

Expanding and Leveraging Private Sector Action to Secure Community Land Rights

Second Meeting of the "Interlaken Group"

March 19 - 20, 2014

London

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

Facilitated by Tapani Oksanen (Indufor)

I. Background

The March 2014 meeting was the second session of a working group of representatives from leading companies, investors and NGOs jointly committed to addressing community land rights issues. A subset of this group first met in September 2013 in Switzerland at a conference entitled *Scaling-Up Strategies to Secure Community Land and Resource Rights* where members worked to identify the problem, including key obstacles and major gaps in private sector intervention, and produced a set of agreements and recommendations. A slightly larger, but less diverse, group then met in February 2014 in Bellagio, Italy as a technical follow-up, in preparation for the meeting in London.

II. Participants

1. Duncan Pollard, AVP Stakeholders Engagement in Sustainability, Nestlé
2. Megan MacInnes, Head of Land Campaign, Global Witness
3. Marcela Manubens, Vice President for Social Impact, Unilever
4. Penny Fowler, Behind the Brands, Oxfam
5. Puvan J. Selvanathan, Head of Sustainable Agriculture, UN Global Compact
6. Stuart Kyle, Director of Workplace Accountability, Coca-Cola
7. John Nelson, Africa Regional Coordinator, Forest Peoples Programme
8. Terhi Koipijarvi, Senior VP, Global Responsibility, Stora Enso
9. Lou Munden, Chairman, The Munden Project
10. J. Chris Anderson, Americas Director, Communities & Social Performance, Rio Tinto
11. Peter Rabley, Director of Investments, Omidyar Network
12. Iris Krebber, Food Security and Land Advisor, Department for International Development, UK
13. Sunrita Sarkar, Operations Officer, IFC
14. Shahila Perumalpillai, Social Performance Advisor, Environmental Resources Management
15. Darryl Vhugen, Senior Attorney, Landesa
16. Josie Cohen, Campaigner on Land Team, Global Witness (observer)
17. Ross Clark, Law and Justice Adviser, Oxfam (observer)
18. Sophia Murday, Partner, The Munden Project (observer)
19. Annie Thompson, Associate, Strategic Analysis and Initiatives, RRI (observer)

III. Purpose

This meeting on *Expanding and Leveraging Private Sector Action to Secure Community Land Rights* gathered additional representatives from leading companies, investors and NGOs - approximately doubling the size of the original group that met in Interlaken - to examine both company and investor domains as they relate to land rights. The meeting was held under the Chatham House Rule which states that participants are free to use the information received, but neither the identity nor the affiliation of the speaker(s), nor that of any other participant, may be revealed.

Specific objectives were to:

- 1) Reach a common vision of the most important gaps, constraints and opportunities to expand and leverage company and investor action to help secure community land rights;
- 2) Identify priority activities and initiatives which may be created or leveraged by participants, separately or together, to achieve that vision, and recommend next steps;
- 3) Assess and provide practical guidance to key initiatives already underway as well as review potential options for collaboration;
- 4) Conduct the meeting in a manner that adds value to all participants' current work on the community land rights issue.

IV. Highlights

a. Reaching a Common Vision of the Gap and Key Roles and Responsibilities

The diversity of the “Interlaken Group”, both in terms of constituency type and experience, made it important to agree early on regarding the purpose and intended goals of the Group, while capitalizing on the good work accomplished during the two prior meetings. The session opened with a presentation of key “breaks” in the system, including:

- 1) A crisis of insecure land tenure and the slowdown in the recognition of community land rights in forest areas (as shown by recent RRI research), with fewer and weaker laws being passed since 2008, coupled with an increase in demand for land; and
- 2) The evident disconnect among companies, financial institutions and CSOs (the main constituencies of the “Interlaken Group”) on land rights issues.

This second “break” is described in Figure 1 and adapted from a conceptual model produced at the technical follow-up in Bellagio entitled “Foundations of Sustainable and Equitable Investment in Lands”. While the actions of governments are fundamental, it was agreed that the lack of dialogue and understanding between CSOs, companies and financial institutions regarding community land rights is a key challenge for addressing the issue.

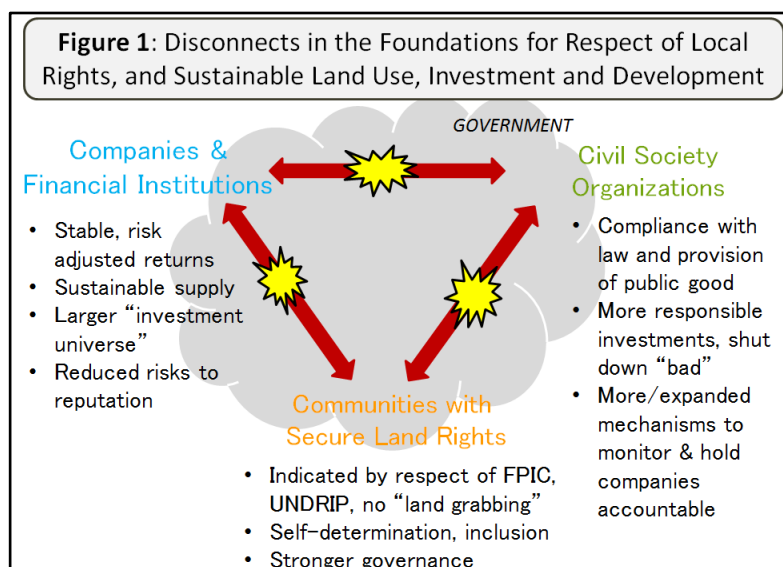
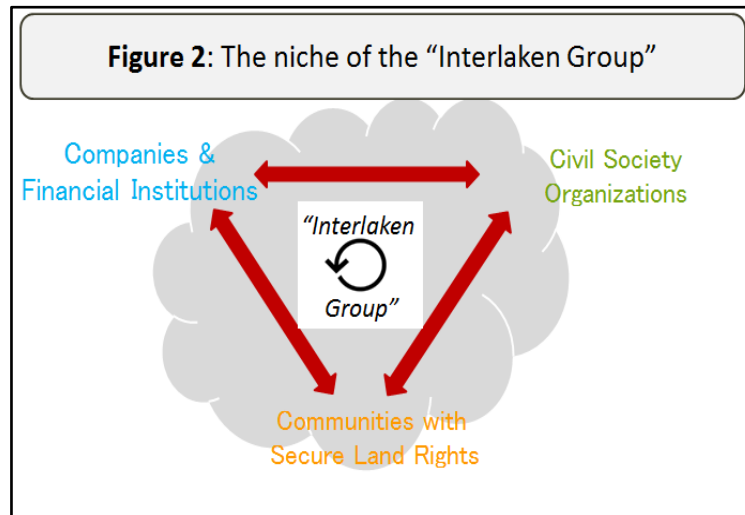
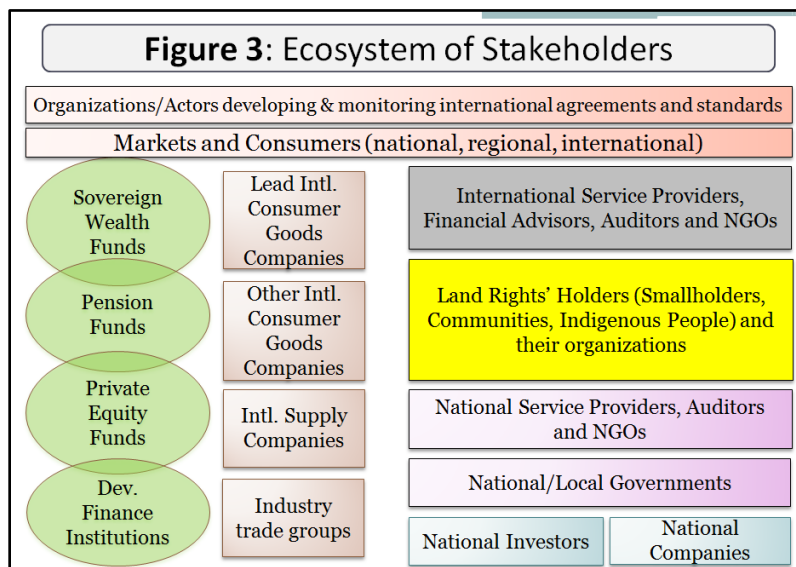


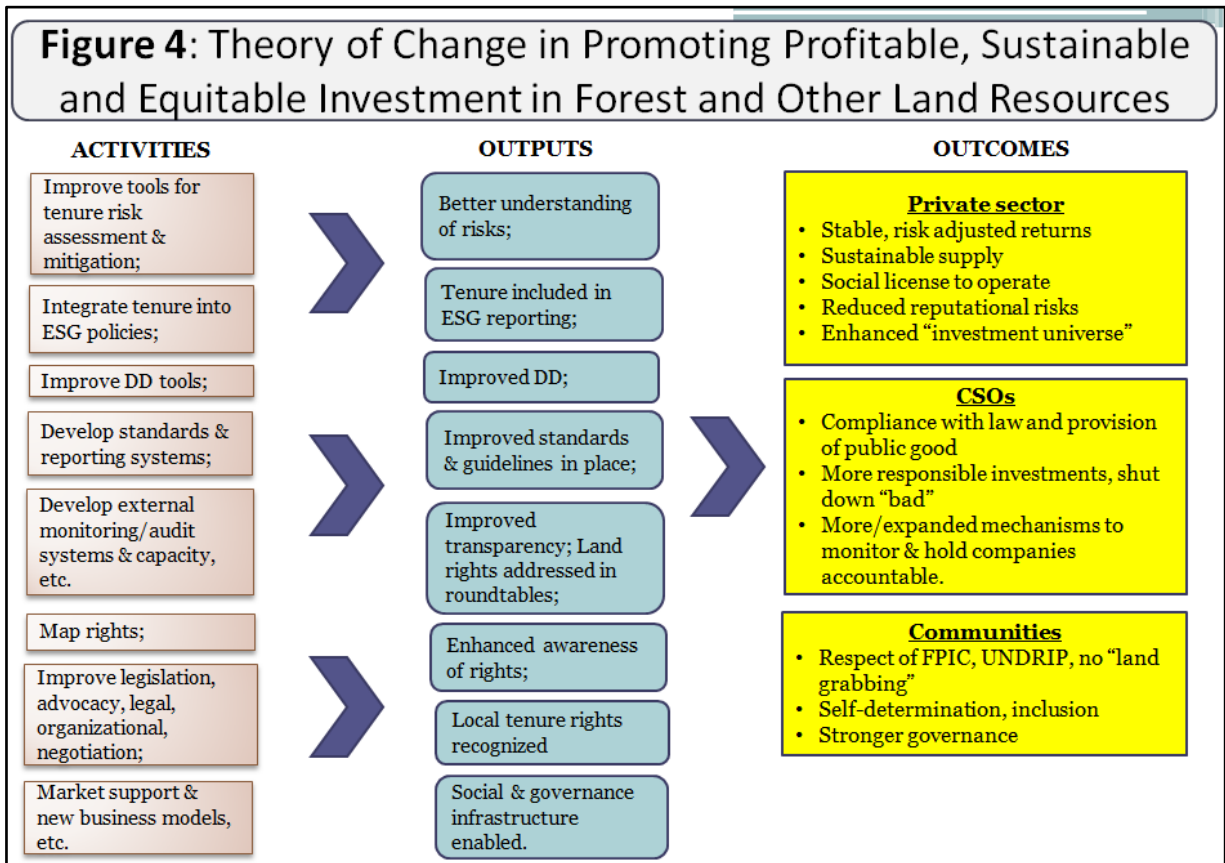
Figure 2 was then presented to illustrate the niche of the “Interlaken Group”. The concept behind this unique multi-stakeholder working group is to provide a space where companies, financial institutions and CSOs can speak informally about challenges and efforts to secure community land rights, and search for common solutions. Although government is not a direct pillar in this model, it is understood to be omnipresent (as seen in Figure 1). The assumption is that if the two constituencies engage in constructive dialogue concerning these issues, they may, in turn, influence governments toward further commitments and actions to support tenure reforms and more appropriate business models.



In order for the group to adopt a baseline understanding of the complex set of actors involved in the land rights arena, a conceptual framework produced at the Bellagio meeting capturing the “Ecosystem of Stakeholders” (Figure 3) was presented. The figure was then opened for discussion and further adjusted. Important revisions to the ecosystem were the inclusion of industry trade groups and consumers. Group members emphasized the importance of recognizing the unique priorities and variable risk exposure of each investor type, a consideration not taken into account in the framework. The example of Pension Funds - which have a much longer term investment horizon and thus have a heightened incentive to engage in securing community land rights - was contrasted with the shorter time frame or transactional nature of certain other investors. Moving forward, the need to map out investor complexity was identified.



At the close of this session, the “Theory of Change in Promoting Profitable, Sustainable and Equitable Investment in Forest and Other Land Resources” (Figure 4), produced at Bellagio, was presented. While impossible to map these complex dynamics completely or perfectly, this exercise was helpful for agreeing upon the generalized “wants” of each constituency, as well as certain enabling conditions for achieving these objectives.



As can be observed from this figure, there is much overlap among the individual concrete actions (far left column) that the private sector and CSOs may support to achieve both their individual goals and those of the communities with whom they are engaged (far right column). The value of multi-stakeholder coordination on these issues is thus identified as a way of enabling the search for a set of common solutions.

b. Major Stumbling Blocks to Achieving Good Practice

Next, discussion groups were formed by key constituency in order to map both the internal and external constraints in realizing good practice. The purpose of this dialogue was to understand what is preventing each group from taking a more proactive approach as it pertains to community land rights. A delegate was then nominated to report back to the group. Main findings are shown in Table 1.

Table 1: Brainstorming Constraints to Achieving Good Practice (per key constituency)		
	Internal	External
Company	<ul style="list-style-type: none"> • Leadership: Awareness of issue at head office- can do "bottom up" but need certain level of "top down" • Effectiveness of due diligence at project level: Have not been asking the right questions in the past. • Cultural mindset: Ignorance of local context and realities (ex. relying on local partner (JV) not enough). • Risk of going beyond human rights/CSR - Addressing community land rights is new territory- uncertain how to deal with land tenure issues/build capacity of government in areas outside of project site. • Lack of local/operational capacity to address land related issues: Don't want to fly in experts every time. • Lack of understanding of issue: Seems double jeopardy to invest in strengthening CLR, only to pay more for land. • Lack of willingness: The standard response being "this is not a company agenda" or "it's government's responsibility". 	<ul style="list-style-type: none"> • Unclear/complex operational guidelines: How to operate in the shades of grey? • Government failure: Lack of "sticks and carrots" by governments (host and origin country) and uniformity of incentives to encourage respecting tenure rights. • Lack service providers • Conflicting NGO guidance How far beyond CSR are we expected to go? • Ability of forerunners to "bring industry along": How do we influence a whole industry movement? • Clash of customary/historic practices versus changing expectations • Lack credible sources of data/case studies of what success looks like and on implications of recognition/security of tenure/compensation on business.
Investor	<ul style="list-style-type: none"> • Un-uniform/nonexistent awareness level by management: Hard to make business case. • Alignment with internal incentives: Still rewarded based on volume, not quality of return. • Limited resources: No in-house specialists. • Cultural ignorance • Lack of informal networks guiding decisions regarding risks (ie. investment in USA vs. Nicaragua). • No road map of how to do it right. • Ability or willingness to invest varies across sector (ie. agriculture vs. mining). • Portfolio composition- May span many sectors, with relatively small portion dedicated to land: What is the size of the market, and associated risk? Is it significant enough to spend time/cost to reduce risk? • Timeframe of investment decision (urgent- competition with other investors) • Unrealistic assumptions that resources can be used way in advance and endlessly • Portfolio diversification necessary to manage risk-creates limits to due diligence. 	<ul style="list-style-type: none"> • Specificities of investor type: Timeframe, investment size (ie. extractives have deeper pockets, Pension Funds have longer term horizon but some are more transactional) • Few case studies/quantification illustrating potential return of "getting it right": Currently only of what you lose if you don't get it right. • General lack of data regarding exposure to risk, especially contextual risks • Governance (as reflected in public records and transparent transactions) • Reward system (how to reward ethical investors and penalize bad ones?)- Media attention focus on international scale and land grabs. • Sustainable investment universe limited • Availability of right resources/advisors
CSOs	<ul style="list-style-type: none"> • Weak & unstandardized evidence base: Lack good data & case studies both of costs/risks/impacts on women/good practice. • Limited funding/finance for research, staff and response <ul style="list-style-type: none"> ○ Reconcile with need to avoid "moral hazard"- NGO may lose independence/integrity if accepts funds from company. • Limited capacity to address & solve problems: <ul style="list-style-type: none"> ○ Lack of experience & knowledge in land, which makes it difficult to challenge governments and use leverage. ○ Still in reactive mode of operation ("putting out fires") due to urgency of matter. • Poor understanding of private sector: Who they are/where they get their money/how they operate. • Disconnect between NGOs (at national & Intl. level) 	<ul style="list-style-type: none"> • Disconnect/ability to build and sustain trust between PS and NGOs causes reluctance to engage • Costly/long processes • Weak implementation & compliance of standards & law (PS, governments, FSC, etc) • General lack of transparency/disclosure regarding investments, especially of privately held companies • Information not readily accessible to communities • Limited political willpower, corruption • Frequent disconnect between central & local governments • Face violent/legal threats

c. Key Leverage Points to Achieving Good Practice

After constituency-specific obstacles to achieving good practice were reported to the plenary, the members of the “Interlaken Group” broke out once more, this time in multi-stakeholder groups, in order to identify priority leverage points to overcoming these constraints. Key ideas from this discussion are summarized as follows:

- **Strengthen regulations to incentivize responsible investment;**
- **Gather and share evidence base:** Need to quantify the value in “doing it right”/financial loss in “doing it wrong” across sectors;
- **Understand investor types,** underlying motivations and the cultural/contextual gaps between them;
- **Build awareness of “land grabs as bad”,** especially among investors;
- **Connect land rights to human rights groups/organizations;**
- **Keep it simple when it comes to operational guidelines:** Recognizing the expertise constraints, create a one-pager on general steps to give to the country-level business managers where land tenure is unclear. Companies don’t want to violate rights, they just need to know how to respect;
- **Build capacity:** Training for companies, financial investors, community leaders and NGOs through either grants or fee-for-service;
- **Encourage anonymous/“Black box” funding mechanism** to avoid conflicts of interest (“moral hazard”) and create arms’ length credibility in responding to community requests for assistance by leveling the playing field between communities and companies;
- **Increase NGO/company interaction** regarding issue through exchanges and forums. There is value in having a focal point that keeps two sides learning and sharing information;
- **Coordinate efforts** of NGOs, companies and financial institutions to give firmer footing and to create a “road map” to raise level of work on this issue;
- **Leverage the “who are we” argument to land rights:** Understand but don’t overplay importance of profitability. Fundamental issues like rights are an obligation- getting it wrong can destroy your business;
- **Focus on operationalization:** Two quick reviews: 1) investment model 2) design of process--> often the problem is a deeply flawed design.

d. Gaps that Need Filling, Opportunities Worth Exploring and Next Steps

The second day of the meeting focused on the need to strategize a best way forward. Initiatives underway - such as MapMyRights (ON), The Tenure Facility (RRI), Quantifying and Screening for Tenure Risks (The Munden Project) and Bilateral Efforts via Donor Working Group (DFID) - were presented by several members of the group and opened for discussion. The group then brainstormed other existing initiatives and finally identified seven priority work streams to be carried forward by group members acting as ambassadors in their respective organizations. The priority work streams are elaborated in the table below.

Table 2: Priority work streams

#	Priority needs	Relevant, existing initiatives that can be encouraged or built upon	Next steps
1	<p>Capacity building & training for community, company, and NGO staff on land tenure issues and conflicts at local and national levels (e.g. basic information on land tenure, how to operationalize FPIC). This will address the very pressing constraint of inadequate capacity felt by companies, NGOs, communities – and also develop more common language and understanding between these constituencies.</p>	<ul style="list-style-type: none"> • RESOLVE- FPIC implementation working group (now focused on mining) • The Forest Trust (TFT) FPIC training exercise in 2013 for company, community and NGO staff, with RRI, in Indonesia • The Center for Social Excellence (CSE), Cameroon and Indonesia, longer-term training course for young professionals to work in companies, NGOs, supported by TFT 	<ol style="list-style-type: none"> 1. Focus capacity building and training on two levels: <ul style="list-style-type: none"> • Awareness raising (in companies, financial institutions) – short interventions • Training operational staff - week to longer trainings 2. Link up the existing initiatives with companies, encourage ‘fee-for-service’ payment by companies for participation 3. Companies to create in-house specialists to align management and operational awareness level 4. Develop sector-specific, customized, FPIC trainings 5. Look for funding opportunities, including encouraging establishment of new service providers; 6. RRI and FPP will follow-up with TFT, RRI with RESOLVE
2	<p>Strategic funding mechanism to respond to urgent opportunities to secure community rights and allow for more equitable engagement with private investors, also respond to other opportunities to mediate between companies and communities</p>	<ul style="list-style-type: none"> • RRI’s Strategic Response Mechanism (SRM) (now inadequate to meet demand) • Land and forest tenure facility, being catalyzed by RRI – to respond to demands greater than what SRM can handle, and ensure independence from RRI 	<ol style="list-style-type: none"> 1. RRI analyzing demand in 5 countries this year, completing design, establishing advisory committee for the tenure facility, and initiating pilot projects this year 2. RRI seek input and guidance from companies and financial institutions regarding design of facility 3. Assess if tenure facility adequate to meet need for identified mechanism
3	<p>Development of operational guidelines & standards for use by companies (especially around grey areas like scope and application of FPIC; procedures for land acquisition; involuntary settlement), and ensuring alignment with the many international standard-setting processes underway. (There is a pressing need for companies to have simple guidance for staff regarding how to implement their commitments and standards, and</p>	<ul style="list-style-type: none"> • Agreement Making Guidance Note (Rio Tinto) • Platforms with related initiatives underway: AIM progress, UN Global Compact, Consumer Goods Forum, WBCSD • Individual companies’ own policies on land rights (e.g. Coca-Cola) • New collaboration between companies and service providers (e.g. Coca-Cola and Landesa) 	<ol style="list-style-type: none"> 1. Develop guidance on company application of CFS/FAO Voluntary Guidelines (Nestlé, UNGC) 2. Help companies produce operational guidelines (e.g. simple check lists and models for making decisions) 3. Establish process for expert review of company policies and policy benchmarking - align with peers in industry 4. Establish platform for information sharing across industry sectors, gain

	<p>this guidance needs to be coherent and aligned with the emerging international standards.)</p>		<p>consensus from NGOs and governments</p>
4	<p>Quantification of potential gains to investors by respecting community land rights, strengthening the business case across sectors. (Some work is underway to quantify the risks and costs of ignoring or avoiding land issues, much more work needs to be done to demonstrate potential benefits of investments and business models that respect community land rights)</p>	<ul style="list-style-type: none"> • Preliminary work by The Munden Project (TMP) quantifying tenure risks • Work of J-PAL (the Jameel Poverty Action Lab at MIT) 	<ol style="list-style-type: none"> 1. Map out different investor types to understand business models that are compelling/underlying motivations of investors (based on portfolio, time frame of investment, level of diversification) 2. Omidyar Network (ON), RRI, TMP, Dfid to explore options for new research in this area
5	<p>Transparent, easily accessible, credible information on land rights and issues in developing countries (i.e. one-stop website with consolidated information on community land rights, location of communities, land legislation, land investments, etc.)</p>	<ul style="list-style-type: none"> • TMP work with financial institutions to quantify ESG risks, including tenure • The MapMyRights initiative supported by Omidyar Network to establish a platform for displaying maps of land rights • Interlaken Working Group on Mapping – who met recently in Rome to establish a global map of community land areas 	<ol style="list-style-type: none"> 1. ON and MapMyRights to keep Interlaken Group updated on status of initiative (expecting to go live mid-2014) 2. RRI, WRI, FPP to keep Interlaken Group updated on status of work by Interlaken Working Group on Mapping.
6	<p>Market & governance incentives or mechanisms for multiple investors to coordinate towards encouraging government action to secure community land rights (in many situations multiple investors face risks when investing in a particular area, but none have clear mandate or incentive to mobilize others and leverage potential private sector influence with government)</p>	<ul style="list-style-type: none"> • The case of mining in southeast Cameroon was identified as an example (ERM) • There is a lack of precedent for this type of collective action by private investors on land rights at a country level • This is one problem that the RRI tenure facility envisioned addressing, with national-level platforms of investors 	<ol style="list-style-type: none"> 1. This is an area of exploration for the Interlaken Group. 2. ERM and RRI to further discuss
7	<p>“Sticks and carrots” from government (host & origin country) for respecting tenure rights. (There is a need to identify pathways and mechanisms to better leverage the influence of progressive investors to encourage developing country governments to undertake land reforms and support right-based land development.)</p>	<ul style="list-style-type: none"> • Existing bilateral, international aid projects to support national-level land reforms, • New initiatives with governments regarding implementation of VGs • New G8 initiatives to encourage stronger government commitments • New donor platform on land reforms (currently chaired by Dfid), including recently established website displaying donor commitments by country 	<ol style="list-style-type: none"> 1. Build capacity of government where needed, via new projects 2. Strengthen voluntary and mandatory regulations to preclude bad investment 3. Align (between and within) government instruments and reporting requirements 4. Dfid to update Interlaken Group on efforts by the donor platform

e. The Future of the “Interlaken Group”

The discussion on the future of the “Interlaken Group” both reviewed the present meeting and assessed options forward. Participants agreed on the unique and valuable “safe space” for investors, companies and NGOs to discuss community land rights while broadening perspective and service benchmarking. Members felt the Group’s informal status to be advantageous in maintaining flexibility and practicality when exploring issue, and acting as an informal feedback loop toward better practice in the field.

It was suggested to broaden and diversify private sector representation– while maintaining agility – to include more financial institutions and suppliers. Alternative formats, including an online forum and constituency-specific sub working groups, were discussed, with periodic face to face discussion seen as having value on an as needed basis (ex. review of specific proposals pertaining to filling the gaps as per the table above).

For the “Interlaken Group” to add most value, it was agreed that the priority now was for the Group to focus on advancing concrete actions under the different work streams and to reconvene when there are substantive common issues to discuss. To facilitate this process, RRI committed to assist volunteers leading the different work streams. Andy recalled that there would be a follow-up conference in Interlaken, Switzerland in October 2015 and participants discussed the value of meeting prior to present progress.