KIT Royal Tropical Institute

Addressing Land Governance in International Responsible Business Conduct Agreements

Final Report

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Contents

Abbreviations 2
Executive summary 4
1. Introduction 7
2. Objectives, methodology and sector selection 9
3. Importance of land governance for IRBC 12
4. International Responsible Business Standards, Guidelines and Guidance 16
5. Sector land governance risk analysis and practices 20
5.1 Gold Sector 20
5.2 Garments and Textile Sector 22
5.3 Green Proteins Sector 24
5.4 Sustainable Forestry Sector 26
5.5 Pension Funds and Insurance Sectors 29
5.6 Floriculture Sector 33
5.7 Palm Oil Sector 34
5.8 Cocoa Sector 39
5.9 Infrastructure Sector 42
5.10 Food Industry Sector 45
5.11 Natural Stone Sector 47
5.12 Tourism Sector 48
6. Analysis & Recommendations 51
6.1 Land: business sector challenges and governance 51
6.2 A responsibility for business? 52
6.3 Putting business responsibilities into practice: improving due diligence 55
6.4 Beyond current due diligence: practices and opportunities 59
6.5 Generating and sharing information 61
6.6 Gender and land governance 62
6.7 Organising collective action: the IRBC agreements 63
References and sources 66
Annex 1: Comparison of international guidelines & standards 72
Annex 2: Overview table sectors 76

Abbreviations

ANVR	Dutch Association of Travel Agents and Tour Operators
ASM	Artisanal Mining
BCI	Better Cotton Initiative
CBL	Central Bureau of Foods
CDC	UK Development Finance Institution
CSO	Civil Society Organisation
CSR	Corporate Social Responsibility
EBRD	European Bank for Reconstruction and Development
EITI	Extractive Industries Transparency Initiative
EKN	Embassy of the Kingdom of the Netherlands
EPRM	European Partnership for Responsible Mining
ESG	Environmental, Social and Governance
EUTR	European Timber Regulation
FAO	Food and Agriculture Organisation of the United Nations
FNLI	Federation of Dutch Food Industries
FNV	Federation of Dutch Trade Unions
FPIC	Free, Prior and Informed Consent
FSC	Forest Stewardship Council
FSI	Floriculture Sustainability Initiative
GSTC	Global Sustainable Tourism Council
HCV	High Conservation Value
ICCM	International Council on Mining & Metals
IDH	Sustainable Trade Initiative
IFC PS	International Finance Corporation Performance Standards
IFOAM	International Federation of Organic Agriculture Movements
ILO	International Labour Organisation
IRBC	International Responsible Business Conduct
ISEAL	International Social and Environmental Accreditation and Labelling
ISO	International Organisation for Standardisation
KIT	Royal Tropical Institute
LSM	Large Scale Mining

MFA	Ministry of Foreign Affairs
MNE	Multinational Enterprises
MVO Nederland	CSR Netherlands
NABU	Nederlandse Aannemers met Belangen in het Buitenland
NCP	National Contact Point
NGO	Non-Governmental Organisation
OECD	Organisation for Economic Cooperation and Development
OECD WPRBC	OECD Working Party for Responsible Business Conduct
PEFC	Programme for the Endorsement of Forest Certification
PRAI	Principles for Responsible Agricultural Investment that Respect Rights, Livelihoods and Resources
RAI	Principles for Responsible Agricultural Investment in Agriculture and Food Systems
REDD	Reducing Emissions from Deforestation and Forest Degradation
RRI	Rights and Resource Initiative
RSPO	Round Table on Sustainable Palm Oil
RTRS	Round Table on Responsible Soy
SDG	Sustainable Development Goal
SER	Socio-Economic Council
SME	Small and Medium Sized Enterprise
TFT RSP	The Forest Trust Responsible Stone Program
UNDP	United Nations Development Programme
UNEP FI	United Nations Environment Programme Finance Initiative
UNGP	United Nations Guiding Principles
UNPRI	United Nations Principles for Responsible Investment
UNPSI	United Nations Principles for Sustainable Insurances
UNWTO	United Nations World Tourism Organisation
VGGT	Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests
VNO-NCW	Confederation of Netherlands Industry and Employers
WCF	World Cocoa Foundation
WTO	World Trade Organisation
WWF	World Wildlife Fund

Executive summary

The study was commissioned to the KIT Royal Tropical Institute in July 2017 by the Land Dialogue, with financial support from the Dutch Government. The objective is to provide insight and guidance into the relevance of land governance as a possible priority theme to be considered in the process of the International Responsible Business Conduct (IRBC) Agreements. The study was conducted in the period between July and November 2017 and included desk research, workshops and interviews with a diverse set of stakeholders in the IRBC process. The opinions expressed in the study are those of KIT and do not represent the views of the interviewees.

Land governance is, next to climate change, one of the biggest and most complex political, social, natural and economic challenges of our time against the background of finite resources on the one hand and a growing, global population on the other hand. Current patterns of land tenure and use are unsustainable and have various, often cumulative adverse impacts, including ecosystem degradation, loss of biodiversity, freshwater decline, human rights issues, greenhouse gas emissions, subsistence farming, unsustainable livelihoods, local political conflicts and land grabbing. Companies and entire industry sectors are causing or contributing to such adverse impacts and/or are, conversely, dependent on and even highly affected by land governance issues.

The IRBC Agreements for selected high impact industry sectors are initiated by the Dutch Government, facilitated by the Social-Economic Council, and led by the specific industrial sector associations. IRBC agreements are typically tripartite, involving businesses, civil society organisations (trade unions, NGOs) and the government. The reference frameworks for the agreements are the 'OECD Guidelines for Multi-National Enterprises' and the 'UN Guiding Principles on Business and Human Rights'.

Key Findings

As land issues typically arise at the very beginning of the supply chain of companies and due diligence by companies is still mostly focused on tier 1 suppliers, land issues are often underestimated or completely ignored. Moreover, the two reference frameworks (OECD Guidelines for Multi-National Enterprises and UN Guiding Principles) do not make specific reference to land, contrary to the FAO 'Voluntary Guidelines on the responsible Governance of Tenure of Land, Fisheries and Forests' framework and the 'International Finance Corporation Performance Standards'.

The only IRBC sector agreement which makes explicit reference to land governance issues in the context of human rights is the agreement of the banking sector, signed in 2016 and now in the process of implementation. The KIT study does not address the banking sector but does cover the insurance and pension fund sectors (see chapter 5.5). Other sectors covered in this study are: gold, garments and textile, green proteins, forestry, floriculture, palm oil, cocoa, infrastructure, food industry, natural stones, and tourism. The choice for these sectors was made in view of the current IRBC agenda. Sector specific recommendations are made in each of the respective chapters in this study. A common finding is that, in accordance with the 'OECD Guidelines for Multi-National Enterprises' and the 'UN Guiding Principles on Business and Human Rights', companies have a "duty of care" in their due diligence and in their direct or indirect interventions to address actual or possible adverse impacts in their entire value chain. They are also expected to exercise, individually or collectively, their leverage on their suppliers, sub-contractors and other business relationships. Where national law does not adequately address adverse impacts as reflected in international laws and standards, international companies have a duty to apply such international standards in their value chain, without getting into conflict with local law and regulations.

Risk-based and impact-based due diligence are critically important and include inclusive and transparent stakeholder consultation, both prior to operations, investments and projects and thereafter as an ongoing process. The FAO 'Voluntary Guidelines on the responsible Governance of Tenure of Land, Fisheries and Forests' in general and the principle of 'Free, Prior and Informed Consent' more specifically are important aspects for such comprehensive due diligence.

Independent certifiers, monitoring agencies and verification/assurance providers are important to ensure that company-specific and international standards are applied and adhered to in the local context. However, standards and certification schemes by themselves are not enough to fully cover business' responsibility for land issues, as gaps remain both with regard to the content of standards and their (voluntary) application and monitoring.

General Recommendations

1. Land governance, given its complex and cross-cutting nature, needs to have a more prominent position on the sustainability agenda of businesses and in the IRBC agreements.

2. The reference framework for the IRBC sector agreements process should be extended beyond the duty of care as laid down in the 'OECD Guidelines for Multi-National Enterprises' and the 'UN Guiding Principles on Business and Human Rights' to also include explicit reference to the FAO 'Voluntary Guidelines on the responsible Governance of Tenure of Land, Fisheries and Forests' and the Sustainable Development Goals.

3. Due diligence on land governance in the entire value chain to identify actual or potential adverse impacts and other salient issues should be risk-based as well as impact-sensitive. This turns due diligence into a comprehensive and continuous evaluative process (covering social and natural issues), which is inclusive of all relevant stakeholders and reacts to changing circumstances. A third party grievance mechanism must be established to provide access to remedy, strengthening the third pillar of the UN "Protect, Respect and Remedy" framework and Guiding Principles.

4. Land governance issues should be considered in the negotiations of the IRBC agreements on the basis of "include or-explain-why-not".

5. As the knowledge about land governance issues by businesses is limited and the objective of the IRBC agreements is to improve due diligence and practice, structured, multi-stakeholder knowledge sharing and learning should be intensified through the Land Dialogue platform; positive and negative case studies need to be collected and evaluated. Further study is recommended on important issues such as: compensation in case of resettlement, "Free, Prior, and Informed Consent-for-All", role of women, youth and marginalised people, landscape approaches, business reporting "externalities", and learning from other European Union countries and peers, such as the UK LEGEND (Land Enhancing Governance for Economic Development) programme.

6. As small and medium sized enterprises with international supply chains are also covered by the IRBC sector agreements, and typically do not have the capacity to exercise their own due diligence compared to larger corporations, sector organisations may consider providing assistance for small and medium sized enterprises to address land governance issues.

7. The Dutch Government's role in the implementation of the IRBC agreements may be further enhanced through its own due diligence and standards in its role as market actor; through its supporting role to international business exercised by the embassies; in its international diplomacy role by emphasising the importance of land governance; by giving preferential treatment to companies demonstrating good

practice on due diligence and responsible conduct (including on land); and by providing enabling policy support, also in the context of the implementation of the Sustainable Development Goals.

8. The IRBC process is sector-specific with parallel negotiations in isolation from each other. Notably the financial sector (banks, insurance companies, pension funds) have their own sector covenants which may not be fully aligned with the covenants of their customers/investees. Better alignment across sector agreements is therefore desirable.
9. Due diligence practices of businesses require improvement with regard to addressing land governance topics. Companies should explicitly report individually and/or by sector on their performance under the relevant reporting formats and sector-specific agreements. Companies should also expand the scope of their supply chain responsibility and transparency beyond tier 1 suppliers, their responsibility extends to the entire value chain.
10. There is a growing international reference framework that can help businesses improve their due diligence practices on land governance, but the level of adoption by companies is currently weak. Moreover, since many guidelines and standards, including the 'OECD Guidelines for Multi-National Enterprises' and the 'UN Guiding Principles on Business and Human Rights', do not specifically mention land governance, there is a need to re-articulate and expand the scope of the international reference framework to more fully cover the various dimensions of land and land-related impacts.
11. Business organisations should continue their efforts to widen the scope and the scaling of certification as an important tool for compliance with relevant standards. However, it is critical that the standards and certification include land governance criteria, such as 'Free, Prior and Informed Consent', which is not always the case. Focusing solely on (official) land ownership as certification criteria is not recommendable as this might exclude other land users to get their produce certified if not land owner. Land use security criteria, also for non-organized female and youth smallholders, might be an option but is perhaps difficult to audit. In addition, including zero deforestation (by cooperatives) in certification might be an option and can be audited. Cooperation and alignment between standard setters and certifiers is highly recommended. Moreover, the often weak implementation mechanisms of voluntary standards, especially with regard to monitoring land issues, need to be addressed.
12. Companies need to find ways to go beyond current due diligence practices. Among others, these include the following:
    a. Commit to fair compensation of land linked to expropriation or voluntary resettlement, for instance by establishing the fair market value of land to such communities;
    b. Specifically address the needs of women, which are often ignored in resettlement projects, with livelihood restoration, cash compensation, employment and farming opportunities that are mainly targeted at men, leaving women vulnerable to impoverishment;
    c. Pay special attention to the needs and land rights of marginalised, vulnerable people and youth;
    d. Apply a landscape approach to deal with competing claims for land and recognise that landscapes provide multiple values and services to diverse interest groups, all of which should benefit from land-based investments and projects.

1. Introduction

International business is confronted with significant risks and impacts related to human rights, labour rights, environment and climate change. These impact on local communities, economies, environment and land use in "host" countries, but also affect Dutch companies and consumers. In order to address these risks and initiated by the Dutch Government, the Dutch Social-Economic Council (SER) facilitates trajectories towards agreements on International Responsible Business Conduct (IRBC) in different high risk sectors.

The importance of IRBC agreements was recognised in 2013, when the Ministry of Foreign Trade and Development Cooperation and the Ministry of Economic Affairs released the letter "*Corporate social responsibility pays off*"[1], in which a broad adoption of IRBC was encouraged (Government of the Netherlands, 2013a). In reaction to this letter, the SER convened a workshop in January 2014 to identify and prioritise human rights risks, together with leaders from 12 Dutch companies. The workshop focused on the first two steps of human rights due diligence as elaborated in the UN Guiding Principles on Business and Human Rights (United Nations, 2011) and the OECD Guidelines for Multinational Enterprises (MNEs) (OECD, 2011). These are (1) assessing impacts and (2) addressing and mitigating identified impacts. The workshop laid the ground for the SER to release its advisory report "Agreements on International Responsible Business Conduct", which recommended that the business sector take the initiative and conclude agreements on IRBC, together with the Dutch Government, trade unions and civil society organisations (SER, 2014).

At the same time, KPMG carried out an IRBC Sector Risk Analysis (KPMG, 2014) at the request of the Dutch Government to guide the development of IRBC agreements. It focused on the main social (labour & human rights), environmental, corruption and tax-related risks for Dutch businesses and their international supply chains. The IRBC Sector Risk Analysis served as a first step to establish due diligence processes in Dutch companies and as a starting point for the discussions on IRBC agreements in prioritised sectors.

IRBC agreements are sector-specific, tripartite arrangements among a specific business sector, civil society organisations (trade unions, NGOs) and the government, which provide an opportunity to identify and assess material risks and impacts, improve initial and on-going due diligence, and solve complex problems in value chains. As roles and responsibilities between public and private actors, especially between companies and host country governments, are often unclear and/or contested, the IRBC agreement process is also leading to insights on which risks are involved for international business, in the event that they do not comply with international standards or if local laws are deficient or not enforced. By using the term "companies" we refer to banks, pension funds, insurance companies, brokers, asset managers, corporations and small and medium companies (SMEs). For SMEs sector-specific IRBC agreements also represent an opportunity for reduced transaction costs as they do not have the capacity to deal with these issues alone.

Agreements are designed for a time frame of three to five years. Subsequently, sector stakeholders are expected to be able to implement their own, ideally improved, processes. The SER facilitates and provides process guidance to the IRBC agreement trajectories. Five sector agreements have already been signed in 2016/17 by stakeholders of the following sectors: Banking, Sustainable Forestry, Gold, Garments and Textile, and Green Proteins. Other agreements are in progress.

[1] https://www.rijksoverheid.nl/documenten/beleidsnota-s/2013/06/28/beleidsbrief-maatschappelijk-verantwoord-ondernemen-loont

This study, conducted by the KIT Royal Tropical Institute at the request of the Land Dialogue, with financial support from the government, provides insight into the relevance of land governance as a possible priority theme in the IRBC agreements. Based on the results of the study, sector partners can make informed decisions about whether and how to include a land governance perspective in their IRBC agreements. To do this the study intends to provide practical, general as well as sector-specific guidance.

Chapter 2 explains the study objectives and methodology, including the choice of sectors for the study. In Chapter 3 information is provided on the importance of land governance in IRBC agreements. This is followed in Chapter 4 by an overview of international guidelines, principles and guidance for responsible business conduct. Chapter 5 presents sector-specific information: a general overview and land issues in specific business sectors, cases and practices and specific recommendations for inclusion of land governance in the sector IRBC agreement processes. Finally, Chapter 6 provides a general analysis and recommendations on key issues.

A separate study trajectory with respect to the implementation of the Banking Sector Agreement has been conducted parallel to the KIT study, and performed by Profundo.

The content of this report only represents the views of the KIT team; they do not reflect the views of the interviewees. The interviews and workshops were held on a confidential basis.

2. Objectives, methodology and sector selection

The main objective of the study, conducted between July and November 2017, is to provide insights into the relevance of land governance as a priority theme in the IRBC agreements.

The specific objectives of the study are as follows:

1. Analyse the existing IRBC sector agreements process with regards to land governance issues, including agreements already signed and those which are being developed;
2. Review the KPMG Sector Risk Analysis (2014): on the quality of the land governance related evaluation, both for the 13 prioritised sectors and the others not generally prioritised;
3. Review and evaluate policies and good and bad practices of Dutch business in their IRBC and international value chains: issues, learnings, solutions;
4. Review and evaluate practices of selected host government governance structures, policies and practices in their regulatory, policy and contracting roles;
5. Provide guidance for important land governance issues to be considered in the sector agreements.

The study was conducted in three stages:

Stage 1: Desk Research

The desk research has been primarily focused on a review of international standards, frameworks, codes and on (good and bad) IRBC practices in the context of land governance of a variety of business actors in selected sectors and countries. Cases/practices were provided by Dutch sector stakeholders, Land Dialogue partners, international stakeholders (NCP-cases, World Bank, Interlaken Group, etc.), SER, the Netherlands Ministry of Foreign Affairs. Embassies of the Kingdom of the Netherlands received a survey form to propose and describe good and bad practices related to land governance in their country. Seven embassies responded. The desk study included the review of land issues included in the existing IRBC agreements process and the KPMG sector risk analysis (KPMG, 2014) for these sectors with regards to land governance issues.

Stage 2: Selective interviews and workshops with practitioners, policymakers

An NGO workshop was organised at KIT on 22 August 2017. The first results of the study were presented and discussed at the LANDac annual meeting in Utrecht on 5 September 2017 and at the Dutch Corporate Responsibility Organisation (MVO) stakeholder meeting organised by the Ministry of Foreign Affairs (MFA) on 6 September 2017. Interviews were conducted with a wide variety of sector stakeholders: Business, certification organisations, ministries, research institutes and civil society organisations. Below is the complete list of organisations (in alphabetical order):

Table 2.1: List of organisations

ActionAid	FMO	PGGM	True Price
AEGON	FNV	Rabobank	Utrecht University
Ahold	Heineken	Royal Haskoning	Unilever
ANVR	G-Star Raw	SER	Utz
Arte	IDH	Shift	Van Oord
Both Ends	LANDac	Solidaridad	VNO-NCW
Cargill	Ministry of Foreign	Tilburg University	VVNH
DSM	Affairs	Tony's Chocolonely	WWF
Fair phone	MVO Nederland	Tropenbos International	ZOA
Fairtrade/Max Havelaar	OXFAM		

Interviews were based on Chatham House Rules: KIT would be free to use the information received during the interviews, but neither the identity nor the affiliation of the interviewee would be revealed. Views expressed in this paper are solely those of the KIT team.

Stage 3: Synthesis, evaluation, conclusions and recommendations

This includes an overview and evaluation of practices and issues identified in the desk research, interviews and workshops. This report presents general and sector-specific guidance, conclusions and recommendations on land governance in IRBC trajectories.

Table 2.2 shows the 13 sectors which were selected for the KIT study (as agreed with the Land Dialogue).

Table 2.2: Sector selection

No	Sub-sector	IRBC agreement (progress)
1	Natural Stone	Expected in 2017
2	Gold	Signed 19 June 2017
3	Pension funds	Intent statement 2017
4	Insurance	IRBC agreement in 2017
5	Sustainable forestry	Signed 22 March 2017
6	Floriculture	IRBC agreement in 2017
7	Green proteins	Signed 17 March 2017
8	Palm Oil	Value chain mapping exercises (2017) by banking covenant stakeholders
9	Cocoa	Value chain mapping exercises (2017) by banking covenant stakeholders
10	Garments and Textile	Signed 4 July 2016
11	Food industry	Intent statement (2016), IRBC agreement in 2017
12	Tourism	Start of discussion in 2016, assessments in 2017 (Surinam, Indonesia, Egypt)
13	Infrastructure	IBRC process starts September 2017

Due to the limited time available for the study, a selection of sectors was necessary. The following criteria were applied for sector selection: 1) high risk sectors based on the KPMG report for land governance, 2) progress with IRBC agreements, and 3) preliminary results of the desk study and interviews with resource persons from the Ministry of Foreign Affairs and members of the Land Dialogue.

The KPMG report selected 13 high risk sectors for IRBC (out of an initial list comprising 86 sectors and sub-sectors). Five risk categories were studied: Environment, labour, human rights, corruption and taxes. In 11 out of these 13 sectors land governance was identified as a possible risk, but limited analysis was provided on this subject. The two sectors that were not mentioned in relation to land governance risks were the wholesale and the financial sector (with sub-sectors banking, insurance, pension funds). Some sectors were not included in the final KPMG report because of limited economic value for the Netherlands, or because IRBC risks were covered in other sector analyses, examples include the forestry and fisheries sectors.

In addition to the priority sectors as per the KPMG report, the present study also includes other sectors which encounter important land governance risks or have shown progress towards an IRBC agreement: The sustainable forestry sector (an IRBC agreement was signed in 2017), the tourism sector (an initiative of the Dutch Association of Travel Agents and Tour Operators ANVR is working towards an IRBC agreement and currently assessing IRBC issues in three countries), the infrastructure sector (IRBC agreement discussions started in early September 2017), and the cocoa and palm oil sectors. In the last two sectors sustainability certification of raw materials and production processes are potentially effective to address ethical, social and environment issues and to ensure transparency in the value chain. The stakeholders in the banking IRBC agreement decided to implement a value chain mapping exercise in 2017 for palm oil and cocoa, which explains why these two sectors have been included in the study. Pension funds and Insurance sectors have been included due to their similarities with the banking sector covenant in which land risks are prominent.

The aim of this report is not to reformulate existing IRBC agreements. For the four sectors with IRBC agreements, the report only offers an inventory of good and best practices to elaborate guidance for sector stakeholders.

3. Importance of land governance for IRBC

In the Land Portal series on "Land and the SDGs", Professor Jeffrey Sachs[2] recently addressed land use as the most important bridge between the SDGs (Sachs, 2017):

> *"Farm land is the key to the survival of millions of smallholder farmers. Land is the key to our food supply. Land rights determine social status, women's empowerment, and the survival or destruction of cultures, especially of indigenous peoples. Carbon stored on the land will make or break the efforts to stop climate change. Land use in mining will affect energy supplies and material inputs for production. And perhaps most dramatically, land use practices will determine the survival or extinction of millions of other species. Directly or indirectly, therefore, land use is at the heart of poverty eradication, food security, gender equality, water management, decent work, sustainable cities, ending climate change, and protecting biodiversity. As we continue to experience further global warming and other environmental stresses, together with the continuing growth of the global population, the pressures on land use and the conflicts across social groups, economic interests, and competing priorities are bound to put land-use policies and politics at the very centre of our debates."*

For the purpose of this study, land governance is defined as: the process by which decisions are made regarding access to and use of land and natural resources, the manner in which those decisions are implemented, and the way that conflicting interests are reconciled (FAO, 2009). Land governance is a broader, cross-cutting issue, covering not only social capital (including stakeholder rights, labour rights, livelihood considerations and gender issues), but also natural capital (ecosystems, biodiversity, deforestation/climate change).

The KPMG report argues that violation of land rights is a significant risk for all business sectors and a challenge for sector actors to recognise and prevent these risks. The report calls for this problem to be tackled at four levels: companies, sectors, supply chains, and at a transitory level. It also emphasises the link between land issues, biodiversity, local food supply and women's rights. Indeed, diverging interests and competing claims on land from the global to the household level need to be carefully managed to prevent conflict, to protect local rights and livelihoods, to stimulate inclusive development and to ensure food security. Effective land governance is central to managing land-based claims and related processes of inclusion and exclusion. For businesses, land conflicts can lead to reputation damage, costly delays and financial losses and/or liabilities.

Dealing with land governance requires a shift in skills and mind-set by sector actors and how they do business, perceive risks and "engage" with actually or potentially affected stakeholders. Land governance also relates directly to the issue of human rights addressed in the IRBC sector agreements. Land relates to human rights and sustainability because of the direct link with right to food, water and a clean environment. To address the growing problem of land grabs, the intergovernmental Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests (VGGT) were introduced by the FAO in 2012. These

[2] Chairman of the Advisory Board of CCSI, Professor at Columbia University, and Director of the UN Sustainable Development Solutions Network.

guidelines provide important tools for respecting land (use) rights and land governance. Although primarily intended for governments, the guidelines call upon companies to exercise their "duty to respect" and to take the necessary measures to deal with and avoid land grabs (including by governments) in their operations, investments and supply chains (FAO, 2012a). The IRBC agreements offer an opportunity for business, government and civil society to address land governance in all sector activities, projects, funding and supply chains. There is a need for financial institutions, pension funds, insurance companies and other investors and businesses to do better on land issues and look for alternative land tenure and business models that improve livelihoods, preserve nature and respect tenure rights (Savenije et al., 2017).

Land is more than a simple economic asset. It also has social and cultural value and functions. There are major disparities between women and men in most parts of the world when it comes to land ownership and access to decision-making processes about land use. Analysis of land governance in IRBC agreements should consider communal and customary tenure arrangements, the links between land tenure and the rules governing property rights within marriage and on inheritance, and the hierarchies of power that affect decision-making regarding land. The notion of 'local community' that is central to safeguarding tenure rights of rural women and men is critical for analysing gender.

The improvement of land governance has become an increasingly major issue in international policy making and business practice in recent years, including in the development of standards for investors and nation-states. This is because land-related investments, especially land acquisition, involve major risks of land grab and violations of land (use) rights, often by or with active/passive support from host/local governments. Netherlands Embassies have shared examples on host country land governance, policy-making and implementation (Boxes 3.1 and 3.2).

Land is not a mere commodity, but an essential element for the realisation of many human rights. Land is a cross-cutting issue that impacts directly on the enjoyment of a number of human rights. For many people, land is a source of livelihood, and is central to economic rights. Land is also often linked to peoples' identities, and is tied therefore to social and cultural rights. Disputes over land are frequently the cause of violent conflict and place obstacles to restoring sustainable peace. In short, the human rights aspects of land affect a range of issues including poverty reduction and development, peace-building, humanitarian assistance, disaster prevention and recovery, and urban and rural planning.

The EU Directorate-General for External Policies (DROI) published a report in 2016 on "the involvement of European corporate and financial entities in land grabbing outside the European Union". It includes a number of cases relevant for this study. Collecting such cases offers perspectives on issues/dilemmas such as deficient due diligence, acting in good faith, adequate compensation for lost livelihoods, multi-layering and distancing from accountability, absent local regulations, access to effective remedies and balancing environmental and social issues.

Box 3.1: Land governance in Bangladesh

Land issues are particularly challenging and sensitive in Bangladesh given the extreme population density and high environmental vulnerabilities. Access to land for investors is an equally challenging issue due to scarcity of land and regulatory issues. Powerful individuals have illegally occupied khas (state-owned) land, depriving others – mainly the poor – of this resource. In addition, there is an absence of institutional support for achieving land rights. There are increasing numbers of cases of forcible land-grabbing by powerful vested-interest groups, with the victims most often being the powerless. Instances of foreign investors being targeted have also been recorded. Challenges include the following:

- The absence of adequate and appropriate policy and legal safeguards against land abuse and grabs.
- The fragmentation of land holdings into smaller plots and security of tenure for small land holders and landless peasants.
- Insecurity of tenure for small land holders impacting on human rights, livelihoods and food security, and sovereignty of grassroots communities.
- The absence of institutional platforms for dialogue between stakeholders, in particular between government and civil society, the media, private sector actors, and donors, on issues of land reforms and land governance.
- Corruption in the maintenance of land records, surveying, distribution of khas land, sale and purchase of land, illegal occupation, land grabbing, and legal processes.

Some examples:

- A Dutch company active in LPG import, storage, bottling and marketing in Bangladesh purchased land in south east Bangladesh in 2013. According to the Dutch company the land was properly vetted by the authorities. After a few months of operation however, a group of people went to court claiming their rights over the land. Eventually the Dutch company won the case, but they had to spend a considerable amount of time, money and energy to settle the case.
- Netherlands importers of shell fish are a party in the shrimp/prawn value chain. In the south west, land for prawn farming is often acquired from the owners or tenants by using force and threats etc. Traditional farming communities often only have negative impact of their land being used for prawn cultivation and bear the environmental costs as the land cannot be used for more traditional crops like rice.

Bangladesh's land governance system is geared towards protecting landowners and investment, which squeezes communities between two levels: investment protection and formalisation of tenure. Land is the source of almost 60% of legal disputes in Bangladesh. At national level, Bangladesh provides considerable protection for investors. This means that the investment regime is set up to prioritise investor protection, while reform of the property registration process, which is particularly inaccessible to communities, lags behind.

Source: EKN Dacca (Personal Communication, 2017)

Box 3.2: Land governance in Ethiopia

A report on context sensitivity of Dutch investments in agribusiness in Ethiopia describes the causes of the violent incidents in 2016. Some 25 agribusiness-owned farms were partially or totally destroyed. Among these were six Dutch-owned flower, vegetable and dairy farms. The report aimed at deriving lessons learned regarding risk mitigation and prevention and focuses especially on the horticultural sector, which contributes considerably to the Ethiopian economy. The sector creates jobs, earns foreign currency and stimulates domestic demand for services. Of the 155 separate Dutch investments in Ethiopia, the majority (an estimated 80%) are in horticulture, as well as in vegetable/fruit and seed production.

Land has been a key conflict driver as large-scale disputes over the border between Oromia and Amhara Regions, or the planned expansion of Addis Ababa into Oromo farmland, have been politicised. At a more micro-level, agribusiness development has resulted in reduced access to specific resources for local communities, such as grazing land. This potential conflict driver is compounded by unmet promises for service delivery from both the government and agribusinesses. Another critical issue explored is the context of land expropriation which has often been poorly handled, with low levels of compensation and limited awareness of the longer-term impacts. This has led to a sense of political marginalisation from the government, coupled with economic marginalisation, particularly in terms of youth unemployment.

While the contextual factors of political and economic marginalisation, land expropriation and compensation for farmers played a key role in the violence against farms, one of the main conclusions of the research is that often a specific set of local drivers or grievances contributed to the attacking of individual farms, including the Dutch-owned interests.

Key points:

- Farms should improve their understanding of their operating environments, e.g. by using local expertise to undertake analysis and engaging with civil society. Analysis should focus on legacy issues such as land/resource use, common property issues and past land acquisition.
- Farms should actively engage in building their relationships with communities, particularly in developing programmes for community service delivery together with adjoining communities and the authorities.
- The Embassy should develop and use a checklist for Dutch companies seeking to invest in Ethiopia, to help them understand the context, anticipate conflict risks and identify mitigation measures.
- The Embassy to make available existing knowledge and expertise for investors during their pre-assessment phase.
- The Embassy to undertake a thorough screening of land claims on specific future agribusiness project land as a prerequisite to help avoid conflict.
- The Federal Government should consider more open and direct communication with communities affected by land policies to enable better understanding of the decisions over land use and to discuss livelihood needs and strategies for communities.

Source: EKN Addis Ababa (Personal Communication, 2017).

4. International Responsible Business Standards, Guidelines and Guidance

The OECD Guidelines for Multinational Enterprises (MNEs) and the UN Guiding Principles on Business and Human Rights (2011) form the basis for the IRBC process, and of the issue of addressing the various dimension of land governance and questions of livelihood, nature and rights. The UN Guiding Principles are based on the pillars introduced by Professor John Ruggie, namely: the duty of governments to protect, and of companies to respect the right to remedy for affected peoples.

In recent years, growing interest in land governance issues has led to the emergence of a diverse set of mostly voluntary principles and guidelines at the global level. The most important ones related to land governance include the following (see also Annex I for a detailed overview of existing guidelines and standards for businesses):

- *OECD Guidelines for Multi-National Enterprises* – The first international instrument to integrate corporate responsibility to respect human rights as set out in the UN's Guiding Principles, offering non-binding principles for responsible business conduct (OECD, 2011).
- *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests (VGGT)* – The leading international guidance on land tenure issues, with respect to all forms of tenure: public, private, communal, indigenous, customary, and informal. Developed by the FAO in 2012, the VGGT address responsibilities of governments, the private sector and civil society and establish a global reference for best practices to respect, protect and remedy legitimate land tenure rights (FAO 1012a, FAO 2012b).
- *IFC Performance Standards on Environmental and Social Sustainability* (IFC PS, revised in 2012) are part of the World Bank's Sustainability Framework and set out the responsibilities of IFC clients for risk-based due diligence and mitigation of potential adverse impacts, including risks associated with land tenure (IFC, 2012).
- The *Principles for Responsible Agricultural Investment that Respect Rights, Livelihoods and Resources (PRAI)*, jointly formulated by the World Bank and other UN agencies in 2010, contain seven principles to which investors may voluntarily subscribe for processes of large-scale land acquisition (FAO/IFAD, 2010).
- The *Principles for Responsible investment in Agriculture and Food Systems (RAI)*, defined by the FAO, IFAD, and World Food Programme, outline how responsible investment in agriculture and food systems can contribute to food security and nutrition. Recognition and respect for human rights is the starting point here (FAO/IFAD/WFP, 2014).
- *Respecting Land and Forest Rights: A Guide for Companies*, developed by the Interlaken Group in 2015, with steering support from the Rights and Resource Initiative (RRI), provides detailed and practice guidance for companies across land-based sectors for them to align their operations with the VGGT (The Interlaken Group, 2015).
- *Guiding Principles on Large Scale Land Based Investments in Africa* (2014), is a non-binding instrument developed by the African Union to provide guidance to investors on how to engage with a variety of governance institutions including customary and traditional authorities in Africa (AU/ADB/UNECA, 2014).

- The *Analytical Framework for Land-based Investment* (2015), formulated by the New Alliance for Food Security and Nutrition and Grow Africa, aims to help companies assess and manage land-tenure risks in their investments in alignment with the VGGT (GrowAfrica, 2015).

FAO's VGGT needs to be considered for reference or explicit inclusion in every IRBC agreement. These state that responsible investments should do no harm, should safeguard against dispossession of legitimate tenure right holders and environmental damage, and should respect human rights. The VGGT are a soft law instrument that does not create new legally binding obligations for states or responsibilities for private actors. FAO has also developed a series of technical guidance papers to translate the principles of the VGGT into practical mechanisms, processes and actions for governments, companies, NGOs, indigenous peoples and local communities in relation to land acquisition. One of the technical guidance papers addresses the issue of respecting '*free, prior and informed consent*' (FPIC) as a key principle for implementing the VGGT (FAO, 2014), which is recognised in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) to protect and promote the collective rights of indigenous populations to self-determination and to their lands, territories and other properties (United Nations, 2008). FPIC emphasises the right of indigenous peoples to make decisions through their own freely chosen representatives and customary or other institutions, and to give or withhold their consent prior to the approval by government, industry or other outside party of any project that may affect the lands, territories and resources that they customarily own, occupy or otherwise use.

In addition to the variety of voluntary guidelines, land governance is also addressed in the *2030 Agenda for Sustainable Development* (United Nations, 2015a) as a cross-cutting subject and contains explicit land-related targets and indicators (Table 4.1).

Table 4-1 Land governance in the Sustainable Development Goals. Source: United Nations (2015a)

SDG Goal	Target	Indicator
	1.4 By 2030, ensure that all men and women, in particular the poor and the vulnerable, have equal rights to economic resources, as well as access to basic services, ownership and control over land and other forms of property, inheritance, natural resources, appropriate new technology and financial services, including microfinance.	1.4.2 Proportion of total adult population with secure tenure rights to land, with legally recognised documentation and who perceive their rights to land as secure, by sex and by type of tenure.
	2.3 By 2030, double the agricultural productivity and incomes of small-scale food producers, in particular women, indigenous peoples, family farmers, pastoralists and fishers, including through secure and equal access to land, other productive resources and inputs, knowledge, financial services, markets and opportunities for value addition and non-farm employment. 2.4 By 2030, ensure sustainable food production systems and implement resilient agricultural practices that increase productivity and production, that help maintain ecosystems, that strengthen capacity for adaptation to climate change, extreme weather, drought, flooding and other disasters and that progressively improve land and soil quality.	2.3.1 Volume of production per labour unit by classes of farming/pastoral/forestry enterprise size. 2.3.2 Average income of small-scale food producers, by sex and indigenous status. 2.4.1 Proportion of agricultural area under productive and sustainable agriculture.

5 GENDER EQUALITY	5.a Undertake reforms to give women equal rights to economic resources, as well as access to ownership and control over land and other forms of property, financial services, inheritance and natural resources, in accordance with national laws.	5.a.1 (a) Proportion of total agricultural population with ownership or secure rights over agricultural land, by sex; (b) share of women among owners or rights-bearers of agricultural land, by type of tenure. 5.a.2 Proportion of countries where the legal framework (including customary law) guarantees women's equal rights to land ownership and/or control.
11 SUSTAINABLE CITIES AND COMMUNITIES	11.1 By 2030, ensure access for all to adequate, safe and affordable housing and basic services and upgrade slums. 11.3 By 2030, enhance inclusive and sustainable urbanisation and capacity for participatory, integrated and sustainable human settlement planning and management in all countries. 11.7 By 2030, provide universal access to safe, inclusive and accessible, green and public spaces, in particular for women and children, older persons and persons with disabilities.	11.1.1 Proportion of urban population living in slums, informal settlements or inadequate housing. 11.3.1 Ratio of land consumption rate to population growth rate. 11.7.1 Average share of the built-up area of cities that is open space for public use for all, by sex, age and persons with disabilities.
15 LIFE ON LAND	15.1 By 2020, ensure the conservation, restoration and sustainable use of terrestrial and inland freshwater ecosystems and their services, in particular forests, wetlands, mountains and drylands, in line with obligations under international agreements. 15.3 By 2030, combat desertification, restore degraded land and soil, including land affected by desertification, drought and floods, and strive to achieve a land degradation-neutral world.	15.1.1 Forest area as a proportion of total land area. 15.1.2 Proportion of important sites for terrestrial and freshwater biodiversity that are covered by protected areas, by ecosystem type. 15.3.1 Proportion of land that is degraded over total land area.

Together, the SDGs, standards, guidelines and guidance papers set the norm regarding land governance. To some extent, increasing alignment and reference to each other, and particularly to the VGGT and its FPIC principles, can be observed between the standards and guidelines, in the process of which land governance becomes progressively more explicit. The link between the OECD MNE Guidelines and the UN Guiding Principles (both do not explicitly address the land governance theme), on the one hand, and the VGGT and IFC Performance Standards (which do explicitly address land governance issues), on the other hand, was made more prominent for the agricultural sector in the 2016 *OECD-FAO Guidance for Responsible Agricultural Supply Chains.* This document focuses on value chain due diligence by business (including investors) by clearly referring to FPIC, tenure rights, and access to natural resources (OECD/FAO, 2016). The OECD Working Party for Responsible Business Conduct (WPRBC) may adopt in 2018 a General Guidance on Due Diligence, applicable to all sectors, which is expected to address land governance issues as well.

While addressing safeguarding human rights in land related investments by the German development cooperation, Windfuhr (2017), comparing the VGGT and the IFC PS, argues that the VGGT can be used to support investments in a way that does not lead to any infringements of human rights. He also concludes that the IFC PS are directed towards clients and private borrowers and sensitive to many of the concerns reflected in the VGGT and that the IFC PS present a reasonable and robust framework for project impact assessments related to land issues. Here, it should added though that entire inclusion of the full VGGT is preferred and an adaptation of the IFC PS is needed.

The diversity of initiatives speak to the growing importance of land governance for business and provide a roadmap to companies that aim to go beyond a ‘do no harm’ approach to minimise adverse impacts, and make positive impacts using a ‘do good’ approach based on shared values, leading to better business for companies and society. To this end, existing, standards, guidelines and guidance provide a roadmap to companies and investors for respecting land rights.

It is equally clear, however, that the voluntary and non-binding nature of these guidelines has limitations for the breadth, speed and depth of adoption by companies. Despite the availability of diverse tools and guidelines, proper implementation, follow-up and monitoring remain far from clear (Quan, 2015). Most importantly, there is a need to move away from seeing land governance issues as an add-on corporate social responsibility activity, and mainstream the consideration of tenure risk and respect for land rights as part of core business strategy and processes.

A comparison of international guidelines & standards is included in Annex 1.

5. Sector land governance risk analysis and practices

5.1 Gold Sector

General overview

The Netherlands plays a minor role in the global gold sector. Gold is mainly used in jewellery, electronics and coins. Europe accounts for 2% of the world gold consumption. Of the 4,300 tonnes yearly on the market, 66% is new gold and 34% is recycled. The KPMG report observes that mining and processing of gold are associated with heightened risk of violations of human rights, labour rights and environmental safeguards. The parties to the IRBC agreement who are "working towards a responsible gold value chain" realise that companies, in their endeavours to act in conformity with international guidelines and principles, face challenges including the lack of adequate and easily available information on actual and potential human rights violations and environmental impacts. The complexity of the international value chain and its potential connection to conflict affected and high risk areas, calls for collective leverage to prevent or mitigate adverse impacts. The IRBC parties aim to collect and recycle waste from electrical and electronic equipment, moving towards a circular economy. In addition to the relevance of gold to the financial sector (in project financing and investments in gold mining companies as well as in bullion), the gold sector in the Netherlands consists predominantly of downstream supply chain actors (Van Gelder & Smit, 2015).

Sector specific guidance, regulations, initiatives and partnerships include:

- The OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas aims to prevent potentially harmful social and economic impacts on "vulnerable groups", among others indigenous peoples (OECD, 2013).
- The EU Regulation on Conflict Minerals will require European importers of minerals, including gold, to have due diligence and reporting processes in place to ensure that the imported gold has not contributed to the serious violations as mentioned in the OECD Due Diligence Guidance.
- The European Partnership for Responsible mining (EPRM) is broader but with strict standards and is attracting companies to become partners. The EPRM fund will provide a learning opportunity. It includes setting up an entry level standard, currently initiated in Colombia, which also addresses gender equality through a women rights and mining platform.
- The International Council on Mining & Metals (ICMM) is an international organisation dedicated to a safe, fair and sustainable mining industry. It brings together 23 mining and metals companies and over 30 regional and commodities associations to strengthen environmental and social performance. Focus areas of the ICMM include (1) Community relations and development, (2) Human rights, (3) Indigenous peoples, and (4) Resettlement. The ICMM published "Land acquisition and resettlement: Lessons learned", which discusses standards of the IFC, the World Bank, EBRD, and African Development Bank (ICCM, 2015a). The ICCM also published "The Indigenous Peoples and Mining Good Practice Guide", which outlines principles for positive engagement that foster respect for the rights, interests, aspirations, cultures and livelihoods of indigenous peoples (ICCM, 2015b).
- The Extractive Industries Transparency Initiative (EITI) is a global standard to promote the open and accountable management of oil, gas and mineral resources. Fairmined (associated with Fairtrade) for gold and silver (assurance label) for artisanal and small scale mining is an attempt to create consumer awareness and impact interventions;

but effect on supply side is still limited and leverage in the mining sector is often low. Fairmined is predominantly focused on artisanal scale miners (ASM) and does not include land issues.

Land issues in the IRBC Agreement

The parties to the Agreement consider the OECD Due Diligence Guidance as the touchstone for responsible business conduct and the manual for implementing due diligence, applicable to all businesses with gold or gold bearing materials in their supply chains.

In the IRBC Agreement, Annex 1 on social Issues of large-scale mining mentions land rights and contested land, impact on local communities, resettlement, social instability/conflict, loss of livelihood, malnutrition due to land deprivation and gender issues. With regard to environmental issues, the Agreement mentions for land use change, biodiversity loss and illegal land use related to artisanal and small-scale mining (in its Annex 1).

The gold Agreement is considered as an open-ended process agreement. A number of working groups now provide a more explicit focus. In the discussions on the gold Agreement, artisanal mining (ASM, often illegal) was a major issue, as well as the formalisation of titles.

Cases/Practices

Box 5.1.1: FPIC related processes during the gold exploration phase in Suriname

Suriname Gold Company (Surgold), a limited liability company owned by Newmont (managing entity), owns and operates the Merian Gold Project in north-eastern Suriname. Suriname is one of the most sparsely populated countries in the world, and while no people live directly within Surgold's operating footprint, the Merian project is located on the traditional lands of the Pamaka tribal group, which is recognised as an indigenous people/tribal people by Surgold and the international community. Because of this, special attention is required to protect their individual and collective rights. Currently, Surgold is working to develop and facilitate a capacity building programme with Pamaka community members/leaders to raise awareness of FPIC process/outcomes and rights. The capacity building is required to demonstrate that the Pamaka community understands why the company is engaging with them and what the various agreements are intended to achieve against an FPIC framework.

Source: ICCM (2015b), page 115

Box 5.1.2: The Cowal gold mine in Australia

The Barrick Company and the Wiradjuri indigenous people successfully established governance arrangements for the mine. In addition to its consultations with local indigenous communities, Barrick also met with conservationists and farmers to ensure that all interested parties had access to the same information. The company hosted several stakeholder tours of the proposed mine site in the years leading up to its construction. Establishing these relationships early on helped Barrick generate support from local communities to submit a formal Native Title Application to the government. The Native Title Agreement, which established the governance arrangements between Barrick and the Wiradjuri for the Cowal mine, took 18 months to negotiate. The Native Title Party, representing the traditional owners of the land, ensured the agreement included several provisions relating to employment, cultural heritage management, training and business development. The Wiradjuri were very clear that they wanted to establish a long-term partnership with Barrick to achieve employment and positive quality of life outcomes. The Wiradjuri communities were not interested in a transactional royalties-based agreement as they did not believe yearly payments would achieve community development or transformation. They based this approach on lessons learned from other Australian indigenous communities.

Key point: Keep ongoing efforts to follow and monitor agreements in addition to ex-ante due diligence.

Source: ICCM (2015b), page 101

Sector specific recommendations on land issues:

- The complexity of the international gold value chain and its potential connection to conflict -affected and high risk areas, calls for collective leverage to prevent or mitigate adverse impacts. As the gold sector in the Netherlands consists predominantly of downstream supply chain actors, land governance should be addressed at that level, leading to improved due diligence processes.
- It is recommended to explore among sector stakeholders how certification in the gold sector can be more widely accepted and how to include land issues.
- If resettlement activities are not managed properly, gold companies can face disruption of the project, and run legal or reputational risks. Companies should undertake resettlement activities responsibly in line with the VGGT and make it their goal to leave communities better off than they were previously.
- Compensation by resettlement or other (monetary and/or social) types of offsetting-compensation for loss of livelihood in gold mining areas should be on a fair land value basis (see also chapter 6.3). Stakeholder engagement in general, and negotiations with displaced people in particular, should be at the heart of the land acquisition and resettlement process. Affected communities and households should be informed and regularly reminded of grievance procedures.
- Information on actual and potential land rights violations and environmental impacts in different countries should be gathered, centralised and made available to gold sector stakeholders (possibly through Land Dialogue, LANDac). This will help gold sector stakeholders to take informed decisions and improve due diligence.

5.2 Garments and Textile Sector

General overview

The garment and textile sector in the Netherlands is a €20 billion sector and offers employment to 100,000 people in the Netherlands and 60,000 people contracted by Dutch companies and working abroad (SER, 2017a). A large number of enterprises are members of the three industry organisations: MODINT, INretail and VGT. In addition, half of the sales in the garment industry are made by non-Dutch enterprises operating on the Dutch market (SER, 2017a).

In 2013, an “Action Plan for the Sustainability of the Dutch Textile and Garment Sector” was signed by 126 enterprises. An IRBC agreement was concluded in 2015 with the following objectives:

- To address specific IRBC risks in clothing manufacturing or in the supply chain within 3-5 years and to improve the situation for groups experiencing negative effects;
- To provide individual businesses with tools to address the potential negative impacts of the company’s own business or its business relations in the production or supply chain;
- To develop joint activities and projects for business problems that cannot be solved completely and/or individually (SER, 2016).

A mid-term review of the Textile Agreement is currently underway. One of the concerns raised is the depth of due diligence as the focus is essentially only on Tier 1 suppliers and not on the entire value chain. Land is not yet a priority issue, although cotton production may well become a hotspot and deserves awareness among parties.

Around 90% of the world's 100 million cotton farmers live in developing countries, raising the crop on less than two hectares. These smallholders are especially vulnerable to market shifts and climate flux, and the performance of a single growing season can make or break a household. For cotton, sourcing starts very far in the supply chain, mostly from countries which are not the same as for the textile companies. Environmental stewardship is increasingly in the public eye, also for cotton production.

Sector specific guidance and initiatives include:

- The OECD's Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector aims to support a common understanding of due diligence in the garment and footwear sector aligned with the OECD Guidelines (OECD, 2017). It provides recommendations for enterprises on how to implement due diligence according to the OECD Guidelines in their own operations and in their supply chains.
- The Better Cotton Initiative (BCI) works with a diverse range of stakeholders across the cotton supply chain to promote measurable and continuing improvements for the environment, farming communities and the economies of cotton-producing areas (BCI, 2013). The Production Principles & Criteria for the Better Cotton Standard make no reference to land governance.
- MODE Tracker is a holistic, transparent and verified progress tracking tool to support fashion brands and retailers in improving their sustainability performance through measuring and communicating year-on-year progress. However, land is not a priority issue.

Land issues in the IRBC Agreement

The KPMG report indicated for this sector that land grabbing is identified as a human rights risk. Land governance issues mentioned in the agreement include environmental pollution in textile clusters which have a major adverse impact on the local population, agriculture and other "water users" (SER, 2016, p. 37). The Parties' joint aim is as follows: "to significantly reduce the environmental impact caused by the use and discharge of water, energy and chemicals in the production of supply chain" (SER, 2016, p. 37). When individual enterprises conduct their due diligence process, it cannot be ruled out that they will also encounter other problems in their production or supply chain, such as land grabs or corruption. When that is the case, enterprises will include them in their annual individual plan (SER, 2016, p. 15).

Cases/Practices

Box 5.2.1: A textile sector business case in Myanmar

Sometimes businesses expand their textile supply chain not only to new suppliers, but also to new production countries. If a business need for such expansion arises, all relevant corporate departments will research whether expanding to a new production country is a responsible choice. When performing due diligence on Myanmar a Dutch company came across potential land right issues next to labour issues. Given the history of the country, more due diligence with regard to land grabbing was considered necessary. The company understood that the land where the factory was located could have been unlawfully obtained through land grabbing. As part of their due diligence, the company worked with an international law firm with an office in Myanmar to perform the land due diligence.

The following was researched: Myanmar Investment Commission (MIC) permit; Lease agreement; Form of lease of town lands; Form 105/106; Corporate documents; History of the leased land; Stamp duty and registration of lease.

The documents were checked with laws relevant to historical land ownership by government in Myanmar such as: Land and Revenue Act and Rules (1876),Lower Burma Town and Village Lands Act (1899),Upper Burma Land and Revenue Regulations (1889);,Land Acquisition Act (1894), Land Nationalisation Act (1953); Duties and Rights of the Central Committee for the Management of Cultivatable Land, Fallow Land and Waste Land, by Notification No.44/91 (1991) and the Vacant, Fallow and Virgin Land Management Law and Rules (2012); Zoning and land use rules and regulations; the Transfer of Immovable Property Restrictions Act (1987) ("TIPRA").

Furthermore, a site visit was done to check the access or persons living on the site illegally. Enquiries with neighbours were part of the site visit.

Source: Personal Communication (2017).

Sector specific recommendations on land issues:

- Sector stakeholders indicate that land (and water) issues are most relevant while (1) obtaining land for the construction of factories and (2) related to environmental pollution. For improved due diligence, textile companies should conduct field visits to ascertain that any factory land-related activities/investments, including lease agreements, are in congruence with relevant national legislation and customary laws.

- Land issues related to cotton production are encountered further upstream in the supply chain and should be addressed in cotton certification schemes (sustainable, organic and bio-cotton certification). These land issues include titling and related land use decision making, land fragmentation, insufficient rotation opportunities and the limitations of available fallow land (because of land grabs and population growth), which leads to reduced soil fertility.

5.3 Green Proteins Sector

General overview

The goal of the IRBC Agreement for the green proteins sector, signed on 17 March 2017, is to make sustainably produced, high-quality vegetable proteins for human consumption internationally more accessible and attractive (SER, 2017b). The Agreement aims at supporting the transition from animal to vegetable protein in human consumption in different regions worldwide. To this end, sustainably produced foods made from high-quality vegetable proteins, often in combination with animal proteins, and vegetarian sources of protein for human consumption should be made available and attractive to all populations.

One of the most important sources of green proteins is soy. Cattle ranching and soy expansion constitute the major drivers of deforestation, both through direct conversion and indirectly by land use displacement. As such, significant land issues are associated with the green proteins sector.

Sector specific guidance, regulations, initiatives and partnerships include:

- The Roundtable on Responsible Soy (RTRS) is a multi-stakeholder initiative that promotes the responsible production, processing and trading of soy on a global level. Its members include the main representatives of the soy value chain and civil society from around the world. RTRS certification assures responsible soy production management, indicating that soy, whether as a raw material or a by-product, is produced in an environmentally correct, socially adequate and economically viable way. Certification has a five-year validity and is based on the RTRS Standard for Responsible Soy Production, a scheme that includes requirements that must be met by any producer wishing to be certified under this standard. The RTRS Standard for Responsible Soy Production includes several land governance issues (RTRS, 2013):

Table 5-1: Land governance issues in the RTRS Standard for Responsible Soy Production. Source: RTRS (2013)

Principle	Indicator	Sub-indicator
Principle 1: Legal Compliance and Good Business Practice	1.2 Legal use rights to the land are clearly defined and demonstrable	1.2.1 There is documented evidence of rights to use the land (e.g. ownership document, rental agreement, court order etc.).
Principle 3: Responsible Community Relations	3.2 In areas with traditional land users, conflicting land uses are avoided or resolved.	3.2.1 In the case of disputed use rights, a comprehensive, participatory and documented community rights assessment is carried out. 3.2.2 Where rights have been relinquished by traditional land users there is documented evidence that the affected communities are compensated subject to their free, prior, informed and documented consent.
	3.3 A mechanism for resolving complaints and grievances is implemented and available to local communities and traditional land users.	3.3.1 The complaints and grievances mechanism has been made known and is accessible to the communities. 3.3.2 Documented evidence of complaints and grievances received is maintained. 3.3.3 Any complaints and grievances received are dealt with in a timely manner.
Principle 4: Environmental Responsibility	4.4 Expansion of soy cultivation is responsible	4.4.1 As of May 2009, any expansion in soy cultivation has not taken place on land cleared of native habitats.
Principle 5: Good Agricultural Practice	5.1 The quality and supply of surface and ground water is maintained or improved.	5.1.1 Good agricultural practices are implemented to minimise diffuse and localised impacts on surface and ground water quality from chemical residues, fertilisers, erosion or other sources and to promote aquifer recharge 5.1.3 Any direct evidence of localised contamination of ground or surface water is reported to, and monitored in collaboration with local authorities.

- IFOAM (International Federation of Organic Agriculture Movements) is an international umbrella organisation uniting an enormous diversity of stakeholders contributing to the setting, aligning and promoting organic standards. The IFOAM Family of Standards, based on IFOAM Norms, states that: “Operators should respect the rights of indigenous peoples, and should not use or exploit land whose inhabitants or farmers have been or are being impoverished, dispossessed, colonised, expelled, exiled or killed, or which is currently in dispute regarding legal or customary local rights to its use or ownership” (IFOAM, 2014).

Land issues in the IRBC Agreement

The Agreement mentions natural resources, nature, and environment, labour and human rights. Land governance issues are also reflected in the “respect local culture and local actors” mentioned as a challenge (p.6) and “land grabbing is a risk” (p 37).

Sector specific recommendations on land issues:

- The RTRS Standard for Responsible Soy Production addresses land issues such as land use rights, land conflict and grievance mechanisms. It is important to implement and monitor the standard and its impacts.
- Regardless of RTRS membership, companies should also perform their own independent due diligence with a view on land issues and potential conflicts.

5.4 Sustainable Forestry Sector

General overview

In 2013, the Dutch Government and 27 organisations signed a Green Deal “Responsible Timber” (“Bewust met Hout”) to promote sales of sustainably sourced timber (Government of the Netherlands, 2013b). The Green Deal refers to the Forest Stewardship Council (FSC) and the Programme for the Endorsement of Forest Certification (PEFC) in its definition of sustainable timber.

The KPMG report mentions land grabbing as a priority risk as a result of deforestation (KPMG, 2014). The Sustainable Forestry Agreement (“promoting sustainable forestry”) was signed on 22 March 2017 (SER, 2017c). The Agreement is a continuation of the Green Deal, signed with the Ministry of Economic Affairs. Action points in the Agreement include identifying and addressing IRBC risks; strengthening the trade chain for sustainably produced timber; stimulating the market demand for sustainable produced timber and; strengthening the business case for sustainable forest management.

Among Dutch timber traders, 90 companies import from 50 different countries and only a few companies have their own concessions. Most companies acquire their information themselves on due diligence issues.

Conversion of tropical forests to industrial production of agricultural commodities is a major driver of climate change and biodiversity loss. In response, ambitious zero-deforestation pledges have been made by a growing number of global consumer manufacturer companies, international agricultural traders, agri-industrial companies and governments, to establish deforestation free supply chains.

Yet, more work is needed for a sustainable forestry sector. The working groups of the IRBC agreement could discuss these issues and how they relate to land governance and the landscape approach.

The promise is that by 2020 only 100% sustainably produced timber will be used in the Netherlands. However, at this stage, there is still a gap of 35%, as many countries have different requirements and the Dutch government also does not exclusively use sustainable timber. There is a need to increase awareness of these issues in the countries where timber originates from and convince suppliers to adhere to sustainable forestry practices.

Sector specific guidance, regulations, initiatives and partnerships include:

- The European Timber Regulation (EUTR) by the European Union entered into force in 2013 and aims to block illegally-sourced timber from entering the EU market. The Regulation divides those who deal in timber and timber products into two categories: operators and traders. Operators – those who first place timber products on the EU market – are required to carry out due diligence, including descriptions of their timber and timber products, the country of harvest, species, quantity, details of the supplier and information on compliance with national legislation. Traders – those who buy or sell timber or timber products already on the market – are required only to keep track of who they buy from and sell to.
- The Forest Stewardship Council (FSC) is a global multi-stakeholder organisation that sets the standards for what is a responsibly managed forest, both environmentally and socially. Social criteria address indigenous peoples' land rights. While FSC certification cannot remedy complex historical land-based conflicts, it does require that ownership, land use and tenure rights are clearly established. Companies must also negotiate and obtain prior agreement from communities affected by their activities, on the basis of a well-informed and fair process. This is a mechanism which provides integrity in certification by preventing or resolving conflicts and facilitating transparent and fair contractual relationships (FSC, n.d.).
- The Programme for the Endorsement of Forest Certification (PEFC) is the world largest forest certification system. The social dimension in sustainable forest management deals with a wide variety of aspects, from indigenous peoples rights to health and safety issues to contribution to local employment (PEFC, n.d.).

Land issues in the IRBC Agreement

The Sustainable Forestry Agreement sets out to ensure that land rights, human rights, and freedom of association are respected and that wages for indigenous peoples, local communities and workers, including smallholders, are improved. Local participation should be enhanced by inclusive business models and synergy with land-use projects, nature-inclusive agriculture and restoration of degraded areas. The Agreement does not mention the VGGT nor gender issues due to the prominent role of certification in the due diligence process, which sector stakeholders considered as adequate.

Cases/Practices

Box 5.4.1: The Savannah Fruits Company, Ghana

Ghana's Northern Savannah has witnessed increasing deforestation from the illegal harvesting and trade in commercial hardwood trees and wood for charcoal. Land degradation is also common, caused by overgrazing and unsustainable agriculture and reduced fallow periods. Tenure insecurity is an important underlying problem, all of which leads to fewer shea (Vitellaria paradoxa) trees, on which many local communities in West African savannas -in particular women -depend for income and food security. An oil is extracted from shea nuts that is widely used locally and in international markets, in soap, shampoo, skin creams and other beauty products.

Building on community work by local NGOs, the Savannah Fruits Company entered into a collaboration with A Rocha Ghana, who helped organise seven communities in the buffer zone of Mole National Park in the previous ten years. A Rocha facilitated a process through which local communities mobilise, plan and manage communal natural resources and share the benefits from them, through several functional natural resource governance structures and instruments supported by local and national legal frameworks called Community Resource Management Areas (CREMAs). Since 2013, the company has actively contributed to the strengthening of this CREMA and to the economic viability of CREMAs and the community at large, by (a) training women in more efficient shea nut harvesting and processing, (b) training women in organic sourcing and handling of the produce as organic shea, and (c) certification of the broader landscape where shea trees grow and nuts are collected.

The company guarantees women a premium on their shea nuts, and incentivises community action for sustainable landscape management through an organic shea nut volume-based incentive package. This business benefits both the individual trader and also the community through a conservation premium from each bag of organic shea nut traded. At the community level, this is realised as a conservation fund used for developing, managing and monitoring community managed areas. The project is now being expanded into a landscape approach to fight deforestation and contribute to reforestation, involving local forest services and a timber development company from Ghana.

Key points:

- Encourage collaboration. Companies and CSOs have demonstrated that collaboration can benefit, especially women in small landscapes where communities have rights to manage natural resources, e.g. through Community Resource Management Area (CREMA) arrangements.
- Develop a landscape approach to combine threats and opportunities from different uses of trees, e.g. energy, timber, NTFPs, food, conservation, and income generation.
- Raise awareness among local users, producers and public actors of the need to plant commercial trees to ensure the long-term viability of important sectors such as the shea Industry.
- Combine public and private finance to make feasibility studies possible for landscape restoration activities, and to develop a future integrated landscape investment plan.
- Increase the economic value of shea to raise security for trees, limiting threats from charcoal-making, and planting, protecting and restoring areas for NTFP collection and marketing.

Source: Savenije et al. (2017)

Box 5.4.2: Komaza Kenya

The Komaza project started in the Ganze district of Kenya, where 80% of smallholders depend on subsistence farming. Komaza is a Kiswahili term that means ‘to encourage growth’. Farmers produce 50% of Kenya’s wood supply. Unfortunately, timber quality has been too poor to enter more profitable markets. Therefore, Komaza’s goal is to increase small farmers’ ability to produce high quality wood.

Komaza was founded in 2006 and can be seen as a social enterprise. Its overall concept is to create income-generating opportunities for smallholder farmers living in Kenya’s infertile and drought-prone regions by planting trees on farmer land. Komaza provides the farmers with the inputs and training they need to grow fast-growing trees (primarily Eycalyptus grandis x camaldulensis hybrid), intercropped with food crops. These trees are planted on their unused land to generate income for their families and to create a sustainable wood supply for growing local markets. Komaza’s overall goal is to plant 50 million trees by 2020.

Komaza strongly focuses on smallholders, mitigating the risk of land acquisition by the government. The company does not own any land itself. The cost and benefits created by timber production are shared by participating farmers and Komaza. It is important that farmers keep sufficient land for their own food production, therefore only a certain proportion of land is converted into tree plantations. The farmers themselves decide upon the area for replanting and the number of trees. On average, farmers bring land up to half an acre. The farmers prepare and work on their land, the company provides trainings, tools and plants. In addition, they harvest, transport and sell the trees from each farm. This concept provides the farmer with continuous income over several years.

Key points:

- To be economically feasible Komaza had to contract a large number of farmers (>20,000).
- Ownership and use rights should be recognised by neighbours, chiefs and community leaders, as this may give more tenure security than ‘legal’ land titles.
- Let each farmer prepare their own land for tree planting. If the farmer succeeds, he/she is considered a ‘serious’ farmer and can continue being part of the project.

Source: Savenije et al. (2017)

Sector specific recommendations on land issues:

- Establish deforestation free supply chains. This can be done by making financing infrastructure available to intensify crop production for all producers including women, youth, and marginalised groups.
- Raise awareness in countries and convince suppliers to source timber products sustainably.
- Study the timber production chain and related land issues to be able to indicate what can be done from the demand side and from the source side.
- Include the VGGT (and the related FPIC, gender) in the forestry agreement working group discussions.

5.5 Pension Funds and Insurance Sectors

General overview

In the Banking Sector Agreement the Dutch Government calls on non-bank financial institutions to assess and address human rights issues, including land rights and FPIC, in their asset management activities. Insurance companies and the pension funds have, since, initiated their (confidential) negotiating processes. The call of the government referred to asset management only, but the insurance sector also has a duty to address responsible business conduct issues.

The UN Principles for Responsible Investment (PRI: relevant for both the pension funds and insurance companies, as investors) and the PSI Principles (relevant for the insurance companies, as insurers) state, amongst others, to embed Environmental, Social and Governance (ESG) criteria into analysis and decision-making. Moreover, PRI includes a reference to enable real-world impact aligned with the SDGs. Both sets of Principles are not specific about the methodology (qualitative, metrics), scope and depth (entire value chain, boundaries) of the ESG analysis, the risk appetite articulation and the incorporation for decision-making and client advice.

Central theme in the IBRC process is due diligence, which constitutes per the OECD MNE Guidelines following elements: an initial and on-going, rights-based, risk-, impact- and dependency-sensitive evaluation covering the entire value-chain in accordance with local laws and relevant international laws and standards. It is important that due diligence includes the value chains from the investees and insureds. Investors and insurers may face the consequences of insufficient due diligence indirectly (through impaired or stranded assets in their portfolio) and directly (reputational risk, liabilities, costs).

In a world with increased competition for scarce resources amidst a growing population and a growing middle class, land is becoming a critical success and risk factor for opportunities, competition and conflicts, often obscured for “end-of-the-value-chain–actors” because of its distance in such value chain notably for banks, pension funds and insurance companies: their own unawareness of the fundamental importance of land use in the context of fertile soil, water availability, tenure, human rights, biodiversity, deforestation, carbon, gender (as this study is addressing) is often aggravated by the unawareness or lack of action by their investees and insureds. The possible costs of conflicts related to land and community issues are studied in the Kennedy School/Shift/University of Queensland paper “Costs of Company-Community Conflict in the Extractive Sector” (2014). The Business and Human Rights Resource Center published the “Investor Briefing: renewable energy impacts on communities” (April 2017), addressing the need to balance environmental and climate change issues with human rights, including land rights.

In their due diligence and research, pension funds and insurance companies are highly dependent on the quality of the due diligence and disclosure policies and practices of their investees and insureds (many of whom are currently at best “early stage”), as well as on information provided by financial services providers (such as MSCI, Sustainalytics, who base themselves on the absence of local controversies around biodiversity, pollution, community issues), certification bodies/standard platforms (such as RSPO, FSC), certifiers/standards advisory services providers (such as Fair Trade, Fairmined, UTZ Certified, Rainforest Alliance) and NGO’s (such as Oxfam, Solidaridad, Both Ends, WWF); they may also rely on positions taken by peers as well as reports provided by their investees and insureds. However, it remains the responsibility of the pension funds and insurance companies to make an “autonomous” assessment of potential, material issues, as stated inter alia in the OECD MNE Guidelines. In the context of the IRBC process, the application of the VGGT Guidelines would extend this own assessment to land issues as well. A broader evaluation is in our view warranted by addressing in a comprehensive way all material externalities which would include (and possibly internalise) any current or evolving issues.

Their assessment of possible linkage with, and, even, (part-)responsibility for current and potential adverse impacts per the OECD-MNE/UNGPs through “cause”, “contribute” (to the adverse impact) or being “directly linked” to a business relationship which causes or contributes to such adverse impact, is subject to the tests of “materiality” (of the adverse impact to relevant affected stakeholders), “severity” (size of the adverse impact) and “proportionality” (reflecting the degree of responsibility to prevent, reduce or mitigate the adverse impact: large actors have a bigger responsibility (as evidenced in the APG/Posco case below). In most situations, the pension fund or insurance is only “directly linked” under the OECD-MNE/UNGPs.

It is relatively new to pension funds and insurance companies and other large investors (“institutional investors”) to be held (partly) responsible and accountable for practices in their entire value chains. Institutional investors have been recently challenged on land issues by CSO campaigns, negative publicity in the media, NCP complaints (such as the Dakota Access Pipeline, Oaxaca windmill farm cases) and even transaction losses in their portfolios and/or in their reputation. In this context, it should be recognised that land is only implicitly referred to in the OECD MNE Guidelines and the UN Guiding Principles. Land is typically deep in the value chain, combined with the lack of structured data as well as the “innocence” of investees and insureds, particularly small and medium sized companies, with these issues, and, hence, not known and considered a priority issue in the materiality assessment. Active engagement with CSOs, active learning within the sector, including dilemmas, good and bad experiences, and exercising joint leverage “for better” in specific cases, are important.

In particular long-term investors, such as pension funds (even when “passive” and/or minority investor; see also the APG/POSCO case below on minority holding), have an interest vis-à-vis their current and future stakeholders and society at large to adopt an active societal stewardship role (“do no harm” as per the OECD MNE Guidelines and UN Guiding Principles and “do good” as per the SDGs), enabled by active engagement with its investees/insureds beyond current theme-specific exclusion lists. Institutional investors investing in assets with short-term profits, yet harmful to society (e.g. fossil fuels), may not serve the interests of their primary beneficiaries: pricing or profits would come secondary to a values-based baseline. Policy clarity on these dilemmas is advisable. Knowledge of the emerging political, policy, societal, technological, sector-specific, business context is of the essence. The financial sector has a public duty and also a business opportunity to support all its beneficiaries and business relationships in this.

In recent years a number of initiatives have been launched to provide further guidance to the financial sector (asset owners, asset managers and financial intermediaries). In this context noteworthy are following papers:

(1) Globalands/Umweltbundesamt paper (June 2015) on “The private sector, CSR and sustainable land use: recent trends”, with an evaluation and comparison of a number of international public frameworks, such as UNGPs, VGGT, IFC Performance Standards, UN Global Compact FAB Principles and, more specifically PRI papers, mentioned below in (2) and (3)

(2) The Principles for Responsible Investment in Agriculture and Food Systems (CFS, 2014): the RAI Principles are "to promote responsible investment in agriculture and food systems that contribute to food security and nutrition, thus supporting the progressive realisation of the right to adequate food in the context of national food security"; the RAI Principles aim to address both the need for investment in agriculture and food systems on the way towards food security and the challenges involved in (large scale) land acquisitions ("land grabbing"); the Principles were developed to complement the VGGT.

(3) UN Principles for Responsible Investments in Farmland: these so-called Farmland Principles were launched in 2006 by a multi-stakeholder group, including large pension and hedge funds; the 6 principles relate to the integration of ESG issues into investment analysis and decision-making, ownership policies, disclosure practices in target companies. In 2014 the Farmland Principles were integrated within the PRI as Guidance for Responsible Investment in Farmland.

A challenge for pension funds and insurance companies is to embed the societal agenda on “do no harm” (OECD MNE Guidelines/UN Guiding Principles/VGGT) and “do good-“agenda (as reflected in the SDGs) in investment-research and risk-screens, recognising the diversity of sectors they are linked to and develop training process for investment managers to make them fully capable of integrating ESG in their assessment decision process.

A starting point in the investment process is that investment officers use red flags (e.g. exclusion lists) before embarking on a due diligence process. The CDC (the UK Development Finance Institution) has developed an ESG toolkit for fund managers. However, the SDGs, which also include land issues, may offer guidance for positive long-term value creation in the portfolio.

Various SDG-related initiatives and commitments (e.g. SDGinvesting and Sustainable Development Initiative) have been made over the past twelve months by large Dutch pension funds and insurance companies.

Cases/Practices

Box 5.5.1: ABP and POSCO

The Korean steel company POSCO intended to invest an amount of US $ 12 billion in a large steel mill and port in Orissa, a state of India since 2005. This would have caused huge damage to the environment and the living environment of the local population. Part of the inhabitants opposed the expropriation of land and the loss of living. There were violations of human rights.

Because all indicates breaches of the OECD guidelines for multinational companies, complaints have been filed with the NCPs of South Korea, Norway and the Netherlands, together with partners in India, South Korea and Norway. In South Korea, the complaint was mainly against POSCO, while in Norway and the Netherlands pension funds were targeted because of their roles as institutional investors in POSCO. In the Netherlands, the complaint was specifically directed against the ABP pension fund and its asset manager APG: they were asked use their leverage with POSCO's to act.

ABP/APG maintains a regular dialogue with POSCO, which discusses its social responsibility for the effects of its investment plans in India. Although ABP / APG itself has not actively consulted with representatives of the local communities threatened by POSCO, it urged POSCO to seek out this kind of consultation more actively.

The NCP notes in its final statement that financial institutions and other investors are subject to OECD guidelines, even when the investor has a minority interest; and this is even more the case when it concerns a large pension fund. This means that financial institutions and other investors have a responsibility to exercise their influence wherever possible to help avoid or reduce any negative effects of actions by companies in which they invest in accordance with article II.12 and Commentary 20 of the OECD MNE Guidelines.

Source: Ministry of Foreign Affairs (2013)

Sector specific recommendations on land issues:

- Land issues need to be explicitly considered, on an "include-or-explain-why-not" basis, in the investment policies and due diligence processes as possible salient issues from social and/or natural capital perspectives, and should, hence, be referred to in both IRBC agreements for the pension funds and insurance sectors. The VGGT should be explicitly considered and referred to, in addition to the OECD MNE Guidelines and the UN Guiding Principles. Moreover, the PRI Guidance papers referred to above provide guidance in the agricultural sector but may be considered as well in other sectors where land issues are involved.
- Investees should be required to disclose their understanding of and dealing with land risks as an emerging salient issue in their entire value chain.
- As land issues are relatively unknown and distant in the value chain of many sectors in which insurance companies and pension funds invest in or insure, collective

learning, training and sharing of experiences (including dilemmas, exercising individual and collective leverage) within both insurance and pension sectors is recommended.

- Not investing or insuring may not be in the interest of sustainable, inclusive societal development (as reflected by, notably, the SDGs); there is no perfect answer today, let alone for tomorrow. Risk management is taking informed decisions for doing the right business and investments (right), balancing material issues, rights and interests on an as much as possible informed basis and be accountable. The financial sector has a particular stewardship role in this. The universal SDGs offer a comprehensive narrative and agenda for responsible and profitable business conduct.

5.6 Floriculture Sector

General overview

The flower industry is a dynamic, fast-growing global industry, defined by three major components: growers, wholesalers and retailers. The Netherlands is an important producer for cut flowers as well as a key importer of flowers from developing countries. Besides being one of the market leaders for cut flowers, the Netherlands is also a main trading hub. The country's logistic position within Europe as well as established international trade ties within the flower industry, place the Netherlands centre stage on Europe's flower market.

In recent years, Dutch flower companies have established businesses in the global South as a result of favourable climatic conditions, available land and water resources, and the presence of cheap labour. With the aim to stimulate investments in developing countries (e.g. in the context of the Private Sector Investment programme) companies were further incentivised by the Dutch Government to invest in developing countries through development-related subsidies or favourable loans. Justified by the perceived availability of underused tracts of arable land and the need to bolster global food security, the Dutch Government views private sector investments as levers for poverty alleviation and inclusive growth.

The floriculture industry is increasingly scrutinised as it produces inedible luxury goods through the use of scarce land and water resources in areas faced with widespread food insecurity and poverty. Moreover, the investments are often located in regions characterised by weak land governance. In these areas local smallholders do not have formal rights to land and may be relocated in the process of floriculture development without sufficient compensation, consultation or participation.

Sector-specific guidance, regulations, initiatives and partnerships include:

- The Floriculture Sustainability Initiative (FSI) in the ornamental sector calls for an IRBC Agreement. FSI is a broad multi-stakeholder platform for sustainability in the ornamental field and has the ambition that in 2020, trade in flowers and plants will come from sustainable sources for at least 90%. The FSI discusses what steps will be needed to fully align the FSI with OECD Directives and the UN Guiding Principles. A plan of action to deal with stakeholder agreements in order to reach an IRBC Agreement this year is currently being developed by FSI.

Cases/Practices

Box 5.6.1: Flowers for Food

LANDac and the Food & Business Knowledge Platform took the initiative to carry out a scoping study on the impacts of the Dutch1 floriculture sector in Eastern Africa. The study covers four countries: Kenya, Tanzania, Uganda and Ethiopia.

Key points:

- An important consequence for local food security is the fact that land, previously used for the production of food, has been placed under flower cultivation.
- Flower farm employees, the majority of whom are migrants, cannot secure part of their food needs through subsistence agriculture. Being far away from their places of origin, and lacking the resources to access land in their new settings possibilities to practise agriculture are diminished.
- Floriculture investors have engaged in natural resource conservation when the water resources on which they depend have been under threat
- Even when land and water resources were not taken directly from local communities, in several cases land had been taken from local users at an earlier stage then subsequently assigned to floriculture investors.

Source: Kirigia et al. (2016)

Box 5.6.2: Lake Naivasha: Private, Public, People Partnership (PPPP) in Kenya

Lake Naivasha is the only freshwater lake in the Kenyan Rift Valley, and is home to a blossoming agriculture industry, exporting high value fresh vegetables and cut flowers especially to the Dutch and English markets. WWF NL has been active in the Lake Naivasha water basin, Kenya, for a decade. The area faces severe environmental degradation, which poses serious risks to water and food security, and climate change resilience. In order to mitigate these risks, WWF NL and its partners successfully brought together stakeholders from the private sector, local communities and civil society, and the Kenyan government to adopt a joint strategy to address the water risks affecting all stakeholders. To make sure that the most vulnerable groups are represented on an equal footing with the other partners, WWF NL has supported them to improve their coalition building capacities, lobby and advocacy skills, and strategic planning.

Source: WWF (2016)

Sector specific recommendations on land issues:

- Linkages between floriculture investments, land governance arrangements and local food security are diverse, highly dependent on local circumstances and often indirect. This calls for attention in policies that stimulate Dutch investments in developing countries through subsidies or loans in the context of the 'Aid and Trade agenda' and the need for a future IRBC agreement.

5.7 Palm Oil Sector

General overview

Palm oil is used in the food industry in large quantities, sourced mainly from Indonesia and Malaysia which combine 85% of global production. In these countries palm oil production is generally related to land grabbing and deforestation. Large scale palm oil expansion directly undermines food and livelihood security of rural and indigenous communities when land that rightfully belongs to, or has been used by, these communities is alienated to companies for oil palm cultivation with little or no consultation or compensation provided or alternatives considered. Not only in Malaysia and Indonesia, but also in other palm oil producing countries, such as Colombia, the Philippines, Nigeria, Uganda, Ghana, Sierra Leone and others, has large scale palm oil expansion been accompanied by land grabs to the detriment of local communities. NGOs and media campaigns continue to expose new cases of palm oil-related land grabs on a frequent basis.

As due diligence far into the supply chain is considered difficult in the view of the fungible nature of palm oil and the challenge of supply chain traceability, many Dutch retailers, consumer good companies and banks are members of the Roundtable on Sustainable Palm Oil (RSPO), a global non-governmental multi-stakeholder initiative established in 2004 to make the palm oil sector more sustainable. The RSPO unites more than 3,500 stakeholders from the following categories: oil palm producers, processors or traders, consumer goods, manufacturers, retailers, banks/investors, and environmental and social NGOs (RSPO, 2017a). The RSPO prescribes a list of principles and criteria (P&C) in its standard for sustainable palm oil, which the participating companies, especially producers, are required to comply with. Compliance is verified through certification.

Regarding land governance, the following can be noted:

- RSPO principles require a commitment to transparency; compliance with applicable (national/local) laws and regulations (including customary rights to lands) as well as relevant international laws; responsible development of new plantings; environmental responsibility and conservation of natural resources and biodiversity; among others.
- Specifically, with regard to land, the RSPO P&C require that member companies
    - Respect customary rights;
    - Only develop plantations on lands where they have the free, prior and informed consent of communities who have used, owned or occupied those lands; and,
    - Exclude from plantation development those areas essential to community needs and cultural identity or found to have high biodiversity conservation values (Lomax, 2015).
- The RSPO P&C prohibits any land acquisition without FPIC. "The right to use the land must not be contested by local people who can demonstrate that they have legal, customary or user rights. The cultivation of oil palm must not diminish the legal, customary or user rights of other users" (RSPO, 2014). The RSPO also developed a Guide to FPIC in 2008, which was revised in 2015.
- In 2009, the RSPO established a complaints system to provide a framework to address complaints against any RSPO member or the RSPO system itself. By 2017, the RSPO had registered a total of 83 complaints, of which the majority of complaints relate to land disputes with indigenous peoples (RSPO, 2017b).
- In 2013, the Dispute Settlement Facility (DSF) was developed for members involved in cases of land dispute. DSF is different from the complaints panel in that, typically, both parties have agreed to bring their case before an independent mediator.
- Certification of a company's operation is only granted if there are no major problems with any of the same corporate group's other majority-owned operations to prevent greenwashing (Colchester, 2016).
- A special taskforce has been put in place for improvement of enforcement of certification. This has led to application of FPIC to new plantations, first trainings of auditors, improved control of the application of labour rules, and plantation companies have been trained to implement rules better.

As such, the RSPO certification provides fairly comprehensive and progressive socio-environmental regulation which can enhance sustainable land use and production practices in this industry, especially by the larger transnational plantation companies that are mindful of their global reputation. The RSPO is also far more responsive than governments have been to the land rights of rural and indigenous communities, providing due process for land claimants as well as recognising that these communities may have legitimate rights to land even if companies were awarded legal title by governments (Nesadurai, 2013).

At the same time, despite these efforts, the RSPO has been under criticism for not delivering on its promise to protect land rights. Studies and reports have shown that member companies are failing to adhere to the P&C with respect to land and human rights. Continued land grabs, lack of community involvement and representation, and disregard for collective rights and customary tenure are among the most commonly reported problems (Colchester, 2016). The most recent RSPO impact report indicates that "the Free, Prior and Informed Consent (FPIC) process has been shown to increase interactions between plantations and communities, but there is no conclusive evidence that FPIC reduces conflict or improves social equality" (RSPO, 2017b).

Cases/Practices

Box 5.7.1: Complaints concerning Rabobank investment in palm oil in Indonesia

In 2014, A complaint on the due diligence on palm oil policies and practices of Rabobank was brought forward with NCP-NL by Milieudefensie/Friends of the Earth. It was related to loans provided to Bumitama Agri Group (BGA) and the adverse environmental impacts at the Bumitama managed Golden Youth (GY) palm oil plantation in Kalimantan. The complaint focusses specifically on the content, implementation and monitoring Rabobank's Palm Oil Supply Chain Policy, including the handling of complaints. The issue of large-scale palm oil plantations was extensively discussed. Also discussed the practice of Rabobank's application through its clients of FPIC as part of the RSPO principles and criteria and as part of the ex-ante environmental and social impact assessment (ESIA).

In research published in November 2013, Friends of the Earth documents how land was cleared for the plantation managed by Bumitama without the required permits or proper government approval. The destroyed forests were home to endangered orang-utans and the company brought illegally produced palm oil in the supply chain by taking over the management of the GY plantation without the right permits. Already five complaints were filed against Bumitama with the RSPO, but none of the complaints have yet been resolved.

Both parties agreed that a critical view of palm oil remains imperative in view of the issues related to the environment and land; and that Rabobank will maintain its dialogue with external stakeholders on the basis of concrete evidence of non-compliance by its clients in the palm oil industry.

The NCP stressed in its final statement that financial institutions have a responsibility of their own to exercise individual leverage to seek to prevent or mitigate the impact of their business conduct, to increase their leverage on their own clients if necessary, and respond identified adverse impacts through engagement or, as last resort, divestment.

Source: OECD Watch (2016)

Box 5.7.2: Government of Ghana, Twifo Oil Palm Plantations Limited (TOPP) and the Dutch Government

In 1978, an outgrower oil palm scheme was in initiated in central Ghana, by a tripartite public-private partnership involving the Government of Ghana (GoG), Twifo Oil Palm Plantations Limited (TOPP) and smallholder producers of oil palm. GOG provided a concession to TOPP including land for the nucleus estate and a processing factory.

The 250 occupants of the land were resettled on government-owned land as long-term tenants and given support to grow oil palm as outgrowers under the Smallholder Tenant Scheme Project (now in phase 3), funded by the EU and the Government of the Netherlands. These outgrowers have received technical assistance (including extension services) as well as inputs and transportation (for inputs and outputs) on credit from TOPP which deducts the costs from payment for the oil palm fruits, amounting to about 30%. In addition, the scheme co-opted other farmers who are supported to grow oil palm on their own land under the Buabin Oil Palm Outgrower Project, funded by ADF. These new outgrowers, about 900, have received similar support from TOPP as the original ones; in addition, they receive support to register their land. As of July 2011, the scheme had about 1,000 out growers growing oil palm on 3,000 ha of land while TOPP grows its own oil palm on a nucleus estate of 4,234 ha.

According to evaluations of the outgrower scheme, the land rights arrangements have generally been adequate; the challenge faced by the outgrowers is the fluctuation of world prices of palm oil on which payments to out growers is based. On the other hand, the challenge faced by TOPP is the side-selling of oil palm fruits by the out growers.

Key points:

- Encourage investment models that do not involve land acquisition or only allow land acquisitions in compliance with the VGGT
- Ensure adequacy of investment model, depending on local context and factors involving tenure, policy, culture, history, geography, and demography.
- Ensure that communities and smallholders have ownership and voice in the investment model.
- Monitor and evaluate the benefits for communities and smallholder farmers.

Source: Byamugisha (2016)

Box 5.7.3: Responsible Land Based Investment in Practice: LEGEND project in Sierra Leone

In Sierra Leone Solidaridad is implementing a project which is part of the LEGEND programme funded by DFID (2016-1019). The private sector partner in this project is the Natural Habitats Group, which currently operates in two oil palm production areas in Sierra Leone, located around Yele and Zimmi.

The project is focused on reducing and formalising the original concession size in the Zimmi area of Makpele Chiefdom in Pujehun District from the actual size of 41,000 HA to maximum 15,000 HA destined for oil palm production. To comply with the RSPO new planting procedure a High Conservation Value (HCV) assessment and impact assessment were required. In addition, National Habitats Sierra Leone (NHSL) recognises all right holders living on the land, therefore active community sensitisation and outreach is required and ongoing. By informing communities about the activities of NHSL and the opportunity to lease land to the company, the NHSL community outreach team is driving a process of documenting land rights with GIS mapping and formalising land lease agreements between landowners and NHSL.

This project aims to capture replicable lessons on responsible land based investment from the NHSL experience: how to approach community engagement, how to raise awareness on land rights with support and training from NGO NAMATI and how to implement a transparent FPIC process towards documented land lease agreements.

These lessons feed into the national policy dialogue in the FAO VGGT working group in Sierra Leone, to showcase best practice from a private sector perspective. As a result the Ministry of Lands has requested support from Solidaridad to design a monitoring protocol to screen future investors on responsible practices, based on the guidelines provided by the VGGT. At the same time there is an ambition to share these lessons in the oil palm sector in West Africa, through the network of Solidaridad West Africa in the oil palm sector, and the Round Table on Sustainable Palm oil.

Source: Solidaridad (Personal Communication, 2017)

Sector specific recommendations on land issues:

- The RSPO addresses different land governance issues and promotes adherence to FPIC. However, neither RSPO certification nor the RSPO complaint system are able to rule out incidents of malpractice, especially in countries where the government is failing to establish and maintain legislation in the field of environmental and working conditions. On the one hand, this calls for capacity building on land governance in producing countries to support the ability of governments to enforce legislation. On the other hand, targeted support for the RSPO by sector stakeholders is necessary to increase its effectiveness on land governance, e.g. with regard to:
    - Strengthening the ability of indigenous peoples to report violations of the RSPO P&C;
    - Supporting the grievance mechanisms set in place by the RSPO;
    - Enforcing sanctions on member companies that are in violation with the RSPO P&C;
    - Promoting a stronger role of indigenous peoples in the activities of the RSPO.
- Finally, in light of the limitations of RSPO certification to promote land governance, companies need to take individual responsibility for their supply chain beyond RSPO certification (e.g. stronger due diligence processes; increased traceability along the supply chain; etc.).

5.8 Cocoa Sector

General overview

Côte d'Ivoire and the Netherlands are the largest processors of cocoa worldwide. The cocoa sector in the Netherlands strives for 100% sustainable cocoa consumption by 2025, based on a Letter of Intent which was signed in 2011 by sector stakeholders organised in the Choco Work Group. The Letter of Intent and the performance of the Choco Work Group are currently being evaluated to prepare for a second phase and to be able to respond more accurately to new developments in the cocoa sector. Also, cocoa value chains are being analysed by stakeholders of the Banking IRBC Agreement through "value chain mapping exercises", an activity coordinated by the Banking Association (NVB).

Current global production levels of cocoa are above four million tons, which results in a situation of oversupply of cocoa. The sustainability perspective is not to use more land for cocoa cultivation, but to use existing land more efficiently. The ideal is "more cocoa, on less land, produced by less people", and this should become the business case for companies. At this stage, most of the increase in cocoa production is still being realised through expanding the land under production. However, a study by SEO (2016) concludes that for the vast majority of cocoa farmers expanding cocoa production in the future by increasing scale appears to be unrealistic due to land shortages and challenges related to land property rights.

Amongst other factors, a stable tenure situation will help farmers to intensify cocoa production, ensure rotation, and use intercropping and fertilisers in their farming system, thus limiting the need for further increase in area and deforestation. In Ivory Coast cocoa is cultivated in deforested protected areas. Indeed, governments, companies and farmers should strive for zero deforestation as promoted by the Amsterdam Declaration (2015, see below). The civil war in Côte d'Ivoire has had a negative impact on land rights. This is paired by a lack of vision on cocoa sector development of the national government. Cocoa is an important commodity for Ghana and Ivory Coast but the general infrastructure, business services and financial support, are missing.

For cocoa production, insight in land tenure systems in West Africa is crucial for companies. Farmers often do not have alternatives than cocoa farming, lack no negotiation power, and will continue farming at any market price of cocoa. Land rights are not well addressed, especially in Ghana and Ivory Coast it is difficult for farmers to claim land as theirs and subsequently to invest in it. For most smallholder farmers it is difficult to adopt better agricultural practices because of the small farm size and problems with land tenure arrangements. Another challenge is reduced soil fertility (in combination with lacking or little rotation of crops).

Sector-specific guidance, regulations, initiatives and partnerships include:

- The Rainforest Alliance certification scheme focuses on enhancing biodiversity and improving the working conditions of cocoa farmer and eco-friendly production methods. Cocoa producers are allowed to use Rainforest Alliance certification if at least 30% of their production is sustainable. In order to become certified by UTZ, another certification scheme, famers need to meet social requirements as well as environmental requirements (e.g. improving the use of land). Furthermore, there are transparency requirements for the value chain: the origin of chocolate should be made clear to consumers. Auditors accredited by UTZ can issue the UTZ certificate (certified volumes).
- The World Cocoa Foundation is a multi-stakeholder effort bringing together public, private, and civil society partners to end deforestation and forest degradation in the cocoa sector. Companies in the Netherlands work with the World Cocoa Foundation and Dutch Sustainable Trade Initiative (IDH) on deforestation issues, particularly in

Ghana and Côte d'Ivoire. Zero deforestation by responsible land use often conflicts with national development agendas in host countries.

- CocoaAction is a voluntary industry-wide strategy that aligns the world's leading cocoa and chocolate companies, origin governments, and key stakeholders on regional priority issues in cocoa sustainability. CocoaAction convenes the sector in order to align complementary roles and responsibilities, leverage scale and efficiency through collaboration, and catalyse efforts to accelerate sustainability in the cocoa sector.
- The objectives of the Amsterdam Declaration "Towards Eliminating Deforestation from Agricultural Commodity Chains with European Countries" (2015) are to support and help meet the private sector goal of eliminating deforestation from the production of agricultural commodities, such as cocoa, by no later than 2020. Companies will be encouraged to eliminate deforestation from their agricultural commodity supply chains.
- The Choco Work Group has been established, initiated and facilitated by the Dutch Government, operating as the national cocoa stakeholder meeting. The Work Group brings together organisations who have signed the Letter of Intent and others committed to the objective, meeting on a regular basis. In the Letter of Intent signatories and other participants strive for 100% sustainable cocoa consumption by 2025.
- The Cocoa and Forest Initiative – organised by the World Cocoa Foundation, IDH and The Prince's International Sustainability Unit (ISU) – is an industry commitment to end deforestation and forest degradation, recognising that deforestation is likely to increase in the future unless concerted action is taken. As part of the Frameworks for Action in this initiative, the Governments of Côte d'Ivoire and Ghana, together with leading chocolate and cocoa companies, have made a commitment to halt conversion of any forest land for cocoa production. The two Governments and companies have committed to accelerating investments in long-term sustainable production of cocoa with an emphasis on "growing more cocoa on less land" (IDH, 2017).

Cases/Practices

Box 5.8.1: Cocoa in Ghana: the customary land regime

In Ghana, cocoa produced by smallholders has been the leading agricultural product driving deforestation. Zero deforestation policies for cocoa are hampered, amongst others, by a lack of land use planning and tenure insecurity. Governments face an enormous challenge in balancing demands for higher cocoa production with plans to minimise deforestation, environmental degradation, and biodiversity loss. A large expansion of cocoa land is experiencing productivity decline. Replacing old and unproductive cocoa trees offers potential to increase cocoa productivity while reducing deforestation, but tenure insecurity discourages landlords from allowing tenants to replant trees, while high costs of cocoa rehabilitation are prohibitive to resource-poor small farmers.

While the Lands Commission is interested in promoting commercial leases for industrial agriculture, the prevalence of a customary land regime promotes smallholder cocoa production. This has prevented large-scale capital investments that could overcome the high replanting costs. Customary tenure arrangements have also historically created incentives to carve out newly planted cocoa farms from secondary and old growth forests, thereby encouraging producers to expand their area rather than intensify production (USAID 2017).

Source: Roth et al. (2017)

Box 5.8.2: Gender and land governance in the cocoa sector in Ghana

In Ghana two systems of inheritance exist: matrilineal and patrilineal. The matrilineal system of inheritance promotes inheritance through the mother's lineage and that of the matrilineal system through the father's lineage. Under the matrilineal system of inheritance, it is the nephew of the land owner who takes over the land when the women dies. Women who inherit land do so as lineage members, not as wives or children especially if the parent involved is a male.

According to Aduamoah (2016), under the two systems of inheritance, women experience significant difficulties with regard to land inheritance. Both systems make women secondary owners of land since they only enjoy temporary use rights over land, and cannot own these lands. According to the author's findings, this practice is based on the misconception that women will take family property away from the family. This arrangement only allows men to inherit individual family land for farming purposes. Women are grouped together and given a common piece of land to cultivate.

Land is a key resource for cocoa producers, and it is often a gateway through which farmers gain access to many other assets and opportunities such as membership of a cooperative or accessing a loan at a bank. Furthermore, in the longer-term, ownership of land gives farmers more income security for themselves and for their children.

Even though the issue of access to land, particular for women, is very complex, empowering women through strengthening their ownership and usufruct rights to land is possible and can be a first step in achieving gender equality and ensuring that women benefit from the production of cocoa. This encourages women to engage more actively in cocoa production, which benefits not only the women but also their families, communities and the value chain.

The cocoa farmers' association Kookoo Pa in Ghana is an interesting example of how land sharing can be promoted and how this increases the benefits that women derive through cocoa farming. Kookoo Pa has introduced a change in their membership registration policy to promote active involvement of wives of farmers in the cocoa production process by making them members of their association so they can receive trainings and have access to other services. The change in membership policy required male farmers to informally give a piece of land to their wives so that women can register as association members in their own right. This strategy was coupled with sensitisation on gender issues of both men and women. As a result, female membership in the cooperative has increased and gradually women are starting to control the income from their piece of the cocoa farm (FAO, TWIN and KIT forthcoming).

Source: KIT (Personal Communication, 2017)

Sector specific recommendations on land issues:

- Governments and companies should link to initiatives such as the Amsterdam Declaration and work towards zero deforestation in cocoa production.
- The Dutch Government should work more closely with producing countries to enhance sustainability in the cocoa chains, in particular, by encouraging sustainable production methods.
- Land reforms and developing land registration systems are important conditions for increasing higher cocoa productivity levels. Initiatives that can help to improve access to land are the development of land-oriented services, such as land mapping services, land-conflict mediation, etc. Initiatives are needed to gain more insight in land rights and to formalise land ownership and land tenure systems. Land mapping will create awareness, also within cocoa cooperatives, on how much land is actually needed for cocoa production and to ensure zero deforestation.
- Certification should include land governance issues. Focusing solely on (official) land ownership as certification criteria is not recommendable as this might exclude other land users to get their produce certified if not land owner. Land use security criteria, also for non-organized female and youth smallholders, might be an option but is perhaps difficult to audit. Baseline certification and related access to financial services

should also be accessible for smallholders who are not organised in cooperatives. Besides opportunities in certification, awareness, incentives and support is to be created for investments in intensification and zero deforestation. Zero deforestation could be a certification criterion for cooperatives.

- Creating room for alignment between government, companies, the timber industry and farmers in public-private partnerships with donor funding can help promote entrepreneurship (particularly among youth), increase cocoa productivity, establish valuable tree species, and improve environmental sustainability.
- Tenure reform reinforcement and awareness is urgently needed as it improves coordination between customary and statutory structures, reduces conflict between landlord and tenant, clarifies and documents rights in different contractual arrangements to strengthen tenure security, transfers rights over timber trees to landowning groups, channels payments from revenue-sharing schemes to cocoa farmers, and assists smallholders with cocoa rehabilitation to increase land use value.
- Establish a fund or the necessary financial infrastructure for women, young farmers and marginal groups interested in cocoa. Financial infrastructure is also needed to make intensification possible.
- Government agricultural vision and policies regarding cocoa production should strengthen cocoa infrastructure for smallholder farmers (business opportunities, business services, access to fertiliser) including the establishment of the necessary financial infrastructure for investments.
- "More cocoa, on less land, produced by less people and with zero deforestation" should become the business case for cocoa and chocolate companies.
- Create awareness and enforce laws and constitutions that guarantee the right of succession for surviving spouses, children and parents and avoid discrimination practices for women to access their property rights.

The Choco Work Group, now going into its second phase, is potentially the right place to materialise these recommendations as it is composed of many cocoa sector stakeholders in the sector. The Work Group could propose to elaborate a separate IRBC agreement next to an updated Letter of Intent.

5.9 Infrastructure Sector

General overview

Early September 2017 a first consultative meeting for infrastructure sector stakeholders was organised by the Ministry of Foreign Affairs. In its risk analysis for this sector, the KPMG report indicated that in addition to possible biodiversity influences because of dredging activities (including dumping of sludge), land grabbing or not respecting land rights are considered risks (KPMG, 2014).

The infrastructure sector is quite diverse in its international activities, spanning the construction of ports and airports, industrial zones and stadiums, dredging and pipelines. All these activities involve land governance issues. Wet infrastructure companies operating internationally in particular are under huge pressure from companies in other countries who do not always comply with international guidelines and standards. To maintain a level playing field, covenants and (international) legislation can be instrumental.

The position of infrastructure and construction companies is different from project to project, from its role as main contractor or as sub-contractor. It is not always possible to discuss or change an already agreed project and go beyond IRBC standards to address socio-economic or land governance issues. Companies can only ensure they have their often small part of a larger, infrastructure project in order. The dilemma is sometimes that opting for dialogue to address social and land issues is not very helpful in getting the contract awarded. But in collaboration or sub-contracting with local companies, Dutch businesses have leverage and include these issues in contracts.

Sector specific guidance, regulations, initiatives and partnerships include:

- A joint code of conduct for all companies in the Netherlands Association of International Contractors (NABU), which currently only have their own code. This could be discussed in the IRBC agreement process. The OECD MNE Guidelines are guiding but do not address land issues specifically. In many larger infrastructure programmes, local governments claim that people will be expropriated or compensated or state that nobody is living there or that the population is illegal. It is difficult for Dutch companies to understand and address such situations, especially if they have no locally presence or representation and limited information. As a result, they check due diligence reports to ensure compliance with international standards.

Cases/Practices

Box 5.9.1: Royal HasKoning and land governance

Royal Haskoning/DHV develops infrastructure for transportation, water supply and sanitation and flood protection. These facilities need a considerable amount of land, often a valuable resource for the local population rural and urban environments. The company manages these land issues as best as they can, firstly by minimising the use of the land at the design stage and avoiding the assets of the local population as much as possible. When land acquisition and physical and/or economic resettlement cannot be avoided, a proper resettlement planning and compensation programme is developed in close consultation with clients, the local government and especially the affected people.

In Morocco, prior to the construction of a new port and industrial zone, an environmental and social monitoring of the was conducted. The land acquisition for the site itself affected a limited number of people. However, the diversion of a river around the site by the creation of a reservoir would affect many more households. As a result the company is developing a new design whereby physical resettlement can be avoided, in order to avoid any adverse social impact.

Royal Haskoning/DHV was involved in the planning of the Trans Adriatic Pipeline (TAP) with the Land Easement and Acquisition (LEA) Project. The goal was to organise the Right Of Way for an 800 km pipeline through Greece, Albania and Italy. A management system was designed to map and negotiate the acquisition of the Right of Way with 45,000 affected people. The availability of an accurate land registry with land rights was an important pre-condition.

Source: Royal Haskoning (Personal Communication, 2017)

Box 5.9.2: Anadarko, ENI, Exxon Mobil, Shell, Cabo Delgado, Mozambique

Mozambique is one of the African countries that has faced a tremendous boom in the exploitation of extractive industries over the last couple of years. In addition to the many coal mines in the province of Tete, large gas reserves have been found in 2010 in the Rovuma Basin in Northern Mozambique. With these reserves, Mozambique is on its way to become the third largest exporter of Liquid Natural Gas (LNG) in the world. Large multinationals such as Anadarko, ENI, Exxon Mobil, and Shell plan to conduct offshore Liquefied Natural Gas drilling, with onshore supporting facilities for LNG production, transportation and storage.

The LNG plans involve expropriations and the dislocation of thousands of local land users and fisher folks. Local communities and CSOs report that communities are not properly being consulted, do not receive complete information, are relocated without sufficient compensation, and often cannot access local jobs generated by the project, and that relocation led to social tensions between communities.

The province of Cabo Delgado is characterised by a high rate of poverty, poor health facilities, increasing inequalities regarding gender and elite capture. Small scale mining, agriculture and the timber industry have been the main source of livelihoods in the area, but with the recent discovery of gas and oil in the area, the future development of the region is unclear.

The Netherlands Embassy in Mozambique is already conducting a strategic and scoping study of the political economic situation in the Cabo Delgado province/ Palma region.

Key points:

- Complement and further elaborate on this study by researching the local dynamics from a bottom-up community perspective.
- Set up a multi-stakeholder learning dialogue to better align the LNG investments with local needs and expectations and to improve information provision on the project towards local communities.

Source: Both Ends (Personal Communication, 2017).

Sector specific recommendations on land issues:

- The leverage for infrastructure companies is limited in impact and time for these to include a more holistic view while focusing not only on the infrastructure itself but also on possible sustainability and land governance issues. But efforts should be made for improved due diligence and addressing possible adverse effects including changes in land use.
- Develop inclusive community engagement plans to improve the design of infrastructure.
- Evaluate local dynamics from a (bottom-up) community perspective. Set-up a multi-stakeholder learning dialogue to better align infrastructure investments with local needs and expectations.
- Engage in international diplomacy with host and home governments to upgrade the tender documents by (often governmental) contracting agencies, as well as to raise common standards among contractors (e.g. through harmonisation by the European court of auditors).

5.10 Food Industry Sector

General overview

With assistance from the SER, the Federation of Dutch Food Industries (FNLI) and the Central Bureau of Foods (CBL) are in the process of initiating the development of an IRBC Agreement for the Food Sector. The KPMG report identifies two land governance related risks for the industry: (1) land grabs or no respect for land rights especially related to an increase in surface areas for certain agricultural raw materials, and (2) bribery and corruption of officials to acquire land rights (KPMG, 2014).

The global eco-agri-food complex requires urgent rethinking and collective action, not only by lead practitioners but by all parties in the sector as a whole. At stake are livelihoods, ecosystems, biodiversity, climate change and deforestation, caused by “illegalities”, the infringement of communal and customary rights on the supply side and nutrition habits on the demand side. These need to be considered in an integrated way, along with a transition to carbon-neutral energy and a circular economy. Sustainable land use (and change) is a critical component of this. A tripartite IRBC food sector agreement of the food sector, civil society organisations and the government, would offer the opportunity for collective learning on the issues at stake and to make early steps to address the most important and urgent ones.

The food industry in the Netherlands generally does not own land or plantations abroad, but has manufacturing facilities and therefore may contribute to adverse impacts. Land issues are considered complex and highly political, yet have a bearing on livelihoods and ecosystems and are played out deep in the supply chain. At the end of the supply chain land issues are often not adequately included in due diligence, despite the existence of many certification schemes (such as Utz, Rainforest Alliance, Fair Trade/Max Havelaar), commodity multi-stakeholder initiatives (RSPO, WCF, RTRS), IDH (Initiative Sustainable Trade) and progressive practices by a number of multinational corporations (as reflected in Oxfam’s analysis in “Behind the Brands”). Major food producers and retailers have made significant progress in incorporating more ESG considerations into their business approach.

There are, indeed, incidental, published initiative/cases, such as a positive land-related case in Chile audited by Unilever. It relates to the supply of tomatoes based on triangular information: the relationship between farmers, communities and processors. In the absence of conflicts, some companies would accept this as prima facie evidence for the existence of land rights by current farmers.

The food industry is one of the most vulnerable to land issues, and primary products are difficult to trace back to their source. There’s a need for much more transparency in sourcing, but suppliers protect their sources as they are concerned about losing markets. Meanwhile, buyers setting high standards run the risk of losing supplies, as these would be redirected to other, less demanding markets. Consumers have yet to throw their weight against bad practices by changing their buying behaviour towards more sustainable produce, away from the lowest prices. Many companies conduct due diligence in their supply chain but perceive themselves as having little leverage to address the issues identified and want to avoid the risk of reputation damage. Only collective action, including national and international policy support, may change this. From a cost point of view, an increasing number of companies are relying on certification and agree that up scaled certification should also encompass land tenure considerations.

Sector specific guidance, regulations, initiatives and partnerships include:

- “Behind the Brands”. This is part of Oxfam’s GROW campaign to create a world where everyone has enough to eat. The Behind the Brand Scorecard assesses the agricultural sourcing policies of the world’s 10 largest food and beverage companies. It focuses on publicly available information that relates to the policies of these companies on their sourcing of agricultural commodities from developing countries. Land governance issues are: the land rights of local communities, remediation & grievance mechanisms, community consent, sustainable management of agricultural land, implications of biofuels on food security, impact assessments, social/environmental land security for communities, FPIC, FPIC for indigenous peoples, sustainable production standards, land rights in the supplier code, and land use in the supplier code.

- The EU Directorate-General for External Policies (DROI) published a report in 2016 on land grabbing referred to in Chapter 3 of this study references the Food industry. It is important that Food sector actors understand the potential issues and their own possible responsibility, accountability or direct or indirect association with impacts. Incidents in one part of the sector may affect the sector-at-large. Collective sharing and learning will improve due diligence and practice for all.

Cases/Practices

Box 5.10.1: The case of EcoEnergy

The out grower scheme used by EcoEnergy in Tanzania for its sugar project involves power asymmetries between the company and the communities. Under the out grower scheme, groups of farmers are expected to create their own out grower company, which requires them to take out a loan of at least US$800,000. It takes the out grower companies seven years to pay back their loans, with low earnings. In addition , farmers have little bargaining power when getting loans from the banks and in setting the price at which they sell their sugar.

Source: European Union (2016), page 17, box 2

Box 5.10.2: The case of Coca Cola zero-tolerance for land grabs

Coca Cola made a commitment to zero-tolerance for land grabs. As part of the commitment, Coca-Cola did 30 third-party country studies on land rights, child labour and forced labour to understand current practices and to develop a strategy to mitigate any potential future violations. Coca-Cola also works closely with suppliers to prevent violations of land rights across the supply chain and developed a set of Supplier Guiding Principles. This set of principles communicates a number of values and expectations for suppliers' operations and provides operational direction. To improve risk assessment, and respond to land rights violations, stakeholder engagement remains important with partners like Oxfam and Landesa. In July 2017, Coca-Cola developed together with Landesa the "Responsible Land Acquisition (and Free, Prior, and Informed Consent) Guidance" to help business partners constructively engage local communities when acquiring land. It discusses practical strategies to identify stakeholders, to inform and consult stakeholders, to obtain consent, and to monitor, evaluate and remediate.

Key point:

The zero tolerance policy and the responsible land acquisition guidance requires quality monitoring and lessons learned need to be continuously developed to be able to adequately inform other companies in this sector about it.

Source: Potter (2014); Coca-Cola (2013); Coca-Cola (2017)

Sector specific recommendations on land issues:

- Triangulate information in the due diligence process of the food industry and stimulate discussions and decision making on land issues between farmers, communities and processors.
- Land issues play very deep in the supply chain; food industry companies need more information and transparency on their sourcing.

- Grievance mechanisms on land governance should be improved and more aligned with the OECD MNE Guidelines and the UN Guiding Principles.
- Major food producers and retailers have made significant progress in incorporating more Environmental, Social and Governance (ESG) considerations into their business approach. However, land is not yet an explicit element in "materiality assessment matrices" and should be included as such in companies' annual reports.
- Alternative and innovative land-related activities with smallholder farmers and local communities can be successful and have positive social and environmental impact.
- Smallholder participation as shareholders in food industry investment projects, and the equitable sharing of risks and benefits, should lead to more trusting relationships, joint responsibility and decision making over land use and ownership.
- There is a need for "entry level certification" next to existing "gold standards" by certifiers.

5.11 Natural Stone Sector

General overview

The natural stone sector in the Netherlands consists of about 800 companies specialising in the import and processing of natural stone or natural stone-based products, such as worktops, tombstones, monuments, tiles, facades and curbs. Natural stone is extracted and processed in many parts of the world, sometimes under conditions that do not meet human rights, working conditions and environmental minimal standards. The turnover in the sector is approximately €300 million a year in the Netherlands. The KPMG report indicated specific risks in the natural stone sector related to land grabbing, violation of land rights and impacts on biodiversity (KPMG, 2014).

The SER is facilitating the process towards an agreement. The expectation is that a natural stone IRBC Agreement will be signed in 2017. The goal is to have more impact by making a joint agreement together with the Flemish Government and Belgian stakeholders. Generally the sector is quite complex with many different products and suppliers. Including land issues in the covenant discussion is considered a good thing, but sector stakeholders indicated a need to be realistic on the number of topics that can be addressed, as improving their due diligence costs a lot of time and money.

Many sustainability issues prevail in the global value chain of natural stone products. Research into sustainability issues in stone quarries and factories in India and China point to violations of all ILO Fundamental Conventions, although problems seem to be more pressing in India than China. The last decade has seen a rise of collective, private sector, voluntary initiatives that attempt to improve labour and environmental conditions in natural stone quarries and processing factories in emerging economies (Franken, 2016).

Sector-specific guidance, regulations, initiatives and partnerships include:

- The Working Group on Sustainable Natural Stone, set up in 2006 by the India Committee of the Netherlands and the Society for Nature and Environment. The aim was to engage stakeholders of the natural stone sector in a dialogue to jointly look at ways of tackling the negative impacts that can occur during the extraction and processing of natural stone.
- Fair Stone is the international social standard for stone imports from developing and emerging markets. Natural stone importers implement certain criteria within their

supply chain and therefore actively improve the working conditions in stone processing factories and quarries. The Forest Trust (TFT) Responsible Stone Programme (RSP) aims to ensure that the sourcing of natural stone respects the environment and improves the lives of people working in quarries and factories. In all the above standards no reference to land governance is made. In the Netherlands natural stone is mostly sourced from India. In the TFT audits land is not a major risk issue. Most of the due diligence is done by companies themselves who visit quarries to make sure partners do not use child labour and do implement health safety.

Sector specific recommendations on land issues:

- Local governments in the Netherlands are large clients for natural stones, e.g. for paving dams. A preferential treatment for companies with good due diligence practices, with specific attention to land governance issues, should be considered.
- To be able to trace stones back to their source and to improve on transparency, adding QR codes could be a solution (information on where is it from, level of certification, land issues).

5.12 Tourism Sector

General overview

In the tourism sector, the Algemene Nederlandse Vereniging van Reisondernemingen (ANVR) has taken the initiative to reach an IRBC covenant. In May 2017, a first stakeholder meeting was organised in cooperation with MVO NL on the possible implementation of a sector-wide IRBC agreement. The sector will conduct impact assessments in three countries (Suriname, Indonesia and Egypt) to map IRBC risks and take nature and environmental issues into account. The results will provide important starting points for the IRBC agreement. To date an assessment has been carried out in Suriname. The surveys are drawing on the assistance of the Netherlands' embassies in gathering relevant information, given the limited in-country resources of the tourism companies.

"While tourism is generally regarded as a 'green' sector – especially compared to other investment sectors such as mining or plantation agriculture – residential tourism is causing mounting pressures on land and local resources. The traditional short-term tourism sector focuses on providing lodging, food and sightseeing. However, due to the new developments, tourism in many areas in the South is increasingly connected to real estate investment and land speculation. Transnational land and real estate investment and mobility now constitute some of the main drivers of capital accumulation in Central America. Many states in developing countries go to great lengths to attract residential tourism investment. The long-term socio-economic and environmental effects of this development are not yet known, however, there are indications that residential tourism may compromise inclusive and sustainable development" (Van Noorloos, 2016).

The most important general land issues in the tourism sector relate to the relationship of tourism with communities and the level of their involvement in decision-making processes. Examples of challenging issues in the tourism sector include land grabbing when rebuilding coastal areas after natural disasters like Tsunamis, conservation of natural parks and nature generally. In the agreements between tourism enterprises and local communities land is not an issue given sufficient attention.

Another issue is land speculation around newly set-up lodges, especially in coastal areas or natural parks. Concessions are granted without careful due diligence and enable real estate companies to also develop the surrounding areas. Residential tourism in tourist areas poses a bigger land governance challenge than development by hotels.

Sector specific guidance, regulations, initiatives and partnerships include:

- The Rainforest Alliance is collaborating with the UN Environment Programme (UNEP), the UN World Tourism Organisation (UNWTO) to design a sustainable tourism programme in nature reserves (BTC, 2017)
- The Global Sustainable Tourism Council (GSTC) establishes and manages global sustainable standards, known as the GSTC criteria. There are two sets: destination criteria for public policy-makers and destination managers, and industry criteria for hotels and tour operators. The Destination Criteria include (GSTC, 2013):
  - "Planning guidelines, regulations and/or policies that require environmental, economic, and social impact assessment and integrate sustainable land use, design, construction and demolition".
  - Laws and regulations regarding property acquisitions exist, are enforced, comply with communal and indigenous rights, ensure public consultation, and do not authorise resettlement without prior informed consent and/or reasonable compensation.
  - Local communities' aspirations, concerns, and satisfaction with destination management are regularly monitored, recorded and publicly reported in a timely manner.

  Industry criteria for hotels & Tour operators include (GSTC, 2016):

  - Awareness of and compliance with, laws related to land use and activities in the local area is demonstrated.
  - The acquisition by the organisation of land and water rights and of property is legal, complies with local communal and indigenous rights, including their free, prior and informed consent, and does not require involuntary resettlement.
  - A United Guiding Principle in the sector and a sustainable tourism label. The sector uses the standards of the OECD and the UNGP.

Sector specific recommendations on land issues:

- Land issues are important in the tourism sector as tourism infrastructure is built in the most attractive places, along coastlines and near national parks and nature reserves. Therefore, the land rights of local populations are at risk and should be addressed.
- Tourism companies must apply sustainability criteria in their contracts in the supply chain and these should also mention land issues.
- Tourism companies should not rely only on host government due diligence but should do their own and talk to local communities about different forms of involvement. A better consultation process is needed.
- Stakeholders such as government, donors, NGOs, investors, banks and pension funds and insurers should reflect on the type of tourism to be attracted given that large-scale tourism often entails real estate acquisition. Undesirable consequences like land speculation should be anticipated and carefully considered before any direct or indirect incentives for residential tourism are made.
- Reflection is needed on the type of tourism to be promoted and the related responsible investments required. These include impact assessments and consultation as well as a careful choice of local partners. This is especially urgent in the case of residential

tourism. Long-term investments are preferable, and social inclusivity, land issues and water availability require special attention.

- Sustainable tourism development requires institutional reforms, particularly in improving the implementation and control of regulations. Weak implementation and control capacities of especially local governments where land and environmental regulations are at stake, need urgent attention.

A summary of all the sector specific recommendations is presented in Annex 2.

6. Analysis & Recommendations

6.1 Land: business sector challenges and governance

Land governance is not only one of the biggest and most complex political, social, natural and economic challenges of our time – it is also highly urgent in the face of finite resources on the one hand and a growing global population on the other. "Land" itself is not a recognised international human right, but it touches on acknowledged human rights such as life, food, work, health and equal treatment.

Current patterns of land use and tenure are highly unsustainable and result in various negative, cross-cutting impacts, including ecosystem degradation, freshwater decline, human rights abuse, climate change, poverty and fragile livelihoods, pollution, greenhouse gas emissions, conflicts and local and geo-political tensions. While not confined to particular countries or continents, land governance issues impact disproportionately on the poor. An estimated 2.5 billion people around the world, of which more than half are indigenous people and rural women, depend on community lands for their livelihoods and subsistence (Allen, 2017). Failure to manage the use and tenure of land and natural resources has been a source of conflict and poverty for decades. The global eco-agro-food system also urgently needs rethinking and collective action, similar to the need to accelerate the transition to sustainable energy and circular economy.

In many cases, companies and entire industrial sectors have caused and/or been affected by land governance issues. They have contributed to them or have at least been linked to these issues; for instance, by seeking lands for investment or by producing natural resource-based goods. Levels of exposure to and awareness of land issues vary significantly across industries and individual organisations. Food companies, for example, are either directly or indirectly linked to agricultural activities with significant impacts on land, water and other natural resources. The gold sector also faces high levels of exposure to land-based conflicts, often linked to human rights violations in the context of major land acquisitions. Gold mines frequently operate in areas of weak governance and inhabited by indigenous populations, which may involve the loss of access to assets for them, forced relocation and human rights abuses. Companies involved in timber, pulp and paper products or companies dealing with large infrastructure projects, such as dams, are also directly or indirectly confronted with land governance issues, by affecting land use and access to natural resources by local communities.

For other sectors and companies, the link with land governance may not be immediately obvious, as land is perceived only to be very indirect and a remote factor in the value chain. Insurance companies, pension funds and the banking sector can be mentioned as cases in point, as they may invest in projects that involve land grabbing, but may not be aware of their impacts. Company effects on land governance may not only be indirect, but may also show impact with (significant) time delays. For instance, investments in irrigation projects with smallholder farmers are expected to benefit local communities, as irrigation promises to increase yields and farmer incomes. However, irrigation also strongly increases the value of agricultural land, which may provide an incentive for public authorities to expropriate communities of the land. "Land grabbing" by (local) governments, by which companies are benefitting, is a serious concern: how can business avoid unintended effects by, and subsequently on, their operations? Who is able to guarantee that misappropriation will not happen? And to what extent are businesses accountable in the event that they do happen?

Land is not only about accountability for past and present activities and effects of companies, their supply chains and customers. It also strongly relates to future accountability and precautionary principles of "the duty of care" in conducting business. Thus far, many industry sectors have only paid limited attention to land governance issues with direct connections to their business, and even less to indirect, unanticipated, and potential effects in the future.

6.2 A responsibility for business?

Scope of responsibilities

Respect for human rights and legitimate land tenure rights is an essential responsibility for business as stated in the VGGT: "business enterprises should act with due diligence to avoid infringing on the human rights and legitimate tenure rights of others" (VGGT section 3.2). This includes appropriate risk management systems to prevent, cease and address adverse impacts on third parties, and non-judicial mechanisms to provide remedy where they have caused or contributed to adverse impacts on human rights and land tenure rights. Moreover, sustainable land use (change) and livelihoods aspects are important features part of land (governance) issues for which balanced, inclusive, fair and transparent solutions need to be offered.

Responsibility thus refers to "cause, contribute or linkage to" with regard to affecting legitimate tenure holders by business operations and investments, including those of financial institutions. On the basis of the OECD MNE Guidelines, this can be formulated as follows:

- "Causing", with cease, prevent, remedy and possible compensation
- "Contributing to", with cease, prevent, remedy, leverage and possible compensation
- "Directly linked" with a business relationship which conducts (1) or (2), with (only) expectation to use leverage (alone or collectively) to prevent and mitigate adverse impacts.

It is important in this study to distinguish between engaging with green-field and brown-field investments, representing two different types of Foreign direct investment (FDI). Green-field investments occur when a company (or its parent) begins a new venture by constructing new facilities in a country outside of where the company is headquartered, most of the examples in this study are green field investments, requiring appropriate due diligence processes for land acquisition. Brown-field investments occur when an entity purchases an existing facility to begin new production or continue ongoing activities.

Disengagement processes and related legacy issues, for instance pulling out of land-based investments because of e.g. land conflicts, are the ultimate remedy and should also be addressed with adequate and robust due diligence to make sure that land rights are secured after disengagement.

Many companies, financial institutions, pension funds, insurance companies and other investors are involved in land governance challenges during the course of land-based investments, but are often not aware or do not act on them, as this study reveals; for instance, because materiality is perceived to be low. This is caused by following factors:

Firstly, awareness of land issues vary strongly by sector. For instance, the gold sector showed a high awareness due to high risks resulting from mining in contexts of weak or even contested public authority. By contrast, the textile sector may be characterised by limited awareness of land governance, as this is an issue perceived as geographically remote (land rights often play out in distant countries of raw material production) and of lower priority compared to human rights abuses in textile manufacturing processes.

Secondly, individual companies may not be directly involved, but benefit from land right violations driven by governments or consortia of several private (and public) actors that are entangled in messy and complex realities characterised by information and/or power asymmetries, conflicting interests and hidden agendas.

Finally, land governance challenges have a critical future component, which may be difficult to assess and deal with for businesses and the financial sector. For instance, in the construction sector, projects are often time-bound, whereas the effects of these activities may only manifest themselves after a considerable time delay.

Box 6.2.1: Wind park construction in Mexico – renewable energy at the expense of local communities?

Heineken and the Dutch investor group PGGM are implicated in a case in Mexico, where indigenous communities were forcefully deprived of their ancestral and communally owned land due to the construction of a wind turbine park along the coast. In charge of this wind park is a global consortium consisting of Australian, Dutch and Japanese investors, which received a thirty year lease from the local government and additional funding from the Inter-American Development Bank. Suppliers to the consortium are Danish, Spanish and Mexican companies; and beneficiaries are locally operating multinational beverage and food companies as electricity users. Officially hailed as a solution to poverty and climate change, local communities fear that the wind park threatens their fishery-based livelihoods, leads to environmental degradation and biodiversity loss, and does not lead to local job creation. An intense resistance movement has surged to fight the wind park, exposing a deep and increasingly violent divide between local communities on the one hand, and local officials backed by a distant business consortium on the other hand.

Key point:

This case illustrates that "contributing to an adverse impact" may also include "significantly benefitting from a project with the stated adverse impacts", in the context of the OECD MNE Guidelines.

Source: Smith (2012)

Legal obligations and public regulation

National regulations and laws constitute the guiding framework for each country on how land, fishery and forest resources are to be used, granted, managed, etc. As such, companies, financial institutions, pension funds, insurance companies and other investors are expected to adhere to and operate in accordance with these laws and regulations.

However, in many countries the legal and institutional frameworks governing land and other natural resources are often weak, out-dated and conflicting; legitimate tenure holders are not recognised; corruption is widespread and many aspects of the law are partially, inappropriately or not at all implemented; the government is directly involved in land-grabbing practices. This makes indigenous and local communities, and among those particularly women, vulnerable to negative impacts such as lack of land right enforcement, dispossession, resettlement, displacement and eviction.

In particular, business faces the following challenges with regard to public laws and regulations:

- *Weak enforcement*. Enforcement capacities are weak in many countries, even if land policies and laws are well crafted.
- *Confusing and conflicting regulations*. In many countries land tenure systems overlap. Customary lands especially have often a combination of individual and collective ownership and use rights, resulting in confusion over property rights and rules of access.
- *Dysfunctional property rights*. In many countries people lack formal documentation of their land rights or are unable to register their land rights due to lacking financial or

human capacity for registration systems, as well as high costs and bureaucratic obstacles for applicants.

- *Corruption.* The prevailing legal pluralism and weak enforcement capacities contribute to corruption at various levels and allow individuals or groups to ignore legislation.
- *Lacking conflict resolution.* Many land disputes remain unresolved or even lead to violent conflicts due to lacking or inadequate judicial and non-judicial conflict resolution mechanisms.

As such, compliance with national regulations and laws in their host countries may not be enough for business, financial institutions, pension funds, insurance companies and other investors to exercise their responsibilities with regard to land governance. Companies are expected to comply with international laws with higher standards than national legislation. Different UN conventions and treaties, for instance, address land governance issues:

- Right to water: "Human right to safe drinking water and sanitation" by the UN Human Rights Council (United Nations, 2010).
- Right to adequate housing, prohibiting forced evictions (Article 25(1) of UN Declaration on Human Rights) (United Nations, 2015b).
- Rights of indigenous peoples (UN Declaration on the Rights of Indigenous Peoples), guaranteeing indigenous peoples the right not be forcibly evicted from their lands or territories (United Nations, 2008).

Industry sectors may also be subject to national legislation in their home countries with regard to their responsibility for land-based or natural resource-based investments in other parts of the world. Thus far, there is no relevant Dutch or EU public regulation in place that explicitly addresses the responsibility of businesses for the governance of land tenure in their global activities, but this may change in the future. For instance, earlier in this year (2017), the EU adopted the *Conflict Minerals Regulation*, which enters into force in 2021 and applies to minerals/metals containing tin, tantalum, tungsten or gold. The regulation requires importers into the EU to perform due diligence and third party auditing to promote responsible sourcing of minerals/metals in order to ensure that their supply chains do not contribute to funding of armed conflict. Applying to all EU-based importers of the four minerals/metals, it is expected that this will create a level playing field for the industry. This is similar to the US Dodd Frank Act of 2010 (Section 1502) which requires US-listed companies to carry out due diligence on conflict minerals sourced from countries like the Democratic Republic of Congo. Another example of a public regulation designed to create a level playing field is the UK Modern Slavery Act of 2015, which, among others, requires companies with a turnover above £36 million to publish an annual statement of the steps undertaken to ensure that slavery and human trafficking are not taking place in the business or in the supply chain.

Societal expectations and economic pressures

Companies seeking land for investment, governments encouraging such investment, and local communities with communal and/or customary tenure rights have been in conflict for decades – mostly to the detriment of these communities who lost access to and control over their lands and natural resources, and as a result suffered from increased food insecurity, poverty and conflict. However, societal pressures on business and their supply chains to engage with land issues are mounting. Businesses that ignore land issues clearly risk directly or indirectly contributing to the expropriation of local communities of their land, without their consent.

Businesses also risk being exposed to adverse media coverage and NGO campaigns, which may endanger their 'social license to operate' and result in litigation and other legal measures against them. A growing number of international NGOs (e.g. Oxfam, ActionAid, Both Ends, Human Rights Watch, Friends of the Earth or La Via Campesina), think tanks, research institutes, advocacy networks and grassroots movements devote growing attention to the issue, defend land rights and uncover international land grabs by companies and investors. Over the past few years, the Dutch Ministry of Foreign Affairs has also paid increasing attention to the issue of land governance. For instance, in 2014 Minister Ploumen initiated the Land Governance Multi-Stakeholder Dialogue, including stakeholders from financial institutions, pension funds, multinational companies, NGOs, knowledge institutions and the government, to discuss how the Netherlands can contribute to the improvement of land governance in developing countries.

There are also economic reasons for why to engage in land issues in a meaningful way and at an early stage of investments, operations and activities. A report by the Rights and Resources Initiative and the Munden Project (2012) shows that unresolved conflicts over land tenure significantly augment the financial risks for companies in infrastructure, mining, agriculture and forestry and increase operational costs by as much as 29 times.

In other cases, the economic costs of company engagement may outweigh the benefits in view of competitive pressures in specific customer segments and the difficulty to establish a level playing field that holds for all companies rather than only Dutch-based or EU-based ones. The limited leverage of individual companies or even Dutch industry sectors is another impeding factor. For instance, 60% of the world's cobalt production comes from the province of Katanga in the DR Congo, of which 80% is purchased by Chinese buyers. This reduces the leverage for (Dutch or European) company initiatives, and requires a global approach. In this case, the OECD Guidelines on the Responsible Cobalt Initiative were translated into Mandarin, workshops were held with Chinese companies, and international companies offered to work with Chinese companies on this issue.

In general, it is expected that land governance issues will become increasingly centre stage in the public debate in times of growing population, increasing resource scarcities, ecosystem degradation, biodiversity loss and climate change. As attention to land governance is set to grow, there will be more and quicker exposures of good and bad practices, by both business actors and governments. This anticipated increase in transparency will need to be matched with a change in behaviour to assume responsibility for land issues and act accordingly.

6.3 Putting business responsibilities into practice: improving due diligence

Current implementation of due diligence

The Dutch Government expects companies to operate in accordance with responsible business practices, such as the OECD MNE and the UNGPs (the "twin sisters" both based on the 3 Pillars of Professor John Ruggie: government duty to protect, business duty to respect, access to remedy for affected people), which, especially since the 2011 edition, encourages companies to carry out risk-based, impact sensitive, due diligence. This is a critical procedure for private sector, financial institutions, pension funds, insurance companies and other investors to identify and address potential risks in land based investments that actors can cause, can contribute to, or be linked to in light of the UN Guiding Principles.

While the expectation by the Dutch Government to carry out due diligence has significantly encouraged the uptake by Dutch industry sectors, the practice of conducting due diligence to address potential land governance does not yet seem satisfactory:

- Land governance issues are not yet high on the agenda of most businesses. Other sustainability challenges, especially climate change, take priority.

- Many companies rely on other actors to identify land issues for them, for instance NGOs and third party auditors/certifiers. This suggests that the capacity of companies to sense and address land issues is still weak.
- Many companies tend to apply a narrow definition of due diligence and understand it as risk mitigation 'do no harm' instead of 'do good'. Implementation of due diligence is often poor.
- Similarly, investment decisions from the financial sector are mainly based on risk mitigation approaches to due diligence, not on impact approaches.
- Many companies rely on standards and certification schemes as a risk management strategy. However, most standards and certification do not directly or extensively address land issues.

Improving due diligence practices

The following key points highlight how current due diligence practices can be strengthened to ensure that investment decisions are based on the application of best practices for land governance.

A) Raise awareness of businesses

The National Contact Point (NCP) is tasked with promoting the business adherence to the OECD Guidelines. It has been asked to contribute to the resolution of issues arising from (alleged) non-compliance with the OECD Guidelines. The Dutch NCP has taken a wide interpretation of the OECD MNE Guidelines by dealing with number of land-related cases.

Moreover, the National Action Plan for Business and Human Rights from April 2014 makes specific reference to land grabbing as an issue to be considered by companies in their due diligence. Nonetheless, this study has brought to light a general lack of awareness of many businesses with regard to land issues. This calls for making information available for businesses on land issues, the various ways in which they may impact on them, and what businesses can do to reduce, cease or prevent adverse impacts.

B) Expanding the scope of the supply chain (beyond Tier 1)

While many companies do not purchase or lease land rights directly, they may work with suppliers that do acquire land rights. Dutch industry sectors therefore acknowledge the need to go beyond an understanding of responsibility as 'directly cause or contribute to' land issues to include the supply chain (beyond Tier 1) in due diligence. Yet, this is not common practice.

The growing complexity of supply chains constitutes a key barrier in this regard. Companies often have little oversight of their entire supply chains. They also stress that they have limited leverage over lower tier suppliers.

The cocoa and palm oil sectors can be considered frontrunner sectors out of the 13 sectors assessed in this study in terms of addressing, or at least recognising, land issues. This seems to be related to the fact that they have been exposed to allegations of child labour and human rights abuses, and hence show a heightened awareness of sustainability issues.

In addition, a number of individual companies have started addressing the 'supplier question'. For instance, in 2014 Unilever developed its Responsible Sourcing Policy (updated in 2017), which sets mandatory requirements for suppliers on human and labour rights for business relationships with Unilever (Unilever, 2017). Principle 11 of the Responsible Sourcing Policy demands that 'land rights of communities, including indigenous peoples, will be protected and promoted'. This includes that land-based investments and activities must adhere to the principles of FPIC. Unilever is currently rolling out the Sourcing Policy across its 10,000 Tier 1 suppliers, followed by an estimated 150,000-200,000 Tier 2-3 suppliers.

C) *Promoting good business reporting*

Transparency and reporting are an essential aspect for responsible business conduct, as recognised in the OECD MNE Guidelines and the UN Guiding Principles. The EU Directive 2014/95 on non-financial reporting requires large companies to disclose certain information in their annual reports on the way they operate and on their management of large social and environmental challenges, effective from 2018 onwards.

This EU Directive is, inter alia, based on the Global Reporting Initiative (GRI) G4 Guidelines. While the GRI G4 Guidelines do not explicitly refer to land issues, the GRI has recently done more work on land and has issued a guide on how companies can report their land-related impacts based on existing GRI G4 Guidelines (GRI, 2017).

An increasing number of (Dutch) companies are also embracing "integrated reporting" (about a quarter of the listed companies in the Netherlands). Again, land issues are not a feature of integrated reporting. However, the "materiality assessment matrix", as part of sustainability reporting, connects the interest of the company with those of its stakeholders (including society), which may constitute a first step in reporting on land issues.

Overall, current reporting formats and guidelines do not yet satisfy the need for land-related reporting by business, and further improvements and alignment are necessary.

D) *International reference framework: expansion and harmonisation to include land issues*

There is a growing international reference framework that can help businesses improve their due diligence practices on land governance issues.

Firstly, several generic guidelines (e.g. OECD MNE Guidelines, UN Guiding Principles, and the VGGT), standards (e.g. IFC Performance Standards) and guidance documents (e.g. PRAI; Interlaken Guide; African Union Guiding Principles) are available. Secondly, a number of sector-specific guidelines and standards exist, including gold (OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas), textile (OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector), agriculture (OECD-FAO Guidance on Responsible Agricultural Supply Chains) and financial sector (OECD Responsible Business Conduct for Institutional Investors). Thirdly, various sectors studied in this report have witnessed the emergence of global multi-stakeholder arrangements which have developed standards and certification schemes for sustainable production processes. While many do not explicitly address land issues, there are also exceptions: The Roundtable on Sustainable Palm Oil (RSPO) and the Forest Stewardship Council (FSC) have included land issues in their principles and criteria. Finally, a number of NGOs have issued guidelines for companies and other organisations, including the WWF Land Use Principles and Agriculture Guidelines "to help navigate inevitable trade-offs involved in land-use decisions".

Despite this increasing diversity of international reference documents, this study observed weak adoption of these guidelines and standards by companies due to their voluntary nature. Furthermore, many guidelines and standards, including the OECD MNE Guidelines, do not specifically mention land governance and explain how companies should operate.

Hence, there is a need to combine, make coherent and even expand the scope of the international reference frameworks to more fully cover land and land-related impacts. It is also important to distinguish between different categories of land rights (e.g. customary and informal land rights) and between different categories of land users and how this affects their right and access to land (e.g. women are often excluded from land rights). Finally, harmonisation efforts are required to avoid confusion for companies, especially where standards overlap. Umbrella organisations, i.e. organisations that connect and represent different international standards, such as the International Organisation for Standardisation (ISO) and the International Social and Environmental Accreditation and Labelling (ISEAL), may have an important role to play in this.

E) Enhancing the depth and breadth of certification

Certification can play an important contributing role in raising the quality and scaling the application of due diligence practices. This will also be supportive to the implementation of the IRBCs. However, it needs to be taken into account that land issues are not referred to as a priority subject in any of the certification schemes that promote sustainable production. As such, a convening and coordination role is required which brings together the variety of standards and certification schemes for different commodities and sectors, to promote the uptake of land issues in the standards' principles and criteria, and establish synergies with the OECD MNE Guidelines and the UN Guiding Principles on Business and Human Rights. Furthermore, the issue of weak implementation, monitoring and enforcement of voluntary standards and certification needs to be addressed. While it is laudable if certification includes criteria on land issues, such as FPIC, it is even more important to ensure that companies indeed adhere to these criteria and are being monitored on their progress.

F) Assisting companies to apply FPIC and the VGGT

The VGGT state that "business should act responsibly in their investments in land, fisheries and forest resources, implying that these investments do no harm, safeguard against dispossession of legitimate tenure right holders and environmental damage, and should respect human rights. Such investments should be made working in partnership with relevant levels of government and local holders of tenure rights to land, fisheries and forests, respecting their legitimate tenure rights" (VGGT sections 12.2-12.4).

A number of major multinational companies have made commitments to the VGGT and are working to improve land and forest governance where they work, including Unilever, Cargill, Illovo Sugar, Nestle, PepsiCo, Coca-Cola, and Rabobank. The latter was the first bank to publicly endorse the guidance of the VGGT and acknowledge the importance of the right to Free, Prior and Informed Consent of affected stakeholders.

In addition to individual company commitments, many of the voluntary guidelines and standards, including the FSC and the RSPO, require that companies obtain the FPIC of both indigenous peoples and local communities prior to proposed developments, the so-called "FPIC for All" approach. For instance, the FSC states that "obtaining the FPIC of indigenous peoples and local communities, before undertaking forestry operations on lands they legally or customarily own and/or use, is [...] an important requirement in the new FSC Principles and Criteria for Forest Management" (FSC, 2012). Similarly, the RSPO makes reference to FPIC in relation to plantation expansion and development of new plantations, and in relation to conflict resolution and compensation. Both the FSC and the RSPO have issued guides for their members on how to implement FPIC, and have put in place a dispute resolution mechanism that supports stakeholders to submit complaints and appeals.

However, studies are critical of the actual implementation of FPIC, even when it is required by the FSC or RSPO. A recent report on the RSPO (Rietberg & Slingerland, 2016) finds that independent empirical studies investigating FPIC processes are largely lacking, and conflicts between oil palm companies who are RSPO members and local communities persist despite FPIC.

There is also a tension regarding the scope of FPIC. 'Consent' does not translate into an absolute right to veto. Amnesty International states that "human rights, including the rights of Indigenous peoples, are generally relative and not absolute. International and regional human rights bodies have been clear that the standard of FPIC is not absolute: FPIC must be applied on objective grounds, based on consideration of all the rights at stake and the importance of their protection" (Amnesty International Canada, 2013). This study argues that the land governance issue is much wider than "rights" only: also the issues of livelihoods and sustainable land use and possibly other public interest considerations need to be part of the balancing act.

The foregoing suggests the need for a thorough review of how FPIC is implemented by companies. Increasing clarity on specific terms, such as "conflict resolution" (what is considered a conflict? what qualifies as resolution?), was also mentioned by key informants of this study.

Any meaningful due diligence process of engagement needs to be supported by an inclusive, comprehensive, international standards-based, publicly available environmental and social assessment or (as the case may be) a human rights assessment. Such assessment is not only required under the relevant international standards/guidelines and guidance papers related to these standards, but is also reflecting sound risk and impact management and good business practice. Such initial assessment, preferably developed or validated by independent experts, may provide the basis for stakeholders' agreements/commitments and serve as a benchmark for ongoing monitoring.

6.4 Beyond current due diligence: practices and opportunities

Fair market value of land and compensation

Many land owners in Africa, Asia and Latin America are confronted with mounting pressure by companies and investors to sell or lease their land. This does not only affect those that are legally considered land owners, but also men and women who have acquired, often collectively, land use rights through customary systems. Questions to be raised include: What is the real value of land, what would be reasonable and fair, taking into account not only the surface area, but also the (future) socio-economic and cultural value?

In practice, compensation to landowners or users is not only inadequate and late, but also makes little or no provision for the value of the land itself. The fair market value of land and compensation can be calculated as is shown below in a study conducted by True Price on fair compensation linked to expropriation. The basic position in this study is that expropriation of people should be avoided where possible. However, where land tenure changes cannot be avoided, it is necessary to offer a fair compensation and process (True Price and University of Groningen, 2016).

Box 6.4.1: Fair market value of land

Calculation of a fair market value and compensation requires an inclusive process in line with FPIC and a cost benefit analysis from a societal point of view, taking into account financial, social, and environmental costs of the investment. Calculation of fair market value of land and compensation should not encourage or legitimise expropriation.

True Price has worked together with University of Groningen (RUG) on an input document with the purpose to further advance knowledge/thinking about fair compensation (see Section 16 of the VGGT) and potentially work towards an international protocol on fair compensation.

The absence of objective guidance on the conditions under which compensation is fair leaves local communities vulnerable to exploitation, poses high transaction costs and reputational risks for business, and leaves governments that need to resort to expropriation without authoritative guidance. A clear protocol on fair compensation could protect vulnerable communities, reduce land-related conflicts and increase opportunities for economic development.

Key point:

A protocol presented in Section 16 of the VGGT would be helpful and may be developed by True Price and RUG for FAO.

Source: True Price and University of Groningen (2016)

A landscape approach

A landscape approach aims to deal with competing claims for land, to achieve social, economic, and environmental objectives in areas where agriculture, mining, and other productive land uses compete with environmental and biodiversity goals (Sayer et al., 2013). It is based on the concept that landscapes are "multifunctional, dynamic and evolving entities composed of a mosaic of different uses (agriculture, forest, mining, urbanisation…) which are highly interdependent" (LANDac, 2014). From a landscape perspective, decisions around land governance issues should benefit all that depend upon land, for different purposes, to different degrees and at different times. For businesses, this requires an engagement strategy that goes beyond the supply chain to recognise that areas and regions are more than simply physical spaces of supply sources: 'landscapes' provide multiple values and services to diverse interests groups (Sayer et al., 2013). As such, sectorial approaches are insufficient.

IDH has developed a "Production, Protection & Inclusion Approach" to invest in sustainable landscape management (IDH, 2017). Decisions made to increase production without coordination and collaboration tend to have a negative impact on the availability or protection of resources. Therefore, partnerships between businesses, smallholders, local authorities and NGOs are built to balance social, environmental and economic benefits.

The ten principles of the landscape approach according to the UN Convention on Biological Diversity (its Subsidiary Body on Scientific, Technical and Technological Advice) offer helpful advice for integrating landscape considerations into business operations and the IRBC processes (Sayer et al., 2013, p. 8351-8352):

1. Continual learning and adaptive management. Landscape processes are dynamic. Despite the underlying uncertainties in causes and effects, changes in landscape attributes must inform decision-making.
2. Common concern entry point. Solutions to problems need to be built on shared negotiation processes based on trust.
3. Multiple scales. Numerous system influences and feedbacks affect management outcomes, but these impacts unfold under the influence of a diverse range of external influences and constraints.

4. Multi-functionality. Landscapes and their components have multiple uses and purposes, each of which is valued in different ways by different stakeholders. Trade-offs exist among the differing landscape uses and need to be reconciled.
5. Multiple stakeholders. Multiple stakeholders frame and express objectives in different ways. Failure to engage stakeholders in an equitable manner in decision-making processes will lead to suboptimal, and sometimes unethical, outcomes.
6. Negotiated and transparent change logic. Trust among stakeholders is a basis for good management and is needed to avoid or resolve conflicts. Transparency is the basis of trust.
7. Clarification of rights and responsibilities. Rules on resource access and land use shape social and conservation outcomes and need to be clear as a basis for good management. Access to a fair justice system allows for conflict resolution and recourse.
8. Participatory and user-friendly monitoring. Information can be derived from multiple sources. To facilitate shared learning, information needs to be widely accessible.
9. Resilience. Wholesale unplanned system changes are usually detrimental and undesirable. System-level resilience can be increased through an active recognition of threats and vulnerabilities.
10. Strengthened stakeholder capacity. People require the ability to participate effectively and to accept various roles and responsibilities.

6.5 Generating and sharing information

Generating and sharing sector specific information is crucial to notify businesses on land governance issues and risks in their due diligence process. There is a need for a central repository of information: a catalogue of lessons learned, good and bad practices in land governance, land governance issues for different sectors in specific regions, information about the local land governance context, or on support tools such as transparency tools, or related to land rights registration. This repository, both positive and negative, will assist operational and financial actors and their stakeholders to continuously learn, improve and anticipate positive and negative impacts and trends. Dutch embassies can play a crucial role in providing relevant and up-to-date information.

Based on the outcomes and discussion of this report some themes for discussion could be proposed for the Dutch Land Governance Multi-Stakeholder Dialogue:

- Business sector land governance: lessons learned and good practices in the due diligence process;
- Inclusion, monitoring and evaluation of land criteria in certification schemes;
- Alternative tenure and business models;
- Positive and adverse (future) impacts on land governance in financing business interventions;
- Gender and land governance in International Responsible Business Conduct.

LANDac should enhance its role as an independent expert centre on land governance issues to become a resource centre for Dutch (and other) businesses, in collaboration with similar international platforms and certifiers. LANDac or its partners could set up a training module for companies and Dutch embassies on IRBC and land governance, also in view of the importance of land in the SDGs.

6.6 Gender and land governance

Despite women being the principal farmers or producers in many parts of the world, significant gender inequities continue to exist with regard to use of and control over land and other natural resources. Reliable statistics on land ownership are difficult to obtain but there is a broad consensus that the vast majority of women in the world do not have formally registered land rights. Weak governance promotes gender inequality as poor women tend to be less able to secure their rights. It fosters social inequality with potentially destabilising consequences as the rich are able to benefit from opportunities to acquire land and the poor lose their rights to land and common property resources such as grazing lands and forests. Women often have fewer and weaker rights to land for a variety of reasons including: biases in formal law, in customs, and in the division of labour in society, as well as due to the HIV/Aids pandemic and the increase in violent conflict and natural disasters that can increase the risk of disinheritance.

When land governance initiatives include and respect women's rights, women can benefit in a number of ways. For example, land tenure initiatives that promote gender equity can serve to increase women's power in agricultural production and help secure their inheritance rights. Rights to land are also linked to other access and resource rights, including water, pasture and to timber and non-timber forest products. Securing rights in land can also enhance political voice and participation in decision-making processes.

A challenge of land governance is to ensure that specific efforts are made to support the effective participation of women and vulnerable groups such as pastoralists, indigenous groups, informal settlements residents and sharecroppers. Efforts to strengthen women's land rights have included: joint registration of land rights in the name of men and women (or women only); legal changes to the "head of household" concept; information and legal aid campaigns to inform women of their land rights; and measures to protect against disinheritance (Palmer et al, 2009).

Also the Interlaken Group (2015) observes, in line with the VGGT, that women's rights to land and forests are often overlooked or abused, despite the fact that women make up the majority of the world's smallholder farmers and are vital to ensuring local food security. Companies must ensure that they are taking active steps to ascertain that all legitimate tenure rights are respected – not just men's tenure rights. The first step is to identify women's rights to land and other resources through engagement with communities. FPIC methods constitute helpful tools to identify women's rights and the threat that they are under due to project plans.

However, even FPIC methods can fail to recognise hierarchies and differences within communities if not properly done (Elmhirst et al., 2017). FPIC is often used as tool for engagement between companies and communities. However, gender dynamics influence differently the impact, for example, of land acquisitions on men, women, youth and marginal groups in local communities. It is not sufficient to add women to discussions when gender norms restrict women to express their views or restrict women's access to and benefits of resources. In order to understand the gendered implications of an investment for both women and men, it is necessary to find spaces where women do participate, such as women's networks or women leaders. It is key to understand the challenges for women in their local context, to develop and apply interventions in regional settings, and work together with public-sector agencies for raising awareness and sensitisation (World Cocoa Foundation, 2017).

Box 6.6.1: The case of large-scale land acquisitions for palm oil in Indonesia

Large scale land acquisitions for palm oil plantations in the village of Long Ayan in Indonesia are an example of how land acquisitions can lead to women's exclusion. Gender norms that limit women' participation in public or political spheres restricted women's engagement in decision making processes related to palm oil. Negotiations on land were with "local communities", being male household members. As a consequence, women's voices were not heard and women were dependent on their husbands, fathers and sons to receive information. Companies negotiated the transfers of land and compensation with male household members, even when the land being given to palm oil was swidden land. The swiddens were informally managed and cultivated by women, providing considerable well-being as well as material and symbolic standing in their households and communities.

Source: Elmhirst et al. (2017)

Specifically for young men and young women, access to land is a major constraint in many countries, particularly as land scarcity and fragmentation due to high rural population densities is common. Land ownership is mostly obtained through inheritance, which implies that youth cannot receive land while their parents are still alive and inheritance is traditionally only directed at sons and not at daughters. Married women only have access to land if it is supported by their husband. Generally parents are reluctant to pass on land before their own retirement.

In many countries land tenure does not represent official land ownership as land is informally passed to children following customs. However, there is no legal support for it. Companies willing to engage youth in their projects or investments, for instance as sharecroppers, should bear in mind that decision making on land use is not always in their power.

The importance of gender – and youth – in relation to land issues suggests the need for the following:

- In order to understand disparities between men and women, due diligence processes should consider communal and customary tenure arrangements, the links between land tenure and the rules governing property rights within marriage and on inheritance, and the hierarchies of power that affect decision-making regarding land.
- Because challenges for women are shaped by the complexity of issues (such as formal laws, norms and beliefs, the division of labour in society, household dynamics, inheritance and marriage customs), it is key to understand the challenges for women in their local context, to develop and apply interventions in regional settings, and work together with public-sector agencies for raising awareness and sensitisation.
- Proper engagement through FPIC methods is needed to understand women's rights and the benefits or threats to these rights due to project plans.
- In order to understand gendered implications, FPIC methods require spaces where women participate and feel free to express their views. Simply adding women to discussions is not sufficient.

6.7 Organising collective action: the IRBC agreements

The case for collective action: roles and responsibilities

The IRBC agreements provide a much needed space to organise multiple stakeholders in the different sectors to collectively act on the complexity and shared responsibility of land issues. Although multiple stakeholders have different interests and objectives, partnering is necessary for improved due diligence and land governance, also recognising that these issues cannot be solved by businesses alone.

Nonetheless, the IRBC agreements start with businesses. They are expected to take the initiative and act on their responsibility for land issues, e.g. in the context of their own activities and investments, those of their suppliers, customers and partners, or those that they somehow – directly or indirectly – affect or benefit from. The ‘cause, contribute and/or linkage to’ principles guide the way for the role and responsibility of business.

The Dutch Government hosts and facilitates the IRBC agreements, but leaves the initiative to the business sector. CSOs and businesses advocate for more active roles of the Government:

- As enabler: to actively support the IRBC processes and foster the establishment of tripartite partnership agreements;
- As policy maker and regulator: to establish a level playing field and provide support when businesses are faced with strong international competition due to restrictions or additional requirements;
- As market actor as purchaser and contracting agency: to improve its own due diligence and implementation of land governance, even set the example for business;
- As coordinator: to promote coherence and consistency across different ministries and public agencies;
- As local expert and advisor (through the Dutch embassies): to provide input for due diligence on the situation in host countries;
- As international agenda-setter: to take a more active role at the international level (e.g. at the OECD, UN) and promote coherence across guidelines.

The Ministry of Foreign Affairs should take the LEGEND programme from DFID as an example to generate and capture lessons on responsible land based investment for Dutch businesses.

Although the Government does not see a normative role for itself, CSOs invite the Government to take a stand in these issues and see legislation as a potential alternative when agreements lack ambition.

CSOs, NGOs and trade unions, have an important role to play to challenge and support the business sector to improve its practices. NGOs can support businesses in their “knowing & showing” due diligence with relevant, country-specific knowledge. Several NGOs have worked with businesses on land issues, or have published guidance for companies on how to deal with land-based investments and projects. The campaigning, lobby and advocacy role of CSOs, NGOs and trade unions is equally important to raise awareness and document cases of poor land governance. Some businesses also encourage CSOs to file complaints, because it helps to flag issues, especially in complex supply chains, and can lead to an objective inspection and evaluation of the situation. From “incidental pain in the value chain to systemic gain”!

Although the current reference in the IRBC process are the OECD MNE Guidelines and the UN Guiding Principles, and next to the VGGT, also the SDGs related to land issues may be included in the process and the agreements.

Process and facilitation: bringing land issues to the negotiation table

Land should not be considered an isolated topic on the agenda, but should be integrated as a cross-cutting theme across environmental, livelihoods, human rights, and gender aspects. The landscape approach mentioned above offers a point of departure for this purpose. At the moment, however, the interconnected nature of land issues does not come out very clearly.

The partners involved in the IRBC agreements are highly diverse and topics to be included are broad. Partners also have different levels of understanding and expertise on land governance.

As a result, the agreements take middle ground in the level of ambition; and partners need to prioritise specific topics. To improve upon this, the IRBC processes should ensure that participants are aware of land governance issues, such as FPIC and legitimate tenure rights, before the negotiation starts. Land is to be included in all IRBC agreements. Otherwise, during the negotiation process, sector stakeholders should explicitly indicate why land issues are not a priority for the future IRBC agreement. Moreover, there should be continuous improvement in terms of the ambition of the agreements, whilst maintaining a balance between integrating different areas and keeping focus.

The different agreements now seem more or less independent and parallel processes. There are no synergies and joint learning trajectories between the different IRBC agreements. It would be helpful to flag the common issues across agreements. A role for the SER together with NCP-NL could be to create synergies, ensuring coherence between different IRBC agreements across sectors and joint learning trajectories on land issues. For example, the banking sector agreement does refer to FPIC and the VGGT, but the sustainable forestry agreement does not. Different sectors can, and should, learn from each other. This is even more relevant for the financial sector (banking, pension funds, insurance companies).

The agreements operate as learning platforms and aim through working groups to further understand and operationalise certain elements. An advantage is that partners can use the first year to learn and collect input for the sector, and then formulate an action plan for implementation. A potential risk of a focus on learning is a lack of specific objectives and implementation.

The possible business linkages between sectors must be addressed. Notably due diligence in the banking sector agreement includes important references to land governance issues, which the banking sector will apply in its due diligence on customers. Possibly the insurance and pension sector will replicate this approach. All other sectors should recognise this.

A mid-term review of the Textile Agreement is underway, which will provide more insights in the effectiveness of the agreements. Evaluation and lessons learned should be shared between the different sectors and stakeholders to keep improving the position of other sectors that are also starting negotiations. This also holds for lessons learned from other EU countries that implement legislation and other initiatives related to land governance.

The financial sector not only plays its supporting and enabling role in all sectors, but it also has a more general stewardship role in society: advising clients on how to improve their practices in line with the societal agenda as reflected by the OECD MNE Guidelines, the UN Guiding Principles on Business and Human Rights, the VGGT and the SDGs.

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Annex 1: Comparison of international guidelines & standards

	Human rights	Gender	Free, prior and informed consent	Supply chain	Land (including expropriation)
UN Declaration on the Rights of Indigenous Peoples (2007)	The Guidelines aim to enhance harmonious and cooperative relations between the State and indigenous peoples, based on principles of justice, democracy, respect for human rights, non-discrimination, and good faith.	Particular attention shall be paid to the rights and special needs of women (among others) [Art.21, 22]	Yes [Art.10, 11, 19, 28, 29, 32]	No reference	· States must provide protection for indigenous peoples' lands, territories or resources [Art.8] · Indigenous peoples shall not be forcibly removed from their lands or territories, includes FPIC, agreement, compensation, option of return [Art.10] · Indigenous people have the right to own, use, develop and control their lands, territories and resources - based on traditional ownership [Art.26] · Transparent and inclusive processes around land, territories, resources [Art. 27] · Compensation [Art.28] · Right to strategies for land use [Art.32] · Right to fair conflict resolution [Art. 40]
UN Guiding Principles on Business and Human Rights (2011)	The Principles discuss the states duty to protect human rights, the corporate responsibility to respect human rights, and access to remedy in case of abuse.	· Recognition of specific challenges faced by women (among others) [P.3] · Special attention is needed to the risk of sexual and gender-based violence [P.3]	No reference	The Principles apply to all States and all business enterprises throughout their operations.	· State duty: Clear governing access to land, including entitlements in relation to ownership or use of land [P.3] · State duty: Protection of both land right-holders and business enterprises [P.3] · State duty: Recognition of specific challenges faced by indigenous peoples (among others) [P.3] · Corporate responsibility: Respect human rights of indigenous peoples (among others) [P.12]
Principles for Responsible Agricultural Investment that Respect Rights, Livelihoods and Resources (PRAI) (2010)	The Principles ensure that investors respect the rights of existing resource users, protect and improve livelihoods at the household and community level, and that they do no harm to the environment.	· Recognise specific attention is needed to the salient rights of women (among others) [P.1] · Interests of vulnerable groups and women must be considered explicitly when making investments [P.6]	Negotiation with land holders/users based on informed and free choice [P.1]	No reference	· Recognition of land and resource rights, including use, ownership, registration [P.1] · Expropriation and fair compensation [P.1] · FPIC [P.1] · Clear and transparent mechanisms to transfer land rights [P.1] · Ensuring food security [P.2] · Local consultation and participation [P.4] · Enhancement of social impacts, including displacement, vulnerability, livelihood and food security strategies [P.6] · Fair compensation and benefit-sharing arrangements [P.6]

	Human rights	Gender	Free, prior and informed consent	Supply chain	Land (including expropriation)
OECD Guidelines for Multinational Enterprises (2011; last edition)	With a human rights chapter, consistent with the UN Guiding Principles on Business and Human Rights and the “Protect, Respect and Remedy” Framework	No reference	No reference	Proposes contractual arrangements to influence suppliers to cease or prevent adverse impacts in the supply chain.	· Stakeholder engagement in planning and decision-making concerning intensive use of land or water, which could significantly affect local communities [G.25]
OECD-FAO Guidance for Responsible Agricultural Supply Chains (2016)	Human rights is identified as one of the risks arising long agricultural supply chains [S. 2].	Gender is cross-cutting standard [S.1]	· FPIC as cross-cutting standard [S.1] · Guidance on engagement with indigenous peoples, including FPIC [Annex B]	The Guidance has been developed to help enterprises observe existing standards for responsible business conduct along agricultural supply chains.	· Tenure rights over and access to natural resources [S.6] · Respect of indigenous and customary rights for resources including land, fisheries, forests, water [S.6] ·Avoid, minimise, or compensate for adverse impacts [S.6] · Land rights is included in the framework for risk-based due diligence along agricultural supply chains [Chapter 3]
IFC Performance Standards on Environmental and Social Sustainability (2012)	Includes human rights as a cross cutting issue. Due diligence against the Performance Standards will enable the client to address many relevant human rights issues in its project.	· Gender is addressed cross-cutting across multiple performance standards. · Considers women’s role in management and use of resources [PS.7, Art. 14]	Yes [PS.1, Art.32; PS.7, Art.2, 11, 12, 15, 16, 17, 22]	Includes supply chain management relating to specific issues, including purchase of primary products from regions with a significant risk of damage to natural or critical habitats.	· Assessment and management of environmental and social risks and impacts [PS.1] · Stakeholder engagement [PS.1, Art.25-33] · Avoid, minimise, or compensate for risks and impacts to workers, affected communities, and the environment [PS.1, Art. 13-16] · Land Acquisition and involuntary resettlement [PS.5] · Compensation and benefits for displaced persons [PS.5, Art. 9] · Community engagement [PS.5, Art. 10] · Grievance mechanisms [PS.5, Art.11] · Resettlement and livelihoods restoration planning and implementation [PS.5, Art. 12-16] · Displacement [PS. 5, Art. 17-29] · Indigenous Peoples [PS.1, Art. 31;PS.7] · Avoidance of adverse impacts [PS.7, Art. 9-9] · Participation and consent [PS.7, Art. 10-12] · FPIC [PS.7, Art. 13-17]

	Human rights	**Gender**	**Free, prior and informed consent**	**Supply chain**	**Land (including expropriation)**
Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests (VGGT) (2012)	Stresses the indivisibility of human rights and that governments should take into account rights directly linked to access and use of land, fisheries and forests, and all civil, political, economic, social and cultural rights. In line with the UN Guiding Principles, businesses can follow this guidance.	· Gender issues are mainstreamed and addressed throughout the guidelines · Gender as one of the principles of implementation [Art. 3B]	Yes [Art. 3B, 9.9]	No reference	· Legal recognition and allocation of tenure rights and duties [P.3, Art. 7-10] · Transfers and other changes to tenure rights and duties [P.4, Art. 11-16] · Administration of tenure [P.5, Art. 17-22] · Governance of tenure of land, fisheries and forests in context of climate change and emergencies [P.6, Art. 23-25]
Principles for Responsible Agricultural Investment in Agriculture and Food Systems (RAI) (2014)	The principles stress that responsible investment should respect and not infringe on human rights of others and address adverse human rights impacts; and support the right to adequate food in the context of national food security.	· Foster gender equality and women's empowerment by advancing women's equal tenure rights, and their equal access to and control over land and resources [P.3] · Enhance women's meaningful participation [P.3]	Yes [P. 9]	Businesses should conduct due diligence and support efforts to track the supply chain [Art. 51].	· Respect tenure of land, fisheries, and forests, and access to water, as well as existing and potential water uses [P.5] · Conserve and sustainably manage natural resources, increase resilience and reduce disaster risks, recognising the role of indigenous people and local communities [P.6] · Promote fair and equitable sharing of benefits, respecting the rights of indigenous peoples and local communities [P.7] · Transparent and inclusive governance structures [P.9] · Grievance mechanisms [P.9]
Respecting Land and Forest Rights: A Guide for Companies (2015)	Human rights as key tenure consideration	Women's rights to land and forests as key tenure consideration	FPIC as key tenure consideration	· Provides support for businesses to align their operations with the VGGT, including guidance for procurement/supply chains · Out grower schemes as key tenure consideration	·Provides guidance according to 5 project types that are most likely to be initiated by a company making land-based investments: greenfield, brownfield, existing holdings, joint ventures, procurement/supply chains. · Smallholders and food security as key tenure consideration ·Forced evictions verses expropriation for public purpose as key tenure consideration

	Human rights	Gender	Free, prior and informed consent	Supply chain	Land (including expropriation)
African Union Guiding Principles on Large Scale Land Based Investments in Africa (2014)	Respect the human rights of communities is one of the fundamental principles [P. 1,2,3,4]	· Develop capacities of communities, in particular women, to negotiate with investors [P. 10] · Respect for the rights of women & benefits for women [P. 11, 12, 13]	Communities are provided sufficient information, and are consulted prior to finalising agreements [P. 9]	No reference	· Responsible governance of land and land-based resources [P.1] · Fair compensation [P.2] · Contribute to the national plan for sustainable agricultural development [P.3] · Good governance, including land administration, use, dispute settlement, stakeholder consultation [P. 6, 7, 8, 9, 10]. · Cost-benefit analysis [P. 14, 15, 16]
The Analytical Framework for Land-based Investment (2015)	The framework is designed to help investors that their land-based investments are inclusive, sustainable, transparent and respect human rights.	Women rights to use and/or own land [Theme I]	Yes [Theme II]	No reference	·Tenure rights [Theme I] · Participation, consultation and negotiations [Theme II] · Grievance mechanisms [Theme III] · Food security, human rights, environmental sustainability, and local capacity building [Theme IV]

Annex 2: Overview table sectors

Sector	Recommendations on land issues to be addressed
Gold	• The complexity of the international gold value chain and its potential connection to conflict -affected and high risk areas, calls for collective leverage to prevent or mitigate adverse impacts. As the gold sector in the Netherlands consists predominantly of downstream supply chain actors, land governance should be addressed at that level, leading to improved due diligence processes. • It is recommended to explore among sector stakeholders how certification in the gold sector can be more widely accepted and how to include land issues. • If resettlement activities are not managed properly, gold companies can face disruption of the project, and run legal or reputational risks. Companies should undertake resettlement activities responsibly in line with the VGGT and make it their goal to leave communities better off than they were previously. • Compensation by resettlement or other (monetary and/or social) types of offsetting-compensation for loss of livelihood in gold mining areas should be on a fair land value basis (see also chapter 6.3). Stakeholder engagement in general, and negotiations with displaced people in particular, should be at the heart of the land acquisition and resettlement process. Affected communities and households should be informed and regularly reminded of grievance procedures. • Information on actual and potential land rights violations and environmental impacts in different countries should be gathered, centralised and made available to gold sector stakeholders (possibly through Land Dialogue, LANDac). This will help gold sector stakeholders to take informed decisions and improve due diligence.
Garments and textile	• Sector stakeholders indicate that land (and water) issues are most relevant while (1) obtaining land for the construction of factories and (2) related to environmental pollution. For improved due diligence, textile companies should conduct field visits to ascertain that any factory land-related activities/investments, including lease agreements, are in congruence with relevant national legislation and customary laws. • Land issues related to cotton production are encountered further upstream in the supply chain and should be addressed in cotton certification schemes (sustainable, organic and bio-cotton certification). These land issues include titling and related land use decision making, land fragmentation, insufficient rotation opportunities and the limitations of available fallow land (because of land grabs and population growth), which leads to reduced soil fertility.
Green proteins	• The RTRS Standard for Responsible Soy Production addresses land issues such as land use rights, land conflict and grievance mechanisms. It is important to implement and monitor the standard and its impacts. • Regardless of RTRS membership, companies should also perform their own independent due diligence with a view on land issues and potential conflicts.
Sustainable forestry	• Establish deforestation free supply chains. This can be done by making financing infrastructure available to intensify crop production for all producers including women, youth, and marginalised groups. • Raise awareness in countries and convince suppliers to source timber products sustainably. • Study the timber production chain and related land issues to be able to indicate what can be done from the demand side and from the source side. • Include the VGGT (and the related FPIC, gender) in the forestry agreement working group discussions.

Pension funds and Insurance	• Land issues need to be explicitly considered, on an "include-or-explain-why-not" basis, in the investment policies and due diligence processes as possible salient issues from social and/or natural capital perspectives, and should, hence, be referred to in both IRBC agreements for the pension funds and insurance sectors. The VGGT should be explicitly considered and referred to, in addition to the OECD MNE Guidelines and the UN Guiding Principles. Moreover, the PRI Guidance papers referred to above provide guidance in the agricultural sector but may be considered as well in other sectors where land issues are involved. • Investees should be required to disclose their understanding of and dealing with land risks as an emerging salient issue in their entire value chain. • As land issues are relatively unknown and distant in the value chain of many sectors in which insurance companies and pension funds invest in or insure, collective learning, training and sharing of experiences (including dilemmas, exercising individual and collective leverage) within both insurance and pension sectors is recommended. • Not investing or insuring may not be in the interest of sustainable, inclusive societal development (as reflected by, notably, the SDGs); there is no perfect answer today, let alone for tomorrow. Risk management is taking informed decisions for doing the right business and investments (right), balancing material issues, rights and interests on an as much as possible informed basis and be accountable. The financial sector has a particular stewardship role in this. The universal SDGs offer a comprehensive narrative and agenda for responsible and profitable business conduct.
Floriculture	• Linkages between floriculture investments, land governance arrangements and local food security are diverse, highly dependent on local circumstances and often indirect. This calls for attention in policies that stimulate Dutch investments in developing countries through subsidies or loans in the context of the 'Aid and Trade agenda' and the need for a future IRBC agreement.
Palm oil	• The RSPO addresses different land governance issues and promotes adherence to FPIC. However, neither RSPO certification nor the RSPO complaint system are able to rule out incidents of malpractice, especially in countries where the government is failing to establish and maintain legislation in the field of environmental and working conditions. On the one hand, this calls for capacity building on land governance in producing countries to support the ability of governments to enforce legislation. On the other hand, targeted support for the RSPO by sector stakeholders is necessary to increase its effectiveness on land governance, e.g. with regard to: o Strengthening the ability of indigenous peoples to report violations of the RSPO P&C; o Supporting the grievance mechanisms set in place by the RSPO; o Enforcing sanctions on member companies that are in violation with the RSPO P&C; o Promoting a stronger role of indigenous peoples in the activities of the RSPO. • Finally, in light of the limitations of RSPO certification to promote land governance, companies need to take individual responsibility for their supply chain beyond RSPO certification (e.g. stronger due diligence processes; increased traceability along the supply chain; etc.).

Cocoa	• Governments and companies should link to initiatives such as the Amsterdam Declaration and work towards zero deforestation in cocoa production. • The Dutch Government should work more closely with producing countries to enhance sustainability in the cocoa chains, in particular, by encouraging sustainable production methods. • Land reforms and developing land registration systems are important conditions for increasing higher cocoa productivity levels. Initiatives that can help to improve access to land are the development of land-oriented services, such as land mapping services, land-conflict mediation, etc. Initiatives are needed to gain more insight in land rights and to formalise land ownership and land tenure systems. Land mapping will create awareness, also within cocoa cooperatives, on how much land is actually needed for cocoa production and to ensure zero deforestation. • Certification should include land governance issues. Focusing solely on (official) land ownership as certification criteria is not recommendable as this might exclude other land users to get their produce certified if not land owner. Land use security criteria, also for non-organized female and youth smallholders, might be an option but is perhaps difficult to audit. Baseline certification and related access to financial services should also be accessible for smallholders who are not organised in cooperatives. Besides opportunities in certification, awareness, incentives and support is to be created for investments in intensification and zero deforestation. Zero deforestation could be a certification criterion for cooperatives. • Creating room for alignment between government, companies, the timber industry and farmers in public-private partnerships with donor funding can help promote entrepreneurship (particularly among youth), increase cocoa productivity, establish valuable tree species, and improve environmental sustainability. • Tenure reform reinforcement and awareness is urgently needed as it improves coordination between customary and statutory structures, reduces conflict between landlord and tenant, clarifies and documents rights in different contractual arrangements to strengthen tenure security, transfers rights over timber trees to landowning groups, channels payments from revenue-sharing schemes to cocoa farmers, and assists smallholders with cocoa rehabilitation to increase land use value. • Establish a fund or the necessary financial infrastructure for women, young farmers and marginal groups interested in cocoa. Financial infrastructure is also needed to make intensification possible. • Government agricultural vision and policies regarding cocoa production should strengthen cocoa infrastructure for smallholder farmers (business opportunities, business services, access to fertiliser) including the establishment of the necessary financial infrastructure for investments. • “More cocoa, on less land, produced by less people and with zero deforestation” should become the business case for cocoa and chocolate companies. • Create awareness and enforce laws and constitutions that guarantee the right of succession for surviving spouses, children and parents and avoid discrimination practices for women to access their property rights.
Infrastructure	• The leverage for infrastructure companies is limited in impact and time for these to include a more holistic view while focusing not only on the infrastructure itself but also on possible sustainability and land governance issues. But efforts should be made for improved due diligence and addressing possible adverse effects including changes in land use. • Develop inclusive community engagement plans to improve the design of infrastructure. • Evaluate local dynamics from a (bottom-up) community perspective. Set-up a multi-stakeholder learning dialogue to better align infrastructure investments with local needs and expectations. • Engage in international diplomacy with host and home governments to upgrade the tender documents by (often governmental) contracting agencies, as well as to raise common standards among contractors (e.g. through harmonisation by the European court of auditors).

Food Industry

- Triangulate information in the due diligence process of the food industry and stimulate discussions and decision making on land issues between farmers, communities and processors.
- Land issues play very deep in the supply chain; food industry companies need more information and transparency on their sourcing.
- Grievance mechanisms on land governance should be improved and more aligned with the OECD MNE Guidelines and the UN Guiding Principles.
- Major food producers and retailers have made significant progress in incorporating more Environmental, Social and Governance (ESG) considerations into their business approach. However, land is not yet an explicit element in "materiality assessment matrices" and should be included as such in companies' annual reports.
- Alternative and innovative land-related activities with smallholder farmers and local communities can be successful and have positive social and environmental impact.
- Smallholder participation as shareholders in food industry investment projects, and the equitable sharing of risks and benefits, should lead to more trusting relationships, joint responsibility and decision making over land use and ownership.
- There is a need for "entry level certification" next to existing "gold standards" by certifiers.

Natural Stone

- Local governments in the Netherlands are large clients for natural stones, e.g. for paving dams. A preferential treatment for companies with good due diligence practices, with specific attention to land governance issues, should be considered.
- To be able to trace stones back to their source and to improve on transparency, adding QR codes could be a solution (information on where is it from, level of certification, land issues).

Tourism

- Land issues are important in the tourism sector as tourism infrastructure is built in the most attractive places, along coastlines and near national parks and nature reserves. Therefore, the land rights of local populations are at risk and should be addressed.
- Tourism companies must apply sustainability criteria in their contracts in the supply chain and these should also mention land issues.
- Tourism companies should not rely only on host government due diligence but should do their own and talk to local communities about different forms of involvement. A better consultation process is needed.
- Stakeholders such as government, donors, NGOs, investors, banks and pension funds and insurers should reflect on the type of tourism to be attracted given that large-scale tourism often entails real estate acquisition. Undesirable consequences like land speculation should be anticipated and carefully considered before any direct or indirect incentives for residential tourism are made.
- Reflection is needed on the type of tourism to be promoted and the related responsible investments required. These include impact assessments and consultation as well as a careful choice of local partners. This is especially urgent in the case of residential tourism. Long-term investments are preferable, and social inclusivity, land issues and water availability require special attention.
- Sustainable tourism development requires institutional reforms, particularly in improving the implementation and control of regulations. Weak implementation and control capacities of especially local governments where land and environmental regulations are at stake, need urgent attention.