



Company commitment instruments to safeguard the food/land rights of people confronted with land use shifts



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Increasing land use shifts

In recent years private investors and governments have increasingly acquired, or leased on a long-term basis, large portions of agricultural land in countries other than their own. The targeted countries are mostly located in the developing world. This phenomenon brings about many changes in land use and has numerous consequences for the people living in and around these areas.

Company commitment instruments

Investment laws, trade laws, human rights laws, and performance standards of international financial institutions; domestic laws of host and home states; and regional laws and policies all to a greater or lesser extent provide a framework for these developments.¹ However, lack of enforcement of these national and international rules and regulations, as well as market access, has led companies to adopt a number of instruments aimed at giving guidance to sustainable policies and practices. Companies can commit themselves to using these instruments, usually voluntarily.

The brief reviews three kinds of company commitment instrument:

- Commodity-specific instruments: Forest Stewardship Council (FSC); Round Table for Sustainable Palm Oil (RSPO); Round Table on Responsible Soy (RTRS); EU sustainability criteria on biofuels/bioliquids; **Extractive Industries Transparency Initiative (EITI)**;²
- General CSR instruments: OECD Guidelines for Multinational Enterprises; Global Reporting Initiative; Global Compact;
- Financial sector-specific instruments: Equator Principles; UN Principles for Responsible Investment; UNEP Finance Initiative.

Based on the analysis conducted,³ it is concluded that the instruments have so far generated some, though little, benefit for people confronted with shifts in land use.

Two big limitations of company commitment instruments are that they do not apply to, or involve, governments, and that companies can usually decide voluntarily whether to commit to them. States

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1 With regard to the right to food and the right to freedom from hunger and malnutrition (reaffirmed at the World Food summit of 1996), many countries have entered into obligations on a national, regional, or global level to ensure that these rights are fulfilled. In practice, however, countries often have no development plan for food security in place and do not systematically assess any possible negative social impacts of specific land investments beforehand.

2 Commodity certification schemes such as **UTZ (coffee, cocoa, and tea)**, **Rainforest Alliance (coffee, cocoa, tea, and bananas)**, **Fairtrade/Max Havelaar**, **The Better Sugarcane Initiative**, and **trademarks for agricultural products certified as "organic"**, have not been analyzed.

3 the study conducted under ILC's commercial pressures on land initiative (available at www.landcoalition.org/cplstudies) had its limitations. Surprisingly few in-depth impact evaluations have been made of the instruments with regard to land rights; some company commitment instruments are still in much too early a stage of development to judge whether they actually yield positive impacts; some instruments might have created a further positive outreach than the commitment of the companies involved, but this could not be measured. For example, the commodity-specific instruments might have created a more positive stance towards land rights among producers and governments in developing countries, even if they are not directly cooperating in the instrument. Similarly, **company interest in CSR and sustainability issues has increased during the years, but it remains unclear how much of the increase can be attributed to the CSR instruments discussed, and even less whether this has actually resulted in positive impacts on food/land rights for people living in poverty.**

have a vital role to play in protecting people's food/land rights, ensuring that companies respect these rights, and providing for access to remedy. However, states hosting land investments may have weak governance and may be supportive of land investments (e.g. Malaysia and Indonesia regarding palm oil plantations and states in Latin America regarding soy and sugar cane). Home states of private investors (including in Europe and North America) and states with interests in foreign lands (e.g. Asian and Gulf states) may also support land investments.

The interest of states in large-scale land investments creates a huge tension with their obligation to respect the food/land rights of people. In general, the framework of the Special Representative of the United Nations Secretary-General on business and human rights to "respect, protect, and remedy"⁴ is not yet being fulfilled by states internationally. States are not encouraging each other sufficiently to respect food/land rights, and are not ensuring that companies do not infringe on rights. Extra-territorial access to judicial and non-judicial remedy is in a poor state.

In this context, and also due to the fact that most company commitment instruments do not oblige companies to conform (there will always be laggards), the potential positive impact of such instruments to safeguard the food/land rights of local communities is subject to serious limitations.

Commodity-specific instruments might help sometimes

Of the three kinds of company commitment instrument, the greatest protection of food/land rights can be expected from the commodity-specific instruments.

As it is very difficult to reach 100% certification, these instruments cannot reduce the pressure on land due to increasing demand for biofuels/bioliquids in the developed world, economic growth in emerging countries, and increased mass consumption. They might, however, encourage companies to take into account the rights of land users and local/regional food economies in certain areas, in contrast with "business as usual". The FSC, RSPO, and RTRS schemes are voluntary and verification of compliance with the criteria and/or their enforcement is still very problematic, making credibility an important issue. It is legally not possible to enforce the use of certified products, although to some extent procurement of such products can be encouraged by governments. The main weakness of certified products is that demand for them in Asia, South America, and Africa (not so much in Europe) is very small, while the costs of verification mechanisms are generally high. At the same time, companies have no problems in marketing non-certified products, and many producers in developing countries do not feel the need to certify their forests and plantations.

The EU sustainability criteria on biofuels/bioliquids (which are not actually a company commitment instrument) do not provide any direct recognition of customary land rights or of free, prior, and informed consent. Social criteria are not included in the sustainability requirements. The quantitative goals contained in these directives calling for greater use of biomass will drastically increase demand for biofuels/bioliquids produced in warmer parts of the globe. The rising demand for biofuels/bioliquids will increase the extent of biofuel monocultures and may increase land conflicts and human rights violations. Biofuels/bioliquids from certain areas where land investments increase **climate change and decrease biodiversity** will be excluded only from entering the European market.

The Extractive Industries Transparency Initiative (EITI) was also reviewed, but it was found not to be relevant for land issues. EITI deals with governance in resource-rich countries through the verification and full publication of company payments and government revenues from oil, gas, and mining. Maybe the experiences of this instrument could be useful in obtaining greater transparency on land investments taking place in developing countries.

General CSR instruments might help, but apply to a narrow group only

The general CSR instruments reviewed have been adopted mainly by companies from OECD countries, although companies in emerging economies such as Brazil and South Africa are increasingly participating. Many companies that are driving forces of land acquisition/leasing are not subject to the OECD Guidelines for Multinational Enterprises and do not participate in the Global Reporting Initiative or the Global Compact. These include Asian companies (except for those in Japan and South Korea) and companies in Gulf states. In OECD countries, many investors and companies in commodity supply chains might not participate either, as there are few repercussions for not committing to these general CSR instruments. Only big and well-known listed companies might feel compelled to endorse such instruments. To what extent this leads to actual changes on the ground is not clear. In general, the verification of

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Investors and companies in commodity supply chains might not participate, as there are few repercussions for not committing to general CSR instruments

4 United Nations, Human Rights Council. Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises. John Ruggie. 9 April 2010. "Business and Human Rights: Further steps toward the operationalization of the 'protect, respect and remedy' framework". <http://www.reports-and-materials.org/Ruggie-report-2010.pdf> (accessed 5 August 2010)

compliance with the general CSR instruments is quite weak (especially the UN Global Compact). The non-judicial access to remedy provided for by the OECD Guidelines has so far proved to have severe limitations.

Financial sector-specific instruments too vague to be effective

Land acquisition/lease and expanding use of land for commodities have been initiated or at least supported by private investors such as pension funds, banks, hedge funds, and private equity groups. The financial sector has almost no company commitment instruments to safeguard the food/land rights of people confronted with investments in agricultural land. In some cases, the individual policies of financial institutions may include the free, prior, and informed consultation of people potentially affected

(though not necessarily consent). To what extent these individual cases are having an effect is not clear, as the transparency of the financial sector is generally low.

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Recommendations

- A good way to enhance the company commitment instruments could be to (further) promote a buyers' market for certified products, focusing on the main users.
- One of the main problems of the general CSR instruments is that the verification of compliance is quite weak, especially for the UN Global Compact. For the Global Reporting Initiative, enhancing the verification of compliance to establish whether companies really report along the GRI reporting framework would be a huge improvement to this promising instrument.
- The OECD Guidelines would function better if there were minimum criteria for the quality of complaints-handling by the National Contact Points. Also, even if a company has stated that it will act according to the OECD Guidelines, there are few opportunities for redress if its behaviour falls short. Home states could do more in making adherence to the principles a condition of government support for companies operating abroad. Also, there should be consequences whenever it is established that a company has breached the OECD Guidelines.
- The financial sector instruments should seek more transparency from the sector as a first step towards enabling a more fully-fledged multi-stakeholder approach that encourages social and environmental achievements.

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This policy brief is derived from a wider initiative on Commercial Pressures on Land (CPL). If you would like further information on the initiative and on the collaborating partners, please contact the Secretariat of the International Land Coalition or visit www.landcoalition.org/cpl.

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