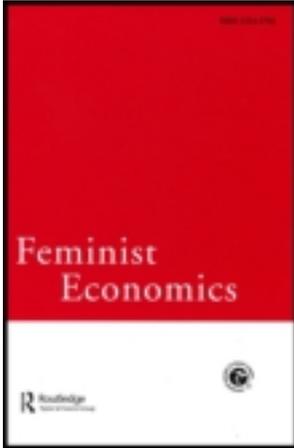


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Transnational Land Deals and Gender Equality: Utilitarian and Human Rights Approaches

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TRANSNATIONAL LAND DEALS AND GENDER EQUALITY: UTILITARIAN AND HUMAN RIGHTS APPROACHES

Poul Wisborg

ABSTRACT

Transnational land deals pose vexing normative (ethical) questions, not least concerning gendered participation and outcomes. This article explores utilitarian and human rights approaches to gender equality in selected policy initiatives on the land deals. While global policy literature manifests growing attention to women in agriculture, the review found the analysis of gender in early policy initiatives to be absent or weak. Utilitarian arguments were used to justify deals but rarely presented women's participation as a means of social progress or so-called smart economics. Human rights documents were more likely to be critical of the deals and to mention gender, though with little elaboration. While to some extent amended by the emphasis on gender equality in the 2012 *Voluntary Guidelines* on tenure governance, failures to mobilize the feminist potential in utilitarian and human rights approaches call for more proactive gender analysis and advocacy when addressing transnational land deals as gendered power struggles.

KEYWORDS

Equality, ethics, gender, human rights, land, policy

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INTRODUCTION

Controversial deals

Rich countries and companies increasingly pursue economic, political, and environmental goals by appropriating land in poorer, land-rich countries, affecting the land tenure and livelihood practices of women and men. Transnational land appropriation in agriculture has reached a considerable scale. The International Land Coalition (ILC) and partners have documented over 900 deals since 2000, covering about

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49 million hectares (ha) of which 35 percent are in Africa (ILC 2012). Genetic Resources Action International (GRAIN) found that of some 400 acquisitions for food production, two-thirds were by agribusinesses and the rest by financial companies or sovereign wealth funds (GRAIN 2012). George C. Schoneveld (2012) identified 353 agriculture/forest acquisitions in thirty-two countries in Sub-Saharan Africa, a total of 18 million ha, or an estimated 8 percent of total area harvested annually (only deals after 2005 and above 200 ha were included).

Transnational land deals are ethically and politically controversial, combining threats to property rights and livelihoods with potential for increased foreign investment and production (Lorenzo Cotula, Sonja Vermeulen, Rebeca Leonard, and James Keeley 2009; Carin Smaller and Howard Mann 2009; Lorenzo Cotula 2012). While donors and international organizations had observed the trend of transnational land appropriation during several years,¹ civil society organizations, such as GRAIN (for example, see GRAIN [2008]); the ILC (Michael Taylor and Tim Bending 2009); Food First Information and Action Network (FIAN; 2010); La Via Campesina, FIAN, Land Research Action Network, and GRAIN (2010); and the World Social Forum (2011), brought land deals on the global agenda. The African Union has argued that the legacy of colonial land acquisition combined with crises of energy, food supply, and climate change are causing a “new scramble for Africa’s land resources,” so that African states must “put in place adequate policies to ensure that the risks associated with these changes and, in particular the risk of uncompensated loss of land rights by the poor are avoided or effectively managed” (AUC-ECA-AfDB 2010: 2.3, 2.7). A political economy analysis argues that land deals reflect that agro–food–energy systems are becoming integrated and globalized under the dominance of wealthy corporations (Saturnino M. Borras Jr., Philip McMichael, and Ian Scoones 2010). At the same time, the deals may bring benefits of investments, technology transfer, and production (Joachim von Braun and Ruth Meinzen-Dick 2009), and these may be more important in contexts of relative poverty. While domestic land appropriation also brings threats and opportunities, the global power relations underpinning transnational land appropriation have intensified the pressures on land. Although emerging global guidelines, principles, and codes of conduct are viewed with some skepticism (Saturnino M. Borras Jr. and Jennifer C. Franco 2010), these controversial deals do appear to accentuate the need for international norms and governance to defend justice, including gender justice.

Goals and approach

In this contribution, I explore normative (or ethical) approaches to transnational land deals and gender equality. I assume that land deals

that entrench or fail to address gender inequality cannot be justified – based on a fundamental individual right to equal concern and respect (Ronald Dworkin 1977). Recent policy documents on agriculture emphasize that women and girls often have heavy labor and other responsibilities in agriculture but lack control over resources and rewards, which is unjust and constrains development (World Bank, FAO, and IFAD 2009; FAO 2011; World Bank 2011a). However, interpretations of gender equality are contested in terms of meaning, weight, and application to new issues. I therefore review normative approaches to gender equality and women’s rights in contemporary policy initiatives on transnational land acquisition. I assume that such normative discourse is imbued with power and more or less sensitive to gender equality and therefore has a bearing on women’s interests.

The research employs a loose exploratory and comparative approach. I used purposeful sampling of documents at the global level, preferably with an explicit normative position and by influential, international organizations (such as the World Bank and the FAO), although I briefly mention a few policy documents by (European) investor/donor countries. I used snowballing, following the trace from one text to the next, keeping in mind the criteria mentioned. I chose to focus on utilitarianism and human rights because they have already influenced global gender policy and appeared to inform emerging policy initiatives. I ask whether the two normative perspectives, as applied, are *sensitive* to gender differences; are used to *justify or challenge* land appropriation; and whether their feminist potential is mobilized to *promote gender equality and women’s interests* in the deals, understood as advances in women’s benefits, rights, or power, absolutely or relative to men.

The terms used in this field reflect ideological positions and nuances of meaning. I use “land deal” to refer to broad changes in land use or production that may or may not involve “land appropriation” (or “land acquisition”), the taking over of property rights, with or without authority or right. “Land grab” refers to an unethical acquisition of land, which may be defined on the basis of human rights (ILC 2011; Wisborg 2011).²

I note a few limitations of the approach. First, while assuming ethical deliberation and priorities play a role in social change, I acknowledge that social and political mobilization, governance, material conditions, power relations, and economic choices all affect women’s interests. Second, I reflect only on utilitarianism and human rights, which can be criticized from other perspectives, such as political economy, the ethics of care, or the capability approaches of Amartya Sen and Martha Nussbaum. Third, without arguing against relativism, I assume that we need and seek norms of cross-cultural validity to assess change and take sides in the debates and value conflicts that exist in any society (Martha Nussbaum 2000). Fourth, I touch only briefly on the experiences and views of those affected by land

acquisitions, although they are obviously central to the applicability and support for any ethical perspective or policy approach. Fifth, most examples are from African countries where I am engaged in empirical work (Ghana and Sierra Leone).

If successful, I will have contributed to (1) examining and critiquing major *normative approaches* to the gender dimensions of transnational land deals; (2) documenting and analyzing selections of the *emerging policy* from a gender perspective; and (3) identifying some *practical implications* of this analysis. I find that attention to gender equality and women's interests in contemporary policy initiatives on the land deals has generally been weak, partly due to a failure to mobilize the feminist potential in the two normative approaches. Recent global policy, notably the 2012 *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security* ([Committee on World Food Security \[CFS\] 2012](#)) on tenure governance, and emerging studies may be amending this. I expect that a human rights approach that accommodates utilitarian concerns can be used to capture the diverse impact of transnational land deals on women's interests and to inform policies and practice. Further study and debate on transnational land deals and gender equality are called for.

GENDERED LAND DEALS

A land deal in Ghana

In 2009 Norwegian investors entered a fifty-year land lease agreement with the Agogo Traditional Council and paramount chief in southern Ghana concerning 13,000 ha (32,000 acres) of land for production of biofuel (*jatropa*) and, when that failed, food crops. In the matrilineal society, women were prominent landholders but said that it was difficult for them to voice concern about decisions predominantly made by men, including chiefs, government officials, and company representatives. Individual and family rights to land within the leased area were initially widely disregarded, as chiefs neglected their obligation to resolve conflicts, and the company went ahead to develop the land. Some landholders protested against the loss of land and involved civil society and local government in securing individual negotiation and compensation. Women appeared particularly aggrieved by the loss of land, including the ability to pass it to daughters and granddaughters as a future livelihood option.

The secondary land rights of immigrant men and women also appeared weakly protected. Environmental change, mainly due to the removal of trees and other vegetation, affected gendered livelihoods, such as charcoal production, which involves women as co-producers and traders; the reduction in shea-nut trees (*Vitellaria paradoxa*), from which women produce shea butter for food, cosmetics, and medicinal purposes (see [Marlène](#)

Elias and Judith Carney [2007:27] on the savannah region of West Africa generally); and, as one woman claimed, reduced production of *dawadawa*, the fermented and dried seeds of the wild-growing African locust-bean tree (*Parkia biglobosa*), used for nutritive value and flavor.

Access to employment, the presumed major compensation for loss of land, was skewed against women. The company claimed that its intervention would benefit women, and the Norwegian government accepted this view when it decided to grant financial support, noting a “positive focus on women’s employment opportunities. Their incomes will benefit the whole family and improve social and economic conditions” (Norad 2010: 3). Employment and health insurance for permanent workers and their families were indeed major benefits of the land deal: a group of women workers said they used their salaries for food and school fees. Some women also found new, though rather uncertain, livelihoods in the production and supply of food and drinks to workers, an extension of gendered care responsibilities. However, women received only 10 percent of permanent positions and 42 percent of casual jobs; their share of total wages was only 13 percent.³ In interviews conducted with this author in 2011, leaders argued that it was difficult to identify skilled women staff. Care responsibilities for children and parents also affected women’s ability to take jobs and gain permanent employment, reflecting the local economy of care (see Susan Himmelweit [2002]). While both men and women had interests in certain aspects of this agricultural development, it appeared particularly difficult for women to collectively and individually achieve advantages to compensate for their reduced access to land.

Context, processes, and impact

General knowledge and preliminary evidence suggest that in many contexts transnational land deals will involve and affect men and women differently. Two review studies find the issue to be characterized by uncertainty and gender blindness (Elizabeth Daley 2011; Julia Behrman, Ruth Meinzen-Dick, and Agnes Quisumbing 2012). One reason for concern is gender inequality prior to any deal in contexts where land, labor, and livelihoods systems are structured by social relations, including gender (Dzodzi Tsikata 2009). Daley (2011) suggests that systemic gender discrimination causes vulnerabilities in: (1) access to, control over, and legal rights to land; (2) voice and choice in decision making; (3) income poverty; and (4) exposure to gender-based violence. In particular, while women’s property rights are key to livelihoods, security, and autonomy (Bina Agarwal 1994), they are often disparagingly regarded as “secondary” or “informal” (Ann Whitehead and Dzodzi Tsikata 2003). According to the World Bank, acquisitions target land-rich countries with weak property rights, raising concern about “the ability of local institutions to protect vulnerable groups from losing land to which they

have legitimate, if not formally recognized claims” (Klaus Deininger, Derek Byerlee, Jonathan Lindsay, Andrew Norton, Harris Selod, and Mercedes Stickler 2010: xiv). Women are particularly likely to see their land rights and land use neglected when they are discriminated against in access to extension and technology and therefore possibly less productive (Amber Peterman, Agnes Quisumbing, Julia Behrman, and Ephraim Nkonya 2011). Furthermore, due to health problems, such as HIV/AIDS, women and the households they head lack the power and command labor necessary to defend their land rights and gain employment (Richard S. Strickland 2004; Cecilia Conrad and Cheryl R. Doss 2008).

A second major concern is that complex land deal processes – consultation and negotiation, determination of contracts and compensation, implementation, and enforcement and monitoring – are likely to be gendered (Behrman, Meinzen-Dick, and Quisumbing 2012). Decisions are often made quickly and by relatively few and male-dominated actors, such as companies, local authorities controlling land, and government officials. The World Bank found several cases where consultations only included men, “leaving women without a voice” (Deininger et al. 2011:70).

Linked to context and processes, the outcomes and impact of transnational land deals are likely to be gendered. Inadequate processes caused “strong negative gender effects, either by directly affecting women’s land-based livelihoods or, where common property resources were involved, by increasing the time required of women to gather water or firewood and take care of household food security” (Deininger et al. 2011:69–70). Landholders may be pauperized by the loss of land rather than proletarianized as workers, as observed during the construction of colonial plantation economies (Nadarajah Shanmugaratnam 1985), suggesting that class formation and gender impact interact. Rather than discrete “events,” land deals are part of a “land rush” that intensifies pressure on resources (Ward Anseeuw, Liz Alden Wiley, Lorenzo Cotula, and Michael Taylor 2012), may reinforce commodification of land (Olivier De Schutter 2011), and may lead to further exclusion of smallholders from land and markets (Kojo Amanor 2011). One may expect the political economies and gender relations of agrarian change (Shahra Razavi 2009) to shape the long-term impact of transnational land acquisition.

Yet, land deals are extremely varied, even within a single country (for Ghana, see Dzodzi Tsikata and Joseph Yaro [2011]), and also create opportunities for increased investment in agriculture, rural development, job creation, social infrastructure, new technology, and increased food supply (von Braun and Meinzen-Dick 2009). If women were discriminated against as smallholders in the situation prior, new regularized employment may provide an improvement. In a case in Sierra Leone, an elderly woman said that due to a major land deal she could now rely on the wage labor of her children rather than the drudgery of her own farming.⁴

However, while job creation is a major potential benefit of land-related investments, the transition from land- to labor-based livelihoods may be incomplete (Tsikata 2009). The feminization of the workforce in export agriculture is partly based on women's acceptance of poor wages (Catherine S. Dolan and Kristina Sorby 2003) and their poorer access to education and land; these constrain their ability to benefit from the new markets and technology that land deals may bring (Olivier De Schutter 2008). Job creation in many recent land deals, particularly biofuel ventures, has been far below expectations (Stefano Valentino 2011), and casual and short-term employment predominates, particularly for women.⁵ When investors fail, gendered power relations will determine the ability of local men and women to hold them to account on promises made (Von Braun and Meinzen-Dick 2009; Tsikata and Yaro 2011).

Thus, there are good reasons to be concerned with how transnational land deals are gendered, how they affect women's interests, the benefits, rights, and power they gain or lose (Table 1) – and how apt normative approaches are in capturing and evaluating these.

UTILITARIAN APPROACHES AND LAND DEALS

Utilitarianism, agriculture, and gender

When members of the whites-only South African parliament debated the 1913 ban on black African ownership of land, some argued that it would be good for exports, while others stated it would be bad for social and political stability (Solomon Tshekisho Plaatje 1916/1991). Their mainly utilitarian calculation of benefits and costs left out individual rights – and those who favored racist dispossession prevailed. Probably power relations and economic interests were more important than ethical reasoning, but it appeared that the utilitarian arguments offered weak protection against discrimination. A hundred years later, discourse on transnational land deals similarly weighs the benefits of, among others, agricultural growth against costs of livelihood losses and social instability. Although a utilitarian assessment can be both nuanced and balanced, to justify an “agro-investment” by referring mainly to production and foreign-revenue generation while disregarding the full rights of women and men appears to mirror the racial and gender biases inherent in colonial dispossession.

Utilitarianism refers “not to a single theory but to a cluster of theories that are variations on a theme” (Raymond Gillespie Frey 1984: 4). Frey suggests that a utilitarian approach judges acts by their consequences, as they affect everyone, and according to a standard of value or goodness that should be maximized. John Stuart Mill, working with Harriet Taylor Mill, attacked gender discrimination both because it is “wrong in itself” and “one of the chief hindrances to human development” (Mill 1870: 1), combining

LAND DEALS AND GENDER EQUALITY

Table 1 Transnational land acquisition: Gendered dimensions and women's interests

<i>Category</i>	<i>Gendered dimensions</i>	<i>Women's interests: Benefits, rights, and power</i>
Situation prior	Tenure, power and politics, labor roles, environment, food security, vulnerability	Promote women's opportunities and address vulnerabilities
Resource capture	Power relations, consultation, and decision making	Defend or enhance women's rights, status, and participation to hinder a patriarchal capture
Implementation	Information, communication, appraisal, planning, implementation, monitoring and learning	Promote women's knowledge, participation, and control
Direct impact	Access to land, food, energy, water, livelihoods, employment and labor rights, residence, living conditions	Prevent risk and harm. Enhance the opportunities and benefits for women as producers, workers, and care givers, and girl children's access to food and education
Environment	Natural resources, landscape, cultural and aesthetic values	Enhance women's access to and well-being from water, energy, wild species, etc.
Collective action and society	Resistance, power, social differentiation, intrahousehold relations, institutions	Enhance women's and men's action and organization to promote their equal rights through cooperating with or resisting land appropriators
Political economy of agrarian change	Employment, land structure, production, proletarianization, pauperization, migration	Promote long-term changes in resource distribution, power relations, and institutions that advance the interests of women and girls

Sources: Shanmugaratnam 1985; Tsikata 2009; von Braun and Meinzen-Dick 2009; Behrman, Meinzen-Dick, and Quisumbing 2012; Daley 2011; De Schutter 2011; Tsikata and Yaro 2011.

principle and utility. Nevertheless, utilitarianism influenced economics to value aggregate benefits, such as economic growth, which may conceal gender differences, bias, and conflict (Marianne A. Ferber and Julie A. Nelson 1993).

Utilitarian approaches to women in agriculture stress gender discrimination as an impediment to production and poverty reduction (World Bank 2008). A World Bank research report (Andrew D. Mason and Elizabeth M. King 2001) and gender-mainstreaming strategy stressed "the evidence that gender plays an important role in determining economic growth,

poverty reduction, and development effectiveness” (Karen Mason, Cecilia Valdivieso, Susan R. Razzaz, C. Mark Blackden, Lucia Fort, and Helene Carlsson 2002: 1), but were critiqued by Suzanne Bergeron (2006) and Diane Elson (2006) as being simplistic. The World Bank argues that “gender matters for land policy” because women’s property rights give rise to economic benefits (income, credit, and enterprise development) and social advantages (bargaining power and security; Eija Pehu, Renee Giovarelli, Susana Lastarria-Cornhiel, Elizabeth Katz, and Sue Nichols [2005: 3–5]). The markedly utilitarian action plan *Gender Equality as Smart Economics 2007–2010* seeks “to advance women’s economic empowerment... in order to promote shared growth and ... promote gender equality and women’s empowerment” (World Bank 2006: 1). While equality and empowerment are included as *ends*, the empowerment of women is primarily *instrumental* to economic growth, health, education, and other societal outcomes: “In sum, the business case of expanding women’s economic opportunities is becoming increasingly evident; this is *nothing more than smart economics*” (World Bank 2006: 2, emphasis added). The regional priority for Africa, to improve “women’s effective access to productive resources, with a focus on agriculture and private sector development” (World Bank 2006: 7), is a relevant test of transnational land deals. Utilitarian perspectives on women in agriculture are more widely manifested: in the policy brief, *Investing in Women as Drivers of Agricultural Growth*, which seeks “to capitalize on the extraordinary productive and poverty-reducing potential of the woman farmer” (Jacqueline Ashby, Maria Hartl, Yianna Lambrou, Gunnar Larson, Annina Lubbock, Eija Pehu, and Catherine Ragasa 2008); in the “Gender in Agriculture Sourcebook” (World Bank, FAO, and IFAD 2009); and in the FAO report on women in agriculture, which claims that the “gender gap” in women’s access to productive resources causes a 20–30 percent “yield gap” on farms managed by women, so that removing it could save 100–150 million individuals from hunger (FAO 2011: vi–vii). One would expect these policymakers to pay close attention to gender relations and women’s interests in transnational land deals, whether because they *threaten* or *enhance* the “productive and poverty reducing potential” of women farmers, as noted earlier; but this was not initially the case.

Transnational land deals: Gender equality as smart economics?

A number of actors, including host-country governments, use utilitarian arguments to justify and promote land deals as investments in agricultural growth. For example, Ghana’s Food and Agriculture Sector Development Policy mentions “new foreign direct investment in horticultural and industrial crop production” as an opportunity to expand agricultural production and trade (Government of Ghana 2009: 19). Investors also frame land appropriation as measures to improve national and global food security

in the future, often skirting the issue of the food security of the land users and workers directly affected (World Bank 2011b).

The document *Principles for Responsible Agricultural Investments (RAI)* argues that agricultural investments are important for growth and poverty reduction, but notes that “some large investments” may cause “loss of land and other resource rights” (FAO, IFAD, UNCTAD, and the World Bank 2010: 3).⁶ Civil society organizations found the document and its reliance on codes of conduct and self-restraint by actors vague and short on action, calling it a “move to try to legitimize land grabbing” (La Via Campesina et al. 2010). The attention to gender is scant; for example, a section on biofuels recommends “drawing on women as collectors, thus providing them with cash to improve their livelihoods” (La Via Campesina et al. 2010: 7). The thorough section on land rights recommends titling in the name of both wife and husband and compensation to women who lose secondary rights. The RAI document tends to construe women as one among other vulnerable minorities in need of protection: “herders, women, and indigenous groups” (2), or “cultural and ethnic minorities, women and sharecroppers” (FAO et al. 2010: 17). While the perspective is predominantly utilitarian, the RAI document mentions the Universal Declaration of Human Rights (UN 1948) and the Global Compact (UN 2011) and suggests that “responsible investors respect human rights,” but gender commitments such as the Convention on the Elimination of All Discrimination Against Women (CEDAW) go unmentioned. The draft, but influential, RAI policy document therefore illustrates a largely utilitarian approach that treats gender equality and women’s interests as relevant but a relatively minor concern. To contribute to filling this gap, and from mainly a utilitarian perspective, the FAO has launched a study of gender dimensions of transnational land acquisition, which one may expect to inform the RAI document as it evolves through further negotiations in 2013.⁷

The World Bank (Deininger et al. 2011) report *Rising Global Interest in Farm Land* employs a critical and cautious tone on transnational land deals, giving examples of failed promises, livelihoods losses, displacement, low rental and compensation rates, dependency on public subsidies, negative social and economic effects, and investors encroaching into larger areas to make their projects profitable. The report pays considerable, but uneven, attention to gender. It stresses the “policy, legal and institutional framework” without including gender equality or other human rights among the relevant standards, although “provisions for gender and worker welfare” is mentioned as a dimension of “social sustainability” (Deininger et al. 2010: 68). Land rights are thoroughly discussed, but the summary of nineteen case studies only mentions disadvantages for women in one Mozambican case. Women, pastoralists, and ex-combatants are mentioned as groups who rely on common resources but were in some of the cases “excluded from consultations in an effort to override or negate their claims” (2011: 50).

Gender ought to have been central in a report on “equitable and sustainable benefits,” but the “strong negative effects” on women’s livelihoods found in cases were hardly reflected in the fifteen-page summary, discussion, or conclusion, perhaps because the report seeks to be “analytical” rather than “normative” (2011: 1). Lacking utilitarian arguments for gender-balanced participation to increase production or sustainability, the discourse of gender equality as smart economics was apparently abandoned.

HUMAN RIGHTS AND TRANSNATIONAL LAND DEALS

Human rights, land, and gender

Challenging the racist exclusion of black women and men from owning land in South Africa, Solomon Tshekisho Plaatje commented that black people “were to be deprived of the bare human rights of living on the land, except as servants in the employ of the whites” (1916/1991: 32). On this view, increases in production and exports could not justify the exclusion of individuals from land. We have human rights by virtue of our humanity and without distinction on the grounds of sex, race, color, religion, language, national origin, or social group (Abdullahi An-Na’im 2003). As opposed to a utilitarian maximization of happiness, human rights set norms for what *must be afforded* and what *may never be done* to any human being (Maurice Cranston 1973). Human rights extend from civil to political to economic, social, and cultural (United Nations 1966a, 1966b). Raymond Gillespie Frey (1984: 3) observes:

Rights are typically postulated in order to protect persons and their vital interests, and recourse to them can seem natural as persons and their interests are perceived to come under threat from utilitarianism. The important point to critics is not that such threats are possible but that they seem endemic to, an inescapable part of, utilitarianism.

The equal worth of individuals means that they possess *the same human rights* with *the same moral weight*, regardless of gender, ethnicity, power, or wealth (Thomas Pogge 2002). This requires priority for those whose rights are unmet or insecure, akin to John Rawls’ (1971/1999) priority for the worst off. Enjoying a human right is to attain a real individual entitlement and state of affairs; the human right to food is “realized when every man, woman and child, alone or in community with others, has physical or economic access, at all times, to adequate food or means for its procurement” (Committee on Economic, Social and Cultural Rights 1999: para 6); it often relies on access to land (Luisa Cruz 2010). As *standards of* and *means of* development, human rights have informed approaches to development (United Nations Development Programme [UNDP] 1998, 2006; UN 1993; Amartya Sen

Table 2 Author’s summaries of the orientation of utilitarian and human rights approaches

<i>Aspects</i>	<i>Utilitarian</i>	<i>Human rights</i>
Ethical orientation	Consequentialist	Deontological and consequentialist
Justification for concern with gender	Promote women’s participation to maximize the common good	The right to equality with regard to the enjoyment of all human rights
Development goal	Sustainable economic growth	Human rights realization
Means and process of development	Capital, investment, innovation	Government leadership, social action, and institutional development
Impact parameters	Multiple: Economic, environmental, social	Multiple: Realization of human rights

1999). Table 2 summarizes the contrasts between utilitarian and human rights approaches.

Human rights – including to food, home, paid work, property, political participation, gender equality, and racial equality – affect or are affected by land tenure (Poul Wisborg 2006). The human right to gender equality is explicit in the Universal Declaration of Human Rights and CEDAW, and it requires equal enjoyment of all human rights (Committee on Economic, Social and Cultural Rights 2005). CEDAW provides that “States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development,” including equal rights to training, education and extension, credit, markets, and technology, and to benefit from land and agrarian reforms and resettlement (UN 1979: 14.2). The African Charter on Human and People’s Rights (ACHPR; Organization of African Unity [OAU] 1981) guarantees rights to equal participation in governance (Article 13), to property (Article 14), to paid work (Article 15), and to “the elimination of all discrimination against women” and “the protection of the rights of the woman and the child as stipulated in international declarations and conventions” (Article 18.3). The Protocol on the Rights of Women in Africa guarantees women’s equal access to employment and remuneration and to clean drinking water, fuel, land, and food (African Union [AU] 2003: 13 and 15). The AU has reaffirmed its commitments to address discrimination of women in access to land (AUC-ECA-AfDB 2010).

Despite the rights–utility contrast examined here, international agencies merge these languages. The World Bank (Anthony Gaeta and Maria Vasilara 1998) made commitments to human rights, though its mandate has also been alleged to preclude imposing human rights on sovereign clients

(Zafiriz Tzannatos 2006). The thorough *Gender in Agriculture: Sourcebook* includes human rights, such as women's equal access to land, credit, and fair labor conditions (World Bank, FAO, and IFAD 2009). United Nations Development Fund for Women's (UNIFEM; 2009) *Women's Empowerment Principles* commits to human rights and also proclaims "equality means business." The World Development Report 2012 on *Gender Equality and Development* (World Bank 2011a) recognizes that gender equality has intrinsic value but, in the view of one critic, it still promotes gender biased macroeconomic policies (Shahra Razavi 2011).

Considering the gap between doctrine and realization, human rights-based feminism may have been "announcing a new dawn prematurely" (Dzodzi Tsikata 2007). Law may be seen as an instrument to protect (the quality of) human relations or "minimize the harms we suffer in social life" (Robin West 1997: 1–2, 94). Maxine Molyneux and Shahra Razavi (2003: 4) review the "mixed record of the 1990s," when human rights gained recognition and were used by women's movements to oppose oppression, while rising inequality and state cuts in social provisioning associated with neoliberal economic policy made others see them as rhetoric. Andrea Cornwall and Maxine Molyneux (2006) argue that inequality and poverty create gulfs between norms and women's lived realities to which plural and often less codified accounts of social and gender justice may be more responsive. Human rights do not easily facilitate gender equality in access to land, as evidenced by the lack of communal tenure reform in South Africa despite widespread discrimination and a human rights-based Constitution and land reform mandate (RSA 1996; Ben Cousins and Aninka Claassens 2005; Aninka Claassens and Ben Cousins 2008). Ben Cousins and Ruth Hall (2011) argue that obtaining legally defined land rights depends on local power relations and struggles, which a "rights-without-illusions" approach must analyze.

Through human rights to gender equality in the land deals?

In the view of Elizabeth Daley, applications of human rights to transnational land appropriation failed to address gender and women's interests:

It could be argued that women's rights are an integral part of broader 'human rights' approaches to CPL [commercial pressures on land]. Yet the relevant literature on this has very little to say on gender (e.g. FIAN 2010; UN 2009 [Olivier De Schutter 2009]). The strategic implication of this is that women have to fight their own battle and cannot rely on basic 'human rights' approaches to address their gender-specific concerns about CPL, as these do not have the systemic discrimination against women at the fore. (2011: 57)

The selected (human rights) documents reviewed largely confirm this assessment although a move toward recognition of gender equality and women's interests may be discerned. The reports of Olivier De Schutter, UN Special Rapporteur on the human right to food, were central at the early stage, apparently due to his independent status and shorter turnaround time as compared to other human rights bodies. He explained, "The problem is that human rights treaties are not very explicit on this issue because it was not very much on the radar when they were drafted," and that his reports sought to "provide an interpretation of the implications concerning access to land from those broadly worded documents" (Olivier De Schutter 2012). De Schutter argues that states permitting land appropriation (foreign or domestic) that deprives people of access to life-sustaining resources or other means of obtaining food are in violation of the human right to food (2009). He states: "Agreements to lease or cede large areas of land should under no circumstances be allowed to trump the human rights obligations of the States concerned" (De Schutter 2009: 33). Governments must control their investors abroad, particularly if host governments are unable or unwilling to do so, and investors must respect human rights and state efforts to safeguard them. Daley (2011) regrets that the eleven core principles proposed by the Special Rapporteur do not pay attention to gender and women's interests.⁸ Although women's secondary land rights and the need for gender-disaggregated data are briefly mentioned, the core principles are, in this respect, reminiscent of the RAI principles by the FAO, IFAD, UNCTAD, and World Bank (2010).

Human rights were evoked by civil society organizations condemning land appropriation as dispossession (FIAN 2010; La Via Campesina et al. 2010; World Social Forum 2011). Simone Heri (2011) analyzed human rights bodies and mechanisms for the ILC, stressing women's rights to property and to secure access to land and other resources according to CEDAW and the Protocol to the African Charter. In one of the few thorough studies of transnational land appropriation and human rights, the Center for Human Rights and Global Justice raises the rights to food, water, participation, a secure home, an adequate standard of living, as well as the rights to self-determination and development of indigenous people (CHRGJ 2010). CHRJG uses the eleven core principles of the UN Special Rapporteur to structure the analysis, without problematizing the absence of gender equality. Case studies from Mali, Southern Sudan, Tanzania, and Pakistan show how investors and agents of the state threaten tenure security and express concern about women's participation in gender-discriminatory contexts (CHRGJ 2010: 30–1, 53), but this is very brief and not included in the summary of cases. The authors argue that human rights can be used to discipline actors, to critique the global food and energy system, and to demand more equitable distribution of land, which "enhances opportunities for empowerment of women" – an important analytical distinction (CHRGJ

2010: 22). Even so, Daley's (2011) observation that a human rights approach does not necessarily imply high visibility of gender equality and women's interests is to some extent confirmed.

"Host countries" are major duty bearers and can regulate foreign investments. My own research in Ghana and Sierra Leone shows that governments were involved in official approval and regulations of foreign land deals, particularly through social and environmental impact assessments, while the promotion of human rights and women's interests was weak. Some investor country governments have taken regional or global policy initiatives on transnational land deals. For example, the German government argued that while land deals may increase agricultural investments, government revenues, and employment, "the majority of poor people in rural areas in developing countries [are] being pushed even further into the margins of global society" and found that women may be particularly exposed due to poverty, insecure land rights, and weak negotiating power (Karin Foljanty and Jutta Wagner 2009: 3, 9). It advocated human rights-based land policies for gender equality, but forgot gender in "six basic principles" proposed to address land grabbing. A "human rights approach" advanced by France (Land Tenure and Development Technical Committee 2010: 6) paid less attention to "gender issues," mentioned only once, than Germany's mixed utilitarian and human rights analysis.

I identified only two examples of contemporary policy that pay relatively thorough attention to gender equality and women's interests. The draft *Guidelines on Business, Land Acquisition and Land Use: A Human Rights Approach* by the Institute for Human Rights and Business (2011) advocates human rights principles of transparency, nondiscrimination, and accountability and a set of guidelines that pay attention to women's interests. For example, companies should "seek out women's groups and consult representative women from all levels of society," using women interlocutors; protect or compensate any loss of women's land rights; base environmental planning on women's priorities; and train their security forces on issues related to gender-based violence. Providing guidance to companies that face land conflicts, the *Guidelines* offer gender-sensitive facilitation of land appropriation, not critique.

The most elaborate attention to gender, and arguably the most important global statement on transnational land appropriation to date, is found in the *Voluntary Guidelines* (CFS 2012) adopted by CFS, which comprises FAO member states and civil society and international organizations. According to the CFS Chair, the *Guidelines* "set the bar for policymakers," and governments were "moving to bring their policies and practices into alignment" (FAO Media Centre 2012). The UN Special Rapporteur on the right to food stresses the legitimacy of the *Guidelines*, "the result of an intergovernmental negotiation ... adopted unanimously" (de Schutter

2012). Civil society participants praised the fairly broad consultation, including praise for being “gender-sensitive” (CSOs 2011; FIAN 2012).

The *Voluntary Guidelines* blend utilitarian and human rights reasoning. Utilitarianism is reflected when states are encouraged to “protect the tenure rights of small-scale producers” due to their “importance . . . for national food security and social stability” and to make transactions in tenure rights “consistent with the objectives of social and economic growth and sustainable human development” (CFS 2012: 11.8, 12.3). Voluntarism, states, and investors acting in their own interest are a guiding principle: a FAO official involved said most states would not have accepted a legally binding text (personal communication, April 2011).

However, references to human rights are conspicuous and repetitive. While the *Zero Draft* of the *Voluntary Guidelines* (CFS 2011) was vague on human rights and gender (Wisborg 2011), consultation and advocacy strengthened this aspect (for example: by the ILC Secretariat [2011]). “Principles of implementation” now include nondiscrimination, rule of law, transparency and accountability, and gender equality. States must ensure that “all programmes, policies and technical assistance” on tenure governance are consistent with human rights and that “businesses are not involved in abuse of human rights and legitimate tenure rights” (CFS 2012: 1.1). Businesses must in turn “act with due diligence to avoid infringing on the human and legitimate tenure rights of others” (3.2). States must “ensure the equal right of women and men to the enjoyment of all human rights while acknowledging differences between women and men and taking specific measures aimed at accelerating de facto equality when necessary” (3B, 4). States must “remove and prohibit all forms of discrimination related to tenure rights,” including that caused by change of marital status and lack of legal capacity or economic resources (4.6), and must ensure “that laws that recognize women’s tenure rights are enforced and implemented” (5.4).

An emphasis on markets and investments frames the treatment of large-scale land deals. The *Guidelines* require that states “recognize and facilitate fair and transparent sale and lease markets” (CFS 2012: 11.1), but “take measures to prevent undesirable impacts on local communities, indigenous people and vulnerable groups that may arise from, inter alia, land speculation, land concentration and abuse of customary forms of tenure” (11.2). While they should promote “responsible investments” that “do no harm,” states are also urged to consider “alternatives” to the “large-scale transfer of tenure rights to investors” (12.6). Women must be able to enter tenure contracts on the basis of equality with men, and states must “protect the legitimate tenure rights of spouses, family members and others who are not shown as holders of tenure rights in recording systems, such as land registries” (11.6). The 2012 *Voluntary Guidelines* have reaffirmed the obligation to eliminate gender inequality, to CEDAW provisions about equal participation in rural development and rights to property and access

to resources in the Protocol on the Rights of Women in Africa, and strengthened the attention to tenure governance – but without being legally binding. The 2012 *Voluntary Guidelines* have reinforced the attention to gender – their implementation will involve further contestation among investors, governments, civil society, and affected women and men.

CONCLUSIONS AND IMPLICATIONS

Invisibility and its causes

Since human beings have an equal right to concern and respect, land deals that violate the right to gender equality cannot be justified. This article has explored utilitarian and human rights approaches to gender equality and women's rights in selected land deal policy initiatives. I found that while recent agricultural-development policy literature professes the importance of gender equality and women's interests (World Bank, FAO, and IFAD 2009; FAO 2011; World Bank 2011a), policy initiatives on transnational land deals have generally paid inadequate and casual attention to gender relations and women's interests. Reasons for this may include resistance to any challenge of men's dominance and an assumption that the impact of land deals does not differ greatly between men and women, as two agricultural development experts, who were men, argued to me during field research in Ghana. Furthermore, lack of gender-specific information and analysis – an effect and a cause of gender invisibility – is a real problem, perhaps particularly for utilitarian (consequentialist) approaches. An ideological schism over land deals may also play a role. A civil society leader in Sierra Leone who advocated attention to gender and women's rights in foreign land deals in the country had been warned by another civil society leader not to "dilute" the "real" issue threats to livelihoods. Thus, gender analysis may introduce an empirical and evaluative complexity that complicates major land deal narratives of development or dispossession. As suggested here, a failure to mobilize the feminist potential of either utilitarian or human rights approaches also plays a role – and may well be as important in this instance as the differences between the two normative approaches.

Observations on utilitarian approaches

Utilitarian theories and evidence on agriculture have become sensitive to, for example, the importance of women's command of property for empowerment and social and economic outcomes (Pehu et al. 2005). This would imply that appropriation of land could be disruptive for smallholder women and men. However, the first drafts of the RAI principles paid little attention to gender (FAO, IFAD, UNCTAD, and World Bank 2010), and a major study neglected the negative impact on women found in cases

studies in its synthesis and conclusion (Deininger et al. 2011). Overall, utilitarian approaches appear more likely to have a justificatory function. Projections of future impact may be alluring in the absence of evidence on similar completed deals: asserting an abstract ability to compensate losers is inadequate when it is not clear how, by whom, and when they will be compensated. Disregard for social differentiation and the distribution of benefits was noted (De Schutter 2009). Framing transnational land deals as measures to promote large-scale, mechanized agriculture for national development may “encapsulate gender issues within existing development paradigms” (Susanne Schech and Sanjugta Vas Dev 2007) – an effect, I believe, of the keen promotion of land deals by some host governments. As pointed out by Caroline Gerschlager and Monika Mokre (2002), deception plays a key role in economic transactions, as illustrated by vast differences between promises and delivery in Ghana and other cases. A utilitarian, instrumental justification for women’s participation in land deals – to improve production, social welfare, and sustainability – could even be detrimental to women’s interests because those who control the land deals, often men, are led to see women’s participation as optional and interchangeable with other measures to promote these outcomes. However, such a concern was not really borne out. Excepting government support for a Norwegian acquisition in Ghana as a way to empower women and benefit families, the reviewed policy documents did not stress women’s benefits or their participation as a measure to improve the aggregate outcomes of land deals. In this sense, the utilitarian discourse on “gender equality as smart economics” remained silent and failed to advance feminist policy responses to transnational land acquisition.

However, despite such weaknesses or risks, utilitarian approaches provide avenues to advancing women’s interests in transnational land deals if they recognize egalitarian principles and distributional effects and are gender sensitive and proactive – and if actors are able to mobilize this often latent feminist potential.

Observations on human rights approaches

Human rights-based policy initiatives contributed to developing feminist positions on transnational land deals, mainly from critical viewpoints of civil society. The 2012 *Voluntary Guidelines*, a pinnacle of global policymaking on transnational land deals, has strengthened the recognition of gender equality within land tenure as a human rights issue. Yet, the *Guidelines* are rather vague on large-scale (transnational) land appropriation and rely on government discretion or prior commitments. Although comprehensive, risks of more procedural rather than substantive applications of human rights exist. As noted, economic interests and policies may constrain struggles for human rights (Upendra Baxi 2001; Molyneux and Razavi

2003; Cornwall and Molyneux 2006). Human rights-based approaches have been accused of permitting “rich country multinationals [to] buy national assets” while leaving causes of poverty and environmental deterioration in the Global North “off the agenda” (Peter Uvin 2004: 88), a critique that is relevant today. So long as the global political economy drivers of land appropriation exist, dispossession may continue to compromise any guidelines and ethical perspectives adopted: these require more policy attention.

Apart from the 2012 *Voluntary Guidelines*, my review confirmed Daley’s (2011) observation that several human rights documents on transnational land deals fail to address gender and women’s rights adequately. Daley concludes that “women must fight their own battle” (2011). Though this may be true, smallholders and other land users also have to join forces to defend their interests. In Ghana, women and men’s rights to land, use of the environment, decision-making power, care responsibilities, and benefits from employment differed significantly. Women and men and a few local organizations demanded better outcomes but further mobilization was needed across genders as well as by women independently to advance their interests. Those who are most directly affected by global processes of dispossession have the least power to defend ethical principles and human rights economic equality, which causes the bewilderment and despondency over transnational land deals – and the need for feminist analysis and struggle for women’s interests.

Implications

Despite contrasts and tensions between them, both utilitarian and human rights will likely be used in justifying, critiquing, and governing transnational land deals. They also match in a number of ways, as when employment promotes human rights to paid work and a livelihood, or when freedom of expression stimulates enterprise. Utilitarianism is routinely applied in impact assessments with a focus on aggregate outcomes such as job creation and economic growth, while human rights analysis promotes appropriate ethical breadth and more attention to processes and consequences for diverse groups of individuals. Table 3 lists contrasting as well as complementary ideas from the two perspectives.

A combined normative assessment may select land interventions based on (aggregate) utilitarian outcomes and then use human rights to reduce conflict during implementation. I would prefer that human rights are used to comprehensively analyze the values at stake and determine whether a land deal is justified, followed by utilitarian analysis to select the best among the justifiable acquisitions and maximize the benefits.

A combined assessment of a land acquisition has to comprise several stages and elements. Studies of the situation prior to the land appropriation must

LAND DEALS AND GENDER EQUALITY

Table 3 Author's characterization of utilitarian and human rights lenses on transnational land acquisition

<i>Land deal stages</i>	<i>Utilitarian</i>	<i>Human rights</i>
Situation prior	Economic analysis focused on poverty and under-utilization of land	Power, inequality, and the role of land for human rights (women, men, children)
Project appraisal	Economic, social, and environmental costs and benefits	Human rights analysis of plans, processes, and guarantees
Consultation	Prevent conflict with minimal transaction costs	Rights to information; informed consent; inclusion; gender-balanced participation
Negotiation	Maintain control and resolve conflict with minimal transaction costs	Gender-equal and effective decision making
Contracts	Secure interest, clarify obligations	Secure rights, clarify obligations
Compensation	Monetary (losses can be redressed)	Socially appropriate and comprehensive (human rights violations cannot be compensated)
Resettlement	A cost factor	Last resort – compliant with human rights
Implementation	Output oriented	Process and empowerment oriented
Employment	Maximize return, reduce cost	Equal access; labor rights
Production	Promote efficiency	Meet needs and rights
Enforcement	Based on actor interest in maximization	State responsibility for rights realization
Impact	Mainly aggregate economic	Mainly realization of human rights
Monitoring	To identify inefficiencies and benefits	To identify rights violations/realization

include the role of land, agriculture, and the environment for livelihoods and other rights, combined with power relations, social differentiation such as ethnicity, age, disease, or disability. It must establish the discrimination and inequalities that the acquisition and related investments may not entrench but must seek to redress. Rights-focused appraisal requires gender-disaggregated data and analysis of women's and men's realization of the human rights to food, water, paid work, equality, participation, and so on. Going beyond the prevention of harm, the appraisal must show how a land deal will affect economic equality including promoting gender equality and women's interests.

Human rights guidance for fair land deal processes includes gender-equal and free and informed participation, negotiation, and decision making,

including a right to reject deals and to have grievances heard by independent review bodies – particularly for the women and men whose access to land is affected. Investment, development, and production should not merely aim at utilitarian maximization, but also be responsive to individual human rights. Among others, employment, a major potential benefit for women, should be based on enforceable guarantees and comply with labor rights. The entitlements – land, water, energy, income, services – that determine the food security of individuals and groups should be analyzed and strengthened, not only (future) national production. Monitoring of transnational land deals must seek to integrate human rights realization (refer to [UNDP \[2006b\]](#)); the maximization of social, environmental, and economic benefits; and agrarian change for gender equality.

Feminist responses to transnational land deals may use arguments and insights from both utilitarian and human rights perspectives, but this requires proactive gender analysis and action at every stage – from negotiation through to decision making, governance, and impact – of transnational land deals as gendered power struggles. With such analysis and action, some transnational land deals may become learning and development processes; without, they are likely to remain callous experiments with the resources, rights, and lives of women and men.

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NOTES

- ¹ Telephone interview with senior economist World Bank, Flora, Ghana, Nov. 25, 2010.
- ² In an input to the e-consultation on the Voluntary Guidelines 2011, I suggested defining “land grabbing” as land appropriation that (1) violates human rights; (2) is illegal; (3) violates free, prior, and informed consent; (4) lacks thorough assessment of gendered social, economic, livelihoods, and environmental impact or disregards these impacts; (5) is not based on clear and binding commitments about activities, employment, benefit sharing, etc. in publicly available contracts; (6) violates the right to gender equality; or (7) does not allow effective democratic planning, oversight, and participation (Wisborg 2011). The ILC (2011) adapted the definition in its Tirana Declaration. The ILC’s five criteria did not include legality, and specified that gender equality is one of the human rights.
- ³ ScanFarm employment data 2011.
- ⁴ Interview with the author, 2012.
- ⁵ Author’s field research in Ghana and Sierra Leone.
- ⁶ The draft RAI principles were: (1) respecting land and resource rights; (2) ensuring food security; (3) ensuring transparency, good governance, and an enabling environment; (4) consultation and participation; (5) responsible agro-enterprise investment; (6) social sustainability; and (7) environmental sustainability.
- ⁷ The program “Promoting gender-equitable and inclusive land-related investment policies and regulatory frameworks that contribute to enhance food security, reduce poverty, and strengthen the livelihoods of poor rural women and men” by the Gender, Equity, and Rural Employment division, other FAO divisions, and the ILC.
- ⁸ The eleven core principles proposed by the UN Special Rapporteur (De Schutter 2009) are (1) transparency; (2) consultation and free, prior, and informed consent; (3) the rights of host communities safeguarded; (4) revenues benefit local population; (5) employment maximized; (6) protect the environment; (7) clear investor obligations, sanctions, and independent assessment of compliance; (8) minimum sale of food crops locally; (9) impact assessment (appraisal) prior to agreements; (10) indigenous people’s rights complied with; and (11) protection of the human and labor rights of workers.

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