

Respecting Land and Forest Rights

A Guide for Companies

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

August 2019 (Revised)

INTERLAKEN
 GROUP





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Acknowledgments

Many individuals have participated in the Interlaken Group process since its inception in 2014. Naturally, some have moved on to other positions at different organizations. We acknowledge below those individuals who have participated in the development of the original version of this document, noting with an asterisk (*) where the affiliation of an individual with an organization is historic:

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DISCLAIMER

The content presented here reflects the consensus from the Interlaken Group process, but it may not necessarily reflect the views, policies, or commitments of the individual organizations represented in the Interlaken Group.

About This Guide

This guide has been produced by the Interlaken Group. The Interlaken Group is a multi-stakeholder forum composed of representatives from companies, investors, international organizations, and civil society groups. First convened in September 2013 during the *International Conference on Scaling-Up Strategies to Secure Community Land and Resource Rights*, the Interlaken Group has met regularly since then to identify practical ways in which companies and their investors can support improved land and forest governance and the tenure rights of rural populations. One outcome of its discussions was the recognition of the lack of clear, practical guidance for companies on the appropriate exercise of responsibilities in situations involving land acquisition processes to protect the tenure rights and livelihoods of existing rights-holders of land and forests, including women, men, and communities.

To this end, the Interlaken Group, with steering support from the Rights and Resources Initiative (RRI), has developed a Guide to support companies aiming to align their operations with the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT).¹ The objective of this project is to formulate practical and detailed guidance for companies to help them do their part to respect land and forest tenure rights of Indigenous Peoples, communities, and individual women and men. The guidance provided within is applicable across land-based sectors, with special emphasis given to agribusiness and plantation forestry operations to reflect the particular expertise of Interlaken Group members.² The document also covers relevant information to ensure that legitimate tenure rights to natural forests are respected.

1 FAO. 2012. Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security. <http://www.fao.org/docrep/016/i2801e/i2801e.pdf>.

2 While the VGGT covers fisheries, this topic is beyond the competencies of the Interlaken Group and therefore not covered here.

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Contents

Purpose of this Guide

In 2012, the 193 governments represented in the United Nations Committee on World Food Security (CFS) 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 was the result of extensive consultation with government, private sector, and civil society representatives.

The VGGT represent the first inter-governmental consensus on the principles and accepted standards for the responsible governance of tenure for governments, international organizations, communities, and the private sector. While they provide a high-level framework within which companies can demonstrate support for better land and forest tenure governance, they might be difficult to interpret for those not expert in such concepts.

This Guide has been developed to provide senior-level and operational teams at leading companies an entry point to understanding and implementing the VGGT.

The intent is to provide a more manageable presentation of the VGGT, along with steps to ensure that a company acts consistently with them.

The guidance presented herein is not a step-by-step checklist of issues to consider or actions to take. Rather, it clarifies a company's basic role and key responsibilities under the VGGT, citing relevant text from the VGGT,³ and also providing information on where to look for more detailed tools. The VGGT are an indivisible package. In other words, companies cannot pick certain articles with which to comply and ignore others. Similarly, companies cannot respect the tenure rights of some and not others. Land rights span a variety of tenure types and rural stakeholders, including indigenous and local communities who hold rights at the community level. Moreover, to equally respect the rights of both women and men, gender differences must be understood and taken into account. Given these complexities, every project will encounter site-specific land and forest tenure challenges that will require managers to use their judgment and integrate a variety of competencies into project operations. It is a company's responsibility to understand the requirements of the VGGT and integrate them into its operations.

³ The full text of the VGGT articles highlighted in this Guide is provided in Annex 6.

The VGGT and Business Responsibilities

Thanks to the extensive consultation and negotiation process leading up to their endorsement in 2012, the VGGT represent generally agreed principles and standards for how states and non-state actors, such as companies and NGOs, should act to improve land and forest tenure governance.

Their content is guided by an acknowledgement that tenure governance in much of the world fails to respect and protect the rights of some of the world's poorest and most marginalized citizens. In the broadest terms, the VGGT emphasize the following priorities for states and companies:

- » **Respect for legitimate land tenure rights:** States and companies have a responsibility to respect and protect the legitimate land and forest tenure rights held by women, men, and communities (**Articles 3.2, 4.5, 7.1, 12.4, and 12.6**).
- » **Women's tenure rights** should receive respect and protection that is equal to that extended to men and communities (**Articles 3B.3, 3B.4, 4.6, and 5.5**).
- » **Do no harm:** All actions by governments and companies should refrain from doing harm to local and national food security and environmental health (**Article 12.12**).
- » **Support for smallholders:** States should support small-holders, specifically the promotion of investment models that do not result in the transfer of tenure rights to investors (**Articles 12.2 and 12.6**).
- » **Broad based consultation:** Guaranteeing broad-based community consultation and participation, including provision for informing all impacted community members (both women and men) of their tenure rights, assisting in the development of community capacity, and provision of professional assistance in the consultation process, as might be required (**Article 12.9**). In the case of Indigenous Peoples, consultation and participation should include obtaining free, prior, and informed consent from host communities (**Articles 12.7 and 9.9**).
- » **Land and forest tenure due diligence and impact assessments:** Companies should include thorough due diligence on the tenure rights existing in areas where they plan to operate or in areas where they already operate. Included in this due diligence, companies should hire independent experts to conduct social and environmental impact assessments that include an assessment of the positive and negative impacts that the investment will have on tenure rights of women, men, and communities; food security; livelihoods; and the environment (**Article 12.10**).
- » **Accountability, monitoring and enforcement:** States and companies should be held accountable for their actions that affect tenure rights and food security. Companies should take actions to prevent corruption in their business practices, especially related to the allocation of land tenure rights (**Article 8.9**). Providing effective monitoring and enforcement provisions, including appropriate dispute resolution and grievance mechanisms, is essential to upholding the intent of the VGGT (**Articles 3.2 and 12.14**).

Each application of the standards included in the VGGT will be shaped by the local realities present in a country or investment area. However, we can characterize the expected outcomes generated when companies act consistently with the VGGT as such:

- » Companies have integrated the required skills and knowledge to assess land and forest tenure rights in areas where they or their suppliers operate.
- » Host communities—and the individual women and men that make them up—have played an active role in negotiating land and forest use or sales with companies and governments.
- » Women’s tenure rights are respected and strengthened. Women participate in decision-making and benefit sharing related to land and forest use.
- » Local and national food security objectives are met with smallholders playing a key role.
- » Companies have played a constructive role in preventing environmental degradation.
- » Companies have engaged national and local governments to protect the legitimate tenure rights of host communities and individuals (both women and men).
- » Grievances by host communities and individuals against companies or governments related to land and forest tenure rights or food security have been addressed speedily and equitably.

Background for Understanding the VGGT

WHAT IS TENURE?

Tenure is the overarching term used to describe the rules that regulate how individuals (both women and men), communities and others gain rights to land, water, fisheries, and forests. These rights can include access rights, use rights, governance rights including management and decision-making, and alienation rights, among others. Tenure systems determine who can use which resources, for how long and under what conditions. The systems may be based on written policies and laws, as well as on unwritten customs and practices.

The VGGT state that “...business enterprises have a responsibility to respect human rights and legitimate tenure rights.” (Article 3.2)

In many places, tenure rights are regulated by customary or informal systems that often remain undocumented but are widely recognized as legitimate. Customary tenure systems can be complex and difficult to understand for non-community members. They may reflect social and cultural beliefs, result from historic conflict resolution, or even map seasonal weather patterns in a given area. Sometimes customary tenure regimes fail to provide for equal land and resource rights for women, and sometimes they are more protective of women than statutory tenure regimes. Legitimate tenure rights to land or forests held by settled or nomadic communities can include seasonal access to water, fodder, forest products, and food sources.

Legally, the responsibility of registering land claims and maintaining good land administration lies with governmental authorities. But in practice, national governance frameworks are often lacking, and state institutions may not dedicate the financial and human resources required to provide high-quality land administration while local judiciaries are not able to effectively adjudicate competing claims. More fundamentally, national laws oftentimes fail to recognize the tenure rights of Indigenous Peoples and women.

Unfortunately, when companies express an interest to acquire long-term use or ownership rights over land and forests (or when a government solicits investments from companies in its country), they frequently negotiate and agree to terms with the same governmental agencies while overlooking the rights of local land users and owners. The communities and individual women and men who use land and forests are often left out of the negotiations between companies and the government, thus laying the basis for conflicts between rightsholders and companies. In many cases, pre-existing grievances between communities or between the government and communities are re-ignited by the introduction of a new plantation or mine on their land.

In countries with weak national governance and poor land administration, companies are increasingly expected to hold themselves to the highest international standards in their operations. As governments move to implement the VGGT, companies can expect their existing land holdings to be subject to review by civil society organizations and national authorities. In some countries or regions where a “governance vacuum” exists, a company will be expected to hold itself to the highest international standards despite the lack of local or national government oversight in the area. **The VGGT provide companies with a reference point to help guide responsible decision-making regarding the company’s impact on tenure rights.**

Current Tenure Realities

- » There is almost no uninhabited land in developing economies. Failing to recognize this can lead a company to misjudge the feasibility of their projects.
- » Frequently, customary tenure systems are more widely understood than the statutory (or formal) tenure systems in rural communities.
- » Developing countries often have a multitude of customary tenure systems, with some legal systems recognizing customary tenure systems as legally valid.
- » 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 lands than in the past.
- » In many developing countries, laws on land acquisition typically preserve strong state authority and leave little room for community and individual rights to rural lands.
- » Best practices for investments in land and forests almost always call for efforts that exceed the weaker national governance frameworks – particularly with regard to women.
- » Land administrations in developing countries are often corrupt and/or mismanaged due in part to a lack of 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 land uses and tenure rights are crucial for local food security and household well-being, 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 benefit from strong international legal protection for their territorial rights and a growing body of practice on free, prior and informed consent (FPIC) can guide companies engaging with Indigenous Peoples.
- » In post-conflict situations, the identification of the tenure rights of displaced populations poses challenges due to lack of documentation and counter-claims made by multiple parties. In such circumstances, the rights and situation of women may be especially vulnerable.

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

TENURE CONSIDERATIONS

Tenure cuts across many economic and social issues. Here we present a few of the key considerations that a company should internalize in order to act consistently with the intent of the VGGT.

Issue (Relevant VGGT articles)	Discussion
Human Rights ^a (3.2, 4.8, 12.4)	<p>“Whereas international legal instruments have not adequately considered the considerable role that land plays in the international human rights framework it is clear with even a brief analysis that land is a fundamental element in access to numerous international human rights.”^b</p> <p>Despite the importance of the VGGT and other international agreements related to land and forest rights – such as the UN Declaration on the Rights of Indigenous Peoples and ILO 169 – there is no international human right to land.^c Nonetheless, understanding the links between tenure rights and human rights is vital for a company operating in the developing world. Tenure rights are often the most important asset held by a community or household. Very importantly, depriving a community, household, or individual of their right to access land and forests can deprive them of their livelihood, as well as access to food and shelter. It can also deprive them of access to clean water for consumption or sanitation.</p>

Issue (Relevant VGGT articles)	Discussion
<p>Free, prior and informed consent^d (3B.6, 9.9, 12.7)</p>	<p>Free, prior and informed consent (FPIC) is the backbone of many policies guiding how businesses interact with host communities. Originally developed to guide consultation processes with Indigenous Peoples, FPIC is becoming a useful tool to guide development projects and investments in developing countries more broadly. Following FPIC principles will ensure host communities have the opportunity “to make decisions through their own freely chosen representatives and customary or other institutions and to give or withhold their consent prior to the approval by government, industry or other outside party of any project that may affect the lands, territories and resources that they customarily own, occupy or otherwise use.”^e</p> <p>Free means that there was no coercion or intimidation as part of the consultation.</p> <p>Prior means consent for the land acquisition is sought well in advance of any deal closure or operations.</p> <p>Informed means that all information relating to the deal or operations is provided and the information is objective, accurate, and presented in a manner or form that is understandable to local communities.</p> <p>Consent means that the local communities (representing the voices of both women and men) agreed to the deal or operations proceeding on lands where they hold legitimate tenure rights. (Adapted from FAO 2014.)</p>
<p>Women’s rights to land and forests^f (3B.4, 5.4, 7.1)</p>	<p>The VGGT highlight gender equality: “Ensure the equal right of women and men to the enjoyment of all human rights, while acknowledging differences between women and men and taking specific measures aimed at accelerating de facto equality when necessary. States should ensure that women and girls have equal tenure rights and access to land, fisheries and forests independent of their civil and marital status.” (3B.4)</p> <p>The VGGT provides for safeguards to “protect women and the vulnerable who hold subsidiary tenure rights, such as gathering rights.” (Art. 7.1)</p> <p>In many developing economies, women’s tenure rights are crucial to household food security and economic well-being. In many instances, these rights are secondary to men’s rights or go undocumented. Nonetheless, a company pursuing land and forests for production must pay specific attention to the uses and rights and interests of women in affected communities. This also applies to companies interested in partnering with communities or individual women and men in outgrower schemes. Properly engaging with a community through FPIC methods can help a company identify women’s rights to land and forests and the threat they are under due to project plans or social structures.</p>
<p>Smallholders and food security^g (12.1-12.3)</p>	<p>In most of the developing world, smallholders play a vital role in providing food security for their families and communities. In Africa and Asia, smallholders provide up to 80 percent of the food supply with approximately 1.5 billion people living in smallholder households.^h Companies interested in acting consistently with the VGGT and improving local land and forest tenure governance can play an important role in ensuring local food security by supporting smallholder farmers.</p> <p>In order for these families to provide food for their communities, they will require continued access to land and forests. When a company is considering a project (or procuring products) that might displace communities and individuals, it must understand the impacts it will have on local food security. In many cases, there are alternatives to outright displacement. Supply chains that incorporate smallholder production and assist them with increasing yields can both help these producers and provide a company with the raw materials needed at competitive costs (see Outgrower schemes below).ⁱ As a company performs its due diligence on new suppliers and acquisitions, it has an opportunity to consider the role of women and men smallholders as part of its business model.</p>

Issue (Relevant VGGT articles)	Discussion
Outgrower schemes (contract farming) ^j (12.2)	<p>The VGGT are explicit in their support for smallholder farming as a means to ensure local food security. Companies in the agribusiness and plantation forestry sectors have a special responsibility to support local smallholders, because many large-scale plantation projects can displace local food production. Outgrower schemes – also known as contract farming – are methods to integrate smallholder production into larger production models.</p> <p>Developing equitable and robust outgrower schemes is one way a company can secure its raw materials without acquiring or leasing the land. In order to act in a manner consistent with the VGGT, the company should ensure that the smallholders forming part of its production model have the required access to inputs, credit, and land. Companies should understand that while it may be more common for men to negotiate and/or strike a supply agreement, women play very important roles in crop production. Companies can enhance women's economic empowerment by implementing gender-progressive supply chain agreements/contracts that include women as contract-holders and incomegenerators. Payment must be fair and take women into consideration, given their sometimes less empowered role within the household. Producers using outgrower models will want to ensure that tenure rights of the participating women, men, and communities are secure in order to avoid disruptions and conflict in their supply chain.</p>
Forced evictions versus expropriation for public purpose ^k (3.1, 4.4, 16.3, 16.6, 16.7)	<p>According to the VGGT, a company has a responsibility to respect all human rights. If the company's planned operations or investments are likely to cause the forced evictions of any community or individual, the company may be contributing to or inflicting human rights abuses. The company is required to do sufficient due diligence to detect and address any risk of or actual forced evictions.</p> <p>Indigenous Peoples must not be forcibly evicted from their lands or territories.^l They may be resettled in accordance with the law and compensated, but only if their Free, Prior and Informed Consent has been obtained. Among other forms, the compensation may include in cash, rights to alternative areas, or a combination. All countries grant the power of eminent domain to state authorities. This gives them the ability to expropriate lands for public purpose (also known as compulsory acquisition). Each country will define public purpose according to their national laws and priorities. A company's project might be deemed to have a public purpose for which expropriation can be permitted. Nonetheless, the company must ensure that the process is handled according to the law and does not infringe on the human rights of those affected. Full, fair, and timely compensation is due to those that have been displaced.</p>

a. For more on Land Rights and Human Rights see: Institute for Human Rights and Business: <http://www.ihrb.org/publications/reports/preventing-conflicts-over-land.html>; OHCHR. 2014. Report of the United Nations High Commissioner for Human Rights E/2014/86. <http://www.un.org/Docs/journal/asp/ws.asp?m=E/2014/86>; http://www.ihrb.org/pdf/Land_Rights_Issues_in_International_HRL.pdf; http://www.ihrb.org/pdf/Preventing_Conflicts_over_Land-Draft_Position_Paper_Nov09.pdf.

b. Wickeri and Kalhan. 2010. Land Rights Issues in International Human Rights Law. *Malaysian Journal on Human Rights*, Vol. 4, No. 10, 2010. <http://ssrn.com/abstract=1921447>.

c. See Annex 2.

d. See also: IFC. 2012. Guidance Note 7: Indigenous Peoples. http://www.ifc.org/wps/wcm/connect/50eed180498009f9a89bfa336b93d75f/Updated_GN7-2012.pdf?MOD=AJPERES.

e. FAO. 2014. Respecting free, prior and informed consent: Practical guidance for governments, companies, NGOs, indigenous peoples and local communities in relation to land acquisition. <http://www.fao.org/3/a-i3496e.pdf>.

f. For more on women's rights to land see: FAO. 2013. Governing land for women and men: A technical guide to support the achievement of responsible gender-equitable governance of land tenure. <http://www.fao.org/docrep/017/i3114e/i3114e.pdf>; Resource Equity, <https://resourceequity.org>; Landesa Center for Women's Land Rights. <http://www.landesa.org/women-and-land>; The FAO Gender and Land Rights Database. <http://www.fao.org/gender-landrights-database/en>; RRI, Power and Potential, <https://rightsandresources.org/en/publication/power-and-potential/>; and UN Women & OHCHR. 2013. Realizing Women's Rights to Land and other Productive Resources. <http://www.ohchr.org/Documents/Publications/RealizingWomensRightstoLand.pdf>.

g. For more on smallholders and food security see: IFPRI. 2013. From Subsistence to Profit Transforming Smallholder Farms. <http://www.ifpri.org/sites/default/files/publications/pr26.pdf> and Oxfam's Smallholder Supply Chain initiative. <http://policy-practice.oxfam.org.uk/our-work/private-sector-markets/smallholder-supply-chains>.

h. FAO. 2012. Smallholders and Family Farmers Factsheet. http://www.fao.org/fileadmin/templates/nr/sustainability_pathways/docs/Factsheet_SMALLHOLDERS.pdf.

i. Oxfam. 2010. Think big. Go small. Adapting business models to incorporate smallholders into supply chains. Briefings for Business No. 6. <http://oxfamilibrary.openrepository.com/oxfam/bitstream/10546/114051/1/bfb06-think-big-go-small-010510-en.pdf>.

j. For more information on outgrower production and resources a company can use to design outgrower schemes see: FAO's Contract Farming Resources Center. <http://www.fao.org/ag/ags/contract-farming/index-cf/en/>. To ensure a company's outgrower schemes are up to international standards see FAO. 2012. Guiding Principles for Responsible Contract Farming. <http://www.fao.org/3/i2858e/i2858e.pdf>.

k. For more on forced evictions and expropriation for public purpose see: UN-OHCHR. Basic Principles and Guidelines on Development-based Evictions And Displacement: Annex 1 of the report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living A/HRC/4/18. http://www.ohchr.org/Documents/Issues/Housing/Guidelines_en.pdf; IFC Performance Standards; International Bar Association. 2014. Business and Human Rights Guidance for Bar Associations. <http://www.ibanet.org/Article/Detail.aspx?ArticleUid=c9bd50c6-c2b3-455b-b086-a7efbfe1f6a5> FAO. 2008. Land Tenure Study 10: Compulsory Acquisition of Land and Compensation. <ftp://ftp.fao.org/docrep/fao/011/i0506e/i0506e00.pdf>.

l. United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). 2008. http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf.

Women's Land and Forest Uses, Interests, and Rights

INTRODUCTION

The rights to land can be held by the state, a community, a tribal or indigenous group, or by individuals and households. For each land parcel there are multiple rights, and these rights may be held by one individual/group or distributed among different individuals/groups. Under community-based tenure, the community either owns the land or the state owns the land but devolves the power to manage and derive benefit from the land to the community level.

Land held under community-based tenure may be designated for different categories of use; for instance, some land under community-based tenure may be designated for individual or household use and control while other land may be designated as common grazing land or another common use.

Common property is land to which all members of the community have a legally or customarily guaranteed use right, provided they can establish membership in the community.

Community-based tenure systems tend to be locally legitimate and are very common around the world. The threshold question that must be answered when assessing community-based tenure arrangements is: Who is considered a member of the community? This is important, because women and other vulnerable groups may not be considered members of the community, and thus benefits that accrue to the community will not accrue to them. Women who move to their husbands' families' homes generally come from another tribe or community, and thus are considered "strangers" even though they fully participate in community life. They are unlikely to have a voice in any process related to land. Yet women and minority groups usually use, steward, and have an interest in community land, depending on it for their livelihood and their children's well-being. To summarize, while using the term "community" is short-hand for the people of a geographic area who use the land of that territory, the term may not capture all the people who benefit from that land and need to be considered and compensated for the loss of use of the land. Wives and nomadic pastoralists are two commonly excluded groups.

Individuals have different access, participation, and roles in community land matters governed by community-based tenure systems. For all individuals with an interest in land in the community to be treated ethically, there needs to be a company-level commitment to deal with communities both as rights holding bodies, and as a compilation of individual men and women who also have specific individual rights, interests, needs, and priorities.

Leaders and other powerful actors within a community or land area do not always represent the interests of all land users. Thus, efforts to ensure that all rights are respected must go beyond engagement with such individuals. The same is true for working with the heads of households or with men only. Both at the household and community level, men generally have far more agency and voice than women do. Women often have an important interest in the land they use, alongside specific knowledge regarding land and natural resources that they are primarily responsible for managing. Yet, even though their livelihoods and the livelihoods of their families depend on their use of the land, men often do not consider women to have rights to the land (even if a national constitution and land laws say otherwise).

Thus, women can lose their land and their livelihoods when that land becomes valuable as a commodity. Efforts that make relatively unproductive land more productive (i.e., agricultural intervention) very often lead to the unintended negative consequence of men asserting greater

control over that land, to the detriment of women. Social impacts resulting from tenure interventions can be significant, unpredictable, and can have negative consequences such as displacement or diminished property rights for women.

This section discusses gender considerations that a company must take into account throughout the investment process—the participation/engagement/consultation of women; risks and impacts specific to women; avoiding or mitigating gender differentiated impacts; and inclusivity. A short checklist of actions that companies can take is included in Annex 2 of this document.

SEEING AND HEARING FROM WOMEN

All people who use or benefit from the use of the land included in a project should participate in engagement and consultation with the company. Beyond women, this would also apply to temporary users of the land or resource. Pastoralists, for example, may not be considered members of the community, yet their livelihoods depend on seasonal use of land held by the community.

Before approaching the community about any investment, it is essential for the company to collect information about the gender norms of the community, which may differ from the norms of other communities in the country. Information collected should include:

- » Community arrangements that affect formal and informal decision-making processes (e.g. are women involved at any level of decision-making for the community; are there women's organizations within the community or women activists). If possible, the company should identify and talk to women leaders (formal or informal).
- » How, when, and from whom do women receive information. This knowledge will enable a company to post or circulate information in places where women go regularly and at a time when they are likely to see the information.
- » What language women use, where and when they gather, and who in the community is best placed to convey information to women who are not leaders.

Information collected should be used to plan meetings and to notify women in advance of the meetings. It may be necessary to meet with women separately from men, but usually it is best first to meet with women and men together and then separately with women. In this way, men understand why women are being called to meet.

DETERMINING RISKS AND IMPACTS TO WOMEN

A company will need to take specific steps to understand the impact of a land investment on women. It is a fact that gaining an understanding of risks and impacts to women will broaden the scope of due diligence for any company because it will require additional effort, time, and costs. Women's interests in land and forests may not be obvious and will inevitably be considered less important than those of men by men.

Identifying risks to women and men, assessing the capacity of both women and men, and engaging women and men in the process of land acquisition may meet with resistance from community men, community leaders, or government officials at all levels. The norm in most communities is for men to engage publicly and to speak for their entire family. For communities as a whole, it is men who tend to do the speaking on behalf of all community members. Almost all of the risk (and harm) of not including women in the process of decision-making will be borne by women.

The key to assessing the potential impact of a project on women is to identify people in the community who can best represent the interests of women. Ideally, women themselves would choose their representatives, but a good starting place will be local women's organizations or community groups if they exist. Many communities have existing groups of women built around social activities, such as church, cooking for funerals, or local market days. Teachers and health workers in a community can be good starting places for understanding the risks and impacts of a project to women. Local CSOs and regional NGOs that serve women may also be able to identify spokespeople in the community if they cannot be easily identified at the community level. In fact, local CSOs often have some of the deepest expertise on land and gender. Companies should generally look to them more often for collaborative support.

Note, however, that women are unlikely to have the same experience and capacity for participating in consultations as men and thus may require additional capacity building in preparation for risk assessments.

AVOIDING OR MITIGATING IMPACTS TO WOMEN

Women have historically been excluded from owning land, and women's rights to land are usually gained through a relationship with a man (father, husband) rather than directly. Land transfers within families (inheritance, gifts at marriage) are typically done between male family members. Thus, when acquiring the use or ownership rights to land, the questions to be asked by companies are: Who has rights to this land? Who uses this land and gains value from it? Asking these questions will make women's work on the land and their use of the land more visible. At the very least, women will be affected by the decisions made regarding the company's use of the land, and women should therefore have a voice in decision-making.

A gender perspective of impacts and risks of a project takes into account women's production and reproduction duties, including their unpaid care work, which often involves use of land and natural resources (water, wood, cooking fuel, etc.). In addition, women are not a homogenous group. Women-headed households, widows, unmarried women, and women within male-headed households may all have different social roles and restrictions in terms of both productive and reproductive use of land and forests. Understanding the risks and impacts of a project on women will involve understanding women's responsibilities and duties in the family and how women use both family land and commons land for their livelihoods and for the benefit of their family. Both types of losses can be devastating to women and to their communities. Often women's rights to use a common resource overlap with men's rights, but only the rights of men are captured and compensated. For example, in a common forest, men may have the right to cut trees and women may have the right to gather firewood. Both are critical to the survival of the family, but tree cutting is "productive" work and firewood gathering is "reproductive" work—unpaid and often unrecognized. Companies need to look at these distinctions carefully.

Over the last two decades, research has shown that women play an important role in providing nutritious diets with forest resources, especially during the agricultural lean or hungry season, and that women can impact the food security trajectory of a household. Moreover, women play a role in managing forest resources, even though these contributions may be unrecognized. Many women have highly specialized knowledge of trees and forests in terms of biological diversity, sustainable management and use for various purposes, and conservation practices. Women are aware of the food and medicinal values of forest products, which are particularly important during food crises. Women make specific contributions to forestry and agroforestry value chains. These are important for their incomes, and in turn for the well-being and food security of their households.

National legal frameworks can, and often do, discriminate against women, either *de facto* or *de jure*. However, 186 countries are party to The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which was adopted by the United Nations General Assembly on 18 December 1979. Article 14 of CEDAW calls for women to participate in all community activities and in rural development planning at all levels, as well as for equal treatment in land and agrarian reform, including land resettlement schemes. As mentioned above, the VGGT track CEDAW by making gender equality a central tenet. When women are fully recognized as rights holders by companies and governments, this can translate into access to credit and training, which ultimately increases productivity and, in some cases, avoids environmental damage. In short, companies can support environmental and social sustainability by investing with a gender lens.

Agriculture is underperforming in many countries partially because women face constraints that reduce their productivity, including lack of property rights. A study of six countries in Sub-Saharan Africa found that "if women worldwide had the same access to productive resources as men, they could increase yields on their farms by 20–30% and raise total agricultural output by 2.5–4%." Female farmers are up to 30 percent less productive than male farmers because they have access to fewer resources.

MAKING WOMEN A PART OF THE DEAL

Including women in negotiating a deal may not be easy to do. As a first step, the company should be informed about the laws and norms related to women and men entering into land contracts or otherwise agreeing to a land transfer. Informal or formal rules may require that women receive permission from their husband to negotiate or enter into a contract. While this may not be desirable, the first rule of any intervention is "do no harm." Note too, that the national or local laws may require that wives give their permission to their husbands to transfer land or land and housing,

even if women do not have a legal right to the land. Often ignored in practice, this safeguard is very important in avoiding risks associated with land deals.

There is often a power differential between companies and male community members and local leaders. Sometimes this imbalance exists between companies and governments. Under all circumstances, this differential will be even more pronounced with female community members. Add to that the lack of social acceptance of women negotiating contracts and the comparative lack of literacy, education, and experience women are likely to have, and it is certain that women will be on an unequal footing in negotiations.

Companies can level the playing field by focusing on groups of women. Women are more likely to have a confident voice in the negotiation if they are part of a group, and if that group is educated and trained about the process and content of negotiation and contracts. Women's groups can empower women to ask for what they want and to make changes in their communities.

Specificity in contracting is important to women's interests because naming women as beneficiaries of land agreements is uncommon and requires a social shift. Without specificity, the assumption, by both women and men, will likely be that the head of the household (who is usually a male) is the responsible party and will receive the benefits. To better understand how best to compensate women, a company needs to know whether married women can have their own checking account (legally and socially acceptable) and whether there are risks to women if they receive their own funds. In some contexts, company compensation might go to women's groups to bypass husband involvement.

Contracts need to clearly state what women's interests are, how compensation will be calculated and paid, and any special accommodations made to ensure women do not lose their ability to provide for their families (water, food, firewood, etc.).

Finally, social norms may affect where and how women can have their grievances heard. Grievance mechanisms need to be spelled out in the contract, and any accommodations for women need to be made clear. For example, women may need the right to representation or may need the right to a hearing in the village where they live, as it is more difficult for women to travel away from home and their families. A company's careful due diligence collection of information about women's roles and restrictions within the community will help identify the most appropriate grievance mechanism.

Even with the best intentions, women are often left out or harmed when land and resources are involved. The project must be monitored on a regular schedule for whether women are fully included in the process and decision-making. Most often, some adjustments need to occur to improve the situation for women because there are few models of excellence and great variety from country to country, and, sometimes, from community to community. During information gathering, consultations, and assessments, all data collected should be disaggregated by sex, and data should be collected at the individual level, not at the level of the household or community.

Corporate- and Project-Level Guidance

The following guidance outlines the statements a company must be able to assert to reassure the public and markets that it is acting in a manner consistent with the VGGT. These statements reflect the Interlaken Group’s understanding (as well as that of many companies, development finance institutions, NGOs, and multi- and bi-lateral donors) of a company’s responsibilities under the VGGT. The relevant articles of the VGGT are identified for each statement, along with examples of indicators that can be used to verify each. When possible, useful resources to inform company actions are also provided.

The guidance contained here begins with high-level corporate commitments to the VGGT. Requisite responsibilities⁴ that all companies must uphold, should they wish to act consistently with the VGGT, are then provided along five project types:

- » Greenfield Investments
- » Brownfield Investments
- » Existing Holdings
- » Joint Ventures or M&A
- » Procurement/Supply Chains

Additional statements are offered for companies that wish to set a standard of excellence by going beyond their requisite responsibilities under the VGGT. The guidance in this booklet is linked directly to the relevant articles from the VGGT. The full text of these articles may be found in Annex 6 of the Guide.

While this Guide does not provide specific guidance for all the ways a company acquires rights to land and forests, the general principles of respecting legitimate tenure rights, respecting human rights and preventing harm to the environment must be upheld in all situations. Depending on the location of the project, the laws regulating land ownership and the type of crop being produced, a company may acquire a variety of use or ownership rights. We use the term “land acquisition” to refer both to outright purchase of land (i.e. freehold or fee simple) and lease. Companies can also enter into outgrower or sharecropping agreements with local communities that do not transfer land rights to the company.

Women make up the majority of the world’s smallholder farmers. They are vital to ensuring local food security and the broader well-being of their households. Unfortunately, their rights to land and forests are often overlooked or misunderstood. Companies must ensure that they are taking active steps to ensure that all legitimate tenure rights are respected—not just men’s tenure rights. The following guidance puts some detail on the steps a company can take to respect women’s rights to land and forests, but the guidance should be read with a view to understanding all the rights-holders in a project area— women, men, communities, Indigenous Peoples—and the potential impact that a company might have on those rights.

⁴ The guidance is classified as “Requisite” and “Additional” responsibilities. Requisite responsibilities are those deriving directly from the text of the VGGT referring to “non-state actors”, “other parties”, “business enterprises” and “investors”. Additional responsibilities are those identified by the Interlaken Group as markers of excellence.

CORPORATE-LEVEL GUIDANCE

Making a corporate-level commitment to supporting the VGGT and respecting all legitimate tenure rights is a first step towards improving a company's performance on land and forest resources. Supporting the VGGT also means taking actions to ensure that a company's ethical behavior related to land acquisition, land use, and corporate relationships with local communities and authorities. Article 3.2 of the VGGT specifies that "Non-state actors including business enterprises have responsibilities to respect human rights and legitimate tenure rights." A company has a duty to fully integrate systems and safeguards to prevent any violations of human rights or legitimate tenure rights.

Responsibilities	Statement	VGGT Article	Indicators	Resources
REQUISITE	The company has a robust understanding of the international convention commitments and national laws (and other commitments) of the company's home country and project host countries related to human rights and corporate responsibility.	2.2 3.2	<ul style="list-style-type: none"> » Management and legal, social, and environmental teams are well versed in international human rights commitments and understand land and forest tenure related issues. » Legal, social, and environmental teams are well versed in the national laws of host countries, including the extent to which the laws fail to meet international standards. 	<p>Institute for Business and Human Rights</p> <p>Business for Social Responsibility</p> <p>IFC Performance Standards on Environmental and Social Sustainability</p> <p>CEDAW 1979</p>
	The company complies with the international and national laws related to human rights and corporate responsibility referenced in the VGGT.	2.2 9.9	<ul style="list-style-type: none"> » Company policies incorporate the duties contained in the UN Guiding Principles on Business and Human Rights. » Company reporting includes human rights and sustainability monitoring. 	<p>Guidance by the International Bar Association on the Guiding Principles on Business and Human Rights</p>
	The company has integrated its responsibilities under the VGGT into its company policies, including company support for local smallholders and food security, and respect of the legitimate tenure rights of women, men, and communities.	2.2 12.2 12.3	<ul style="list-style-type: none"> » Company land and forest tenure policy has been published and disseminated to staff. » The company allocates sufficient resources to ensure robust due diligence and consultation processes before making investment decisions. » The company has actively integrated the requirements of the VGGT into their corporate ESMS. 	<p>Example policies from PepsiCo, Coca-Cola, Illovo, Nestlé, Unilever, and others.^a</p>
	The company upholds its responsibilities to provide remedy in cases where its operations led to (or contributed to) human rights abuses or violations of legitimate tenure rights, including women's and men's, and acts to address such issues of their suppliers. If necessary, company ceases transactions with offending suppliers.	3.2	<ul style="list-style-type: none"> » Company non-judicial grievance mechanisms uphold the UNGPB Effectiveness Criteria. A company's supplier code of conduct requires suppliers to act consistently with the UNGPB. 	<p>UNGPB (Principle 31)</p> <p>Business and Human Rights Resource Centre</p>

Responsibilities	Statement	VGGT Article	Indicators	Resources
	The company does not engage in corrupt practices related to land and forest tenure rights.	6.9	<ul style="list-style-type: none"> » The company's interactions with government officials and communities are documented and transparent to the fullest extent possible. » The company does not enter into business ventures with Politically Exposed Persons.^b 	United Nations Convention against Corruption
	The company proactively addresses tenure risks and seeks to remedy abuses of legitimate land and forest tenure rights of women, men, and communities committed by its operations or those of its suppliers.	3.2	<ul style="list-style-type: none"> » The company has instituted a risk management system to prevent and address adverse impacts on human rights and legitimate tenure rights by its operations. » The risk management system includes regular review of land and forest holdings, land and forest tenure conflicts in or around project sites, and reviews of community engagement (of both men and women) by project staff. 	UNGPB (Principles 17-21) FAO VGGT Technical Guide: Governing Land for Women and Men
	The company is not involved in projects that infringe on legitimate land and forest rights or lead to forced evictions.	4.5 16.7– 16.9	<ul style="list-style-type: none"> » The company backs out of investments or operations if they could lead to forced evictions. 	IFC Performance Standards on Environmental and Social Sustainability World Bank Operational Manual on Involuntary Resettlement OHCHR Fact Sheet on Forced Evictions UN Human Rights Council general comment No. 4 and No. 7 (on the CESCR)
ADDITIONAL	All relevant employees have been trained in the requirements of and are knowledgeable about the VGGT and their related responsibilities.	26.5	<ul style="list-style-type: none"> » The company has distributed the VGGT and related technical guides to relevant staff in local languages, conducted staff training on company land policy, and the expectations for ethical behavior. 	

Responsibilities	Statement	VGGT Article	Indicators	Resources
	The company makes a public commitment to implement the VGGT.	26.5	» Press releases » Company-wide notification	Example commitments from Cargill, Pepsico, Coca-Cola, Nestlé, Illovo, Unilever, etc. ^c
	The company actively encourages other companies in its industry, its suppliers, and host governments to adhere to the VGGT.	26.5	» Regular participation in forums, distribution of the VGGT, etc.	
	The company monitors compliance with the VGGT and makes such monitoring reports available publicly.	26.5	» Public presentation of land and forest tenure record and/or independent audits.	

a. See Annex 1.

b. Refers to individuals who are, or have been, entrusted with prominent public functions, their family members, and close associates. Due to their influence, they are in positions that potentially can be abused for the purpose of committing such offences including corruption and bribery. <http://www.fatf-gafi.org/media/fatf/documents/recommendations/guidance-pep-rec12-22.pdf>.

c. See Annex 1.

PROJECT-LEVEL GUIDANCE

Land-based investment projects appear in many shapes and sizes. They are planned to produce agricultural, forestry, and mineral products, among others. Each sector presents special land and forest tenure characteristics⁵ and each project will require a certain amount of land to produce the resource, house workers, and transport goods out of the project site. Each project will generate gendered risks— affecting women and men differently—across all phases of operations. In all circumstances, land access, use rights, and management rights must be negotiated with the women, men, and community counterparts who use the land and hold those rights.

The Interlaken Group has developed guidance according to the five project types that are most likely to be initiated by a company making land-based investments. Each project type has certain characteristics that distinguish it from the others.

KEY CONSIDERATIONS RELATED TO THE VGGT FOR THE FIVE PROJECT TYPES

Project Type	Consideration
Greenfield	<p>No prior due diligence: In a greenfield project, no prior due diligence has been completed on land and forest rights in the project area. A company's due diligence process must be thorough and comprehensive to understand the legitimate tenure rights that exist in the project area. Greenfield projects have the most freedom to find new ways to engage host communities and the individual women and men within them, along with the government, in the site selection for a project and in the production model design. At the same time, a greenfield project can be reconsidered for another location where the tenure situation is clearer or more equitable at less cost than other project types.</p> <p>In some cases, government agencies will expropriate land from communities to make it available for new investments. Companies must therefore complete a thorough due diligence process to ensure that the land was expropriated according to international best practices and the VGGT.</p>

⁵ See Annex 4 for key considerations for agricultural and plantation forestry land.

Project Type	Consideration
Brownfield	<p>Existing operational model: Brownfield projects are implemented in an area where a previously operational production model exists or existed, and land has already been acquired. The existing/ previous operator may or may not have negotiated the land or forest rights in a way that reflects best practices and the VGGT. In such a circumstance, the new operator interested in acquiring the brownfield site must conduct their own due diligence related to tenure in the area. They must also perform a retrospective analysis to understand how the first and/or previous operator addressed the land and forest tenure rights of the women, men and communities who granted the concession, and what types of compensation (if any) were provided to those affected by the project.</p> <p>In brownfield sites, local communities may hold longstanding grievances against the previous operator that could affect the new operator's relationships with the communities. Rightsholders may have been displaced from the site. Since the VGGT were published in 2012, it is likely that the previous operator did not conduct due diligence that meets the standards of the VGGT. In this situation, a potential new operator still has the option to look elsewhere for its project site, or to reasonably remedy what may have been a lawful but problematic acquisition at the time of the original displacement.</p>
Existing Holdings	<p>Re-engaging communities: When companies undertake implementation of the VGGT in their existing projects, they are likely to uncover land and forest rights issues that did not appear in the initial due diligence.</p> <p>They are expected to thoroughly review the prior land acquisition and any Environmental and Social Impact Assessments (ESIAs) and Human Rights Impacts Assessments (HRIAs) that may have been done, the contracts they have in place granting their land access and the compensation they made to the women and men rights-holders in the host communities. Companies might use this process as an opportunity to re-engage neighboring communities and identify new ways to augment their production through the inclusion of local household/ community production models. In this circumstance, it is unlikely that the operator will move operations given the considerable cost they would face. At the same time, the company must face the reality that the expenditures made to remedy past mistakes related to land and forest rights might decrease the project's return on invested capital.</p>
Joint Ventures or M&A	<p>Acquiring existing land holdings or working with local partners: Gaining land and forest rights through a joint venture with a local company or through a merger/acquisition where the acquired company had previously obtained the land poses particular challenges for a company aiming to act consistently with VGGT.</p> <p>In many developing economies, possible local partners may have acquired land and forest rights through political connections or processes that did not respect the international standards for land acquisitions reflected in the VGGT. Just as for a Brownfield, companies engaging in joint ventures with local partners or acquiring companies with existing land holdings must therefore conduct retrospective due diligence on the process used to acquire those rights. A company can choose to abandon the joint venture or acquisition if they discover especially egregious violations of the VGGT, but they can also use the negotiation process to remedy past violations and put the operations on a new footing that respect the tenure rights of the women, men, and host communities who may have held the land.</p>
Procurement/Supply Chains	<p>Engaging suppliers who impact land and forest tenure rights: For companies that purchase raw materials from suppliers that own or lease land and forests, adhering to the VGGT will mean engaging their suppliers in a dialogue on improving their respect for legitimate local tenure rights and human rights. In some cases, the supplier may have taken steps to adhere to the VGGT independently; in other cases, the supplier might require some assistance or encouragement. Large purchasers of commodities can develop policies based on the VGGT for their procurement teams to audit their suppliers. Suppliers might also be required to meet certain standards before entering into contracts with the purchasing company. A multitude of suppliers in a complex supply chain will make compliance more complex, but companies may want to change suppliers should the standards not be met. Ensuring full traceability in a company's supply chain can help the company track how its suppliers impact local tenure rights of women, men, and communities.</p>

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Greenfield Projects

Responsibilities	Statement	VGGT Article	Indicators	Resources
REQUISITE	The company actively considers a range of project designs that do not include the acquisition of land and resources.	12.6	<ul style="list-style-type: none"> » Feasibility studies on outgrower schemes and other smallholder production models commissioned. The land uses of both women and men are considered. » The project leases land directly from the host community for a defined period of time that has been openly negotiated and equitably valued. The land uses and rights of both women and men are reflected. 	<p>Oxfam Smallholder Supply Chain program</p> <p>FAO Contract Farming Resource Center</p>
	The company conducts and publicizes Environmental and Social Impact Assessment, Human Rights Impact Assessment, and food security analyses before any investment decisions are made.	3.2 12.4 12.5	<ul style="list-style-type: none"> » Independent impact assessment experts are contracted, including gender specialists. » ESIA and HRIA are conducted prior to project design and implementation and include assessments of actual and potential impacts on human rights, legitimate tenure rights, dispossession of rights-holders, and environmental damage. Impacts to both women and men—including boys and girls—are avoided or fully mitigated. » Assessments are made available in proposed project areas in local languages and disseminated to marginalized groups within the community, such as women, minorities, and the poor. » Assessments include a specific focus on the project's impacts on women's land uses and tenure rights. 	<p>UNGPB (Principles 15, 17, 21)</p> <p>BSR on Conducting an Effective HRIA</p> <p>CEDAW 1979 article 14</p> <p>Maputo Protocol article 19.c.</p>
	The company meaningfully consults all neighboring/ host communities with special attention paid to women, and pastoralist and migrant communities prior to making investment decisions.	9.9 12.10	<ul style="list-style-type: none"> » Free, Prior and Informed Consent of Indigenous Peoples (both women and men) affected by the project has been secured before proceeding. » Meaningful consultation with the women and men within other local communities has been accessible and carried out using the highest standards. » Detailed land and forest tenure assessments conducted to document women's and men's existing land uses and legitimate tenure rights in/around the project site. » Comprehensive legal and customary gender assessment conducted to establish women's land uses and tenure rights. 	<p>FAO FPIC Guide</p> <p>IFC Performance Standards</p> <p>CEDAW 1979 article 14</p> <p>Maputo Protocol article 19.c.</p>

Responsibilities	Statement	VGGT Article	Indicators	Resources
	If the project proceeds, the company actively ensures that it does not infringe upon the existing legitimate land and forest tenure rights of women, men, and communities present in the area.	3.2 7.1 9.9 12.12 12.4	<ul style="list-style-type: none"> » The company hires knowledgeable tenure experts, including gender specialists, with experience in the region to assess the land and forest tenure situations in potential project sites and establishes systems to warn of, avoid, monitor, and remedy tenure abuses. » The company works with government authorities to support gender-sensitive rights formalization when requested by the community. » Communities or households with legitimate seasonal tenure rights to the company's operating area are provided with rights of way or negotiated seasonal access that meets the communities' requirements. » The company has budgeted time and resources to monitor the impacts of its projects on the women and men in surrounding communities. It actively participates in monitoring exercises. » Integration of land and forest tenure related Key Performance Indicators (KPIs) for key project staff. » The company investigates the counterparty selling or providing land to ensure its rights were acquired legitimately and without infringing on the rights of other legitimate tenure rights-holders. 	<p>USAID, AFD and FAO guidance documents</p> <p>LGAF</p> <p>RRI tenure data on the rights of indigenous and local communities, as well as the specific rights of women.</p>

Responsibilities	Statement	VGGT Article	Indicators	Resources
	The company's investment did not lead to forced evictions.	16.7-16.9	<ul style="list-style-type: none"> » The company abided by the highest international standards related to displacement and expropriation. » Indigenous Peoples are not forcibly removed from their land and territories. No relocation has occurred without the Free, Prior and Informed Consent of Indigenous Peoples (including the consent of both women and men). » The company has budgeted adequate resources for compensation to the individual women, men, and communities who will be affected by the project. » The company monitored the expropriation and resettlement processes to ensure that the process respected the human rights of the affected rightsholders (both women and men). If it did not, the company abandoned the project and encouraged the state to pay appropriate compensation to the women and men within the affected communities. 	<p>IFC Performance Standards</p> <p>World Bank Operational Manual on Involuntary Resettlement</p> <p>UNDRIP</p> <p>UN Human Rights Council general comment No. 4 and No. 7 (on the CESCR)</p>
	The company engages with communities to create operational-level grievance mechanisms that are accessible by both women and men, so as to quickly remedy conflicts when/if they arise and provide just and prompt compensation when relevant.	3.2 16.1 16.3 16.5	<ul style="list-style-type: none"> » Company's non-judicial grievance mechanisms uphold the UNGPB Effectiveness Criteria and are accessible to all affected parties including women and minorities. 	<p>UNGPB (Principle 31)</p> <p>Business and Human Rights Resource Centre</p>
	The company acts transparently in all its dealings related to the project.	11.4	<ul style="list-style-type: none"> » The company makes details of the project available to the host community in local languages. » Company holds regular meetings with host communities to update them and solicit input on its project performance. 	<p>UNGPB (Principles 15, 17, 21)</p>
	The company does not engage in corrupt practices.	6.9	<ul style="list-style-type: none"> » Company has a zero tolerance policy on corruption. 	<p>United Nations Convention against Corruption</p> <p>Transparency International Business Integrity Toolkit</p>

Responsibilities	Statement	VGGT Article	Indicators	Resources
	The company addresses local economic development, food security, and the rights of smallholders in the design of greenfield projects.	12.1-12.4	» Based on consultations with the women and men within local communities and with government authorities, independent experts, including gender specialists, provide analysis and advice to the company regarding how to support food security and smallholders in the project area.	
	The company's projects contribute to local food security and smallholder productivity.	12.2	» Public-private partnerships to enhance the productivity of smallholders. » The company does not acquire land for speculation and develops its projects in reasonable time periods.	
ADDITIONAL	The company supports communities and individual women and men to register their land and forest rights in or around the project site to the extent feasible.	6.6	» The company provides funds and/or legal support to register the rights of affected individual women and men and communities.	Namati Paralegals Program

Brownfield Projects⁶

Responsibilities	Statement	VGGT Article	Indicators	Resources
REQUISITE	The company investigates production options that do not require the transfer of land and forest tenure rights to the company.	12.6	» The company consults authorities and communities on leasing and outgrower models. The livelihoods needs and land uses of both women and men are considered. » The company commissions feasibility studies on production models based on smallholder production. The land uses of both women and men are considered.	FAO Contract Farming Resource Center
	The land holdings in the current site are reviewed to ascertain that the project actually requires the amount of land in the current concession.	12.6	» Project modified to reduce footprint.	

⁶ While the VGGT do not require a company to correct injustices or infringements on the human rights and legitimate tenure rights of communities and of individual women and men that live or lived in the area of the brownfield project, a company must understand the past and current realities. Legacy issues related to past injustices can impede a company from operating sustainably, and the new operator can exacerbate past injustices. The company has a responsibility to act according to the highest international standards of redress and accountability (see the UNGPB).

Responsibilities	Statement	VGGT Article	Indicators	Resources
	The company conducts thorough due diligence on existing and historic land and forest tenure rights in the brownfield site.	3.2 16.7- 16.9	<ul style="list-style-type: none"> » Company hires independent tenure experts to review the tenure situation in the area, including the history of how the site was acquired by the current seller. » The company maps secondary, informal, and customary uses and rights to land and forests in or around the project site with due care given to the uses and rights of women. » Due diligence is conducted on the beneficiaries of the land lease or sale. The project is abandoned if Politically Exposed Persons are included as beneficiaries. » Retrospective analyses are completed to determine whether forced evictions took place during the original acquisition of the project site. 	<p>Land and forest tenure experts, including gender specialists</p> <p>Participatory mapping experts, including gender specialists with local expertise</p> <p>UNGPB (Principles 15, 17, 21)</p> <p>IFC Performance Standards</p> <p>World Bank Operational Manual on Involuntary Resettlement</p> <p>UN Human Rights Council general comment No. 4 and No. 7 (on the CESCR)</p>
	The company conducts and publicizes Environmental and Social Impact Assessment, Human Rights Impact Assessment, and food security analyses before any investment decisions are made.	3.2 12.4 12.5	<ul style="list-style-type: none"> » Independent impact assessment experts are contracted, including gender specialists. » ESIA and HRIA are conducted prior to project implementation and made public. Impacts to both women and men—including boys and girls—are avoided or mitigated. » Assessments are made available in the proposed project areas in local languages and disseminated to marginalized groups within the community like women, minorities, and the poor. » Assessments include specific focus on the project's impacts on women's land uses and tenure rights. 	<p>UNGPB (Principles 15, 17, 21)</p> <p>BSR on Conducting an Effective HRIA CEDAW 1979 article 14</p> <p>Maputo Protocol article 19.c.</p>
	The company meaningfully consults all neighboring/ host communities with special attention paid to women, and pastoralist and migrant communities prior to making investment decisions.	3.2 9.9	<ul style="list-style-type: none"> » Free, Prior and Informed Consent of Indigenous Peoples (both women and men) affected by the project has been secured before proceeding. » Meaningful consultation with the women and men within other local communities has been accessible and carried out using the highest standards. 	UNDRIP

Responsibilities	Statement	VGGT Article	Indicators	Resources
	The company establishes a process to evaluate grievances and land claims before deciding to proceed with the acquisition of the brownfield site and provides just and prompt compensation when relevant.	3.2	<ul style="list-style-type: none"> » The company has engaged with communities to create accessible operational-level grievance mechanisms, so as to quickly remedy conflicts when/if they arise. » Grievance mechanisms are accessible to all affected parties including women and minorities. » Indigenous Peoples' right to redress is upheld for land previously acquired without their Free, Prior and Informed Consent. » Company non-judicial grievance mechanisms uphold the UNGPB Effectiveness Criteria. 	<p>UNGPB (Principle 31)</p> <p>Business and Human Rights Resource Centre</p> <p>UNDRIP</p>
	The company establishes a tenure risk management system to monitor, prevent, and address land tenure and forest rights abuses in the project area.	3.2	<ul style="list-style-type: none"> » Employees use the risk management system to review changes to land and forest tenure rights in the area as a means to engage with the local community, and as a way to hold the company accountable for commitments it has made regarding land use and respect for legitimate land and forest tenure rights. » Integration of land and forest tenure related KPIs for key project staff. 	<p>UNGPB (Principles 17-21)</p>
	The company acts transparently in all its dealings related to the project.	11.4	<ul style="list-style-type: none"> » The company makes the details of the project available to the host community in local languages. » Company holds regular meetings with host communities to update them on project performance. 	<p>UNGPB (Principles 15, 17, 21)</p>
	The company does not engage in corrupt practices.	6.9	<ul style="list-style-type: none"> » Company has a zero tolerance policy on corruption. If legacy issues remain due to corrupt practices of previous operator, the company proactively addresses the issues or abandons the project. 	<p>United Nations Convention Against Corruption</p> <p>Transparency International Business Integrity Toolkit</p>
	The company supports local food security and local development.	12.1	<ul style="list-style-type: none"> » Company provides jobs and training to host communities. » Company provides training and supplies to help improve smallholder productivity of both women and men in the project area. 	

Responsibilities	Statement	VGGT Article	Indicators	Resources
ADDITIONAL	The company provides independent legal support to communities during the negotiation for the brownfield site.	6.6	» Legal teams provided to defend the rights and interests of the individual women and men and communities/households affected by the project.	Namati Paralegal Program
	The company attempts in good faith to provide redress for past injustices in the brownfield site related to legitimate land and forest tenure rights and human rights.		» Compensation is made to individual women and men and communities originally displaced if the project proceeds. » The project is abandoned if previously forcibly evicted community/households wish to return to the area unless agreement is reached on a mutually acceptable alternative.	

Reviewing Existing Holdings

Responsibilities	Statement	VGGT Article	Indicators	Resources
REQUISITE	The company reviews its existing holdings against the requirements of the VGGT to ensure that they respect the legitimate tenure rights of the host communities (especially women and other vulnerable smallholders).	3.2	» Due diligence is conducted on the tenure situation in the project area including the rights of women and secondary users whose rights might have been overlooked previously. » Retrospective analysis is conducted of how the land for the project was acquired. » New ESIA and HRIAs that integrate land and forest tenure considerations are conducted. » Assessments include specific focus on the project's impacts on women's land uses and tenure rights, in addition to the rights of children (both girls and boys).	Independent tenure experts, including gender specialists UNGPB (Principles 15, 17 and 21) CEDAW 1979 article 14 Maputo Protocol article 19.c.
	The company produces a roadmap based on the findings from the review and impact assessments to mitigate infringements of existing rights and to compensate for previously infringed rights.	3.2	» Findings from the review are made public in local languages. » Roadmap developed in close consultation with affected women, men, and communities/households. » Integration of land and forest tenure related KPIs for key project staff.	

Responsibilities	Statement	VGGT Article	Indicators	Resources
	The company establishes a risk management system to ensure its operations are not violating the tenure or human rights of neighboring/host communities.	3.2	<ul style="list-style-type: none"> » Employees use the risk management system to review changes to land and forest tenure rights in the area, as a means to engage with the local community, and as a way to hold the company accountable for commitments it has made regarding land use and respect for legitimate land and forest tenure rights. » Any project expansion or reduction plans incorporate community consultation before decisions are made. 	UNGPB (Articles 17-21)
	The company establishes a process to evaluate grievances and historic land claims within or around the site and provides just and prompt compensation when relevant.	3.2	<ul style="list-style-type: none"> » The company has engaged with women and men within communities to create accessible operational-level grievance mechanisms, so as to quickly remedy conflicts when/if they arise. » Grievance mechanisms are accessible to all affected parties including women and minorities. 	UNGP (Principle 31) Business and Human Rights Resource Centre
	The company acts transparently in all its dealings related to the project.	11.4	<ul style="list-style-type: none"> » The company makes the details of the project available to the host community in local languages. » ESIA and HRIAs are conducted and made public in local languages and disseminated to marginalized groups within the community like women, minorities, and the poor. » Company holds regular meetings with host communities to update them and solicit input on its project performance. 	UNGPB (Principles 15, 17, 21)
	The company re-evaluates its corruption policies and its relationship with land administration agencies to ensure there is no corruption.	6.9	<ul style="list-style-type: none"> » New statement on zero tolerance for corruption issued. » Staff trained to report corruption. 	United Nations Convention Against Corruption Transparency International Business Integrity Toolkit

Responsibilities	Statement	VGGT Article	Indicators	Resources
	In the event that the existing holding was acquired through corruption or forced eviction the company establishes a process to remedy past wrongs.	3.2 16.7- 16.9	<ul style="list-style-type: none"> » Non-judicial grievance mechanism established (upholding the UNGPB criteria). » Indigenous Peoples' right to redress is upheld for land previously acquired without their Free, Prior and Informed Consent. » The project is abandoned if previously forcibly evicted community/households wish to return to the area. 	<p>UNGPB (Principle 31)</p> <p>Business and Human Rights Resource Centre</p> <p>UNDRIP</p> <p>IFC Performance Standards</p> <p>World Bank Operational Manual on Involuntary Resettlement</p> <p>OHCHR Fact Sheet on Forced Evictions</p> <p>UN Human Rights Council general comment No. 4 and No. 7 (on the CESCR)</p>
	The company verifies that its operations contribute to the national food security strategy of the host country and does no harm to local food security.	12.1- 12.4	<ul style="list-style-type: none"> » Where possible the business model is changed to incorporate smallholders (both women and men). » Benefit sharing arrangements modified to ensure local food security. 	Oxfam Smallholder Supply Chain program
ADDITIONAL	The company modifies or abandons projects if the company acquired the land illegally or through means that negatively impacted local food security and the legitimate tenure rights of the women and men within the host communities.	3.2 12.1	<ul style="list-style-type: none"> » New production model is put in place or compensation is provided to the women and men whose legitimate land rights were negatively impacted. 	
	The company provides legal and technical assistance to communities to secure their land and forest tenure rights.	6.6	<ul style="list-style-type: none"> » Paralegals and the fees to register land and forest rights are furnished by the company. 	Namati Paralegal Program

Joint Ventures and Mergers & Acquisitions

Responsibilities	Statement	VGGT Article	Indicators	Resources
REQUISITE	Before proceeding with its projects, the company conducts thorough due diligence on its local investment partners and the land and forest tenure situation in the area.	3.2 6.9	<ul style="list-style-type: none"> » Background research performed on local investment partners to ensure that they did not illegally or illegitimately acquire the land and are not alleged (or proven) to be involved in corruption and human rights abuses. » Land and forest tenure analyses are conducted in greenfield project area. 	United Nations Convention Against Corruption
	The company meaningfully consults all neighboring/ host communities with special attention paid to women, and pastoralist and migrant communities prior to making investment decisions.	3.2 9.9	<ul style="list-style-type: none"> » Free, Prior and Informed Consent of Indigenous Peoples affected by the project has been secured before proceeding. » Consultation in accordance with the highest standards has been conducted to identify women's, men's, and communities' development priorities, land and forest uses and tenure rights, and concerns with the project. 	FAO FPIC Guide IFC Performance Standards CEDAW 1979 article 14 Maputo Protocol article 19.c.
	In the event that the project proceeds, the company establishes a risk monitoring system to ensure that its actions do not infringe on the tenure rights of host communities.	3.2	<ul style="list-style-type: none"> » Employees use the risk monitoring system to review changes to land and forest tenure rights in the area, as a means to engage with the women and men within the local community, and as a way to hold the company accountable for commitments it has made regarding land use and respect for legitimate land and forest tenure rights. » Staff trained to engage with communities and monitor the company's impact on the land and forest rights of host communities. 	UNGPB (Principles 17-21)
	The company ensures that the project does not lead to the forced eviction of host communities.	16.7- 16.9	<ul style="list-style-type: none"> » Company provides funding and support to ensure that any expropriation or resettlement process is consistent with the highest international standards. 	IFC Performance Standards World Bank Operational Manual on Involuntary Resettlement
	The company establishes a process to evaluate grievances and historic land claims within or around the site and provide just and prompt compensation when relevant.	3.2	<ul style="list-style-type: none"> » The company has engaged with women and men within the communities to create accessible operational-level grievance mechanisms, so as to quickly remedy conflicts when/if they arise. » Grievance mechanisms are accessible to all affected parties including women and minorities. 	UNGP (Principle 31) Business and Human Rights Resource Centre

Responsibilities	Statement	VGGT Article	Indicators	Resources
	The company acts transparently in all its dealings related to the project.	11.4	<ul style="list-style-type: none"> » The company makes the details of the project available to the host community in local languages. » Company holds regular meetings with host communities to update them and solicit input on its project performance. » ESIA and HRIAs are conducted prior to project implementation and made public in local languages and disseminated to marginalized groups in the community, like women, minorities, and the poor. » Assessments include specific focus on the project's impacts on women's tenure rights. 	UNGPB (Principles 15, 17, 21)
	The company supports local food security and smallholders through the project.	12.1-12.4	<ul style="list-style-type: none"> » The company adjusts the project to ensure that it promotes local development and food security. » Company provides more employment opportunities or training to both women and men smallholder producers. 	

Procurement / Supply Chains

Responsibilities	Statement	Article	Indicators	Resources
REQUISITE	The company codifies the expectations that suppliers will act in a manner consistent with VGGT.	3.2 26.5	<ul style="list-style-type: none"> » Supplier code of conduct 	Coca-Cola supplier code of conduct
	The company audits its suppliers for compliance with the VGGT and makes audit reports available to the suppliers.	3.2	<ul style="list-style-type: none"> » Independent tenure experts review the land and forest tenure impacts of the company's suppliers. 	Land and forest tenure experts, including gender specialists. LGAF RRI tenure data on the rights of indigenous and local communities, as well as the specific rights of women
	The company establishes a roadmap with its suppliers to ensure they uphold their responsibilities under the VGGT.	3.2	<ul style="list-style-type: none"> » The roadmap is developed by the company, the supplier, and the communities affected by the supplier's operations. 	Landesa playbooks

Responsibilities	Statement	VGGT Article	Indicators	Resources
	<p>The company offers training for suppliers who are found to have violated the land and forest rights of individual women, men, or neighboring/host communities.</p> <p>In parallel, the company enacts an escalation plan including reducing, suspending, and ultimately, ceasing business if the supplier fails to comply within a predetermined period.</p>	3.2 9.10 12.1- 12.4	<ul style="list-style-type: none"> » Training sessions with suppliers. » Documented targets that the supplier must reach in order to continue doing business with the company. 	UN Global Compact: Supply Chain Sustainability
	As part of a company's due diligence and monitoring of their supply chain, it monitors and assesses new and existing suppliers for corrupt practices, with special emphasis on land and forests.	6.9	<ul style="list-style-type: none"> » A company's due diligence reports specify investigation of corruption in supply chain. 	United Nations Convention Against Corruption Transparency International Business Integrity Toolkit
	The company establishes a grievance mechanism for violations of legitimate land and forest tenure rights by its suppliers	3.2	<ul style="list-style-type: none"> » The company takes actions to address infringements in their supply chain. » The grievance mechanism meets the effectiveness criteria established by UNGPB. Grievance mechanisms are accessible to all affected parties including women and minorities. » Indigenous Peoples' right to redress is upheld for land previously acquired without their Free, Prior and Informed Consent. 	UNGPB (Principle 31) Business and Human Rights Resource Centre UNDRIP
	The company provides training to its procurement/sourcing teams on the steps they must take to perform land and forest tenure due diligence on existing or prospective suppliers.	3.2	<ul style="list-style-type: none"> » Training sessions with procurement/sourcing teams on their responsibilities under the VGGT. » Integration of land and forest tenure related KPIs for procurement teams. 	CERES Sustainable Supply Chains
	The company carries out transparent and independent third party ESIA's and HRIA's on commodity suppliers.	3.2 11.2	<ul style="list-style-type: none"> » ESIA's and HRIA's are shared with suppliers and made public in accessible language for the local community. » Assessments include specific focus on the suppliers' impacts on women's rights to land. 	UNGPB (Principles 15, 17 and 21)

Responsibilities	Statement	VGGT Article	Indicators	Resources
	The company actively integrates smallholders into their supply chain, where appropriate.	12.1-12.4	» Number of smallholders and the volume of product they contribute to the company's supply chain are reported annually and differences explained.	Oxfam Smallholder Supply Chain program
ADDITIONAL	The company initiates full traceability of the agricultural and forest commodities within its supply chain to monitor its impact on land and forest tenure rights.	3.2	» The company can identify the origin of the agricultural and forest commodities that it uses to make its products. The origin identifies where the commodity was produced and is linked to the company's risk management system.	
	The company maps the land and forest tenure rights of its suppliers and the legitimate tenure rights of their host communities.	3.2	» The map is used as part of the company's risk management system to monitor its impacts on land and forest tenure rights throughout the supply chain.	

Annex

1. COMPANY COMMITMENTS TO IMPROVING TENURE GOVERNANCE

Some of the world's largest agribusiness companies have already made commitments to the VGGT and are working to improve land and forest tenure governance where they work. These include: Cargill, Illovo Sugar, Nestlé, PepsiCo, The Coca-Cola Company, and Unilever. The table below showcases highlights from company commitments. It does not reflect all commitments made nor does it evaluate whether the company has kept its commitments.

Company	Commitment Highlights
Cargill ^a	<p>“Cargill supports government efforts around the world to clarify land tenure and property rights, and promote good land governance as we believe this is critical to agricultural and rural development and investment, all of which contributes to stability, poverty reduction and increased food security.”</p> <p>“Cargill recently joined the efforts of leaders of the G8 and global organizations to lend its voice in support of the VGGT on Responsible Tenure of Land, Fisheries and Forests.”</p> <p>“Cargill is committed to demonstrating its support for these VGGT in its global business transactions.”</p>
Coca-Cola	<p>The Coca-Cola Company Commitment: Land Rights and Sugar^b</p> <ul style="list-style-type: none"> » “Commit to zero tolerance for land grabbing » Will adhere to the principle of Free, Prior and Informed Consent across our operations (including bottling partners) and will require our suppliers to adhere to this principle. » Encourage the development of an industry-wide commitment within the next three years on sustainable sugarcane » Publicly advocate that food and beverage companies, traders, especially of soy, sugar, and palm oil, as well as sourcing country governments to endorse and implement the VGGTs and commit to respecting land rights.” <p>Sustainable Agriculture Guiding Principles^c</p> <ul style="list-style-type: none"> » “Recognize and safeguard the rights of communities and traditional peoples to maintain access to land and natural resources. » Require respect for and prohibit the violation of the land rights of individuals and communities. » Maintain positive community relations and contribute to local economic development.” <p>In 2014, the company issued Supplier Guiding Principles^d that includes guidance for suppliers on land rights and FPIC.</p>

Company	Commitment Highlights
Illovo Group	<p>Illovo Group Guidelines on Land and Land Rights^e</p> <ul style="list-style-type: none"> » “The Illovo Group adopts a zero tolerance approach to land grabs and requires that all its Suppliers do likewise.” » “We have implemented a process to identify, and on an on-going basis we will continue to assess, through stakeholder engagement and other mechanisms, any negative impacts on land and land rights in the areas in which we operate.” » “In relation to small grower development and other projects involving the development of local farm land, we will carry out a due diligence investigation in relation to land rights in order to identify any competing land claims, or other land rights issues, and will seek to address these insofar as possible.” » “We will promote the adoption of responsible land rights practices (including those of the UNGC and the UN VGGT on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security) in our countries of operation.” » “In line with our Code of Conduct, Illovo adheres to the principles of Free, Prior and Informed Consent (FPIC) in relation to our dealings with our local communities. This requirement extends to our Suppliers, who are also required to adopt a similar approach throughout their supply chains.”
Nestlé	<p>Nestlé Commitment on Land and Land Rights in Agricultural Supply Chains^f</p> <ul style="list-style-type: none"> » “We will adopt the FAO’s VGGT on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, and other relevant and accepted instruments that codify the rights of communities in relation to their land and natural resources. » “[Include] specific commitments on land, natural resources and human rights in our Responsible Sourcing Guideline for high risk commodities, including provisions by suppliers to ensure that: <ul style="list-style-type: none"> › They have a zero tolerance for land grabs. › They engage with and seek the support of those who could be affected by investment decisions prior to decisions being taken and respond to their contributions. They take into account existing power imbalances and ensuring active, free, effective, meaningful and informed participation of affected individuals and groups. › They seek free, prior, and informed consent with regard to the rights of Indigenous Peoples. » “[Work] with suppliers to implement actions to improve land rights wherever gaps are identified. » “[Include] respect for land rights in our due diligence review in relation to acquisitions and joint ventures that involve land acquisition.”
PepsiCo	<p>PepsiCo Land Policy^g</p> <ul style="list-style-type: none"> » “When PepsiCo is acquiring land, engage in fair (based on effective grievance mechanisms and processes) and legal negotiations on land transfers and acquisitions and utilize the IFC Performance Standards to implement the Free, Prior, and Informed Consent (FPIC) principles for agricultural development, in developing countries.” » “In countries from which PepsiCo sources raw commodities and where we do not believe adequate land rights protections are in place that are consistent with the IFC Performance Standards and the UN FAO VGGT on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (UN FAO Guidelines), advocate for the national government to use and follow the IFC Performance Standards and UN FAO Guidelines.” » “Engage with appropriate industry and other groups to positively impact and respect all legitimate land tenure rights and the people who hold them.” » “Utilize the PepsiCo Responsible Sourcing Guidelines as well as the PepsiCo Sustainability Councils and processes to ensure continued engagement with and compliance by suppliers on relevant land issues”

Company	Commitment Highlights
Unilever	<p>Sustainable Sourcing Strategy^h</p> <ul style="list-style-type: none"> » “Unilever recognises that the respect of land rights is critical for food security and for inclusive social and economic development. The practice of land grabbing does not drive sustainable and equitable growth and must be stopped. We are committed to the principle of Free, Prior and Informed Consent. This principle is included in the UN Declaration on the Rights of Indigenous Peoples and the UN VGGT on the Responsible Governance of Tenure of Land, Fisheries & Forests in the context of National Food Security. Unilever supports the implementation of these guidelines by national authorities.” » “We also recognise the right of women to land ownership and access to land. One of the Fundamental Principles of Unilever’s Responsible Sourcing Policy is that the land rights of communities, including indigenous peoples, will be protected and promoted and a mandatory requirement is that due diligence relating to established rights to property and land is undertaken.” <p>Responsible Sourcing Strategyⁱ</p> <ul style="list-style-type: none"> » “Land rights of communities, including indigenous peoples, will be protected and promoted. » The rights and title to property and land of the individual, indigenous people and local communities are respected. » All negotiations with regard to their property or land, including the use of and transfers of it, adhere to the principles of Free, Prior and Informed Consent, contract transparency and disclosure.”

a. Cargill. 2014. Does Cargill support global standards that respect and strengthen local communities and farmers’ rights to land? <http://www.cargill.com/news/issues/agricultural-development/land-rights/index.jsp>.

b. The Coca-Cola Company. 2013. The Coca-Cola Company Commitment: Land Rights and Sugar. <http://assets.coca-colacompany.com/6b/65/7f0d386040fcb4872fa136f05c5c/proposal-to-oxfam-on-land-tenure-and-sugar.pdf>.

c. The Coca-Cola Company. 2013. Sustainable Agricultural Guiding Principles. <http://assets.coca-colacompany.com/bb/28/0d592b834e9d8fd9afcccb1829b6/sustainable-agricultural-guiding-principles.pdf>.

d. The Coca-Cola Company. 2014. Supplier Guiding Principles. http://assets.coca-colacompany.com/1b/d5/9c8554554fd29678c97791e27c83/SGP_Brochure_ENG.pdf.

e. Illovo Group. 2015. Illovo Group Guidelines on Land and Land Rights. <http://www.illovosugar.co.za/Group-Governance/Group-Guidelines-on-Land-and-Land-Rights>.

f. Nestlé. 2014. Nestlé Commitment on Land & Land Rights in Agricultural Supply Chains. http://www.nestle.com/asset-library/documents/library/documents/corporate_social_responsibility/nestle-commitment-land-rights-agriculture.pdf.

g. PepsiCo. 2014. PepsiCo Land Policy. https://www.pepsico.com/Assets/Download/PepsiCo_Land_Policy.pdf.

h. Unilever. 2015. Sustainable Sourcing Strategy. <http://www.unilever.com/sustainable-living-2014/reducing-environmental-impact/sustainable-sourcing/our-strategy/>.

i. Unilever. 2015. Responsible Sourcing Strategy. http://www.unilever.com/Images/sac-2015_tcm244-427050_1.pdf.

2. RESPECTING AND PROTECTING THE LEGITIMATE TENURE RIGHTS HELD BY WOMEN AND OTHER VULNERABLE PEOPLE – A CHECKLIST OF ACTIONS

The VGGT plainly call for companies to respect and protect the legitimate land and forest tenure rights held by women, men, and communities. In short, everybody’s rights are included. However, experience has shown that it is more difficult to respect and protect the rights of those land users and rightsholders that are unseen or less empowered, less vocal, and less privileged from a social, economic, or political perspective. Those weaker, quieter rightsholders are often women, children, and other vulnerable people.

This checklist includes basic steps that must be taken to see, hear, empower, and privilege those sometimes ignored or disadvantaged rightsholders. The steps are to be taken as a company otherwise embraces the best investment practices called for by this Interlaken Group guide. Those best practices are called out in plain terms for all types of land and forest investments in the remainder of the guide—due diligence, capacity building, consultation and engagement, impact assessment and avoidance, sensitive project design, fair and transparent negotiations, fair and timely compensation,

establishing accessible grievance mechanisms, monitoring, providing remedies when needed, and others. When the checklist mentions women, it also is directed toward other vulnerable land and forest users and rightsholders. Following are nine action items that are always required for gender inclusive investments.

1. Respect and protect women’s tenure rights to the same extent as the tenure rights of men within households and communities.
2. In all investment practices, identify and acknowledge the differences between women and men, accelerating equality across all rightsholders.
3. Integrate into company policies and procedures the intent and means to respect and protect women’s tenure rights and provide incentives for employees to comply with them.
4. Instruct all relevant employees to respect and protect women’s tenure rights. This can be achieved by building measurable human rights performance criteria into staff KPIs, HR recruitment and job descriptions, bonus structures, staff reviews, and disciplinary measures.
5. When collecting any information about a possible investment in land or forests, collect information from women.
6. Design and implement consultation and engagement—talking, hearing, seeing—so that women are included as frequently and with the same impact as men. Tell men and women that you will talk to, hear from, and see women. Seek out spaces where women are already meaningfully engaged.
7. Use gender experts to advise, design, and implement best practices.
8. Proceed with investments only when women have been included and their treatment is equal to that of men and communities.
9. Consider men and women separately in the following aspects of any land investment:
 - » Capacity and authority to interact with a company
 - » Land and resource use
 - » Land and resource management
 - » Formal and informal/customary land and resource rights
 - » Formal and informal decision-making
 - » How information is received and expressed
 - » Negotiation and contracting
 - » Consent
 - » Enforcement of agreements
 - » Scope, breadth, and severity of impacts
 - » Impact mitigation and avoidance
 - » Means of livelihoods
 - » Risks to livelihoods
 - » Extent, control, and uses of income
 - » Production and reproduction duties
 - » Paid employment and unpaid duties
 - » Payment of compensation and benefits
 - » Fielding and remedying grievances
 - » Monitoring

3. THE VGGT AND OTHER INTERNATIONAL INSTRUMENTS

While not legally binding, the VGGT rest upon international law and agreed norms regulating corporate responsibilities. The VGGT state:

“These Guidelines should be interpreted and applied consistent with existing obligations under national and international law, and with due regard to voluntary commitments under applicable regional and international instruments. They are complementary to, and support, national, regional and international initiatives that address human rights and provide secure tenure rights to land, fisheries and forests, and also initiatives to improve governance. Nothing in these Guidelines should be read as limiting or

undermining any legal obligations to which a State may be subject under international law.”(Article 2.2)

Several international rights agreements recognize rights related directly and indirectly to land and forest tenure. It is a company’s responsibility to understand and uphold its responsibilities under international law and agreements. Below are several of the most relevant to this Guide:

United Nations Guiding Principles on Business and Human Rights (UNGPR)⁷

“The responsibility of business enterprises to respect human rights applies to all enterprises regardless of their size, sector, operational context, ownership and structure.” (UNGPR Article 14)

Companies must also abide by international human rights standards in the application of the VGGT. In particular, the United Nations Guiding Principles on Business and Human Rights (UNGPR) provide a framework that can help to understand how a company can act consistently with the intent of the VGGT. The framework establishes that states have a duty to protect the human rights in their jurisdiction, that companies have a responsibility to respect those human rights and that all citizens should have access to remedy in the case of a human rights violation.

Though tenure rights are not a human right, because of their importance to the realization of many human rights, companies have a responsibility to ensure that their land use (or that of their suppliers) does not abuse the human rights of their host communities.⁸

According to the United Nations High Commissioner for Human Rights:

“Business enterprises, which are often influential actors in the governance of land and other natural resources, including through market mechanisms, have human rights-related responsibilities. National and transnational companies involved in land deals, investments and extractive and other activities involving the acquisition, use or alteration of lands bear a responsibility not to infringe on the rights of other users and owners through their activities, and to address any adverse impact arising as a result of their actions.”⁹

The Universal Declaration of Human Rights¹⁰ and International Covenant on Economic, Social and Cultural Rights¹¹

“Everyone has the right to own property alone as well as in association with others.” (UDHR Article 17.1)

“No one shall be arbitrarily deprived of his property.” (UDHR Article 17.2)

“Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.” (UDHR Article 25.1)

“The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.” (ICESCR Article 11.1)

While not explicitly referencing land and forest tenure rights, the UN Declaration of Human Rights guarantees the right to food and housing. In most developing economies, food security and

7 UN-OHCHR. 2011. Guiding Principles on Business and Human Rights. http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf.

8 See also: Human Rights Reporting and Assurance Frameworks Initiative. <http://www.csrandthelaw.com/2015/03/10/u-n-guiding-principles-reporting-framework-released-by-the-human-rights-reporting-and-assurance-frameworks-initiative/>.

9 OHCHR. 2014. Report of the United Nations High Commissioner for Human Rights on Land and Human Rights. http://www.un.org/ga/search/view_doc.asp?symbol=E%2F2014%2F86.

10 UN. 1948. Universal Declaration of Human Rights. <http://www.un.org/en/documents/udhr/index.shtml>.

11 UN. 1966. International Covenant on Economic, Social and Cultural Rights. <http://www.ohchr.org/EN/ProfessionalInterest/Pages/ICESCR.aspx>.

housing is directly linked to one's tenure rights. Moreover, the right to own property and not be arbitrarily deprived of property is relevant to communities and households with legitimate tenure rights where it has not been legally registered. In some places, a community or household's ability to formally register their land and forest tenure rights is impeded by high costs and bureaucratic complexities.

UN Declaration on the Rights of Indigenous Peoples (UNDRIP)¹²

"Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the Free, Prior and Informed Consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return." (UNDRIP Article 10)

"Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired" (UNDRIP Article 26 1.)

"Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired." (UNDRIP Article 26.2)

"States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned." (UNDRIP Article 26.3)

The tenure rights of Indigenous Peoples were recognized in 2007 through UNDRIP. The VGGT note that states and other parties must hold consultations and obtain the Free, Prior and Informed Consent of Indigenous Peoples before any project affecting their tenure rights may proceed. (Article 9.9)

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)¹³

"States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals." (CEDAW Article 15)

"States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right:... To have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement scheme." (CEDAW Article 14)

In 1979, the Convention on the Elimination of All Forms of Discrimination against Women was adopted by the United Nations General Assembly, and it entered into force as an international treaty in 1981 after the 20th country had ratified it. Today, 187 countries have ratified CEDAW. The United States is among seven countries that have not. States Parties have agreed to enact the governance frameworks needed to realize

12 UN. 2007. United Nations Declaration on the Rights of Indigenous Peoples. http://www.un.org/esa/socdev/unpfi/documents/DRIPS_en.pdf.

13 UN General Assembly, Convention on the Elimination of All Forms of Discrimination Against Women, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13, available at: <https://www.refworld.org/docid/3ae6b3970.html> [accessed 19 March 2019]

its provisions, and to provide state capacity at appropriate levels of government to implement them. CEDAW also calls for States Parties to report on the legislative, judicial, administrative or other measures that they have adopted to implement it every four years.

UN Sustainable Development Goals

“Goal 1: End poverty in all its forms everywhere.”

“Target 1.4: By 2030, ensure that all men and women, in particular the poor and the vulnerable, have equal rights to economic resources, as well as access to basic services, ownership and control over land and other forms of property, inheritance, natural resources, appropriate new technology and financial services, including microfinance.”

“Indicator 1.4.2: Proportion of total adult population with secure tenure rights to land, with legally recognized documentation and who perceive their rights to land as secure, by sex and by type of tenure.”

“Goal 2: End hunger, achieve food security and improved nutrition and promote sustainable agriculture.”

“Target 2.3: By 2030, double the agricultural productivity and incomes of small-scale food producers, in particular women, indigenous peoples, family farmers, pastoralists and fishers, including through secure and equal access to land, other productive resources and inputs, knowledge, financial services, markets and opportunities for value addition and non-farm employment.”

“Goal 5: Achieve gender equality and empower all women and girls.”

“Target 5.a: Undertake reforms to give women equal rights to economic resources, as well as access to ownership and control over land and other forms of property, financial services, inheritance and natural resources, in accordance with national laws.”

“Indicator: 5.a.1 (a) Proportion of total agricultural population with ownership or secure rights over agricultural land, by sex; and (b) share of women among owners or rights-bearers of agricultural land, by type of tenure.”

“Indicator: 5.a.2 Proportion of countries where the legal framework (including customary law) guarantees women’s equal rights to land ownership and/or control.”

At the United Nations Sustainable Development Summit on September 25, 2015, more than 150 world leaders adopted the 2030 Agenda for Sustainable Development, including the Sustainable Development Goals (SDGs). The 17 SDGs came into force on January 1, 2016. The new goals are expected to shape political and bi- and multi-lateral policy worldwide for the next 15 years.

ILO 169: Indigenous and Tribal Peoples Convention¹⁴

“The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognised.” (ILO Article 14.1)

“The rights of the peoples concerned to the natural resources pertaining to their lands shall be specially safeguarded.” (ILO Article 15.1)

ILO 169 was one of the first international agreements that included provisions calling on states to recognize and protect the land rights of Indigenous Peoples and other tribal peoples. The VGGT make reference to ILO 169 as it pertains to a state’s obligation. Companies operating in places with Indigenous Peoples that remain unprotected by national legislation have a responsibility to respect FPIC and the rights of the local Indigenous Peoples.

14 ILO. 1989. Indigenous and Tribal Peoples Convention. http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169.

UN Basic principles and guidelines on development-based evictions and displacement¹⁵

“Transnational corporations and other business enterprises must respect the human right to adequate housing, including the prohibition on forced evictions, within their respective spheres of activity and influence.” (Article 73)

The VGGT place the responsibility of protecting against forced evictions on states (Article 7.6). However, according to the VGGT, it is a company’s responsibility to respect all human rights. If the company’s planned operations are likely to cause the forced evictions of any community or individual, the company may be contributing to or inflicting human rights abuses.

4. ADDITIONAL RESOURCES TO INFORM COMPANY EFFORTS TO SUPPORT THE VGGT¹⁶

Several international development agencies have been working to secure land rights of individual women, men, and poor households/communities over the past several decades.¹⁷ Some of these organizations are now translating their experience into guidance notes for companies and investors interested in responsible land-based investments. These guidance notes contain useful information for a company’s operations and sustainability teams. For example, the USAID booklet provides detailed guidance on the procedures that land tenure experts might follow to understand tenure dynamics in a country and an investment site, including information on mapping and participatory processes. The AFD handbook, which is part of the French government’s commitments to the VGGT, provides guidance for investment officers evaluating agribusiness projects. FAO has stewarded the VGGT process and is now producing several guidance notes for difference stakeholder groups, including investors.

Additionally, the International Finance Corporation Performance Standards (and related Guidance Note) on Environmental and Social Sustainability are frequently used by companies to guide their project design and consultations with host communities (particularly Performance Standards 1, 5, 6 and 7). Though the Performance Standards are not explicitly linked to the VGGT, the standards can provide useful information beyond the scope of this Guide.¹⁸

Companies can use these guides as a source of information and ideas to promote better tenure governance and improved smallholder agriculture in the areas that they operate. In addition, it must be emphasized, that no guide can replace the official VGGT text. All companies with operations impacting land and forest rights should be aware of the complete VGGT and their responsibilities thereunder.

Guide	Highlights
USAID Operational Guidelines for Responsible Land-Based Investment	Detailed questions to ask during due diligence, consultation, and contract negotiation phases. Organized chronologically along the project lifecycle.
AFD Guide to Due Diligence of Agribusiness Projects That Affect Land and Property Rights	Focuses on contracts between companies, the state, and communities. Identifies “red lines” that would require a project to stop. The French government now requires any company receiving French public funding, in the form of concessional lending for example, to uphold the VGGT. ^a
FAO VGGT Implementation Guides	A variety of VGGT implementation guides that would be useful to companies have been published by the FAO. These include guides to Governing land for women and men, valuing land tenure rights, improving ways to record tenure rights, a technical guide for investors, and others. See http://www.fao.org/tenure/resources/collections/governance-of-tenure-technical-guides/en/ .

¹⁵ UN-OHCHR. Basic Principles and Guidelines on Development-based Evictions And Displacement: Annex 1 of the report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living. A/HRC/4/18. <http://daccess-dds ny.un.org/doc/UNDOC/GEN/G07/106/28/PDF/G0710628.pdf?OpenElement>.

¹⁶ These guides are cited for information purposes due to their prominence in the dialogue about responsible land-based investments. The Interlaken Group does not endorse any of these specific guidelines.

¹⁷ For example: AFD, DFID. FAO. USAID, and the World Bank have all led or are funding international development programs aiming to secure land tenure rights.

¹⁸ IFC. 2012. Performance Standards on Environmental and Social Sustainability. http://www.ifc.org/wps/wcm/connect/115482804a0255db96fbff1a5d13d27/PS_English_2012_Full-Documents.pdf?MOD=AJPERES

Guide	Highlights
IFC Performance Standards (and the environmental and social standards of other development finance institutions)	Trusted by many companies and governments. Rather than a guide, the Performance Standards present criteria to evaluate a proposed project's environmental and social suitability. Particularly strong on the matters of displacement, Indigenous Peoples, and bio-diversity.
New Alliance for Food Security and Nutrition: Analytical Framework for Responsible Land-Based Agricultural Investments	This tool was designed to assist companies in aligning their policies and actions with global guidelines on responsible land-based investments, most notably the VGGT and the African Union's Guiding Principles on Large Scale Land Based Investments in Africa.

a. See French Ministry of Foreign Affairs. 2013. Supporting land policies. <http://www.diplomatie.gouv.fr/en/french-foreign-policy-1/governance/state-reform/article/supporting-land-policies-20296>).

5. EXAMPLES OF KEY TENURE DISTINCTIONS BETWEEN AGRICULTURAL AND PLANTATION FORESTRY LAND

While the Guidance provided here is applicable across all land-based sectors, special emphasis is given to land acquired for agribusiness and plantation forestry. Each of these sectors present special land and forest tenure considerations. Examples of such distinctions are presented below.

Product	Special characteristics
Agricultural	<p>Tenure rights to agricultural land can include seasonal use rights for specific plots or pasture. Accommodating the rights of way held by other communities – for example nomadic groups – can be particularly important to reduce the risk of conflict over land access. Women's land uses are numerous, and rights to land may exist, but they can often be obscured, despite their vital roles in performing agricultural work and providing food for their households and communities. In cases where land rights are formally registered, household plots are frequently only registered to the male head of household.</p> <p>Acquiring land for agricultural production provides a company with an opportunity to support local economic development and food security. Rather than displace communities, companies can engage them and support smallholder agriculture. For example, enhancing smallholder productivity and the cold chain available to community and household producers can help a company meet its production goals while also supporting local producers to serve national and regional markets. Additionally, companies committed to acting in accordance with the spirit of the VGGT can engage national counterparts in processes to register the land rights of local communities and households before finalizing land lease agreements.</p> <p>Thanks to the shorter rotation period of agricultural production compared to forestry projects, companies, communities and households can benefit from more frequent cash flow from harvesting and selling their products. This characteristic of agriculture can imply that companies are able design their projects with shorter lease periods than in forestry projects. Locking up agricultural land for very long time periods can have a detrimental impact on local communities' future food security as the population grows, which could lead to future conflicts between the company and communities.</p>

Plantation forestry	Plantation forestry requires large expanses of land to produce such crops as timber, pulpwood, rubber, and palm oil. Where the land is suitable for agriculture, communities living nearby may have seasonal use rights to parts of the land for growing crops, gathering food, or for other purposes. Often plantation forestry is practiced in areas unsuitable for agriculture (e.g., steep hillsides), where neighboring communities might hunt or collect food. Moreover, communities living around plantation areas are frequently the most marginalized in the country. Due to the longer growing cycle of trees compared to agricultural crops, plantation forestry companies will look for long-term land leases. Locking the land up for decades could result in poor community relationships that can place the investment at risk. The length and security of the lease is a key determinate of the value of the timber stand. Companies will therefore have a strong interest in following FPIC norms and continual community engagement to ensure that the operations are not damaging the rights of the community or individuals. Where possible, plantation forestry companies should plan outgrower schemes that respect community and household tenure rights.
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6. ASSESSING LAND AND FOREST TENURE GOVERNANCE IN THE AREAS WHERE A COMPANY OPERATES

The risks posed by weak land and forest tenure governance to companies and communities can be difficult to quickly identify. Fortunately, there is a growing body of research and databases that provide information on land and forest governance in the developing world. While these sources of information can be useful to guide a company's research, they cannot replace careful, due diligence performed by your staff and the robust consultations required by the VGGT.

- » **FAO Gender and Land Rights Database (GLRD)** provides a searchable platform that includes Country Profiles (characterizing the extent to which national legal frameworks, policies, and programs support women's access to land in 84 countries), statistics (disaggregated by gender), and a legal assessment tool (providing policy advice and including 30 legal indicators that indicate problem areas).¹⁹
- » **World Bank Land Governance Assessment Framework (LGAF)** provides detailed assessments of the land sector and the recognition of local tenure rights in more than 30 countries.²⁰
- » **World Bank Women, Business and the Law 2019** examines 10 years of country-specific data through an index structured around the economic decisions women make as they go through different stages of their working lives.²¹
- » **USAID Country Profiles** are available within its LANDLINKS website and cover over 70 countries. Gender is addressed as a discrete topic.²²
- » **Transparency International's Corruption Perception Index** can give a company insights into the level of corruption and government accountability in a country as part of your due diligence process. Corruption in the land sector can lead to forced evictions and human rights abuses.²³
- » **Land Matrix** is an online platform monitoring land investments that can help a company mitigate risks and understand global trends in land acquisitions.²⁴
- » **Rights and Resources Initiative (RRI)'s research on forest tenure and community forestry** will provide a company with up to date information on the current laws and tenure systems in countries where you might operate.²⁵

¹⁹ <http://www.fao.org/gender-landrights-database/en/>.

²⁰ World Bank LGAF website: <http://web.worldbank.org/WBSITE/EXTERNAL/EXTDEC/EXTRESEARCH/EXTPROGRAMS/EX-TARDR/EXTLGA/0,,contentMDK:22793966~menuPK:9163253~pagePK:64168427~piPK:64168435~theSitePK:7630425,00.html>.

²¹ <https://wbl.worldbank.org/#>.

²² USAID LANDLINKS website: <https://www.land-links.org/country-profiles/>.

²³ Transparency International website: <http://www.transparency.org/>.

²⁴ Land Matrix website: <http://www.landmatrix.org/en/>.

²⁵ Rights and Resources Initiative Forest Tenure Data: <http://www.rightsandresources.org/resources/tenure-data/>.

- » **Resource Equity’s LandWise website** can be useful when doing due diligence because it contains national and international legal materials and articles about women’s land rights. It also contains Practice Guides that help users make use of the materials they locate within LandWise.²⁶

7. ESSENTIAL READING FOR BUSINESSES AND INVESTORS: SELECTED ARTICLES FROM THE VGGT

The following articles specify responsibilities held by companies or represent articles of particular relevance to the private sector. It must be remembered that the VGGT are indivisible; it is a company’s responsibility to understand and consider how all the articles apply to a company’s policies and operations.

2. Nature and scope

Article 2.2

These Guidelines should be interpreted and applied consistent with existing obligations under national and international law, and with due regard to voluntary commitments under applicable regional and international instruments. They are complementary to, and support, national, regional and international initiatives that address human rights and provide secure tenure rights to land, fisheries, and forests, and also initiatives to improve governance. Nothing in these Guidelines should be read as limiting or undermining any legal obligations to which a State may be subject under international law.

3. Guiding principles of responsible tenure governance

3A General principles

Article 3.1

States should:

1. Recognize and respect all legitimate tenure right holders and their rights. They should take reasonable measures to identify, record and respect legitimate tenure right holders and their rights, whether formally recorded or not; to refrain from infringement of tenure rights of others; and to meet the duties associated with tenure rights.
2. Safeguard legitimate tenure rights against threats and infringements. They should protect tenure right holders against the arbitrary loss of their tenure rights, including forced evictions that are inconsistent with their existing obligations under national and international law.
3. Promote and facilitate the enjoyment of legitimate tenure rights. They should take active measures to promote and facilitate the full realization of tenure rights or the making of transactions with the rights, such as ensuring that services are accessible to all.
4. Provide access to justice to deal with infringements of legitimate tenure rights. They should provide effective and accessible means.

Article 3.2

Non-state actors including business enterprises have a responsibility to respect human rights and legitimate tenure rights. Business enterprises should act with due diligence to avoid infringing on the human rights and legitimate tenure rights of others. They should include appropriate risk management systems to prevent and address adverse impacts on human rights and legitimate tenure rights. Business enterprises should provide for and cooperate in non-judicial mechanisms to provide remedy, including effective operational-level grievance mechanisms, where appropriate, where they have caused or contributed to adverse impacts on human rights and legitimate tenure rights. Business enterprises should identify and assess any actual or potential impacts on human rights and legitimate tenure rights in which they may be involved. States, in accordance with their international obligations, should provide access to effective judicial remedies for negative impacts on human rights and legitimate tenure rights by business enterprises. Where transnational corporations are involved, their home States have roles to play in assisting both those corporations and host States to ensure that businesses are not involved in abuse of human rights and legitimate tenure rights. States should take additional steps

²⁶ Resource Equity LandWise website: <https://landwise.resourceequity.org/>.

to protect against abuses of human rights and legitimate tenure rights by business enterprises that are owned or controlled by the State, or that receive substantial support and service from State agencies.

3B Principles of implementation

These principles of implementation are essential to contribute to responsible governance of tenure of land, fisheries and forests

4. Gender equality: Ensure the equal right of women and men to the enjoyment of all human rights, while acknowledging differences between women and men and taking specific measures aimed at accelerating de facto equality when necessary. States should ensure that women and girls have equal tenure rights and access to land, fisheries and forests independent of their civil and marital status.
6. ...Consultation and participation: engaging with and seeking the support of those who, having legitimate tenure rights, could be affected by decisions, prior to decisions being taken, and responding to their contributions; taking into consideration existing power imbalances between different parties and ensuring active, free, effective, meaningful and informed participation of individuals and groups in associated decision-making processes.

4. Rights and responsibilities related to tenure

Article 4.4

Based on an examination of tenure rights in line with national law, States should provide legal recognition for legitimate tenure rights not currently protected by law. Policies and laws that ensure tenure rights should be non-discriminatory and gender sensitive. Consistent with the principles of consultation and participation of these Guidelines, States should define through widely publicized rules the categories of rights that are considered legitimate. All forms of tenure should provide all persons with a degree of tenure security which guarantees legal protection against forced evictions that are inconsistent with States' existing obligations under national and international law, and against harassment and other threats.

Article 4.5

States should protect legitimate tenure rights, and ensure that people are not arbitrarily evicted and that their legitimate tenure risks are not otherwise extinguished or infringed.

Article 4.8

Given that all human rights are universal, indivisible, interdependent and interrelated, the governance of tenure of land, fisheries and forests should not only take into account rights that are directly linked to access and use of land, fisheries and forests, but also all civil, political, economic, social and cultural rights. In doing so, States should respect and protect the civil and political rights of defenders of human rights, including the human rights of peasants, indigenous peoples, fishers, pastoralists and rural workers, and should observe their human rights obligations when dealing with individuals and associations acting in defence of land, fisheries and forests.

5. Policy, legal and organizational frameworks related to tenure

Article 5.4

States should consider the particular obstacles faced by women and girls with regard to tenure and associated tenure rights, and take measures to ensure that legal and policy frameworks provide adequate protection for women and that laws that recognize women's tenure rights are implemented and enforced. States should ensure that women can legally enter into contracts concerning tenure rights on the basis of equality with men and should strive to provide legal services and other assistance to enable women to defend their tenure interests.

6. Delivery of services

Article 6.6

States and other parties should consider additional measures to support vulnerable or marginalized groups who could not otherwise access administrative and judicial services. These measures should include legal support, such as affordable legal aid, and may also include the provision of services

of paralegals or parasurveyors, and mobile services for remote communities and mobile indigenous peoples.

Article 6.9

States and non-state actors should endeavour to prevent corruption with regard to tenure rights. States should do so particularly through consultation and participation, rule of law, transparency and accountability. States should adopt and enforce anti-corruption measures including applying checks and balances, limiting the arbitrary use of power, addressing conflicts of interest and adopting clear rules and regulations. States should provide for the administrative and/or judicial review of decisions of implementing agencies. Staff working on the administration of tenure should be held accountable for their actions. They should be provided with the means of conducting their duties effectively. They should be protected against interference in their duties and from retaliation for reporting acts of corruption.

7. Safeguards

Article 7.1

When States recognize or allocate tenure rights to land, fisheries and forests, they should establish, in accordance with national laws, safeguards to avoid infringing on or extinguishing tenure rights of others, including legitimate tenure rights that are not currently protected by law. In particular, safeguards should protect women and the vulnerable who hold subsidiary tenure rights, such as gathering rights.

8. Public land, fisheries and forests

Article 8.9

States should allocate tenure rights and delegate tenure governance in transparent, participatory ways, using simple procedures that are clear, accessible and understandable to all, especially to indigenous peoples and other communities with customary tenure systems. Information in applicable languages should be provided to all potential participants, including through gender-sensitive messages. Where possible, States should ensure that newly allocated tenure rights are recorded with other tenure rights in a single recording system, or are linked by a common framework. States and non-state actors should further endeavour to prevent corruption in the allocation of tenure rights.

9. Indigenous Peoples and other communities with customary tenure systems

Article 9.9

States and other parties should hold good faith consultation with indigenous peoples before initiating any project or before adopting and implementing legislative or administrative measures affecting the resources for which the communities hold rights. Such projects should be based on an effective and meaningful consultation with indigenous peoples, through their own representative institutions in order to obtain their Free, Prior and Informed Consent under the United Nations Declaration of Rights of Indigenous Peoples and with due regard for particular positions and understandings of individual States. Consultation and decision-making processes should be organized without intimidation and be conducted in a climate of trust. The principles of consultation and participation, as set out in paragraph 3B.6, should be applied in the case of other communities described in this section.

Article 9.10

State and non-state actors should strive, where necessary, together with representative institutions of affected communities and in cooperation with affected communities, to provide technical and legal assistance to affected communities to participate in the development of tenure policies, laws and projects in non-discriminatory and gender-sensitive ways.

11. Markets

Article 11.2

States should facilitate the operations of efficient and transparent markets to promote participation under equal conditions and opportunities for mutually beneficial transfers of

tenure rights which lessen conflict and instability; promote the sustainable use of land, fisheries and forests and conservation of the environment; promote the fair and equitable use of genetic resources associated with land, fisheries and forests in accordance with applicable treaties; expand economic opportunities; and increase participation by the poor. States should take measures to prevent undesirable impacts on local communities, indigenous peoples and vulnerable groups that may arise from, inter alia, land speculation, land concentration and abuse of customary forms of tenure. States and other parties should recognize that values, such as social, cultural and environmental values, are not always well served by unregulated markets. States should protect the wider interests of societies through appropriate policies and laws on tenure.

Article 11.4

States and other parties should ensure that information on market transactions and information on market values are transparent and widely publicized, subject to privacy restrictions. States should monitor this information and take action where markets have adverse impacts or discourage wide and equitable market participation.

12. Investments

Article 12.1

State and non-state actors should acknowledge that responsible public and private investments are essential to improve food security. Responsible governance of tenure of land, fisheries and forests encourages tenure right holders to make responsible investments in these resources, increasing sustainable agricultural production and generating higher incomes. States should promote and support responsible investments in land, fisheries and forests that support broader social, economic and environmental objectives under a variety of farming systems. States should ensure that all actions are consistent with their existing obligations under national and international law, and with due regard to voluntary commitments under applicable regional and international instruments.

Article 12.2

Considering that smallholder producers and their organizations in developing countries provide a major share of agricultural investments that contribute significantly to food security, nutrition, poverty eradication and environmental resilience, States should support investments by smallholders as well as public and private smallholder-sensitive investments.

Article 12.3

All forms of transactions in tenure rights as a result of investments in land, fisheries and forests should be done transparently in line with relevant national sectoral policies and be consistent with the objectives of social and economic growth and sustainable human development focusing on smallholders.

Article 12.4

Responsible investments should do no harm, safeguard against dispossession of legitimate tenure right holders and environmental damage, and should respect human rights. Such investments should be made working in partnership with relevant levels of government and local holders of tenure rights to land, fisheries and forests, respecting their legitimate tenure rights. They should strive to further contribute to policy objectives, such as poverty eradication; food security and sustainable use of land, fisheries and forests; support local communities; contribute to rural development; promote and secure local food production systems; enhance social and economic sustainable development; create employment; diversify livelihoods; provide benefits to the country and its people, including the poor and most vulnerable; and comply with national laws and international core labour standards as well as, when applicable, obligations related to standards of the International Labour Organization.

Article 12.5

States should, with appropriate consultation and participation, provide transparent rules on the scale, scope and nature of allowable transactions in tenure rights and should define what constitutes large-scale transactions in tenure rights in their national context.

Article 12.6

States should provide safeguards to protect legitimate tenure rights, human rights, livelihoods, food security and the environment from risks that could arise from large-scale transactions in tenure rights. Such safeguards could include introducing ceilings on permissible land transactions and regulating how transfers exceeding a certain scale should be approved, such as by parliamentary approval. States should consider promoting a range of production and investment models that do not result in the large-scale transfer of tenure rights to investors, and should encourage partnerships with local tenure right holders.

Article 12.7

In the case of indigenous peoples and their communities, States should ensure that all actions are consistent with their existing obligations under national and international law, and with due regard to voluntary commitments under applicable regional and international instruments, including as appropriate from the International Labour Organization Convention (No 169) concerning Indigenous and Tribal Peoples in Independent Countries and the United Nations Declaration on the Rights of Indigenous Peoples. States and other parties should hold good faith consultation with indigenous peoples before initiating any investment project affecting the resources for which the communities hold rights. Such projects should be based on an effective and meaningful consultation with members of indigenous peoples as described in paragraph 9.9. The principles of consultation and participation of these Guidelines should be applied for investments that use the resources of other communities.

Article 12.9

States should make provision for investments involving all forms of transactions of tenure rights, including acquisitions and partnership agreements, to be consistent with the principles of consultation and participation of these Guidelines, with those whose tenure rights, including subsidiary rights, might be affected. States and other relevant parties should inform individuals, families and communities of their tenure rights, and assist to develop their capacity in consultations and participation, including providing professional assistance as required.

Article 12.10

When investments involving large-scale transactions of tenure rights, including acquisitions and partnership agreements, are being considered, States should strive to make provisions for different parties to conduct prior independent assessments on the potential positive and negative impacts that those investments could have on tenure rights, food security and the progressive realization of the right to adequate food, livelihoods and the environment. States should ensure that existing legitimate tenure rights and claims, including those of customary and informal tenure, are systematically and impartially identified, as well as the rights and livelihoods of other people also affected by the investment, such as small-scale producers. This process should be conducted through consultation with all affected parties consistent with the principles of consultation and participation of these Guidelines. States should ensure that existing legitimate tenure rights are not compromised by such investments.

Article 12.11

Contracting parties should provide comprehensive information to ensure that all relevant persons are engaged and informed in the negotiations, and should seek that the agreements are documented and understood by all who are affected. The negotiation process should be non-discriminatory and gender sensitive.

Article 12.12

Investors have the responsibility to respect national law and legislation and recognize and respect tenure rights of others and the rule of law in line with the general principle for non-state actors as contained in these Guidelines. Investments should not contribute to food insecurity and environmental degradation.

Article 12.14

States and affected parties should contribute to the effective monitoring of the implementation and impacts of agreements involving large-scale transactions in tenure rights, including

acquisitions and partnership agreements. States should take corrective action where necessary to enforce agreements and protect tenure and other rights and provide mechanisms whereby aggrieved parties can request such action.

16. Expropriation and compensation

Article 16.1

Subject to their national law and legislation and in accordance with national context, States should expropriate only where rights to land, fisheries or forests are required for a public purpose. States should clearly define the concept of public purpose in law, in order to allow for judicial review. States should ensure that all actions are consistent with their national law as well as their existing obligations under national and international law, and with due regard to voluntary commitments under applicable regional and international instruments. They should respect all legitimate tenure right holders, especially vulnerable and marginalized groups, by acquiring the minimum resources necessary and promptly providing just compensation in accordance with national law.

Article 16.3

States should ensure a fair valuation and prompt compensation in accordance with national law. Among other forms, the compensation may be, for example, in cash, rights to alternative areas, or a combination.

Article 16.5

Where the land, fisheries and forests are not needed due to changes of plans, States should give the original right holders the first opportunity to re-acquire these resources. In such a case the re-acquisition should take into consideration the amount of compensation received in return for the expropriation.

Article 16.6

All parties should endeavour to prevent corruption, particularly through use of objectively assessed values, transparent and decentralized processes and services, and a right to appeal.

Article 16.7

Where evictions are considered to be justified for a public purpose as a result of expropriation of land, fisheries and forests, States should conduct such evictions and treat all affected parties in a manner consistent with their relevant obligations to respect, protect, and fulfil human rights.

Article 16.8

States should, prior to eviction or shift in land use which could result in depriving individuals and communities from access to their productive resources, explore feasible alternatives in consultation with the affected parties, consistent with the principles of these Guidelines, with a view to avoiding, or at least minimizing, the need to resort to evictions.

Article 16.9

Evictions and relocations should not result in individuals being rendered homeless or vulnerable to the violation of human rights. Where those affected are unable to provide for themselves, States should, to the extent that resources permit, take appropriate measures to provide adequate alternative housing, resettlement or access to productive land, fisheries and forests, as the case may be.

26. Promotion, implementation, monitoring and evaluation

Article 26.5

All parties, including civil society organizations and the private sector, are encouraged to use collaborative efforts to promote and implement these Guidelines in accordance with national priorities and contexts. All parties are encouraged to disseminate information on responsible tenure governance in order to improve practices.

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). Individuals from the following organizations have participated in the Interlaken Group process: Coca-Cola, IKEA, Illovo Sugar, Miro Forestry, Nestlé, New Forests, Olam International, PepsiCo, Rabobank, Rio Tinto, Stora Enso, Unilever, CDC Group, DEG, EBRD, EIB, Finnfund, FMO, IFC, OPIC, PIDG, Proparco, Swedfund, AgDevCo, Asia Indigenous Peoples Pact, Centre pour l'Environnement et le Développement, Columbia Center on Sustainable Investment, Earthworm Foundation, Forest Peoples Programme, Global Witness, Landesa, Oxfam, Proforest, Rainforest Alliance, Rights and Resources Initiative, World Bank, ERM, GIZ, IDH, Indufor North America, Resource Equity, TMP Systems, DFID, Omidyar Network, SIDA, and USAID. The meetings are held under the Chatham House Rule. For more information, please visit www.interlakengroup.org.

THE RIGHTS AND RESOURCES INITIATIVE (RRI)

The Rights and Resources Initiative is a global Coalition of more than 200 organizations dedicated to advancing the forestland and resource rights of Indigenous Peoples, local communities, the women within these groups. Members capitalize on each other's strengths, expertise, and geographic reach to achieve solutions more effectively and efficiently. RRI leverages the power of its global Coalition to amplify the voices of local peoples and proactively engage governments, multilateral institutions, and private sector actors to adopt institutional and market reforms that support the realization of rights. By advancing a strategic understanding of the global threats and opportunities resulting from insecure land and resource rights, RRI develops and promotes rights-based approaches to business and development and catalyzes effective solutions to scale rural tenure reform and enhance sustainable resource governance.

RRI is coordinated by the Rights and Resources Group, a non-profit organization based in Washington, DC.

For more information, please visit www.rightsandresources.org.

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