance emerges from the constructs of governance and good governance, and that good “FAI governance” generally could strengthen and promote inclusivity, transparency and accountability if applied in FAI practices, and could serve as a necessary framework to better protect people’s rights and interests during FAI decision-making and implementation. FAI land deals are often opaque and exclusionary, as was stated in Chapters 1 and 2 of this thesis, and because the exercise of the right to access to information and participation promote and enhance governance, these aspects of governance as noted above have the potential to achieve better outcomes with respect to FAI governance. Consequently, a regime of good FAI governance that encourages and is based on the procedural rights of a RBA could arguably be an appropriate platform to ensure the protection of and respect for people’s rights and interests during FAI practices. Such a framework could be feasible only through the incorporation of the procedural aspects of the RBA and the RBA generally in the context of FAI activities, which seeks to reinforce states’ international human rights obligations at the domestic level and consequently to facilitate and ensure the protection of people’s rights and interests *vis-a-vis* development activities. Notwithstanding the above, the chapter has noted that because the procedural aspects of a RBA have both strengths and weaknesses, it should not be considered a *panacea* with regards to the protection of people’s rights and interests generally, but it remains an importantly indispensable element in good FAI governance.

The next chapter provides a detailed investigation of the procedural aspects of a RBA in international, regional and sub-regional frameworks in order to determine how the procedural aspects of a RBA could be used to protect people’s rights and interests during FAI practices generally and in the focal countries of this study in particular.

## CHAPTER 4

### THE LEGAL FRAMEWORK OF A RBA IN INTERNATIONAL, REGIONAL AND SUB-REGIONAL INSTRUMENTS

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#### 4.1 Introduction

The previous chapter discussed the theoretical foundation of the thesis that comprises of governance, good governance, FAI governance, good FAI governance and a RBA. It noted that the procedural aspects of a RBA, namely the right to access to information, public participation and the right to access to justice, are generally described as the three pillars of procedural rights.<sup>1</sup> It was argued that ideally these pillars of procedural rights must form part of good FAI governance generally. To this end, because people's fundamental rights must be protected by means of a RBA, the use of a RBA in regulating FAI appears a plausible way to protect people's rights and interests in that context.

Following from this, the present chapter aims to provide a detailed examination of the procedural rights aspects in international, regional and sub-regional conventions and soft law instruments. And aspects of these rights, which consist of a blend of hard and soft law relating to human rights, environmental and investment laws instruments are discussed in more detail below under the various legal instruments. This serves to provide clarity and coherence and a better understanding of how the procedural aspects of a RBA could be used to provide adequate protection of people's rights and interests in the context of FAI governance. Although soft law does not impose binding obligations on states and "its legal effects as well as its manifestation is often difficult to identify clearly,"<sup>2</sup> soft law instruments could serve as meaningful tools in interpreting and

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1 Art 3 of the Aarhus Convention; Mason 2010 *GEP* 14-15.

2 Depuy 1991 *MJIL* 420; Guzman and Meyer 2010 *JLA* 172; Shaffer and Pollack 2010 *MLR* 712-717. See the contradictory view of Weil, who posits that "obligations are neither soft law nor hard law: they are simply not law at all." See Weil 1983 *AJIL* 414-417.

shaping hard law (including treaties, for example) and state and non-state practices with respect to FAI.<sup>3</sup> Through soft law, potential strategies could be developed to ensure the actual and concrete implementation of hard law, while soft law also serves as a medium through which to address the loopholes that may exist in the implementation of hard law.<sup>4</sup>

Furthermore, the chapter proceeds to formulate generic minimum requirements and characteristics of the RBA as a benchmark, in part as such minimum requirements have to be present in domestic legal systems in order to ensure respect, protection and fulfilment of people's rights and interests. The said minimum requirement will subsequently be used to evaluate the extent to which these elements are present in the procedural RBA regimes of the focal countries of this study, and how they could be used by local communities and affected stakeholders to asset protection of their rights-based interests during FAI practices in Cameroon Uganda and South Africa.

In order to achieve the aims of this chapter, the following questions are addressed.

- (1) What is the legal status of the international, regional, sub-regional human rights instruments of the RBA and how do they relate to FAI governance?
- (2) How do these RBA instruments provide for the rights to access to information, public participation and access to justice?
- (3) What generic characteristics and minimum requirements could be distilled from the instruments insofar as the RBA is concerned, and how could they be used to ensure domestic compliance and enforcement of governance measures?

## **4.2 The right to access to information**

As indicated above, aspects of the right to access to information emerged from and could be found in international, regional, and sub-regional instruments that pertain to

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3 Anon <http://anthonydamato.law.northwestern.edu/IELA/Intech05-2001-edited.pdf> accessed 22 April 2015.

4 Guzman and Meyers 2010 *JLA* 172.

human rights laws, environmental laws and investments laws instruments. This section examines how the various legal instruments could be used to facilitate and promote people's right to access to information in the context of development activities such as FAI.

#### 4.2.1. *International law*

Because, the UNDHR is not a treaty, it does not *per se* create legal obligations on member states. However, the UNDHR which was adopted on 10<sup>th</sup> December 1948 is a universally adopted global instrument that provides for basic human rights and fundamental freedoms which states, including the focal countries of this study are expected to observe at their domestic levels. The UNDHR clearly provides for the respect for and enforcement of the fundamental rights of all human beings.<sup>5</sup> It stipulates that the foundation of freedom, justice and peace in the world is predicated on the full recognition, respect for and enforcement of human rights, without discrimination as to sex, colour, religion, minorities and political beliefs.<sup>6</sup> These principles have been reiterated in a host of other international soft and hard law agreements,<sup>7</sup> which suggests that member states have an obligation to respect, protect and fulfil people's fundamental rights in their domestic jurisdictions and in all matters, including socio-economic development projects that have the potential to adversely encroach on people's fundamental rights.<sup>8</sup> Hence, it is the responsibility of countries hosting FAI projects who are members of the UNDHR, including Cameroon, Uganda and South Africa, to respect, protect and fulfil the right to access to information, for instance, of all the people of a local community, insofar as FAI projects are concerned, especially if it is provided by the Declaration.

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5 The Preamble of UNDHR.

6 The Preamble of the UNDHR; Preamble of UNDRIPs.

7 For example, art 2 of the UDHR; art 2 of the ICCPRs; Principle 2 of the Sofia Guidelines; Principle 1(2) of the Declaration of Principles on Freedom).

8 The Preamble of UNDRIP; art 8(2)(b) of UNDRIP.

According to the UNDHR, state parties are obliged to provide and guarantee a right to access to information at the national level.<sup>9</sup> Promoting the right to access to information at the national level requires member states for example, to enact legislation to give effect to this right. In principle, the right must be exercised without public interference to the extent that the state as well as private bodies cannot withhold information from the public when it is requested. In the context of this study, this means that the governments of Cameroon, Uganda and South Africa are supposed to freely and timely disseminate information about FAI activities to the public. Withholding such information may constitute interference with and infringement of people's right to access to information under article 19 of the UNDHR. It would also serve to demonstrate the host country's breach of its obligations and commitments under international human rights law when it does not give effect to this right.<sup>10</sup> It is important to emphasise that the right to access to information is particularly pertinent, as it is a prerequisite for public participation in decision-making processes.<sup>11</sup>

The ILO Convention 169 is also an international instrument with binding force on member states and specifically lays the basis for respecting and protecting indigenous people's human rights within the context of project developments, such as FAI. For example, FPIC which embodies aspects of procedural rights such as public participation and access to information is explicitly mentioned five times in the ILO Convention,<sup>12</sup> which stresses the importance of adhering to FPIC when undertaking development projects that may potentially affect the rights and interests of local communities. Yet, because none of the focal countries of this study have signed or ratified the ILO

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9 Art 19 of the UNDHR.

10 It is an express requirement of international law that parties to international agreements are obliged and expected to translate and observe their international commitments nationally. See the Preamble of the UNDHR, for example.

11 Ebbesson "Public participation" 686; Ebbesson "Participatory and procedural rights in environmental matters" 2; Devenish *A commentary* 451.

12 Arts 10,11,19,28, 29 of UNDRIP. See further art 6 of ILO Convention 169.

Convention, they cannot be in breach of the treaty provisions in the event that they do not give effect to or breach FPIC principles as these do not apply to them.<sup>13</sup>

Although the ILO Convention does not explicitly provide for the right to access to information, part VI of the Convention, entitled *Education and Means of Communication*, can be broadly construed to indirectly encompass the right to access to information.<sup>14</sup> The responsibility of states to provide quality and appropriate education to indigenous and tribal people is taken to imply educating them on their right to access to information, including the right to know,<sup>15</sup> which suggests empowering them to seek information from public authorities about probable infringement on their rights, as well as any other rights contained in international or national laws.<sup>16</sup> For instance, the education of local communities may be instrumental in motivating them to request to participate in decision-making processes, including those in the context of FAI.<sup>17</sup> However, as indicated above, because Cameroon, Uganda and South Africa are not signatories to the ILO Convention 169, adherence to the provisions of the Convention by the governments of these countries in the context of development activities would be difficult, if not impossible, to enforce.

The adoption of the ICCPR of 1966 essentially serves to further reinforce the rights enshrined in the UNDHR of 1948. The ICCPR which is binding to all member states provides for the protection of both civil and political rights,<sup>18</sup> and member states, including Cameroon, Uganda and South Africa, are obliged to undertake to respect, protect and fulfil the relevant rights.<sup>19</sup> Some of these, such as the right to freedom of expression,<sup>20</sup> relate to the core of the right of access to information. Article 19 provides

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13 The only the African country that has signed and ratified ILO Convention 169 is the Central African Republic.

14 This part covers arts 26-31.

15 Art 30(1).

16 Art 30(1) of ILO Convention 169.

17 Art 29 of ILO Convention 169.

18 For example arts 2 and 3 of the ICCPR.

19 Art 2(1) of ICCPR.

20 Art 19.

for the right to freedom of expression and requires that the right must apply to everyone. It further entails the right to seek and receive information from a government official or the state.<sup>21</sup> The request for information under this right may be oral or written.<sup>22</sup> Article 19 does not limit the exercise of this right to a particular kind of information; rather, it concerns all kinds of information which is of public interest and held by the state. This implies that state parties to the ICCPR are under an implied duty not to withhold any information which is of public interest. This could include information regarding FAI transactions. Thus, the obligation imposed on states to provide information to members of the public provides an avenue through which measures could be taken to ensure that the rights and interests of local communities and affected stakeholders are taken into account during FAI land deals. This could serve to combat corruption, to provide accountability, and to act as a necessary catalyst for a more responsible and sustainable FAI processes.<sup>23</sup>

State parties have the option to restrict the ICCPR rights and freedoms in certain exceptional cases,<sup>24</sup> including respect for the rights or reputation of others,<sup>25</sup> and for the protection of national security.<sup>26</sup> Consequently, a state party may under the terms of article 4 derogate from its obligations in situations relevant to the protection of state security, for instance. To this end, it is clear that, like in domestic law as we shall see in Chapters 6 and 7, the right to access to information could sometimes be limited, albeit usually only under exceptional circumstances.

The Aarhus Convention adopts a RBA to environmental protection by setting the basis for respect for and the protection of the rights to access to information, public

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21 Art 19(2) of the ICCPR.

22 Art 19(2) of the ICCPR.

23 Smaller and Mann 2009 <http://www.fao.org/fileadmin/templates/est/INTERNATIONAL-TRADE/FDSs/A-Thirst-for-distant-lands.pdf> accessed 27 November 2015.

24 Art 19 places a restriction on the exercise of the right to freedom of expression through the taking into cognisance of other people's rights or the protection of national security, for example.

25 Art 19(3)(a) of the ICCPRs.

26 Art 19(3)(b) of the ICCPRs.



participation and access to justice.<sup>27</sup> Although the Convention is regional in scope, it has been argued that it influences and promotes the respect of the public's right of access to information, public participation and access to justice in environmental matters outside of Europe as well.<sup>28</sup> Also, the Convention is open to accession to non-EU member states<sup>29</sup> and such states are then obliged to adhere to the obligations set out in the Convention. However, most African countries, including those singled out in this study, have not ratified the Convention. Nonetheless, the Convention increases the pressure on states to make available environmental information to the public by providing clear guidance on how public authorities must disseminate public information.<sup>30</sup> In terms of the Compliance Committee and the Meeting of the Parties (MoP), it was ruled that member states are obliged to provide valuable information to the public and they must not require the public to provide reasons for seeking environmental information or showing particular interest in a case.<sup>31</sup> Under the Aarhus Convention, individuals have both a passive and an active right to access to information.<sup>32</sup> While the passive right entails an obligation on public authorities to respond to public requests for information, the active right to access to information relates to the obligation of public authorities to periodically collect, update and disseminate public information from their records.<sup>33</sup> Individuals can rely on both the passive and active aspects to assert their right to access to information. In terms of article 4, individuals are granted a passive right to request and receive information in any form relating to the state of the environment, factors or activities likely to affect the environment, human health, the conditions of human life, and cultural sites.<sup>34</sup> In view of the fact that FAI could affect all of the foregoing concerns, it is crucially important for

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27 Wates 2005 *JEEPL* 2; art 1 of Aarhus Convention; Kravchenko 2007 *CJIELP* 2; Ebbesson "Information, participation and access to justice" 1; Berthier and Kramer "The Aarhus Convention implementation and compliance in EU law" 7.

28 Ebbesson 2011 *ELR* 74.

29 Wates 2005 *JEEPL* 3; art 19(3) of Aarhus Convention.

30 Kravchenko 2007 *CJIELP* 2.

31 Kravchenko 2007 *CJIELP* 2 Ebbesson "Information, participation and access to justice" 2.

32 Wates 2005 *JEEPL* 3; Ebbesson "Information, participation and access to justice" 2.

33 Wates 2005 *JEEPL* 3.

34 Art 4 of the Aarhus Convention.

members of the public to be provided with information on the state of FAI activities in order for them to be aware of how governmental decisions relating to FAI regulation could impact their environment-related and other interests.<sup>35</sup> Hence, information requested, whether written or oral, must not be withheld by the government, and must be released in the form requested, and within the limited time defined by the Convention,<sup>36</sup> unless it can be shown to fall within the finite list of exempted categories.<sup>37</sup>

If information is not available in the form requested, the responsible government official should provide reasons for making it available in another form.<sup>38</sup> In addition, the person requesting the information need not be a citizen or resident of the country in question or express an interest in or reason why the information is being requested.<sup>39</sup>

With regard to the active right to access to information, public authorities have a responsibility to collect and disseminate information to the public in order to generally protect rights.<sup>40</sup> The implication in the context of this study is that local communities and affected stakeholders of host countries of FAI projects do not have to request all types of information on FAI projects from public authorities. Instead, public authorities must collect this information on behalf of local communities and then disclose it, since people's environment-related rights and other interests risk being negatively affected. Under the Aarhus Convention, states have to establish mandatory systems that ensure the adequate flow of information to the public about proposed activities that may affect the environment.<sup>41</sup> Evidently, the establishment of these mandatory systems ensures a network of information flow from public authorities to local communities, without the latter having to request for certain types of information, which amounts to a

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35 Kravchenko 2009 *ORIL* 228.

36 Art 4(1)(b) and 4(2) of the Aarhus Convention.

37 Arts 4(1)(3) and (4) of the Aarhus Convention.

38 Art 4(1)(b)(i) and (ii).

39 Art 4(1)(a) of the Aarhus Convention.

40 Art 5 of the Aarhus Convention; Ebbesson "Information. participation and access to justice" 2.

41 Art 5(1)(b) of the Aarhus Convention.

requirement of transparency in the dissemination of information to the public by public authorities.<sup>42</sup> The foregoing means that a failure to mandatorily provide information constitutes a violation of the dictates of Aarhus Convention, as well as a contravention of the rights to environment and life as was the case in *Guerra and others v Italy*.<sup>43</sup> In that case, the European Court of Human Rights held that failing to provide essential information to the public to enable them to assess the risks of project developments constitutes a violation of the right to family life and privacy as laid down in article 8 of the European Convention on Human Right.<sup>44</sup>

The Aarhus Convention stipulates instances in which the right may be refused,<sup>45</sup> including instances where the public authority to which the request is addressed does not hold the information,<sup>46</sup> or the request for information is manifestly unreasonable,<sup>47</sup> or the request for information concerns materials that are in the course of completion or concerns the internal communication of public authorities.<sup>48</sup> A request for information may also be refused if it is believed that the disclosure would adversely affect the confidentiality of the proceedings of public authorities,<sup>49</sup> public security,<sup>50</sup> and the course of justice,<sup>51</sup> the confidentiality of commercial and industrial information,<sup>52</sup> intellectual property rights,<sup>53</sup> the confidentiality of personal data,<sup>54</sup> or the interest of the person who disclosed the information.<sup>55</sup>

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42 Art 5(2) of the Aarhus Convention.

43 *Guerra and others v Italy* (1998).

44 Also see article 5(9) of the Aarhus Convention; Ebbesson "Information, participation and access to justice" 2.

45 Art 4(3)-(4) of the Aarhus Convention.

46 Art 4(3)(a) of the Aarhus Convention.

47 Art 4(3)(b) of the Aarhus Convention.

48 Art 4(3)(c) of the Aarhus Convention.

49 Art 4(4)(a) of the Aarhus Convention.

50 Art 4(4)(b) of the Aarhus Convention.

51 Art 4(4)(c) of the Aarhus Convention.

52 Art 4(4)(d) of the Aarhus Convention.

53 Art 4(4)(e) of the Aarhus Convention.

54 Art 4(4)(f) of the Aarhus Convention.

55 Art 4(4)(g) of the Aarhus Convention.

The Espoo Convention is an international legally binding environmental instrument containing relevant provisions of the procedural aspect of access to information important to this study. However, African countries, including the countries discussed in this study are not signatories to the Espoo Convention. The main purpose of the Espoo Convention is to oblige member states to collectively or individually take appropriate and effective measures to prevent, reduce and control significant adverse environmental impacts from proposed activities.<sup>56</sup> This requires the taking of legal, administrative and other measures by states to prevent, reduce and control the impact of activities, especially those listed in Appendix I to the Convention.<sup>57</sup> In order to achieve this aim, it is explicitly required of member states to carry out an EIA prior to the commencement of an activity within its jurisdiction.<sup>58</sup>

The carrying out of an EIA requires the dissemination of information about the proposed project and its potential impacts on the environment, article 3 requires the Party of origin<sup>59</sup> to disseminate environmental information to the public.<sup>60</sup> The “deforestation of large areas”<sup>61</sup> constitutes one of the areas of activities listed in Appendix I that requires an EIA, which means that even if FAI is not a listed activity as such that requires an EIA, some activities linked thereto are. In this instance, host countries where FAI occurs are duty-bound to disseminate information on FAI and its potential impacts on the environment to local communities. The reason for this as indicated in Chapter 2,<sup>62</sup> is that the lease of arable land in sub-Saharan Africa either involves deforestation or afforestation, as this land often serves to facilitate appropriate measures for climate change mitigation. As a result deforestation continues in sub-Saharan Africa, often in sensitive regions, to achieve CDM objectives. For instance,

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56 Art 2(1) of the Espoo Convention.

57 Art 2(2) of the Espoo Convention.

58 Art 2(3) of Espoo Convention.

59 Party of origin, according to the Espoo Convention, means the Contracting Party or Parties to this Convention under whose jurisdiction a proposed activity is envisaged to take place.

60 Art 3(2)(a)-(c).

61 Para 17 of Appendix I of Espoo Convention.

62 In section 2.5.2.

Cameroon is part of the Congo Basin and is endowed with six major ecosystems<sup>63</sup> which harbour rich biodiversity, including endangered plants and animals.<sup>64</sup> The exploitation of the country's resources, especially its forests, for CDM purposes has been instrumental in the destruction of much of this.<sup>65</sup> Thus because access to information is a prerequisite for meaningful participation in decision-making, lack of information regarding FAI projects may significantly undermine the participatory and other substantive rights of local communities and affected stakeholders in decision-making. This implies, for example, that the lack of information on FAI projects may continue to have an adverse impact on Cameroon's rich biodiversity and ecosystems, as local communities will be unable to enforce their protection during public participation processes.

The UNFCCC of 1992 is an international legally binding instrument which reinforces global efforts directed at combating the adverse impacts of climate change. In order to effectively address such impacts, the UNFCCC obliges member states, including those in this study, to promote and facilitate at the national level public access to information on climate change and its effect.<sup>66</sup> Investment in carbon credit and biofuel projects could constitute aspects of FAI activities, and member states are likely to be required to disseminate information about these projects to the public. Member states are further obliged to co-operate and promote at the international level the development and exchange of education and public awareness materials on climate change and its impacts.<sup>67</sup>

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63 These include: the marine and coastal ecosystem; the tropical humid dense forest ecosystem; the tropical wooded Savannah ecosystem; the semi-arid ecosystem; the montane ecosystem; and the fresh water ecosystem.

64 Fuo and Semie "Cameroon's environmental framework" 77.

65 Bele *et al* 2010 *MASGC* 4.5; Njoh 2007 *GeoJournal* 112; Tamasang "The clean development mechanism and forestry projects 171-195; Fuo and Semie "Cameroon's environmental framework" 75.

66 Art 6(a)(ii) of the UNFCCC.

67 Art 6(b)(i) of the UNFCCC.

Although UNDRIP is not legally binding because it is not a treaty, but a declaration, the adoption of UNDRIP appears to be not only the most comprehensive and advanced international legal instrument that deals specifically with indigenous people's rights,<sup>68</sup> but it also signals an addition to the growing body of international human rights law.<sup>69</sup> In order to ensure the full realisation of the substantive environmental and other human rights of local communities,<sup>70</sup> UNDRIP requires states, including the countries discussed in this study to respect, protect and fulfil the right to access to information of local communities, many of whom are officially designated as indigenous people who warrant protection as a specially designated and marginalised group, in project-oriented development.<sup>71</sup> The respect for and promotion of this right could be feasible only through adherence to the principle of FPIC.<sup>72</sup> This could be achieved through the dissemination of information on FAI land deals to them. The reason why it is important that indigenous people be informed is that the land to be allocated to the proposed FAI may be of considerable importance to them in terms of their culture, religion and spiritual lives.<sup>73</sup> Without adequate knowledge on FAI projects, indigenous people would be unable to protect their rights to land, especially as the implementation of FAI in such parcels of land could undermine the significance of the land to them.<sup>74</sup>

The fact that articles 25 and 26 of UNDRIP recognise and emphasise the distinctive spiritual relationship between indigenous people and the land which they have traditionally owned, occupied or used, hints at a continuous right to own, use and develop the land without outside interference. This suggests that any interference with the land of indigenous people should be backed *inter alia* by adherence to the principle

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68 Also see the ILO Convention 169.

69 Charters and Stavenhagen *Making the declaration work* 10; Anaya and Wiessner 2007 <http://jurist.org/forum/2007/10/un-declaration-on-rights-of-indigenous.php> accessed 19 January 2016.

70 Art 1 of UNDRIP.

71 The Preamble of the UNDRIP; art 3 of UNDRIP.

72 Art 10 of UNDRIP.

73 NAPE "Land, life and justice" 13.

74 Art 11(1) and (2) of UNDRIP.

of FPIC.<sup>75</sup> “Inform” in FPIC stresses the importance of the right of indigenous people to be informed about development projects, including FAI. Such information has to be disseminated prior to the commencement of an FAI project, as prior information serves as a prerequisite for consent relating to project developments.<sup>76</sup> Prior information should allow people sufficient time to scrutinise the public information in order that they may give their free and non-coerced consent during FAI projects.<sup>77</sup> Conversely, information disseminated after the implementation of a FAI project could prevent the giving of free consent or any other form of participation in decision-making, thus demonstrating the lack of transparency and accountability on the part of the host country.

Importantly, prior information about FAI projects should be accessible, clear, consistent, accurate, constant and transparent.<sup>78</sup> It has to be delivered in language appropriate to the indigenous people and various formats including radio, video, graphics, documentaries, photos or oral presentation, and must cover both the positive and the negative potential of the FAI project.<sup>79</sup> In other words, prior information has to be delivered in a manner that strengthens and not erodes indigenous people’s culture and traditions.<sup>80</sup>

Considering that indigenous people are often marginalised because they are in the minority,<sup>81</sup> it may be difficult for them to enforce respect for their right to information, and consequently their tenure and other rights. The fact that the focal countries of this study have signed and ratified UNDRIP implies a corollary obligation on their governments to adhere to the principles of the Convention by respecting the right to access to information of indigenous people where development projects are concerned.

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75 Art 32 of UNDRIP.

76 Laughlin *et al Guidelines on free prior informed consent* 18.

77 Laughlin *et al Guidelines on free prior informed consent* 18.

78 Laughlin *et al Guidelines on free, prior, and informed consent* 18.

79 Laughlin *et al Guidelines on free, prior, and informed consent* 18.

80 Laughlin *et al Guidelines on free, prior, and informed consent* 18.

81 De Schutter “Large-scale land acquisition and leases” 12.

The Stockholm Declaration is a non-legally binding international environmental instrument that fused environmental rights and human rights protection, as is evident from its concluding document, the Stockholm Declaration, which provides the basis for the human rights approach to environmental protection.<sup>82</sup> This suggests that environmental protection appears to be an essential prerequisite for the effective enjoyment of universal human rights such as the rights to life, food, and human health.<sup>83</sup> It has been argued that the Stockholm Declaration marked a significant turning point in the history of the development of international environmental law through its enunciation of principles that some term the “foundation of modern international environmental law.”<sup>84</sup>

These principles serve to guide and inspire efforts to preserve and enhance the environment.<sup>85</sup> Principle 19 of the Stockholm Declaration underscores the right of access to information. It provides for and considers environmental education an essential prerequisite for environmental protection. Principle 19 provides that:

Education in environmental matters, for the younger generation as well as adults, giving due consideration to the underprivileged, is essential in order to broaden the basis for an enlightened opinion and responsible conduct by individuals, enterprises and communities in protecting and improving the environment in its full human dimension. It is also essential that mass media of communications avoid contributing to the deterioration of the environment, but, on the contrary, disseminates information of an educational nature on the need to protect and improve the environment in order to enable man [sic] to develop in every respect.

Clearly in terms of the Declaration the dissemination of environmental information, arguably including information about FAI projects and their implementation, could educate and broaden the basis for an enlightened opinion and responsible conduct by

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82 The Preamble of Stockholm Declaration; Popović 1996 *CHRLR* 494; Kiss and Shelton *International environmental law* 663; Ouguergouz *The African Charter on Human and People's Rights* 355.

83 Müllerová 2009 *CLR* 2; Shelton 2008 *EPL* 42; Principle 1 of Stockholm Declaration; Popović 1996 *CHRLR* 487.

84 Thornton and Beckwith *Environmental law* 34; Principle 21 of Stockholm Declaration.

85 The Preamble; Principle 1 of Stockholm Declaration.



states, corporations, enterprises and local communities.<sup>86</sup> FAI host countries thus have to make information about FAI transactions available to local communities and affected stakeholders, as this helps to promote more rational and informed decision-making and foster transparent and accountable decision-making.<sup>87</sup> The right to access to information therefore places an obligation on state agencies to collect and disseminate relevant information, meet information requests in a timely manner, and keep information application fees within the means of all people.<sup>88</sup>

The Rio Declaration of 1992 is a non-binding international environmental instrument that sought to augment global efforts for environmental protection through *inter alia* the right to access to information. The Rio Declaration made sustainable development a centrepiece of international and domestic environmental law and policy<sup>89</sup> through the declaration of a set of principles designed to foster, ensure and enhance environmental protection. Principle 10 of the Rio Declaration stresses the relevance of the provision of environmental information:

Environmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. State shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.<sup>90</sup>

As well, the right to environmental information includes a right to information about hazardous materials that are capable of affecting the environment.<sup>91</sup> This means that because the activities that FAI leads to could entail the use in modern agricultural

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86 Principle 19 of the Stockholm Declaration; Principle 10 of the Rio Declaration.

87 Robinson *et al* 1996 *JEL* 20.

88 Petkova *et al Closing the gap* 37-40.

89 Richardson and Wood "Environmental law for sustainability" 1.

90 Principle 10 of Rio Declaration. See also principle 19 of the Rio Declaration.

91 Principle 1 of the Sofia Guidelines defines environmental information as any information on the state of water, air, soil, fauna, flora, land and natural sites, and on activities or measure adversely affecting or likely to affect these, and on activities or measures designed to protect these, including administrative measures and environmental management programmes.

practices of pesticides and other artificial chemicals, information on these substances and the use thereof ought to be made available to local communities.

The Johannesburg Principles is a soft-law instrument that, among others, sets standards for respecting and promoting people's human rights, through access to information.<sup>92</sup> It provides standards that clarify the legitimate scope of restriction of access to information on grounds of national security, while allowing the public to gain access to certain relevant information, as essential prerequisites for the respect for and promotion of human rights as the foundation of freedom, justice and peace in order to protect their rights.<sup>93</sup> Principle 1 stipulates the right to freedom of expression. Because the right to access to information has been perceived to be an aspect of the right to freedom of expression,<sup>94</sup> the latter entails the right to seek and receive information which arguably makes up the right to access to information.<sup>95</sup> This implies that states cannot withhold information from the public, except when withholding information is in the interest of national security.<sup>96</sup>

The PRAI principles is an international soft law instrument adopted by the World Bank in an effort to propose solutions based on procedural measures on how FAI could be better governed. Principle 3 underscores the relevance of the principles of transparency and accountability. The Principle requires that processes for accessing land and other resources and associated investments on land are transparent, monitored, and situated within a proper business, legal, and regulatory environment, in order to ensure accountability by all stakeholders. The importance of these principles in FAI projects could be explained in two ways. Firstly, lack of transparency and accountability in FAI

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92 The Preamble of the Johannesburg Principles.

93 Mendel 2003 <https://www.article19.org/data/files/pdfs/publications/jo-burg-principles-overview.pdf> accessed 13 January 2016. See also the Preambles of UNDHR and the Johannesburg principle.

94 Mendel *The right to information in Latin America* 1; Mendel 2003 <https://www.article19.org/data/files/pdfs/publications/jo-burg-principles-overview.pdf> accessed 1 January /2016.

95 Principle 1(b) of the Johannesburg Principles.

96 Principle 1(c) and 9 of the Johannesburg Principles.

projects serve as a potential ground for igniting conflicts in host countries.<sup>97</sup> This is because a lack of transparency not only creates distrust but also deprives local communities and affected stakeholders of the chance to resolve minor conflicts before they become major.<sup>98</sup> This implies that conflicts resulting from FAI projects could be avoided or minimised if FAI projects are transparent and accountable. Secondly, transparency and accountability in FAI projects may provide greater clarity in FAI incentives and the way they are applied, and may serve as a stimulus for host countries to attract more foreign investors, particularly those who make clear and tangible contributions to long-term sustainable investments. What is discernible from the above is the fact that an enabling and proper environment for FAI projects must be consistent with the good governance principle of information disclosure.

In order to achieve the second component of Principle 3 of PRAI, certain characteristics of transparency and accountability must be met. Firstly, the public must have access to relevant information about FAI projects.<sup>99</sup> This information should relate to land potential and availability, core aspects of prospective investments, as well as resource flow and tax revenue. Secondly, the capacity of the public institutions to handle investment selection must be well developed.<sup>100</sup> This is to ensure that land transfer and incentives follow good governance principles and operate efficiently and transparently. Finally, the implementation of an independent system that monitors the progress of investment projects must be guaranteed to ensure continuous transparency and accountability in FAI land transactions.<sup>101</sup>

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97 See section 2.10.1.2 below for more details.

98 FAO *et al*/ 2010 "Principle for responsible agricultural investment that respects rights, livelihood and resources: A discussion note" 8.

99 Para 3.2.1 of PRAI; FAO *et al*/ 2010 "Principle for responsible agricultural investment that respects rights, livelihood and resources: A discussion note" 9.

100 FAO *et al*/ 2010 "Principle for responsible agricultural investment that respects rights, livelihood and resources: A discussion note" 8-9.

101 FAO *et al*/ 2010 "Principle for responsible agricultural investment that respects rights, livelihood and resources: A discussion note" 8-9.

The Voluntary Guidelines is another international soft law instrument that provides guiding principles to host countries of FAI activities, including the focal countries of this study. Paragraph 3 provides for transparency by requiring the adoption of practices “clearly defining and widely publicising policies, laws and procedures in applicable languages, and widely publicising decisions in applicable languages and in formats accessible to all.”<sup>102</sup> These transparent rules and policies have the potential of ensuring that procedures and decisions relating to land and forest rights are accessible to all. Arguably this could be feasible only where the right to access to information is respected and promoted and where this right is part and parcel of such an effort.<sup>103</sup> It therefore implies that FAI land deals procedures and decisions are to be made accessible to all affected parties in order to promote and ensure transparency and accountability in FAI deals.<sup>104</sup> Another noticeable feature of the Guidelines is the incorporation of the notion of corporate social responsibility (CSR),<sup>105</sup> which involves private investors taking measures to mitigate socio-environmental impacts that may result from FAI projects.<sup>106</sup> Thus FAI investors are expected to be responsible for their actions insofar as their projects are concerned. Paragraph 12.12 of the Guidelines requires both corporations and non-state actors who are the principal actors in FAI to recognise the tenure rights of local communities.

Although the above clearly illustrates the considerable extent to which the Guidelines seek to instigate good land governance with respect to tenure rights and forests as far as FAI projects are concerned, they may not be entirely effective because of some shortcomings.

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102 Para 3B.8 of the Voluntary Guidelines.

103 Para 3B.8 of the Voluntary Guidelines.

104 Paras 6.9 and 3B.9 of the Guidelines; Spyke 1999 *BCEALR* 269-270; Tribe 1972 *SCLR* 617; Wirth 1996 *CJILP* 1.

105 Para 12.12; 3.3A.3.2 of the Guidelines.

106 Forstater *et al* “Corporate responsibility in Africa development” 13.

Firstly and most obviously, the application of the Guidelines is voluntary,<sup>107</sup> and some host countries or investors may therefore not apply the Guidelines in FAI projects. Secondly, the Guidelines fail to include water governance. This may be problematic, as water is a vital element in FAI land deals. Thirdly, the Guidelines facilitate and accept the transfer of tenure rights through market transactions.<sup>108</sup> This means that in the absence of an appropriate state regulatory framework, market transactions could fail to benefit the poor and might not provide for proper local communities' engagement in the process of FAI transactions. Finally, the Guidelines do not mention a strong monitoring mechanism that could ensure the accountability of host country policies on tenure security.

The OECD Guidelines<sup>109</sup> is a non-binding set of international recommendations, jointly addressed by governments, to multinational enterprises and thus relevant where governments allow multinational companies to engage in FAI. They provide principles and standards of good practice that are consistent with applicable domestic laws. Their application in the context of FAI should not be contrary to or in conflict with the relevant domestic laws of a country.<sup>110</sup> These principles and standards cover areas ranging from human rights, employment and industrial relations, and information disclosure, to the environment and taxation. In order to formulate measures for effective environmental protection, information about the implementation of an activity that might impact on the environment is required. It is against this background that Principle 4 requires multinational enterprises to provide the public with adequate and timely information on the potential environmental, health and safety impacts the proposed activity may have.<sup>111</sup> Hence, multinational enterprises have a responsibility to inform local communities, in a clear and simple manner, about the nature of the

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107 Para 2.1 of the Voluntary Guidelines.

108 Para 11.2; 11.3 of the Voluntary Guidelines.

109 Adopted 25th May 2011.

110 Principles 1. 7 and 1.9 of OECD Guidelines.

111 Principle 4.2(a) of OECD Guidelines.

environmental and health impacts proposed FAI activities may cause when they are seeking community consent for projects.<sup>112</sup>

The Equator Principles is a voluntary set of international standards for determining, assessing and managing social and environmental risks in project financing.<sup>113</sup> Although it could be asserted that the Equator Principles mainly apply to development projects financed by the World Bank and its affiliate, the IFC, the Equator Principles is built on the 1998 World Bank safeguard policies that set standards to protect nature and people from adverse environmental impacts of project developments.<sup>114</sup> The Equator Principles apply to all investors of development projects, including FAI, and are therefore relevant for this study, especially if one considers that FAI, like other “mega-projects”,<sup>115</sup> such as those that the principles, often results in severe environmental and human health impacts.<sup>116</sup>

The objective of the Equator Principles is to ensure that large-scale projects meet specified social and environmental requirements throughout their operation, with a view to reducing risks related to these in host countries.<sup>117</sup> To achieve this goal, the Equator Principles requires investors to comply with ten principles.<sup>118</sup> A study of these principles demonstrates the need for investors to recognise, respect, and promotes the environmental procedural right of access to information of local communities and affected stakeholders in socio-economic development projects, for instance. For instance, principle 2 provides for the execution of an EIA or SIA for different categories of socio-economic development projects.<sup>119</sup> This includes projects with high

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112 Principle 4.2(a) of OECD Guidelines.

113 Goetz 2013 *Globalization* 200; the Preamble of Equator Principles.

114 Goetz 2013 *Globalization* 200.

115 Goetz describes huge investment socio-economic projects as mega-projects; Goetz 2013 *Globalization* 199.

116 See Chapter 2 of this thesis for more details on the environmental impacts of FAI. .

117 Goetz 2013 *Globalization* 200; the Preamble of Equator Principles.

118 Goetz 2013 *Globalization* 200.

119 The Equator Principles categorised three types of investment projects that require either an EIA or SIA. Category A projects are projects with potential significant adverse environmental and social risks and or impacts that are diverse, irreversible or unprecedented; category B projects are those

environmental risks, projects with low environmental risks, and projects with no environmental risks. In terms of the Equator Principles, an EIA or SIA is required for the first two categories of investment projects.<sup>120</sup> It could be argued that because an EIA or SIA requires the dissemination of information, principle 2 requires investors to disseminate information about investment projects and their impacts to local communities.<sup>121</sup>

#### 4.2.2 *Regional law*

The African Charter, also known as the Banjul Charter, is a legally binding regional human rights instrument that was adopted to see the respect for and, protection and fulfilment of human rights and basic freedom in the African continent.<sup>122</sup> The African Charter applies to all member states, including Cameroon, Uganda and South Africa. The protection of human rights and basic freedoms is particularly evident from the relevant provisions in the Charter dealing with individual rights and freedoms. The African Charter informs a broad understanding of what is essential, from a rights-based perspective, for individuals to exercise their rights.<sup>123</sup> It affords individuals the right to economic, social and cultural development, with due regard to their freedom and identity.<sup>124</sup> This means that individuals have a right to pursue socio-economic and cultural development.<sup>125</sup> The reverse is also true, in that states have a duty to ensure that socio-economic and cultural developments must be pursued in accordance with local communities' socio-economic development goals or priorities.<sup>126</sup> Achieving this requirement entails that local communities or indigenous people have a right to have

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with potential limited adverse environmental and social risks and or impacts that are few in number, generally site-specific, largely reversible and readily addressed through mitigation measures; and category C projects are those with minimal or no adverse environmental and social risks and or impacts.

120 Principle 2 of Equator Principles.

121 The Preamble of Equator Principles.

122 The Preamble of the African Charter.

123 Art 22 of the African Charter.

124 Art 22 of the African Charter.

125 Also art 24 of the African Charter.

126 Also art 3 of the UNDRIPs; art 22(2) of the African Charter.

access to information relating to development projects,<sup>127</sup> with a view to determining their own development, freedom and identity.<sup>128</sup>

Article 9 provides for the right to access to information<sup>129</sup> and affords individuals the right to express and disseminate opinions within the law.<sup>130</sup> It implies that African member states, including those in this study, are duty-bound to ensure the exercise of this right at the domestic level by disseminating information, including information about FAI activities available to the public, to enable them to assert their rights and interests in the context of FAI. It further implies that states would be in breach of this provision and their commitment under the Charter should information be withheld from the public.

The ACDEG of 2007 is also a regional binding human rights instrument that seeks *inter alia* to promote the values and principles of democracy, good governance, human rights and the right to development<sup>131</sup> through the institutionalisation of transparency, accountability and participatory democracy.<sup>132</sup> The African Charter on Democracy further aims to promote the establishment of conditions that foster citizen participation, transparency, access to information and accountability in the governance of public affairs.<sup>133</sup> In order to achieve these aims, article 19 of the ACDEG requires states to guarantee conditions for free access to information.<sup>134</sup> This means that in order to promote and ensure transparent and accountable administration,<sup>135</sup> host countries of FAI have to disseminate information to the public regarding the governance of public affairs.

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127 Art 9 of the African Charter.

128 Art 22 of the African Charter.

129 Art 9(1) of the African Charter.

130 Art 9(2) of the African Charter.

131 Art 2(1) of the ACDEG.

132 Art 2(6) and the Preamble of the ACDEG.

133 Art 2(10) of ACDEG.

134 Art 19(2) of the ACDEG.

135 Art 12(1) of the ACDEG.



The AUCPCC is a regional binding human rights instrument that *inter alia* seeks to promote development through the removal of obstacles that impair the enjoyment of economic, social, cultural, civil and political rights,<sup>136</sup> and to foster transparency and accountability in the governance of public affairs.<sup>137</sup> This suggests that the AUCPCC adopts a holistic and pragmatic approach in combating corruption in terms of the governance of public affairs.<sup>138</sup> Like the ACDEG, the AUCPCC relies on access to information to promote and ensure transparency and accountability.<sup>139</sup> Article 5 obliges states to disseminate information to the public, particularly as education and general information are perceived as key provisions for the prevention and eradication of corruption.<sup>140</sup>

Furthermore, affirming the fundamental importance of freedom of expression as an individual human right, a cornerstone of democracy, and a means for respecting human rights and freedom, the Declaration on Freedom of Expression provides for the right to freedom of expression and information, including the right to seek, receive and impart information and ideas, whether orally or in written format.<sup>141</sup> According to the Declaration, the right to freedom of expression and information is a right that must be available to all people of a community, region or country and must not be interfered with,<sup>142</sup> except as prescribed by law.<sup>143</sup>

In terms of the Declaration refusal to disclose public information may be appealed.<sup>144</sup> Consequently, because freedom of expression and access to information serves to enhance and promote transparency and accountability, it is in the interest of states, including the focal countries of this study, to disseminate information to the public,

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136 Art 2(4) of the AUCPCC.

137 Art 2(5) of the AUCPCC.

138 Jatto 2010 *ARIBTL* 83.

139 Jatto 2010 *ARIBTL* 83 art 5(8) of the AUCPCC.

140 Jatto 2010 *ARIBTL* 83 art 5(8) of the AUCPCC.

141 Principle 1(1) of the Declaration on Freedom of Expression.

142 Principle 2(1) of the Declaration on Freedom of Expression.

143 Principle 2(2) of the Declaration on Freedom of Expression.

144 Principle 2(3) of the Declaration on Freedom of Expression.

even if the public does not request the information.<sup>145</sup> This conclusion is based on the fact that public authorities hold information not only for them but also as custodians of the public good<sup>146</sup> and people's right of access to information must therefore be respected, protected, and fulfilled.<sup>147</sup>

#### 4.2.3 *Sub-regional law*

The *CEMAC Investment Charter* of 1999 (CIC) is a regional binding investment instrument in the CEMAC region to which Cameroon is a signatory. The CIC aims to improve economic development by soliciting investment opportunities.<sup>148</sup> This is evident from the general framework designed to improve institutional, tax and financial issues for companies that are active in the region.<sup>149</sup> To this end, article 3 enjoins member states to provide investors with suitable, reliable and accessible information essential for economic development.<sup>150</sup> This could be interpreted to mean that member states, including Cameroon, have a duty to improve on the manner in which information, and notably information on FAI land deals can be accessed by the public.<sup>151</sup> The CIC mentions the public right to know only when it concerns privatisation of public companies, and this suggests that private bodies have a duty to disclose information about FAI activities in instances where they are involved in the activity.<sup>152</sup>

The EADPGG is a legally binding human rights instrument in the EAC region, to which Uganda is a member. The EADPGG seeks to promote good governance in the EAC region, in order to attract foreign direct investment and, it is reasonable to say that for the EAC countries including Uganda, to attract huge amounts of foreign direct investment (FDI) they are accordingly required to promote public access to information

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145 Principles 2(4) and IV(1) of the Declaration on Freedom of Expression.

146 Also Principle 2 of DAUPAI.

147 Principle IV(1) of the Declaration on Freedom of Expression.

148 The Preamble of CIC.

149 Art 1 of the CIC.

150 Also art 8 of the CIC.

151 Art 8 of the CIC.

152 Art 11 of the CIC.

in an effort to be as transparent as possible for the sake of improving investors' confidence. Article 6 of the EADPGG provides for the establishment of mechanisms that facilitate timely, accessible and accurate information on human rights issues to the public.<sup>153</sup> According to the EADPGG, access to information enables citizens to be informed about possible human rights violations when development projects occur. This might imply that member states are obliged to make information available to the public regarding the protection of those human rights relating to FAI projects.

The EADC Bill of Rights is also another regional binding human rights instrument to which Uganda is a member. Article 8 of the Bill of Rights provides for the right to access to information, involving the right of people to seek and receive information that is in possession of an organ of state, or an agency of a member state and private-held information.<sup>154</sup> This implies that an organ of state or agency must not withhold information from the public and ought to provide timely, accurate and accessible information. Withholding information would constitute non-compliance with a member state's commitments arising from this Bill of Rights. Nonetheless, there is a significant difference between what is on paper and what actually happens on the ground. It is reported that local communities do not have access to information on FAI land deals in Uganda.<sup>155</sup> Thus, organs of state do not seem to comply with the provisions of this Bill of Rights; neither do they respect the constitutional and legislative guarantee of the right to access to information in development projects, including FAI.<sup>156</sup> This raises serious concerns for a country such as Uganda that is a party to international, regional and sub-regional agreements that profess respect for human rights, including the right to access to information.<sup>157</sup>

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153 Art 6(2)(k) of the EADPGG.

154 Art 8(1) of the EADC Bill of Rights.

155 Kasimbazi "The legal framework for the balancing of development and environmental interests in Uganda" 545; Oakland Institute 2014 "The darker side of green plantation forestry and carbon violence in Uganda" 1-10.

156 Kasimbazi "The legal framework for the balancing of development and environmental interests in Uganda" 545.

157 The Preamble, and art 41 of the Ugandan Constitution.

In order to guarantee the promotion of this right, member states are obliged to enact domestic legislation to give effect to the right to access to information.<sup>158</sup> Under the EAC Bill of Rights, the right to information may be refused in certain cases, if the dissemination of the information is believed to be likely to prejudice the security and sovereignty of the state, or to interfere with the right to privacy of another person.<sup>159</sup>

The Protocol on Finance and Investment is a regional binding investment instrument in the SADC region, to which South Africa is a member. The Protocol fosters regional integration in the SADC region through the harmonisation of financial and investment policies of member states.<sup>160</sup> Under Annex 1 of the SADC Protocol on Finance, member states, including South Africa are obliged to uphold respect for people's right to access to information by ensuring that their investment promotion agencies disseminate investment information to the public.<sup>161</sup> Such information empowers the public to effectively exercise the right to public participation and it further helps the public to understand the necessary measures taken by foreign investors to adhere to CSR practices of the host countries.<sup>162</sup>

It must be emphasised that the right to access to information is a necessary prerequisite for the effective exercise of the right to public participation<sup>163</sup> as, for instance, it allows the public to participate in decision-making, and to criticise governmental decisions, and to express opinions on activities that may adversely impact on their fundamental human rights.<sup>164</sup> The next section of this chapter examines the right to public participation in international, regional and sub-regional law.

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158 Art 8(2) of the EADC Bill of Rights.

159 Art 8(1) of the EADC Bill of Rights.

160 Arts 2(1) and (2) of the SADC Protocol on Finance.

161 Art 23(c) Annex 1 of the SADC Protocol on Finance.

162 Art 10 Annex 1 of the SADC Protocol on Finance.

163 Art 5 Aarhus Convention; Ebbesson 2011 *ELR* 71; Segger and Khalfan *Sustainable development law* 156-158; Segger *et al* 2003 *RECIEL* 54; Principle of Rio Summit; Charnovitz 1997 *MJIL* 183; Agenda 21; Robinson "Reflecting on Rio" 18-19; Ebbesson "Participatory and procedural rights in environmental matters" 2.

164 Kravchenko 2009 *ORIL* 228.

### **4.3 The right to public participation**

#### *4.3.1 International law*

The ILO Convention 169 obliges states to consult with indigenous and tribal people through appropriate procedures when executing development projects.<sup>165</sup> States are further mandated to establish means that allow and provide for effective participation of indigenous and tribal people in the decision-making processes of project developments.<sup>166</sup> This suggests that host countries of FAI projects, including the focal countries of this study, are duty-bound to consult and include local communities, and particularly indigenous communities in the decision-making processes related to FAI land deals. The public consultation and participation must be in good faith and in an appropriate form consistent with peoples' circumstances, cultures and development policies.<sup>167</sup> The fact that public consultation and participation must be in good faith and in a form consistent with indigenous people's circumstances suggests a dual responsibility for member states and particularly host countries of FAI projects to ensure, and it also illustrates the level of co-operation required from both government and indigenous people to protect and preserve the natural environment.<sup>168</sup>

The fact that land allocated for FAI purposes is often land held and used by indigenous and tribal people under domestic customary laws signals the necessity of their effective participation in the decision-making processes of FAI projects with respect to the use, management and conservation of the land and its resources.<sup>169</sup> Consequently, through public participation, whether in the policy-formation or implementation of a project or programme, indigenous people can be responsible and take part in creating their own socio-economic self-sufficiency.<sup>170</sup> Their participation enables indigenous people to

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165 Art 6(1) of ILO Convention 169.

166 Art 6(2) of ILO Convention 169.

167 Arts 2(2)(b); 6(2); 7(1)-(4); 5(a)-(c) of ILO Convention 169.

168 Art 7(4) of ILO Convention 169.

169 Art 15(1) of ILO Convention 169.

170 Art 7(1) of ILO Convention 169.

ensure that the implementation of socio-economic projects, including FAI, is consistent with their development priorities.<sup>171</sup> Conversely, even if the state retains ownership and the rights to the natural resources pertaining to the land to be developed, it is still obliged to involve indigenous people in the decision-making process.<sup>172</sup> Clarity on the nature of the peoples' participatory rights is necessary before the actual commencement of any project development,<sup>173</sup> and a lack of clarity could in itself be seen as an infringement on the right to public participation in terms of article 15(2) of the ILO Convention.

In addition, the right to participate in decision-making is instrumental to enable local communities to object to the proposal that they leave their land,<sup>174</sup> which means that neither the host countries of FAI projects nor foreign investors should illegally be allowed to evict indigenous people from their land.<sup>175</sup> This suggests that should foreign investors interfere and evict indigenous people's land from the use and management of their land, the host country of the FAI project must, in accordance with national law and policies, establish appropriate penalties for such an eviction.<sup>176</sup> Such eviction can be feasible only with the FPIC of the indigenous people.<sup>177</sup>

Article 27 of the UNDHR provides for the right to public participation, though it seems to exclude the right with respect to socio-economic concerns, because it focuses only on the right of local communities to participation in cultural life.<sup>178</sup> Yet the fact that there is an element of participation may suffice to construe its application, in the broader sense, to include participation in the decision-making processes relating to development projects that have the potential to impact on the cultural right and identity of local communities. To this end, the host countries of FAI activities are required to allow for

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171 Art 3 of UNDRIP; art 792) of ILO Convention 169.

172 Art 15(2) of ILO Convention 169.

173 Art 15(2) of ILO Convention 169.

174 Art 16(1) of ILO Convention 169.

175 Art 16(1) of ILO Convention 169.

176 Art 18 of ILO Convention 169.

177 Art 16(2) of ILO Convention 169.

178 Art 27(1) of the UNDHR.

the full and active participation of local communities in the decision-making processes of FAI land deals in order for the communities to be able to ensure the protection of their cultural values, customs and traditions which may negatively be affected by project development.

The right to public participation is also guaranteed under the ICCPRs in the form of the right to political participation.<sup>179</sup> Article 25 clearly enunciates the right of all citizens to participate in the conduct of public affairs. The right seems to encompass a broad approach relating to the actual exercise of political power and in particular the exercise of legislative, executive and administrative powers. It also includes all aspects of public administration including the formulation and implementation of policies, laws and strategies at national level to provide for meaningful public participation in decision-making processes. This could be interpreted to mean that the host countries of FAI projects are required to allow for the meaningful participation of the public with regard to the formulation and implementation of policies, laws and strategies relating to FAI projects.<sup>180</sup> This is particularly important as the participation of the public could serve to ensure not only the protection of environmental concerns, but also local communities' farming rights, land tenure rights, water rights, food, and the rights of women to engage in agricultural activities.

To effectively and progressively guarantee the right to public participation in decision-making processes, the Aarhus Convention compliance committee<sup>181</sup> enjoined member states to periodically submit reports on the implementation of the Convention's provisions.<sup>182</sup> Where allegations of non-compliance are reported by the public of a party to the Convention, recommendations could be made by the MoP to ensure compliance with the Convention.<sup>183</sup> The Aarhus Convention emphasises every citizen's right to a

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179 Art 25 of the ICCPR.

180 Also art 8 of the Aarhus Convention.

181 At its first session in 2002, the MoP of the Aarhus Convention established the Compliance Committee by its decision I/7 on review of compliance.

182 Art 10(2)(a) of the Aarhus Convention.

183 Arts 10 and 15 of the Aarhus Convention.

healthy environment, and that this right must be guaranteed for both present and future generations.<sup>184</sup> This is predicated on the fact that through the effective implementation of the right to public participation, local communities and affected stakeholders are provided with a chance to make important decisions in terms of the use of their natural resource for generations to come, particularly with regard to the scale and purpose of the use. By alluding to the concept of inter-generational equity, it could be argued that the Convention deposes a shared responsibility on both states and members of the public to protect the environment for the benefit of both present and future generations. This entails a responsibility on the part of the present generation to cease from conducting activities that could jeopardise the integrity of the environment for the benefit of present and future generations and for the state and the public to engage in meaningful dialogue.<sup>185</sup> Member states are obliged to adopt legislative and other measures designed to respect and implement the right to public participation at the domestic level.<sup>186</sup> If local communities and affected stakeholders are allowed to have a say in decisions that affect their lives, then their participation could promote environmental governance and enhance democracy.<sup>187</sup> This suggests that the duty to respect the participatory right of local communities and affected stakeholders could have the potential to encourage good FAI governance, which would be instrumental in promoting more responsible and sustainable FAI through the protection of people's rights and interests.

Articles 6, 7 and 8 provide various ways for member states to include the public in environmental decision-making. Article 6 enumerates conditions for public participation in decisions on specific activities, particularly those listed in Annex I under the Convention.<sup>188</sup> It may be inferred from this that member states are to respect and make

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184 Para 7 of the Preamble of the Aarhus Convention.

185 Arts 6-8 of the Aarhus Convention; Waite 2006 *SAJELP* 51; Weiss "Intergenerational equity and the rights of future generations" 603.

186 Art 3(1) of the Aarhus Convention.

187 Kravchenko 2009 *ORIL* 228.

188 Art 6(1)(a)-(c) of the Aarhus Convention.



provision for the right of the public to participate in a wider range of environment-related activities than those listed in Annex I.<sup>189</sup> Consideration of the fact that article 6(4) provides for and requires public participation at an early stage of project development suggests that states are required to allow for early public participation as a catalyst to ensure that participation of local communities in FAI decision-making procedures and activities is effective.<sup>190</sup> This is because options are still open at that stage, and proper weight may be given early on to public interests in the making of crucial decisions.<sup>191</sup> To this end, in the context of the Aarhus Convention, Ebbesson makes four clear points about early public participation, namely that: (1) late participation by the public makes it difficult for people to influence decision-making; (2) early participation would enable the public to be informed about proposed developments, the nature of the possible decisions, the envisaged procedures, and the possibilities for participation; (3) early participation enables the public to submit comments in writing to hearings or inquiries that are relevant to the proposed activity; and (4) early participation ensures that due account is taken of the public's views.<sup>192</sup>

Conversely, article 7 obliges public authorities to consider public participatory rights when preparing plans and/or issuing decisions that permit certain activities that may significantly affect the environment. States must accordingly endeavour to provide opportunities for public participation in the preparation of policies, plans and programmes relating to the environment. In terms of the Convention, all information pertaining to the permitting of an activity has to be released early in order to inform public participation.<sup>193</sup> The relevance of this is that the dissemination of information prior to the permitting of an activity allows for the meaningful participation of the public with regard to the approval, or rejection of a proposed activity.<sup>194</sup> The dissemination of

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189 Art 20 of Annex I of the Aarhus Convention.

190 Kravchenko 2006 *SAJELP* 110.

191 Kravchenko 2006 *SAJELP* 110; Art 6 of the Aarhus Convention; Ebbesson "Information, participation and access to justice" 3.

192 Ebbesson "Information, participation and access to justice" 3.

193 Art 6(2) of the Aarhus Convention.

194 Art 6(2)(a)-(d) of the Aarhus Convention.

prior information gives impetus to the involvement of the public in decision-making processes at an early stage of a project's development when options for public involvement are still open,<sup>195</sup> when the interests of the public may still be taken into consideration and implemented.<sup>196</sup> In similar vein, article 8 provides for and requires public participation during the preparation of executive regulations and other generally applicable legally binding rules that may have a significant impact on the environment.<sup>197</sup> This provision suggests that sufficient time frames and draft rules, policies, norms, standards and principles relating to FAI activities must be provided to the public. This enables the public to comment either directly or through their representatives with the intention of ensuring protection of and respect for their procedural and substantive rights-based entitlements.<sup>198</sup> According to Rehbinder,<sup>199</sup> in order for public participation to be effective, it must be supported by legal rules and procedures that provide for and encourage public involvement in the decision-making processes. It is thus necessary and mandatory for states to allow for the full and active involvement of members of the public in making decisions relating to laws, rules, and policies that relate to development projects.

Article 5 of the Espoo Convention requires member states to enter into effective and meaningful consultation with the public. The consultation must take place immediately after the completion of an EIA. Such consultations require members of the public to scrutinise public information relating to the proposed development project with a view to giving or withholding their consent. They further serve to provide the authorities with adequate knowledge to effectively regulate and mitigate environmental impacts that might result from FAI development projects.<sup>200</sup>

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195 Art 8 of the Aarhus Convention.

196 Art 8(c) of the Aarhus Convention; Ebbesson "Information, participation and access to justice" 3.

197 Kravchenko 2006 *SAJELP* 110.

198 Kravchenko 2006 *SAJELP* 110; Rehbinder 2006 *SAJELP* 83.

199 Rehbinder 2006 *SAJELP* 83.

200 Ebbesson "Public participation" 678-688.

Considering that access to information serves as a prerequisite for full and active public involvement in decision-making,<sup>201</sup> article 18 of the UNDRIP reinforces the right of indigenous people to actively and fully participate in the decision-making processes of development such as those leading from FAI. This provision stipulates the right of local communities to be involved in matters which affect their rights, and their participation must occur through their chosen representatives and in accordance with their own procedures.<sup>202</sup> This implies that states are not mandated to choose representatives for local communities when engaging them in public participation. States are instead required to consult and co-operate with local communities through their own representative institutions in order to obtain the necessary FPIC with respect to project developments, including FAI.<sup>203</sup> Despite this guarantee, it has been argued that the full potential of indigenous people's participation in EIA procedures may not be attained.<sup>204</sup> In the Cobalt Nickel Mining Project in Cameroon, for example, efforts to engage local communities, the Pygmies and the Bantu, were ineffective, and the lack of input from those who would be most closely affected by the consequent destruction of natural resources had disastrous outcomes, such as impacts on land and tenure rights, the right to food, and environmental right among others.<sup>205</sup> This lack of public participation illustrates two worries. First, it shows the fundamental disrespect for the recognition, promotion and enforcement by the government of Cameroon of the procedural right to participation of local communities. Secondly, it impedes the protection of the environment and the environment-related interests of the people.<sup>206</sup>

Article 3 of the UNDRIP enshrines the right to self-determination of local communities which includes the right to freely choose and pursue their economic, social, and cultural

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201 Art 5 Aarhus Convention; Segger and Khalfan *Sustainable development law* 156-158; Segger *et al* 2003 *RECIEL* 54; Principle of Rio Summit; Charnovitz 1997 *MJIL* 183; Agenda 21; Robinson "Reflecting on Rio" 18-19.

202 Art 18 of UNDRIP.

203 Art 19 of UNDRIP.

204 Kravchenko 2009 *TELJ* 36.

205 Foundation for Environment and Development (FEDEV), "The access initiative Cameroon" 9-10; Kravchenko 2009 *TELJ* 36.

206 Kravchenko 2009 *TELJ* 36.

development.<sup>207</sup> It also reinforces the principle of FPIC.<sup>208</sup> To be sure, Ward posits that local communities' right to FPIC and their participatory right in development projects are derived from the right to self-determination.<sup>209</sup> It has been argued that "consent" in FPIC appears to be its most important element, because at the core of the principle lies the right of local communities to freely engage, negotiate and choose whether to give or withhold their consent.<sup>210</sup> It has been indicated that in certain circumstances a proposed project may be stopped, where local communities and indigenous people decide not to continue negotiating or to withhold their consent.<sup>211</sup> Again, consent must be free, meaning that it must be given of one's own volition. The free giving of consent should not at any time be influenced by external timelines or expectations. Rather, local communities should have the right to determine the process, timeline and decision-making structures, and to insist on being given transparent and objective information. If they give their consent, it must have been freely given and not in response to bribery, bias or reward.<sup>212</sup>

By contrast, the selection of a few members of a community and paying them large sums of money to consent to project developments such as FAI does not amount to the free giving of consent and would constitute a violation of the right to free participation.<sup>213</sup> For example, in Cameroon, it is reported that during the regulation of Herakles Farms land deals, the company paid some chiefs and notably large sums of money in order to buy the concern of the community.<sup>214</sup> Also Freudenthal *et al*<sup>215</sup> note the same problem during the Biopalm palm oil project in Cameroon and report that

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207 Also arts 1 (2) of ICCPR and the ICESCR; art 5(c) of the *International Convention on the Elimination of all Forms of Racial Discrimination* of 1996, arts 25 and 27 of ICCPR; Human Right Committee, *Chief Ominayak and the Lubicon Lake Band v Canada*, Communication No. 167/84 (CCPR/C/38/D/167/1984).

208 De Schutter 2009 <http://www2.ohchr.org/english/issues/food/docs/BriefingNotelandgrab.pdf> accessed 27 November 2015.

209 Ward 2011 *NWJIHR* 55; Claver 2005 *AICLJ* 42; Masaki "Recognition or misrecognition?" 69.

210 Laughlin *et al Guidelines on free, prior, and informed consent* 20.

211 Laughlin *et al Guidelines on free, prior, and informed consent* 20.

212 Laughlin *et al Guidelines on free, prior, and informed consent* 18.

213 Art 3 of the UNDRIP; Laughlin *et al Guidelines on free, prior, and informed consent* 20.

214 Mousseau "Herakles exposed" 4.

215 Freudenthal *et al "BioPalm oil palm project"* 350.

some chiefs had closed personal links with the company in which they were paid money for the sake of gaining the community's concern. Similarly, because states have a right to undertake development projects like FAI, this makes it the responsibility of states under the *Declaration on the Right to Development*<sup>216</sup> to formulate appropriate policies that ensure the well-being of their people. It follows that people's well-being can be guaranteed only if they freely and actively participate in decision-making relating to project development.<sup>217</sup>

The Johannesburg Declaration is a non-binding international environmental instrument which reiterates the notion of sustainable development,<sup>218</sup> as stated in the Rio Declaration, and emphasises that public participation is instrumental to the realisation of sustainable development in development projects.<sup>219</sup> This means that in order to ensure sustainable FAI projects, the governments of host countries of FAI have to allow for and ensure active public involvement in decision-making and implementation processes, particularly in policy formulation.<sup>220</sup> The reason for this is that the private sector, which also encompasses local communities and affected stakeholders, has a duty to contribute to the evolution of an equitable and sustainable community and society.<sup>221</sup> The private sector can contribute only if it is actively involved in decision-making related to development projects. In addition, the effective participation of local communities and affected stakeholders may be considered instrumental in enhancing corporate accountability in the context of FAI regulation.<sup>222</sup>

Principle 13 of the Stockholm Declaration requires states to develop and adopt an integrated and co-ordinated approach to development planning, and it can be inferred that this approach is extended to include the right to public participation in

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216 The Declaration of the Right to Development 1986, United Nations General Assembly Resolution A/RES/41/128, 1986.

217 Art 2 Para 3 of the Declaration of the Right to Development.

218 Principles 1- 8 of the Johannesburg Declaration.

219 Principle 26 of the Johannesburg Declaration.

220 Principle 26 of the Johannesburg Declaration.

221 Principle 27 of the Johannesburg Declaration.

222 Principle 29 of the Johannesburg Declaration.

environmental decision-making. The integrated and co-operative approach in principle 13 requires the need to match development with environmental protection, and this suggests a need to allow, encourage and promote public involvement in development projects on activities taking place in the environment that may potentially impact on people's rights to the environment and other environment-related rights. The context for this statement is the fact that public involvement in development activities is a necessary catalyst to ensure and enhance environmental protection.<sup>223</sup> To this end, Kotzé,<sup>224</sup> argues that because the "environment is a holistic, integrated and inter-related phenomenon ... problems that may occur with regard to the environment may require solutions, and hence co-operation in problem-solving strategies." Therefore, it is logical that an integrated and co-operative approach to environmental problems could be feasible if local communities and affected stakeholders freely participated in decision-making process of FAI projects and made their voices heard.<sup>225</sup> As indicated earlier, public participation in environmental decision-making seeks to ensure an appropriate and rational way of managing natural resources, and thus improving the environment for the benefit of both present and future generations.<sup>226</sup> To this end, Principle 10 of the Rio Declaration reiterates one of the basic ideas of the Stockholm Declaration, which is that the protection and preservation of the environment is the responsibility of everybody. Principle 10 states that:

Environmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.<sup>227</sup>

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223 Principles 10 and 15 of Rio Declaration and Stockholm Declaration; Ebbesson "Public participation 684; Razzaque 2007 *FELR* 587.

224 Kotzé "A legal framework for integrated environmental governance" 53.

225 Para 10.1 of Agenda 21; Robinson *Agenda 21* 152.

226 Principle 13 of Stockholm Declaration; Petkova *et al closing the gap* 66-67.

227 Principle 10 of Rio Declaration.

This provision illustrates the essence of the right of public participation. It portrays that the participation of local communities in environmental decision-making is significant to assist public authorities in making informed decisions on environmental matters.<sup>228</sup> In the context of this study, this suggests that inadequate mechanisms for the effective participation of local communities in land-use decisions could seriously compromise the delivery of both local and global benefits, and could ultimately infringe internationally recognised human rights.<sup>229</sup> The participation of local communities in FAI projects does not only safeguard property and socio-economic rights interests; it also provides valuable insight into the improvement and protection of the environment and its resources by public authorities, through the formulation of environmental policies and laws.<sup>230</sup>

The adoption of Agenda 21 and its Plan of Action through the Rio Declaration demanded even more urgent environmental protection, including through the realisation of participatory rights.<sup>231</sup> Chapter 8 of Agenda 21, entitled “Integrating Environment and Development in Decision-Making”, corroborates this view. It rejects the idea that decision-making in socio-economic developments should distinguish between economic, social and environmental factors.<sup>232</sup> Instead, it requires and stresses the full integration of these issues in governmental decision-making processes relating to economic, social, fiscal, energy, agricultural, trade and other policies.<sup>233</sup> In the context of this study, this implies that the host countries of FAI project should not make decisions on FAI projects without fusing socio-economic, environmental and developmental concerns that could be determined only by involving the people on whom the decisions will have an impact. This requires a fundamental reshaping of the planning processes of FAI projects, which evidently call for a broader range of public

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228 Principle 22 of Rio Declaration; Petkova *et al Closing the gap* 66-67.

229 For more details, see chapter 2 sections 2.10.1.1.

230 Principle 10 of the Rio Declaration; Ebbesson “Public participation” 684; Razzaque 2007 *FELR* 587.

231 Desai “Foreword” I; Preamble of Agenda 21.

232 Robinson *Agenda 21* 115.

233 Para 8.2; 8.3 of Agenda 21.

participation, and which may ultimately improve the decision-making process. Improved decision-making may lead to considerable advantages including transparency about and accountability for the environmental impacts of developmental policies,<sup>234</sup> and it may improve access to relevant information that in turn facilitates public involvement and representation in development activities.<sup>235</sup>

In particular Chapter 10 of Agenda 21 provides for public participation, as it requires an integrated approach to the planning and management of land and its resources.<sup>236</sup> Considering that human and economic activities increase pressure on land resources, leading to competition and conflict over the use of the land and its resources, an integrated land-use planning and management approach appears to be the way to go to avoid conflict and competition over land-use.<sup>237</sup> This approach requires among other things effective public participation, which may strengthen the decision-making processes, policies, planning and management procedures, as well as sustainable methods of land use. In the context of this study, this indicates that an integrated approach to land use management, which could reduce conflict and competition over land and its resources, has the potential to ensure and promote sustainable agriculture and rural development.<sup>238</sup> This is especially important because the principal goal of the latter is to enhance food security by increasing food production in a sustainable way.<sup>239</sup> Hence to achieve this goal, the sustainable agriculture and rural development approach relies on the use and implementation of certain tools, including policies on agrarian reform, participation, income diversification, land conservation and improved management of input.<sup>240</sup> It therefore appears from the sustainable agriculture and rural development tools that public participation in decision-making processes constitutes an important factor for ensuring sustainable agricultural and rural development. Based on

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234 Para 8.4 (e) of Agenda 21.

235 Para 8.4 (f) of Agenda 21.

236 Para 10.1 of Agenda 21; Robinson *Agenda 21* 152.

237 Robinson *Agenda 21* 152.

238 Para 14.1 of Agenda 21.

239 Para 14.2 of Agenda 21.

240 Para 14.2 of Agenda 21.



this, one could state that in order to ensure sustainable agricultural and rural development, the host countries of FAI projects must involve local communities and affected stakeholders in their decision-making, particularly as FAI projects are mostly implemented in rural areas.

In terms of Chapter 26 of Agenda 21, the involvement of local communities in FAI projects is crucial<sup>241</sup> to the extent that the host countries of FAI are required to adopt policies and measures to empower local communities;<sup>242</sup> policies and measures relating to the recognition of local communities' land and to protect these lands from activities, including FAI;<sup>243</sup> policies and measures that recognise the values, traditional knowledge and resource management practices of local communities in order to promote environmentally sound and sustainable development;<sup>244</sup> and policies and measures that recognise their traditional and direct dependence on renewable resources and ecosystems which are essential to their cultural, economic and physical well-being where large-scale development projects are involved.<sup>245</sup> Finally, states are required to enhance the capacity building of indigenous people based on the adaptation and exchange of traditional experience, knowledge and resource management practices, in order to ensure their sustainable development.<sup>246</sup>

Principle 4 of PRAI provides that all those materially affected are consulted, and that agreements from consultations are recorded and enforced. It thus appears to reiterate the relevance of consultation and participatory rights. The right to public participation in principle 4 of PRAI, which is largely drawn from articles 3 and 18 of the UNDRIP, is predicated on the idea that sustainable investment in agriculture requires that this investment be directed and implemented in a participatory manner which is consistent

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241 Para 26.1 of Agenda 21; Para 27.1 of Agenda 21.

242 Para 26.3(a)(i) of Agenda 21.

243 Para 26.3(a)(ii) of Agenda 21.

244 Para 26.3(a)(iii) of Agenda 21.

245 Para 26.3 (a) (iv) of Agenda 21.

246 Para 26.3 (a) (vii) of Agenda 21; Robinson *Agenda 21* 508.

with local people's vision of development.<sup>247</sup> This suggests that the host countries of FAI projects do not only have to involve local communities' in decision-making processes, but also that the project must be consistent with the developmental goals of the local community in question.<sup>248</sup>

However, given that public participation and consultation in development projects may be hampered by a lack of clarity with respect to the process, nature and recording of the outcome, a need remains to rise to these challenges. Principle 4 of PRAI proposes three ways of making consultation more effective in the context of project development. Firstly, there must be clarity on the definition and procedural requirements regarding the representation of local communities and the quorum for local attendance. Secondly, all parties must sign the consultation agreements reached. Finally, there should be clear specifications regarding the enforcement of the agreements and sanctions for non-compliance, by either party, with the agreement reached during consultation. Thus effective consultation and participation in FAI projects, as proposed by Principle 4 of PRAI, has the potential of ensuring, promoting and enforcing transparency and accountability in FAI projects, qualities which are reportedly absent from many FAI land deals at present.<sup>249</sup>

The implementation principles of the Voluntary Guidelines are essential for the contribution they make to the governance of responsible land tenure and forests insofar as FAI projects are concerned. According to the implementation principles, states have to consult and allow for the participation of local communities in FAI projects.<sup>250</sup> However, the participation of local communities may be problematic, because it is often limited to those who have a legitimate tenure right.<sup>251</sup> This implies that those without a legitimate tenure right are most likely to be excluded from decision-making processes on their land. Nonetheless, since the term "legitimate" is not defined by the Voluntary

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247 Arts 3 and 18 of UNDRIP.

248 Also art 3 of UNDRIP.

249 Smaller and Mann "A thirst for distant land" 3.

250 Paras 3B.6; 4.10; 9.9 of the Guidelines.

251 Paras 3B.6; 4.10; 9.9 of the Guidelines.

Guidelines, its definition cannot be restricted to signify legally registered rights only, and the term could apply to all who have a right to tenure, whether registered or not.<sup>252</sup> Thus, it is suggested that local communities' right to participate must be weighed against different power balances in order to ensure their active, free, effective, meaningful and informed participation in decision-making processes of FAI.<sup>253</sup> Such participation could act as a catalyst for sound environmental governance, as it facilitates and provides for the protection of environmental rights and interests related to development projects.<sup>254</sup>

Principle 16 of the Sofia Guidelines requires states to provide for and facilitate the participation of local communities in environmental decision-making.<sup>255</sup> The duty of states is further extended to include NGOs in decision making through the establishment of formal and informal consultative processes in matters having significant environmental implications.<sup>256</sup> It is also required that these consultative processes take place at an early stage of decision-making processes because *ex ante* consultative processes may bar effective public participation.<sup>257</sup> In addition, the Guidelines specifically requires that it is mandatory for states to consider the opinion of local communities, NGOs, and interested and affected parties during public participation processes before making a final decision on any environmental matter.<sup>258</sup>

Similarly, the OECD Guidelines require multinational companies to allow, provide and engage in adequate and timely communication and consultation with local communities directly affected, or to be affected, by proposed FAI projects.<sup>259</sup> The participation of local communities in decision-making processes provides an opportunity to assess and

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252 Para 9.2; 5.3 of the Guidelines.

253 Lee and Abbot 2003 *MLR* 82-85; Richardson and Razzaque "Public participation in environmental decision-making" 166.

254 Principle 10 of the Rio Declaration; Ebbesson "Public participation" 684; Razzaque 2007 *FELR* 587.

255 Also Principle 18 of Sofia Guidelines.

256 Principle 17 of Sofia Guidelines.

257 Principle 19 of Sofia Guidelines.

258 Principle 21 of Sofia Guidelines.

259 Principle 4.2(B) of OECD Guidelines.

to address the probable feasible environmental and health impacts of FAI projects which multinational companies are expected to address.<sup>260</sup>

Principle 5 of the Equator Principles does not differentiate between the various categories of project developments in terms of consultation and participation processes. Rather, it requires that investors demonstrate and allow for effective community and stakeholder engagement in a structured and culturally appropriate manner that has to be consistent with the risks and impacts of the project, the project's phase of development, the language preference of local communities, and the decision-making process.<sup>261</sup> Importantly, the process must be free from external manipulation, interference, coercion and intimidation, and could ultimately serve to enhance transparency and accountability in FAI projects.<sup>262</sup>

#### 4.3.2 *Regional law*

Article 13 of the African Charter provides for a broad spectrum of public participation rights and obligations. It sets out the right of all citizens, whether individually or through chosen representation, to freely participate in the governance of their country.<sup>263</sup> The fact that in terms of the African Charter public participation is not limited to decision-making but also involves participation in the formulation of laws, policies and their implementation, is indicative of the fact that public participation by local communities in the context of FAI cannot be restricted to FAI decision-making processes *per se*, but should also extend to a higher strategic governance level where FAI-related laws and policies are concerned are formulated. In 2001, for example, the African Commission on Human and People's Rights decision in *The Social and Economic Rights Action Centre and the Centre for Economic and Social Rights v Nigeria*, African

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260 Principle 4.3 of OCED Guidelines.

261 Principle 5 of Equator Principles.

262 Principle 10 of Equator Principles.

263 Art 13(1) of the African Charter.

*Commission on Human and People's Right*<sup>264</sup> reiterated the rationale for public participation in decision-making processes. The Commission ordered Nigeria to undertake scientifically and technically sound environmental and social impact assessments, to publish these results, and to provide meaningful opportunities for the affected people to be heard and to participate in the decision-making process.<sup>265</sup>

Despite this broad spectrum for public participation, it is reported that the success of the African Charter in promoting environmental governance and public participation is limited and has resulted in less emphasis on the effective protection of the right to public participation in environmental decision making.<sup>266</sup> Most probably the reason could be that the decisions of the Commission are not binding on states. However, with the advent of the new African Court on Human Rights, whose decisions are binding, there is hope that the Court would ensure that member states effect its decisions to the letter.

Chapter 9 of ACDEG, entitled *Political, Economic and Social Governance*, contains procedural measures of a public participation nature that are relevant in the context of FAI. For example, member states including the focal countries of this study<sup>267</sup> have committed themselves *inter alia* to improving the efficiency and effectiveness of public participation and to combating corruption in relation to corruption.<sup>268</sup> This should be achieved by fostering popular participation and partnership with civil society organisations and local communities,<sup>269</sup> and by harnessing the democratic values of traditional institutions in order to strengthen and reinforce participatory governance in the context of the governance of public affairs generally and large-scale development

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264 *The Social and Economic Rights Action Center and the Center for Economic and Social Rights v Nigeria, African Commission on Human and People's Right*, Comm. No. 155/92 (2001). Also see Endoris case.

265 *The Social and Economic Rights Action Center and the Center for Economic and Social Rights v Nigeria, African Commission on Human and People's Right*, Comm. No. 155/92 (2001); Ward 2011 NWHIHR 66.

266 Odote and Makoloo "African initiative for public participation in environmental management" 123.

267 With the exception of Uganda, which has signed but not ratified the ACEDG. Cameroon and South Africa have both signed and ratified the ACDEG.

268 Art 27(5) of the ACDEG.

269 Art 27(2) of the ACDEG.

projects in particular.<sup>270</sup> To this end article 30 obliges states to allow, promote and ensure citizen participation in development processes. This means that states must ensure and promote the participation of local communities and affected stakeholders in FAI projects, thus serving to promote good governance through transparent and accountable administration.<sup>271</sup> Considering that women constitute the bulk of African farmers<sup>272</sup> and are active players in FAI activities that they are frequently discriminated against and marginalised, the African Charter on Democracy requires member states to recognise the crucial role of women in agricultural development activities and to ensure their active, effective and full participation in decision-making processes at all levels as a fundamental element necessary for the promotion and exercise of a democratic culture,<sup>273</sup> that has the potential to eliminate all forms of discrimination against women and to strengthen democratic and citizen participation.<sup>274</sup>

In ensuring effective transparency and accountability in the management of public affairs by state agents, the AUCPCC requires member states to establish mechanisms that allow for the effective participation of the private sector.<sup>275</sup> This means that states have a duty to provide and allow for public participation in the governance of public affairs. The AUCPCC also emphasises that the role of the public is particularly important in monitoring the activities of public authorities, as well as in making informed decisions regarding the prevention and eradication of corruption in the management of public affairs.<sup>276</sup>

The Protocol on the Rights of Women is a binding regional human rights instrument that was adopted to specifically address human rights issues relating to women.<sup>277</sup> To

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270 Art 27(9) of the ACDEG.

271 Art 12(1) of the ACDEG.

272 Fonjong "Equal rights but unequal power over land" 19; Adeniyi "Women farmers and agriculture growth: Challenge and perspective for Africa face the economic crisis" 2.

273 Arts 29(1) and (2) of the ACDEG.

274 Arts 8(1) and (3) of the ACDEG; arts 2(1)(a) and (b) of the AU Protocol on the Rights of Women.

275 Art 11(2) of the AUCPCC.

276 Art 12(3) of the AUCPCC.

277 The Preamble of the Protocol on the Rights of Women.

this end, the AU Protocol on the Rights of Women obliges states to eradicate all forms of discrimination against women and adopt legislative and other measures that protect the rights and interests of women at the national level.<sup>278</sup> This suggests that the 53 countries, including the focal countries of this study, that make up the AU have an obligation to guarantee the rights and interests of women in general, including their participatory rights at the domestic level. Pursuant to the fact that women constitute the bulk of rural African agriculturalists, their substantive and procedural rights would most likely be vulnerable to violation during FAI, thus placing women in a much weaker position overall.<sup>279</sup> For example, the customary land tenure of some African countries excludes women from owning property and overrides statutory law in most circumstances,<sup>280</sup> despite the equal protection of rights to land afforded by statutory law.<sup>281</sup> In Cameroon, for instance, the ownership of land vests through inheritance to a male child and not a female child.<sup>282</sup> This is also the case in Uganda, and it is reported that over 80 per cent of land in the country is managed according to local custom, where women are mostly not allowed to own land because they move from their maiden families to their marital home.<sup>283</sup> Thus in both Cameroon and Uganda it is evident that women do not have access to or control over land, which makes it even more critical to entrench and protect their participatory rights for empowerment in terms of the socio-economic well-being of rural communities.<sup>284</sup> Non-respect for people's right to public participation has the potential of jeopardising agricultural activities and productivity, as well as women's ability to produce food crops which could

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278 Art 2(1)(a) and (b) of the Protocol on the Rights of Women.

279 Anon <http://www.ahgingos.org/documents/Documents/CAMEROON.pdf> accessed 20 June 2015.

280 Fonjong "Equal rights but unequal power over land" 19-20; Ngassa "Women inheritance rights in the north west and south west regions of Cameroon" 43; Anon <http://www.ahgingos.org/documents/Documents/CAMEROON.pdf> accessed 20 June 2015; Adoko *et al* "Understanding and strengthening women's land rights under customary tenure in Uganda" 1-6.

281 Fonjong "Equal rights but unequal protection over land" 20.

282 Anon <http://www.ahgingos.org/documents/Documents/CAMEROON.pdf> accessed 20 June 2015.

283 Adoko *et al* "Understanding and strengthening women's rights under customary tenure in Uganda" 1-2; Asiimwe 2014 *YHRDJ* 171; EqualityNow 2000 <http://www.equalitynow.org/node/218> accessed 29 May 2015.

284 Fonjong "Equal rights but unequal power over land 19-20.

lead to a violation of the right to food, among others.<sup>285</sup> The foregoing highlights the need for participative processes in law and governance where domestic legislative and other measures do not guarantee tenure security to women. This could enable rural African women to make informed decisions with respect to their rights related to access to and control over their land and natural resources, and also to make decisions related to methods and strategies to increase food security.<sup>286</sup>

The Protocol on the Rights of Women further mandates member states to ensure and provide for the full, active and effective participation of women on an equal base, without discrimination on any level of decision-making.<sup>287</sup> The participation of women has to be promoted in areas such as the planning, management and preservation of the environment, and in the sustainable utilisation of natural resources at the local level,<sup>288</sup> as well as in the conceptualisation, implementation and evaluation of the policies and programmes of projects, including those related to FAI.<sup>289</sup>

The PAIB<sup>290</sup> is a binding regional investment instrument that aims to foster economic integration and development through investment in development projects that are consistent with the objectives of the AU.<sup>291</sup> Fostering economic integration and development through investment also implies the need on the part of the PAIB to undertake measures to promote public participation and good governance,<sup>292</sup> in addition to promoting and protecting human rights in accordance with the African Charter and other human rights instruments.<sup>293</sup> To this end, article 4, requires the Bank to provide technical assistance to state parties to prepare and implement investment

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285 Art 15 of the Protocol on the Rights of Women.

286 Sandys E (UNO Report 2008) "Rural women in a changing world: Opportunities and challenges" 2; Adeniyi "Women farmer's and agriculture growth" 3; Mehra and Rojas 2008 "Women, food security and agriculture" 1; Agenda 21.

287 Art 9 of the Protocol on the Rights of Women.

288 Art 18(1) of the Protocol on the Rights of Women.

289 Arts 9; 18(1) and 19(b) of the Protocol on the Rights of Women.

290 Adopted in 2009.

291 Art 3 of the Protocol on the African Investment Bank of 2009 (PAIB) arts 3(i) and (j) of the Constitutive Act of the African Union (CAAU).

292 Art 3(g) of the CAAU.

293 Art 3(h) of the CAAU.



projects,<sup>294</sup> and to assist states with other activities and services that may advance the purpose of the Bank.<sup>295</sup>

The African Union Framework and Guidelines, is a non-binding regional human rights instrument that requires member states of the AU to adhere to certain principles that would enable them to embark upon and harness land reform policies,<sup>296</sup> with the view that reforms should be beneficial to national development objectives.<sup>297</sup> One such principle is the need for popular participation or public involvement in land policy formulation and implementation,<sup>298</sup> as it is considered to improve land governance and the management of natural resources.<sup>299</sup> Through this participatory approach and its implementation thereof, it is hope that the Framework and Guidelines could help reinforce the land governance systems of states, including the focal countries of this study by “improving the capacity of those negotiating on behalf of the host country or representing local communities,”<sup>300</sup> to the extent that local communities’ rights and interests are protected during FAI land deals. However, the fact that the Framework and Guidelines is not binding on states, including the countries considered in this study, it is difficult to imagine how the requirement of participatory governance would not likely succeed and be observed by states at their domestic levels during the regulation of FAI land deals.

The CPA envisions public participation as an important principle for sound development strategies.<sup>301</sup> It requires member states to allow for open and effective participation by different actors, including local communities and affected stakeholders, in order to

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294 Art 4(2) of the PAIB.

295 Art 4(3) of the PAIB.

296 Para 1.1.2(c) of the AU Framework and Guideline.

297 Para 1.1.2(c) of the AU Framework and Guideline.

298 Para 1.1.2(c) of the AU Framework and Guideline.

299 The AU Framework and Guideline defines land governance as “the political and administrative structures and processes through which decisions concerning access to and use of land resources are made and implemented including the manner in which conflicts over land are resolved.” Para 1 of the AU Framework and Guidelines.

300 De Schutter 2011 *HILJ* 557.

301 Art 2 of the CPA.

encourage the integration of all sections of society in aspects of development projects.<sup>302</sup> Signatories are obliged to encourage the creation of civil society organisations and establish arrangements that allow for their active involvement in the design, implementation and evaluation of development strategies and programmes,<sup>303</sup> which hint at the fact that host countries of FAI have a responsibility to encourage the effective participation of local communities in FAI projects. This has the potential to strengthen transparency and accountability in project development,<sup>304</sup> because respect for human rights promotes transparency and accountability, whereas transparent and accountable governance encompasses an integral part of sustainable development and responsible and sustainable FAI generally.<sup>305</sup>

The concept of good governance,<sup>306</sup> which is repeatedly addressed in the CPA,<sup>307</sup> is essential to enhance the governance of trade and investment policies, including FAI.<sup>308</sup> Hence, because the effective participation of local communities promotes elements of good governance such as transparency and accountability, it is only logical that in order for host countries of FAI to promote and enhance good governance, they must allow for the active and effective involvement of the public in all phases of FAI projects.<sup>309</sup>

#### *4.3.3 Sub-regional law*

The *SADC Charter of Fundamental Social Rights* (SCFSR)<sup>310</sup> is a binding sub-regional human rights instrument that enhances and promotes the right to social protection in the SADC region,<sup>311</sup> *inter alia* through the formulation and harmonisation of legal, economic and social policies and programmes which contribute to productive

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302 Art 2 of the CPA.

303 Art 7 of the CPA.

304 Art 7 of the CPA.

305 Art 9(1) of the CPA.

306 Art 9(3) for a comprehensive definition of good governance by the CPA.

307 For example the Preamble of CPA as well as arts 8; 9; and 20.

308 Art 9(4) of the CPA.

309 Also art 75(a) of the CPA.

310 Adopted in 2003.

311 Art 10 of the SADC Charter of Fundamental Social Rights of 2003 (SCFSR).

employment and good working conditions.<sup>312</sup> The SCFSR obliges member states to promote an enabling environment that allows citizens the right to be consulted and to participate in social responsibilities or other outreach programmes in the community.<sup>313</sup>

Member states are further obliged to encourage the right to consultation and participation,<sup>314</sup> and to ensure that companies respect human rights.<sup>315</sup> The fact that FAI projects are often facilitated by a subsidiary of a mother company in the host country<sup>316</sup> indicates the imperative for host countries of FAI to ensure that these subsidiary companies observe and respect the participatory rights of local communities when concluding FAI land deals.

Article 8 of the Protocol on Finance and Investment enjoins states to promote and establish open and transparent policies, practices, regulations and procedures relating to investment projects. Open and transparent investment projects have the potential of allowing, encouraging and respecting the participatory rights of local communities and affected stakeholders in decision-making relating to investment projects.<sup>317</sup> Consequently, through active and effective participatory processes local communities have the opportunity of making informed decisions that protect their rights and interests. The reverse will be true if investment projects are not transparent and local communities do not participate in making decisions that affect their lives.

Finally, article 13 of the EADC Bill of Rights provides for the right of everyone to participate in the governance of the public affairs of the member state<sup>318</sup> either directly or through chosen representatives.<sup>319</sup> This means that all East African countries, including Uganda, have an obligation to enshrine in their domestic legal systems a right

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312 Art 1(b) of the SCFSR.

313 Art 13(b)(iii) of the SCFSR.

314 Art 13(c) of the SCFSR.

315 Art 13(d) of the SCFSR.

316 See Chapter 2, section 2.6 of this thesis for details.

317 Art 4 Annex 1 of the SADC Protocol on Finance.

318 Art 13(1) of the EADC Bill of Rights.

319 Art 13(1)(a) and 13(2) of the EADC Bill of Rights.

for their people to directly or indirectly participate in the conduct of the affairs affecting their communities, including with regard to decision-making during FAI activities.<sup>320</sup>

## **4.4 The right to access to justice**

### *4.4.1 International law*

As indicated earlier in Chapter 3, while access to information could be perceived as a prerequisite to the meaningful participation of local communities in decision-making, access to justice, amongst others, is a means of enforcing the rights of access to information and public participation and a range of other substantive rights.<sup>321</sup> To this end, Kravchenko<sup>322</sup> contends that the rights to information and public participation may be only promises on paper unless people have the right to take cases of their violation to court or other independent bodies for a remedy. Thus access to justice guarantees that these rights and other related human rights-based interests might become a reality. The next section illustrates how the provision of access to justice in international, regional and sub-regional instruments could be used to enforce not only the rights to access to information and public participation, but also substantive entitlements in the context of FAI activities generally.

Article 12 of the ILO Convention reaffirms, provides and requires the promotion of and respect for the right of indigenous people and local communities to access to justice<sup>323</sup> by obliging states to take adequate measures to ensure that indigenous people and local communities do not only have access to judicial redress, but also that measures are taken to ensure that they can understand and be understood in legal proceedings.<sup>324</sup>

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320 Art 13(2) of the EADC Bill of Rights.

321 Ebbesson "Participatory and procedural rights in environmental matters" 2.

322 Kravchenko 2006 *SAJELP* 111.

323 The UNDRIP defines access to justice as: the ability of people to seek and obtain a remedy through formal or informal institutions of justice, and in conformity with human rights standards. See art 1 of the UNDRIP.

324 Art 12 of ILO Convention 169.

Article 8 of the UNDHR gives impetus to the right to effective judicial remedies.<sup>325</sup> Host countries of FAI who are member states to the UNDHR are under an obligation to establish appropriate platforms and mechanisms to provide and ensure the public with sufficient access to a competent national tribunal for acts violating people's rights and interests.<sup>326</sup> The focal countries of this study are included in the remit of the Declaration's scope and thus its obligations. They are therefore duty-bound to provide local communities and affected stakeholders with an appropriate and effective mechanism in the guise of access to courts that enables them to seek and obtain redress for the violation of both their procedural and substantive rights during the implementation of large-scale development projects. Nonetheless, these local communities and affected stakeholders do not in practice seem to have effective means of judicial redress for violation of their rights, as was shown earlier. The right to access to justice must also apply to everyone equally and must enable a fair public hearing by an independent and impartial tribunal.<sup>327</sup>

The Aarhus Convention provides for the right to judicial review for people whose rights are violated.<sup>328</sup> It has been argued that under the Convention the right to access to justice relates to two kinds of situations. Firstly, it relates to situations where a person's right to access to information or participation has been ignored, refused or not dealt with, and secondly, to situations where a member of the public has sufficient interest in a right to need to have access to a review procedure before a court of law in order to challenge both the substantive and procedural legality of a decision, action or omission of an activity likely to adversely affect the environment.<sup>329</sup> Kravchenko<sup>330</sup> posits that under the Aarhus Convention, the term "sufficient interest" should be interpreted to include NGOs dedicated to environmental protection. In *Zander v Sweden*,<sup>331</sup> the

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325 Art 8 of the UNDHR.

326 Art 8 of the UNDHR.

327 Art 10 of UNDHR.

328 Art 9(1) of the Aarhus Convention.

329 Ebbesson "Information, participation and access to justice" 3.

330 Kravchenko 2006 *SAJELP* 112.

331 *Zander v Sweden* 45/1992/390/348.

European Court of Human Rights granted standing to the complainant, the owner of land near permitted harmful activities.<sup>332</sup> The court held that the complainant's right as landowner was a property right within the purview of article 6(1) of the Aarhus Convention and accordingly had standing.<sup>333</sup> It suffices to say that the right to access to justice under the Aarhus Convention relates to the need to ensure the protection and enforcement of people's substantive and procedural entitlements. To progressively realise this right, member states are enjoined to ensure that the exercise of the right must not be so expensive as to preclude local communities from seeking judicial redress. States must instead ensure and provide for fair, inexpensive and effective recourse to just and legal proceedings for members of the public,<sup>334</sup> in addition to providing the public with information relating to administrative and judicial review procedures.<sup>335</sup>

The FAO was originally responsible for introducing the notion of good governance into the context of FAI projects.<sup>336</sup> At the *International Conference on Agrarian Reform and Rural Development* (ICARRD)<sup>337</sup> the FAO member states focused on the protection of substantive fundamental rights such as the rights to water, land and other natural resources of agrarian reform, especially in the context of hunger and poverty alleviation.<sup>338</sup> Yet it could be argued that the emphasis on the fundamental importance of these rights implies the correlative importance of their counterpart, that is, procedural rights, as the former cannot be achieved without the latter, as has been argued earlier in this thesis.

The principal objectives of the PVGLNR include: to improve tenure governance by providing guidance and information that deals with the rights to use, manage and

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332 *Zander v Sweden* para 24-27.

333 *Zander v Sweden* para 24-27.

334 Art 9(1) of the Aarhus Convention.

335 Art 9(5) of the Aarhus Convention.

336 Seufert 2013 *JPS* 181.

337 The Conference was adopted in 2006 by 92 member states of the FAO.

338 Seufert 2013 *JPS* 181.

control land, fisheries and forests; to contribute to the improvement and development of the policy, legal and organisational framework that regulates the range of tenure rights that exist over these resources; to enhance transparency and improve the functioning of tenure systems;<sup>339</sup> and to strengthen the capacity and operation of implementing agencies. Achieving its objectives requires adherence to certain fundamental principles, namely the general principles<sup>340</sup> and the implementation principles.<sup>341</sup>

According to the PVGLNR principles, the general principles should be interpreted and applied consistently with states' obligations under international and national law.<sup>342</sup> For instance, the principles clearly stipulate that states should make provision for access to justice to deal with legitimate tenure rights.<sup>343</sup> The exercise of the right to access to justice is a means to the realisation of all rights and becomes crucial in protecting rights such as those relating to tenure. The exercise of the right to access to justice is important in the FAI context insofar as it enables local communities to have protection of their right to land, because they are often deprived of the tenure to which they have a legitimate claim under customary law.<sup>344</sup> As local communities are often most vulnerable to the infringement of their tenure rights caused by FAI projects because of their marginalisation and discrimination against them,<sup>345</sup> there is a need for the host countries of FAI activities to safeguard the tenure rights of local communities with customary tenure systems through a platform of access to courts.<sup>346</sup> Consequently, in terms of the Voluntary Guidelines states are required to identify, record and respect the legitimate tenure rights of local communities whether formally recorded or not, and to

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339 Paras 1.2.1 to 1.2.3 of the Guideline.

340 Part 3A of the Guidelines

341 Part 3B of the Guidelines.

342 Para 2.2 of the Guidelines.

343 Para 3A.1.4 of the Guidelines.

344 De Schutter 2009 <http://www2.ohchr.org/english/issues/food/docs/BriefingNotelandgrab.pdf> accessed 27 November 2015.

345 De Schutter 2009 <http://www2.ohchr.org/english/issues/food/docs/BriefingNotelandgrab.pdf> accessed 27 November 2015.

346 Paras 7.3 and 9 of the Guidelines; Golay and Biglino 2013 *TWQ* 1642-1644.

accordingly protect them against forceful eviction caused by FAI projects.<sup>347</sup> Local communities must therefore always be afforded a clear, transparent, effective and accessible means of judicial redress that resolves conflict over tenure rights.<sup>348</sup>

In addition, recognising that investment projects could lead to disputes between the investor and local communities, principle 6 of the Equator Principles provides for means of judicial redress in such instances. It requires investors to establish a grievance mechanism designed to receive and facilitate the resolution of concerns and grievances about a project's environmental and social performance.<sup>349</sup> In order to effectively resolve disputes between investors and local communities, it is required that disputes are timeously settled through an understanding and transparent consultative process that is culturally appropriate, readily accessible, cost-free and without retribution to the party that instigated the dispute.

#### *4.4.2 Regional law*

The African Charter provides for the right to judicial redress, which seeks to ensure the recognition and respect of the rights to information and public participation, as mandated by law.<sup>350</sup> Article 7 provides citizens the right to have their causes heard, including the right to appeal for violation of their rights.<sup>351</sup> This suggests that host countries of FAI activities have a responsibility to provide an effective means of judicial redress at the domestic level that enables local communities to seek and obtain judicial redress for violation of their human rights caused by FAI projects.

The adoption of the Protocol on the Statute of the African Court and the Protocol of the Court of Justice was to provide further measure for the effective guarantee of the right to access to justice as a fundamental human right in Africa, although the Protocol African Court of Justice is not yet in force. It is worrying that the Protocol of the African

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347 Para 3A.1.1 and 3A.1.2 of the Guidelines.

348 Golay *The right to food and access to justice* 44-45.

349 Principle 6 of the Equator Principles.

350 Art 7(1) of the African Charter.

351 Art 7(1)(a) of the African Charter.



Court does not make provision for the right to access to justice; neither does it seek to promote a right that falls exclusively within its jurisdiction. Article 39 instead makes vague reference to a public hearing and provides that the hearing shall be public except where the court decides on its motion or on application from the parties not to make it public.<sup>352</sup> The question that comes to mind is what redress is afforded to people in cases of violation of their fundamental rights. This might imply that nationals, including local communities and affected stakeholders of member states, would continually suffer from violations of their rights from FAI projects without meaningful redress.

In addition, to better protect the human rights of women, the Protocol on the Rights of Women enjoins states to provide for appropriate remedies in cases of violation of these rights.<sup>353</sup> Such remedial measures must be determined by competent judicial, administrative or legislative bodies, or any other authority provided by law.<sup>354</sup> This means that in terms of the Protocol on the Rights of Women, women are afforded the right to seek judicial redress for violation of their procedural rights,<sup>355</sup> and this concerns judicial redress with regard to discriminatory practices or laws against women relating to land and agricultural rights.<sup>356</sup> Given the fact that the land tenure governance of some African countries may discriminate against women with respect to title to land, the right to a fair trial may possibly provide women with an appropriate measure for seeking redress to their rights to land, especially as they constitute the bulk of sub-Saharan farmers.<sup>357</sup>

Consistent with the aims of the African Charter,<sup>358</sup> the Dakar Declaration is a regional binding human rights instrument that reinforces the rights to a fair trial as well as respect for the right to access to justice. The reason for this is that the right to access

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352 Also art 26 of the Protocol of the Court of Justice.

353 Art 25(a) of the Protocol on the Rights of Women.

354 Art 25(b) of the Protocol on the Rights of Women.

355 Art 8 of the Protocol on the Rights of Women.

356 Art 8(f) of the Protocol on the Rights of Women.

357 Para 9 of the Dakar Declaration.

358 Arts 7 and 26 of the African Charter provide the right to a fair trial.

to justice is a necessary prerequisite for and essential factor in the implementation of the right to a fair trial,<sup>359</sup> and the right to access to justice is vital to people who require judicial relief for the violation of their rights. In the context of this study, the observance of this right means that local communities and affected stakeholders would have the opportunity to seek and obtain meaningful redress in terms of the violation of their substantive rights, including for example the right to food, clean and potable water and the right to a clean and healthy environment.<sup>360</sup>

Conversely, the non-observance of the right to access to justice has the potential of undermining constitutionally enshrined substantive human rights, notably the rights to a clean and healthy environment, the right to life and the right to food. It is evident, therefore, that the enforcement of the right in FAI projects in terms of the Dakar Declaration by host countries could enable local communities and affected stakeholders to protect their substantive rights.

Finally, although the CPA seeks to promote a better regulatory trade and a sound investment environment for Africa, the Caribbean, Pacific and the EU regions, *inter alia* through the respect for human rights, good governance and democracy, it fails to provide measures for redress when people's human rights and interests are violated in the context of trade and investment initiatives. This is especially important and necessary for Africa, which is reported to often be the site of gross instances of human rights violations,<sup>361</sup> particularly where investment projects like FAI are concerned.<sup>362</sup> This is worrying, because provision is made to safeguard investors' rights and interests<sup>363</sup> rather than those of local communities who are vulnerable to human rights abuse insofar as development projects are concerned. To this end, it has been questioned whether the EU trade policy towards ACP countries is supposed to be an

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359 Para of the Dakar Declaration.

360 Para 7 of the Dakar Declaration.

361 Ofodile 2009 *ICLT* 86-87.

362 Cotula *Legal empowerment for local resource control* 6-9. See section 2.7 in Chapter 2 on the impacts of FAI for details.

363 Art 78 of the CPA.

instrument serving the protection of democracy and human rights or a smoke screen for a hidden economic agenda with a considerable impact on people's substantive and procedural rights.<sup>364</sup>

#### 4.4.3 *Sub-regional law*

Similar to its provision on the right to access to information, article 4 of the CIC provides an imprecise right to access to justice. It requires member states only to promote and guarantee legal security and to strengthen the rule of law at the domestic level. It does not state how the right to access to justice should be exercised and by whom.

Article 5 of the EADPGG provides for the right to access to justice and this gives citizen the opportunity to seek redress for violations of their human rights in the context of socio-economic development projects such as FAI projects. In terms of the EADPGG, the right to access to justice must be informed by respect for the rule of law, through which citizens have the right to appeal for the judicial review of administrative decisions or orders which impinge on their right to participate in decision-making processes, for example.<sup>365</sup>

The Protocol on the Tribunal provides mechanisms for the settlement of disputes between states and natural or legal persons,<sup>366</sup> as well as between natural persons and communities.<sup>367</sup> This suggests that the Protocol on the Tribunal has jurisdiction over disputes and all applications referred to it<sup>368</sup> relating to the interpretation and application of the Protocol,<sup>369</sup> and all matters specifically provided for in any other agreement that member states may conclude among themselves or within the

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364 Thanassoula *et al*/ date unknown <http://www.uni-koeln.de/phil-fak/afrikanistik/kant/data/Vogel-KANT2.pdf> accessed 27 November 2015.

365 Art 5(4)(b) of the EADPGG.

366 Arts 15(1) and 17 of the Protocol on Tribunal.

367 Arts 15(2) and 18 of the Protocol on Tribunal.

368 Art 14 of the Protocol on Tribunal.

369 Art 14(a) of the Protocol on Tribunal.

community that confers jurisdiction on the Tribunal.<sup>370</sup> The Protocol thus remains useful to serve as a deterrent for the violation of local communities' rights and interests during FAI activities in South Africa and other SADC member countries. For example, it has been argued that the decision of the Tribunal in the land reform case of *Mike Campbell and others v. The Republic of Zimbabwe*,<sup>371</sup> which dealt with land reform issues, paved the way for the Tribunal to strengthen the rule of law and democracy pursuant to the promotion of the respect for human rights in the context of development projects within the ambit of regional integration.<sup>372</sup>

Whereas these efforts may be commendable, the full realisation of the right of access to justice is problematic. This is because the right to judicial redress in Annex 1 of the equally important the Protocol on Finance and Investment does not include the right of citizens of the host countries of investment projects to seek judicial redress.<sup>373</sup> This is a difficulty, especially considering that the citizens of the host countries of investment projects are vulnerable to human rights violations during the implementation stage of investment projects. Instead, the Protocol places a responsibility on the host countries of investment projects to ensure that investors, including foreign investors, have access to courts and to judicial and administrative remedies for the violation of their rights as stipulated in the investment agreements.<sup>374</sup>

The EADC Bill of Rights provides for the right to seek judicial redress in cases of the violation of fundamental human rights.<sup>375</sup> The rights are not limited to an aggrieved person only, but also include broader civil society organisations.<sup>376</sup> This means that because judicial proceeding are often expensive and local communities may not have the financial resources to institute an action for the violation of their rights during FAI

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370 Art 14(c) of the Protocol on Tribunal.

371 *Mike Campbell and others v. The Republic of Zimbabwe* SADC (T) Case No. 2/2007.

372 Scholtz and Ferreira 2011 *ZAORV* 331.

373 Art 27 Annex 1 of the Protocol on Finance.

374 Art 27 Annex 1 of the Protocol on Finance.

375 Art 41(1) of the EADC Bill of Rights.

376 Art 41(2) of the EADC Bill of Rights.

projects, civil society organisations such as NGOs may do so on their behalf.<sup>377</sup> The EADC Bill of Rights further provides that should anyone be unsatisfied with the decision of the highest court of a member state regarding the violation of human rights, the aggrieved person has a right to appeal to the East African Court of Justice,<sup>378</sup> suggesting that in terms of the Bill of Rights, the right of access to courts is not limited to the domestic level.

#### **4.5 Generic characteristics and minimum requirements of a RBA in terms of good FAI governance**

The international, regional and sub-regional procedural law framework of the RBA discussed in this chapter provides meaning and guidance on at least the minimum content or characteristics of procedural rights in terms of good FAI governance (as a measure to effectively regulate FAI land deals and activities). Drawing from the features of the procedural legal framework of the RBA in the international, regional and sub-regional instruments discussed above, this chapter has highlighted generic characteristics of good FAI governance and has described how the latter could be pursued by the host governments of FAI land deals to effectively regulate FAI land deals and activities that also respect, protect and fulfil basic human rights of local communities that are affected by FAI. To this end, a number of minimum generic characteristic and requirements for good FAI governance in terms of the three procedural rights analysed above, are set out in Table 2 below.

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377 The Cameroonian case of *FEDEV v China Road and Bridge Corporation* 2009 (unreported) where the court granted locus standi to an NGO to institute claims for the violation of environmental procedural rights.

378 Art 41(3) of the EADC Bill of Rights.

**Table 2: Summary of the generic characteristics and minimum requirements of a RBA in terms of good FAI governance**

| <b>Characteristics the right to access to information</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                | <b>Characteristics of the right to public participation</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | <b>Characteristics the right to access to justice</b>                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b>(A) General characteristics</b></p> <ul style="list-style-type: none"> <li>• The right to access to information must enable people to assert protection of their human rights, including environmental and tenure rights and uphold and encourage the democratic values of transparency and accountability in the governance of public affairs, through information that is necessary to enable such protection.</li> </ul>                                                                                        | <p><b>(A) General characteristics</b></p> <ul style="list-style-type: none"> <li>• States must ensure and encourage a culture of inclusive and participatory governance in the governance of public affairs that must enable people to actively participate in decision-making that affect their lives, rights and interests.</li> </ul>                                                                                                                                                                                            | <p><b>(A) General characteristics</b></p> <ul style="list-style-type: none"> <li>• The right to access to justice must enable all people to seek judicial redress where their rights and interests are infringed. It must be facilitated by broad <i>locus standi</i> provisions and private bodies and other interested and affected parties such as NGOs must be able to seek protection for people's rights and interests on their behalf.</li> </ul>                                           |
| <p><b>(B) Specific characteristics</b></p> <ul style="list-style-type: none"> <li>• Access to information must be affordable and easily accessible to all, and must cater for the needs of vulnerable and minority groups, especially women who are active role players in agriculture.</li> <li>• States must enact national legislation to respect, protect and fulfil people's right to access to information.</li> <li>• People must be able to exercise their right to access to information against the</li> </ul> | <p><b>(B) Specific characteristics</b></p> <ul style="list-style-type: none"> <li>• States must ensure and promote public participation prior to implementation of development projects through clear rules, processes and procedures so that public opinions can be concretised in the final outcomes of decisions.</li> <li>• Public participation must be voluntarily exercised to enable people to assert protection of their rights and interests.</li> <li>• People's right to access to information could bolster</li> </ul> | <p><b>(B) Specific characteristics</b></p> <ul style="list-style-type: none"> <li>• Access to justice must be affordable to all, in order to enable especially vulnerable and minority groups such as women to have recourse to judicial remedies.</li> <li>• Access to justice must be fair and impartial.</li> <li>• Access to justice must be effective and efficient and based on respect for the rule of law.</li> <li>• People's right to access to justice should be facilitated</li> </ul> |

| <b>Characteristics the right to access to information</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | <b>Characteristics of the right to public participation</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | <b>Characteristics the right to access to justice</b>                                                                                                                                                                                                                                            |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>state and private bodies.</p> <ul style="list-style-type: none"> <li>• Requested information must be made available timeously.</li> <li>• Access to information must in principle not exclude too many categories of information, although some limitations are understandable.</li> <li>• The right to access to information must be facilitated through mechanisms such as education and awareness raising, research and training.</li> <li>• In an environmental/FAI context specifically, people's right to access to information could be facilitated through EIA processes and procedures.</li> </ul> | <p>public participation.</p> <ul style="list-style-type: none"> <li>• Public participation must be conducted in a language that people understand.</li> <li>• The right to public participation must serve to afford protection to people's rights to tenure, environmental rights and other related rights.</li> <li>• The right to public participation must be promoted through mechanisms such as education and awareness raising.</li> <li>• Private bodies, such as NGOs should encourage and facilitate people's right to public participation in decision-making.</li> </ul> | <p>through education and awareness raising.</p> <ul style="list-style-type: none"> <li>• People's right to access to justice should be supported by legal aid, including financial support, especially to indigent people indigents in order to enable them to have access to courts.</li> </ul> |

Although the foregoing discussion indicates that some of the characteristics of the procedural rights under the RBA are not necessarily present in all of the international, regional, and sub-regional procedural legal frameworks of the RBA, it is nevertheless clear that there is a more or less comprehensive legal framework that provides for various aspects of the procedural RBA, including an entire panoply of characteristics unique to, that could potentially apply to FAI and that could promote good FAI governance. Most if not all of the African countries that host FAI activities, including the focal countries of this study, are party to many of the international, regional and sub-regional instruments discussed in this chapter. Consequently, there is a need for states to respect, protect and fulfil people's human rights, particularly when large-scale

investment activities such as FAI occur, by implementing their international, regional and sub-regional procedural RBA obligations at the domestic level. Implementing these human rights obligations would require that FAI land deals and activities be regulated to the extent that the general and specific characteristics of the RBA, as they emerge from the international, regional and sub-regional frameworks, are more or less present in domestic legal systems. While it is unlikely that any country's legal system will perfectly reflect all the general and specific characteristics of each right, one would at least expect that the majority of these characteristics to be present in domestic legal systems. Whether this is the case in Cameroon, Uganda and South Africa, is investigated in the following chapters.

#### **4.6 Chapter summary**

This chapter has provided an analysis of the procedural aspects of a RBA contained in international, regional and sub-regional instruments and illustrated their relevance in the context of FAI regulation. The procedural aspects of a RBA consist of three elements: access to information, public participation, and access to justice, and these are generally referred to as the pillars of procedural rights.<sup>379</sup> It has been argued above that their inclusion in the context of FAI could be instrumental in bringing about the adoption of a rights-based framework for good FAI governance, to be used as a means to better regulate FAI activities in order to protect people's rights and interests in the focal countries of this study.

The chapter has also noted that it is important for the host countries of FAI activities to adhere to their obligations and commitments in various instruments in order to ensure good FAI governance, especially taking into account that development projects must be designed to benefit foreign investors, the host governments and the local communities.<sup>380</sup> This applies to the focal countries of this study, as to all others.

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379 Art 3 of the Aarhus Convention; Mason 2010 *GEP* 14-15.

380 Goodland 2004 *SDLP* 66.



Importantly, the chapter has distilled several general and specific characteristics associated with the procedural RBA from these international, regional and sub-regional instruments. These characteristics should be more or less present to promote and ensure good FAI governance in the focal countries of this study and in sub-Saharan Africa generally as far as the protection of rights of local communities and affected stakeholders that are affected by FAI is concerned. Proceeding from these lessons, Chapters 5, 6 and 7 provide a detailed exposition of the regulation of FAI activities in the focal countries of this study and determine the regulation of these activities against the generic characteristics of the procedural aspects of the RBA distilled in Chapter 4.

## **CHAPTER 5**

### **THE LEGAL FRAMEWORK FOR THE REGULATION OF FAI IN CAMEROON**

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#### **5.1 Introduction**

This chapter investigates the regulation of FAI deals in Cameroon in order to ascertain how, and the extent to which contractual and existing approaches to FAI regulation affects local communities' rights and interests. This is achieved by providing a detailed examination of Cameroon's RBA law framework pertaining to FAI regulation. The chapter further assesses and critically evaluates the legal framework against the characteristics of the three procedural rights developed in the previous chapter. The purpose of this critical assessment is to make proposals towards a legal framework designed to promote more responsive and sustainable FAI land deals that *inter alia* respect, protect and fulfil the rights and interests of local communities and affected stakeholders. The first part of this chapter examines the regulation of FAI land deals in Cameroon and the second part focuses on an exposition of the country's RBA law framework with specific reference to the three procedural rights that are the focus of this study. The third part assesses and critically evaluates this legal framework. The last part provides a summary of the chapter. To generally achieve the aim of this chapter, the following questions are addressed.

- (1) How are FAI land deals regulated in Cameroon?
- (2) What procedural legal mechanisms exist in Cameroon that could be used to ensure respect for and adequate protection of people's rights and interests generally?
- (3) To what extent does the procedural RBA framework in Cameroon conform to the generic characteristics and minimum requirements for good FAI governance in terms of the RBA distilled in Chapter 4?
- (4) Are there any perceived gaps in the current procedural RBA framework in Cameroon insofar as it relates to FAI?

Before examining the regulation of FAI in Cameroon, it is important to have some background information about the country and its agricultural activities.

## 5.2 Background on Cameroon

Cameroon is located in the intersection between West and Central Africa. Geographically, it is located on the coast of West Africa, slightly north of the equator.<sup>1</sup> Cameroon is located between two great basins, the Niger and Congo basins, and as a consequence shares the cultural and physical characteristics of both basins.<sup>2</sup> It has a population of an estimated 20 million people, who live on a total surface area of about 469,440 square kilometers (km<sup>2</sup>) with approximately 6000 km<sup>2</sup> consisting of water, which is vital for agricultural activities.<sup>3</sup> Cameroon is endowed with a rich natural environment and biodiversity resources, which constitute some of the most diverse, widespread and valued in the world.<sup>4</sup> Because of this the country is sometimes referred to as "Africa in miniature."<sup>5</sup> Its interesting features couple with the fact that the country is the most peaceful and secure nation in Africa<sup>6</sup> have motivated the Cameroon government to solicit foreign investment in the hope of promoting socio-economic growth and development.<sup>7</sup> With regard to the timber sector, for instance, it is reported

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1 Ebi "The structure of succession law in Cameroon" 15.

2 Mbaku *Culture and customs of Cameroon* 1.

3 AFD and Cameroon date unknown [http://www.afd.fr/webdav/shared/PORTAILS/PUBLICATIONS/PLAQUETTES/AFD\\_et\\_le\\_Cameroun\\_EN.pdf](http://www.afd.fr/webdav/shared/PORTAILS/PUBLICATIONS/PLAQUETTES/AFD_et_le_Cameroun_EN.pdf) accessed 7 June 2015; Anon <http://www.infoplease.com/country/cameroon.html> accessed 7 July 2015.

4 Fuo and Semie "Cameroon's environmental framework law" 77; Fombad 1997 *JEL* 43; Bele *et al* 2010 *MASGCC* 2.

5 Bele *et al* 2010 *MASGCC* 2; Fombad 1997 *JEL* 43; USAID 2011 [http://usaidlandtenure.net/sites/default/files/country-profiles/full-reports/USAID\\_Land\\_Tenure\\_Cameroon\\_Profile.pdf](http://usaidlandtenure.net/sites/default/files/country-profiles/full-reports/USAID_Land_Tenure_Cameroon_Profile.pdf) accessed 10 February 2015; Imbert *Le Cameroun, que sais-je?* 3; FAO 2012 [http://www.fao.org/fileadmin/user\\_upload/tcsp/docs/Cameroon\\_Country\\_Profile\\_FINAL.pdf](http://www.fao.org/fileadmin/user_upload/tcsp/docs/Cameroon_Country_Profile_FINAL.pdf) accessed 27 November 2015; AFD and Cameroon date unknown [http://www.afd.fr/webdav/shared/PORTAILS/PUBLICATIONS/PLAQUETTES/AFD\\_et\\_le\\_Cameroun\\_EN.pdf](http://www.afd.fr/webdav/shared/PORTAILS/PUBLICATIONS/PLAQUETTES/AFD_et_le_Cameroun_EN.pdf) accessed 7 July 2015.

6 Khan and Bamou "An analysis of foreign direct investment flows to Cameroon" 93.

7 S 2 of Law No 2002/004 of 19th April 2002 instituting the Cameroon Investment Charter (the Investment Charter).

that from 1993 to 1995 the number of foreign logging companies increased by 81 per cent with a corresponding 34 per cent of volume of timber harvested.<sup>8</sup>

In Cameroon, agriculture contributes to about 19 per cent of the country's GDP<sup>9</sup> and it is reported that from 2004-2007 agriculture and agribusiness led to a growth rate in GDP of 21.25 per cent, with an increase to 992 million dollars in 2007 from 924 million dollars in 2004.<sup>10</sup> The country is dominated by agriculture, with about 48 per cent of the population depending on agriculture and pastoral activities.<sup>11</sup>

Cameroon has five agro-ecological zones,<sup>12</sup> these being situated in the north and extreme north, centre, east, west, and south-west regions of the country.<sup>13</sup> Each of these regions is well known for the production of various cash and food crops.<sup>14</sup> Whereas the more arid north and extreme northern regions are ideal for cereal crops such as corn, millet, groundnuts, sorghum, beans and wheat, the southern region is appropriate for tubers. The south-west and littoral regions support palm oil, rubber, cocoa, tea, rubber, banana, coffee and horticulture production, whereas the western region primarily produces vegetables and other perishable crops.<sup>15</sup>

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8 Eba'a Atyi "Cameroon's logging industry" 16-21.

9 FAO 2012  
[http://www.fao.org/fileadmin/user\\_upload/tcsp/docs/Cameroon\\_Country\\_Profile\\_FINAL.pdf](http://www.fao.org/fileadmin/user_upload/tcsp/docs/Cameroon_Country_Profile_FINAL.pdf) accessed 27 November 2015.

10 FAO 2012  
[http://www.fao.org/fileadmin/user\\_upload/tcsp/docs/Cameroon\\_Country\\_Profile\\_FINAL.pdf](http://www.fao.org/fileadmin/user_upload/tcsp/docs/Cameroon_Country_Profile_FINAL.pdf) accessed 27 November 2015.

11 FAO 2012  
[http://www.fao.org/fileadmin/user\\_upload/tcsp/docs/Cameroon\\_Country\\_Profile\\_FINAL.pdf](http://www.fao.org/fileadmin/user_upload/tcsp/docs/Cameroon_Country_Profile_FINAL.pdf) accessed 27 November 2015.

12 These are the Sudano-Sahelian zone, the High Guinea Savannah zone, the Western Highland zone, the Monomodal Humid zone, and the Bimodal Humid zone.

13 Ndoye and Kaimowitz 2000 *JMAS* 228.

14 Ndoye and Kaimowitz 2000 *JMAS* 228-229; FAO 2012  
[http://www.fao.org/fileadmin/user\\_upload/tcsp/docs/Cameroon\\_Country\\_Profile\\_FINAL.pdf](http://www.fao.org/fileadmin/user_upload/tcsp/docs/Cameroon_Country_Profile_FINAL.pdf) accessed 27 November 2015.

15 USAID 2011 [http://usaidlandtenure.net/sites/default/files/country-profiles/full-reports/USAID\\_Land\\_Tenure\\_Cameroon\\_Profile.pdf](http://usaidlandtenure.net/sites/default/files/country-profiles/full-reports/USAID_Land_Tenure_Cameroon_Profile.pdf) accessed 10 February 2015; FAO 2012  
[http://www.fao.org/fileadmin/user\\_upload/tcsp/docs/Cameroon\\_Country\\_Profile\\_FINAL.pdf](http://www.fao.org/fileadmin/user_upload/tcsp/docs/Cameroon_Country_Profile_FINAL.pdf) accessed 27 November 2015.

Cameroon is a bi-jural state with common law and civil law systems operating in the country.<sup>16</sup> This bi-jural legal system is the consequence of its having inherited its legal system from two major cultures, Britain and France, when the country came under the administration of these countries after the First and Second World Wars respectively.<sup>17</sup> While the common law system, as adopted from England, applies in the two English-speaking regions,<sup>18</sup> the civil law system, adopted from France, applies in the remaining eight French-speaking regions. Notwithstanding the above, this bi-jural legal character has been gradually mediated by the harmonisation of legal reforms across the country. Such harmonisation is found in the area of investment law, land law and environmental law, for instance.<sup>19</sup>

The Constitution, being the supreme law of the country, applies throughout the entire country, in addition to other national legislation, including for example Law No 96/12, and Law No 94/06 among others.<sup>20</sup> Vision 2035 of the government<sup>21</sup> supports investment initiatives in the country, including agriculture, as the agricultural sector remains a strategic sector for the country's development. Such investment projects range from the proposed China rice production projects in the Nanga Eboko region in Upper Sanaga to the Biopalm oil palm project and the notorious Herakles Farms

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16 Tamasang "The right to water in Cameroon" 4; Fuo and Semie "Cameroon's environmental framework" 79.

17 It must be noted that the administration of the present-day state of Cameroon began in 1896-1916, when the country was under German rule. After the defeat of Germany during the First World War, the territory Cameroon was partitioned between Britain and France by the Treaty of Versailles of 1919. Cameroon was then placed under the Mandatory System of the League of Nations until 1945. With the second defeat of Germany during the Second World War, Cameroon was placed under the Trusteeship System of the United Nations Organisation, the trustees being Britain and France.

18 By virtue of s 10 of the *Southern Cameroon High Court Law* of 1955 (SCHCL), the English Common law system as administered in Nigeria was incorporated into the English speaking part of Cameroon, because that part was administered as an integral part of Nigeria.

19 Examples of harmonised laws in Cameroon include criminal law, water law, environmental law, land law, labour law, and business law among others. Tamasang "The right to water in Cameroon" 4.

20 While Law No 96/12 is Cameroon's main environmental framework legislation, Law No 94/06 regulates forestry related activities.

21 The objectives of Vision 2035 are to reduce poverty to less than 10 per cent; to become a middle-income, industrialized nation; and to consolidate democracy and national unity. Anon [http://www.cameroonembassyusa.org/docs/webdocs/Cameroon\\_VISION\\_2035\\_English\\_Version.pdf](http://www.cameroonembassyusa.org/docs/webdocs/Cameroon_VISION_2035_English_Version.pdf) accessed 20 January 2016.

projects, all of which are in the south west region of the country. Foreign investment in Cameroon, including in the agricultural sector, is regulated by the *Cameroon Investment Code* (CIC),<sup>22</sup> which was replaced in 2002 by the Investment Charter.<sup>23</sup>

In line with the belief that investment policies serve as appropriate determinants for an economy to grow or decline, the CIC was established in 1999 to encourage investment in Cameroon, in order to promote economic growth. It was a revised version of the 1984 investment code, which had never been implemented due to the 1990 economic crisis and the country's adoption of the Structural Adjustment Plan (SAP) in the 1990s. In order to promote investment the CIC provided equal protection to both foreign and local investors in matters relating to tax and other social security benefits, while providing extra basic guarantees to foreign investors, including the ability to own property, the ability to repatriate capital and income, the free movement of equipment within Cameroon, and the free movement of workers.<sup>24</sup> It further established a one-stop shop for the approval of investment projects, as well as the settlement of disputes with respect to such projects, known as the Investment Code Management Unit (ICMU).<sup>25</sup> The CIC has been operating under the auspices of the Ministry of Finance, meaning that the Ministry is in charge of receiving and granting investment applications, including FAI projects. Although the CIC was later repealed by the Investment Charter in 2002, the law remains in effect until the full implementation of the Investment Charter.

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22 Ordinance No 90/007 of 1990 creating the Cameroon Investment Code.

23 However, the Investment Charter has not been enforced yet and many of the provisions of the Investment Code still apply. In May 2009, President Paul Biya signed a decree postponing to 2014 the deadline for the implementation of some of the provision of the Investment Charter. Anon <http://www.state.gov/e/eb/rls/othr/ics/2012/191122> accessed 27 November 2015.

24 FAO 2012  
[http://www.fao.org/fileadmin/user\\_upload/tcsp/docs/Cameroon\\_Country\\_Profile\\_FINAL.pdf](http://www.fao.org/fileadmin/user_upload/tcsp/docs/Cameroon_Country_Profile_FINAL.pdf) accessed 27 November 2015.

25 FAO 2012  
[http://www.fao.org/fileadmin/user\\_upload/tcsp/docs/Cameroon\\_Country\\_Profile\\_FINAL.pdf](http://www.fao.org/fileadmin/user_upload/tcsp/docs/Cameroon_Country_Profile_FINAL.pdf) accessed 27 November 2015.

The investment Charter, like the CIC, was enacted to facilitate business and economic development in Cameroon.<sup>26</sup> Like the CIC, the Investment Charter provides equal protection to both foreign and domestic investors and especially to those who comply with internationally recognised norms, including the human rights norms discussed in chapter 4.<sup>27</sup> To facilitate and promote investment activities in the country, the Investment Charter created three institutions: the Investment Promotion Agency, the Export Promotion Agency, and the Regulation and Competiveness Board.<sup>28</sup> The Investment Promotion Agency is primarily responsible among other things for receiving and forwarding investment applications, for the issuance of business licences, for assisting enterprises in their business operations by guaranteeing that investment rules and regulations are respected, and for creating a favourable investment climate in the country.

Although land application for investment purposes in Cameroon could be processed by different ministries depending on the purpose of the land, land acquisition for FAI is done by submitting an application to the Ministry of Agriculture and Rural Development (MINADER). MINADER then registers the application, analyses the feasibility of the project, and formalises the request for land. A copy of the application is then forward to the Ministry of Public Lands, Cadastral and Land Affairs (MINCAF), as well as other administrative bodies such the Ministry of Environment.<sup>29</sup>

### **5.3 The regulation of FAI in Cameroon**

In Cameroon, the regulation of FAI land deals is done in two ways. It can either be through a contractual land lease agreement which also takes the form of a Convention of Establishment (CoE) between a foreign investor and the host state; or it takes place

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26 S 2 of the Investment Charter.

27 FAO  
2012 [http://www.fao.org/fileadmin/user\\_upload/tcsp/docs/Cameroon\\_Country\\_Profile\\_FINAL.pdf](http://www.fao.org/fileadmin/user_upload/tcsp/docs/Cameroon_Country_Profile_FINAL.pdf)  
accessed 27 November 2015.

28 S 25 of the Investment Charter.

29 Nguiffo and Watio "Agro-industrial investment in Cameroon" 39.

through a direct agreement between a foreign investor and local communities of the host state, in which case a Memorandum of Understanding (MoU) is used.<sup>30</sup> Although each land deal may encompass an array of contracts and legal instruments, some land deals integrate these different legal instruments into a single legal instrument, with the result that both a contractual land lease and a MoU may apply to a particular FAI project.<sup>31</sup> Regardless of whether a contractual lease, CoE,<sup>32</sup> and/or MoU apply in a particular land deal project, the agreements are contractual in nature.<sup>33</sup> It remains unclear how the legal provisions of such contracts interact in practice. Although the evidence may point to the fact that the investment is legally secured as it is governed by contract law, some concerns exist. These pertain largely to the acknowledgment and protection of the participation right, the environmental right and the protection of property right, as was indicated in Chapters 1 and 2. The contractual negotiations are usually conducted behind closed doors with little or no participation of local communities and affected stakeholders.<sup>34</sup>

Within this regulatory model the regulation of FAI in Cameroon can be viewed in two ways: as a contractual lease or as a MoU.

### *5.3.1 Contractual leases*

A distinction must be made between a land lease contract and an investment agreement (IA). While a land lease contract transfers land from the lessor to the lessee by means of leasehold, an investment agreement (IA) or CoE regulates the investment project as a whole. It is important to note that a land lease contract must be read in conjunction with a CoE.<sup>35</sup> Through the land lease contract, issues such as the price per hectare of land, the space or quantity of land, the duration of the lease agreement and

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30 Cotula *Land deals in Africa* 7.

31 Cotula *Land deals in Africa* 7; Cotula *et al Land grab or development opportunity* 15-16;.

32 They are also referred to as investment agreements.

33 Cotula *Land grab or development opportunity* 15-16.

34 Cotula *Land deals in Africa* 1;

35 Cotula *Land deals in Africa* 1.



the possibility of renewal are determined.<sup>36</sup> Whereas some land lease contracts may be for the establishment of new agreements, other land lease agreements may be for the extension of pre-existing investments. The latter, for example, was the form of the 2006 land lease agreement between the government of Cameroon and the French Company Vilgrain, which was operating in Cameroon under the aegis of the Cameroon Sugar Company (Sosucam).<sup>37</sup> Despite the fact that some contracts may allow a foreign investor to acquire additional land, provided certain conditions are met,<sup>38</sup> it is reported that investment contracts between foreign investors and the government of the host country usually range from 25 to 99 years,<sup>39</sup> with low prices paid per hectare of land.<sup>40</sup> Land lease contracts by means of leasehold enable an investor to engage in investment activities, especially as contract law that secures land deals defines the terms of investment projects as well as the distributed risks, costs and benefits.<sup>41</sup> Although contract law may provide for the legal capacity and authority to sign investment contracts and the process through which people can have their voices be heard, it is reported that investment contracts are often negotiated behind closed doors and only rarely do local communities have a say in establishing their terms.<sup>42</sup> Cotula posits in this regard that the gap between legality and legitimacy has the potential of exposing local communities to the risk of land dispossession.<sup>43</sup>

A fundamental difference between a lease contract and a CoE is that with a CoE an investor may directly proceed with investment activities without obtaining an additional lease agreement. This is because a CoE regulates the entire investment project, including leases. However, like land lease, a CoE provides for the duration, prices and

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36 For example art 1 of the 2006 lease contract between the government of Cameroon and the French company Vilgrain operating in Cameroon as Cameroon Sugar Company (Sosucam). Document on file with author.

37 Art 2 of the lease agreement.

38 Cotula *Land deals in Africa* 12.

39 See Chapter 2, table 1 of this thesis for details.

40 Cotula *Land deals in Africa* 1.

41 Cotula *Land deals in Africa* 1.

42 Cotula *Land deals in Africa* 1.

43 Cotula *Land deals in Africa* 2.

hectares of land to be allocated to a foreign investor. For instance, in the CoE between Herakles Farm and the government of Cameroon,<sup>44</sup> it is stated that the contract would be for 99 years, covering an area of about 730863 hectares of land.<sup>45</sup> It is further stated that the company will annually pay US \$ 1 per hectare for developed state land and 0.5 US \$ per hectare for undeveloped state land.<sup>46</sup> This notwithstanding, a 2013 presidential decree reduced the number of hectares from 73,000ha to 19,843ha, while increasing the price per hectare to \$ 6 as opposed to the previous \$1 per hectare.<sup>47</sup>

In Cameroon, because only a few people have registered land rights and unregistered right is subject to lease or sale for FAI purposes, this practice does not always respect people's rights and tenure security held under diverse customary land rights.<sup>48</sup> Respecting customary land rights would require that attention be given to respect and protect the traditional knowledge, innovations and practices of local communities relating to their land and its natural resources. In terms of the CBD to which Cameroon is a member, the importance of the traditional knowledge, innovations and practices of local communities is acknowledged for the conservation of biodiversity,<sup>49</sup> illustrating the increasing role that customary law, which is vitally related to tenure rights, could play in regulating the use of natural resources.<sup>50</sup> In fact, the Aichi Targets adopted during the 10<sup>th</sup> CoP to the CBD affirms and acknowledges the importance of customary practices and law with respect to biodiversity conservation in stating that:

The traditional knowledge, innovation and practices of indigenous and local communities, relevant for the conservation and sustainable use of biodiversity, and their customary use of biological resources, are respected, subject to national legislation and relevant international obligation, and fully integrated and reflected in

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44 Copy of the Convention Agreement on file with author.

45 Art 2(1) of the Convention of Establishment.

46 Art 13 (5) of the Convention of Establishment.

47 SEFE 2013 [https://www.save-wildlife.org/downloads/save\\_the\\_forest/SEFE%20PR\\_2013.pdf](https://www.save-wildlife.org/downloads/save_the_forest/SEFE%20PR_2013.pdf) accessed 22 December 2015.

48 See Chapters 1 and 2 of this thesis for details.

49 Art 10(c) of CBD.

50 Katrina *Customs and constitutions v.*

the implementation of the Convention with the full and effective participation of indigenous and local communities at all relevant levels.<sup>51</sup>

However, the stark reality is that the Herakles Farms palm oil project, the *Nanga-Eboko* rice cultivation project and the BioPalm project have significantly infringed on local communities' rights to the land that they have traditionally occupied.<sup>52</sup> Nonetheless, in Cameroon unoccupied land or exploited land for FAI activities must be allocated by a temporary grant (*concession provisoire*) to development projects for a period not exceeding five years, and the application must be made to the Lands Service where the land is located for consideration by the Land Consultative Board (LCB).<sup>53</sup> According to Ordinance No 76/166 of 1976 laying down the Management of State Land in Cameroon, the LCB must consist of representatives of all interested and affected parties to a proposed project development, including a sub-prefect, a representative from the Lands Service, a representative from the relevant ministry, and the chief and two members of the community where the land is situated.<sup>54</sup> The grant may become a lease (*bail*) or absolute grant (*concession définitive*).<sup>55</sup> It is expressly provided by the 1976 law governing the allocation of land concessions that areas of land (state land) larger than 50,000 hectares must be allocated by a presidential decree,<sup>56</sup> while areas less than 50,000 hectares must be allocated by the Minister in charge of land.<sup>57</sup> This implies that a foreign investor can directly conclude a FAI deal with the president. However, because part of the Herakles Farms involve part of state land and exceeded the limit provided by the Ordinance 76/166 (50,000 hectares) and was concluded instead by the Minister of Economy, Planning and Regional Development (MEPRD), Louis Paul Motazé, and not the President, raised concerns about the legality of the investment contract.<sup>58</sup>

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51 Target 18 of the Aichi Targets.

52 See Chapter 2 of this thesis for details.

53 Arts 4-6 of Ordinance No 76/166 of 1976.

54 Art 12 of Ordinance No 76/166 of 1976.

55 Arts 1-3 of Ordinance No 76/166 of 1976.

56 Art 7(2) of Ordinance No 76/166.

57 Art 7(1) of Ordinance No 76/166 of 1976.

58 Mousseau "Herakles exposed" 2; Fru date unknown <http://www.icenecdev.org/Land-Grabbing-in-Cameroon.pdf> accessed 13 January 2016.

Although an investment contract ought to be concluded by the Cameroon Investment Promotion Agency (CIPA), as the relevant body charged with the promotion of investment activities in the country, most deals are registered either by the MEPRD or the Vice Prime Minister and Minister of MINADER.<sup>59</sup> This method of registering investment contracts highlights the difference between the various government ministries charged with registration and enforcement. Thus it is evident that while MINADER is charged with the registration of FAI land deals, the Ministry of Forestry and Wildlife is concerned with ensuring the enforcement of FAI land deals. Although a foreign investor may be allocated land for FAI purposes, under Cameroonian land law, the land grant may be terminated if the investor does not fulfil his/her obligations.<sup>60</sup> As far as enforcement is concerned, it is reported that both the Minister of Forests and Wildlife and the Regional Delegate of the Ministry of Forestry and Wildlife seized bulldozers belonging to Herakles Farms and fined the Company for the illegal logging of forest when Herakles Farm failed to comply with relevant forestry law.<sup>61</sup>

Generally, the regulation of FAI in Cameroon is far from being transparent and accountable, because local communities are often not provided with basic information of investment deals regarding the proposed project.<sup>62</sup> It has been stated that transparency and accountability are serious issues that must be addressed in the context of FAI activities in Cameroon, insofar as information about FAI-related projects is not disseminated to the public.<sup>63</sup> To this end, Nguiffo and Watio<sup>64</sup> suggest that because only snippets of information may be available in the press about ongoing FAI projects, it is difficult to verify the figures that are published or to find out what the developers intend doing with their concessions. Because negotiation between foreign

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59 This concerns for the example the Herakles Farm land lease and the BioPalm contract, both of which were concluded by the Minister of Economy Planning and Rural Development and the Vice Prime Minister, Minister of Agriculture and Rural Development.

60 Art 8 of Ordinance 76/166 of 1976.

61 Achobang *et al* "SG Sustainable Oil Cameroon PLC (SGSOC) in South West, Cameroon" 360.

62 Freudenthal *et al* "The BioPalm oil palm project" 348.

63 Nguiffo and Watio "Agro-industrial investments in Cameroon" 48.

64 Nguiffo and Watio "Agro-industrial investments in Cameroon" 48.

investors and host governments are often not public due to the insertion of a confidentiality clause which parties to the investment contracts are obliged to respect, it becomes difficult if not impossible to obtain information about the operations of the concessionaries.<sup>65</sup> And the absence of information about the proposed project renders the project vague and unaccountable.

In Cameroon, information relating to land leases, the size of the land and how the allocations are processed at the local level and by the central administration is reportedly not being provided to the public.<sup>66</sup> According to a report by Nguiffo and Waito<sup>67</sup> on large-scale land acquisitions in Cameroon since 2005, there was apparently no public disclosure of information in terms of the demand for land as well as its provisional or definitive allocation. In fact, a recent study by the Centre for Environmental and Development relating to access to information by local communities and authorities pertaining to seven agro-industrial plantations highlights the gross lack of information on investment projects in Cameroon, and suggests that:

The communities' level of knowledge about the company is linear, starting with the name of the company, its activities, the managers' nationality, the destination of the products, the date it was set up, whether or not there are plans for expansion, the amount of land allocated, and the length of the lease. It is relatively easy [to] find out the name of the company and [the] nature of its activities, but virtually impossible to get hold of two pieces of information that are crucial for the communities and the company to have an equal partnership: the amount of land the company has acquired and the duration of its contract.<sup>68</sup>

Concurring with the above, it is not surprising that a report by Oakland Institute revealed that local communities were not aware in advance of the proposed Herakles Farms palm oil plantation.<sup>69</sup> Further, in Nguti, where Herakles Farms also acquired land,

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65 Nguiffo and Watio "Agro-industrial investments in Cameroon" 48.

66 Nguiffo and Watio "Agro-industrial investments in Cameroon" 21.

67 Nguiffo and Watio "Agro-industrial investments in Cameroon" 21.

68 CED [2013] "La transparence dans le secteur foncier au Cameroun: Etude de cas preliminaire de la cohabitation entre agro-industries et communautes locales et autochtones, Yaounde"; Nguiffo and Watio "Agro-industrial investments in Cameroon" 21.

69 Oakland Institute date unknown <http://www.oaklandinstitute.org/herakles-farms-destroying-rainforests-and-local-livelihoods-cameroon-palm-oil-plantations> accessed 19 May 2015; Nguiffo and Watio "Agro-industrial investments in Cameroon" 41.

local communities sent a letter to the presidency saying that they “noted with dismay that 2,532 hectare of forest including farms have been mapped out ... without our consent” and complained that “the people of Nguti are not well-informed about a project that will affect their lives as well as the lives of future generations.”<sup>70</sup>

In similar vein, vital information about the BioPalm oil palm plantation in Cameroon was not provided to local communities about the area where the proposed project was to take place.<sup>71</sup> Interestingly, the lease agreements relating to the BioPalm and the Herakles Farms palm oil projects do not contain obligations for the companies to ensure compliance with CSR measures, neither did they included obligations for environmental protection, including biodiversity for example.<sup>72</sup> The Herakles Farms project, which is situated in the midst of four biodiversity hotspots, negatively impacts on the biodiversity of the country and on the preservation of traditional knowledge and practices of the local communities in terms of the conservation and sustainable use of biological resources. Also, the country’s commitment to international legal instruments such the CBD, the RAMSAR Convention, the Rio Declaration and the African Convention for the Conservation of Nature has been seen to be negligible, as evidenced by the granting of a land lease concession for the establishment of a large-scale palm oil plantation such as those relating to Herakles Farms, that is not environmentally friendly.

As in most other sub-Saharan African countries, governance is performed as a state prerogative, accountability is not taken into consideration in that exercise, and the state is prepared to allocate vast portions of land to foreign investors without or with minimal consultation with local communities.<sup>73</sup> It has been shown that neither the BioPalm Company nor the government gave local communities the opportunity to decide their own representative decision-making structures, and there were no provisions for local

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70 Nguiffo and Watio “Agro-investment in Cameroon” 41.

71 Freudenthal *et al* “The BioPalm oil palm project” 348.

72 Copies of the agreements are on file with the author.

73 Polack *et al Accountability in Africa’s land rush 2*; Nguiffo and Watio “Agro-industrial investments in Cameroon” 48.

communities' consultation, participation and structured negotiation in the land deal.<sup>74</sup> Even if there had been consultation with and participation by local communities, their opinions had not actually been taken into consideration. The foregoing is supported by a quote from a government official during the BioPalm project quoted as saying "I did not come to ask the opinion of the populace. The forest is the forest of the state" (*Je ne suis pas venu demander l'avis aux populations. La forêt c'est la forêt de l'État*).<sup>75</sup>

Similarly, it has been reported that the Herakles Farms land deal was implemented without proper consultation with and the participation of the local communities involved.<sup>76</sup> Also, it is reported that concerns were raised by representatives of the village of Ebanga, who expressed dissatisfaction with the composition and functions of the LCB and the demarcation of the areas to be developed between Ebanga and Ndonga villages with respect to the Herakles Farm palm oil plantation.<sup>77</sup>

As in the Herakles Farms and BioPalm case, during the negotiation of the *Nanga Eboko* rice project, it is also reported that local communities and the local municipality were not consulted and did not participate in the leasing of community land for the project, as evidenced by the Mayor of *Nanga Eboko* quoted to have said "... the municipality and our administration had not been consulted in the lands' selling."<sup>78</sup> The lack of public participation restricts local communities from making informed decisions about their development priorities on activities that have the potential to negatively impact on their cultural values and traditions. The lack of effective consultation and participation by local communities in decision-making clearly runs counter to the precepts of good

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74 Freudenthal *et al* "The BioPalm oil palm project" 348.

75 Freudenthal *et al* "The BioPalm oil palm project" 348.

76 Dupuy and Bakia "Fact finding mission on Herakles Farm oil palm plantation project" 6.

77 Anon <http://www.sciencespo.fr/ecole-de-droit/sites/sciencespo.fr/ecole-de-droit/files/Analysis%20of%20Some%20Contested%20Legal%20Issues%20Reviewed%20FINAL%20VERSION.pdf> accessed 27 May 2015.

78 Afronline 2009 <http://www.afronline.org/?p=2908> accessed 19 May 2015.

FAI governance and the minimum procedural dictates of the RBA developed in Chapter 4.<sup>79</sup>

### 5.3.2 *MoUs*

As was indicated above,<sup>80</sup> FAI in Cameroon and other African countries can be regulated through a MoU. This occurs when the foreign investor concludes a contract directly with the local communities of the area where the project is to take place. A MoU can also be concluded between a foreign investor and the host country government. When a MoU is concluded between a foreign investor and local communities, both parties pledge to undertake several commitments. While the foreign investor usually commits to provide basic services to the communities, including for example roads, hospitals, schools, potable water, electricity and jobs, local communities undertake to provide land for the proposed development/investment. However, in practice this does not always materialise. Returning to the Herakles example, it is reported that the company made false promises of job creation, in addition to providing the above-mentioned services to local communities of the areas concerned.<sup>81</sup>

It is reported that MoUs are often vague, and hence the activities emanating from them are characterised *inter alia* by bribery and corruption, intimidation, and lack of proper consultation and participation, because influential people of the community, particularly chiefs are paid large sums of money in order to facilitate and precipitate the implementation of the proposed project.<sup>82</sup> This is true of the Herakles MoU in Cameroon,<sup>83</sup> illustrating that in as much as a MoU is not a legally enforceable document it does not create reciprocal rights and duties. Thus the conclusion of a FAI project by a

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79 See Chapter 4, Table 2 of this thesis for details.

80 See section 5.3 above for details.

81 Mousseau "Herakles exposed" 4; See Chapter 2 of this thesis for details on the impacts of land grabbing.

82 Mousseau "Herakles exposed" 4.

83 Mousseau "Herakles exposed" 4.



MoU may be construed as inviting the violation of local communities' rights and interests.

As stated above, a MoU can also be concluded between a foreign investor and the government. Although not yet implemented, in 2011 a land concession was concluded through a MoU between BioPalm (a subsidiary of a Singaporean company, SIVA) and the government of Cameroon, led by Jean Nkuete, Vice Prime Minister and Minister of MINADER. The government of Cameroon and BioPalm made several commitments. While the government is required to make land available for the realisation of the BioPalm project, BioPalm is expected to comply with best practices such as the criteria of the Roundtable of Sustainable Palm Oil (RSPO) and construct or upgrade the existing roads in the area to facilitate movement both for the company and the local community of the area.

#### **5.4 The procedural framework of a RBA in Cameroon**

The legal framework of a procedural RBA in Cameroon consists of the rights to access to information, public participation, access to justice and broad *locus standi*, and is contained in constitutional and statutory provisions. These are discussed in greater detail below.

##### *5.4.1 The right to access to information*

In Cameroon, people's right to access to information is enshrined in the *Constitution of the Republic of Cameroon*, 1996 (the Constitution) and legislation empowering people to have access to state-held information. Legislation giving effect to this right includes Law No 96/12, and Law No 2003/006. The following section examines these constitutional and legislative provisions with a view to determining their relevance and application in the FAI context.

#### 5.4.1.1 The Constitution

Contrary to other jurisdictions such as Uganda and South Africa, for example, where the constitution clearly provides for a Bill of Rights that deals extensively with people's human rights and freedoms, this is not the case in Cameroon. The Cameroonian Constitution does not contain a Bill of Rights and does not explicitly provide for people's right to access to information, but people's fundamental rights and freedoms are provided in the Preamble, which in terms of article 65 of the Constitution has binding force. The Preamble "affirms the country's attachment to the fundamental freedoms enshrined in the Universal Declaration of Human Rights, the Charter of the United Nations and the African Charter on Human and Peoples' Rights, and all ratified international conventions relating thereto."<sup>84</sup> It is clear from the foregoing that Cameroon follows a monist approach with respect to the reception and domestication of international law.<sup>85</sup>

The fact that Cameroon has signed and ratified almost all international human rights instruments discussed in Chapter 4 suggests an intention on the part of the state to respect, protect and fulfil people's human rights, including the right of access to information. In as much as the right to access to information is encapsulated in these international agreements and the Preamble in terms of article 65 has binding force, a person can invoke paragraph 5 of the Preamble to assert *inter alia* his or her right of including the right to access to information.<sup>86</sup> This is also possible when considering the provision of Paragraph 5 line 1 of the Preamble, which obliges the state to provide its citizens with equal rights and obligations.<sup>87</sup>

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84 Para 5 of the Preamble of the Constitution.

85 Fuo and Semie "Cameroon's environmental framework law" 81.

86 Also see Hambuda and Kaoya *Freedom of information and Women's rights in Africa* 18-19.

87 Para 5(1) states that: "all persons shall have equal rights and obligations. The state shall provide all its citizens with the conditions necessary for their development."

Given that freedom of expression complements the right to information, and since the Constitution guarantees the right of freedom of expression,<sup>88</sup> it can be argued that the right to government-held information in Cameroon is guaranteed as part of the right to freedom of expression. Thus, because the right of freedom of expression embodies the right to seek and impart information, this could imply for example that, in a FAI context, local communities must be provided with an opportunity to be informed about FAI activities in order to empower them to freely express their opinions about the potential impact of the activity on their rights and interests.

However, as the right to access to information including its conditions and procedures are not explicitly guaranteed by the Constitution or an implementing law, it is doubtful that the right could effectively be exercised in Cameroon. It is also unclear how the courts would interpret and enforce people's right to access to information and particularly government-held information with regard to development projects. It would have been preferable if the right to access to information was a stand-alone provision in the Constitution as it is in other jurisdictions like South Africa and Uganda, where the right is explicitly provided for in their Bills of Rights.<sup>89</sup> The express lack of a constitutional right to access to information acts as a barrier to the realisation of and respect for, democratic principles and values such as freedom, equality and the rule of law.<sup>90</sup> Also, the lack of a constitutional guarantee to the right of access to information has the possibility to impact negatively on the ethos of Cameroonian governance, and consequently accommodates a lack of transparency and accountability in the context of development projects and the governance of public affairs generally. The lack of adequate access to state-held information also potentially affects the advancement of communities, including Cameroonian women, who, are often affected by the lack of vital information that relates to their rights and interests, predominantly where large-scale development projects are concerned.

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88 Para 5(16) of the Preamble of the Constitution.

89 See respectively 32 s 32 and art 41 of the South African and Ugandan constitutions respectively.

90 Para 5(1) of the Preamble of the Constitution.

#### 5.4.1.2 Law No 96/12

Law No 96/12 is Cameroon's main environmental legislation and reinforces the constitutional provision of the right to a healthy environment.<sup>91</sup> It provides efforts to open up environmental decision-making to public influence and scrutiny, through the right to access to information and particularly environmental information, which is necessary to protect health and well-being. Section 6 obliges public and private bodies, including NGOs, to educate and sensitise the public on environment problems, including the impacts of environment-related activities, which could by definition, include FAI.<sup>92</sup> This is achieved by requiring both public and private bodies to integrate adequate plans and programmes on environmental management in their activities in order to permit the public to have knowledge about the environment.<sup>93</sup> Section 10 requires the government to develop environmental policies and to co-ordinate their implementation.<sup>94</sup> In order for the government to effectively co-ordinate environmental policies, it is required to collect and disseminate environmental information to the public so as to promote and ensure the effective protection and management of the environment.<sup>95</sup> In this case, the dissemination of information - mostly environment information - on the plans and activities of FAI land deals and activities related to these deals could significantly help to set the basis for and reinforce government's efforts to initiate, co-ordinate and implement environmental protection measures. Such measures could include those designed to react to environmental emergencies or any other situation that may pose a serious threat to the environment. These measures would also be based on input from the local communities and affected stakeholders.<sup>96</sup> For the purposes of this study, this means that public knowledge of information generally and environmental information specifically on the state of FAI activities could be instrumental in enabling local

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91 See Para 5(22) the Preamble of the Constitution.

92 S 6(1) of Law No 96/12.

93 S 6(2) of Law No 96/12.

94 S 10(1) of Law No 96/12.

95 S 10(1)(f) of Law No 96/12.

96 S 10(1)(g) of Law No 96/12.

communities and affected stakeholders to seek the protection of their environmental and other related human rights interests that are susceptible to violation during FAI.

Furthermore, section 7 imposes an obligation on the state to provide information to the public, and states that:

Everyone has the right to be informed about the effects of activities that are detrimental to health, man and the environment as well as about the measures taken to prevent or offset these effects.<sup>97</sup>

What is discernible from the above is that section 7 guarantees the right of all persons to environmental information that serves to promote the effective implementation of environmental laws and policies in the country.<sup>98</sup> The obligation on the state to provide information to the public is reinforced and supplemented by rights and duties, notably the right of every citizen to have access to information on the environment and the duty of the every citizen to protect the environment,<sup>99</sup> including in instances where development projects such as FAI occur.<sup>100</sup> The right is subject to state security concerns, however, and can be limited subject to these concerns.<sup>101</sup> Because the law does not define what is meant by state security concerns, it has been argued that state security concerns can be interpreted too broadly to meet specific interests.<sup>102</sup> Like the Constitution, the law does not provide conditions and procedures under which the right to access to information may be exercised in Cameroon. To this is end; clarity is required on a number of questions: what should be the content of the disclosed information? Does it suffice to simply inform the public of the project and reveal the possible impacts? What is the applicable sanction for failure to provide information?

Section 7(2) states that the conditions and procedures relating to the exercise of the right to access to information shall be subjected to a decree, which has not been

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97 S 7(1) of Law No 96/12.

98 S 7(1) of Law No 96/12.

99 See s 9 of Law No 96/12 which provides for environmental right.

100 S 9 of Law No 96/12.

101 Mengang 1997 *YFESB* 246; s 12 of Law No 2003/006.

102 Fuo and Semie "Cameroon's environmental framework law" 88.

promulgated yet.<sup>103</sup> The lack of adequate conditions and procedures relating to the exercise of the right to access to information has prompted the government to resort to intimidation and incessant non-disclosure practices relating to information requested by the public and civil society organisations when executing major projects such as those involving multinational corporations.<sup>104</sup> During the Chad-Cameroon Oil and Pipeline project, for example, it is reported that the government used these tactics both in the preparatory and execution phases of the project.<sup>105</sup> Such practices illustrate a failure on the part of the government to balance environmental protection, human rights and economic development. Transposing the above in the context of this research implies that because of the lack of conditions and procedures for the exercise of the right to information, it becomes difficult for local communities and affected stakeholders to exercise their rights and to protect their interests. This situation is in stark contrast to the vision reflected in the Preamble of the Constitution that affirms the country's attachment to the rights and freedoms set out *inter alia* in the African Charter and the UDHR.<sup>106</sup> The situation is also unacceptable because the government is committed to guaranteeing all citizens of either sex the rights and freedoms set forth in the Preamble of the Constitution,<sup>107</sup> including the right to freedom of expression which, by extension, includes the right of access to information.

#### 5.4.1.3 Law No 2003/006

Given that foreign companies could invest in GMO crops through FAI practices in order to boost food crop yields, it is important that information pertaining to GMOs be disclosed to the public. Law No 2003/006 makes explicit reference to and considers the right to access to information as an appropriate tool for the attainment of its objective, which in terms of section 4(2) is to provide a mechanism for assessing, managing,

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103 Fuo and Semie "Cameroon's environmental framework law" 85.

104 Fuo and Semie "Cameroon's environmental framework law" 88.

105 The Chad- Cameroon oil and pipeline project 6-8; Fuo and Semie "Cameroon's environmental framework law" 88.

106 Para 5 of the Preamble of the Constitution.

107 Para 5(25) of the Preamble of the Constitution.

communicating and controlling the risks inherent in the use, release and cross-border movement of genetically modified organisms (GMOs).<sup>108</sup> Section 12 enumerates instances or conditions under which an inspector or controller<sup>109</sup> may divulge information to the public. Such instances or conditions include: where the information is necessary for the effective implementation of the provisions of this law or related regulatory instruments;<sup>110</sup> for the purpose of legal proceedings within the framework of the law and subsequent regulatory instruments where a competent court of law so rules;<sup>111</sup> and where the inspector or controller is authorised by the competent national administration<sup>112</sup> to do so.<sup>113</sup> This implies that the public has a right to access information regarding GMOs released into the environment and the competent national administration is accordingly expected to disseminate the information. To this end, section 35 imposes a duty on the competent national administration to foster and facilitate the sensitisation and education of the public with regard to the use of GMOs, and ensure that any person involved in modern biotechnology must sensitise and educate the public on the risks and benefits that the GMOs entail.

Although the competent national administration is not obliged in terms of the Law No 2003/006 to periodically publish information about GMOs, the authority is enjoined to open a national biosafety register that contains information relating to the use and

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108 S 5(36) of Law No 2003/006 defines genetically modified organism as an organism whose genetic material has been altered following a process which cannot be replicated naturally through mating and/or natural recombination, and which has the capacity to replicate and to transmit the same genetic material.

109 S 5(28) of Law No 2003/006 defines an inspector or controller as an accredited and sworn official of the competent service, who is well specialised in disciplines relating to biotechnology/safety, and whose duties consist of verifying, assessing, managing and ensuring the follow-up of risks and control with a view to granting a prior approval and/or authorization with full knowledge of the facts on notifications and release in the environment of genetically modified organisms and products thereof. He shall, in addition, be responsible for identifying offenders, and formulating and/or proposing appropriate sanctions.

110 S 12(1) of Law No 2003/006.

111 S 12(2) of Law No 2003/006.

112 S 5(2) of Law No 2003/006 defines competent national administration as the national authority in charge of coordinating activities related to biosafety.

113 S 12(3) of Law No 2003/006.

release of GMOs, and the information must accordingly be disclosed to the public.<sup>114</sup> The publication of such information appears a useful and appropriate tool to enable the public to assert its constitutional<sup>115</sup> and legislative<sup>116</sup> right to a healthy environment, regarding the impact caused by the release of GMOs into the environment. Thus, because foreign companies could invest in GMO crops through FAI practices in order to boost food crop yields, it is important that the information pertaining to GMOs be disclosed to the public. A report by Friend of Earth International, actually illustrates the keen interest biotech companies have in the general push for agrofuel crops that extends in practice to opening up new markets and potentials for investment in GMOs varieties.<sup>117</sup> Apart from biofuel crops, foreign investors could also invest in food crop production by using GMO seed to increase food crop yield. For example, it is stated that the Chinese rice project in the *Nanga Eboko inter alia* uses GMO rice seed in order to increase rice production.<sup>118</sup> It becomes clear that public access to such information could be useful in asserting protection of the people's rights-based interests during FAI practices.

#### 5.4.2 *The right to public participation*

Legislation giving effect to public participation *inter alia* includes: Law No 96/12; Law No 2003/006; Law No 94/01 and Ordinance No 76/166.

##### 5.4.2.1 Law No 96/12

As with most national legislation that incorporates certain principles for the effective and efficient environmental governance,<sup>119</sup> Law No 96/12 follows the same trend.<sup>120</sup>

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114 S 42(1) of Law No 2003/006.

115 Para 5(21) of the Preamble of the Constitution.

116 For example s 5 of Law No 96/12.

117 Friends of the Earth International 2010  
[https://www.foeeurope.org/sites/default/files/publications/FoEE\\_Africa\\_up\\_for\\_grabs\\_0910.pdf](https://www.foeeurope.org/sites/default/files/publications/FoEE_Africa_up_for_grabs_0910.pdf)  
 accessed 8 September 2015.

118 Grain 2010 <http://farmlandgrab.org/16485> accessed 8 September 2015.

119 For example the s 2 principles of the South African NEMA and s 2 of the Ugandan NEA.

120 S 9 of Law No 96/12.



One of the principles provided for in section 9 of the Law is the principle of public participation. The principle entails among other things the right and responsibility of everyone to safeguard the environment as well as to contribute to its protection, where decisions concerning the environment shall be taken after consultation with other actors concerned or through public debate.<sup>121</sup> This implies that to properly safeguard and protect the environment, local communities and interested and affected parties have to be actively involved in decision-making, plans and programmes of environment-related activities, including EIA processes and procedures in order to properly assert protection of their environmental and other related rights. In the context of this study, for local communities and interested and affected parties to be actively involved in environmental protection measures, they should be allowed to be part of the decision-making processes on FAI land deals, as their participation could provide a necessary platform for the public authorities to enhance environmental protection and other related human rights-based interests.

Section 72 reiterates this requirement and obliges the state to encourage and allow for public participation insofar as environmental governance is concerned. In as much as it was established in Chapter 2 that FAI activities are inclined to negatively impact on the environment and other human rights linked to the environment, ensuring the protection of these rights requires the state to provide and to encourage the involvement and public participation of local communities and affected stakeholders in FAI land deals through mechanisms that allow for and promote free access to information; to create consultative mechanisms to allow the public to form an opinion; and to be popularly represented at the consultative organs on governance matters relating to the environment. The state is also required to create appropriate mechanisms to ensure the dissemination of environmental information through mechanisms that encourage measures relating to training, research and education about environmental issues.<sup>122</sup>

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121 S 9 of Law No 96/12.

122 S 72(i)-(iv) of Law No 96/12.

#### 5.4.2.2 Law No 2003/006

It has already been indicated in the previous section that FAI could be directed at propagating GMOs. Law No 2003/006 reinforces public participation with respect to GMOs. Section 35 of the Law obliges the competent national authority to foster and facilitate active and effective public participation with regard to the safe movement, manipulation and use of GMOs. This implies, for example, that because GMOs may be used to enhance food crop yields during FAI activities and consequently could be transported from an investor's country to the host country, local communities and affected stakeholders ought to be part of the decision-making processes relating to the safe movement, manipulation and final use of GMOs. Part III entitled "Open testing and use of genetically modified organisms" provides for public participation in matters relating to the use and release of GMOs. Section 42 requires the competent national authority to hold a sufficient number of consultative and participatory meetings with the public that are devoted to the use, release and placing on the market of GMOs and their products.<sup>123</sup> It is also required of the competent national authority to ensure and subject applications for the open testing of GMOs requiring risk assessment to effective public consultation and participation. The reason for this is that the competent national authority can issue an environmental safety attestation only after taking account of comments made by the public during the public participation process.<sup>124</sup> In the context of this study, this means that the competent national authority is required to hold public participation meetings with local communities and affected stakeholders on the use and release of GMOs when implementing FAI activities, if GMOs are an aspect to be considered in that particular FAI deal.

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123 S 42(1) of Law No 2003/006.

124 S 42(2) of Law No 2003/006.

#### 5.4.2.3 Law No 94/01

Law No 94/01 and its Decree of Implementation<sup>125</sup> provide a framework for integrated and sustainable use of forests, wildlife and fisheries.<sup>126</sup> Section 23 of the Law provides for the elaboration of forest management plans (FMPs) which must be submitted to the Minister of Forestry for approval, and compels logging companies to ensure the participation of local communities during the preparation of such plans so as to ensure the sustainability of forest resources. FMPs also provide a platform for agreements between logging companies and local communities.<sup>127</sup> For the purposes of this study, this could mean that the involvement and participation of local communities and affected stakeholders in FMPs of FAI land deals that relate to carbon offset projects, for example, has the potential to enhance and ensure the sustainable use and exploitation of forest resources. Involvement of local communities in forest carbon offset projects will also strive to conserve permanent value forest which according to sections 20-22 of the law must constitute thirty per cent of the national territory.<sup>128</sup> In this regard, responsibility reposes on the Minister to actually ensure that foreign investors of FAI activities follow and adhere to a participatory approach, thereby providing local communities and affected stakeholders with the right to be actively and fully involved in FMPs during FAI land deals on forestry activities.

Despite the desire to promote, ensure and increase the participation of local communities in sustainable forest management, it has been argued that in practical terms local communities rarely exercise this right because FMPs are often approved

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125 Decree No. 95-531-PM of 23rd August of 1995 setting the Modalities for the Implementation of Forests Regulations and Decree No 95/466/PM of 1995 setting the Modalities for the Implementation of Wildlife Regulations.

126 S 1 of the Law No 94/01.

127 Alemagi *et al*/2013 JSD 9.

128 Also see Fuo and Semie "Cameroon's environmental framework law" 84.

without due regard to legal prescriptions such as those providing for the participation of local communities.<sup>129</sup>

#### 5.4.2.4 Ordinance No 76/166

Ordinance No 76/166 provides a framework for land management in Cameroon and establishes the creation of a LCB to discharge this responsibility. In terms of the Ordinance the LCB must consist of representatives of government, a Senior Divisional Officer (or Prefect), the chief and two village elders, and decisions on matters relating to land investment must be made with the participation of all the members.<sup>130</sup> Because decision-making on land-related matter must take place in this manner, an FAI activity cannot commence without the full and effective involvement and participation of local communities and affected stakeholders, who in terms of article 12 of Ordinance No 76/166 are members of the LCB. However, article 15 appears to bar the effectiveness of this right, particularly as it provides that “[T]he Commission’s recommendation are adopted by a simple majority of members present and valid if the head of the village or the community are present.” This counters article 12 in that decision-making on land matters could be made without the presence of all the members of the Board.<sup>131</sup> In this context, it may be possible that the government of Cameroon could rely on the provision of article 15 to restrain the effective participation of local communities and affected stakeholders in decision-making of FAI land deals.

#### 5.4.3 *The right to access to justice*

The right to access to justice is derived from the Constitution, Law No 96/12 and Law No 2009/004.

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129 Fuo and Semie “Cameroon’s environmental framework law” 85; Cerutti *et al* 2008 *ES* 1-13; Alemagi *et al* 2013 *JSD* 9.

130 Art 12 of Ordinance 76/166.

131 Art 15 of Ordinance No 76/166.

#### 5.4.3.1 The Constitution

Pursuant to the fact that article 65 makes the Preamble of the Constitution an article of the Constitution with enforceable and justiciable rights, the Preamble implicitly provides for the right to justice through the incorporation of the right to a fair hearing. This is so because a right to a fair hearing before the courts can be conveniently exercised only if there is a right to access to court and the two are directly related. In this regard, paragraph 5 of the Preamble provides that the law shall ensure the right of every person to a fair hearing before the courts.<sup>132</sup> This means that local communities and affected stakeholders have a right to a fair hearing before a court on activities and actions by foreign investors that may encroach on their fundamental rights and interests.

In addition, the Constitution incorporates the notion of shared responsibility between the government and people,<sup>133</sup> in an effort to foster and enhance environmental protection through public interest litigation. In terms of the Constitution the protection of the environment shall be the duty of both the state and the citizens,<sup>134</sup> which suggests that the right to environmental protection which applies to natural persons, legal persons and state authorities,<sup>135</sup> could properly be exercised by citizens *inter alia* through public interest litigation, as is also the case in Uganda and South Africa.<sup>136</sup> In Cameroon, the latter constituted the cause of action instituted against China Road and Bridge Corporation by a Bamenda-based NGO (FEDEV) requiring China Road to engage with local communities and comply with the prescribed EIA regulations and procedures.<sup>137</sup> From the foregoing it is evident that local communities as well as

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132 Para (10) of the Preamble of the Constitution.

133 Para 5(22) of the Constitution provides that: "Every person shall a right to a healthy environment. The protection of the environment shall be the duty of every citizen. The state shall ensure the protection and improvement of the environment."

134 Para 5(22) of the Preamble of the Constitution.

135 For example art 8(2) of Law No 96/12.

136 See chapters 6 and 7 of this thesis for details.

137 *FEDEV v China Road and Bridge Corporation* (2009), unreported decision No CFIB/004M/09; Fuo and Semie "Cameroon's environment framework" 82.

interested and affected parties could rely on this approach to enforce the environmental rights and other human rights of people during FAI land deals and activities.

Paragraph 5 line 12 of the Preamble further makes an indirect reference to the right to access to justice by guaranteeing every person the right to life, to physical and moral integrity, and to humane treatment in all circumstances.<sup>138</sup> This means that the right to access to justice is necessary to ensure the rights to life, physical and moral integrity, and humane treatment in all circumstances, especially taking into account that the Preamble obliges the state to guarantee and protect the rights and freedoms of all citizens set forth in the Preamble of the Constitution.<sup>139</sup> Hence, in order to guarantee and protect these rights and freedoms, particularly in an FAI context, the state has a duty to ensure that its citizens have adequate access to justice, through which they could seek redress for the violation of their fundamental rights and freedoms as espoused in the Preamble of the Constitution.

Notwithstanding the above, like the right to access to information, the Constitution lacks an explicit and broadly formulated provision for the right to access to justice. This arguably demonstrates the deliberate failure on the part of the state to meet its international human rights obligations, especially considering that constitutionally entrenched rights carry with them a firm commitment by the state to respect, protect and fulfil the fundamental rights and freedoms of its citizens.

#### 5.4.3.2 Law No 96/12

Section 8(2) of Law No 96/12 of 1996 provides for *locus standi* and this enables local communities and authorised associations with the mandate to protect the environment and the right to exercise the rights granted to civil parties in terms of the legislation. For the purposes of this study, this implies that the legislation grants local communities and authorised associations standing, and that accordingly they have a right to institute

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<sup>138</sup> Para 5(12)(a) of the Preamble of the Constitution.

<sup>139</sup> Para 5(25) of the Preamble of the Constitution.

actions against foreign investors where FAI land deals and their activities cause direct or indirect harm to the environment and other related human rights-based interests.

Notwithstanding the above, the clear absence of a stand-alone provision in the legislation to cater for people's right to access to justice, could be a significant barrier to the effective realisation of the right and the protection of people's rights-based interests, especially in the context of development activities such as FAI. Also, in Cameroon as in other countries, poverty is a huge constraint to allowing local communities to effectively have access to courts to seek relief for violations of the procedural and substantive rights entitlement when large-scale developments occur.

#### 5.4.3.3 Law No 2009/004

Law No 2009/004 was enacted to support and assist by enhancing the financial abilities of poor Cameroonians to gain access to courts through full or partial payment of related legal fees. To this end, legal aid in Cameroon has considerably eased the drawbacks associated with people's right to access to justice caused by want of financial means. It is believed that for people to effectively gain access to courts, legal aid must be timeously provided without delay. However, the reverse is true in Cameroon, where the legal aid commission is fraught with delays to the extent that it does not assist indigents to have access to justice.<sup>140</sup>

### **5.5 Critical assessment of Cameroon's relevant procedural rights framework**

This section critically assesses and evaluates Cameroon's procedural framework of a RBA against the distilled generic characteristics and minimum requirements of the procedural RBA in terms of good FAI governance.<sup>141</sup> The aim with this assessment is twofold. First, it serves to determine whether the Cameroonian procedural framework of

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140 Sama "Providing legal aid in criminal justice in Cameroon" 157; White and Case LLP date unknown [https://www.crin.org/sites/default/files/cameroon\\_access\\_to\\_justice.pdf](https://www.crin.org/sites/default/files/cameroon_access_to_justice.pdf) accessed 11 January 2016.

141 See Table 2 in Chapter 4 in 4.5 for details.

the RBA conform to the generic characteristics and minimum requirements of the RBA of good FAI governance, to the extent that it accords adequate protection to local communities rights and interests during FAI practices in the country. Second, it also serves as an initial premise to later make recommendations for reforms in Chapter 8, in instances where the Cameroonian framework is not in conformance with the generic characteristics and minimum requirements.

### *5.5.1 The right to access to information*

The right to access to information in Cameroon to some extent does not conform to the broad and specific generic characteristics and minimum requirements of the right to access to information developed in Chapter 4 of this thesis.<sup>142</sup>

In practice, people do not always have access to information about development activities, including FAI in Cameroon. This has been illustrated by the various examples cited earlier in this chapter. Not having proper access to information makes it difficult for people to assert protection of their human rights, and for the state to uphold and promote the democratic values of transparency and accountability in the governance of public affairs generally.<sup>143</sup>

There is neither a stand-alone provision in the Constitution on access to information or an enabling legislation to facilitate and enforce people's right to access to government-held and private information generally, as in other jurisdictions.<sup>144</sup> However, as indicated above, sectoral legislation such as Law No 96/12 and Law No 2003/006, provide for this right, also in an environmental context.<sup>145</sup> Under Law No 96/12, for example, people have the right to request and gain access to accurate and timeous

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<sup>142</sup> See Table 2 in Chapter 4 in 4.5 for details.

<sup>143</sup> See the broad characteristics of the right to access to information in Table 2 in Chapter 4 in 4.5 for details.

<sup>144</sup> For example in Uganda and South Africa, there exists clear provisions in their constitution on the right to access to information as well as national legislation to cater for people's right to access to information. See Chapters 6 and 7 of this thesis for details.

<sup>145</sup> See section 5.4.1 above for details.



information and specifically environmental information from both public and private bodies. Public and private bodies, including NGOs are also expected to educate and raise public awareness on activities that may negatively impact on public rights and interests. However, both laws fail to provide for sanctions and remedies if people's right to gain access to information is refused, and they do not provide clear procedures and conditions to enable people to gain access to information. One would have expected as a bare minimum that the drafters of these Laws include procedures and conditions to exercise of the right, especially as there is no enabling national legislation to cater for the right, including its conditions and procedures. As well, the degree required by section 7 of Law No 96/12 to clarify the procedures and conditions of people's access to information is still to be promulgated.<sup>146</sup>

### *5.5.2 The right to public participation*

In Cameroon, the state is on balance committed to ensure, facilitate and encourage inclusive and participatory governance in the governance of public affairs generally,<sup>147</sup> and this commitment mirrors the broad characteristic of the right to public participation.<sup>148</sup> Despite this commitment of the state, public participation in Cameroon does not totally conform to all the generic characteristics and minimum requirements of the RBA in terms of good FAI governance.<sup>149</sup> Flowing from this, it might be asked whether the right of public participation in Cameroon is a mere symbolic right of intent rather than a meaningful and powerful right designed to oblige both the government and investors to ensure the effective participation of local communities in the decision-making processes of development activities? Rules, procedures and processes relating to public participation in Cameroon are flawed in some instances and do not always

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<sup>146</sup> See section 5.4.1.2 above for detail.

<sup>147</sup> See section 5.4.2 above for details.

<sup>148</sup> See the broad characteristic of the right to public participation in Table 2 in Chapter 4 in 4.5 for details.

<sup>149</sup> See Table 2 in Chapter 4 in 4.5 for details.

align with governance practices. For example, FMPs are sometimes approved without due regard to legal prescriptions providing for the participation of local communities.<sup>150</sup>

In reality local communities most often are not consulted and do not participate in decision-making about logging permits and other related FAI investments in the forestry sector to protect their rights and interests.<sup>151</sup> This lack of effective public participation by local communities in decision-making of forestry activities is in direct contrast to its prime objective namely “the involvement of local communities in the management and protection of forest.”<sup>152</sup> To this end, it has been argued in tandem with the 1995 Ministry of Forestry policy document,<sup>153</sup> that the government’s intention to enhance sustainable and inclusive forestry governance has turned out to be nothing but a mirage.<sup>154</sup> This situation also holds true for Ordinance 76/166, in which article 15, as indicated above, is a possible barrier to effective public participation of people in land related investments.<sup>155</sup>

However, in Cameroon, as was noted in this chapter, in order to effectively protect people’s right to a healthy environment, the public is given an opportunity to be involved in decision-making of activities taking place in the environment as well in EIA processes and procedures. Also, there is an increasing involvement of NGOs to promote and facilitate public participation through education and awareness raising to enable the public to adequately assert protection of their rights and interests during decision-making processes. Nonetheless, it was argued that even if people are provided the opportunity to participate and make informed decisions in decision-making on activities such as FAI land deals, people’s views and opinions are often not taken into account in

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150 Fuo and Semie “Cameroon’s environmental framework law” 85; Cerutti *et al* 2008 *ES* 1-13; Alemagi *et al* 2013 *JSD* 9.

151 Dupuy J and Bakia A “Fact finding mission on Herakles Farm oil palm plantation project” 6.

152 S 23 of the 1994 Forestry Law; Egbe 2001 *JAL* 25-26; Explanatory Statement to parliamentary Bill No. 54/PJL/AN of November 1993.

153 Ministry of Environment and Forestry Policy Document: National Forestry Action Programme of Cameroon 1-4 and 35.

154 Egbe 2001 *JAL* 26.

155 See section 5.4.2 above for details.

the final decision.<sup>156</sup> Lack of concretisation of people's views and opinions in the final outcome of decision-making is contrary to the dictates of the generic characteristics and minimum requirements of the RBA in terms of good FAI governance, and it is difficult to imagine how adequate protection could be afforded to people's tenure right, environmental rights and other related rights.<sup>157</sup>

### 5.5.3 *The right to access to justice*

The right to access to justice in Cameroon conforms to the broad characteristic of the right to access to justice.<sup>158</sup> There is an implicitly right to access to justice in Cameroon that is facilitated by the right to a fair hearing. People's right to access to justice is also facilitated by a broad *locus standi* provision which enables interested and affected parties, including NGOs, to seek protection on behalf of others in a court of law.<sup>159</sup> In Cameroon, access to justices is mostly fair and impartial and based on respect of the rule of law as required by the minimum requirements of access to justice in Chapter 4 of this thesis.<sup>160</sup>

However, the Cameroonian Constitution does not contain an explicit provision on the right to access to justice as in other jurisdictions. Also, although Law No 2009/004 was enacted to curb financial constraints that pre-empt people from gaining access to courts, it has been argued that state-controlled legal aid is fraught with delays to the extent that it does not assist indigent people to have access to justice.<sup>161</sup>

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156 See section 5.3 above for details.

157 See Table 2 in Chapter 4 in 4.5 for details.

158 See Table 2 in Chapter 4 in 4.5 for details.

159 In Cameroon, NGOs (including FEDEV, Word, Conservation Society, World Wide Fund, the German Technical Co-operation, and the Cameroon Biodiversity Conservation Society) have been instrumental in enhancing the protection people's rights and interests, including environmental protection and conservation through locus standi provision by identifying offenders, investigating cases, prosecuting offenders and execution of court judgments. For details on this, see Fonjong 2006 IJES 672-675; Sama 2008 <http://www.inece.org/conference/7/vol1/Sama.pdf> accessed 13 January 2016.

160 See Table 2 in Chapter 4 in 4.5 for details.

161 Sama "Providing legal aid in criminal justice in Cameroon" 157; White and Case LLP date unknown [https://www.crin.org/sites/default/files/cameroon\\_access\\_to\\_justice.pdf](https://www.crin.org/sites/default/files/cameroon_access_to_justice.pdf) accessed 11 January 2016.

## **5.6 Chapter summary**

This chapter has described the regulation of FAI activities in Cameroon and investigated the legal framework needed to ensure the protection of peoples' procedural and substantive rights and interests in Cameroon. The chapter noted that the regulation of FAI in Cameroon takes place in two ways, both of which negatively impact on local communities' rights and interests. It emerged from the discussion that the procedural framework of a RBA in Cameroon consists of the rights to access to information, public participation and access to justice, including broad standing provisions. The framework to an extent makes provisions for these procedural rights aspects, but in most instances does not properly guarantee the protection of people's rights and interests during the implementation of development projects, such as FAI. The Cameroonian procedural framework in many instances does not conform to the specific generic characteristics and minimum requirements of the RBA in terms of good FAI governance.

In Cameroon, there is no enabling legislation to cater for and facilitate people's access to the information necessary to ensure protection of their rights and interests. Also requested information is not timeously available. In terms of public participation, it was noted that although the state is committed to promote a culture of inclusive and participatory governance in the governance of public affairs, rules, procedures and processes relating to public participation are flawed, making it difficult to ensure effective participatory governance in some instances. In addition, lack of public access to information bars people's ability to participate and make informed decision during participatory processes on project activities. While the right to access to justice is necessary to protect and provide remedies to people's rights and interests, it was noted that financial constraints continue to be a major barrier for people to gain access to courts. An important challenge with Cameroon's procedural framework of the RBA seems to lie in the ineffective governance and enforcement mechanisms and not the

legal framework *per se*.<sup>162</sup> Consequently, in order to effectively guarantee the protection of people's rights and interests, especially in the context of development projects, such as FAI, the need remains to strengthen *inter alia* the effectiveness of enforcement mechanisms, improve accountability and, most importantly, enact and implement legislation dealing with human rights issues.

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162 Fuo and Semie "Cameroon's environmental framework" 93.

## **CHAPTER 6**

### **THE LEGAL FRAMEWORK FOR THE REGULATION OF FAI IN UGANDA**

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#### **6.1 Introduction**

This chapter examines how FAI is being regulated in Uganda, and critically assesses this regulation against the lessons learned in the previous chapters with respect to good FAI governance and the RBA. The chapter specifically examines the legal framework of a procedural RBA in Uganda in order to illustrate the existing mechanisms available for the protection of people's rights-based interests generally and in the context of FAI development projects. To achieve this aim, the chapter is structured into four parts. The first part investigates the regulation of the FAI in Uganda by looking at contractual leases and MoUs, while the second part examines the country's RBA framework with particular focus on the rights to access to information, to public participation, to access to justice, and its related aspect of *locus standi*. The third part critically assesses the procedural RBA framework in Uganda against the generic characteristics and minimum requirements of the RBA in terms of good FAI governance developed in Chapter 4. The last part provides a summary of the chapter. To achieve the aims of this chapter, the following questions are addressed:

- (1) How are FAI land deals regulated in Uganda?
- (2) What procedural legal mechanisms exist in Uganda that could be used to ensure respect for and adequate protection of people's rights and interests generally?
- (3) To what extent does the procedural RBA framework in Uganda conform to the generic characteristics and minimum requirements for good FAI governance in terms of the RBA distilled in Chapter 4?
- (4) Are there any gaps with the current procedural RBA framework in Uganda insofar as it relates to FAI?

Before undertaking this analysis, some background information relating to the location, total surface area, population, and agricultural activities of the country is provided.

## **6.2 Background information on Uganda**

The Republic of Uganda is a landlocked country located in the eastern region of Africa, it is bisected from east to west by the equator, and covers a total surface area of about 241,584 km<sup>2</sup>. It consists of over 15.3 per cent of water, 3 per cent of permanent wetland, 9.4 per cent of seasonal wetland, and 199,710 km<sup>2</sup> of arable land. Uganda has a rapidly increasing population, which is reported to be growing by 3.57 per cent each year. The population witnessed a significant increase from 34.5 million people in 2011 to 37.5 million in 2013.<sup>1</sup> The country is home to the world's second largest lake, Lake Victoria. As in most sub-Saharan countries, the bulk of the population are agriculturalists and therefore dependent on agricultural activities as a means of subsistence and livelihood.<sup>2</sup> It is reported that about 80 per cent of the total population depends on agricultural production and in rural areas the ratio is greater, with over 85 per cent of the population involved in agricultural production.<sup>3</sup>

Agriculture also constitutes the main source of income for women. It is reported that over 90 per cent of the rural women work in agriculture,<sup>4</sup> yet only about 7 per cent of the female population have the right to own, control, or use the land.<sup>5</sup> The vision of the government of Uganda is to transform the agricultural sector from a peasant farming system to commercial agriculture with improved productivity and production as well as improved market access, and endeavour it could facilitate through FAI, among others.<sup>6</sup> This is clear from the government's introduction of the Poverty Eradication Action Plan (PEAP) and the Plan for the Modernisation of Agriculture (PMA), approved in 1997 and

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1 Natukunda 2013 [http://www.newvision.co.ug/new\\_vision/news/1323879/uganda-population-record-million](http://www.newvision.co.ug/new_vision/news/1323879/uganda-population-record-million) accessed 22 October 2016.

2 FOWODE 2012 "Gender policy brief for Uganda's agriculture sector" 3.

3 FOWODE 2012 "Gender policy brief for Uganda's agriculture sector" 3.

4 FOWODE 2012 "Gender policy brief for Uganda's agriculture sector" 3.

5 FOWODE 2012 "Gender policy brief for Uganda's agriculture sector" 6.

6 FOWODE 2012 "Gender policy brief for Uganda's agriculture sector" 3.

2009 and respectively. While PEAP embodies five pillars<sup>7</sup> that set out the country's overall development policy framework towards the eradication of poverty, PMA is a strategic policy that seeks to transform the lives of poor farmers through the introduction of modern agricultural practices.<sup>8</sup>

There are principally two ways through which land deals for FAI purposes are regulated in Uganda. One is through a direct lease negotiation with a private landowner (with possible government intervention), and the other is through negotiation with various agencies of the government about government-held land, the agencies including the District Land Boards (DLB), the Uganda Land Commission (ULC), and/or the Uganda Investment Authority (UIA). It follows that the processes can conveniently be subsumed under land leases or CoE and MoUs, as is the case in Cameroon. The UIA is defined in the Uganda Investment Code (UIC) as a body corporate capable of acquiring and holding property,<sup>9</sup> and this body plays a significant role in acquiring land for its own use. It can acquire and hold property for allocation to foreign investors, especially considering that the UIC does not specify rules or regulations governing the allocation of agricultural land held by the UIA for investment purposes.<sup>10</sup> Issues that arise from this governance construction are considered below.

### **6.3 The regulation of FAI in Uganda**

#### *6.3.1. Contractual leases*

Pursuant to the *Constitution of the Republic of Uganda* of 1995 (the Constitution)<sup>11</sup> and the Uganda *National Land Act* of 1998 (UNLA),<sup>12</sup> there exist four types of land tenure in

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7 These include: economic management; enhancing production, competitiveness and income; security, conflict resolution and disaster management; good governance and human development.

8 Gowa "Analysis of private investment in the coffee, flowers and fish sectors of Uganda" 125-126.

9 S 2(3) of the Uganda Investment Code (UIC).

10 Stickler "Governance of large-scale land acquisition in Uganda" 12.

11 S 237(3) of the Constitution.

12 S 2 of the NLA. (The Act was amended in 2010).



Uganda, namely customary, freehold, *mailo* and leasehold.<sup>13</sup> In all of these categories about 70 to 80 per cent of the land in Uganda is held under undocumented customary tenure, making it difficult for customary land tenure to be leased for FAI purposes.<sup>14</sup> Only leasehold land tenure may be allocated to foreign investors for FAI purposes. Foreign investors may obtain contracts for leases for up to 99 years with a possibility of extension.<sup>15</sup> It is reported that leases on *mailo* land must be subjected to the interest of the lawful or *bona fide* occupant, and foreign investors are accordingly required to compensate the lawful occupant for improvement of the land.<sup>16</sup> The UIA helps foreign investors in determining *bona fide* occupants when dealing with *mailo* land in order to ensure compensation for the improvement of the land.<sup>17</sup> BITs agreements also play an influential role in facilitating land lease agreements in Uganda. For example, the BITs agreement between the government of Uganda, the foreign company Wilmar International, and the International Fund for Agricultural Development (IFAD) binds the government to acquire and make land available for the project under a 99 year lease.<sup>18</sup> The Wilmar Palm Oil Plantation land lease was for an extension of 10,000h of oil palm land under the initial 99-year lease agreement in the Lake Victoria area.<sup>19</sup>

Under leasehold tenure, it is expressly provided by UNLA that the leasing of land for more than five years to a non-citizen will have to be registered in accordance with the registration of title.<sup>20</sup> In this context, this implies that under lease contracts, land lease

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13 S1 of the Uganda Land Act defines customary land tenure as: a system of land tenure regulated by customary rules which are limited in their operation to a particular description or class of persons; Freehold land tenure means the holding of registered land in perpetuity subject to statutory and common law qualifications; Leasehold land tenure means the holding of land for a given period from a specified date of commencement on such terms and conditions as may be agreed upon by the lessor and the lessee; and *mailo* land tenure is the holding of registered land in perpetuity and having roots in the allotment of land pursuant to the 1990 Uganda Agreement and subject to statutory qualifications.

14 Veit "Land for private investors and economic development" 2.

15 Veit "Land for private investors and economic development" 3.

16 Stikler "Governance of large-scale land acquisition in Uganda" 10.

17 Stikler "Governance of large-scale land acquisition in Uganda" 10.

18 FOEI 2013 "Land grabbing for palm oil in Uganda" 2.

19 FOEI 2013 "Land grabbing for palm oil in Uganda" 1-2.

20 S 40(2) of the Ugandan National Land Act of 1998.

becomes effective only once registered with the registration of title, and this precedes the carrying out of the proposed investment project. The ULC established under the Constitution<sup>21</sup> has the responsibility to hold and manage all land that has been acquired by the government from private landowners.<sup>22</sup> Together with the UIA, the ULC is engaged in the acquisition and allocation of public land through leases to the private sector, including foreign investors for investment purposes.<sup>23</sup>

It has been indicated that the process through which the government acquires land and leases it to foreign investors is not transparent, inclusive and participatory.<sup>24</sup> Although it is expressly provided by the Constitution that the state may acquire private land for public purposes,<sup>25</sup> the acquisition of land for a public purpose does not usually require that the landowner be consulted or informed about the proposed acquisition. Although land in Uganda may be sold under the willing buyer-willing seller rule, it is expressly required that the *bona fide* occupant must be informed before land is given to another person. However, it has been indicated that most land transactions are closed deals that take place strictly between the buyer and the seller without consultation with the *bona fide* occupant.<sup>26</sup> District land officials, local council chiefs and area land boards are often not consulted during the negotiation processes of land deals, as is evident in an interview by Muriisa *et al* with a government official in Mubende District:

The way people (meaning foreign investors) buy land in Mubende leaves a lot to be desired. How land is acquired is only known by the seller and the buyer and may be, by the land officer who issues the title since many come carrying title claiming that they are the new owners of land. We only get to know about any land transfers and acquisition when there are problems with squatter.<sup>27</sup>

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21 S 238(1) of the Constitution.

22 S 239 of the Constitution; Veit "Land for private investors and economic development" 3; s 49(a) of the Uganda *National Land Act* of 1998 (NLA); Stickler "Governance of large-scale land acquisition in Uganda" 11.

23 Veit "Land for private investors and economic development" 3.

24 Veit "Land for private investors and economic development" 3.

25 See s 237 of the Constitution.

26 Muriisa *et al* "Land deals in Uganda" 9.

27 Muriisa *et al* "Land deals in Uganda" 9.

It would have been better if landowners were consulted or informed, because changes in the holding of public land should be guided by open and transparent procedures that provide and allow for citizen consultation and effective participation in decision-making processes.<sup>28</sup>

Although it is a requirement for foreign investors to lease land directly from government agencies such as the DLB, UIA and the ULC, it is reported that there is currently no enabling legislation that specifies procedures for the leasing of land to foreign investors.<sup>29</sup> The problem is complicated by the fact that there is no distinction or statutory definition of the terms “public”, “government” and “local government” land, making it difficult to ascertain the power of the different authorities and to determine the specific competent authority with respect to a parcel of land. Thus different authorities reserve the right to institute procedures for the leasing of public land to foreign investors as they deem fits.

As noted in Chapters 1 and 2 of this study, the extent of negotiated land deals varies between countries as well as in the different stages of negotiation. According to Cotula *et al*, each land deal generally involves an array of parties in the multiple stages of preparing, negotiating, contracting and operationalising an investment project.<sup>30</sup> This includes, for example, multiple agencies within the host government, and implies that even a central point of contact, namely a “one stop shop”, usually an investment promotion agency, cannot deal with all aspects of a land deal alone. Also, an investor is most likely to need to engage separately with government agencies at the local level.<sup>31</sup>

In Uganda, administrative processes in some countries have been streamlined to enable an investor to acquire land for investment purposes.<sup>32</sup> This means that their role in facilitating land access focuses on helping investors to deal with other agencies. In

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28 Veit “Land for private investors and economic development” 3.

29 Stickler “Governance of large-scale land acquisition in Uganda” 11.

30 Cotula *et al Land grab or development opportunity* 66.

31 Cotula *et al Land grab or development opportunity* 66.

32 Stickler “Governance of large-scale land acquisition in Uganda” 13-14.

other words, they act as intermediaries between investors and other government agencies with respect to land investment.<sup>33</sup> The UIA, for example, is legally empowered to promote investment in the country, including matters relating to facilitating investors' access to land.<sup>34</sup> Further, according to the UIC the major responsibilities of the UIA include *inter alia* to receive all applications for investment licences from investors intending to establish or set up business enterprises in Uganda, and to issue licences and certificates.<sup>35</sup> Since the ULC and UIA are government agencies acting in the interests of the state and have the right to acquire and lease government or public land for investment purposes, including FAI, might mean that either the ULC or the UIA could determine the terms and conditions of the land deals, without properly consulting local communities and providing them an opportunity to effectively participate in the decision-making processes, which supports the view that land lease processes in Uganda are not transparent.<sup>36</sup> The lack of transparency raises concerns about the participatory rights of local communities in decision-making processes.

In 2001, the government leased to Kaweri Coffee Plantation Ltd, a subsidiary of the German Neuman Kaffee Gruppe (NKG) based in Hamburg, Germany, land in the Mubende district for the production of coffee, which is considered the largest in the country.<sup>37</sup> This lease was signed in support of the government's plan to modernise agriculture in order to eradicate poverty by converting subsistence farming into commercial agriculture. It is reported that the local communities of the villages of Kitemba, Luwunga, Kijunga and Kiryamakobe did not participate in the negotiation processes relating to the project, but were forcefully and violently evicted from their land at gunpoint by the Ugandan army.<sup>38</sup> This is a clear demonstration that a lack of participation by local communities and affected stakeholders in decision-making relating

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33 Stickler "Governance of large-scale land acquisition in Uganda" 13-14.

34 Stickler "Governance of large-scale land acquisition in Uganda" 11.

35 S 6 of the UIC.

36 Veit "Land for private investors and economic development" 3.

37 FIAN 2012 "Land grabbing in Uganda: Evictions for foreign investment in coffee in Mubende" 1.

38 FIAN 2012 "Land grabbing in Uganda: Evictions for foreign investment in coffee in Mubende" 1.

to FAI land deals is in this case a gross violation of people's rights.<sup>39</sup> This may not have happened if the local communities had been able to take part in the decision-making processes, voice their concerns over their rights and interests, and protect their ancestral lands from what amounted to a large-scale invasion by their own government.

Furthermore, the government lease of land to the UK-based industry, New Forest Company (NFC), for carbon off-setting within the localities of Mubende and Kiboga was not done according to the requirements of FPIC, and the eviction of the villagers was justified on the grounds that they were illegal encroachers on forest land.<sup>40</sup> Consequently, the villagers of both Kiboga and Mubende were forcefully evicted from their land without the proper information and consultation required by FPIC. Eviction, which leads to forceful displacement of people without their express consent or participation in the decision related to the eviction, should be perceived as the action of an autocracy, and not of a democracy.<sup>41</sup> Evidence indicates that both the police and the army were actively burning the homes, destroying the crops and butchering the livestock of the locals.<sup>42</sup>

In addition, it is reported that the consultation meetings carried out by the NFC with the local communities of Mubende and Kiboga were non-participative and non-inclusive, taking into account the fact that these communities were not fully and properly represented in these meetings and their views were not taken into consideration.<sup>43</sup> This appears to be in total contrast to the dictates of FPIC, that require that local communities must be consulted and must freely participate in decision-making in order for them to be able to give or withhold their consent. If the consultation and participatory procedures were unclear, this means that the procedures were not free

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39 FIAN 2012 "Land grabbing in Uganda: Evictions for foreign investment in coffee in Mubende" 1.

40 Oxfam 2011 <http://www.policy-practice.oxfam.org.uk/publications/land-and-power-the-growing-scandal-surrounding-the-new-wave-of-investment-in-I-142858> accessed 27 January 2015.

41 Goodland *SDLP* 2004 72.

42 Oxfam 2011 <http://www.policy-practice.oxfam.org.uk/publications/land-and-power-the-growing-scandal-surrounding-the-new-wave-of-investment-in-I-142858> accessed 27 January 2015.

43 Greenspan "Free, prior and informed consent in Africa" 5.

from manipulation and coercion, as required by FPIC, but rather that these communities were oppressed and their consent, if given, was probably not given voluntarily but under undue influence, as was indicated by one villager from Kiboga district.<sup>44</sup> Mubende evictees also reported that employees of NFC were “evicting, harassing, erasing their plantations, demolishing their houses, intimidating, mistreating” them.<sup>45</sup> Most importantly, the locals were evicted without compensation as required by FPIC.<sup>46</sup> It is evident that the requirements of FPIC were totally ignored in this case.

In another instance, a Norwegian company, Green Resources, leased from the government of Uganda 11,864 hectares of land for carbon credit purposes for a period of 50 years. The project, which is situated at the Bukaleba Forest Reserve and Kachung Forest Reserve in Mayuge and Dokolo districts, has the sole objective of contributing to climate change mitigation and contributing to sustainable environmental management, community development and poverty alleviation in Uganda.<sup>47</sup> The fact that the project is meant to contribute to community development and poverty alleviation suggests that its implementation would be guided by principles such as those of the FPIC, which seek to reinforce the protection of people’s rights and interests in the context of development projects. The rationale for this argument is predicated on the belief that development activities must be designed to benefit both local communities and foreign investors. Effective participation of local communities in decision-making fulfils this role if one considers that participation entails agreement on aspects such as precaution, mitigation and compensation.<sup>48</sup> Thus, it is argued that the distribution of the costs and benefits of development projects, including FAI, between foreign investors,

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44 Oxfam 2011 <http://www.policy-practice.oxfam.org.uk/publications/land-and-power-the-growing-scandal-surrounding-the-new-wave-of-investment-in-I-142858> accessed 27 January 2015.

45 Oxfam 2011 <http://www.policy-practice.oxfam.org.uk/publications/land-and-power-the-growing-scandal-surrounding-the-new-wave-of-investment-in-I-142858> accessed 27 January 2015.

46 Oxfam 2011 <http://www.policy-practice.oxfam.org.uk/publications/land-and-power-the-growing-scandal-surrounding-the-new-wave-of-investment-in-I-142858> accessed 27 January 2015.

47 Oakland Institute 2014 “The darker side of green plantation forestry and carbon violence in Uganda” 3.

48 Goodland 2004 *SDLP* 66.

governments and local communities should be perceived as an essential aspect of public participation.<sup>49</sup>

However, local communities' involvement in negotiating the terms of development projects to secure their interests has yet to occur.<sup>50</sup> Instead, it is reported that while corporate land licenses have the potential to provide a legal mandate to enforce the protection of the rights and interests of investors, domestic legislation helps only to recognise and not to enforce the customary land rights of use and access to land and natural resources.<sup>51</sup> It has been argued that this divide creates borders for human activity that further marginalise the sustainable livelihoods of local communities and affected stakeholders.<sup>52</sup> Often these communities have been criminalised as trespassers and encroachers.<sup>53</sup> In regard to the Kachung and Bukaleba Central Forest Reserve, local communities recounted stories of how they were chased off their land without their consent in favour of Green Resource projects.<sup>54</sup> According to the local communities, the eviction was a violent take-over of the land, especially as they had not been informed of the Green Resources project.<sup>55</sup> It is reported that staff of Green Resource arrived without notice, and "just started to plant trees on top of our crops... We were evicted without discussion."<sup>56</sup> Although Green Resources had initiated consultative mechanisms aimed at working directly with local communities through the establishment and registration of community-based organisations, it is reported that these consultative processes were flawed, particularly as the views and aspirations of the local

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49 Goodland 2004 *SDLP* 66.

50 FoEI "A study of land grabbing cases in Uganda" 24.

51 Oakland Institute 2014 "The darker side of green plantation forest and carbon violence in Uganda" 7.

52 Oakland Institute 2014 "The darker side of green plantation forest and carbon violence in Uganda" 7.

53 Oakland Institute 2014 "The darker side of green plantation forest and carbon violence in Uganda" 9.

54 Oakland Institute 2014 "The darker side of green plantation forest and carbon violence in Uganda" 7-8.

55 Oakland Institute 2014 "The darker side of green plantation forest and carbon violence in Uganda" 7.

56 Oakland Institute 2014 "The darker side of green plantation forest and carbon violence in Uganda" 8.

communities were not taken into account. This was confirmed by a villager of Dokolo district, who said that their requests fell on deaf ears.<sup>57</sup> Other affected villages too reported that the impact of this poverty alleviation project was the loss of their land and their food security.<sup>58</sup>

### 6.3.2. *MoUs*

In Uganda, local communities do not engage in negotiations with foreign investors. This is because customary land is not leased, and the government buys potential farmlands from local communities and then leases these lands to foreign investors. The government is therefore the sole authority to be involved in negotiations and sign MoUs with foreign investors for FAI purposes. Unlike in contractual land leases where the ULC or the UIA may be the sole authority to lease land, the President together with other government officials may sign a MoU for FAI purposes. For example, it has been reported that President Yoweri Museveni and the Minister of Energy, Irene Muloni, recently signed a MoU with three major companies from the UK, France and China, including Tullow Oil and Total France.<sup>59</sup> It is reported that the MoU, like the contractual leases, is not transparent, because it is “still kept a top secret to only a few individuals” despite the oil’s being a national resource.<sup>60</sup> The fact that local communities and affected stakeholders are not informed of FAI land deals and do not participate in the related decision-making processes is a clear indication of the lack of transparency and accountability of the government with respect to FAI land deals in the country.

## 6.4 The procedural framework of a RBA in Uganda

As in Cameroon, the legal framework of the procedural RBA in Uganda consists of the rights to access to information, public participation, access to justice and *locus standi*

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57 Oakland Institute 2014 “The darker side of green plantation and carbon violence in Uganda” 13.

58 Oakland Institute 2014 “The darker side of green plantation and carbon violence in Uganda” 13-14.

59 Walusimbi date unknown <https://unwantedwitness.or.ug/uganda-oil-companies-sign-memorandum-of-understanding-mou-for-the-countrys-oil-production/> accessed 22 September 2015.

60 Walusimbi date unknown <https://unwantedwitness.or.ug/uganda-oil-companies-sign-memorandum-of-understanding-mou-for-the-countrys-oil-production/> accessed 22 September 2015.



contained in constitutional and statutory provisions. These are discussed in greater detail below.

#### *6.4.1 The right to access to information*

In Uganda people's right to access to information is enshrined in the *Constitution of the Republic of Uganda*, 1995 (the Constitution) and an array of legislation. Legislation dealing with the right to access to information includes *inter alia* the AIA, the NEA, the NFTP, and the WPA.

##### *6.4.1.1 The Constitution*

The Constitution is the supreme law of the country<sup>61</sup> and in its National Objectives and Directives Principles of State Policy the state is committed to protect natural resources, including land, water, wetland, minerals, oil, fauna and flora on behalf of the people of Uganda.<sup>62</sup> The Constitution also provides in article 39 the right of every Ugandan to a clean and healthy environment. The environmental right encompasses a healthy and habitable environment including clean water, soil and air free from hazards that potentially threaten human health.<sup>63</sup> The environmental right suggests a number of things. First, that the environment has to be free from pollution and other hazardous substances that result from socio-economic development projects, including FAI, and that the behaviour of persons engaged in such activities must be directed towards promoting and ensuring the protection of the environment, as was confirmed in *Uganda Electricity Transmission Co Ltd v De Samaline Incorporation Ltd*.<sup>64</sup> Second, the environmental right suggests that Parliament is obliged to provide legal measures designed to protect and preserve the environment from abuse, pollution and degradation; to manage the environment for the benefits of both future and present

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61 Art 2 of the Constitution.

62 Principle XIII of the Constitution.

63 See Kasimbazi "The legal framework for the balancing of development and environmental interests in Uganda" 526.

64 Unreported case No 181 of 2004 High Court of Uganda.

generations;<sup>65</sup> and to promote environmental awareness.<sup>66</sup> Third, the right suggests that the promotion of public awareness of environment-related activities by means of information is a crucial and necessary means of reinforcing and enhancing people's right to a clean and healthy environment, an argument already elaborated on in Chapter 3 of this study. It is against this background that the Constitution guarantees every Ugandan the right to access to information in the possession of the state or its agencies. The Constitution provides that:

(1) Every citizen has a right of access to information in the possession of the State or any other organ or agency of the State except where the release of the information is likely to prejudice the security or sovereignty of the State or interfere with the right to the privacy of any other person.

(2) Parliament shall make laws prescribing the classes of information referred to in clause (1) of this article and the procedure for obtaining access to that information.<sup>67</sup>

Clearly, every Ugandan has a right to demand access to information in the possession of the state or any other organ or agency and that these bodies are compelled to disclose relevant information to the public, except if its disclosure is likely to prejudice the security or sovereignty of the state or interfere with the right to privacy of any other person. It follows that local communities and affected stakeholders have a right to access information about FAI land deals from public bodies, and the latter must accordingly disclose this information as long as it is not excluded by the exceptions. This is particularly true if one considers that the Bill of Rights the right to access to information is one of the rights constitutionally entrenched in the Bill of Rights<sup>68</sup> suggests that the state is under an obligation to disclose information, including information about FAI land deals and its FAI activities to the public whenever it is requested. The procedures for requesting state-held information are clearly spelled-out

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65 Also Principle XXVII(ii) of the Constitution.

66 Art 245 of the Constitution.

67 Art 41 of the Constitution.

68 See Chapter 4 of the Constitution titled "Protection and promotion of fundamental and other human rights" arts 20-76 of the Constitution.

in the *Access to Information Regulations* of 2007,<sup>69</sup> with the minimum requirements stipulated in section 4<sup>70</sup> being coupled with the payment of the prescribed fee.<sup>71</sup>

Despite the explicit provision of a right of access to information in the Constitution, a reading of this constitutional provision indicates that the right can be exercised against public bodies or state agencies/organs only. It remains unclear how the constitutional guarantee could be applicable to private bodies. The fact that article 41 restrictively applies to the public sector or any agency of the state and excludes private bodies could be problematic particularly in this era of globalisation characterised by foreign investment activities. It would have been preferable if article 41 applied to private parties because they play an increasingly important role in FAI activities and their investment projects often lead to violations of people's rights and interests.<sup>72</sup> The restricted application of article 41 appears to be a serious flaw in the legal regime, seeming to imply that private parties are not obliged to comply with the requirements of the right to access to information.

Notwithstanding the above, accountability is one of the principles contained in the National Objectives and Directives Principles of State Policy,<sup>73</sup> with the aim of guiding all organs and agencies of state to take and implement policy decisions to include, for example, the right to information, that are designed to ensure and promote a just, free and democratic society.<sup>74</sup> Presumably the objective of accountability can be achieved only if state-held information and particularly information on FAI activities is disclosed to the public. It therefore becomes compulsory for public authorities to disclose state-held information in order to promote and ensure accountability. This obligation on public authorities is pertinent in the FAI context, if one considers that all public offices

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69 Established under s 47 of the AIA.

70 S 4(1)-(8) of the Regulation for details.

71 S 5(1)-(4). See Chapter 8 for details.

72 See Chapter 2 of this thesis for details.

73 Principle XXVI of the Constitution.

74 Principle I of the Constitution.

are held in trust for the people of Uganda,<sup>75</sup> and public authorities must be answerable to the people.<sup>76</sup> One way of being accountable to the people is to make state-held information, including information relating to FAI land deals and the state's activities in that regard, available to the public. In Uganda, the disclosure of information is useful and necessary *inter alia* to combat corruption, the abuse of power and human rights violations insofar as the management of public affairs is concerned.<sup>77</sup>

#### 6.4.1.2 AIA

The overall aims and objectives of the AIA *inter alia* include: to promote an efficient, effective, transparent and accountable government; to give effect to article 41 of the Constitution by enabling the public to gain access to information held by organs of the state other than exempt records and information; to promote transparency and accountability in all organs of the state by providing the public with timely, accessible and accurate information; and to empower the public to effectively scrutinise and participate in government decisions that affect them.<sup>78</sup> In order to achieve these objectives the Act clearly stipulates the right of everyone to information and records held by the state or any public body as follows.

(1) Every citizen has a right of access to information and records in the possession of the State or any public body, except where the release of the information is likely to prejudice the security or sovereignty of the State or interfere with the right to the privacy of any other person.

(2) For the avoidance of doubt, information and records to which a person is entitled to have access under this Act shall be accurate and up-to-date so far as is practicable.<sup>79</sup>

Section 5 of the AIA reinforces the constitutional right to access to information by requiring public authorities to disseminate timely and accurate information to the public as a matter of good governance. To this end, the AIA explicitly recognises the link

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75 Principle XXVI (i) of the Constitution.

76 Principle XXVI (ii) of the Constitution.

77 Principle XXVI (iii) of the Constitution.

78 S 3(a)-(e) of the AIA.

79 S 5 of the AIA.

between the provision of timely, accessible and accurate information and transparent, accountable and participatory governance.<sup>80</sup> Notably, these aspects constitute features of good FAI governance. Section 5 of the AIA possibly also provides local communities and affected stakeholders with a right to gain access to state-held information, including information about FAI land deals and associated activities. Under the AIA in order to access state-held information the public has formally to request it from the relevant authorities,<sup>81</sup> and a person may approach a court in instances where his/her request of access to information is refused.<sup>82</sup> The request must be made on the prescribed form, and the requester must furnish particular information to the information officer so as to enable the latter to identify the record or records requested, as well as the person requesting the information.<sup>83</sup> In the FAI context, this means that local communities and affected stakeholders have a right to request information from public bodies. Such requests may relate to issues such as FAI land deals, commercial information, the mode of operation of the company, and EIA reports, among others. To properly ensure the public right to access to state-held information, section 8 of the AIA requires an information officer to publish twice a year relevant information to the public, including details of the means of accessing the information.<sup>84</sup>

In terms of section 34 of the AIA, the authorities are mandated to disclose state-held information because the disclosure is in and will serve the public interest. For the purposes of this study, this implies that the authorities are obliged to mandatorily disclose information about FAI activities to the public, because the disclosure could serve to ensure protection of the public interest to a clean and healthy environment, for example. Where some FAI land deals are not transparent and are exclusionary, it is obligatory for state authorities to disclose information on FAI land deals. This is because

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80 Preamble of the UAIA, Kasimbazi "The legal framework for the balancing of development and environmental interests in Uganda" 544.

81 S 11 of the AIA.

82 See s 37(a) of the AIA.

83 See ss 11(1); 11(1)(a)(i) and 11(2)(a)(ii) of the AIA.

84 Ss 8(a) and (b) of the AIA.

disclosure of such information would enable the public to know whether a particular FAI land deal contravenes a substantial provision of the law, or if there is an imminent or serious public safety or environmental risk which warrants information disclosure, and if disclosing such information in the public interest seems the most important way of safeguarding people's environmental health and safety.<sup>85</sup>

According to the AIA, all state agencies have a duty to compile a manual that describes their structure and functioning, contact details and procedures for access requests for information, information on the records held by public bodies, and a description of the arrangements that allow citizens' input in policy formulation or government performance.<sup>86</sup> It is also required that the manual must be updated after every two years, and each year the information officer is obliged to publish a description of the categories of information that has to be automatically available to the public without the latter requesting it.<sup>87</sup>

Notwithstanding the above, like the Constitution, the AIA is only restrictively applicable to state bodies, and it is uncertain how section 5 of the AIA could be applied to private bodies. The private sector also plays a role in FAI, and it would therefore have been better if the Act were applicable to private bodies in addition to state bodies. This might have required private parties to adhere to the core principles of governance, transparency and accountability, while respecting and protecting people's human rights by providing them with relevant information on issues that are closely linked to their rights and freedoms.

Also, the AIA sets new limits<sup>88</sup> to the exercise of the right to access to information, as well as conditions under which the right to access to information could be denied.<sup>89</sup> AIA excludes certain categories of information such as cabinet records or those of its

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85 S 34(a)(i)-(iii) of the AIA.

86 S 7(1)(a)-(h) of the AIA.

87 S 8 of the AIA.

88 For example, ss 25; 26; 27;28;29;30;31;33 of the AIA.

89 See ss 24 and 18 of the AIA.

committees, and records of court proceedings before the conclusion of a case from being disclosed to the public.<sup>90</sup> Although it is reasonable to expect exclusion of certain information from the public, the limitation/exclusion set by AIA is contrary to article 41 of the Ugandan Constitution. This is because the Constitution is the supreme law, and any limit set by the Constitution determines the maximum beyond which no other law can add other limits. In terms of the Constitution the public's right to access to information can be denied only if it is proved that the release of the information is likely to prejudice "the security or sovereignty of the state or likely to interfere with the right to privacy of any other person."<sup>91</sup> It is explicitly provided in the Constitution that where any law or custom is inconsistent with any constitutional provision, the Constitution shall prevail.<sup>92</sup>

#### 6.4.1.3 NEA

The NEA is Uganda's main environmental framework legislation and provides for sustainable management of natural resources in order to enhance the right to a decent and healthy environment.<sup>93</sup> Section 2 of the Act embodies relevant principles to achieve this aim. Such principles include the publishing of relevant data on environmental quality and resource use, and ensuring that environmental awareness is treated as an integral part of education at all levels.<sup>94</sup> In order to efficiently and effectively co-ordinate and supervise all environmental activities, the Act establishes the Ugandan National Environmental Agency (UNEMA) as the principal lead agency for environmental management in Uganda.<sup>95</sup> As such, UNEMA is responsible for the gathering and dissemination of environmental information, and for publishing relevant data on

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90 S 2(2)(a) and (b) of the AIA.

91 Art 41 of the Constitution.

92 See art 2(2) of the Constitution.

93 See the Preamble and s 3(1) of the NEA.

94 Ss 2(2)(h) and (j) of NEA.

95 S 2 of NEA.

environment quality and resource use as well as the organisation of public awareness and education campaigns in the field of the environment.<sup>96</sup>

Part XI, entitled "Information, Education and Public Awareness," reiterates the relevance of disclosing information and particularly environmental information to the public, by clearly providing the right to information and more specifically the right to environmental information to everyone, albeit with limitations.<sup>97</sup> Access to information as espoused in the NEA provides the public with an opportunity in environmental and other decision-making processes to exercise their rights and protect the environment in development contexts such as those relating to FAI activities. In the FAI context as elsewhere, access to environmental information remains a practical vehicle for the realisation and protection of people's rights in Uganda.<sup>98</sup> The NEA provides that:

- (1) Every person shall have freedom of access to any information relating to the implementation of this Act submitted to the authority or to a lead agency.
- 2) A person desiring the information shall apply to the authority or a lead agency and may be granted access on payment of a prescribed fee.
- (3) Freedom of access to environmental information does not extend to proprietary information which shall be treated as confidential by the authority and any lead agency.<sup>99</sup>

From the above, it is evident that the lead agency has a responsibility to disseminate environmental information to the public, and this duty can be conveniently exercised through, for example, the gathering of information on the state of the environment and natural resources; accessing any data collection on the environment and natural resource; analysing information; disseminating information to public and private users; carrying out public information and education campaigns in the field of the environment; exchanging information with other Ugandan; foreign, international and non-governmental agencies; co-ordinating the management of environmental

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96 Ss 3; 85(1); 87 of the NEA.

97 See for example, s 85(3) on the limitation of the right to access to information, in terms of the Act.

98 Kasimbazi "Legal framework for the balancing of development and environmental interests in Uganda" 545.

99 S 85 of NEA.



information in the lead agencies; advising the government on existing information gaps and needs; establishing guidelines and principles for the gathering; processing and dissemination of environmental information; and liaising with the district environment committees and district environment officers in matters with respect to environmental information.<sup>100</sup>

Although the above efforts, if made, would be commendable, their full benefits have yet to be experienced. Instead, the public disclosure of information and particularly environmental information seems to be inadequate.<sup>101</sup> It has been indicated that the situation is complicated by the fact that the internal use of the dataset for project activities within UNEMA is still very limited, and the promise to make it fully efficient and interactive is still to be realised.<sup>102</sup>

Another problem with the section 85 environmental information right is that, like the AIA,<sup>103</sup> it sets broader limits to the right to access to information. The Act provides that freedom of access to environmental information does not extend to proprietary information which shall be treated as confidential by the authority and any lead agency.<sup>104</sup> This is also contrary to the article 41 constitutional right to information, which does not differentiate between the classes of information to which the right applies.

#### 6.4.1.4 NFTP

Adoption of the NFTP was to provide for and enhance the conservation, sustainable management and development of the forests for the benefit of all Ugandans, to provide for the sustainable use of forest resources and to provide for the enhancement of the

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100 S 85(1)(a)-(j) of NEA.

101 Kasimbazi "Legal framework for the balancing of development and environmental interests in Uganda" 545.

102 Kasimbazi "Legal framework for the balancing of development and environmental interests in Uganda" 545.

103 S 2(2)(a) of the AIA.

104 S 85(3) of the NEA.

productive capacity of forests.<sup>105</sup> The NFTP A relies *inter alia* on the promotion and facilitation of public awareness of the cultural, economic and social benefits of sustainable forest management.<sup>106</sup> In the context of this study, this suggests that information dissemination on FAI in forestry-related activities could play a crucial role in enhancing sustainable forest management as well as in determining the use and exploitation of forest resources, especially considering that the Minister has to develop and implement a National Forest Plan.<sup>107</sup> The reason is because people's views and opinions on the potential impacts of forestry activities can be properly expressed only if they have access to and are informed of forestry management problems when FAI activities occur. Such information becomes pertinently relevant in this era of FAI when the government is currently de-gazetting national forest and leasing it to foreign companies for FAI purposes,<sup>108</sup> including among others the Wilmar Oil Palm Plantation in Lake Victoria, Bugala Island in the Kalangala District, and the New Forest Company carbon offset project in Mubende and Kiboga Districts. For this reason the Minister is obliged to seek and take into account the views and opinions of persons and organisations in both the public and the private sectors that are involved in forestry management before developing and implementing a forestry management plan.<sup>109</sup> Section 91 of the NFTP A explicitly provides for access to information about forest resources. Section 91 states that:

Every citizen has the right of access to any information relating to the implementation of this Act, submitted to or in the possession of the State, a local council, the Authority or a responsible body.<sup>110</sup>

From the above it is evident that the dissemination of information on FAI in forestry-related investment and related activities to the public would enable the public to assist

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105 Preamble of the NFTP A.

106 S 2(f) of the NFTP A.

107 Kasimbazizi "Legal framework for the balancing of development and environmental interests in Uganda" 530.

108 Kasimbazizi "Legal framework for the balancing of development and environmental interests in Uganda" 523-526.

109 S 49(2) of the NFTP A.

110 S 91(1) of the NFTP A.

the National Forestry Authority<sup>111</sup> to develop and manage all central forest reserves, to prepare and implement management plans for central forest reserves, and to prepare reports on the state of central forest reserves and such other reports as may be required by the Minister.<sup>112</sup> The National Forestry Authority, might further help to establish procedures for the sustainable utilisation of Uganda's forest resources by and for the benefit of the people of Uganda, to co-operate and co-ordinate with the UNEMA and other lead agencies in the management of Uganda's forest resources, and in conjunction with other regulatory authorities, to control and monitor industrial and mining developments in central forest reserves.<sup>113</sup>

In order that the public may effectively exercise the right to access to information, the Act provides that a requester of information is obliged to submit an application to the relevant public body holding the information in conjunction with the prescribed applicable fee.<sup>114</sup> However, the right to forestry information does not extend to proprietary information,<sup>115</sup> which is considered confidential.<sup>116</sup> As in the case of the AIA discussed above, this again goes beyond the constitutional limitation of the right of access to information, and it is doubtful that the additional limitation would withstand constitutional scrutiny.

#### 6.4.1.5 WPA

The WPA reinforces the right to access to information by providing for procedures by which individuals in both the private and the public sectors may in the public interest disclose information that relates to irregular, illegal and corrupt practices.<sup>117</sup> The Act also provides for protection against the victimisation of persons who make such

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111 The authority is established under s 52(1) of the NFTP.

112 Ss 54(1)(a) and (d) of the NFTP.

113 Ss 54(1)(e)-(g) of the NFTP.

114 S 91(2) of the NFTP.

115 S 91(4) defined proprietary information to mean information on research or practices initiated or paid for by an individual or private company or financial standing of an individual or private company which is not for public consumption.

116 S 91(3) of the NFTP.

117 Preamble of the WPA.

disclosure.<sup>118</sup> Section 2 provides for the disclosure of impropriety<sup>119</sup> and requires that a person may make a disclosure of information if it is reasonably believed that the disclosure will reveal that a corrupt, criminal or otherwise unlawful act has been committed, is being committed or is likely to be committed, that a public officer or employee has failed, refused or neglected to comply with any legal obligation to which that officer or employee is subject, that a miscarriage of justice has occurred, is occurring or is likely to occur, and that any matter referred to in paragraphs (a)-(c) has been, is being or is likely to be deliberately concealed.<sup>120</sup> In the FAI context, it is apposite to invoke the provision of section 2 on whistle-blowers on improper FAI land deals and activities that impinge on people's interests and rights to be protected,<sup>121</sup> so long as the whistle was blown in good faith to reveal acts of impropriety, such as those relating to a foreign company paying a government official huge sums of money to approve an FAI deal, for example.<sup>122</sup> The foregoing is evident from section 3, which lists the category of persons qualified to "blow the whistle" to include among others any person on behalf of another person and a person on behalf of a private or public institution.<sup>123</sup> This means that in the FAI anyone could blow the whistle where FAI land deals and activities affect people's rights as a result of the issues raised by the Act (such as corruption), while disclosing *inter alia* the nature of the impropriety in respect to which the disclosure is made; the name and particular of the person alleged to have committed, who is committing or is about to commit the impropriety; the time and place where the alleged impropriety is taking place or is likely to take place; and the full

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118 Preamble of WPA.

119 S 1 defines impropriety as conduct which falls within any of the categories of the definition of disclosure referred to in paragraphs (a) to (d) irrespective of whether or not—(a) the impropriety occurs or occurred in the Republic of Uganda or outside the Republic of Uganda; or (b) the law applying to the impropriety is that of the Republic of Uganda or outside the Republic of Uganda.

120 Ss 2(1)(a)-(d) of the WPA.

121 S 2(2) of the WPA.

122 S 2(2)(a) and (b) of the WPA. S 1 defines "good faith" as the honest intent to act without taking an unfair advantage over another person and includes honesty, fairness, lawfulness of purpose and absence of any intent to defraud.

123 S 3(1)(c) and (d) of WPA.

name, address and description of a person who witnessed the commission of the impropriety.<sup>124</sup>

#### *6.4.2 The right to public participation*

##### *6.4.2.1 The Constitution*

In the “National Objectives and Directive Principles of State Policy”, principle IX of the Constitution provides for the right to development. This right obliges the state to encourage private initiatives and self-reliance in order to facilitate rapid and equitable development. It is also required of the state to fulfil the fundamental rights of all Ugandans to social justice and economic development.<sup>125</sup> Possibly, participatory governance could play a meaningful role in fostering people’s right to development, social justice and economic development, especially as people would have the opportunity to make informed decisions on matters that directly concern them. Accordingly, the Constitution requires the state to encourage the active participation of Ugandans in matters that directly concern and affect them, and to take all necessary steps to involve people in the formulation and implementation of plans and programmes that affect them.<sup>126</sup>

The participation of local communities and affected stakeholders could also be relevant to the plans and programmes of FAI land deals insofar as FAI activities have the potential to negatively impact on people’s rights and interests.<sup>127</sup> To this end, it is necessary to encourage the active and full participation of local communities and affected stakeholders in decision-making processes relating to FAI land deals and activities that concern them, for example. Evidently, a participatory approach of this nature could have the potential to address the negative impacts of FAI activities, while significantly contributing towards promoting, reinforcing and ensuring governance

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124 S 6(3)(b)-(e) of the WPA.

125 Principle XIV(I) of the Constitution.

126 Principles II(i); X of the Constitution.

127 See Chapter 2 section 2.1.1.1 on the environmental impacts of FAI activities.

accountability in the FAI context.<sup>128</sup> This is especially true considering that in terms of the Constitution all public offices are held in trust for the people of Uganda, and all persons placed in positions of leadership and responsibility are answerable to the people, and all lawful measures must be taken to expose, combat and eradicate corruption and abuse or the misuse of power by those holding political and other public office.<sup>129</sup> Hence, the active and full participation of Ugandans in decision-making processes relating to FAI activities may help to eradicate the malpractices common in FAI land deals and may thereby strengthen transparency and accountability, which are essential ingredients of good FAI governance in terms of the RBA. By contrast, without the meaningful and effective participation of local communities and affected stakeholders in the decision-making processes of FAI, measures aimed at exposing, combating and eradicating the abuse or misuse of public power by public authorities would be ineffective.

#### 6.4.2.2 NEA

As indicated above, the section 2 principles of the NEA are important for environmental protection.<sup>130</sup> In order to ensure the effective protection of the environment as well as to safeguard the health and well-being of the Ugandan people,<sup>131</sup> section 2 *inter alia* relies on the promotion of the participation of the Uganda people in environmental decision-making. It clearly obliges the government to encourage the maximum participation of Ugandan people in the development of the policies, plans and processes (including EIA) of environment-related activities with the hope of ensuring the effective protection of the environment.<sup>132</sup> Public participation serves not only to enhance environmental protection and governance, but is also instrumental in setting the standards and rules relating to the use and conservation of the environment and natural resources for the benefit of both the present and the future generations, and to

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128 Principle XXVI of the Constitution.

129 Principle XXVI(i)-(iii) of the Constitution.

130 S 2(1) of NEA.

131 S 2(2)(a) of NEA.

132 S 2(2)(b) of NEA. On EIA procedures and processes, see s 19 of NEA.

conserve the cultural heritage of Uganda.<sup>133</sup> For the purposes of the present study, this means that the facilitation and promotion of the participation of local communities and affected stakeholders in determining environmental-related activities such as FAI could enhance the effect of measures for environmental protection and also protect other human rights of people that are closely intertwined with the environment. The effective and full participation of local communities in decision-making relating to FAI land deals and activities in Uganda may also have the outcome that the environment will be better protected for the benefit of all Ugandan people, both present and to come. Against this background, the UNEMA is required to liaise with the private sector, intergovernmental organisations, NGOs and other government agencies on environment-related activities<sup>134</sup> which could have a negative impact on the environment. This implies that in terms of section 6 of the NEA, the UNEMA is obliged to encourage the participation of public and private bodies in environment-related activities with the purpose of protecting the environment. Encouraging the participation of public and private bodies is pertinently relevant in the FAI context where FAI activities have the potential to significantly affect the environment through the use and misuse of natural resources. Section 19 provides for project briefs and EIA and requires a developer-a foreign investor, to undertake an EIA which provides for public participation.<sup>135</sup> This means that the UNEMA and foreign investors must allow for the participation of local communities and affected stakeholders during the EIA processes relating to FAI activities.

#### 6.4.2.3 NFTP

The overarching aim of the NFTP is to create an integrated forest management sector that would ultimately facilitate and ensure *inter alia* the achievement of sustainable increases in the economic, social and environmental benefits derived from forests and trees by all Ugandan people; and to promote the improvement of people's livelihoods

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<sup>133</sup> Ss 2(2)(c) and (d) of NEA.

<sup>134</sup> S 6(1)(c) of the NEA.

<sup>135</sup> S 19(8)(c) of the NEA.

through strategies and actions that aim to contribute towards poverty eradication.<sup>136</sup> It is apposite that achieving these objectives imposes a duty on the state to facilitate and promote participatory governance in forestry activities with the hope of properly managing and conserving forests and trees for the benefits of Ugandan people. In terms of section 2 of the NFTP, the state is obliged to encourage and facilitate public participation in the management and protection of forests and trees.<sup>137</sup> This duty becomes relevant if read together with the notion of the public trust, that defines the responsibility for managing Ugandan resources, including the forest, as being in the nature of a trust held for the benefit of all Ugandan people.<sup>138</sup> According to Kasimbazi,<sup>139</sup> the rationale for espousing the public trust doctrine in Uganda lies in the fact that the country's natural resources, including its land and forests are subject to the wishes and interests of the Ugandan people, and them assigning their management to the state which is in the nature of a social contract between the people of Uganda and the state. The state has the responsibility to protect these resources and guarantee their permanent availability for public use through fostering a participatory approach to their management to ensure that the state does not abuse the trust vested in it by the Ugandan people. In the context of this study, this means that in order for the state not to breach the trust vested in it by the Ugandan people, it is necessary for the state to encourage public participation in FAI in forestry-related activities in order that the state should properly manage the forests and their resources to the benefit of the Ugandan people.<sup>140</sup>

Section 54 explicitly declares that one of the main duties of the National Forestry Authority<sup>141</sup> is to promote innovative approaches to local community participation in the

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136 See s 2(a)-(d) of NFTP.

137 S 2(e) of NFTP.

138 See s 5 of NFTP.

139 Kasimbazi "The legal framework for the balancing of development and environmental interests in Uganda" 533.

140 Also s 54(1)(c) of the NFTP.

141 The authority is established under s 52(1) of NFTP.



management of central forest reserves.<sup>142</sup> In terms of this provision, the participatory right of local communities and affected stakeholders is not limited to the management of central forest reserves, but is extended to include participation in the preparation and implementation of management plans for central forest reserves.<sup>143</sup> Conversely, it can be argued that without effective participation by local communities and affected stakeholders in the decision-making processes relating to FAI activities, the measures geared towards the conservation and management of forests and their resources would be futile.

### *6.4.3 The right to access to justice*

#### *6.4.3.1 The Constitution*

Despite the glaring absence of an express provision of the right to access to justice in the Ugandan Constitution, there is compelling evidence that it implicitly makes such a provision. For example, in the National Objectives and Directives Principles of State Policy, the state is obliged to guarantee measures for the protection and promotion of human rights and freedoms.<sup>144</sup> The right to access to justice is evidently one of those measures implicitly provided by the Constitution to protect and promote people's human rights and freedoms. As courts play a pivotal role in protecting and promoting human rights and freedoms, especially the rights and freedoms enshrined in the Constitution,<sup>145</sup> the right to access to justice remains one of the primary ways to promote and protect procedural and substantive human rights and freedoms in Uganda. To this end, the Constitution provides that anyone whose fundamental or other rights or freedoms are infringed or threatened has the right to apply to a competent court for redress.<sup>146</sup> This implies that a Ugandan has the right to approach a competent court in

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<sup>142</sup> S 54(1)(c) of the NFTP.

<sup>143</sup> S 54(1)(d) of the NFTP.

<sup>144</sup> S V(i) of the Constitution.

<sup>145</sup> Kasimbazi "The legal framework for the balancing of development and environmental interests in Uganda" 544.

<sup>146</sup> Art 50(1) of the Constitution.

situations where an FAI activity violates or infringes his or her fundamental rights and freedoms, and that such person is entitled to a fair, speedy and public hearing before an independent and impartial tribunal.<sup>147</sup> Article 126 requires the court when adjudicating cases of civil and criminal matters to do justice to all, irrespective of social or economic status. The court must not delay justice, adequate compensation must be awarded to victims of wrongs, and the court has to administer substantive justice.<sup>148</sup>

As in Cameroon, where provisions on *locus standi* are used to bring cases before the court, article 50 of the Ugandan Constitution incorporates the notion of *locus standi* by guaranteeing the right of everyone or any organisation to institute an action in court for the violation of another person's or group of persons' human rights and freedoms.<sup>149</sup> This means that if an FAI activity impinges on the rights and freedoms of a person or group of persons, an NGOs or a third party has the right to act in the person's or group of persons' (in this cases a community) interests by approaching a competent court for a remedy for the violation of that other person's human rights and freedoms, as was confirmed in *British American Tobacco (BAT) v Environment Action Network (TEAN)*.<sup>150</sup> The case concerned the seeking of an order under article 50(2) of the Constitution from the court by the applicant against the respondent, a manufacturer of dangerous goods (cigarettes) to the effect that the respondent had a legal obligation to fully and adequately warn consumers of its product of the full extent of the risk associated with the product. Although the application was denied on the grounds that it was doubtful that article 50(2) authorises the filing of actions on grounds of public interest by private persons, the approach adopted by the court with regard to standing is of great relevance for purposes of this study. Ntabgoba J held that persons, organisations or groups of persons could be read in article 50(2) of the Constitution to include public interest litigants. That is to say, that the Constitution does not recognise the existence

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147 Art 28 of the Constitution.

148 Art 126(2) of the Constitution; Kasimbazi: "The legal framework for the balancing of development and environmental interests in Uganda" 544.

149 Art 50(2) of the Constitution.

150 Civil Application No 27 of 2003.

of needy and oppressed persons *per se*, and therefore the claim that it cannot allow the actions of public interest groups to be brought on their behalf is to demean the Constitution.<sup>151</sup> The Ugandan courts construed this constitutional provision as extending the *locus standi* in PIL, and therefore adopted a liberal approach to *locus standi* requirement by entertaining a number of public interest cases that were filed in the interest of marginalised people who might not be in a position to access the court.<sup>152</sup> This view was held in *Advocate Coalition for Development and Environment v Attorney General*.<sup>153</sup> This approach has led the court to adopt the biblical role of a brother's keeper to argue that a violation of any human right of one person is a violation of the rights of all.<sup>154</sup>

Following from this jurisprudence is the view that anyone can institute an action on behalf of a group of persons or an organisation or in the public interest. Such broad application of standing is pertinently relevant in the context of FAI, as FAI activities have the potential to negatively impact of the rights of persons or group of persons or the public interest, and it is appropriate for anyone to be able to file an action when such violations occur (even on behalf of others).

#### 6.4.3.2 NFTP A

The NFTP A reinforces the *locus standi* provision of article 50 in the Constitution. Under section 5 of the Act, it is explicitly provided that in the furtherance of the performance of the public trust obligations and in furtherance of the realisation of the right to a clean and healthy environment any person or responsible body (including an NGOs) may

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151 Also see Kasimbazi "The legal framework for the balancing of development and environmental interests in Uganda" 554.

152 Other cases dealing with standing *inter alia* include *Greenwatch and Advocate Coalition for Development and Environment (ACODE) v Golf Course Holding Ltd* Miscellaneous Application No 390 of 2001 (Arising from HCCS No 834 of 2000) (Unreported); *National Association of Professional Environmentalists v AES Nile Power (Ltd)* Miscellaneous Cause No 60 of 1999 (Unreported); *The Environmental Action Network Ltd (TEAN) v Attorney General and National Environment Management Authority* Miscellaneous Application No 39 of 2001, High Court of Uganda (Unreported).

153 Miscellaneous cause No 100 of 2004; Kasimbazi "The legal framework for the balancing of development and environmental interests in Uganda" 524; Mubangizi and Mbazira 2012 *LDD* 210.

154 Mubangizi and Mbazira 2012 *LDD* 210.

bring an action in court against a person whose actions or omissions have had or are likely to have a significant impact on a forest, or for the protection of a forest.<sup>155</sup> Thus, a person may in the FAI context invoke the provisions of both Principle XIII of the Constitution and section 5(2) of the NFTP if the public trust doctrine is breached.<sup>156</sup> In *Advocates Coalition for Development and Environment (ACODE) v Attorney General*,<sup>157</sup> the government of Uganda in 2001 de-gazetted the Butamira Forest Reserve and granted a 50-year permit to Kakira Sugar Works Ltd for the production of sugarcane. An NGO Advocate Coalition for Development and Environment (ACODE) instituted a case in the public interest and contended that the government's decision to lease the Butamira Forest Reserve for sugarcane production was in direct contravention of the public trust doctrine under the Constitution. The court considered article 237(2)(b) of the Constitution, section 44 of the Land Act and section 5(2) of the NFTP and held that the Butamira Forest is land which the government of Uganda holds in trust for the people of Uganda and that it has a duty to protect the same for the common good of the citizens, and therefore the government had no authority to lease it out or otherwise alienate it.<sup>158</sup> It was also decided that ACODE had legal rights to institute an action in the interest of the public because this was a matter of general or public interest.<sup>159</sup>

#### 6.4.3.3 NEA

In tandem with the need to provide for the sustainable management of the environment<sup>160</sup> that guarantees the fundamental right to an environment adequate for the health and well-being of all Ugandans,<sup>161</sup> the NEA employs the use of PIL to achieve this aim. Section 3 clearly stipulates the right of everyone to a healthy and decent

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<sup>155</sup> Ss 5(2)(a)-(b) of the NFTP.

<sup>156</sup> Kasimbazi "The legal framework for the balancing of development and environment interests in Uganda" 523; 530.

<sup>157</sup> Miscellaneous Cause No 0100 of 2004, (Unreported).

<sup>158</sup> Kasimbazi "The legal framework for the balancing of development and environmental interests in Uganda" 533.

<sup>159</sup> Kasimbazi "The legal framework for the balancing of development and environmental interests in Uganda" 524-525.

<sup>160</sup> Preamble of NEA.

<sup>161</sup> S 3(2)(a) of the NEA.

environment,<sup>162</sup> and specifically bestows on everyone the responsibility to maintain and enhance the environment, including the duty to inform the authority or the local environment committee of all activities and phenomena that may significantly affect the environment.<sup>163</sup> It further requires anyone to bring an action against another person whose activities or omissions have or are likely to have a significant deleterious impact on the environment,<sup>164</sup> or to request a court order for the taking of other measures that would ensure that the environment does not suffer any significant damage.<sup>165</sup> Although the above provision may be seen as being limited to private persons only, it can be argued that the fact that a company is a person with a distinct legal personality that can sue or be sued in law, that public interest litigation in section 3 also extends to companies, considering that certain activities of companies such as those relating to FAI may result in significant adverse effects on people's environment-related rights. In the context of this study, this therefore implies that a Ugandan has the right to bring an action against the activities of a company that has or is likely to have a significant impact on the environment-related rights of people, and that the court must issue an environment restoration order<sup>166</sup> against such a person or entity who has harmed or is harming or is reasonably likely to harm the environment.<sup>167</sup>

## **6.5 Critical assessment of Uganda's relevant procedural rights framework**

This section critically assesses and evaluates Uganda's procedural framework of a RBA against the distilled generic characteristics and minimum requirements of the procedural RBA in terms of good FAI governance.<sup>168</sup> The aim of the critical assessment is twofold. First, it serves to determine whether the Ugandan procedural framework of

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162 S 3(1) of the NEA

163 S 3(2) of the NEA.

164 S 3(3) of the NEA.

165 S 3(3)(e) of the NEA.

166 S 1(x) defines an environmental restoration order as an order provided for under s 67 of NEA.

167 S 71 of the NEA.

168 See Table 2 in Chapter 4 in 4.5 for details.

the RBA conform to the generic characteristics and minimum requirements of the RBA of good FAI governance, to the extent that it accords adequate protection to local communities rights and interests during FAI practices in the country. Second, it also serves to make recommendations for reforms in Chapter 8, in instances where the Ugandan framework does not conform with to the generic characteristics and minimum requirements.

#### *6.5.1 The right to access to information*

While the right to access to information in Uganda conforms to the broad characteristic of access to information, it differs with the specific characteristics in some respect.

In Uganda, the government promotes respect for people's right to access to information to enable citizens to assert protection of their fundamental human rights and for the government to uphold the democratic values of transparency and accountability espoused in the National Objectives and Directives Principles of State Policy in the Constitution. Sections 3 (a) and (d) of AIA is used to promote an efficient, effective, transparent and accountable government and to promote transparency and accountability in all organs of state, through respecting people's right to access to information. The commitment to promote people's access to information is reflected in sectoral legislation which makes provisions for this right, in addition to the enactment of specific national legislation to cater for the right with its implementing regulations, which provides citizens with procedures and conditions to gain access to accurate and timeously information from the public bodies, except where certain information are excluded.<sup>169</sup> AIA also provides for remedies where, the public is required to approach the courts in case a request to access information is refused by the information officer.<sup>170</sup> Despite this guarantee, it was shown in this chapter that information relating to FAI land deals is classified as "top secret." Such classification implies that local communities do not have access to such information and it is doubtful to imagine how

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<sup>169</sup> See section 6.4.2 above for details.

<sup>170</sup> S 37(a) of PAIA.

transparency and accountability, which are manifestly expressed through the right to access to information, could be observed and promoted in FAI activities in Uganda, with the intention of protection local communities' rights and interests.

Part XI of NEA, entitled "Information, Education and Public Awareness," requires public bodies and not private bodies, including NGOs, to facilitate and promote people's right to access to information through mechanisms such as education and the creation of awareness. NEA also provide for respect of people's right to access to information during EIA processes and procedures.

Notwithstanding the above, because the Constitution and legislation only provide people the right to gain access to public held-information means that the right cannot be enforceable against private parties, who are important role players in the FAI governance paradigm.<sup>171</sup>

Also, despite the state commitment to respect and promote people's right to access to information, the costs to gain access to government-held information vary and are relatively high in some instances. Under Schedule 1 of the Access to Information Regulations of 2005,<sup>172</sup> one currency point is considered to be the equivalent to 20000 Uganda shillings (UGX). Under the regulation the prescribed amount of the access fee is 20,000 UGX while photocopying fees range from 0.005 to 0.75 of a currency point; audio and video recording information and digital data transfer and digital colour printing range from 0.5 to 2 currency points (40,000 UGX); and digital data transfer information - to the amount of 40000 UGX.<sup>173</sup> It would have been better if there had been a standard fee applicable to all requested information in Uganda to ensure affordability of access to everyone.

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171 See Chapter 3, section 3.2.1.2 for a working definition of governance adopted for this thesis.

172 Published in the Uganda Gazette No 28 Volume CIV of 21st April, 2011.

173 See Schedule 1 of the Ugandan Access to Information Regulation of 2005.

### 6.5.2 *The right to public participation*

Like the right to access to information above, the right to public participation in Uganda conforms to the broad characteristic of public participation, but differs from the specific characteristics. The Constitution as the supreme law sets the pace for participatory governance and the need for the state to encourage and promote a culture of inclusive and participatory approach in the governance of public affairs generally.<sup>174</sup>

Public participation in Uganda is promoted and encouraged through clearly defined rules, processes and procedures, including before the commencement of development activities; in EIA processes where it is explicitly required; conducted in a manner and language people understand; and facilitated through education and awareness raising mechanisms.<sup>175</sup> Yet, it is noted that public opinions and views are rarely taken into account and implemented and because of this, rights and interests are not often protected.<sup>176</sup>

### 6.5.3 *The right to access to justice*

In terms of the right to access to justice, the Constitution provides people an opportunity to seek and claim redress for violation of their human rights. The right to access to justice in Uganda is supported by broad *locus standi* provisions through which interested and affected parties, including NGOs can on account of PIL approach the courts on behalf of others for judicial redress.<sup>177</sup> This conforms to the minimum requirements of access to justice.<sup>178</sup> Despite the fact that access to justice could be fair and impartial and based on respect of the rule of law as required by the minimum requirements of access to justice,<sup>179</sup> like in Cameroon, the high costs of litigations and

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174 See Table 2 in Chapter 4 in 4.5 for details.

175 See Table 2 in Chapter 4 in 4.5 for details.

176 See section 6.3 above for details.

177 See sections 6.4.3.1-6.4.3.3 above for details.

178 See Table 2 in Chapter 4 in 4.5 for details.

179 See Table 2 in Chapter 4 in 4.5 for details.



financial constraints is a significant barrier for people to effectively have access to courts and to claim judicial redress for their violated rights and interests in Uganda.

## **6.6 Chapter summary**

This chapter has provided a detailed investigation of the regulation of FAI activities in Uganda and has indicated that FAI is regulated via two methods, namely a contractual lease agreement and a MoU arrangement. The chapter noted that in both arrangements local communities' rights and interests are often at stake and impacted on. The chapter has also provided an analysis of the country's procedural framework of a RBA and noted that the framework consists of the rights to access to information, public participation and access to justice, and is contained in constitutional and legislative provisions. The framework should in principle be able to ensure respect for, protection and fulfilment of people's rights-based interests in FAI. In practice however, the opposite is often true, especially given the lack of adherence to the country's procedural framework of a RBA in FAI context, which in some instances has resulted in the violation of local communities' rights and interests. To this end, it is observed that the Ugandan procedural framework of a RBA falls short of protecting and respecting people's rights-based interests when the latter are called into question. There are great discrepancies between what exists on paper and the enforcement and observance measures of the procedural aspects of a RBA in the country. Flowing from this, it can be questioned whether the Uganda procedural legal framework of a RBA is toothless dog that barks but cannot bite? For, example, with regard to the right to access to information, it is noted in this chapter that the public/local communities generally are not informed of proposed development projects, despite the existence of constitutional and legislative guarantees respecting people's right to access to information, including government-held information. Instead, information relating to FAI land deals is classified as "top secret." There is disinclination on the part of the state to respect, protect and fulfil local communities' rights by means of enhancing and facilitating their right to access to information. It was established that the lack of public access to information on FAI

activities has characterised the lack of transparency and accountability in FAI practices in the country generally.

Furthermore, despite the provision of a participatory approach in the management of public affairs generally, it was observed that some FAI land deals in Uganda are non-participatory and non-inclusive. Local communities do not often take part in the decision-making processes. This lack of involvement and effective participation of local communities in decision-making relating to FAI land deals contrasts with the constitutional and legislative provisions guaranteeing people the right to participation.

Finally, it was argued that although people may have a right to access to justice, financial constraints are an obstacle preventing local communities and affected stakeholders from seeking redress and gaining access to courts to address the violation of their human rights during FAI.

As in Cameroon, the discrepancies between what the law provides and what actually happens in practice in Uganda indicate that the regulation of FAI in Uganda is not in direct compliance with the dictates of the generic characteristics and minimum requirements of the procedural RBA framework in terms of good FAI governance.

## **CHAPTER 7**

### **THE LEGAL FRAMEWORK FOR THE REGULATION OF FAI IN SOUTH AFRICA**

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#### **7.1 Introduction**

Although it might appear counter-intuitive to include South Africa in this study, because South Africa is also a major investor in FAI within the African context, the fact that South Africa is not ostensibly host to large-scale FAI projects at the moment does not rule out the possibility of FAI occurring in future in the country. This is true if one considers that South Africa also trades with those foreign investors that are responsible for FAI in other countries. Another reason for looking at South Africa is that the country has a comprehensive procedural legal framework relating to a RBA which could serve as a measure of good practice for the purpose of comparison. This chapter aims to critically assess South Africa's RBA framework with a view to determining best practices and gaps in the legal framework in order to make proposal(s) for reforms, in the subsequent chapter, for the effective protection of people's rights and interests in the likely event of a future practice of FAI in the country, and to make comparative proposals for reforms in Cameroon and Uganda. Accordingly, the present chapter details the South African procedural legal framework of a RBA in order to determine its strengths and weakness generally in the FAI context. To achieve this aim, the following questions are addressed.

- (1) How are FAI land deals regulated in South Africa?
- (2) What procedural legal mechanisms exist in South Africa that could be used to ensure respect for and adequate protection of people's rights and interests generally?
- (3) To what extent does the procedural RBA framework in South Africa conform to the generic characteristics and minimum requirements for good FAI governance in terms of the RBA distilled in Chapter 4?

- (4) Are there any perceived gaps in the current procedural RBA framework in South Africa insofar as it relates to FAI?

The chapter is divided into four parts. The first part investigates the regulation of FAI in South Africa, while the second part examines the country's procedural framework of a RBA. The third part critically assesses the South African procedural framework of a RBA against the generic characteristics and minimum requirements of the procedural RBA framework in terms of good FAI governance developed in Chapter 4. The fourth part summarises the chapter. The section below commences with a brief contextual background of South Africa before examining the regulation of FAI in the country.

## **7.2 Contextual background to South Africa**

South Africa is located in the southern part of Africa and is one of the countries forming part of SADC. It is reported that between 80 to 85 per cent of the surface area of South Africa has been earmarked for agriculture, and about 1.5 million citizens are dependent on agricultural activities in terms of labour needs.<sup>1</sup> Approximately 69 per cent of South Africa's land is suitable for grazing, and livestock farming constitutes by far the largest agricultural sector.<sup>2</sup> Pringle<sup>3</sup> reports that South Africa has a population of about 49.32 million people, residing on a total land surface of about 122 million km<sup>2</sup>. Although it is difficult to state precisely how much land constitutes agricultural land in South Africa, (because the term "agricultural land" broadly includes all land that lies outside towns and cities and does not form part of proclaimed national parks or nature reserves).<sup>4</sup>

Private tenure is the prevalent type of land ownership in South Africa, and private tenure is fairly secured, as is evident from associated legislation that guarantees security of tenure. Private land tenure is also protected constitutionally by section 25 of the Constitution. This notwithstanding, local people in rural areas practice and exercise

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1 Verster *et al* "Soil" 264.

2 Goldblatt 2010 [http://led.co.za/sites/default/files/cabinet/orgname-raw/document/2011/wwf.agric\\_.factsheetjune.10.pdf](http://led.co.za/sites/default/files/cabinet/orgname-raw/document/2011/wwf.agric_.factsheetjune.10.pdf) accessed 5 October 2015.

3 Pringle 2013 *JHF* 37.

4 Pringle 2013 *JHF* 39.

customary land tenure, which is not always properly regulated, and since land/agriculture-related investment is mostly concentrated in rural areas, it has the potential to augment pressure on customary land tenure systems and the rights and interests of people where FAI is evident.<sup>5</sup>

As indicated in Chapter 1 of this study, land grabbing and FAI are not as grave concerns in South Africa as they are in Cameroon and Uganda. The reason for this could be attributed to the degree of development in the country, which accounts for the use of large quantities of land, the high population density, and the regulatory framework that protects rights.<sup>6</sup> Nonetheless, evidence from Table 1 in Chapter 2 illustrates subtle and potential forms of FAI practices in the country, such as the Canadian Biochar project, the United States Cape Pine Investment Holding project, the Japanese Nippon Paper Group Inc, the United Arab Emirate Al Dahra Company project, and the Spanish Sanluar Fruit SI project, among others.

**7.3 The regulation of FAI in South Africa**

*7.3.1 Contractual leases*

Due to the subtle form of FAI activities in South Africa, it is difficult to ascertain the regulation and implementation of FAI land deals in the country. However, there is an indication that FAI land deals are mostly regulated by means of contractual leases. For instance, in 2010 the government leased 53,000 hectares of land to an American Company Cape Pine Investment Holdings Pty Ltd, for the production of forestry products, and wood and carbon off-sets.<sup>7</sup> Detailed information relating to the implementation of this project and the others referred to in Table 1 of this study are however, not available.

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5 Crabtree-Condor and Casey "Lay of the land" 60.  
6 Crabtree-Condor and Casey "Lay of the land" 61.  
7 Global Environment Fund date unknown  
<http://www.globalenvironmentfund.com/category/portfolio/region-portfolio/africa-middle-east-central-europe/> accessed 2 November 2015.

There are four types of land tenure in South Africa: customary, private, communal, and state land tenure. In these four categories of tenure mostly state land, which constitutes about 14 per cent of the total land, is subject to being leased for FAI purposes. The reason is that the government targets to restitute about 30 per cent of land, including agricultural land, to previously disadvantaged black South Africans through the willing buyer, willing seller approach.<sup>8</sup> Despite the constitutional guarantee of property rights, it could be argued that in terms of section 25(1), the Constitution protects only individual rights to property and not communal rights.<sup>9</sup> Similarly, the *Interim Protection of Informal Land Rights Act* 31 of 1996 guarantees non-deprivation of informal land right to land.<sup>10</sup>

Nonetheless, if the draft Bill on Preservation and Development of Agricultural Land Framework of 2015 (PADLF)<sup>11</sup> becomes law, it might usher in a future change in rights to agricultural land.<sup>12</sup> The fact that the Bill makes provision for people's right of access to information and access to justice,<sup>13</sup> and other measures needed to regulate agricultural land might be an indication that the PDALF could more effectively regulate FAI land deals and activities.<sup>14</sup> The Bill aims *inter alia* to create a process for the subdivision and rezoning of agricultural land to ensure its protection from non-agricultural and unsustainable and non-economic uses; and to maintain a minimum threshold of high-value agricultural land rights to farm and permission for foreign

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8 Pringle 2013 JHF 41; s 25(6) of the Constitution.

9 Despite this constitutional guarantee, it has been pointed out that black, rural South African continued to be deprived of their right to land, individually and communally. See Van der Westhuizen date unknown <http://thoughtleader.co.za/christivanderwesthuizen/2013/04/09/you-have-no-right-to-own-land-if-youre-black-and-rural/> accessed 2 November 2015. Also see s 2(2) of the Interim Protection of Informal Land Rights Act 31 of 1996 (IPIIRA)

10 S 2(2) of the IPIIRA.

11 Published in GG 38545 R210 of 13th March 2015.

12 In terms of s 1 of the draft Preservation and Development of Agricultural Land Framework (PDALF), agricultural land means all land in South Africa excluding land in a proclaimed township, or land to which an application for declaration of township has been submitted or land formally zoned as non-agricultural land and any other land excluded by the Minister in the notice in the Gazette.

13 See ss 155 and 157 of PDALF for provision of the rights of access to justice and access to information respectively.

14 See ss 53-61 of PDALF for details.

investors to own agricultural land. In terms of section 53 of the Bill, it is explicitly provided that all areas of high potential cropping land must be proclaimed as protected agricultural land,<sup>15</sup> to which the land is subject to a lease agreement for a period of 10 years or longer as determined by the Minister and the lease agreement.<sup>16</sup>

## **7.4 The procedural framework of a RBA in South Africa**

As in Cameroon and Uganda, the legal framework of the procedural RBA in South Africa consists of the procedural right to access to information, public participation, and the right to access to justice, including its associated *locus standi* provisions. These procedural rights are also used where appropriate to enforce substantive rights-based claims.<sup>17</sup> This legal framework comprises of constitutional and statutory provisions, and is discussed in greater detail below. Given that South Africa's judiciary has been very active in fleshing out the procedural RBA in the country, (even more so than the Ugandan and Cameroonian courts) case law will be used throughout to illustrate how the courts have contributed to the realisation of constitutionally and legislatively defined rights.

### *7.4.1 The right to access to information*

In South Africa, the right to access to information is derived from constitutional and statutory provisions empowering people to gain access to state-held and private information. Legislation giving effect to this right includes the PAIA, and in the environmental/agricultural context, NEMA, and the NFA. The following section provides relevant provisions of these laws and their application in the FAI context.<sup>18</sup>

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15 S 53(1) of PDALF.

16 S 57(1) of PDALF. Also see s 60 of the Bill.

17 Kotzé and du Plessis 2014 *VRU* 462; Kotzé 2004 *PELJ* 58-94.

18 Other legislation containing provisions for access to information but not relevant to this study includes the *Promotion of Administrative Justice Act* 3 of 2002 (PAJA).

#### 7.4.1.1 The Constitution

The Constitution is the supreme law of the country<sup>19</sup> and places an obligation on the state to respect, protect, promote and fulfil the rights contained in the Bill of Rights.<sup>20</sup> According to Liebenberg, while the duty to respect entails the duty by the state to refrain from interfering directly or indirectly with people's rights, the duty to protect consists of the state preventing parties from interfering with people's rights through the adoption and enforcement of legislative and other measures that must be observed by private bodies. The duty to fulfil includes the duty to take positive measures to assist people to have access to and enjoy their constitutionally-entrenched rights and freedoms.<sup>21</sup>

Under the Constitution, the state is obliged to respect, protect, fulfil and promote the right to access to information for two reasons. First, access to information is pivotal to ensure the protection of other human rights-based interests. Second, access to information helps to facilitate and promote inclusive, transparent and accountable government.<sup>22</sup> The Constitution provides that:

(1) Everyone has the right of access to:

(a) any information held by the state; and

(b) any information that is held by another person and that is required for the exercise or protection of any rights.

(2) National legislation must be enacted to give effect to this right, and may provide for reasonable measures to alleviate the administration and financial burden on the state.<sup>23</sup>

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19 S 2 of the Constitution.

20 See s 8(1) and (2). For details on the horizontal and vertical application of the Bill of Rights chapter see generally; Kotzé and du Plessis 2014 *VRU* 447-481; Mubangizi *The protection of human rights in South Africa* 64-50; De Vos and Freeman *South African constitutional law* 329-337; Currie and De Waal *The Bill of Rights handbook* 33-50; Devenish *A commentary* 24-25.

21 Liebenberg *Socio-economic rights adjudication* 84- 85.

22 Devenish *A commentary* 444; 452; De Vos and Freeman *South African constitutional law* 619; Currie and De Waal *The Bill of Rights handbook* 692-693.

23 S 32 of the Constitution.



In terms of this, the Constitution bestows two kinds of rights insofar as the exercise and application of the right of access to information is concerned.<sup>24</sup> First, the right applies vertically to the state and obliges the latter to provide for the right of everyone to have access to governmental information which is necessary to protect a right.<sup>25</sup> This means that people/local communities, in both their collective and individual capacities, have the right of access to information held by public bodies responsible for regulating development activities, including FAI, insofar as the information is necessary to ensure the protection of their rights. It could be said in the FAI context that invoking section 32 on state-held and private information about FAI land deals and activities could be instrumental in providing an appropriate way to enable the public (local communities) to assert the protection of their fundamental rights. To this end, Kidd<sup>26</sup> posits that if local communities are not informed of relevant information in development activities such as FAI, they could arguably challenge the lack of information as an infringement of their right. This implies that both the state and foreign investors are under an obligation to uphold people's right to access to information when undertaking FAI activities. The Supreme Court of Appeal (SCA) reiterated this constitutional obligation in *Company Secretary of ArcelorMittal South Africa v Vaal Environmental Justice Alliance*,<sup>27</sup> where it obliged the company to disclose relevant information to the public regarding its mining activities in the Drakenstein/Vanderbijlpark area. Although the above case principally focussed on mining activities, it illustrates the obligation imposed on private parties to respect people's right to gain access to information necessary to protect their constitutionally-entrenched rights.

This is especially true if one considers the wording of the right itself, and section 1 of the Constitution, which serves to promote the values which underlie an open and

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24 Devenish *A commentary* 442.

25 S 32(1)(a) of the Constitution; De Vos and Freeman *South African constitutional law* 619.

26 Kidd *Environmental law* 305.

27 *Company Secretary of Arcelormittal South Africa v Vaal Environmental Justice Alliance* 2014 (69) SA (SCA) 184. Also see *Earthlife Africa v Eskom Holdings Ltd* (2006) (2) All SA 632.

democratic society, based on human dignity, equality and freedom.<sup>28</sup> Hence, in terms of section 32 of the Constitution people are entitled to have access to information pertaining to the decisions and actions of both governmental and non-governmental entities such as those relating to the conclusion of FAI land deals.<sup>29</sup> It has been argued that the section 32 right to access to information is predicated on the right to know as opposed to the need to know, and the right must be realised without interference.<sup>30</sup>

As stated earlier, the right to access to information serves to promote openness, transparency and accountability in the governance of both public and private affairs.<sup>31</sup> This is because it is difficult to hold a government or a non-governmental entity accountable if they operate in secrecy.<sup>32</sup> Thus, an open, transparent and accountable approach in public and private governance based on respect for the right to access to information is important and necessary with regard to development projects, including FAI. This much was argued in Chapter 3.

Thus, in the context of this study, it is appropriate that public access to information on FAI land deals and activities should serve as a means to ensure transparency and accountability in FAI activities, as has been argued elsewhere in this study.<sup>33</sup> In as much as the constitutional right to access to information is meant to ensure, promote and facilitate transparency and accountability in the conduct of public affairs by the state.<sup>34</sup> Devenish<sup>35</sup> is of the view that transparency and accountability would be meaningless if an unqualified and enforceable right to access to information did not exist. Devenish's view echoes Robertson's contention that the ability of the government to manipulate government-held information is the stark antithesis to the precepts of the

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28 See s 1 of the Constitution; Preamble and s 9 of PAIA.

29 Devenish *A commentary* 445; Currie and De Waal *The Bill of Rights handbook* 692.

30 Devenish *A commentary* 447.

31 Du Plessis "Access to information" 197; De Vos and Freeman *South African constitutional law* 620; Currie and De Waal *The Bill of Rights handbook* 692.

32 De Vos and Freeman *South African constitutional law* 620; *President of the Republic of South Africa and Others v M and G Media Ltd* (2011) ZACC 32.

33 See Chapter 2 of this thesis.

34 De Vos and Freeman *South African constitutional law* 619.

35 Devenish *A commentary* 445.

rule of law, since it facilitates arbitrary decision-making, which “is associated with despotism and not democracy”.<sup>36</sup> It suffices, therefore, that in order to promote the underlying values espoused in section 1 of the Constitution generally and in the FAI context specifically, both the state and private bodies are obliged to provide the public with information relating to the decisions and actions of people charged with the duty of regulating and implementing investment projects, including FAI.

In *Brummer v Minister for Social Development and Others*<sup>37</sup> the Constitutional Court (CC) had the occasion to concur with this view that the right to access to information is closely connected to the right to freedom of expression. The CC noted that the right of access to information “is crucial to the right to freedom of expression, which includes freedom of the press and other media and freedom to receive or impart information or ideas.”<sup>38</sup> Given that information is crucial for the expression of an opinion, the Constitution also advocates the right to information through the right to freedom of expression,<sup>39</sup> by guaranteeing everyone the right to access to information.<sup>40</sup> This right is taken to include the right to gain access to information held by both public and private bodies, which is important to enable a person to exercise his or her rights that might potentially be infringed.<sup>41</sup> For the purposes of this study, the right to freedom of expression would specifically relate to and imply the existence of the right of local communities and affected stakeholders to gain access to information from both the state and private bodies relating to FAI land deals and activities.

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36 Robertson *Public secrets* 11.

37 *Brummer v Minister for Social Development and Others* (2009) ZACC (21); 2009 (11) BCLR.

38 At para 62-63.

39 S 16 of the Constitution.

40 S 16(1)(b) of the Constitution.

41 De Vos and Freeman *South African constitutional law* 620-621; Klaaren and Penfold “Access to information” 62-3.

#### 7.4.1.2 PAIA

PAIA was enacted to give effect to the right of access to information,<sup>42</sup> and in tandem with section 32 of the Constitution intends in a development context generally to ensure and promote good, participative, inclusive, and transparent governance through fostering respect for and the promotion of people's right to access to information relating to activities by both public and private bodies that may significantly affect their rights and interests.<sup>43</sup> PAIA provides two ways in which the right to access to information can be exercised against public and private bodies. One way is to request information from public and private bodies in which they are obliged to provide the requested information,<sup>44</sup> except where there are statutory grounds for refusal, including *inter alia* the reasonable protection of privacy, and commercial confidentiality.<sup>45</sup> Another way concerns the mandatory disclosure of information by a public body that is not backed by a prior request.<sup>46</sup> These two ways are examined below.

##### 7.4.1.2.1 Disclosure of information not backed by a request

Under PAIA, public bodies are required to voluntarily disclose certain information, such as those relating to FAI activities that are necessary to ensure protection of people's rights and interests, to the public without the public's requesting it.<sup>47</sup> PAIA requires public bodies to disclose such information at least once a year and the information must be published by notice in the Government Gazette.<sup>48</sup> Similarly, although a private body is not statutorily obliged to do so, it may as well disclose relevant information, including information of its FAI activities to the public without request.<sup>49</sup> Section 15 provides that recorded information must be automatically available and the information must be

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42 S 9 of PAIA; 32(2) of the Constitution.

43 S 9(e)(i) of PAIA; Kotze and Du Plessis 2014 *VRU* 463.

44 While s 11 of PAIA deals with requests for access to information held by public bodies, s 50 deals with requests for access to information held by private bodies.

45 S 9(b)(i) of PAIA; Du Plessis "Access to information" 205.

46 S 46 of PAIA; Currie and Klaaren *The promotion of access to information act* 59.

47 S 15(1)(a) of PAIA.

48 S 15(2) of PAIA.

49 See s52 of PAIA; Du Plessis "Access to information" 199.

provided free to the public,<sup>50</sup> except when a prescribed fee for the reproduction of the information included in the notice in the Government Gazette is required.<sup>51</sup> Transposing the above to the context of this research, the government of South Africa could voluntarily provide certain information on FAI activities to the public at no cost. Thus, it is reasonable to conclude that disclosure of information in the FAI context could enable local communities and affected stakeholders to effectively scrutinise information about FAI land deals and participate in decision-making processes that affect them and have a direct bearing on their rights and interests.<sup>52</sup> Also, the voluntary disclosure of information on FAI land deals could serve to reinforce one of the underlying objectives of PAIA which, as said earlier, is to promote transparency, accountability and effective governance of all public and private bodies generally.<sup>53</sup>

Section 46 specifically requires public bodies to mandatorily disclose information to the public. The mandatory disclosure of information in the public interest would concern instances where the disclosure of information would serve to reveal evidence of a substantial contravention of or failure to comply with the law, or an imminent and serious public safety or environmental risk, taking into consideration that the public interest clearly outweighs any reason for non-disclosure.<sup>54</sup> From the foregoing it can be said that when public interest in a request for information on FAI transactions outweighs the reason for its non-disclosure, and there is evidence of a substantial contravention or failure to comply with the law, then that information must be disclosed. Evidently, this statutory remedy would be very useful to local communities who feel that their right might have been infringed upon by FAI land deals and activities.<sup>55</sup>

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50 S 15(I)(a)(iii) of PAIA.

51 S 15(3) of PAIA.

52 S 9(e)(iii) of PAIA.

53 S 9(e) of PAIA.

54 Ss 46 (a)(i)-(ii) and 46(b) of PAIA.

55 S 46(a)(i) of PAIA.

#### 7.4.1.2.2 Disclosure of information on request

With regard to the disclosure of information on request, it is required that should public bodies fail to voluntarily and automatically disclose information; the public has a right to request such information.<sup>56</sup> In terms of the Act, the public could approach the court for judicial redress in instances where a request to information is refused.<sup>57</sup> Under section 50 of PAIA, private bodies are also required to provide requested information to the public that relates to their operations/activities and any other useful information relating to the entire development undertaken by the body corporate.<sup>58</sup> For example, in the *Mittal* case mentioned above, the SCA emphasised the contributory role that respect for people's right to access to information generally plays in reinforcing environmental and other rights-based protection in the context of development activities. The case principally concerned a request for environmental information by the Vaal Environmental Justice Alliance in 2002 under PAIA on how ArcelorMittal intended to rehabilitate pollution at its Vanderbijlpark site. In February 2012 Vaal Environmental Justice Alliance requested further information relating to the closure and rehabilitation of ArcelorMittal's Vaal Disposal Site, following the illegal dumping of hazardous waste by the company. Judge Carstensen believed:

The participation in environmental governance, the assessment of compliance, the motivation of the public, the mobilisation of the public, the dissemination of information does not usurp the role of the state but constitutes a vital collaboration between the state and private entities in order to ensure achievement of constitutional objectives.<sup>59</sup>

On further appeal to the SCA by ArcelorMittal, the court rejected the appeal, ordered ArcelorMittal to release the necessary information, and stated that:

Corporations operating within our borders, whether local or international, must be left in no doubt that in relation to the environment in circumstances such as those under

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56 S 11(1) of PAIA.

57 S 78 of PAIA.

58 S 50(1)(a) of PAIA.

59 Para 18 of the judgment.

discussion, there is no room for secrecy and that constitutional values will be enforced.<sup>60</sup>

Drawing from the SCA jurisprudence, it is appropriate in a development context that foreign companies undertaking investment projects, including possible FAI land deals and activities in South Africa, should be compelled to disclose the requested information on their activities to the public, in order to enable local communities and affected stakeholders to assert the protection of their rights and interests which may be infringed as a result of the investment project. Section 11 of PAIA underscores this and provides for the right of a requester to be given access to requested information, where the right must not be refused by reasons for requesting the information, or what the information officer believes to be the reason(s) for requesting the information.<sup>61</sup> The right to request information from public and private bodies can be respected and fulfilled only if the requested information complies with the procedural requirements contemplated in section 1 of PAIA.<sup>62</sup> In terms of the Act an information officer is obliged to assist people with their request to gain access to information.<sup>63</sup>

The measures providing the public with access to both publicly and privately held information are extensive, but in terms of PAIA not all information need be disclosed to the public, and some categories of information may be refused.<sup>64</sup> One of the grounds for the refusal of a public request for information relates to the mandatory protection afforded to the confidential commercial information of a third party and the commercial information of a private body.<sup>65</sup> This means that relevant information on FAI land deals and their activities could be deemed confidential commercial information and thus be excluded from the public. However, there are some interesting caveats with regard to

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60 Para 82.

61 Ss 11(1); 11(3)(a) and (b) of PAIA.

62 S 11(1)(a) of PAIA.

63 See s 19 of the PAIA.

64 While the grounds of refusal in respect of public bodies are clearly set out in part 2, Chapter 4 of PAIA, the grounds of refusal in respect of private bodies are set out in part 3, Chapter 4 of PAIA. However, some of the grounds of refusal are mandatory and others are not, s 33 details the mandatory and non-mandatory grounds of refusal.

65 See ss 64 and 68 respectively of PAIA.

the protection afforded to commercial confidential information. The caveats could be used by local communities and affected stakeholders to request information from corporate entities generally, and specifically during FAI land deals. Under PAIA, commercially confidential information could be disclosed where it relates to the result of the testing of any product, or environmental testing, or any other investigation and the result reveals a serious public safety or environmental risk.<sup>66</sup> Du Plessis<sup>67</sup> argues that because PAIA requires that the protection of the commercial information of a third party is mandatory, and the protection of a person's or company's own commercial interests is discretionary,<sup>68</sup> the courts should be flexible in making a decision determining whether requested certain information generally, and during FAI land deals and activities specifically, is indeed commercial confidential information.

Notwithstanding the above, it could be argued that because PAIA does not clearly define what is meant by commercial information, in the FAI context the term could be used by private bodies/corporate entities to resist requests for relevant information on FAI land deals and activities.<sup>69</sup> Both sections 64 and 68 of PAIA make use of several undefined terms in stating that the head of a private body may refuse a request for access to a record if the record *inter alia* relates to trade secrets, financial, commercial, scientific or technical information. It is actually unclear what is meant, for example, by "technical information", or why it merits protection. The same is true of commercial information. It would have been preferable if these terms had been given precise meaning in the definitional section 1 of the Act in order to provide a clearer understanding of the protection afforded by PAIA.

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66 See ss 36(2)(c) and 64(2)(c) of PAIA.

67 Du Plessis "Access to information" 211.

68 See ss 36;37;64; 65 and 68 of PAIA respectively for the mandatory and discretionary grounds for the refusal of information.

69 See ss 64; 65; 68 of PAIA; Du Plessis "Access to information" 210. Du Plessis argues that the inclusion of a precise definition of commercial information could have precluded the ability of corporate entities and foreign companies involved in FAI land deals to use the ground in order to escape disclosing information about their activities to the public. See Du Plessis "Access to information" 211.



#### 7.4.1.3 NEMA

NEMA is South Africa's primary environmental framework legislation, and the Act gives effect to the section 24 constitutional right of an environment that is not harmful to health and well-being.<sup>70</sup> According to Van der Linde,<sup>71</sup> NEMA attains this objective in various distinct ways, which include environmental management principles and the procedures laid down for improving environmental quality and the consistency of decisions that may affect the environment; access to environmental information and civil participation in environmental governance; and adherence to the constitutional imperative to respect, protect, promote and fulfil the environmental right.

NEMA requires that decisions on activities taking place in the environment must be performed in an open and transparent manner, that access to information must be provided for in accordance with the law, and that such disclosure should serve to provide and ensure a holistic approach to environmental protection.<sup>72</sup> This implies, in the FAI context, that the disclosure of information of FAI activities would be required to enhance environmental protection as well as the other related rights of people linked to the environment, such as the rights to life, food, water, and property, among others. Despite the above guarantee NEMA like PAIA, limits public access to information in instances where a request for information is considered commercially confidential information.<sup>73</sup>

Nonetheless, in order to further reinforce environmental protection through information disclosure, section 31 of NEMA specifically prohibits the institution of sanctions, whether criminal or civil, on whistle-blowers - that is, those who disclose evidence of environmental risk. In terms of NEMA, a whistle-blower who discloses evidence of an

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70 The Preamble of NEMA; s 24(a) of the Constitution.

71 Van der Linde "National environmental management act 107 of 1998" 197-198.

72 S 2(4)(k) of NEMA; Glazewski *Environmental law* 138.

73 S 1 of NEMA defines commercially confidential information as: commercial information, the disclosure of which would prejudice to an unreasonable degree the commercial interests of the holder, provided that details of emission levels and waste products must not be considered to be commercially confidential.

environmental risk in good faith should be protected from dismissal, discipline, prejudice or harassment on account of having furnished the relevant information.<sup>74</sup> Section 31 of NEMA is potentially relevant in the FAI context if one considers that FAI activities may significantly result in environmental harm, including pollution and environmental degradation. For this reason, it would be appropriate to accord similar protection to people who blow the whistle on the environmentally harmful consequences of FAI land deals and the related activities.<sup>75</sup> The protection offered to whistle-blowers is predicated on the notion that a culture of openness and transparency is vital to enhancing environmental protection, compliance and enforcement in South Africa, especially taking into account that those deeply embedded within the ambit of an organisation and possessing knowledge of and access to relevant information might not disclose such information for fear of reprisal or victimisation.<sup>76</sup> Nonetheless, protection will be offered to a whistle-blower only if the information of an environmental risk is disclosed to a committee of parliament, an organ of state responsible for protecting the environment, the Public Protector, the Human Rights Commission, the attorney general, or more than one of the bodies listed above.<sup>77</sup> The above provision applies whether or not it is clear that a whistle-blower has exhausted any other applicable relief.<sup>78</sup>

It must be emphasised that subsections 31 (1)-(3) which historically dealt with the right of access to environmental information and the protection of whistle-blowers has been repealed by the NEMA Amendment Act 25 of 2014. The reason may be because of the overlap between section 31 of NEMA and the PAIA. It is argued that while NEMA empowers the state with the ultimate decision over whether to grant or refuse

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74 S 31(4) of NEMA; Glazewski *Environmental law* 156.

75 See Chapter 2 of this thesis for details on the environmental impacts of FAI activities.

76 Du Plessis "Access to information" 218.

77 S 31(5)((a)(i)-(vi) of NEMA.

78 S 31 (6) of the NEMA.

information, PAIA on the other hand includes mandatory refusal provisions and thus erodes the right to environmental information.<sup>79</sup>

#### 7.4.1.4 NFA

The aim of the NFA is to promote the sustainable management and development of forests for the benefit of all South Africans.<sup>80</sup> Achieving this objective bestows a responsibility on the Minister to set criteria and indicators for monitoring forest resources, which requires the Minister to communicate to the public information derived from such monitoring.<sup>81</sup> The Act considers the Minister as trustee of state forests and accordingly empowers the latter to lease forested land or parts thereof, including arguably, for FAI purposes. For example, Nippon Paper Group Inc, a Japanese company, recently leased 53,000 hectares of forest land *inter alia* for carbon credits and wood and fiber production. In this regard, it is expected that the Minister has the right to disseminate information about such transactions to the public. Such information could inform the public about the nature of the proposed activity taking place, its environmental implications, and what portion of the forest remains for recreational, educational, health, cultural and spiritual purposes, as well as measures employed to enhance the sustainable management of the forest.<sup>82</sup>

#### 7.4.2 Public participation

The provisions of participatory rights in the South African procedural legal RBA framework lie in the Constitution, NEMA and NEM: BA. The relevant provisions in these laws for the purposes of this study are discussed in detail below.

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79 National Assembly Portfolio Committee on Environmental Affairs and Tourism Summary of comments date unknown <http://pmg-assets.s3-website-eu-west-1.amazonaws.com/docs/2003/appendices/030923summary.htm> accessed 31 August 2015.

80 S 1(a) of the NFA.

81 S 6(1) and (2) of the NFA.

82 S 1 (d) of the NFA.

#### 7.4.2.1 The Constitution

While there is no direct right to public participation in South African law, such a right could be inferred from the provision of section 1 of the Constitution, which serves to promote democratic values by ensuring accountability, responsiveness and openness.<sup>83</sup> Presumably, public participation in decision-making could facilitate and ensure accountable, responsive and open government. Chapter 10 of the Constitution, envisages participatory governance as a useful ingredient to enhance public administration by encouraging and facilitating public participation in policy-making, and to foster transparency by providing the public with timely, accessible and accurate information.<sup>84</sup> In the context of this study, this implies that encouraging, facilitating and allowing for the full and active participation of local communities and affected stakeholders in governance generally and in FAI specifically could have the potential to strengthen and shape decisions and actions of public bodies with respect to FAI land deals and activities to the extent that their decisions and actions do not encroach on people's rights and freedoms, including environment-related rights.

Furthermore, the Constitution provides for relevant rights, such as the right to freedom of expression, political rights, the right to information, the right to just administrative action, the right to have any dispute settled in a court of law, and *locus standi* to enforce rights in court.<sup>85</sup> It has been argued that these rights cumulatively enable, strengthen and support public participation *inter alia* in environmental decision-making.<sup>86</sup> The relevance of public participation was clearly stated in *Doctors for Life International v Speaker of the National Assembly (Doctors for Life)*,<sup>87</sup> wherein the CC had the occasion to set out the test to be used to facilitate public involvement and

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83 S 1(d) of the Constitution; s 195 of the Constitution.

84 See ss195 (e) and (g) of the Constitution.

85 See ss 16; 19; 33; 34; 38 of the Constitution respectively.

86 Kotzé "Promoting public participation in environmental decision-making" 1.

87 2006 (12) BCLR 1399. Also see *The Merafong Demarcation Forum v President of the Republic of South Africa* 2008 (5) SA 171; *Tongoane V National Minister for Agriculture and Land Affairs* 2010 (6) SA 214.

participation in law-making processes.<sup>88</sup> *Doctors for Life* dealt with the applicant's challenge of the failure of the National Council of Province (NCOP) and the provincial legislature to comply with constitutional obligations regarding public participation in the law-making processes during the promulgation of four statutes,<sup>89</sup> namely, the *Choice on Termination of Pregnancy Amendment Act* 338 of 2004, the *Sterilisation Amendment Act* 3 of 2005, the *Traditional Health Practitioners Act* 35 of 2004 and the *Dental Technicians Amendment Act* 24 of 2004. While underscoring the rationale for public participation, Sachs J held that:

All parties interested in legislation should feel that they have been given a real opportunity to have their say, that they are taken seriously as citizens and that their views matter and will receive due consideration at the moments when they could possibly influence decisions in a meaningful fashion. The objective is both symbolical and practical: the person concerned must be manifestly shown the respect due to them as concerned citizens, and the legislator must have the benefit of all inputs that will enable them to produce the best possible laws.<sup>90</sup>

What is immediately relevant to this study in the above and in the judgment of *Doctors for Life* is the view that a need remains for the state to create meaningful opportunities to encourage public involvement and participation in decision-making about FAI land deals and activities and to have their opinions taken into account in order to shape the decisions and outcomes of FAI land deals.<sup>91</sup>

Similarly, in the CC case of *Poverty Alleviation Networks and others v President of the Republic of South Africa and others*, (Poverty Alleviation)<sup>92</sup> the applicants challenged the constitutional validity of the Thirteenth Constitutional Amendment Act (TCAA),<sup>93</sup>

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88 The test was whether the legislature acted reasonably in discharging the duty to facilitate and promote public participation and included a consideration of issues such as the nature of the legislation concerned (2); the importance of the legislation; (3) the intensity of the impact on the public and (4) any other relevant factors which will be dependent on the circumstances of each case. See *Doctors for Life* para 128.

89 *Doctors for Life* para 1408E-F.

90 *Doctors for Life* para 235.

91 See *Doctors for Life* para 129.

92 2010 Case No CCT 86/08 2010 ZACC 5.

93 23 of 2007. It amended Schedule 1A to the Constitution and came into operation on the 14th of December 2007.

that altered the boundaries of the Eastern Cape Province and the KwaZulu-Natal Province, thus regulating the transfer of Matatiele Local Municipality from the province of KwaZulu-Natal to the Eastern Cape Province. The challenge was based largely on the grounds that the law-making processes did not conform to the constitutional requirements in sections 59(1)(a), 72(1)(a) and 118(1)(a) of the Constitution, which are aimed at promoting and facilitating public involvement in law-making processes and procedures.<sup>94</sup> The applicants also argued that the lawmakers (the respondents) had employed an irrational approach while exercising their legislative powers to amend the Constitution in terms of section 74 of the Constitution. As to the facts of the case: the applicants contended that both the National Assembly and the NCOP had exercised their legislative power in amending the Constitution under section 74 in an irrational and unconstitutional manner.<sup>95</sup> It was further argued by the applicants that while approving part of the TCAA that concerns Matatiele Local Municipality, the provincial legislature of KwaZulu-Natal also exercised its legislative power under section 74(8) of the Constitution in a manner that was irrational and inconsistent with the dictates of the Constitution in that it failed to facilitate public participation and involvement as required by section 118(1)(a) of the Constitution.<sup>96</sup>

Although the *Poverty Alleviation* case is not primarily concerned with development activities such as FAI, two important issues can be distilled from the judgment. First, the judgment reiterates the relevance of the underlying values espoused in South Africa's new constitutional democracy, which is instrumental in fostering respect for and the protection of human rights. Second, in terms of the judgment, law makers have an obligation to facilitate and provide for public involvement and participation in law-making processes, including processes that may have a direct bearing on peoples' rights

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94 Also see *Matatiele Municipality and others v President of the Republic of South Africa and others* 2006 73/05 (2006), where a similar challenge was brought against the validity of the Constitutional Twelfth Amendment. See further *Petro Props (Pty) Ltd v Barlow and Another* 2006 (5) SA 160 (W), where an application for an interdict aimed at preventing a public campaign against the construction of a fuel service was dismissed for want of public participation.

95 *Poverty Alleviation's* case at para 4.

96 *Poverty Alleviation's* case at para 4.

and interests. It can be concluded, then, that public bodies are duty bound to promote the underlying values of the new constitutional democracy through adopting a participatory approach that encourages, facilitates and allows for the active involvement and full participation of the public in the decision-making processes relating to FAI land deals and activities. It was observed in Chapters 2 and 4 of this study that a mechanism for participatory governance is often lacking in FAI land deals and activities. The participation of local communities and affected stakeholders in FAI decision-making processes could provide them with an opportunity to raise concerns about the infringement of their human rights and the lack of weight attached to their interests. Also, the participation of local communities and affected stakeholders in FAI decision-making could serve as a useful tool to promote, reinforce and enhance good FAI governance, which is designed to promote and enhance transparency and accountability, respect for democratic values, and protection of people's rights and freedoms generally.

#### 7.4.2.2 NEMA

NEMA contains some provisions mandating public participation, and adherence to these provisions may serve to enhance environmental protection during decision-making.

Section 2 of NEMA states that:

The participation of all interested and affected parties in environmental governance must be promoted, and all people must have the opportunity to develop the understanding, skills and capacity necessary for achieving equitable and effective participation, and participation by vulnerable and disadvantaged persons must be ensured.<sup>97</sup>

The above provision supports the contention that the participation and full involvement of all interested and affected parties<sup>98</sup> in decision-making relating to FAI land deals is important to enhancing environmental governance and protection. The environment is

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<sup>97</sup> S 2(4)(f) of NEMA.

<sup>98</sup> S 1(i) of the amended NEMA 62 of 2008 defines interested and affected parties (I & Aps) as : (a) any person, group of persons or organisation interested in or affected by such operation or activity; and (b) any organ of state that may have jurisdiction over any aspect of the operation or activity.

held in trust for the people, and the beneficial use of environmental resources must serve the public interest. The active and full involvement of interested and affected parties in decision-making relating to FAI land deals through the medium of public participation could serve to ensure the effective protection of the environment, and concomitantly protect public interest.<sup>99</sup> This is especially true of section 2(4) which requires that environmental decisions must take into account the interests, needs and values of all interested and affected parties.<sup>100</sup> The foregoing illustrate the view that because solutions to complex environmental problems and the management of public affairs generally may not rest with the state alone, it is in the interest of the state to involve local communities and affected stakeholders in the decision-making processes of environment-related activities such as FAI, as this could serve to reinforce environmental governance and governance in the country more generally.<sup>101</sup> Inputs from local communities and affected stakeholders, if implemented and taken into account by public bodies, could have the potential to significantly inform the decisions of public officials relating to development activities, including FAI that may have an effect on the environment. To this end, Kotzé and Du Plessis<sup>102</sup> contend that as development activities could harm the environment and other related rights of people, it is imperative for governmental decisions regarding such activities not to be taken “willy-nilly.” According to the authors, public governance and decision-making generally and specifically in the environmental realm could have severe environmental ramifications, and because of this, decisions and actions by public bodies must be guided *inter alia* by people’s participatory right.<sup>103</sup> Thus, one way of protecting people’s environmental right while promoting sustainable development is to facilitate, promote and ensure effective

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99 S 2(4)(o) of NEMA.

100 S 2(4)(g) of NEMA.

101 Du Plessis and Nel “Driving compliance to and enforcement of South African legislation by means of a hybrid of new environmental governance instruments” 259.

102 Kotzé and Du Plessis 2014 *VRU* 467.

103 Kotzé and Du Plessis 2014 *VRU* 467.



public involvement and participation in harmful activities taking place in the environment, such as those relating to FAI.<sup>104</sup>

NEMA further provides for and encourages the vital role of women in environmental management and development and requires the institution of measures to promote and allow for their full and active participation in this regard.<sup>105</sup> Furthermore, integrated environmental management through EIAs is envisioned in section 23 as a plausible approach to effectively protect the environment, and public participation is employed as an appropriate and useful tool to achieve the objectives of integrated environmental management.<sup>106</sup> In South Africa, the objectives of EIAs are unattainable in the absence of public participation, especially if one considers that the role of public participation is to ensure the consideration of and compliance with peoples' views and opinions on environmental matters in decision-making processes and the management of activities that may have a significant adverse impact on people and on the environment.<sup>107</sup>

Notwithstanding the above, NEMA does not provide any definition of what public participation means.<sup>108</sup> It would have been better for the term to be defined in order to have clarity as to its use/application in specific contexts, including FAI. It has been argued that the lack of a definition of public participation in NEMA seems to be one of the constraining factors for effective public participation in EIA processes in South Africa.<sup>109</sup>

#### 7.4.2.3 NEM:BA

In tandem with the section 24 constitutional environmental right and particularly sections 24(b)(ii) and (iii), which *inter alia* promotes conservation and secure

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104 *Earthlife Africa v Eskom Holding Ltd* (2005) Case no 04/27514; Du Plessis and Nel 2001 *SAJELP* 1-37.

105 S 2(4)(q) of NEMA.

106 S 23(2)(d) of NEMA.

107 Ss 23(2)(d) and (e) of the NEMA.

108 Nel 2001 *SAJELP* 110.

109 Murombo 2008 *PELJ* 109.

ecologically sustainable development and use of natural resources, NEM:BA gives effect to this objective through a framework that provides for the management and conservation of biological diversity.<sup>110</sup> Achieving this goal entails that the public should be actively and fully involved in environment-related decision-making to properly support biodiversity protection measures. Against this background, NEM:BA provides measures to enhance biodiversity conservation, and explicitly requires the involvement of interested and affected parties in decision-making processes.<sup>111</sup> The involvement of local communities in biodiversity protection measures is pertinent in the FAI context because as was indicated in Chapter 2 FAI activities have the potential to impact on and destroy an environment, broadly defined, and its biodiversity.<sup>112</sup> Where FAI occurs next to biodiversity hotspots, it is important to facilitate local community participation in decision-making in order to ensure biodiversity protection.<sup>113</sup>

#### 7.4.3 *The right to access to justice*

The Constitution, NEMA and the LAA contain relevant provisions on people's right of access to justice. The following section examines these provisions and illustrates their usefulness in the context of FAI land deals and activities.

##### 7.4.3.1 The Constitution

The right to access to justice generally and in the South African context has been perceived to be a fundamental component of the rule of law in a constitutional democracy.<sup>114</sup> The CC jurisprudence of *Lesapo v North West Agricultural Bank and Another*<sup>115</sup> reiterated the view that the right to access to justice is related to upholding the rule of law and clearly stated that:

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110 S 2(a)(i) of NEM:BA.

111 Ss 99(c) and 100 of NEM: BA; Ervin *et al Protected Areas for the 21st Century* 9.

112 See s 1 of NEMA on the definition of an environment.

113 See ss 99(c) and 100 of NEM:BA.

114 De Vos and Freeman *South African constitutional law* 628; Currie and De Waal *The Bill of Rights handbook* 711.

115 1999 (ZACC) 16; 12 (BCLR) 1420.

Section 34 and the access to courts it guarantees for the adjudication of disputes are a manifestation of a deeper principle; one that underlies our democratic order. The effect of this underlying principle on the provision of s 34 is that any constraint upon a person or property shall be exercised by another only after recourse to a court recognised in terms of the law of the land... Respect for the rule of law is crucial for a defensible and sustainable democracy. In a modern constitutional State like ours, there is no room for legislation which, as in this case, is inimical to a fundamental principle such as that against self-help. This is particularly so when the tendency for aggrieved persons to take the law into their own hands is a constant threat.<sup>116</sup>

The legal dimension of the concept to access to justice espoused in section 34 of the Constitution developed as an element of the fundamental principle that all people should enjoy equality before the law, while having the right to challenge the legality of conduct.<sup>117</sup> It has been argued that challenging a conduct or law would be meaningful and relevant only if the challenge were issued before an independent and impartial tribunal, like a court, without which the right to challenge any law or conduct would only be illusory.<sup>118</sup> To this end, section 34 of the Constitution explicitly states that:

Everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum.<sup>119</sup>

From the above excerpt it may be concluded that section 34 of the Constitution creates the right to access to justice and that this provides a necessary means to ensure each person may protect his or her rights.<sup>120</sup> Section 34 also creates a due process right requiring a fair and a public hearing.<sup>121</sup> This implies that South Africa's legal system should be organised in such a way as to enable and ensure everyone the right to invoke the legal processes for legal redress irrespective of social or economic status and that everyone must receive just and fair treatment in this respect.<sup>122</sup> The right to access to courts serves to ensure protection against actions by states or other persons that impinge on people's rights and interests. In essence, section 34 opens the doors of the

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116 At para 16-17.

117 Nyenti 2003 *De Jure* 903; De Vos and Freeman *South African constitutional law* 629.

118 De Vos and Freeman *South African constitutional law* 629.

119 S 34 of the Constitution.

120 De Vos and Freeman *South African constitutional law* 630.

121 De Vos and Freeman *South African constitutional law* 630.

122 Muralidhar *Law, poverty and legal aid* 1.

justice system to all people where actions and decisions of the state relating to the regulation of FAI land deals and activities result in an infringement of people's rights and freedoms. Conversely, without an effective and efficient mechanism that guarantees the protection of people's rights such as the right to justice, people's rights and interests could not properly be protected generally, and specifically in a development context, including in relation to FAI.<sup>123</sup> Hence, the right of access to justice is a leverage right that allows litigants of human rights violations to leverage other rights-based entitlements to vindicate any right in issue.<sup>124</sup> To this end, Brickhill and Friedman<sup>125</sup> argue that the right to access to justice is a necessary pre-requisite for the enjoyment of other constitutional guaranteed rights, without which the extensive protection afforded to the array of rights in the Bill of Rights would be meaningless.<sup>126</sup>

Despite the constitutional guarantee of a right to access to justice, it must be pointed out that there are some barriers against people's right to access to justice.<sup>127</sup> For example, financial constraints could be an impediment for local communities to effectively access courts to seek juridical redress for violations of their human rights caused by FAI land deals. Devenish<sup>128</sup> argues in this regard that the legal system is presently characterised by acute flaws, because access to justice is in practice restricted by the high cost of legal services and the paucity of legal aid available to the majority of the population, who are poor.

The unanswered question is and always has been whether or not section 34 creates a positive obligation on the state to create, maintain and finance courts and to provide individuals with the necessary financial assistance to enable litigants to access courts

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123 Devenish *A commentary* 486.

124 Brickhill and Friedman "Access to court" 59-3.

125 Brickhill and Friedman "Access to courts" 59-01; Kotzé and Du Plessis 2014 *VRU* 464.

126 Also see De Vos and Freeman *South African constitutional law* 629.

127 Some of these barriers include: poverty, geographical location of adjudication institutions, physical inaccessibility of adjudication institutions, lack of knowledge due to illiteracy, inappropriate dispute resolution institutions and mechanisms, procedural hurdles and delay in the resolution of dispute. For details see Nyenti 2013 *De Jure* 913-915.

128 Devenish *A commentary* 488.

and other tribunals.<sup>129</sup> Although a case has been made in favour of the state that limited state resources can be a plausible reason to discard such an interpretation and application of section 34,<sup>130</sup> it was held in the context of *Magidiwana and Another v President of the Republic of South Africa and Others*<sup>131</sup> that such a duty could arise. The case concerned an application by the applicants, consisting of approximately 300 survivors of a shooting incident on 16 August 2012 in Marikana, North West Province, for state-funded legal representation in proceedings before the respondent, the Commission of Inquiry. The court held *inter alia* that the applicants' claim to state-funded legal representation before the commission should not be considered in the abstract. Instead, it should be considered in its proper context, because the state-appointed commission was tasked to investigate, among other matters, the conduct of the applicants, who admittedly could not afford to fund their own legal representation, and the state had marshalled a formidable team of experienced legal representatives.<sup>132</sup> Concurring with the judgment in the *Magidiwana* case, it is apposite to argue in the context of this study that the government has a duty to provide financial assistance and other measures in the form of legal representation to enable local communities and affected stakeholders to be able to access courts and seek judicial redress for the violation of their rights and interests during possible FAI activities.

Section 38 of the Constitution complements the provision of access to court with a *locus standi* provision. *Locus standi* is used to facilitate and reinforce the right of access to justice as well as the protection of the rights in the Bill of Rights. The Constitution provides:

Anyone listed in this section has the right to approach a competent court, alleging that a right in the Bill of Rights has been infringed or threatened, and the court may grant

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129 De Vos and Freeman *South African constitutional law* 632; Currie and De Waal *The Bill of Rights handbook* 714.

130 De Vos and Freeman *South African constitutional law* 632; Currie and De Waal *The Bill of Rights handbook* 714.

131 37904/2013 ZAGPPHC 292.

132 At para 65.

appropriate relief, including a declaration of rights. The persons who may approach a court are-

- (a) anyone acting in their own interest;
- (b) anyone acting on behalf of another person who cannot act in their own name;
- (c) anyone acting as a member of, or in the interest of, a group or class of persons;
- (d) anyone acting in the public interest; and
- (e) an association acting in the interest of its members.<sup>133</sup>

It is clear from the above that section 38 of the Constitution broadens the scope for *locus standi* as opposed to the pre-constitutional dispensation where in terms of the common law<sup>134</sup> only a person who could prove an interest in the matter had *locus standi* to bring legal proceedings to a court.<sup>135</sup> It has been suggested that section 38 allows for standing not only for class actions, but also provides for standing to act on behalf of others, including an unidentifiable class or group of persons.<sup>136</sup> It also means that a person does not have to prove that the right of a particular person is infringed. All that is required is to show that there was a breach or infringement or a threat of a breach or infringement on a right in the Bill of Rights. Possibly, all that is expected from local communities and affected stakeholders is to prove an infringement or the threat of an infringement on a right(s) in the Bill of Rights in the FAI context. In *Minister of Health and Welfare v Woodcarb*,<sup>137</sup> the minister sought an interdict on the basis that certain provisions of the Atmospheric Pollution Prevention Act 45 of 1965 had been breached. The court was of the opinion that because the minister was responsible for the proper administration and enforcement of the Act, he had the necessary standing to

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133 S 38 of the Constitution.

134 However, it must be noted that the common law approach still applies where the case does not concern infringement on a right in the Bill of Rights. This is because the court has observed that effective environmental protection entails the common law provision of *locus standi* in accordance with the broader concept of *locus standi* provided for in the Constitution. See Feris "Environmental rights" 149.

135 Feris "Environmental rights" 147; Kotzé and Du Plessis 2014 *VRU* 464.

136 Feris "Environmental rights" 148; Kotzé and Du Plessis 2014 *VRU* 464.

137 1996 (3) SA 155.

apply for the interdict. Also, *Ferreira v Levin*<sup>138</sup> amplified the liberalized position of section 38 of the Constitution. In that case the CC was called upon to determine whether the applicant had standing to challenge the validity of section 417(2)(b) of the *Companies Act* 61 of 1973 on the ground that it was in conflict with section 25(3) of the *Interim Constitution of the Republic of South Africa, Act* 200 of 1993, that provided for the right to a fair trial. The court held that the constitutional provision on standing does not require that a person acting in his or her own interest has to be the one whose constitutional rights had been infringed on or threatened.<sup>139</sup> Similarly, in *Vryenhoek v Powell NO*,<sup>140</sup> the court underscored the rationale for broadening *locus standi* and stated that:

It is my view that we should rather adopt a broad approach to standing. This would be consistent to the mandate given to this Court to uphold the Constitution and would serve to ensure that constitutional rights enjoy the full measure of the protection to which they are entitled. Such an approach would also be consistent in my view with the provisions of section 7(4) of the Constitution.<sup>141</sup>

This means that the new constitutional category of standing evidently serves as an appropriate and effective measure to properly enforce the rights in the Bill of Rights.<sup>142</sup> Furthermore, the provision of section 38 applies not only to private individuals or an association; the state may also rely on the provision to bring an action on behalf of people (in the public interest)<sup>143</sup> whose rights are infringed upon, as in the case of *Minister of Health and Welfare v Woodcarb (Pty) Ltd and Another*.<sup>144</sup> In the FAI context, section 38 of the Constitution could be particularly relevant in empowering and enabling local communities and affected stakeholders to approach a competent court in order to allege violation of their rights-based interests (both substantive and procedural) protected in the Bill of Rights.

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138 1996 (1) SA 984.

139 At para 168.

140 1995 (2) SA 813.

141 At para 165.

142 Currie and De Waal *The Bill of Rights handbook* 80.

143 Ss 38(a);(e); (d) of the Constitution.

144 1996 (3) SA 155.

#### 7.4.3.2 NEMA

It has been argued that the justiciability of the section 24 constitutional environmental right or any other right contained in the Bill of Rights largely depends on whether or not the person who wants to enforce such a right has standing.<sup>145</sup> Section 32 of NEMA explicitly guarantees access to courts in environmental matters and it is argued that the Act seems to have broadened the notion of standing beyond section 38 of the Constitution.<sup>146</sup> Section 32 of NEMA provides that:

(1) Any person or group of persons may seek appropriate relief in respect of any breach or threatened breach of any provision of this Act, including a principle in Chapter 1, or of any provision of a specific environmental management Act, or any other statutory provision concerned with the protection of the environment or the use of natural resources-

(a) in that person's or group of person's own interest;

(b) in the interests of, or on behalf of, a person who is, for practical reasons, unable to institute such proceedings;

(c) in the interest of or on behalf of a group or class of persons whose interests are affected;

(d) in the public interests; and

(e) in the interest of protecting the environment.

What is immediately discernible in the above provision is that section 32 of NEMA can be used both by individuals and the public - in this case the community - to bring a suit against a public or private entity in order to obtain appropriate relief, as was the case in *Hichange Investment (Pty) Ltd v Cape Produce Co (Pty) Ltd t/a Pelts Products*.<sup>147</sup> In the context of this study, local communities and affected stakeholders of FAI land deals and activities are empowered by NEMA to bring an action against a FAI investor (whether

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145 Feris "Environmental rights" 146 citing Loots "Standing, ripeness and mootness" 7-1 in Woolman *et al Constitutional law of South Africa*.

146 Kidd *Environmental law* 286; Feris "Environmental rights" 150.

147 2004 (2) SA 393 E.



the state or a private entity) in the event that a FAI activity negatively impacts on people's environmental and other related rights-based interests.

NEMA further requires that a court does not have to award costs against a person or group of persons who act in the public interest or in the interest of protecting the environment.<sup>148</sup> Instead, a court is obliged to award costs to the legal representative of the person or group of persons conducting the proceedings,<sup>149</sup> or to order the person against whom the relief is granted to pay to the person or group of persons concerned the reasonable costs incurred in the investigation of the matter and its preparation for the proceedings.<sup>150</sup> This suggests three things. First, because broadened *locus standi* aims to enhance environmental protection, it is accordingly appropriate for the concerned individuals to have standing in order to be able to act in their interests or in the public interest. Second, it is argued that a broad approach and implementation to standing serves to ensure that the environment will enjoy the full protection which the environmental right in section 24 of the Constitution sets out to provide.<sup>151</sup> Presumably, section 32 of NEMA could be invoked in the FAI context to enable local communities and affected stakeholders to approach a competent court and bring an action against the state or private entity for the violation of their rights-based interests. Third, and most obviously, this provision enables indigent poor people who are usually most affected by FAI land deals to be able to approach a court for judicial remedies.

Although NEMA seems to provide for a wider scope for standing in relation to environmental cases, there are different interpretations and applications of the constitutional right to standing and section 32 of the NEMA. This is because in some instances courts have disregarded section 32 (1)(e) of NEMA in preference for section 38(e) of the Constitution, as was the case in *Merebank Environmental Action Committee*

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148 S 32(2) of the NEMA.

149 S 32(3)(a) of the NEMA; *Hangklip Environmental Action Group v MEC for Agriculture, Environmental Affairs and Development Planning, Western Cape* 2007(6) SA 65 at para 87A.

150 S 32(3)(b) of the NEMA.

151 Feris "Environmental rights" 130.

*v Executive Member of KwaZulu-Natal Council for Agriculture and Environmental Affairs.*<sup>152</sup>

#### 7.4.3.3 LAA

A national legal aid scheme supported by LAA is aimed at assisting indigent citizens to have access to justice even when they are unable to pay for it. Similarly, many universities' legal aid clinics and NGOs, including the Legal Resource Centre, provide legal services to local communities.<sup>153</sup>

In order to facilitate the right to access to justice, the LAA established Legal Aid South Africa, which is charged with the duty of ensuring access to justice and the realisation of the right of a person to have legal representation and to render or make legal aid or advice available to the public.<sup>154</sup> To this end, Legal Aid South Africa is required to serve the public impartially and independently and must perform its duties in good faith, without fear, favour, bias or prejudice.<sup>155</sup> In the context of this study, this implies that local communities and affected stakeholders could rely on Legal Aid South Africa to ensure their right of access to justice upon violation of their rights-based interests during FAI activities. However, although the Act may seem to apply to all court proceedings, section 22 singles out criminal proceedings and states that a court in criminal matters may direct a person to have legal representation and therefore access to court if certain conditions are met.<sup>156</sup> From the above, it might be possible to deduce that Legal Aid South Africa does not cover all sorts of claims that may arise from FAI and related activities, and restricting its application only to criminal matters may be

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<sup>152</sup> Unreported case no 2691/01.

<sup>153</sup> For a detailed understanding of the role of university law clinics in promoting access to justice and public interest litigations, see Mubangizi and Mcquoid-Mason 2013 *JJS* 47-66; De Klerk 2005 *SALJ* 929-950.

<sup>154</sup> See the Preamble and s 3 (a)-(b) of the LAA.

<sup>155</sup> S 5 of LAA.

<sup>156</sup> Such conditions related inter alia to the personal circumstances of the person concerned; the nature and gravity of the charge on which the person is to be tried or of which he/she has been convicted; whether any other legal representation at state expense is available or has been provided; and any other factor which in the opinion of the court should be taken into account. See s 22 (1)(a)(i)-(iv).

problematic in an age where large-scale investment projects, including FAI, have the potential to significantly undermine people's rights and interests.

## **7.5 Critical assessment of South Africa's relevant procedural rights framework**

As in the chapters above that focused on Cameroon and Uganda, this section critically assesses and evaluates South Africa's procedural framework of a RBA against the distilled generic characteristics and minimum requirements of the procedural RBA in the context of good FAI governance.<sup>157</sup> The aim of the critical assessment is twofold. First, it serves to determine whether the South African procedural framework of the RBA conforms to the generic characteristics and minimum requirements of the RBA of good FAI governance, to the extent that it accords adequate protection to local communities rights and interests during FAI practices in the country. Second, it serves to act as a foundation to later make recommendations for reforms in Chapter 8, in instances where the South African framework is not in direct conformance with the generic characteristics and minimum requirements.

### *7.5.1 The right to access to information*

The right to access to information conforms to almost all the characteristics and minimum requirements of a RBA in terms of good FAI governance.<sup>158</sup>

In South Africa, section 1 of the Constitution requires the state to uphold and ensure a democratic government based on accountability, responsiveness and openness in the governance of public affairs.<sup>159</sup> The right to access to information espoused in the Constitution enables people to assert protection of their fundamental human rights and

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<sup>157</sup> See Table 2 in Chapter 4 in 4.5 for details.

<sup>158</sup> See Table 2 in Chapter 4 in 4.5 for details.

<sup>159</sup> See s 1(d) of the Constitution; Du Plessis "Access to information" 97; De Vos and Freeman *South African constitutional law* 620; Currie and De Waal *The Bill of Rights handbook* 692

to enable and oblige the state to provide such information. This properly reflects the broad characteristic of access to information developed in Chapter 4 of this thesis.<sup>160</sup>

PAIA was specifically enacted to give effect to the constitutional right to access to information and the Act also ensures and promotes good, participative, inclusive, and transparent governance through fostering respect for and the promotion of people's right to gain accurate, accessible and timeous access to information.<sup>161</sup> The right to access to information applies to both public and private bodies in relation to their activities that may significantly affect people's rights and interests, except where statutory limitations exists. Also the public has a right to judicial remedy in instances where the public's request for information is refused. Where explicit provision is being made for the right in EIA procedures, people's right to access to information is also respected which enhances protection of environmental and other related rights. This much is clear from the discussion in section 7.4.1 above.

### *7.5.2 Public participation*

Participatory governance is envisioned in the South African procedural framework as a vital mechanism necessary to reinforce and enhance proper public administration as well as the underlying values and principles of the South African constitutional state.<sup>162</sup> Through the Constitution, the state is committed to promote and ensure a culture of inclusive and participatory governance in the governance of public affairs generally so as to enhance transparency and accountability.<sup>163</sup> This commitment reflects the broad characteristic of public participation developed in Chapter 4 of this thesis.<sup>164</sup>

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160 See Table 2 in Chapter 4 in 4.5 for details.

161 S 9(e)(i) of PAIA; Kotzé and Du Plessis 2014 *VRU* 463.

162 These values and principles include constitutionalism, respect for the rule of law, democracy and accountability, the separation of powers, and checks and balances. It has been argued that these values and principles influence the interpretation and application of the constitutional rights. See Currie and De Waal *The Bill of Rights handbook* 7.

163 See Chapter 10 of the Constitution.

164 See Table 2 in Chapter 4 in 4.5 for details.

Participatory rights which is often facilitated by people's access to information, is conducted through clearly defined rules, processes and procedures such as those providing for EIA and the views and opinions of people are often taken into account with the aim of ensuring protection of their rights and interests which may be negatively affected by development activities such as FAI.

Despite this, the South African procedural framework and specifically NEMA do not provide clarity on the meaning and scope of public participation as used in the South African context. The lack of clarity and limited provisions on education and awareness raising on people's participatory rights could be a constraining factor against effective public participation in decision-making processes.

### *7.5.3 The right to access to justice*

There exists a right to access to justice in South Africa and the right is supported by broad *locus standi* provisions contained in constitutional and statutory provisions, which enables interested and affected parties, including NGOs as in Cameroon and Uganda, to approach a court and seek judicial redress on behalf of others. This dovetail with the broad characteristic of access to justice developed in Chapter 4 of this thesis.<sup>165</sup>

Specifically, there is an increasing degree of education and awareness on the right to access to justice in the country and how assistance could be provided to people. Also, in South Africa the right to access to justice is considered to be fair and impartial and is effective and efficient and based on respect of the rule of law.<sup>166</sup> The right to access to justice is perceived to be a necessary pre-requisite for the enjoyment of other constitutionally entrenched rights and in most cases has provided people with the necessary (adequate) protection for their rights and interests.<sup>167</sup>

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<sup>165</sup> See Table 2 in Chapter 4 in 4.5 for details.

<sup>166</sup> See *Lesapo v North West Agricultural Bank and Another* 1999 (ZACC) at para 16-17; De Vos and Freeman *South African constitutional law* 628; Currie and De Waal *The Bill of Rights handbook* 711.

<sup>167</sup> Brickhill and Friedman "Access to justice" 59; Kotzé and Du Plessis 2014 *VRU* 464.

Although this is all commendable because it conforms to the generic characteristics and minimum requirements of access to justice developed for this thesis,<sup>168</sup> it is important to emphasise that litigation in South Africa is expensive and financial constraints act as a major barrier against people's effective access to courts.<sup>169</sup> Nonetheless, this concern is partly addressed by the presence of legal aid services in the country and in tandem with university law clinics and NGOs; they assist local indigents who cannot gain access to courts to claim judicial redress for their violated rights.

## **7.6 Chapter summary**

Contractual leases have been referred to in this chapter as the chief instrument by which FAI land deals are concluded in South Africa. It was noted that the subtle form of FAI activities including *inter alia*, the American Cape Pine deal was regulated through a contractual lease. It was also noted that because the PDALF makes provision for the procedural aspects of access to information and access to justice, the passing of the PDALF into law could provide proper measures and approaches to effectively regulate FAI land deals and activities to the extent that local communities' rights and interests could be respected, protected promoted and fulfilled.

The chapter further provided a description of the South African procedural law framework of the RBA and noted that the framework consists of the right to access to information, public participation, and the right to access to justice. It is observed that the South African procedural legal RBA framework provides for a comprehensive RBA regime which is informed by constitutional and legislative provisions. These constitutional and statutory provisions collectively entrench principles which are playing an increasingly significant role to respect, protect, promote and fulfil protection of human rights and people's interests generally, and in the context of development activities, also FAI. It also emerged from the discussion that respect for and the enforcement of these rights generally and in the FAI context could strengthen the

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168 See Table 2 in Chapter 4 in 4.5 for details.

169 This is a similar situation in Cameroon and Uganda. See Chapters 5 and 6 of this thesis for details.

democratic values and practices provided for in the Constitution. Kotzé and Du Plessis contend in this regard that any contextual analysis of the South African legal regime would undoubtedly score exceptionally high especially in view of the nature of and broad scope of application of the procedural RBA, which has been instrumental in enhancing respect for people's rights.<sup>170</sup> It was also noted that the South African procedural legal RBA framework conforms generally to the international benchmarks for FAI governance and good FAI governance.

The chapter further noted that there are some *lacunae* in the South African legal regime, such as those relating to public participation and that the existence of these gaps may militate against the state's commitment to respect, protect, promote and fulfil human rights and people's interests generally and in development contexts such as FAI more specifically. Accordingly, there is a need to address these gaps, given the possible future occurrence in the country of FAI activities that could jeopardise people's rights-based entitlements.

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170 Kotzé and Du Plessis 2014 *VRU* 479.

## CHAPTER 8

### CONCLUSION AND RECOMMENDATIONS

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#### 8.1 General background

FAI activities are instrumental in facilitating and promoting economic growth and development, increasing a country's GDP, and helping to facilitate the attainment of the Millennium Development Goals and the SDGs notably those of poverty eradication, achieving food security, and promoting sustainable agriculture.<sup>1</sup> Thus the desire of African governments to solicit and to promote FAI should not necessarily be perceived as condemnable. Instead, legislative and governance efforts should be reinforced to ensure that FAI regulation does not negatively impact on people's rights and interests. In this regard, it was argued in Chapter 2 that the main problem with FAI lies with what may well be regulatory deficiencies, including the belief that the regulation of FAI processes is frequently perceived not to be transparent and to be exclusionary. The implementation of FAI activities in host countries, including the focal countries of this study, has increasingly resulted in significant infringements upon local communities' rights and interests. Various examples throughout this study have demonstrated this. In this regard, this thesis has argued that there is a need to regulate FAI in a way that will ensure and provide a win-win scenario (that takes into account the twins aspects of the interests of foreign investors as well as the desire of government to promote economic growth and development, and the protection of the rights and interests of local communities) with a view to promoting and enhancing responsible FAI. As established in this study, this approach will be feasible only if FAI is regulated *inter alia* through a RBA to FAI governance in the guise of "good FAI governance" to act as a possible check on the adverse rights impacts of FAI activities. This reflects the principal objective of this study, which was to investigate and ascertain how the procedural aspects of a RBA

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1 Goal 2 of the SDGs.



could be used to provide adequate protection to local communities' rights and interests during FAI practices in Cameroon, Uganda and South Africa, as measured against the international, regional and sub-regional legal frameworks. "Adequate protection" as used in this context refers to appropriate, proper and effective protection of local communities' rights and interests as provided in human rights legal instruments. To this end, the central research question employed in this study was:

*How can the procedural aspects of a rights-based approach be used to provide adequate protection to local communities during FAI practices in Cameroon, Uganda and South Africa?*

In answering this question, the following objectives were set out to be achieved:

- (1) Within the context of land grabbing, to discuss FAI, its impacts, extent and meaning generally and in Cameroon, Uganda and South Africa specifically;
- (2) To analyse the concepts of governance, good governance and RBA in order to build a theoretical understanding of these for the purpose of good FAI governance;
- (3) To investigate the procedural aspects of the RBA in international, regional and sub-regional conventions and soft law instruments that may contribute to the formulation of an adequate framework for good FAI governance;
- (4) To analyse the regulation of FAI land deals in Cameroon, Uganda and South Africa;
- (5) To investigate and critically assess the procedural aspects of a RBA to FAI governance frameworks in Cameroon, Uganda and South Africa; and
- (6) To make comprehensive proposals regarding the contribution of the procedural aspects of a RBA to address FAI in the three national jurisdictions as measured against international, regional and sub-regional law.

Against the above background, the research consisted of 8 chapters and was structured as follows: Chapter 2 focused on a discussion of land grabbing, FAI, its meaning and impacts; Chapter 3 provided the theoretical foundations of the study; Chapter 4

investigated the international, regional and sub-regional procedural aspects of the RBA legal frameworks; Chapters 5, 6 and 7 examined the regulation and manifestation of FAI land deals in Cameroon, Uganda and South Africa, including a detailed analysis of the RBA legal frameworks in these jurisdictions with a view to evaluating whether a RBA can respond to protect the rights of local communities and stakeholders that are affected by FAI.

## **8.2 Main findings and critical assessment**

### *8.2.1 Contextualising FAI and land grabbing*

In Chapter 2 it was established that the outbreak of three major crises – the financial, energy and food crises in the early 2000's- had prompted the current wave of land grabbing and FAI activities to prosper in developing countries and particularly in sub-Saharan Africa. An increase in FAI was facilitated by the mounting perception by both foreign investors and the governments of host countries, (including the focal countries of this study) that land in Africa is vacant, fertile, unoccupied, empty, marginal, unproductive and wasted, and that it is therefore readily available for FAI purposes. Land in Africa was previously used and occupied under customary law, and it was shown that the protection of local communities' customary rights to property is problematic when development activities such as FAI occur, mainly because customary property rights are usually not registered and are thus not adequately protected.<sup>2</sup> This has prompted the governments of Cameroon and Uganda to term these lands as vacant, unoccupied or underutilised in order to be able to lease the land to foreign investors to boost economic growth and development. Chapter 2 then proceeded to provide meaning to and a better understanding of land grabbing and FAI.

It was established after consideration of the many definitions of land grabbing that the term meant the acquisition of vast portions of land, which often occurs through non-transparent contracts involving purchase or lease agreements. Such contracts are

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<sup>2</sup> See Chapter 2, section 2.3 of this thesis for details.

usually concluded between a foreign investor, which can be a private company, a foreign government or a financial institution, and the government of a developing country,<sup>3</sup> and is usually directed towards the eventual production of food crops or biofuel which are exported to the investor's home country. This practice often leads to the usurpation of the rights of ownership and use of land of local communities without proper consultation or protection of their rights and interests. It is this usurpation and infringement of rights (both of ownership, use and related environmental and socio-economic rights) that is termed land grabbing.<sup>4</sup>

It was argued that FAI is a recent development and that it could be a form of land grabbing. FAI was also considered to be a contractual investment in agriculture between a foreign investor and the government of a host country directed towards the production of food crops and biofuel for export to the investor's home country. FAI was shown to encompass an array of actors including multinational companies, sovereign wealth funds, private equity funds, foreign governments and international financial institutions; a situation that significantly complicates an assessment of the prevention of impacts on human rights leading from FAI land deals and which likewise raises multifarious challenges with respect to the regulation of such impacts. To this end, it was specifically argued that FAI land deals are often not transparent or inclusive, which raises serious concerns with regard to the participatory rights of local communities, compatibility with property rights, environmental protection and the protection of the other interests of local communities. This notwithstanding, it was submitted that FAI should not be perceived to be something bad or wholly problematic; it becomes a problem only when not properly regulated to provide protection of local communities' land-related rights and interests.<sup>5</sup> It was also established that FAI has adverse impacts on the rights and interest of people, ranging from environmental to social and economic

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3 The investor need not necessarily be a private entity; it could as well be a public entity, a state owned company, and international financial institution or a foreign country.

4 See Chapter 2, section 2.3 of this thesis for details.

5 See Chapter 2, section 2.6 of this thesis for details.

impacts. These cumulatively urge a need to regulate FAI by means of a procedural RBA legal framework that could safeguard people's rights and interests.

### *8.2.2 Theoretical foundations*

In Chapter 3 a detailed description and understanding of the theoretical foundational collection of core concepts underpinning the study, such as governance, the notion of a RBA, RBA to FAI, good governance, good FAI governance and procedural rights in relation to land interests were provided. It is within and against the general framework provided by these core concepts that this study is situated. Governance was considered to be a decision-making process, including the mechanisms, institutions and processes that are normatively based on rules, principles, and standards through which authority in a country is exercised in relation to the conduct of public and private affairs. It principally involves the making of decisions with respect to developmental issues in the public and private domain. Governance specifically entails the involvement of both public and private actors in decision-making processes that must be transparent, accountable and efficient to serve the general public interests.<sup>6</sup>

It was argued that the state of governance in a country reflects the level of legal, institutional and administrative benefits a government is committed to provide to its citizens. It was further submitted that while a strong regime of governance provides citizens with powerful protection measures of their fundamental rights, a weak regime of governance acts as a possible platform for the violation of peoples' rights insofar as it provides little or no protection. To this end, it was argued that because foreign agricultural investors often target host countries with weak governance systems and particularly weak land governance systems, there is a need for these countries to reform their governance set-up, including issues pertaining to land governance. Reforming the land governance system could serve to ensure transparency and

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6 See Chapter 3 of the thesis for details.

accountability in FAI land deals. The land governance system should be designed to contribute towards the enforcement and protection of local communities' land rights.

It was argued that good governance denotes a specific approach to governance or a quality that governance must have, which enables the realisation of human rights and interests. Procedural rights are necessary and important elements of good governance and are included as important considerations in the good governance paradigm. "Good governance" is a term describing the best possible process of making and implementing decisions giving rise to the best possible outcomes of decisions, and it notably includes the observance and protection of human rights.<sup>7</sup>

It was further argued that good governance is concerned with improving the quality and impact of governance, where quality and impact are measured against indicators such as the rule of law, development and democracy, political stability, anti-corruption measures, accountability and transparency, and the presence of proper administrative procedures.<sup>8</sup> It was submitted that the ideal of good governance should serve as a continuing guiding principle for donor agencies and international financial institutions aimed at facilitating and promoting sustainable economic development. As a counter-narrative, the concept of good governance in developing countries has been perceived to be an objective of and a condition for seeking and obtaining development assistance from developed countries. It was further established that the current poor economic growth and development trajectories in developing countries, particularly in Africa, are rooted in weak governance. On this basis it was indicated that in order for African countries to achieve rapid economic growth and development that is sustainable, there is a need to address the prevailing factors that are inhibiting good governance, namely: human rights violations; non-respect for the rule of law; the lack of transparency and accountability by public officials; non-participation and involvement of the public in decision-making processes; the limitation of access to public and private information;

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7 See Chapter 3, section 3.2.2 of this thesis for details.

8 See Chapter 3 for details.

reliance on personal networks for survival rather than on holding the state accountable; personalised politics and patronage; illegitimate leadership; and excessive control of information.<sup>9</sup> Accordingly, it was argued that good FAI governance could be facilitated through a procedural RBA.

FAI governance was understood to be the setting of rules, regulations, laws and standards to regulate FAI activities.<sup>10</sup> FAI governance was defined as transparent and accountable processes and institutions in both formal and informal institutions that govern large-scale agricultural land investment which protect the rights and interests of local communities and affected stakeholders.<sup>11</sup> It was established that FAI governance encompasses mechanisms, processes and institutions that should allow local communities to articulate their interests and exercise their rights in order to mediate their differences. The central objective of FAI governance is to promote and ensure transparency and accountability in the FAI context. Governance requires an enabling environment where information is available and transparent and government authorities are accountable. Such an environment must also include clear procedures guaranteeing people's participation in decision-making processes. This indicates that FAI governance must promote and ensure transparency and accountability in the regulation of FAI land deals. It was argued that there is a need to regulate FAI activities preferably through FAI governance which would be transparent, accountable and inclusive and designed in such a way as to respect and protect local communities' rights and interests.

It was also established that the concept of good FAI governance emerged from the construct of the concepts of governance and good governance and that it denotes the preferred manner for regulating FAI land deals while respecting and protecting the rights and interests of local communities.<sup>12</sup> It was shown that the notions of transparency, accountability, and participation are aspects of these three concepts. It

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9 De la Harpe *et al* 2008 *PELJ* 3- 4.

10 See Chapters 1 and 3 sections 1.3 and 3.2.3 respectively of this thesis for details.

11 See Chapter 3, section 3.2.3 of this thesis for details.

12 See Chapter 3, section 3.2.4 of this thesis for details.

was argued that because good FAI governance serves to promote and ensure transparency and accountability in FAI land deals, good FAI governance could be useful and important to act as a counter measure to the current *status quo* of FAI land deals that is characterised as being non-transparent and exclusionary. To this end, it emerges that the underlying aim of good FAI governance is to promote a culture of transparency and accountability in the management of public affairs, and achieving this aim requires the interplay of an array of actors in processes, mechanisms and institutions, and adherence to clearly defined rules/laws, norms, policies, standards and principles relating to FAI land deals.

Given that transparency and accountability are two of the core elements of good governance, they are equally important to form the basis of and to inform good FAI governance. It was argued that the lack of transparency in FAI land deals is increasingly problematic as it might lead to the exclusion of interested and affected parties; especially as information relating to such deals is not always disclosed to the public. In these instances, people are not part of the decision-making processes that determine the future use of their land.<sup>13</sup> To address this problem and to ensure respect for and protection of local communities' rights and interests by means of transparent and accountable FAI land deals, it was established that FAI has to be regulated through a framework of good FAI governance. Good FAI governance based on transparent and accountable FAI land deals would require that foreign investors and governments of host countries to FAI be held accountable for their actions, and that local communities are aware of the potential and actual human rights-related impacts that might result from FAI. Good FAI governance would also require that FAI land deals are negotiated with absolute openness to include the full and active involvement and participation of local communities and affected stakeholders and to enable them to make informed decisions in matters that have a direct bearing on the protection of their rights and interests. This could entail, for example, that the processes of land acquisition and

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13 Cuffaro and Hallam "Land grabbing in developing countries" 5.

other resources are made transparent in order to ensure the accountability of all stakeholders involved within a proper legal, regulatory and business environment.<sup>14</sup> It will further require that the capacity of public institutions handling agricultural investment be properly developed to ensure that information on FAI land deals and activities are disseminated to local communities and affected stakeholders. It was argued that the contemplation of a regime of good FAI governance serves to illustrate the extent to which FAI activities could be better regulated in order to enhance respect for and to promote of constitutional values generally and more specifically respect for human rights in the FAI context.<sup>15</sup>

Human rights are broadly reflective of inherent and inalienable attributes of a human person. This is because human rights are considered to be the cornerstone of human dignity and they represent juridical claims in instances where they are infringed. A RBA is evident at the international, regional, sub-regional and domestic juridical levels, and it bestows a responsibility on states to respect, protect and fulfil people's rights generally including in the context of development activities such as FAI. It was argued that a RBA is also about empowering people to know their rights and to claim protection in cases of their violation. The fact that a RBA ensures that human rights standards and principles are incorporated into policy making and governance practices, while acting as a minimum baseline for these, suggests that a RBA is a new approach to thinking about governance, and if adopted might give rise to the protection of human rights in many decisions pertaining to socio-economic development.

A RBA is also seen as a means to reinforce the ability, capacity and responsibility of a state to fulfil its international human rights obligations. It was established that this approach has the potential to facilitate and ensure adherence to the democratic principles of transparency and accountability underpinning governance, while respecting people's rights and freedoms. For this reason, it was argued from a governance

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14 Deininger *et al* *Rising global interests in farmland* xxvii; Verhoog "The politics of land deals" 20.

15 See Chapter 3, section 3.2.4 of this thesis for details.



perspective that the most important contribution of a RBA is the emphasis it places on fostering accountability not only among policymakers, but also of other actors including those in the private sector whose actions may have a detrimental impact on people's rights and interests.

Thus, because the realisation and protection of human rights norms often encompass the goal of all development efforts, and because governance is related to and facilitates development in a broad sense, it was argued that there is a need to mainstream human rights norms and standards into the governance paradigm. To this end, it was established that insofar as a RBA is a mainstreaming process that links human rights to governance, it helps to infuse the norms, standards and principles of human rights into the plans, policies and processes of governance. This is also potentially the case for, and highlights the link between, procedural rights and FAI governance. It was argued that the integration of these norms, standards and processes into governance could help to provide a platform upon which people's rights and interests could be better protected and respected. This is predicated on the belief that a RBA perceives human rights as fundamental rights with universal legal guarantees that protect individuals and groups against actions and omissions of states, private actors and development agencies that interfere with people's fundamental freedoms.<sup>16</sup>

Human rights was categorised into two classes - procedural and substantive rights. While aspects of procedural rights include the right of access to information, public participation, the right to administrative justice, the right of access to justice, and *locus standi*, aspects of substantive rights include the right to life, the right to food, the right to health, environmental rights and the right to property, among others. Notwithstanding this categorisation, it was established that implementing the RBA often requires a determination of whether to pursue a procedural rights approach or a substantive rights approach or both.<sup>17</sup> In the environmental context, for example, while

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<sup>16</sup> See Chapter 3, section 3.3.4 of this thesis for details.

<sup>17</sup> See Chapter 3 of this thesis for details.

substantive rights entitle the holder of a right to a specific quality of environment, procedural rights entitle the holder of a right to remedial and protective guarantees such as appropriate access to information concerning the environment, public participation in decision-making processes regarding the environment, and access to justice relating to environmental matters.<sup>18</sup> It was argued that procedural rights are instrumental in the attainment and realisation of substantive rights.

Procedural rights were defined for the purpose of this work as the legal rights of a constitutional and/or statutory nature that relate principally to realising substantive rights-based interests by supporting and ensuring the implementation of and compliance with substantive rights in a development context.<sup>19</sup> Thus, without respect for and the promotion of procedural rights, the full realisation of substantive rights would be unattainable.

Following from the definition of the RBA used in this thesis, it was found that a RBA to FAI governance denotes the responsibility of development actors, including states, to respect, protect and fulfil people's fundamental human rights that may be affected by large-scale FAI activities. It was argued that applying a RBA to FAI governance is expected to act as a catalyst to ensure and promote responsible FAI activities designed to enhance and reinforce respect for and the protection of vulnerable local communities' rights and interests, which are often violated during FAI land deals. This is predicated on the belief that the RBA to FAI generally, and FAI governance specifically, could create awareness that the protection of environmental quality is a necessary and useful prerequisite for the enjoyment of a host of human rights in a procedural and substantive sense; that respect and promotion of a RBA to FAI governance could lead to better FAI regulation; that a RBA to FAI governance has the potential to offer protection to people's property right if one considers that FAI activities have the

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18 Turner *A substantive environmental right* 6-7.

19 Alexander 1998 LP 23; Ebbesson "The notion of public participation in international environmental law 70-75; Birnie and Boyle *International law and the environment* 261; Shelton "A rights-based approach to conservation" 13.

potential to considerably impact on local communities' rights to tenure; and that applying a RBA to FAI governance could ensure that local communities at least have access to employment in FAI land deals, which would serve to actually promote socio-economic development.

It was also noted that a RBA to FAI governance generally frames the impact of FAI activities as violations of people's rights. In this regard, it was submitted that because the RBA is essentially about rules and standards setting, a RBA to FAI governance could play an increasingly important role in setting rules, standards, processes and the manner in which FAI land deals could be regulated in a more responsible and sustainable manner. Through these processes and standards, it was argued that a RBA to FAI governance could help repudiate the impermissible impacts of FAI activities and concomitantly help address distributive concerns, especially when viewed from the perspective of a state's human rights obligations. A RBA to FAI governance would emphasise the need to protect human rights as well as to achieve certain outcomes, such as using procedural human rights to protect substantive interests during FAI regulation. A RBA also highlights the many rights aspects of projects, programmes, and activities related to FAI with a view to addressing these, ensuring sustainable development, and protecting the rights and interests of those likely to be affected by FAI.<sup>20</sup> To this end, it was argued that FAI governance and human rights are deeply intertwined conceptually and in practice. This is because human rights do not only provide a set of principles to guide the work of governments and other political and social actors, but also provide a set of abstract (but objective) performance standards against which these actors could be held accountable with respect to the management of public affairs in a country. Also, it was submitted that human rights principles inform the content of FAI governance efforts, in part as they often inform the development of legislative frameworks, policies, and programmes designed to regulate socio-economic development projects with the ultimate objective of protecting people's rights and

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20 See Chapter 3, sections 3.3.1.1 and 3.3.4 of this thesis for details.

interests. This could be interpreted to mean that without a system of good FAI governance that incorporates and is based on a RBA, people's rights and interests cannot be properly respected, protected, promoted and fulfilled in the context of FAI activities.<sup>21</sup>

### *8.2.3 The procedural framework of a RBA in international, regional and sub-regional instruments*

In Chapter 4 a detailed exposition of the procedural aspects of the international, regional and sub-regional RBA framework was provided and it was noted that this consists of three essential elements: the right to access to information, public participation, and the right to access to justice. While provisions for the procedural aspects of the RAB to FAI governance are enshrined in international human rights soft instruments and code of conducts (for example, PRAI, Voluntary Guidelines, and the Framework and Guidelines among others), it was argued that these soft law instruments and code of conducts could only succeed to adequately protect people's rights and interests during FAI land deals if combined with enforceable international and national laws and regulations. Such combination could arguably augment and strengthen protection of people's rights and interests. It was observed that, while sufficient provisions of procedural rights aspects are provided in international human rights and environmental instruments, these aspects, on balance, lack sufficient provisions in the regional and sub-regional human rights and investment instruments.<sup>22</sup> This does not bode well for Africa since this anomaly raises serious concerns with regard to respecting, protecting and fulfilling people's rights and interests in the context of development, including FAI, where they are most susceptible to violation. For instance, at the regional level the AUCPCC does not contain explicit provisions on the right to access to information, which is an instrumental factor in facilitating and promoting transparency and accountability, which are important and central objectives

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21 See Chapter 3, section 3.3.4 of this thesis for details.

22 See Chapter 4 of this thesis for details.

of the AUCPCC. The fact that the AUCPCC appears to have factored in and transposed anti-corruption initiatives into the human rights paradigm suggests a need for the AUCPCC to promote respect for people's right to access to information, which is foundational to respecting and protecting other related human rights within the context of development generally and FAI specifically. For this reason, it is recommended that the Convention and other regional and sub-regional instruments be amended to include the provision to access to information in order to be consistent with its purpose of promoting respect for popular participation and democracy, including public participation in FAI land deals and activities.

Also, the African Union Protocol of the Court of Justice does not contain provisions on the right to access to justice. As it is a human rights instrument dealing with the protection of people's rights through judicial recourse, it would have been better if provision had been made for the right to access to justice that falls exclusively within the jurisdiction of the Protocol. In this regard, it is difficult to imagine how member states could be compelled to respect people's right to access to justice and how the right could be exercised at the African regional level, and especially in the context of development activities such as FAI. It is also suggested that the Protocol of the Court of Justice should be revised to include provisions for procedural safeguards of access to justice, which are necessary to ensure respect for and the protection of human rights generally and in the context of FAI. The Aarhus Convention, as noted in Chapter 4, was adopted to encourage respect for people's right of access to information, public participation and access to justice in the environmental context, and it was argued that respect for these rights outside the environmental realm to include investment activities such as FAI could be meaningful to ensure respect for and the protection of people's and interests generally, while concomitantly protecting the environment. Thus the Aarhus Convention appears to provide valuable measures for respecting and protecting people's human rights as far as it concerns activities caused by FAI that impacts the environment. While the Aarhus Convention is open for ratification to all countries over the world, including African countries, it might be preferable to develop and adopt an

African-specific instrument on the RBA to environmental law and governance that is specifically tailored to the unique needs, circumstances and sustainability conditions in Africa. Such an instrument could then provide a focused framework on access to information, public participation and access to justice to cater for the protection of human rights and interests generally and especially in the context of FAI in Africa. Such an African regional framework would be important at a time when FAI, as noted in Chapter 2 of this study, is increasingly gaining momentum and is not likely to decline in future. It was argued this seems to indicate that there will be a continuation of the violation of people's rights and interests as well, unless these are properly regulated by, among others, regional legal instruments pertaining to the RBA. At the same time, the SADC Protocol on Tribunals and the SADC Protocol on Finance and Investment contain no provision for access to justice. It is recommended that these protocols be amended to include provisions for judicial redress in the SADC region, to enable the citizens of host countries of FAI projects to seek and obtain judicial relief for violations of their fundamental rights and interests caused by FAI activities.

Furthermore, the OHADA code and the CEMAC investment code lack sufficient procedural measures on access to information, public participation and access to justice. This is worrying, as these are regional instruments that regulate investment activities, *inter alia*, including FAI. They fail to incorporate procedural measures and CSR initiatives for foreign companies to adhere to when implementing investment activities. In this regard it is suggested that the instruments be revised to include provisions for procedural safeguards and related CSR measures to be observed by foreign companies when undertaking investment activities in the region. The provision of procedural rights and CSR measures could enhance environmental protection and other related human rights interests within the context of FAI activities. By contrast, the SADC Protocol on Finance and the EADC Bill of Rights provides *inter alia* for people's right to access to information related to investment projects and the need to incorporate CSR measures in the regulation of investment activities, including FAI, in

the region. It is hoped that the CEMAC region could be informed by the SADC and EADC laws and accordingly revise its investment laws to encompass similar provisions.

In addition to some of the shortcomings identified in the international, regional and sub-regional procedural RBA frameworks, the study also distilled generic characteristics acting as minimum requirements of a RBA in terms of good FAI governance. It was argued that these generic characteristics should ideally constitute essential legal elements of good FAI governance and in principle be present in host countries of FAI activities in order to provide adequate protection of people's rights and interests. It was argued that the regulation of FAI land deals must consist of the following generic characteristics and minimum requirements:

Generally, the right to access to information must enable people to assert protection of their human rights, including environmental and tenure rights and uphold and encourage the democratic values of transparency and accountability in the governance of public affairs; access to information must be affordable and easily accessible to all, and cater for the need of vulnerable and minority groups, especially women who are active role players of FAI; states must enact national legislation to respect, protect and fulfil people's right to access to information; access to information must in principle not exclude too many categories of information, although some limitations are understandable; people must exercise their right to access to information against the state and private bodies; requested information must be timeously available; the right to access to information must be facilitated through mechanisms such as education and awareness raising, research and training; and people's right to access to information must be respected during EIA processes and procedures, in instances where this is explicitly provided for by law.

With respect to the right to public participation, generally speaking, states must ensure and encourage a culture of inclusive and participatory governance in the governance of public affair; states must ensure and promote public participation prior to implementation of development projects through clear rules, processes and procedures;

public participation must be voluntarily exercised to enable people to assert protection of their rights and interests; public participation must serve to concretise public opinions in the final outcome of decision-making processes; public participation could be facilitated by people's right to access to information; public participation must be conducted in a language that people understand; the right to public participation must serve to afford protection to people's right to tenure, environmental rights and other related rights; the right to public participation must be promoted through mechanisms such as education and awareness raising; people's right to public participation should be respected and protected in EIA processes and procedures; and private bodies, such as NGOs should encourage and facilitate people's right to public participation in decision-making.

The right to access to justice must be facilitated by broad *locus standi* provisions and private bodies and other interested and affected parties such as NGOs should be able to seek protection for people's rights and interests on their behalf; access to justice must be affordable to all, afford people protection of their rights and interests; access to justice must be fair and impartial to the extent that it affords people protection of their rights and interests; access to justice must be effective and efficient and based on respect for the rule of law; people's right to access to justice should be facilitated through education and training; and people's right to access to justice should be supported by legal aids services to local indigents in order to enable them to have access to the court and to seek redress for violation of their rights and interests.

This analysis suggests that good FAI governance could act as a useful and vital medium to ensure and promote responsible FAI activities. The reason is that good FAI governance could help to provide a "win-win" scenario for both foreign investors and host countries to the benefit of the population of the host country. Good FAI governance could further serve to provide clarity on the identification of land to be used, the incorporation of local communities' interests, and the protection and safeguarding of the rights and interests of local communities during FAI land deals.



#### 8.2.4 *The legal framework for the regulation of FAI in Cameroon*

Chapter 5 examined the regulation of FAI activities in Cameroon and noted that it occurs in two ways, via a contractual lease or via a MoU. Both approaches negatively impact on local communities' rights and interests. The Chapter further examined the procedural framework of a RBA in Cameroon and noted that the framework provides for the rights to access to information, public participation and access to justice. The framework was critically assessed against with the distilled generic characteristics and minimum requirements of a RBA in terms of good FAI governance developed for this study in Chapter.<sup>23</sup> It was established that in some respects, the Cameroonian framework is not in direct conformance with all the characteristics and requirements of a RBA for good FAI governance.<sup>24</sup> However, it was specifically argued that the non-conformance of the Cameroonian framework with the generic characteristics and minimum requirements of a RBA lies with enforcement and implementation measures and not with the legal framework *per se*. For this reason, in order to ensure adequate protection of people's rights and interests generally and specifically in the context of development activities such as FAI, it is recommended to strengthen *inter alia* the effectiveness of the enforcement mechanisms, improve accountability, and most importantly, strive to enact and implement legislation dealing with human rights protection.

In Cameroon, it was observed that the Constitution does not contain a stand-alone provision on the right to access to information as in other jurisdictions, it is recommended that the Constitution be revised to include this provision in order to enable people to gain access to public and private held information and to encourage and promote transparency and accountability in the governance of public affairs generally. Also, it was observed that there is no enabling legislation to give effect to people's right to access to information as in other jurisdictions. In this regard, there is a

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23 See Table 2 in Chapter 4 in 4.5 for details.

24 See Chapter 5 of this thesis for details.

need for Cameroon to follow the example of Uganda and South Africa and enact national legislation to cater for people's right to gain access to information held publicly or privately, which is necessary if they are to be able to protect their interests, especially in the context of development activities like FAI.

It was further noted that people's participatory rights are not strongly enforced and respected. Perhaps, the reason could be because participatory rights are not sufficiently provided for in legislation and existing rules, processes and procedures of public participation are often flawed. The Forestry Law, for example, does not contain any explicit reference to local communities' participation in decision-making about forestry activities. The lack of an explicit provision on public participation, it was argued, is inappropriate during FAI activities, where local communities' participation in forestry-related investment for CER/carbon credits and biofuel could be seen as an important element to enhance and reinforce the underlying purpose of the Forestry Law, namely to promote and ensure sustainable forestry management. It is therefore suggested that with the proposed revision of the Forestry Law, attention should be paid to include provisions that allow an all-inclusive participatory approach designed to include and involve indigenous people and local communities in decision-making processes in FAI related to forestry projects, while implementing public views and opinions during participatory processes.

Similarly, it was established that although in terms of Ordinance 76/66 the LCB adopts a participatory approach for the approval of land-related investments, section 15 appears to considerably restrict the effective participation by local communities and affected stakeholders in decision-making in land investment matters. To this end, it is recommended that section 15 be repealed to allow local communities' effective participation in the decision-making processes relating to land investment, including FAI. This could serve to better enhance the land governance system in the country in a bottom-up way. Consequently, there is a need for the state of Cameroon to better respect and provide adequate protection to local communities' right to property, including tenure security.

Finally, it was established that financial constraints continue to be a major barrier to people's access to justice where they seek judicial redress for their violated rights and interests. To curtail this problem and to properly facilitate and promote people's access to justice, it is recommended that legal aid to indigent people be increased. For example, legislation should be designed to enable institutions such as Cameroonian universities to follow the South African experience where universities law clinics facilitate people's access to justice through the provision of legal aid services. Also, although legal aid facilitates people's access to justice, it was shown that in most instances the state-controlled legal aid commission does not frequently meet and the commission's processes are fraught with delays which make it likely that people not have sufficient access to courts.<sup>25</sup>

#### *8.2.5 The legal framework for the regulation of FAI in Uganda*

Chapter 6 examined the regulation of FAI land deals in Uganda. As in Cameroon it was noted that FAI land deals in Uganda are regulated via a contractual lease or a MoU. It was noted that in both arrangements local communities' rights and interests are often at stake. The chapter also provided a detailed examination of Uganda's procedural aspects of the RBA and noted that like in Cameroon, the procedural aspects consist of the rights to access to information, public participation and access to justice. The Ugandan procedural aspects of the RBA were critically evaluated against the generic characteristics and minimum requirements of a RBA in terms of good FAI governance to determine whether the Ugandan framework conforms more or less with the generic characteristics and requirements. It was observed that the regulation of FAI in Uganda, as in Cameroon, does not fully conform to the generic characteristics and resultant minimum requirements of a RBA developed for this thesis.<sup>26</sup> Thus there is a need to address concerns with the legal framework in order for it to more adequately provide protection to people's rights and interests.

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25 Sama "Providing legal aid in criminal justice in Cameroon" 157.

26 See Table 2 in Chapter 4 in 4.5 for details.

In Uganda, although there is explicit provision for the right to access to information, which serves to promote transparency and accountability, while protecting people's human rights, it was shown that the right to access to information only applies to public bodies and not to private bodies. This means that whereas the AIA (in terms of sections 3 (a) and (d)), is used to promote an efficient, effective, transparent and accountable government and to promote transparency and accountability in all organs of state, it could be difficult, if not impossible, for these democratic principles to be observed in the private sector, especially insofar as the Act does not apply to private actors. This is worrying because as was noted in Chapters 3 and 4 of this thesis, the private sector encompass role players of governance and as such should equally strive to promote and enhance the democratic values of transparency and accountability, by providing the public with timely and accurate information necessary to assert protection of their rights and interests. Besides, private bodies are increasingly active actors of FAI activities and their activities in some instances have resulted in violating people's human rights and interests. It is therefore suggested that the AIA be revised to include its application to both public and private bodies.

Also, access to information in Uganda may not be affordable to all especially considering the various costs involved which are high in some cases and may potentially be a barrier for the poor to exercise their right to access to information due to financial constraints.<sup>27</sup> In this regard, it is suggested that the AIA be revised to provide a standard or affordable fee requirement.

Finally, although there is provision for access to justice in Uganda's legal framework, it was shown that the effective exercise of this right could be barred by financial constraints. In this regard, it is suggested that the Ugandan government could learn from the South African example and enact legislation that provides indigents with legal aid services to enable them to have access to courts and claim protection for their violated human rights.

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27 See Chapter 6 of this thesis for details.

#### 8.5.6 *The legal framework for the regulation of FAI in South Africa*

Chapter 7 examined FAI regulation in South Africa and noted that at present FAI is not as serious a problem in the country as in Cameroon and Uganda. The subtle forms of FAI land deals in South Africa were found to be regulated through contractual leases, as far as could be established from the available information. Emphasis was placed on the country's exemplary procedural framework of a RBA in order to provide solutions to countries where FAI is a serious problem. The said framework, which consists of the rights to access to information, public participation and access to justice, largely conforms to the generic characteristics and minimum requirements of a RBA of good FAI governance. Despite this conformance, there are some flaws in the legal framework and it was noted that there is a need to address these *lacunae* in order to ensure greater protection of peoples' rights and interests in the likely event of future FAI activities in the country.

Most notably, it was established that PAIA applies only to recorded information and not to information that are not recorded. It is suggested that because PAIA does not apply to all kinds of information, PAIA should be revised to follow the Uganda example, which applies to all information, whether recorded or not, including information held by the state and its agencies on the topic of FAI land deals and activities.

In addition, PAIA does not provide clear substantive meaning to certain terms describing information to which requests for access is excluded. For example, under sections 64 and 68 of PAIA a private body may refuse a request for access to a record if the record *inter alia* relates to trade secrets, financial, commercial, scientific or technical information. It is unclear what is meant by "technical information" and "commercial information" and why they should receive protection under these provisions. Possibly, applying sections 64 and 68 in the FAI context could be problematic, because vital information on FAI land deals and activities could broadly be termed "technical information or commercial information" by private bodies when attempting to refuse a request for information, which could amount to an infringement of people's

constitutionally-defined right. Thus, it would have been preferable if these terms had been given precise meaning in the definitional section 1 of the Act. In this regard, it is suggested that the terms commercial information, technical information and others of that kind used in sections 64 and 68 of PAIA should be defined in order to concretise the grounds of legitimate refusal of privately held information.

Finally, it was established that despite the extensive provision of participatory rights in the South African procedural RBA framework, NEMA South Africa's main environmental framework legislation provides no clarity on the meaning and scope of public participation. This *lacuna* is further exacerbated by limited provisions on education and awareness raising relating to people's participatory rights. In order to address this problem, it is suggested that NEMA be revised to include clear provisions on the meaning and scope of public participation to enable people to effectively participate in decision-making processes of development activities in order to properly protect their rights and interests.

### **8.3 Future research**

The following long- to medium-term future research agenda is proposed:

- Future research could test the findings of this study with practical case studies;
- There is a need to investigate whether the existing gaps in the procedural legal aspects of Cameroon, Uganda and South Africa have been adjusted to provide better protection of people's rights and interests generally and in the context of development activities like FAI and its associated activities;
- It may be necessary for future research to explore the potential of the procedural legal frameworks of a RBA to FAI governance in other African countries to contribute towards respect for and the protection of local communities' land-related rights during FAI activities;
- Finally, because FAI is not likely to decline in the African region, it may be necessary for future research to explore and investigate the potential, relevance

and design of a specific AU protocol to regulate FAI that could inform domestic jurisdictions more comprehensively and effectively.

#### **8.4 Conclusion**

From this thesis, it emerged that the major problem associated with large-scale land development activities such as FAI, is the increasing violation of people's human rights and interests. To this end, it was argued that a RBA to FAI governance and good FAI governance specifically could be a possible solution to the impacts of FAI activities, particularly as the RBA helps to ensure respect for and protection of people's rights and interest generally.

It is believed and trusted that this study has made significant contribution from a governance perspective to the growing body of academic literature on land grabbing dedicated on fostering respect and protection of people's rights and interests. It is hoped that, by implementing the above recommendations more procedural safeguards would be afforded to local communities and affected stakeholders during FAI land deals, both regionally and domestically. Should this be the case, then Cameroon, Uganda and South Africa would be able in principle to adequately and effectively regulate FAI land deals to the extent that the rights and interests of local communities are respected, protected and fulfilled.

## **BIBLIOGRAPHY**

### **Literature**

#### **A**

Abbott and Snidal 2000 *IO*

Abbott KW and Snidal D "Hard and soft law in international governance" 2000  
*International Organisation* 421-456

Abramovic 2006 *CR*

Abramovic V "The rights-based approach in development: Policies and strategies"  
2006 *Cepal Review* 33-48

Achobang, Nguiffo, and Schwartz "SG Sustainable Oil Cameroon PLC in South West Cameroon"

Achobang CF, Nguiffo S and Schwartz B "SG Sustainable Oil Cameroon PLC in South West Cameroon" in Colchester M and Chao S (eds) *Conflict or consent? The oil palm sector at a crossroads* (FPP, Sawit Watch and Tuk Indonesia, 2013) 355-371

Ackermann 2004 *NLR*

Ackermann LWH "The legal nature of the South African constitutional revolution"  
2004 *New Zealand Law Review* 633-679

Adeniyi "Women farmers and agriculture growth"

Adeniyi L "Women farmers and agriculture growth: Challenge and perspective for Africa face the economic crisis" in the *Joint 3<sup>rd</sup> African Association of Agricultural Economists and the 48<sup>th</sup> Agricultural Economists Association of South Africa Conference* (19-23 September 2010, South Africa) 1-22



Adesina "Africa's food crisis"

Adesina AA "Africa's food crisis: Trends and global development policy" in *International Association of Agricultural Economists Conference* (16 August 2009 Beijing)

Adoko, Akin, and Knight "Understanding and strengthening women's land rights"

Adoko K, Akin J and Knight R "Understanding and strengthening women's land rights under customary tenure in Uganda" (Cordaid and LEMU, 2011)

ADB *The African Development Report*

ADB *The African Development Report* (The African Development Bank, Abidjan 1994)

Akram-Lodhi 2012 *CJDS*

AH Akram-Lodhi "Contextualising land grabbing: Contemporary land deals, the global subsistence crisis and the world food system" 2012 *Canadian Journal of Development Studies* 119-142

Ahrens *Governance and economic development*:

Ahrens J *Governance and economic development: A comparative institutional approach* (Edward Elgar Publishing, 2002)

Alden-Wily *Whose land is it?*

Alden-Wily L *Whose land is it? The status of customary land tenure in Cameroon* (CED, 2011)

Ali-Khan "The relevance of good governance concept"

Ali-Khan A "The relevance of good governance concept: Revisiting goals, agendas and strategies" in Jamil I, Aminuzzaman SM and Haque SKTM (eds)

*Governance in South, Southeast and East Asia: Trends, issues and challenges*  
(Springer, 2015) 101-116

Alemagi *et al* 2013 *JSD*

Alemagi D, Hajjar R, Tchoundjeu Z and Kozak R "Cameroon's environmental impact assessment Decree and public participation in concession-based forestry: An exploratory assessment of eight forest-dependent communities" 2013 *Journal of Sustainable Development* 8-24

Alexander 1998 *LP*

Alexander L "Are procedural rights derivative substantive rights" 1998 *Law and Philosophy* 19-42

Almeida *et al* 2014 *RRI*

Almeida F, Corriveau-Bourque A, Colly JD, Khare A, La Vina T, Springer J and White A "Status of forest carbon rights and implications for communities, the carbon trade and REDD+ investment" 2014 *Rights and Resources Initiative* 1-10

Ambaye "Land rights in Ethiopia"

Ambaye DW "Land rights in Ethiopia: Ownerships, equity and liberty in land use rights" in *FIG Working Week 2012, Knowing to Manage the Territory, Protect the Environment, Evaluate the Cultural Heritage*, (6-10 May 2012 Rome) 1-27

Amos *Human rights law*

Amos M *Human rights law* (Hart Publishing, Oxford, 2006)

Anderson *Free prior and informed consent*

Anderson P *Free prior and informed consent: principles and approaches for policy and project development* (RECOFT and GIZ, 2011)

Andrews "An ends-means approach to looking at governance"

Andrews M "An ends-means approach to looking at governance" in *CID Working Paper No. 281* (April 2014 Harvard Kennedy School) 1-60

Anghie 2000 *VLR*

Anghie A "Civilisation and commerce: The concept of governance in historical perspective" 2000 *Villanova Law Review* 887-913

Anseeuw *et al* *Land rights and the rush for land*

Anseeuw W, Wily LA, Cotula L, and Taylor M *Land rights and the rush for land: Finding of the global commercial pressure on land research project* (ILC, Rome 2012)

Anseeuw *et al* *Transnational land deals for agriculture in the global south*

Anseeuw W, Boche M, Breu T, Giger M, Lay J, Messerli P and Nolte K *Transnational land deals for agriculture in the global south: Analytical report based on the Land Matrix Database* (CDE, CIRAD, GIGA, 2012)

Anton and Shelton "Environmental protection and human rights"

Anton DK and Shelton DL "Environmental protection and human rights" in *GW Legal Studies Research Paper No 2013-32* (2011 George Washington University) 1-16

Arnstein 1969 *JAIP*

Arnstein SR "A ladder of citizen participation" 1969 *Journal of American Institute of Planning* 216-224

Asiimwe 2014 *YHRDJ*

Asiimwe J "Making women's land rights a reality in Uganda: Advocacy for co-ownership by spouses" 2014 *Yale Human Rights and Development Journal* 171-187

## **B**

Bäckstrand 2008 *GEP*

Bäckstrand K "Accountability of networked climate governance: The rise of transnational climate partnerships" 2008 *Global Environment Politics* 74-102

Banisar "The rights to information and privacy"

Banisar D "The rights to information and privacy: Balancing rights and managing conflicts" in *World Bank Working Institute Governance working paper series*, (2011, IBRD and World Bank) 1-56

Barton "Underlying concepts"

Barton B "Underlying concepts and theoretical issues in public participation in resource development" in Zillman D, Lucas A and Pring G (eds) *Human rights in natural resource development: Public participation in the sustainable development of mining and energy resources* (Oxford, Oxford University Press, 2002) 77-121

Bass *et al* "Rural livelihoods and carbon management"

Bass S *et al* "Rural livelihoods and carbon management" in *IIED, Natural Resource Issues Paper No 1* (2000, IIED, London) 1-106

Baxter *Administrative law*

Baxter L *Administrative law* (Juta and Co Ltd, Cape Town, 1984)

Beder 2000 *NJEL*

Beder S "Costing the earth: Equity, sustainable development and environmental economic" 2000 *New Zealand Journal of Environmental Law* 227-243

Bele *et al* 2011 *MASGCC*

Bele MY, Somorin O, Sonwa DJ, Nkem J and Locatelli B "Forests and climate change adaptation policies in Cameroon" 2011 *Mitigation and adaptation strategies for global climate change* 369-385

Bell and McGillivray *Environmental law*

Bell S and McGillivray D *Environmental law* 7<sup>th</sup> ed (Oxford University Press; Oxford, 2008)

Benedetto *International investment law*

Benedetto SD *International investment law and the environment* (Edward Elgar Publishing, 2013)

Benjamemisen *et al* "Conservation and land grabbing in Tanzania"

Benjamemisen A, Bryceson I, Maganga F and Refseth T "Conservation and land grabbing in Tanzania" in the *International Conference on Global Land Grabbing* (6-8 April 2011 University of Sussex,) 1-29

Bernstein 2005 *PGDT*

Bernstein S "Globalisation and the requirement of "good" environmental governance" 2005 *Perspectives on Global Development and Technology* 645-679

Berthier and Kramer "The Aarhus Convention implementation"

Berthier A and Kramer L "The Aarhus Convention implementation and compliance in EU law: Furthering transparency, public participation and access to justice in the EU" in *The European Union Aarhus Center Report* (ClientEarth 2014) 7-84

Betts "Introduction"

Betts RF "Introduction" in Betts RF (ed) *The Scramble for Africa: Causes and dimensions of empire* (Heath and Company, 1966) vii-xvi

Beyerlin and Marauhn *International environmental law*

Beyerlin U and Marauhn T *International environmental law* (Oxford, 2011)

Bilchitz 2010 *IJHR*

Bilchitz D "The Ruggie framework: An adequate rubric for corporate human rights obligations" 2010 *International Journal on Human Rights* 199-229

Binayak *IJSE* 1999

Binayak R "Good governance, administrative reforms and socio-economic realities: A South pacific perspective" 1999 *International Journal of Social Economics* 354-369

Birnie and Boyle *International law and the environment*

Birnie P and Boyle A *International law and the environment* (Oxford University Press; Oxford, 2002)

Blesgraaf RAR "Water use of jatropha"

Blesgraaf RAR "Water use of jatropha: Hydrological impacts of jatropha curcas" (MSc thesis, Delft University of Technology, 2009)

Bodansky D "Legitimacy"

Bodansky D "Legitimacy" in Bodansky D, Brunnée J and Hey E (eds) *The oxford handbook of international environmental law* (Oxford: Oxford University Press, 2007) 704-723

Boko *et al* "Africa"

Boko M, Niang I, Nyong A, Vogel C, Githeko and Medany M "Africa" in Parry ML, Canziani OF, Palutikof, Van der Linden PJ and Hanson CE (eds) *Climate Change: Impacts, Adaptation and Vulnerability. Contribution of the Working Group II to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change* (Cambridge University Press, 2007) 433-467

Bonnafous-Boucher 2005 *JEEN*

Bonnafous-Boucher M "From Government to Governance" 2005 *Journal of European Ethical Networks* 521-534

Borras and Franco "Towards a broader view of the politics of land grab"

Borras Saturnino M Jr and Franco J "Towards a broader view of the politics of land grab: Rethinking land issues, reframing resistance" in *ICAS Working Paper Series No. 001* (May 2010) 1-39

Borras and Franco 2010 *YHRDLJ*

Borras SM Jr and Franco J "From threat to opportunity?: Problems with the idea of a 'code of conduct' for land grabbing" 2010 *Yale Human Rights and Development Law Journal* 507-523

Borras and Franco 2012 *JAC*

Borras SM Jr and Franco J "Global land grabbing and trajectories of agrarian change: A preliminary analysis" 2012 *Journal of Agrarian Change* 34-59

Borras, McMichael and Scoones 2010 *JPS*

Borras SM Jr, McMichael P and Scoones I "The politics of biofuel, land and agrarian change: Editor's introduction" 2010 *Journal of Peasant Studies* 575-592

Borras *et al* 2010 *JPS*

Borras SM, Franco JC, Gómez S, Kay C and Spoor M "Land grabbing in Latin America and the Caribbean 2010 *Journal of Peasant Studies* 845-872

Bosselmann "Ecological justice and law"

Bosselmann "Ecological justice and law" in Richardson BJ and Wood S (eds) *Environmental law for sustainability* (Hart Publishing, 2006) 129-163

Bosselmann *The principle of sustainability*

Bosselmann *The principle of sustainability: Transforming law and governance* (Aldershot, Ashgate, 2008)

Bowles *The diplomacy of hope*

Bowles NR *The diplomacy of hope: The United Nations since the Cold War* (IB Tauris: 2004)

Boyle and Anderson *Human rights approaches to environmental protection*

Boyle AE and Anderson MR (eds) *Human rights approaches to environmental protection* (Oxford, Clarendon Press, 1998)

Bradshaw G and Burger 2005 *Africanus*

Bradshaw G and Burger W "Public participation, sustainable development and public disputes: Public scoping processes in the Coega deep water port and industrial zone" 2005 *Africanus* 44-57

Braithwaite 1999 *AJPA*

Braithwaite J "Accountability and governance under the new regulatory state" 1999 *Australian Journal of Public Administration* 90-97



Bratton and Van de Walle "Towards governance in Africa"

Bratton M and Van de Walle N "Towards governance in Africa: Popular demands and state responses" in Hydén G and Bratton M (eds) *Governance and politics in Africa* (Boulder Co, 1992) 27-55

Brautigam 1992 *SCID*

Brautigam D "Governance, economy and foreign aid" 1992 *Studies in Comparative International Development* 3-25

Bray "Administrative justice"

Bray E "Administrative justice" in AR Paterson and LJ Kotzé (eds) *Environmental compliance and enforcement in South Africa: Legal perspectives* (Juta Cape Town, 2009) 152-196

Brickhill and Friedman "Access to justice"

Brickhill J and Friedman A "Access to justice" in Woolman S and Bishop M (eds) *Constitutional law of South Africa* 2<sup>nd</sup> (Juta Cape Town, 2014) 59-01-59-107

Bronwen and Yeung *An introduction to law and regulation*

Bronwen M and Yeung K *An introduction to law and regulation: Texts and materials* (Cambridge, Cambridge University Press, 2007)

Brown Building a sustainable society

Brown LR *Building a sustainable society* (New York, Norton and Company, 1981)

Bruch and Filbey "Emerging global norms of public involvement"

Bruch C and Filbey M "Emerging global norms of public involvement" in Bruch C (ed) *The new public: The globalization of public participation* (Environmental Law Institute, 2002) 1-15

Brynard 2011 *AP*

Brynard DJ "Procedural fairness to the public as an instrument to enhance public participation in public administration" 2011 *Administratio Publica* 100-116

Burnod *et al* 2013 *DC*

Burnod P, Gingembre M and Ratsialonana RA "Competition over authority and access: International land deals in Madagascar" 2013 *Development and Change* 357-379

Burnod *et al* "From international land deals to local informal agreements"

Burnod P, Gingembre M, Andrianirina Ratsialonana R and Ratovoarinony R "From international land deals to local informal agreements: Regulations of and local reactions to agricultural investment in Madagascar" in the *International Conference on Global Land Grabbing* (6-8 April 2011, University of Sussex) 1-16

Burns *Administrative law*

Burns Y *Administrative law* 4<sup>th</sup> ed (LexisNexis, 2013)

Burns and Beukes *Administrative law*

Burns Y and Beukes M *Administrative law under the 1996 Constitution* (LexisNexis: Butterworths, 2006)

Byamugisha *Securing Africa's land shared prosperity*

Byamugisha FFK *Securing Africa's land shared prosperity: A programme to scale up reform and investment* (International Bank for Reconstruction and Development, 2013)

Byerlee "Are we learning from history"

Byerlee D "Are we learning from history" in Kugelman M and Levenstein SL (eds)  
*The global farm race: Land grab, agricultural investment and the scramble for food security* (Island Press, 2013) 21-44

Byerlee *et al Growing Africa*

Byerlee D, Garcia AF, Griertz A and Palamde V *Growing Africa: Unlocking the potentials of agribusiness* (The World Bank 2013)

## C

Căjvăneanu "A Genealogy of Government"

Căjvăneanu D "A Genealogy of Government: On Governance, Transparency and Partnership in the European Union" (PhD Thesis, University of Trento, 2011)

Calvan and Ablola "Highly extractive fishing activities"

Calvan DF and Ablola JMS "Highly extractive fishing activities and the privatization of foreshore lands: Impacts on the everyday lives of municipal fisherfolks" in *NFR Contribution to ILC Collaborative Research Project on Commercial Pressures on Land* (2011 ILC Rome) 1-39

Cane *Administrative law*

Cane P *Administrative law* 4<sup>th</sup> ed (Oxford, Oxford University Press, 2004)

Cane *Responsibilities on law and morality*

Cane P *Responsibilities on law and morality* (Oxford, Oxford University Press, 2002)

Carrere and Lohmann *Pulping the south*

Carrere R and Lohmann L *Pulping the south: Industrial tree plantations and the world paper economy* (Zed Books, 1996)

Cerutti *et al* 2008 *ES*

Cerutti PO, Nassi R, and Tacconi L "Sustainable forest management in Cameroon needs more than just forests management plans" 2008 *Ecology and Society* 1-13

Charnovitz 1997 *MJIL*

Charnovitz S "Two centuries of participation: NGOs and international governance" 1997 *Michigan Journal of International Law* 183-286

Charters and Stavenhagen *Making the declaration work*

Charters C and Stavenhagen R (eds) *Making the declaration work: The United Nations declaration of indigenous people* (Copenhagen, Denmark, 2009)

Cheadle "Limitation of rights"

Cheadle H "Limitation of rights" in Cheadle MH, Davis DM and Haysom NRL *South African constitutional law: The Bill of Rights* (Butterworths, Durban, 2002) 693-714

Chenwi 2006 *ICLQ*

Chenwi L "Fair trial rights and their relation to the death penalty in Africa" 2006 *International and Comparative Law Quarterly* 609-634

Christopher, Rothstein, and Baldwin *The government of risk:*

Christopher H, Rothstein H and Baldwin R *The government of risk: Understanding risk regulation regimes* (Oxford: Oxford University Press, 2001)

Clare *Industrial Revolution*

Clare JD *Industrial Revolution* (Bodley Head, London, 1993)

Claver 2005 *AJICL*

Claver B "The indigenous rights to participation and international development policies" 2005 *Arizona Journal of International and Comparative Law* 41-51

Colbran "The financialisation of agricultural commodity futures trading"

Colbran N "The financialisation of agricultural commodity futures trading: the 2006-2008 global food crisis" in Rayfuse R and Weisfelt N (eds) *The Challenge of food security: International policy and regulatory frameworks* (Edward Elgar Publishing, 2012) 168-189

Conca 2005 *JILIR*

Conca K "Environmental governance after Johannesburg: From stalled legalization to environmental human rights?" 2005 *Journal of International Law and International Relations* 121-166

Cornell *et al* "The concept of governance and its impacts for first nations"

Cornell S, Curtis C and Jorgensen M "The concept of governance and its impacts for first nations" in *Joint Occasional Paper on Native Affairs* (2004) 1-34

Cornwall A and Nyamu-Musembi 2004 *TWQ*

Cornwall A and Nyamu-Musembi C "Putting the rights-based approach to development into perspective" 2004 *Third World Quarterly* 1415-1437

Cotula 2012 *JPS*

Cotula L "The international political economy of the global land rush" A critical appraisal of trends, scale, geography and drivers" 2012 *Journal of Peasant Studies* 649-680

Cotula and Vermeulen 2009 *IA*

Cotula L and Vermeulen S "Deal or no Deal: The outlook for agricultural land investment in Africa" 2009 *International Affairs* 1233-1247

Cotula *Land deals in Africa*

Cotula L *Land deals in Africa: What is in the contract?* (IIED, 2011)

Cotula *Legal empowerment for local resource control*

Cotula L *Legal empowerment for local resource control: Securing local resource rights within foreign investment projects in Africa* (IIED, 2007)

Cotula *The great African land grab?*

Cotula L *The great African land grab?: Agricultural investments and the global food system* (Zed Books: London, 2013)

Cotula, Toulmin, and Hesse *Land tenure and administration in Africa*

Cotula L Toulmin C and Hesse C *Land tenure and administration in Africa: Lessons of experience and emerging issues* (IIED: London, 2004)

Cotula *et al Land grab or development opportunity?*

Cotula L, Vermeulen S, Leonard R and Keeley J *land grab or development opportunity? Agricultural investment and international land deals in Africa* (Food and Agricultural Organisation, 2009)

Crabtree-Condor and Casey "Lay of the land"

Crabtree-Condor I and Casey L "Lay of the land: Improving land governance to stop land grab" in *Actionaid Report* (2012) 1-96

Cramb "Reinventing dualism"

Cramb RA "Reinventing dualism: Policies narratives and modes of oil palm expansion in Sarawak" in the *Conference of Canadian Council of Southeast Asian Studies, Laval University*, (19-21 October 2007 Quebec) 1-28

Cramb *Land and longhouse*

Cramb RA *Land and longhouse: Agrarian transformation in the uplands of Sarawak* (NIAS Press, Copenhagen, 2007)

Crawhall "Indigenous people in Africa"

Crawhall N "Indigenous people in Africa" in *Norwegian Church Aid Occasional Paper* (December 2007) 1-34

Crewett *et al* "Land tenure in Ethiopia"

Crewett W, Bogale A and Korf B "Land tenure in Ethiopia: continuity and change, shifting rulers, and the quest for state control" in *CAPRI Working paper No. 91* (September 2008 Washington DC) 1-30

Crowe "The scramble and the Berlin West African Conference"

Crowe SE "The scramble and the Berlin West African Conference" in Betts RF *The scramble for Africa: causes and dimensions of empire* (DC Heath and Company, 1966) 23-39

Cruz "Responsible governance of land tenure"

Cruz L "Responsible governance of land tenure: An essential factor for the realisation of the right to food" in *Land Tenure Working Discussion paper No 15* (May 2010) 1-37

Cuffaro and Hallam "Land grabbing in developing countries"

Cuffaro N and Hallam D "Land grabbing in developing countries: Foreign investors, regulation and code of conduct" in the *International Conference on Global Land Grabbing* (6-8 April 2011 University of Sussex) 1-16

Currie and De Waal *The Bill of Rights handbook*

Currie I and De Waal J *The Bill of Rights handbook* 5<sup>th</sup> ed (Juta and Co Ltd, 2005)

Currie and De Waal *The Bill of Rights handbook*

Currie I and De Waal J *The Bill of Rights handbook* 6<sup>th</sup> ed( Juta and Co Ltd, 2013)

Currie and Klaaren *The promotion of access to information act*

Currie I and Klaaren J *The promotion of access to information act: A commentary* (Siber Ink, 2002)

Currie *The promotion of administrative justice act*

Currie I *The promotion of administrative Justice act: A commentary* 2<sup>nd</sup> ed (Siber Ink, 2007)

## **D**

D'Hollander *et al* "Promoting a human rights-based approach"

D'Hollander D, Pollet I and Beke L "Promoting a human rights-based approach within the development effectiveness agenda" in the *CSO Partnership for Development Effectiveness Working Group on the Human Rights-based Approach* (June 2013, Leuven) 1-32



Dadze 1994 *TLCD*

Dadze KKS "Reforming the United Nations to eradicate poverty and maldevelopment" 1994 *Transnational Law and Contemporary Development* 531-550

Daniel "Land grabbing and potential implication for world food security"

Daniel S "Land grabbing and potential implication for world food security" in Behnassi M, Shabbir Shahid A and D'Silva J (eds) *Sustainable agricultural development* (Springer, 2011) 25-42.

Daniel and Mittal *The great land grab*

Daniel S and Mittal A *The great land grab: Rush for world's farmland threatens food security of the poor* (The Oakland Institute, 2009)

Daniel S *Misinvestment in agriculture*

Daniel S *Misinvestment in Agriculture: The role of the international finance corporation in global land grabs* (Oakland Institute, 2010)

Daniel "The role of the international finance corporation"

Daniel S "The role of the international finance corporation in promoting agricultural investment and large-scale land acquisitions" in the International Conference on Global Land Grabbing (6-8 April 2011, University of Sussex) 1-23

Davis "Access to information"

Davis D "Access to information" in Cheadle MH, Davis DM and Haysom NRL (eds) *South African constitutional law: The bill of rights* (Butterworths, Durban, 2002) 575-591

De Jager "Reflecting on experiences in land reform and proposals on alternatives"

De Jager T "Reflecting on experiences in land reform and proposals on alternatives" in *Seminar Report on Land Reform in South Africa: Constructive Aims and Positive Outcomes-Reflecting on the Way to 2014* (26-27 August 2008, Roode Vallei Country Lodge Pretoria) 1-4

De Klerk 2005 *SALJ*

De Klerk W "University law clinics in South Africa" 2005 *South African Law Journal* 929-950

De la Harpe *et al* 2008 *PELJ*

De la Harpe S, Rijken C and Roos R "Good governance" 2008 *Potchefstroom Electronic Law Journal* 1-15

De Schutter "A human rights approach to trade and investment policies"

De Schutter O "A human rights approach to trade and investment policies" in *confronting the global food challenge: Finding new approaches to trade and investment that support the right to food Conference* (24-26 November 2008, Geneva) 1-20

De Schutter 2011 *JPS*

De Schutter O "How not to think of land-grabbing: Three critiques of large-scale investment in farmland 2011 *Journal of Peasant Studies* 249-279

De Schutter 2010 *ICLR*

De Schutter O "The emerging human right to land" 2010 *International Community Law Review* 303-334

De Schutter 2011 *HILJ*

De Shutter O "The green rush: The global race for farmland and the rights of land users" 2011 *Harvard International Law Journal* 504-559

De Vos and Freeman *South African constitutional law in context*

De Vos P and Freeman W (eds) *South African constitutional law in context* (Oxford University Press, 2014)

Dean 1986 *SAJHR*

Dean WHB "Our administrative law: A dismal science?" 1986 *South African Journal of Human Rights* 164-176

Deininger 2011 *JPS*

Deininger K "Challenges posed by the new wave of farmland investment" 2011 *Journal of Peasant Studies* 217-247.

Deininger *et al* *Rising global interest in farmland*

Deininger K, Byerlee D, Jonathan L, Norton A, Selod H and Mercedes S *Rising global interest in farmland: Can it yield sustainable and equitable benefits?* (World Bank, 2011)

Demsetz 1967 *AER*

Demsetz H "Towards a theory of property rights" 1967 *American Economic Review* 347-359

Deng *et al* *Foreign land deals and human rights*

Deng DK, Johansson A and Narula S *Foreign land deals and human rights: Case studies on agricultural and biofuel investment* (New York, 2010)

Depuy 1991 *MJIL*

Depuy JM "Soft law and the international law of the environment" 1991 *Michigan Journal of International Law* 420-435

Dethier "Governance and economic performance"

Dethier JJ "Governance and economic performance: A survey" in *ZEF Discussion Paper on Development Policy* (Bonn, 1999)

Detomasi 2007 *JBE*

Detomasi DA "The multinational corporation and global governance: Modeling global policy networks" 2007 *Journal of Business Ethics* 321-334

Devenish *A commentary*

Devenish G *A commentary on the South African bill of rights* (LexisNexis, Durban, 1999)

Djire "Land registration in Mali"

Djire M "Land registration in Mali: No land ownership for farmers?" in *IIED Issues Paper No. 144* (2007) 1-24

Doornbos 2001 *JPS*

Doornbos M "Good governance: The rise and decline of a policy metaphor?" 2001 *Journal of Development Studies* 93-108

Dryzek *Deliberative democracy and beyond*

Dryzek *Deliberative democracy and beyond: Liberals, critic's contestations* (Oxford University Press; Oxford, 2000)

Dseai "Foreword"

Dseai N "Foreword" in Robinson NA (ed) *Agenda 21: Earth's action plan* (Ocean Publication, INC: New York, 1993) i

Du Plessis "Fulfilment of South Africa's constitutional environmental right"

Du Plessis AA "Fulfilment of South Africa's constitutional environmental right in the local government sphere" (LLD Thesis, North-West University, Potchefstroom Campus, 2008)

Du Plessis 2008 *PELJ*

Du Plessis AA "Public participation, good environmental governance and fulfilment of environmental rights" 2008 *Potchefstroom Electronic Law Journal* 2-34

Du Plessis 2009 *SAPL*

Du Plessis AA "Some comments on the sweet and bitter of the National Environmental Law framework for local government" 2009 *South African Public Law* 56-96

Du Plessis W "Access to information"

Du Plessis W "Access to information" in Kotzé LJ and Paterson AR (eds) *Environmental compliance and enforcement in South Africa: Legal perspective* (Juta, Cape Town, 2009) 197-221

Du Plessis W "Earthlife Africa versus the pebble bed modular reactor"

Du Plessis W "Earthlife Africa versus the pebble bed modular reactor: A battle for governance for sustainability and informed decision making in South Africa" in Bosselmann K, Engel R and Taylor P (eds) *Governance for sustainability: Issues, challenges, successes* (IUCN, Bonn, Germany, 2008) 103-109

Du Plessis 1997 *SAJEP*

Du Plessis W "Rights to environmental information in the US" 1997 *South African Journal of Environmental Law and Policy* 115-139

Du Plessis and Du Plessis "Striking the sustainability balance in South Africa"

Du Plessis W and Du Plessis AA "Striking the sustainability balance in South Africa" in Faure M and Du Plessis W (eds) *The balancing of interests in environmental law in Africa* (Pretoria, University Law Press, 2010) 413-458

Du Plessis and Nel "Driving compliance"

Du Plessis W and Nel J "Driving compliance to and enforcement of South African legislation by means of a hybrid new environmental governance instruments" in Paddock L, Du Qun, Kotze LJ, Markell DL, Markowitz KJ and Zaelke D (eds) *Compliance and enforcement in environmental law: Towards more effective implementation* (Edward Elgar Publishing, 2011) 259-285

Du Plessis W and Nel 2001 *SAJELP*

Du Plessis W and Nel J "An evaluation of NEMA based on a generic framework for environmental framework legislation" 2001 *South African Journal of Environmental Law and Policy* 1-37

Dunn and Gaventa "Building inclusive citizenships and democracies"

Dunn A and Gaventa J "Building inclusive citizenships and democracies" in Mahendra S (ed) *Claiming citizenship: Research finding for development policymakers and practitioners* (IDS Brighton, 2007) 1-6

Dutfield "Protecting the rights of indigenous people"

Dutfield G "Protecting the rights of indigenous people: Can prior informed consent help?" in Wynberg R, Schroeder D and Chennells R (eds) *Indigenous people, consent and benefit sharing: Lessons from the San-Hoodia case* (Springer, 2009) 53-67

## E

Eba'a Atyi "Cameroon's logging industry"

Eba'a Atyi R "Cameroon's logging industry: Structure, economic importance and effects of devaluation" in *Occasional Paper No 14* (Centre for International Forestry Research, 1998) 1-40

Ebbesson "Public participation"

Ebbesson J "Public participation" in Bodansky D, Brunnée J and Hey E (eds) *The oxford handbook of international environmental law* (Oxford University Press; Oxford, 2007) 681-703

Ebbesson "Information, participation and access to justice"

Ebbesson J "Information, participation and access to justice: The model of the Aarhus Convention" in *Background Paper No. 5 presented at the Joint UNEP-OHCHR Expert Seminar on Human Rights and the Environment*, (14-16 January 2002 Geneva) 1-7

Ebbesson "Participatory and procedural rights in environmental matters"

Ebbesson J "Participatory and procedural rights in environmental matters: State of play" in the *Conference on The New Future of Human Rights and Environment: Moving the Agenda Forward, UNEP* (30 November-1 December 2009 Nairobi) 1-25

Ebbesson 2011 *ELR*

Ebbesson J "Public participation and privatisation in environmental matters: An assessment of the Aarhus Convention" 2011 *Eramus Law Review* 71-89

Ebbesson "The notion of public participation in international environmental law"

Ebbesson J "The notion of public participation in international environmental law" in Brunnée J and Hey E (eds) *Yearbook of international environmental law* (Oxford University Press; Oxford, 1997) 51-97

Ebbesson *et al*/The Aarhus Convention

Ebbesson J, Gaugitsch H, Jendrośka J, Stec S and Marshall F *The Aarhus Convention: An implementation guide* 2<sup>nd</sup> ed (United Nations, 2013)

Ebi "The structure of succession law in Cameroon"

Ebi JN "The structure of succession law in Cameroon: Finding a balance between the needs and interests of different family members" (LLD Thesis, University of Birmingham, 2008)

Edelman 2013 *JPS*

Edelman M "Messy hectares: Questions about the epistemology of land grabbing data" 2013 *Journal of Peasant Studies* 485-501

Egbe 2001 *JAL*

Egbe SE "The concept of community forestry under Cameroonian law" 2001 *Journal of African Law* 25-50

Ernsting *et al* "Biochar land grabbing"

Ernsting A, Anderson T and Maina A "Biochar land grabbing: the impacts on Africa" (ABN, Biofuelwatch and Gaia Foundation, 2009) 1-10

Ervin *et al* *Protected Areas for the 21<sup>st</sup> Century*



Ervin J, Sekhran N, Dinu A. Gidda S, Vergeichik M, and Mee J *Protected Areas for the 21st Century: Lessons from UNDP/GEF's Portfolio*. (United Nations Development Programme and Montreal: Convention on Biological Diversity, New York 2010)

## **F**

Falk *On human governance*

Falk R *On human governance: Towards a new global politics* (Pennsylvania State University, 1995)

Falkner 2003 *GEP*

Falkner R "Private environmental governance and international relations: Exploring the links" 2003 *Global Environmental Politics* 72-87

FAO *World agriculture towards 2015/2030*

FAO *World agriculture towards 2015/2030: An FAO perspective* (Rome, 2003)

Faure "The balancing of interest"

Faure M "The balancing of interest: Some preliminary (economic) remarks" in Faure M and Du Plessis W (eds) *The balancing of interests in environmental law in Africa* (Pretoria University Law Press, 2011) 1-33

Ferguson *Global social policy principles*

Ferguson C *Global social policy principles: Human rights and social justice* (London, DFID, SDD, 1999)

Feintrenie "Transfer of the Asian model of oil palm development"

Feintrenie L "Transfer of the Asian model of oil palm development: From Indonesia to Cameroon" in the *World Bank Conference on Land and Poverty* (23-25 April, 2012 Washington DC) 1-19

Feiring *et al Indigenous and tribal people's right in practice*

Feiring B, Olney S, Oelz M, Roy D, Henriksen J, Kipuri N, and Cunningham M  
*Indigenous and tribal people's right in practice: A guide to ILO Convention No 169* (ILSD, 2009)

Feris "Environmental rights and *locus standi*"

Feris LA "Environmental rights and *locus standi*" in AR Paterson and LJ Kotzé  
(eds) *Environmental compliance and enforcement in South Africa: Legal perspectives* (Juta; Cape Town, 2009) 129-151

Feris 2010 *PELJ*

Feris LA "The role of good environmental governance in the sustainable development of South Africa" 2010 *Potchefstroom Electronic Law Journal* 73-99

Finer *Comparative government*

Finer SE *Comparative government* (London, the Penguin Press, 1970)

Finkelstein 1995 *GG*

Finkelstein LS "What is global governance?" 1995 *Global governance* 367-372

Fischer *et al Global agro-ecological assessment*

Fischer G, Van Velthuisen H, Shah M and Nachtergaele F *Global agro-ecological assessment for agriculture in the 21<sup>st</sup> century* (Rome, FAO, Laxenburg, and IIASA, 2002)

FoEI, "Land grabbing for palm oil in Uganda"

FoEI, "Land grabbing for palm oil in Uganda: Factsheet" (FoEI 2013)

Fonchingong 1999 *GD*

Fonchingong C "Structural adjustment, women, and agriculture in Cameroon"  
1999 *Gender and Development* 73-79

Fonjong 2006 *IJES*

Fonjong LN "Managing deforestation in Anglophone Cameroon. Are NGOs  
pacesetters" 2006 *International Journal of Environmental Studies* 663-679

Fonjong "Equal rights but unequal power over land"

Fonjong LN "Equal rights but unequal power over land: Rethinking the process of  
land ownership and management in Cameroon" in Fonjong LN (ed) *Issues in  
women's land rights in Cameroon* (African Books Collective, 2012) 19-42

Forstater *et al* "Corporate responsibility in African development"

Forstater M, Zadek S, Guang Y, Yu K, Hong CX and George M "Corporate  
responsibility in African development: Insight from an emerging dialogue" in  
*Working Paper of the corporate social responsibility initiative, No. 60* (October  
2010, Beijing) 1-53

Foster "Public participation"

Foster S "Public participation" in Gerrard MB and Foster SR (ed) *The law of  
environmental justice: Theories and procedures to address disproportionate risk*  
2<sup>nd</sup> ed (American Bar Association, 2008) 225-263

Foster 1998 *CLR*

Foster SR "Justice from the ground up: Distributive inequities, grassroots  
resistance, and the transformative politics of environmental justice movement"  
1998 *California Law Review* 775-841

Francioni "The rights of access to justice under customary international law"

Francioni F "The rights of access to justice under customary international law" in  
Francioni F (ed) *Access to justice as a human right* (Oxford University Press;  
Oxford, 2007) 1-48

Franco *et al*/2010 *JPS*

Franco J, Levidow L, Fig D, Goldfarb L, Hönicke M and Mendonça ML  
"Assumptions in the European Union biofuel policy: Frictions with experience in  
Germany, Brazil and Mozambique" 2010 *Journal of Peasant Studies* 661-698

Fraser 1976 *Arena*

Fraser A "Legal theory and legal practice" 1976 *Arena* 123-156

Freestone "The international climate change legal and institutional framework"

Freestone D "The international climate change legal and institutional framework:  
An overview" in Freestone D and Streck C (eds) *Legal aspects of carbon trading:  
Kyoto, Copenhagen and beyond* (Oxford: Oxford University Press, 2009) 3-32

Freudenthal *et al* "The BioPalm oil palm project"

Freudenthal E, Lomax T and Venant M "The BioPalm oil palm project: A case  
study in the Département of Océan, Cameroon" in Colchester M and Chao S  
(eds) *Conflict or consent? The oil palm sector at a crossroads* (FPP, Sawit Watch  
and Tuk Indonesia, 2013) 337-354

Freund *The making of contemporary Africa*

Freund B *The making of contemporary Africa: The development of African  
society since 1800* 2<sup>nd</sup> ed (Basingstoke, Macmillan 1984)

Friis and Reenberg "Land grab in Africa"

Friis C and Reenberg A "Land grab in Africa: Emerging land system drivers in a teleconnected world" in the *GLP report No 1* (2010 Copenhagen) 1-42

Frischtak "Governance capacity and economic reform in developing countries"

Frischtak LL "Governance capacity and economic reform in developing countries" in the *World Bank Technical Paper No 254* (1999 Washington DC) 1-40

Fromkin *The question of government*

Fromkin D *The question of government: An inquiry into the breakdown of modern political systems* (New York, 1975)

Fuo 2015 *AHRLJ*

Fuo ON "Public participation in decentralized governments in Africa: Making ambitious constitutional guarantees more responsive" 2015 *African Human Rights Law Journal* 167-191

Fuo ON and Semie SM "Cameroon's environmental framework"

Fuo ON and Semie SM "Cameroon's environmental framework, law and the balancing of interest in socio-economic development" in Faure M and Du Plessis W (eds) *The balancing of interest in environmental law in Africa* (Pretoria, Pretoria University Law Press, 2011) 75-94

## **G**

Gale 1995 *MS*

Gale D "The law of supply and demand" 1995 *Mathematica Scandinavica* 155-169

Gaventa and Valderrama "Participation, citizenship and local governance"

Gaventa J and Valderrama C "Participation, citizenship and local governance" in the *Workshop for Strengthening Participation in Local Governance*, (21-24 June 1999 Institute of Development Studies ) 1-15

Gebeyehu "Towards improved transaction of land use rights in Ethiopia"

Gebeyehu ZH "Towards improved transaction of land use rights in Ethiopia" in the *Annual World Bank Conference on Land and Poverty* (8-11 April 2013 Washington DC) 1-12

Gerrard and Foster *The law of environmental justice*

Gerrard MB and Foster SR *The law of environmental justice: Theories and procedures to address disproportionate risks* 2<sup>nd</sup> ed (American Bar Association, 2008)

Giliomee "Pesticides"

Giliomee JH "Pesticides" in Strydom HA and King ND *Environmental management in South Africa* 2<sup>nd</sup> ed (Juta: Cape Town, 2009) 746-764

Glazewski *Environmental law in South Africa*

Glazewski J *Environmental law in South Africa* 2<sup>nd</sup> ed (LexisNexis, Butterworths, 2005)

Glowka *et al A guide to the convention on biological diversity*

Glowka L, Burhenne-Guilmin F, Synge H, McNeely JA and Gündling L *A guide to the convention on biological diversity* (IUCN: Gland and Cambridge, 1994)

Goetz 2013 *Globalization*

Goetz A "Private governance and land grabbing: The equator principles and the roundtable on sustainable biofuels" 2013 *Globalization* 199-204

Golay 2013 *TWQ*

Golay C and Biglino I "Human rights responses to land grabbing: A right to food perspective" 2013 *Third World Quarterly* 1630-1650

Golay *The right to food and access to justice:*

Golay C *The right to food and access to justice: Examples at the national, regional and international levels* (FAO: Rome, 2009)

Gómez-Palacio and Muchlinski "Admission and establishment"

Gómez-Palacio I and Muchlinski P "Admission and establishment" in Muchlinski P, Ortino F and Schreuer C (eds) *The oxford handbook of international investment law* (Oxford University Press, 2008) 227-258

Gonthier "Foreword"

Gonthier CD "Foreword" in Pitts C, Gonthier CD, MacLean J and Picherack R (eds) *Corporate social responsibility: A legal analysis* (Ontario: LexisNexis, 2009)

x

Goodland 2004 *SDLP*

Goodland R "Free, prior and informed consent and the World Bank Group" 2004 *Sustainable Development Law and Policy* 66-74

Gordillo "Access to justice, legal certainty and economic rationality"

Gordillo A "Access to justice, legal certainty and economic rationality" in Anthony G, Auby JB, Morison J and Zwart T *Values in global administrative law* (Hart Publishing; Oxford, 2011) 363-372.

Gowa "Analysis of private investment in the coffee"

Gowa AK "Analysis of private investment in the coffee, flowers and fish sectors of Uganda" in Liu P, Koroma S, Arias P and Hallam D (eds) *Trends and impacts of foreign investment in developing country agriculture: Evidence from case studies* (FAO; Rome, 2012) 123-153

Graham *et al* "The role of the EU in land grabbing in Africa"

Graham A, Aubry S, Künnemann R and Suárez SM "The role of the EU in land grabbing in Africa, CSO monitoring 2009-2010 "Advancing Africa Agriculture (AAA): The impact of Europe's policies and practices on African agriculture and food security" in the *International Conference on Global Land Grabbing* (6-8 April 2011, University of Sussex) 1-29

Greenspan "Free, prior and informed consent in Africa"

Greenspan E "Free, prior and informed consent in Africa: An emerging standards for extractive industry projects" in *Oxfarm America Research Background Paper* (Oxfarm, 2014) 1-56

Greiber "Introduction"

Greiber T "Introduction" in Greiber T, Janki M, Orellana, Savaresi A and Shelton D (eds) *Conservation with justice: A rights-based approach* (IUCN, Bonn, 2009) 1-4

Grindle and Thomas *Public choices and policy change*

Grindle MS and Thomas JW *Public choices and policy change: The political economy of reform in developing countries* (The Johns Hopkins University Press, 1991)

Guy-Peters "Is governance for everyone"



Guy-Peters B "Is governance for everyone: The use and abuse of governance" 1 in Bissessar AM (ed) *Governance: Is it for everyone?* (Nova Publishers, New York, 2012) 1-12

Guzman and Meyer 2010 *JLA*

Guzman AT and Meyer TL "International soft law" 2010 *Journal of Legal Analysis* 171-225

Gwanmesia "Locus standi in human rights enforcement in Cameroon"

Gwanmesia G "Locus standi in human rights enforcement in Cameroon" in *Report of the Judicial Colloquium on Locus Standi in Administrative Justice and Human Rights Enforcement* (8-9 October 2001, the Gambia) 1-28

## H

Hall 2011 *JPS*

Hall D "Land grab, land control, and Southeast Asian crop booms" 2011 *Journal of Peasant Studies* 837-857

Hall 2011 *Policy brief*

Hall R "Land grabbing in Africa and the new politics of food" 2011 *Policy brief* 1-8

Hall 2011 *RAPE*

Hall R "Land grabbing in Southern Africa: The many faces of the investor rush" 2011 *Review of African Political Economy* 193-214

Hallam "International investment in agricultural production"

Hallam D "International investment in agricultural production" in Kugelman M and Levenstein SL (eds) *Land Grab? The race for the world's farmland* (Woodrow Wilson International Centre for Scholars Asia Programme, 2009) 27-37

Hallam "Foreign investment in developing country agriculture"

Hallam "Foreign investment in developing country agriculture: Issues, policy implications and international response" in *Global Forum VIII on International Investment Conference* (7-8 December 2009) 1-9

Haller 2008 *RS*

Haller M "Division on Europe between elites and citizens 2008 *Review of Sociology* 67-92

Halliday *Judicial review and compliance*

Halliday S *Judicial review and compliance with administrative law* (Hart Publishing, 2004)

Hamann and Acutt 2003 *DSA*

Hamann R and Acutt N "How should civil society and the government respond to 'corporate social responsibility'? A critique of business motivations and the potential for partnerships" 2003 *Development Southern Africa* 255-270

Hambuda and Kagoiya *Access to information and women's rights in Africa*

Hambuda C and Kagoiya R (eds) *Access to information and women's rights in Africa: A collection of case studies from Cameroon, Ghana, Kenya, South Africa and Zambia* (FEMNET, UNESCO: 2009)

Hartwell "Foreword"

Hartwell RM "Foreword" in Jones EL *Agriculture and the industrial revolution* (Basil Blackwell and Mott Limited, 1974) x-xiii

Helu "Tradition and governance"

Helu F "Tradition and governance" in *State, Society and Governance, Research discussion paper* (1997 the Australian National University) 1-6

Hempel *Environmental governance*

Hempel LC *Environmental governance: The global challenge* (Washington, Island Press, 1996)

Henderson *The Industrial revolution in Europe*

Henderson WO *The Industrial revolution in Europe 1815-1914* (Quadrangle Books, Chicago, 1961)

Hepburn and Kuuya "Corporate social responsibility and investment treaties"

Hepburn J and Kuuya V "Corporate social responsibility and investment treaties" in Segger MCC, Gehring MW and Newcombe A (eds) *Sustainable development in world investment law* (Kluwer Law International: The Netherlands, 2011) 589-609

Hildenbrand 1983 *Econometrica*

Hildenbrand W "On the law of demand" 1983 *Econometrica* 997-1019

Hilhorst *et al* "Agrarian change below radar screen"

Hilhorst T, Nelen J and Traoré N "Agrarian change below radar screen: Rising farmland acquisitions by domestic investors in West Africa. Result from a survey in Benin, Burkina Faso and Niger" (Unpublished paper by the Royal Tropical Institute and SNV 2011) 1-29

Hirsch "Sources of international investment law"

Hirsch M "Sources of international investment law" in Bjorklund AK and Reinisch A (eds) *International investment law and soft law* (Edward Elgar: Cheltenham United Kingdom, 2012) 9-38

Hirst "Democracy and governance"

Hirst P "Democracy and governance" in Pierre J (ed) *Debating governance: Authority, Steering and Democracy* (Oxford University Press, 2000) 13-36

Hirst *From statism to pluralism*

Hirst P *From statism to pluralism* (UCL Press, 1997)

Hoexter *Administrative law*

Hoexter C *Administrative law* (Juta, Cape Town, 2007)

Holt-Giménez 2012 *FFB*

Holt-Giménez E "Land grab vs land sovereignty 2012 *Food First Backgrounder* 1-3

Hoyle and Levang "Oil palm development in Cameroon"

Hoyle D and Levang P "Oil palm development in Cameroon" in *An Ad-hoc working paper* (IRD/CIFOR 2012) 1-15

Hunter *et al International environmental law*

Hunter D, Salzman J and Zaelke D, *International environmental law and policy* 2<sup>nd</sup> ed (New York, Foundation Press, 2002)

Hydén "Governance and the study of politics"

Hydén G "Governance and the study of politics" in Hyden G and Bratton M (eds) *Governance and politics in Africa* (Boulder Co, 1992) 1-26

## I

Imbert *Le Cameroun que sais-je?*

Imbert J *Le Cameroun que sais-je?* 3<sup>rd</sup> ed (Press Universitaire de France, 1982)

Ingwe *et al* 2010 *JSDLA*

Ingwe R, Okoro J and Ukwayi Joseph K "The new scramble for Africa: How large scale acquisition of sub-Saharan Africa's land by multinational corporations and rich countries threatens sustainable development" 2010 *Journal of Sustainable Development Law in Africa* 28-50

Irwin to include the year *PUS*

Irwin A "Constructing the scientific citizen: Science and democracy in the biosciences" *Public Understanding of Science* 1-18

Isham *et al* "Governance and the returns to investment"

Isham J, Kaufmann D and Pritchett LH "Governance and the returns to investment: An empirical investigation" in *Policy Working Research paper* (November, 1995) 1-44

## **J**

Jansen and Dubois "Global pesticide governance by disclosure"

Jansen K and Dubois M "Global pesticide governance by disclosure: Prior informed consent and the Rotterdam Convention" in Gupta A and Mason M (eds) *Transparency in global environmental governance: Critical perspectives* (Cambridge: MIT Press, 2014) 107-131

Jatto 2010 *ARIBTL*

Jatto LB Jnr "Africa's approach to the international war on corruption: A critical appraisal of the African Union Convention on Preventing and Combating Corruption" 2010 *Asper Review of International Business and Trade Law* 79-98

Jean-Pierre "Access to information, participation and justice"

Jean-Pierre DM "Access to information, participation and justice: Keys to the continuous evolution of the Inter-American system for the protection and promotion of human rights" in Bruch C (ed) *The new public: The globalization of public participation* (Environmental Law Institute, Washington DC, 2002) 251-261

Jessop "The governance of complexity and the complexity of governance"

Jessop B "The governance of complexity and the complexity of governance: Preliminary remarks on some problems and limits of economic guidance" in Amin A and Hausner J (eds) *Beyond market and hierarchy: Interactive governance and social complexity* (Cheltenham, Edward Edgar Publishing, 1997) 111-147

Jessop 1995 *ES*

Jessop B "The regulation approach, governance and post-Fordism: An alternative perspective on economic and political change?" 1995 *Economy and Society* 307-333

Jones 1997 *WMELPR*

Jones EG "Risky assessments: Uncertainties in science and the human dimensions of environmental decision-making" 1997 *William and Mary Environmental Law and Policy Review* 3-66

Jones *Agriculture and the industrial revolution*

Jones EL *Agriculture and the industrial revolution* (Basil Blackwell and Mott Limited, 1974)

## **K**

Kaarhus *et al* "Agro-investment in Africa"

Kaarhus R, Haugs R, Hella JP, and Makindara JR "Agro-investment in Africa: Impact on land and livelihoods in Mozambique and Tanzania" in *Noragric Report No. 53* (August 2010) 1-60

Kakonge 1996 *IA*

Kakonge JO "Problems with public participation in EIA process: Examples from sub-Saharan Africa" 1996 *Impact Assessment* 309-320

Kaler 2002 *BER*

Kaler J "Responsibility, accountability and governance" 2002 *Business Ethics Review* 327-333

Kasimbazi "The legal framework for the balancing of development and environmental interests in Uganda"

Kasimbazi E "The legal framework for the balancing of development and environmental interests in Uganda" in Faure M and Du Plessis W (eds) *The balancing of interests in environmental law in Africa* (Pretoria University Law Press, 2011) 519-555

Katrina *Customs and constitutions*

Katrina C *Customs and constitutions: State recognition of customary law around the world* (IUCN, Bangkok, 2011)

Kaufmann and Kraay "Governance indicators"

Kaufmann D and Kraay A "Governance indicators: Aid allocation and millennium challenge account" in *World Bank Working paper series* (December 2002) 1-14

Kelly 2010 *LEDJ*

Kelly DJ "The case for social safeguards in a post-2012 agreement on REDD" 2010 *Law Environment and Developmental Justice* 63-81

Khalfan A "International investment law and human rights"

Khalfan A "International investment law and human rights" in Segger MC C, Gehring MW and Newcombe A (eds) *Sustainable development in world investment law* (Kluwer Law International, 2011) 53-56

Khan and Bamou "An analysis of foreign direct investment flows to Cameroon"

Khan SA and Bamou LT "An analysis of foreign direct investment flows to Cameroon" in Ajayi SI (ed) *Foreign direct investment in sub-Saharan Africa: Origins, targets, impacts and potential* (African Economic Research Consortium, 2006) 75-101

Kidd 2008 *SAAJELP*

Kidd M "Removing the green-tinted spectacles: The three pillars of sustainable development in South African environmental law" 2008 *South African Journal of Environmental Law and Policy* 85-102

Kidd and Retief "Environmental assessment"

Kidd M and Retief F "Environmental assessment" in Strydom HA and King ND (eds) *Environmental management in South Africa* 2<sup>nd</sup> ed (Juta Cape Town, 2009) 971-1047

Kidd *Environmental law*

Kidd M *Environmental law* 2<sup>nd</sup> ed (Juta, Capet Town, 2011)

Kiss and Shelton *Guide to international environmental law*

Kiss A and Shelton D *Guide to international environmental law* (Martinus Nijhoff Publishers, 2007)



Kiss and Shelton *International environmental law*

Kiss A and Shelton D *International environmental law* 3<sup>rd</sup> ed (Transnational Publishers: New York, 2004)

Kiyaga-Nsubuga "Local democracy, good governance and delivery of MDGs in Africa"

Kiyaga-Nsubuga J "Local democracy, good governance and delivery of MDGs in Africa: Background paper" in *Report of the African regional symposium* (April 2006 Uganda) 57-80

Kjær "Governance-making it tangible"

Kjær M "Governance-making it tangible" in the *Good Governance Working Group at the EADI Conference* (11-14 September 1996 VIENNA) not done

Kjoer and Kinnerup "Good governance"

Kjoer M and Kinnerup K "Good governance: How does it relates to human rights?" in Sano H, Alfredson G and Clapp R (eds) *Human rights and good governance: Building bridges* (Martinus Nijhof Publishers, the Hague, 2002) 1-18.

Klaaren and Penfold "Access to information"

Klaaren J and Penfold G "Access to information" in Woolman S and Bishop M (eds) *Constitutional law of South Africa* 2<sup>nd</sup> (Juta, 2014) 62-24

Klein *et al Concepts and principles*

Klein A, Kiranda Y and Bafaki R *Concepts and principles of democratic governance and accountability* (Konrad-Adenauer Stiftung, 2011)

Kloppers and Du Plessis 2008 *JENRL*

Kloppers H and Du Plessis W "Corporate social responsibility, legislative reforms and mining in South Africa" 2008 *Journal of Energy and Natural Resource Law* 91-118

Kotzé "A legal framework for integrated environmental governance"

Kotzé LJ "A legal framework for integrated environmental governance in South Africa and the North-West Province" (LLD Thesis, North-West University, Potchefstroom Campus 2005)

Kotzé "Balancing sustainability considerations through public participation"

Kotzé LJ "Balancing sustainability considerations through public participation in South Africa: A critical reflection on legislative entitlements and the role of the judiciary" in Bosselmann K, Engel R and Taylor P (eds) *Governance for sustainability: Issues, challenges, successes* (IUCN, Bonn, Germany, 2008) 133-140

Kotze and Du Plessis 2014 *VRU*

Kotze LJ and Du Plessis AA "A gold rush to nowhere? The rights-based approach to environmental governance in South Africa's mining sector in question" 2014 *Verfassung und Recht in Übersee* 447-481

Kotzé "Environmental governance"

Kotzé LJ "Environmental governance" in Paterson AR and Kotzé LJ (eds) *Environmental compliance and enforcement in South Africa: Legal perspectives* (Cape Town, Juta, 2008) 102-12

Kotzé "Promoting public participation in environmental decision-making"

Kotzé LJ "Promoting public participation in environmental decision-making through the South Africa courts: Myth or reality?" in the *International Conference on Environmental Governance and Democracy* (May 2008 Yale University)

Kotzé "Towards a tentative legal formulation of environmental governance"

Kotzé LJ "Towards a tentative legal formulation of environmental governance" in Honkonen T and Couzens ED (eds) *International environmental law-making and*

*diplomacy review* (UNEP Course series, Joensuu Finland: University of Eastern Finland, 2009) 3-20

Kotzé 2006 *Obiter*

Kotzé LJ "A legal analysis of the proposed waste discharge system in terms of the South African environmental and water law framework" 2006 *Obiter* 128-145

Kotzé and Du Plessis 2010 *JCI*

Kotzé LJ and Du Plessis AA "some brief observation on fifteen years of environmental rights jurisprudence in South Africa" 2010 *Journal of Court Innovations* 157-176

Kotzé *Global environmental governance*

Kotzé LJ *Global environmental governance: Law and regulation for the 21<sup>st</sup> century* (Edward Elgar Publishing, 2012)

Kotzé *Reimagining global environmental law and governance*

Kotzé LJ *Reimagining global environmental law and governance in the Anthropocene* (Inaugural address, Potchefstroom Campus, 2012)

Kravchenko 2009 *ORIL*

Kravchenko S "Is access to environmental information a fundamental human right?" 2009 *Oregon Review of International Law* 227-266

Kravchenko 2008 *VJEL*

Kravchenko S "Right to carbon or right to life: Human rights approaches to climate change" 2008 *Vermont Journal of Environmental Law* 514-547

Kravchenko 2007 *CJIELP*

Kravchenko S "The Aarhus Convention and innovations in compliance with multilateral environmental agreements" 2007 *Colombia Journal of International Environmental Law and Policy* 1-50

Kravchenko 2006 *SAJELP*

Kravchenko S "The Aarhus Convention: A work in progress" 2006 *South African Journal of Environmental Law and Policy* 105-113

Kravchenko 2009 *TELJ*

Kravchenko S "The myth of public participation in a world of poverty" 2009 *Tulane Environmental Law Journal* 34-55

Kravchenko and Bonnie *Human rights and the environment*

Kravchenko S and Bonnie JE *Human rights and the environment: Cases, law and policy* (Carolina Academic Press, 2008)

Kraybill and Kidoido "An analysis of the relative profitability"

Kraybill D and Kidoido M "An analysis of the relative profitability of key Ugandan agricultural enterprises by agricultural zones" in *Background Paper No. 04* (Ugandan Strategy Support Program 2009) 1-43

Kugelman "Introduction"

Kugelman "Introduction" in Kugelman M and Levenstein SL (eds) *Land Grab? The race for the world's farmland* (Woodrow Wilson International Center for Scholars, 2009) 1-23

## L

Larmour "Making sense of good governance"

Larmour P "Making sense of good governance" in *State, Society and Governance, Research discussion paper* (The Australian National University 1998) 1-12

Larry 1996 *JD*

Larry D "Is the third wave over?" 1996 *Journal of Democracy* 20-36

Lateef *Governance and development*

Lateef S *Governance and development* (IBRD/ The World Bank, 1992)

Laughlin *et al Guidelines on free, prior informed and consent*

Laughlin J, McNeill C, Sriskanthan G, and Kantcheva N *Guidelines on free, prior informed and consent* (UN, 2013)

Lee and Abbot 2003 *MLR*

Lee M and Abbot C "The usual suspects: Public participation under the Aarhus Convention" 2003 *Modern Law Review* 80-108

Lee 2006 *JCAS*

Lee MC "The 21<sup>st</sup> century scramble for Africa" 2006 *Journal of Contemporary African Studies* 303-330

Lemos and Agrawal 2006 *ARER*

Lemos MC and Agrawal A "Environmental governance" 2006 *Annual Review of Environment and Resources* 297-325

Levy and Newell "Introduction"

Levy DL and Newell PJ "Introduction" in Levy DL and Newell PJ (eds) *The business of global environmental governance* (Cambridge University Press, 2005) 1-7 or 73-104

Leyland and Woods *Textbook on administrative law*

Leyland P and Woods T *Textbook on administrative law* 4<sup>th</sup> ed (Oxford, Oxford University Press, 2002)

Liebenberg *Socio-economic rights adjudication*

Liebenberg S *Socio-economic rights adjudication under a transformative constitution* (Cape Town, 2010)

Lindeque and Cloete 2005 *AS*

Lindeque AS and Cloete CE "Public participation in lower and higher socio-economic areas in South Africa" 2005 *Acta Structtilia* 25-41.

Liu "Introduction"

Liu P "Introduction" in *Trends and impacts of foreign investment in developing countries agriculture: Evidence from case studies* (FAO, 2013) 3-12

Liverage "Responding to land grabbing"

Liverage H "Responding to land grabbing and promoting responsible investment in agriculture" in IFAD Occasional Paper N0 2 (2010) 1-12

Louka *International environmental law*

Louka E *International environmental law: Fairness, effectiveness, and world order* (Cambridge, Cambridge University Press, 2006)

Luhman *The differentiation of society*

Luhman N *The differentiation of society* (New York, Columbia University Press, 1982)

Lundbald "Some legal dimensions of corporate codes of conduct"

Lundbald C "Some legal dimensions of corporate codes of conduct" in Mullerat R (ed) *Corporate social responsibility: The corporate governance of the 21<sup>st</sup> century* (Kluwer Law International: Hague, 2005) 385-399

## **M**

Maaski "Recognition or misrecognition?"

Maaski K "Recognition or misrecognition:?" Pitfalls of indigenous people's free, prior and informed consent" in Hickey S and Mitlin D (eds) *Rights-based approaches to development: Exploring the potential pitfalls* (Kumarian Press, 2009) 69-83

Mabikke "Escalating land grabbing in post-conflict regions of northern Uganda"

Mabikke SB "Escalating land grabbing in post-conflict regions of northern Uganda: A need for strengthening good land governance in the Acholi Region" in the International Conference on Global Land Grabbing (6-8 April 2011) 1-27

Maguire *Global forest governance*

Maguire R *Global forest governance: Legal concepts and policy trends* (Edward Elgar Publishing Limited, 2013)

Margulis *et al* 2013 *Globalisation*

Margulis ME, Mckeen N and Borrás SM Jr 'Land grabbing and global governance: Critical perspectives 2013 *Globalisation* 1-23

Malthus *An Essay on the principles of population*

Malthus TR "Malthusian theory of population" in *An Essay on the principles of population, as it affects the future improvement of society with remarks on the speculations of Mr. Godwin, M Condorcet, and Other Writers* (London 1798)

Mann and Smaller "Foreign land purchase for agriculture"

Mann H and Smaller C "Foreign land purchase for agriculture: What impact on sustainable development" in *Sustainable Development Innovation Briefs Issue No 8* (2010) 1-8

Margulis "Global food security governance"

Margulis M "Global food security governance: The committee on world food security, comprehensive framework for action and the G8/G20" in Rayfuse R and Weisfelt N (eds) *The challenge of food security: International policy and regulatory frameworks* (Edward Elgar Publishing, 2012) 231-254

Martiniello "The accumulation of dispossession and resistance in northern Uganda"

Martiniello G "The accumulation of dispossession and resistance in northern Uganda" in the *International Conference on Global Land Grabbing II* (17-19 October 2012 New York) 1-32

Mason 2010 *GEP*

Mason M "Information disclosure and environmental rights: The Aarhus Convention" 2010 *Global Environmental Politics* 10-31

Mass "Section 4 of AJA and procedural fairness"

Mass C "Section 4 of AJA and procedural fairness in administrative action affecting the public: A comparative perspective" in Lange C and Wessels J (eds) *The right to know: South Africa's promotion of administrative justice and access to information* (Siber Ink, 2004) 63-80



Mayers and Vermeulen *Company and community forest partnerships*

Mayers J and Vermeulen S *Company and community forest partnerships. From raw deals to mutual deals?: An international review with proposals for improving forests enterprise and livelihoods* (IIED, 2002)

Mbaku *Culture and customs of Cameroon*

Mbaku JM *Culture and customs of Cameroon* (Westport, Connecticut, Greenwood Press, 2005)

Mbazira *Public interest litigation and judicial activism in Uganda*

Mbazira C *Public interest litigation and judicial activism in Uganda: Improving the enforcement of economic, social and cultural rights* (HURIPPEC: Kampala, 2009)

McBarnet *et al The new corporate accountability*

McBarnet D, Voiculescu A and Campbell T (eds) *The new corporate accountability: Corporate social responsibility and the law* (Cambridge: Cambridge University Press, 2007)

Mckinley "The state of access to information in South Africa"

Mckinley DT "The state of access to information in South Africa" in *Report prepared for the ventre for the study of Violence and reconciliation* (2003)

McMichael "Interpreting the land grab"

McMichael P "Interpreting the land grab" in *Discussion paper presented at TNI* (2011, Cornell University) 1-9

Meier *Leading issues in economic development*

Meier GM (ed) *Leading issues in economic development* 6<sup>th</sup> ed (Oxford University Press, 1995)

Melber and Southall "Introduction"

Melber H and Southall R "Introduction": A new scramble for Africa" in Southall R and Melber H (eds) *A new scramble for Africa? Imperialism, investment and development* (University of KwaZulu-Natal Press, 2009) xix-xxvii

Mehra and Rojas *Women, food security and agriculture*

Mehra R and Rojas MH *Women, food security and agriculture in a global market place* (ICRW, 2008)

Mengang 1997 *YFESB*

Mengang JM "Evolution of natural resource policy in Cameroon" 1997 *Yale Forestry and Environmental Studies Bulletin* 239-248

Mendel *The right to information in Latin America*

Mendel T *The right to information in Latin America: Overview and implementation* (UNESCO, 2009)

Misselhorn *et al* 2012 *COES*

Misselhorn A, Aggarwal P, Ericksen P, Gregory P, Horn-Pathanothai L, Ingram J and Wiebe K "A vision for attaining food security" 2012 *Current Opinion in Environmental Sustainability* 7-17

Mittal "The 2008 food price crisis"

Mittal A "The 2008 food price crisis: Rethinking food security policies" in *G-24 Discussion Paper Series* (United Nations, 2009) 1-25

Moran 2002 *BJPS*

Moran M "Understanding the regulatory state" 2002 *British Journal of Political Science* 391-413

Morina "The transposition"

Morina V "The transposition of the convention on access to information, public participation and access to justice in environmental matters with legislation of Kosovo" in *Assessment Report* (Pristina, 2006) 1-37

Morrow "The court and public participation in environmental decision-making"

Morrow K "The court and public participation in environmental decision-making" in Benidickson J, Boer B, Benjamin AH and Morrow K *Environmental law and sustainability after Rio* (Edward Elgar Publishing, 2011) 138-157

Mortia and Zaelke "Rule of law, good governance and sustainable development"

Mortia S and Zaelke D "Rule of law, good governance and sustainable development" in the *Seventh International Conference on Environmental Compliance and Enforcement* (2007, Washington DC) 15-21

Mousseau "Herakles exposed"

Mousseau F "Herakles exposed: The truth behind Herakles Farms false promises in Cameroon" (Oakland Institute and Greenpeace International, 2013)

Mubangizi and Mbazira 2012 *LDD*

Mubangizi JC and Mbazira C "Constructing the amicus curiae procedure in human rights litigations: What can Uganda learn from South Africa"? 2012 *Law, Democracy and Development* 199-218

Mubangizi and Mcquois-Mason 2013 *JJS*

Mubangizi JC and Mcquois-Mason DJ "The role of university law clinics in public interests litigations, with specific reference to South Africa" 2013 *Journal for Juridical Science* 47-66

Mubangizi *The protection of human rights in South Africa*

Mubangizi JC *The protection of human rights in South Africa: A legal and practical guide* 2<sup>nd</sup> (Juta and Co Ltd, 2013)

Muchlinski *Multinational enterprises and the law*

Muchlinski P *Multinational enterprises and the law* (Oxford: Blackwell, 2007)

Müllerová 2009 *CLR*

Müllerová H "Human rights approaches to environmental protection at the international level and their application in the Czech R" 2009 *Common Law Review* 1-10

Muralidhar *Law, poverty and legal aid*

Muralidhar S *Law, poverty and legal aid: Access to criminal justice* (LexisNexis; Butterworth, 2004)

Mureinik 1993 *AJ*

Mureinik E "Re-considering review: participation and accountability 1993 *Acta Juridica* 35-46

Muriisa *et al* "Land deals in Uganda"

Muriisa Roberts K, Mbabazi Pamela K and Twinamatsiko M "Land deals in Uganda: An invisible hand in land grabbing and rural development" in the *Conference of Land Politics in Africa* (March 2013 South Africa) 1-35

Murombo 2008 *PELJ*

Murombo T "Beyond public participation: The disjuncture between South Africa's environmental impact assessment (EIA) law and sustainable development" 2008 *Potchefstroom Electronic Law Journal* 1-31

Murombo 2010 *LEDJ*

Murombo T "Strengthening *locus standi* in public interest environmental litigation: Has leadership moved from the United States to South Africa" 2010 *Law Environment and Development Journal* 165- 178

## **N**

NAPE *Land, life and justice*

NAPE *Land, life and justice: how land grabbing in Uganda is affecting the environment, livelihood and food sovereignty of communities* (FoEI, 2012)

Narula "The global land rush: Markets, rights, and the politics of food"

Narula S "The global land rush: Markets, rights, and the politics of food" in the *International Conference on Global Land Grabbing II* (17-19 October 2012) 1-71

Narula 2013 *SJIL*

Narula S "The global land rush: Markets, rights, and the politics of food" 2013 *Stanford Journal of International Law* 101-175

Ndoye and Kaimowitz 2000 *JMAS*

Ndoye O and Kaimowitz D "Macroeconomics, markets and the humid forests of Cameroon, 1967-1997" 2000 *Journal of Modern African Studies* 225-253

Ndulo 2011 *IJGLS*

Ndulo M "African customary law, customs and women's rights" 2011 *Indiana Journal of Global Legal Studies* 87- 120

Nel 2001 *SAJELP*

Nel J "Stakeholders relationships in the EIA process: Some concerns" 2001 *South African Journal of Environmental Law and Policy* 105-110

Ngassa "Women's inheritance rights"

Ngassa VN "Women's inheritance rights in the north west and south west regions of Cameroon" in Fonjong LN (ed) *Issues in women's land rights in Cameroon* (African Books Collective, 2012) 43-64

Niezen *The origin of indigenism*

Niezen R *The origin of indigenism: Human rights and the politics of identity* (University of California Press, 2003)

Njoh 2007 *GeoJournal*

Njoh AJ "Politico-economic determinant of forestry policy in Cameroon" 2007 *GeoJournal* 109-120

Ntlama 2012 *PELJ*

Ntlama N "The application of section 8(3) of the constitution in the development of customary law values in South Africa's new constitutional dispensation" 2012 *Potchefstroom Electronic Law Journal* 24-44

Nyamu-Musembi and Cornwall "What is the rights-based approach all about?"

Nyamu-Musembi C and Cornwall A "What is the rights-based approach all about?: Perspective from international development agencies" in *IDS Working Paper 234* (2004 Institute of Development Studies, Sussex England) 1-53

Nyenti 2003 *De Jure*

Nyenti M "Access to justice in the South African social security system: Towards a conceptual approach" 2003 *De Jure* 901-916

## O

Oakland Institute "Understanding land investment deals in Africa"

Oakland Institute "Understanding land investment deals in Africa, massive deforestation portrayed as sustainable development: The deceit of Herakles Farms in Cameroon (Oakland Institute 2012)

O'Brien E "Irregular and illegal land acquisition by Kenya's elites

O'Brien E "Irregular and illegal land acquisition by Kenya's elites: Trends, processes, and impacts of Kenya's land grabbing phenomenon" in *KLA Contribution to ILC Collaborative Research Project on Commercial Pressures on Land* (Rome 2011) 1-49

Odote and Makoloo "African initiative for public participation"

Odote C and Makoloo MO "African initiative for public participation in environmental management" in Bruch C (ed) *The new public: The globalization of public participation* (Environmental Law Institute: 2002) 121-13

Odeny *et al* "Land grabbing in Kenya and Mozambique"

Odeny E, Leonard R, Borrás S and Rocha M "Land grabbing in Kenya and Mozambique: A report on two research missions and a human rights analysis of land grabbing" (FIAN 2010)

OECD *Governance in transition*

OECD *Governance in transition: public management reforms in OECD countries* (Paris, OECD/PUMA, 1995)

Offe *Contradictions of the welfare state*

Offe C *Contradictions of the welfare state* (Massachusetts Institute of Technology Press, 1987)

Ofodile 2009 *ICLTJ*

Ofodile U "Trade, aids and human rights: China's Africa policy in perspective"  
2009 *International Commercial Law and Technology Journal* 86-99

Olaniyan 2004 *AHRLJ*

Olaniyan K "The African Union Convention on Preventing and Combating  
Corruption: A critical appraisal" 2004 *African Human Rights Law Journal* 74-92

Olowu "Public accountability, good governance and constitutional validation"

Olowu D "Public accountability, good governance and constitutional validation in  
Commonwealth Africa" in the *VII World Congress on Constitutional Law* (11-15  
June 2007 Greece) 1-21

Osborne and Gaebler *Reinventing government*

Osborne D and Gaebler T *Reinventing government* (Massachusetts; Addison-  
Wesley, 1992)

Osofsky 2005 *SELJ*

Osofsky HM "Learning from environmental justice: A new model for international  
environmental rights" 2005 *Stanford Environmental Law Journal* 71-90

Ouguerouz *The African Charter on Human and People's Rights*

Ouguerouz F *The African Charter on Human and People's Rights: A  
comprehensive agenda for human dignity and sustainable democracy in Africa*  
(Martinus Nijhoff Publishers: The Hague, 2003)



## P

Pakenham *The scramble for Africa*

Pakenham T *The scramble for Africa: The white man's conquest of the dark continent 1876-1912* 1<sup>st</sup> ed (Random House Inc, New York, 1991)

Palmer *et al* 2012 *L TJ*

Palmer D Arial A, Metzner R, Willmann R, Muller E, Kafeero F, and Crowley E "Improving the governance of tenure of land, fisheries and forests" 2012 *Land Tenure Journal* 39-63

Parry *et al* *Climate change 2007*

Parry M, Canziani O, Palutikof J, Van der Linden P, and Hason C (eds) *Climate change 2007: Impact, adaptation and vulnerability. Working Group II contribution to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change* (IPCC, Cambridge University Press, 2007)

Pearce *The land grabbers*

Pearce F *The land grabbers: The new fight over who owns the earth* (Boston Beacon Press, 2012)

Pearson "A fresh look at the roots of food insecurity"

Pearson C "A fresh look at the roots of food insecurity" in Rayfuse R and Weisfelt N (eds) *The Challenge of food security: International policy and regulatory frameworks* (Edward Elgar Publishing, 2012) 19-43

Peters *The future of governing*

Peters BG *The future of governing: Four emerging models* (Kansa, Kansa University Press, 1996)

Petkova *et al* *Closing the gap*

Petkova E, Maurer C, Henninger N and Irwin F *Closing the gap: Information, participation and justice in decision-making for the environment* (World Resource Institute, 2002)

Picolotti and Taillant *Linking human rights and the environment*

Picolotti R and Taillant JD (eds) *Linking human rights and the environment* (University of Arizona Press; Tucson, 2003)

Pierre "Introduction"

Pierre J "Introduction: Understanding governance" in Pierre J (ed) *Debating governance: Authority, steering and democracy* (Oxford University Press, 2000) 1-20

Pinedo 2011 *IJHSS*

Pinedo MEM "Access to justice as hope in the dark in search for a new concept in European law" 2011 *International Journal of Humanities and Social Sciences* 9-19

Plasket "The fundamental rights to just administrative action"

Plasket C "The fundamental rights to just administrative action: Judicial review of administrative action in democratic South Africa (LLD thesis, University of Rhodes, 2002)

Polack *et al* *Accountability in Africa's land rush*

Polack E, Cotula L and Côte M *Accountability in Africa's land rush: what role for legal empowerment?* (IIED and IDRC, 2013)

Popović 1996 *CHRLR*

Popović NAF "In pursuit of environmental human rights: Commentary on the draft declaration of principles on human rights and the environment" 1996 *Columbia Human Rights Law Review* 487-603

Pring and Noé "The emerging international law of public participation"

Pring G and Noé SY "The emerging international law of public participation affecting global mining, energy, and resource development" in Zillman DM, Lucas A and Pring G (eds) *Human Rights in Natural Resource Development* (Oxford University Press; Oxford, 2002) 11-76

Pringle 2013 *JHF*

Pringle E "Land reform and white ownership of agricultural land in South Africa" 2013 *Journal of the Helen Foundation* 37-42

## **R**

Raubenheimer 2007 *SAPL*

Raubenheimer E "Section 4 of PAJA: The constitutional standard for participative provisions in land use management" 2007 *South African Public law* 491-506

Rayfuse and Weisfelt "The international policy and regulatory challenges"

Rayfuse R and Weisfelt N "The international policy and regulatory challenges of food security: an overview" in Rayfuse R and Weisfelt N (eds) *The challenge of food security: International policy and regulatory frameworks* (Edward Elgar Publishing, 2012) 3-15

Razzaque 2007 *FELR*

Razzaque J "Linking human rights, development, and environment: Experiences from litigation in South Asia" 2007 *Fordham Environmental Law Review* 587-608

Rehbinder 2006 *SAJELP*

Rehbinder E "Promoting and enforcing environmental law and sustainable development" *South African Journal of Environmental Law and Policy* 83-92

Reif 2000 *HHRJ*

Retif LC "Building democratic institutions: The role of national human rights institutions and good governance and human rights protection" 2000 *Harvard Human Rights Journal* 1-72

Rhodes "Governance and public administration"

Rhodes "Governance and public administration" in Pierre J (ed) *Debating governance: Authority, steering and democracy* (Oxford University Press, 2000) 54-90

Rhodes 1996 *PS*

Rhodes RAW "The new governance: Governing without government" 1996 *Political Studies* 652-667

Rhodes *Understanding governance*

Rhodes RAW *Understanding governance: Policy networks, governance reflexivity and accountability* (Open University Press, Philadelphia, 1997)

Rhona *Textbook on international human rights*

Rhona S *Textbook on international human rights* 3<sup>rd</sup> ed (Oxford, Oxford University Press, 2007)

Richardson and Razzaque "Public participation in environmental decision-making"

Richardson BJ and Razzaque J "Public participation in environmental decision-making" in Richardson BJ and Wood S (eds) *Environmental law for sustainability* (Hart Publishing, Oxford and Portland, 2006) 165-194

Richardson and Wood "Environmental law for sustainability"

Richardson BJ and Wood S "Environmental law for sustainability" in Richardson BJ and Wood S (eds) *Environmental law for sustainability* (Hart Publishing, Oxford and Portland, 2006) 1-18

Robertson and Andersen 2010 *Springer*

Robertson B and Andersen PP "Global land acquisition: Neo-colonialism or development opportunity" 2010 *Springer* 271-283

Robertson *Public secrets*

Robertson KG *Public secrets: A study in the development of government secrecy* (New York; St Martin's Press, 1982)

Robinson "Reflecting on Rio: Environmental law in the coming decades"

Robinson "Reflecting on Rio: Environmental law in the coming decades" in Benidickson J, Boer B, Benjamin AH and Morrow K *Environmental law and sustainability after Rio* (Edward Elgar Publishing, 2011) 9-30

Robinson *et al* 1996 *JEL*

Robinson JR, Ross A, Walton W and Rothnie J 1996 "Public access to environmental information: A means to what end?" 1996 *Journal of Environmental Law* 19-42

Robinson *Agenda 21*

Robinson NA (ed) *Agenda 21: Earth's action plan* (Oceana Publications, INC: New York, 1993)

Rosenau "Governance in a new global order"

Rosenau JT "Governance in a new global order" in Held D and McGrew (eds) *Governing globalization: Power, authority and global governance* (Cambridge Polity Press, 2002)1-27

## **S**

Saidul Islam and Carla De Jesus "Regional initiatives on food security"

Saidul Islam MD and Carla De Jesus I "Regional initiatives on food security"  
Rayfuse R and Weisfelt N (eds) *The challenge of food security: International policy and regulatory frameworks* (Edward Elgar Publishing, 2012) 255-274

Saladin 1999 *TLCP*

Saladin AJ "Good governance and transparency: Their impact on development"  
1999 *Transnational Law and Contemporary Problems* 193-215

Sama "Providing legal aid in criminal justice in Cameroon"

Sama CJ "Providing legal aid in criminal justice in Cameroon: The role of lawyers"  
in *Access to justice in Africa and beyond: Making the rule of law a reality* (PRI, 2007) 153-162

Sand "The right to know"

Sand PH "The right to know: Environmental information disclosure by government and industry" in Zaelke D, Kaniaru D and Kružíková E (eds) *Making law work: Environmental compliance and sustainable development* vol 2 (Cameron May Ltd, 2005) 17-48

Santiso 2001 *GPPR*

Santiso C "Good governance and aid effectiveness: The World Bank and conditionality" 2001 *Georgetown Public Policy Review* 1-22

Sassen 2013 *Globalization*

Sassen S "Land grabs today: Feeding the disassembling of national territory"  
2013 *Globalization* 25-46

Satgar "Global capitalism and the neo-liberalisation of Africa"

Satgar V "Global capitalism and the neo-liberalisation of Africa" in Southall R and  
Melber H (eds) *A new scramble for Africa? Imperialism, investment and  
development* (University of KwaZulu-Natal Press, 2009) 35-56

Scholtz "Human rights and the environment in the African Union context"

Scholtz W "Human rights and the environment in the African Union context" in  
Scholtz W and Verschuuren J (eds) *Regional environmental law: Transaregional  
comparative lessons in pursuit of sustainable development* (Edward Elgar  
Publishing, 2015) 102-127

Scholtz and Ferreira 2011 *ZAÖERV*

Scholtz W and Ferreira G "Much ado about nothing? The SADC Tribunal's quest  
for the rule of law pursuant to regional integration" 2011 *Heidelberg Journal of  
International Law* 331-358

Segger *et al* 2003 *RECEIL*

Segger M.C C, Khalfan A, Gehring M and Toering M "Prospects for principles of  
international sustainable development law after WSSD: Common but  
differentiated responsibilities, precaution and participation" 2003 *RECEIL* 54-68

Segger and Khalfan *Sustainable development law*

Segger MC C and Khalfan A *Sustainable development law: Principles, practices  
and prospects* (Oxford University Press, 2004)

Sending and Neumann 2006 *ISQ*

Sending OJ and Neumann IB "Governance to governmentality: Analysing NGO's states and power" 2006 *International Studies Quarterly* 651-672

Sengupta 2000 *DC*

Sengupta A "Realising the right to development" 2000 *Development and Change* 553-578

Seufert 2013 *JPS*

Seufert P "The food and agricultural organisation voluntary guidelines on the responsible governance of tenure of land, fisheries and forests" 2013 *Journal of Peasant Studies* 181-186

Shaffer and Pollack 2010 *MLR*

Shaffer GC and Pollack MA "Hard vs soft laws: Alternatives, complements and antagonists in international governance" 2010 *Minnesota Law Review* 712-799

Shakung "Protection of the procedural rights of indigenous people"

Shakung MM "Protection of the procedural rights of indigenous people affected by mining in South Africa (LLM Dissertation, NWU 2014)

Shelton 2008 *EPL*

Shelton D "Human rights and the environment: Problems and possibilities" 2008 *Environmental Policy and Law* 41-49

Shelton D L "Environmental justice in the postmodern world"

Shelton D L "Environmental justice in the postmodern world" in Bosselmann K and Richardson BJ (eds) *Environmental justice and market mechanisms: Key challenges for environmental law and policy* (Kluwer Law International Ltd, 1999) 21-29



Shelton "A rights-based approach to conservation"

Shelton DL "A rights-based approach to conservation" in Greiber T, Janki M, Orellana M, Savaresi A and Shelton DL (eds) *Conservation with justice: A rights-based approach* (IUCN: Bonn, 2009) 5-37

Sik "The scramble as a necessary phase in European capitalistic exploitation"

Sik E "The scramble as a necessary phase in European capitalistic exploitation" in Betts RF *The scramble for Africa: Causes and Dimensions of Empire* (DC Heath and Company, 1996) 65-67

Simo "Land grabbing, governance and social peace-building issues in Cameroon"

Simo JA M "Land grabbing, governance and social peace-building issues in Cameroon: Case study of the roles of elites in land deals and commoditisation in the North West region" in *International Conference on Global Land Grabbing* (6-8 April, 2011) 1-15

Smith 2002 *IJGEI*

Smith J "Afforestation and reforestation in the clean development mechanism of the Kyoto Protocol: Implications for forests and forest people 2002 *International Journal of Global Environmental Issues* 322-343

Sohn 1973 *HILJ*

Sohn L "The Stockholm declaration on the human environment" 1973 *Harvard International Law Journal* 423-514

Solomon *Corporate governance and accountability*

Solomon J *Corporate governance and accountability* 3<sup>rd</sup> ed (John Wiley and Sons Ltd, 2010)

Sorabjee 1999 *JR*

Sorabjee SJ "Introduction to judicial review in India" 1999 *Judicial Review* 126-129

Sornarajah M *The international law on foreign investment*

Sornarajah M *The international law on foreign investment* 2<sup>nd</sup> (Cambridge University Press, 2004)

Southall "Scrambling for Africa"

Southall R "Scrambling for Africa: Continuities and discontinuities with formal imperialism" in Southall R and Melber H (eds) *A new scramble for Africa? Imperialism, investment and development* (University of KwaZulu-Natal Press, 2009) 1-34

Southall 2008 *LCS*

Southall R "The new scramble and labour in Africa" 2008 *Labour, Capital and Society* 130-155

Sparks 2012 *IBERJ*

Sparks DL "Large scale land acquisition in sub-Saharan Africa: the new scramble" 2012 *International Business and Economic Research Journal* 67-696

Spyke 1999 *BCEALR*

Spyke NP "Public participation in environmental decision-making at the new millennium: Structuring new spheres of public influence 1999 *Boston College Environmental Affairs Law Review* 263-315

Steele 2001 *OJLS*

Steele J "Participation and deliberation in environmental law: Exploring a problem solving approach" 2001 *Oxford Journal of Legal Studies* 415-442

Stephen 2002 *FIR*

Stephen L "Freedom of information, a Finnish clergyman's gift to democracy" 2002 *Freedom of Information Review* 2-8

Stickler 2 "Governance of large-scale land acquisition in Uganda"

Stickler M M "Governance of large-scale land acquisition in Uganda: The role of Uganda investment authority" in *International Conference on Global Land Grabbing II*, (17-19 October 2012 Cornell University) 1-29

Stocker 1998 *ISSJ*

Stocker G "Governance as theory: Five propositions" 1998 *International Social Science Journal* 17-28

Strong 1973 *FA*

Strong MF "One year after Stockholm: An ecological approach to management" 1973 *Foreign Affairs* 690-707

Subedi *International investment law*

Subedi SP *International investment law: Reconciling policy and principle* (Hart Publishing (Oxford and Portland, 2008)

Sulyok "In fairness"

Sulyok M "In fairness: A comparative analysis of the past, present and future of fair trial systems outside of Europe" in Badó A (ed) *Fair trial and judicial independence, Ius Gentium: Comparative perspectives on law and justice* (Springer International Publishing: Switzerland, 2014) 101-138

Sweptston *et al ILO Convention on indigenous and tribal peoples*

Swepston L, Jolidon G, Thornberry F and Andersen F *ILO Convention on indigenous and tribal peoples, 1989 (No. 169): A manual* (ILO: 2003)

## T

Taillant and Bonnitcha "International investment law and human rights"

Taillant JD and Bonnitcha J "International investment law and human rights" in Segger MC C, Gehring MW and Newcombe A (eds) *Sustainable development in world investment law* (Kluwer Law International, 2011) 57-80

Tamasang "The clean development mechanism and forestry projects in Cameroon"

Tamasang CF "The clean development mechanism and forestry projects in Cameroon: The case of forestry projects in Cameroon" in Mwebaza R and Kotzé LJ (eds) *Environmental governance and climate change in Africa: Legal perspective* (2009) 171-195

Tamasang "The right to water in Cameroon"

Tamasang CF "The right to water in Cameroon: Legal framework for sustainable utilisation" in the *Workshop on Legal Aspects of Water Sector Reforms* (20-21 April 2007 Geneva) 1-22

Thaler "Large-scale land acquisitions and social conflict in Africa"

Thaler K "Large-scale land acquisitions and social conflict in Africa" in the *International Conference on Food Sovereignty: A critical dialogue* (14-15 September 2013 Yale University) 1-14

The "Chad-Cameroon oil and pipeline project"

The "Chad-Cameroon oil and pipeline project: Putting people and the environment at risk" in *Report prepared by the Centre for Environment and Development Cameroon, Chadian Association for the Promotion and Defense of Human Rights and Environmental Defense Fund* (USA, 1999)

The Commission on Global Governance *Our global neighborhood*

The Commission on Global Governance *Our global neighborhood* (Oxford University Press, 1995)

Thornton and Beckwith *Environmental law*

Thornton J and Beckwith S *Environmental law* 2<sup>nd</sup> ed (Sweet and Maxwell: Thomson London, 2004)

Tim *International courts and environmental protection*

Tim S, *International courts and environmental protection* (Cambridge University Press, 2009)

Tomuschat *Human rights*

Tomuschat C *Human rights: Between idealism and realism* (Oxford University Press, 2003)

Tribe 1972 *SCLR*

Tribe L "Technology assessment and the fourth discontinuity: The limit of instrumental rationality" 1972 *Southern California Law Review* 617-661

Turner *A substantive environmental right*

Turner SJ *A substantive environmental right: An examination of the legal obligation of decision-makers towards the environment* (Kluwer Law International BV, The Netherlands, 2009)

## U

Udombana 2006 *AHRLJ*

Udombana NJ "The African Commission on Human and People's Rights and the development of fair trial norms in Africa" 2006 *African Human Rights Law Journal* 299-332

Uvin 2007 *DP*

Uvin P "From the right to development to the rights-based approach: How human rights entered development" 2007 *Development in Practice* 597-606

## V

Van der Linde "National environmental management act 107 of 1998"

Van der Linde M "National environmental management act 107 of 1998" in Strydom HA and King ND (eds) *Environmental management in South Africa* (Juta; Cape Town, 2009) 193-221

Van Heerden *et al* 2014 *SJ*

Van Heerden A, Govindjee A and Holnes D "The constitutionality of statutory limitation of access to information held by the state in South Africa" 2014 *Speculum Juris* 27-54

Van Reenen 1997 *SAJELP*

Van Reenen T "Constitutional protection of the environment: Fundamental rights or principle of state policy?" 1997 *South African Journal of Environmental Law and Policy* 269-289

Veit P "Uganda"

Veit P "Uganda: Land for private investors and economic development" (FOLA, Policy Brief December 2010) 1-6

Verhoog "The politics of land deals"

Verhoog S "The politics of land deals: A comparative analysis of global land policies on large-scale land acquisition" (PhD Thesis, University of Amsterdam, 2012)

Vermeulen and Cotula 2010 *JPS*

Vermeulen S and Cotula L "Over the heads of local people: Consultation, consent and recompense in large-scale land deals for biofuel projects in Africa" 2010 *Journal of Peasant Studies* 899-916

Verschuuren "Public participation regarding the elaboration"

Verschuuren J "Public participation regarding the elaboration and approval of projects in the EU after the Aarhus Convention" in Etty TFM and Somsen H (eds) *Yearbook of European Environmental Law* (2004) 29-48

Verschuuren 1993 *AJPIIL*

Verschuuren J 1993 "The constitutional right to protection of the environment in the Netherlands" 1993 *Austrian Journal of Public and International Law* 67-77

Verschuuren *et al* "Climate-induced foreign agro-investment

Verschuuren JM, Kotzé LJ, Du Plessis AA, Tumushabe G, Rwakakamba Morrison T, Fleurke F and Muhumuza T "Climate-induced foreign agro-investment in Ethiopia and Uganda: Improving the legal pathways and securing the empowerment of local stakeholders" in *Integrated Project Report* (March 2013)

Verster *et al* "Soil"

Verster E, Du Plessis W, Olivier NJJ, Myakayaka AG and Fuggle RF "Soil" in Strydom HA and King ND (eds) *Environmental management in South Africa* 2<sup>nd</sup> ed (Juta, Cape Town, 2009) 294-341

Von Braun and Meinzen-Dick "Land grabbing by foreign investors"

Von Braun J and Meinzen-Dick R "Land grabbing by foreign investors in developing countries: Risks and opportunities" in *IFPRI Policy Brief* (13 April 2009) 1-4

## **W**

Walker *A review of corporate governance*

Walker D *A review of corporate governance in UK banks and other financial industry entities* (The walker review secretariat, London 2009)

Ward 2011 *NWJIHR*

Ward T "The right to free, prior, and informed consent: Indigenous people's participation rights within international law" *Northwestern Journal of International Human Rights* 54-84

Wates 2005 *JEEPL*

Wates J "The Aarhus Convention: Driving forces for environmental democracy" 2005 *Journal for European Environmental and Planning Law* 2-11

Weil 1983 *AJIL*

Weil P "Towards relative normativity in international law?" 1983 *American Journal of International law* 413-442

Weintraub "Access to information"



Weintraub BA "Access to information" in Gerrard MB and Foster SR (eds) *The law of environmental justice: Theories and procedures to address disproportionate risks* 2<sup>nd</sup> ed (American Bar Association, 2008) 265-294

Weiss 1990 *TMWHR*

Weiss EB "Intergenerational equity and rights of future generations" 1990 *The Modern World of Human Rights* 601-616

Weiss 1990 *AJIL*

Weiss EB "Our rights and obligations to future generations for the environment" 1990 *America Journal of International Law* 198-207

Weiss *In fairness of future generations*

Weiss EB *In fairness of future generations: International law, common patrimony, and intergenerational equity* (Transnational, United Nations University, 1989)

Weiss 2000 *TWQ*

Weiss TG "Governance, good governance and global governance: Conceptual and actual challenges" 2000 *Third World Quarterly* 795-814

Wermaere *et al* "Legal ownership and nature of Kyoto units and EU allowances"

Wermaere M, Streck C and Chagas T "Legal ownership and nature of Kyoto units and EU allowances" in Freestone D and Streck C (eds) *Legal aspects of carbon trading: Kyoto, Copenhagen and beyond* (Oxford: Oxford University Press, 2009) 35-58

Wilkinson 1976 *NRJ*

Wilkinson P "Public participation in environmental management: A case study"  
1976 *Natural Resource Journal* 117-135

Wirth 1996 *CJILP*

Wirth DA "Public participation in international processes: Environmental case studies at the national and international levels" 1996 *Colorado Journal of International Law and Policy* 1-38

Witten 2007 *AF*

Witten MW "The protection of land rights in Ethiopia" 2007 *Afrika Focus* 153-184

Wohlmuth "Good governance and economic development in Africa"

Wohlmuth K "Good governance and economic development in Africa: An introduction" in Wohlmuth K, Bass H H and Messner F (eds) *Good governance and economic development* (African Development Perspectives Yearbook, 1999) 3-4

Woodhouse and Ganho "Is Water the hidden agenda"

Woodhouse P and Ganho AS "Is water the hidden agenda of agricultural land acquisition in sub-Saharan Africa"? in the *International Conference on Global Land Grabbing* (6-8 April, 2011 University of Sussex) 1-18

Woods "The environment, intergenerational equity and long-term investment"

Woods C "The environment, intergenerational equity and long-term investment" (PHD Thesis, University of Worcester, Oxford, 2011)

World Bank "Governance"

World Bank "Governance: The World Bank's experience" (The World Bank, Washington 1994)

World Bank *Awakening Africa's sleeping giant*

World Bank *Awakening Africa's sleeping giant: Prospects for commercial agriculture in the Guinea Savannah zone and beyond* (Washington DC, 2009)

WCED *Our common future*

WCED *Our common future* (Oxford, Oxford University Press, 1987)

## **Y**

Young *International governance*

Young OR *International governance: Protecting the environment in a stateless society* (Cornell University Press, 1994)

## **Z**

Zaelke *et al* "What reason demands"

Zaelke D, Stilwell M and Young O "What reason demands: Making law work for sustainable development" in Zaelke D, Kaniaru D and Kružijová E (eds) *Making law work: Environmental compliance and sustainable development* vol 2 (Cameron May Ltd, 2005) 29-82

Zerk *Multinationals and corporate social responsibility*

Zerk J *Multinationals and corporate social responsibility: Limitations and opportunities in international law* (Cambridge: Cambridge University Press, 2006)



## **International Conventions**

*African Charter on Democracy, Elections and Governance* of 2007

*African Charter on Human and People's Right* of 1981

*African Conservation of Nature and Natural Resources* of 1968 and 2003

*African Platform on Access to Information* of 2011

*African Union Convention on Preventing and Combating Corruption* of 2003

*African Union Framework and Guidelines on Land Policy in Africa* of 2009

*African Union Freedom of Expression and Access to Information* of 2010

*Communauté Économique et Monétaire de L'Afrique Centrale- Economic and Monetary Community of Central Africa (CEMAC) Investment Charter* of 1999

*CEMAC Court of Justice* of 2010

*Contonou Agreement* of 2003

*Dakar Declaration and Recommendation of the Rights to Fair Trial* of 1999

*East African Development Community Protocol on Good Governance* of 2010

*East African Development Community Draft Bill of Rights* of 2009

*International Convention on the Elimination of all Forms of Racial Discrimination* of 1996

*International Covenant of Economic, Social and Cultural Rights* of 1966

*Johannesburg Principles on National Security, Freedom of Expression and Access to Information* of 1995

*La Code de L'organisation pour L'harmonisation en Afrique du Droit des Affaires- the Organisation for the Harmonisation of Business Law in Africa Code (OHADA Code)* of 1993

*Millennium Development Goals of 2000*

*Protocol on the African Investment Bank of 2009*

*Protocol on the Court of Justice of the African Union of 2003*

*Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa of 2003*

*Report of the African Commission's Working Group of Experts on Indigenous Population/Communities of 2005*

*Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade of 2004*

*Southern African Development Community Protocol on Legal Affairs of 2000*

*Southern African Development Community Protocol on Tribunal and Rules of Procedure of 2000;*

*Southern African Development Community Protocol on Finance and Investment of 2006*

*Southern Africa Development Community Charter of Fundamental Social Rights of 2003*

*The African Commission on Human and People's Rights of 2005*

*The Cartagena Protocol on Biosafety of 2000*

*The Convention on Access to Information, Public Participation in decision-making and Access to Justice in Environmental Matters of 1998*

*The European Convention on Human Rights of 2010*

*The International Covenant on Civil and Political Rights of 1966*

*The Marrakesh Agreement Establishing the World Trade Organisation of 1994*

*The Protocol on the Statute of the African Court of Justice and Human Rights of 1998*

The *United Nations Conference on Environment and Development* of 1992

The *United Nations Declaration on the Rights of Indigenous People* of 2006

The *United Nations Human Right Sub-Commission on Prevention of Discrimination and Protection of Minorities* of 1982

## **National Legislation**

### **Cameroon**

The *Constitution of the Republic of Cameroon*, 1996

Law No 2003/006 of 21<sup>st</sup> April 2003 to lay down *safety regulations governing modern biotechnology in Cameroon*

Law No 74/1 and 74/2 of July 5<sup>th</sup> 1974 to lay down *the Organisation and Management of Land Tenure in Cameroon*

Law No 76/166 of April 27<sup>th</sup> 1976 laying down *the management of state land in Cameroon*

Law No 94/01 of 20<sup>th</sup> January 1994 *on the regime of Forestry, Wildlife and Fisheries in Cameroon*

Law No 98/005 of 14<sup>th</sup> April 1998 to lay down *the National Water Code and its Enabling Statutes in Cameroon*

Law No 96/12 of 5<sup>th</sup> August 1996 relating *to Environment Management in Cameroon*

The *Cameroon Investment Code* of 2002

### **Uganda**

The *Constitution of the Republic of Uganda*, 1995

The *Access to Information Act* 6 of 2005

The *Investment Act* of 1991

The *National Environment Act* Cap 153 of 1995

The *National Forestry and Tree Planting Act* 8 of 2003

The *National Land Act* Cap 227 of 1998

The *Water Act* Cap 152 of 1997

The *Whistleblowers Protection Act* 6 of 2010

## **South Africa**

The *Constitution of the Republic of South Africa*, 1996

The *Atmospheric Pollution Prevention Act* 45 of 1965

The *Communal Land Rights Act* 11 of 2004

The *Communal Property Association Act* 28 of 1996

The *Companies Act* 61 of 1973

The *Development Facilitation Act* 67 of 1995

The *Expropriation Act* 63 of 1975

The *Green Paper on Land Development and Planning* of 1999

The *Interim Protection of Informal Land Rights Act* 31 of 1996

The *Legal Aid Act* 39 of 2014

The *Local Government: Municipal Structures Act* 117 of 1998

The *Local Government: Municipal System Act* 32 of 2000

The *National Environmental Management Act* 107 of 1998



The *National Environmental Management Amendment Act* 62 of 2008

The *National Environmental Management: Biodiversity Act* 10 of 2004

The *National Environmental Management: Protected Areas Act* 57 of 2003

The *National Forest Act* of 1998

The *National Water Act* 36 of 1998

The *Promotion of Access to Information Act* 2 of 2000

The *Promotion of Administrative Justice Act* 3 of 2000

The *Restitution of Land Rights Act* 22 of 1994

The *Upgrading of Land Tenure Rights Act* 112 of 1991

The *White Paper on Integrated Pollution and Waste Management for South Africa: A policy on pollution prevention, waste minimisation, impact management and remediation* of 2000

The *White Paper on Land Reform* of 2009

### **Others jurisdictions**

*Constitution of the Federal Republic of Ethiopia*, 1995

*Constitution of the Republic of Ghana*, 1992

*Constitution of the Republic of Kenya*, 2000

*Constitution of the Republic of Tanzania*, 1977

*Australian Freedom of Information Act* of 1982

*Canadian Access to Information Act* of 1982

*New Zealand Official Information Act* of 1982

*Sarawak Land Code Amendment Bill* of 2000.

*Sarawak Land Code* of 1958.

*Swedish Freedom of Press Act* of 1766

*Tirana Declaration* of 2011

United States of America *Freedom of Information Act* 5 of 1966

## **Government Notices**

### **Uganda**

Gazette No 28 Volume CIV of 21<sup>st</sup> April, 2011

### **South Africa**

GN R385-387 of 21<sup>st</sup> April 2006

GN R612 of 23<sup>rd</sup> June 2006

GN R543 in GG 33306 of 18<sup>th</sup> June of 2010

GN R1022 in GG 23674 of 31<sup>st</sup> July 2002

GN R187 in GG 23119 of 15<sup>th</sup> February 2002

## **Cases**

### **International Cases**

*Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya*, No 276/2003 ACHPRs (2010)

*Chief Ominayak and the Lubicon Lake Band v Canada*, Communication No. 167/84 (CCPR/C/38/D/167/1984)

*Guerra and others v Italy* 116/1996/735, 1998 (ECHR)

*Mike Campbell and others v. The Republic of Zimbabwe/ Mike Campbell and others v. The Republic of Zimbabwe* SADC (T) Case No. 2/2007

*Leander v Sweden* (1987) 9 ECHR

*The Social and Economic Rights Action Center and the Center for Economic and Social Rights v Nigeria, African Commission on Human and People's Right, Comm. No. 155/92* (2001)

*Zander v Sweden/ Zander v Sweden* 45/1992/390/348

## **Domestic Cases**

### **Cameroon**

*FEDEV v China Road and Bridge Corporation* decision No CFIB/004M/09 (2009) (Unreported)

### **Uganda**

*Advocate Coalition for Development and Environment v Attorney General* Miscellaneous Cause No 100 of 2004 (Unreported)

*British American Tobacco (BAT) v Environment Action Network (TEAN)* Civil Application No 27 of 2003 (Unreported)

*British American Tobacco V The Environmental Action Network* HCCS No 27 of 2003 (Arising from Miscellaneous Application No 70 of 2002, (Unreported)

*Environmental Action Network (Ltd) v Attorney General and National Environment Management Authority* Miscellaneous Application No 39 of 2001 High Court of Uganda, (Unreported).

*Greenwatch and Advocate Coalition for Development and Environment v Golf Course Holdings Ltd* Miscellaneous Application No 390 of 2001 (Arising from High Court Civil Suit (HCCS) No 834 of 2000, (Unreported)

*National Association of Professional Environmentalists v AES Nile Power Ltd* Miscellaneous Cause No 60 of 1999 (Unreported)

## **South Africa**

*Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs and Tourism and others* 2004 (4) SA 490 (CC)

*Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs and Tourism* 2004 (7) BCLR 687 (CC)

*Bellochio Trust Trustee's v Engelbrecht No* 2002 (3) SA 519 (C)

*Beukes v Krugersdorp Transitional Local Council* 1996 (3) SA 467 (W)

*BP Southern Africa (Pty) Ltd v MEC for Agriculture, Conservation and Land Affairs* 2004 (5) SA 124 (W)

*Brummer v Minister for Social Development and Others* (2009) ZACC (21); 2009 (11) BCLR (CC)

*Company Secretary of Arcelormittal South Africa v Vaal Environmental Justice Alliance* 2014 (69) SA (SCA) 184

*Director: Mineral Development, Gauteng Region, and Another v Save the Vaal Environment and Others* 1999 (2) SA 709 (SCA)

*Doctors for Life International v Speaker of the National Assembly and Others* 2006 (12) BCLR 1399 (CC)

*Earthlife Africa (Cape Town) V Director-General: Department of Environmental Affairs and Tourism* 2005 3 SA 156 (CC)

*Earthlife Africa v Eskom Holdings Ltd* (2006) (2) All SA 632

*Ex Parte Chairperson of the Constitutional Assembly: In re Certificate of the Constitution of the Republic of South Africa*, 1996 (4) SA 744 (CC)

*Ferreira v Levin NO* 1996 (1) SA 984 (CC)

*Hangklip Environmental Action Group v MEC for Agriculture, Environmental Affairs and Development Planning, Western Cape* 2007(6) SA 65 (C)

*Lesapo v North West Agricultural Bank and Another* 1999 [ZACC] 16; 12 [BCLR] 1420

*Magidiwana and Another v President of the Republic of South Africa and Others* [37904/2013 ZAGPPHC 292

*Mahambahlala v Member of the Executive Council for Welfare, Eastern Cape Provincial Government* 2001 (9) BCLR 899 (SE)

*Matiso v Commanding Officer, Port Elizabeth Prison* 1994 (3) SA 899 (E)

*Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, 2001 ser. C, No. 79

*Mazibuko Leader of the Opposition in the National Assembly v Sisulu MP Speaker of the National Assembly and Others* 21990/2012 [2012] ZAWCHC 189; 2013 (4) SA 243 (WCC)

*McCarthy v Constantia Property Owners Association* 1999 JOL 5124 (C)

*MEC for Agriculture, Conservation, Environmental and Land Affairs v Sasol Oil (Pty) Ltd* 2006 (5) SA 483 (SCA)

*Merebank Environmental Action Committee v Executive Member of KwaZulu-Natal Council for Agriculture and Environmental Affairs* Unreported case no 2691/01 (D)

*Merebank Environmental Action Committee v Member of the Executive Council for Agriculture and Environmental Affairs (Province of KwaZulu-Natal)* 2002 (unreported decision of the Natal Provincial decisions, 2002)

*Minister of Environmental Affairs and Tourism and others v Phambili Fisheries (Pty) Ltd and another* 2003 (2) ALL SA 616 (SCA)

*Minister of Health and Welfare v Woodcarb (Pty) Ltd and Another* 1996 (3) SA 155 (N)

*Minster of Public Works and others v Kyalami Ridge Environmental Association and others* 2001 (3) SA 1151 (CC)

*Mohammed v President of the Republic of South Africa* 2001 (3) SA 893 2001 (3) SA 893 (CC)

*Mustapha v Receiver of Revenue, Lichtenburg* 1958 (2) SA 343 (A) at 247 D-G

*Ngxuza v Department of State for Welfare Eastern Cape Provincial Government* 2001 (4) SA 1184 (SCA)

*Pepcor Retirement Fund v Financial Services Board* 2007 (6) 38 (SCA)

*Petro Props (Pty) Ltd v Barlow and Another* 2006 (5) SA 160 (W)

*President of the Ordinary Court Martial No v Freedom of Expression institute* 1999 (4) SA 682 (CC)

*President of the Republic of South Africa and Others v M and G Media Ltd* (2011) ZACC 32

*President of the Republic of South Africa v South African Rugby Football Union* 1999 (10) BCLR 1059, 2000 (1) SA 1

*Reuters Group PLC v Viljoen NO* 2001 (2) SACR 519 (C)

*South African Association of personal Injury Lawyers v Health* 2001 (1) SA 883 (CC) 891E-F

*South Durban Community Environmental Alliance v Head of Department: Department of Agriculture and Environmental Affairs* 2003 (6) SA 631 (D)

*Van Huyssteen V Ministry of Environment Affairs and Tourism* 1995 (9) BCLR 1191 (C)

*Vryenhoek v Powell NO* 1995 (2) SA 813 (W)

*Wildlife and Environmental Society of South Africa v MEC for Economic Affairs, Environment and Tourism, Eastern Cape and Others* 2005 (6) SA 123 (E)

## Internet sources

Access Infos Europe 2006 *Access to information: A fundamental right, universal standard* [http://www.access-](http://www.access-info.org/documents/Access_Docs/Thinking/Get_Connected/Access_Info_Europe_Briefing_Paper.pdf)

[info.org/documents/Access\\_Docs/Thinking/Get\\_Connected/Access\\_Info\\_Europe\\_Briefing\\_Paper.pdf](http://www.access-info.org/documents/Access_Docs/Thinking/Get_Connected/Access_Info_Europe_Briefing_Paper.pdf) accessed 08 April 2015

AFD and Cameroon *Working together for a sustainable future* date unknown [http://www.afd.fr/webdav/shared/PORTAILS/PUBLICATIONS/PLAQUETTES/AFD\\_et\\_le\\_Cameroun\\_EN.pdf](http://www.afd.fr/webdav/shared/PORTAILS/PUBLICATIONS/PLAQUETTES/AFD_et_le_Cameroun_EN.pdf) accessed 07 July 2015

African Biodiversity Network date unknown [www.biofuelwatch.org.uk/docs/ABN\\_Agro.pdf](http://www.biofuelwatch.org.uk/docs/ABN_Agro.pdf) accessed Date of use 02 December 2015

African Charter on Democracy, Election and Governance "date unknown" <http://au.int/en/sites/default/files/Charter%20on%20Democracy%20and%20Governance.pdf> accessed 23 September 2015.

Afronline 2009 *Chinese in Cameroon: An agricultural misunderstanding* <http://www.afronline.org/?p=2908> accessed 19 May 2015.

Anaya J and Wiessner S 2007 *The UN declaration on the rights of indigenous people: Towards re-empowerment* <http://jurist.law.pitt.edu/forumy/2007/10/un-declaration-on-rights-of-indigenous.php> accessed 19 January 2016

Annual transparency Report 2012 *Mmaking the forest sector transparent: Cameroon indicator* <http://www.foresttransparency.info/cameroon/2012/themes/17/115/> accessed 19 May 2015

Anonymous date unknown *Africa's agriculture and agribusiness markets set to top US 1 trillion in 2030* <http://www.worldbank.org/en/news/feature/2013/03/04/africa-agribusiness-report> Accessed 23 November 2015



Anonymous *General principles of access to information* date unknown  
<http://www.parliamentarystrengthening.org/mediamodule/pdf/unit6.pdf> accessed 08 April 2015

Anonymous *Analysis of some contested legal issues regarding the Herakles Farm's oil palm plantation project in Cameroon* date unknown <http://www.sciencespo.fr/ecole-de-droit/sites/sciencespo.fr/ecole-de-droit/files/Analysis%20of%20Some%20Contested%20Legal%20Issues%20Reviewed%20FINAL%20VERSION.pdf> accessed 27 May 2015

Anonymous Better Crops International 1999  
[http://www.ipni.net/publication/bci.nsf/0/25CF2B45AF285DEE85257BBA006E20BC/\\$FILE/Better%20Crops%20International%201999-1.pdf](http://www.ipni.net/publication/bci.nsf/0/25CF2B45AF285DEE85257BBA006E20BC/$FILE/Better%20Crops%20International%201999-1.pdf) accessed Date of use 05 March 2015

Anonymous Cameroon date unknown *Women call for land and inheritance rights*  
<http://www.ahgingos.org/documents/Documents/CAMEROON.pdf> accessed 20 June 2015

Anonymous *Cameroon Vision 2035* date unknown  
[http://www.cameroonembassyusa.org/docs/webdocs/Cameroon\\_VISION\\_2035\\_English\\_Version.pdf](http://www.cameroonembassyusa.org/docs/webdocs/Cameroon_VISION_2035_English_Version.pdf) accessed 20 January 2016

Anonymous *On applying the rights-based approach to development and governance* date unknown  
[http://www.chr.gov.ph/MAIN%20PAGES/about%20hr/advisories/pdf\\_files/abthr036.pdf](http://www.chr.gov.ph/MAIN%20PAGES/about%20hr/advisories/pdf_files/abthr036.pdf) accessed 02 October 2015

Anonymous *Soft law* date unknown  
<http://anthonydamato.law.northwestern.edu/IELA/Intech05-2001-edited.pdf> accessed 22 April 2015

Anonymous The *European Union and the global land grab* date unknown  
<http://www.fian.at/assets/europeanunionandtheglobalandgrab-a5.pdf> accessed 26 March 2015

Anonymous The *Gallagher review of indirect effect of biofuel production* date unknown  
[https://www.unido.org/fileadmin/user\\_media/UNIDO\\_Header\\_Site/Subsites/Green\\_Industry\\_Asia\\_Conference\\_\\_Maanila\\_/GC13/Gallagher\\_Report.pdf](https://www.unido.org/fileadmin/user_media/UNIDO_Header_Site/Subsites/Green_Industry_Asia_Conference__Maanila_/GC13/Gallagher_Report.pdf) accessed 26 March 2015

Baffes J and Haniotis T 2010 *Placing the 2006/08 commodity price boom into perspective* <http://www.growthenergy.org/images/reports/WPS5371.pdf> accessed 26 February 2015

Benest G date unknown *A rights-based approach to participatory video: Toolkit*  
<http://insightshare.org/sites/insightshare.org/files/A%20Rights-Based%20Approach%20to%20Participatory%20Video%20-%20toolkit%20%28COMPLETE%29.pdf> accessed 27 January 2015

Borras SM Jr, Scoones I and Huges D 2011 *Small scale farmers increasingly at risk from global land grabbing* <http://www.guardian.co.uk/global-development/poverty-matters/2011/apr/15/risks-over-increasing-global-land-deals> accessed 26 April 2015

Brunschwig H date unknown *African nations and territory identity: The dismantlement of African land and nations and the artificial construction of the 1872 colonial Africa c. 1960 c.* [http://www.africafederation.net/Berlin\\_1885.htm](http://www.africafederation.net/Berlin_1885.htm) accessed 26 February 2014

CAADP Compact date unknown <http://www.caadp.net/library-country-status-updates.php> accessed 09 December 2015

Canadian Biotechnology Action Network date unknown <http://www.cban.ca/Resources> accessed 19 November 2015

Care About Rights date unknown *What is a human rights based approach?*  
<http://www.scottishhumanrights.com/careaboutrights/whatisahumanrightsbasedapproach> accessed 14 April 2015

Chichava S Duran J, Cabral L, Shankland A, Buckley L, Lixia T and Yue Z 2013 *Chinese and Brazilian Cooperation with African agriculture* [http://www.future-agriculture.org/publications/research-and-analysis/working-papers/docs\\_download/1637-chinese-and-brazilian-cooperation-with-african-agriculture-the-case-of-mozambique](http://www.future-agriculture.org/publications/research-and-analysis/working-papers/docs_download/1637-chinese-and-brazilian-cooperation-with-african-agriculture-the-case-of-mozambique) accessed 18 January 2015

De Schutter 2010 *Food commodities speculation and food prices crises* [http://www2.ohchr.org/english/issues/food/docs/Briefing\\_Note\\_02\\_September\\_2010\\_EN.pdf](http://www2.ohchr.org/english/issues/food/docs/Briefing_Note_02_September_2010_EN.pdf) accessed 26 February 2015

De Schutter O 2009 *Large-scale land acquisition and leases: A set of core principles and measures to address the human rights challenges* <http://www2.ohchr.org/english/issues/food/docs/BriefingNotelandgrab.pdf> accessed 27 November 2015

De Schutter O 2010 *Responsibly destroying the world's peasantry* <http://www.project-syndicate.org/commentary.deschutter1/English> accessed 7 April 2015

De Schutter O date unknown *Highlights the importance of a right-based approach to food security* <http://blogs.worldwatch.org/nourishingtheplanet/de-schutter-highlights-the-importance-of-a-rights-based-approach-to-food-security/> accessed 13 January 2016

De Vos P 2013 *Marikana funding case hints at larger problems with gaining access to justice* <http://constitutionallyspeaking.co.za/marikana-funding-case-hints-at-larger-problems-with-gaining-access-to-justice/> accessed 13 October 2015

ECOGOV 2007 *Environmental governance* <http://ecogov.blogspot.com/2007/04/definition-of-environmental-governance.html> accessed 17/03/2015

Economic Report 2010 *Land grabbing: Myth or reality* <http://farmlandgrab.org/13767> accessed 27 November 2015

EqualityNow 2000 *Uganda: Exclusion of women from land ownership, the lost clause*  
<http://www.equalitynow.org/node/218> accessed 29 May 2015

FAO 2008 *Climate change, energy and food*  
<ftp://ftp.fao.org/docrep/fao/meeting/013/ai782e.pdf> accessed 04 January 2016.

FAO 2009 *The state of agricultural commodity markets: High food prices and the food crisis-experience and lessons learned* <http://www.fao.org> accessed 26 February 2014

FAO 2010 *Global hunger declining, but still unacceptably high: international hunger targets difficult to reach* <ftp://ftp.fao.org/docrep/fao/011/al241e/ak241e03.pdf> accessed 14 January 2016

FAO 2012 *Foreign agricultural investment: Country profile Cameroon*  
[http://www.fao.org/fileadmin/user\\_upload/tcsp/docs/Cameroon\\_Country\\_Profile\\_FINAL.pdf](http://www.fao.org/fileadmin/user_upload/tcsp/docs/Cameroon_Country_Profile_FINAL.pdf) accessed 27 November 2015

Farmland Grab 2010 *Unpacking a Chinese company's land grab in Cameroon*  
<http://farmlandgrab.org/16485> accessed 19 May 2015

Focus on the Global South date unknown *Why We Oppose the Principles for Responsible Agricultural Investment (RAI)* <http://focusweb.org/content/why-we-oppose-principles-responsible-agricultural-investment-rai> accessed 7 April 2015.

Foundation for Environment and Development (FEDEV) 2008 *The access initiative Cameroon: National report on the poverty project*  
<http://www.accessinitiative.org/sites/default/files/Cameroon%20poverty%20Report.pdf> accessed 18 February 2015

FOWODE 2012 *Gender and policy brief for Uganda's agriculture sector*  
<http://www.womankind.org.uk/wp-content/uploads/downloads/2013/06/FOWODE-Gender-policy-brief-for-Ugandas-Agriculture-sector.pdf> accessed 20 October 2015

Friends of the Earth International 2002 *Towards binding corporate accountability*  
[http://www.foei.org/campaigns/Rio\\_10/prepcom.html](http://www.foei.org/campaigns/Rio_10/prepcom.html) accessed 25 July 2015

Friends of the Earth International 2010 *Africa: Up for grabs, the scale and impact of land grabbing for agrofuel*

[https://www.foeeurope.org/sites/default/files/publications/FoEE\\_Africa\\_up\\_for\\_grabs\\_0910.pdf](https://www.foeeurope.org/sites/default/files/publications/FoEE_Africa_up_for_grabs_0910.pdf) accessed 08 September 2015

Fru NV date unknown *Land grabbing: The case of Herakles Farms in Cameroon*

<http://www.icenecdev.org/Land-Grabbing-in-Cameroon.pdf> accessed 13 January 2016.

Goldblatt A 2010 *Agriculture: Facts and trends South Africa*

[http://led.co.za/sites/default/files/cabinet/orgname-](http://led.co.za/sites/default/files/cabinet/orgname-raw/document/2011/wwf.agric_.factsheetjune.10.pdf)

[raw/document/2011/wwf.agric\\_.factsheetjune.10.pdf](http://led.co.za/sites/default/files/cabinet/orgname-raw/document/2011/wwf.agric_.factsheetjune.10.pdf) accessed 05 October 2015

Grain 2007 *Stop the agrofuel craze* <https://www.grain.org/article/entries/597-stop-the-agrofuel-craze>. accessed 19 November 2015

Grain 2007 *The new scramble for Africa* <https://www.grain.org/article/entries/606-the-new-scramble-for-africa> accessed 29 November 2015

Grain 2010 *Stop land grabbing now! Say no to the principles on responsible agro-enterprise investment promoted by the World Bank*

[https://www.grain.org/bulletin\\_board/entries/4224-stop-land-grabbing-now](https://www.grain.org/bulletin_board/entries/4224-stop-land-grabbing-now) accessed 07 April 2015

Grain 2010 *The World Bank in the Hot Seat* <http://www.grain.org/articles/?id=64> accessed 30 November 2015

Grain 2010 *Unpacking a Chinese company's land grab in Cameroon*

<http://farmlandgrab.org/16485> accessed 08 September 2015

Grain 2011 *It's time to outlaw land grabbing and not to make it responsible*

<https://www.grain.org/article/entries/4227-it-s-time-to-outlaw-land-grabbing-not-to-make-it-responsible> accessed 18 January 2016

Grain date unknown *Interview with grain on the ProSavana Project*  
<http://www.grain.org/article/entries/4633-interview-with-grain-on-the-prosavana-project> accessed 18 January 2015

Grain, 2012 *Grain releases data set with over 400 global land grabs*  
<http://www.grain.org/article/entries/4479-grain-releases-data-set-with-over-400-global-land-grabs> accessed 15 November 2015

Grain 2012 *Land grabbing and food sovereignty in west and central Africa*  
<https://www.grain.org/article/entries/4575-land-grabbing-and-food-sovereignty-in-west-and-central-africa> accessed 16/05/2016

Greenpeace 2012 *Palm oil's new frontier: how industrial expansion threatens Africa's rainforests*  
<http://www.greenpeace.org/usa/Global/usa/planet3/PDFs/Forests/PalmOilsNewFrontier.pdf> accessed 26 March 2015

Greenpeace 2013 *Herakle farms in Cameroon: A showcase of bad example*  
<http://www.greenpeace.org/usa/wp-content/uploads/legacy/Global/usa/planet3/PDFs/HeraklesCrimeFile.pdf> accessed 11 January 2016

Griffiths T 2004 *Seeing RED: Avoided deforestation and the rights of indigenous peoples and local communities* <http://www.forestpeople.org/topics/un-redd/publication/2010/seeing-red-avoided-deforestation-and-rights-indigenous-peoples-and-1> accessed 04 May 2015.

Haberli and Smith date unknown *Land grab vs food security*  
<http://www.iisd.org/itn/2013/03/22/land-grab-v-food-security-can-global-regulation-cope> accessed 19 November 2015

Hainzl G date unknown *Interests in West Africa*  
[http://www.bmlv.gv.at/pdf\\_pool/publikationen/sorting\\_out\\_the\\_mess\\_interest\\_inf\\_west\\_africa\\_g\\_hainzl.pdf](http://www.bmlv.gv.at/pdf_pool/publikationen/sorting_out_the_mess_interest_inf_west_africa_g_hainzl.pdf) accessed 18 January 2016.

Haller, M 2008 *Divisions on Europe between elites and citizens: European Union and world politics* [www.akademai.com/index/6954857477276RR2.pdf](http://www.akademai.com/index/6954857477276RR2.pdf) accessed 11 April 2015

Hoffman B date unknown *Saudi Company leases Ethiopian land for rice export*  
<http://www.theworld.org/2011/12/Saudi-arabia-leased-ethiopia-land-rice-export/>  
accessed 7 January 2015

Howstuffworks date unknown *The Spread of the Industrial Revolution*  
<http://history.howstuffworks.com/european-history/industrial-revolution4.htm> accessed 26 February 2015

HRBA Portal date unknown *What is the relationship between human rights and good governance?* <http://hrbaportal.org/faq/what-is-the-relationship-between-human-rights-and-good-governance> accessed 20 March 2015

Human Rights Watch 2011 *Waiting here for death: Displacement and villagization in Ethiopia's Gambella region*  
[http://www.hrw.org/sites/default/files/reports/ethiopia0112webwcover\\_0.pdf](http://www.hrw.org/sites/default/files/reports/ethiopia0112webwcover_0.pdf) accessed 13 November 2015

IIED date unknown *Farms and funds: Investment funds in the global land rush*  
<http://pubs.iied.org/pdfs/17121IIED.pdf> accessed 26 March 2015

InfoPlease date unknown *Cameroon*  
<http://www.infoplease.com/country/cameroon.html> accessed 7 July 2015

Javelle A G 2013 *Experiences with transferring forest rights Brief*  
<http://www.focusonland.com/silo/files/cameroon-experiences-with-transferring-forest-rights.pdf> accessed 10 February 2015

Johnston M "date unknown" *Good governance, rule of law, transparency and accountability*

<http://unpan1.un.org/intradoc/groups/public/documents/un/unpan010193.pdf> accessed 21 March 2015

Kachika T 2010 *Land grabbing in Africa: A review of the impacts and the possible policy responses* <http://www.oxfamblogs.org/eastafrica/wp-content/uploads/2010/11/Land-Grabbing-in-Africa.-Final.pdf> accessed 27 November 2015

Kaufmann, Daniel, Kraay A and Masrtuzzi M 2010 *The worldwide governance indicators: Methodological and Analytical Issues* (World Bank Policy Research Working Paper, Washington DC, 2010 <http://info.worldbank.org/governance/wgi/pdf/WGI.pdf>. accessed 15 January 2016

Kawasaki J 2010 *Thailand's rice farmers adapt to climate change* <http://ourworld.unu.edu/en/climate-change-adaptation-for-thailands-rice-farmers> accessed 04 January 2016

Kima-Bundnis date unknown *Indigenes* <http://www.indigene.de/44.html> accessed 28 May 2014

Krumova 2011 *Land grab in Africa threaten greater poverty* [www.theepochtimes.com/n2/world/land-grabs-in-africa-threaten-greater-poverty-61869.html](http://www.theepochtimes.com/n2/world/land-grabs-in-africa-threaten-greater-poverty-61869.html) accessed 26 February 2015.

La Via Campesina date unknown *Dakar appeal against the land grab* <http://www.viacampesina.org/en/index.php/main-issues-mainmenu-27/agrarian-reform-mainmenu-36/1013-dakar-appeal-against-the-land-grab> accessed 14 July 2015

La Via Campesina [www.viacampesins.org/](http://www.viacampesins.org/) accessed 17 January 2015

Layers Committee for Human Rights Report 2000 *What's a fair trial?: Basic guide to legal standards and practice* [http://www.humanrightsfirst.org/wp-content/uploads/pdf/fair\\_trial.pdf](http://www.humanrightsfirst.org/wp-content/uploads/pdf/fair_trial.pdf) accessed 02 June 2015



Leahy S 2009 *Agriculture: Foreigners lead global land rush*  
<http://www.ipsnews.net/2009/05/agriculture-foreigners-lead-global-land-rush/> accessed  
27 November 2015

Legal Leaks date unknown *What is access to information*  
<http://www.legalleaks.info/right-to-information/1-what-is-access-to-information.html>.  
accessed 08 March 2015

Mandil C and Adnan SE date unknown *Assessment of biofuel*  
[http://www.ief.org/\\_resources/files/content/events/event-cards/ief\\_report\\_biofuel\\_potentials\\_and\\_limitations\\_february\\_2010.pdf](http://www.ief.org/_resources/files/content/events/event-cards/ief_report_biofuel_potentials_and_limitations_february_2010.pdf) accessed 20  
November 2015

Melber H 2007 *The new scramble for Africa's resources*  
[www.pambazuka.org/en/category/comment/39693](http://www.pambazuka.org/en/category/comment/39693) accessed 18 January 2016

Mendel T 2003 *The Johannesburg principles: Overview and implementation*  
<https://www.article19.org/data/files/pdfs/publications/jo-burg-principles-overview.pdf>  
accessed 13 January 2016.

Moore O date unknown *Land tenure issues comes to the fore at G8 meeting*  
<http://www.arc2020.eu/front/2013/06/land-and-land-tenure-issues-come-to-the-fore-at-g8-meeting/> accessed 18 January 2016.

*Multilateral Investment Guarantee Agency (MIGA), the World Bank Group* date  
unknown [http://www.fao.org/docs/up/easypol/506/snapshot\\_africa\\_kenya.pdf](http://www.fao.org/docs/up/easypol/506/snapshot_africa_kenya.pdf) accessed  
26 March 2015

*National Assembly Portfolio Committee on Environmental Affairs and Tourism Summary  
of comments* date unknown <http://pmg-assets.s3-website-eu-west-1.amazonaws.com/docs/2003/appendices/030923summary.htm> accessed 31 August  
2015.

Natukunda C 2013 *Uganda population at record 37 million*.  
<http://www.newvision.co.ug/news/644270-uganda-population-at-record-37-million.html>  
accessed 22 August 2015.

Nchunu S date unknown *Public interest litigation: Cameroon court upholds locus standi and the rational for PIL* <http://www.accessinitiative.org/blog/2009/08/public-interest-litigation-cameroon-court-upholds-locus-standi-and-rational-pil> accessed 4 February 2015.

Nelson J and Lomax T 2013 *The want to take our bush: An independent assessment of processes to obtain the free, prior and informed consent from communities in the Mundemba and Nguti subdivisions in South West Cameroon, for palm oil developments overlapping their customary territories. The case of Herakles/SGSOC*  
<http://www.forestpeoples.org/sites/fpp/files/publication/2013/07/fpp-fpic-herakles-final-july-18-web.pdf> accessed 27 November 2015

New Age date unknown *Corporate governance: Introduction* [www.newagepublishers.com](http://www.newagepublishers.com)  
accessed 03 April 2015

Ngalame EN 2015 *Cameroon: Investors Seek to Boost Biofuel Production*  
<http://news.trust.org//item/20120613125200-pgqk3/?source=dpagerel> accessed 05 March 2015

Nguiffo S and Schwartz B date unknown *Herakles' 13th labour*  
[http://www.rightsandresources.org/documents/files/doc\\_4763.pdf](http://www.rightsandresources.org/documents/files/doc_4763.pdf) accessed 11 February 2015

Ochalla N 2013 *Ethiopia's land crisis: Stories from the displaced*  
<http://intercontinentalcry.org/ethiopias-land-grabs-stories-displaced-20830>. 13 January 2016

OCHRCH 2006 *Frequently asked questions on a human rights-based approach to development cooperation* <http://www.ohchr.org/Documents/Publications/FAQen.pdf> accessed 20 October 2015

Okure A 2012 *A new scramble for Africa: Land grab and dispossession of people* <http://www.afjn.org/focus-campaigns/other/other-continental-issues/161-agriculture/1067-a-new-scramble-for-africa-land-grab-a-dispossession-of-people.html> accessed 06 May 2015.

Organisation for Economic Co-operation and Development (OECD) "date unknown" *Public governance and management* [http://www.oecd.org/topic/0.3373,en\\_2649\\_37405\\_1\\_1\\_1\\_1\\_37405,00.htm](http://www.oecd.org/topic/0.3373,en_2649_37405_1_1_1_1_37405,00.htm) accessed 22 March 2015

Oxfam 2011 *Land and Power: The growing scandal surrounding the new wave of investment in land* <http://policy-practice.oxfam.org.uk/publications/download?Id=428754;>  
<http://oxfamlibrary.openrepository.com/Oxfam/bitstream/10546/142858/32/bp151-land-power-rights-acquisitions-220911-en.pdf> accessed 27 January 2015

Perez *et al* 2011 *Sleeping lions: International investment treaties, state-investor disputes and access to food, land and water* <https://www.oxfam.org/sites/www.oxfam.org/files/dp-sleeping-lions-260511-en.pdf> accessed 05 January 2016.

Pimbert M and Wakeford T 2001 *Overview –deliberative democracy and citizen empowerment* [www.iied.org/docs/pla/pla\\_fs\\_5.pdf](http://www.iied.org/docs/pla/pla_fs_5.pdf) accessed 18 January 2015

Platteau JP 2008 *Information distortion, elite capture and task complexity in decentralized development* <https://pure.fundp.ac.be/ws/files/1050499/66049.pdf> accessed 30 November 2015

Portalewska A date unknown *Free, Prior and Informed Consent: Protecting indigenous peoples' rights to self-determination, participation, and decision-making*  
<http://www.culturalsurvival.org/publications/cultural-survival-quarterly/free-prior-and-informed-consent-protecting-indigenous> accessed 15 May 2015

Reuters date unknown *Ethiopia set aside land for foreign investors*  
<http://in.reutres.com/article/domestic-News/idNLT58431220090729> accessed 15 January 2015

Rice A date unknown *Is There Such a Thing as Agro-Imperialism?*  
<http://www.nytimes.com/2009/11/22/magazine/22land-t.html?pagewanted=all>  
accessed 7 January 2015

Roudart L and Even MA 2010 *Terres cultivables non-cultivées: des Disponibilités suffisantes pour la sécurité alimentaire durable de l'humanité*  
[http://agriculture.gouv.fr/IMG/pdf/Analyse\\_18\\_Terres\\_cultivables-2.pdf](http://agriculture.gouv.fr/IMG/pdf/Analyse_18_Terres_cultivables-2.pdf) accessed 18 April 2015

Sama NJ 2008 *Criminal law and environment, prosecution, inspectors and NGOs in Cameroon* <http://www.inece.org/conference/7/vol1/Sama.pdf> accessed 13 January 2016.

Sarawak NGO 2001 *Sarawak land code amendment bill 2000 does not recognise indigenous rights over customary land* <http://www.rengah-sarawak.net/page/95/>  
accessed 06 May 2015

SEFE 2013 *Calls on president of Cameroon's land deals with US company Herakles Farms a grave injustice and hindrance to conventional values* [https://www.save-wildlife.org/downloads/save\\_the\\_forest/SEFE%20PR\\_2013.pdf](https://www.save-wildlife.org/downloads/save_the_forest/SEFE%20PR_2013.pdf) accessed 22 December 2015

Sheng YK date unknown *What is good governance*  
<http://www.unescap.org/sites/default/files/good-governance.pdf> accessed 08 October 2015

Sindayigaya W 2011 *Foreign investments in agriculture: Land grabbing*  
[http://www.entwicklungshilfe3.de/media/Bilder\\_ZSE/UEber\\_Uns\\_Dateien/Grundlagente xte/Land\\_grab\\_article.pdf](http://www.entwicklungshilfe3.de/media/Bilder_ZSE/UEber_Uns_Dateien/Grundlagente xte/Land_grab_article.pdf) accessed 27 November 2015

Smaller C and Mann H 2009 *A Thirst for distant land: Foreign investment in agricultural land and water* [http://www.fao.org/fileadmin/templates/est/INTERNATIONAL-TRADE/FDIs/A\\_Thirst\\_for\\_distant Lands.pdf](http://www.fao.org/fileadmin/templates/est/INTERNATIONAL-TRADE/FDIs/A_Thirst_for_distant Lands.pdf) accessed 27 November 2015

Snapshot Africa- Kenya 2007 *Benchmarking foreign direct investment (FDI) Competitiveness. Multilateral investment guarantee agency (MIGA): The World Bank Group* [http://www.fao.org/docs/up/easypol/506/snapshot\\_africa\\_kenya.pdf](http://www.fao.org/docs/up/easypol/506/snapshot_africa_kenya.pdf) accessed 26 March 2015

Thanassoula M Kolossa K, Baasner C, Rodejuhr PA, Seifert M, Nassenstein N, Horstmann AK, Vogel C and Fyrhmann LD date unknown *The Africa policy of, normative power European Union considering Cotonou Agreement and promotion of economic partnerships agreements* <http://www.uni-koeln.de/phil-fak/afrikanistik/kant/data/Vogel-KANT2.pdf> accessed 27 November 2015

Theting H and Bekke B [2010] *Land investments or land grab? A critical view of Tanzania and Mosambique*  
[http://www.spireorg.no/files/spire/documents/Land\\_investment\\_or\\_land\\_grab08112010.pdf](http://www.spireorg.no/files/spire/documents/Land_investment_or_land_grab08112010.pdf) accessed 16/05/2016

The Act Council of Social Science date unknown *Governance and management: Knowing the difference*  
<http://www.actcoss.org.au/oik/infosheets/governance/boardnEOresponse.html> accessed 02 April 2015

The *Comprehensive Africa Agriculture Development Programme* date unknown  
<http://www.nepad.org/foodsecurity/agrucluture/about> accessed 09 December 2015.

The Economist 2011 *The surge in land deals*  
<http://www.economist.com/node/18648855> accessed 18 January 2015

The Global Campaign for Agrarian Reform Land Research Action Network 2010 *Why we oppose the principles for responsible agricultural investment (RAI)*  
<http://focusweb.org/content/why-we-oppose-principles-responsible-agricultural-investment-rai> accessed 09 January 2016

The International Centre for Settlement of Investment Disputes date unknown  
<http://web.worldbank.org/WBSITE/EXTERNAL/EXTABOUTUS/0,pagPK:50004410~piPK:36602~thesitePK:29708,00html> accessed 15 November 2015

The United Nations Special Rapporteur's Report on Protect, Respect and Remedy: A Framework for Business and Human Rights <http://www.reports-and-materials.org/sites/default/files/reports-and-materials/Ruggie-report-7-Apr-2008.pdf> accessed 16/05/2016.

*The United Nations permanent forum on indigenous issues: Factsheet* date unknown  
[http://www.un.org/esa/socdev/unpfii/documents/5session\\_factsheet1.pdf](http://www.un.org/esa/socdev/unpfii/documents/5session_factsheet1.pdf) accessed 13 January 2016

*The World food summit plan of action of 1996* date unknown  
<http://www.fao.org/docrep/003/w3613e/w3613e00.htm> accessed 26 March 2015

Tirana Declaration date unknown <http://newsite.landcoalition.org/en/tirana-declaration> accessed 02 December 2015

Umenjoh V 2013 *Women's access and control to land in the North West region of Cameroon rights* <http://vowinitiative.org/2013/04/06/womens-access-and-control-to-land-in-the-north-west-region-of-cameroon/> accessed 18 January 2015

UN's *Annan warns of new scramble for Africa*. *New Zealand herald* 2 July 2006, [http://www.nzherald.co.nz/world/news/article.cfm?c\\_id=2&objectid=10389356](http://www.nzherald.co.nz/world/news/article.cfm?c_id=2&objectid=10389356) accessed 18 January 2016

UNDG 2003 *The human rights-based approach to development cooperation: Towards a common understanding among UN agencies* [http://www.undg.org/archive\\_docs/6959-The\\_Human\\_Rights\\_Based\\_Approach\\_to\\_Development\\_Cooperation\\_Towards\\_a\\_Common\\_Understanding\\_among\\_UN.pdf](http://www.undg.org/archive_docs/6959-The_Human_Rights_Based_Approach_to_Development_Cooperation_Towards_a_Common_Understanding_among_UN.pdf) accessed 02 October 2015

USAID 2011 *Cameroon, property rights and resource governance* [http://usaidlandtenure.net/sites/default/files/country-profiles/full-reports/USAID\\_Land\\_Tenure\\_Cameroon\\_Profile.pdf](http://usaidlandtenure.net/sites/default/files/country-profiles/full-reports/USAID_Land_Tenure_Cameroon_Profile.pdf) accessed 10 February 2015

Van der Westhuizen C date unknown *You have no right to own land if you are black and rural* <http://thoughtleader.co.za/christivanderwesthuizen/2013/04/09/you-have-no-right-to-own-land-if-youre-black-and-rural/> accessed 02 November 2015

Walusimbi D date unknown *Uganda oil companies sign memorandum of understanding for the country's oil production* <https://unwantedwitness.or.ug/uganda-oil-companies-sign-memorandum-of-understanding-mou-for-the-countrys-oil-production/> accessed 22 September 2015

White and Case LLP date unknown *Access to justice for children: Cameroon* [https://www.crin.org/sites/default/files/cameroon\\_access\\_to\\_justice.pdf](https://www.crin.org/sites/default/files/cameroon_access_to_justice.pdf) accessed 11 January 2016

World Bank Press Release date unknown *How Africa can transform land tenure, revolutionise agriculture, and end poverty* <http://www.worldbank.org/en/news/press-release/2013/07/22/how-africa-can-transform-land-tenure-revolutionize-agriculture-end-poverty> accessed 19 January 2016