How to Stop Land Grabbing in Africa

The International Land Coalition estimates that about 83 million hectares of rural land have been taken over by investors in large-scale agriculture. There is evidence that the true owners of these land parcels have been neglected and unlawfully evicted. The High Level Panel of Experts of the FAO urges for better recording of those land rights. In urban areas, the Centre of Housing Rights and Eviction calculates that more than 4 million people have been evicted from their homes or are living in fear of eviction.

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The Centre urges for better recording of housing rights. Providing secure land and housing tenure should be at the top of the political agenda, but it is not. The responsible political elites appear to be occupied by other interests. Land professionals can create mechanisms to identify and record ownership and use, but they cannot make such systems meaningful unless politicians shoulder their responsibilities to create the necessary legal and social fabric. And, even then, it will take time to roll the systems out. Meanwhile, land grabbing and eviction continues.

Is there no alternative which provides vulnerable people with a tool to make their governments accountable? Yes, there is: the African Charter of Human and People’s Rights. This Charter, adopted in 1981, states in article 14 that “the rights to property should be guaranteed”. Although the Charter was developed at a time when African States were far from eager to guarantee the property rights of their former colonisers, this article opens up a way for calling governments to account on land grabbing and eviction.

Two things have to be changed to make this possible. Individuals do not have easy access to the African Court of Human and People’s Rights. Under article 5.3 of the Court’s protocol, individuals can only apply when their home States make a declaration accepting the competence of the Court in the case. That is the first thing to be changed. Secondly, in the terminology of the Charter, indigenous land rights are — wrongly — not considered to be a ‘property right’. By allowing individuals and groups to lodge an Art. 14 appeal, the Court can follow what the European Court of Human Rights does.

Since its inception in 1959, this Court has ruled on more than 2,200 cases regarding property rights. Case law indicates that four questions are at stake: does the plaintiff indeed exercise a property right, is the interference of the State lawful, is it proportionate, and does the interference comply with principles of legal certainty (compensation)? In the African situation, vulnerable people might then have an opportunity to get their property rights recognised by the African Court, regardless the absence of a land register, and the Court can prevent States from evicting them and grabbing their land.

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