

**ANNEX I:**

**Voluntary guidelines for agribusiness, and their relevance to defenders**

A range of voluntary guidelines for agribusiness exist which, if properly interpreted and implemented, would ensure that companies and investors not only avoid harming defenders, but support and protect them, facilitating community participation in decision-making. Many of their principles could also be interpreted by other businesses in the natural resource sector.

Of particularly practical utility is the guidance produced by the Interlaken Group<sup>297</sup> on how companies should implement the **Voluntary Guidelines on the Responsible Governance of Tenure of Land, Forests and Fisheries and Forestry in the Context of National Food Security (VGGT)**, which were themselves the result of extensive consultation with governmental, private sector and civil society representatives, and are endorsed by 193 governments.<sup>298</sup>

The Interlaken Group guidance, entitled ‘Respecting Land and Forest Rights’ (**the Interlaken Guidance**), is unique in being the only authoritative agribusiness guidance actually written by representatives from the private sector, together with civil society and governments.<sup>299</sup> It lays out what companies need to do to comply with the VGGT, what indicators of compliance might look like, and which resources exist to support efforts towards compliance. The guidance covers a range of project types: greenfield investments, brownfield investments, existing holdings, joint ventures or mergers and acquisitions, plus procurement and supply chains.

Many of the Interlaken Guidance’s key principles could help prevent threats against land and environmental defenders, and include:

**> Guaranteeing proper consultation and participation of affected communities, and the right to free, prior informed consent (FPIC):** *The lack of community consultation and consent for business projects is one of the root causes of conflict that leads to threats and attacks against defenders.*<sup>300</sup>

The Interlaken Guidance encourages companies to resource robust consultation processes and secure FPIC from indigenous peoples before making investment decisions, and to also meaningfully consult all neighbouring and host communities before changes are made to a project.

**> Ensuring transparency in all areas of business, and a zero tolerance policy on corruption:**

*Communities and activists can only be effective in defending their rights and engaging with business if they have the information necessary to do so. On the other hand, corruption fuels attacks on defenders by facilitating the imposition of projects and fostering impunity when threats occur.*<sup>301</sup>

The Interlaken Guidance demands companies ensure transparency across all interactions with officials and communities, and avoid business with ‘politically exposed persons.’<sup>302</sup> Project details should be available to communities in local languages. Environmental, social, human rights and food security analyses should be participatory, published and conducted before investment decisions are made.

**> Ensuring proper due diligence along supply chains:**

*Investors and companies have a duty to ensure that their procurement policies are not negatively affecting defenders, and that the highest human rights standards are upheld along supply chains.*

The Interlaken Guidance reminds companies that compliance with the VGGT requires engaging and encouraging suppliers on the same issues they ought to be tackling themselves. Companies should ensure full traceability, codify their expectations on suppliers, audit compliance and potentially change supplier if standards are not met.

**> Ensuring that the VGGT are properly implemented at every moment of the project cycle:** *Business should take steps to consult communities and guarantee the rights of defenders before taking investment decisions, and throughout any project’s evolution.*

The Interlaken Guidance is clear that, if a company takes over an existing project – whether through joint ventures or mergers and acquisitions – it ought to review existing environmental and social impact assessments, human rights impacts assessments, and any contracts they have in place, consulting affected communities and ensuring the VGGT are properly applied.

**> Ensuring proper grievance mechanisms and access to remedy:** *When defenders face threats, it is imperative they can alert businesses quickly and securely. Business has a responsibility to remedy any violations that have occurred, and accountability will reduce the possibility of threats escalating or re-occurring. Likewise, if effective grievance, accountability and remedy mechanisms are implemented for complaints regarding land tenure or FPIC, it is less likely that grievances will escalate to conflicts and, ultimately, attacks on defenders.*

The Interlaken Guidance is clear that companies should back out of investments or operations if they could lead to forced evictions, and that projects should be abandoned if forcibly evicted communities wish to return to the area. Similar consequences could therefore be expected if projects lead to threats or attacks on defenders.

Two other voluntary guidelines reiterate a number of these points and should guide agribusiness in preventing threats against defenders: the **OECD Guidelines for Multinational Enterprises** and the **OECD-FAO Guidance for Responsible Agricultural Supply Chains**, which translates companies' human rights due diligence responsibilities into practical steps.<sup>303</sup> It sets out situations that represent 'red flags' and warrant enhanced due diligence. Threats against defenders and restrictions on civil society should be included as red flags when assessing areas, products and business partners.

Finally: evidence proves that guidance alone is not enough. Companies and investors must develop concrete policies to guarantee their implementation, and states must legislate and prosecute to guarantee accountability when agribusiness violates human rights.

## ANNEX II:

### Free, Prior and Informed Consent<sup>304</sup>

International law, guidance and practise protect the principle that all communities should be able to make free and informed choices about whether and how their land and natural resources are used and developed, with individuals having the right to say 'no' to business projects which affect their rights, their land or their environment.

International experts have developed a number of tools exploring what proper free, prior and informed consent (FPIC) should look like in practice, but key principles include:

➤ **FREE** – nobody should be coerced, intimidated, or manipulated into giving their approval to a project. Where defenders are under threat, therefore, conditions for FPIC do not exist.

➤ **PRIOR** – sufficient time should be given for decision-making before bidding for licences and land takes place, and before each significant study, change or phase in a project.

➤ **INFORMED** – communities must have all the information they need. The information must be objective, accurate, and accessible in their native language.

➤ **CONSENT** – the right to veto a project should be guaranteed. Consultation is not consent.

Under international law, the right to give or withhold FPIC is best understood as an expression of the right to self-determination. It can be interpreted as applying to all self-identified peoples who maintain customary (ie. administered under traditional systems and customs) relationships with their land and natural resources, particularly indigenous peoples. This is enshrined in International Labour Organization Convention 169 on Indigenous and Tribal Peoples plus the UN Declaration on the Rights of Indigenous Peoples, and reiterated by a range of expert guidance.

These specific, additional protections afforded to indigenous peoples under international law are clear and states have a duty to replicate and implement them at the national level. However, there is an increasing recognition that the principle of FPIC should be applied to *all* communities whose land, resources or rights might be affected by a business project. The right of every citizen to participate in public affairs has long been outlined in the International Covenant on Civil and Political Rights, whilst the UN Declaration on the Right to Development is clear that all individuals should be able to participate freely and meaningfully in development and its benefits.

The UN-REDD Programme, aimed at preserving forests to reduce carbon emissions, states that FPIC is a means to ensure “the full and effective participation of relevant stakeholders [including...] local communities”. Regional conventions have reiterated the need to guarantee public participation, and the UN Special Rapporteur for the right to food has asserted that “any shifts in land use can only take place with the free, prior, and informed consent of the local communities concerned.” The palm oil sustainability watchdog RSPO agrees that FPIC is a requirement for all potentially affected communities; a principle reinforced by Michelin Tyres, the Colombian Constitutional Court, and government agencies of Indonesia, amongst others.

As well as governments, business also has the responsibility to ensure that FPIC is guaranteed before projects go ahead. The UN Guiding Principles on Business and Human Rights not only underscore the business duty to respect international human rights law, regardless of the capacity or will of the state to enforce it, but also reiterate the importance of meaningful consultations with potentially affected groups. IFC Performance Standard 7 too articulates expectations upon investors in regards to the necessary consent of communities with customary relationships with their land.

## ANNEX III:

### What exactly can business do for defenders?

In 2015, a cross-regional group of 39 human rights organisations used the occasion of the UN Forum on Business and Human Rights to outline, as follows, how business might play a proactive positive role to engage and support human rights defenders (HRDs).<sup>305</sup>

#### **Business must respect and engage with HRDs, such as by:**

- > Desisting from physical or legal attacks against HRDs, including those exercising their rights to freedom of expression, association, peaceful assembly and protest against the business or its interests;
- > Meaningfully consulting with HRDs in the design, implementation and evaluation of projects, and in due diligence and human rights impact assessment processes;
- > Advising and educating clients, suppliers and peers as to their obligations in relation to HRDs.

#### **Business should support and partner with HRDs, such as by:**

- > Encouraging home and host governments to consult with HRDs in the elaboration of national action plans on business and human rights (NAPs) and to include concrete measures and commitments to support HRDs in such NAPs; addressed alleged murders of, attacks on, and acts of intimidation against HRDs who campaign against the adverse impacts of extractive company operations and allegations regarding the impact of mining and hydroelectric projects on indigenous peoples.
- > Encouraging home governments to speak out in support of HRDs through their diplomatic representations in States in which the company operates and HRDs are restricted.

#### **Business can advocate and seek remedy for HRDs at risk, and against laws and policies that restrict them, such as by:**

- > Joining or supporting, in an appropriate way, a campaign or coalition in support of HRDs and against attacks and restrictions against them;
- > Speaking out in general terms in support of HRDs and a safe and enabling environment for civil society;

- > Speaking out in individual cases of attacks or restrictions against HRDs or in relation to proposed or enacted laws or policies that restrict or criminalise them;
- > Advocating to governments in relation to individual cases, laws or policies.

#### **Business should make additional efforts and take specific action to engage and protect women human rights defenders and other groups facing particular risks:**

- > Recognising and addressing the fact that women human rights defenders can face increased exclusion and specific risks;
- > Taking additional positive actions to consult and protect women human rights defenders, indigenous defenders and minority groups;
- > Ensuring that a response to the particular situations of women human rights defenders, indigenous defenders and minority groups is included across all business action related to human rights defenders.