

TIAA's Accumulation of Farmland Is **Not Responsible**

By Doug Hertzler, Ph.D., Senior Policy Analyst in land rights and agriculture, ActionAid USA, and Jeff Conant, Senior International Forests Program Manager, Friends of the Earth US



TIAA's Accumulation of Farmland Is Not Responsible: An analysis of gaps between TIAA standards and normative human rights standards

By Doug Hertzler, Ph.D., Senior Policy Analyst in land rights and agriculture, ActionAid USA, and Jeff Conant, Senior International Forests Program Manager, Friends of the Earth U.S. Thanks to Elizabeth Umlas for editorial review and contributions.

Cover image: Monoculture crop in Mato Grasso, Brazil.
Credit: Fabio Erdos/ActionAid.



Actionaid USA and Friends of the Earth United States, 2020.

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Context: TIAA's Responsibility in Light of Human Rights Norms

TIAA's "Responsible Investment in Farmland" report series highlights the fact that in 2011 TIAA was one of a group of businesses that developed the Principles of Responsible Investment (PRI) Farmland Guidelines, which are supposed to guide institutional investors who wish to invest in farmland in a responsible manner. These guidelines were originally called the "UN Principles for Responsible Investment in Farmland."¹ However, the misleading original name hides the fact that while the businesses came together under UN auspices, the private sector signatories developed these principles primarily to further their investment interests, and *they are not explicitly tied to human rights and other international law.*

At the same time that TIAA and other investors were drawing up the PRI guidelines to justify their interest in acquiring farmland, the member nations of the United Nations Committee on World Food Security (CFS) were engaged in a longer process of consensus building to write a stronger universal set of guidelines. The negotiations at the CFS involved both private sector representatives and civil society, Indigenous peoples, farmers' organizations, consumer groups, women's organizations and others. In 2012 the consensus of these groups and over 124 member countries resulted in the "Voluntary Guidelines for the Governance of the Tenure of the Land Fisheries and Forests."² These CFS Tenure Guidelines (also known as the VGGTs) constitute international "soft" law that is based in "hard" human rights law to guide how tenure rights to land, fisheries, and forests should be governed. The CFS Tenure Guidelines include guidance on large-scale acquisitions by investors.

TIAA's reporting on its "responsible" investment in farmland has thus far failed to mention the human rights-based CFS Tenure Guidelines. These guidelines are "voluntary" in the sense that countries voluntarily endorse and decide how they will apply them, *but following the underlying human rights law is an international obligation.* TIAA's use of the more simplistic PRI guidelines and the failure to utilize the CFS guidelines can be interpreted as an attempt to ignore the significance of the UN's human rights-based guidelines for their agricultural investments.

Notably, this puts TIAA out of step with several developments in global norms: 1) the increasing uptake of soft-law instruments by business, primarily through endorsement of the UN Guiding Principles on Business and Human Rights (UNGPs); 2) growing pressure on institutional investors to do the same, primarily expressed in the OECD Guidelines for Responsible Business Conduct by Institutional Investors;³ and 3) the fact that several large multinational corporations, including Nestlé, Coca-Cola, Pepsi, and Unilever, have endorsed the use of the VGGTs⁴ (though their implementation may be questionable).

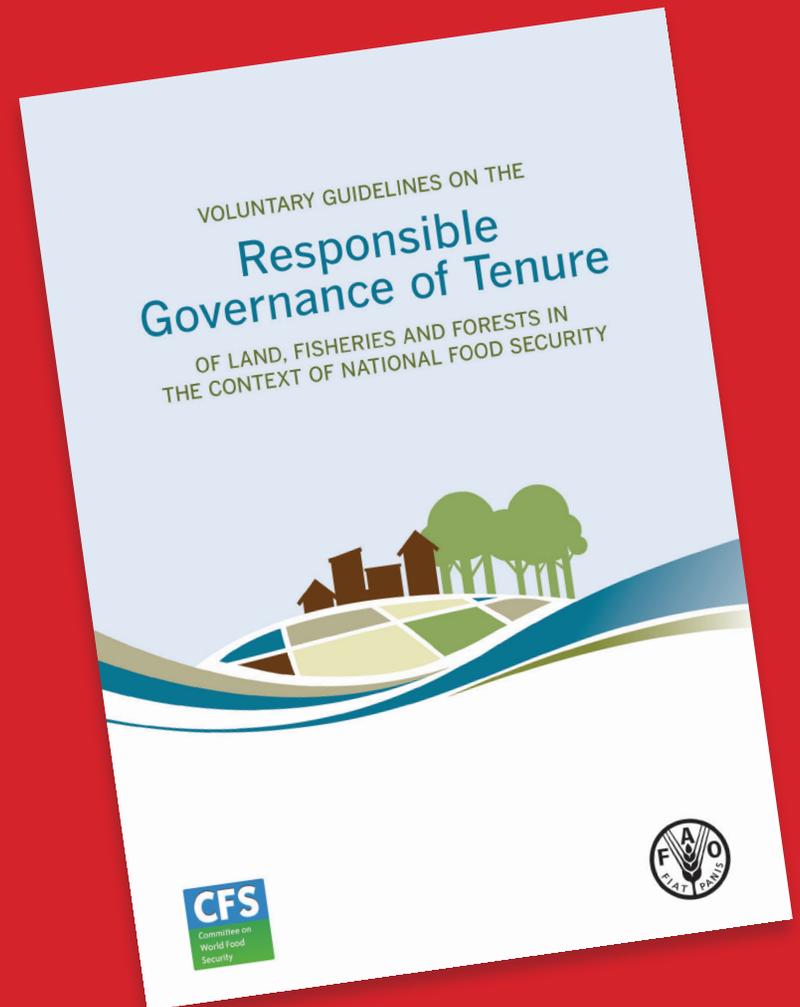
Applying the UN CFS Tenure Guidelines to TIAA's investments

The most critical point of the UN CFS Guidelines is that land rights for vulnerable and marginalized people, especially women, must be emphasized in tenure governance as part of the obligation to realize the Human Right to Food (Sections 1.1, 3B.3-4).

By accumulating land in Brazil in regions where there are movements of landless rural people and where land rights are contested, TIAA is driving land-grabbing and undermining responsible land tenure governance. This impedes the realization of the Right to Food of poor Brazilians who seek land to grow food and create livelihoods.

According to the UN CFS Guidelines which Brazil and the United States have endorsed, states should recognize all legitimate tenure rights holders, including when their rights are customary or informal. This includes shared, overlapping, and periodic rights (Sections 3.1, 7.1 and 20.3). Furthermore, *states should prevent the negative impacts of large land deals on the Right to Food, promote alternatives, and consider limits* (Section 12). Additionally, the UN CFS Guidelines outline ways in which the redistribution of land can be undertaken in order to facilitate broad and equitable access to land, to realize the Right to Food, and to benefit the landless (Section 15). While states have the responsibility to carry this out, responsible investors should not undermine the way forward in meeting these human rights obligations.⁵ TIAA has quite clearly done so in Brazil, not only by accumulating land in zones of conflict and buying land from businessmen with a history of illegal land deals, but by finding loopholes in a Brazilian law which was intended to prevent the large-scale accumulation of land by foreign investors. This makes it more difficult for Brazil to address its problems of land tenure conflict, inequitable access to land, landless rural people, and ultimately the Right to Food.

The UN CFS Tenure Guidelines also recognize that Indigenous people have the right to give or withhold Free, Prior, and Informed Consent (FPIC) over projects that affect their lands, and all communities should be given similar protections with the participation of women and marginalized people (Sections 3B.6, 5.5, 9.9, 12.7). FPIC is enshrined in international law (ILO Convention 169) and in soft law (UN Declaration on the Rights of Indigenous Peoples). As such, FPIC is at base an obligation of states, but FPIC is emerging as an international norm and therefore must also be respected by business. Former UN Special Rapporteur on the Rights of Indigenous Peoples James Anaya has said that where states have failed to obtain FPIC, businesses should not proceed. In contravention of this normative standard, TIAA is acquiring land in Brazilian states where Indigenous peoples, traditional communities, and women are contesting the loss of land and erosion of land rights. TIAA has not provided evidence that they have consulted, received consent from, or taken into account concerns about their projects from affected communities and groups.



Failing to meet the PRI Farmland Guidelines

As noted above, the PRI Principles for Responsible Investment in Farmland⁶ *are not explicitly tied to human rights and other international law* – and in fact are not associated with the United Nations beyond the fact that PRI was originally convened under the auspices of the United Nations. While they were developed with support from UN programs such as the UN Global Compact and UNEP Finance Initiative, the PRI Farmland Guidelines were never subject to an in-depth negotiation process in the manner of the CFS Tenure Guidelines, and they do not have the endorsement of UN member countries or civil society organizations. As a standard for judging whether TIAA is acting responsibly in farmland acquisition, they are therefore in no way comparable with global norms associated with UN processes. With regard to land tenure, the CFS Guidelines (VGGTs) should be the standard.⁷ However, it is possible to use the PRI Farmland Guidelines to show that TIAA is falling far short of meeting even its own standards. These guidelines made by the companies seeking to acquire farmland cover five areas: environmental sustainability, labor and human rights, respect for existing land and resource rights, business and ethical standards, and reporting on progress. In the section that follows, we review each of these five areas.



Environmental Sustainability



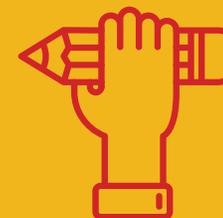
Labor and Human Rights



Respect for Existing Land and Resource Rights



Business and Ethical Standards



Reporting and Progress

1. Environmental sustainability



The large-scale farms formed by TIAA's land acquisitions are by the very nature of their scale – and their management by large-scale farm operators – unsustainable. Farmland varies greatly in soil composition, topography, water drainage, and existing vegetation over small areas. Sustainable management requires agro-ecology, which includes personal knowledge of the land, attention to detail, and use of varied cultivation and conservation techniques over small areas. Attention to ecological processes, maintenance of biodiversity, and crop rotations are used to maintain soil fertility, productivity, and to sustain livelihoods over multiple generations. While smaller-scale farms do not guarantee sustainable management, best management practices and agro-ecological approaches are possible only on smaller-scale farms.

Large-scale farms, including those assembled by institutional investors, focus on profitability over only a few years. They destroy biodiversity by planting a single crop such as corn or soybeans over large areas with relatively little crop rotation. They often ignore or disrupt the contours of different soil types and waterways. They generally use uniform and extensive spreading and spraying of chemicals to control pests and stimulate crop growth. They require large machinery and high use of petroleum fuels and associated emissions. Standardized practices are substituted for intimate knowledge of the land and its ecology. Because TIAA does not report the exact location of its farms or the exact practices and chemicals used on each, we cannot directly assess the practices of its farm managers. While there may be better or worse practices in large-scale farming, growth in farm size cannot be considered sustainable for the environment or communities – in Brazil, the United States, or other countries. Furthermore, TIAA's latest farmland reporting guidelines require that farm managers have equipment capable of variable spraying and that they test the soil. However, *it does not require that they meet any particular standards of good chemical use or maintenance of soil quality, or even report on the results of soil tests.*



2. Respect for labor and human rights



As the CFS Tenure Guidelines (VGGTs) acknowledge, systems of land tenure involve risks to the Human Right to Food because of the potential lack of access to and control over land and livelihoods. The PRI Farmland Guidelines state that “depending on location,” investment managers should implement policies to respect the rights of Indigenous peoples and vulnerable groups. In Brazil there are many vulnerable groups, including Indigenous peoples and movements of landless workers, who are struggling to obtain land rights, including groups in the states where TIAA is acquiring land. TIAA’s entry as a major player in acquiring land stimulates speculation in land markets and undermines the ability of vulnerable groups to acquire land, as well as the ability of the state to address landlessness and protect the Right to Food. In the United States, TIAA’s land acquisitions reduce access to land for young farmers, immigrants, and farmers of color. The concentration of landholdings hurts rural communities through increasing scale of mechanization and elimination of farming livelihoods, as well as the elimination of the local businesses that serve small farms. Because TIAA does not reveal the exact location of its farms, it is impossible to evaluate either the impact on the Right to Food or the labor practices of its farm managers in an industry that is notorious for labor rights violations.



“By buying land in the states where land rights remain contested, TIAA is increasing the demand for land for large soy plantations and impeding the efforts to resolve these land conflicts.”

3. Respect for existing land and resource rights



The PRI Farmland Guidelines state that affected communities should benefit from “Free, Prior and Informed **Consultation**” before the implementation of any project that may have an adverse effect. Large-scale farming projects can be assumed to have many potential negative impacts, yet we have no evidence that TIAA has carried out participatory community consultations. Furthermore, this guideline falls short of the Free, Prior, and Informed **Consent** that is required by human rights law for any project affecting Indigenous communities. Indeed, the use of the term “consultation” rather than “consent” is a deliberate erosion of the intent of the FPIC principle as developed in the UN Declaration on the Rights of Indigenous Peoples.

Land rights in several states in Brazil where TIAA is acquiring land are highly contested. The possession of titles in these regions is insufficient to prove that existing land rights have been respected, because titles were often issued in corrupt processes which ignore the “legitimate tenure rights” that should be protected by states that endorse the CFS Tenure Guidelines.

For example, when public lands were titled to large land owners in the four states of the MATOPIBA region in Brazil, Afro-Brazilian communities and Indigenous peoples were dispossessed of land they had legitimate claims to. This includes the claims made by Afro-Brazilian women to babassu palm groves where they have harvested and processed nuts for centuries. Several jurisdictions in the MATOPIBA region have recently moved to protect these groves and ensure that the women have shared land-use rights along with those who received title to the lands for cattle ranching and other purposes. However, these claims and shared rights are still contested in many places, and they are threatened by the expansion of soy farming, as the current title holders seek to sell the lands to investors like TIAA.⁸ By buying land in the states where land rights remain contested, TIAA is increasing the demand for land for large soy plantations and impeding the efforts to resolve these land conflicts.

4. Uphold high business and ethical standards



Research has shown that TIAA acquired land from Euclides De Carli, a figure accused of land-grabbing and acts of violence.⁹ In 2016, De Carli had 15 land transactions blocked by a court due to suspected improprieties.¹⁰ In buying land from De Carli, TIAA failed to undertake reasonable due diligence regarding land use rights. A buyer who receives property from someone known to have a practice of stealing it is normally seen as an accomplice. Returning to a normative context, a fundamental principle of the UN Guiding Principles on Business and Human Rights is the need for business enterprises to carry out human rights due diligence. As uptake of the GPs spreads and is incorporated into hard law (as is happening with mandatory human rights due diligence legislation in Europe, for example), the failure to carry out due diligence will no longer be accepted as an excuse.

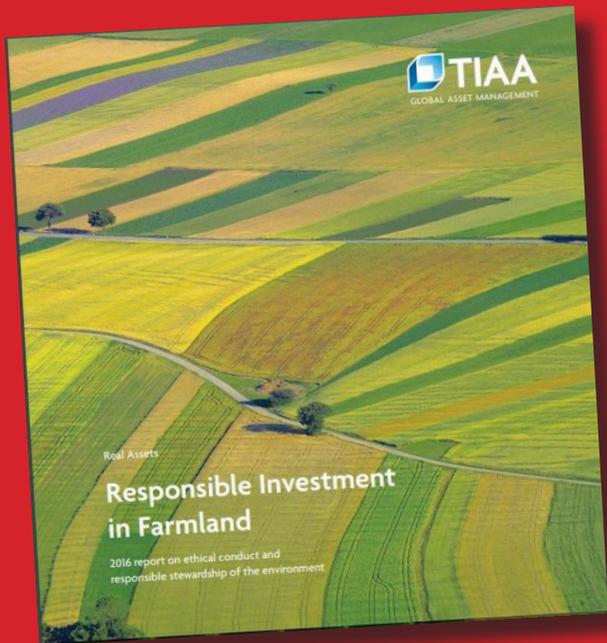
Also unethical were the actions taken by TIAA to use the partners and subsidiaries (COSAN and Radar) to circumvent the intent of Brazilian law, which was to prevent large-scale accumulations of land by foreign companies. The intent of the law was to allow Brazil to address its problems with land inequality and the need to carry out agrarian reform for the benefit of the landless (measures backed by the CFS Tenure Guidelines). Through its actions, TIAA may have violated Brazilian law, and at the very least behaved unethically in trying to circumvent it. Furthermore, TIAA undermined policy agendas intended to address poverty and landlessness.

In May 2019, Senator Bernie Sanders highlighted the need to *“strengthen oversight of foreign acquisitions of American farmland in order to prevent that farmland from being controlled by foreign governments and foreign corporations.”* **It is notable that the main conduit for foreign entities to buy into U.S. farmland is through U.S. financial companies.** TIAA itself manages funds for a number of international entities which are specifically invested in its farmland funds – meaning that TIAA is a primary agent for foreign investment into U.S. farmland. Pointing out that *“about 2% of our national total of 930,000,000 acres, is in foreign hands, and the pace of investment seems to be picking up,”* Senator Sanders argues that *“This is a national security issue, and we must treat it like one.”*¹¹

To flip that equation and view it in its ethical dimension, the practice of U.S.-based investors acquiring farmland in other countries should be viewed with the same concern as foreign acquisitions of farmland in the U.S. At minimum, the practice should be subject to rigorous oversight; at best, it should be prohibited altogether.

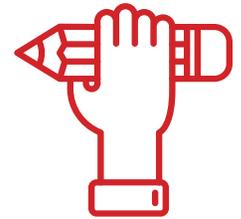


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Above: 2016 TIAA report entitled “Responsible Investment in Farmland”. TIAA’s image of sustainable farmland appears to be a machine-manicured landscape of monoculture crops that largely ignore the contours of the land.

5. Reporting on activities and progress



By failing to provide real transparency about its farmland acquisitions and the exact locations of its farms, TIAA makes its reporting largely meaningless. There is no means for independent verification of TIAA’s claims. TIAA needs to provide this information so that communities can be interviewed and farming operations observed. However, even the reporting that has been done shows a lack of awareness of the concerns about community impacts of large-scale land accumulation. Research by social scientists going back to the 1940s in the United States has shown the negative effects of large-scale farms on the economic and social life of rural communities.¹²

This lack of awareness is demonstrated in TIAA’s materials for investors. For example, the cover of the 2016 TIAA report entitled “Responsible Investment in Farmland” shows a machine-manicured landscape of thousands of acres of monoculture crops that largely ignore the contours of the land. The farm photo shows only a small remnant of forest and no human habitation.¹³

TIAA's farmland maps

In a gesture toward transparency of its investments in land, TIAA has posted maps on its website that intend to show where the firm and its subsidiaries own farmland, and what is being produced on that farmland. Unfortunately, TIAA's maps leave much room for interpretation, including the issues most crucial to social responsibility, such as production methods, deforestation, and any land conflicts that may involve the firm's properties. This failure of transparency is clearly not due to the lack of available data; indeed, while TIAA gives little detail on their farmland holdings, it provides detailed maps with Google street views for its commercial, residential, and other land holdings.

TIAA's farmland [maps](#) show the county, the crop, the rainfall, and the tillable acres, but they lack any detailed information that would allow for an independent assessment of the environmental and social management of the land.

Knowing from [this map](#), for example, that Radar I owns and/or manages a property of 5,831 acres of soy in Diamantino County tells stakeholders nothing about current or historic deforestation patterns, agrochemical usage, crop rotation patterns, water and soil management, labor and mechanization, let alone the title history and potentially conflicting claims to the property.

This is far from best practice and serves at best to provide an illusion of transparency without providing any information of significant use. In contrast, to take one example, [Farmland Partners](#) provides maps of all its properties, with detailed aerial maps and soil maps as well as ownership information.

In the palm oil sector, where civil society efforts have succeeded at securing progressively improving transparency and supply chain traceability, current best practice in disclosure is significantly more robust than what TIAA is undertaking regarding its own properties. As is true also for soy and sugar cane production, many

of the palm oil industry's most significant impacts occur in new land development; consequently, best practice, as articulated in the 2017 *Reporting Guidance for Responsible Palm Oil* (Ceres et al.), requires that companies demonstrate that development does not take place without the Free, Prior, and Informed Consent (FPIC) of local communities, nor with the clearing of High Carbon Stock forests and peatlands. The reporting guidance lays out expectations for clear procedures regarding land expansion as well as evidence of compliance. For the latter, companies are encouraged to submit maps of expansion areas for third-party assessment through the High Carbon Stock Assessment group, and to ask their suppliers to do the same. The *Reporting Guidance for Responsible Palm Oil* asks downstream companies and investors to require reporting on all plantations greater than 25 hectares by providing the name, geo-referenced boundaries, and owner(s) of the land. Industry actors are also being encouraged to provide shape files to WRI to load into the [Global Forest Watch](#) platform developed by World Resources Institute (WRI), which provides real-time monitoring of deforestation. Wilmar International's transparency dashboard, for example, provides [supply chain maps](#) using the [Global Forest Watch](#) platform.

Finally, it is notable that TIAA's maps are not easy to find within the architecture of the firm's website and require that even a dedicated researcher make a concerted effort to find them. TIAA represents itself as a leader in responsible farmland investing; as such, the firm should, at the very least, make its farmland maps easy to access for anyone seeking to assess TIAA's approach to farmland investing. Better yet, the firm should use advances in mapping and remote sensing technologies and the wealth of information at its disposal to model the best example of what responsibility and transparency in land investment can look like. Additionally, it is doubtful that TIAA has made much effort to keep its maps up to date.¹⁴



TIAA's "No Deforestation in Brazil" Policy

In August 2018, after years of public concern from civil society groups, TIAA adopted a policy guiding its deforestation practice on future land investments in Brazil. Under the policy, TIAA Nuveen "will not acquire land on behalf of any of its accounts in Brazil that has been cleared from native vegetation" after a set of dates specific to biomes named in the policy.

While the policy shows that TIAA is attentive to the concerns of deforestation, its scope does not extend to farms already held in its portfolio. Independent research has shown that TIAA's farms in the Brazilian Cerrado have been cleared of [72,000 hectares](#) of forest since 2000.¹⁵ Further, the one farm in the Brazilian Cerrado for which independent researchers have obtained georeferenced data was deforested by TIAA/Radar soon after purchase (Figure 1, below).



Figure 1. Deforestation of Ludmilla Farm following TIAA/RADAR purchase

A demonstration of real responsibility would involve transparent admission of the extent of deforestation that has occurred on TIAA's landholdings to date and would integrate an approach to deforestation into a broader framework of responsible land management, as this analysis suggests throughout.

“Between 2000 and 2017, Matopiba lost 1.94 million ha of forest. Deforestation on foreign-held farms represents 22 percent of the overall deforestation in Matopiba from 2000 to 2017. Nuveen was the fourth largest foreign land-owner in the region, and had the second-largest deforestation footprint among foreign firms. Since 2000, TIAA-managed farms have lost over 72k h of vegetation -- an area 12 times the size of Manhattan. Between 2010 and 2017, some 2,400 ha were deforested at the two TIAA-managed farms. In 2018, TIAA/Nuveen adopted a deforestation policy for its landholdings in Brazil which may stem deforestation going forward, but does nothing to alleviate the previous damage done.”

From Chain Reaction Research, [Foreign Farmland Investors in Brazil Linked to 423,000 Hectares of Deforestation](#)¹⁶

It is also significant that TIAA has adopted a policy on deforestation for its future landholdings in Brazil but has so far failed to acknowledge the need for such a policy in its equity holdings. Given that TIAA maintains significant holdings in agribusiness companies active in the Brazilian Cerrado, such as Bunge and ADM, and continues to be among the top ten U.S. institutional investors in Southeast Asian palm oil companies, TIAA's failure to adopt a broad no-deforestation policy represents an ongoing failure to recognize the magnitude and import of the deforestation issue.



Photo courtesy of ActionAid US



Conclusion

TIAA claims to be the largest manager of worldwide farmland assets.¹⁷ As such, it is the leader in the trend of accumulation of large farms by distant institutional investors. Given the fact that many questions have been raised about the negative impacts of large-scale farms and this pattern of farmland ownership, as a responsible investor, TIAA needs to take a decisive step back from farmland accumulation and provide transparency about the farms that it already owns. TIAA should set a different example for other investors by supporting the implementation of the CFS Tenure Guidelines, rather than using the weaker PRI standard that undermines the CFS guidelines.

Recognizing that capital is needed for the further development of rural communities and sustainable agriculture through agroecology, TIAA should explore avenues for investing in agriculture to support diversified farming communities with access to and control of land for local people. TIAA should invest in communities in ways that strengthen local economic activity with diverse food production, for local as well as more-distant markets.

Endnotes

1. <https://www.unpri.org/farmland/responsible-investment-in-farmland/716.article>
2. <http://www.fao.org/docrep/016/i2801e/i2801e.pdf>
3. <https://mneguidelines.oecd.org/RBC-for-Institutional-Investors.pdf>
4. <http://www.fao.org/3/a-i7887e.pdf>
5. Per the UN Guiding Principles, where states fail to carry out their obligations, businesses – including institutional investors – have the responsibility to uphold international standards (and they certainly have a responsibility not to impede states' execution of their duties).
6. <https://www.unpri.org/farmland/responsible-investment-in-farmland/716.article>
7. The UN CFS Tenure Guidelines (the VGGTs) should be used as a standard instead of either the PRI Farmland Guidelines or the CFS Principles for Responsible Investment in Agriculture and Food Systems (RAI). Unlike the PRI Farmland Guidelines, which are endorsed only by TIAA and other large-scale farmland accumulators, the CFS RAI was endorsed by the member nations of the UN Committee on World Food Security, but this endorsement was done over the objections of civil society organizations participating at CFS. The reason for the lack of civil society endorsement was that CFS RAI did not go beyond the earlier CFS Tenure Guidelines (VGGTs) in protecting marginalized peoples and communities from land-grabbing. The CFS RAI also failed to prioritize international human rights law above trade agreements, and it implied that companies were not required to apply all the principles in order to be responsible. See analysis of the CFS Civil Society Mechanism's position on the CFS RAI at <https://www.tni.org/en/briefing/political-brief-principles-responsible-investment-agriculture-and-foodsystems>
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