

# Transformative land investment

## Trends in transnational governance

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### Key messages

- Land governance standards, regulations and ‘food systems transformation’ have very different meanings across different actors, and different perceived roles – from facilitating large-scale land investments to preventing them.
- The promise that voluntary standards would mobilize significant additional investment has not materialized.
- Challenges with corporate self-regulation have led many, including some private sector actors, to push for mandatory regulation. However, this also comes with specific weaknesses and risks (e.g., bias towards those with the resources to comply); corporate disclosure has been inadequate to date.
- Under the right political and contextual conditions, even what appear to be weak land governance instruments can provide opportunities for the poorest farmers to protect their land rights.
- It is essential to understand and make explicit the different visions and assumptions regarding ‘development’ behind standards and initiatives, and their implementation pathways, in order to identify common ways forward.

### Introduction

There is a proliferation of global standards and guidelines (e.g., principles, frameworks, regulations) related to land investment, with different priorities in relation to environmental, social, governance and societal impacts. This proliferation has led not only to pressure for greater consolidation or alignment but also to questioning the efficacy of different approaches. Whereas our Infobrief on environmental, social, governance and societal standards lays out what these various standards and guidelines are (and are not) trying to achieve, and explains our research methodology, this Infobrief reviews the trends, limitations and critiques within the broader global arena of land investment standards.

### The limits of voluntary sustainability standards

The emergence of voluntary international sustainability standards and guidelines in recent decades was partly in response to weak national standards and the desire for companies to gain a competitive advantage over those selling to less discerning markets. The logic of voluntary certification is that:

- i. Certification aims to differentiate good companies or products by adhering to more than the minimum mandatory standards;

- ii. Companies rely on external independent systems to provide consumers with credible information, as companies can lack credentials, and supply chains are complex;
- iii. Certification systems then act as quasi-cartels to bring competitive advantage and limit competition – for example, certification bodies might limit how many companies can get certified by using quotas, fees or other restrictions, which reduces competition and might let certified companies control prices (Bartley 2007).

Recently, however, there has been increasing awareness of the limits of voluntary initiatives. Certification participation rates are low (Lynggaard and Ravnborg 2020; Varela and Williams 2020), with only 11.6% of the global oil palm area and 1.7% of the soy area certified (Kemper et al. 2023). Fair Finance Asia (2022) found that in 2016 to 2020, 125 of the largest agribusinesses in ASEAN, Japan and India received USD 22.6 billion in loans and underwriting from global and regional financial institutions, and 90 percent ignored issues related to fair labour practices, transparency and accountability, and gender parity. The original assumption that voluntary standards would mobilize significant additional investment has not materialized. Certification has also sometimes lent itself to stamping approval on practices that were not up to standard (Buckley 2023).



**Figure 1. Aerial view of the landscape around Halimun Salak National Park, West Java, Indonesia**

Photo by Kate Evans/CIFOR

The complexity arising from the large number of frameworks serving similar needs allows investors to pick and choose. It is a potential minefield for investors who may not have the in-house capacity to navigate this terrain. In the case of some certification schemes, they may lead to lowering of standards to attract members (Clapp 2017). Related to this, the legitimacy of voluntary regulation and frameworks can confuse investors and consumers (see Cole, 2022 on the motivations behind the ASEAN-RAI). While voluntary approaches offer flexibility, making them easier for businesses to work with, they risk providing the appearance of good environmental behaviour without the costs of delivering it, otherwise termed ‘greenwashing’ (Taylor et al. 2021).

A few voluntary standards, such as the Rainforest Alliance 2020 Certification Program and Fairtrade, are leading the way in social inclusion by supporting more small-holder-centric approaches, but they are the exception. Others, especially those designed by and for industry, such as the Round Table on Sustainable Palm Oil (RSPO), may have regressive outcomes as they can pose barriers to market access for smallholders or simply do not make sense for them financially.

Similar scepticism is emerging over initiatives for corporate self-regulation related to high-profile commitments such as the No-deforestation, No-peat

and No-exploitation (NDPE) Implementation Reporting Framework (NDPE-IRF). Over half of the world’s most significant palm oil-consuming companies are struggling to publicly assess their suppliers on commitments to sustainability and zero deforestation (ZSL 2023). The 2022 Forest Declaration Assessment reporting on the New York Declaration on Forests commitments concluded that it is easy for companies to commit to standards, but much harder to implement them (Forest Declaration Assessment Partners 2022).

## A turn toward mandatory regulation?

Previous assumptions that the private sector would lead the way for sustainability reforms, such as those committed to zero deforestation, have led over time to an increased realization of the need to work with the government to engage with companies. The interviews conducted for this assessment emphasized the importance of binding instruments (both enabling and constraining) for influencing the private sector’s policies and operations.

Experience from the UNFCCC’s REDD+ scheme has demonstrated the need for binding elements in such new global regimes. Specifically, the Cancun safeguards interpretation process is based on national laws. Thus,

where laws are weak on human rights, land rights, Indigenous Peoples and free prior and informed consent (FPIC), for example, they take precedence. This weakness is despite invoking the UN Declaration on the Rights of Indigenous Peoples, which many countries have signed on to; but, again, compliance is voluntary. In this vein, the Voluntary Guidelines on the Governance of Tenure (VGGT) and the Council on Food Security's principles for Responsible Agricultural Investment (CFS-RAI) are criticized for their voluntary compliance and related 'lack of teeth' (Hall et al. 2016).

Certification bodies such as Rainforest Alliance (RA) see their 'due diligence' approach<sup>2</sup> (alignment with legal frameworks on human rights and deforestation) as a critical feature of their work. Several countries, particularly in the European Union, are crafting new laws requiring human rights due diligence (HRDD) across European companies. Major food and beverage companies committed to improving sustainable supply chain management, including Nestlé and PepsiCo, are joining calls for mandatory HRDD legislation, and urging competitors to do the same. Nevertheless, many companies have worked against measures requiring legal liability and giving teeth to such efforts (see Box 1 on the new EU corporate regulations).

Mandatory regulations also have risks. They raise issues around trade rules, protectionism and geopolitical tensions regarding state sovereignty and colonialist behaviour. They can also be so challenging to implement that working with smallholders can become a liability. One example is the EU Deforestation Regulation (EUDR) that came into force in June 2023, which, among other things, requires compliance with national land rights law. Many people fear that smallholders will be dropped from supply chains, given that the complexity and cost of ensuring compliance (e.g., land titles) for many small farmers is much higher than for fewer large farmers.<sup>3</sup> Some companies have privately stated they may shift to countries with more lenient land laws (anonymous global finance expert, 2023).

## The challenges of corporate disclosure and transparency

A key theme for sustainability initiatives concerning the private sector is the need for improved disclosure practices, which refers to the external and public reporting of critical metrics and indicators. Disclosure surrounding private sector operations remains low (DFI Transparency Initiative 2020), partly due to client

<sup>2</sup> See, for example, their participation in the VOICE Network-lead joint position paper on the EU's policy and regulatory approach to cocoa at <https://www.rainforest-alliance.org/wp-content/uploads/2021/10/human-rights-due-diligence-joint-position-paper.pdf>

<sup>3</sup> For a review of smallholder experience with certification, see Meekman 2020 [https://www.rural21.com/fileadmin/downloads/2017/en-01/rural2017\\_01-527-29.pdf](https://www.rural21.com/fileadmin/downloads/2017/en-01/rural2017_01-527-29.pdf)

### Box 1. The new EU directives

The EU Commission's Corporate Sustainability Due Diligence Directive (EU CSDDD) has the potential to raise the bar for stronger corporate accountability regarding human rights and the environment (Zerk 2024) (Bastos Lima and Schilling-Vacaflor 2024). The directive relates to the overarching OECD Due Diligence Guidance for Responsible Business Conduct (OECD 2018). The OECD Guidelines for Multinational Enterprises on Responsible Business Conduct were revised in 2023, mobilizing land and human rights advocacy groups in the process (Feld 2023). The updated guidelines directly reference the rights of Indigenous Peoples, including their rights to free, prior and informed consent (FPIC), and seek to align with the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) for the first time (Carling 2023). Both will have some form of external but weak verification. In the final agreement on the CSDDD, FPIC has been included. Still, the rights of Indigenous Peoples and local communities have not been included under due diligence requirements because a bloc of European countries with Indigenous populations objected. In addition, the financial sector has been temporarily excluded from downstream due diligence requirements. The OECD guidelines are non-binding, but the CSDDD includes some civil liability clauses which allow some form of redress, albeit limited. There is also some risk that more stringent requirements may exclude smaller players, as noted previously regarding the EUDR.

In addition, the 2023 EU Corporate Sustainability Reporting Directive (CSRD) introduced binding uniform EU standards concerning the social and environmental information that companies must report (Steiger 2023 and CMS Law-Now 2022). Previously, there was no requirement to use the established international standards for reporting. However, it is also worth noting that the CSRD, including the new European Sustainability Reporting Standards (ESRS), will only apply to large companies and listed SMEs. Most other land-based investors, such as smaller companies, will not have such requirements.

expectations that data will not be released to protect their confidentiality, and the private sector's general apprehension about disclosing information because of concerns over competitive, legal and reputational risks. The lack of disclosure makes it difficult for stakeholders to assess the veracity of claims.

With regard to sustainable investment, oversight of (and standards for) financial intermediaries such as commercial banks or investment funds is an increasing concern. More than 60 percent of all

International Finance Corporation (IFC) commitments and a third of European Bank for Reconstruction and Development (EBRD) and European Investment Bank (EIB) commitments are channelled through such intermediaries (Fuchs et al. 2021). In these cases, responsibility is commonly delegated to the intermediary<sup>4</sup> where there is far less transparency concerning the use of funds than with direct investment projects (Donaldson and Hawkes 2018). Development finance institutions (DFIs) may be unaware of the client's harmful investments (Genovese, Ingrams and Geary 2018; Oxfam 2020). In addition, liabilities and responsibilities are much harder to define, as intermediaries are not directly involved in land acquisition. This lack of definition may result in weak enforcement of environmental and social standards, and a lack of clarity regarding the use of development finance. Communities impacted often do not know who is behind investments, so access to grievance processes and remedies for adverse impacts is significantly limited (Christman Cole 2022).

In general, DFIs report reasonably well on public finance operations, and less well on private sector operations (DFI Transparency Initiative 2020). Although there are large differences among DFIs. The quality is problematic for some, and for others, data is difficult to find even when published. In one study of nine multilateral DFIs reporting on sovereign operations, none "published comprehensive lists of the standards or initiatives they are aligned to" (DFI Transparency Initiative 2020). Other transparency concerns arise around blended finance, which combines public concessional official development assistance (ODA) with private finance (Pereira 2017). It usually aims to 'mobilize' or 'leverage' development finance from other actors, but the combination means the DFIs are subjected to what tends to be the more opaque private sector.

## Polarization of narratives around land investment: The political setting

Since the 2008 food price crisis, land acquisition for speculation, land-banking objectives and agri-business has intensified. Land has increasingly become a financial asset, and polarization in the discourses around agribusiness<sup>5</sup> has been exacerbated (Cotula et al. 2009). This results in diverging theories of change – and visions of development – across standards and initiatives. On the one hand, there is the narrative of the need to encourage the benefits of export-oriented farming and

transboundary agrifood systems for improving incomes (as discussed in Cole 2022). Related to this is the need to work with business and private actors to influence implementation. On the other hand, there are strong narratives about the risks of commodification and intensification, and the need to address land grabbing (Hall et al. 2015) and weak governance, which has enabled investors and firms to evade responsibility (Collins 2016). Linked to this are calls for developing new models to transform/disrupt existing food systems. Box 2 lays out how these narratives played out in the development of the Principles for Responsible Agricultural Investment (PRAI), VGGT and CFS-RAI.

## Questioning the role of global standards

Related to these divergent narratives, within the literature there is some questioning of the assumption that global standards related to the regulation of investment are the best solution to sustainability challenges. The UN Special Rapporteur on the Right to Food from 2008 to 2014 argued that the main problem is not weak governance, but rather the notion that development is best achieved through large-scale land rights transfers (De Schutter 2011). Mulleta et al. (2014) suggest that an array of governance instruments promoting responsible investment in land only fixes the superficial problems of land deals, allowing the underlying issue of the commodification of land to continue at the expense of people experiencing poverty; "a dangerous diversion of attention from 'substance'" (Borras and Franco 2012). From this perspective, what is needed is a different rural development model based on democratic access to resources (Mulleta et al. 2014).

An example of these concerns is that standards focused on environmental concerns and labour rights, may not directly address the small value of funds that go directly to producers. To address this, regulations could incorporate measures to increase transparency in pricing mechanisms, empower producers with better market information, and establish mechanisms for fair negotiation and dispute resolution.

Still, Margulis and Porter (2013) and Brüntrup et al. (2014) argue that transnational arrangements such as the CFS-RAI and VGGT provide opportunities for the poorest farmers to protect their land rights. The authors show how these initiatives can promote and provide a framework for public debate over large-scale land-based agricultural investments. In addition, normative standards such as the VGGT and private initiatives are gradually being incorporated into harder laws and regulations.

4 Some critique of this is captured in this 2022 press release by Both ENDS: <https://www.bothends.org/en/Whats-new/Press/Groups-react-with-dismay-to-FMO-s-position-statement-on-Financial-Intermediaries-pointing-to-outstanding-human-rights-and-climate-concerns/>

5 The International Land Coalition (ILC) and Oxfam are addressing this dilemma head on through the ILC diagnostic tool (<https://learn.landcoalition.org/en/manuals-toolkits/land-collaborative-diagnostic-tool/>) and their Uneven Ground report (Christman Cole 2022).

## Box 2. The ideological underpinnings of the PRAI, VGGT and CFS-RAI

The most prominent global instruments related to land on the global governance agenda are the Principles for Responsible Agricultural Investment (PRAI), CFS-RAI and the VGGT. Each has a different origin, process, legitimacy and ideological underpinning (Muller and Cloiseau 2015). Borras et al. (2013) identify three main political positions in the land investment debate related to different notions of development and the role of the state, namely 'regulate to facilitate land deals'; 'regulate to mitigate negative impacts and maximize opportunities'; and 'regulate to block and roll back land grabbing'. Lynggaard and Ravnborg (2020) highlight how all three positions played out in developing these key initiatives.

The PRAI was developed at the initiative of the G8 by the World Bank, FAO, UNCTAD and IFAD in light of the negative impacts of land grabbing. The PRAI took a 'risk-management' approach to the risks faced by investors and capital (Stephens 2013), and stressed the importance of self-regulatory and industry-led forms of governance (Muller and Cloiseau 2015). It faced substantial criticism from global civil society for legitimizing land grabbing (Stephens 2013) due to its focus on land-titling to enable land transactions (Akram-Lodhi 2012). Some argue this represents a shift from promoting smallholder agriculture to focusing on large-scale, industrialized farms (Korpi 2013).

The VGGT, on the other hand, sprang from movements around the Right to Adequate Food. In 1999, La Via Campesina, the transnational peasant movement, and its allies launched the Global Campaign for Agrarian Reform (CGAR), linking land reform and human rights. The International Conference on Agrarian Reform and Rural Development (ICARRD), organized by FAO in 2006, and the subsequent VGGT process were exercises in multi-stakeholder inclusivity (McKeon 2013). The structural causes of the food crisis were acknowledged, and the VGGT refer to human rights obligations. Nevertheless, CSOs failed to insert a ban on land grabbing in the guidelines, although there are several related safeguards (Paoloni and Onorati 2014).

The CFS-RAI emerged from bringing together the VGGT and the PRAI, emphasizing small-scale farmers' rights (Brunori 2018 and Lambeck 2019). The CFS-RAI was an attempt to provide internationally agreed principles to promote investor responsibilities based on national policy and legal frameworks as well as international standards and soft laws (Cole 2022). Like the VGGT, the CFS-RAI have legitimacy based on the inclusivity of their negotiation process (Collins 2016). However, tension around the content remains between those favouring regulation-light principles aligned with investor interests (TNI 2015) and those supporting smallholders. For the latter, the CFS-RAI is seen to be endorsing international trade regulations that would undermine food security and human rights while pushing a neoliberal notion of empowerment through economic participation (Collins 2016).

## Conclusions

Current standards have substantial limitations, not only regarding their effectiveness in reaching stated goals, but also in addressing the substantive systems challenges in ways that would foster transformative change. Regarding the "essential conditions" we refer to elsewhere as the "four pillars of transformative change", few standards take a comprehensive or integrated approach, such that they consider what is good for the environment, local people, governance and society. Voluntary standards – without teeth – may foster 'greenwashing,' but they may also have started a conversation about changing priorities. At this stage, perhaps some have run their course. Binding regulations, after all, can only work if they can be passed and then enforced.<sup>6</sup> Corporate disclosures and greater transparency are essential.

The divergent political narratives raise valuable considerations. To some extent, many of the standards facilitate land commodification, but they also operate within a capitalist world that is powerful, resilient and not easy to change. Are imperfect standards better than no standards if they provide new opportunities to protect land rights? How do we ensure that standards evolve based on science and best practices to push for continual improvement?

New ways of doing business mean a paradigm shift in the fundamental structure and priorities of investments: considering more than just profits as part of the bottom line. As long as there are ample alternative sources of finance or markets that do not require the same strict standards, change will be partial, at best. For now, what is needed is a deep understanding of our theories of change, focused on leveraging current initiatives; identifying implementation gaps and innovating for change; and engaging with forward-thinking companies, government, civil society and farmers – testing, reflecting and revising as we try, learn and try again.

<sup>6</sup> For a debate on the relation between voluntary and mandatory standards, see Luttrell et al. (2018).



**Figure 2. Lubuk Beringin villagers cut off palm nut fruits at Lubuk Beringin village, Bungo district, Jambi province, Indonesia**

Photo by Tri Saputro/CIFOR

## Recommendations

- It is important to make explicit the development vision behind land-based investments, regardless of the specific standard(s) being followed.
- Mandatory standards and increased requirements for public reporting and disclosure are a critical path forward.
- Mandatory standards, however, also come with risks, such as limiting to avoid such negative consequences.
- Although 'greenwashing' is real, so are the challenges of implementing comprehensive standards well. Understanding these difficulties is important to finding effective solutions.

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This is the second of two Infobriefs based on the review and analysis of global standards and other guidelines and principles related to land investment, particularly concerning agriculture and food systems. This review was undertaken under the auspices of the Transformative Land Investment (TLI) project <https://tli.cifor-icraf.org/>. A short flyer presents the **introduction and classification of the standards and initiatives; the first Infobrief analyses their alignment across the four 'pillars' of transformative change.**

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## CIFOR-ICRAF

The Center for International Forestry Research and World Agroforestry (CIFOR-ICRAF) harnesses the power of trees, forests and agroforestry landscapes to address the most pressing global challenges of our time – biodiversity loss, climate change, food security, livelihoods and inequity. CIFOR and ICRAF are CGIAR Research Centers.

