NO EXCUSE

HOW AUSTRALIA'S BIG FOUR BANKS CAN BETTER RESPOND TO LAND GRABS

A briefing paper for the Australian financial sector

OXFAM
Australia

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Villagers impacted by Phnom Penh Sugar in Kampong Speu protest in front of the headquarters of ANZ Royal in Phnom Penh. The villagers use fake blood to symbolise the impact of the Phnom Penh Sugar operation on their lives. This protest is part of ongoing actions on the case, presenting an ongoing reputational risk to the bank. Photo: Thomas Cristofoletti/Ruom.

Cover: A worker loads the trucks with sugar cane on the Phnom Penh Sugar plantation, Omliang, Kampong Speu, Cambodia in 2013. ANZ partially financed the sugar company for three years. During which time a range of human rights abuses were reported. Photo: Nicolas Axelrod/Ruom.


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SUMMARY

In April 2014, Oxfam revealed that Australia's big four banks — ANZ, the Commonwealth Bank of Australia (CBA), the National Australia Bank (NAB) and Westpac — were connected to companies facing credible allegations of involvement in agriculture and timber land grabs overseas. This briefing paper outlines in extensive detail how the banks can construct a Zero Tolerance for Land Grabs approach in response, drawing on practices and policies already in use by the Australian financial sector. Action by the big four banks is critical to safeguard the human rights of communities affected by their agriculture and timber operations in emerging markets and to manage a range of land-related material and reputational risks. At the time of release of this paper, NAB and Westpac had taken positive steps to improve their approach to land rights, while CBA and ANZ had done little. However, no bank has taken sufficient action to ensure that they don't back land grabs. In showing what the big four banks can and must do, Oxfam is also putting the banks on notice. There is no excuse for a failure to act.

INTRODUCTION

This briefing paper presents Australia's big four banks — and their clients and investors — with a potential roadmap for action on land rights in the soft commodity sector overseas. Drawing extensively on practices and policies already in use by the Australian financial sector, Oxfam shows how the banks could construct a group-wide Zero Tolerance for Land Grabs approach to their agriculture and timber operations. This paper suggests how NAB and Westpac can build on their recent land rights commitments, and illustrates how CBA and ANZ are lagging behind. A Zero Tolerance for Land Grabs approach is imperative if banks are to protect themselves from land-related risks through their exposure to agriculture and timber operations, and respect the needs and aspirations of affected communities. In showing what the big four banks can and must do, Oxfam is also putting the banks on notice. There is no excuse for a failure to act.

In April 2014, Oxfam revealed worrying connections between all of Australia's big four banks — ANZ, CBA, NAB and Westpac — and allegations of land grabbing overseas.[1] Through detailed case studies, Oxfam showed how agriculture and timber land grabs violate the human rights of affected communities through forced evictions, use of child labour, violence, destruction of crops and pollution of water sources. We also identified gaps in the big four banks' policies and practices on land rights, highlighting that they remained exposed to land-related risk in their soft commodity businesses.

To safeguard the rights of communities, Oxfam called for the banks to adopt a group-wide Zero Tolerance for Land Grabs approach, where they:

1. know and show their exposure to land risk in the soft commodity sector;
2. commit to a Zero Tolerance for Land Grabs policy;
3. advocate for responsible financing; and
4. ensure justice for affected communities.

Since April 2014, hundreds of media reports have featured stories on the banks and land grabs, including a *60 Minutes* television program, which reached 5% of our national population.[2] Twenty thousand Australians have called for the big four banks to take action.[3] In November, NAB and Westpac responded with positive steps, both creating policies that include new measures on how they will approach land rights in their lending practices.[4] This puts them ahead of ANZ and CBA in managing the risks of large-scale land deals to communities and the associated material risks for their clients and investors.

However, more than a year on, none of the big four has adopted a Zero Tolerance for Land Grabs approach across their operations in accordance with the recommendations that Oxfam has made.

The need for action on land grabs is clear and immediate. In 2015, non-government organisations (NGOs) and communities continue to work together to uncover bank connections to companies linked to agriculture and timber land grabs overseas, and to amplify calls for justice for affected communities.[5] Oxfam will also release a follow up to our 2014 *Banking on Shaky Ground* report later this year. At a global level, there is increasing attention on the material risks linked to land grabs, risks amplified by a downturn in soft commodity markets. This shift takes place alongside the rapid growth of shareholder action and financial sector activism in Australia, with environmental and social justice campaigns playing a growing role in publicising problematic deals and shaping investor perceptions of risk.

If Oxfam, a financial sector outsider, can identify these measures for action then it is evident that the banks can identify, commit to, and implement a comprehensive Zero Tolerance for Land Grabs approach. Until the big four banks commit to such action, they continue to place their customers' and investors' money, and the lives of communities overseas, at risk.

What is a land grab?

Since 2000, more than 36 million hectares of land — an area the size of Germany — have been snapped up in large-scale land deals.[6] A large-scale land acquisition can be defined as the acquisition of any tract of land larger than 200 hectares or twice the median land-holding, according to the national context.[7] These large-scale land deals have shifted land from local farmers, communities and forests to companies, largely driven by the international demand for timber and agricultural commodities like sugar, palm oil and soy. Stories abound of large-scale land deals failing to respect local land rights, resulting in communities around the world being left hungry and homeless.

A large-scale land acquisition becomes a land grab when it does one or more of the following:

- violates human rights, particularly those of women;
- flouts the principle of free, prior and informed consent (FPIC);
- takes place without a thorough assessment of social, economic and environmental impacts;
- avoids transparent contracts with clear and binding commitments on employment and benefit sharing; and/or
- eschews democratic planning, independent oversight and meaningful participation of affected communities.[8]

"You don't need guns to kill people. When you take food from a village by destroying farmlands and cash crops, you are starving its people … these things must stop. Our people deserve the right to survive. They shouldn't be denied their land."
Alfred Brownell, Green Advocates, Liberia.[9]

THE RESPONSIBILITY TRIANGLE: COMMITMENTS, TRANSPARENCY AND ACCOUNTABILITY

In the last two years, multinational companies in the agriculture and timber sector have rapidly expanded their public social and environmental commitments in response to Oxfam and others' public campaigning. At best this shows that ethical concerns are reverberating across the commodity chain — from end users, to suppliers, to financiers. At a minimum it shows that international companies are lowering their appetite for risk in the face of falling commodity prices.

The explosion of soft commodity land rights commitments

Since November 2013, global food and beverage companies such as Coca-Cola, PepsiCo, Nestlé and Unilever have all committed to a Zero Tolerance for Land Grabs approach, as has Africa's largest sugar producer Illovo.[10] After palm oil giant Wilmar committed to its December 2013 "No Deforestation, No Exploitation, No Peat" policy, much of the world's palm oil supply has since come under similar policies that include new requirements on free, prior and informed consent (FPIC).[11] These developments signal how new standards are reverberating across the agricultural commodity chain.

While new company commitments are an important start, alone they are not enough.

Real responsibility involves a mutually reinforcing triangle of commitments, transparency and accountability. Accountability is a central part of good governance, ensuring that companies are responsible to the communities where they operate and to their shareholders and customers. Transparency is an important aspect of accountability. Barriers to transparency can include capacity, a lack of willingness, a lack of incentives and/or not collecting the relevant information.[12] As described in the following pages, the big four banks already have access to relevant data and sufficient capacity to improve their approach to transparency. This would suggest that there is insufficient incentive or a lack of willingness to be more transparent and accountable.

Greater transparency, through appropriate disclosure, is necessary to ensure that communities know who is financing and undertaking operations on their land. Without a minimum level of transparency that reveals which companies — including banks — are connected to forestry and agriculture activities in their area, communities have no capacity to hold companies accountable to their policy commitments.

Policies also need to be enforced through the development of robust and independent accountability processes. Without appropriate grievance and redress mechanisms, policies fail to serve their function to mitigate social, environmental, material and reputational risks. As an interim step, the banks should seek to meet their existing commitments for grievance mechanisms and processes for redress under the United Nations Guiding Principles on Business and Human Rights. For the longer term, the banks should adopt clearly articulated, time-bound and documented processes for responding to community complaints, including land-related issues. These processes should include mutually agreed grievance mechanisms, a capacity to directly support access to remedy or other forms of redress, and independent third-party environmental, social and human rights assessments. Developing robust forms of accountability to land rights commitments would also benefit banks by helping to identify problems in how companies apply their policies, and to recognise implementation gaps and additional policy needs. Most critically, processes that are able to support just outcomes for communities where human rights and environmental violations have occurred will mitigate risks of further community action and reduce the likelihood of similar problems reoccurring.

"I had documents from the local authority proving that I was the landowner … When they said the documents weren't legitimate I asked, why did the local authority put their formal stamp on these documents? … I refused to accept [USD]$300 compensation for the land. The company then hired people who drove to my house, destroyed my house and then put my belongings in the car to take to the resettlement site … $300 is not enough. I just want adequate compensation to support my kids and my family. The company only gave me a 40 x 50 metre plot. Before I had 13 hectares — including land for a house, rice and other crops."

"THIDA", 55, KAMPONG SPEU, CAMBODIA[13]

1 SYSTEMATISE DISCLOSURE

Just a few years ago, the global financial system was virtually impenetrable to outsiders. Today NGOs, media and people's movements are learning how to uncover bank links to a host of environmental and social issues. In the 21st century the banks can choose to disclose systematically or risk third-party disclosure with attendant negative headlines.

While Oxfam understands the importance of privacy in banking, we believe it is critical for banks to adopt greater transparency in dealings that are exposed to land-related risks due to the dire consequences of land grabs and human rights violations. Often the issue of transparency is dismissed by appealing to a general principle of privacy. Instead, banks should approach the issue of disclosure by considering the diversity of bank operations, their specific legal and commercial contexts, and the forms of disclosure that already exist. There is a vast difference between an asset management fund listing the names of companies in which it holds shares — which has no impact on client privacy — and the privacy needs in transactional banking.

At times the financial world appears attached to an increasingly outdated notion of secrecy that does not acknowledge the disclosure already occurring within the sector. This culture of secrecy can be so entrenched that some banks refuse to publish any substantial information about policies supposedly intended to increase accountability.[14] This raises the question of whether genuine concerns about privacy, legal compliance and commercial competitiveness are being conflated with efforts to avoid reasonable levels of scrutiny by bank customers, investors and the general public, including communities affected by bank operations. For example, banks regularly include a clause on disclosure in loan agreements or as part of a bundle of documents to be signed in connection with taking a loan.[15] When negotiating transactions, banks prioritise obtaining consent for detailed disclosure that serves their marketing interests.[16] However, banks have yet to place the same priority on securing disclosure of basic, high-level information relevant to their environmental, social and governance (ESG) commitments and which contributes to safeguarding the rights of affected communities. Even an initiative driven by the banking sector itself — the Equator Principles III (EP III) — requires that banks publicly name projects that they finance.[17] So far, only NAB has worked towards meeting this commitment. In 2014, it named 10 projects out of the 23 under the EP III initiative, and 27 projects in total that it closed or refinanced in the preceding year.[18] This is a precedent that its key Australian competitors have yet to exceed or match.[19]

While there are some outstanding questions in specific areas about how to disclose, tools to increase transparency already exist. If banks implement and build on these tools systematically this would help investors to better understand bank exposure to land risk and allow communities to more easily raise concerns with banks about their operations. These tools are explored further below.

To date, none of the banks have taken comprehensive action to systematise disclosure relevant to the management of land-related risks using available financial sector tools. Only NAB has publicly stated that it will investigate disclosure further.[20]

CORPORATE LOAN REPORTING

Corporate loans and project finance represent the most direct link between banks and companies accused of land grabbing. Yet there is no systematic information on how this financing occurs. Additionally, the line for or against disaggregated disclosure is often arbitrary. For example, under EP III the banks have committed to improve transparency on some project loans but not others, based only on the types of collateral that companies provide.[21] Banks frequently claim that they are limited by legal or commercial constraints in extending disclosure, yet their sustainability reports regularly feature case studies that highlight their investment in particular companies and projects with a more ethical focus such as renewable energy.[22] Banks also disclose detailed deal information on loans, bonds and shareholding information to pay-walled financial databases to show who has achieved the biggest deals or the largest loan portfolio.[23] Banks do not go to similar efforts to ensure that this same information and level of transparency is available to communities.

If the banks can improve disclosure on a portion of their lending they can surely find a way to apply this standard more systematically across their corporate loans. Under EP III the banks have already supported public reporting on company names (either through direct inclusion of company names in project names or through traceable links to projects) and locations for project finance from 30 June 2015 (30 June 2016 for CBA).[24] This same standard should be applied to all corporate loans alongside long-term commitments to standardise disclosure on high-level reporting in loan contracts.

Systematic company-level and project-name reporting on corporate loans	
ANZ	x
CBA	x
NAB	x In September 2014, NAB published its project-name report under EP III, revealing a list of 10 of 27 projects it financed (23 of these come under EP III).
Westpac	x

COMPANY NAME REPORTING FOR ASSET AND WEALTH MANAGEMENT

Communities find it nearly impossible to know who is financing agriculture and timber operations that have far-reaching impacts on their day-to-day lives.

After months of hearing bank concerns about disclosure, Oxfam was surprised to learn that there is already an industry tool available for greater transparency for asset management activities. A comprehensive proxy voting record includes a list of all the Australian and international companies that an asset management fund has a significant stake in, alongside details of how the fund engaged at the company annual general meeting. In effect, this is a list of the companies in which a fund is invested above a certain threshold. A variety of financial companies in Australia — including superannuation funds and some banks — publish this information for both Australian and overseas listed companies, including CBA subsidiary Colonial First State Global Asset Management (CFSGAM).[25] So why aren't all the big four banks adopting this standard?

Disclosure of a comprehensive list of companies in which wealth funds hold a significant stake	
ANZ	x
CBA	√ CBA's subsidiary CFSGAM has a public commitment to comprehensive proxy voting records and it publishes these on its website.
NAB[26]	x
Westpac	x Westpac's BT Investment Management publishes proxy voting records for Australian-listed companies but not overseas-listed companies.

A clear way forward would be for banks — including their subsidiaries — to commit to publishing a list of all Australian and overseas listed companies in which their funds hold a significant stake, making this available through a searchable database. Where banks refer their customers to a third-party fund, they should favour funds with similarly comprehensive records of where they invest.

EXPLORE OTHER FORMS OF DISCLOSURE

Oxfam sees project-name and company-level reporting as priorities for improved disclosure. In these areas the challenge is not in developing new tools but standardising and systematising them.

In future, new forms of disclosure are also needed. As companies posting multi-billion dollar annual profits and undertaking complex international operations, the banks clearly have the resources to innovate and improve their reporting. This was seen in 2014, where all four banks increased their reporting on fossil fuels investments in response to concerted shareholder campaigns.[27]

Currently there is no information on bank exposure to land risk through transactional banking. A potential risk is that companies could use bank accounts in ways that facilitate land-related crime. One example of a possible risk would be the use of accounts for receiving payments for land assets or timber resources that the company does not legitimately control. In recent years, both ANZ and Westpac announced their withdrawal from banking operations in the forestry industry in the Solomon Islands due to concerns over unsustainable logging.[28] However, investors and communities have no way of knowing how banks understand and manage similar risks in other countries with high levels of land-related risk.[29] One rare case where information on transactional banking is available is from the Papua New Guinea Commission of Inquiry into Special Agriculture and Business Leases. The Commission viewed evidence that in 2011 a company fraudulently claimed to represent land interests relevant to 30,000 land owners and then received a 1 million kina payment (approximately AUD $475,000) into its ANZ account.[30] This case raises questions about how extensively ANZ applies its "Know Your Customer" standards. Improved measures on disclosure are needed to communicate how the big four banks are approaching land-related risk in their transactional banking. This is particularly relevant for Westpac and ANZ, which offer a range of transactional banking services in one or more countries with low scores in Transparency International's annual Corruption Perception Index.[31]

While the industry adoption of social and environmental impact assessments (SEIAs) is a step in the right direction, a lack of transparency undermines their accuracy and efficacy. Local people who have the most knowledge about existing land use and who have the biggest stake in new projects rarely contribute to SEIAs.[32] As a result there are many examples of SEIAs failing to capture land-related issues such as non-compliance with local laws and human rights law, likelihood of forced resettlement, companies' prior land rights records and the impact on women's rights (see, for example, the Phnom Penh Sugar case study on pp. 15–16). Increasingly, banks refer to requirements on SEIAs as evidence that they are fulfilling their ESG commitments. However, without appropriate levels of transparency, such as knowing which companies banks do business with, there is no way to assess the quality of SEIA reporting.[33]

2 COMMIT TO STRONGER DUE DILIGENCE AND OTHER POLICIES TO RESPECT HUMAN RIGHTS

In November 2014, both NAB and Westpac published new policy statements related to land rights in their lending practices. According to both banks, developing these processes involved internal processes of awareness-raising and company discussions about land rights, as well as deeper discussion on how the bank reports on its exposure to, and action on, land issues. While neither of these policies encapsulates a full Zero Tolerance for Land Grabs approach across their operations, they clearly place Westpac and NAB ahead of their competitors and represent a significant investment in their policy response to the issue. Both banks state that the public commitment to improved land rights practices has increased their external accountability and staff investment in better understanding land rights. This exemplifies the importance of making clear, land-specific commitments.

	Public commitment on soft commodity land grabs	A clear commitment to Zero Tolerance for Land Grabs across all their operations
ANZ	x	x
CBA	x	x
NAB	√ For lending and procurement.	x
Westpac	√ For lending and procurement.	x

RESPECT THE PRINCIPLE OF FREE, PRIOR AND INFORMED CONSENT (FPIC)

As detailed in Oxfam's 2014 report *Banking on Shaky Ground*, an inability to understand the local land rights context exposes banks to operational, expropriation, credit and reputational risks. More broadly, financial consultancy The Munden Project notes that investors are so distanced from the local land context where they invest that they are unlikely to understand it.[34] The Munden Project pointed out that proxies for assessing land risk are often inaccurate and that common tools for managing operational risk, such as political risk insurance, are unlikely to protect land-related investments.[35]

Good due diligence starts with the banks having an accurate situation analysis of the countries that they work in. This requires understanding the extent to which legitimate land rights may not be recognised, or protected, through judicial frameworks, particularly in emerging markets. As outlined in *Banking on Shaky Ground*, this also involves incorporating land-risk into all assessments of credit, operational, compliance, sovereign and reputational risk in the soft commodity sector. Where banks opt to operate in countries and industries with high land-related risks, full recognition of the principle of FPIC is essential. The realisation of FPIC is also dependent on appropriate transparency through disclosure and accountability to ensure that communities know who is financing activities in their area and that they have access to meaningful redress if abuses do occur.

Done well, FPIC establishes a relationship with local communities capable of sustaining ongoing support and cooperation. Emphasising that communities can give, or withhold, consent also decreases operational risks from local protest and direct action. A comprehensive approach to FPIC better safeguards the banks against misrepresentation or corruption in land deals by ensuring that companies have consent from a broad cross-section of the local community. Full recognition of FPIC throughout the investment

cycle facilitates compliance with existing national and international laws across diverse contexts, particularly on the rights of indigenous people. Recognition of the principle of FPIC for both local and indigenous communities also contributes to future-proofing soft commodity investments in light of FPIC's rapid incorporation into buyers' guidelines and industry standards.

Unlike other tools in use by the financial sector, only an FPIC-based approach can pre-emptively identify land issues. For example, the limitation of media monitoring or reputational databases is that even in a best-case scenario they can only identify problems after they occur. Environmental standards that prohibit investment in current, or recently cleared, high conservation value forests, peatlands, wetlands on the Ramsar list and UNESCO World Heritage Sites are also critical, but limited in their geographic application and social scope.

In 2014, Westpac took the significant step of committing to only lending to agribusiness and timber companies that operate with the free, prior and informed consent of both local and indigenous communities. In 2015, Westpac has expanded this commitment to lending in all sectors.[36] This commitment applies across the commodity chain, including processors and product distributors. Westpac's position displays clear leadership in the Australian financial sector and shows that the banks can, and should, have a robust approach to FPIC.

Oxfam calls for the other big Australian banks to match Westpac's commitment. Further, we encourage Westpac to standardise this commitment to all operations, not just lending.

Oxfam also emphasises that the full realisation of company FPIC policies can only occur when communities know who is financing operations in their area and when they have some way of holding companies to account.

"Wilmar destroyed all our farmland. My family has been on this land for 37 years, since before I was born. There is over 300 hectare here for the community. We used to plant plantain, oil palm, coco yam, pepe, economic trees. The community is over 7,000 people, and the land was over 300 hectares, and 200 of this has been taken now. We lost our forest too. Some of our community members used it for medicines. But there was a lot of wildlife, like antelope or monkey. Now we need to buy meat, or iced fish, and this is very expensive."

"We told Wilmar not to continue until they compensate us. If Wilmar can compensate us the way we want, we will accept it. If not, we want our land back. This is our only source of survival we have. We are no government workers, we are depending on our farms. By taking our farms, Wilmar is declaring us dead."

CHIEF NIUFAM ETIM ITAGBOR, MBARAKOM VILLAGE, NIGERIA, SPEAKING TO ENVIRONMENTAL RIGHTS ACTION NIGERIA[37]

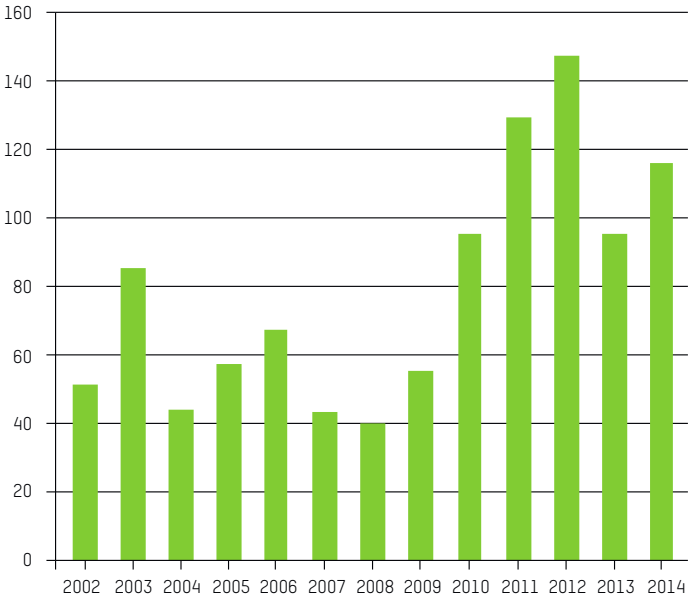
Group-wide commitment to free, prior and informed consent for all communities	
ANZ	x Limited to indigenous people affected by project finance and a generalised commitment to follow the law, with no reporting on how this is implemented.
CBA	x Limited to indigenous people affected by project finance and a generalised commitment to follow the law, with no reporting on how this is implemented.
NAB	x Limited to indigenous people affected by project finance and a generalised commitment to follow the law. Although NAB has committed to reporting on its land rights commitments.
Westpac	x But made a significant improvement by respecting FPIC for all communities impacted by its lending.

3 BE ACCOUNTABLE TO COMMUNITIES AFFECTED BY THE BANK'S OPERATIONS

"Activists around the world are being killed in record numbers trying to defend their land and protect the environment in the face of increased competition over natural resources ... In 2014, we found 116 cases of killings of land and environmental defenders in 17 countries — on average more than two victims per week and almost double the number of journalists killed in the same year ... As well as killings, environmental and land defenders suffer acutely from threats and physical violence, criminalisation and restrictions on their freedoms."

GLOBAL WITNESS, 2015[38]

Documented cases of killings of environmental and land defenders



From Global Witness[39]

In *Banking on Shaky Ground* we detailed multiple links between each of the big four banks and credible allegations of land grabbing. To date, only one bank — Westpac — has presented new evidence that plausibly, although not conclusively, suggests that it was not financing one company linked to land grabs during the period in which a land grab occurred.[40] As yet, none of the big four banks has worked with communities impacted by land grabs to support a meaningful change in their day-to-day life. None of the banks has committed to ensuring justice for affected communities profiled in Oxfam's 2014 report by undertaking the recommended action of commissioning independent third-party social, environmental and human rights impact assessments. Neither have they committed to remediation, mitigation and ongoing monitoring of cases to ensure human rights and legal abuses do not occur. Land rights violations typically take years to be addressed. Banks should not assume that community action will diminish over time but rather expect the media and financial sector profile of problematic cases to increase, and potential for reputational risk to deepen.

Banks clearly recognise the importance of grievance mechanisms and access to remedy for upholding their reputation and maintaining their accountability. The banks have documented and time-bound processes to systematically respond to customer complaints and shareholder concerns.[41] The banks may even insist that their own clients have grievance and remedy processes in place. Yet none of the big four banks has an appropriate process for addressing the concerns of overseas communities who are, in many cases, the most directly impacted by operations that banks support through their lending, asset management and transactional banking decisions.[42] So far, only Westpac has shown the potential for progress in this area. In May 2015, Westpac's Human Rights Position Statement committed to having a complaints mechanism in place for customers, investors and members of the public. It is not yet clear what structure this will take and how accessible it will be to affected communities. Best practice for the fair resolution of land disputes involving land use or ownership rights uses processes agreed on by all parties, and may include third-party ombudsmen or independent panels.

An ongoing challenge in financial sector accountability is that banks typically off-load responsibility onto their clients without acknowledging the proportional role that they play in enabling, legitimising and profiting from large-scale land deals. As the banks themselves recognise, they can make a meaningful impact on the sectors, companies and projects with which they deal by insisting on appropriate levels of social and environmental accountability and risk mitigation from their clients. Where a bank opts not to undertake appropriate due diligence, or fails to act on available information about land rights concerns, this falls within its direct sphere of influence. In cases where the bank has not upheld its commitments, and where it is unable to work with companies to support appropriate redress, the bank itself needs to assume some direct responsibility in facilitating a fair outcome for communities proportional to its role and profits from the deal.

"Banks typically off-load responsibility onto their clients without acknowledging the proportional role that they play in enabling, legitimising and profiting from large-scale land deals."

Under pressure, banks may be tempted to cut and run, dropping their investment without ever engaging with the affected community. Notably, in their new policies, both Westpac and NAB explicitly refrained from prioritising exiting the relationship as a primary response to land rights issues. While some communities wish for banks to divest, many want banks to work with companies to improve their practices or help communities to seek redress. As the ANZ and Phnom Penh Sugar case shows (see p. 15–16), cutting and running without meaningful community engagement can actually increase the bank's reputational risk.

As the big four banks expand their operations into industries and countries with poor independent oversight — for example, due to poor rule of law or high levels of corruption — they risk being seen as seeking to benefit from these conditions.

As the NGO SOMO has observed, company self-managed grievance processes are less robust than external mechanisms.[43] The third-party ESG processes that do apply to the banking sector, such as the Organisation for Economic Co-operation and Development (OECD) National Contact Point process under the OECD Guidelines for Multinational Enterprises, have little capacity for enforcement and even rarer facility for providing remedy.[44] In December 2014, BankTrack's report *Banking with Principles?* highlighted that ANZ, like other banks, was failing to meet measures articulated in the 2011 United Nations Guiding Principles on Business and Human Rights.[45] While all of the big four banks have commitments to the Guiding Principles, none have yet met these accountability requirements.

While previously banks could have relied on escaping external accountability for their role in the commodity chain, the landscape is rapidly changing. In 2015, financial sector researchers, academics, journalists and NGOs are increasingly focused on the role of banks and other financial sector actors in supporting land grabs in the agriculture and timber sectors and working with affected communities to hold banks to account.[46]

A stated commitment to having its own grievance mechanism and access to remedy for affected communities that meet human rights standards	
ANZ	x
CBA	x
NAB[47]	x
Westpac	x However, in its May 2015 Human Rights Position Statement, Westpac committed to a complaints mechanism for members of the public — it is not yet clear what structure this will take and how accessible it will be to affected communities.

The best way for the big four banks to address this lack of external accountability in many areas where they work would be to develop, or sign onto, robust external and independent panel processes that include input from a community representative or human rights perspective.[48] This would address the concern that voluntary guidelines that apply to the financial sector on soft commodity land issues are limited in their efficacy by their lack of an effective enforcement mechanism.[49]

As an interim step, the big four banks should commit to complying with measures outlined in the 2011 United Nations Guiding Principles on Business and Human Rights, applying the BankTrack criteria. They should also explicitly state how these measures apply to land rights.

Accountability measures under the 2011 United Nations Guiding Principles on Business and Human Rights

Criteria	Guiding Principle
CATEGORY 1: POLICY COMMITMENT	
1.1 Has the bank adopted a statement of policy through which it expresses its commitment to respect human rights?	11, 15a
1.2 Does the bank's policy commitment explicitly refer to the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labour Organization's Declaration on Fundamental Principles and Rights at Work?	12
1.3 Does the bank's policy commitment stipulate its human rights expectations not only of personnel, but also of business partners and other parties directly linked to its operations, products or services?	13 (a and b)
1.4 Is the bank's human rights policy commitment explicitly approved at the most senior level of the business?	16a
CATEGORY 2: DUE DILIGENCE COMMITMENT	
2.1 Does the bank commit to carry out human rights due diligence covering adverse impacts that the bank may cause or contribute to through its activities, or which may be directly linked to its operations, products or services by its business relationships?	17 (a and b)
2.2 Does the bank show how its due diligence process draws on internal or external human rights expertise, and involves meaningful consultation with potentially affected groups?	18 (a and b)
2.3 Does the bank clearly allocate responsibility for addressing human rights impacts to specific levels and functions within the business enterprise?	19 (a(i))
CATEGORY 3: REPORTING	
3.1 Does the bank report formally on how it addresses its human rights impacts?	21
3.2 Does the bank verify whether adverse human rights impacts are being addressed, by tracking the effectiveness of its response?	20
3.3 Does the bank's reporting provide information that is sufficient to evaluate the adequacy of its response to its human rights impacts?	21 (b)
CATEGORY 4: ACCESS TO REMEDY	
4.1 Does the bank have a process in place to provide for, or cooperate in, the remediation of any adverse human rights impacts to which it may have caused or contributed?	22
4.2 Has the bank established or participated in a grievance mechanism for individuals and communities which may be adversely impacted by its activities?	29

From BankTrack, *Banking with principles? Benchmarking banks against the UN Guiding Principles on Business and Human Rights,* December 2014, p. 9.

ជំណោះស្រាយតាមសំណូមពររបស់យើងខ្ញុំ។

យើងខ្ញុំទាំងអស់គ្នាសូមឲ្យធនាគារឆ្លើយតបតាមការទាមទារ ព្រមទាំងរៀបចំកិច្ចប្រជុំជាមួយតំណាងរបស់យើងខ្ញុំ ក្នុងរយៈពេល ១សប្តាហ៍ យ៉ាងយូរគិតចាប់ថ្ងៃនៃការដាក់ពាក្យបណ្តឹងនេះ។

អាស្រ័យដូចបានរៀបរាប់ខាងលើ យើងខ្ញុំជឿជាក់ថា លោកប្រធានធនាគារនឹងធ្វើការដោះស្រាយតាមសំណូមពរ របស់យើងខ្ញុំ ដោយក្តីអនុគ្រោះ។

សូមលោកប្រធានទទួលនូវការគោរពដ៏ខ្ពង់ខ្ពស់អំពីយើងខ្ញុំ។

ថ្ងៃទី ០1 ខែ មីនា ឆ្នាំ ២០១៤

ស្នាមមេដៃរបស់ប្រជាពលរដ្ឋរងផលប៉ះពាល់

(ឯកសារភ្ជាប់ជូន)

A letter from community representatives to ANZ in 2014. Due to concerns for the safety of villagers in this case, the names have been whited out.

ANZ AND PHNOM PENH SUGAR: THE ONGOING RISKS OF CUTTING AND RUNNING

"The fact that your bank has granted a loan has meant you have earned a great deal of profits from Phnom Penh Sugar. Although this company has paid off its debt and is no longer a customer of ANZ … we, innocent people suffer from serious consequences as follows: no place to farm cattle, no place to grow crops to make our living, negative effects on our children's study because without work we can no longer pay associated costs, and no land for our children on which to live and work after they marry."

LETTER FROM REPRESENTATIVES OF EVICTED COMMUNITIES TO ANZ, 16 DECEMBER 2014.[50]

In January 2014, Fairfax newspapers reported that ANZ was linked to a Cambodian sugar operation implicated in various human rights abuses including child labour, food shortages and forced evictions. Hundreds of people had been forced off their land for the development of a sugar plantation. This took place without recognition of existing community tenure and documentation. The journalists showed that ANZ Royal, in which ANZ has a controlling stake (55%), had issued a loan to Phnom Penh Sugar (PPS) — a company that oversees a sugarcane plantation complex on 23,000 hectares in Kampong Speu.[51] Media and NGOs report that this includes protected forest land and the use of a shell company to sidestep the 10,000-hectare limit on government-issued Economic Land Concessions in Cambodia.[52] The company is owned by a powerful senator, Ly Yong Phat. Based on household assessments, local NGOs now estimate community losses in Kampong Speu at USD $11 million (about AUD $15 million).[53] It has since been revealed that ANZ issued the loan in 2011.

Several issues should have triggered ANZ to further investigate the deal. Prior to lending, ANZ hired a Thailand-based consultancy to conduct a site assessment, which local residents never saw. Although highly flawed, the 23 November 2010 assessment did raise concerns about land acquisitions.[54] By this time local media and human rights groups had reported on the 2010 (and later 2011) Kampong Speu land seizures and earlier land grabs linked to a Ly Yong

Phat company in Koh Kong.[55] The business involvement of a senior politician should have escalated a decision on the loan to ANZ senior staff in line with Australian anti-corruption rules and the bank's own policies.[56] Despite these multiple risks, ANZ issued the company a loan for a mill — a central part of PPS's integrated plantation complex.

Affected communities were clear that they wanted ANZ to help them to improve PPS's practices and to support meaningful redress. There is now a dispute between the community and ANZ about commitments that ANZ subsequently made to facilitate an independent audit.[57] Since mid-2014, ANZ has not supported any meaningful process of redress for affected communities despite its financing to Phnom Penh Sugar across three years.

After six months of negative publicity in Australia and Cambodia, PPS and ANZ ended their relationship in July 2014. According to local NGOs, 681 families in Thpong and Oral districts of Kampong Speu province now struggle to meet day-to-day needs such as access to adequate food, water and meaningful income as a direct result of land seizures.[58] Instead of using profits from the deal to help communities, ANZ has left people high and dry. It appears that ANZ is prepared to profit from what look to be egregious human rights abuses. The political connections in this case, and poor rule of law in Cambodia, seriously narrow affected people's options for legal avenues to pursue redress.

ANZ's response to substantive concerns raised by customers, investors and human rights advocates has been flippant and misleading. The bank has stated that it addresses these cases through its sensitive sector policy, yet it has no sensitive sector policy on land or agriculture. The bank has no grievance mechanisms in place that communities could access and no processes for redress. ANZ has tried to distance itself from the PPS land grab by saying that it did not fund the acquisition of land, yet the very definition of a land grab is that land is taken at little or no cost. ANZ has suggested that PPS has given "compensation" despite clearly documented reports that there was no systematic process of payments and that some people received as little as USD $50 or nothing at all.[59]

This failure to accurately assess concern in the PPS case is misjudged and negative exposure on the case continues to increase. Affected communities continue to send letters to the bank, protest outside the bank's Phnom Penh headquarters, and keep the case in the media. Since July, thousands of Oxfam supporters have written to the bank, the majority being ANZ customers. In October 2014, Cambodian NGOs filed a complaint under the OECD Guidelines on Multinational Enterprises on the communities' behalf.[60] In November 2014, The Uniting Church in Australia launched a letter-writing campaign. In November 2014, 5% of the entire Australian population viewed a 60 Minutes story that focused on the bank's poor response to the case.[61] The case was also included in a widely circulated April 2015 Business and Human Rights report.[62]

The bank's case is further undermined by its broader approach to land issues. Unlike NAB or Westpac, ANZ has not taken any new policy action on land rights. The bank has denied further links to land grabs but has not responded to detailed evidence presented by Oxfam in April 2014 of ANZ's links between 2009–2013 to ten other companies connected to improper land acquisitions. In its May 2015 correspondence with the bank, Oxfam noted that "a lack of systemic action places ANZ at risk of being viewed as out of step with evolving social risk standards while your competitors investigate and develop substantial policies to mitigate land risk through enhanced due diligence".[63]

The PPS case clearly shows that reputational risk from land grabs can be ongoing until land rights concerns are meaningfully addressed.

While difficult to assess, it appears increasingly likely that ANZ's profits from the deal will be offset by the costs of negative national and international publicity.

NO EXCUSE: WHAT THE BANKS MUST DO

This report has shown that the big four banks have access to a range of tools to increase their commitments, transparency and accountability on land issues in the soft commodity sector. If Oxfam, a financial sector outsider, can identify these tools, it is clear that the banks can formulate a roadmap for a group-wide Zero Tolerance for Land Grabs approach. There is no excuse.

Westpac and NAB have taken some significant steps with their new policies, showing leadership on the issue of land grabs. However, these policy aspirations will only be achieved with increased transparency and accountability. So far, the two banks with the highest number of connections to land grabs noted in *Banking on Shaky Ground*, CBA and ANZ, have failed to take any significant action. This increases the likelihood of their ongoing exposure to land-related reputational and material risk. Later in 2015, Oxfam will release another report on the big four banks and land grabs, including more detail on each bank's response to the issue.

Until the big four banks commit to a Zero Tolerance for Land Grabs approach, they continue to risk backing companies linked to land grabs in the soft commodity sector. They risk being connected to human rights abuses and environmental destruction, and to practices that can plunge whole communities into poverty and deny people their right to culture and spiritual beliefs.

WHAT ZERO TOLERANCE FOR LAND GRABS LOOKS LIKE

In *Banking on Shaky Ground*, Oxfam outlined a set of measures that together comprised a Zero Tolerance for Land Grabs approach. This report has identified specific financial sector tools and precedents that the banks could draw on in developing such an approach, with a focus on the links between commitments, transparency (through appropriate disclosure for land-related risks) and accountability. Here is one example of measures that banks could adopt to chart a group-wide path to Zero Tolerance for Land Grabs.

KNOW AND SHOW

- Publish annual, disaggregated project-name reports as required under EP III in 2015, then expand this to all forms of project and project-related finance above a specified material threshold within three years. Make a time-bound commitment to systematically expand this high-level disclosure to other corporate loans.
- Publish an annual list of holdings in which funds have a significant stake. Apply this to all bank and subsidiary asset management products by 2016. This could be met, for example, by publishing a list of Australian-listed and overseas-listed companies through proxy voting records.
- Incorporate requests for client consent for high-level disclosure relevant to ESG commitments into all project finance and corporate loans from 1 January 2016.
- Develop a coherent approach for how the bank assesses and takes action on agriculture- and forestry-related land risks in its transactional banking and report on this approach. Priority should be placed on operations in countries with high reported levels of corruption.[64]
- Share information on the bank's approach to land rights and its disclosure in a form accessible to at-risk communities.

COMMIT

In 2015, commit through a group-wide policy to protect and promote all land rights of communities impacted by the company and supplier operations of its clients.

The bank should also require, before the provision of a product or service, that the client must:

- Respect and promote human rights with special attention to land rights of communities impacted, or potentially impacted, by company and supplier operations.
- Ensure fair negotiations on land transfers and adherence to the principle of free, prior and informed consent in all company and supplier operations.
- Ensure contract transparency and disclosure to affected communities for any concession agreements/operation permits.
- Refrain from cooperating with any host government's illegitimate use of eminent domain in order to acquire farmland.
- Avoid exposure to production models that involve the transfer of land rights away from small-scale producers, and refrain from converting UNESCO World Heritage Sites, wetlands on the Ramsar list, High Conservation Value forests, peatlands or other critical habitats into other uses. In the situation where the company's or supplier's land assets were located on land formerly occupied by these, the clearing must have occurred more than 10 years ago and the client shall certify that it is not responsible, directly or indirectly, for the clearing.
- At a minimum, comply with all applicable laws and regulations pertaining to land including social and environmental requirements, as well as with this stated policy.
- Apply this policy as a required code of conduct for all downstream business relationships with suppliers, and audit the policy accordingly.

ADVOCATE

- Lead the way for responsible and respected financing practices. Work with governments, other financiers and civil society to adhere to multi-stakeholder sector initiatives that drive better respect for land rights.

JUSTICE FOR AFFECTED COMMUNITIES

- Commit to ensuring Justice for Affected Communities covered in Oxfam's report *Banking on Shaky Ground* by undertaking independent third-party social, environmental and human rights impact assessments, and committing to remediation, mitigation and ongoing monitoring of the case to ensure human rights and legal abuses do not reoccur. Where a company has pulled out of the investment, work directly with communities to support meaningful redress proportional to the bank's role as a stakeholder.
- Act immediately to comply with measures for grievance mechanisms and access to remedy outlined in the 2011 United Nations Guiding Principles on Business and Human Rights for all, as articulated specifically for banks by BankTrack. The bank should build on this to develop a more robust accountability mechanism with the capacity for external and independent input. This should comply with the effectiveness criteria identified in article 31 of the Guiding Principles.

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2 'Dirty Business', *60 Minutes*, television program, Channel 9, 30 November 2014, <www.9jumpin.com.au/show/60minutes/stories/2014/november/dirty-business-60-minutes/>.

3 According to Oxfam media monitoring, more than 530 Australian and international media featured a story on the big four banks and their links to land grabs in the week following the release of *Banking on Shaky Ground*. This included 240 major TV items, 236 radio items and 55 print items (incorporating 23 in major metropolitan publications and 32 in regional papers). Oxfam also received 10,000 additional visitors to its website. See also 'Dirty Business', *60 Minutes*, television program, Channel 9, 30 November 2014, <www.9jumpin.com.au/show/60minutes/stories/2014/november/dirty-business-60-minutes/>.

4 National Australia Bank, 'NAB's Improper land acquisition policy statement', November 2014, <http://cr.nab.com.au/docs/141114_nab-improper-land-acquisition-policy-statement-1.pdf>; Westpac, 'Financing Agribusiness' position statement, November 2014, <www.westpac.com.au/docs/pdf/aw/sustainability-community/Agribusiness_Position_Statement.pdf>.

5 This includes revelations that between 2009 and 2013 all of the big four banks loaned money to what Tuk Indonesia refers to as "the palm oil tycoons". Tuk Indonesia & Profundo, *Tycoon-controlled oil palm groups in Indonesia, Executive Summary, 2015; Tuk Indonesia, Kuasa Taipan: Kelapa Sawit di Indonesia, 2015,* <http://www.tuk.or.id/2015/02/kuasa-taipan-kelapa-sawit-di-indonesia>. A July 2015 report also highlights that Westpac and the Commonwealth Bank are two of the largest financiers of palm oil giant Wilmar and that Wilmar has failed to act on credible allegations that it has not secured appropriate free, prior and informed consent in its operations in Nigeria. Friends of the Earth US & Environmental Rights Action Nigeria, *Exploitation and Empty Promises: Wilmar's Nigerian Land Grab*, 8 July 2015, <www.foe.org/news/blog/2015-07-when-wilmar-finishes-we-have-no-future-left>.

6 See The Land Matrix Global Observatory. This data includes only transnational deals which have been concluded based on the Land Matrix, an online database of land deals involving more than 200 hectares, where land has shifted from smallholder production, local community use, or ecosystem service provision to commercial use. The data is accurate as of 14 July 2015, however, the Land Matrix is constantly updated as new information becomes available. See The Land Matrix, The Online Public Database on Land Deals, <http://landmatrix.org/en>.

7 The 200-hectare figure comes from the International Land Coalition's definition of "large scale". However, according to research by the International Food Policy Research Institute, 200 hectares is ten times the size of a typical small farm. According to the most recent Food and Agriculture Organization of the United Nations World Agricultural Census, it is also larger than the average land holding in all but three developing countries.

8 International Land Coalition, *Tirana Declaration: Securing land access for the poor in times of intensified natural resources competition*, 2011, <http://www.landcoalition.org/sites/default/files/documents/resources/tiranadeclaration.pdf>.

9 A Brownell, Presentation to the Rights and Resources Seminar, 2012, <www.rightsandresources.org/documents/files/doc_4714.pdf>.

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11 Wilmar, 'No Deforestation, No Peat, No Exploitation Policy', 5 December 2013, <www.wilmar-international.com/wp-content/uploads/2012/11/No-Deforestation-No-Peat-No-Exploitation-Policy.pdf>.

12 This is drawn from A Gupta 'Transparency in Global Environmental Go vernance: A Coming of Age?', Global Environmental Politics. Vol. 10, no. 3. pp.1-9

13 Oxfam interview, October 2014. Thida is not her real name.

14 For example, ANZ's public information on its sensitive sector policies does not include any detail on commitments and accountabilities. See: <http://www.anz.com/about-us/corporate-responsibility/customers/responsible-business-lending/policies-guidelines/sector-policies/>.

15 While banks must work within existing legal parameters, there is clearly a way forward to increase disclosure.

16 See S Narayanasamy, 'The farce of Client Confidentiality — the case for Disclosure' in *Banking on Shaky Ground,* p.45. None of the big four banks has asked to be uniformly withdrawn from listings of deals and transactions in such databases.

17 Although the guideline includes various caveats and opt-outs, and project finance only applies to a small portion of its lending. For example, it comprises only 2% of all NAB lending. National Australia Bank, *2014 Equator Principles report,* 2014, <http://cr.nab.com.au/docs/2014_equator_principles_report.pdf>.

18 Here the term "financial close" is defined as the date on which all conditions precedent to initial drawing of the debt have been satisfied or waived — in layperson's terms, when the deal is sealed. Informatively, the NAB report also notes that project finance constitutes only 2% of NAB's gross loans and advances, and that an additional four projects it financed did not come under EP III. This data was current as at 30 September 2014. National Australia Bank, *2014 Equator Principles report*, 2014, <http://cr.nab.com.au/docs/2014_equator_principles_report.pdf>. As of 20 July 2015 only two of 80 EP III members have published a full list of project finance and project-related finance transactions.

19 Where a bank has published project name reporting information on its website, the Equator Principles Association Secretariat has linked to these details. Westpac has not published information on its own website and has provided correspondence that the secretariat intends to start publishing information on project name reporting in October.

20 This is in NAB's November 2014 improper land acquisition policy statement.

21 EP III only applies to loans intended to be repaid from income generated from the project.

22 For example, see Commonwealth Bank of Australia, 'More Wind Power for Victoria with Pacific Hydro', accessed 14 July 2015, <www.commbank.com.au/about-us/sustainability-and-community/case-studies/pacific-hydro.html>; ANZ, 'Case Study: Royalla Solar Farm, Australia' and 'Case Study: Central Plains Irrigation Scheme, New Zealand', pp. 31, 34 in *ANZ 2014 Corporate Sustainability Review*, <www.anz.com.au/resources/a/d/ad910911-a4f9-4dc0-a2a4-ec2584a51a2d/sustainability-review.pdf?MOD=AJPERES>.

23 See S Narayanasamy, 'The Farce of Client Confidentiality — the case for Disclosure', *Banking on Shaky Ground,* p. 45. This notes how financial databases such as Thomson One and Bloomberg include highly detailed information on global equity, fixed income, syndicated lending and project finance information. The databases confirmed that "the bankers themselves provide us information through submission forms".

24 The requirement is for the disclosure of project names, however, the project title often includes a company name or companies can be otherwise tracked through public information on the project. It should also be noted that EP III project name reporting commitments include various opt outs and caveats. *Equator Principles, Guidance Note on Equator Principles Implementation Reporting,* 2014, <www.equator-principles.com/resources/equator_principles_implementation_note_july_2014.pdf>.

25 See Colonial First State Global Asset Management, 'Stewardship Disclosure Framework for Asset Managers', <https://www.cfsgam.com.au/uploadedFiles/Content/About_Us/Responsible_investment/RI_policies/NAPF_Stewardship_Framework_FSI-CFSGAM_March_2014.pdf>.

26 NAB notes that its subsidiary MLC refers customers to funds run by third parties. However MLC could choose funds which are more transparent.

27 For a summary see Australasian Centre on Corporate Responsibility webpage 'Unburnable Carbon and Australia's big banks', accessed 29 June 2015, <http://www.accr.org.au/big_banks>.

28 Solomons' banks close foreign logging company accounts', *Business Advantage PNG, 15 August 2013, <www.businessadvantagepng.com/solomons-banks-close-foreign-logging-company-accounts/>.*

29 Another area is bank contributions to land risk via commodity indexes and other derivatives. Australian banks appear less exposed to these products than other global banks.

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31 ANZ currently operates transactional banking services in Cambodia (156 of 174 on the 2014 index), Myanmar (156), Papua New Guinea (PNG) (145) and Timor-Leste (133) — either directly or through a majority-owned subsidiary. In 2015, Westpac has sold much of its Pacific banking arm to the Bank of the South Pacific. However, it continues to operate transactional banking services in PNG (145). The Tax Justice Network also publishes a Financial Secrecy

Index to highlight that problems, such as the issue of illicit flows, not only stem from corruption in developing countries but also in financial centres with low levels of accountability or regulatory enforcement.

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33 Ibid. This resource also discusses the difference in approach between environmental and social impact assessments and human rights impact assessments.

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35 ibid.

36 As advised via personal communication, Siobhan Toohill, Westpac Group Head of Sustainability, to Kelly Dent, Food, Climate and Humanitarian Advocacy Manager, Oxfam Australia, 9 June 2015.

37 Friends of the Earth US & Environmental Rights Action Nigeria, *Exploitation and Empty Promises: Wilmar's Nigerian Land Grab*, 8 July 2015, <www.foe.org/news/blog/2015-07-when-wilmar-finishes-we-have-no-future-left>.

38 Global Witness, *How many more? 2014's deadly environment: the killing and intimidation of environmental and land activists, with a spotlight on Honduras*, 2015, pp. 4, 13, <www.globalwitness.org/campaigns/environmental-activists/how-many-more>.

39 ibid.

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41 See, for example, ANZ has three separate complaints processes: one for general customers, as well as customers of investment (One Path) and trading services (etrade). NAB has a customer complaint service, as does its subsidiary MLC. CBA runs a single customer complaint service, which includes its subsidiary Colonial First State Global Asset Management, as well as its insurance and trading arms.

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44 See J Wilde Ramsing, V Sangjojo, K M G Genovese & C Daniel, *Remedy Remains Rare,* OECD Watch, June 2015, <http://oecdwatch.org/publications-en/Publication_4201>.

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46 Tuk Indonesia & Profundo, *Tycoon-controlled oil palm groups in Indonesia*, Executive Summary, 2015, <www.tuk.or.id/wp-content/uploads/2015/02/Tycoons-in-the-Indonesian-palm-oil-sector-140828-Tuk-Summary.pdf>; Joint NGO Statement, 'Briefing to banks and potential investors on the ongoing risks and outstanding social issues in the palm oil business sector: Golden Agri-Resources (GAR) bond offering', BankTrack, 15 April 2015, <www.banktrack.org/show/news/briefing_to_banks_and_potential_investors_on_the_ongoing_risks_and_outstanding_social_conflicts_in_the_palm_oil_agribusiness_sector_golden_agri_resources_gar_bond_offering>; Friends of the Earth US & Environmental Rights Action Nigeria, *Exploitation and Empty Promises: Wilmar's Nigerian Land Grab*, 8 July 2015, <www.foe.org/news/blog/2015-07-when-wilmar-finishes-we-have-no-future-left>; Oxfam Australia (forthcoming). Environmental, Social and Governance measures for banks in commodity chains are being further articulated in the OECD Guidelines for Multinational Enterprises and The Banking Environment Initiative Soft Commodity Compact.

47 NAB has stated that its complaints process is also open to non-customers. However, as of 5 August, this was not reflected on the bank's website.

48 This should progress to meet all the effectiveness criteria for extra-judicial grievance mechanisms articulated in the United Nations Guiding Principles on Business and Human Rights. This should include meeting the defined characteristics of being legitimate, accessible, predictable, equitable, transparent, rights-compatible, a source of continuous learning and based on engagement and dialogue.

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52 The most extensive is the complaint filed against ANZ under the OECD Guidelines for Multinational Enterprises. See Specific instance under the OECD Guidelines for Multinational Enterprises submitted to the Australian National Contact Point (NCP) for the OECD Guidelines by: Inclusive Development International (IDI) and Equitable Cambodia (EC) Against Australia New Zealand Banking Group (ANZ), concerning financial services provided to Phnom Penh Sugar Company, 6 October 2014, <http://oecdwatch.org/cases/Case_343>.

53 ibid

54 The assessment noted that the company had leased an adjacent concession from Kampong Speu Sugar Company. This suggests that the company was seeking to control a contiguous land area larger than 10,000 hectares — the maximum area for an Economic Land Concession (ELC) awarded after the 2001 Land Law. Further investigation would have revealed that Kampong Speu Sugar Company is owned by Ly Yong Phat's wife Kim Heang and that both ELCs were awarded on the same day. This would have warranted further research to establish if Kampong Speu Sugar Company is a shell company set up purely to sidestep the 10,000 ELC hectare limit.

55 The problematic land acquisitions connected to Phnom Penh Sugar, including excessive use of military force, were featured in significant detail by Bridges Across Borders Cambodia, *Bittersweet: A Briefing Paper on Industrial Sugar Production*, Trade and Human Rights in Cambodia, September 2010, <http://babcambodia.org/developmentwatch/cleansugarcampaign/bittersweet.pdf>. Licadho, a high-profile human rights NGO, also raised issues on Ly Yong Phat concessions in a 2009 report, *Land Grabbing & Poverty in Cambodia: The Myth of Development*, May 2009, p. 17, <www.licadho-cambodia.org/reports/files/134LICADHOREportMythofDevelopment2009Eng.pdf>. For a media example, see 'Cambodia: Communities fight back against land grabbing', Irin News, 13 September 2010, which details the issue of land more generally, including the mention of communities in Kampong Speu displaced for PPS, <www.irinnews.org/report/90453/cambodia-communities-fight-back-against-land-grabbing>.

56 This is also common practice internationally. See the Financial Action Task Force (FATF), 'Guidance on Politically Exposed Persons (Recommendations 12 and 22)', June 2013, <www.fatf-gafi.org/media/fatf/documents/recommendations/guidance-pep-rec12-22.pdf>. FATF guidance on politically exposed persons, including senior politicians, was issued as early as 2003.

57 Minutes from a 15 February 2014 meeting between community representatives, EC, IDI and PPS, and also attended by ANZ Royal, suggest that the IFC Performance Guidelines could be an appropriate guide for such an audit. Human rights assessments are frequently conducted by independent third-party organisations. They do not require access to, or permission from, companies involved and ANZ could commission independent research in this area even after it ended its relationship with PPS.

58 See generally, Specific instance under the OECD Guidelines for Multinational Enterprises submitted to the Australian National Contact Point (NCP) for the OECD Guidelines by: Inclusive Development International (IDI) and Equitable Cambodia (EC) Against Australia New Zealand Banking Group (ANZ), concerning financial services provided to Phnom Penh Sugar Company, 6 October 2014, <http://oecdwatch.org/cases/Case_343>.

59 'Dirty Business', 60 Minutes, television program, Channel 9, 30 November 2014, <www.9jumpin.com.au/show/60minutes/stories/2014/november/dirty-business-60-minutes/>.

60 See generally, Specific instance under the OECD Guidelines for Multinational Enterprises submitted to the Australian National Contact Point (NCP) for the OECD Guidelines by: Inclusive Development International (IDI) and Equitable Cambodia (EC) Against Australia New Zealand Banking Group (ANZ), concerning financial services provided to Phnom Penh Sugar Company, 6 October 2014, <http://oecdwatch.org/cases/Case_343>.

61 'Dirty Business', 60 Minutes, television program, Channel 9, 30 November 2014, <www.9jumpin.com.au/show/60minutes/stories/2014/november/dirty-business-60-minutes/>.

62 I Pietropaoli & B Sta. Maria, Briefing: Development for all or a privileged few? Business and Human Rights in Southeast Asia, Business and Human Rights Resource Centre, April 2015, p. 12, <http://business-humanrights.org/sites/default/files/Southeast%20Asia%20Briefing%2016%20April%202015.pdf>.

63 Kelly Dent, Food, Climate and Humanitarian Advocacy Manager, Oxfam Australia correspondence with Gerard Brown, Group General Manager, Corporate Affairs, ANZ, 1 May 2015, <www.oxfam.org.au/grow/files/2015/05/oxfam-letter-to-anz-1-may-2015.pdf>.

64 For example, countries within the bottom 50 on Transparency International's annual Corruption Perception Index.


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