Friends of the Earth Europe

global witness

REGULATING RISK

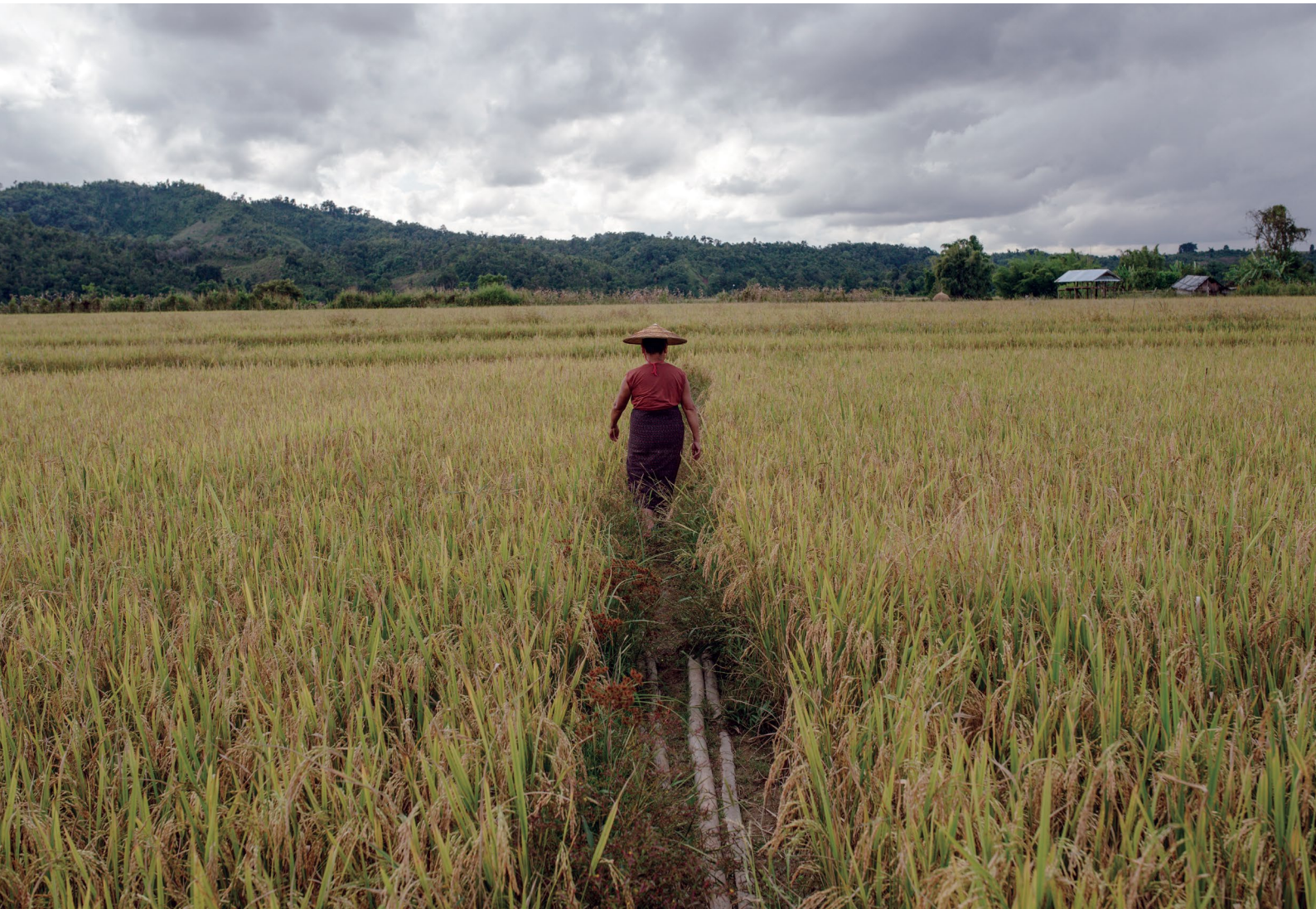
Why European investors must be regulated to prevent land grabs, human rights abuses and deforestation.

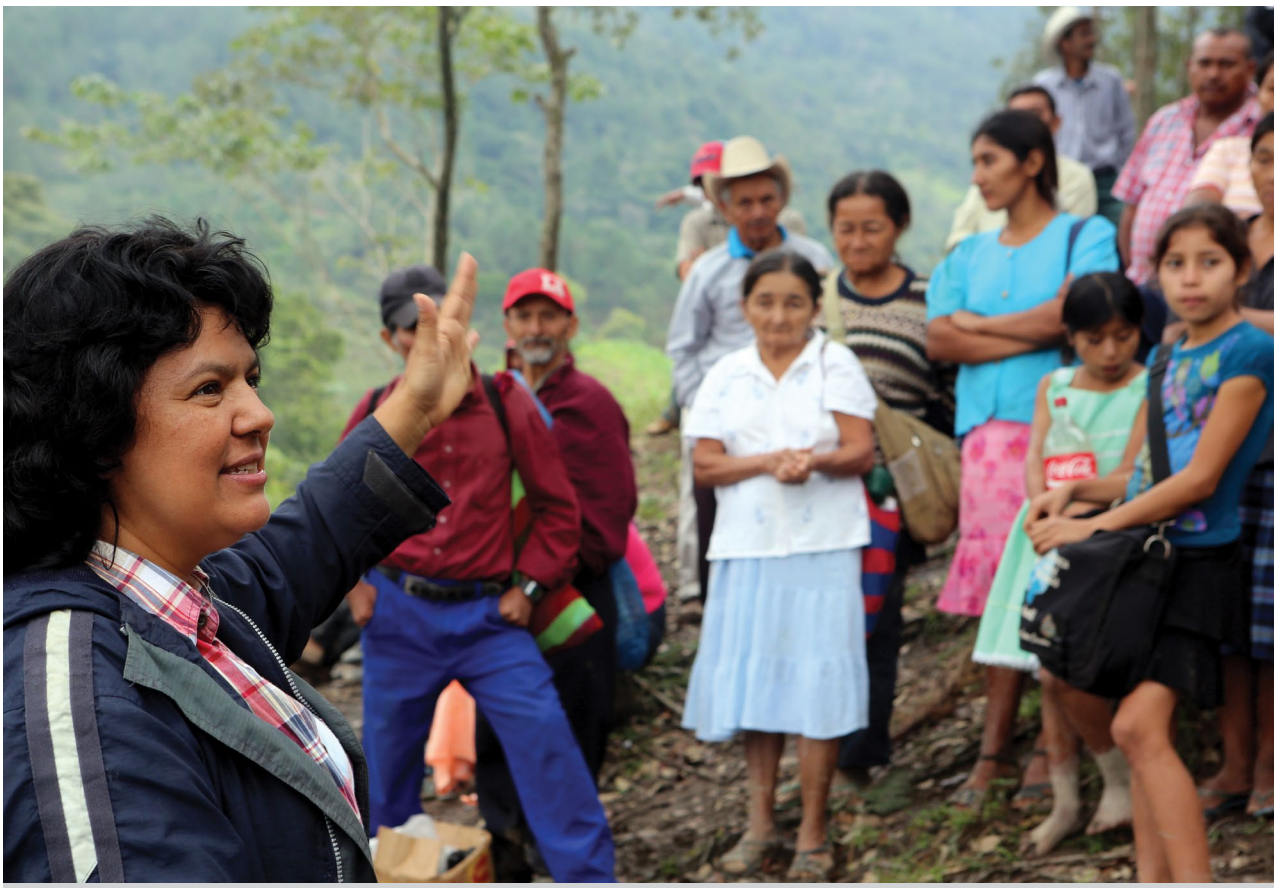
Cover – Villagers walk through recently cleared forest inside a HAGL rubber plantation in Cambodia in 2013.
At the time Deutsche Bank held US$4.5 million in shares in HAGL through its DWS Vietnam Fund Ltd. (© Global Witness)

Opposite page – A woman walks through a crop field in Myanmar's northern Shan State, home to numerous land grabs for rubber production documented by Global Witness. (© Global Witness)

Over recent years, there has been a huge increase in awareness over the role of companies and financial investors in driving the global land grabbing crisis and its negative impacts on local people and the environment. However, despite this improved understanding, the response from the regulators, as well as the corporations themselves, has so far been to focus on promoting voluntary standards and mechanisms as the solution.

Global Witness and Friends of the Earth Europe believe this voluntary approach is fundamentally flawed. This briefing paper provides evidence and analysis from the ground to demonstrate why robust, binding regulations are urgently required to address the problem of European corporate and investor involvement in projects causing land grabs, deforestation and human rights violations overseas. The introduction of mandatory solutions will not only reduce the harm caused, but help align European-based corporate and financial actors, and regulators, with EU commitments to human rights, development and climate change, while ultimately also making good business sense.





Berta Cáceres was murdered in March 2016 because of her opposition to a hydro-electric dam being built on indigenous land in Honduras. At the time the project was partly financed by the Dutch development bank FMO. (© the Goldman Environmental Prize)

1) BACKGROUND TO THE INVOLVEMENT OF EUROPEAN CORPORATIONS IN LAND GRABBING, HUMAN RIGHTS VIOLATIONS AND DEFORESTATION OVERSEAS

The global rush for land – driven by increasing demand for fuel, food, raw materials and financial speculation – is causing social and environmental havoc across the world. Land, as territory, is the world's ultimate finite resource. Since 2000, at least 38.9 million hectares of land in developing countries, an area just larger than the size of Germany, has been leased to companies, or is under negotiation.[1] This is driven by increasing global demand for biofuel and raw materials, and speculation on land and agricultural commodities.[2]

Globally, the UK, USA, Germany, Netherlands and France consistently rank high amongst countries involved in large-scale overseas agribusiness investments.[3] By the beginning of 2015 for example, the top EU-based financial institutions (including banks, institutional investors and alternative investment funds) had provided nearly US$18 billion in outstanding loans and recent underwriting services to foreign agriculture companies based in developing countries. EU financial institutions are also major holders of shares in stock-market listed agricultural companies based in developing countries; in early 2015 the top 20 institutional investors held US$2.8 billion.[4]

"Since 2000, at least 38.9 million hectares of land in developing countries, an area just larger than the size of Germany, has been leased to companies, or is under negotiation"

Although on paper these land investments often intend to have economic growth and food security benefits, in fact many can be described as "land grabs"; investments which cause significant environmental and social problems, violate human rights and are

Armed security guards at the dam project that Berta Cáceres campaigned against. Four suspects have been arrested in connection with her death – two linked to the dam company and two with ties to the Honduran armed forces. (© Global Witness)

undertaken without the consent of those negatively affected.[5] Significant areas of land are being handed over to commercial investors: approximately one fifth of farmland in Senegal and Sierra Leone, more than 30% in Liberia and an area equivalent to 74% of the available arable land in Cambodia has been acquired by companies.[6] The displacement of people from their land and source of livelihoods, ancestral territories, cultural and religious sites has both direct and indirect consequences, which are causing significant harm and social instability.

Furthermore, the production of agricultural commodities now supersedes logging as the leading threat to global forests,[7] predominantly driven by large-scale production of 'forest risk commodities' including palm oil, soy, beef, rubber and cocoa.[8] Within this global demand, a ground-breaking study by the European Commission in 2013 revealed that Europe itself was the largest net importer of so-called "embodied deforestation"[9] between 1990 and 2008, well ahead of North America or China.[10] Although China has since pulled ahead in terms of overall impact, the EU remains a far larger importer of embodied deforestation on a per capita basis.[11]

The negative social and environmental impacts caused by this large-scale grabbing of land and forests are compounded by governance failures. A World Bank study in 2012 revealed that during the escalation of global land grabbing in 2008-9, investors specifically targeted countries with weak governance, and where local peoples' land rights were not recognised or protected.[12] Meanwhile, research undertaken by Global Witness in Cambodia demonstrates how endemic corruption not only allows companies to grab land from local people with impunity, but that local elites are then able to manipulate judicial systems to prevent victims of these land grabs from gaining justice or redress after the fact.[13] It should come as no surprise therefore that many large-scale projects operate beyond the law. A study by Forest Trends in 2014 concluded that around half of all tropical deforestation since 2000 has been due to illegal

Cleovanci da Silva Lima stands where his brother Isídio Antonio was found dead on Christmas Eve in 2015. The leader of a smallholder farming community in the Brazilian state of Maranhão, Isídio had suffered years of assassination attempts and death threats for defending his land against the powerful landowners who have attempted to seize it to make way for ranches and plantations. (© Global Witness)

conversion of forests for commercial agriculture, and that approximately half of that area is now producing agricultural goods for export.[14] The in-country work of our own organisations echoes Forest Trends' findings in terms of the proportion of these operations which are illegal.

Such illegality comes in two forms. Firstly, illegalities in the licensing of such concessions. Almost all agribusiness concessions operate with some form of government permit, but these licenses can be fraudulently obtained or corruptly issued. Secondly there are illegalities in the operation of these concessions – even if the concession itself was legally obtained, there are numerous ways in which concessions operate against the law, such as companies ignoring provisions to protect the forest and consult with local communities, or ignoring requirements to undertake environmental and social impact assessments. Furthermore the problems of legality do not just relate to statutory laws; traditional and customary laws and tenure rights are frequently ignored too. As now recognised in international standards such as the Voluntary Guidelines on the Governance of Tenure[15], even if local peoples' and indigenous communities' land and resource rights are not recognised in statutory law, their legitimate customary tenure rights must still be protected.[16]

The agribusiness sector now stand in stark contrast to the extractives and forest sectors, in which there have been recent successes for the introduction of binding international regulations.[17] Consequently, in countries such as Cambodia, Myanmar, DRC, PNG and Honduras, where land grabbing is causing social and environmental devastation but the national rule of law is failing their citizens, the only current means of recourse for victims is international voluntary standards (such as the Voluntary Guidelines on the Governance of Tenure, the OECD guidelines, and the rai principles[18]), self-regulating industry round-tables, such as the Round Table on Sustainable Palm Oil, and ad hoc commitments by plantation companies.

Global Witness investigations in Liberia have shown how logging companies have systematically bypassed laws and environmental safeguards designed to protect forests and the communities that live in them. (© Global Witness)

2) KEY VOLUNTARY MEASURES AND MECHANISMS, AND THEIR FAILINGS

The voluntary and self-regulated initiatives relating to land grabs and deforestation take a number of forms, and operate in relation to a range of objectives. Some, such as the Roundtable on Sustainable Palm Oil (RSPO) and the Forest Stewardship Council (FSC), are made up of NGOs and private sector actors involved in palm oil and timber supply chains (respectively). Others, such as the UN Global Compact and the Extractive Industry Transparency Initiative (EITI), also include Governments.[19] In terms of what they certify companies to do, the RSPO and FSC are notable in that they have both recently upgraded their standards to include protection of legitimate land tenure rights holders. Others, such as the Equator Principles[20], are pegged to the environmental and social performance standards of the International Finance Corporation, and are therefore constrained by the speed at which that institution's standards are revised.[21]

Voluntary initiatives can provide a framework for private sector actors who have already decided to take steps to improve the sustainability, transparency and governance of their operations in specific sectors. In doing so, they can play a limited role in devising and strengthening international standards and norms. A good example is the RSPO, which includes a requirement that all communities potentially affected by palm oil projects have the right to be consulted in accordance with the principle of free, prior and informed consent, even though in international human rights instruments this right is only accorded to indigenous peoples.[22]

However, the rationale for creating such initiatives remains context specific. The EITI, for example, was deliberately created to enable corporations in the extractive industries sector to temporarily fill a governance gap in the countries in which they were operating.[23] In other cases, initiatives were created by industry actors, under the threat of regulatory controls. A recent report by the Royal Society for the Protection

of Birds (RSPB) described a classic example of this being " … tobacco and alcoholic beverage advertising, where voluntary schemes have been used as a tactic in seeking to avoid, or at least delay, the introduction of mandatory standards".[24]

The number of voluntary initiatives being implemented across the globe has proliferated in recent years. This is partly due to regulatory authorities taking deliberate steps to promote voluntary solutions instead of regulations, across a range of public policy sectors.[25] For example, the UK's National Audit Office stated in 2014 that "the government wants regulation to be considered only as a last resort, and has introduced and strengthened incentives for departments not to regulate and consider alternatives".[26] This position was reiterated at the EU level when former Finance Commissioner Jonathan Hill outlined in an April 2016 that Europe should not "over-regulate" its financial sector, but "work for a regulatory framework that delivers financial stability but which also recognises that without risk, we will not have growth".[27]

But the effectiveness of voluntary measures as an alternative to regulation is increasingly in doubt. A number of studies by the UN have highlighted how the UN Global Compact and Principles of Responsible Investment are barely implemented, and that agreeing to a principle of policy is not sufficient.[28] The UN Environment Programme (UNEP)'s Inquiry into the Design of a Sustainable Financial System concluded that although sustainability reporting has become the norm, such measures are not yet proven to have had any improvements in social or environmental performance on the ground.[29] Meanwhile the RSPB's comprehensive global assessment of the performance of voluntary approaches[30] found that the vast majority (82%) of these schemes performed poorly (both in levels of ambition as well as uptake), and for the majority of them, a lack of monitoring and reporting prevented any positive changes in behaviour from being identified. It concluded that "voluntary approaches are rarely if ever an effective substitute for regulatory or fiscal measures", highlighting in particular their inadequacy in dealing with the world's most pressing environmental and social challenges.

Research on the effectiveness of voluntary initiatives which specifically relate to land tenure risks suggests similar problems. Although there has been a proliferation in commodity and sector specific commitments and initiatives relating to agricultural raw materials in the last decade, this appears to have done very little to stem the global crisis in land grabbing – which has escalated during this same period. Even worse, corporate compliance with these voluntary initiatives (or even just the act of making a commitment to comply) has been given greater and more dangerous prominence.

A study by Dutch group Profundo in 2014 of six European-based institutional investors found a worryingly large number relying on clients to be certified or "committed to certification" through these voluntary schemes, instead of the investors developing and applying their own minimum environmental, social and governance (ESG) standards or screening procedures.[31]

Whilst voluntary schemes may play a role in some circumstances, they are clearly not enough when it comes to curbing corporate abuse of land tenure, human rights and the environment

In summary, whilst voluntary schemes may play a role in some circumstances, they are clearly not enough when it comes to curbing corporate abuse of land tenure, human rights and the environment. This is for two reasons. Firstly, such voluntary schemes that only attract companies and investors already willing to behave responsibly. As such, they are unable to force irresponsible actors to comply with their standards.

Secondly, there are a number of key weaknesses in the basic operations of these mechanisms, including significant gaps in the scope of existing voluntary initiatives, inadequate monitoring and reporting systems, and a general inability for these initiatives to be accessible to, or provide access to justice for, communities negatively affected by harmful investment decisions. These weaknesses are explored in more detail in the following section.

Curica mourns her husband Raimundo Chagas, who was assassinated in front of their 12-year-old son. The Brazilian state of Maranhão has been targeted by powerful landowners who have attempted to seize the land to make way for ranches and plantations. (© Global Witness)

a) Weak recognition of land tenure risks in the principles guiding these initiatives

Apart from the inclusion of free, prior and informed consent within the RPSO mentioned above, an independent review of the extent to which land issues are included in voluntary standards for investment in agriculture concluded that recognition was weak and generic, if the term "land" was mentioned at all.[32] Commodity sector standards, such as FSC, do usually include a requirement of clear proof of land rights being obtained, make reference to indigenous peoples' land rights, and avoiding land conflicts. However, out of the four globally recognised financial sector standards – the UN Global Compact, UN PRI, the Equator Principles and UNEP Finance Initiative – only the Equator Principles made any mention of land issues, and this was only due to their being pegged to the IFC's performance standards.[33]

b) Inadequate monitoring and reporting of implementation

Too many initiatives focus overly on setting elaborate standards, without considering the reporting and monitoring systems for demonstrating their implementation. The Equator Principles, UN Global Compact, and Global Reporting Initiative are all examples of mechanisms which do not require members to report on implementation and therefore the progress towards the standards and impacts on the ground are very difficult to measure.

Not only does poor reporting and monitoring by corporate members of such initiatives prevent communities affected by their operations on the ground from accessing vital information, the lack of transparency also prevents these initiatives from being able to measure or promote their own success. The RSBP assessment observed that "For the vast majority of schemes assessed it was not possible to attribute

any of the observed changes in performance to the schemes themselves due to insufficient monitoring and reporting, the presence of confounding factors and difficulty in identifying what would have happened in their absence".[34]

c) No complaints mechanisms and limited, or non-existent, sanctions

Connected to the problem of poor reporting and inability of an initiative and its members' to demonstrate success is the fact that many of these initiatives have no means of sanction when members fail to meet their commitments. For example, not one of the Equator Principles, UN Global Compact, the RSPO nor the Global Reporting Initiative have any mandate to take action in such cases. Meanwhile, while initiatives such as the FSC and Bon Sucro[35] do have offices tasked with investigating violations by members of their standards, even in the worst cases they cannot do more than suspend or end membership, an act which may do little to significantly improve operations on the ground.

The global multi-stakeholder initiative considered to be most robust in terms of compliance is the EITI, which aims to improve transparency of revenue payments by companies to governments from oil, gas and mining projects.[36] The multi-stakeholder membership of this initiative means that its global governance structure of government, company and NGO representatives are replicated at the national level for all countries which have committed to implement the initiative. Governments lead on the implementation of this initiative and although voluntary to join, the progress of each candidate country towards compliance with the initiative's aims is overseen by the Board according to a strict timeframe. Countries failing to meet these targets are disqualified, for example Central African Republic, Indonesia, Azerbaijan, Tajikistan, Tanzania and Yemen.[37]

d) Initiatives failing to engage or be accessible to local communities

NGOs have pointed out that the RSPO complaint mechanism, for example, is not easily accessible to communities. It is extremely rare that communities activate the process without the help of local, national or international NGOs.[38] There are several reasons for this. First, communities are not adequately informed about the RSPO mechanism, its standards and their rights. Technical terms and the language are also significant barriers for local communities to make a complaint to the Panel. Finally, conflict resolution processes require the parties to dedicate a significant amount of time, financial resources, legal and technical expertise.[39] As a result, it is almost impossible for communities to undertake the process without any help, especially when facing companies. Thus, this means that only a small number of communities have effectively used their right to seek redress through the RSPO complaint mechanism.

3) WHY REGULATIONS ARE NEEDED

Put simply, if the plethora of voluntary initiatives designed to help companies behave responsibly, protect the environment and respect human rights were fit-for-purpose, we would not have seen the land grab phenomenon reaching such a global crisis. The RSBP assessment concluded that "for public policy, relying on voluntary action alone is likely to be insufficient in seeking to tackle our most pressing social and environmental challenges".[40] There will always be companies who individually decide to become progressive outliers – leaders in the field of responsible operations – and their actions should be applauded. For the rest, what the failure of voluntary initiatives demonstrates is that the attraction of the voluntary commitment to improvements, the "pull" is not enough; they need a "push" instead.

This "push" – regulatory requirements – is coming from those arguing from ethical economic and social perspectives. UNEP's Inquiry into a Sustainable Financial System worked under the assumption that if the financial sector continues to develop according to a business-as-usual approach, negative environmental outcomes will increase rapidly and such externalities might reduce efforts to tackle poverty and climate change globally.[41]

It is also a business case argument. The failure of these voluntary initiatives is not just problematic in terms of the devastating human rights and environmental

In recent years roughly 12 per cent of Papua New Guinea has been annexed to timber and palm oil companies using a leasing system intended for small-scale agriculture. Many of these leases have been used for industrial logging rather than their intended purpose to promote agricultural development, contributing to the wholesale destruction of rainforests of global importance. (© Global Witness)

impacts on the ground; their failure is also causing material risks to the corporations involved. In 2012, research demonstrated that the financial risks for companies posed from not addressing land tenure are multiple, including from a delay in construction and cash flow losses due to suspension.[42] The escalation of such risk can be extremely rapid and irreversible, with the report concluding that the average global operating costs of a three-year investment of around US$10 million could be as much as 29 times higher than normal if the project were forced to stop its activities because of local opposition. The same group of researchers were responsible for an assessment in 2014 of 73,000 mining, oil and gas, logging and agribusiness concessions in eight tropical forested countries, which found that 93% of them involved land already inhabited by indigenous peoples and local communities.[43] A 2014 World Bank and UNCTAD study found that whilst "initial consultations [with local communities] proved time consuming" … "attempts to short-cut these processes ... led to negative long-term ramifications, for both the business and for local communities, over a protracted period".[44]

Social and environmental regulations for financial institutions are gaining traction around the world; potentially leaving the EU behind. Brazil, China, Bangladesh, Nigeria, Indonesia and Peru have all moved to introduce social and environmental risk management and reporting requirements on banks and in some cases other financial institutions.[45] Meanwhile in May 2015, France adopted an Energy Transition Law, which requires that the annual reports of investors should include information about how their investment decision-making processes consider ESG issues.[46] Further to this, just under 12 months later the French National Assembly adopted a legislative proposal on parent company duty of care (devoir de vigilance).[47] By embedding this obligation to develop vigilance plans – plans to ensure due diligence throughout companies' operations – the law would make certain that large French companies are responsible for their impacts, in France and in their value chain.

Social and environmental regulations for financial institutions are gaining traction around the world, potentially leaving the EU behind.

The "direct link" between the financial sector and the adverse impacts of the projects they invest in was also recently recognised by the OECD's Working Party on Responsible Business Conduct in 2014, which recommended that: "Financial institutions, like any other MNEs, should thus avoid causing or contributing to adverse impacts, and seek to prevent or mitigate those impacts when their operations, products and services can be directly linked to them by a business relationship".[48]

Government regulatory intervention for this is being called for by key leading members of the financial sector, such as Aviva: "We see the primary failure of the capital markets in relation to sustainable development as one of misallocation of capital. This in turn, is a result of national governments' failure to act properly to ensure environmental and social costs are reflected in companies' profits and loss statements. …Until these market failures are corrected through government intervention of some kind, it would be irrational for investors to incorporate such costs since they do not affect financial figures or appear on the balance sheet, therefore affecting companies' profitability."[49]

"We see the primary failure of the capital markets in relation to sustainable development as one of misallocation of capital. This, in turn, is a result of national governments' failure to… ensure environmental and social costs are reflected in companies' profits and loss statements" – Aviva

The transition from voluntary initiatives to regulatory ones governing a specific industry has already been made in comparable natural resource sectors, or other supply-chains involving international players. We have seen for example the initial voluntary commitment to revenue payment transparency under the EITI become binding regulations for companies within the mining, oil and gas sectors, first in USA and now under European law. Likewise initially voluntary commitments to undertake supply chain due diligence made by companies involved in the mining and trade of minerals from conflict areas also became law in the USA in 2012.[50] Similar legislation on conflict minerals was proposed by the European Parliament in June 2015, and is now being negotiated with the Council and Member States. Regulations within Europe and USA to stop the trade of illegally sourced timber into the region are argued by some to have also followed on from voluntary commitments and certification schemes which had come first.[51]

The call for a more robust regulatory framework to curb corporate abuse is growing across the globe. On 26 June 2014, the UN Human Rights Council adopted Resolution 26/09[52], which calls for the elaboration of a legally binding instrument on transnational corporations with respect to human rights. This historic decision means that international human rights law will for the first time apply to the activities of transnational corporations and in 2015 so far, efforts have focused on discussing the proposed content, scope nature and form of the treaty. Although the European Parliament has recommended EU engagement in this process,[53] other European institutions (for example Commission and Council) have so far been slow to respond.

"COMPLY OR EXPLAIN" MECHANISMS – A TOOL FOR IMPLEMENTATION OR A LOOPHOLE?

Recent changes in Europe have strengthened corporate reporting requirements relating to social and environmental impacts, for example the 2014 Non-Financial Reporting Directive.[54] Whilst welcome, compliance with these requirements are tempered due to companies being given the choice of either fulfilling these reporting requirements, or simply explaining why they have not done this; the so-called "comply or explain" mechanism.

An example of corporate reporting regulation which uses the "comply or explain" mechanism is the UK's Stewardship Code, introduced in 2010.[55] Despite some improvements in reporting as a result of this Code, many laggards in the UK's investment sector are resisting becoming more transparent, responsible or engaged. A survey of FTSE 350 companies found that 39% failed to either "comply" with the Code or "explain" why they are not following it.[56] One reason for this is that the Financial Reporting Council does not have adequate enforcement powers to take these laggards to task. In comparison, the Swedish Corporate Governance Code implements these requirements through a much more robust mechanism, in which companies need to clearly state that it has not complied with the rule and why.[57]

4) RECOMMENDATIONS

Civil society organisations, lawyers and academics have been pursuing various options for strengthening the regulatory framework governing European-based entities involved in land grabbing and deforestation activities overseas. This includes both regulations within the existing Parliamentary and Commission's objectives, as well as exploring opportunities for entirely new and dedicated regulatory systems. The recommendations given below cover regulatory options targeting companies involved in the supply chains of agribusiness commodities, as well as regulations specifically targeting financiers of such projects.

a) Company-focused regulations

The EU is able to regulate how companies registered within its jurisdiction operate, even when overseas, in three key ways. The first is to legislatively require companies to follow the law in Europe, regardless of where they operate. This follows the model of the UK and the USA, both of which require companies overseas to follow national anti-corruption legislation.[58]
The second regulatory route focuses on reporting requirements companies have to fulfil, as part of their corporate registration, for example with the UK's Company House, or the Frankfurt Stock Exchange.[59] Thirdly, would be the introduction of mandatory human rights due diligence (namely a legal obligation on companies to identify, prevent, mitigate, and account for their human rights impacts) and steps taken by EU regulators to improve access to justice for victims of corporate abuses (measures to make it easier for victims to bring a company to court in its home state).

In terms of the second option, such a change could be achieved through revisions to the Non-Financial Reporting Directive (2014/95/EU[60]), to explicitly include land grabbing and deforestation risks in the non-financial key performance indicators; and to the Accounting Directive (2013/34/EU[61]), to expand the scope of companies required to report on revenues paid to governments to include the agribusiness sector (as well as extractive industries and forestry, as currently applied).

b) Financial investment-focused regulations

As has been outlined above, European banks, private equity and other financial institutions are significant investors in companies involved in land grabs overseas. European financial regulations are issued and governed

through three different regulatory authorities – the European Banking Authority, the European Markets and Securities Authority and the European Insurance and Occupational Pensions Authority. Within this regulatory framework, banks are relatively more regulated, but in fact it is private equity (governed by the European Markets and Securities Authority), that is an increasingly important conduit for investors in the land and agribusiness sectors.

European NGOs are addressing the lack of current regulation of financiers through a three tier strategy:

1. Using current and upcoming EU legislation as an opportunity to introduce (or strengthen) measures relating to how environmental, social and governance factors are taken up by financial sector actors. Examples of this work are our engagement[62] with revisions to the Shareholders Rights Directive, the Pension Funds Directive (IORP II), as well as our contributions to the development of the Capital Markets Union initiative and Action Plan.[63]

2. Campaigning for the introduction of entirely new European regulation that specifically addresses the gaps in risk management, due diligence and transparency reporting frameworks required of the financial sector, which would prevent investors from becoming involved in projects overseas that cause social or environmental harm. Such regulation would specifically be comprised of the following binding requirements on investors:

   a. undertaking robust due diligence which explicitly assesses the environmental, social, human rights and governance risks of current and future land-tenure related holdings;

   b. developing an engagement policy with those they invest in, which in turn requires companies to assess the environmental, social, human rights and governance risks of such projects and take steps to mitigate those risks;

   c. publicly disclosing their exposure to environmental, social, human rights and governance risks and how such risks are being managed, through the engagement policy as well as annual reporting systems.

3. Supporting the work within the UN Human Rights Council to adopt a binding treaty for businesses in relation to human rights, including considerations of the liabilities of both companies and financial investors for involvement in projects which violate such rights and potential mechanisms for accountability and redress.[64]

Our overall proposed regulatory solution for financial investors in companies which are involved in land grabbing overseas is a binding requirement that only legally compliant agribusiness concessions should be eligible for investment. This requirement would cover both statutory laws, as well as customary laws and international human rights law, which would mean that an agribusiness concession which has been allocated in accordance with statutory laws should not be considered legal if it still is violating customary laws of local affected communities. Therefore, the basic legal requirement would need to be verified by improved due diligence to ensure customary laws are also being followed, and supplemented through regular public disclosure.

5) CONCLUSIONS

NGOs and social movements in both the global north and south have been very successful in exposing and campaigning to end the destructive environmental and social effects of corporate land grabbing, as well as the role of European investors in providing financial services to these companies. One significant change as a result of this work is the expansion of voluntary standards and codes of conduct, such as the introduction of the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Forests and Fisheries, in 2012.

However, not only are actors in the corporate and financial sectors embracing this system of voluntary and market-driven measures; unfortunately the approach has also been adopted by European policy and law-makers.

But we believe the evidence from the ground suggests

this voluntary approach is inherently flawed – and is doing little to prevent those who make such commitments from continuing to be involved in destructive projects. The urgent challenge of land grabbing globally, and its associated environmental and social harm, deserves a robust response from regulators. This does not just make business sense, but ensures European-based corporate and financial actors, and regulators, are aligned with European commitments to human rights, development and climate change.

ENDNOTES

1. Based on the most up to date information available in the Land Matrix database: http://www.landmatrix.org/en/

2. Anseeuw, W., L. Alden Wily, L. Cotula, and M. Taylor. (2012): Land Rights and the Rush for Land: Findings of the Global Commercial Pressures on Land Research Project. ILC, Rome; available for download at:http://www.landcoalition.org/sites/default/files/documents/resources/ILC%20GSR%20report_ENG.pdf

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4. FERN (2015) Clear Cut: Making EU Financial Institutions work for People and Forests, March 2015. Available for download at: http://www.fern.org/sites/fern.org/files/Clear Cut.pdf

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7. Noriko Hosonuma, et al., An assessment of deforestation and forest degradation drivers in developing countries, Environ. Res. Lett. 7 (2012) (finding that timber extraction and logging is the primary driver of the degradation of forests worldwide, while commercial agriculture is the leading cause of global deforestation). Broken down regionally, available at http://www.stacks.iop.org/ERL/7/044009

8. While the EU Forest Footprint study estimated that 53 per cent of global deforestation experienced between 1990 and 2008 was due to agricultural expansion, a 2012 study produced for the British and Norwegian governments, using a different methodology and covering a different period (2000 – 2010) estimated that agriculture was responsible for about 80 percent of deforestation. Gasbrielle Kissinger, Martin Herold and Veronique de Sy, Drivers of Deforestation and Degradation: A Synthesis Report for REDD+ Policy-Makers (Extreme Consulting, August 2012): https://www.gov.uk/government/publications/deforestation-and-forest-degradation-drivers-synthesis-report-for-redd-policymakers. Other studies indicate that agriculture accounts for around 73 per cent of all deforestation across tropical and sub-tropical countries, with other causes making significantly smaller contributions – mining (7%), infrastructure (10%), urban expansion (10%), and other activities (10%). Hosonuma, N. et al, An assessment of deforestation and forest degradation drivers in developing countries (IOP Science, October 2012); Union of Concerned Scientists, The Root of the Problem: What's driving tropical deforestation today? (June, 2011), available at http://www.ucsusa.org/assets/documents/global_warming/UCS_RootoftheProblem_DriversofDeforestation_FullReport.pdf

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global witness

Global Witness investigates and campaigns to change the system by exposing the economic networks behind conflict, corruption and environmental destruction.

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