



UEBT
SOURCING®
WITH RESPECT

GUIDELINES ON LAND TENURE, RIGHT OF USE AND ACCESS TO NATURAL RESOURCES

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Principle 7 of the UEBT Standard defines practices that respect rights over land and natural resources, particularly the relevant rights of indigenous peoples and local communities in cultivation and collection areas.

The UEBT standard aligns with and recognises the rights related to use and access to land and natural resources established in:

- The International Labour Organisation (ILO) Convention on Indigenous and Tribal Peoples (ILO 169)¹
- The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)²
- The United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas³

UEBT defines land tenure as:

The rules defined by law or custom that determine rights to own, access, use, control and transfer land (including other natural resources such as water and trees), as well as associated responsibilities and restraints.

In simple terms, land tenure determines who can use what resources for how long, and under what conditions.⁴

Who is this document for?

- **Local suppliers** (also known as organisations at source)
- **Companies holding UEBT certificates** that wish to guide their suppliers

REFERENCES

¹ ILO Convention 169, Article 14 establishes:

1. *The rights of ownership and possession [...] over the lands which they traditionally occupy shall be recognised. In addition, measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities.*

Article 15 establishes:

1. *The rights of the peoples concerned to the natural resources pertaining to their lands shall be specially safeguarded. These rights include the right of these peoples to participate in the use, management and conservation of these resources.*

www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169

² UNDRIP, Article 26 establishes:

1. *Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.*
2. *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.*

www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf

³ The Declaration's Article 17 establishes:

Peasants and other people living in rural areas have the right to land, individually and/or collectively, including the right to have access to, sustainably use and manage land and the water bodies, coastal seas, fisheries, pastures and forests therein, to achieve an adequate standard of living, to have a place to live in security, peace and dignity and to develop their cultures.

digitallibrary.un.org/record/1650694

⁴ Adapted from FAO. 2002. Land Tenure Studies. 3. *What is land tenure?* [Online]. Rome. www.fao.org/3/y4307e/y4307e05.htm

3.1 *Land tenure is the relationship, whether legally or customarily defined, among people, as individuals or groups, with respect to land.*

(For convenience, "land" is used here to include other natural resources such as water and trees.) Land tenure is an institution, i.e., rules invented by societies to regulate behaviour. Rules of tenure define how property rights to land are to be allocated within societies. They define how access is granted to rights to use, control, and transfer land, as well as associated responsibilities and restraints. In simple terms, land tenure systems determine who can use what resources for how long, and under what conditions.

This reference is cited in a FAO legal brief on 'Protecting land and natural resources tenure rights in the era of COVID-19 by heeding the lessons from the past' from 8 October 2020 www.fao.org/3/cb0706en/CB0706EN.pdf

All links in this document accessed January 2021

Land tenure situations: some examples

Here are just a few examples of the types of situations that companies may encounter:

- A community could have land that is owned by the entire community and not by individuals. The community members may have rights granted to access the land for livestock grazing, or wild collection of raw materials without the need to claim individual rights. People who are not members of the community may have no rights to access these lands.
- Forested land could be owned by the state. Individuals or communities may not be able to transfer their access rights to these forests to other individuals or entities.
- Land could be privately owned by a family and then passed from family to family or to individuals. Documents such as land title deeds may or may not exist. There may be customary laws¹ recognised by members of that community.
- Land could be privately owned by individuals or communities but land title documents do not exist. In some instances, women are forced to cede their land after losing husbands, or other vulnerable individuals such as indigenous people or youth are at risk due to unequal power relations within a household, or with the community, investors or local government. These persons may lack tenure security and become targets for lapses in customary rights or laws.

A DEEPER LOOK AT PRINCIPLE 7 CRITERIA IN THE UEBT STANDARD

Criterion 7.1

In Criterion 7.1 of the UEBT standard, it states that:

7.1 Disputes over ownership or use of land and natural resources are addressed

Let us look at the indicators for 7.1 in detail and explore some additional guidance:

7.1.1 Critical Information is available on disputes in cultivation or collection sites, including over rights of use of land, tenure rights and rights on other natural resources, such as water.

Examples of situations that companies may encounter:

- A local supplier is sourcing from communities practicing wild collection. The organisation will need to ensure that the field collectors have the right to collect raw materials from those lands and that there are no disputes with other communities with regards to access or harvesting.
- A local supplier is a processing company with access to communal sources of water such as a local river. They will need to ensure they seek and secure the legal rights to access that river water for industrial use.



Tips and guidance

- Gather information available on status of land and water use in the area.
- Ensure field operators have legal or legitimate right to use the land.
- Collect evidence through, but not limited to, title deeds, leasehold, traditional or customary rights.

7.1.2 Critical stepwise Disputes identified in 7.1.1 are actively monitored and attempts at conflict resolution are supported where possible.

For example, if there is a dispute between two communities about accessing a wild collection site, the organisation at source will need to ensure follow-up with the involved parties and possibly local authorities to solve the dispute.



Tips and guidance

- If disputes have been identified, ensure they are being solved.
- Develop a dispute resolution procedure and work with affected parties on solving the issue.
- Keep official records on the status of the dispute.

REFERENCE

¹ *Customary law refers to the principles, practices, customs and beliefs so vital to, and intrinsic a part of, a social and economic system that they are locally recognised as laws and internally govern or guide aspects of the lives and activities of indigenous peoples and local communities. (Adapted from the Convention on Biological Diversity and the World Intellectual Property Organisation.)*

Criterion 7.2

In Criterion 7.2 of the UEBT standard, it states that:

7.2 The rights and traditional practices of indigenous peoples and local communities are respected

Indigenous peoples are the descendants of populations which inhabited a country or geographical region during its conquest, colonisation or the establishment of present state boundaries and retain some or all their own social, economic, cultural and political institutions.

Source: ILO Convention 169

Local communities refer to the human populations in distinct ecological areas, depending directly on biodiversity for all or part of their livelihoods and having developed associated traditional knowledge.

Let us look at the indicators for 7.2 in detail and explore some additional guidance:

7.2.1 Critical The rights of indigenous peoples and local communities to own, use, and control lands, territories and resources in cultivation or collection sites, including the right to free prior informed consent, are identified and respected as recognised in international agreements and national and customary laws.

Free, prior informed consent, known as FPIC, is a specific right that pertains to indigenous peoples. It allows them to give or withhold consent to any measure that may affect them or their territories. It enables them to negotiate the conditions under which the measure will be designed, implemented, monitored and evaluated.

Adapted from the Food and Agriculture Organisation (FAO) and UNDRIP

Examples of situations that companies may encounter:

- A local supplier wishes to convert communal land that has been used for livestock grazing into production or processing sites, thus diminishing the land. Free prior and informed consent must be implemented before the project begins.
- A local supplier has other potential project ideas that could eliminate or reduce the access of the communities to their lands and natural resources such as water. These cannot commence until free prior and informed consent has been granted.



Tips and guidance

- Ensure there is no evidence of coercion or intimidation of the individuals and local communities. Their rights must be respected.
- Make sure to avoid violation of land use rights.
- Ensure indigenous people and local communities are informed of their rights concerning land use and tenure.
- When applicable and necessary, ensure free prior informed consent was obtained from the communities and indigenous people.
- Check if there are any projects that may affect local communities. In case there are, were the indigenous people consulted and given a chance to give or to withhold consent?
- If activities fall under 'access to genetic resources' according to national regulations, please refer to the requirements on Access and Benefit Sharing set out in Principle 3 of the UEBT standard.

FURTHER INFORMATION

For more information on how to implement free prior informed consent read:

Free Prior and Informed Consent: An indigenous peoples' right and a good practice for local communities. Manual for project practitioners.

www.fao.org/family-farming/detail/en/c/1036908



Criterion 7.3

In Criterion 7.3 of the UEBT standard, it states that:

7.3 Cultivation and wild collection activities do not jeopardize local food security

Food security refers to the physical and economic access to sufficient, safe and nutritious food to meet dietary needs and food preferences for an active and healthy life.

Adapted from the 1996 World Food Summit

Let us look at the indicators for 7.3 in detail and explore some additional guidance:

7.3.1 Critical stepwise The potential impact of sourcing activities on local food security is monitored.

7.3.2 Critical stepwise When necessary, actions are implemented to avoid or reverse any negative impact on local food security.



Tips and guidance

- Gather information on the sources of food for livelihoods of field operators/local communities.
- Make sure the expansion of sourcing activities is not compromising basic food production.
- Actively ensure there is no conversion of land meant for food production into land for other commercial uses.
- Some projects aim to plant some monoculture plantations as a means of reforestation with cash crops and to improve the livelihoods of small farmers and landless peasants.

However, the resulting loss of biodiversity (from replacing instead of improving the remaining forest and its management), and the impacts on the environment due to, for example, most of the project's pesticides and herbicides affecting non-targeted species (and human communities) in areas outside of the immediate project area, could affect indigenous peoples' food systems, health and livelihoods. Make sure this is not the case in your scope of intervention/sourcing activities.

- If land for food production has been converted for other commercial uses, slowly begin to reintroduce food crops.



Tips and guidance

Related to water for human consumption...

- Gather information on the use of water for human consumption.
- Ensure water use is not so heavy that it affects its availability for other people and uses.
- Ensure riverways are not altered in ways that negatively affect local communities.



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For more guidance and training, please contact UEBT at certification@uebt.org

About UEBT

UEBT is a non-profit association that promotes sourcing with respect. Its mission is to regenerate nature and secure a better future for people through ethical sourcing of ingredients from biodiversity.



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Published January 2021