



Global Donor Platform  
for Rural Development

## **Land Governance as a Corporate Performance Standard: Opportunities, Challenges and Recommended Next Steps**

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## LIST OF ACRONYMS

BHR	Business and Human Rights
CHRB	Corporate Human Rights Benchmark
COP	Communication of Progress
CSR	Corporate Social Responsibility
DFID	Department for International Development (UK)
EIU	Economist Intelligence Unit
ESG	Environmental, Social and Governance
FAO	UN Food and Agriculture Organization
FTSE	Financial Times Stock Exchange
GDI	Global Development Incubator
GDWGL	Global Donor Working Group on Land
GRI	Global Reporting Initiative
IFC	International Finance Corporation
KII	Key Informant Interviews
MSI	Multi-Stakeholder Initiative
NGO	Non-Governmental Organization
OECD	Organization of Economic Co-operation and Development
ODI	Overseas Development Institute
PS	IFC Performance Standards on Environmental and Social Sustainability
PwC	PriceWaterhouseCoopers
PWYP	Publish What You Pay
RAI	Principles for Responsible Agricultural Investment
S&P	Standard and Poors
UNGP	United Nations Guiding Principles on Business and Human Rights
USAID	United States Agency for International Development
VGGT	Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security

## EXECUTIVE SUMMARY

Global donors are concerned to increase the visibility of land issues within corporations so that operational decision making takes better account of land tenure rights and land governance. While some sectors, particularly extractives, pay close attention to land tenure concerns (as a result of many years of conflict across the world with local and indigenous peoples and NGOs), other sectors are only just beginning to think about how and when to engage on these issues. New commitments from consumer-facing companies such as Coca-Cola, Unilever and Pepsico to limit harmful land acquisitions within their supply chains is a welcome shift. However, more can and should be done to engage with companies to build knowledge of land issues and to work collaboratively to improve land governance outcomes, particularly in developing world countries.

Donors have a special role to play here. Donors have unique technical expertise, deep knowledge of country level issues, relationships with governments and with NGOs, and some degree of funding available to help companies address sensitive and complex land concerns. As a result, donors can serve as a trusted bridge between the many stakeholders involved in land governance. Through partnerships and outreach, research and trainings, convenings and communications efforts, donors can help companies navigate the often treacherous waters of land governance so that risks are reduced and positive outcomes increased for many groups, including local communities and vulnerable groups. Working with responsible investors, leading companies, and leveraged international organizations, donors can help to shift corporate behavior towards increased recognition of, and respect for, the legitimate land rights of local women and men.

By adopting the following strategies, donors can continue to raise corporate awareness of land tenure rights as an important, and in some cases material issue, one that deserves to be part of operational decision making on a routine basis:

Raise and expand awareness of land tenure and land governance issues

- Develop and support a coordinated social media campaign (in partnership with leading NGOs) that clearly articulates (using specific examples and “faces”) the social and environmental impacts associated with poorly managed/executed land-based investments under the assumption that increased public attention will raise demand among some consumers and responsible investors for improved corporate engagement and reporting on these issues.
- Convene a meeting in London or Washington of responsible investors from North America and Europe to raise and expand awareness of how issues of land tenure rights and land governance issues impact corporate sustainability and are connected to business and human rights issues, sometimes in material ways. An initial meeting can also be used to gauge support for (or against) a new land-based MSI and performance standards based on the VGGT.
- Develop targeted training materials for corporate staff (finance, risk managers, operations) and for responsible investors based on existing donor-supported land tenure guidance and the VGGT. Trainings could be developed with UN Global Compact and with UN PRI. They should raise the materiality of land issues, provide guidance on effective due diligence and community engagement as it relates to land tenure risks, and build capacity to provide grievance mechanisms to address land issues.
- Develop targeted training materials for Corporate and General Counsel that may provide Continuing Legal Education (or equivalent) credit and which could be developed in partnership

with the International Bar Association, which has a new emphasis on addressing the BHR issues that clients/employers face.

- Create an easy-to-use web-based platform that would provide much-needed and often disbursed land information (national/local would be most valuable) into the hands of responsible investors to promote understanding, share experiences and support capacity building to meet the expressed needs of companies for accessible, practical information.

Support and expand strategic partnerships:

- Work collaboratively with existing MSIs to strengthen their approach to land rights by aligning existing criteria and indicators explicitly with the VGGT in order to expand the number of firms incorporating best practices on land issues into their decision making and corporate reporting. Donors should consider developing model criteria and indicators that MSI can use to standardize approaches to land issues. In addition, donors should invite some MSI representatives to join or participate in Global Donor Working Group on Land (GDWGL) meetings to enhance learning opportunities.
- Continue to support existing land champions with needed technical assistance and research and through pilot projects. As appropriate, shine a public spotlight on efforts of champions to address complex land tenure issues. Working with existing champions, and through existing roundtable and other discussions, identify and cultivate new champions.
- Partner directly with UN Global Compact, UN PRI and other responsible investing initiatives to expand understanding of land issues as part of Business and Human Rights and sustainability agendas. These initiatives have thousands of members that are already working on issues that relate to land tenure and land governance, including creating more sustainable livelihoods for stakeholders, improving food security, and effectively addressing climate change. Donors can extend their outreach through strategic partnerships with these groups.

Explore opportunities to develop new platforms for actions:

- Collaborate with USAID's Global Development Incubator to conduct a deep dive assessment of the costs and benefits associated with developing a new land-based MSI that would work to implement the VGGT, expand best practice guidance, and improve land governance across multiple sectors.

With additional support and attention from the GDWGL there is good reason to believe that land issues can and will gain prominence in the operational decision making of more private sector companies. Handling these issues in a more responsible manner will help lower internal costs and costs of capital, reduce risks, safeguard reputation and brand and protect or secure a license to operate. The benefits of addressing land issues should outweigh the costs for many, though not all, companies. Donors are well positioned to help these companies develop skills and approaches to effectively address sensitive and often complex land issues.

## INTRODUCTION

Improving land governance and securing legitimate land tenure rights is a growing concern of governments, civil society, donors and some corporations. This is the result, in part, of alleged land grabbing, facilitated or perpetrated by governments, often in response to private sector demand for land and valuable natural resources. It also reflects a growing recognition that weak land tenure and land governance is a constraint to many development objectives, including fighting extreme poverty, supporting women's empowerment, increasing resilience and reducing conflict and fragility. For governments, weak land governance reduces the effectiveness of the business enabling environment and for companies it can raise significant financial and reputational risks.

Given the many risks associated with many land-based investments it is possible to frame land issues as being not only important, but in some cases of material concern in a variety of sectors from extractives (where this understanding is already advanced among larger firms) to infrastructure development, agribusinesses and tourism. Over the past five years NGOs and donors have worked to do just this, through advocacy campaigns that "name and shame" companies that do not effectively address land issues, by quantifying land tenure risks and by building the business case for corporate engagement. As a result, some firms have made commitments to respect land tenure rights but the numbers, to date, remain low.

This raises the question: how might the GDWGL help to increase the demand for corporate action to respect legitimate land tenure rights in such a way that corporate executives feel compelled to respond? Demand for change can come from consumers responding to "naming and shaming" campaigns (as with Oxfam's Behind the Brands efforts). Demand can come from the political sphere and take the form of new legislative or regulatory requirements that mandate particular behavior (as happens through national legislation that supports EITI initiatives). Demand can come from responsible investors that wish to see companies adopt more sustainable practices and/or practices that comply with recognized human rights principles. Demand can come from internal actors who wish to reduce costs, protect brand and reputation and attract good talent. Demand can also come from donors that ask their private sector partners to collaborate on land-based pilots and projects to achieve shared goals.

As one interviewee for this study pointed out, companies often face multiple triggers for action on an issue like land tenure and land governance. These triggers can be internal and external but "what really matters at the end of the day in a decentralized multinational corporation is what is happening on the ground. Will a business unit or strategic unit of the company face a challenge in their ability or license to operate unless they take a position, develop a strategy, project or program on the issue?" As this interviewee made clear, companies be most likely to address an issue if it has a significant impact on company operations, if there is a clear business impact and if the issue is relevant to the company. When these factors exist, the interviewee went on to say "this creates a need for corporate management to establish clear guidance on company expectations are on this issue, what standards are, and clarify expectations and the way the company will manage the issue, review and monitor." (BHRConsultant, 2015).

For some companies (e.g., extractives, some agribusinesses), land tenure risks do create clear business impacts but for others direct impacts may not exist and so demand for change may be less pressing. For

those companies where impacts are clear and there is a willingness to address land issues donors can support them by continuing to raise awareness and by partnering to achieve shared goals on pilots and other projects. These efforts can help improve skills and understanding and increase attention to land issues as part of operational decision making. But this study also asks: does there need to be a new performance standard for land supported by a new MSI, or are the IFC PS or other voluntary initiatives and reporting requirements sufficient to ensure that land issues will be addressed as part of operational matters?

For those companies where impacts of land acquisitions are less clear or are indirect another question this study asks is: what leverage points exist that would allow donors to raise awareness of the need to effectively addressing land tenure issues within companies? Responsible investors, corporate and in-house counsel, risk managers, operations and finance staff may be particularly well placed to raise the profile of land issues among executives – because of their focus on sustainability, risk management, community engagement and materiality. It may also be especially helpful to coordinate activities with organizations such as the UN Global Compact, the UN PRI, and existing MSIs to expand the dialogue around land issues by leveraging their existing platforms to provide training and other materials on land to their members.

Facing demand from various stakeholders to change behaviors in the direction of increased sustainability, a wide range of companies (some consumer facing, some not) have adopted standards, policies and practices that are designed to lessen negative impacts on people and places. There is good reason to believe that companies will incorporate land issues into their operational decision making if sufficient demand exists for them to do so.

## **Objectives of the study**

This paper explores the rise of the business and human rights agenda and related sustainability concerns, and the role that MSIs, particularly the Extractive Industries Transparency Initiative, have played in prompting corporations to support revenue transparency. In both cases, these effort have resulted in new issues being incorporated into the operational decision making of at least some companies. The purpose of this study is to help identify elements of a strategy that would place land governance at the heart of corporate operational decision making. The research is based on a desk review and Key Informant Interviews (KIIs) with individuals representing advocacy, institutional investor and corporate interests. Interviews were conducted on an anonymous basis so that interviewees would feel free to speak openly.

The paper begins by asking if a new land-specific corporate performance standard is needed to increase attention to land issues or if existing standards suffice. Creating such a standard, or further promoting existing standards, may help increase demand for corporate attention to tenure rights and land governance. Given time and resource constraints, this review is limited – focusing on several standards that currently do address land issues. After this, the study provides a brief discussion of how the landscape related to corporate responsibility is changing. Corporations are increasingly seen as being responsible for a wide variety of social and environmental impacts associated with their activities and the activities of their suppliers/partners. These changes create new opportunities for donors to engage with the private sector on the issue of land governance and land tenure rights precisely because the strength or weakness

of land governance institutions has such a pronounced impact on the lives, livelihoods and local environment of company stakeholders. By briefly reviewing the growth of the BHR and sustainability agendas the study draws lessons from these experiences that can be used to incentivize corporate leadership to address land issues. Next, the study reviews the development of the Extractive Industries Transparency Initiative (EITI) in order to understand how a standard on revenue transparency developed and the impacts of this effort on corporate behavior. The EITI provides an interesting model that might be expanded in Compliant Countries to address agricultural and forestry (which could help address problems of corruption in the land sector). The paper then identifies entry points, issues, and support that might be leveraged to increase demands for corporate attention to land issues. Finally, the paper concludes with a set of recommendations for donor action.

### **Is another corporate performance standard needed increase attention to land issues?**

One way increase corporate attention to land issues as part of operational decision making is to create a mandatory (or binding) requirement to address these issues. This can be done through legislation/regulatory means or it can be done through performance standards. This study notes that for some issues (child labour, conflict minerals, and human trafficking are just three examples) legislation requires companies to report on their how their activities impact people and places of interest. Beyond noting these examples this study will not explore the option of increasing demand for attention to land issue through the development of specific legislation or regulation as this is beyond the purview of donor agencies.

Performance standards provide another mechanism that can be used to create incentives to shift behavior. Performance standards provide a mechanism to encourage (though not assure) behavior change. [As a recent on-line post](#) on Environmental, Social and Governance (ESG) standards notes: “Since the introduction of eco-labels in the late 1980s, more than 500 ESG standards have been created in various sectors of the global economy, including several in the extractives sector. Some of the most widely recognized and adopted ESG principles and standards in extractives today are the IFC Performance Standards, the World Bank Environmental Health and Safety Guidelines, UN Guiding Principles on Human Rights, the Equator Principles, Extractive Industries Transparency Initiative, and International Council on Mining and Metals Principles.” Broadly speaking, these standards create principles and criteria that members adopt in order to reduce the risk of harms and increase the likelihood of sustainable outcomes.

For example, the IFC’s Performance Standards on Environmental and Social Sustainability (PS) are incorporated into a variety of project financing agreements, notably into the project financing of Equator Principles Financial Institutions. There are currently 81 such institutions operating in 36 countries (Equator Principles, n.d.). These financial institutions verify, through their due diligence, that a client’s activities comply with the requirements of the PS. This helps improve risk management and may reduce the potential for negative impacts on stakeholders. Non-compliance may result in the need to develop a corrective action plan or it could, potentially, lead to the termination of a financing agreement or other legal action.

A number of existing standards provide a different kind of assurance: by joining organizations such as the Roundtable for Sustainable Palm Oil (RSPO) or the Roundtable for Sustainable Biomaterials (RSB) private



sector members receive a certification that their actions comport with the principles and criteria created by the organization's governance body. Because firms that join these organizations must report on their activities, and submit to independent audits, this may help change behavior. If companies fail to meet standards' requirements they may lose certification or membership status (which can have market consequences). As critics have noted, however, these standards are typically voluntary and so companies that face pressure for failing to meet criteria can resign their membership: weak governance structures and weak sanctioning are cited as drawbacks of these systems (Goetz, 2013). Nonetheless, performance standards provide one possible option for increasing corporate attention to land issues. The next section provides a brief comparison several performance standards that address land issues and asks if a new land-based performance standard is needed to increase corporate attention or if existing standards can help achieve donors' goal of increasing corporate attention to land issues. If donors are interested in developing a new land-based standard a more thorough review of existing standards would be desirable.

#### *Which standards provide strong guidance on land issues?*

As noted above, the IFC's Performance Standards provide one important benchmark for actions related to the environmental and social impacts of land-based investments. PS 5 (Involuntary Resettlement) and PS 7 (Indigenous People) are particularly relevant for the land sector as they (in combination with PS 1) require companies to identify, manage and report on land-related risks (and other risks) by conducting environmental and social impact assessments (in some cases human rights impact assessments are advised), creating Environmental and Social Management Systems (ESMS), engaging with local communities/affected parties, and providing affected communities with remedy and redress. As with other performance standards, the PS provide a basis for performance measurements and so enable tracking of progress towards the achievement of certain results. They also require senior executives to receive required reports on a periodic basis.

The PS are widely used and are often incorporated by reference into a variety of project financing agreements. Companies may voluntarily adopt the PS (alone or in conjunction with other standards) to guide their project and investment activities. While NGOs express sometimes serious concerns that the PS do not do enough to protect communities from wrongful displacements, the PS represent the most widely referenced performance standard for land that currently exists.

The goal of the PS 5 (and for PS 7 also) is to avoid or minimize displacements (loss of land rights), forcible evictions, and adverse impacts associated with land acquisitions. The PS generally require companies to comply with national law related to these issues or follow PS requirements if these are more stringent. Under PS 5, companies must understand if and how a project will impact the tenure rights of local people/affected parties (both formal rights and customary rights). Companies operating under the PS are required to develop projects in consultation with local affected parties, taking the needs of women and vulnerable parties into account. They must develop communications channels with affected parties and create grievance mechanisms. Companies are encouraged to avoid (though not required to avoid) projects that lead to the expropriation of land and to involuntary resettlements. If it is not possible to avoid expropriation and resettlement the PS require companies to identify and compensate people for physical and economic losses. As appropriate for the particular investment, companies are also required to develop and implement resettlement plans, livelihood and biodiversity plans to minimize harms to

affected communities. The PS strive to ensure that displaced people are made no worse off and instead ex post are left in a comparable or improved position as compared with their ex-ante position. If the government with which the investor is working on a project lacks capacity the PS require companies to work to fill the governance gap, to the extent possible, and promote better outcomes on the ground. The PS do not apply to cases of voluntary market-based transactions and this can be a weakness. Local affected communities may lack knowledge or capacity to negotiate beneficial transfers of rights to use or access land.

The goal of PS 7 is to ensure that companies respect the recognized rights of indigenous communities, including rights to traditional lands. PS 7 requires companies to minimize the scope of traditional lands they use and understand and document the ways Indigenous Peoples use resources on their lands. PS 7 requires that companies ensure indigenous peoples understand their land rights and receive adequate compensation for any loss of land rights. PS 7 increases the responsibilities of companies to engage with communities by requiring that companies pursue Free, Prior and Informed Consultation (not consent) as part of an investment project.

In other words, these standards do much, but not all, that the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests (VGGT) recommend the private sector do to respect legitimate land rights. Companies that accept the standard presumably do so because the quid pro quo is worthwhile. But the PS do have limitations: some suggest the PS provide insufficient attention to human rights concerns (Gear & Kotze, 2015, p. 500). In addition, the PS are tied to particular projects so companies are not required to establish company-wide policies and practices on these issues, which may be a weakness. They do, however, require companies to establish targeted policies for projects that are being funded and so bring land issues into operational decision making. The PS have the advantage of being familiar to many companies as they have been in force for nearly two decades. There are numerous case studies that discuss how to apply the PS, so a body of best practice exists and they are widely accepted as a standard. If more lenders and investors required companies to adopt the IFC PS this would help ensure that more executives incorporated land issues into operational matters. Failure to do so could threaten to raise the cost of capital and harm brand and reputation. Donors could work with responsible investors to raise awareness of how the PS can be used to reduce land tenure risks and increase sustainability of some projects. Donors would want to be attentive to NGO criticism of the PS and support efforts to further strengthen best practice approaches to community engagement, monitoring and grievance mechanisms.

While there are benefits to donors promoting the use of the IFC PS (known quantity, no start-up costs), the VGGT could provide the basis for a new and more comprehensive land standard. The VGGT provide a set of high-level agreed-upon Principles and implementation guidance for governments, civil society and the corporate private sector. They have been incorporated by reference into international guidelines including (among others) the Principles for Responsible Agricultural Investment (RAI) and the FAO-OECD Guidance for Responsible Agricultural Supply Chains. The VGGT are also being incorporated into national legal frameworks and into donor programming, potentially further strengthening their impact. An expanding set of tools and resources now exist to help stakeholders implement the VGGT as a means of improving land-based investing. Some companies, including Cargill, Coca-Cola, Illovo, Rabobank and

Unilever, have endorsed the VGGT and are assuming responsibilities to promote better land governance. It is not clear, however, what the value of adopting the VGGT as a new standard would be unless it would lead to a new certification mechanism or would be tied to project or other funding. And to date there is very limited field-based experience of what it means to implement the VGGT.

There could be several reasons for this. First, many companies presumably look to the IFC's Performance Standards (PS) as the leading guidance on land issues; they may not be aware that the VGGT provide related guidance. For other companies, land may not currently be a central issue because it is not clearly a part of sustainability reporting requirements and/or is not an internationally recognized human right. As a result, companies may be less familiar with or less willing to engage on the issue. Some companies are willing to comply with the VGGT, but are not certain exactly what this means given limited implementation experience and unclear requirements for monitoring and reporting: the VGGT are still a "work in progress." This suggests that donors need to continue to work very closely with early adopters to create best practice case studies and champions that can advocate for usefulness of the VGGT. Donors should also create materials (even trainings) for responsible investors that build awareness of how the VGGT can help them meet their goals for longer-term sustainability of investments.

In order to encourage further uptake of the VGGT donors could a) work with existing performance standards organizations to ensure that criteria and indicators reflect the best practices outlined in VGGT; b) build capacity of companies to implement the VGGT; c) build capacity of responsible investors to demand that firms comply with the principles of the VGGT; and c) explore, through deep dive research, the costs and benefits of a new platform and performance standard to implement the VGGT. Given the risks and costs associated with the latter option and given the need to continue to raise awareness of land issues among companies, investors, and consumers, the timing may not be right for a stand-alone land-based MSI (this is discussed in more detail below). In the meantime, donors should continue pilot efforts to implement the VGGT and to road test the New Alliance/Grow Africa Analytical Framework (AF), which reflects the major principles of the VGGT. These efforts will help create a set of case studies of best (and worse) practice from which companies can draw guidance. But to have deeper impact, donors would need to help increase demand for the compliance with the VGGT – demand that may be limited without additional awareness raising.

Other performance standards also address land issues. They include the RSPO and the RSB. These certification schemes, like Bonsucro and the Forest Stewardship Council, address concerns related to the land rights of local people as part of their Principles (Bonsucro and FSC are not addressed here. A more thorough comparison of land-related standards would discuss their approaches - which some perceive as weaker than those of RSPO and RSB (Fortin & Richardson, 2013) - as well as approaches adopted by the mining/extractives sector). How principles are translated into criteria, indicators and actual implementation guidance varies across efforts however, they all share a similar structure: membership consists of a mix of NGOs, inter-governmental organizations and different private sector organizations that together work to develop standards/criteria and form a governing body. Members are subject to independent audits, conducted by third-party certifiers and certifiers are accredited to conduct these audits. This design may help improve accountability and increase legitimacy (though as some note,

auditors may be less likely to produce very critical reports if their ability to develop new business is adversely affected by such reports).

Fortin and Richardson (2013, p. 144) note that roundtables use at least two approaches to encourage companies to adopt their standards and change behavior: they provide a certification (eco-label) that supply chain partners and consumers value and demand, or they work to integrate certification requirements into legal and regulatory frameworks, so meeting public-sector demands (as happened for the RSB and Bonsucro with the EU's Renewable Energy Directive). Supply chain partners and consumers may demand (and be willing to pay for higher-priced certified goods) to achieve goals such as promoting environmental conservation and biodiversity, addressing global climate change or limiting conflict. It is not clear what the demand for a specific land certification would look like and donors may wish to conduct additional research to try to clarify this point.

The RSPO and the RSB address land issues to reduce social harms associated with the production of palm oil and biomaterials used to create biofuels. Companies in these large and disbursed supply chains face brand/reputational and financial risks associated with production that creates harms for local communities and local environments (Goetz, 2013, p. 201). The Roundtables may, therefore, mitigate or eliminate some risks by creating standards of engagement that encourage enhanced environmental and social impact assessments, improved community engagement and consultation, and that may help companies meet legal and regulatory requirements.

The development of palm oil plantations can, like energy and infrastructure projects and other agribusiness development, have negative impacts on local peoples and places. Palm oil production has been linked to serious human rights concerns in a number of countries (Skinner, 2013). To address these concerns, the Roundtable requires members to conduct ESIA's before operations begin and it has adopted and revised principles that call for members to respect customary land rights, acquire free, prior and informed consent (not consultation) of the communities whose lands will be used for projects, provide compensation for communities that relinquish lands, and refrain from using areas of high conservation value, which can include sites of fundamental community need and culturally valuable areas (Roundtable on Sustainable Palm Oil, 2013).

The RSPO also requires members to provide prior public notice of intent to begin a project – including sharing ESIA's. This allows NGOs and communities to, potentially, stop a problematic investment before it happens. Aggrieved parties can also use RSPO procedures to file written complaints against members that violate rules and principles. While this may be a benefit for communities, the RSPO has been criticized for failing to adequately address violations of criteria and principles. Self-governance may not drive robust enforcement of membership rules.

Despite the criticism, many companies may have incentives to comply with RSPO standards because certification provides buyers with some assurance that the products they are purchasing have been produced under acceptable conditions. This may reduce reputational and brand risks for these purchasers (which the Mars Company faced in 2014 for its use of palm oil that contributes to deforestation in some products). Loss of certification for one processing plant will result in loss of certification “for the entirety of its operations” according to Lomax and so may serve as an incentive for compliance (2015, p. 2). In

addition, some institutional investors have made a point of calling on members to adhere to RSPO principles and criteria as a means of combatting deforestation, reducing financial and reputational risks and better ensuring long-term sustainability (PRI, 2013). On the other hand, a 2013 opinion editorial in The Guardian notes that demand for responsible palm oil from consumers and from buyers has not been especially robust and so pressure on producers to shift behavior is limited (Balch) and the need to change behavior may also be perceived as not pressing.

The RSB also addresses land issues. Through its Principle 12 it requires members to “respect ... land rights and land use rights.” This means it addresses how members acquire land rights and how they should sustainably use land. Unlike the IFC PS, the RSB standards asks companies to forgo projects that require involuntary resettlements and projects that involve unresolved land tenure disputes (if disputes are settled and companies have acquired the Free, Prior and Informed Consent of communities then projects may move forward) (Goetz, 2013). This stronger criteria should provide additional protection to local people and communities however, this also depend upon the willingness of the RSB to enforce its provisions and de-list members that violate rules.

Another benefit of the RSB is that its standards address land users as well as land rights holders, so the standards are interpreted as applying to groups such as pastoralists, who use but don’t hold land and who are often overlooked by project developers and governments. This, together with its focus on FPIC aligns the RSB with important parts of the VGGT. In cases where communities lose land rights the RSB requires that they be compensated and that their livelihoods are replaced and their socio-economic conditions are improved (Fortin & Richardson, 2013, p. 147). As the RSB applies to a variety of crops they could, potentially, have broad application within the agribusiness sector. A drawback of the standard may be that the RSB does not take sufficient account of the likely claims of local people to “unused lands” and that the number of participating members (~120) remains rather small so currently its reach is limited.

Finally, as more stakeholders focus on the social responsibility of companies, other standards have been developed which touch, indirectly, on land issues. For example, the UN Global Compact requires firms that commit to adhere to its 10 Principles to “support and respect the protection of internationally proclaimed human rights,” which include rights to livelihoods, housing and property. The UN Guiding Principles on Business and Human Rights (UNGPR) also call on companies to respect internationally recognized human rights (these two efforts will be discussed in more detail below). Land rights, while not an internationally recognized human right are, in some cases, required to achieve other recognized rights. As more companies commit to these broader human rights and sustainability standards, there are opportunities to work with the groups that develop reporting standards to ensure that land issues are incorporated. Donors are currently supporting an effort by the Global Reporting Initiative to address tenure through its reporting framework. If stakeholders demand more transparent reporting on these issues and if reporting standards require companies to address tenure concerns, then many more firms will be required to (at a minimum) report on how their activities are impacting these rights.

This very brief review of land-related performance standards suggests that the widely adopted IFC PS, with their Environmental and Social Management Systems approach, do encourage client companies to address important land tenure issues in their operations. As noted by Case: “Formal EMS development and implementation is a substantial, organization-wide undertaking ... This process can have a

fundamentally transformative effect on a firm’s organizational architecture and culture ... the very nature of EMS design and implementation is to `embark on a prolonged and fundamental program [] of [organizational] change. Thus, a `fully operational’ EMS is expected to `exert a powerful influence’ over perception, actions and decision-making of managers and employees.” (2006, pp. 101-02).

The PS do not require company-wide policies on land nor do they apply to voluntary transactions (which, despite being voluntary may in some cases suffer from serious power imbalances and so may benefit from the application of standards also), but otherwise, they require clients to be sensitive to customary land tenure rights, women’s land rights and to the importance of adequately compensating local peoples for different kinds of harms they suffer from displacements. The IFC PS do allow evictions and displacements to occur, but they focus attention on mitigating harms associated with displacements and ensuring that resettlements leave people in a comparable or improved situation ex post. NGO concerns that the PS provide insufficient protection for communities and that grievance mechanisms are unwieldy mean there is room for donors to support efforts to improve PS implementation. It is reasonable to assume that if more lenders and investors require IFC PS compliance land issues will be further integrated into corporate decision making. Donors may wish to support targeted research that would look more systematically at the question of what would be needed to expand the use of the IFC PS to more companies in more sectors.

Membership in the RSPO and the RSB also encourages companies to develop a stronger understanding of land issues and to take action to limit harms to local people and places that come from developing property for these agribusinesses. The RSPO has a much broader membership base and it does cover an important supply chain; one where land-based harms have been substantial. Donor support to continue to strengthen the RSPO’s criteria and indicators could help improve decision making related to land among member organizations. The RSB, which does have strong criteria, and which covers more supply chains than the RSPO has a much smaller membership base and so does not provide as much leverage to shift company behavior as do the IFC PS or the RSPO. Despite these limitations, donors should develop a coordinated approach to engage with roundtables/MSIs on land issues. Donors may wish to develop model criteria and indicators to help standardize approaches to land issues and encourage behavior change across sectors and supply chains.

Performance standards provide one approach to increasing corporate attention to land issues. As several reasonably robust standards already exist that address land concerns, donors might wish to support the creation of a “model” set of criteria and indicators what would represent best land practices, reflecting the criteria established by the VGGT, and then engage directly with appropriate standards’ governance bodies to promote uptake of improved guidance. This may be a more efficient, less costly and less risky approach than creating a new stand-alone land performance standard and a new land-based MSI. Rather than enter a field with several existing players and compete with their efforts, donors may instead be better advised to collaborate with these groups to strengthen existing standard. As noted in a new report by USAID’s Global Development Incubator: while the report finds several examples of robust MSIs, it is very difficult and time consuming to create these organizations and they do not cover their own costs so funding needs are likely substantial (Global Development Incubator, 2015).

This study turns now to explore how corporate attention to human rights and revenue transparency have increased. It looks to the expanding uptake of Business and Human Rights (BHR) and sustainability

commitments and to the growth of the Extractive Industries Transparency Initiative as examples of corporate engagement on sensitive and political issues for lessons that might be applied in the land sector. A decade ago, corporate engagement on these issues was limited. Today, an expanding group of companies reference the UNGP or commit to adopt the UN Global Compact's Principles; more corporate leaders see these issues as critically important for sustainability. While the EITI experienced a slow start, it also seems to have matured into a platform for action that helps in many country contexts to increase revenue payments transparency. There are lessons the land sector can take from these experiences and adopt to increase corporate attention to land issues as part of operational decision making.

## A changing landscape

The contours of corporate responsibility are changing. As a result of demand from responsible investors and some consumers and based on a desire to better manage risks, private sector engagement on BHR issues is expanding. BHR issues are considered to be a part, or a subset of, a larger sustainability agenda that focuses on economic, environmental and social sustainability. BHR commitments focus on internationally recognized human rights while sustainability commitments may include these and other issues as well. Companies also increasingly commit to report on (or are required to report on; see here for a list of national level requirements to report on sustainability issues: <http://hausercenter.org/iri/about/global-csr-disclosure-requirements>) the sustainability and ESG impacts of their activities. ESG concerns overlap some BHR issues but address much broader concerns as well, including energy use, animal welfare, corporate governance, and executive pay – things beyond the scope of BHR (Park & Koehler, 2013). These agendas are, therefore, related and perhaps mutually reinforcing, but not synonymous.

A recent survey by the Economist Intelligence Unit (EIU) of 853 senior corporate leaders from a variety of sectors and geographies finds: “A large majority of executives now believe that business is an important player in respecting human rights, and that what their companies do-or fail to do-affects those rights ... 83% of respondents agree (74% of whom do so strongly) that human rights are a matter for business as well as governments” (Economist Intelligence Unit, 2015, p. 10). This uptake in commitments has been attributed by some researchers to the slow, deliberate, consultative and non-confrontational approach adopted to support development of the UNGP by Special Representative John Ruggie (Salcito, Wielga, & Singer, 2015). It is also driven by a shifting legal and regulatory environment, particularly in Europe where large firms are now required to report on their ESG impacts (Deloitte, 2014). Increasingly stakeholders including shareholders, customers, governments and civil society, expect that firms will assume responsibility for a wider scope of social and economic issues. Other drivers of these interrelated agenda include: risk management, concern for brand/reputation, loss of public trust in private sector firms, and commodity price volatility (Koehler & Park, 2013).

As a result, “companies are increasingly working with stakeholders to understand their views and concerns on various environmental, social, corporate governance and economic issues...and to incorporate and address those views and concerns in the company's strategic decision-making processes” (Noked, 2013). Closer engagement on these issues can improve management decision making, improve business intelligence and reduce risks, improve brand value and reputation and promote innovation and productivity. The development of the UN Global Compact, the OECD Guidelines for Multinational

Enterprises, the UN Principles for Responsible Investment, the Voluntary Principles on Security and Human Rights, and the endorsement in 2011 of the UN Guiding Principles (UNGPs), which had broad stakeholder involvement, has led thousands of companies to adopt policies to respect human rights and put in place practices that better ensure the sustainable use of resources (UN Human Rights Office of the High Commissioner, 2011). Donors are an important stakeholder in these processes and can help companies and responsible investors by raising and expanding awareness of how land issues relate, directly and indirectly to social and environment concerns and how weak land governance contributes to a variety of negative impacts.

In order to communicate on progress, firms are also changing the way they report on their activities. In the US, only 20% of S&P 500 firms reported on sustainability issues in 2010. By 2012 53% of firms were reporting on these issues (Noked, 2013). A KPMG survey of the top 100 firms in 41 countries found that 71% of these firms reported on ESG issues in 2013 v. 64% in 2011 (KPMG International, 2013). By including land tenure issues in reporting standards (as is currently being pursued by the GRI), companies would be likely required to analyze, at the enterprise level, if their activities create impacts for stakeholders, including impacts on livelihoods, food security, access to water, and biodiversity among others. This may not result in major behavior change, however. As Stathis Gould writes: “the good news is that mandatory and voluntary approaches have led to an increase in ESG disclosures across most jurisdictions. However, the big challenge remains providing meaningful and specific disclosures about material ESG issues. Increased reporting too often leads to boilerplate disclosure or too much disclosure on issues that are not central to the strategy and business model of an organization” (Gould, 2014). Donors can help by continuing to support research that makes the case that land-based impacts are material for disclosure/reporting purposes.

Firms are also adjusting their due diligence around investments and partnerships to better understand, assess and communicate about (disclose) potential impacts of their actions and to meet stakeholder expectations. One example is Coca-Cola’s new due diligence in its sugar supply chain. Danish dairy firm Arla has committed to improving its due diligence around investments that may harm small farmers when it enters African markets. And the UN Working Group on Business and Human Rights has also encouraged investors to file and vote in support of resolutions requiring businesses to conduct human rights due diligence (UN Human Rights Office of the High Commissioner, 2013).

Land issues, however, have received relatively little attention as either a human rights or a sustainability issue. The EIU survey looks at 11 different clusters of human rights and finds that the “rights related to land” cluster is perceived by corporate leaders as the least relevant to their business operations (see Chart 1 below):

#### **Chart 1**



For each of the following clusters of human rights, please indicate whether they are relevant to your business operations?  
 Relevant = Where your company's operations and actions could have either a positive or negative impact.  
 (% respondents)



Source: (Economist Intelligence Unit, 2015, p. 11)

A 2015 survey of over 400 sustainability professionals from 196 large multinationals finds that human rights, workers' rights and climate change are top priorities for business; while key issues of concern in supply chains include working conditions, supply chain traceability, raw materials sourcing, and supplier ethics and transparency (BSR/GlobeScan, 2015). Land issues are not featured at all – at least not directly – and it is not clear that they are an indirect concern. In a 2012 study, Preuss and Brown found of the 37 rights listed in the UN Declaration of Human Rights and which are included in UK legislation, the right to property is referenced in only 4.5 % of the corporate policies of FTSE 100 firms, as compared to 95.5% that address discrimination, 81.8% that recognize the right of association, and 77.3% that recognize the right to form and join trade unions (p. 296).

A recent Rapid Evidence Assessment by DFID sheds some light on corporate engagement on land issues. The authors find that while “most foreign direct investment (FDI) actors are aware of the need to accommodate local land tenure rights...[nevertheless] most large land-based investments are failing to take into account either legitimate local land tenure rights and/or local livelihood impacts” (Tanner, Scalise, & Mutema, 2015, p. i). A 2014 survey of 80 senior executives in food and agribusinesses finds that while the main legal risks for agribusiness are contractual issues (42%); the second major legal risks are land titles (27%), followed by enforceability issues (21%) (Norton Rose Fulbright, 2014). It is interesting to note that the report, though it finds land titles to be the second biggest legal concern says very little about this specific risk. So, while many firms are aware of land tenure issues they currently are not taking sufficient action to address these risks. Donors can help by continuing to pilot best practice approaches to implementing the VGGT, by developing best practice case studies and by working with MSIs to improve

criteria and indicators so that more companies have a clearer sense of what “good” land tenure engagement looks like. Businesses need to understand how to engage on this complex and often politicized issue. Donors can help by raising and expanding awareness of the issue, by supporting and expanding partnerships to improve implementation and by exploring opportunities to create new platforms for action that will improve corporate decision making and land governance.

## BUSINESS AND HUMAN RIGHTS

10 years ago few companies voluntarily agreed to recognize, respect and report on how their actions were impacting the human rights of their stakeholders. Today, there is a clear trend to voluntarily accept these obligations (though it is important to note that of the millions of companies that exist worldwide, just over 10% of the ~80,000 that operate internationally have signed on to the UN Global Compact, though others may have made other commitments (Institute for Human Rights and Business, 2011, p. 1)). A recent McKinsey report notes that “a growing body of evidence indicates that sustainability initiatives can help to create profits and business opportunities...leading companies pursue sustainability because it has a material financial impact” (Bonini & Schwarz, 2014, p. 5). As noted above, sustainability is one umbrella under which businesses often address human rights concerns.

This change has happened relatively quickly. In the 1970s, the UN created a Center on Transnational Corporations and the OECD issued its Guidelines for Multinational Enterprises. Researchers have noted “these attempts by intergovernmental organizations (IGOs) remained largely symbolic, however, as corporations and developed countries’ governments lobbied aggressively against binding international law” (Lim & Tsutsui, 2012, p. 71). In the 1990s, growing attention from NGOs, other civil society groups and government (in the wake of scandals related to child labour, sweatshop labour, and environmental disasters, among others) led to “increasing demands for companies to operate within human rights standards, drawn from international human rights law” (Institute for Human Rights and Business, 2011).

This attention prompted some firms to adopt codes of conduct and other voluntary commitments (industry self-governance). Industry self-governance, through MSIs such as the EITI, the RSPO, the RSB, the Forest Stewardship Council, and Bonsucro, has benefits as well as costs. On the one hand, these initiatives allow firms to solve collective action problems and develop and share best practices. The standards and criteria developed by MSIs may be more flexible than government regulations (a good thing if conditions are changing). On the other hand, companies can shirk commitments and/or may lack capacity to monitor and report on their impacts (Chatterji & Richman, 2008). In addition, some civil society organizations complain that industry self-governance contributes to greenwashing (NGOExpert1, 2015). Corporate standards, such as Rio Tinto’s Water Management Policy or Coca-Cola’s policy on land grabbing, create consumer and NGO expectations about how firms will operationalize commitments but commitments of this sort may not involve reporting against appropriate indicators and so may be less useful in terms of identifying how corporate actions are changing.

Piecemeal efforts sparked calls for international standards and guidelines. One such international standard is the UN Global Compact, which was launched in 2000. The Global Compact is composed of 10 principles that firms voluntarily agree to adhere to by aligning corporate policies, strategies and operations with universal principles related to human rights, labour, the environment and corruption

(United Nations Global Compact, n.d.). Companies report their actions to implement the 10 principles through Communications on Progress (COPs), over 30,000 of which have been filed since 2000. The Global Compact itself reports that “recent growth – both in terms of the sheer number of COPs submitted and their sophistication – is largely driven by demand from key stakeholders including investors, civil society, governments and consumers. COPs provide stakeholders with information to make informed choices about the companies they interact with and stakeholder vetting is a cornerstone of transparency and disclosure as a means of driving performance” (UN Global Compact, n.d.). Since 2005 the Global Compact has “named and shamed” firms that do not submit their COPs.

Other efforts help companies report on and measure their performance, and may thereby increase transparency. The GRI, cited above and created in 1997 by Ceres and the UN Environmental Programme, is widely used to report against Global Compact commitments. The GRI has developed a set of metrics and tools that allow firms to develop sustainability reports using Reporting Standards. The GRI “provides the world’s most widely used standards on sustainability reporting and disclosure, enabling businesses, governments, civil society and citizens to make better decisions based on information that matters. In fact 93% of the world’s largest 250 corporations report on their sustainability performance” (Global Reporting Initiative, n.d.). A 2013 blog post notes that “more than half of the S&P 500 companies publishing CSR reports use the GRI reporting framework,” to disclose information on economic, social and environmental impacts (Noked). By developing new indicators related to land tenure, the GRI will encourage more companies to track and report on impacts on stakeholders of how land is acquired and used. This should help increase attention to land issues as part of corporate decision making (if companies become more aware of impacts and choose to act to reduce negative impacts).

Reporting standards do have some noted weaknesses: they may devolve into “box checking exercises,” that result in “precise, but not necessarily relevant, data. As a result, indicators may draw public attention toward data and away from actual corporate behavior, preventing regulation from measuring what is important” (Sarfaty, 2012). Sarfaty also notes that “In the case of the GRI, issues that are easy to quantify, such as greenhouse gas emissions, are prioritized. At the same time, issues such as human rights and community impact are deemphasized through categorization as mere business risks” (this comment was made in reference to the previous version of the reporting standards). Hess raises similar concerns about sustainability reporting in a recent policy paper: “In short, corporations dissemble by selectively and strategically disclosing information, directing stakeholder dialogues towards reputation and risk management goals rather than true stakeholder engagement, and decoupling the reporting process from the corporation’s strategic and operating decisions” (2014, p. 5). Sarfaty’s recommendations to improve GRI reporting have particular importance for land issues. These include adopting outcome-based indicators that track progress over time to see if and how performance is changing and to reduce the role of accountants in design and verification of data while increasing citizen and NGO participation in the design of indicators and in the reporting process. Hess, on the other hand, suggests that the narrower reporting requirements of Sustainability Accounting Standards Board (which focuses on reporting through annual reports on issues of materiality to investors) may lead to more widespread eventual uptake (2014, p. 14)

While the Global Compact is important for broader sustainability purposes, the most important guide for corporate actions on human rights is the 2011 UNGP. The UNGP were endorsed unanimously in 2011 by the UN Human Rights Council after a six-year effort by Special Representative John Ruggie. Ruggie created a consensus-based, multi-stakeholder mechanism to operationalize the 2008 Framework for Business and Human Rights that created the “protect, respect and remedy” framework. The UNGP “operationalize” the Framework and propose practical guidance for businesses and for governments to reduce human rights violations and harms to stakeholders. The UNGP are being implemented at the national level through National Action Plans. Of note, the UK’s National Action Plan ties all UK investments anywhere in the world that are land related to the VGGT as recommended central guidance on performance. (Secretary of State for Foreign and Commonwealth Affairs, 2013).

The UNGP have been widely endorsed (by business and including the International Chamber of Commerce). Other initiatives, including the OECD’s revised Guidelines for Multinational Enterprises, the IFC’s Performance Standards and the VGGT all align with the Ruggie Principles. As a recent Report of the Working Group on human rights and transnational corporations and other business enterprises argues: “the Guiding Principles have become the authoritative global reference for preventing and addressing adverse impacts on human rights arising from business-related activity” (UN General Assembly, 2015, p. 4).

Several recent reports have looked at corporate motivation to engage on these issues. In a 2014 study sponsored by McKinsey, the authors found that managing risk is the major driver of engagement: 90% of respondents’ firms initially engaged because of a trigger event – including consumer pressure and rising commodity prices; 26% mentioned mitigating risks to reputation as a reason to engage and another 15% cited the desire to avoid regulatory or operational risks (Bonini & Schwarz, 2014, p. 12) as a motivating factor.

Another factor driving engagement is direction from corporate leaders. When executives push BHR and sustainability agendas, the firm follows. The 2015 BSR/GlobeScan report notes that “Growing engagement from leadership means that corporate sustainability is increasingly driven by internal factors, rather than external events” (2015, p. 7). For example, the EIU finds that in a majority of cases (44%) the CEO takes the lead in this area; then CSR offices (34%); Human Resources (24%) and Strategy (19%). This report cites Ed Potter, formerly of Coca-Cola on corporate engagement: “Such broad-based corporate involvement – with an active C-suite setting the tone and many corporate departments involved – is ‘the keystone of success’” (Economist Intelligence Unit, 2015, p. 16). A recent discussion paper issued by the Thun Group, also points to the importance of leadership engagement: “‘Tone from the top’ is important in gaining buy-in from other parts of the organization, especially when making explicit reference to human rights in a range of policies and integrating a human rights ‘perspective’ on decisions and processes” (Thun Group of Banks, 2014, p. 7). In a study of corporate engagement on EITI Schuler also echoes this observation: “The philosophy and behavior of top managers towards CSR activities cannot be underestimated. A litany of studies link senior management’s attitudes and behaviors towards CSR as critical to its extensiveness and effectiveness” (2012, p. 15). If we assume land issues can be analogized to CSR concerns then support from leaders is critically important to driving change.

Given the important role corporate leaders play in driving particular agendas and in addressing issues they support, donors should continue to identify and work with champions of land rights to develop operations level best-practice guidance (as donors currently as trying to do around implementation of the New Alliance’s Analytical Framework and with investor playbooks) and to provide expert technical assistance to champions to help them address land tenure risks across company portfolios (again, something donors are currently doing but might consider expanding). In addition, donors should develop case studies of good implementation efforts to highlight what works at the operations level to minimize or avoid land tenure risks. In each of these areas donors are already taking action to support corporate leaders. These effort will create opportunities to communicate publically (through opinion editorials, in journals and at conferences) about the important role corporations can play in addressing tenure concerns. Finally, donors should work with existing champions to identify and support new champions.

New legislative and regulatory requirements also drive corporate engagement. The 2013 report *Carrots and Sticks* finds a notable increase in the number of mandatory and voluntary reporting requirements companies face across 45 countries and regions: “Over the past 15 years, many governments have promoted sustainability reporting in varied ways, including via regulation for sustainability or Environmental, Social and Governance (ESG) disclosure, stock exchange rules, public procurement provisions, safety and health protection laws, financial regulation, political and consultative processes for building consensus, social institutionalized dialogue, and civil dialogue on approaches to effective regulation” (KPMG, 2013, p. 10). However, a PwC report on ESG issues for private equity firms finds that only 7% of survey respondents cite regulation as a driver for responsible investment activities, which suggests that it is not particularly useful as a driver for this group of investors, but may be for others (PwC, 2013, p. 9). And although reporting requirements are expanding, many countries, including the U.S., currently have no national ESG reporting requirements (Baron, 2014, p. 14).

Actiam, the Dutch responsible investment firm that manages over €51 billion in assets, issued a Land Grabbing Position Paper in 2014 with an aim of “promoting responsible manners of investment in the natural resources sector,” in order to enhance the positive potential of land-based investments. The firm frames land grabbing as a violation of its Fundamental Investment Principles, “particularly with respect to human rights and the environment.” It looks to its investees to create ESG policies that reference documents including the UN Declaration of Human Rights, the UN Global Compact, EITI, and sector-level guidance such as the RSPO, RSB, FSC and the Farmland Principles. Policies should include commitment to FPIC, to addressing the land rights of vulnerable groups such as women and indigenous peoples, and to providing information about how affected communities will benefit from revenues a project generates. Actiam recommends that investees include GRI or Global Compact indicators in their reporting and “to disclose all land related investments on both a country-by-country and project-by-project basis.”

Source: Actiam, “Landgrabbing Position Paper,” July 1, 2014, [https://www.actiam.nl/nl/duurzaamheid/Documents/Position\\_paper\\_Landgrabbing.pdf](https://www.actiam.nl/nl/duurzaamheid/Documents/Position_paper_Landgrabbing.pdf).

While the EU is driving adoption of sustainability commitments as a result of its Corporate Social Responsibility Strategy and Directive on company disclosure (ACCA, 2015, p. 10), reporting requirements are also being developed by middle and low income countries: Brazil, South Africa, Cote d’Ivoire and Indonesia all have sustainability initiatives though how effective these are may vary substantially. For some firms the threat of mandatory reporting creates incentives for voluntary compliance.

Yet another driver of corporate engagement on BHR, sustainability and ESG issues is responsible investors. Bonini and Swartz argue that “investors are increasingly comfortable with the idea of putting their money into socially responsible investment. In the United States, such investment grew by 486 percent between 1995 and 2012, outpacing the broader universe of managed US assets, which grew by 376 percent over the same period...Globally, more than \$13 trillion is invested in

assets under management that incorporate ESG metrics” (2014, p. 7).

Whether through the IFC’s Performance Standards, the UN PRI, or the Equator Principles, a growing number of investors are pushing firms to respect human rights by creating human rights policies, adopting human rights due diligence practices, conducting rigorous impact assessments and integrating findings from assessments into corporate functions and processes to reduce risks, increase long-term social, economic and environmental viability and improve returns. As the Institute for Human Rights and Business says: “Human rights due diligence is about value protection” (2011, p. 14). Integrating BHR and sustainability policies and practices may also help improve stakeholder satisfaction and allow firms to contribute to increasing important global debates on these issues (EY, 2013, p. 3). Donors can leverage this growing demand by supporting a research agenda that analyzes, for investors and companies, how implementation of the VGGT can help companies meet their BHR and sustainability commitments.

Despite progress in this area there are important challenges to fulfilling the promise of the UNGP. These include increasing uptake of the guidelines, improving data collection and monitoring of state and business actions and ensuring that effective grievance mechanisms are created to allow for meaningful remedy (UN General Assembly, 2015, p. 15). Here, a potentially important new effort is the Corporate Human Rights Benchmark (CHRB) project which will benchmark the top 500 globally listed companies on human rights policies, practices and processes. The Benchmark project is sponsored by several organizations and has recently closed a process of multi-stakeholder consultations. The goal of the CHRB project is to create incentives to improve corporate performance on human rights issues through a metrics-based ranking system. According to CHRB documents, this will: “make human rights performance easier to see and simpler to understand,” and help point the way to improvements, recognize good actors, create a positive race to the top, and create an evidence base for corporate accountability (Institute for Human Rights and Business/Calvert Investments/Business & Human Rights Resource Center/VBDO/EIRIS/Aviva Investors, 2015).

The relatively rapid growth of the BHR agenda which benefits from the rise of attention to sustainability and ESG issues, provides several important take away lessons that might be adopted by the land sector:

- It may not take very long to raise corporate awareness of and attention to land issues, especially if responsible investors are sensitized to the issue. Donors should actively engage with responsible investors to build awareness of the importance, and in some cases the materiality, of land issues through targeted meetings and joint sponsorship of panels and events, particularly in the BHR space where land issues may be underrepresented.
- Working and engaging corporate leadership on this issue will be vital. Donors need to continue to cultivate champions within the private sector by, as needed, providing business case and technical support for pilot projects to demonstrate how attention to land supports a license to operate, promotes positive stakeholder engagement and helps mitigate corporate risks. Donors should also work with existing champions to identify and support new champions.
- Creating sound metrics can help drive good action on land governance. Support for the GRI’s land tenure initiative is an excellent step. In addition, donors should reach out to the [Shift Project](#) to explore opportunities to partner and collaborate to include land governance in curricula for business learning and education and outreach.
- If the GDWGL adopts the idea of creating a new MSI on land the individual who coordinates activities will play a critical role. Research and interviews confirm that John Ruggie’s stature within the field and his non-confrontational approach to the development of the UNGP was extremely important in achieving broad buy-in and support for the process. The land sector would want to identify someone of comparable stature, who commands the respects of the many stakeholders in this sector and beyond, and who could work with tact and diplomacy to bring parties to agreement around a land standard while navigating political and other minefields. Having either the VGGT or the IFC PS in place may mitigate this need somewhat but would not obviate it.
- Significant barriers to operationalizing commitments exist. Companies do not necessarily understand what best practice entails in the land sector; they may not be familiar with the complex nature of land rights and they may not have policies and practices in place that would

allow them to identify and recognize overlapping rights and compensate the appropriate parties in case rights are compromised. Donors can help by continuing to support the development of guidance, playbooks, and case studies that demonstrate field-based, project-level best practices, by piloting approaches to improved land acquisitions that build on this guidance, and (as noted above) by supporting the refinement and adoption of practical land tenure/land governance metrics.

## THE ROLE OF MSIS AND THE EXPERIENCE OF THE EITI

MSIs provide another possible mechanism (in combination with performance standards) to increase corporate attention to land issues. MSIs are multi-partite initiatives that seek to overcome collective action problems and work on an agenda that disparate groups wish to address through coordinated efforts. As noted in a recent report by USAID's Global Development Incubator, the use of MSIs has proliferated over the past decade (2015, p. 1) and for good reason. When well crafted, and under the right conditions, the report finds that MSIs can achieve important results in complex areas. However, it also cautions that creating effective MSIs is a "high risk venture" and should be undertaken cautiously and at the right moment with a clear understanding of whether acceptable (and less costly/less risky) alternatives exist to achieve the desired goal.

As noted above, several important MSIs already exist that touch on land: the RSPO, the RSB, Bonsucro and the FSC among them, though none are solely focused on the public good of improving land governance. These MSIs do, however, provide guidance on how members should address land tenure and issues within the contexts of particular supply chains and so can help avoid or mitigate harmful impacts, but only to the extent that members are able to effectively implement policy and practice change, monitor impacts and provide effective remedies. Given that they operate under self-governance organizations, this may prove difficult (Fortin & Richardson, 2013).

Other example of an important MSI that addresses complex and politically sensitive issues is the Extractive Industries Transparency Initiative (EITI), which focuses on revenue transparency. If the GDWGL were interested in exploring the option of developing a new MSI focused on land it might look to the EITI as a possible model. The EITI was launched in the early 2000s by Revenue Watch and the Publish What You Pay (PWYP) campaign. The initiative's goal was to bring greater transparency and accountability to the extractives sector through the publication of material financial information. The EITI also seeks to reduce negative social and economic impacts, reduce corruption and conflict, and promote more equitable, sustainable development through the use of enormous revenues flows associated with the development of oil, gas and minerals deposits.

The core of the EITI is a Statement of Principles. These 12 Principles present high-level statements on the potential that greater transparency on revenue streams may hold to improve accountability and promote sustainable economic growth and development. Following their 2003 release, several countries expressed interest understanding how the Principles might be operationalized and four countries (Azerbaijan, Ghana, the Kyrgyz Republic and Nigeria) piloted the Principles. To support such efforts, in 2004 a Multi-Donor Trust Fund, administered by the World Bank with contributions from a number of donors, was created.



In 2013, the EITI adopted a revised [Standard](#) that requires companies to report on material payments on a project-by-project basis. Countries are required to report on the process for awarding concessions or licenses, identify license holders and report on sub-national level payments. In addition, payments made by parastatals to governments must also be reported (<http://www.saiia.org.za/opinion-analysis/the-new-eiti-standard-and-the-role-of-civil-society>). This new Standard also encourages countries to provide more useful information and companies to do more than submit a yearly report – and instead see the EITI as an important component in their efforts to engage with local communities and civil society and to acquire and maintain a social license to operate.

Today, the EITI includes 49 implementing countries: 18 Candidate Countries and 31 Compliant Countries (see here: <https://eiti.org/countries>). Companies agree to report payments to governments and countries have responsibility for enforcing reporting requirements. The initiative has experienced good growth since the launch of its revamped governance structure. This growth, which includes expansion to developed countries, suggests that the EITI now represents a global governance standard on revenue transparency—one implemented at the national level through legislation.

Some attribute this growth to the initiative’s limited focus: “Honing in exclusively on the extractive industry sector made the requirements for implementing countries manageable” (Lehmann, p. 8). Others point to the reputational and financial value that EITI membership brings to some governments: reconciling payments can bring substantial addition revenue into government treasuries. In addition, joining the EITI can signal that a country is fiscally responsible and is seeking to improve its business enabling environment (Moffatt & Haralampieva, 2014, p. 10). This may help reduce a country’s risk rating, attract foreign direct investment and may lower the costs of capital.

EITI is important for civil society because they gain access to previously unavailable information (Sovacool & Andrews, 2015). However, civil society will benefit most if they are able to engage in an effective and meaningful way, free of undue influence and without fear of recrimination. In national level EITIs and at the global level, civil society can voice the many human rights, fiscal and environmental concerns that are typically associated extractives development. In some countries, EITI has helped to build civil society capacity to engage and monitor government and the private sector – a governance benefit.

Extractive companies may benefit because EITI “creates a more broadly supportive and secure operating environment” (Runde, 2014). When the operating or enabling environment improves, risks are lowered and governments are better able to meet the needs of citizens (which may lower some expectations for companies to play this role). By participating they also gain “a seat at the table” and provide a counterweight to CSOs in discussions that may lead to government regulation of their sector.

At least one national EITI – Liberia – also covers forestry and commercial agriculture, in part because these sectors are so important to the Liberian economy and because they have been closely associated with corruption, mismanagement and distrust (Rich & Warner, 2012), in addition to human rights abuses. Forestry products had, for example, been subject to international sanctions in the early 2000s because they were tied to funding for rebels in the civil war. Including these sectors in the EITI framework was seen as a way to serve important national goals, including tackling corruption, capturing more revenue from tax payments, and strengthening the post-civil war economic recovery. Since 2009, when Liberia’s

first report was published, information about payments from companies has allowed civil society and citizens to see the contributions that firms in these sectors make, through their tax and concession payments to the government, while also bringing to light suspicious payments or discrepancies in payments. This might provide a way to address corruption in the land sector and improve land governance.

In its most recent report, released on December 15, 2015, the Liberian government announced major increases in the revenue it receives from extractives (\$185 million v. \$110 million in fiscal years 2011/12). Agriculture's share of extractives revenue has risen to 25% of the country's total EITI-covered revenue. While this may imply that some accountability issues are being addressed, Sovacool and Andrews argue that Liberia's EITI "seems to have lost momentum after the country attained compliance status...the LEITI is weakly integrated into government day-to-day activities" (2015). And other reports argue that forestry concessions continue to violate local land rights (Paley & Siakor, 2015). It is, despite governance weaknesses in its organization, interesting that Liberia addresses agriculture and timber as part of the world of extractives. Donors should engage with LEITI to understand if and how these efforts are helping to a) improve land governance in the country and b) improve corporate behavior related to acquisition of land rights. Liberia's experiment may provide an entry for the land sector to engage with other EITI implementing countries to improve transparency around a broader set of land-based concessions.

So while the EITI may provide one model for a possible MSI on land, it is a model that should be investigated much more closely given concerns about its effectiveness and impact. These include the following:

- As is the case with other MSIs, the effectiveness of the EITI is limited by the institutional strength or weakness of the participating countries – weak countries that may need the EITI the most may be least able to implement its provisions, promote transparency and support meaningful civil society participation. (There are, for example enormous [challenges in Nigeria](#) (Garuba, 2015). Similar concerns would apply to countries that need to improve land governance.
- The EITI lacks an explicit Theory of Change (TOC). Transparency is a necessary, but not sufficient, condition for improving the governance of natural resources and improving social impact (Khadiagala, 2014, p. 13). Donors would want to articulate a clear TOC for any new land-based MSI.
- EITI has not contributed significantly to improving accountability (Scanteam, 2011, p. 26).
- The extractives sector, like the land sector, is politically sensitive. Without a high-level political commitment to engage, it will be very difficult to effectively implement the EITI (Scanteam, 2011, p. 23).
- The resource curse is the result of poor governance, not lack of transparency. Extractive projects should be allowed to move forward when governance improves, rather than allowing for projects then reporting payments (Visser, 2012, p. 5).
- In some countries civil society may not have the capacity or the independence needed to participate effectively (as in Ethiopia). This would also be the case for any new land-based MSI.
- Because it is a voluntary effort and because of how sanctioning occurs, companies face few repercussions for non-compliance or for insufficient compliance (Lehmann, 2015, p. 9).

- The EITI is a northern effort that is being pushed on southern developing nations.

Through its recent revised Standard, EITI is seeking to address many of these criticisms.

Much like the BHR agenda, the EITI/transparency agenda has also grown through uptake and adoption of norms and principles. While both efforts are voluntary and, in the case of BHR, soft international law, both agendas are, to some extent “hardening” (EITI implementation is compulsory in Nigeria and Norway, for example, Lehmann 11). In order to avoid the rigidities and costs associated with harder national laws and regulations some firms may be willing to make voluntary commitments to increase transparency reporting.

Beyond the cases where EITI compliance is mandatory, the question remains does the EITI influence corporate performance? In a 2012 study of the why companies choose to join the EITI Schuler finds that engagement is a matter of cost/benefit analysis. The costs of EITI membership may be relatively low: firms pay a fee to join, support efforts to implement EITI in countries where they operate and publically declare support for EITI (Schuler, 2012, p. 3) and benefits of joining outweigh these costs. Membership may create some reputational benefits for companies, as they are perceived as helping to improve transparency and accountability. Schuler finds some evidence that these reputational benefits may make it easier for companies to gain access to home country politicians (2012, p. 11). And he also finds some evidence that companies that join EITI may be able to access credit from institutional investors at lower rates than if they were not EITI members (2012, p. 13). And for some companies, being part of a group that contributes to the development of public governance goods may be important. Research on the explicit impacts of EITI membership on corporate behavior, as opposed to reasons why companies might join, is limited however it seems that the demands of membership for enhanced transparency likely track demands that important stakeholders are making and so membership may reinforce other reporting requirements and represent a marginal, as opposed to a major cost.

But, depending upon the government’s perspectives in a given EITI jurisdiction, these actions may alienate public sector officials who can create a variety of problems for companies. And it is possible, Schuler points out, to burnish a company’s reputation without joining EITI. Consumers may not be aware of, and demand, EITI membership from companies and companies that are not consumer-facing may not feel pressure to respond to join, so EITI itself may not provide a major push to improve transparency reporting. And finally, if firms expend more time on EITI meetings (especially if senior staff are involved) then costs obviously rise, eroding the benefits of EITI membership.

For the land sector, the EITI experience does offer several lessons:

- First, it is important for donors to understand if there is a sufficient mandate to create a new MSI. EITI’s rather slow start up may reflect, in part, a limited mandate among various stakeholders. The mandate to address land issues is embodied in the VGGT (a multi-stakeholder effort) but it is not clear that a new governance body is being “demanded” to implement the VGGT. Donors should carefully assess, through targeted additional research, the scope of demand for a new MSI on land. Some host governments may support such an effort but others are likely, for political economy reasons, to oppose such a development (as some oppose the EITI). It is also not clear,

from interviews conducted for this study, the degree to which companies and NGOs would support the development of another MSI.

- Donors can work with the Global Development Incubator to conduct a deep dive analysis that applies GDI guidance on whether or not to create a new land-based MSI. This would help to clarify if the time and conditions are right for this kind of effort. For example, it seems that the land sector would benefit from additional support to strengthen a “burning platform” (2015, p. 16). To this end, donors should continue to support work that makes the case for why stakeholders need to act now on land governance now – as opposed to five (or ten) years from now. Why is it critically important to engage on this issue today? Particularly, donors should continue to support research that builds the evidence base related to the outcomes of land tenure interventions. Currently, this base remains limited and additional rigorous evaluation is needed to clarify causal connections between tenure interventions and development outcomes.
- Donors should articulate a clear and rational Theory of Change that would support the development of a new land-based MSI. What, specifically, is change that donors wish to see? Would this be enhanced perceptions of tenure security? Poverty reduction through more inclusive contracting with land-based investors? Enhanced food security? Would a new MSI be likely to generate the desired change? (ODI produced a generalized Theory of Change for a transparency initiative in its 2013 report; work can build off this study (Locke, 2013, p. 21)).
- MSIs need to measure change over time to demonstrate their impact. Whether donors support the development of a new land-based MSI or not, they should continue to support efforts to improve data collection and monitoring and evaluation methodologies in order to track progress on issues of importance – particularly the implementation of the VGGT. Unless data provided are robust, dependable and, if feasible, interoperable, it will be difficult to determine if progress towards the goal of improved land governance occurring. Overcoming this hurdle is essential – donors can help by creating model criteria and indicators that a variety of MSIs can use and by continuing to support The World Bank’s Land Governance Assessment Framework and its expanding data collection efforts.

In interviews conducted for this study, participants expressed a variety of views about the benefits of MSIs and the potential usefulness of a new MSI for the land sector. Some private sector representatives were broadly supportive of such an idea while others were opposed. One interviewee noted that: “It would be reasonable to look at something like a multi-stakeholder initiative with credible folks from high levels in different sectors to get behind this. [Paul] Collier supported EITI -- that got the UK government involved. EITI is effective because you get everyone around the table and that’s a pretty rare thing a pretty high level. The key is getting high level government officials...If government officials who are well connected to leaders participate then companies pay attention. If senior leaders or government representatives participate and are around the table to we know governments are taking this seriously. If governments are adopting legislation or rules around this companies will have to follow suit so it’s best to engage and help shape engagement” (CorporateCSRLead, 2015).

Another interviewee shared the value some investors place in MSIs: “[Our company] looks at whether a company participates in MSIs when we are evaluating firms. Depending upon the industry it’s more

critical for some than for others. There IS a growing number of MSIs, but at the end of the day the question for us is 1) is it truly multi-stakeholder? Does it include civil society and companies and governments? This is one level of assessment. But also: 2) what type of transparency is supported by the MSI – for us as investors this is critical. We make decisions based on what information is publicly available if this [a land MSI] supported an improved level of transparency this creates favorable conditions for us and for companies to talk openly about how they are managing certain risks and opportunities. And 3) what type of change is it really driving? In some industries we believe it's especially critical, in others it may be less critical and it may not be a make or break item in reviewing investments but we do factor it in ... On corporate side, an effort like this [a land MSI] might allow them to say 'we're working with civil society and the government to address these issues.' We evaluate an MSI to see if it is truly achieving some measurable improvement. If it is, this means partners may be equally contributing, but if not, this raises a red flag" (Investor1).

These comments suggest that a new land-based MSI might be helpful for institutional investors as a signal of enhanced responsible corporate behavior, which should limit a variety of risks and make investments more appealing. However, the nature and the goal of such an MSI would also be important: participatory processes that allow an airing on concerns from various stakeholders bring information out in the open about investments and practices and allow parties to work together to address these and, perhaps, avoid more significant costs associated with consumer backlash, work stoppages, litigation, etc. A venue like this could be a help in the land sector – an opportunity to share best practices and lessons learned about effective engagement on these complex issues. Much like EITI in Azerbaijan, however, it could be very difficult to create these conditions: countries would need to provide the space for civil society to engage and government actors would need to want to change how they address land governance (Sovacool & Andrews, 2015).

Other interviewees were less supportive about this kind of approach. One did not think that a multi-stakeholder platform on land was a good idea; better to expand conversations around land within other efforts and try to address and discuss issues in these platforms more holistically. This interviewee suggested that "what needs to happen is that you bring the Ruggie people together with the land people and try to shape what already exists in this direction – you need to understand who the right actors are and bring them together from all sides, including government" (CorporateBHR1, 2015).

A different interviewee said: "I always think there's value at working at the local or national level...it's hard to facilitate conversations between government, the private sector and civil society at the international level. Doing a multi-stakeholder platform on land sounds messy and complicated – it might be better linked to something else; there's a lot of platform fatigue" (CorporateBHR3, 2015). Another interviewee suggested that "Multi-stakeholder mechanisms work when they are filling a governance gap but there should be no reason why you should not jump right to a regulatory answer when there is not a governance gap. There is not a governance gap in the US and Europe so you could require companies to follow the VGGT and investors could place requirements on companies to follow the VGGT to gain their investments" (NGOExpert1, 2015). This interviewee went on to say: "there is growing skepticism about self-regulatory voluntary regulations among grassroots organizations. If donors suggest this they are likely to come under considerable criticisms – huge and coordinated – civil society needs to be a partner and be on board. It

won't go anywhere if it there are not meaningful grievance mechanisms and accountability for firms" (2015).

These insights suggest that an MSI may be a useful mechanism for developing a corporate standard on land, but other less risky and less costly efforts might also do the job. By supporting existing MSIs donors might accomplish much of that they would by developing a new land-based MSI. Given budget and personnel constraints the wisest action for the short to medium-term may be to support other initiatives and to do more research on the costs and benefits of new initiative.

The next section discusses a set of framing questions for the study. These questions provide further insight into practical actions that can be taken in the short, medium and longer-term to help develop a land governance standard.

## LEVEARGE POINTS FOR INCLUDING LAND RIGHTS IN CORE CORPORATE DECISION MAKING PROCESSES

In order to better understand how to shift corporate behavior so that land governance is incorporated into decision making this study investigated several framing questions. These included:

- What were critical entry points to access decision makers in the private sector?
- What arguments were provided to convince decision makers of the materiality of an issue?
- Through whom were message delivered and did litigation play a role?
- Was there a role of donors/development actors?
- What other external support influenced internal policies?
- What should be driven through international action or cooperation?

To answer these questions research was supplemented by KIIs with stakeholders from the private sector and NGOs. Private sector interviewees represented companies with investments in land or with suppliers that invest in land as well as institutional investors. Representatives of NGOs that were interviewed have direct experience with MSI and with the BHR agenda.

On the first question, responsible investors (those who self-identify as such or who join efforts such as the UN PRI) provide one critical entry point to access private sector decision makers. In a 2013 survey of 103 private equity firms, PriceWaterhouseCoopers found that while risk management drives most engagement on ESG issues (36%), investor pressure was the second most important driver at 24% (PwC, 2013, p. 6). Pressure may not come from responsible investors but these investors may have special interests in land issues as they relate to and touch on BHR and sustainability concerns. The report notes that "investors have been instrumental in driving the ESG agenda within private equity and one in four of our sample survey states investor pressure as the primary driver. But that figure does not do justice to the extent of investor concern. 85% of PE houses said that at least some of their investors have shown interest in responsible investing over the last two years" (PwC, 2013, p. 9). A more recent survey of private equity professionals (a different class of investor) had even more striking findings: major drivers of ESG programming in 2014 were pressure from limited partners (71%); environmental and social consciousness (63%) and risk management (61%) (Pitch Book/RR Donnelly, 2015).

Shareholder activists, some of whom are institutional and responsible investors, also are important actors that push for corporate behavior change. In the U.S., public employee pension funds such as CalPERS and CalSTRS have, since 2010, been increasing the annual number of proposals they introduce. Human rights, the environment and other social issues account for 28% of these proposals (Copland, 2015). A recent blog post on Harvard Law School's Forum on Corporate Governance finds that:

While their voting support remains far below the majority threshold, the volume of proposals on social and environmental policy issues rose to unprecedented levels in 2014. These requests represented the single most frequent subject of shareholder resolutions filed in the S&P 500 in the January 1-June 30, 2014 period (249 proposals, or 43 percent of the total filed at companies in that index) and more than one-third of the total submitted at Russell 3000 companies (288 proposals, or 38.3 percent). Widely diversified (ranging from political contribution disclosure to compliance with human rights and from sustainability reporting to the adoption of a climate change policy), these issues are pursued by multiple investor types, with the highest concentration among individuals (58 filed proposals in 2014), public pension funds (49 proposals), and other stakeholders like the Humane Society of the United States and the National Center for Public Policy Research (Tonnello, 2015).

In addition, trigger events can motivate private sector decision makers to engage on critical issues: For example, a 2011 study found that: "Many companies have embraced the human rights agenda because of specific incidents involving them or their industry, and due to external pressure.... An interviewee also pointed to the importance of "trigger" events: "Companies respond to multiple internal and external triggers but the ones that companies do much better with are internal triggers, meaning those that arise from the need for business strategies related to the competencies of the company. These are much more streamlined and easier for a company to handle and develop...If it's an activist trigger, from the perspective of the executive management this consumes time and energy from company resources that they would prefer to devote to developing a strategy on the issue. But where there is a reasonable, constructive external voice that says 'have you considered your positions in x, y and z countries and how this intersects with this issue?' this can be very helpful, especially when it comes from donors or some think tanks. We like to engage with these groups because they operate in the country and understand the social, economic and political issues we'll confront in that country" (BHRConsultant, 2015).

One interviewee noted, however, "there is no silver bullet on entry points; there's no particular model that will be right for every company so an 'all of the above' approach that is done strategically is best. On balance, it's most effective to have someone very senior to champion a particular issue. They are going to get more traction within the company than if it comes from a mid-level champion. And if a mid- to lower-level champion brings something forward it will take longer; they need to brief senior staff and build support, so it's more efficient to work with a senior-level person" (CorporateCSRLead, 2015). Another interviewee said: "you need to be able to identify internal champions because these people can determine if things [issues] move or not. Also, you need to be open to discussions with these internal champions. Some NGOs miss an important opportunity to move people internally and so miss opportunities to achieve their goal... NGOs empower champions by raising the profile of their issues so that they can go to boss and say 'hey, we need to do something about this issue,'" then the boss pays attention to the person" (NGOExpert2, 2015).

As discussed above, corporate leaders provide an important entry point: the EIU study segments out corporate “leaders:” firms that outperform peers on human rights policies. Characteristics of these “leaders” include greater likelihood of active CEO engagement on the human rights policy (59% v. 39% for non-leaders), respondents from “leader” firms were more likely so see human rights as a moral/ethical issue and were more likely to agree that respecting human rights goes beyond legal compliance. These leaders may be more likely to adopt a long-term view that ties respect for human right to the firms’ mission (2015, p. 17).

This suggests that donors should identify and continue to engage with private sector champions who are willing and able to push forward internal attention to land rights issues. These champions may need information to support their positions, either business case information (which may align with the pillars outlined in the box to the right) or technical assistance to demonstrate the benefits of addressing land governance concerns. Donors should work to support these champions with appropriate information on the benefits of engaging on land issues and, if desired by these actors, with public recognition for their work.

For companies that directly acquire rights to land, how land investments are managed is a critical issue – one that can directly impact project operations, making land tenure risk a potentially material factor.

As one interviewee said: “What really matters at the end of the day in a decentralized MNC is what is happening on the ground that creates a challenge for a business unit or a strategic unit of the company and their ability or license to operate unless the company or business unit takes a position, develops a strategy, project or program on the issue...Once they see it as a significant enough part of their operation it would be important then to develop a policy statement at enterprise level. Companies do this when it has business impact and relevance and this creates a need for corporate management to establish clear guidance on what company expectations are on this issue and clarity around standards and expectations” (BHRConsultant, 2015).

By addressing human rights issues (land is related to several human rights concerns) companies can prevent or mitigate risk in advance. In this way, “they start seeing human rights as a business opportunity through the effective management of risk” (Institute for Human Rights and Business, p. 12). For example, the EIU study ranks protecting brand/reputation as the second most important driver of corporate engagement on BHR issues (43%) and meeting employee expectations is tied for third (41%) with moral/ethical considerations (41%) (Economist Intelligence Unit, 2015, p. 5). In a study on supply chain accountability co-published by the Interfaith Center on Corporate Responsibility, Calvert Investments and Christian Brothers Investment Services, these responsible investors highlight that “developing a

A review of empirical research regarding the return on investment in ESG initiatives identifies five pillars of the business case for corporate sustainability:

1. Corporate investment in ESG enhances market and accounting performance
2. Corporate investment in ESG lowers the cost of capital
3. Corporate investment in ESG is a means of engagement with key shareholders
4. Corporate investment in ESG improves business reputation
5. Corporate investment in ESG channeled to product innovation fosters new revenue growth

(Tonello, 2015)



corporate-wide human rights policy is a critical first step” in addressing risks in supply chains but that “companies must develop a holistic and long term human rights due diligence process based on an analysis of company activities and relationships and how these affect people and their rights” (ICCR/Calvert Investments/Christian Brothers Investment Services, Inc., 2011, pp. 4-5). Coupled with independent audits and traceability programs, this diligence “demonstrates to investors that a company is taking steps to ensure that its suppliers are not participating, directly or indirectly, in human trafficking and that the company is effectively monitoring its suppliers” (2011, p. 7). By raising and expanding the awareness of responsible investors of the role that land governance and land tenure issues play in creating (or preventing) human rights concerns, companies may be more likely to incorporate these issues into their operational decision making. This may be the case if doing so helps create value. Bonini and Swartz note that: “According to research by Deutsche Bank, which evaluated 56 academic studies, companies with high ratings for environmental, social, and governance (ESG) factors have a lower cost of debt and equity; 89 percent of the studies they reviewed show that companies with high ESG ratings outperform the market in the medium (three to five years) and long (five to ten years) term.” (2014, p. 6). Or, if by taking these issues into consideration responsible investors are better able to manage investment risks.

As one interviewee pointed out: “in all these BHR issues reputational problems drive interest; civil society and external stakeholders are putting pressure on companies. Campaigns put attention on the firms ... Reputation was and in general it is a large driver. This relates to public perception: perception of the general public, or the common stockholder who might sell stock, or governments” (CorporateCSRLead, 2015). Another interviewee also supported this view: “why do companies respond to some issues? Their first reaction is because they are brand sensitive and activists put brands at risk with constituencies that matter – typically the public” (NGOExpert2, 2015). These insights would apply to consumer-facing firms – those, for example, that were sensitive to Oxfam’s Behind the Brands campaign or to campaigns associated with child labor (such as Nike and more, recently, Apple). For other firms, concerns “at the coal face” (or in the field as producers of raw materials) are more pressing and drive engagement on issues such as indigenous and customary land rights. Donors are currently engaging with some companies to help road test new guidance designed to reduce or eliminate land tenure risks and these kinds of engagements can build a body of case studies that others can then use to improve practices.

On the question of whether litigation drives company engagement on BHR, interviewees had somewhat conflicting perspectives. One said: “If you are going after the land grabbing issue then scandals and media attention and shareholder activism, or maybe an international petition, might be most useful. Local litigation is usually too time consuming and difficult, but maybe with the right set of circumstances, with the right court, lawyers, etc. it could raise awareness and set a focus on companies” (NGOExpert2, 2015). Another interviewee noted that: “Because it requires so much effort to move through this opaque [land acquisition] process maybe in this case litigation may motivate some to act differently” (CorporateBHR1, 2015). A different interviewee pointed out: “On litigation, it is a motivating factor to some extent if it’s believed to be a real, potential or even low risk. Specifically on land, we haven’t had any conversations about litigation driving action ... [however] there doesn’t need to be risk of litigation for there to be motivation for change” (CorporateBHR3, 2015).

Another interviewee said that: “Avoiding litigation definitely plays a fairly important role in companies’ thinking about company principles over all ... However, I don’t think it’s a central reason for companies to do sustainability projects. Many companies have big litigation budgets, they expect to get sued for all kinds of things and they have a belief that they are able to, and can engage [in litigation]. I don’t think companies look at issues that relate to corporate responsibility, including land, and think we’ll have a massive global lawsuit unless we do x, y, z. In part because the litigators are not on the front lines developing policies for the corporation. There will always be plaintiff’s firms and this part of cost of doing business. While CSR [offices] will mention this as a way to add value by avoiding litigation, it is not the thing that most drives companies” (CorporateBHR1, 2015).

Despite a growing set of drivers encouraging companies to align with BHR, sustainability and ESG agendas, firms still face challenges operationalizing commitments. Barriers include the following: C-Suite commitments may not reflect operations-level realities. Operations level managers have a strong understanding of local conditions and political nuances but may in some cases, face time/cost constraints to address complex land arrangements. Developing a strategy to identify all affected stakeholders can be difficult as some stakeholders are migratory. Negotiating with many stakeholders in culturally appropriate ways further increases short-term time/cost concerns. And for many, the government provides needed license or concessions yet government may provide conflicting or ambiguous guidance on how to acquire rights. Just gaining access to clear, up-to-date legal and regulatory information can be a challenge.

Another important challenge for business is a lack of financial incentives to engage on these issues. Few executives have compensation tied to achieving BHR or sustainability goals. Coupled with a reported lack of key performance indicators and short-term earnings pressures, executives may be missing some of the tools and incentives they may need to commit more time and attention to these issues (Bonini & Schwarz, 2014, p. 10). Donors should provide a web-based platform with tools and other materials that companies and investors can use to assess land tenure risks and improve project-level operations.

Interestingly, in a recent publication, Ruggie and Sherman cite a survey of 40 general counsel which finds that lawyers find it difficult to address BHR issues because “human rights issues can be hard, complex, messy and carry significant reputational risk for an organization—many times without clear guidance on how to manage or navigate through them” (2015, p. 5). Given the particularly complex nature of land governance and land tenure rights, donors should work with leading law firms to provide outreach to general counsel to provide background information and/or trainings. Ruggie and Sherman point out that advising clients on soft law is less comfortable for lawyers yet, as states increasingly use soft law (such as the VGGT) to address complex global problems, lawyers need to familiarize themselves with these norms and provide advice on them. Donors can provide training in the form of Continuing Legal Education (or the equivalent) to General Counsel and other in-house legal staff to build awareness of and capacity to address land governance issues.

Other important barriers include a lack of understanding of human rights responsibilities, lack of corporate funding to support these activities, lack of training or education of employees, and inconsistencies between national law and international standards. To better address human rights challenges, the EIU report notes that companies want “public benchmarking of company performance (39%) and access to reliable, independent information on country-level human rights situations (32%) 30% would prefer for

policy makers to “make human rights due diligence a legal requirement for business” (Economist Intelligence Unit, 2015).

One interviewee, who is a BHR expert, noted that on land issues, “People often get it at the top and bottom of the firm, but supervisors not so much. They need to run an operation and practice on the ground is often different from intent of the company at the top. Companies do not do enough training and don’t provide enough support to allow supervisors to become good stakeholder managers” (BHRExpert, 2015). Another said: “If you are thinking proactively, where land grabbing is part of backdrop but really you want to safeguard against future harms and build prosperity you would use different strategy: companies may not be the main driver – you need win them over that this in their long-term interest, exercise persuasion, work with local chamber of commerce, and step up reforms in particular countries. It may be in long-term best interest of firms to step up to this kind of issue” (NGOExpert2, 2015).

Donors can play an important role: Firms would like access to information about BHR in general, and are anxious for practical, up-to-date and reliable information about the de jure and de facto situation with regard to land governance, land laws and regulations, land administration practices and procedure and customary land tenure rights in countries where they or their suppliers operate. Donors can support the creation and dissemination of this kind of information. One interviewee noted: “Maybe donors can support efforts to provide national level land information. I also need to be able to talk to community groups in a way that builds trust and credibility. Can donors help with that? Maybe by supporting brokers/facilitators/moderators with the community? Donors can help thinking about what this could look like. Maybe it’s through a funding mechanism that is going towards another party, something like a pool to support NGOs, like the EU ad hoc committee on land – a framework that’s supported by donors” (CorporateBHR1, 2015). This interviewee went on to say: “We get confusing information from governments on land. It’s very tough to navigate the political dimensions of this issue. There’s a lot of gray...For each issue that has come up there’s so much conflicting information – maybe this is unique to land? For the affected communities there’s a deep anger and mistrust – how do you break this and try to overcome it with long-term objectives and vision. This is a very muddled space so it’s hard for some companies” (CorporateBHR1, 2015).

Another interviewee suggested that it’s best to “stay away from country rankings but it would be very helpful to provide companies with information: a factual statement of what is and is not in place in each country in relation to the legal framework for land...Often people don’t understand what you expect firms to do so you need to make it practical. No one would disagree that land tenure rights are important so what you really need to do is provide practical information and guidance. Sometimes, all that’s needed is a little bit of information about what’s expected of the private sector. With practical information and tools companies can factor these issues into their decision making.” (CorporateBHR2, 2015). A third said: “A go-to resource on land could be very useful. Land, like most other [BHR] issues is not necessarily well understood; it needs to be interpreted into a specific supply chain or context...It would be useful if you could provide practical scenarios and context-specific examples of what to do in a given situation” (CorporateBHR3, 2015). Work such as the Danish Institute of Human Rights’ recent country-level reports and the FAO’s and USAID’s country profiles might be more aggressively marketed to these audiences.

What other external support influenced internal policies? One interviewee pointed out: “in the last five years there has been a major shift where financial firms are not outsourcing sustainability issues, they are setting up internal shops and this attention gets high-level interest and attention from company leaders. If Blackrock asks what we are doing on land or on the VGGT, we will pay attention...if you put something on a proxy ballot, this really gets the attention of executives. You can use these to get on the agenda of sustainability raters or big funds, so that they are consistently asking what you’re doing about this. We think: `we’re getting all these questions; we should probably be doing something about this” (CorporateCSRLead, 2015). An NGO interviewee said: “The most effective actions in terms of changing behavior on the ground is to push on investors and get them to push on the companies. Sometimes you need to have already exposed a company before you can go to investors. Somethings it helps to have an on-the-record set of information or analysis; a bit of naming and shaming” (NGOExpert1, 2015).

On the issue of what should be driven through international action or cooperation, interviewees had some clear recommendations: “Donors are in the perfect spot to support multi-stakeholder dialogues to help resolve contested land issues; it’s hard to fund a funder for this. Business knows it goes beyond them so why should they provide the funding. Host governments often don’t have funds, so often you continue to have conflict because there’s no one to create a process to make forward progress. This would be capacity funding for support to resolve land conflicts. This could be a critical leverage opportunity. Think about cocoa in West Africa, this is the issue that is always avoided by companies. It is complex but it is part of the equation that leads the country to continue to be unstable. From companies’ point of view they can do a lot to work with farmers without addressing this BUT they continue to bump up against this.” (BHRExpert, 2015).

In addition: “Donors could make it a requirement that anyone who receives investment funding follows the VGGT and they could finance research that looks at the extent to which equity and pension funds are investing in projects that cause land grabbing and deforestation. You could put some numbers on this, look at case studies where this is exposed and quantify costs. This would be really powerful. RRI and Munden have begun this but it carries more weight when it comes from the government; a report like this should also consider solutions –regulatory and softer policy responses” (NGOExpert1, 2015).

This interviewee also stated, quite pointedly, that: “The GDWGL should not be supporting voluntary or self-regulating certification schemes because this model of voluntary and self-regulating schemes is utterly broken we have no faith that these non-binding mechanisms will actually work and in many cases they are becoming greenwash mechanisms. They [donors] could most effectively think about what governments can do from a regulatory perspective. They could create a binding system that requires certification. Anything which is voluntary in nature or self-certifying is not in any way going to be effective. We have faith in EITI; it still works but the only reason it works is that whilst it’s voluntary to join, once you join there are strict timelines within which you must meet deadlines and countries that do not meet these are kicked off. EITI is robust because it is tripartite and this is replicated at every level (national and global board as well) and there’s a robust process by which board does and has kicked off gov’t members for non-compliance” (NGOExpert1, 2015).

Taking all of these recommendations and the experience and insights of other initiatives into account, what can and should the GDWGL do in order to encourage more companies to include land issues in their operational decision making? What strategic investments should the Group consider making?

Donors should work to raise and expand awareness of land tenure and land governance issues by:

- Supporting the development of a coordinated social media campaign (in partnership with leading NGOs) that clearly articulates (using specific examples and “faces”) the social and environmental impacts associated with poorly managed/executed land-based investments under the assumption that increased public attention will raise demand among some consumers and responsible investors for improved corporate engagement and reporting on these issues.
- Convening a meeting in London or Washington of responsible investors from the North America and Europe to raise and expand awareness of how issues of land tenure rights and land governance issues impact corporate sustainability and are connected to business and human rights issues, sometimes in material ways. A initial meeting can also be used to gauge support for (or against) a new land-based MSI and performance standards based on the VGGT.
- Developing targeted training materials for corporate staff (finance, risk managers, operations) and for responsible investors based on existing donor-supported land tenure guidance and the VGGT. Trainings could be developed with UN Global Compact and with UN PRI. They should raise the materiality of land issues, provide guidance on effective due diligence and community engagement as it relates to land tenure risks, and build capacity to provide grievance mechanisms to address land issues.
- Developing targeted training materials for Corporate and General Counsel that may provide Continuing Legal Education (or equivalent) and which could be developed in partnership with the International Bar Association, which has a new emphasis on addressing the BHR issues that clients/employers face.
- Creating an easy-to-use web-based platform that would provide much-needed and often disbursed land information (national/local would be most valuable) into the hands of responsible investors to promote understanding, share experiences and support capacity building to meet the expressed needs of companies for accessible, practical information.

Donors should work to support and expand strategic partnerships by:

- Working collaboratively with existing MSIs to strengthen their approach to land rights by aligning existing criteria and indicators explicitly with the VGGT in order to expand the number of firms incorporating best practices on land issues into their decision making and corporate reporting. Donors should consider developing model criteria and indicators that MSI can use to standardize approaches to land issues. In addition, donors should invite some MSI representatives to join or participate in Global Donor Working Group on Land (GDWGL) meetings to enhance learning opportunities.
- Continuing to engage existing land champions with needed technical assistance and research and through pilot projects. As appropriate, shine a public spotlight on efforts of champions to address

complex land tenure issues. Working with existing champions, and through existing roundtable and other discussions, identify and cultivate new champions.

- Partnering directly with UN Global Compact, UN PRI and other responsible investing initiatives to expand understanding of land issues as part of Business and Human Rights and sustainability agendas. These initiatives have thousands of members that are already working on issues that relate to land tenure and land governance, including creating more sustainable livelihoods for stakeholders, improving food security, and effectively addressing climate change. Donors can extend their outreach through strategic partnerships with these groups.

Donors should work to explore opportunities to develop new platforms for actions by:

- Collaborating with USAID's Global Development Incubator to conduct a deep dive assessment of the costs and benefits associated with developing a new land-based MSI that would work to implement the VGGT, expand best practice guidance, and improve land governance across multiple sectors.

## CONCLUSION

Land is a complex, often politicized issue and, as a result, can be particularly challenging for companies to address. Failing to address these issues, however, creates a variety of risks for companies and can impose serious harms on local communities and stakeholders. Finding practical opportunities to raise and expand awareness of this issue, build capacity to reduce or eliminate risks, and engage with strategic partners to create better, more sustainable policies and practices will help improve land governance, strengthen enabling environments, achieve development goals and encourage mutually beneficial engagements with communities.

To meet this challenge, donors can take practical steps to share information, provide trainings and needed tools, and explore the development of new platforms to address land issues. Donors can leverage critical entry points – especially responsible investors and key corporate staff -- to increase awareness of these the importance of land tenure and land governance. They can bring companies, responsible investors and land tenure experts together so that companies deepen their knowledge and share experiences and practical approaches to address land concern. Donors can collaborate with existing initiatives and provide best practice model guidance to strengthen their approaches to land issues.

There is reason to be optimistic that donors can raise the profile of land issues so that they become part of core decision making among corporate leaders. By taking advantage of the accelerating growth of the BHR and sustainability agendas and by working closely with MSIs that touch on land, donors can help more companies address this critical issue. A new land-based MSI may (or may not) be needed to support these effort but donors have an excellent resource in the Global Development Incubator to explore this option. Overall, with coordinated effort and some patience donors should be in an excellent position to increase corporate attention to land tenure and land governance.

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