

Report VGGT Masterclass

Masterclass on the “Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security” (VGGT), 15 April 2015, 14.00 – 17.00.

1. Presentation Michael Windführ

Michael showed that a focus on the governance of land tenure is necessary in the context of the recent food crisis, increased investments in land, instances of land grabbing and current difficulties such as food insecurity, hunger and malnutrition. The VGGT were introduced as a relatively fast reaction to these developments. The guidelines were adopted in 2012 with a broad support from the international political actors and the civil society. The VGGT contain principles for the national land policies and focuses on land rights, more specifically on legal recognition, land transfers and administration of tenure. The implementation of the VGGT is the responsibility of the states, together with the involvement of other actors. Compared to another standard such as the IFC-PS, the VGGT merely indicate the states as being responsible for its implementation. States are encouraged to involve other stakeholders and to set up platforms and frameworks to improve the cooperation. The IFC-PS goes beyond the VGGT because they assume a weak governance and consequently view the investor as the responsible actor to comply with the standards. Private actors can use the VGGT for their own assessments of responsible investments. As the name implies, the VGGT are in principle voluntary in nature. However, at the same time they link to the human rights framework which is incorporated in international law. The question remains if the VGGT as available standard is enough, considering the strong economic actors which are involved and the power struggles which are often present during land acquisitions. The implementation of the VGGT is crucial and requires further work: “a standard won’t help you for the implementation, actors need to work on it”. Establishing a dialogue between the different stakeholders is therefore vital.

2. Presentations stakeholder groups

Each stakeholder group (private sector, civil society organizations (CSOs), public sector and knowledge institutes) reflected on the presentation and discussed the opportunities, obstacles and eye-openers. They presented their findings afterwards:

- *Private Sector:*
The private sector group raised the question if the VGGT is a compliance or a progress standard. They also aimed for clearer definitions and criteria, as well as more clarity on what the minimal denominator is where you should adhere to as a financial organization. In this context, they consider it important (but often difficult) to start a constructive dialogue with CSOs, who might have a different perception on this denominator. Furthermore, they see the VGGT as an opportunity to create a level playing field for the different stakeholders. The private sector group mentioned a ‘standards fatigue’ (considering the many standards that demand attention) and the weak institutions of the host governments as obstacles. They suggested a pilot of the VGGT in a certain region with a home and host government, to measure the impact and to know how to work with the standards.
- *Civil Society Organizations:*
The CSOs emphasized the need for monitoring and accountability models to track the progress. More clarification is needed on how the complaint mechanism works and if the VGGT is a result or a process commitment. The CSOs mentioned the opportunity to embed the VGGT in the Sustainable Development Goals (SDGs), to use it to organize participatory land use planning, and to help creating more policy coherence. As obstacles, they mentioned the limited role of CSOs in land matters (it is often politicized), the diversity of interests within or between communities (is not always included in participation and consultation processes), the water and forest issues (less

covered in the VGGT) and the risk of cherry-picking among the principles of the VGGT. The CSOs are curious to see how companies implement the VGGT, as one of the many supporting stakeholders of the Voluntary Guidelines.

- *Public sector:*
The public sector raised the issue of how to deal with decentralization and who would be the responsible authority in these cases. And how far do the extra-territorial obligations reach? They also mentioned water issues as being less well covered in the VGGT. The public sector emphasized opportunities to involve the private sector more by helping them to deal with the guidelines (e.g. develop business cases, guidance documents). Obstacles for the implementation of the VGGT have also been mentioned by this group: limited political will of certain states, corruption of the local governments, a lack of the rule of law or a functional justice system. It was an eye-opener that 25 percent of all the investments approved by the Netherlands Enterprise Agency (RVO) (and also other checks of for instance local governments) cannot proceed because of problems related to land rights.
- *Knowledge institutions:*
The knowledge institutions asked for more clarification on the grievance mechanisms and how to set them up in different countries. They emphasized questions about the legal character of the VGGT: will the principles become embedded in legal frameworks? To what extent do the VGGT influence land law and new law-making? The representatives of the institutions mentioned opportunities to bring donors, as well as different ministries together. Furthermore, it would be interesting to track the progress during the implementation of the VGGT and to study how the Voluntary Guidelines influence investors and investments. The knowledge institutions also brought up the issue of the VGGT as being a shopping list and underscored the importance of viewing the application of the guidelines in various countries as context-specific. They view the VGGT as principles aiming to improve the current governance system.

3. Reaction Michael Windführ

- *Compliance or progress standard:* the VGGT presents what can and should be expected regarding land issues, this is a process in a way. On the other hand, it can be used as a compliance mechanism. In the Netherlands, it is used as a compliance standard by the development agencies when allocating subsidies.
- *Fatigue of standards:* the many standards that exist are there to fill the gap in situations where governance is missing or when there is a high risk of violations. The VGGT standards are an invitation for all stakeholders to look more into land-related problems. The standards introduced need to be kept to a level that is digestible.
- *Weak institutions:* as long as there is no functioning system of spatial planning, the operations of all land and tenure institutions is very difficult and it remains hard to provide an investor with the right information about land administration and the rights of people living there.
- *Strong rule of law:* without the rule of law, we only have intermediate solutions. In the end, it a solid rule of law system, accessible at all levels has to be defined.
- *Need for capacity building:* human rights cannot be pushed from outside and real changes happen from processes within the country, supported by development actors. Checks and balance systems involving all stakeholders are needed.
- *Risk for cherry-picking:* the VGGT places land in the overall context of land use planning. This can be strengthened through development aid and policy dialogues, in order to handle the increased interest in land in a more substantive way.
- *Monitor:* The SDGs could be a possibility. Monitoring needs to function at a national level and the 'teasing power' of media, civil society and other organizations needs to be strengthened. Monitoring cannot only be strengthened at an international level.