



Scaling up Responsible Land Governance

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REALIZING SOCIALLY-RESPONSIBLE INVESTMENTS IN LAND FROM A GENDER PERSPECTIVE:
UNPACKING "ZERO TOLERANCE" TO IDENTIFY BARRIERS AND PRACTICAL STEPS TO ACHIEVE
EQUITABLE AND SUSTAINABLE INVESTMENTS

Leslie Hannay¹, David Bledsoe², Mina Manuchehri²

¹Resource Equity, Seattle, Washington, USA

²Landesa, Seattle, Washington, USA

leslieh@resourceequity.org

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Abstract

To be socially responsible, land-related investments must ensure that women and men are not harmed, are meaningfully consulted and give consent where their rights are affected, are fairly compensated for lost land and resource rights, and benefit equitably from the investment. Importantly, socially responsible investments should not contribute to “gender gaps” by systematically disenfranchising women or men. Realizing corporate commitments to socially responsible investments requires an understanding of and affirmative steps to address gender differences, yet companies may view addressing women’s issues as a step beyond their core commitments on land. They are not. Understanding the gender dimensions of their commitments to socially responsible land-based investments is a necessary first step for many investors to make good on their commitments.

To date, many leading agribusiness companies, notably Cargill, Illovo Sugar, Nestle, PepsiCo, the Coca-Cola Company, and Unilever, have made statements or commitments regarding land. This paper will analyze these companies’ public statements, commitments, and policies on land from a gender perspective in order to demonstrate what gender-sensitive socially responsible investments carried out under these commitments would entail, and to shed light on the challenges and pragmatic implications that such commitments present.

This paper will ‘unpack’ these companies’ commitments to socially responsible investments to analyze the challenges and concrete steps that are needed to realize a “zero-tolerance” commitment for both men and women affected by land-related investments in order to ensure that:

- Women are equal beneficiaries of investments in land;
- Economic and social practices that disadvantage women are not further entrenched by investments; and
- Women are not worse off as a result of such investments.

Key Words: gender, large-scale investments, women, social responsibility

Introduction

Heightened attention to the phenomenon of large-scale land-based investments (LSLBI), including criticism of companies and concern for the impact of land deals on local communities, has spurred the development of new international and domestic frameworks to provide guidance on how to achieve more responsible investments in large-scale land. Some multinational companies have responded to public pressure by committing to “zero tolerance for land grabs,” as well as to instruments such as the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT) and Free, Prior, and Informed Consent (FPIC).

Though it is well established that these deals are likely to impact men and women differently, and that pervasive discrimination and weaker tenure rights of women in the context of formal and informal land governance present a barrier for women’s participation in investments, efforts to understand and address these inequalities are few. The significant body of literature on gender inequality regarding land rights, however, highlights that LSLBI could magnify inequality and leave women worse off if companies do not explicitly address these issues.

With few exceptions, the recently adopted land rights policies and commitments of companies fail to explicitly commit to addressing gender issues in their supply chains, and provide insufficient clarity about how policy implementation will affect women’s land rights. Yet, in committing to “zero tolerance,” the VGGT, and FPIC, these companies are tacitly and explicitly committing to protecting women’s land rights. Companies risk public criticism if their land-related operations are shown to disenfranchise women. Through fulfilling such commitments to protect women’s land rights and by implementing processes to ensure equitable participation and benefit sharing by men and women affected by investments, companies can play a strong role in overcoming structural and historical inequalities that have disadvantaged women.

Through a detailed analysis of corporate policies and obligations affirmed or implied in the VGGT, and FPIC regarding women’s land rights, this paper will analyze company commitments and challenges to realizing socially responsible investments from a gender perspective.

Background and Rationale

Women’s Land Rights and LSLBI

Though there is a growing body of literature on the implications, impacts, and necessary responses to ensure that LSLBI are socially responsible and sustainable, the scholarship and analyses to date have

largely been “gender blind” (Daley, 2011) and there remains a gap in evidence and insight into the gender dimensions of such investments. There have been a few efforts to fill this gap (Bomuhangi et al, 2011; Behrman et al, 2011; Daley and Pallas, 2013), and a growing number of case studies examine the effects of land deals on men and women to inform the development of better, more inclusive deals.

Land deals generally involve the conversion of land use for economic gain, and often cause or are accompanied by increased formalization and privatization of land (Daley and Pallas, 2013). Such changes tend to impact men and women differently, and the importance of applying a gender perspective to understand these disparate impacts has been well recognized for several decades (Dancer and Tsikata, 2015). This deep experience provides an analytical basis for anticipating and addressing gender impacts along the investment lifecycle.

Defining ‘legitimacy’: Investors seeking to conduct their operations responsibly must respect the legitimate tenure rights of the men and women affected by the investment. Defining “legitimacy” poses challenges to investors, who must identify all different types of property rights, including secondary rights, and all property rights holders. Contributing to this challenge is that land rights are often not documented at all, or are only partially documented, and women tend not to be included on land titles (Doss et al 2011).

Particularly in customary tenure systems, though women may have land rights that are recognized by their communities, they have fewer recognized decision making rights than men, especially concerning alienation. It is important to note that in many customary settings, neither men nor women have the right to make decisions about alienation without the approval of the community. Investors must navigate these complexities, and must take steps to ensure that their obligation to consult with and respect all legitimate tenure rights extends to both women and men, and that fulfilling this obligation will likely require proactive measures on the part of the investor to seek out women’s participation and input where traditional norms and assumptions may exclude them.

The specific dimensions of women’s insecure tenure vary significantly from place to place, posing a further challenge to investors and others to identify and mitigate gender impacts to ensure socially responsible investments across their supply chains. Threats to women’s tenure security come from a host of sources, actors, and cultural and economic circumstances. Given this diversity, the question of how to ensure women’s land rights are respected can seem overwhelming, particularly for private sector operators seeking to comply with their corporate policies, among which land rights is likely just one among several issues invoking sustainability standards.

Assessing and mitigating risks: Assessing and mitigating social and environmental risks is a critically important step in the investment process. Investors may inadvertently exclude women because they do not see women as parties to the investment deal, or – perhaps more commonly – they expect a gender-neutral approach to assessing potential harms to be sufficient. Experience shows that if women’s needs and experiences are not explicitly taken into account, they are likely to be overlooked in the design and implementation of laws, projects, processes, and deals. Moreover, where investments result in a loss of land, research indicates that women are disproportionately affected, and that increasing pressures on land tend to further jeopardize and erode women’s relatively weak tenure rights.

To adequately identify and mitigate negative impacts for women, investors must set out to understand the different impacts on men and women, for whom current tenure issues and barriers to participation and benefit sharing are distinct. Failing to do so could violate women’s rights or leave women worse off.

Consultation, negotiation, and consent: Not only may investors face challenges in identifying the appropriate decision-makers within a community, but they may be unaware of or unable to penetrate traditional norms that impede broader transparency, consultation, access to information and meaningful participation to fulfill their commitments to uphold men and women community members’ rights to be consulted in and consent to land-related decisions.

Land governance issues in contexts of legal pluralism¹ also present barriers to women’s participation and benefit sharing from investments. In many jurisdictions, both the formal law and its implementation offer inadequate protections for women’s rights. This is crucially important: Behrman, Meinzen-Dick, and Quisumbing (2011) point out that the strength and distribution of land rights is one of the most important factors influencing who may participate in negotiations over large-scale land acquisitions, and who may make subsequent claims to any benefit streams.

Though there are examples of women leaders taking part in community decisions, women are largely absent from land decision-making, which tends to be the domain of male community leaders. Women are often not invited to meetings, or do not participate in the community discussion or decision-making (Doss and Pallas, 2013). As a result, women suffer disproportionate impacts from displacement, are paid little or

¹ “Legal pluralism” in the context of land tenure refers to the existence of different sets of rights, obligations, and adjudicatory bodies concerning land and property, e.g. due to the existence of both customary and statutory tenurial regimes. Though many jurisdictions formally recognize customary tenure while seeking to protect women’s rights under the Constitution, customary legal regimes tend to offer less tenure security to smallholder individuals and communities in the context of investments, and treat men and women differently with respect to land and property rights.

no compensation and consideration for their lost livelihood activities, and cannot meaningfully be said to consent to agreements (IDRC, 2015).

Benefit sharing and inclusive investment models: In terms of relative income poverty, women are income or cash poor in comparison to men. Women are also more likely to benefit less than men from any employment opportunities derived from land deals, as women on average receive lower wages than men, or are given only low-paying, unskilled or temporary work. In one case study from the Philippines, for example, villages sold land to the investor Vergara for shrimp farms, which resulted in the investor creating seasonal employment opportunities for the local men, but not for the local women. This land deal also resulted in the depletion of mangroves on which women depended for their livelihoods and food sources (Daley and Pallas, 2013). Similarly, in a case study from India, women lost 1,000 acres of land used for food production to support their families, but only three percent of those surveyed were provided paid employment to make up for this loss.

Accountability, monitoring, and enforcement: Ensuring that men and women can enforce the terms of the investment agreement, and can hold the investor and others to account where issues arise, is a critically important element of concluding responsible investments. Communication, education, and training activities play a crucial role in achieving project accountability objectives because they help support mutual understanding between the investor and communities and offer an avenue for identifying and resolving issues as they arise. Women may not be able to access the same modes and channels of communication as men. For example, women may not be included in community meetings. Women may also experience cultural or logistical barriers to accessing dispute resolution, and local or traditional dispute resolution bodies may not recognize or may discriminate against women's rights.

Understanding the way in which land-related investments can impact men and women differently is an important first step for investors seeking to realize their commitments to engage in socially responsible land-based investments. Land governance challenges, insufficient legal and procedural protections, and resulting disparities in distributive outcomes for men and women can mean that land deals will deepen inequality and further disadvantage women. On the other hand, investments present an opportunity to disrupt discriminatory processes and thereby reverse or remedy historical gender inequality (Anseeuw et al, 2012).

Global Response to LSLBI: Guidelines, Sustainability Standards, and Advocacy Campaigns

In response to global concern about the impacts of LSLBI, the United Nations and other stakeholders called for initiatives promoting responsible agricultural investments that minimize risk and support beneficial outcomes for local communities. These efforts have resulted in the development of instruments which aim to guide governments in developing laws and policies that both accommodate and promote responsible business conduct, and which provide guidance for the private sector to make investments that are financially, socially, and environmentally sustainable (FAO, 2016).

The two most notable standards for the purposes of analyzing corporate commitments on land are the Voluntary Guidelines (VGGT) and the principle of FPIC.² Together, these standards form the cornerstone of corporate policies on land.

The VGGT were developed by the Committee on World Food Security (CFS) to serve as a non-binding reference and provide guidance to improve tenure governance in the interest of achieving food security. The VGGT is the most widely embraced and best-known international guidance on land governance to date, and has been endorsed by governments, civil society, and the private sector. The VGGT are primarily directed at states, though they do contain provisions establishing roles and responsibilities of private sector actors.

A second key standard developed to address the issue of land rights in the context of land investment is the principle of FPIC. FPIC has developed over the past several decades through the international human rights discourse; its current form derives from efforts to protect the collective rights of indigenous peoples to self-determination and to their lands, territories, and other properties (Goodland 2004). FPIC is explicitly recognized in numerous binding and non-binding instruments, including the ILO Convention 169 and the Rotterdam Convention on Free, Prior, and Informed Consent (1998); FPIC was first specially applied to land in the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) (2007).

Importantly, FPIC has been elaborated in the International Finance Corporation (IFC) Performance Standard 7 on Indigenous Peoples (IFC, 2012).

² Additional guidelines on LSLBI continue to emerge. Notably, the CFS has recently developed the Principles for Responsible Investment in Agriculture and Food Systems (CFS RAI), which build on the VGGT and call out specific roles and responsibilities for business enterprises, donors, and financial institutions (secs. 50 and 48, respectively). Additionally, the New Alliance for Food Security and Nutrition, in coordination with land experts and multilateral institutions and donor governments, developed the Analytical Framework for Land-Based Investments in African Agriculture (the “Framework”) in 2015 to help investors ensure that their land-based investments are inclusive, sustainable, transparent, and respect human rights. Due to their relatively recent adoption by CFS (in 2014), the impact of the CFS RAI on corporate policies and behavior has yet to be demonstrated. The CFS RAI and Analytical Framework will not be reviewed in this paper.

In addition, a number of sector-specific sustainability organizations have adopted social and environmental standards, including Bonsucro, the Roundtable on Sustainable Palm Oil (RSPO), the Roundtable on Responsible Soy (RRS), and the Forest Stewardship Council. These standards require respect for the land rights of indigenous peoples and local communities.³ Most of the “Big 10” companies have also endorsed the UN Guiding Principles on Business and Human Rights.

Alongside these policy development efforts, civil society and media attention has pushed companies to adopt measures to address land rights issues in their operations and supply chains. As a result, a growing number of companies have adopted land-related policies to demonstrate their commitment to responsible commodity procurement and investment. These corporate commitments have not been fully catalogued, but a preliminary review of private sector policies depicts a spectrum of commitments, from formal legal compliance to fully embracing international standards including the VGGT and FPIC (Stevens and Bouma, 2015).

Among civil society and media efforts on this subject, the Oxfam Behind the Brands campaign is of particular interest, as it has been among the loudest voices in advocating for private sector accountability on land rights issues since the campaign began in 2013 (Oxfam, 2016). The campaign assesses the agricultural sourcing policies of the world's ten largest food and beverage companies⁴ and publishes a scorecard of corporate performance on seven human rights categories, including land rights.⁵ The scorecard considers companies' commitments to sustainability standards⁶ as well as their public statements and policies. The campaign has been largely responsible for the emergence of yet another corporate commitment, namely the adoption of a “zero tolerance policy on land grabs” in corporate supply chains.

The potential impact of policy changes across these ten companies on global land rights is huge. As the largest companies in the world, the reach of their supply chains is substantial; if implemented, their policies could set a new standard for commodity procurement. These companies are industry leaders,

³ Bonsucro adopts this standard by reference to ILO Convention 169. These sector-specific standards are important in articulating private sector commitments to accepted and best practices, and encouraging their adoption by actors in respective commodity supply chains. For the purpose of this paper's analysis, these standards are duplicative or complementary to broader corporate commitments to FPIC, the VGGT, and “zero tolerance,” and will not be analyzed here.

⁴ The ten companies included in the campaign are: Nestlé, Unilever, The Coca-Cola Company, PepsiCo, Mars, Danone, Mondelez, General Mills, Kellogg's, and Associated British Foods. (Oxfam webpage, n.d.).

⁵ The seven human rights categories include: land rights, women, farmers, workers, climate, transparency, and water. (*Id.*)

⁶ These include the RSPO, RTRS, and Bonsucro (Oxfam, 2013).

commanding the lion's share of key global commodities,⁷ and having the potential to set the standard for responsible sourcing of agricultural products across various sectors.

The complexity of these supply chains, however, complicates the task of meaningfully implementing such promises, and establishing who is responsible for upholding land commitments according to each company's policy and relevant international standards is not always straightforward. The amount of land that each of these companies directly holds varies significantly. In the case of Nestlé, for example, the company's direct land holdings are relatively small: the company does not directly acquire or lease agricultural land, only acquiring land for factory sites and demonstration farms (Nestle, n.d.). However, Nestlé – and the other 'Big Ten' companies targeted by Oxfam – are huge consumers of ingredients such as palm oil, soya, and sugar, which make up a large proportion of agricultural land being acquired in the current 'land rush' (Cotula, 2014; Nestlé, n.d.). In adopting land rights protections in its sourcing and auditing policies, Nestlé effectively extends its commitment to thousands of suppliers.

Though not representative of all companies with land-based agricultural investments, the corporate targets of the Oxfam campaign present interesting reference points for assessing private sector commitments on land. The core of these corporate commitments comprises support for the VGGT, FPIC, and 'zero tolerance.' The next section will analyze the land-related policies and statements of the "Big 10" companies from a gender perspective; the following section will discuss the gender implications of invoking these standards.

Private Sector Response: Corporate Commitments on Land

All of the companies targeted by the Behind the Brands campaign have adopted some form of land-related policy or supply chain guidance related to land. Among these companies, Nestlé, Unilever, Coca-Cola, PepsiCo, and Illovo⁸ have come out with the strongest commitments on land, while the others have

⁷ According to Oxfam, these companies collectively generate revenues of more than \$1.1bn a day, and control approximately 40 percent of the global cocoa market (Oxfam, 2013). Coca-Cola is the world's largest buyer of sugar (*Id*). Associated British Foods (ABF) owns British Sugar and Azucarera, and is the parent company of Illovo Sugar Ltd (see note 7 below); ABF accounts for 4.3 percent of global sugar production (Oxfam, 2013b).

⁸ Illovo Ltd. is targeted by the Oxfam campaign by virtue of its relationship to Associated British Foods (ABF), which owns a majority share of Illovo Sugar Ltd. Illovo is Africa's largest sugar producer, operating in six countries.

made more limited land commitments. Notably, even those companies with the lowest ranking have made commitments to adhere to FPIC, at least for certain parts of their supply chains.⁹

Nestlé

In June 2014, Nestlé announced a commitment to zero tolerance for land grabs and adopted the following company policies: 1) respecting relevant national laws and international human rights standards; 2) requiring adherence to FPIC for indigenous peoples affected by business operations; (3) supporting the VGGT and promoting their adoption by government and private sector partners; and 4) working with governments, communities, and farmers to strengthen land rights (Nestlé, 2014). This commitment extends to its suppliers: in its Responsible Sourcing Guidelines (RSG), Nestlé has promised to hold suppliers accountable to ensure that community land rights are respected, and has pledged to advocate for secure land rights more broadly. Nestlé’s RSGs also affirm its continued commitment to accessible and responsive grievance mechanisms and improved systems for maintaining communication with the public.

Compared to its peers, Nestlé’s land commitments convey a more nuanced understanding of the gender dimensions of its operations, and articulate direct commitments regarding women’s rights and roles in the supply chain (Nestlé, n.d.-a). In Nestlé’s Commitment on Land and Land Rights in Agricultural Supply Chains, it recognizes the importance of women’s tenure security for increasing farm productivity and household income, and improving health outcomes. Nestlé commits to working with governments, communities, farmers, and other relevant stakeholders to improve the effectiveness of land rights by “strengthening the recognition of land rights for men and women, communities and Indigenous Peoples with access to land but whose rights are not recognized and respected; and promoting the security of tenure for women whose rights under the law or in practice may not be equal to those of men in their household” (Nestlé, 2014 at 2). Nestlé further commits to monitoring and reporting on progress towards improving “the effectiveness of land rights of the men and women” in its supply chain (*Id*).

⁹ Among the companies called out in the Oxfam campaign, Danone, Mondelez, General Mills, and Mars have made the least comprehensive commitments on land. Danone and General Mills have only committed to adhere to FPIC in their respective sourcing of palm oil, while Mars likewise commits to uphold FPIC in sourcing of “some agricultural commodities.” (Danone, 2014; General Mills, 2014; Mars, 2014). Mondelez has not explicitly embraced FPIC, though it includes FPIC in defining land rights in its Responsible Palm Oil Action Plan, in which it also commits to buy palm oil from “legally held land; that ...respects human rights, including land rights” (Mondelez, 2014). Danone, Mondelez, and GM are all members of and supporters of RSPO principles. In its Supplier Code of Conduct, Mars incorporates the conventions of the International Labor Organization and other recognized standards, including the UN Global Compact, SA8000, OECD Guidelines, and UNGP (Mars, 2014).

These affirmative commitments on gender reflect Nestlé’s broader efforts to integrate gender into its business-related activities and programs to promote gender equality. These efforts are centered on the company’s cocoa supply chain, with plans to expand to other commodities, particularly dairy and coffee (Nestlé, 2014). The company’s efforts in its cocoa supply chain are grounded in the Nestlé Cocoa Plan (NCP), initiated in 2013 with the aim to strengthen Nestlé’s efforts to improve the livelihoods of women in its cocoa supply chain; its Rural Development Framework; and the progressive integration of gender aspects across its programs (Nestlé, n.d.- c; Nestlé, 2014).

Though distinct from the company’s commitments on land, in integrating gender policies throughout its operations, Nestlé has signified a change in how it understands and addresses women’s issues, including issues related to land rights. For example, the Cocoa Plan (NCP) 2013 included a commitment to gather data to assess the participation of women in its supply chain; women’s ownership of land was included as an indicator in this assessment, which was piloted in Côte d’Ivoire. The assessment found that women producers’ land is often registered under their husbands’ names, with the result that women had less of a voice in their cooperatives, and did not receive the benefits of participation (Nestlé, 2014). Though the ultimate outcome for women suppliers is as yet unknown, these steps suggest how Nestlé is working to realize its goal of integrating gender into land and other policies, and indicates that the company is working to identify and address impacts of women’s tenure insecurity within its supply chain.

Unilever

Unilever also made significant land related commitments and established the following company policies as mandatory requirements for suppliers: (1) undertaking due diligence to uphold the established land rights of individuals or Indigenous Peoples to property or land; (2) periodic training on FPIC for all relevant staff members; and (3) Establishing and implementing a zero tolerance policy for land grabbing (Unilever, 2014, secs. 11.1-11.4).

Unilever’s Responsible Sourcing Policy (sec. 11.6) identifies recognition of women’s land rights as an aspirational aim for suppliers. This aim is called out under the heading “Advancing to Good Practice” and as such is not a mandatory requirement of suppliers at this time. Unilever’s Human Rights Policy (2015) also reflects that the company is aware that women’s land rights require specific, direct attention in order for it to fulfill its land rights commitments, and acknowledges that “[a]n equally important element of respecting land rights is the right of women to land ownership and access to land, a right that has traditionally been favourable to men in many countries” (Unilever, 2015 at 43).

Unilever is a leader among companies for having an affirmative statement on women's land rights. Yet the explicit hierarchy of commitments in Unilever's policy highlights the current limitations in corporate practice around women's land rights: requiring "zero tolerance" for land grabs as a mandatory supplier policy does not yet require that women's land rights *must* be protected.

The Coca-Cola Company

The Coca-Cola Company was the first company to commit to zero tolerance for land grabs and adopt policies that: 1) require adherence to the principle of FPIC across its operations, including by suppliers; 2) require respect for the land rights of communities and traditional peoples; 3) commit 100 percent sustainably sourced sugarcane by 2020; 4) encourage industry-wide commitment to sustainably sourced sugar cane; and 5) advocate for governments and suppliers to contribute towards the elimination of land grabs (Coca-Cola, 2013).

Coca-Cola's policies on land rights do not mention specific commitments or measures to ensure that women's land rights in their supply chains are protected or acknowledge the potential for gender-differentiated impacts in their supply chain.

PepsiCo

PepsiCo's 2013 corporate Land Policy includes a similar set of commitments related to land. Interestingly, the policy invokes the IFC Performance Standards as it affirms "a zero tolerance for illegal activities in our supply chain and land displacements of any legitimate land tenure holders which are contrary to the International Finance Corporation (IFC) Performance Standards." The Policy defines a legitimate land tenure holder as "a person, family, community, or business with rights to the land or associated natural resources, whether based on indigenous rights, custom, informality, or occupation, regardless of whether the right is currently protected by law or formally recorded" (PepsiCo, 2013 note 1).

The Policy further requires that its suppliers "meet IFC Performance Standards, including FPIC, in their land acquisitions (including leasing and utilization)" (*Id.*), and promises that the company will advocate for the adoption and use of the IFC Performance Standards and VGGT in countries from which PepsiCo sources

Like Coca-Cola, PepsiCo's corporate policies and statements on land do not indicate that the company is aware of the potential gender impacts of its operations or the need to expressly assess and address risks to women's land rights in its supply chain.

Associated British Foods and subsidiary (Illovo Sugar, Ltd).

ABF has been called out by Oxfam as being among the least responsive companies on the land issue, owing to its minimal adoption of direct language or guidance on land rights and, perhaps, its relative opacity concerning corporate policy and implementation practices across its businesses. As of this writing, ABF's only public commitments related to land rights included its adoption of the FPIC standard in its Supplier Code of Conduct (ABF, 2016), and Illovo's rather more robust adoption of policies and guidelines on land, discussed below.

In 2015, Illovo promulgated guidelines on land and land rights committing Illovo to a zero-tolerance approach to land grabs and calling for its suppliers to do likewise. These land guidelines also espouse the company's commitment to broadly protect the land rights of others; embrace the commitment to obtaining FPIC when community and smallholder land rights may be affected; perform environmental and social impact assessments of planned land-related activities and plan to mitigate negative impacts accordingly; monitor and evaluate its own compliance and that of suppliers across its operations; and establish grievance mechanisms that enable local communities and individual smallholders to register and track complaints and claims against the company (Illovo, 2015).

Illovo's commitments on land render an assessment of ABF's commitments difficult: taken on its own, Illovo's actions demonstrate a significant commitment to land rights, yet the rest of the ABF brands and businesses remain silent on the issue of land. Despite Illovo's relatively expansive commitments, the company's approach is 'gender-neutral' and does not expressly take on a commitment to ensure that women's land rights are protected through the implementation of its policies and operations. In advancing its efforts to meet its commitments, it has recently publicized a Road Map aimed at making good on its obligations. Road Map activities include formation of an advisory Roundtable that includes outside gender and land expertise and public donors that have committed to the importance of women's land rights.¹⁰

¹⁰ In developing its Road Map, Illovo undertook an assessment of its Malawi operations from a land perspective, which included gender. Two of this paper's authors participated in that study.

Kellogg's

Kellogg's Global Supplier Code of Conduct confirms the company's commitment to FPIC and to respecting the land rights of affected communities across its supply chain. The Supplier Code establishes requirements for suppliers to: (1) Respect the land rights of women and communities affected by their operations and sourcing practices; (2) Ensure transparent reporting and disclosure of agreements pertaining to transfers of land rights; (3) Ensure fair negotiation on land transfers; and (4) adhere to FPIC (Kellogg Company, 2014). The Kellogg Company Palm Oil Commitment (2015) further establishes its commitment to resolve all legitimate complaints, and describes its plan to implement the Palm Oil Commitment by communicating the new standards to its suppliers, requiring that its suppliers trace palm oil to sources that are independently verified as legally compliant; and complying with all RSPO principles and criteria (Kellogg Company, 2015).

Kellogg's has been criticized as slow to adopt meaningful commitments and demonstrate its intention to carry them out across its operations and supply chain (Oxfam, n.d.). However, in explicitly calling out women's rights to land, the Kellogg's policy signifies an awareness – lacking in other corporate policies – of the importance of women's rights and a commitment, at least in principle, to ensure that its supply chain does not further disenfranchise women.

Kellogg's is an outlier in that it has demonstrated a fairly weak commitment to land rights generally, yet its rhetoric on land rights is among the strongest regarding women's land rights. There is little information available about how the company is implementing its supplier code, and in particular how it is working to enforce the requirements related to women's land rights.

Gender in the "Big 10" Policy Statements

Although these commitments signify a new level of awareness and intention to respect land rights, with the exception of Nestlé there remains insufficient attention to gender or women's land rights in company policy statements, and insufficient clarity about how women's land rights will be addressed through policy implementation. With few exceptions, these companies appear to be adopting a 'gender neutral' approach to understanding and fulfilling their obligations with respect to land and resource rights. However, realizing their corporate commitments to socially responsible investments requires an understanding of and affirmative measures to address gender differences. Understanding the gender dimensions of their commitments to socially responsible land-based investments is a necessary step if private sector actors are to deliver on their land-related policies, yet many companies may view

addressing women's issues as being beyond their core commitments on land. In affirming their commitment to the VGGT, FPIC, and zero tolerance for land grabbing, these companies are in fact committing to address women's land rights issues.

Gender in International Standards

As stated above, company commitments are rooted in global standards. In fact, these global standards convey both express and implicit obligations regarding women's land rights. These principles and guidelines explicitly build on and invoke existing state obligations under international law, including obligations related to the rights of women, such as those enshrined in the Universal Declaration of Human Rights, UNDRIP, and Convention Eliminating all forms of Discrimination against Women. Additionally, they call out specific protections and considerations for ensuring that women's rights are respected.

Though many international standards scarcely mention gender, and few have considered the gendered implications of land deals (Daley, 2011), the VGGT stand out in integrating gender throughout the guidance, and in concretely addressing gender issues in each of its thematic areas. FAO has also developed a technical guide on gender in VGGT implementation to support the implementation of this guidance on gender (FAO, 2013). In basing their policies on these instruments, companies are implicitly embracing a commitment to protect women's land rights.

The VGGT

The VGGT establish internationally accepted principles and standards to improve land governance and to support more productive, socially responsible, and sustainable land use. The VGGT focus specifically on land, largely describing state governance action with some general guidance for private sector behavior. Though voluntary, the VGGT explicitly refer to existing human rights obligations, primarily borne by states, and provide interpretation and guidance on how to implement them. The VGGT were developed through an inclusive and transparent consultation process finalized through intergovernmental negotiations, which gives them a high level of legitimacy and political weight (Munro-Faure & Palmer, 2012; Seufert, 2013). The VGGT represent generally agreed principles and standards for how states and non-state actors should act to improve land and forest tenure governance.

Although comprehensive, these principles describe idealized outcomes and do not provide prescriptive instructions for achieving those outcomes. A further challenge is that, to accomplish these land

governance ideals, states will require resources and capacity far in excess of present or soon to be seen levels (Bledsoe et al, 2015). The VGGT thus present implementation challenges in assigning duties to stakeholders, establishing specific requirements for stakeholder conduct, developing capacity of stakeholders to deliver, and ensuring compliance and enforcement (*Id.*).

Gender and Women's Land Rights in the VGGT

The VGGT explicitly address gender equality, marking an important improvement over previous international policy initiatives on land and investment, which either made only limited reference to gender or omitted it altogether (Daley, 2011). The consultative process that led to the creation of the VGGT included a focus on gender, and as a result the VGGT themselves acknowledge the importance of gender equality in land tenure and – supported by the publication of a technical guide on gender in VGGT implementation (FAO, 2013) – establish a strong focus on gender equality.

The VGGT promote gender equality in regard to tenure rights and access to land both through a cross-cutting implementation principle and specific articles outlining guidelines for ensuring that gender is central to VGGT implementation. The VGGT recognize equality between individuals and explicitly highlight women's equal tenure rights as compared to men (Sec. 3B, article 3 and 4). The VGGT further promote “positive action, including empowerment, in order to promote equitable tenure rights and access to land, fisheries and forests, for all, women and men.” (*Id.*)

The VGGT do not provide definitions for key concepts and obligations. They do, however, establish principles for implementation. In particular, Section 3B establishes a principle of non-discrimination, providing that “no one should be subject to discrimination under law and policies as well as in practice.”

The VGGT clearly state that responsible governance of tenure means that women must be equally involved in all activities related to tenure governance, including developing gender-sensitive policies and laws (arts. 5.5, 9.10, 10.1), land institutions and processes (6.1, 10.3, 17.3, 20.3), communication and awareness-raising strategies and methods (8.9, 15.9), monitoring (8.11, 15.8) equitable dispute resolution (21.1, 25.3), land based investments (12.11).

Realizing a commitment to VGGT thus means that both the processes and the outcomes of an investment should integrate an awareness of gender issues that is based on gender analysis, and should include policies, processes, and approaches to ensure that those differences included in project design and implementation.

Companies' Adoption of the VGGT

Because the VGGT have been recognized as a standard for responsible tenure governance, many companies have embraced the VGGT in their corporate policies and public statements on land;¹¹ some companies, notably Nestlé and Coca-Cola, have also committed to promoting the adoption of the VGGT by industry partners and governments, and to developing operational guidelines for the implementation of the VGGT by the private sector.

What does a company commitment to the VGGT mean?

The VGGT establish a framework that presents technical, high-level guidance, and companies may find that they lack the technical experience to interpret and implement their commitments vis-à-vis the VGGT. To address this capacity gap, several initiatives have developed guides to the VGGT that support private sector and government understanding and implementation of the Guidelines.

One such guide was created by the Interlaken Group/Rights and Resources Initiative (Interlaken, 2015). This guide clarifies private sector roles and responsibilities under VGGT and provides information for seeking additional guidance. The Interlaken guide stresses that in adopting the VGGT, companies are committing to comply with the VGGT in its entirety, and cannot adopt some articles and ignore others (Interlaken, 2015).

The Interlaken guide provides a useful breakdown of the priorities and commitments contained in the VGGT for corporate actors, which is summarized and slightly modified below.

Corporate and state actors supportive of the VGGT will:

1. Recognize and respect all legitimate land tenure rights

States and companies have a responsibility to respect and protect the legitimate land and forest tenure rights held by communities and households (Articles 3.1, 3.2, 4.5, 7.1, 12.4, 12.6). Article 3.2 elaborates the responsibility of companies to respect human rights and legitimate tenure rights by implementing due diligence and risk management systems, providing dispute resolution and grievance mechanisms, and assessing impacts on legitimate tenure rights and human rights (Interlaken, 2015).

¹¹ To date, Cargill, Nestlé, Unilever, Coca-Cola, Illovo, and PepsiCo have committed to supporting the VGGT.

The first step in respecting and protecting tenure rights is identifying rights and rights holders. This step is not straightforward in many places, particularly where pluralistic legal and tenure systems are present. Often, local understandings of gendered land rights are more complex than those to which an investor may be accustomed. (Bomuhangi et al, 2011). Both men and women in customary tenure contexts may report a relatively high degree of joint ownership of land, even though women's names are rarely on the documents, if any documents are available. Thus, an investor relying on titles to identify rights holders will often overlook women who have legitimate tenure rights and should be protected under the VGGT.

The degree to which a woman's land rights are legitimate, and therefore secure, depends on who recognizes women's interests in land as rights; that is, on whether and how her land rights are recognized by law, by custom, by her family, her clan, and her community. This is especially critical in the growing number of countries where formal laws guarantee protections for women's land rights that extend – at least in principle – to customary land. To produce improvements for women in practice, such formal rules must be recognized by the institutions and individuals that administer land rights in customary systems.

Another risk for investors is that they will ignore secondary use rights and thereby violate the tenure rights of community members – often women – to land-based resources. For instance, in many cases investments are taking place that have the potential to rehabilitate or improve suboptimal or underutilized land. Such land is often used for informal food and commercial crop production; investment could improve the efficiency of land use and could offer more economic value to landholders. These lands may be subject to overlapping rights or may be owned by the community. Yet, such areas often provide critically important livelihood opportunities for women having a recognized customary use right. If investors consider only the primary interests in determining what rights are at play, they may not realize that women have a stake in the land transaction or investment. Local household dynamics and cultural norms may further impede women from participating in an investment, or retaining the economic benefit of their participation. Such examples illustrate the necessity for investors to adopt a gender lens in order to understand the range of tenure rights at play, and the potential investment outcomes for both women and men.

2. Assess social and environmental impacts and Do No Harm

Article 12.4 suggests a definition of responsible investments as investments that do no harm, and that contribute to food security, poverty eradication, rural development, enhance social and economic development, and provide benefits to affected populations, including the poor and most vulnerable (Interlaken, 2015). As a first step, companies should hire experts to conduct social and environmental impact assessments, which assess the impacts that the investment will have on

tenure rights, food security, livelihoods, and the environment (Article 12.10) and systematically identify existing tenure rights and claims, as well as the rights and livelihoods of affected individuals through a consultative process that involves affected parties (Article 12.10).

Assessing the impacts on women can be complicated; assessing such impacts throughout the supply chain is even more difficult, further discouraging companies from addressing the impacts of their investments on women's livelihoods. These challenges may be amplified by customary systems that often disadvantage women in many areas of life, including land and property rights. Women's land rights are often vulnerable to changes in the family structure such as the death of her father or husband, or her husband taking a second wife; or to changes in her clan or community, such as changes in the leadership who granted her those rights. This vulnerability is often built in to customary systems, and is exacerbated by declining adherence to traditional protections for women in many customary settings today.

Land investments can shift land tenure dynamics, driving up demand for land and introducing new incentives and pressures as land is commoditized. Evidence indicates that, as land becomes scarcer, more limited conceptions of women's customary land rights are adopted and enforced, weakening women's land rights. In Uganda and Tanzania, for example, studies have shown that increased scarcity and competition for land can cause a breakdown in customary rules, especially those related to equitably managing communal land resources, resulting in a reinterpretation of customary rules that further weakens women's right to land (Dancer and Sulle, 2015; MISR, 2010). Such gender-differentiated impacts must be anticipated and factored into investment planning through its due diligence and risk assessment and mitigation activities.

When land becomes scarcer, the burden on women tends to increase as they have to work longer hours, and walk longer distances to farm and to collect water and wood for fuel. This added burden undermines productive livelihood activities and can lead to a fall in household income, creating a huge impact on women and their households (IDRC, 2014).

An investor must ask questions that expose differences in men's and women's experiences and potential impacts of the investment. These questions help to illuminate women's insecure land rights in a particular setting, and show the drivers, conditions, and participants in creating – or remedying – women's tenure insecurity.

3. Support broad based and informed consultation, negotiation, and consent

The VGGT recommend that contracting parties should guarantee broad-based community consultation and participation, and should provide comprehensive information such that all

impacted community members are informed in the negotiations, are assisted as needed in the development of capacity to negotiate, and are provided with professional assistance in the consultation process, as needed (Articles 12.9 and 12.11). Further, State and non-state actors should provide technical and legal assistance to facilitate community participation in the development of policies, laws, and projects in non-discriminatory and gender-sensitive ways (Article 9.10).

Customary tenure systems usually recognize women's interests in family or communal land but do not recognize women's decision-making rights and rights to participate in land governance decisions, especially concerning the right to alienate land (Bomuhangi et al, 2011). This is crucially important: the strength of land rights is one of the most important factors influencing who may participate in negotiations over large-scale land acquisitions, and who may make claims to any benefit streams and revenue sharing. (*Id.*, citing Behrman et al (2011)). Thus, if an investor does not explicitly invite or insist that women participate in consultation, negotiation and consent, they are unlikely to be involved. In many cases women require assistance in learning *how* to participate, even if they are included.

4. *Support benefit sharing and secure tenure rights of smallholders*

States should support smallholders, specifically through the promotion of investment models that create employment and livelihoods opportunities, and that do not result in the transfer of tenure rights to investors (Articles 12.2; 12.4; and 12.6) (Interlaken, 2015).

Women's exclusion from community discussions about land governance in turn restricts their participation in community consultation and decision-making about investments. This inequality can lead to unrealistic land valuation, failure to fully value foregone livelihoods options, and reduced overall compensation. Additionally, benefits from the deal are not shared equitably among men and women within communities (Daley and Pallas, 2013). Where they do participate in an investment, as participants in an out-grower scheme, for example, women often lose control of the financial proceeds of their efforts because their husbands control household finances and income.

When large tracts of lands are acquired, a related set of concerns may arise regarding valuation, compensation, and distribution of risks and benefits. Generally, better procedural protections yield stronger negotiation power for men and women within communities.

5. *Establish accountability and monitoring and enforcement mechanisms*

States and companies should be held accountable for their actions that affect tenure rights and food security. Effective monitoring and enforcement provisions, including appropriate dispute resolution and grievance mechanisms, are essential to upholding the intent of the VGGT (Articles 3.2 and 12.14) (Interlaken, 2015).

Women may face barriers to accessing grievance mechanisms, and dispute resolution systems may disadvantage women's rights through the application of discriminatory customary norms. Women may face logistical and cultural challenges to gaining access to grievance mechanisms. Multiple points of entry should be available, including face-to-face meetings, written complaints, telephone conversations, or e-mail.

Gender in Corporate Commitments to Support the VGGT

The above priorities combine to establish an expectation that when a company “supports the VGGT,” it is committing to undertake concrete measures to: assess tenure rights in areas where they or their suppliers operate; ensure the active participation of all affected men and women in negotiating land use or sales with companies and governments; respect women's rights to land and participation in decision-making and benefit-sharing related to land and forest use; support food security objectives; establish and implement accessible grievance mechanisms; prevent negative environmental and social impacts; and work with national and local governments to protect the legitimate tenure rights of host communities.

These commitments reflect a significant undertaking by companies aiming to comport with the VGGT. To fully realize each of these commitments from a gender perspective requires that companies first understand that impacts, conditions, needs, and barriers are likely to be different for men and for women, and then undertake measures to ensure that each commitment is fulfilled for both men and for women affected by their investments.

Free, Prior, and Informed Consent (FPIC)

Adoption of FPIC by the Private Sector

FPIC (Free, Prior, and Informed Consent) has been widely accepted in private sector social policies and supplier guidance materials in sectors including infrastructure development, extractives, agriculture, forestry, and conservation. All ten of the companies called out in the Oxfam campaign have stated that

they will apply the principle of FPIC to their operations, though Danone and General Mills restrict their application of FPIC to their palm sourcing policies (Danone 2014; General Mills 2015).¹² Importantly, standards for implementing FPIC are elaborated in the IFC Performance Standards (PS); these standards, and PS 7 in particular, are invoked in the domestic legal and policy frameworks of many host countries, as well as in the corporate policy commitments on FPIC of PepsiCo, Coca-Cola, and others. For this reason, the treatment of FPIC under PS 7 will be given special attention in the analysis below.

FPIC defined

Performance Standard 7 explains that there is no universally accepted definition of FPIC and no definition of FPIC is provided in Performance Standard 7. FPIC is a collective right that has been variously defined and interpreted over recent decades. Under international law, FPIC is recognized as a legal norm that imposes affirmative duties and obligations on States. FPIC has been defined as a “right” by UNDRIP and the FAO Policy on Indigenous Peoples (FAO, 2010). In the land tenure discourse, and in private sector policies, FPIC is commonly referred to as a “principle,” or as both a “right” and a “principle.” In addition, the policies of several international financial institutions require FPIC for financial projects that may impact indigenous peoples’ lands.¹³ This range of definitions reflects the fact that FPIC is both an end state and a process deriving from underlying substantive rights; FPIC serves as a standard that provides clarity to support the realization of these substantive rights. (UN-REDD Programme, 2013; FAO, 2014).

FPIC has evolved both in its definition and its application. FPIC is most clearly established in international law in relation to indigenous peoples’ rights. International law is less clear as to the legal status of individuals or groups who gain access to lands and resources through customary law, traditional inheritance, or other informal processes. However, the VGGT invoke the FPIC standard in requiring the “active, free, effective, meaningful and informed participation” and consultation with all those affected having *legitimate* tenure rights, including indigenous peoples and other communities with customary tenure (para. 3B.6). FPIC has also been applied to other communities locally affected by land and resource projects, or having a traditional or customary relationship to the land (CIEL, 2015).

¹² In the case of Danone and General Mills, company commitments to FPIC derive from their participation in the Roundtable on Sustainable Palm Oil (RSPO), which endorses FPIC as a key principle in its Principles and Criteria.

¹³ These include the International Finance Corporation (IFC), the European Bank for Reconstruction and Development (EBRD), the Asian Development Bank (ADB), the Inter-American Development Bank (IADB) and the International Fund for Agricultural Development (IFAD), as well as many financial institutions that have signed on to the Equator Principles, which explicitly endorsed the right to FPIC in project lending in 2012 (FAO, 2014). The World Bank review and updating of its environmental and social safeguard policies will strengthen the FPIC standard to require that consent is obtained (World Bank, 2015).

Companies' reference to the IFC Performance Standards in adopting FPIC is sensible: the Standards provide guidance to companies on how to identify risks and impacts, and "are designed to help avoid, mitigate, and manage risks and impacts" (PS 7, para. 1). From the perspective of guiding corporate policy, PS 7 provides useful guidance on using FPIC as a safeguard against social risk and as a cost-saving measure in establishing and maintaining a company's social license to operate. PS 7 does not define FPIC outright, but rather describes FPIC as an expansion on the process of Informed Consultation and Participation (ICP) described in PS 1. PS 7 further provides that FPIC is established through good faith negotiations with Affected Communities.

Under IFC PS 7, FPIC applies when a project is likely to have an impact on cultural heritage, land, and natural resources subject to traditional ownership or customary use, or involves relocation of indigenous peoples. This definition arguably expands the effect of FPIC beyond Indigenous Peoples to those holding legitimate rights to land.

Gender in FPIC

As with the VGGT, implementing FPIC means ensuring that the rights of both men and women rights holders are respected, and that those men and women receive the benefit of participation, consultation, information sharing, and decision making. The language of corporate commitments to FPIC is unclear with respect to how companies understand and will enforce FPIC, and do not explicitly recognize that adherence to FPIC means that they must guarantee the inclusion of women. Yet the processes that FPIC outlines are likely to only nominally include women or may leave women out entirely if specific measures are not taken to protect their rights of voice, participation, access to information, and decision making.

Free

"Free" means that consent is given voluntarily and without "coercion, intimidation or manipulation." (UNPFII, 2005). A free process is one that is respectful of the customs, expectations, decision-making structure, and time requirements of the community from which consent is being sought. Information is transparently and objectively provided, including through the procurement of services by a third-party expert or consultant. These attributes of free participation and consent are applicable to all affected individuals without discrimination, and regardless of gender, age, or standing (UN-REDD, 2013). A free process also includes appropriate venues, meeting times, protocols, formats and languages as determined

by the stakeholders. These elements of a ‘free’ FPIC process require particular attention and efforts to ensure that men and women are supported to meaningfully participate in the consultation, information sharing, negotiation, and decisions around an investment.

Though FPIC requires respect for culturally appropriate traditional decision-making structures, relevant cultural practices must be consistent with human rights, and they cannot be used to legitimize an inequitable structure. Thus, FPIC could be used to advance women’s tenure rights because it embraces both various procedural and substantive rights, and because the collective community protected by FPIC is made up of the men and women in the community (CIEL, 2015). Companies must therefore ensure that their systems of decision-making are genuinely representative and made in ways that are inclusive of, and accountable to, members of their communities.

Prior

“Prior” means that consent is sought sufficiently in advance of any activity or process requiring consent. (FAO, 2014) Importantly, for FPIC to be effective in protecting the rights of self-determination of communities in the context of land deals, “Prior” means at the “early stages of a development or investment plan” (UN-REDD, 2013), with time provided for communities and individuals to understand, access, and analyze information on the proposed activity. “Prior” thus includes a right of access to information, which should be provided when an activity, process or phase of implementation is proposed. Finally, the decision-making timeline established by the rights-holders must be respected, to allow sufficient time for them to understand, analyze, and evaluate the proposed activities (UN-REDD, 2013).

This element of FPIC poses significant challenges to investors, whose due diligence and impact assessment processes may only fully initiate once a deal has been signed, or once the land in question has been identified and some assurance that a contract will result from its efforts has been extended to the company. This is problematic because the shape of a project and the embodying contract should be the end result of an extensive process of consultation, information sharing, community organizing, social and environmental risk assessments, reconfiguration, mitigation planning, rights mapping, and contract development and agreement; in turn, these steps must include both men and women in the community.

One challenge that companies face more generally in implementing FPIC is that consulting communities takes time; women’s differing needs, schedules, and other time constraints means that reaching women, and meaningfully consulting with them, requires even more time. Most FPIC frameworks stipulate that communities should be given unlimited time to process project information, decide whether they want to

engage with project developers and then how, enter into negotiations, hold community discussions, and provide or withhold their consent. The FAO FPIC report acknowledges that this relative absence of time constraints could make the FPIC process unexpectedly timely and costly.

Informed

“Informed” implies that all relevant information about a proposed activity, including its potential social and environmental impacts, is provided and that the information is objective, accurate and presented in a manner or form that is understandable to the affected communities and individuals. Relevant information includes: (1) the nature, size, pace, duration, reversibility, and scope of any proposed project; (2) the project purpose; (3) potentially affected areas; (4) a preliminary assessment of the possible economic, social, cultural, and environmental impacts, including tenure impacts and potential risks and benefits; and (5) project procedures (FAO, 2014).

Women’s and men’s needs, habits, and opportunities to participate may mean that information about a proposed activity will have to vary in format, language, timing, and frequency in order to be understandable to both men and to women. Additionally, where men and women have differing literacy rates, a company must ensure that communications with community members are universally accessible. It cannot be assumed that men and women will share information with one another, even about important land-related issues or prospective projects.

Additionally, communities have a right to be informed about the potential social and economic risks, opportunities, and plans related to a project. It is important to allocate enough time to meaningfully engage both women and men in project activities.

The investor should ensure that women, in particular, are appropriately made aware of a proposed project and that both men and women community members and leaders receive information about the importance of men’s and women’s participation in decision making and of supporting women’s rights to land and resources.

Consent

The meaning of "consent" is more ambiguous, and is the most controversial aspect of the FPIC principle. For indigenous organizations, it is generally understood to mean that the affected peoples have the right to

withhold consent or to offer it with conditions. Good faith consultation and participation are key elements of obtaining consent; this consultation indicates that the parties must engage in a dialogue to discuss issues, and to develop appropriate and mutually beneficial solutions. Consent also requires mutual respect and full and equitable participation, including the participation of women and youth. (FAO, 2014).

To ensure that women's voices are heard, and that they contribute and consent to the terms of any deal, companies must take proactive measures to promote women's participation in project activities, including gender analysis, land tenure and social risk assessments, etc.; assessment and analysis reveal gender differences and disparities, and help illuminate the existing and potential impacts of investments upon women and men. These will provide the basis for pricing and integrating gender into project planning, activities, and deliverables, while gender analysis will support the creation of recommendations for implementing gender specific recommendations in the investment.

Gender Implications of FPIC through Application of the IFC Performance Standards

Gender considerations also pertain to investors' FPIC obligations through application of the IFC Performance Standards, which in addition to imposing requirements regarding gender integration and social inclusion provide that projects must undertake risk and impact assessment processes. Where such assessments identify impacts that are likely to "directly or differentially or disproportionately" affect individuals or groups because of their disadvantaged or vulnerable status, the project must propose and implement specific measure to mitigate such impacts so that the groups or individuals are not harmed and "are not disadvantaged in sharing development benefits and opportunities." (IFC PS 1, para. 12). IFC Guidance on the PS1 further elaborates the rationale for the prominent treatment of gender in the Performance Standards, and in the social risk assessments in particular. As Guidance Note 50 explains,

"Projects may have different impacts on women and men, due to their differentiated economic roles and their varying degrees of control over and access to assets, productive resources, and employment opportunities. There may be norms, societal practices, or legal barriers that impede the full participation of persons of one gender (usually women, but potentially men) in consultation, decision-making, or sharing of benefits [and that] ...may lead to gender discrimination or inequality. Gender differentiated impacts should be assessed and [the company] should propose measures designed to ensure that one gender is not disadvantaged relative to the other in the context of the project. This may include providing opportunities to

enhance full participation and influence in decision-making through separate mechanisms for consultation and grievances, and developing measures that allow both women and men equal access to benefits (such as land titles, compensation, and employment).” (IFC PS 1, Guidance Note 50).

As stated above, the Performance Standards provide guidelines for mainstreaming gender throughout a project, and requirements and guidance are specifically laid out in PS 1, 2, 7 and respective Guidance Notes, as well as Guidance Notes for PS 4 and 5. Of particular interest is guidance for PS 5 on Land Acquisition and Involuntary Resettlement, which identifies gender (and women-headed households in particular) as a factor in potential disproportionate impacts of displacement (Guidance Note 29), and establishes a project’s responsibility to ensure that women are not left worse off due to a project (Guidance Note 47). The guidance also encourages the enterprise to take proactive measures to elevate the status of women and promote more equitable treatment of women. PS 7 requires the client to employ gender-sensitive processes and to specifically consider women’s roles in the management and use of traditionally managed land and resources (Para. 14).

PS 7 guidance on FPIC states that the social engagement processes should take into account “the existence of patriarchal traditions and social norms...that may limit women’s participation in leadership roles and decision-making processes” and “the need to protect and ensure the legal rights of indigenous women.” (PS 7 Guidance Note 16). Note 42 further provides that competent experts should be engaged to carry out full social risk assessments when land use issues are identified in the initial risk screening phase.

The application of the above Performance Standards to corporate operations is, of course, not universal. However, in their land policy statements and other corporate commitments, companies have committed to applying the Performance Standards to implement FPIC and advocate for State adoption of the IFC Performance Standards.

The Standards are seen as best practices and offer interpretive guidance for carrying out risk assessments and due diligence, consultations, community engagement, and related FPIC processes (Interlaken Group, 2015). The magnitude of the IFC’s investments¹⁴ and their application in practice (if not by technical requirement) to land-related businesses lend the Standards considerable influence as constituting private sector best practice (Seck, 2014). The Standards are mandatory for projects receiving IFC financing.

¹⁴ IFC lending exceeds \$96 billion since its establishment in 1956 (Adeyemi, 2014).

Additionally, the World Bank, the Multilateral Investment Guarantee Agency,¹⁵ and a number of banks and financial institutions have adopted similar or even more stringent standards or the closely related Equator Principles.

Zero Tolerance for Land Grabs

“Zero tolerance” has been affirmed by companies in response to Oxfam’s Behind the Brands campaign, which demanded that companies make such a commitment to demonstrate positive policy setting on land rights. Though it conveys a sense of absolute commitment to corporate responsibility related to land rights, the “zero tolerance” language is not clear about what obligations it conveys to subscribing companies. The main challenge with this standard is in defining exactly what it means, and when it has been fulfilled.

- What is a land grab?
- What is a sufficient response by a company that is seeking to enforce a zero tolerance policy?
- What about legacy issues? Can a company establish a ‘clean slate’ cut-off point for acquisitions and behaviors that predate their commitment, or are they responsible for legacy issues?

These issues and ambiguities raised above may account at least in part for the reticence of some companies to engage with Oxfam or to embrace the specific language and policies that the Behind the Brand campaign demands. Of the ten companies targeted, six have yet to commit to “zero tolerance” (Oxfam, 2016). For example, ABF declined to develop policies that adopted the “zero tolerance” commitment, stating that they are already “hugely sensitive to the issues of land ownership” and that pledging to zero tolerance for land grabs is “cheap and plentiful” (ABF, 2013). Similarly, Kellogg has not embraced the “zero tolerance” terminology, but has developed progressive standards from the perspective of respecting and protecting women’s tenure rights.

The clearest interpretation of the zero tolerance commitment may be that companies adopting such a

¹⁵ The World Bank applies IFC’s Performance Standards (known as World Bank Performance Standards) to private sector projects supported by the International Bank for Reconstruction and Development/International Development Association (IFC, n.d.).

policy will comply with best practices in any acquisition of land and in land-based commodity sourcing, and will work to secure and maintain both legal license and an enduring social license. Social license can be earned through a combination of activities and behaviors, centered on timely and effective communication, meaningful dialogue, and ethical and responsible environmental and social behavior, all of which contribute to building trust and credibility by community members. Combined, these elements of “zero tolerance” correspond to compliance with and support for the VGGT and adherence to FPIC. At the core of the standard are the principles of inclusivity (people should have a say in the decisions that impact them); materiality (decision makers should identify and be clear about the issues that matter); and responsiveness which means ensuring that organizations should be transparent about their actions, and should communicate clearly with men and women stakeholders throughout – including well in advance of – the process of the investment. Although not a legally defined standard and one that is not explicitly required or prescribed by law, elements of social license—such as stakeholder engagement, issue resolution, and risk management—form the building blocks of FPIC and are required by many jurisdictions and investors.

Adopting such an interpretation of “zero tolerance” does not avoid the many challenges and questions that these standards pose as companies start down the long road of adopting and implementing measures to comply with their own policies. Local conditions, needs, and customs vary considerably and are often difficult for outsiders to ascertain, yet they have a significant impact on the likelihood that a company will successfully build social capital and trust. These regional and cultural differences demand a flexible and responsive approach and must be understood early in order to enable the development and implementation of an effective strategy to earn and maintain social license (Yates and Horvath, 2013). The strength of the zero tolerance commitment is that it conveys an unequivocal and proactive attitude on the part of companies; putting the attitude into practice so as to protect women and men in communities will require careful and express attention to gender, support from experts, and a long-term approach to engaging with communities.

Conclusion

Companies have committed themselves to protecting women’s land rights through their public statements and endorsements of international standards. In 2014, Unilever committed to creating greater “opportunities for women” through economic empowerment and livelihood improvement after recognizing women’s central role in “eradicating poverty and accelerating global development” (Unilever, n.d.). Nestlé committed to women’s empowerment through increasing their “participation in,

and contribution to, the value chain in a sustainable way,” as women’s participation “creates shared value” for both business and society (Nestlé, n.d. - b). The Coca-Cola Company and PepsiCo have also made similar commitments to women’s economic empowerment.¹⁶

Fulfilling these obligations is a complex matter, and is one that will require long-term commitments to understanding gender issues, and taking measures to account for gender differences to ensure that both women and men benefit from investments in land.

Companies that have made these commitments will likely face criticism if their land-based investments result in disenfranchising, instead of empowering, women. Companies should thus view land-based investments as opportunities to disrupt discriminatory processes against women by addressing the correlation among gender inequality, societal poverty, and the failure to respect, protect, and fulfill land rights for women. Strengthening women’s secure rights to land will empower them to reach their potential as citizens and as economic actors, and support empowered, productive communities.

Implementing corporate commitments to empower women is particularly challenging because promoting the rights of women tends to challenge cultural norms and power relationships within families, communities, and societies; the more difficult provisions are less likely to be enforced, or enforcement is likely to be selective. Though this risk pertains to the implementation of the standards more broadly, the elective nature of these guidelines and principles poses a particular challenge to realizing positive gains for women.

Failing to meet these standards will have real consequences. Not accounting for gender differences may leave women without a voice and potentially in a worse position than prior to the investment. Over the long-term, this failure could episodically erode the company’s social license and increase the company’s reputational risk.

Overcoming barriers to socially responsible land based investments calls for coordinated and sustained efforts by governments, investors, practitioners, and communities. However, even when the will is present to implement the gender-positive provisions of these standards, effectively doing so is likely to be difficult when stakeholders lack the knowledge and understanding of how to overcome gender inequality in a specific context. Because these instruments are not prescriptive, and are designed to address a range of potential scenarios and circumstances and be adapted according to the context and issues presented, users must determine how to fulfill them. Ensuring that an investment supports women’s and men’s full

¹⁶ See The Coca-Cola Company, Women’s Economic Empowerment, *available at*: <http://www.coca-colacompany.com/sustainabilityreport/we/womens-economic-empowerment.html>; PepsiCo, *Pepsi’s Commitment to Women*, *available at* <http://www.pepsico.eu/purpose/talent-sustainability/pepsicos-commitment-to-women.html>.

participation in consultation and decision-making and equitable benefit sharing thus requires careful attention to implementation. In settings where local customs, norms, and traditions prevail over formal laws, the impact of investments on women will depend not just on the quality and enforcement of national policies and legislation but also on the willingness of investors to recognize women's rights to participate in and benefit from transactions in land in spite of longstanding norms to the contrary. For each of the standards and guidelines, additional targeted efforts are needed.

A challenge underlying the global effort to establish standards for socially responsible corporate land dealings is that incentives are often not aligned to support ideal outcomes, and monitoring and enforcement mechanisms are weak at best. Where discrimination, historical economic disadvantages, and other deep-rooted impediments combine to challenge women's relative voice and agency within communities, the cost of achieving equitable outcomes for men and women within such communities may be prohibitive from an investment standpoint. Companies faced with this reality must evaluate whether to abandon a prospective project or to waver on adherence to best practices. In reality, companies will need to face such decisions on a case-by-case basis. Yet 'zero tolerance' would seem to imply a commitment to always uphold best practices no matter the cost.

Ultimately, companies can make a big difference in the lives of rural women by championing the importance of women's land rights in their social and environmental efforts. However, they need clarity and support in bringing about the intended positive results for women. This requires coordinated and sustained efforts by governments, investors, practitioners, and communities and additional research into how to protect and promote women's rights in the context of land-based investments.

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