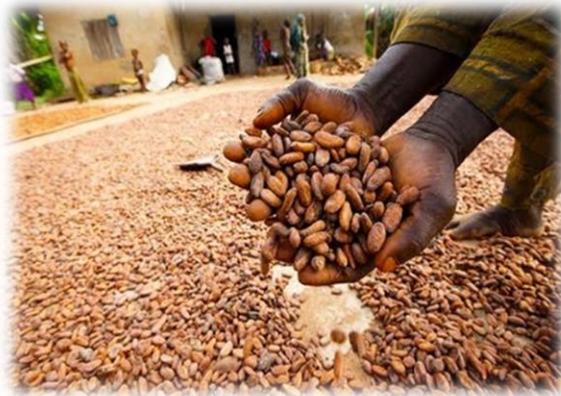




Emerald Network Ltd

# Behind the Brands: Independent Evaluation of Implementation of Land Rights Commitments



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January 2021

## Acknowledgements

We would like to acknowledge all of those who tirelessly defend the land rights of Indigenous Peoples and local communities. In 2020 it has felt as if we are all doing our best from our computer screens to remain vigilant and apply our creative minds and bodies to finding the best path through. We remain hopeful that the lessons of this year will remind us of what is valuable: the soil beneath our feet, the trees above our heads and our precious lives. The evaluation team have struggled, as have so many, with the effects of 2020. This evaluation has been completed despite surviving the California fires, with partners losing work, children no longer at school, sick parents, getting Covid 19 and dealing with the emotional stress of knowing that so many suffer more than we do. We would particularly like to thank Chloe Christman and Emma Fawcett from Oxfam America who engaged with us with compassion and kindness. We have felt very supported while doing this task. We would also like to thank Ellen Lewis for her contributions to research cycle 1. Ellen continued to work while having to relocate twice due to the California fires. The first four authors would also like to thank Emerald Network Director, John Colvin for his unwavering trust in us and support.

## About Emerald Network Ltd

Emerald Network is a niche consultancy that works with multi-level, multi-stakeholder systems change for just and sustainable development through policy influencing, research, evaluation, design, process facilitation and social innovation. Our leading-edge practice is informed by complexity and systems perspectives and transformational learning approaches, bringing together scholar-practitioners with in-depth experience and a wide range of skills to support the design and implementation of interventions. We work both globally and in China, Europe, Latin America, sub Saharan Africa and South Asia.

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## Acronyms

ABF	Associated British Foods
AIM	Association des Industries de Marque
CFI	Cocoa and Forests Initiative
CFS	Committee on World Food Security
CS	Civil Society
CSO	Civil Society Organisation
CSR	Corporate Social Responsibility
CSPO	Certified Sustainable Palm Oil
FAO	Food and Agriculture Organisation
FPIC	Free Prior and Informed Consent
HCC	High Conservation Lands
HCS	High Conservation Stock
HRDD	Nestlé's Human Rights Due Diligence Programme
IGWG	Intergovernmental Working Group
IP	Indigenous Peoples
LC	Local community
NGO	Non-governmental organisation
PS	Private Sector
RAI	Responsible Investment in Agriculture and Food Systems
RIPL	Responsible Investment in Property and Land (Landesa)
RSG	Nestlé's Responsible Sourcing Guidelines (2013)
RSP	Unilever's Responsible Sourcing Policy
RSPO	Roundtable on Sustainable Palm Oil
SAC	Unilever's Sustainable Agriculture Code
SAGP	Coca Cola's Sustainable Agriculture Guiding Principles
SCoC	PepsiCo's Supplier Code of Conduct
SGP	Coco Cola's Supplier Guiding Principles
SMETA	Sedex Members Ethical Trade Audit
SSP	PepsiCo's Sustainable Sourcing Programme
TCCC	The Coca Cola Company
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
VGGT	The Voluntary Guidelines on the Responsible Governance of Land, Fisheries and Forests in the context of national food security (developed by the FAO)

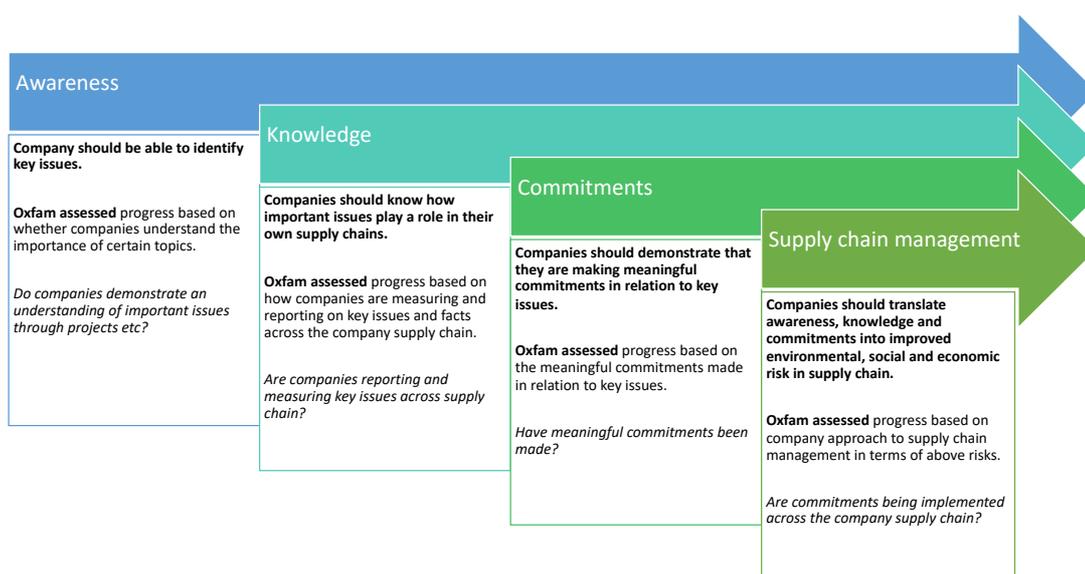
# 1. Evaluation summary

## 1.1 Brief introduction to the Behind the Brands campaign

Over a decade ago, Oxfam, along with allies, lobbied for recognition on how the agribusiness rush on land was threatening the livelihoods of communities, indigenous peoples and smallholder farmers, leading to increased hunger and human rights violations.<sup>1</sup> The Behind the Brands campaign formed part of Oxfam’s response to this trend. Launched in February 2013 the campaign aimed to work with consumers, governments and companies to hold the top ten global food and beverage companies accountable and transparent in relation to social and environmental impacts on farmers, workers and communities worldwide. Since the end of the public campaign in April 2016, Oxfam has focused on ensuring that companies implement their commitments.

The Behind the Brands campaign started by seeking time-bound commitments by the Big Ten companies.<sup>2</sup> In April 2016 Oxfam completed its final assessment of corporate policies of the Big Ten companies using a scorecard according to seven themes, one of which is land.

The Behind the Brands scorecard evaluated the companies’ levels of commitment and accountability to these themes according to four dimensions: awareness, knowledge, commitments and supply chain management (Figure 1). The aim was for the scorecard to incentivise a competitive race to the top for these big brands. Assessment of the scorecard was based on publicly available data to encourage company transparency. Scores were publicly announced.



1

Figure 1: The Behind the Brands Campaign looked for evidence of company accountability across four Dimensions, from awareness of the issues to improvement in the management of company supply chains.

## 1.2 Brief summary of evaluation approach and main findings

This evaluation focuses on the theme of land, in particular land rights, access and sustainable use, through an assessment of five of the ten Big Ten companies: the Coca-Cola company (TCCC),

PepsiCo, Nestlé, Unilever and Associated British Foods' (ABF) subsidiary Illovo Sugar Africa. As a result of the Behind the Brands campaign, these brands have publicly recognised the risk of people being dispossessed of their land, and have pledged to respect the rights of women, communities and smallholder farmers.

Oxfam's primary focus is concern for the vulnerable land rights of communities and Indigenous Peoples. While national governments have a key role in protecting human rights and communities' land rights, national governance is often too weak to hold companies to a higher account. The gap has been filled by international 'soft law', which we discuss below.

The overall purpose of the evaluation, as articulated in the terms of reference (ToR), is to assess the *'extent to which companies are implementing their land commitments across their supply chains'* with a particular focus on the following dimensions:

- Knowledge and transparency particularly in relation to new land acquisitions and the traceability of the supply chain;
- Engagement with suppliers on land rights;
- Advocating toward host country governments and international institutions on strengthening land tenure particularly in relation to implementing the Voluntary Guidance on Responsible Governance of Tenure (VGGTs).

Oxfam also highlights emerging areas that may become the focus of future work such as:

- Gender-sensitive investment models;
- The inclusiveness of smallholders and how this relates to procurement and land concentration;
- Support for the growing evidence on community land rights reducing the likelihood of deforestation and whether companies have policies that recognise these rights as part of their commitment to zero deforestation.

To undertake this assessment the evaluators gathered evidence of how companies have aligned internal policies with international best practice and how these are being implemented across company supply chains.

The evaluation adopted a two-step approach for tracing 'policy to implementation': firstly by analysing the companies' policy commitments in terms of an integrated governance framework, emphasising how all the parts should interconnect; and secondly by considering what impact the companies' policy and governance practice has had on ensuring land rights are respected (see [section 2](#) for further details of the evaluation methodology, including details of the integrated governance framework). While we do not cast the companies as all-powerful or the only actors in the field, they have had a powerful influence on big shifts in land use over the last century, which have great potential to increase risks to the land tenure security of vulnerable communities. Companies can in turn be powerful influencers in transforming land use practices in ways that respect and *defend* land rights.

Land, land use and land rights comprise a complex network of socio-legal norms, practices and mechanisms that respond to both internal and external stimuli. We have situated this evaluation within this complex space and probe what this means for the practices of companies and those with whom they partner.

In summary the main evaluation findings are:

1. Since the start of the Behind the Brands campaign the internal policy environment in relation to land rights and zero land grabs has significantly improved and is aligned with international best practice. Most company land governance frameworks are in place (see [section 4](#) below for

details). *However, there is evidence of policy evaporation and phantom practice when implemented across the supply chain.*

2. Policy evaporation<sup>3</sup> and phantom practice<sup>4</sup> (see [section 5](#)) tend to occur due to:
  - Invisibility of land rights instead of centrality of land rights
  - Illegibility of land rights at grassroots level for companies
  - Over-reliance on standards and principles to ensure compliance
  - Case-by-case attention to rights violations, rather than a systemic approach
  - Attention on deforestation without addressing land rights issues
  - Reluctance by companies to get involved in country-level land issues, or in collective action related to land
  
3. Emerging good practices to ameliorate policy evaporation and phantom practice (see [section 5](#)):
  - Establishing long term implementation partnerships with international and local land rights CSOs.
  - Publicly revealing supply chains, grievances and suspension of supplier
  - Mapping land under crop production in countries
  - Supporting and investing in the documentation of land rights
  - Investing in the training of staff
  - Acknowledging the link between systemic poverty and land use
  - Investing in sector-level cooperation in order to deepen impact and create economies of scale in CSR investments with regard to land issues

## 1.3 The structure of this report

The report is structured in a way that foregrounds findings and lessons learned. Following a short section on evaluation methodology, the report starts by situating company responses to land rights within the context of the development of international soft law. This is followed by a summary of the evidence. The final section of the report presents consolidated findings and recommendations.

## 2. Evaluation design

### 2.1 Purpose of the evaluation

The overall purpose of the evaluation as articulated in the terms of reference (ToR) is to answer the question *‘To what extent are companies implementing their land commitments across their supply chains?’* with a particular focus on the following dimensions:

- Knowledge and transparency, particularly in relation to new land acquisitions and the traceability of the supply chain;
- Engagement with suppliers on land rights;
- Advocating toward host country governments and international institutions on strengthening land tenure particularly in relation to implementing the Voluntary Guidance on Responsible Governance of Tenure (VGGTs).

Oxfam also highlights emerging areas that may become the focus of future work such as:

- Gender-sensitive investment models;
- The inclusiveness of smallholders and how this relates to procurement and land concentration;
- Support for the growing evidence on community land rights reducing the likelihood of deforestation and whether companies have policies that recognise these rights as part of their commitment to zero deforestation.

### 2.2 Evaluation design

To address the above we designed a two-phased approach (Figure 2):

- Research cycle one investigated the public face of companies in relation to the above by assessing company commitments, policies and land governance frameworks.

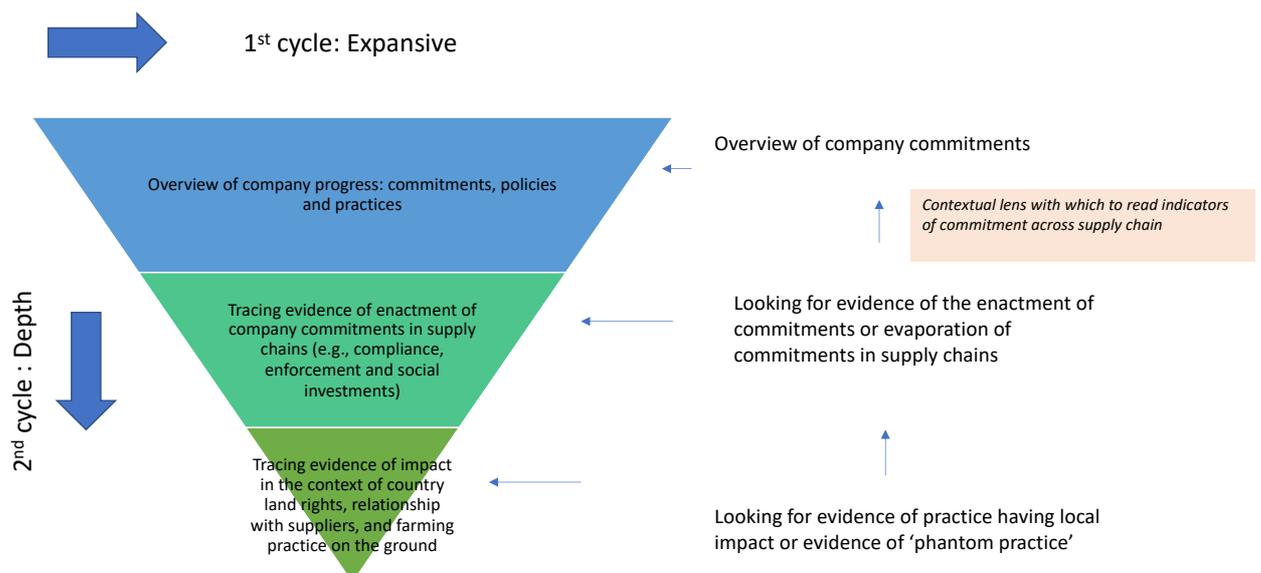


Figure 2: A two-cycle evaluation approach: (i) Cycle 1: expansive overview of company progress based on publicly available data followed by (ii) Cycle 2: tracing this progress into illustrative supply chain cases (unpublished).

- Research cycle two investigated illustrative cases of how company commitments and land governance frameworks impact practice at farm and mill level. These cases were researched to highlight the complex nature of protecting land rights. The cases also point to how even good practice can be lacking due to a) the difficulty of working at global to local scale - where local scale land use and contestation is historically and culturally embedded and b) the fact that company solutions are constrained by and intertwined with contradictions between the drive for profit and growth, and human and environmental wellbeing. The full cases are unpublished, but key findings are integrated throughout this report.

## 2.3 Research cycle one: Overview of company progress: commitments, policies and practices

Research cycle 1 was conducted as a desktop study drawing on publicly available evidence (see reference list in [section 6](#)). The intention was to develop an expansive review of company land policies as they are presented to the public and in relation to the focus of the ToR. For this reason, the data reviewed is limited to publicly available resources with a particular focus on how companies present commitments, policy and practice on websites. (We subsequently drew on interviews (primary data) and other secondary data sources to reflect on what can be learned from the company overviews). This desktop review is not exhaustive; rather it demonstrates where companies have been investing to ensure land rights commitments. The desktop study was guided by three core questions:

- *What progress has been made?*
- *Where has progress been made?*
- *How has progress been made?*

This desktop study was developed into a PowerPoint presentation (draft report) based on key findings as well as emerging insights and concerns. For this report we have given an overall assessment of the findings in the main body of the report.

## 2.4 Analytical model to guide the review of company land governance frameworks

The analytical model shown in Figure 3 was developed to investigate the land governance frameworks of the five companies. This model assisted us in viewing company land governance holistically, as a system. Below we unpack the different dimensions of the model:

- *Commitments/policy/international soft law*: As mentioned above this is the landscape of international principles, policies and agreements to which companies can adhere to as agreed upon 'best international practice'. This is the roof of the system. Commitments made by companies usually relate directly to adherence to international soft law.
- *Strategies & mechanisms*: These are the policies, procedures and strategic partnerships that are in place, and should be integrated into the administrative system that is unpacked below.
- *Partnerships with civil society organisations*: This fits under strategies and mechanisms. We have highlighted it as a specific mechanism.

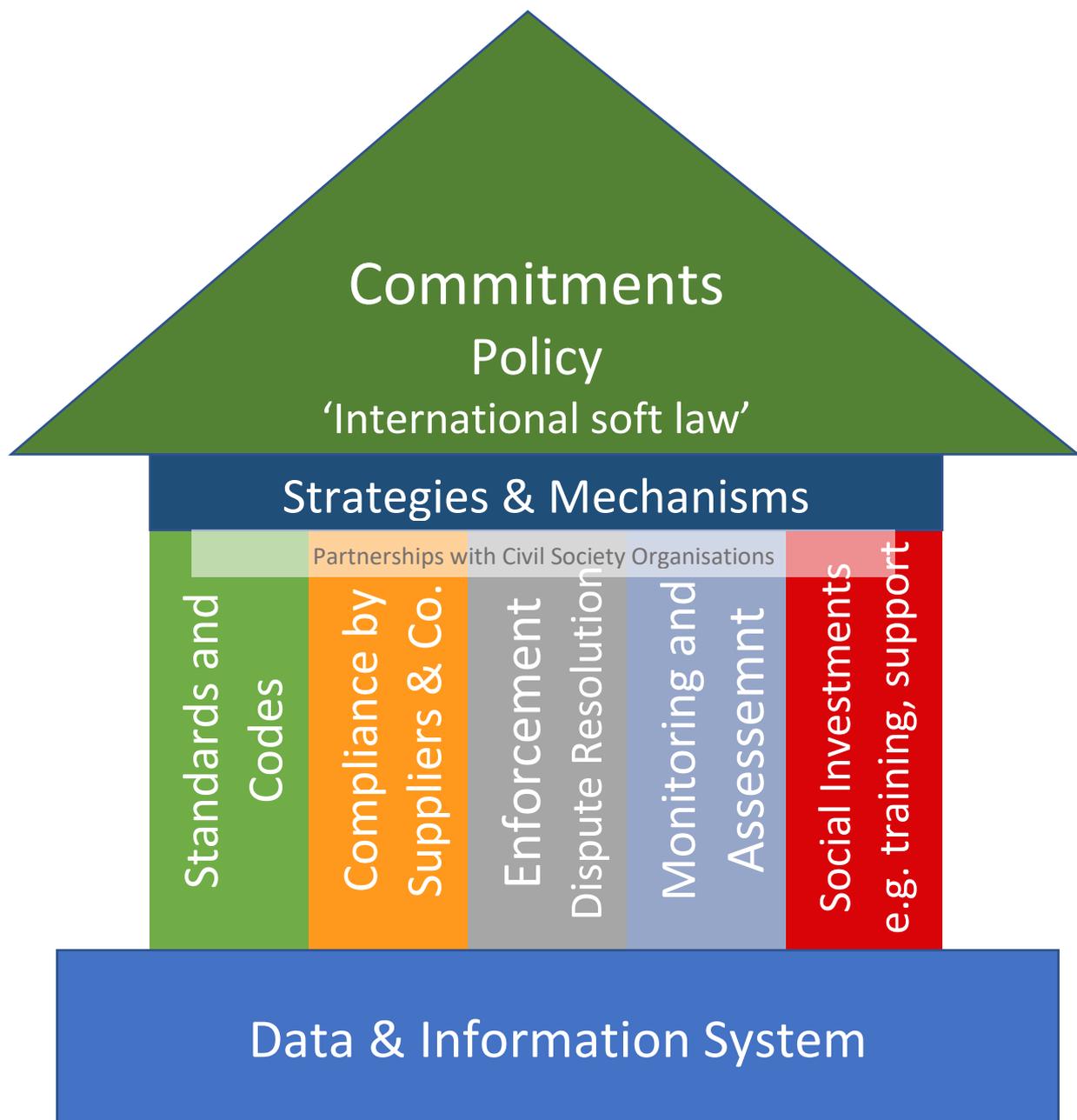


Figure 3: Analytical model to guide review of company land governance frameworks

- Administrative mechanisms:* The administrative system falls under strategies and mechanisms and can be viewed as the building blocks of the system. We have split this up into five specific mechanisms:

Standards and Codes: These are mechanisms that are used to monitor and enforce compliance as well as demonstrate compliance. Membership to internationally recognised third-party audited standards ensures accountability to specific standards of practice.

Compliance by suppliers and companies: This refers to the mechanisms that are in place to ensure the compliance of suppliers. Most companies have compliance with internal codes or standards included in contracts with suppliers. One way in which suppliers can demonstrate compliance with company specific codes or standards is by becoming an accredited member of a recognised third-party audited standard. However many companies are developing their own codes and certification systems. This level also refers to other ways in which companies can ensure the compliance of suppliers such as making the list of suppliers publicly available.

Enforcement and dispute resolution: This refers to grievance mechanisms, mechanisms for remediating land issues and protocols for terminating contracts with non-compliant suppliers, for example publicly stating reasons for termination of the relationship.

Monitoring and assessment: This refers to mechanisms that first, assess the issues relating to land rights across the companies supply chain and second, monitor progress and compliance. This includes mapping, assessment reports and monitoring systems.

Social investments: This refers to a) the support that the company provides to suppliers to enable compliance such as training or investment support, and b) support to small scale farmers and women given that local communities, Indigenous Peoples and women are most at risk of suffering from land rights violations.

- *Data Information Systems:* This refers to how companies report and provide information on land rights and land rights violations with specific attention given to whether these systems are integrated, transparent and easily accessible. We have not commented on this dimension as it requires in-depth analysis of company data information systems.

Data were generated from both primary (interviews) and secondary (reports, media articles and academic articles) sources. A list of interviews conducted by sector and country/region is shown in Table 1.

Sector	Country/Region (if relevant)	No. of interviews
Company	Africa	2
Civil society organisation (CSO)	Brazil	1
	Guatemala	1
	Ghana	2
	Côte d'Ivoire	1
	United States of America	2
	International	2
Smallholder farmers	Malawi	6
Academic	Brazil	1
<b>Total:</b>		<b>18</b>

Table 1: Interviews conducted by sector and country/region

## 3. Context of land rights and company responses

In this section we set out three themes which underpin the broader context of the Behind the Brands campaign and thus our evaluation approach:

- International soft law;
- The multifaceted context of land rights in the global South;
- Trends in the land-smallholder nexus

### 3.1 International soft law

International, transnational and national CSOs, and increasingly commodity corporations, are developing a layer of norms, principles, standards and protocols that are akin to law to complement national state laws. This is referred to as international soft law. This has developed as a response to concerns about land rights violations, to gaps in the effectiveness of national state laws and their implementation, and growing recognition of the human rights obligations of non-state actors in relation to the historical impacts of colonialism, rising inequality, poverty and hunger.

The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), the International Labour Organization Convention 169T and the Committee on World Food Security (CFS) (which is made up of UN member states, the private sector (PS), civil society (CS) and other stakeholders) have developed *soft law instruments* as guiding principles on the governance of tenure rights to land and natural resources and responsible investment in agriculture, reflecting human rights, labour rights and environmental sustainability concerns. The most abiding soft-law instruments are: [Free Prior and Informed Consent \(FPIC\)](#)<sup>5</sup>; [the Voluntary Guidelines on the Responsible Governance of Land, Fisheries and Forests in the context of national food security \(VGGT\)](#)<sup>6</sup> and the [CFS Principles for Responsible Investment in Agriculture and Food Systems \(RAI\)](#).<sup>7</sup> These obligations are enacted in various international treaties and conventions.

The FPIC is widely endorsed but not always understood in the context of human rights. In the case of Indigenous Peoples, this also includes the right to self-determination, which is legally stronger than non-binding soft law. The FPIC was first outlined in the UNDRIP as Indigenous Peoples (IPs) and local people (LPs) are extremely vulnerable to dispossession of land rights through non-consultation and non-consent.

International soft law has been taken up by companies in their policy commitments and it has strengthened their self-regulation capacity to respond to land and human rights issues. These commitments are incorporated in their frameworks of corporate social responsibility (CSR) and policies of responsible land investment that include commitments to zero land grabs. The companies under review have all endorsed FPIC. FPIC attempts to rebalance the unequal scales of power when investments are considered, but in reality, the power inequity is hard to overcome.

FPIC means: 1. **Free**: Community members give or withhold consent voluntarily, without coercion, intimidation or manipulation; 2. **Prior**: consent is sought sufficiently in advance of any authorisation or commencement of activities; obtained well before each stage of project authorization; actively sought and maintained on an ongoing basis throughout the life of a project. 3. **Informed**: Community members access, understand, and deliberate on all relevant project information before giving or withholding consent; the nature of the engagement and type of information that should be provided prior to seeking consent and also as part of the ongoing consent process; 4. **Consent**: Community decisions to agree to, refuse, or offer conditional consent to projects or activities that affect their land or resources are respected; collective decisions are made by the rights holders and reached through a customary decision-making process of the community.<sup>8</sup>

The full interpretation of FPIC shows that it is not a once-off procedure but an ongoing commitment and responsibility throughout the duration of procuring raw agricultural supplies. While soft law is, generally speaking, non-binding and difficult to enforce, its limitations should be understood in the context of increasing cases that are taken to international and national courts, and where a trickle of court judgments are ruling in favour of communities where rights of consent are infringed. Communities and IPs are beginning to press their rights by going to court.<sup>9</sup> In other words, international law is recognizing the obligation on companies to engage impacted communities especially through FPIC.

It appears to be developing teeth with the prospect of becoming justiciable in future. Aspects of international soft law thus appear to be evolving into international law with attempts being made to develop a binding legal instrument to hold transnational companies to account. In 2014 the United National Human Rights Council adopted a resolution “to establish an open-ended intergovernmental working group (IGWG) on transnational corporations and other business enterprises with respect to human rights, whose mandate shall be to elaborate an international legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises.” In October 2020, the sixth session of the IGWG was held to negotiate revisions to a draft instrument.<sup>10</sup>

Companies should take heed of these developments, which though still subject to contestation and negotiation, suggest that it would be advisable to take a proactive approach to fully endorsing internationally recognized human rights in preparation for a binding instrument, including the full extent of FPIC. Companies are only one part of the problem, however. The real problem is where states give licences to companies to invest at the expense of community or Indigenous People’s rights and to ignore FPIC.

## 3.2 The multifaceted context of land rights in the Global South

In recent decades, the pace of large-scale land deals has slowed, but the vulnerability of land rights holders in the small-scale farming sector remains high and there is evidence of growing land inequality and insecurity.<sup>11</sup> There has been a shift in focus from highly visible land acquisitions to more nuanced understandings of land dispossession by poorer farmers and their families. Land tenure risks are no less relevant, albeit they need to be understood in a more nuanced way. Whereas actors in the formal sector tended to think of property rights as only confined to registered rights, this approach no longer has traction given that the majority of people in the global South do not have registered or even documented rights. The focus on land rights therefore requires a deep understanding of country laws and local norms governing land rights.

Recognition and protection of legitimate land rights has to go beyond country land laws as the majority of rights in the global South are undocumented and categorised as ‘customary rights’. National law may only partially recognise or protect customary rights formally, and in some cases not at all. Thus, land rights should include:

- land rights established and recognized locally through socially legitimate processes, and/or
- according to customary law, though this may differ across regions of a country.

Even when customary law is recognised, customary land rights are vulnerable to outside investors despite commitments to observe them, largely due to: (a) poor national governance of land

administration; (b) social fault lines in communities and families or clans, or between national government and communities, where consultation is often monopolized by power holders within communities who are willing to collaborate and gain from investment through profit, shares or labour; (c) corporations' lack of understanding on how to meaningfully engage communities on (a) and (b). Not everyone in a 'community' is equal or has equal land rights, even in communal and customary systems.<sup>12</sup>

From a business perspective, respecting local land rights could reduce long-term costs and judicial interventions and provide greater security for investors and producers.<sup>13</sup> From a national perspective it reduces costly land conflicts that often take years to resolve and usually have to be resolved judicially. Weak property regimes put investors at risk and damage the reputation of countries as investment destinations. From a local perspective, land rights are fundamental rights. They are sometimes enshrined in constitutions, and in most countries in land laws, but the latter are often ambivalent due to legal pluralism, dual or overlapping systems of authority and weak land administration. In reality, many land conflicts occur at highly localised levels in ways that arise from a complex web of relations between family members, clans, communities, traditional authorities and other property holding units. Land dispossession is often the result of creeping privatisation that leads to higher input, servicing and transport costs, debt and bankruptcy, ending up in loss of the land. The trade-offs in favour of the 'upgrading' of production approach favours only a few and the rest get left behind.<sup>14</sup> It is these more embedded land issues that companies find hard to get to grips with as they tend to prioritise their risk in relation to land rights rather than the risk of poor communities and indigenous peoples.<sup>15</sup>

Corporates are also limited by their own *raison d'être*, which is to generate profit within a framework of free markets. Unilever's leadership statements recognise that there need to be 'systemic' changes to the capitalist system and the entire approach to producing consumer goods.<sup>16</sup>

### 3.3 Troubling trends in the land-smallholder nexus

Some scholars argue for more nuanced perspectives of how land grabs or land acquisitions play out differently in different geographies; and how moves to integrate poor farmers into value chains may lead to exclusions.<sup>17</sup> A combination of elements in particular geographies leads to varying forms of land dispossession/acquisition and also to differential impact on livelihoods. Elite capture usually involves interaction between local power holders in communities and national or international investors, often with the active or passive collusion of national government.<sup>18</sup> This is often interpreted as a positive sign of 'upgrading' from small to medium or large-scale farming, which is preferred by transnational companies and agribusiness since these producers can upscale production and upgrade quality, and also meet increased expenses for services, transport and inputs. Certification and other standards are increasingly required for international markets, including not using child labour. In the context of poverty and small-scale farming, this means that a small minority move up and the majority are either displaced or enter deeper spirals of poverty as they fail to meet their labour, servicing and input expenses, and become indebted. Child labour needs to be understood in this general context of poverty and labour costs, rather than as a purely human rights abuse.<sup>19</sup>

There is the added problem that the more smallholders become integrated in the value chains in terms of the imperative to 'upgrade', the higher their input and servicing costs become in order to increase their production outputs and at the same time meet international environmental, labour and quality standards. This is the conundrum facing the producer-supplier-manufacturer nexus, and which goes beyond social responsibility to structural issues.

The meta-narrative of 'no land grabs' at global scale has been useful for highlighting the plight of smallholders in the global South where land rights are precarious; as well as for understanding global trends and activism but on reflection, it is not applicable at all scales and equally throughout the world. Capitalism, like development, always manifests itself unevenly and impacts are often surprising and contradictory.<sup>20</sup>

The evaluators advocate for investigating land rights at various scales in ways that consider spatial and temporal circumstances. Analysis has to take into account these evolving narratives based on empirical research and point the way to a more differentiated process. Early versions of the 'global land grab' narrative fail to take into account the way internal factors interact with external investments or interventions.

## 4. Evidence

This section covers a brief summary of the evidence collected through the two cycles of research. We present a summary of the company land governance frameworks review (research cycle 1) followed by what can be learned from this review as well as the unpublished illustrative cases (research cycle 2).

### 4.1 Company land governance frameworks

An overall finding is that most company land governance frameworks are in place:

- Companies have developed significant governance frameworks for social and environmental rights, including policies, strategies, codes, standards and dedicated personnel.
- Governance includes extensive policy making at the top, followed by a ceiling of strategies and mechanisms. The main mechanism is the global third-party standard couched within company responsible supply principles. Companies must then monitor compliance and enforce the standards and principles.
- Compliance is, however, largely based on voluntary commitment although some enforcement is regulated within supply chains as part of responsible sourcing and compliance that is woven into contracts, along with the companies' right to audit for compliance.

Below we summarise company progress in terms of:

- a) commitments,
- b) policies,
- c) strategies and mechanisms.

## 4.1.1 NESTLÉ

(a) <u>Commitments</u>	(b) <u>Policies</u>	(c) <u>Strategies &amp; mechanisms</u>
<p>Nestlé's current land commitments are nested within Nestlé's 2020 <b>public commitments (36 in total)</b> that are grouped under three pillars: <b>for individuals and families, for communities and for the planet.</b><sup>21</sup></p> <p>Land rights commitments sit under <b>"for communities"</b>. The commitments in relation to land focus on growing food more sustainably through a) ensuring <b>responsible sourcing (which includes land rights)</b> and b) <b>support to farmers</b> in collaboration with partners to ensure more efficient and sustainable farming and sustainable livelihoods. Commitment to deforestation sits under the pillar, <b>"for the planet"</b>. In 2010 Nestlé made a commitment to <b>"deforestation-free" supply chains for 5 products</b> (palm oil, pulp &amp; paper, soya, meat and sugar) by committing to no expansion in High Carbon Stock (HCS) forests and habitats and protecting High Conservation Lands (HCL) from <b>31<sup>st</sup> December 2015</b>.</p> <p>Nestlé stands against all forms of land acquisition that are <b>illegal</b> and/or have an <b>adverse impact on local communities' livelihoods</b>. This includes developing its business in a way that a) complies with national laws and, b) respects human rights, in particular the customary rights to land and natural resources of Indigenous Peoples, traditional people's and local communities.</p>	<p>Nestlé's policies related to land are in line with international soft law and international industry associations.<sup>22</sup> In 2014 Nestlé published its <b>"Commitment to Land and Land Rights in Agricultural Supply Chains"</b> as an appendix to its policy on Environmental Sustainability.</p> <p>Nestlé refined their <b>responsible sourcing into a standard</b> in 2018.<sup>23</sup> These requirements are applicable to Tier 1 as well as upstream intermediaries and require suppliers to map their upstream supply chain, do remote assessment, have evidence of third-party verification and certification schemes,<sup>24</sup> and engage in special projects that demonstrate practices against standards as well as landscape approaches.</p> <p>Both caring for and respecting land are captured in the <b>5 executive principles</b> of Nestlé's <b>Responsible Sourcing Standard (RSS)</b> with all land developments being subject to FPIC and no expansion on HCS forests and HCL. Farmers are also expected to protect ecosystems including forests and follow responsible forest management.<sup>25</sup></p>	<p>Nestlé's practice includes a) <b>improving transparency; b) compliant procurement through RSG (2013) and its replacement, the Responsible Sourcing Standard (2018); c) support for ensuring compliance; and d) projects to support livelihoods and prevent deforestation.</b></p> <p>Nestlé currently <b>leads the way</b> in declaring the source of 15 priority raw materials<sup>26</sup> as part of their responsible sourcing programme. This has been done in partnership with ProForest, Earthworm and other partners. This disclosure covers <b>95% of company's annual sourced raw materials across Tier 1 and Tier 2 suppliers</b>. Further innovation includes <b>Open SC</b>, a blockchain platform that enables consumers to trace food to the farm.<sup>27</sup> Sourcing goes through Farmer Connect programme or procurement department.<sup>28</sup></p> <p>Nestlé has a series of programmes and toolkits for supporting supply chains/farmers such as the: <b>Farmer Connect Programme;</b><sup>29</sup> <b>Nestlé Cocoa Plan;</b><sup>30</sup> <b>Rural Development Framework;</b><sup>31</sup> <b>HRDD programme.</b><sup>32</sup> Nestlé has developed a <b>palm oil transparency dashboard</b> using Starling, a satellite-based system to monitor all palm oil for deforestation. Nestlé are also supporting the development of the <b>NDPE implementation framework.</b><sup>33</sup></p> <p>Nestlé has <b><u>grievance and remediation mechanisms</u></b> comprising the external "Tell us" and internal "Integrity Supporting System" — reviewed in 2019 for effectiveness. Improvements implemented in pilots, in progress.</p>

**Summary:** Nestlé leads the way with declaring their supply chain and piloting OpenSC. This is significant for land rights as products can be directly traced to land. Although not directly stated, Nestlé is addressing land issues through a) adherence to international soft law b) ensuring both policies and support mechanisms (auditing and training) are in place internally and c) support for emerging farmers and livelihoods. The links between land rights, sustainable land use and environmental concerns are not always clear. Land rights tend to rely on FPIC which is not always implementable. Nestlé is yet to find a way of working with the multifaceted nature of land ownership and how protecting land rights is integrally linked to the protection of livelihoods which includes how global markets influence how land is used.

## 4.1.2 The Coca-Cola Company

### (a) Commitments

TCCC commits to **zero tolerance for land grabbing** and **adherence to FPIC** across all operations including bottling partners and suppliers. Part of this commitment included conducting **28 due-diligence studies** on child labour, forced labour and land rights in the TCCC supply chain. TCCC has **publicly endorsed the Voluntary Guidelines on the Responsible Governance of Tenure of Land (VGGT)** through membership to the **Interlaken Group**. TCCC is committed to publicly advocating for food and beverage companies, traders and country governments to endorse and implement the VGGT's.

Through the Consumer Goods Forum, TCCC has committed to **zero-deforestation by 2020**.

TCCC has made a commitment of reaching **100% sustainable sourced key agricultural ingredients<sup>34</sup> by 2020**.

### (b) Policies

Land rights are held within **the Supplier Guiding Principles (SGPs)<sup>35</sup>** that are informed by **TCCC's Human Rights Policy.<sup>36</sup>** FPIC<sup>37</sup> is an accepted principle embedded within the SGPs. **The Sustainable Agriculture Guiding Principles (SAGPs)<sup>38</sup>** are an expansion of the SGPs and set out the social and environmental expectations to all ingredient suppliers.

Suppliers must demonstrate **compliance** with the SGPs by using **global sustainable agriculture standards and assurance schemes.<sup>39</sup>** Adherence to a particular global third-party standard is recognized as evidence of compliance.<sup>40</sup> **Local or regional standards are acceptable** but only if equivalent to the globally preferred standards.

TCCC has embedded human rights in its **Global Workplace Rights Department**.

In 2017, TCCC produced **guidance documents on the SGPs<sup>41</sup>** one of which concerns guidelines for **Responsible Land Acquisition and FPIC.<sup>42</sup>**

### (c) Strategies & mechanisms

TCCC's land rights practice includes a) **advocacy** at an international scale (see commitments); b) **compliance** to SGPs; c) **support/incentives** for sustainable compliance; d) increasing **human rights due diligence** via studies and follow up action.

The **SGPs are audited.<sup>43</sup>** The TCCC has audit protocols where they monitor indicators related to land rights such as title, compensation and grievance mechanism. These are captured in the audit reports under a separate land rights section.

TCCC has a number of initiatives to incentivise farmers and suppliers to be sustainable. This includes support to smallholder farmers and women. These include: **the Leaders-Improvers Movers framework,<sup>44</sup> AIM-PROGRESS,<sup>45</sup> 5by20,<sup>46</sup> Project Nature,<sup>47</sup> and Source Africa.<sup>48</sup>** TCCC has completed **21 studies on human rights in key countries supplying sugar** to TCCC.<sup>49</sup> **EthicsLine** is a web and telephonic service available in several language for consumers to report disputes.

**Summary:** TCCC's commitment to land rights is easy to trace. It holds global positions around land rights and on the food and beverage industry platforms. Due to the Coca-Cola system (including independent bottling partners) it is very difficult to trace the Coca-Cola systems supply chain. TCCC does not disclose suppliers which inhibits civil society from tracing supply to land and thus to land rights abuses. This makes it difficult to assess TCCC's commitment to zero land grabs and to zero deforestation. The Brazil sugar chain action plan could lead to more transparency if this is open to public scrutiny. TCCC has received criticism on the Source Africa project for being silent on the need to shift towards more sustainable modes of agricultural production, the protecting and strengthening farmers seed systems and the dangers associated with the emergence of a market for land rights. As of 2019, 54% of priority ingredients were reported as sustainably sourced. This is short of TCCC's commitment of 100% by 2020.

### 4.1.3 Unilever

#### (a) Commitments

Unilever commits to **FPIC and advocates for VGGT** as well as implements VGGT as best practice in their supplier guidelines.<sup>50</sup>

In 2010 Unilever committed to **achieving zero deforestation by 2020 in relation to four commodities: palm oil, soy, paper and board and beef**. As this has not been achieved and Unilever has extended this timeline to deforestation free supply chain to 2023<sup>51</sup>. Unilever is on the **steering group behind the Cerrado Manifesto**<sup>52a</sup> commitment to halting deforestation in the Cerrado in Brazil.

Unilever has committed to 100% sustainably sourced raw materials.

#### (b) Policies

The Unilever system is governed by **Unilever's Code of Business Principles (the Code) and the policies that support it (Code Policies)**.<sup>53</sup> Unilever requires third-party business partners and their employees to adhere to business principles consistent with their own. These are set out in Unilever's **Responsible Sourcing Policy**<sup>54</sup> (RSP), which underpins third-party compliance programme, and the **Sustainable Agriculture Programme, Sustainable Agriculture Code (SAC), and Unilever People and Nature Policy**.<sup>55</sup>

A supplier needs to register for Unilever's **Supplier Qualification System** and respond to questionnaires. Mandatory requirements of the RSP are part of contract and these include FPIC. Suppliers that are deemed high risk undergo independent verification including third-party audits. High risk suppliers are not publicly listed.

#### (c) Strategies & mechanisms

Unilever implements land rights through: **a) International and country based advocacy; b) enforcing compliance to RSP; c) transparency of three agricultural supply chains; d) specific human rights audits; e) publicly lists grievances for one of their agricultural products.**

The RSP is monitored and enforced via supplier self-assessment, online assessments and, for high-risk countries and suppliers, third party verification through third-party audits is required. Unilever does **specific human rights audits** a summary of which is included in the public domain<sup>56</sup>. Unilever accepts **SMETA audits** as a means of verifying compliance with the RSP. In 2018 they **introduced EcoVadis**,<sup>57</sup> **an online assessment for indirect procurement suppliers and scorecard platform** that evaluates suppliers across 21 categories including land rights.

Unilever **publicly lists palm oil, soy, cocoa**<sup>58</sup>, **and tea suppliers**. It discloses countries from which it sources some commodities through its CDP disclosures and other documents, and provides additional, more detailed information on sourcing country and location for palm<sup>59</sup>. This kind of detailed information is necessary in order to trace land rights violations directly from farms up the supply chain.

Unilever is engaged in specific activity for palm oil that include grievance mechanisms, a grievance tracker, concession mapping platform and deploying various technologies to monitor deforestation and peat land conversion.<sup>60</sup>

**Summary:** Unilever has a strong governance framework centered on 'sustainability', consisting of [values, principles, business and employment codes](#),<sup>61</sup> strategies, mechanisms, co-development of international business norms and enforcement procedures and takes human rights seriously. Transparency is improving with the public listing of some supply chains and grievances, but still can be improved in order to trace land rights violations from farm/mill to company for additional commodities.

## 4.1.4 PepsiCo

(a) Commitments	(b) Policies	(c) Strategies & mechanisms
<p>PepsiCo has committed to <b>zero tolerance to land displacements</b> in accordance with <b>IFC Performance Standards</b> including <b>FPIC</b>. This includes a third-party audit program of the company's sugar supply chain in Brazil and Thailand and, the palm oil supply chain in Mexico and coconut water supply chain in the Philippines.<sup>62</sup></p> <p>In PepsiCo's land policy the company commit to <b>developing and maintaining a map of the raw agricultural commodities supply chain</b>.<sup>63</sup></p> <p>PepsiCo has committed to <b>100% sustainable sugar</b> through Bonsucro,<sup>64</sup> <b>100% sustainable palm oil (RSPO certified), potato, whole corn, oats and oranges</b><sup>65</sup> and <b>zero deforestation by 2020</b>.<sup>66</sup> By the end of 2019 most products were over 80% sustainably sourced<sup>67</sup>.</p>	<p>PepsiCo has a <b>Lands Rights Policy</b>.<sup>68</sup> This forms part of PepsiCo's <b>Sustainable Sourcing Programme</b> (SSP) that comprises the <b>Supplier Code of Conduct</b>,<sup>69</sup> Sustainable Farming Initiative, Environmental Health and Safety Policy and <b>Sustainable Agriculture Policy</b>.<sup>70</sup> SSP includes four dimensions: Accountability to the Supplier Code of Conduct (SCoC), engaging through code training, reviewing of risks, improvement through third party audits or corrective management. The SCoC is part of the supplier initial contract. In 2017 land rights was recognized as a <b>salient human rights issue</b><sup>71</sup> within PepsiCo's Sustainable Farming Programme.</p> <p>In 2020 PepsiCo developed a <b>policy specifically for sustainable palm oil</b><sup>72</sup> which is applied throughout the PepsiCo system. PepsiCo also has a <b>Forestry Stewardship Policy</b><sup>73</sup> which direct suppliers must adhere to.</p> <p>PepsiCo publishes a <b>yearly human rights report</b><sup>74</sup> based on the SCoC.</p>	<p>PepsiCo implements policy around land rights through: <b>a) ensuring responsible sourcing compliance; b) impact assessments on human rights in four countries including a specific assessment of land rights in one country; c) monitoring land rights globally and d) transparency in supply chain for one product.</b></p> <p>SCoC compliance is audited and a condition for doing business with PepsiCo.<sup>75</sup> Training is given before auditing suppliers.<sup>76</sup> PepsiCo accepts <b>SMETA audits</b> as a means of verifying compliance The <b>Sustainable Farming Programme</b>,<sup>77</sup> a self-assessment tool, puts more effort and resources into managing land rights beyond standard due diligence. PepsiCo has collaborated with Landesa, to create <b>the ACRE Framework</b><sup>78</sup> to monitor Land Policy globally. This is currently being piloted. PepsiCo has conducted four impact assessments/studies that include land risks/impacts in: Mexico,<sup>79</sup> Thailand,<sup>80</sup> Brazil<sup>81</sup> and the Philippines.<sup>82</sup> Based on findings in Brazil a review of potential land rights issues in the sugar supply chain in Brazil was conducted.</p> <p>PepsiCo has focused on the traceability of palm oil through its <b>Traceability to Plantation Protocol</b>.<sup>83</sup> PepsiCo provides a list of Global Fiber Suppliers.</p> <p>PepsiCo has developed a <b>grievance mechanism for its agricultural supply chain</b>, guided by Section 31 of the UN Guiding Principles on Business and Human Rights.<sup>84</sup></p> <p>PepsiCo has the <b>Speak Up!</b><sup>85</sup> hotline for reporting breaches of Forest Stewardship Policy.</p>

**Summary:** PepsiCo seems to be prioritizing land rights and has a pilot framework for monitoring its land policy globally. Currently only one supply chain, palm oil, is traceable, which is a small step towards their commitment of mapping all raw agricultural commodities supply chain. Impact assessments on land risks have been done in four countries in relation to three products. If this is upscaled, leading to declaring these

supply chains and monitored through the ACRE Framework, it will be a significant step towards being able to prevent and respond to land rights violations.

## 4.1.5 Illovo Sugar Africa (Associated British Foods)<sup>86</sup>

(a) Commitments	(b) Policies	(c) Strategies & mechanisms
<p>AB Sugar sets out its 2030 sustainability commitments under the <b>Global Mind, Local Champions policy</b><sup>87</sup>, under three categories: building rural economies, thriving and healthy communities and consuming resources responsibly. Land rights are under ‘thriving and healthy communities under ‘social’ with a commitment to land rights particularly in southern Africa.</p> <p>Illovo Sugar Africa is committed to <b>zero tolerance to land grabs</b>. As part of this commitment the company undertakes <b>self-assessments on land matters</b> on all operations with the assistance of external experts. This includes Illovo land and out growers land. The 2018 Annual Report highlights Illovo Sugar Africa’s work on land rights which AB Sugar is encouraged by Oxfam to adopt throughout the company.</p> <p>Illovo Sugar Africa commits to working with country stakeholders to promote responsible land practices.</p>	<p>ABF <b>Supplier Code of Conduct</b><sup>88</sup> includes a principle on land acquisition which aligns with FPIC. The governance framework is around the concept of responsibility and responsibility policies, one of which is the <b>Supplier Code of Conduct</b>.<sup>89</sup> Adherence to the Code is verified through a <b>supplier audit system</b><sup>90</sup> with procurement and operational teams. ABS has an <b>auditing committee</b> that oversees the appointment of an external auditor to policies and ensures policies are kept under review.</p> <p>The Illovo Sugar Africa governance framework is around the concept of corporate governance &amp; citizenship. Illovo Sugar Africa is guided by a Strategic intent that acknowledges the context of working in rural Africa and the value of African communities in relation to land. Illovo Group has a <b>Code of Conduct and Business Ethics</b><sup>91</sup>.</p> <p>Illovo historically does not engage in land acquisitions as their business practice seeks to <b>avoid transferring land rights away</b> from communities and national governments.<sup>92</sup> They prioritize an alternative model of investment such as the development of small grower farming operations. This is highlighted in the <b>Group Guidelines on Land and Land Rights</b><sup>93</sup> which was published in 2015 with the roadmap on land rights.</p>	<p>Illovo Sugar Africa implements policy around land rights through: <b>a) ensuring compliance in relation to group guidelines; b) traceability of sugar to farm and mill; c) monitoring land rights; and d) engaging with partners in land related projects.</b></p> <p>Illovo Sugar Africa ensures compliance through <b>reserving the right to audit suppliers</b> against Guidelines on Land and Land Rights as part of their contractual agreement in Compliance in relation to land must be in accordance with Illovo Group Guidelines on Land and Land Rights. Illovo Sugar Africa worked closely with Landesa to pilot the <b>LandAssess</b><sup>94</sup> tool designed to build the capacity to implement land rights commitments throughout supply chains as well as <b>other projects</b>.<sup>95</sup></p> <p>AB Sugar developed an <b>interactive sourcing map</b><sup>96</sup> outlining where AB Sugar is sourced down to mill level and where it is exported. <b>Contact information</b> for all mills is available on the Illovo Sugar Africa website. Illovo Sugar Africa has a policy of partnering with international land rights CSOs, bilateral donors and local land rights CSOs to address local land rights issues.</p> <p><b>ABF Whistleblower Policy</b><sup>97</sup> includes a list of toll-free phone numbers to report human rights issues or where there has been damage to the environment. Land Rights training is provided to all employees via Landesa.</p>

**Summary:** The Illovo Sugar Africa governance model enables Illovo to work with land rights issues in a way that is specific to each country it procures sugar from. The company often procures sugar directly from estates or out grower associations. The relationship between company and farm is more direct even so it is challenging to address land rights in a way that addresses the multifaceted nature of land rights in Africa. To

address this Illovo Sugar Africa work closely with CSOs both locally and internationally. This enables Illovo to be aware of and work with the granularity of land rights issues at a local level.

## 4.2 What can be learned

### 4.2.1 *Link between international soft law and strategies and mechanisms*

Most companies are aligned with international human and land rights principles and best practice business commitments, principles and policies most of which include reference to FPIC and VGGT. Internal principles, codes, policies and standards are aligned with these.

### 4.2.2 *Administrative mechanisms*

The company governance landscape provides adequate guidelines, codes and standards to monitor and govern compliance with international soft law in relation to land acquisitions. However, not *all* new land acquisitions are known by companies throughout their supply chain unless an issue of compliance arises. Compliance is monitored through internal standards and recognised third-party audited standards. Land rights monitoring is an emerging practice for Illovo Sugar and PepsiCo, both of whom have frameworks for monitoring land issues. This has been brought about by partnering with international land rights CSOs and prioritising land rights. Other companies have, as yet do not monitor land issues proactively. They rely on grievance mechanisms and auditing responsible sourcing policies to pick up on land rights issues.

A vital aspect of ensuring compliance is public declaration of supply chains. This makes it possible to trace land rights issues to the ground within particular company supply chains and call on companies to engage around particular land rights problems and ensure that land violations are resolved. There are efforts being made to trace commodities to mills and estates. The importance of traceability of commodities for monitoring land rights was emphasised in interviews with stakeholders and showed up when developing illustrative cases.<sup>98</sup> No company has 100% traceability to date. Nestlé is leading in traceability with 85% of its suppliers publicly declared including country origin of supply, followed by Unilever who declares their palm oil, soy, cocoa, and tea supply chains. PepsiCo is focusing on their palm oil supply chain through the Traceability to Plantation protocol. AB Sugar has a map of sugar traceability down to mill level and Illovo Sugar Africa lists all mills on their website. TCCC is the only company not to make significant progress towards traceability of supply chain.

All companies have integrated provisions on land rights into their supplier requirements and guidance documents. There is also evidence of training programs and support mechanisms to encourage suppliers to become compliant. This includes international partnerships and cooperation with intergovernmental platforms and not-for-profit third-party certifications. All companies partner with international NGOs with expertise in land rights to assist them with implementing land rights to a greater or lesser degree. This is an effective strategy.

All companies have grievance mechanisms. Unilever makes grievances in their palm oil supply chain publicly available. Nestlé has a transparency palm oil dashboard. This is a significant improvement towards transparent accountability.

### 4.2.3 *Compliance by suppliers and companies*

For most companies, compliance is assured through assessments and audits against responsible sourcing standards or codes. These range from desktop audits to visiting suppliers. It is difficult to get details of these audits. In interviews CSOs representatives suggested that it is unusual for third-party standard audits to include sufficient engagement with local communities and local references.<sup>99</sup> Company evidence of compliance is limited to supplier documentation, employee interviews and site visits of the supplier. This level of assessment and auditing does not necessarily pick up on country-specific land rights violations. This is changing for some standards like Bonsucro.<sup>100</sup> When non-compliance is clear, companies will either ask for remediation plans (which will be audited) or cease from using a particular supplier. In situations of land rights violations

companies can be encouraged by land rights CSOs to participate and even apply some pressure.<sup>101</sup> Interviews with stakeholders revealed that companies' engagement with land rights issues and remediation is seen as extremely valuable.<sup>102</sup> Land rights NGOs indicated preference for company engagement with a non-compliant supplier rather than withdrawal, as this enhances the possibility of remediation. However, engagement has limited effectiveness if a land rights violator supplies to multiple companies, but only one company is willing to engage. This suggests that sectoral platforms are important to get the buy-in of all companies involved in a supply chain. If companies choose not to engage but rather to cut ties with a supplier, CSOs recommend that companies go public when they no longer source from a particular company that is not complying with land rights as public disclosure enhances the chances of accountability in future.<sup>103</sup>

#### *4.2.3 Monitoring, assessment and documentation*

All companies are involved in monitoring and assessment of high-risk crops and high-risk supply chains. These studies are valuable to the company as well as to CSOs and international bodies. What is particularly valuable for monitoring land rights is spatial mapping of land under particular crops. Advancements in technology are making this more and more possible even for smallholder plots. This has been done by Nestlé and PepsiCo in the palm oil supply chain. According to one stakeholder interview, there is no reason why companies will not be able to trace all supplies to farm level in the upcoming years.<sup>104</sup> Developing advanced monitoring systems is a feasible and effective mechanism for companies to improve global governance of land rights and deforestation. This is partly playing a land governance function which should be undertaken by national governments, but where in many countries in the global South there are often significant gaps due to lack of capacity. This is exacerbated by legal pluralism that accentuates land-legal ambiguities, the vastness of country landscapes, inaccessibility of landscapes, lack of political will and sometimes corruption. Companies have limited powers in directly conducting land rights documentation exercises outside of authorized processes, since adjudication of land rights is open to contestation and can only be resolved by nationally endorsed law, including customary law. However, companies can support government or CSO initiatives by assisting with technological tools to spatially identify land rights holders that may add to national governments' Land Information Systems and Spatial Data Infrastructure datasets. This could ultimately assist in documenting land rights without prejudicing the countries' legal frameworks for land ownership.

#### *4.2.4 Social investments*

Companies have begun to recognise the importance of supporting women and smallholder farmers through social investments in partnership with bilateral donors, governments and CSOs. It is becoming increasingly apparent that respecting community and indigenous peoples' land ownership is only one step towards ensuring the protection and recognition of this right. Due to historical land dispossessions and continued vulnerability of land rights that are associated with poverty, access to land for livelihoods is vitally important, and land tenure security requires active interventions. Protecting land rights contributes to ensuring redress and rebuilding the devastated livelihoods of local people. An aspect of this support has been to investigate how to open up corporate supply chains to smallholders. This has had mixed results due to the differential benefits thereof, as there are always winners and losers in supply chain integration. Companies should self-reflect whether they are choosing the most contextually relevant and resilient approach to supporting livelihoods given these contradictions. Companies' procurement models may state that they support livelihoods by encouraging smallholder farmers to grow a crop which the company would buy. This may not, however, be the most sustainable or most resilient model for long term smallholder farming. Illovo Sugar Africa has recognized this conundrum by assisting smallholder farmers to diversify crops in addition to growing sugar, and many commentators are suggesting this should be done in the West African cocoa sector (Nestlé is engaging on this<sup>105</sup>). A challenge for companies is that it is difficult for outsiders to understand the power dynamics associated with land rights that occur at familial, community and local or traditional authority levels, as these influence who gains and who loses from

social investments. There is evidence that companies recognise some of these constraints in understanding local contexts of land rights, which means it is difficult to implement commitments at a local level. It is encouraging that many companies have seen the necessity for country-level guidance, and have partnered with country NGOs or land rights specialists, or most advantageously with NGOs that focus on land rights. Illovo Sugar Africa leads the way in this regard and has over time come to acknowledge how the granularity of land rights at the local level impacts on what decisions are best. Another important social investment is in supporting suppliers to become compliant through training and access to procedural guidelines and process guidebooks, etc.

#### *4.2.5 Emerging good practices*

The reflections below draw on the company land governance framework review and stakeholder interviews.

#### *International good practices*

There are a number of promising international multi-stakeholder and public-private platforms that could address the systemic links between poverty, land rights and land use, particularly in relation to crops that benefit country revenue and land elites at the expense of the majority who farm the crops, and who remain poor and vulnerable.

An example is the Cocoa and Forest Initiative (CFI). Although its focus is on deforestation, CFI is also considering issues around land rights and land access relating to deforestation.<sup>106</sup> It is important to strengthen links between critical environmental threats and local production systems, both for the poor farmers whose livelihoods depend on cocoa farming and for the local communities who rely on natural forests for their livelihoods and for whom forests are part of their heritage.<sup>107</sup>

Many companies are developing partnerships with international CSOs<sup>108</sup> who have expertise in land rights and whose mandate it is to defend and protect the land rights of the most vulnerable. What is apparent from this evaluation is that companies can provide the enabling environment for land rights protection.<sup>109</sup> However, due to their distance from the land itself (both physically and cognitively) they need to partner with CSOs to ensure the implementation of company policy in country contexts. Illovo Sugar Africa<sup>110</sup> has managed to become much closer to the ground than most companies, but acknowledges the need to partner with Landesa and local land rights CSOs for two reasons: to build the capacity of Illovo Sugar Africa staff on land rights and to develop appropriate land rights monitoring tools such as the LandAssess tool.<sup>111</sup>

Sector-level developments, for example in palm oil and cocoa through the RSPO and CFI initiatives and programmes, are showing promise in that companies can pool resources and gain economies of scale in sector-wide investments. This reduces duplication of processes and procedures and potentially distributes CSR resources across the entire sector. Development of a deeper shared understanding of land and human rights, livelihoods and environmental issues that manifest in particular way in particular sectors could release resources that improve implementation of commitments. From a land rights perspective this approach could deepen understanding of how the sector concerned affects land use and land rights and eventually include standards relating to land rights adherence. However, there are concerns that multi-stakeholder initiatives are enacted in highly unequal power relations and results in governance that favours companies over communities.<sup>112</sup>

#### *National governance and working with national CSOs*

Illovo Sugar Africa has learned that working with local land rights CSOs adds to the success of their work. They describe this as getting in touch with the granularity of land rights issues in particular country contexts.<sup>113</sup> This work influences the kind of relationships they set up with smallholder

farmers and contracts that are developed.<sup>114</sup> In Brazil, CSOs report that there is a reluctance from companies to engage with local CSO processes and a more hands-off approach to land rights issues.<sup>115</sup>

Other emerging good practice is reflected in companies partnering with bilateral donors and country governments to document and map land rights.<sup>116</sup> For example, Illovo Sugar Africa partnered with USAID to adopt global best practices to address land tenure risks. This included supporting a participatory mapping process and the development of local grievance mechanisms.<sup>117</sup> Companies cannot be seen to be influencing the legal formulae for recognition and adjudication of land rights, but can assist with providing resources to build state and local capacity to document land rights. Companies may prefer to simplify land rights to a single owner, but this goes against the grain of customary land rights. Insisting on individual ownership can trigger conflict and ambiguity, rather than the certainty they desire. In the global South land rights are multifaceted and usually linked to families and inter-generational transmission, often accompanied by contestation within families when shifts occur, e.g. an individual wants to sell or lease or change the land use. For this reason, it is vital that companies support contextually relevant documentation of land rights and are careful not to impose simplistic conversions to Western-style registration systems. Companies should not conflate their spatial mapping exercises with authoritatively recording land ownership, but user arrangements, agreements and understandings are useful to record.

Companies should consider the returns on investment in new technological solutions to map land under a particular crop such as palm oil or cocoa. For example, Nestlé has invested in technological solutions such as spatial mapping of natural forest and land under cocoa.<sup>118</sup> National governments tend to lack the budgets and capacity to maintain the systems that use new technologies. Initiatives that build technological capacity to develop spatial and tracking databases and land information systems have two benefits: (a) companies can begin to trace their supply chains to farms; and (b) the data gained from this mapping can be beneficial to national governments and citizens.

### *Local level practices*

It is particularly challenging for global companies to directly benefit communities on the ground given their distance from the land itself. Companies are committed to significant social investment that includes training, opening up markets for smallholders and supporting women and youth. There is also a growing recognition that food production cannot continue the way it has been and that smallholder farmers do not necessarily benefit from growing crops to supply a global food and beverage market.<sup>119</sup>

## 5. Consolidated findings and recommendations

In this final section of the report the evaluators consolidate the findings and considers what can be learned from Companies' commitments to land rights through the Behind the Brands campaign. We divide these into findings relating to

- policy evaporation and phantom practice
- emerging good practice

We conclude with a summary of recommendations.

## 5.1 Findings

Our overall finding is that: *Since the start of the Behind the Brands campaign, participating companies' internal policy environment in relation to land rights and zero land grabs has significantly improved and is aligned with international best practice. There are examples of emerging good practice in supply chains but also 'policy evaporation' in application.*

### 5.1.1 Policy evaporation and phantom practice

Policy evaporation refers to non-application of policies on the ground. Phantom practice refers to land rights practices that companies are implementing or supporting that do not have a significant impact in defending and protecting local land rights and livelihoods. There are a number of factors that influence policy evaporation and/or phantom practice:

**Invisibility of land rights instead of centrality of land rights.** Land rights are complex and multi-faceted, which makes them difficult to 'see', unlike child labor and deforestation.<sup>120</sup> They are, however, central to property, environmental and economic systems and are drivers of many of the other problems that companies commit to addressing. All stakeholders whose work impacts on land issues need to be sensitized and trained to understand the interlinkages between land rights, property and inequality. Land rights may be difficult to grasp at first, but they are navigable with specialist assistance. There are massive land inequalities in the global South which translates into property disparities between the manufacturing and consumer societies of the North and the raw material producers of the South. *"Land inequality sits at the heart of other forms of inequality. It is fundamentally related and often central to broader inequalities, such as wealth inequality, political inequality, social inequality, gender inequality, environmental inequality, and spatial inequality, in particular in agrarian societies"*.<sup>121</sup> Companies need to understand the connection of their activities to their impacts on land rights so that their statements of intent to act on land rights are not disguised behind rhetorical commitments to principles and standards that are not possible to follow through on. Their policies should be institutionalised into their mainstream business frameworks rather than seen as 'add on' obligations covered by once-off procedures. Adherence to land rights is never a once-off, but an ongoing process of redress and application. It requires deepening company understandings of the implications of the weaknesses and inequalities of land rights for their businesses, society at large and the planet.

**Over-reliance on standards and principles to ensure compliance.** Most companies' internal policies on land rights have significantly improved. All the companies under review have put in place policies and standards relating to responsible sourcing that include the protection of land rights via FPIC and sometimes VGGT. Compliance with internal policies, principles and standards is linked to third-party standards which generally rely on certification as evidence of compliance. Third-party standards are important signifiers of intent, but are imperfect mechanisms for ensuring compliance. Standards alone are not enough to influence changes in practice. RSPO has been an international success in drawing attention to sourcing standards for palm oil, but grievance remediation backlogs are evidence of systemic weaknesses and the complexities of land grievances.<sup>122</sup> The backlog has been reviewed<sup>123</sup> and is being addressed by RSPO. Improvements in the number of complaints closed each year and percentage of total complaints close year-on-year are documented in the RSPO's 2019 Impact Report.<sup>124</sup> International standards do not always meet local country norms and practices relating to land issues. There is poor alignment with country land information systems and databases, and weak interaction with country and local stakeholders, such as land rights CSOs. There

are a few examples where these weaknesses are beginning to be addressed, but not yet at significant scale or substance.

**Case-by-case attention to rights violations, rather than a systemic approach.** The model that companies adopt in relation to land rights violations is to monitor and audit identified cases of land rights violations that are traced to affected individuals or communities. This approach does not institutionalise a recognition of historical legacies of colonial land dispossession and legal pluralism in the global South. Land rights, use and tenure are multifaceted and socially embedded, but nevertheless evolve in response to shrinking land access and poverty as well as domestic and international markets. Post-colonial land tenure reforms have generally not found a way of recognising customary concepts of ownership that are in line with these shifts, and land rights are consequently vulnerable to violations due to the leverage of powerful local, national and international stakeholders. Addressing land rights violations on a case-by-case basis does not address the systemic issues that perpetuate weak land rights that remain vulnerable to ongoing abuse. Companies are able to abdicate responsibility since their systems only address land rights abuse that are directly linked to their supply chain through their suppliers, or by avoidance when they cease to procure products from suppliers that violate land rights even if they did in the past. Land rights abuses often take years to surface, to be identified and acknowledged. A factor that exacerbates patterns of avoidance is that companies often shift supply chains year by year. If companies only address cases of violation that are directly linked to them when they have an active relationship with a supplier, it makes it difficult to hold suppliers accountable. As various examples demonstrate that land conflicts are often legacy issues that are entrenched in landscapes for centuries.<sup>125</sup> Undoing these abuses requires a proactive and systemic approach that addresses the roots of land rights violations. This cannot occur when they are addressed on a case-by-case basis.

**Attention on deforestation without addressing land rights issues.** Companies are taking a proactive stance against deforestation, which includes significant investment in new technologies to prevent deforestation as well as restore natural forests.<sup>126</sup> There is less understanding of the interconnections between land rights, land use and livelihoods. The protection of forests is directly linked to the protection of livelihoods, which are in turn reliant on access to land. Companies' investment strategies in countering deforestation should include measures that will strengthen land rights. Engaging with local land rights CSOs will assist companies to comprehend the granularity of local land rights and land access, while national and international CSOs are also developing a range of tools and guidebooks to assist in training corporates and other personnel on the frontlines. It is important that corporate initiatives do not unwittingly trigger local land disputes, as exemplified in Malawi and Ghana.

**Reluctance by companies to get involved in country-level land issues, or in collective action related to land.** Evidence from CSOs suggests that companies tend to avoid involvement in country land conflicts that are related to production and procurement of their supplies. An example from the state of Para in Brazil indicates that land rights violations are rife and violent.<sup>127</sup> The CSO and academic representatives interviewed were frustrated by companies' reluctance to engage.<sup>128</sup> They indicate that companies are reluctant to engage in collective action to address land rights violations involving a supplier that supplies more than one company. It is thus difficult to hold a shared supplier accountable. CSOs working in Guatemala also expressed similar concerns. When it comes to deforestation, however, companies do engage in collective action.

**Risk assessments usually reflect companies' perceived accountability to consumers and shareholders, rather than to vulnerable communities who are at risk of poverty, land dispossession, human rights abuses and environmental catastrophe.** Companies need to centre risk to vulnerable communities as well as risks associated with consumers and shareholders. When it comes to

addressing risk, companies tend to prioritise the risks associated with pressure from consumers and shareholders. This can be seen in the way the climate crisis drives company priorities, policies and initiatives. Deforestation and climate change will impact vulnerable communities' access to fertile land, but their livelihoods are directly linked to land tenure security and land access on an ongoing basis. Furthermore, land use is a critical factor in building resilience against climate change. National government incentives that encourage certain crops can perpetuate local community poverty and reduce resilience to climate change; thus local communities are directly linked to global market trends. Different kinds of land grab that are more indirect result from national governments and local powerful elites benefitting from agrarian investments at the expense of the majority of the rural poor who remain entrenched in poverty. In Brazil, some CSO representatives maintain that companies prioritize land risks associated with profit rather than including land risks to local communities in their policies and practices. FPIC is poorly understood as a means by which to ensure a predictable flow of production to prevent delays that could be a reputational risk for the company. FPIC is, however, supposed to rebalance control and power over land by the land rights holders, and should thus ensure that decision-making concerning land is in their hands to reduce their own risk of dispossession.

### 5.1.2 Emerging good practices to ameliorate policy evaporation and phantom practice

#### Establishing long term implementation partnerships with international and local land rights CSOs.

We argue that companies cannot rely on standards and principles to ensure compliance with land rights adherence, as generalities and intent do not translate into implementation. Since it is difficult for companies themselves to implement commitments to respect land rights given their distance from the site of production, they need to develop other mechanisms for implementation. These need to be proactive, as with deforestation. The most feasible approach is to develop long-term implementation partnerships with international and local CSOs whose mandates centre the needs of the most vulnerable. It is encouraging to find that many companies are showing more willingness to partner with CSOs. They benefit from their expertise as well as their connections to local and international networks. They are able to both use local capacity as well as strengthen and build local and national capacity through active engagement.

**Publicly revealing supply chains, grievances and suspension of suppliers.** Tracing land rights adherence or abuse in supply chains is made difficult if not impossible if companies do not reveal their supply chains. Some companies are beginning to map and reveal their supply chains. Nestlé leads in public disclosure and reveals 95% of core agricultural product supply chains. Unilever and PepsiCo are also beginning to reveal their supply chains. AB Sugar provides a map of all mills and Illovo Sugar Africa provides all mill contacts on their website. This is extremely beneficial for defending land rights as suppliers to global companies can no longer operate in the shadows and are more likely to invest in compliance. CSOs can better monitor land rights abuses and bring these to the attention of global companies. Unilever reveals all palm oil suppliers and all grievances related to palm oil supply and a list of suspended suppliers.

**Mapping land under crop production in countries:** Spatial mapping of fields to prevent deforestation adds to spatial databases and is beneficial for land tenure security even if it does not adjudicate and document land rights directly. It improves traceability of crops to farm level which bolsters capacity to trace and address land rights violations. Further processes of conflict resolution (which may involve local or customary authorities) would, however, be necessary to follow through.

**Supporting and investing in the documentation of land rights:** Illovo Sugar Africa has partnered with bilateral donors and country governments to document local land rights. The company recognises

that they cannot influence land rights documentation but can support contextually relevant documentation and administrative land systems to govern land rights at a country scale.<sup>129</sup> Companies should be sensitive to country legal and local norms and practices, and not attempt to influence the way in which local land rights are adjudicated and documented to their own benefit.

**Investing in the training of staff:** We found evidence of positive benefits to strengthening companies' land rights commitments if their staff are trained by specialists. Illovo Sugar Africa, in partnership with Landesa, has engaged in extensive staff training on land rights that includes the concept of land champions within country branches. This includes an awareness of important local references on land rights. In the interview with Illovo Sugar Africa staff it was clear that the understandings of land rights issues in Africa were sophisticated and country based.<sup>130</sup> There are many potentials in West Africa, and Ghana in particular, where both Landesa and a local NGO, COLANDEF, have produced guidebooks for government, private sector and communities in land rights and responsible investments. They are also actively engaged in training stakeholders.

**Acknowledging the link between systemic poverty and land use:** Some companies are grappling with issues of poverty, land and production of cash crops. Poverty is a question not only of income but also of land use, where changing land use practices have been influenced by global market forces. For example, cocoa production in West Africa tends to be driven by poverty and engaging in markets is not alleviating it.<sup>131</sup> In Malawi, smallholder farmers with less than 2 hectares of land struggle to make a profit from sugar production. Companies are responding by investing in agroforestry and training in the diversification of crops.<sup>132</sup> Unilever's former and current CEO have publicly expressed concerns about capitalism, modern food production, climate change and rising inequality. Acknowledging these links is a first step to taking action. CEO Alan Jope said "... the single-minded pursuit of profit is damaging. It has many unanticipated negative consequences." He argued that traditional and modern forms of capitalism "have resulted in blind spots for multiple crises that have had devastating impacts in 2020. Aside from the twin climate and nature crises, he warned of the links between biodiversity loss and pandemics and emphasised the historic failure of the system to ensure racial justice".<sup>133</sup>

## 5.2 Recommendations

Companies should:

1. Generate and maintain long-term implementation relationships with land rights CSOs at international and country level in order to draw on country-based land rights knowledge, expertise in monitoring and responding to land rights issues and to generate a more systemic response to land access and land use, without influencing their mandate of protecting the rights of the most vulnerable.
2. Take a proactive rather than reactive stance to land rights protection as is done with human and environmental rights issues, such as protection of forests. It is important to address the causes of land rights violations rather than only addressing violations on a case-by-case basis.
3. Include land rights and land access issues in initiatives to protect forests and prevent deforestation. Ensure that initiatives to prevent deforestation do not trigger local land rights violations or adversely impact on vulnerable people.

4. Be willing to engage with country level initiatives to address land rights and in collective action with other companies (as is done in deforestation initiatives) to put pressure on and support non-compliant suppliers. It is more effective to engage in order to ensure changes in land practices than to suspend engagement. Suspension should be a last resort and declared publicly.
5. Centre the land risks to vulnerable communities *as well as* company land risks in land rights policy and practice. This includes acknowledging that *how* land is used due to global market pressure can entrench poverty and put livelihoods at risk in spite of cash incomes.
6. Continue to map supply chains to farm level and make this information publicly available along with current grievances related to land.
7. Continue developing partnerships with companies and CSOs who can offer technologically advanced solutions to mapping land under crops that are associated with deforestation.
8. Continue investing in staff training in land rights issues that goes beyond international soft law and includes an understanding of the multifaceted nature of land rights in the global South.
9. Support and invest in the contextually relevant documentation of land rights but do not influence how land rights are adjudicated and recognised. Companies need to be careful about how they frame policies that promote land rights documentation and should avoid it as company policy. Companies can develop systems of documentation for farms under crop production but should steer clear of the documentation of land rights which should be conducted by authorised processes.

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## 7. Interviews

### **Virtual Interviews:**

AB Sugar representative. Interview by Jane Burt, 17<sup>th</sup> December 2020.

COLANDEF representative, Accra, Ghana. Interview by Rosalie Kingwill. 4 December 2020.

Cote d'Ivoire CSO representative, Abidjan. Interview by Glwadys Aymone Gbetibouo, 4<sup>th</sup> December 2020.

Earthworm Guatemala representative, Guatemala. Interview by Jane Burt, 18<sup>th</sup> November 2020.

Illovo Sugar Africa representative. Interview by Jane Burt, 17<sup>th</sup> December 2020.

Landesa representatives. Interviews by Rosalie Kingwill, 23<sup>rd</sup> November 2020; 1<sup>st</sup> December 2020.

Oxfam Brazil representative, Brazil. Interview by Jane Burt, 16<sup>th</sup> November 2020.

Oxfam Ghana representative. Interview by Rosalie Kingwill, 19<sup>th</sup> November 2020.

Oxfam America representatives. Interview by Rosalie Kingwill, 21<sup>st</sup> December 2020.

Universidade Federal Rural do Rio de Janeiro representative, Brazil. Interview by Jane Burt, 24<sup>th</sup> November 2020.

### **Onsite interviews in Malawi done by Chimwemwe Msukwa**

Dwangwa Cane Growers Association (2 interviews)

Lake Shore Cane Growers Association (1 interview)

Mgodi Smallholder Cane Growers Association (1 interview)

Independent Smallholder Growers Association that does not have a contract with Illovo (1 interview)

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- <sup>1</sup> <https://oxfamlibrary.openrepository.com/bitstream/handle/10546/270393/bp166-behind-the-brands-260213-summary.pdf?sequence=2>
- <sup>2</sup> The Big Ten companies are: Associated British Foods (ABF), The Coca-Cola Company (TCCC), Danone, General Mills, Kellogg, Mars, Mondelez, Nestlé, PepsiCo and Unilever.
- <sup>3</sup> Policy evaporation refers to non-application of policies on the ground.
- <sup>4</sup> Phantom practice refers to land rights practices that companies are implementing or supporting that do not have a significant impact in defending and protecting local land rights and livelihoods.
- <sup>5</sup> <http://www.fao.org/3/a-i6190e.pdf>
- <sup>6</sup> FAO-VGGT was endorsed by CFS at its Thirty-eighth (Special) Session on 11 May 2012; CFS-RAI (2015) was approved by the [41st Session of CFS](http://www.fao.org/3/i2801e/i2801e.pdf) on 15 October 2014. <http://www.fao.org/3/i2801e/i2801e.pdf>
- <sup>7</sup> <http://www.fao.org/cfs/home/activities/rai/en/> Accessed 30<sup>th</sup> November 2020
- <sup>8</sup> <https://landportal.org/library/resources/government-briefing-incorporating-free-prior-and-informed-consent-fpic-investment>
- <sup>9</sup> Philippe Hanna & Frank Vanclay (2013) Human rights, Indigenous peoples and the concept of Free, Prior and Informed Consent, *Impact Assessment and Project Appraisal*, 31:2 <https://doi.org/10.1080/14615517.2013.780373>; Ondotimi Songi, Julius A. Enefifa, John K. Chinda, Prince N.C. Olokotod & Vincent Topmane (2017) 'FPIC Right of Indigenous People and Local Communities in Resource Development: Lessons from the Inter-American Jurisprudence', *Unipart Journal of Private Law*, 1(1) 2017: 203
- <sup>10</sup> <https://www.business-humanrights.org/en/latest-news/6th-session-of-the-intergovernmental-working-group-dedicated-to-negotiations-on-the-second-revised-draft-of-the-binding-treaty/>
- <sup>11</sup> <https://www.landcoalition.org/en/uneven-ground/executive-summary/>
- <sup>12</sup> <https://landportal.org/library/resources/government-briefing-incorporating-free-prior-and-informed-consent-fpic-investment>; see also cautions arising from the extractive industries: <https://www.ensafrika.com/news/detail/1474/mining-and-local-communities-free-prior-and-i/>
- <sup>13</sup> <https://www.landcoalition.org/en/uneven-ground/executive-summary/>; Julian Quan & Amaelle Seigneret (2019) 'Investing Responsibly in Agricultural Land: Lessons from responsible land investment pilots in sub-Saharan Africa'. DIFD, Land Enhancing Governance for Economic Development (Legend) <https://data.landportal.info/library/resources/investing-responsibly-agricultural-land>
- <sup>14</sup> Mirjam AF Ros-Tonen, Verena Bitzer, Anna Laven, David Ollivier de Leth, Yves Van Leynseele & Andrea Vos (2019) 'Conceptualizing inclusiveness of smallholder value chain integration' *Current Opinion in Environmental Sustainability*, 41: 10-17. <https://www.sciencedirect.com/science/article/pii/S1877343519300636>; Catherine Boone (2019) 'Legal Empowerment of the Poor through Property Rights Reform: Tensions and Trade-offs of Land Registration and Titling in Sub-Saharan Africa. *The Journal of Development Studies*, 55:3, 384-400.
- <sup>15</sup> Interview, Civil Society Organisation, Brazil, November 2020
- <sup>16</sup> <https://oxfamblogs.org/fp2p/paul-polman-on-capitalism-leadership-sustainability/>; <https://www.theguardian.com/business/2019/oct/29/damaged-ideology-business-must-reinvent-capitalism-ex-unilever-boss>
- <sup>17</sup> Ian G. Baird (2014) The Global Land Grab Meta-Narrative, Asian Money Laundering and Elite Capture: Reconsidering the Cambodian Context, *Geopolitics*, 19:2, 431-453 <http://dx.doi.org/10.1080/14650045.2013.811645>; Amanor, Kojo (2019) 'Global Value Chains and Agribusiness in Africa: Upgrading or Capturing Smallholder Production?' *Agrarian South: Journal of Political Economy* 8(1-2) 30-63 <https://journals.sagepub.com/doi/full/10.1177/2277976019838144>
- <sup>18</sup> Ruth Hall (2011) 'The Many Faces of the Investor Rush in Southern Africa: Towards a Typology of Commercial Land Deals'. ICAS Review Paper Series No. 2
- <sup>19</sup> Amanor, Global Value Chains, op. cit. n. 17 above.
- <sup>20</sup> Baird, Global Meta-narrative, op. cit. n 17 above; Ruth Hall, Many Faces Investor rush, op. cit. n 15 above
- <sup>21</sup> <https://www.nestlé.com/csv/impact>
- <sup>22</sup> Includes the [Consumer Goods Forum](https://www.consumergoodsforum.com/), the [Institute for Human Rights and Business Leadership Group](https://www.institute-for-human-rights.org/) for Responsible Recruitment and the Responsible Business Alliance's Responsible Labor Initiative, as well as multi-stakeholder collaborations such as the [Fair Labor Association](https://www.fairlaborassociation.org/) (FLA), the [High Carbon Stock Approach](https://www.highcarbonstockapproach.org/)(HCSA) Steering Group, the [Cerrado Manifesto](https://www.cerradomanifesto.org/)
- <sup>23</sup> <https://www.nestlé.com/sites/default/files/asset-library/documents/library/documents/suppliers/nestlé-responsible-sourcing-standard-english.pdf>
- <sup>24</sup> Some of these include the Rainforest Alliance, Roundtable for Sustainable Palm Oil, and Bonsucro.
- <sup>25</sup> <https://www.nestlé.com/sites/default/files/asset-library/documents/library/documents/suppliers/nestlé-responsible-sourcing-standard-english.pdf>
- <sup>26</sup> <https://www.nestlé.com/supply-chain-disclosure>; <https://www.nestlé.com/csv/responsible-sourcing-raw-materials>
- <sup>27</sup> This was piloted in 2019 (<https://www.nestlé.com/csv/impact/rural-livelihoods/responsible-sourcing>) with New Zealand Milk and is being expanded for the *Zoegas* coffee brand (<https://www.nestlé.com/media/news/nestlé-blockchain-zoegas-coffee-brand>).
- <sup>28</sup> <https://www.nestlé.com/csv/impact/rural-livelihoods/responsible-sourcing>
- <sup>29</sup> The farmer connect programme (<https://www.nestlé.com/csv/impact/rural-livelihoods/responsible-sourcing>) has received praise from the WB for ensuring markets for agro-entrepreneurs (<https://blogs.worldbank.org/jobs/3-ways-private-sector-stimulating-agri-preneurship>). Sourcing staff do regular farm visits and assessments against RSS. Training is also provided.
- <sup>30</sup> <https://www.nestlé.com/csv/raw-materials/nestlé-cocoa-plan>. The Cocoa Plan is assessed against a series of KPI's.
- <sup>31</sup> <https://www.nestlé.com/csv/impact/rural-livelihoods/farm-nutrition> This initiative is looking at issues related to food shortages in vulnerable communities.
- <sup>32</sup> This includes Human rights Assessments and staff training in human rights and the CARE audit program<sup>32</sup>. This is a Corporate toolkit for training managers which is audited through the CARE audit program developed in collaboration with the Danish institute of Human Rights (<https://www.nestlé.com/sites/default/files/2020-03/creating-shared-value-report-2019-en.pdf#page=34>).
- <sup>33</sup> <https://www.nestlé.com/csv/raw-materials/palm-oil/palm-oil-transparency-dashboard>
- <sup>34</sup> <https://www.bonsucro.com/members/the-coca-cola-company/> Accessed 29<sup>th</sup> September 2020.
- <sup>35</sup> <https://www.coca-colacompany.com/policies-and-practices/supplier-guiding-principles> Accessed 30 September 2020. FPIC is adhered to in the SGPs, Principle 1: Land Rights. TCCC is currently exploring how to integrate sustainable agricultural issues with the supplier audit procedure.

- <sup>36</sup> <https://www.coca-colacompany.com/policies-and-practices/human-rights-policy-languages> Accessed 28th September 2020
- <sup>37</sup> <http://www.fao.org/indigenous-peoples/our-pillars/fpic/en/> Accessed 30 September 2020
- <sup>38</sup> <https://www.coca-colacompany.com/policies-and-practices/sustainable-agricultural-guiding-principles> Accessed 30 September 2020.
- <sup>39</sup> TCCC, 2019, p. 36
- <sup>41</sup> <https://www.coca-colacompany.com/policies-and-practices/sgp-guidance-documents> Accessed 23rd September 2020.
- <sup>42</sup> <https://www.coca-colacompany.com/content/dam/journey/us/en/policies/pdf/human-workplace-rights/supplier-guiding-principles/responsible-land-aquisition-guidance-2017.pdf> Accessed 28th September 2020.
- <sup>43</sup> <https://www.coca-colacompany.com/policies-and-practices/california-transparency-in-supply-chain-act> Accessed 3rd December; TCCCs purchase order requires all suppliers and Bottling Partners to adhere to national and international laws and the supplier is responsible for the compliance of all sub-suppliers
- <sup>44</sup> The first requirement is to be accredited as sustainable, following this TCCC supports continual progress in the supply chain by increasing the volume of supply that is SAGP compliant. <https://www.coca-colacompany.com/content/dam/journey/us/en/policies/pdf/sustainability/sustainable-ingredients-policy.pdf> Accessed 28th September 2020.
- <sup>45</sup> Training on the four pillars of responsible sourcing one of which is human rights. The training sessions provide a platform for suppliers to ask questions, learn and share. <https://aim-progress.com/introduction> Accessed 30th September 2020
- <sup>46</sup> TCCC invests in the program with the aim to help 5 million women from fruit farmers to artisans become part of their value chain by 2020. The programme provides skills to accessing the market. By 2018 the programme had reached 3.2 million women. <https://www.coca-colacompany.com/shared-future/women-empowerment> Accessed 3rd December 2020.
- <sup>47</sup> <https://www.coca-colacompany.com/news/shared-value-for-coke-and-african-mango-farmers> Accessed 3rd December 2020.
- <sup>48</sup> TCCC and Bottling partners invested significantly in the [Source Africa project](#) with the intention of securing more consistent and sustainable local ingredients sourcing in partnership with the New Alliance for Food Security and Nutrition and Grow Africa. This project has received some [criticism](#) ([https://www.europarl.europa.eu/RegData/etudes/STUD/2015/535010/EXPO\\_STU\(2015\)535010\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2015/535010/EXPO_STU(2015)535010_EN.pdf)) for being silent on the need to shift towards more sustainable modes of agricultural production, the protecting and strengthening farmers seed systems, the dangers associated with the emergence of a market for land rights, the regulation on contract farming and recognition of women's rights and empowerment.
- <sup>49</sup> A specific case on the Brazil sugar chain was conducted due to the high risk of land rights violations. Based on the findings TCCC has developed an action plan which will also serve as a framework for similar action in other countries. The action plan contains supplier guidance on land rights which has been developed on collaboration with [Landesa](#).
- <sup>50</sup> A case example of Unilever's commitment to VGGT is the tea concession in Rwanda. The company worked with the Rwandan government during expropriation and insisted that the resettlement was to be implemented in line with International Finance Corporation's (IFC) performance standards that included livelihood restoration and grievance mechanisms.
- <sup>51</sup> <https://www.unilever.com/sustainable-living/reducing-environmental-impact/greenhouse-gases/protecting-our-forests/> Accessed 3<sup>rd</sup> December 2020.
- <sup>52</sup> <https://www.theconsumergoodsforum.com/wp-content/uploads/2017/10/2017-Letter-of-business-support-for-Cerrado-Manifesto-CGF.pdf> Accessed 28th September 2020
- <sup>53</sup> <https://www.unilever.com/about/who-we-are/our-values-and-principles/business-integrity/code-policies/> Accessed 30<sup>th</sup> September 2020.
- <sup>54</sup> The Responsible Sourcing Policy has 13 principles one of which is that the land rights of communities, including indigenous peoples, will be protected and promoted.
- <sup>55</sup> [https://www.unilever.com/Images/sustainable-agriculture-code--sac---2017\\_tcm244-515371\\_en.pdf](https://www.unilever.com/Images/sustainable-agriculture-code--sac---2017_tcm244-515371_en.pdf) Accessed 27th September 2020. [https://www.unilever.com/Images/responsible-sourcing-policy-interactive-final\\_tcm244-504736\\_en.pdf](https://www.unilever.com/Images/responsible-sourcing-policy-interactive-final_tcm244-504736_en.pdf) Accessed 28 September 2020. [https://www.unilever.com/Images/unilever-people-and-nature-policy\\_tcm244-557556\\_en.pdf](https://www.unilever.com/Images/unilever-people-and-nature-policy_tcm244-557556_en.pdf) Accessed 17 February 2021.
- <sup>56</sup> The 2019 Unilever human rights report documents 213 non-conformances with land rights with 65% of these relating to a lack of understanding of FPIC. 27 of these were related to operations and 25 to commodities with the region with the most cases being South Asia followed by Latin America.
- <sup>57</sup> <https://ecovadis.com> Accessed 3<sup>rd</sup> December 2020.
- <sup>58</sup> [https://www.unilever.com/Images/global-cocoa-direct-suppliers-march-2020\\_tcm244-547985\\_en.pdf](https://www.unilever.com/Images/global-cocoa-direct-suppliers-march-2020_tcm244-547985_en.pdf)
- <sup>59</sup> <https://www.unilever.com/sustainable-living/our-approach-to-reporting/cdp-index/>; [https://www.unilever.com/Images/unilever-cdp-forests-response-2020\\_tcm244-558530\\_en.pdf](https://www.unilever.com/Images/unilever-cdp-forests-response-2020_tcm244-558530_en.pdf); [https://www.unilever.com/Images/palm-oil-facility-list-refiner-oleochemical-kcp\\_tcm244-530098\\_en.pdf](https://www.unilever.com/Images/palm-oil-facility-list-refiner-oleochemical-kcp_tcm244-530098_en.pdf); [https://www.unilever.com/Images/palm-oil-mill-list-from-unilever-suppliers\\_tcm244-530097\\_en.pdf](https://www.unilever.com/Images/palm-oil-mill-list-from-unilever-suppliers_tcm244-530097_en.pdf)
- <sup>60</sup> As part of Unilever's sustainable palm oil sourcing policy anyone can lodge a complaint online. Unilever has also outlined the [process of remediation](#) following a reported grievance. Unilever publicly lists palm oil grievances on direct suppliers and third-party indirect suppliers on their [palm oil grievance tracker](#) ([https://www.unilever.com/Images/palm-oil-grievance-procedure\\_tcm244-510633\\_en.pdf](https://www.unilever.com/Images/palm-oil-grievance-procedure_tcm244-510633_en.pdf) Accessed 3<sup>rd</sup> December 2020). With the [World Resources Institute's Global Forest Watch](#) and [Aidenvironment](#) in using satellite technology<sup>60</sup> Unilever is evolving its palm oil concession mapping platform. Unilever also supports Global Forest Watch to develop radar monitoring technology to detect deforestation in near real time. In order to trace the possibility of deforestation in soy and palm oil supply chains, Unilever has launched a [pilot with Orbital insight](#) in using geolocation data to identify individual farms and mills that are most likely to supply Unilever.
- <sup>61</sup> [https://www.unilever.com/Images/code-of-business-principles-and-code-policies\\_tcm244-409220\\_en.pdf](https://www.unilever.com/Images/code-of-business-principles-and-code-policies_tcm244-409220_en.pdf) Accessed 30th September 2020.
- <sup>62</sup> [https://www.pepsico.com/docs/album/esg-topics-policies/pepsico\\_land\\_policy.pdf?sfvrsn=fce24e93\\_8](https://www.pepsico.com/docs/album/esg-topics-policies/pepsico_land_policy.pdf?sfvrsn=fce24e93_8)
- <sup>63</sup> [https://www.pepsico.com/docs/album/esg-topics-policies/pepsico\\_land\\_policy.pdf?sfvrsn=fce24e93\\_8](https://www.pepsico.com/docs/album/esg-topics-policies/pepsico_land_policy.pdf?sfvrsn=fce24e93_8)
- <sup>64</sup> <https://www.pepsico.com/sustainability/focus-areas/agriculture>
- <sup>65</sup> <https://www.pepsico.com/sustainability/focus-areas/agriculture>
- <sup>66</sup> [https://www.pepsico.com/docs/album/esg-topics-policies/pepsico-forestry-stewardship-policy-1.pdf?sfvrsn=e8e0f3d\\_4](https://www.pepsico.com/docs/album/esg-topics-policies/pepsico-forestry-stewardship-policy-1.pdf?sfvrsn=e8e0f3d_4)
- <sup>67</sup> <https://www.pepsico.com/sustainability/focus-areas/agriculture>
- <sup>68</sup> [https://www.pepsico.com/docs/album/esg-topics-policies/pepsico\\_land\\_policy.pdf?sfvrsn=fce24e93\\_8](https://www.pepsico.com/docs/album/esg-topics-policies/pepsico_land_policy.pdf?sfvrsn=fce24e93_8) Accessed 15<sup>th</sup> September 2020
- <sup>69</sup> [https://www.pepsico.com/docs/album/supplier-code-of-conduct/pepsico-global-scoc-final\\_english.pdf?sfvrsn=fa1a3c28\\_18](https://www.pepsico.com/docs/album/supplier-code-of-conduct/pepsico-global-scoc-final_english.pdf?sfvrsn=fa1a3c28_18)
- <sup>70</sup> [https://www.pepsico.com/docs/album/esg-topics-policies/pepsico-sustainable-agriculture-policy.pdf?sfvrsn=201f5573\\_6](https://www.pepsico.com/docs/album/esg-topics-policies/pepsico-sustainable-agriculture-policy.pdf?sfvrsn=201f5573_6)

- <sup>71</sup> [https://www.pepsico.com/docs/album/esg-topics-policies/pepsico-global-human-rights-and-salient-issues-statement.pdf?sfvrsn=9d5f20c8\\_8](https://www.pepsico.com/docs/album/esg-topics-policies/pepsico-global-human-rights-and-salient-issues-statement.pdf?sfvrsn=9d5f20c8_8)
- <sup>72</sup> [https://www.pepsico.com/docs/album/esg-topics-policies/global-policy-for-sustainable-palm-oil.pdf?sfvrsn=ffec838\\_10](https://www.pepsico.com/docs/album/esg-topics-policies/global-policy-for-sustainable-palm-oil.pdf?sfvrsn=ffec838_10)
- <sup>73</sup> [https://www.pepsico.com/docs/album/esg-topics-policies/pepsico-forestry-stewardship-policy-1.pdf?sfvrsn=e8ee0f3d\\_4](https://www.pepsico.com/docs/album/esg-topics-policies/pepsico-forestry-stewardship-policy-1.pdf?sfvrsn=e8ee0f3d_4)
- <sup>74</sup> [https://www.pepsico.com/docs/album/esg-topics-policies/2019-pepsico-human-rights-report.pdf?sfvrsn=e428b396\\_4](https://www.pepsico.com/docs/album/esg-topics-policies/2019-pepsico-human-rights-report.pdf?sfvrsn=e428b396_4)
- <sup>75</sup> [https://www.pepsico.com/docs/album/esg-topics-policies/2019-pepsico-human-rights-report.pdf?sfvrsn=e428b396\\_4](https://www.pepsico.com/docs/album/esg-topics-policies/2019-pepsico-human-rights-report.pdf?sfvrsn=e428b396_4)
- <sup>76</sup> [https://www.pepsico.com/docs/album/esg-topics-policies/agricultural-supply-chain-grievance-mechanism-summary.pdf?sfvrsn=8d8bccf3\\_6](https://www.pepsico.com/docs/album/esg-topics-policies/agricultural-supply-chain-grievance-mechanism-summary.pdf?sfvrsn=8d8bccf3_6)
- <sup>77</sup> [https://www.pepsico.com/docs/album/esg-topics-policies/sfp-indicator-goal-statements.pdf?sfvrsn=92a934ef\\_4](https://www.pepsico.com/docs/album/esg-topics-policies/sfp-indicator-goal-statements.pdf?sfvrsn=92a934ef_4)
- <sup>78</sup> The intention of the framework is to enable PepsiCo monitor progress on adopting responsible land practices in their supply chain, as well as to identify and respond to potential gaps in implementation. The framework outlines concrete practices expect at different levels of the supply chain. The framework integrates PepsiCo's internal sustainable sourcing standards as well as crops specific standards. It is currently being piloted. <https://www.pepsico.com/sustainability/esg-topics-a-z#land-rights> Accessed 3<sup>rd</sup> December 2020.
- <sup>79</sup> [https://www.pepsico.com/docs/album/esg-topics-policies/pepsico-response-to-mexico-palm-oil-and-cane-sugar-report.pdf?sfvrsn=fd751fa\\_2](https://www.pepsico.com/docs/album/esg-topics-policies/pepsico-response-to-mexico-palm-oil-and-cane-sugar-report.pdf?sfvrsn=fd751fa_2)
- <sup>80</sup> [https://www.pepsico.com/docs/album/esg-topics-policies/pepsico-response-to-bonsucro-thailand-assessment.pdf?sfvrsn=fe549643\\_2](https://www.pepsico.com/docs/album/esg-topics-policies/pepsico-response-to-bonsucro-thailand-assessment.pdf?sfvrsn=fe549643_2)
- <sup>81</sup> [https://www.pepsico.com/docs/album/esg-topics-policies/brazil-land-study-2020.pdf?sfvrsn=8a70d7a9\\_2](https://www.pepsico.com/docs/album/esg-topics-policies/brazil-land-study-2020.pdf?sfvrsn=8a70d7a9_2)
- <sup>82</sup> The Mexico report is available in English and Spanish. PepsiCo also published its response to the report and plans for next steps. The Thailand report is a white paper called "Thai Sugarcane Sector & Sustainability". It is available on the PepsiCo and Bonsucro websites. PepsiCo has published a summary of findings from its Philippines assessment
- <sup>83</sup> [https://www.pepsico.com/docs/album/esg-topics-policies/pepsico-palm-oil-traceability-protocol-\(1\).pdf?sfvrsn=55daa7e4\\_6](https://www.pepsico.com/docs/album/esg-topics-policies/pepsico-palm-oil-traceability-protocol-(1).pdf?sfvrsn=55daa7e4_6)
- <sup>84</sup> [https://www.pepsico.com/docs/album/esg-topics-policies/agricultural-supply-chain-grievance-mechanism-summary.pdf?sfvrsn=8d8bccf3\\_6](https://www.pepsico.com/docs/album/esg-topics-policies/agricultural-supply-chain-grievance-mechanism-summary.pdf?sfvrsn=8d8bccf3_6)
- <sup>85</sup> [https://www.pepsico.com/docs/album/global-code-of-conduct/speak-up-documents/speak-up-usage.pdf?sfvrsn=fac4fa34\\_10](https://www.pepsico.com/docs/album/global-code-of-conduct/speak-up-documents/speak-up-usage.pdf?sfvrsn=fac4fa34_10)
- <sup>86</sup> Illovo Sugar Africa is housed under AB Sugar as part of Associated British Foods
- <sup>87</sup> <https://www.absugar.com/sustainability> Accessed 3<sup>rd</sup> December 2020
- <sup>88</sup> <https://www.abf.co.uk/documents/pdfs/policies/supplier-code-of-conduct.pdf> Accessed 15 September 2020
- <sup>89</sup> <https://www.abf.co.uk/documents/pdfs/policies/supplier-code-of-conduct.pdf>
- <sup>90</sup> [https://www.abf.co.uk/documents/pdfs/board\\_committees/tor\\_audit\\_committee.pdf](https://www.abf.co.uk/documents/pdfs/board_committees/tor_audit_committee.pdf)
- <sup>91</sup> <https://www.illovo-sugar-africa.com/Group-Governance/Code-of-Conduct-Business-Ethics>
- <sup>92</sup> <https://www.illovo-sugar-africa.com/Group-Governance/Group-Guidelines-on-Land-and-Land-Rights>
- <sup>93</sup> <https://www.illovo-sugar-africa.com/Group-Governance/Group-Guidelines-on-Land-and-Land-Rights>
- <sup>94</sup> <https://www.landesa.org/what-we-do/landassess-tool/> Accessed 3<sup>rd</sup> December 2020
- <sup>95</sup> <https://www.landesa.org/one-companys-journey-to-better-respect-land-illovo-sugar-africa/>
- <sup>96</sup> <https://www.absugar.com/sourcing-map>
- <sup>97</sup> [https://www.abf.co.uk/documents/pdfs/policies/abf\\_whistleblowing\\_policy.pdf](https://www.abf.co.uk/documents/pdfs/policies/abf_whistleblowing_policy.pdf)
- <sup>98</sup> CSO interviews in Brazil & Guatemala, November 2020
- <sup>99</sup> CSO interviews in Brazil & Guatemala, November 2020
- <sup>100</sup> <https://www.bonsucro.com/complaints-and-grievances/community-voice-in-sugarcane/>
- <sup>101</sup> CSO interviews Brazil, Guatemala and USA, November and December 2020.
- <sup>102</sup> CSO interviews in Brazil, Guatemala and USA, November and December 2020
- <sup>103</sup> CSO interviews in Brazil, Guatemala and USA, November and December 2020.
- <sup>104</sup> Interview with Brazilian academic, November 2020
- <sup>105</sup> nestle-cocoa-plan-progress-report-2019.pdf  
<https://www.nestle.com/sites/default/files/2020-03/nestle-cfi-progress-report.pdf>
- <sup>106</sup> Cocoa & Forests Initiative *Joint Framework for Action Ghana* <https://www.idhsustainabletrade.com/uploaded/2017/11/Ghana-Framework-Final-1-1.pdf>
- <sup>107</sup> <https://www.worldcocoafoundation.org/initiative/cocoa-forests-initiative/>, 12 December 2020
- <sup>108</sup> <https://www.landesa.org/one-companys-journey-to-better-respect-land-illovo-sugar-africa/>; <https://www.landesa.org/what-we-do/corporate-engagement/>; <https://www.proforest.net/what-we-do/supporting-companies/> Accessed 12 December 2020
- <sup>109</sup> Interviews with Landesa, November 2020
- <sup>110</sup> Interviews with Illovo Sugar Africa and AB Sugar, December 2020.
- <sup>111</sup> Interviews with Illovo Sugar Africa and AB Sugar, December 2020.
- <sup>112</sup> Köhne, M, 2014. Also see MSI Integrity "Not Fit-for-Purpose: The Grand Experiment of Multi-Stakeholder Initiatives in Corporate Accountability, Human Rights and Global Governance" <https://www.msi-integrity.org/not-fit-for-purpose/>
- <sup>113</sup> Interview with Illovo Sugar Africa, December 2020.
- <sup>114</sup> Interview with Illovo Sugar Africa and AB Sugar, December 2020.
- <sup>115</sup> Interviews with CSO Brazil & CSO, Guatemala, November 2020
- <sup>116</sup> [https://www.Nestlécocoaplan.com/themes/custom/cocoa/dist/assets/documents/Nestlé\\_CFI\\_Tackling\\_Deforestation\\_Progress\\_Report\\_2020.pdf](https://www.Nestlécocoaplan.com/themes/custom/cocoa/dist/assets/documents/Nestlé_CFI_Tackling_Deforestation_Progress_Report_2020.pdf) Accessed 12 December 2020
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- <sup>117</sup> <https://land-links.org/case-study/responsible-land-based-investment-project-in-mozambique/>, Accessed 20 January 2021
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- <sup>122</sup> Interview with International CSO, December 2020

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<sup>123</sup> Holly C. Jonas, 2014.

<sup>124</sup> <https://rspo.org/news-and-events/news/rspos-grievance-unit-aims-to-improve-its-workflow-to-serve-stakeholders-better>. RSPO's Impact Report 2019 (<https://www.rspo.org/resources/archive/1324>) section on Complaints (page 21) indicates improvement in the number of complaints closed each year and percentage total complaints closed year-on-year after the implementation of our Complaints and Appeal Procedure (CAP) 2017.

<sup>125</sup> Interviews with Brazilian CSO, Ghana CSO & Illovo Sugar Africa, November 2020

<sup>126</sup> [https://www.Nestlécocoaplan.com/themes/custom/cocoa/dist/assets/documents/Nestlé\\_CFI\\_Tackling\\_Deforestation\\_Progress\\_Report\\_2020.pdf](https://www.Nestlécocoaplan.com/themes/custom/cocoa/dist/assets/documents/Nestlé_CFI_Tackling_Deforestation_Progress_Report_2020.pdf) ; <https://www.unilever.com/sustainable-living/reducing-environmental-impact/greenhouse-gases/protecting-our-forests/>;

<sup>127</sup> <https://br.reuters.com/article/domesticNews/idBRKBN1HW36T-OBRDN> Accessed 3<sup>rd</sup> December 2020 Accessed 3<sup>rd</sup> December 2020; <https://www.farmlandgrab.org/post/view/27980> Accessed 3<sup>rd</sup> December 2020.

<sup>128</sup> Interview with CSO, Brazil & Academic, Brazil, November 2020

<sup>129</sup> Interview Illovo Sugar Africa and AB Sugar, December 2020

<sup>130</sup> Interviews with Illovo Sugar Africa and AB Sugar, December 2020

<sup>131</sup> <https://theconversation.com/ghanas-cocoa-farmers-are-trapped-by-the-chocolate-industry-124761>, Accessed 12 December 2020.

<sup>132</sup> Interviews with smallholder farmers in Malawi, November 2020

<sup>133</sup> <https://www.edie.net/news/7/Unilever-CEO--Climate-change-and-Covid-19-mean-capitalism-must-change/>