



Analyzing international and regional guidelines on the protection of land tenure rights vis-as-vis land based investment in Africa: Implementation in Nigeria

Abubakar Balarabe Kura

Lecturer, Faculty of Law, Yusuf Maitama Sule University, Kano, Nigeria

Abstract

The global trend of frequent compulsory, acquisitions of land by private companies for large scale land based investment scheme either in agriculture or other investment needs drew the attention of several international and regional bodies, governmental and nongovernmental organizations to find a lasting solution and guidelines on how to balance the tenure rights of the local peasants farmers vis-as-vis the need to foster economic development policy via investment by foreign or local investors. The article used doctrinal method to examine the international and regional guidelines on regulation of investment vis a vis the protection of tenure rights/property rights on how to balance the need for investment to foster economic development and the sustainability of property rights and means of livelihood. The guidelines promote ethical investment that will not jeopardize the property/tenure rights, means of livelihood and social well being of the victims of the acquisition. Nigeria as member state of the most of the guidelines through its Ministry of Environment issued Social Impact Assessment Guideline and Regulation to show its commitment and discharge its responsibility under the international and regional guidelines. Much need to be done to ensure implementation of the guideline before any acquisition so as to balance the need for investment and sustainable right to property and means of livelihood of the landowners.

Keywords: Compulsory acquisition, investment, property/tenure rights, social wellbeing, means of livelihood

Introduction

The global trend of frequent acquisitions of land by private companies for large scale land investment scheme either in agriculture or other investment needs drew the attention of several international and regional bodies, governmental and nongovernmental organizations to find a lasting solution and guidelines on how to balance the tenure rights of the local peasants farmers vis-as-vis the need to foster economic development policy via investment by foreign or local investors. This is because some reports carried out proved that out of 474 lands acquired in some countries in Africa of over 16 million acres, only 42% of the land covered were utilized by the investors ^[1], Marginalizing small farmers in favour of largescale investors who received better protection triggered by weak governance on tenure rights render many commoners to be affected more by the acquisition processes and the need for standing regulations and guidelines globally.

The land acquisition in Africa for investors (recognized as new “scramble for land by foreign investors) ^[2] has raised serious problem for sustainable food production where agricultural land has been converted for other purposes ^[3].

Consequent upon the yearnings and agitations by several activists on the effects of compulsory acquisition for large scale investment on social and economic life of people living in the affected area, the United Nation and other International organizations in securing land tenure rights, livelihoods, and other ancillary social issues that may arise during large scale acquisition of land, adopted guidelines, standards and framework at international and regional level to curb the potential risk on tenure rights and means of livelihood caused by large scale investments. At the international level, Voluntary Guidelines on Responsible Governance of Tenure of Land, Fisheries and Forest in the Context of National Food Security (VGGT) (2012),

Principles for Responsible Agricultural Investment (PRAI) (2009) and several other guidelines were adopted and endorsed at international level as a guide to regulate investments and avoid potential effects that may jeopardize tenure rights, means of livelihood, social, cultural and economic life of the people living in the area to be covered by the investments.

At the regional level particularly in Africa; several guidelines were equally adopted even earlier than the international guidelines ^[4]. In 2009 the African Head of States adopted the Declaration of Land Issues and Challenges in Africa which gave birth to African Union Framework and Guidelines on land Policy in Africa (AU F&G) to guarantee and secure land rights for existing customary owners and for future investors ^[5]. In 2014 also, the African Union (AU) Head of States endorsed AU Guiding Principles on Large Scale Land Based Investment in Africa to harmonize the AU F&G and VGGT application ^[6].

Several programs and conferences were organized at regional and International level in collaboration with United Nation and its agencies and African Union and other governmental and nongovernmental organizations and stakeholders in land Governance on how to actualize and implement the guidelines and principles to secure tenure rights and sustainable investments ^[7].

This article focuses on discussing these guidelines and principles, exploring the extent of protection given to tenure rights and land governance in general, protecting means of livelihood, right to food, water and environment, and promoting sustainable and ethical investment. Similarly, attention is paid to the level of implementation and application of these guidelines in Nigeria. Lessons to be drawn from these guidelines will help in protecting tenure

rights and promoting economic development policies and investments in Nigeria.

Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security. (VGGT)

The idea for having guidelines on land tenure governance was given birth to from the comprehensive response to the Voluntary Guidelines on the Right to Food, (2005) which reinstates the need for the states to take measures to promote and protect the security of land tenure and consider establishing legal and other policy mechanism that would advance land reform to enhance access for the poor and women. This idea was further shaped at International Conference on Agrarian Reform and Rural Development (ICARRD) in 2006^[8]. The conference was organized in Port Alegre, Brazil between 7 to 10 March, 2006 under the auspices of FAO and Brazilian Government with main aim of exploring new development opportunities to revitalize rural communities worldwide and improving access to land^[9].

The coming of VGGT was through extensive intergovernmental organization launched in 2009 under the auspices of Food and Agriculture Organization of the United Nation (FAO)^[10] and about 700 stakeholders were brought from the public and private sectors, civil societies and academia representing 133 countries to ascertain and address tenure governance concern^[11]. Each consultation meeting resulted in an assessment identifying issues and actions to be included in the guidelines. The zero draft was prepared following the conclusion of the consultation process and an electronic consultation organized in 2011. The VGGT was finally endorsed by United Nation Committee on Food and Security (CFS) in 2012 at its 38th (Special) session^[12].

The Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT) is considered as first global and comprehensive instrument on governance of tenure. Even though the status of the guidelines is soft law not binding but it is considered as best practices that are backed by international consensus of governments, international NGOs, civil societies and private sector^[13]. The level of participation of different interest groups in arriving at the VGGT made many activists to regard it as one of the most democratic institutional frameworks for global decision making for international agreement ever^[14]. VGGT even though not legally binding but private companies, governments, NGOs are increasingly accepting it as new international standard on protecting land tenure^[15].

The main objective of VGGT is to improve the governance of tenure of land, forests and fisheries, with emphasis on vulnerable and marginalized people with goals of food security and progressive realization of right to adequate food, poverty eradication, sustainable livelihood, social stability, housing security and sustainable social and economic development.

The perspectives on the VGGT vary among different organizations and groups. Donors and government tend to see the VGGT as a technical standard for enabling responsible land investments and mitigating negative impacts, with only limited or indirect attention to rights and equity issues. NGOs and Social movements, on the other hand see the guidelines as an important human right

instrument that can be used to press government and companies to respect the right of small farmers, women, indigenous people and local communities that lack legal recognition and tenure security in many countries^[16].

Compulsory Acquisition or Expropriation and Investment under VGGT

VGGT is to be implemented within the context of National law; in essence it was not meant to suppress national laws but rather to compliment it. VGGT enjoined states to respect all legitimate tenure rights and guard the holders against arbitrary loss of their tenure rights through forced eviction that are inconsistent with existing obligation under national & international law. Tenure rights and its governance is considered as central for realization of human right, food security, poverty eradication, sustainable livelihood, social stability, housing security, rural development and socio-economic growth. The term ownership under VGGT is not considered absolute. All tenure rights are subject to limitation by right of others and can be taken by states for public purposes. VGGT follows the same pattern like in any other or most national laws in recognizing acquisition of land for public purposes. The term public purpose was not defined by VGGT and each country has discretion to define the term according to its provision of national laws. In many parts of the world decision making on compulsory acquisition is politically sensitive and significant source of contention between government and affected population^[17]. In South Africa there have been significant debates over whether expropriation/compulsory acquisitions are justified for the purpose of redistributing land to black population who lost their tenure rights during apartheid. The debate was born out of the property clause in the Constitution of South Africa and the influence of capitalist economy echoed by the white minority farmers after the apartheid period. Some political class in the country are agitating that the land should be nationalized and it should be held for the common benefit of the all people while the white farmers having backing from international capitalist economy are urging to maintain willing buyer and willing seller principles^[18]. In China farmers organized a sit in at a local government office after their land was compulsory acquired for the purpose of real estate development. The booming sector of real estate, emerging private land developers and discovery of oil and gas in the Yulin region of China forced the government to acquire more land from villages in its plan for foster economic growth. About 10 million farmers lost their land in the region due to the government action to acquire land for developers. The farmers protested the action for over two years with no avail and they planned sit in at the official offices of the regional government to disrupt all activities and development on their land which denied them access to their means of livelihood. The regional government used military and paramilitary to disperse them and cautioned them not to dare oppose the government decisions on economic development^[19]. In India, farmers protested and challenged a government decision to expropriate village land in 2011 claiming that the expropriation was unjustified because it did not serve public interest. The Supreme Court in India ultimately ruled the expropriation illegal on the ground that in the name of public interest the government is serving private interest^[20]. From the above examples most countries do not define clearly the term public purpose due to the complex nature of

the term and need for flexibility to adapt to dynamism of time and tenure. The VGGT does not attempt to give definite definition of the term but rather it gives general principles that every state should clearly define the concept public purpose in law, in order to allow for judicial review. The fundamental principle set down by the VGGT is that compulsory acquisition must be for public purpose, depending on what a particular state defines the concept and how it was judicially interpreted by courts. Defining the concept clearly will curb the excesses of abuse of power by government to go beyond the limit set down by law or widen the scope to include some items not covered under the definition but are closely related^[21].

Guideline 16 of VGGT provides in detail and establishes standards for the amount and type of land that can be compulsory acquired;

1. The state should acquire land for public purpose and should respect all legitimate tenure right holders including vulnerable, small farmers and marginalized people by acquiring the minimum resources necessary and promptly providing just compensation in accordance with National Law.
2. The states should be sensitive where proposed acquisition/expropriation Involves area of particular cultural, religious or environmental significance or where the land is particularly important to the livelihoods of the poor vulnerable.
3. States should ensure that the planning and process for expropriation are transparent and participatory. Any one likely to be affected should be identified and properly consulted and informed at all stages so as to avoid or minimize disruption of livelihoods.
4. The state should ensure that after the acquisition fair valuation is made and prompt compensation is paid and suggested the compensation should be in form of cash, alternative land or combination of both.
5. When the land acquired is not needed due to changes in plans, the state should give original right holders, the first opportunity to reacquire it, and in re-acquisition the compensation received in return of expropriation.
6. Where the expropriation or eviction is inevitable for public purposes, it should be done in such manner as not affect human rights of the holders and all feasible means to avoid eviction need to be considered or at least minimize eviction in order not to render the individuals homeless or vulnerable to the violation of human right. The state should to the extent or resource permit take measures to provide adequate alternative housing, resettlement or access to productive land.

The VGGT went further to set down guidelines on how responsible investment could be established which requires expropriation of land without tempering or minimize effect to tenure rights.

Guideline 12 of VGGT highlights how states should regulate responsible investment in land;

1. State and other stakeholders in investments in land should encourages tenure right holders to make responsible investment, increase sustainable agricultural production and states should support and promote investments that support broader, social, economic and environmental objectives.
2. All forms of investments in land should be done in line with national policies that are consistent with objectives

of social and economic growth and sustainable human development focusing on small holders.

3. The responsible investment should safeguard tenure right, environmental damage, human right and contribute to the social policy objectives such as poverty eradication, food security and sustainable communities, contribute to rural development, enhance social and economic sustainable development, create employment, diversify livelihood, and provide benefits to the country and its people including the poor and most vulnerable.
4. Before land is acquired for investment, state must ensure that it determines the nature, scope of the investment and what area will the investment cover in order to protect the tenure right of the holders. States should provide safeguards to tenure rights, human rights, means of livelihood, food security and environment from the risk that could arise from large scale investment in land. The safeguards could be in limiting and regulating the kind of land to be acquired for investment, encourage and promote production and investment models that do not result in large scale transfer of tenure rights to investors and should encourage partnership with local tenure right holders.
5. The indigenous peoples must be consulted by government and other parties involved before initiating any investment project affecting resources for which the communities hold rights.
6. State should ensure that before any investment agreement or partnership which involves large scale transaction of tenure rights or acquisition is considered, prior independent assessment on the potential position and negative impacts that those investments could have on tenure rights, food security and the progressive realization of the right to adequate food, livelihood and the environment is carried out particularly to protect the negative impact of such investment on livelihoods, tenure right of small scale producers; so that their tenure rights are not compromised by such investments.
7. The investors have responsibility to respect human right and tenure rights and investments should not contribute to food insecurity and loss of means of livelihood.

The guidelines provide for workable environment to balance the government need to formulate policies on investment and economic integration but in terms of implementation of VGGT; monitoring and accountability mechanism are very weak at global and national level due to the nonbinding nature of the guidelines. Other problem for implementing VGGT is that it does not ban the largescale acquisition. The guidelines offer more advocacy tool to CSOs and NGOs and other activists' organization in persuading the national government to adopt the guidelines for proper tenure management.

Some of the shortcoming of the guidelines is subjecting the guidelines to national law provisions and government decision making above the international law rules. Many NGOs and CSOs used the guidelines to advocate and or press for legal reform or implementation of the existing useful land laws. For example Oxfam an NGO in India used the guidelines to push for implementation of Forest Right Act. Also, in Mali, Cambodia, Senegal and several other countries used the guidelines to advocate for the reform of

land policy and developing new framework for protection of land grab in their respective countries ^[22].

The problem of implementation of VGGT in some African countries is due to the perception that the donor countries like UK and Germany are pushing for its implementation to underpin its own trade and economic development goals ^[23]. A research conducted by Action Aid in Gambia and Senegal reveals that, the implementation of VGGT and AU framework and Guidelines on Land Policy in Africa is very weak as the result of existing national legal framework which does not contain many of the provisions of the guidelines and call for the reform of the national laws to accommodate the guidelines ^[24].

Apart from the short coming and setbacks in implementation of the guidelines, there are positive responses to implement the guidelines side by side with the national laws; the government of Germany, Sierra Leone and Food and Agriculture Organization of the United State signed an agreement to respect and comply with the VGGT guidelines while implementing any investment in the Sierra Leone ^[25].

Principle for Responsible Investment in Agriculture and Food System (CFS – RAI) 2014.

The global effort by many organizations to find a lasting solution to land grab and fine-tune regulations and guidelines for responsible investments which will encourage economic development and avoid negative impacts of large kind investments that may pose danger to tenure rights of small holders, sustainable means of livelihoods, human rights, environment etc, culminated into the proposing and adopting of this guidelines. It is on this background, the Committee on World Food Security (CFS) under the auspices of Food and Agriculture Organization of United Nation concluded global negotiation of principles for responsible investment in agriculture and food systems in August 2014 ^[26]. The negotiation lasted for the period of two years, regional consultation and workshops were held in Africa, Europe and Central Asia, North America and the Pacific, Latin America, the Caribbean and the Near East. Also feedback was received through electronic consultation. The consultation involved governments, UN agencies, civil societies, nongovernmental organizations, Research institutes, private sector associations and several other stakeholders ^[27]. Zero draft of the principles highlight the background and need for responsible investment.

It is a key to enable agriculture to better contribute to food security and nutrition for all, thus supporting the universal declaration of right to food. At the same time, investment needs to support agriculture to continue driving poverty eradication, create decent jobs and livelihood opportunities on farm and all along food supply chains and contribute to environmental sustainability. When explicitly responsive to such challenges and accountable for doing so, the activities for agricultural investors can be defined as “responsible” the contribution of agricultural investments to food security and nutrition is the central concern ^[28].

The RAI principle like other international guidelines are not binding but soft law aimed at guiding and regulating the investors in dealing with tenure rights and means of livelihoods of the local farmers and settlers.

The aim of the principle is to promote responsible agricultural investment to contribute to the food security and nutrition and universal realization of right to food, poverty

eradication, sustainable use of land, support local communities, enhance social and economic sustainable development, create employment and diversify livelihood ^[29].

Responsible Investment, Land Grab and Human Rights under CFS-RAI Principles

CFS RAI Principles had set down guidelines to regulate the interaction between investments which requires large scale land grab and human rights to avoid excessive land grab or tempering with human rights in the process of land grab or the investment. These guidelines are stretched through the ten principles of the responsible investment and other parts of CFS-RAI principles. The scope of this work will be limited only to the principles that affects land grab (expropriation) and human rights associated with such exercise as provided by principle 20.

Responsible Investment should respect and not infringe on the human rights of others and address adverse human rights impacts. It should safeguard against dispossession of legitimate tenure right and environmental damages.

The guidelines and regulations in respect of investment vis-à-vis interaction between expropriation and human rights are:

1. The investment must be oriented toward job creations
2. The investment must improve livelihoods and enhances sustainable development.
3. The Investment must respect legitimate tenure rights.
4. The investment should prevent and minimize legitimate impacts on air, land, soil, water, forest and biodiversity.
5. The investment should respect and not temper the traditional and cultural heritage site.
6. The investment should be geared to respect human right and legitimate tenure rights in line with VGGT principles.
7. The investment should be in line with mechanism to assess and address economic, social, environmental, impacts particularly considering the right of small holders and vulnerable group by implementing appropriate and effective remedial and/or compensatory action in the case of negative impacts and where potential negative impacts were perceived; including the option of not proceeding with the investment.

The states should ensure that every investor respect human right and legitimate tenure right of small holders and put in place monitoring and implementation mechanism to guide the conduct of every investor. The broader aim of these principles is to provide win-win situation in order to ameliorate the negative impacts of such investment on tenure rights, livelihood, human right and environmental impacts and on the other hand encourage and foster economic development ^[30].

The guidelines are more less like a duplication of VGGT because almost all the provisions in these guidelines contained in VGGT; in fact principle 9 of the guidelines acknowledged VGGT and emphasize that all investment must respect the tenure right and human rights in line with VGGT guidelines. The peculiarity of this guideline is that it restricted its scope to only agricultural investments.

Critical examination of these guidelines shows that it lays foundation for smooth transition of land rights transfer from the current owner to the investors as the land grab was not prohibited by the guidelines but rather more concern with

production of the food or food security without minding who produces what ^[31]. The peasant farmers are left at the mercy of the investors because the concern is to ensure food security system. The John Raws theory of contractarianism will not be in harmony with these principles as it backs the land grab more than the fate of the peasant farmers who may lose their livelihood ^[32].

Principles for Agricultural Investment that Respects Rights, Livelihoods and Resources (PRAI).

The collaborative effort of World Bank and United Nations agencies (FAO, International Fund for Agricultural Development (IFAD) and United Nation Committee on Trade and Development (UNCTAD) in their attempt to respond to the escalating impacts of largescale acquisition of land and other resources resulted into the formulation of Principles for Agricultural investment that Respects Rights, Livelihoods and Resources (PRAI) ^[33]. After negotiation and consultation with different stakeholders, the principles were released in 2010.

PRAI set down seven principles to regulate and guide the need for investment and respect for human rights which includes;

1. Respecting land and resource rights, this includes all forms of right holdings over land whether statutory or customary, primary or secondary, formal or informal, group or individual. The investors should not acquire any land without proper compensation being paid.
2. The investment should not jeopardize food security but rather to strengthen it.
3. Process relating to investment in agriculture are transparent, monitored and ensure accountability by all stakeholders, within a proper business, legal and regulatory environment.
4. All those materially affected are consulted and agreement from consultations are recorded and enforced.
5. The investors should ensure that the projects i.e. the investment respects rule of law, reflect industry best practice and are economically viable.
6. The investments should generate desirable social and distributional impacts and not to increase vulnerability to accord more benefits to the elite at the expense of vulnerable group.
7. The investment should take into consideration environmental impacts and avoid any damage to environment or at least minimize it to nearest minimal ^[34].

The PRAI principle has been criticized as being self regulating by private sector and is likely to destroy the global peasantry system in the guise of responsible investment ^[35]. Similarly, some argue that the principles even though in themselves are presented as indicators providing win-win solution, however, it should be taken into consideration that the principle could be used to legitimize what is unacceptable; foreign and domestic companies seeking to take over large amounts of land ^[36].

African Union Framework and Guidelines on Land Policy in Africa, (2009)

The African Union Framework and Guidelines on Land Policy in Africa (AU F&G) is the result of three years intense and rigorous consultation across the African

Continent which involved various stakeholders and Government bodies under the auspices of African Union Commission, United Nations Economic Commission for Africa and African Development Bank ^[37]. It was initiated in 2006 with the aim to examine land policy issues and challenges in Africa with a view to developing a framework to strengthen land rights, enhance productivity and improve livelihoods ^[38]. The guidelines were endorsed by the joint conference of ministers of Agriculture and livestock held in April, 2009 in Addis Ababa, Ethiopia ^[39].

The Framework and Guidelines which took three years of negotiation and consultation was adopted by African Union in its "Declaration on Land Issues and Challenges in Africa" Urging the effective implementation of the F & G thus: Urging the member states to

1. Review their land sectors with a view to developing comprehensive policies which takes into account their peculiar needs,
2. Build adequate human, financial, technical capacities to support land policy development and implementation.
3. Take note of the steps outline in the framework and guidelines on land policy in Africa for their land policy development and implementation strategies.

The AU F&G set down the framework of land policy in Africa and highlights the key issues which need to be reflected in national framework of member states. The F&G are not binding and are regarded as soft law aimed at guiding the member states to review their land sector with a view to develop comprehensive policies and make use of the F&G as a valid tool to guide their national land policy process ^[40]

Chapter three of F&G emphasizes the vital nature of land and its centrality to sustainable livelihood. The AU reiterate that there is a need to take appropriate measures to ensure that land plays its primary role in the development process and more particularly in social reconstruction, poverty reduction, enhancing economic opportunities for women, strengthening governance, managing the environment, promoting conflict resolution and driving agricultural modernization.

The F&G in Guidelines 1 to 4 highlight the interconnection of land with other facet of mundane activities (Development) as follows:

1. Acknowledging the legitimacy of indigenous land rights system and land policy process must recognize the role of local and community based land administration/management institutions
2. Strengthening the land rights of women and avoid any form of gender based discrimination of women in access to land resources.
3. Enhancing access to land through tenure reform will facilitate economic opportunity and livelihood security for all land users.
4. Equally distributed and effectively managed land can be instrumental in eradicating poverty.
5. Creating enabling environment for agriculture. Agriculture is the main source of livelihood and land is the major factor for agriculture. The land policy process will ensure harmonizing/balancing the management of land and ensure creating enabling environment for agricultural development.
6. Promoting the development of land rights transfer systems and market, this will expand opportunities for

acquisition of land resources for many agricultural users engaged in large or small scale operation

7. Land is needed for manufacturing, mining, energy development activities and this will compel compulsory acquisition of land held under indigenous tenure. The land policy must address the issues of environmental damage coming as the result of the manufacturing and balance should be struck between investment in manufacturing, mining, energy development and the requirements of the human health and safety, environmental protection, resettlement of displaced people, social dislocation of agricultural communities etc.

African Union Guiding Principles on Large Scale Land Based Investments in Africa (LSLBI) (2014)

The commitment of AU head of states to ensure integration and implementation of new regime of land policy in Africa and emerging concern surrounding the potential impacts of large scale land based investments on local food security, tenure right and livelihood led to the Nairobi meeting in Kenya in 2011 to assess land based scale investment, development of principle for sound and sustainable investment in land and development, and implementation of land use plans and policies that facilitate equitable access and secure land rights for communities including women and investors both local and foreign. The Nairobi Action plan was to build evidence on the Largescale Land Based Investment in Africa (LSLBI) drawing on best practices and to develop guiding principles on LSLBI. These guidelines are specific to address inadequacy of the AU F&G which are general and not straight forward to implement, monitor or evaluate ^[41].

In 2014 the Land Policy Initiative (LPI) in Africa initiated the drafting of the guiding principles in collaboration with the stakeholders and experts. The drafting of the guiding principles were produced and endorsed by the joint conference of ministers of Agriculture, Rural Development, Fisheries and Aquaculture in a conference held on 19-24 March, 2014 in Durban, South Africa.

The purpose of LSLBI was underlined in the preamble of the guidelines thus:

The Nairobi Action plan calls for urgent action to develop land policies that reduce the underlying risk of LSLBI through variety of approaches, including enhancing the security of land rights, building evidence on LSLBI drawing on best practices to enhancing capacities and facilitating fair and transparent LSLBI deals.

Six fundamental principles are framed to guide large scale land based investment, minimize the risk and maximize benefits particularly on issues affecting human rights, unnecessary large acquisition of land and sustainable social and economic development. The fundamental principles are:

1. LSLBI respect human rights of communities, contribute to the responsible governance of land and land based resources, including customary land rights and are conducted in compliance with the rule of law.
2. Decisions on LSLBI are guided by national strategy for sustainable agricultural development which recognizes the strategic importance of African Agricultural land and the small holder farmers in achieving food security, poverty reduction and economic growth.
3. Decisions on LSLBI and their implementation are based on good governance, including transparency,

subsidiary, inclusiveness, prior informed participation and social acceptance of affected communities.

4. LSLBI respect land rights of women, recognize their voice, generate meaningful opportunities for women alongside men and do not exacerbate the marginalization of women.
5. Decision on the desirability and feasibility of LSLBI are made based on independent, holistic assessment of economic, financial, social and environmental costs and benefits associated with the proposed investments throughout the life time of the investments.
6. Members should uphold high standards of cooperation, collaboration and mutual accountability to ensure that LSLBI are beneficial to African economies and their people ^[42].

Analyzing the Guidelines in Line with Current Nigerian Legal Regime and their Interface

From the above guidelines discussed, the compulsory acquisition for private investment has become prevalent and global phenomena. Investment has become integral part of the economic development. The concern of the international and regional guidelines is to minimize or mitigate the negative effects of such investments, if it could not be avoided completely. The guidelines were aimed to provide international best practice and standard on how to regulate the investment to avoid or minimize consequential effects such as losing land to compulsory acquisition, loss of means of livelihood, destroying of social networks, loss of cultural and religious site, loss of businesses etc and provide safeguards on how to mitigate negative effects in such a manner to promote and foster designed resettlement plan, improve compensation for land loss, creating jobs and restoring means of livelihood, infrastructural benefits and host of other benefits to be brought by the investments.

The aim of the guidelines and standards is to work within the context of national law, in essence, it is not meant to supersede national law but rather guide the government in reshaping its existing laws to rhythm with international best practices ^[43].

This section of the work will examine the existing Nigerian Legal regime on protecting land rights, means of livelihood and social issues arising as a result of compulsory acquisition for private investment and measure it up with the guidelines and standard set down by the above guidelines.

To begin with, section 16 of the Nigerian Constitution makes provisions on the duty of the state to make policies to balance economic development, share and distribute resources evenly, the economic system should not be operated in such a manner to concentrate the wealth and means of production in the hands of few individuals and make policy for adequate shelter, adequate food, protection of old age and vulnerable people and reduce unemployment level and welfare of the employed. The state shall direct its policy on ensuring that the citizens have the opportunity for securing adequate means of livelihood, as well as opportunity to secure suitable employment, to provide facilities for social, religious and cultural life and several other social rights are enjoined to be protected and safeguarded. Similarly, section 43 and 44 of the Nigeria constitution makes provision for the compulsory acquisition for public purpose and payment of compensation promptly. Section 28, 29 and 51 of the Land Use Act provides for the procedure and power of the Governor to compulsory

acquires land for public purpose and overriding public interest.

On protection of environmental damage caused by the investment, Environmental Impact Assessment Act aimed to provide safeguard to the environment and to prevent any project or activity that will be harmful to environment. Following the agitation for protection of environment and increasing global drive towards sustainability in 1980s and after the World Conference on the Environment and Development in 1987; the Nigeria government as state party to that Conference decreed into being Environmental Impact Assessment Decree (now Act) in 1992 to actualize the Nigeria's commitment to protect environment by conducting Environmental Impact Assessment (EIA) before any project or activity of high magnitude is allowed to be carried out by either public institution or private enterprises [44].

The essence of the law is to subject every project in the public or private sector of the economy for scrutiny to explore possible environmental effects that may arise during the execution of the project and aftermath effects. The effects could be positive and negatives effects. The law provides participatory approach towards mitigating and assessing the effect to be caused by the project. The communities' members should be engaged in ascertaining those consequential effects. Also experts in certain field should be engaged in ascertaining the effects of the project.

At initial stage of passing this law, the concern of the assessment of the impacts is limited to physical environment, until recently when the assessment was expanded to include not only physical environment but social environment. The impact on physical environment is assessed with little or no regard to the communities; the immediate vicinities of these projects. Social Impact Assessment (SIA) is an offshoot of the Environmental Impact Assessment. The SIA is more comprehensive and integrated assessment of the overall effects of the projects environmentally, socially and economically. The rationale of the inclusion of SIA in the framework of EIA was highlighted below.

Rising indignation and social unrest/tension engendered by the realization of continuing neglect in the face of abundant resources by the rural people in most part of the world and, Niger Delta in particular, has brought to the fore the detailed community/socio economic understanding within the general framework of environmental assessment. Sustainable development, as it is being espoused, encompasses all social, economic and political activities aimed at improving the quality of human life [45].

SIA utilizes interactive and participatory method to achieve better social and economic result, the communities' members are directly engaged in the discussion on the effects of the projects on the social and economic life of the people affected by the project with aim of providing solution or mitigating the effects. It was against this backdrop; the Federal Ministry of Environment in 2017 issued Social Impact Assessment Guideline and standard as gauge to measure up the protection or safeguarding the social issues arising during and after execution of any projects either by public or private entity (investment inclusive) [46].

Social Impact Assessment Guideline and Standard, 2017

Social Impact Assessment Guideline and Standard was formulated by Federal Ministry of Environment in 2017 in line with the following international standards, International Finance Cooperation Performance Standards, World Bank Safeguards Policies, United Nation Principles for Responsible Investment.

The aim of the SIA Guideline and Standard, 2017 is to present systematic approach that shall assist in identification and mitigation of adverse social impacts, optimization of benefits as well as provision of structure for uniform and consistent monitoring and management of the projects. The guideline provides step by step procedure of SIA ranging from project proposal; screening, public involvement, identification of alternatives, baseline description, scoping, analysis of social impacts, impact mitigation and enhancement, impact monitoring, review and decision making, implementation and follow up. The procedure is as follows:

a. Project Proposal

The proponent of the project either government or private enterprise shall fill a form at Federal Ministry of Environment indicating relevant information available and Land Use Map of the proposed area site of the project.

b. Screening

Screening activities will be carried out to ascertain the activity and social structure existing in the project area. Federal Ministry of Environment (FME) will conduct social examination in determining whether or not SIA should be conducted.

c. Public Involvement/Stakeholders Engagement process

The proponents of the project or their consultant should identify parties to be engaged for better SIA to avoid discriminatory SIA. The parties may include Government agencies at Federal, State or Local Government, NGOs, Experts in the field, private sector, and members to be directly affected by the project. Stakeholders plan should be designed which should contain action plan for consultation during preparation and details format for effective and culturally meaningful interaction with stakeholders, affected members of community, community leaders and issue plan for development of grievance mechanism.

d. Scoping

At this stage key issues should be outlined. The scope of investigation activities should be stated, this could help in covering all sectors of SIA ranging from community and institutional structures, political and social resources, individual and family changes.

e. Identification of Alternatives

The project will be analyzed as a whole to see if there is alternative to it in terms of cost, land mass and examining the alternatives with their impacts (positive or negative) in relation to other projects in order to identify and deal with potential cumulative impacts. The essence of the identification of the alternative is to weigh if the alternative will have less impacts it will be given priority than the initial project. For example location site of an industry close to the people settlement will have more impacts on social structures of the inhabitants than locating the site at far

distance from people settlement. In this instance, the alternative may have fewer impacts and the projects could be relocated to the alternative place to minimize the impacts.

f. Baseline Description

The baseline description shall provide relevant information that describes the socio-economic conditions of the affected people including historical overview of the project area, household demography, housing and services, agricultural and household nutrition, income and expenditure, health, education, social organization, social infrastructure, livelihood strategies, small businesses, transportation, technology, land use, belief system and sacred rights among others.

Gathering the data for baseline description method should be through a combination of qualitative research methods, quantitative household surveys and desk top study to analyze the impacts and propose solution mechanism. Relevant government agencies should provide available information that will help in gathering baseline data for proper SIA.

g. Social Impact Analysis

From the data collected at baseline description level; potential impacts (direct, indirect and cumulative) of the project should be assessed and analyzed. The people at risk to the social impacts of the project should be identified, e.g. Artisans, seasonal and daily wage laborers, vendors among others. The potential impact should be assessed at all level of construction, operation and decommissioning of the project, estimate how the affected public would respond to the potential impacts.

h. Social Management Plan

In order to minimize and mitigate or enhance potential impacts; Social Management Plan should be designed. In preparing the plan the following should be taken into consideration; the water required for the project to avoid shortage, dispute management to guide employees how to relate to the community to avoid conflicts, traffic management plan, safety and risk management plan, waste management plan, Resettlement Action plan to provide detailed strategy for negotiating displacement with private land owners, minimizing or avoiding resettlement, ensuring the affected people are afforded the opportunity to improve their incomes and standard of living they had before the project affected them, livelihood restoration plan, community development plan to include skill training and alternative, livelihood strategies and other social benefit like social amenities among host others.

The SIA report after taking care of all the steps enumerated and addressing all issues should be approved before the project take off. The report of SIA should be sent to SIA audit to ensure all the potential impacts were either mitigated, enhanced or avoided. By section 69 and 70 of SIA all the projects should have a goal of sustainable social development where the companies especially foreign multinational corporation are granted legal permit to operate within the country, and any project that will cause physical displacement (related land acquisition cases) or economic displacement (loss of agricultural land or disruption of livelihood) should provide adequate compensation and

provide improvement or at least re-establishment of living conditions and livelihood.

The international and regional guidelines; VGGT, Principles for Responsible Investment in Agriculture and Food System, Principles for Agricultural Investment that Respects Rights, Livelihood and Resources, African Union Framework and Guidelines on Land Policy in Africa and African Union Guiding Principles on Large Scale Land Investments in Africa summarily focused on achieving the following:

1. The acquisition is to be for public purpose even though the term should be defined by national law peculiar to each state, while sanctioning the acquisition the state should be sensitive to cultural, religious, environmental significance, and the acquisition should be participatory by engaging the affected people in the investment area to avoid or minimize disruption of livelihood, payment of compensation should be promptly, to make provision for alternative land, protect human right, provide alternative housing and resettlement plan and where the investment failed the land should be offered to original holders to re-acquire it.
2. The state should ensure all investments are sustainable and should support and promote investments that support broader social, economic and environmental objectives. The scope of the investment and the area the investment will cover must be clearly stated in the investment proposal. Indigenous people must be consulted and engaged before initiating any investment project.
3. The independent assessment of the potential negative and positive impacts of the investment on tenure rights, food security, progressive realization of the right to adequate food and livelihood is to be carried out to protect the negative impacts of such investment on livelihoods, tenure rights and such other social issues.

The summary gist of the international and regional guidelines and standards indicates that sustainability of the social, economic and environment is critical in all spheres of human life and to actualize sustainable development all the three component of social, economic and environment must be balanced and protected. In earlier period, development is only considered as economic efficiency to maximize production and profit, with emergence of concept of sustainable development, the development paradigm is shifted from mere economic efficiency to equitable growth in which social (distributional) objectives, especially poverty, alleviation, enhancing means of livelihood, preservation of nature, protecting indigenous land rights are put on the same pedestal with economic efficiency. In other words, the pursuit of economic development will not in any anyway be at expense of standard living conditions and other social rights of the people as such it should not be compromised^[47].

For the system to work properly, economic development and means of production should not be a threat to the environment and social rights. The International Court of Justice in the case of Hungary V. Slovakia Hungary V. Slovakia (1997) ICJ Rep. 78 clearly illustrates this position. Throughout the ages, Mankind has for economic and other reasons, constantly interfered with nature. In the past this was often done without consideration of the effects upon environment owing to new scientific insights and to a

growing awareness of the risks for mankind – for present and future generations of pursuit of such interventions at an unconsidered and unabated pace, new norms and standards have been developed, set forth in great number of instruments during the last two decades, such new norms has to be taken into consideration, and such new standards given proper weight, not only when states contemplates new activities but also when continuing the activities began in the past. This need to reconcile economic development with protection of the environment is aptly expressed in the concept of sustainable development.

Social and environment issues are linked to realization of human rights (respect for hum rights) which is essential for achieving sustainable development. The respect for human right is relevant in realizing several social issues or rights for example land acquisition processes can affect internationally recognized right to property, to food, housing and to culture, indigenous people' right to their ancestral land, poverty eradication, sustaining livelihoods and standard of living etc ^[48].

It is against this background, the Federal Ministry of environment issued SIA Guideline and Standard to show the commitment of Nigeria in compliance with international and regional guidelines and standards.

The paradigm shift from conducting EIA only on physical environment to including social environment assessment in more integral and participatory approach can assist in developing open and meaningful dialogue, and can influence decision making, build trust, address community concern, manage expectations, mitigate or avoid adverse effects of the projects/ investment and negotiate mutually beneficial future that are more sustainable and locally relevant ^[49].

The introduction of SIA Guideline and Standard by Federal Ministry of Environment indicate the seriousness of Nigerian government in honoring its responsibilities regarding its commitment to international and regional guidelines on protection of tenure rights, means of livelihood, human rights and promoting ethical and sustainable investment.

In practical sense, the implementation of the principles contained in the guidelines discussed regarding the safeguards of tenure rights, means of livelihood and social rights; even though most of them are incorporated in the SIA guidelines but are poorly implemented due to lack of political will and corruption that bedeviled administrative activities of the regulatory bodies ^[50].

Implementation and compliance with the SIA Guidelines and Standards before embarking on any investment to assess social, economic and environmental impacts of any investment will help in regulating the interaction between quest for investment which requires large scale land acquisition, land rights and human rights to avoid excessive land grab, mitigate or minimize potential negative impacts and project the positive impacts on the social and economic well being and standard of life of the affected people.

Conclusion

The compulsory acquisition of land is global phenomena due to the excessive need to find suitable place for investment. The world food crisis diverted the attention of numerous investors to engage in agricultural investments. The international investment policy of trade liberalization, openness of market, privatization and Foreign Direct

Investment emphasizes the need to secure land for investors to locate their investment. The international organizations like UN, World Bank, WTO, FAO, UNCTAD, AU, EU etc are concerned with food security, promotion of sustainable investment and protection of human rights. The combination of the organization and their agencies resulted in numerous guidelines to balance the quest for investment, promoting social, economic and environmental objectives under the concept of sustainable development. Some of the guidelines are VGGT, Principles for Responsible investment in Agriculture and Food Systems, Principles for Agricultural Investment That Respects Rights, Livelihoods and Resources, AU Framework and Guidelines on Land Policy in Africa and AU Guiding Principles on large Scale Land based Investment in Africa. The aim of the of the guidelines is to provide workable environment for investment that will not jeopardize the land right of people residing in the area the investment is located and the guidelines also has the goal of progressive realization of right to land, right to adequate food, right to shelter, poverty eradication, sustainable livelihood, social stability, housing security and sustainable social and economic development. The guidelines intend to provide participatory framework for consulting relevant stakeholders and affected people with aim of achieving the above mentioned goals.

From the guidelines reviewed above, it is clear that the issue of land grab or land acquisition has global attention and not peculiar to a particular country or region. The paradigm shift from traditional mode of governance where government pilot infrastructural and economic development to current trend where private sector participation was highly encouraged to less the burden on government to only or mostly regulatory supervision make it mandatory to provide guidelines on how such participation should be governed.

None of the guidelines prohibits acquisition of land provided a balance is struck between the investors and the landowners in order to avoid deterioration of livelihood and standard of living of landowners.

The Nigerian government through Federal Ministry of Environment in response to its commitment to the guidelines issued Social Impact Assessment Guideline and Standard 2017 which introduced compulsory Social Impact Assessment before any project or investment is carried out by either public institution or private enterprises. With the adoption of SIA social issues arising during compulsory acquisition for private investment can be addressed either by mitigating or avoiding the negative effects and enhancing and promoting positive effects. Compliance with SIA will provide a workable ground for striking balance between quest for investment, protection of land rights, means of livelihood and other social and economic rights through the all encompassing sustainable development concept.

References

1. United Nation Economic Commission for Africa, "Guiding Principle on Large Scale Land Based Investments in Africa, 2014, 2. www.uneca.org last visited on 24th December, 2023
2. African Union Framework and Guidelines on Land Policy in Africa, African Development Bank and Economic Commission for Africa, 2010:11:17.
3. Action Aid International, "Assessing Implementation of the Voluntary Tenure Guidelines and the AU

- framework and Guidelines for Land policy: A Toolkit Approach, 2017, 8. www.actionaid.org last visited on 24th December, 2023.
4. Emmanuel Sulle, Ruth Hall. "International and Regional Guidelines on land Governance and Land Based Investments: An Agenda for African states (Policy Brief)." Institute for Poverty, Land and Agrarian Studies, 2014. www.future-agriculture.org last visited on 24th December, 2023.
 5. Emmanuel Sulle, Ruth Hall. "International and Regional Guidelines on land Governance and Land Based Investments: An Agenda for African states (Policy Brief)." Institute for Poverty, Land and Agrarian Studies, 2014. www.future-agriculture.org last visited on 24th December, 2023.
 6. Ward Anseeuw. "Large Scale Land Based Investment in Africa and the Nairobi Action Plan" available at <http://agritrop-cirad.fr>. Last visited on 15/3/2022
 7. Eugene Rurangwa, Odame W. Larbi, "Towards an Integrated Implementation of VGGT and F&G in Africa. <http://www.fao.org/nr/tenure> or www.africanlandpolicy.org/eu-programme last visited on 25th December, 2019.
 8. Ruth Hall *et al.* "Strengthening Land Governance: Lessons from Implementing the Voluntary Guidelines, LEGEND state of the Debate Report, 2016, 14. available at www.landportal.infor/partners/legend last visited on 25th December, 2018.
 9. <http://www.icarrd.org> last visited on 9/12/2023
 10. Palmer D, *et al.* "Fostering a New Global Consensus: the Voluntary Guidelines on the Governance of Tenure," *Land Tenure Journal*,2012:1(12):19-38.
 11. Food and Agriculture Organization, "Voluntary Guidelines on the Governance of Tenure: At Glance, 2012, 10. www.fao.org/nr/tenure last visited on 25th December, 2018.
 12. Wordsworth Odame Larbi. "VGGT and the F&G: Versatile Tools for Improving Tenure Governance" <https://www.conftool.com>.
 13. Action Aid International. "A Brief Introduction to the Voluntary Guidelines on Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, 2012. available at http://landportal.info/sites/landportal.info/files/actionaid_voluntaryguidelines_guides.pdf
 14. Seufert P. "The FAO guideline on Responsible Governance of Tenure of land, Fisheries and forests," *Globalization*,2013:10(1):181-186. Do1:10.1080 P.184
 15. The Interlaken Group, Rights and Resources Initiative (RRI), Respecting Land and Forest Rights: A guide for companies, "Washington DC, 2015. http://www.rightsandresources.org/wp-content/uploads/interlakengroupguide_web1.pdf
 16. Tom Griffiths. "VGGT: What potential to engage?" Making the EU Work for People and Forests (FERN), 2018, 4. <http://www.fern.org> last visited on 28th December, 2022.
 17. Nicholas K Tagliarino. "Encroaching on Land and Livelihoods: How Notional Expropriation Laws Measure up against International Standards," Working Paper, Washington DC World Resources Institutes, 2016, 11. <http://www.wri.org/publication/encroaching-on-land-livelihoods> last visited On 28th December, 2022
 18. Ntsebeza L. "Land Redistribution in South Africa: the Property Clause, Revisited " http://www.yale-university.org/macmillan/apartheid/apartheid_part/land_Reform.pdf
 19. Yardley J. "The farmers being moved Aside by China's Real Estate Boom." *New York times* http://www.nytimes.com/real-estate-boom.html?_r=0 last visited 23/3/2023
 20. Sharma A. "Supreme Court Speaks up on Land Acquisition", *The Wall street journal* <http://blogs.wsj.com/Indiarealtime/2011/06/28> last visited 15/8/2021
 21. Op. cit, Nicholas K. Tagliarino, 11.
 22. Fern FAO interview 7 and 13, 2015. www.fern.org visited on 26/may/2023
 23. Curtis M. New Alliance, New Risk of land Grab: Evidence from Malawi, Nigeria, Senegal and Tanzania" Action Aid International Secretariat, Johannesburg, 2015 www.actionaid.org last visited on 26/may/2023
 24. Action Aid International, "Assessing Implementation of the Voluntary Guidelines and the AU Framework and Guidelines for Land Policy: A toolkit Approach, 2017. www.actionaid.org last visited on 24th December, 2022.
 25. Joint Declaration of Intent on the Establishment of a G7 Land Partnership.
 26. Emmanuel Sulle, Ruth Hull. "International and Regional Guidelines on Land Governance and Land Based Investment: An Agenda for African States Policy Brief". Institute for Poverty, Land and Agrarian Studies, 2014. www.future-agriculture.org last visited on 24th December, 2022.
 27. Carlos Alessandro Castellaneli. "A critique of the Principles for Responsible Agricultural investment", *Mercator (Fortaleza)*, 2017, 16. available at <http://www.scielo.br/scielo.php?ing=en>
 28. Committee on World Food Security, "Background Document on principles for Responsible Agricultural investment (RAI) in the Context of Food Security & Nutrition: Zero Draft http://www.fao.org/fileadmin/templates/cfs/docs/1112/ra_i/ last visited on 25/1/2019
 29. Marco Marzano de Mariris, "Responsible Investment in Agriculture" *Farmletter, WFO E-Magazine*,2017:3:67. www.wfo-oma.org
 30. Op. cit Carlos Alessandro Castellaneli
 31. Carlos Alessandro Castellaneli, "A critique of the Principles for Responsible Agricultural investment", *Mercator (Fortaleza)*, 2017, 16. available at <http://www.scielo.br/scielo.php?ing=en>
 32. Samuel freeman. *Justice and Social contract* (Oxford University Press, 2007, 102.
 33. Op. cit, Emmanuel Sulle and Ruth Hall, 4.
 34. Principles for Responsible Agricultural Investment that Respect Right, Livelihoods and Resources, synoptic Version, A discussion note prepared by FAO, IFAD, UNCTAN and World Bank Group, 2010.
 35. De Schutter O. "Responsibly Destroying the World's Peasantry", *Journal of Peasantry studies*,2010:37:(4):631-660.
 36. Food First Information and Action Market (FIAN), "Land Grabbing in Kenya and Mozambique: A Report on two Research Missions and a Human Right Analysis of Land Grabbing", FIAN, Heidelberg, 2010.
 37. www.uneca.com last visited on 2/12/2019

38. Joan Kagwanja. "Implementing the AU Declaration on land issues and challenges: What Role for Parliamentarians. <http://www.iisd.org/pdf/presentation> last visited on 2/3/2019
39. African Union Declaration on Land Issues and Challenges in Africa, Assembly /AU/Ded.I(XIII) Rev.I
40. Land Policy initiative (LPI), "Implementing the AU Declaration on land issues and challenges in African: Engaging the Professional Community of Surveyors" FIG working week, 2013.
41. Op. cit., Emmanuel Sulle and Ruth Hall.
42. Principle 1.5 Guiding principles on Large Scale Land Based Investments in Africa, P.7 available at www.uneca.org last visited on 17/3/2021
43. Nicholas K Tagliarino. "Encroaching on Land and Livelihood: How National Expropriation Law Measure up Against International Standard," Working Paper, Washington DC World Resources Institutes, 2016, 11. <http://www.wri.org/publication/> visited on 28/12/2021
44. Thaddeus Chidi Nzeadibe, *et al.* "Integrating Community Perception and Cultural Diversity in Social Impact Assessment in Nigeria," *Environmental Impact Assessment Review*, 2015:55:74.
45. Akpofure EA, Ojile M. "Social Impact Assessment: An Interaction and Participatory Approach," UNEP, Training Resource manual, 213.
46. Federal Ministry of Environment/Office of Environmental Assessment Development. <http://ead.gov.ng> last visited on 29/12/2021.
47. Pradyumna P. Karan, *The Non Western World: Environment Development and Human Rights* (Routledge, 2004, 33.
48. Lorenzo Cotulla. *Foreign Investment, Law and Sustainable Development*, 2nd Edition (the International Institute for Environment and Development, 2016, 5.
49. Frank D. "Social Impact Assessment of Resource Projects" International Mining for Development Centre [http://www.ceccu-ug.org/resource centre](http://www.ceccu-ug.org/resource%20centre) last visited on 31/12/2021
50. Peter O. Adeniyi, *Improving Land Governance in Nigeria: Implementation of Land Governance Assessment Framework* (University of Lagos, 2011, 150.