



Investments in Land – Taking on responsibility. Now!

(Working Group 3)
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Background

Everybody has the right to adequate food. As the world's population continues to grow and land as well as associated natural resources are increasingly becoming scarce and precious, it has to be ensured that public and private investments in land give priority to food production and nutrition or generate sufficient income for the local population to enable them to buy food on the local market that has been produced elsewhere. Currently, however, large-scale land-based investments tend to produce for a global market without sharing the benefits with local communities. Where these investments take place in an irresponsible manner they may even result in local communities no longer having access to land and other resources on which their livelihoods depend.

The role of the Voluntary Guidelines on Responsible Governance of Tenure of Land, Fisheries and Forests in the context of national food security (VGGT)

The VGGT deal with safeguards against dispossession of legitimate tenure rights holders among others by private and public, foreign and domestic large-scale investments. They provide guidance what different stakeholders such as governments (including those of states of origin of multinational investors), private and public investors (including financial ones) and civil society organisations can do.

The VGGT in a nutshell – key issues in regard to investments in land

3 A General principles

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 to everyone, through judicial authorities or other approaches, to resolve disputes over tenure rights; and to provide affordable and prompt enforcement of outcomes. States should provide prompt, just compensation where tenure rights are taken for public purposes.*



5. *Prevent tenure disputes, violent conflicts and corruption. They should take active measures to prevent tenure disputes from arising and from escalating into violent conflicts. They should endeavour to prevent corruption in all forms, at all levels, and in all settings.*

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 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.*

Definition of „Responsible investments“ (VGGT 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.”

Further guidance is provided in chapter 12 on investments.

During the first session of the working group, it will be presented and discussed what guidance the VGGT provide for investments in land and how these principles and standards can be implemented.

The challenge – How to ensure that the VGGT will be implemented?

The VGGT provide a lot of more or less detailed guidance for different stakeholders how to ensure responsible investments in land. But how can it be ensured that governments as well as private investors apply the VGGT? Are additional incentives, obligations and/or mechanisms of sanctions needed to ensure responsible land-based investments? If so, what preconditions need to be established, primarily at international and regional level?



During the second session of the working group, issues such as global transparency and accountability initiatives (e.g. G8 initiative, BMZ/GIZ initiative), corporate social responsibility (e.g. EU CSR strategy), support to smallholder food production, VGGT as part of the *responsible agricultural investment* (rai) principles, VGGT to be reflected by the revised WB safeguards and the WB “Doing Business in Agriculture” indicators, land tenure security for women and men as target or indicator in the post-2015 development agenda, WTO safeguards in regard to investments and VGGT as part of international investment laws, treaties and agreements can be discussed.

Key issues to be discussed during the working group session:

- How can it be ensured that governments as well as private investors apply the VGGT?
- Are additional incentives, obligations and/or mechanisms of sanctions needed to ensure responsible land-based investments?
- If so, what preconditions need to be established, primarily at international and regional level?
- Is there a need for an international transparency and accountability initiative/mechanism that defines which information should be disclosed, at what point and to whom such information should be made accessible? Could or should such mechanism have the mandate to impose sanctions in case of non-compliance? If there is a need for such mechanism, how should it function? Who/Which body or organization should be in charge of it?
- How could VGGT standards be reflected by corporate social responsibility (CSR) standards? Should the VGGT standards be included or linked to OECD guidelines for multinational enterprises, ISO 26000 on corporate social responsibility, UN Global Compact – Sustainable Agriculture Principles, EU CSR guidelines etc.? What action is required?
- Currently, the Committee on World Food Security (CFS) is preparing principles on responsible agricultural investment, the so called rai principles. In the current zero draft, the VGGT are briefly referred to. Is this sufficient? Should there be more explicit reference to the VGGT? Which elements of the VGGT should be clearly stated, referred to or repeated in the rai principles?
- Currently, the World Bank safeguards are under review. Land tenure and land administration are supposed to receive more attention. What is the current status? Would additional advocacy be useful?
- There is a risk that the VGGT may be misused to push large-scale land based investments by focussing mainly on how this type of investment can be made more responsible, respectively less harmful rather than discussing alternatives to investments that require large-scale transactions of tenure rights. What alternatives do exist? What type of investment models should be favoured? What type of support do smallholder farmers need? Who should provide it?



Recommendations for actions

The third and final session of the working group will serve to agree on recommendations for actions to contribute to the creation of the necessary preconditions (incentives, obligations and mechanisms of sanctions) to ensure that all stakeholders involved in land-based investments take on greater responsibility.