

Respecting Land and Forest Rights

Risks, Opportunities,
and a Guide for Companies

Support for aligning your operations with
the Voluntary Guidelines on the Responsible
Governance of Tenure

August 2015

AN INTRODUCTION



About the Interlaken Group

The Interlaken Group is a multi-stakeholder forum composed of individuals from leading companies, investors, international organizations, and civil society groups. The group first convened in 2013 during the International Conference sponsored by RRI, Helvetas, Oxfam, and IUCN on Scaling-Up Strategies to Secure Community Land and Resource Rights. Their discussions focused on insecure land tenure in land acquisitions and the particular roles of companies and investors in addressing these challenges while protecting the rights and livelihoods of existing rights holders. The Interlaken Group has met regularly since this conference to identify practical ways that companies and their investors can support improved land governance and the land rights of rural populations.

The Interlaken Group is convened by the Rights and Resources Initiative (RRI). Representatives from the following organizations have participated in the Interlaken Group process: Nestlé, Stora Enso, Rio Tinto, Coca-Cola, Unilever, IFC, Rabobank, TMP Systems, Oxfam, Global Witness, RRI, ERM, The Forest Trust, Landesa, Forest Peoples Programme, Olam, Omidyar Network, and Dfid. The meetings are held under the Chatham House Rule.

THE RIGHTS AND RESOURCES INITIATIVE (RRI)

RRI is a global coalition of 13 Partners and over 150 international, regional, and community organizations advancing forest tenure, policy, and market reforms. RRI leverages the strategic collaboration and investment of its Partners and Collaborators around the world by working together on research, advocacy and convening strategic actors to catalyze change on the ground. RRI is coordinated by the Rights and Resources Group, a non-profit organization based in Washington, D.C. Learn more at www.rightsandresources.org.

The views presented here are those of the authors and are not necessarily shared by the agencies that have generously supported this work or all of the Partners of the RRI Coalition. This work is licensed under a Creative Commons Attribution License CC BY 4.0.

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WHAT ARE THE VGGT AND WHAT DO THEY MEAN FOR YOUR COMPANY?

Your company might face risks due to weak land and forest rights in developing countries. Companies that understand the risks posed by insecure tenure rights and engage host communities can secure a competitive advantage.

In May 2012, the United Nations Committee on World Food Security (CFS)¹ endorsed a document called the *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forestry in the Context of National Food Security* (VGGT). This document is the result of extensive consultation with government, private sector, and civil society representatives. The VGGT offer a valuable framework that can help your company mitigate tenure risks and contribute to enhancing local food security in areas where it operates.

The VGGT reflect a global consensus on principles of and standards for governments, international organizations, communities, and private sector entities addressing or responding to tenure risk. The VGGT can help companies investing in or operating land-based businesses act according to the highest international standards in areas with weak land and forest governance.

The Interlaken Group is a multi-stakeholder forum composed of individuals from companies, investors, international organizations, and civil society groups. It has produced the accompanying Land and Forest Rights Guide to help staff and suppliers make sense of your company's responsibilities under the VGGT.² The Guide explains the key outcomes companies should seek to ensure that they uphold the VGGT, and helps integrate the guidelines into their planning and operations.

The Guide does not provide a step-by-step checklist; rather it seeks to decipher the VGGT for company leaders and their opera-

1 The Committee on World Food Security (CFS) was established in 1974 as an intergovernmental body to serve as a forum in the United Nations System for review and follow-up of policies concerning world food security, including production and physical and economic access to food. <http://www.fao.org/cfs/cfs-home/cfs-about/en/>.

2 Guidance provided within is applicable across land-based sectors, with special emphasis given to agribusiness and plantation forestry to reflect the expertise of Interlaken Group members. The document also covers relevant information to ensure that legitimate tenure rights to natural forests are respected. While the VGGT include provisions for fisheries, that topic is beyond the competencies of the Interlaken Group and therefore not covered.

Current Tenure Realities

- » There is almost no uninhabited land in developing countries. Failing to recognize this can lead a company to misjudge the feasibility of its projects.
- » Rural communities, often with the help of watchdog NGOs, are asserting more control over natural resources and are likely to demand higher compensation for the use of their land and forests than in the past.
- » Land administrations in developing countries are often corrupt or mismanaged due in part to a lack of human and financial resources to reliably maintain and formalize land registries.
- » Governments expropriating lands for private purposes often do so without the knowledge or consent of the people who live or depend on that land.
- » In many places, poor communities and households are unable to legally register their tenure rights due to high costs or bureaucratic obstacles.
- » Land and forests in developing countries are often subject to a combination of individual and collective ownership and use rights.
- » Women's tenure rights are crucial for local food security, but are often the most vulnerable and least visible.
- » Rural communities use multiple livelihood strategies and often rely on a set of seasonal use rights.
- » Indigenous Peoples have strong international legal protections for their territorial rights.
- » A growing body of practice can guide companies engaging with Indigenous Peoples.

Sources: TMP Systems 2014; ERM 2014 (unpublished); and Transparency International 2011.

tions staff in the field. It reflects the Interlaken Group's understanding of a company's responsibilities under the VGGT.

Some of the world's largest agribusiness companies have already made commitments to the VGGT and are working to improve tenure governance where they work. These companies include: **Cargill, Illovo Sugar, Nestlé, PepsiCo, The Coca-Cola Company, and Unilever.**

COMPANIES PRODUCING OR PURCHASING GOODS IN DEVELOPING COUNTRIES FACE SUBSTANTIAL RISKS WHEN LAND AND FOREST GOVERNANCE IS WEAK

Today, there is virtually no uninhabited or “clean” land available for investment.³ Land, forests, and resources are subject to competing claims of ownership and use rights, particularly in developing countries where traditional systems of land management prevail. These claims are frequently unregistered and are based on informal ownership rules. For companies operating in these places, uncertainty over land and forest ownership and use rights increases the potential for conflict with local rights holders. This may result in increased costs, unforeseen delays, and legal challenges, affecting production, operational and capital expenditures, returns on invested capital, reputations, and ultimately, the sustainability of business operations.⁴

When companies identify land suitable for operations, investment decisions are made based on product demand, yield expectations, financing capabilities, and the ability to secure long-term use or ownership rights over the land. In some cases, the companies making such investment plans might over-estimate their ability to effectively acquire use or ownership rights. Appropriate due diligence with a focus on current users of the land and their formal or informal use rights is therefore critical.

COMPANIES THAT MANAGE TENURE GOVERNANCE RISKS CAN BENEFIT BOTH THEMSELVES AND HOST COMMUNITIES

Companies that acknowledge the risks posed to their business by insecure land and forest rights will be better positioned than their competitors to establish sustainable production and procurement models. Applying international standards to land acquisition or leasing substantially enhances a company’s and its suppliers’ abilities to mitigate such risk. Companies that do this successfully can gain the trust of society and stakeholders as a partner of choice.

3 An analysis of 73,000 concessions across Africa, Asia and Latin America revealed that at least 93% of the land that goes to mining, oil and gas, logging, and agriculture projects is inhabited (TMP Systems 2014).

4 According to a 2012 estimate by TMP Systems, the financial risk to companies of ignoring local land rights in their operations can range from increased operating costs (as much as 29 times higher than otherwise) to abandonment of the project.

Central to success is taking a proactive approach to engaging with the communities that use land near proposed production sites and ensuring that their land rights are respected. Facilitating a robust and ongoing dialogue with both host communities and national governments on food security and tenure rights can help a company identify ways to support local sustainable development. Best practice for companies whose business may affect domestic food security includes identifying and promoting production methods that involve local communities and bolstering the tenure rights of smallholder farmers and community foresters.

WHO IS RESPONSIBLE FOR TENURE GOVERNANCE?

Legally, the responsibility for registering land and forest claims and maintaining good land administration lies with government

Examples of Actions Companies can take to Support the VGGT

- » Implement the VGGT and integrate them into the company's operating policies.
- » Encourage national and local governments to implement the VGGT.
- » Actively engage national counterparts (governments, civil society groups, and communities) in discussions on the goals and principles of the VGGT.
- » Encourage peer companies and industry players to support the VGGT.
- » Encourage suppliers to make changes in their operations to ensure they adhere to the VGGT and to advocate for adoption of the goals and principles of the VGGT by local and national governments.
- » Conduct reviews of land holdings and the holdings of suppliers to check for and address tenure issues.
- » Implement an integrated tenure risk management system for investment planning, business operations, and mergers and acquisitions.
- » Educate employees about informal and customary tenure rights, corruption prevention, and business models that can prevent harm to neighboring or host communities' land rights.
- » Report on progress in meeting the VGGT.
- » Consult communities in line with international standards.

authorities. But in practice, national institutions often do not dedicate the financial and human resources required to provide high quality land administration, while local judiciaries are unable to effectively mediate or settle competing claims. When companies express an interest in acquiring long-term use or ownership rights over land and forests (or when a government solicits investments from companies), they frequently negotiate and agree to terms with the same government agencies that overlook the tenure rights of local rights-holders. This lays the basis for conflict between the communities and the company. In many cases, pre-existing grievances between communities or between communities and the government are re-ignited by the introduction of a new plantation or mine on their land.

Companies are expected nevertheless to operate to the highest international standards and uphold human rights obligations, even in countries with weak national governance and poor land administration. Further, as governments move to implement the VGGT, companies can expect their existing land holdings to be subject to greater review by civil society organizations and national authorities.

WHAT CAN MY COMPANY DO TO REDUCE RISK THROUGH IMPROVED TENURE GOVERNANCE?

Actively respecting the land and forest rights of the communities where your company operates requires due diligence actions focused on identifying – and where possible helping to legally secure – the tenure rights of local communities and households. Ensuring that your company’s land acquisitions and those of the company’s suppliers are based on the Free, Prior and Informed Consent⁵ (FPIC) of the local communities and households is a major first step towards reducing risks and opening opportunities for communities. Innovative production models that rest upon the secure tenure rights of host communities may add value for your company’s customers and investors.

The VGGT urge companies and their investors to become active partners with governments, communities, and international organizations to implement the guidelines and improve corporate practices related to acquisition, management, and

5 FPIC is the principle that a community has the right to give or withhold its consent to proposed projects that may affect the lands they customarily own, occupy or otherwise use.

Land Tenure Governance Cost and Benefit Snapshot

Company Level	Costs Related to Weak Land Governance and Company Inaction
Corporate (e.g. Board of Directors, Shareholders, C-Suite officers)	<ul style="list-style-type: none"> » Inconsistent operating income creates debt servicing problems and credit rating downgrades » Capital budgeting based on faulty net present value (NPV) assumptions (cash flow, discount rate) leads to missed opportunities elsewhere » Weakened investor confidence increases cost of finance » Brand image and company reputation suffer from public perception that the company is hurting land rights or livelihoods through its operations » Risk to competitive position and market access » Increased public relations costs
Business Unit (e.g. Agribusiness or Procurement)	<ul style="list-style-type: none"> » Increased operating and capital expenditures through project life-cycle » Unreliable supply of labor and raw materials » Insurance policy cancelation if company makes acquisitions based on coercion (directly or indirectly through third parties) » Difficulty pursuing future expansion due to conflicts with communities » Increased regulatory scrutiny and burden » Impacts on reputation within corporation and among customers for being seen as violating local tenure rights
Project (e.g. Cocoa farm)	<ul style="list-style-type: none"> » Risk of staff and community conflict » Increased operational expenditures (e.g. security, fences, sabotage) » Risk of project modification or abandonment costs » Unbudgeted time to settle conflicts and address employee absenteeism » Contract insecurity: contracts can be cancelled by governments if operations are disrupted by local communities or if company operations violate rights of communities » Limited opportunities to support local sustainable development

governance of land and forests. Companies that actively promote industry-wide adoption of the VGGT can help lead better tenure governance in the countries where they operate. Large companies can encourage suppliers to adhere to the VGGT, which can improve their overall supply-chain efficiency, reliability, and market share vis-à-vis less responsible companies.

Company Level	Benefits Due to Active Promotion of Better Land Governance
Corporate (e.g. Board of Directors, Shareholders, C-Suite officers)	<ul style="list-style-type: none"> » More predictable operating income reduces credit risk » More accurate capital budgeting assumptions optimize investment returns » Stronger investor confidence reduces cost of finance » Best-in class reputation supports brand image » Reduced public relations costs » Stronger competitive position and market access » Products differentiated from those of competitors » Improved communications throughout the company
Business Unit (e.g. Agribusiness or Procurement)	<ul style="list-style-type: none"> » Minimized operating and capital expenditures through project life cycle » More predictable supply of labor and raw materials » Improved credit terms and insurance coverage » Future expansion eased as a result of adherence to best practices with respect to community land rights » Reduced regulatory scrutiny and burden » Better reputation within corporation and among customers helps secure best talent and resources
Project (e.g. Cocoa farm)	<ul style="list-style-type: none"> » Reduced risk of conflict between staff and community » Lower capital and operational expenditures » Reduced risk of project modification or abandonment » More predictable flow of operations » Improved employee retention and security » Implementation of best practices leads to improved contract security » Integration of innovative smallholder production models contributes to company goals and community livelihoods

THE ACCOMPANYING GUIDE CAN SERVE AS YOUR POINT OF ENTRY TO THE VGGT

Various company actors can use the Land and Forest Rights Guide to improve operations in the following ways:

Senior Management

- » Reduce potential negative environmental or social impacts from operations
- » Improve board-level understanding of the risks the company faces
- » Inform performance metrics for company leadership
- » Provide a platform to become a best-in-class company
- » Demonstrate high-level commitment to the VGGT
- » Inform company production and procurement policy
- » Enhance host government relationship
- » Improve intra-company communications and staff morale
- » Inform performance metrics for their business unit leaders and staff
- » Identify ways the company can contribute to national food security and smallholder agriculture in host countries

Operations and Sustainability Teams

- » Integrate better understanding of tenure risk into operational policy, valuations and capital budgeting, financial projections, information technology requirements, and marketing opportunities
- » Improve quality of due-diligence in finding and negotiating land for operations
- » Inform initial land valuations
- » Inform cash-flow projection assumptions
- » Provide a tool for the sustainability team to communicate with operational teams
- » Provide a framework through which to interact with host communities
- » Identify ways the operations team can contribute to the national food security and success of smallholder agriculture around their company's operations
- » Support suppliers to adhere to the VGGT
- » Provide questions to ask the company's suppliers
- » Enhance supply forecasting and understanding of risks to supply

Communications Team

- » Improve public understanding of the company
- » Communicate progress in a meaningful way
- » Communicate/advocate areas to improve for the industry as a whole
- » Differentiate company's product from competitors

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