

Expanding and Leveraging Private Sector Action to Secure Community Land Rights **Preparing Operational Guidelines for Private Acquisition of Land**

October 27-28, 2014

Windsor, UK

Co-chaired by Andy White (RRI) and Mark Constantine (IFC)

Facilitated by Avrim Lazar

I. Background

The October 2014 meeting on “Preparing Operational Guidelines for Private Acquisition of Land” was the third session of a working group of representatives from leading companies, investors and NGOs jointly committed to addressing community land rights issues. The first meeting of this working group took place in September 2013 in Interlaken, Switzerland, in a conference sponsored by RRI, Helvetas, Oxfam, and IUCN on *Scaling-Up Strategies to Secure Community Land and Resource Rights*. The discussion was on issues surrounding insecure land tenure in land acquisitions and the particular roles of the private sector in addressing these challenges while protecting the rights and livelihoods of existing rights-holders.

Following the meeting in Interlaken, a subset of this original group convened in February 2014 in Bellagio, Italy to identify the ecosystem of stakeholders involved in the land rights arena, as well as their particular interests, constraints and theory of change in promoting more secure community land rights. The “Interlaken Group”, as it had become known by that point, convened quickly after in March 2014 in London to review and discuss the findings from Bellagio and to agree on priority workstreams to carry forward. The first of these workstreams undertaken by the Interlaken Group is the development of clear, practical guidance on the appropriate exercise of responsibilities for companies in situations involving land acquisition processes (“operationalizing the VGGTs”). The main objective of the October 2014 meeting was to review progress made on this workstream and agree on steps for finalizing.

II. Participants

1. Duncan Pollard, AVP Stakeholders Engagement in Sustainability, Nestlé
2. Olaf Brugman, Team leader Sustainability Policies & Reporting, Rabobank
3. John Nelson, Africa Regional Coordinator, Forest Peoples Programme (FPP)
4. Peter Rabley, Director of Investments, Omidyar Network
5. Iris Krebber, Food Security and Land Advisor, Department for International Development (DFID)
6. Megan MacInnes, Head of Land Campaign, Global Witness
7. Terhi Koipijarvi, Senior VP, Global Responsibility, Stora Enso
8. Lou Munden, Chairman, The Munden Project
9. David Bledsoe, Senior Director of Program Partnerships, Landesa
10. Benedick Bowie, Partner, The Munden Project
11. Sunrita Sarkar, Operations Officer, IFC
12. Shahila Perumalpillai, Social Performance Advisor, Environmental Resources Management (ERM)
13. Annie Thompson, Associate, Strategic Analysis and Initiatives, RRI

III. Meeting objectives

1. Update each other on key related work underway;
2. Review draft Operational Guidance, identify key issues and agree on next steps;
3. Assess Interlaken Group purpose, strategy, value proposition and plan the way forward.

IV. Agenda (synopsis)

The meeting commenced with updates from each member on the most recent developments in the world of relevance to the Interlaken Group since the meeting in March 2014. ERM then presented the background document which they prepared as a first step in the development of guidance to operationalize the VGGTs, along with current thinking for carrying the project forward. Following the presentation, the Interlaken Group discussed and made decisions regarding the type of tool and format best suited for corporate adoption of the guidance. Members also flagged key content issues to take into account in drafting the final document. Next steps and member roles in completing the project were then agreed upon, as well as responsibilities of members in promoting adoption of the guidance. The end of the second day was dedicated to assessing and reaffirming the Interlaken Group's niche and priorities going forward. The meeting was held under the Chatham House Rule.

V. Highlights from the discussion

A) Review draft Operational Guidance, identify key issues and agree on next steps

- The discussion revealed a recent sense by members that, in the lead-up to the NYCC summit, there has been **more noise with regards to land rights, including more corporate and government commitments and more funding dedicated by donor**. The Interlaken Group was undetermined whether this **increased attention is due purely to heightened rhetoric, or rather a true shift in awareness**. Nevertheless, there was agreement on the **lack of readiness and delivery on land rights commitments by companies**. Members affirmed that the operational guidance produced by the Interlaken Group could play a critical role in helping companies fulfill these commitments.
- A **few inherent challenges** to the project were noted, including:
 - The aspirational nature of the VGGTs, which require actions by states that may lack the proper legal environment (especially LMICs).
 - The potential danger of focusing on corporate implementation of the VGGTs before being certain that government can guarantee the necessary space. Perhaps a precursor would thus be helping corporate actors understand government's capacity in this respect.
 - The difficulty in distilling global statements of belief into something a company can understand and measure their operations against.
- **8 principles to guide the design of the operational guidance document** were decided:
 1. **High-level** | Must tie back to VGGT as highest level – The Interlaken Group does not want to encourage sub-standard behavior. While making clear what's necessary to comply (indicating "red lines" which must not be crossed), it should offer path to gold in best practice.
 2. **Must not be normative** | The Interlaken Group does not have the mandate to create new norms or guidelines; rather, it seeks to offer guidance to existing guidelines.
 3. **Integral** | Must complement and build on what has been done or is underway (eg USAID/FAO), to ensure that the tool is not eclipsed by other initiatives.

4. **Company-focused** | Best to have separate tools for companies and investors, due to distinct sets of incentives.
 5. **Clear** | Most existing documents are incomprehensible and not business friendly (eg. USAID draft did not consult companies) – this tool must aid in demystifying the VGGTs for corporates.
 6. **Straightforward** | Need for a simple portal and simple decision tree for use by companies. This does not require dumbing-down; for example, tax law is complex, but offers clear guidance.
 7. **Versatile** | Must allow for alignment with other common corporate commitments (eg, HR, transparency, etc) and be suitable for a wide range of purpose, including for use by suppliers, to ease annual reporting processes, to recruit other companies, etc. To allow for this versatility, the tool must be available in both electronic and hard copy.
 8. **Accessible** | Need to consider various entry points, including stage of the business cycle, type of investment, sector type, key killer questions that companies should ask themselves, or VGGT clause or principle.
- A number of **content issues were flagged** as requiring further discussion or attention in designing the operational guidance document:
 - Need to focus on **building the business case**, for which Interlaken Group companies may offer valuable data on material risk to commercial activity arising from insecure land tenure.
 - It will be valuable to select and deconstruct **instructive case studies** (provided by FPP, Landesa and GW) to clearly demonstrate what a company should have done at various points, especially for more complex matters such as scope and application of FPIC, restoration of tenure rights and exertion of eminent domain. To show reality, case studies must be pulled after 1-2 years of operations.
 - There are several **caveats to the design of the organizational structure** of the guidance:
 - If stages of the **business cycle** are selected as the entry point, the guidance must allow for remedial actions (a company won't always start at Phase 1).
 - If **investment type** is selected as the entry point, guidance must nuance appropriate actions whether greenfield, brownfield, etc.
 - If **sector type** is selected as the entry point, guidance must account for sector- specific requirements.
 - There will be a need to build in a close legal review, for accuracy and consistency of terminology.
 - A **timeline was envisioned** for completion of the Operational Guidelines Project:

Date	Action
December 2014	<ul style="list-style-type: none"> • ERM revise and finalize background document, circulate to members; • Interlaken Group ensures synergy of the project with other initiatives, including coordinating timelines (eg. USAID); • Hire consultant to begin to draft the framework for the operational document, including a decision tree and intro text; • A small team conducts bilateral consultations of the prototype, especially regarding how to deal with gaps.
January 2015	<ul style="list-style-type: none"> • A small team continues bilateral consultations of the prototype, incorporate member feedback.
End January 2015	<ul style="list-style-type: none"> • Circulate the draft guidance document to the larger Group to gather feedback and input on remaining gaps; • Gather instructive case studies from members and integrate into document.
February 2015	<ul style="list-style-type: none"> • The Interlaken Group meets (virtual or face to face) to review and finalize the product (possibly London, February 3rd);

	<ul style="list-style-type: none"> The Group communicates the process/puts something in public domain.
March 2015	<ul style="list-style-type: none"> The product is presented at the WB Land Conference.
Post March 2015	<ul style="list-style-type: none"> Wider consultation/dissemination as necessary.

B) Assess Interlaken Group purpose, strategy, value proposition and plan the way forward



- Following discussion of the Operational Guidelines Project, members opened the conversation to consider and **reaffirm the Interlaken Group’s niche**, which was decidedly **bringing alignment between company, investor and CSO practices to secure and strengthen community land rights**. While members acknowledged that they could very well attempt to navigate the complex world of land rights alone, there is undeniable **value in sharing challenges, triumphs and lessons learned with others**. This diverse platform allows **members to move jointly towards better practice in the field**.
- Members agreed that one of the Group’s strength was its size and informal nature, allowing for nimbleness. While it was also recognized that it would not be feasible to include new constituencies at this stage, the need for greater and more consistent representation from companies and investors was noted.
- In strategizing **the way forward for the Interlaken Group**, members agreed on the following:
 - It will be important for **members to link worlds** by making reference to the Interlaken Group and its activities on each other’s websites.
 - It will be important for members within their organizations to **continue advancing efforts on priority workstreams** identified in London in March 2014.
 - It will be important for the Interlaken Group to **build legitimacy via practical products**. The Group’s ability to work together and create something of value will decide its future. In this vein, members agreed that the next project undertaken will be producing **operational guidance for investors**, led by The Munden Project.
 - It will be important to **recruit more companies and investors who can demonstrate ownership** of Interlaken Group products. Consultations surrounding the operational guidance document will provide an opportunity to make this initial contact and solicit feedback.
 - The Group will **reconvene in October 2015**, if not before, for RRI’s Interlaken + 2 meeting, marking two years since the first meeting of the private sector working group.