

**Loyola University Chicago**

---

From the SelectedWorks of David Tinashe Hofisi Mr

---

August 2012

THE EASE OF DOING BUSINESS AND  
LAND GRABBING: CRITIQUE OF THE  
INVESTING-ACROSS-BORDERS  
INDICATORS

Contact  
Author

Start Your Own  
SelectedWorks

Notify Me  
of New Work



Available at: [http://works.bepress.com/david\\_hofisi/1](http://works.bepress.com/david_hofisi/1)

# **The Ease of Doing Business and Land Grabbing:**

## **Critique of the Investing-Across-Borders Indicators**

**By:** Araya K. Araya and David T. Hofisi

**Supervisor:** Professor Dadush, Sarah Valeria

Submitted as partial fulfillment for the LLM Program in Rule of Law for Development,

Loyola University Chicago

July 2012, Rome

## Table of Contents

Acknowledgements.....	3
Abstract.....	4
Introduction.....	7
What is Land Grabbing?.....	9
Potential benefits.....	10
Potential threats.....	12
The IAB indicators.....	15
International Development Architecture: IFC Performance Standards, PRAI and Voluntary Guidelines, etc.....	25
Conclusion.....	37
References.....	41

## **Acknowledgements**

Above all, we are sincerely and heartily grateful to our supervisor, Professor Dadush, Sarah Valeria for the support and continuous guidance she showed us throughout our thesis research – starting from its conception, structuring up to its writing. We are also thankful to Dr. Rutzel Martha for his insightful suggestions in formulating the idea of the paper. The thesis benefitted from participants’ constructive comments and suggestions during our presentation of the paper on the 8<sup>th</sup> Global Administrative Law Viterbo Seminar especially Professor Kevin Davis.

We deeply appreciate the Bill and Melinda Gates Foundation and the Microsoft Corporation for offering financial assistance throughout our study. David and Araya greatly appreciate Loyola University Chicago and the unique PROLAW Program for helping us achieve one more step in our professional life. Our achievements could not have been possible without the academic and administrative guidance and assistance of Professor William T. Loris, PROLAW Program Director and other PROLAW and JFRC staff notably Professor Shaw, Helena, Kata. Thank you all!

Dearest PROLAW colleagues, thank you for making our life in Rome memorable. We specially thank Lesle and Peter for their direct contribution to this paper as members of the group who further developed and presented the idea conceived by Professor Dadush on the course Architecture of International Development. We are also grateful to UNIDROIT along with its staff for providing us with a six-week research grant to further expand and deepen our research area and utilize its library.

Finally, we would like to extend our heartfelt gratitude to our respective families for their love and moral support throughout our study away from home.

## Abstract

This paper analyses the policy implications and other potential impacts of the Investing Across Borders (IAB) indicators *vis-à-vis* cross border land investment deals. The International Finance Corporation (IFC) introduced the IAB indicators in its inaugural report of July 2010.<sup>1</sup> Heavily influenced by the views of Hernando de Soto, the indicators sought to assist the stimulation of economic growth by giving primacy to foreign direct investment as a driver for the creation of jobs, transfer of technology, upgrade of skills, fostering of competition and overall contribution to the fiscal standing of economies.<sup>2</sup>

The IAB indicators were designed to be complementary to the Doing Business Index — a document that evaluates a government’s regulatory framework and its effect on the ‘ease’ of doing business.<sup>3</sup> It presents its data in an ordinal way, with the higher scoring countries being those whose laws and institutions are more permissive to the operation of a business.<sup>4</sup> The IAB Indicators are grounded in the same methodological foundations as the Doing Business Index.<sup>5</sup> In fact, the impetus to create the IAB indicators was directly from the users of the Doing Business Index who expressed the need for complementary indicators which evaluate the regulation of foreign-owned companies.<sup>6</sup> Whilst the Doing Business Index assesses the regulation of domestically owned companies, the IAB indicators focus on foreign owned companies and

---

<sup>1</sup> IAB, <<http://iab.worldbank.org/~media/FPDKM/IAB/Documents/IAB-report.pdf>>, (Accessed on May 10, 2012)

<sup>2</sup> IAB, Ibid, p. 2

<sup>3</sup> See, Doing Business, <<http://www.doingbusiness.org/>>, (Accessed on May 25, 2012)

<sup>4</sup> Doing Business, Ibid

<sup>5</sup> Doing Business, Ibid, n.1

<sup>6</sup> Doing Business, Ibid, n.1

evaluating the legal, administrative, regulatory and institutional impediments for foreign direct investment (FDI).<sup>7</sup>

The IAB indicators were developed contemporaneously with an increase in cross-border land investments deals in Africa, Asia and Latin America. Whilst on first apprehension, such investments may appear innocuous and even beneficial, aimed at increasing FDI and opportunities for development, there is a growing consensus that these deals, as currently constituted, are harmful to local communities, economies and the environment. By analyzing the contents of the IAB indicators, this paper seeks to highlight how indicators can encourage the establishment of frameworks that limit benefits for host countries. The IAB indicators also violate the letter and spirit of the IFC's Performance Standards for Environmental and Social Sustainability; the Principles for Responsible Agricultural Investment that respects rights, livelihoods and resources (PRAI); the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests; and various other international instruments. This contradiction in the International Development Architecture (IDA) has the potential of enhancing the harmful effects of cross border investment deals. The authors suggest that greater consistency is needed between the IFC's commitments to sustainable development as expressed in its Performance Standards for Environmental and Social Sustainability and the formulation of the IAB indicators in order to avoid systemic contradictions (recalling that the IFC is a part of the World Bank Group) that risk benefiting investors at the expense of environmental and social protections. The paper recommends engaging in ongoing review processes for indicators generally, and in particular, for those indicators that influence decision-making in the different-

---

<sup>7</sup> IAB, Ibid, n.1, p. 2

but-connected parts of the IDA. Such a review process would seek to deepen consideration of indicators for social and environmental protections throughout the stages of formulation, use, and modification of the IAB indicators.

It is conceded that this research methodology has an inherent weakness. The emphasis placed on the production process of the indicators means very little evaluation is made of how countries have actually reacted to the indicators. Since the inaugural 2010 report, not much empirical data has emerged to show the actual impact of the indicators and how countries have reacted to them. To that extent, many potential consequences posited in the paper are based on a reasonable deduction of the letter and spirit of the indicators vis-à-vis countries' desire to boost FDI and their overall standing. This approach has the effect of excluding information from other indicators that may be complementary to the IAB indicators and is not grounded in actual actions taken by countries or investors. The authors are of the firm view that this weakness can only be addressed by further research into the area based on social-legal theories. To this end, the IAB indicators are analyzed in isolation. This is premised on an attempt to analyze the philosophical underpinnings and policy and legal ramifications of the IAB indicators themselves, and whether they allow for an interaction with other indicators without irrevocably harming the social and environmental protections of local communities. The paper therefore questions whether the potential negative effects of the indicators can be solved merely by reference to other indicators or whether this reflects a need for a robust change and reform to the formulation of indicators.

## Introduction

The Global Food and Financial crisis of 2008 necessitated new investments in agriculture for food consumption as well as for biofuel requirements. These new investments took the character of large scale foreign investments on vast tracts of land in developing countries. As international trade and investments registered significant improvements in the first half of 2010, the IAB indicators were developed to assess the regulation of foreign owned companies and the impediments to FDI.<sup>8</sup>

There can be little doubt that the land investment deals have the potential to unlock the wealth that resides in agricultural land. There also exist potential dangers to local communities, women and other vulnerable groups, and to the environment.<sup>9</sup> Thus, in one sense, these land investment deals are mutually beneficial and can be viewed as development finance. On the other hand, they can be harmful to the environment and to the life and livelihoods of local communities, in which case they would constitute ‘*land grabs*.’ The question that arises is whether and how the IAB indicators can enhance the potential for sustainable growth and development or, conversely, encourage the establishment of economic and legal frameworks that result in inequitable land investment deals.

The growing influence of indicators in the area of global governance and policy formulation makes such an enquiry even more pertinent.<sup>10</sup> Governments and various other actors in the IDA are using indicators as a guide for legislative reform, strategic allocation of resources, and general

---

<sup>8</sup> IAB, Ibid, n.1, p. v, Foreword

<sup>9</sup> The Land Matrix Partnership , ‘Agriculture in the Global South,’ (April 2012)

<sup>10</sup> Bjørn Høyland, Karl Moene, and Fredrik Willumseny: The Tyranny of International Index Rankings, (April 2010), p.1 “One can hardly open a newspaper without finding a reference to an international country ranking. The appeal of the reported rankings lies in their simplicity.”



evaluation of policy impacts and effectiveness of state action. The interplay between indicators and the behavior of actors operating within the IDA generates various questions concerning the obligation placed on the formulators of indicators to consider and comply with the various norms, standards, and principles that are already at work in the IDA. Indicators have created the phenomenon of ‘rank-seeking behavior,’ where governments seek to boost their ranking without having to necessarily improve performance in that particular area.<sup>11</sup>

Indeed, the promotion of FDI does not necessarily have to be at odds with the promotion of sustainable development for the host countries. If, however, indicators are formulated in such a way that it is the investor that disproportionately stands to benefit from investment deals to the detriment of host-country citizens, and that goes against existing social and environmental norms, then these tools can effectively contribute to the promotion of unsavory practices commonly referred to as ‘*land grabbing*.’ Such a tension within the IDA, between the policy prescriptions produced through indicators and those produced through compliance with existing (and evolving) social and environmental norms needs to be addressed. The purpose of this exploration is to identify means for securing respect for the entitlements of rural populations that are affected by land investment deals so as to secure the benefits of these deals for local citizens and also maintain the integrity and internal consistency of the IDA. In other words, our aim is to consider mechanisms for ensuring that investments in land, which can have positive developmental effects, are prevented from turning into grabbing of land.

Finally, we argue for the need to conduct critical reviews of indicators on an ongoing basis. This continuous review process will enable indicators to continue to serve stakeholders while responding to the dynamism and ever-evolving nature of the IDA.

---

<sup>11</sup> Bjørn Høyland, *Ibid*

The paper is organized as follows. The first part of the paper explores the phenomenon that has been commonly referred to as ‘land grabbing’ and analyzes the potential benefits, and threats that could result from such type of investment. The second part evaluates the IAB indicators and their potential implications. The third part of the paper looks into the IDA and various instruments whose letter and spirit are in contradiction with the IAB indicators. The final part of the paper links the IAB indicators with land grabbing and makes recommendations for the review and reform of the indicators.

## **What is Land Grabbing?**

Land grabbing generally refers to the acquisitions of vast tracts of land by more wealthy countries and private investors which result in harmful effects for local communities and/or the

environment.<sup>12</sup> Typically, land grabbing takes the form of the acquisition of controlling stakes in tracts of land far much bigger than that used in average land holdings in a country.<sup>13</sup> To illustrate, consider the cases of Mozambique, Uganda and the Democratic Republic of Congo (DRC). 15.2% of Mozambique's forest area has been acquired, 11.5% of Uganda's and 7.1% of DRC have also been acquired.<sup>14</sup>

## **Potential benefits**

Governments in developing countries stand to gain from fees charged for making use of land, as well as from taxation.<sup>15</sup> It must be noted however that owing to the underdeveloped nature of the agricultural land that is invested in, most direct land fees are nominal and not of such a magnitude as to substantially boost the respective treasuries of developing countries.<sup>16</sup>

---

<sup>12</sup> This definition is relevant to the nature of land deals under discussion. Various other forms of land grabs exist within national borders such as the Fast-Track Land Reform Program in Zimbabwe and the controversy over the Mailo land allocation by the British to the Buganda in Uganda. These acquisitions are not at the center of the current global discourse around land grabbing and will not be covered by the discussion in this paper. See, Joseph Mujere and Sylvester Dombo, Large Scale Investment Projects and Land Grabs in Zimbabwe: The Case of Nuanetsi Ranch Bio- Diesel Project, (Paper presented at the International Conference on Global Land Grabbing, 6-8 April, 2011)

<sup>13</sup> As an example of the scale issue, consider the case of Madagascar, where the Korean Firm Daewoo had negotiated the lease of 1.3 million hectares of land, which accounts for more than half the arable land in Madagascar. The International Food Policy Research Institute (IFPRI) estimated that 20 million hectares of land has been sold since 2006 in land deals, with 9 million hectares acquired in Africa alone. Of these hectares, an area of over 5 million hectares, which is an area greater than that of Holland, has been earmarked for biofuel production. See, Africa: Up for grabs The scale and impact of land grabbing for agro fuels, (June 2010), by Friends of the Earth Europe, p. 10

<sup>14</sup> Similarly, over 14% of Uganda's agricultural land has been acquired, over 17% of Sierra Leone's arable land, over 21 % of Mozambique's agricultural land and over 48% of the DRC's agricultural land. In other words, almost half of the DRC's agricultural land is now either owned by or leased to foreign investors. (Land resource database (FAOstat 2010). <<http://faostat.fao.org/site/377/default.aspx#ancor>>, (Accessed on December 12, 2011))

<sup>15</sup> In a deal concluded between the Government of South Sudan and a Texas based firm, Nile Trading and Development Inc. (NTD) in March 2008, the South Sudanese government was paid the equivalent of US\$25 000 to lease 600 000 hectares of land The agreement has an option to add 400 000 hectares, (please see the lease agreement available at <[http://media.oaklandinstitute.org/sites/oaklandinstitute.org/files/Lanya%20County%20Land%20Grab--Lease\\_0.pdf](http://media.oaklandinstitute.org/sites/oaklandinstitute.org/files/Lanya%20County%20Land%20Grab--Lease_0.pdf)>, (Accessed on December 14, 2011))

<sup>16</sup> Cotula, Lorenzo, Sonja Vermeulen, Rebeca Leonard and James Keelye. *Land Grab or Development Opportunity? Agricultural Investment and International Land Deal in Africa*, (FAO, IFAD and IIED, 2009). available at <<http://www.fao.org/docrep/011/ak241e/ak241e00.htm>>, (Accessed on December 16, 2011). Further, in the northern parts of Sudan, for example, land rents are pegged at US\$ 2-3 per 0.42 hectares per year. Further, as shall be fully discussed below, investors are often given tax breaks as an incentive to invest. Sudan gives an exemption on custom duties and taxes on capital for agricultural concessions for example, which is also the case in Pakistan and Ethiopia.

More substantial benefits may lie in the area of infrastructural development, modernization of rural areas and employment creation.<sup>17</sup> In Kenya for instance, the Government of Qatar undertook to build US\$ 3.4 billion sea port in return for a lease of 40,000 hectares of land.<sup>18</sup> Combined with increased investment in agriculture, this investment could boost the export volumes from developing countries whilst simultaneously improving the quality of agricultural produce.<sup>19</sup> Related technology transfers would also lead to a transfer of expertise to the local population resulting in capacity building. Therefore, with appropriate deals concluded in the context of enabling frameworks, land investments could be mutually beneficial, and it could be argued that they supply a welcome stream of development finance.<sup>20</sup>

The investing countries certainly benefit from the output of the investments. In this way, the food insecurity and demand for biofuel are addressed. Conversely, the local farmers will learn and benefit from the transfer of knowledge and skills. These synergies with local communities could also lead to more environmentally sustainable methods of farming.<sup>21</sup>

---

17 Cotula, *et al.* Ibid

18 Shepard Daniel with Anuradha Mittal; The Great Land Grab Rush for World's Farmland Threatens Food Security for the Poor, p. 16; See also Michael Kugelman and Susan L. Levenstein, (Eds.) Land Grab? The Race for the World's Farmland, available at [http://www.wilsoncenter.org/sites/default/files/ASIA\\_090629\\_Land%20Grab\\_rpt.pdf](http://www.wilsoncenter.org/sites/default/files/ASIA_090629_Land%20Grab_rpt.pdf), (Accessed on May 10, 2012), p. 28

19 David Hallam, International Investments in Agricultural Production. (Paper presented at the conference "Land Grab: the Race for the World's Farmland", Woodrow Wilson Center, Washington, May 5, 2009)

<sup>20</sup> Shepard *et al.*, n., 18 Ibid, p. 1. :'In response, several research institutions and international governance agencies have proposed ways to make the land grab phenomenon a win-win situation, in which food-insecure nations will increase their access to food resources while benefiting "host" nations through investments in the form of improved agricultural infrastructure and increased employment opportunities. These diverse responses to the issue are creating an important and timely debate on the implications of land grabbing for poor populations, the role of increased investment in agriculture for improving global food security, and the best way forward in light of the food and financial crises.'

<sup>21</sup> Shepard *et al.*, n., 18, p.1

## Potential threats

Land grabbing accelerates the trends of *de-peasantization*, large-scale commercial farming and tenure re-arrangements favoring international agribusiness.<sup>22</sup> It can lead to loss of livelihoods<sup>23</sup> and displacement of various populations. It is commented that land grabbing has more impact on the world's poor than climate change.<sup>24</sup> In an interview, Fred Pearce notes that poor people were being moved off the land with little regard for their historical and cultural rights, with centuries of history being destroyed.

Most developing countries, especially in Sub-Saharan Africa, have customary land tenure systems, with most members of the rural population lacking title to land.<sup>25</sup> This makes them particularly vulnerable to displacement and loss of livelihood. Whilst land grabs are often executed on the promise of employment creation, these projects often fail to live up the hype.<sup>26</sup>

---

<sup>22</sup> Fouad Makki and Charles Geisler, Development by Dispossession: Land Grabbing as New Enclosures in Contemporary Ethiopia, (Paper presented at the International Conference on Global Land Grabbing, 6-8 April, 2011), p. abstract

<sup>23</sup> The Government of Ethiopia for example, claimed that all land investment deals were concluded in relation to “wastelands” with no pre-existing owners, and yet the “...evidence suggests that some of these lands were used for shifting cultivation and dry-season grazing’ See, Joshua Pringle, Land Grabs and The World Bank, (November 2011), available at <<http://www.commercialpressuresonland.org/press/land-grabs-and-world-bank-0>>, (Accessed on December 14, 2011)

<sup>24</sup> Extracts from Fred Pearce's new book, The Land Grabbers: Africa's hidden revolution cited on <<http://globalvoicesonline.org/2012/06/02/ethiopia-land-history-and-justice-in-gambella/>>, (Accessed on June 6, 2012)

<sup>25</sup> In Madagascar for instance, 70 % of the population lives in the rural areas; in Cambodia, one of the Asian States in which such countries as Qatar have invested in, rural landlessness rose from 13% in 1997 to 20 % in 2004, and then to nearly 30% in 2006. In Uganda, 401 families, representing 2041 people, were displaced when the Government of Uganda leased out land to a German company trading through a local subsidiary called Kaweri Coffee Plantation Limited in 2001. The families were evicted violently by the army, houses were destroyed, staple crops of cassava and potatoes were confiscated and only 2% of them were compensated, and not adequately. In Ethiopia, as of November 2011, in Gambella and Benishangul, respectively, 45,000 and 90,000 households are slated for relocation due to ‘villagization’ and land investment displacements, resulting in a loss of livelihood for over 650,000 people." It is with these tangibly troubling experiences in mind that the Chairperson of the United Nations Permanent Forum on Indigenous Issues estimated that the land rights of some 60 million indigenous people worldwide may be at risk as a result of large-scale agro-fuel expansion. See, Cotula, n. 16, p. 13

<sup>26</sup> “Actual opportunities for employment tend to end up being much smaller than originally promised. Often local people are passed over in favour of a migrant work force that flew in from a precarious circumstance elsewhere.” See, Introduction: Global Land Grabs: Investments, risks and dangerous legacies Development, (2011) 54(1), 5 – 11. doi:10.1057/dev.2010.108; (published online, February 11, 2011)

Quite often, local candidates are overlooked in favor of foreigners when recruiting for well-paying jobs with security of tenure.<sup>27</sup> This leaves the local people to the menial contracts with very little job security, very little-to-no insurance protecting them from occupational hazards, and irregular wage payments.<sup>28</sup>

A striking feature of these land investments is how they are mostly carried out by food insecure countries in territories that are, themselves, food insecure. According to FAO, 43 of the 53 African countries are unable to produce sufficient food for their populations.<sup>29</sup> The dependency of these countries on imports and hand-outs through foreign aid is therefore being perpetuated by these investments. As rightly noted ‘there is a dangerous disconnect between increasing investment in agriculture through rich countries taking over land in poor countries and the goal of securing food supplies for poor and vulnerable populations.’<sup>30</sup>

These commercial transactions must also be viewed from the grand scheme of opening up farmlands to the global financial markets. Once these deals come into effect, the farmlands become subject to the vicissitudes of far-off markets whose slight flinching may affect local workers in very real ways, including their wages. In such a scenario, the prospects for social

---

<sup>27</sup> In Ethiopia for instance, there are no limits on the complement of foreign staff that the investing partners employ, giving investors a virtual carte blanche as to who they can employ. See, Cotula, n. 16, *ibid*.

<sup>28</sup> Workers for the Kaweri Plantation Limited in Uganda aforementioned were being paid 2000 Ugandan Shillings, at the time equivalent to US\$1, for a day’s work. This often translated to several days’ work, as the shillings were relative to the amount of work given and not the time in which it is completed. On 6 January 2010, workers for a flower plantation called Rosebud in Uganda, protested against insufficient remuneration and protective clothing among other issues. Two days later, one of the workers died as a result of a pesticide accident and was neither provided medical treatment nor was compensation provided to his family, leading to a sit-in on the 26<sup>th</sup> January 2010 which was disbanded by the police. See, Gertrud Falk and Wolfgang Sterk, *The Case Mubende*, FIAN, (March 2004), available at <[http://www.fian.org/resources/documents/others/the-case-mubende/view?set\\_language=en](http://www.fian.org/resources/documents/others/the-case-mubende/view?set_language=en)>, (Accessed on April 10, 2012)

<sup>29</sup> See, Fouad and Charles, n. 22, p. 8

<sup>30</sup> Shepard *et al.*, n., 18, p.4

unrest from growing inequality increase exponentially.<sup>31</sup> Another concern that has been raised is the danger of African states evolving into Agro-fuel republics, giving into the influence of (and desire to attract) the foreign private sector, rather than to their own citizenry.<sup>32</sup>

There is also the matter of land reform that remains an urgent necessity in most developing countries.<sup>33</sup> The increased demand for land through land grabbing has further increased the tension on the farmlands with the interests of small-scale farmers and those of private sector investors clashing.<sup>34</sup>

The overwhelming inclination by governments in developing countries to offer contracts on concessionary terms, and to proverbially “race to the bottom,” has the ultimate effect of titling these agreements in favor of investors.<sup>35</sup>

It is for these reasons that the World Bank, in a report published in 2011, acknowledged that there exist “real dangers” of “uncompensated land loss by existing land users and land being

---

<sup>31</sup> In the case of Central American countries, the term ‘banana republic’ came to symbolize politically unstable countries reliant on one raw material for export ruled by self-elected elite that is influenced by big trans-national corporations. This was caused by the political influence required for US companies such as United Fruit, Standard Fruit, and Cuyamel Fruit to maintain their dominance over through rights in land. See, Shepard *et al.*, n., 18, p.6

<sup>32</sup> Shepard *et al.*, n., 18, p.11

<sup>33</sup> 1.5 billion Small-scale farmers live and work on less than 2 hectares of land in the world. See, David Hallam, n. 19 Ibid

<sup>34</sup> In the Philippines, efforts to pass the Genuine Agrarian Reform Bill (GARF) in 2009 were stalled by lobby efforts of Saudi investors who were planning to lease out a thousand hectares for poultry and livestock investment. In Pakistan, there have already been two failed attempts at land reform and the latest wave of land grabs is the latest obstacle in achieving land reform. See, Hussain, F. “The need to revive land reforms in Pakistan.” (October 24, 2003), Available at <[www.chowk.com/articles/6621](http://www.chowk.com/articles/6621)>, (Accessed on December 16, 2011)

<sup>35</sup> In Ethiopia for instance, the government has no minimum capital required to start of such an investment and has exempted foreign agricultural activities from paying customs duties and taxes on imports of goods. See, Fouad and Charles, n. 22, p. 8, Ibid. In Pakistan, investors retain 100 percent proprietary rights and enjoy a tax holiday for 10 years, without which they would need to pay taxes and duty on their imports and keep a percentage of their produce in the Pakistani market. They are however permitted to retain 100 percent of their profits and dividends as well as 100 % repatriation of produce to their home countries. See, David Hallam, n. 19, p.6

given away well below its true social value.”<sup>36</sup> It further noted that “many investments... failed to live up to expectations and, instead of generating sustainable benefits, contributed to asset loss and left local people worse off than they would have been without the investment... case studies confirm that, in many cases, benefits were lower than anticipated, or did not materialize at all.”<sup>37</sup>

## The IAB indicators

Due to their diverse nature, it is not easy to devise a universally agreed definition of indicators. However, in an attempt to pinpoint the defining elements of indicators, Kevin E. Davies, *et al.*<sup>38</sup> delimited and explained ‘indicators’ as a named collection of rank-ordered data that purports to represent the past or projected performance of different units whose data are generated through a process that simplifies raw data about a complex social phenomenon.

Using indicators is one mode of governance operating outside or across units of analysis such as states, corporations, etc. Indicators, which represent a distinctive method of producing knowledge about societies, generally compare and rank states for purposes as varied as deciding how to allocate foreign aid or investment and whether states have complied with their treaty obligations.<sup>39</sup> Similar to some organizations, the WB produces and employs indicators for several purposes. The DBI is one of the sets of indicators produced by the IFC/WB. As it ranks economies every year based on these indicators, the IFC promotes a particular ideology in doing

---

<sup>36</sup> Klaus Deininger, *et al.*, *Rising Global Interest in farmland*, (The IBRD/The World Bank, 2011), p.70

<sup>37</sup> World Bank, "Rising global interest in farmland: can it yield sustainable and equitable benefits?", Washington DC, September 2010, available at [http://www.donorplatform.org/component/option,com\\_docman/task,doc\\_view/gid,1505](http://www.donorplatform.org/component/option,com_docman/task,doc_view/gid,1505), (Accessed on May14, 2012) p. 51

<sup>38</sup> Davis, *et al.*, ‘Indicators as a Technology of Global Governance’, *Law and Society Review* 36:1 (2012), p. 1

<sup>39</sup> Davis, *Ibid*, p. 3



business and addresses the experience of business, and measures the quality of business laws and related institutions across many countries.<sup>40</sup> Its ideology is reflected in its policies. The indicators are in turn intended to reflect more or less the same policy ideas.

The IAB indicators measure regulation of foreign direct investment in 87 of the world's economies.<sup>41</sup> The project is intended to identify good practices, stimulate reform, and provide a platform for shared learning from a large and diffuse set of experiences.<sup>42</sup> The data is collected and presented in four categories; the relevant categories for our purposes include "Investing Across Sectors," and "Accessing Industrial Land."<sup>43</sup> By ranking countries under the four categories, the indicators seek to promote those regulatory frameworks that "...both do not overburden investors and provide sufficient protections for environments and citizens."<sup>44</sup> The IAB has 23 indicators across the four categories. Countries are not ranked against each other in an ordinal way. Rather, the data is presented as a comparative figure of the regional and global average of that particular sector.<sup>45</sup> Instead of a list, a country's performance is exhibited through a figure which is relative to the performance of other countries in its region and around the world. The ranking of economies remains a goal of the IAB indicators, but shall be introduced once its methodology is 'stabilized.'<sup>46</sup> At this stage, the IAB seeks 'feedback on the data and

---

<sup>40</sup> Davis, Ibid, p.37

<sup>41</sup> See, IAB, n.1, p. introduction

<sup>42</sup> IAB methodology available at <<http://iab.worldbank.org/Methodology>>, (Accessed on May 10, 2012)

<sup>43</sup> The other two are: "Starting a Foreign Business" and "Arbitrating Commercial Disputes."

<sup>44</sup> IAB Accessing Industrial Land Methodology available at <<http://iab.worldbank.org/Methodology/Accessing-Land>>, (Accessed on May 10, 2012)

<sup>45</sup> IAB Accessing Industrial Land Methodology, Ibid

<sup>46</sup> IAB, FAQ, <<http://iab.worldbank.org/FAQ>>, (Accessed on December 14, 2011) "The project will consider introducing economy ranks in the future after the project's methodology has been stabilized."

methodology,<sup>47</sup> which makes this paper's analysis relevant to the development of the IAB indicators.

The Investing Across Sectors indicators assess the “friendliness” of domestic regulations affecting foreign ownership of equity in new investment projects, as well as the foreign acquisition of shares in existing companies.<sup>48</sup> The underlying test is one of foreign ownership and the extent to which domestic laws permit the establishment of foreign owned firms, as well as the acquisition of domestic firms by foreign firms. The friendliness of foreign investor regulation is assessed across 33 sectors that are aggregated into 11 sector groups, including ‘agriculture and forestry.’<sup>49</sup> In order to assess the performance of individual countries on the agricultural component, the IAB relies on a hypothetical situation in which a foreign firm seeks to acquire ownership of a commercial farm.<sup>50</sup> Importantly, to test a country's regulatory system against this hypothetical situation, the indicator assumes that the investor is able to obtain a long-term lease on the land.<sup>51</sup> One can therefore infer that fewer restrictions on foreign ownership and / or use of farmland are necessary for a country to receive a high score under the Investment Across Sectors Indicators. In this context, having fewer restrictions in place is synonymous with being open to foreign investment, which is the variable that is positively assessed and promoted by the indicator.

It is important to note that this subset of the IAB indicators applies to entities that are assumed to be multinational companies “... with no equity interest or management control by the government

---

<sup>47</sup> *ibid*

<sup>48</sup> Investing Across Sectors methodology available at <<http://iab.worldbank.org/Methodology/Investing-Across-Sectors>>, (Accessed on May 10, 2012)

<sup>49</sup> The other areas are Mining, oil and gas, light manufacturing, Telecommunications, Electricity, Banking, Insurance, Transportation, Media, and Sector Group 1: Construction, tourism and retail, Sector Group 2: Healthcare and Waste Management.

<sup>50</sup> See, IAB, FAQ, n. 46, *Ibid*

<sup>51</sup> IAB, FAQ, n. 46, *Ibid*

of its home country.”<sup>52</sup> As such, it is not supposed to relate to state-owned enterprises, sovereign wealth funds, individuals or institutional investors like pension funds.<sup>53</sup> This exclusion is to ensure “comparability and consistency of data.”<sup>54</sup> It must be noted that a sizeable amount of the land transactions referred to as “land grabs” across the world are being conducted by investment vehicles in which the state has a controlling stake.<sup>55</sup> However, this assumption does not have a significant effect on the indicators themselves. State controlled enterprises and private multinational companies mostly invest based on the same regulatory framework. The legal and institutional frameworks that apply to the former apply to the latter and as such, the indicators still serve as a point of reference and guidance to both groups of investors in spite of the assumption that the indicators only relate to private multinational companies.

The Accessing Industrial Land indicators evaluate domestic regulatory frameworks to assess how easy / complicated it is for a foreign investor to lease or own land, as well as availability of information about the land.<sup>56</sup> Measurement is done for the following categories:

- Strength of lease rights index (0-100)
- Strength of ownership rights index (0-100)
- Access to land information index (0-100)
- Availability of land information index (0-100)
- Time to lease private land (days)
- Time to lease public land (days)

---

<sup>52</sup> IAB, FAQ, n. 46, Ibid

<sup>53</sup> IAB, FAQ, n. 46, Ibid

<sup>54</sup> IAB, FAQ, n. 46, Ibid

<sup>55</sup> IAB, FAQ, n. 46, Ibid

<sup>56</sup> Accessing Industrial Land Methodology available at <http://iab.worldbank.org/Methodology/Accessing-Land>, (Accessed on May 25, 2012)

The Strength of Lease Rights index assesses the rights accorded to investors who seek to lease industrial land. “Strength” is based on equal treatment of foreign investors and local investors, as well as the ability to engage in additional transactions related to the land, including sub-leasing, subdividing, mortgaging or leveraging the land as collateral.<sup>57</sup> Fourteen survey questions are used to assess these various aspects of lease rights.<sup>58</sup> This is followed by bonus questions that reward countries that provide further protections without penalizing those countries that do not provide these extra protections. The content of the substantial survey questions, when juxtaposed against the bonus questions, reflects very little commitment to providing “... sufficient protections for [the] environment and citizens...”<sup>59</sup> As will be demonstrated below, this contributes to the harmful effects of land grabbing.<sup>60</sup>

Some of the survey questions do not necessarily affect land investment deals and land grabbing, which is the case of the points awarded to countries that allow foreign companies to renew their leases. Other questions are far more directly related to land grabbing. For instance, countries are awarded points for allowing foreign firms to lease land; there are even more points for those countries that allow the transfer of the leases; and when it is possible to effect such a transfer to another foreign company, then the country is awarded even more points. Further, under the bonus questions, countries that allow foreign firms to fast track their applications for leases can earn additional points. This is noteworthy given that the survey questions award points for equal treatment of foreign and domestic companies. Further, countries in which there is no higher transaction cost for foreign companies score even higher. Foreign companies are therefore to be treated the same way and charged at the same rate as domestic companies. On the other hand,

---

<sup>57</sup> Methodology, n. 56, *ibid*

<sup>58</sup> Methodology, n. 56, *ibid*

<sup>59</sup> Methodology, n. 56, *ibid*

<sup>60</sup> This is discussed fully in the conclusion

transfer of leases between foreign companies is awarded extra points, as is the option of speeding up transactions by foreign companies. The contradiction is clear; whilst the indicators call for non-discrimination of foreign companies, they openly incentivize countries to give preferential treatment to and for transactions between foreign companies.

The Statutory Limit for Leases Index assesses the maximum period for which a lease can be granted. The maximum number of years permitted for a lease is divided by the figure 100 to produce the points to be awarded. A country that allows foreign investors to lease for 100 years or more, or with unlimited lease periods, is awarded the highest point of 1.<sup>61</sup> Further, countries are awarded points for permitting foreign countries to lease an unlimited amount of land. The message is clear: in order to receive a high score under the IAB, and to boost its prospects for attracting FDI, foreign companies must have access to unlimited lease periods for unlimited amounts of land.

Here, the bonus questions evaluate whether a country allows foreign companies to have their applications for leases fast tracked for a fee. They also examine whether a particular country requires environmental and social impact assessments and community consultations during the lease period.<sup>62</sup> The bonus questions reward countries that have such requirements in place, but there is no penalty for those that do not. Some argue that tracking the environmental and social impact of investments is an integral part of doing business successfully in developing countries, and that notions of corporate social responsibility are informed and (re)defined by developing

---

<sup>61</sup> Methodology, n. 56, *ibid*

<sup>62</sup> Methodology, n. 56, *ibid*

countries' experiences of engaging with foreign investors.<sup>63</sup> Yet the IAB indicators treat this impact-assessing and tracking dimension as optional, rather than as essential for achieving optimal economic performance. This is at odds with the stated intent of the IFC policies to protect citizens and the environment; this disconnect is aggravated by the increasing relevance and popularity of “triple bottom line” investing, where social and environmental returns are measured and pursued, alongside financial returns.<sup>64</sup>

The strength of Ownership Rights Index is measured over eight survey questions and a bonus question. In this category, a legal framework which allows foreign ownership of land will only score highly if it allows such purchase without the need for local partnership.<sup>65</sup> It is insufficient to allow foreign ownership of land, but rather this ownership must be exclusively in the hands of the foreign company without any need to be in partnership with a domestic investor. Further, countries are awarded points for permitting a foreign company to sell land without seeking permission. Further points are awarded where such sell can be made to another foreign firm.<sup>66</sup> This standard is similar to the one which awards points for permitting foreign companies to transfer leases to other foreign companies. The rewarding of the frameworks that permit exclusive commercial transactions in land between foreign companies is therefore consistent

---

<sup>63</sup> For a detailed discussion on Corporate Social Responsibility, See *The importance of corporate responsibility*, an Economist Intelligence Unit white paper, available at <[http://graphics.eiu.com/files/ad\\_pdfs/eiuOracle\\_CorporateResponsibility\\_WP.pdf](http://graphics.eiu.com/files/ad_pdfs/eiuOracle_CorporateResponsibility_WP.pdf)>, (Accessed on May 4, 2012)

<sup>64</sup> Frank Vanclay, *Impact Assessment and the Triple bottom line: competing pathways to sustainability?*, available at <[http://www.minerals.csiro.au/sd/pubs/Vanclay\\_Final.pdf](http://www.minerals.csiro.au/sd/pubs/Vanclay_Final.pdf)>, (Accessed on 25 May, 2012)

<sup>65</sup> Methodology, n. 56, *ibid*

<sup>66</sup> Methodology, n. 56, *ibid*

throughout the IAB indicators. Just as in the strength of lease rights category, points are awarded for countries that allow a foreign firm to buy an unlimited amount of industrial land.<sup>67</sup>

The only bonus question in this category relates to fast tracking foreign firms' applications to purchase land.<sup>68</sup> The references to environmental protections, social protections and communal consultations are dropped altogether for this indicator even at the 'bonus question' level. The unavoidable conclusion is that countries are being encouraged to allow foreign ownership of land without local partnerships or other joint venture that could facilitate transfers of knowledge and technology. Domestic frameworks are incentivized to allow foreign firms to buy unlimited amounts of land and sell these between themselves (as foreign entities) and allow such purchases without any need for the State's permission. Environmental and social protections are treated as peripheral and almost superfluous and are thus not instrumental for boosting the FDI opportunities of a particular economy.

This discussion would be incomplete without mentioning that the 2010 IAB Report states that the Accessing Industrial Land indicators do not cover acquisition of agricultural land by foreign individuals and companies.<sup>69</sup> The reasons set forth in the report for this exclusion are as follows:

“... in many countries there may have additional restrictions for foreign investment in agricultural land (as in the European Union and the United States). Due to the sensitive nature of the topic and its potential negative consequences for communal land holders in rural areas, it was deliberately excluded.”<sup>70</sup>

---

<sup>67</sup> Methodology, n. 56, *ibid*

<sup>68</sup> Methodology, n. 56, *ibid*

<sup>69</sup> IAB, n., *Ibid*

<sup>70</sup> IAB, n., *Ibid*, p.74

This exception is difficult to reconcile with the information provided in the same report under “Key Laws measured by the Accessing Industrial Land indicators.”<sup>71</sup> One such key law is the domestic equivalent of the “agricultural land ownership and use act”. Thus, the assessment of a country’s openness to investments in agricultural land does seem to be quite relevant to the IAB analysis. Further, the “Profiles of Economies” contained in the IAB report are replete with references to agricultural land, even under the Accessing Industrial Land Section.<sup>72</sup> In other words, although the IAB report states that agricultural land investments are excluded from consideration, the methodology for assessing FDI regulation seems to consistently include evaluations pertaining to agricultural land, which suggests that the IAB stance is contradictory to, or at least inconsistent with its practice. Thus, to the extent that agricultural land is relevant to the Accessing Industrial Land indicators, the discussion above remains relevant for the broader analysis of indicators and their influence on investments in land, which, depending on the applicable terms and standards, can be dubbed land grabbing.

The number of days required to lease public and private land is measured under the “Ease of leasing land indicators.” These indicators measure the amount of time it takes to get a lease for purposes of establishing a manufacturing plant on the outskirts of the country’s biggest commercial city.<sup>73</sup> This particular index, together with that on availability of Land Information and Access to Land Information are therefore not relevant for this discussion.

---

<sup>71</sup> IAB, n., Ibid ; Box 5.1, p. 42

<sup>72</sup> IAB, n., ibid; for example, for Albania under the Accessing Industrial Land section it states that: “Lease contracts are limited to 99 years for agricultural land and 30 years for other land.” For Morocco it states that: “Foreign companies seeking to access land may lease or buy privately or publicly held land, with the exception of agricultural land, which foreign entities are prohibited from owning”



In a nutshell, the IAB indicators encourage the establishment of legal frameworks that enable foreign owned companies to buy or lease unlimited amounts of land for unlimited periods whilst being treated the same as the domestic firms, and that provide the option to fast-track transactions upon payment of a fee. The fewer the regulations, the fewer the requirements for government approvals, and the more room there is for transactions to take place between foreign owned companies, the more countries are likely to be viewed as attractive for FDI purposes. The IAB indicators make the concession that they do not dwell on legal social and environmental protections beyond the bonus questions the Ease of Leasing Land indicators.<sup>74</sup> Whilst acknowledging this limitation, the indicators then make the bold claim that they do not “...encourage governments to promote efficient land transactions at the cost of environmental and social protections.”<sup>75</sup> It is then submitted that the failure to measure the social and environment protections of regulatory frameworks has the precise effect of encouraging governments to “...promote efficient land transactions at the cost of environmental and social protections.” Whilst the indicators point to other indicators which may address this shortfall<sup>76</sup>, this has the effect of taking the discussion of social and environmental protections out of the arena of foreign direct investments and the ease of doing business. It cannot be enough to acknowledge the shortcoming and rely on other indices whilst still creating the impression that a country can be an attractive destination for FDI without paying attention to social and environmental protections. The “naming and shaming” effect of the indicators inevitably

---

<sup>74</sup> Methodology, n. 56, *ibid*

<sup>75</sup> Methodology, n. 56, *ibid*

<sup>76</sup> Methodology, n. 56, *ibid*: The indicators (like many other data sets) should not be considered in isolation, but in conjunction with other indicators and reports -- such as the Land Governance Assessment Framework (LGAF) ii-- that reflect a country’s other needs, circumstances, and socioeconomic development.

encourages countries to adopt ‘rank-seeking’ behavior rather than improve social and environmental protections which have little to no effect on the points awarded.<sup>77</sup>

## **International Development Architecture: IFC Performance Standards, PRAI and Voluntary Guidelines, etc**

Whilst the IAB indicators create policy prescriptions as pointed out in the discussion above, the IFC has developed a comprehensive set of Social and Environmental Standards that all of its clients are obliged to meet. The IFC’s clients are the entities or parties who are financed by the IFC and responsible for implementation and operation of projects.<sup>78</sup> They are mainly drawn for the private sector as the IFC seeks to promote sustainable private sector investments in developing countries.<sup>79</sup> The IFC Standards on Environmental and Social Sustainability provided the basis for the Equator Principles for determining, assessing and managing social and environmental risk in project finance.<sup>80</sup> The IFC Standards and the Equator Principles have been widely received and “...have become the most widely-accepted framework among international project financiers for managing environmental and social risks of projects in the developing world.”<sup>81</sup> More than 60 financial institutions involved in project finance have adopted the

---

<sup>77</sup> Aldo Caliarì, IFIs on trade and investment: Liberalization bias returns; Center of Concern; BRETTON WOODS update number 72, (Sep./Oct. 2010). If previous experience is any guide, the “naming and shaming” impact of the report on countries not implementing such “good practices” is likely to be much stronger than the disclaimers might lead one to think.

<sup>78</sup> IFC Performance Standards on Environmental and Social Sustainability, p. 2

<sup>79</sup> Aldo Caliarì, n. 77, Ibid

<sup>80</sup> See Mehrdad Nazari, IFC Standards: Lessons Learnt available at <<http://www.prizmasolutions.com/assets/documents/Vol03-02-IFCPerformanceStandards-32-33.pdf>>, (Accessed on May 10, 2012)

<sup>81</sup> Steven Herz, et al., The IFC’s Performance Standards and the Equator Principles: respecting human rights and remedying violations? A Submission to the U.N. Special Representative to the Secretary General on Human Rights and Transnational Corporations and other Business Enterprises Bank Information Center, BankTrack, Center for

Equator Principles<sup>82</sup> and others have stated that the IFC Standards have become the, “... *de facto* benchmark for developing and financing responsible extractive projects in emerging markets.”<sup>83</sup>

The IFC Standards break down into eight categories, including those for Land Acquisition and Involuntary Resettlement, Indigenous Peoples and Cultural Heritage.<sup>84</sup> In these various categories, the IFC acknowledges that private sector investments can create real hardships for the local peoples and communities. Under the Land Acquisition and Involuntary Settlement category, the IFC concedes that “...project-related land acquisition and restrictions on land use can have adverse impacts on communities and persons that use this land.”<sup>85</sup> The potential harm is enumerated as including landlessness, joblessness, homelessness, marginalization, food insecurity, increased morbidity and mortality, loss of access to common property and services and social disarticulation.<sup>86</sup>

Quite unlike the optional provisions of indicators, the language is decidedly obligatory. The IAB indicators relegate the assessment of environmental and social protections and community consultations to an optional section in which countries without these protections are not

---

International Environmental Law, Oxfam Australia, World Resources Institute, (August 2008), p. 1, available at <[http://www.banktrack.org/download/the\\_international\\_finance\\_corporation\\_s\\_performance\\_standards\\_and\\_the\\_equator\\_principles\\_respecting\\_human\\_rights\\_and\\_remedying\\_violations\\_/0\\_final\\_ruggie\\_submission\\_august\\_6\\_.pdf](http://www.banktrack.org/download/the_international_finance_corporation_s_performance_standards_and_the_equator_principles_respecting_human_rights_and_remedying_violations_/0_final_ruggie_submission_august_6_.pdf)>, (Accessed on May 4, 2012)

<sup>82</sup> Aldo Caliarì, n. 77, Ibid

<sup>83</sup> Aldo Caliarì, n. 77, Ibid

<sup>84</sup> The other categories are Environmental and Social Assessment and Management System; Labor and Working Conditions, Pollution Prevention and Abatement; Community Health, Safety and Security and Biodiversity Conservation and Sustainable Natural Resource Management

<sup>85</sup> See IFC Performance Standard 5: Land Acquisition and Involuntary Resettlement available at <[http://www1.ifc.org/wps/wcm/connect/4b976700498008d3a417f6336b93d75f/Updated\\_GN5-2012.pdf?MOD=AJPERES](http://www1.ifc.org/wps/wcm/connect/4b976700498008d3a417f6336b93d75f/Updated_GN5-2012.pdf?MOD=AJPERES)>, (Accessed on May 10, 2012)

<sup>86</sup> Aldo Caliarì, n. 77, Ibid

penalized.<sup>87</sup> On the other hand, IFC clients are required to consult with the communities whose livelihoods could be affected by their investments from the early planning stage of a project.<sup>88</sup> Evictions are to be avoided, and, where unavoidable, the detrimental effects of such evictions are to be mitigated through provision of compensation for loss of assets and “...ensuring that resettlement activities are implemented with appropriate disclosure of information, consultation, and the informed participation of those affected.”<sup>89</sup> The investor is also required to provide the displaced persons with security of tenure at the resettlement sites. Environmental and social protections are treated as an integral part of the investment which must be accounted for and reported on “...as a way of doing business in a sustainable way.”<sup>90</sup> They are not an optional part of doing business unlike in the IAB indicators. The IFC has an Environmental and Social Review Procedure through which it assesses the social and environmental risks which its clients are exposed to and the capacity that each client has to deal with the risks.<sup>91</sup> The outcome of this review process is “...an important factor in IFC's decision to finance a client or not.”<sup>92</sup> Therefore, a failure to comply with the requirements of the IFC Standards can result in loss of funding for the IFC clients.

The IFC Standards also seek to protect cultural heritage from adverse effects of investments by requiring that investors consult with the affected communities with a view to limiting any damage or losses.<sup>93</sup> The IFC requires its clients to maintain sites of cultural heritage and to allow

---

<sup>87</sup> Methodology, n. 56, *ibid*

<sup>88</sup> Aldo Caliari, n. 77, *Ibid*

<sup>89</sup> Aldo Caliari, n. 77, *Ibid*

<sup>90</sup> Aldo Caliari, n. 77, *Ibid*, p. 2

<sup>91</sup> IFC Environmental and Social Requirements for FI Clients available at <<http://firstforsustainability.org/risk-management/ifc-environmental-and-social-requirements.php>>, (Accessed on May 10, 2012)

<sup>92</sup> IFC Requirements, *Ibid*

<sup>93</sup> IFC Performance Standard 8: Cultural Heritage available at <[http://www1.ifc.org/wps/wcm/connect/dd8d3d0049a791a6b855faa8c6a8312a/PS8\\_English\\_2012.pdf?MOD=AJPERES](http://www1.ifc.org/wps/wcm/connect/dd8d3d0049a791a6b855faa8c6a8312a/PS8_English_2012.pdf?MOD=AJPERES)>, (Accessed on May 10, 2012)

local people access; where this is no longer possible, IFC clients must restore the site elsewhere or compensate those affected for the loss.<sup>94</sup> Under Performance Standard Number 7, the IFC acknowledges that indigenous peoples are particularly vulnerable to the adverse effects of investments due to marginalization.<sup>95</sup> However, in a move toward more inclusive forms of development, the IFC Standards identify the potential for indigenous peoples to promote and manage “...activities and enterprises as partners in development.”<sup>96</sup> For this reason, investors are required to be particularly sensitive to the views of indigenous peoples and to seek their Free and Prior Informed Consent (FPIC) in matters impacting on “Lands and Natural Resources Subject to Traditional Ownership or Under Customary Use.”<sup>97</sup> The investors are required to negotiate with indigenous peoples in good faith and document the “...mutually accepted process between the client and Affected Communities of Indigenous Peoples, and ... evidence of agreement between the parties as the outcome of the negotiations.”<sup>98</sup> In the case of investments affecting the land of indigenous people, various options are listed, including providing compensation in land or in cash, continued access to natural resources located on the land which are ‘central to the identity and livelihood’<sup>99</sup> of affected communities and continued rights for indigenous peoples to transit through the land.<sup>100</sup>

---

<sup>94</sup> IFC Requirements, Ibid

<sup>95</sup> See IFC Performance Standard 7: Indigenous People available at [http://www1.ifc.org/wps/wcm/connect/50eed180498009f9a89bfa336b93d75f/Updated\\_GN7-2012.pdf?MOD=AJPERES](http://www1.ifc.org/wps/wcm/connect/50eed180498009f9a89bfa336b93d75f/Updated_GN7-2012.pdf?MOD=AJPERES);

(Accessed on May 10, 2012)

<sup>96</sup> IFC Standard 8, N.93, Ibid

<sup>97</sup> IFC Standard 8, N.93, Ibid

<sup>98</sup> IFC Standard 8, N.93, Ibid

<sup>99</sup> IFC Standard 8, N.93, Ibid

<sup>100</sup> IFC Standard 8, N.93, Ibid

This section is not intended to evaluate the IFC Standards or to assess their adequacy, efficiency, comprehensiveness or level of enforcement.<sup>101</sup> Rather, we turn to Standards because they are widely accepted and used, and because they help to demonstrate that there are some troublingly contradictory practices currently taking shape within the IDA. As explained above, the assessment of domestic frameworks conducive to attracting FDI barely refers to environmental and social protections and community protections. Such protections appear mainly in the context of bonus points, and countries that do not require social or environmental impact assessment or consultations are not penalized. In general, countries score well if they do not have laws on their books that require partnership with local firms, and if they provide unlimited lease periods for unlimited amounts of land, without governmental approval. In contrast, the IFC acknowledges the need for investors to be sensitive to the views and needs of local peoples and their cultural heritage in its Standards. Rather than relegating the social and environmental dimensions of foreign investment to the bonus point category, which effectively renders related measures optional, the IFC Standards mandate that solicitation of input from affected populations, consultations, and mitigation measures need be undertaken.

Whilst on the one hand the IAB indicators push policy makers to treat foreign firms in the same way as local firms and avoid creating obligations for foreign firms to partner with local entities, the IFC Standards require firms to be sensitive to the plight of local peoples and to partner with them whenever possible. Consequently, rather than being mutually reinforcing, efforts to promote

---

<sup>101</sup> See, Catching up to the past five years: Recommendations for the IFC's environmental and social sustainability framework "An ongoing criticism of the IFC Performance Standards is that many clients reduce them to a checklist of the minimal activities necessary to receive financing. IFC, in turn, lacks effective ways to ensure that these activities lead to actual, improved environmental and social performance on the ground. For example, consultations with local communities often become "information sharing" sessions rather than an opportunity for affected people to participate meaningfully in project decision-making." Available at [http://pdf.wri.org/wri\\_comments\\_ifc\\_performance\\_standards\\_06-21-10.pdf](http://pdf.wri.org/wri_comments_ifc_performance_standards_06-21-10.pdf)., (Accessed on May 10, 2012)

and maximize foreign investments in developing countries run against efforts to strengthen the web of social and environmental protection mechanisms. One could argue that what the IDA gives with one hand, namely, clear mandates concerning social and environmental protection, it takes away with the other, by incentivizing local governments to reduce protective regulation. Indeed, to the extent that policy makers change domestic policies to score well on the IAB indicators and attract FDI, they may (to advance their citizens' well-being) need to increase their dependency on other parts of the IDA, such as the IFC, to supply social and environmental standards-based influence, and fill the protective regulation gap.

The IFC is not alone in filling the protective regulation gap and injecting social and environmental norms into the IDA. As an example, the Food and Agricultural Organization (FAO) has developed Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests (Voluntary Guidelines) in order "...to improve the governance of tenure of land, fisheries and forests with the overarching goal of achieving food security for all and to support the progressive realization of the right to adequate food in the context of national food security."<sup>102</sup> These Voluntary Guidelines were adopted by the Committee on World Food Security on 11 May, 2012 and whilst they are not legally binding, they offer an important reference point for policy makers and various other actors.

The Guidelines point out that States must ensure that markets operate in a manner that increases the participation of the poor.<sup>103</sup> Further, "[s]tates should take measures to prevent undesirable impacts on local communities, indigenous peoples and vulnerable groups that may arise from,

---

<sup>102</sup> Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests, available at <[http://www.fao.org/fileadmin/user\\_upload/nr/land\\_tenure/pdf/VG\\_Final\\_May\\_2012.pdf](http://www.fao.org/fileadmin/user_upload/nr/land_tenure/pdf/VG_Final_May_2012.pdf)>, (Accessed on May 14, 2012)

<sup>103</sup> Voluntary Guidelines, n. 102, Ibid, paragraph 11.2

*inter alia*, land speculation, land concentration and abuse of customary forms of tenure.”<sup>104</sup> The Guidelines acknowledge that investments are essential to secure food security<sup>105</sup>, but highlight the need to be mindful of the objectives of “social and economic growth and sustainable human development focusing on smallholders.”<sup>106</sup> As such, with investment comes the responsibility to “...’do no harm’, safeguard against dispossession of legitimate tenure right holders and environmental damage, and ... respect human rights.”<sup>107</sup>

Whilst the Guidelines leave it to the States to define what constitutes a “large-scale transaction in tenure rights,”<sup>108</sup> they underscore the need to provide safeguards “...to protect legitimate tenure rights, human rights, livelihoods, food security and the environment from risks that could arise from large-scale transactions in tenure rights.”<sup>109</sup> The Guidelines recommend safeguards such as parliamentary approval for transactions of a certain scale.<sup>110</sup> Partnerships with local tenure right holders are also recommended.<sup>111</sup> This is in contradiction with the general policy direction of the IAB indicators. In that context, it is the absence of parliamentary or ministerial level approval for leasing public land that is positively scored, not the generation of new public approval mechanisms.<sup>112</sup> In the same vein, it is the absence of the requirement to partner with a national entity that is awarded points in the IAB indicators.<sup>113</sup> The dilemma concerning which policy track to pursue is left to States to resolve: on the one hand, these actors wish to become more attractive as destinations for FDI by scoring well in the IAB indicators; on the other hand, they seek to

---

<sup>104</sup> Voluntary Guidelines, n. 102, Ibid

<sup>105</sup> Voluntary Guidelines, n. 102, Ibid, paragraph 12.1

<sup>106</sup> Voluntary Guidelines, n. 102, Ibid, paragraph 12.3

<sup>107</sup> Voluntary Guidelines, n. 102, Ibid, paragraph 12.4

<sup>108</sup> Voluntary Guidelines, n. 102, Ibid, paragraph 12.5

<sup>109</sup> Voluntary Guidelines, n. 102, Ibid, paragraph 12.6

<sup>110</sup> Voluntary Guidelines, n. 102, Ibid, paragraph 12.4

<sup>111</sup> Voluntary Guidelines, n. 102, Ibid, paragraph 12.4

<sup>112</sup> IAB methodology, n. 42, ibid

<sup>113</sup> IAB methodology, n. 42, ibid



protect their citizens and their environment by following the recommendations contained in the Voluntary Guidelines.

In the same vein, FAO, IFAD, UNCTAD, and the World Bank developed Principles for Responsible Agricultural Investment that Respects Rights, Livelihoods and Resources (PRAI) in 2010.<sup>114</sup> The Principles are intended to provide a framework for national regulations, international investment agreements, global corporate social responsibility initiatives and individual investor contracts. They reinforce the need for public participation and consultation, respect for land tenure rights and the primacy of food security concerns. They also emphasize the need for social sustainability through transfer of technology.<sup>115</sup> Again, the fact that the IAB indicators award higher scores to countries that do not impose a local partnerships requirement hampers efforts to ensure social sustainability.

Every business venture has the potential to have positive and negative impacts on people and human rights – those rights and freedoms that the international community has agreed that people need in order to live with dignity. In some cases, where the potential positive and negative human rights impacts of a venture are direct and significant, managing human rights risks will be an essential consideration to be included at the earliest stages of the life cycle of the venture. This is

---

<sup>114</sup> The Principles, <<http://archive.unctad.org/Templates/Page.asp?intItemID=6123&lang=1>>, (Accessed on April 23, 2012). The principles are: **Principle 1:** Existing rights to land and associated natural resources are recognized and respected. **Principle 2:** Investments do not jeopardize food security but rather strengthen it. **Principle 3:** Processes relating to investment in agriculture are transparent, monitored, and ensure accountability by all stakeholders, within a proper business, legal, and regulatory environment. **Principle 4:** All those materially affected are consulted, and agreements from consultations are recorded and enforced. **Principle 5:** Investors ensure that projects respect the rule of law, reflect industry best practice, are viable economically, and result in durable shared value. **Principle 6:** Investments generate desirable social and distributional impacts and do not increase vulnerability. **Principle 7:** Environmental impacts of a project are quantified and measures taken to encourage sustainable resource use, while minimizing the risk/magnitude of negative impacts and mitigating them.

<sup>115</sup> See <[http://archive.unctad.org/en/docs/diaemisc2010d2\\_en.pdf](http://archive.unctad.org/en/docs/diaemisc2010d2_en.pdf)>, (Accessed on May 11, 2012)

the case where the project presents either large-scale or significant social, economic or environmental risks or opportunities, or involves the depletion of renewable or non-renewable natural resources. In such cases, irrespective of the sector involved, the negotiation process between a host State and a business investor offers a unique opportunity to identify, avoid and mitigate human rights risks. This will help optimize the full range of benefits to be drawn from the investment and help ensure the potential negative impacts on people are avoided or mitigated.<sup>116</sup>

The United Nations Declaration on the rights of Indigenous Peoples provides that, “[i]ndigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.”<sup>117</sup> The 11<sup>th</sup> Article of the International Covenant on Economic Social and Cultural Rights guarantees the right to a standard of living and adequate food.<sup>118</sup> The Human Rights Council stated that this right is “inseparable from social justice, requiring the adoption of appropriate economic, environmental and social policies, at both the national and the international levels, oriented to the eradication of poverty and the fulfillment of all human rights for all.”<sup>119</sup> Other newer treaties are also beginning to include concerns relating to labor rights, human rights and the environment.<sup>120</sup>

---

<sup>116</sup> Principles for responsible contracts, available at <http://www.business-humanrights.org/media/documents/ruggie/report-principles-for-responsible-contracts-25-may-2011.pdf> (Accessed on June 25, 2012) p. 1

<sup>117</sup> See, Article 10, available at [http://www.un.org/esa/socdev/unpfii/documents/DRIPS\\_en.pdf](http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf), (Accessed on May 11, 2012)

<sup>118</sup> See, <http://www2.ohchr.org/english/law/cescr.htm> (Accessed on May 11, 2012)

<sup>119</sup> Human Rights Council Resolution 7/14 [http://ap.ohchr.org/documents/E/HRC/resolutions/A\\_HRC\\_RES\\_7\\_14.pdf](http://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_7_14.pdf), (Accessed on May 10, 2012)

<sup>120</sup> Sornarajah, M., *The International law on foreign investment*, 3<sup>rd</sup> ed., (Cambridge University Press, 2010), p. xvi, preface

Finally, let us briefly examine a closely related document from the extractive industry with a similar effect to land grabbing. According to the Model Mine Development Agreement (MMDA 1.0) prepared by the International Bar Association, long term stability conditions benefit investors, countries and civil societies by enabling them to share some fundamental interests. Long-term stability comes when all interests benefit from an agreement, and when the agreement contributes to both business success and the sustainable development of the societies in which mines operate.<sup>121</sup> This document serves as a model for a country to produce a binding investment contract code that gives space specific contracts to be agreed between parties taking into consideration the specific facts and circumstances surrounding the particular transaction and the special relationship of the parties. Agreements need to bear in mind, amongst other things, the desires of local communities, social aspects of closure, and dispute settlement mechanisms. However, it is important that the code incorporates some controlling principles regarding the fairness, balance and legality of the agreements to be concluded.

The MMDA 1.0 is not designed as a long-term alternative to mining codes. It is up to host countries what kind of investment regime to adopt, and for those who choose to operate through contracts, the MMDA 1.0 is designed as a tool to assist in negotiating and drafting such agreements.<sup>122</sup>

---

<sup>121</sup> International Bar Association, Model Mine Development Agreement, MMDA 1.0: A template for Negotiation and Drafting, (April 2011), p. 7

<sup>122</sup> MMDA 1.0, *ibid*, p. 8

In this connection, Howard Mann, who views large-scale agricultural investment as extractive industry, wrote that both land and water that are critical in the equation of investment in agriculture over the longer period generate critical issues of current and future displacement, community and small-holders rights, and human rights issues.<sup>123</sup> He further noted that since investment in agricultural land does not equate to investment in sustainable development. Deliberate decisions and strategies which can be given effect through contracts are needed to produce benefits for the community and the host country.<sup>124</sup> Such contract has to embody what one wants the investment to accomplish, including the socio-economic developments to be associated with the project as well as the environmental dimensions. These, in turn, encompass a range of human rights issues, including in the very least the right to water, the right to food, and the property rights of local land owners and users. Environmental issues can include the impacts of the project on the environment as well as recognizing the impact that environmental events can have on agriculture in the future, and food security issues.<sup>125</sup>

Mann argues that the contract must draw from the principles of the extractive industries as opposed to land lease or land purchase precedents – a narrow range.<sup>126 127</sup> For a comprehensive result, successful approach, and equitable investment; all parties who have a stake in the investment should be included in the process. There are several ways to do that. There can be

---

<sup>123</sup> Howard Mann, Foreign Investment in Agriculture: Some critical contract issues, XVII Unif. L. Rev. 129, 2012, p. 130

<sup>124</sup> Howard Mann, Ibid, pp. 130-131

<sup>125</sup> Howard Mann, n. 123, Ibid, p. 131

<sup>126</sup> For a model agreement along with common and essential provisions a mining industry contract should include, see <[www.mmdaproject.org](http://www.mmdaproject.org)>, (Accessed on June 19, 2012).

<sup>127</sup> See Howard Mann, n. 123, Ibid, pp. 131,136. He argued against making the land leasing/purchase precedent since the latter picks one issue as ‘the’ issue when in fact the multiplicity of issues is much greater and there is a need to address all of them. Other examples mentioned are focusing only on land tenure issue, relationship between tribal or community customary law and other formal property rights. He thinks the issues involved are enormous and they have to be interrelated in a proper way in the contract. In this connection, all the actors who have interests - the investor, national and sub-national governments, the local community or tribal leaders, individual leaders on the land or nearby – have to be included in the process in one manner or another.

through subsidiary agreements or community development agreements that have equal status to the governmental agreement.<sup>128</sup> These protections cover the period ranging before, during and after the contract.

Similarly, Ruggie<sup>129</sup> recommends for the inclusion of pre-contractual or pre-operational obligations of the investors, including environmental impact assessment of the proposed use and social and human rights impact assessment. He was a special representative of the UN Secretary-General working on the issue of human rights and transnational corporations and other business enterprises. He produced the principles titled: *“Principles for responsible contracts: integrating the management of human rights risks into State-investor contract negotiations: guidance for negotiators.”*<sup>130</sup> The Report was presented to the UN General Assembly during the Human Rights Council 7<sup>th</sup> Session for the agenda of ‘promotion and protection of all human rights, civil,

---

<sup>128</sup> Howard Mann, n. 123, Ibid, p. 136

<sup>129</sup> See, Howard Mann, n. 123, Ibid, p. 136 (n.5)

<sup>130</sup> The principles comprise: 1. Project negotiations preparation and planning: The parties should be adequately prepared and have the capacity to address the human rights implications of projects during negotiations.

2. Management of potential adverse human rights impacts: Responsibilities for the prevention and mitigation of human rights risks associated with the project and its activities should be clarified and agreed before the contract is finalized.

3. Project operating standards: The laws, regulations and standards governing the execution of the project should facilitate the prevention, mitigation and remediation of any negative human rights impacts throughout the life cycle of the project.

4. Stabilization clauses: Contractual stabilization clauses, if used, should be carefully drafted so that any protections for investors against future changes in law do not interfere with the State’s bona fide efforts to implement laws, regulations or policies in a non-discriminatory manner in order to meet its human rights obligations.

5. “Additional goods or service provision”: Where the contract envisages that investors will provide additional services beyond the scope of the project, this should be carried out in a manner compatible with the State’s human rights obligations and the investor’s human rights responsibilities.

6. Physical security for the project: Physical security for the project’s facilities, installations or personnel should be provided in a manner consistent with human rights principles and standards.

7. Community engagement: The project should have an effective community engagement plan through its life cycle, starting at the earliest stages.

8. Project monitoring and compliance: The State should be able to monitor the project’s compliance with relevant standards to protect human rights while providing necessary assurances for business investors against arbitrary interference in the project.

9. Grievance mechanisms for non-contractual harms to third parties: Individuals and communities that are impacted by project activities, but not party to the contract, should have access to an effective non-judicial grievance mechanism.

10. Transparency/Disclosure of contract terms: The contract’s terms should be disclosed, and the scope and duration of exceptions to such disclosure should be based on compelling justifications.

political, economic, social and cultural rights, including the right to development'. We can draw important lessons from this 'ten-principles' document.<sup>131</sup> These principles help integrate the management of human rights risks into investment project contract negotiations between host State entities and foreign business investors.<sup>132</sup> These principles cover the period before, during and after the contract.

All in all, it is clear that there is a large body of normative provisions operating within the IDA that is both directly and indirectly contradictory to the effect and implications of the IAB indicators. We argue that this contradiction works to the detriment of local communities, as the discussion on land grabbing shows. Whilst the normative provisions would pull land investments in the direction of development finance, the IAB indicators push them in the direction of land-grabbing. In this sense, the phenomenon of cross-border land investments may represent an opportunity to review and reform the indicators in light of their likely policy implications. From the likely rank-seeking behavior, governments will continue to conclude deals that overlook the plight of the small scale farmer and the effect the deals will have on the environment, on landlessness and joblessness.<sup>133</sup>

## Conclusion

Land investment deals can be viewed either as development finance or as land grabbing. The IAB indicators have the potential and capacity to incentivize governments to set up frameworks that

---

<sup>131</sup> Business and human rights, <<http://www.business-humanrights.org/media/documents/ruggie/report-principles-for-responsible-contracts-25-may-2011.pdf>>, (Accessed on June 25, 2012)

<sup>132</sup> Business and human rights, *ibid*, p. 4

<sup>133</sup> These are areas that have already highlighted as areas of concern in the IFC Standards

could promote an approach to land investment deals *as* development finance. The significance of indicators is that they inspire reform and change. The need for such reform is even starker when one is mindful of the plight of the women, peasants and indigenous peoples on communal and traditional lands who are affected by land grabbing. As the discussion on this paper shows, the basis for such an integrated approach to business and investment already exists through a plethora of international instruments.

The doing business ranking of a country affects its ability to attract investment, access loans and lines of credit. In fact, by 2009, it was reported that there had been over 270 reforms as a direct result of the Doing Business Indicators.<sup>134</sup> Local scholars, entrepreneurs and various other actors use indicators to lobby for reform and governments actively change their policies and laws in order to score highly and attract investment.<sup>135</sup>

As currently conceived, there is the real danger that the indicators will encourage developing countries to race to the bottom, open up their markets to exploitation in the name of foreign direct investment. The indicators encourage domestic frameworks in which investors can access unlimited amounts of land for unlimited periods of time. In fact, they contradict the provisions of the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security and other international instruments alluded to.

---

<sup>134</sup> Please see, <<http://www.oecd.org/dataoecd/8/18/44246332.pdf>>, (Accessed on May 14, 2012)

<sup>135</sup> Aspirations for rank-seeking are announced as when the director-general of the Malaysian Industrial Development Authority insists that "Malaysia aims to move from the 24th to a top 10 position in the World Bank's 'Doing Business' ranking list. We continue to ask ourselves what it will take to reach the top 10, and are we willing to do what it takes to get there." (Asia in Focus, Jan. 8 2007). Similarly, Akylbek Zhaparov, Minister of the Economic Development in Kyrgyzstan, expresses a hope (in 2008) that his country "shall rank among top twenty countries in the Doing Business rating in three years". Achievements from rank-seeking are also celebrated as when Macedonia placed a one-page advert in the Economist's annual forecasting report "The World in 2008", where the key message was that Macedonia had improved their position on the Doing Business index. See Bjorn H\_yland Karl Moene Fredrik Willumseny: The Tyranny of International Index Rankings April 2010

By insisting on equal treatment of foreign and domestic firms, the indicators do not allow for affirmative action to promote local investors. These contradictions result in serious dilemmas for public policy makers, which is ultimately to the detriment of small scale farmers. As pointed out elsewhere, “[d]oing business with extraordinary high profits is not necessarily the same as doing business efficiently.”<sup>136</sup>

Such phenomenon as land grabbing is just one instance highlighting the need for indicators to be reviewed on an on-going basis in light of emerging trends and dynamics of an ever-changing world. Indicators will need on-going scrutiny as circumstances in the world continue to change in a manner in which they may fail to serve their purpose if they are not changed accordingly.

The IAB indicators make some reference to environment and social protections, but only at the level of ‘bonus’ questions. There is acknowledgment that the IAB indicators do not give enough attention to environmental and social protections.<sup>137</sup> The IAB indicators themselves state that they must be read together with indicators covering other areas of governance.<sup>138</sup> This may be instructive, but it does not alleviate the tension that disrupts the standard setting function of the IDA, namely that the interests of FDI and development on the one hand and environmental and social protections on the other are formulated and assessed as conflicting and competing interests and that this assessment is carried out differently in different parts of the IDA. Investors must

---

<sup>136</sup> Bjørn Høyland, *et al*, Be careful when Doing Business, available at <[http://www.if-watchnet.org/sites/if-watchnet.org/files/Doing%20Business\\_ESOPanalysis.pdf](http://www.if-watchnet.org/sites/if-watchnet.org/files/Doing%20Business_ESOPanalysis.pdf)>, (Accessed on May 20, 2012)

<sup>137</sup> See IAB methodology, n. 42, *ibid*: As noted, the indicators do not highlight issues related to environmental and social protections for host countries, though the IAB survey did examine these in the context of leasing land

<sup>138</sup> See IAB methodology, n. 42, *ibid*: The indicators (like many other data sets) should not be considered in isolation, but in conjunction with other indicators and reports -- such as the Land Governance Assessment Framework (LGAF) ii-- that reflect a country’s other needs, circumstances, and socioeconomic development.



enjoy the benefits of responsible investments which require them to live up to such standards as the IFC Performance Standards on Social and Environmental Sustainability require. These considerations, along with those captured in other normative texts such as PRAI, MMDA 1.0, and the UN/FAO Voluntary Guidelines must be integrated into the idea of FDI and generally, business, and thereby reflected in the IAB indicators to make them robust and complete enough to provide us with the minimum standards to measure a good regulation. Environmental and social protections should, in order to maintain the integrity of and promote consistency within the IDA, receive the same weight as the other FDI-attracting categories that are assessed. As the IAB indicators are still at a nascent stage of development, the opportunity to implement such reforms is not only available, but has the potential to improve millions of lives affected by ‘land grabs’ across the world.

## References

1. Aldo Caliari, IFIs on trade and investment: Liberalisation bias returns; Center of Concern; Bretton Woods update number 72, (September/October 2010)
2. Bjørn Høyland, Kalle Moene, and Fredrik Willumsen, Be careful when Doing Business, available at [http://www.if-watchnet.org/sites/if-watchnet.org/files/Doing%20Business\\_ESOPanalysis.pdf](http://www.if-watchnet.org/sites/if-watchnet.org/files/Doing%20Business_ESOPanalysis.pdf), (Accessed on May 20, 2012)
3. Bjorn Høyland, Karl Moene Fredrik Willumsen: The Tyranny of International Index Rankings, (April 2010)
4. Catching up to the past five years: Recommendations for the IFC's environmental and social sustainability framework, Available at [http://pdf.wri.org/wri\\_comments\\_ifc\\_performance\\_standards\\_06-21-10.pdf](http://pdf.wri.org/wri_comments_ifc_performance_standards_06-21-10.pdf) (Accessed on May 10, 2012)

5. Corporate Social Responsibility, *The importance of corporate responsibility*, an Economist Intelligence Unit white paper, available at [http://graphics.eiu.com/files/ad\\_pdfs/eiuOracle\\_CorporateResponsibility\\_WP.pdf](http://graphics.eiu.com/files/ad_pdfs/eiuOracle_CorporateResponsibility_WP.pdf) (Accessed on May 4, 2012)
6. Cotula, Lorenzo, Sonja Vermeulen, Rebeca Leonard and James Keelye. 2009. *Land Grab or Development Opportunity? Agricultural Investment and International Land Deal in Africa*. FAO, IFAD AND IIED, available at <http://www.fao.org/docrep/011/ak241e/ak241e00.htm>, (Accessed on Dec. 16, 2011).
7. David Hallam. International Investments in Agricultural Production. Paper presented at the conference “Land Grab: the Race for the World’s Farmland”, Woodrow Wilson Center, Washington, (May 5, 2009)
8. Fouad Makki and Charles Geisler, Development by Dispossession: Land Grabbing as New Enclosures in Contemporary Ethiopia, (Paper presented at the International Conference on Global Land Grabbing 6-8 April 2011)
9. Frank Vanclay, Impact Assessment and the triple bottom line: competing pathways to sustainability? University of Tasmania, available at [http://www.minerals.csiro.au/sd/pubs/Vanclay\\_Final.pdf](http://www.minerals.csiro.au/sd/pubs/Vanclay_Final.pdf) (Accessed on 25 May, 2012)
10. Fred Pearce, The Land Grabbers: Africa's hidden revolution cited in <http://globalvoicesonline.org/2012/06/02/ethiopia-land-history-and-justice-in-gambella/>, (Accessed on June 6, 2012)
11. Friends of the Earth Europe, Africa: Up for grabs The scale and impact of land grabbing for agro fuels, Report, (June 2010)

12. Gertrud Falk and Wolfgang Sterk, The Case Mubende, FIAN, ( March2004), available at [http://www.fian.org/resources/documents/others/the-case-mubende/view?set\\_language=en](http://www.fian.org/resources/documents/others/the-case-mubende/view?set_language=en)), (Accessed on14 May, 2012)
13. Howard Mann, Foreign Investment in Agriculture: Some critical contract issues, XVII Unif. L. Rev. 129, (2012)
14. Hussain, F. “The need to revive land reforms in Pakistan.” October 24, 2003, available at [www.chowk.com/articles/6621](http://www.chowk.com/articles/6621)), (Accessed on December 16, 2011)
15. IAB Accessing Industrial Land Methodology, available at <http://iab.worldbank.org/Methodology/Accessing-Land>), (Accessed on May 10, 2012)
16. IAB methodology, available at <http://iab.worldbank.org/Methodology>), (Accessed on May 10, 2012)
17. IFC Performance Standards, [http://pdf.wri.org/wri\\_comments\\_ifc\\_performance\\_standards\\_06-21-10.pdf](http://pdf.wri.org/wri_comments_ifc_performance_standards_06-21-10.pdf)), (Accessed on 10 May, 2012)
18. International Bar Association, Model Mine Development Agreement, MMDA 1.0: A template for Negotiation and Drafting, (April 2011)
19. Introduction: Global Land Grabs: Investments, risks and dangerous legacies Development (2011), 54(1), 5 – 11. doi:10.1057/dev.2010.108; published online, (11 February 2011)
20. Investing Across Sectors methodology available at <http://iab.worldbank.org/Methodology/Investing-Across-Sectors>), (Accessed on May 10, 2012)

21. Joseph Mujere and Sylvester Dombo , Large Scale Investment Projects and Land Grabs in Zimbabwe: The Case of Nuanetsi Ranch Bio- Diesel Project, (Paper presented at the International Conference on Global Land Grabbing 6-8 April 2011)
22. Joshua Pringle, Land Grabs and The World Bank, (November 2011), available at <<http://www.commercialpressuresonland.org/press/land-grabs-and-world-bank-0>> (Accessed on December 14, 2011)
23. Kevin E. Davis, Benedict Kingsbury, and Sally E. Merry, 'Indicators as a Technology of Global Governance', *Law and Society Review* 36:1 (2012)
24. Klaus Deininger, *et al*, Rising global interest in farmland, (The World Bank, 2011)
25. Land Matrix Partnership , 'Agriculture in the Global South,' (April 2012)
26. Land resource database (FAOstat, 2010), available at <<http://faostat.fao.org/site/377/default.aspx#ancor>>, (Accessed on December 12, 2011)
27. Mehrdad Nazari, IFC Standards: Lessons Learnt, available at <<http://www.prizmasolutions.com/assets/documents/Vol03-02-IFCPerformanceStandards-32-33.pdf>>, (Accessed on May 10, 2012)
28. Michael Kugelman and Susan L. Levenstein, (Eds.), Land Grab? The Race for the World's farmland, available at <[http://www.wilsoncenter.org/sites/default/files/ASIA\\_090629\\_Land%20Grab\\_rpt.pdf](http://www.wilsoncenter.org/sites/default/files/ASIA_090629_Land%20Grab_rpt.pdf)>, (Accessed on May 10, 2012),
29. Principles for responsible contracts, available at <<http://www.business-humanrights.org/media/documents/ruggie/report-principles-for-responsible-contracts-25-may-2011.pdf>> (Accessed on June 25, 2012)

30. Shepard Daniel and Anuradha Mittal, *The Great Land Grab Rush for World's Farmland Threatens Food Security for the Poor*, (The Oakland Institute, 2009)
31. Sornarajah, M., *The International law on foreign investment*, 3<sup>rd</sup> ed., (Cambridge University Press, 2010)
32. Steven Herz, *et al.* *The International Finance Corporation's Performance Standards and the Equator Principles: respecting Human rights and remedying Violations? A Submission to the U.N. Special Representative to the Secretary General on Human Rights and Transnational Corporations and other Business Enterprises* Bank Information Center, BankTrack, Center for International Environmental Law, Oxfam Australia, World Resources Institute August 2008, available at [http://www.banktrack.org/download/the\\_international\\_finance\\_corporation\\_s\\_performance\\_standards\\_and\\_the\\_equator\\_principles\\_respecting\\_human\\_rights\\_and\\_remedying\\_violations\\_/0\\_final\\_ruggie\\_submission\\_august\\_6\\_.pdf](http://www.banktrack.org/download/the_international_finance_corporation_s_performance_standards_and_the_equator_principles_respecting_human_rights_and_remedying_violations_/0_final_ruggie_submission_august_6_.pdf), (Accessed on May 4, 2012)
33. The IFC, *Investing Across Borders 2010 Report*, available at <http://iab.worldbank.org/~media/FPDKM/IAB/Documents/IAB-report.pdf>, (Accessed on May 10, 2012)
34. *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security*, available at [http://www.fao.org/fileadmin/user\\_upload/nr/land\\_tenure/pdf/VG\\_Final\\_May\\_2012.pdf](http://www.fao.org/fileadmin/user_upload/nr/land_tenure/pdf/VG_Final_May_2012.pdf) > (Accessed on May 14, 2012)