



RESPONSIBLE INVESTMENTS IN PROPERTY AND LAND

Community Guidebook

Practical guidance and adaptable tools for communities and civil society organizations to prepare for, negotiate, and monitor responsible land-based investments.

DESIGNED FOR Community leaders, community members, and civil society organizations



GUIDEBOOK NAVIGATION

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GUIDEBOOK SECTION

Introduction

Background

Background for the RIPL Guidebooks

In established market economies, the policies, laws, regulations, and state administrative and judicial systems that govern land transactions are known as land governance frameworks. Ideally, these frameworks reflect the best practices listed in this guidebook. In places where this is true, most land investments can be said to be responsible investments, typically the result of agreements between informed, willing buyers and informed, willing sellers. In places where this is not true (i.e. where state laws do not follow best practices or the state lacks capacity to implement best practices), a legal investment may still be carried out in an irresponsible manner.

In a well-functioning land governance framework, for example, **no sale, lease or change in the use of a land asset occurs without notice, consultation, negotiation and consent.** Inequitable and non-beneficial land deals are less frequent, and if there is a dispute or breach of an agreement, judicial and administrative remedies are accessible, effective and just.

Unfortunately, however, many emerging economies lack governance frameworks embodying these best practices. Even if they are in place, the government and landholding communities often lack the capacity to implement them. Complicating the situation, individuals possessing land rights - especially women - frequently hold their interests and rights informally. Even if their rights are formally documented, prevailing norms and traditions may mean that women are excluded from consultation and decision-making processes even when their interests are clear. For more information on gender issues, consult the [Gender Primer](#).

Fortunately, situations like these can be mitigated by looking to international standards and best practices for property and land investments. A great deal of global attention is focused on implementing these standards through government and corporate commitments to improve land governance and investment practices. **The consensus is clear: land deals should be done responsibly.**

There is less consensus, however, about **how** to bring about a responsible investment. For example, it is not always clear how to meaningfully engage and consult with a company. Nor is there clarity around how to meaningfully include the broader community including women and other groups like pastoralists, particularly in situations where they are not customarily included. Limited community capacity and governance structures may also pose a further barrier.

With support from DFID's Land Governance for Economic Development (LEGEND) Programs, Landesa's RIPL Project is addressing these challenges by making international guidelines and best practices more accessible as guidebooks. These guidebooks offer country- and audience-specific step-by-step instructions for how to implement best practices and international standards, making it easier for businesses, governments and communities to all do their part to create a responsible land investment.

It is important to note that the RIPL Guidebooks are not about rectifying historic land grabs,^[i] but can help stakeholders identify issues. Businesses (and governments) should always look very carefully at who currently uses and claims rights to the land, and then look at how they came to use or control the land.

It should also be noted that the RIPL Guidebooks are not intended as legal advice, but rather as tools to aid stakeholders in navigating the process of designing and implementing a responsible investment. Furthermore, the best practices described in this guidebook should be seen as the basic minimum standard for responsible land-based investment, which all stakeholders should strive to exceed. Guidelines in the RIPL Guidebooks may exceed the minimum legal requirements at local, national, or international levels, but extra measures are suggested to safeguard against international condemnation for land grabs and to protect local land holders and users.

References

[i] Although there is scant literature about the legacy issue, two recent publications present detailed analyses of the subject. See L. Cotula, T. Berger, & P. Sutz, "Addressing Legacy Land Issues in Agribusiness Investments," LEGEND Analytical Paper 2 (2016), available online [here](#); N. Flanders & J. Jenks, A Guidance Note on Managing Legacy Issues in Agribusiness (2015), available [here](#).

Scope

Guidebook Scope: Thematic & Geographic Focus

The focus of this guidance is on supporting stakeholders in implementing best practices related to understanding and respecting land rights in the context of an investment. It is intended to be used alongside additional resources that focus on other critical aspects of investment design and implementation, such as guidance and best practices for understanding and mitigating environmental impacts.

While many of the best practices and steps outlined in this guidebook can be applied across sectors, the focus is on land-based investments in agriculture. These investments can be both direct acquisition of land (through lease or purchase) or procuring agricultural commodities directly from smallholder farmers.

This guidance is intended to be adaptable to different contexts and investment models. It is worth noting, though, that a significant amount of the field research used to inform the guidance took place in sub-Saharan Africa.

Audience

Guidebook Audiences

There are three broad investment stakeholders: business or investor; government, and the community of people. Each of these audiences has different needs, roles and responsibilities in an agricultural investment transaction. The RIPL project has accordingly produced a different guidebook for each stakeholder group and identified a specific user for each guidebook.

- This **Community Guidebook** - intended to benefit all community members - is directed to representatives of a community, such as community leaders or facilitators from a civil society organization.
- The **Business Enterprise Guidebook** is intended for company representatives tasked with evaluating and facilitating a prospective investment or managing an ongoing investment.
- The **Government Guidebook** is directed to national or local level officials who may not be familiar with best practices related to responsible agricultural investments or completely knowledgeable about either their country's investment process or the expectations of the international community.

Achieving a responsible investment is too difficult for any single actor to accomplish: it is imperative that communities, governments and businesses work together to uphold best practices and ensure that transactions in land are sustainable and responsible.

The Role and Responsibilities of Communities

Communities and their leaders must be empowered to participate fully in any investments affecting them. Though they may benefit from a land-based investment, rural communities and smallholders are also the stakeholders that have the most to lose when land deals take place. It is important to note that investments - even undertaken with best practices - cannot simply be imposed upon communities. Women and men in communities must have the capacity to be a part of fair land deals and have an opportunity to participate. There must be community attention, consideration, and response - from both women and men. This means that communities and their leaders may need to:

- **Reconcile inequitable traditional or informal practices with international standards**, which may be quite challenging. For example, in some communities customary leaders- usually a male elder or chief - holds the power to manage the community land. This person often serves as the representative, guardian, negotiator and contracting party during the investment process. However, within the framework of a responsible investment, all land rights holders - including women, ethnic minorities and pastoralists - should be involved in the negotiation process. After all, though these groups may not have rights within a customary setting, they are land users and may have rights from a national or international legal perspective. This means that some communities may need to alter practices to include stakeholders (such as women, youth, elderly, ethnic and religious minorities, indigenous people, and pastoralists) in discussions where they may not normally be included.
- **Develop processes or structures to support community consultation and decision making.** Establishing processes or groups within the community that share information, support community input into project or other considerations, and assist with or guide land use planning will leave a community better prepared to weigh the options and engage with a business on a potential investment.
- **Learn about how agricultural investments work**, such as the national and international rights the community has, the typical steps comprising a land transaction, and best practices and process to achieve a fair, equitable, and enforceable agreement.

Civil society can also assist communities during the planning, assessment, contracting and implementation of an investment by serving as facilitators, trainers, experts, interpreters and collaborators. This engagement may prove helpful to business enterprises as well, who will likely need help effectively reaching and engaging with community members. Civil society may therefore play the role of ensuring that all elements of a rigorous consultation and engagement effort or resettlement process are effectively implemented.

The Role and Responsibilities of Businesses

Businesses play an important role in upholding best practices in a responsible investment: as the entity with potentially more resources and capacity than government, they must ensure community and individual rights are respected throughout the process of acquiring or investing in land, otherwise they will be left exposed operationally and reputationally. At the same time, these resources put the business in a position of power. In combination with a clear interest in obtaining land, this power can too easily be used in a way that can be perceived to be threatening to land rights holders.

Whether this is fair or not, business enterprises should be responsible for implementing international standards to ensure communities are treated with fairness and respect throughout the investment process. This means businesses should uphold human rights more broadly as part of their core business activities in line with the United Nations Guiding Principles on Business and Human Rights (UNGPs). This means that businesses have a responsibility to:

- **Do research on the local context and culture they are entering.** Local government, civil society, academics and other experts may have information about the land situation in the target investment area. Companies already doing business in the area or donors funding projects in agriculture and land are additional resources. It is up to the business to find these resources and learn what they can from them.

- **Engage the community prior to and during the investment process.** The business should corroborate initial information derived from desk research and consultations with government and civil society with information obtained directly from community leaders and land rights holders, who can provide important context and history about the people and land in the area. These groups must be regularly consulted in advance of a prospective investment and receive continued information and engagement over the lifetime of the investment. Importantly, a business must ensure the participation of stakeholders who represent different social groups, particularly those of vulnerable groups, such as women, youth, elderly, ethnic and religious minorities, indigenous people, and pastoralists.
- **Align investment plans to follow FPIC guidelines.** Free, prior, and informed consent is a necessary condition for investment on land occupied by indigenous communities, and highly recommended for all communities under UN principles. This requires providing relevant information to all impacted communities.
- **Support rigorous and independent assessments.** As part of environmental and human rights assessments, a business must support the execution of independent land and social assessments that identify all land rights holders and anticipate impacts on land rights, livelihoods, food security and indirect social impacts. These assessments must involve impacted communities and be conducted and shared with communities and land rights holders in advance of negotiation and contracting.
- **Mitigate impacts and compensate for loss of livelihoods.** A business must attempt to reconfigure the project to minimize breadth and depth of identified impacts. Where impacts cannot be removed, compensation must be agreed upon. Businesses must compensate beyond cash payment land rights holders and users for the full livelihoods value of the land asset affected by the investment. Compensation should be part of a Livelihood Restoration Plan, structured sustainably and be informed by dialogue with the communities and the land rights holders entitled to compensation.
- **Coordinate grievance mechanisms.** In accordance with UNGP #31, the community leaders and Land Investment Committee should develop grievance mechanisms that meet the criteria for non-state, non-judicial dispute resolution processes. Business should pursue these mechanisms with the consultation of community members..
- **Negotiate a transparent and inclusive agreement.** Land rights holders and users must consent and say “yes” to the transaction. A formal agreement plays an important role in memorializing the negotiation and establishing clear rights, responsibilities, and processes to ensure the long-term sustainability and equity of the land transaction.
- **Monitor and enforce agreements.** Regular monitoring and evaluation (M&E) of the agreement over the life of the project is essential to earning and maintaining a social license to operate. Monitoring should be participatory, transparent, enforceable, and responsive. One component of M&E is ensuring the availability of accessible and transparent channels for affected parties to raise grievances.
- **Implement feedback from the community at all stages of the investment process.** Simply talking about responsible investment is not enough. Businesses must work with the communities and land rights holders affected by the investment, which means taking time for questions, concerns and ideas from the community and meaningfully including that input into the investment design and implementation. It also requires empowering community members and land rights holders who may be more vulnerable or marginalized to meaningfully participate at all stages.

It is important to note that best investment practices cannot simply be imposed upon communities and their leaders. All land rights holders must have the capacity to be a part of fair land deals and have an opportunity to participate. There must be attention to, consideration of and response from the community throughout the investment process, and the business holds a responsibility to ensure that happens.

The Role and Responsibilities of Government

The government also plays an important role in responsible investment. At a high level, the government's role is to ensure that all parties are adhering to pertinent local, national, and international laws and to provide an enabling and receptive environment for a business that embraces best practices. As such, government officials may need to act as facilitators or guides during the investment process.

The government also holds a responsibility to:

- Recognize and respect all legitimate tenure right holders and their rights,
- Safeguard legitimate tenure rights against threats,
- Make efforts to promote and facilitate the full realization of tenure rights in the context of facilitating responsible investment,
- Provide access to justice to deal with infringements of legitimate tenure rights,
- Support accessible and equitable transactions, and
- Take steps to prevent tenure disputes from arising and escalating into conflicts.

GUIDEBOOK SECTION

How to Use this Guide

This Model RIPL Guidebook for Communities includes instructions and tailorable tools and resources that a community can modify as it prepares for an agricultural investment in a socially responsible manner. The material is organized by four phases of an investment process.

Guidebook Structure

The investment process is separated into four phases in this guidebook, with each phase consisting of two tasks that have detailed steps. Each task contains step-by-step guidance organized in a linear manner to provide structure to an investment process that is often times complex and cyclic in nature. The information within each step is a combination of analysis, principles, recommendations, tools and resources.

■ Phase 1: Preparing for Investment

- Task 1: Strengthen Community Systems and Safeguards for Land Investments
- Task 2: Conduct Initial Due Diligence

■ Phase 2: Community Engagement and Assessments

- Task 1: Identify Investment Site and Engage and Consult with Land Holders and Users
- Task 2: Conduct Community Assessments

■ Phase 3: Developing an Equitable and Inclusive Contract

- Task 1: Negotiate and Draft the Contract
- Task 2: Review and Sign the Contract

■ Phase 4: Implementing and Monitoring the Investment

- Task 1: Prevent and Address Land-Related Issues
- Task 2: Confirm the Business has an Ongoing Monitoring and Evaluation Plan

Best Practice Statements

Explained at the outset of each task, the guidebook includes detailed best practice statements that reflect the international standards and principles for socially responsible investments in land.

Application of “Step-by-Step” Guidance

When applying the RIPL Guidebooks to an investment, it is important to recognize that the context of an investment will shape how best practices can bring about a socially responsible investment. This will require identifying these variables in order to apply the guidance to the community’s unique investment context. Examples of the contextual variables include:

- Sophistication and functionality of national land governance framework and extent to which it reflects international best practices.
- Capacity of government and institutions to implement effective enabling frameworks.
- Ability and resources for business to implement international standards and best practices
- Local land governance practices.
- Agricultural commodities that are part of the investment.
- Modes of production, such as irrigation, rain fed farming, small scale farming and outgrower schemes.
- Importance of land-based livelihoods, meaning the extent to which local communities rely on land for their livelihoods.
- Competition for land resources and extent of land availability.

- Legal and social status of women within the investment area.
- Opportunity of all land holders and users - including women, pastoralists and migrant farmers - to participate and be represented in the land development process, and also ensure that best practices are employed in an unfolding investment.

Supporting Materials

All of the phases have resources and tools to help the community translate best practices to the specific needs, risks and opportunities of the agricultural investment project. These resources are all available [here](#).

- **Phase 1: Preparing for an Investment Supplemental Resources**
 - Community Governance Assessment
 - Leveraging Land Investment Committees
 - Land Rights Awareness Training Curriculum
 - Developing Community By-Laws for Responsible Investment
 - Gender Sensitive Community Mapping
 - Boundary Harmonization
 - Documenting Boundaries
 - Developing a Land Use Plan
 - Land Valuation
- **Phase 2: Community Engagement and Assessments Supplemental Resources**
 - Consultation Meeting Notes Template
 - Community Consultation Meetings Checklist
 - Outgrower Best Practices Literature Review
- **Phase 3: Developing an Equitable and Inclusive Contract Supplemental Resources**
 - Key Contract Elements
 - Template for LOI/MOU
 - Final Contract Checklist
- **Phase 4: Implementing and Monitoring the Investment Supplemental Resources**
 - Designing a Stakeholder Engagement Plan
 - Monitoring & Evaluation Indicators

There is also information organized by thematic area in our Topical Primers. Primers are approximately 10-page briefs designed to complement the step-by-step guidance. They provide more detailed information on several key topics referenced throughout the guidebook. An understanding of these topics will be central to contextualizing and accomplishing the best practices. Some primers will be referenced throughout the guidebook where appropriate, and all primers are available online [here](#).

GUIDEBOOK SECTION

International Standards & Important Concepts

International Standards

International Standards & Best Practices

Responsible agricultural investment includes more than just following the letter of the national law. It also means adhering to international standards and best practices. These standards have been created, in fact, because in many places the local laws simply do not do enough to protect communities.

The basis for these best practices comes from two key documents that embody all the agreed upon principles and best practices. The aim of the RIPL Guidebooks is to help operationalize these four recent well-known instruments:

- [Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security](#) by the Committee on World Food Security (CFS) and Food and Agriculture Organization of the United Nations (FAO). Sometimes this document is referred to as VGGT or the Voluntary Guidelines.
- [Guiding Principles on Large-Scale Land Investments in Africa by the African Union](#), African Development Bank, and United Nations Economic Commissions for Africa. These are often referred to as AU Guiding Principles.
- The [Principles for Responsible Investment](#) by the United Nations, often called the UN PRI.
- The [International Finance Corporation \(IFC\) Environmental and Social Performance Standards](#), often called IFC's Performance Standard

At a high level, these standards call on business enterprises to work equitably with communities and individuals with legitimate land rights. This includes (but is not limited to):

- Making a commitment to uphold both national law and international standards, especially where the international standards exceed the national law requirements;
- Identifying all land rights, including access, use, secondary and communal rights recognized under both formal and customary law;
- Providing notice to all land rights holders (including traditionally vulnerable groups such as women, ethnic minorities, pastoralists and migrant farmers) about the investment;
- Engaging and consulting with leaders of affected communities and individuals about how to design and implement the prospective investment;
- Recognizing and formalizing land rights;
- Asking land rights holders to freely consent, with the option to decline;
- Assessing land impacts via an impact assessment;
- Mitigating impacts (such as potential displacement) and social risks that may be caused by the project;
- Inviting land rights holders to negotiate a fair agreement;
- Ensuring investment benefits are distributed equitably among all individuals with land rights; and
- Establishing and implementing grievance mechanisms.

A great deal of global attention is now focused on supporting the implementation of these practices to achieve fair, informed, inclusive and choice-driven processes that respects the land rights of all.

Important Concepts

Free, Prior and Informed Consent

A necessary part of developing a high level of trust between an investor and communities is obtaining free, prior and informed consent (FPIC). FPIC carries with it the element of choice to accept or reject the change in land use that accompanies the proposed investment.

FPIC is enshrined in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP);[i] it is also included in other international legal instruments[ii] and domestic legal frameworks.[iii] Numerous business enterprises have agreed to FPIC as part of their commitments to responsibly invest in land.[iv]

Under UN principles, FPIC is reserved for indigenous communities, while consultation and participation are seen as the minimum standard for interactions with non-indigenous communities.[v] Importantly, UNDRIP states that individuals and communities have the right to self-determine whether they are indigenous or not, which can be in the absence of the government making such a determination.[vi]

That being said, it is often broadly interpreted as best practice to obtain the FPIC of all communities that maintain customary rights to or uses of land and natural resources.[vii] Moreover, the principles of FPIC overlap considerably with the principles of good contracting: no party ever parts with land without saying “yes.” And any party asked to enter into a contract has the right to say “no.” That is, fair business deals always have the element of choice. FPIC is therefore central to land-based investment projects seeking to transact responsibly. Finally, businesses must know that it is difficult to maintain a social license when surrounded by displaced land holders and users who did not have a choice.

Choice must be fully informed. For land-based agricultural investments, FPIC requires that affected communities:

- 1 Are provided with all information relevant to the investment and its potential impacts, in a language and format that they can understand,
- 2 Have as much time as needed to assess the information and investment opportunity, and
- 3 Are able to make a decision as to whether or not to proceed with the investment without any undue influence or coercion from the government, business enterprise, or other outside source.

For more information, see the [FPIC Primer](#).

Best Practices for Holding Community Meetings

Publicize meetings to achieve diverse representation. It is likely that the investment will impact people and groups differently so their participation is needed to contribute different perspectives and help anticipate and mitigate potential issues.

- Share information about the meeting place and time in places where participants frequent, such as messages on local radio and notices on message boards at local schools, churches and community gathering places.
- Community leaders should mobilize their constituents. This is especially important for the leaders of minority groups.
- Encourage all community members to spread the word. At the end of a community meeting, encourage attendees to bring a friend, neighbor or family member along to the next meeting.
- Make meeting times and locations accessible. Meetings should be held at locations and times that are accessible to all community members. Women, pastoralists, and others may have different schedules that must be accommodated.

Ensure broad representation. Reaching vulnerable groups who are frequently underrepresented in decision making forums, such as women, youth and ethnic minorities, (see [Vulnerable Groups Primer](#)) often requires more concentrated effort than just inviting them to information meetings, so make specific efforts to include the following individuals:

- Married Men
- Single Men
- Married Women
- Single Women
- Widowed Women
- Male Youth
- Female Youth
- Male Pastoralists
- Female Pastoralists
- Others, e.g., widows, religious minorities, elderly, people with disabilities, etc.

Structure the meetings into three parts to ensure broad participation

- Community members should convene as one large group for general information and instructions.
- To facilitate discussion that provides everyone an opportunity to express their views, community members should be separated into groups of 15 to 25 community members. In the majority of contexts, women should be separated from men. Consult the [Gender Primer](#) for more guidance on meaningfully including and considering women throughout the investment process.
- Reconvene the community for further discussion and an opportunity for members to ask questions.

Develop a meeting agenda facilitation plan to ensure the following is achieved:

- The meeting is organized and runs smoothly. The meeting organizers come to the venue prepared with an agenda and additional materials, such as paper, pens, posters, copies of handouts, mobile phone, etc. The organizers keep track of the agenda and time.
- Meeting objectives are clear. Meeting participants have a shared understanding of the agenda and purpose of the meeting.
- Meetings are respectful. Participants establish and know the “meeting ground-rules.” These rules typically involve commitments to respect and listen to all perspectives, avoid usage of bad language or raised voices, etc., and should be established at the first community meeting and repeated at every meeting.
- Meetings are participatory. Participants receive clear information and have adequate time to discuss, share ideas, and ask questions. A number of voices are heard; one person does not dominate the conversation.
- Meetings are informative. Decision-makers receive the input (such as information, feedback, consent or lack of consent) needed to make decisions.
- Meetings are action-oriented. The community understands what the next steps are and who is responsible for completing them. Plans for additional meetings are made and date and time agreed upon.

Document the meetings

- Take meeting minutes and notes, including names and signatures of participants. Representatives from each major community group should also sign the document as witnesses.
- With prior consent from participants, consider video recording the meetings with a smartphone for additional documentation.

Schedule additional meetings

- Develop a schedule to hold multiple meetings with community members to inform and to provide a space for dialogue, and to ensure everyone participates, particularly widows, minorities, pastoralists etc.
- The time between meetings should be agreed on by community members.

Obtain consent from community members.

- Investing company in consultation with the community should define majority consent for the specific project and context.
- After each meeting, community members should vote on whether or not to proceed or hold additional meetings.
- Meeting minutes should be signed by those that gave and withheld their consent.

References

- [i] See UN General Assembly, United Nations Declaration on the Rights of Indigenous Peoples: resolution / adopted by the General Assembly, A/RES/61/295 (Oct. 2, 2007), available at http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf.
- [ii] See e.g., United Nations, Department of Economic and Social Affairs, An Overview of the Principle of Free, Prior and Informed Consent and Indigenous Peoples in International and Domestic Law and Practices (2005) (detailing how Philippines, Malaysia, Australia, Venezuela, and Peru implemented legislation relating to FPIC).
- [iii] See e.g. The Coca-Cola Company, The Coca-Cola Company Commitment: Land Rights and Sugar (2013), <https://www.coca-colacompany.com/content/dam/journev/us/en/private/fileassets/pdf/2013/11/proposal-to-oxfam-on-land-tenure-and-sugar.pdf>; Nestlé, Nestlé Commitment on Land & Land Rights in Agricultural Supply Chains (2014), http://www.nestle.com/asset-library/documents/library/documents/corporate_social_responsibility/nestle-commitment-land-rights-agriculture.pdf; PepsiCo, PepsiCo: Land Rights Policy (2014), https://www.pepsico.com/Assets/Download/PepsiCo_Land_Policy.pdf; Unilever, “Sustainable Sourcing Strategy,” <https://www.unilever.com/sustainable-living/> (last visited Jan. 29, 2016); Illovo, “Illovo Group Guidelines on Land and Land Rights” (2015), available at <http://www.illovosugar.co.za/Group-Governance/Group-Guidelines-on-Land-and-Land-Rights> (last visited Jan. 29, 2016).
- [iv] For example, as part of its policy of “zero tolerance” for land grabs, Coca-Cola committed to adhering to FPIC with respect to all communities it works with. Tirit Amir, Coca-Cola Leads the Way on Land Rights, OXFAM (Nov. 8, 2013), <https://politicsofpoverty.oxfamamerica.org/2013/11/coca-cola-leads-the-way-on-land-rights/>.
- [v] See UN-REDD Programme, Guidelines on Free, Prior and Informed Consent (2013), available at <https://www.unclearn.org/sites/default/files/inventory/un-redd05.pdf>.
- [vi] FAO, Free Prior and Informed Consent: An Indigenous Peoples’ Right a Good Practice for Local Communities 12 (2016), available at <http://www.fao.org/3/a-i6190e.pdf>.
- [vii] See id. (stating it is good practice to extend FPIC to local communities, although it is a right of indigenous peoples).

GUIDEBOOK SECTION

Phase 1: Preparing for Investment

Phase Roadmap

This phase is about preparing a community and affected individuals for a land investment.

Task 1: Strengthen Community Systems and Safeguards for Land Investments

- 1 Community leaders identify a CSO to assess and strengthen community governance structures regarding investment.
- 2 Community leaders, with support from a CSO, carry out a community governance assessment.
- 3 CSO helps community leaders establish a Land Investment Committee to prepare the community for prospective investment.
- 4 Land Investment Committee, with support of a CSO, builds awareness of rights and best practices among community members.
- 5 Land Investment Committee leads efforts to draft and adopt community by-laws for responsible investment.
- 6 Community ratifies by-laws for responsible investment and elects permanent Land Investment Committee members.

Task 2: Conduct Initial Due Diligence

- 1 Land Investment Committee continues to build awareness of rights and best practices among community members.
- 2 Land Investment Committee prepares for rights identification and mapping process by consulting local government.
- 3 Land Investment Committee establishes trust by organizing a community meeting to discuss gender sensitive land rights identification and mapping.
- 4 Land Investment Committee, with the support of a CSO, facilitates gender sensitive land rights identification and mapping for all community members, including women, pastoralists and other groups.
- 5 Land Investment Committee prepares for land use planning process by consulting local government.
- 6 Land Investment Committee supports a participatory community land use planning process, including identifying suitable land available for investment.
- 7 Land Investment Committee facilitates meetings with community members to value land designated for investment.

Task 1: Strengthen Community Systems and Safeguards for Land Investments

Best Practices

A community is best positioned to benefit from a prospective investment if community members take measures to strengthen the community's governance structure, increase awareness of their rights, document their land and resource rights, and engage in land planning exercises well before a prospective investor approaches a community. This will ensure community members are well equipped to make informed decisions and meaningfully participate in the investment process. Before engaging with a company, community leaders should identify a CSO to help members ask themselves:

- What are our community short-, medium- and long-term goals? How do these relate to our interest in the prospective investment?
- Are we willing to sell or lease community-held land to an investor? If so, what land?
- If land is held privately in the community, are there any requirements private land owners have to consult the community if they would like to sell or lease land (as the sale of private land may impact surrounding community members)?
- Who will represent the community in transactions and negotiations with an investor?
- How will information be disseminated to the broader community?
- Do we understand our rights in an investment deal? Or, do we have access to people or resources who can help us understand our rights and all contract terms and conditions?
- Are there certain conditions that must be met in all agreements or we won't move forward, such as the maximum number of years we will lease land to a single investor or compensation requirements?
- In cases of sale or lease of community-held land, how will we manage financial compensation received in exchange? Who will manage it? How will management be made transparent to community members?

To ensure that land investments in the community are responsible, sustainable and beneficial for the community, the community needs strong systems and safeguards in place that are rooted in good practices and centered on:

- Establishing a Land Investment Committee that leads efforts in preparing the community for a possible investment and representing the community in negotiations with prospective investors.
- Drafting and adopting community rules or by-laws that specifically govern land investments, particularly how decisions will be made about investors accessing and using land in the community.
- Conducting awareness-raising and training activities to ensure community members are informed about their rights and understand benefits and risks associated with investments.

The establishment or strengthening of new systems and safeguards should include the entire community. The process will also likely generate debate and challenging discussions that will require time to resolve. Best practices for Holding Community Meetings located in the introduction will promote the interests of all community members and result in:

- Community-driven planning processes that provide both women and men space and time to openly discuss concerns,
- Transparent and timely communication that reaches all community members,
- Obtaining consent from community members in an inclusive and participatory manner,
- Broad awareness of legal rights and duties related to land and investment within the community, and
- By-laws for responsible investment that are clear and well-understood by the whole community, reflect the input of all community members, and are sensible and compatible with the local governance institutions and processes.

Step-by-Step Guidance

1. Community leaders identify a CSO to assess and strengthen community governance structures regarding investment.

Although many communities have governance structures for consultation, information sharing and decision making, the process may require adjustments to improve effectiveness, inclusivity and accountability to facilitate a responsible land investment.

An outside expert such as a CSO can help by:

- Offering an unbiased perspective to help the community make decisions and rules about new investments in a way that promotes the interest of the entire community and does not create harm for vulnerable community members.
- Bringing comparative expertise from evaluating or establishing community governance structures in other areas.
- Empowering community members to navigate challenging relationships within the community that might pose roadblocks to success.

Ideally, the CSO would assist the community in:

- Evaluating the effectiveness of existing community institutions that govern investments in land.
- Strengthening community governance structures and processes and establishing the community's Land Investment Committee to support community members in planning, consultation, receiving information, giving consent and negotiating with possible investors.
- Providing community leaders and members with basic legal literacy training to ensure they are well informed about their rights and the potential benefits and risks that investments in land may bring.
- Facilitating the drafting by-laws for responsible investment in a manner that is inclusive of all community members.
- Supporting the community in participatory land rights identification and mapping.
- Supporting the community in land use planning to identify areas suitable and available for investment.

2. Community leaders, with support from a CSO, carry out a community governance assessment.

The community should work with its selected partner to evaluate the strengths and weakness of the community's existing governance structures for investment. In this guidebook, we will refer to this activity as a community governance assessment.

This process includes:

- Identifying an assessment team that will be responsible for designing and conducting the assessment;
- Gaining support from trusted community leaders to legitimize the activity and help the team navigate interests, personalities and institutions;
- Designing and conducting the assessment in a manner that supports the participation of all community members, paying special attention to include vulnerable groups such as women, youth, elderly, ethnic and religious minorities, indigenous people, and pastoralists;
- Mapping the existing community institutions and looking at their current roles, responsibilities, resources and skillsets;
- Evaluating the reputation and influence of each community institution and looking at their governance structure and composition; and
- Documenting and sharing findings and making recommendations to the community.

[Supplemental Resource: Community Governance Assessment](#) will help community leaders understand what is required by the CSO. In addition, it will help the CSO understand what activities should be undertaken.

Following the presentation of assessment findings, the assessment team should make any revisions to the report based on feedback gathered at the community meeting. If the team makes revisions to the report or recommendations based on this meeting, the revised report should be presented at a follow-up community meeting.

3. CSO helps community leaders establish a Land Investment Committee to prepare the community for prospective investment.

To implement the findings from the community governance assessment, community leaders (with the support of the CSO) should establish an interim Land Investment Committee composed of representatives from key stakeholder groups in the community. Based on the findings of the assessment, community leaders should determine if the responsibilities of this committee can be added to an existing community structure or if a new one should be created. Regardless of the approach taken, for the purposes of this guidebook we are referring to this group as the Land Investment Committee. After the community validates the community's by-laws for responsible investment in step five of this task, the community will elect permanent members to the Land Investment Committee.

[Supplemental Resource: Leveraging Land Investment Committees](#) outlines more detailed steps for establishing the roles and responsibilities of the Land Investment Committee and electing/selecting its members. Refer to Best Practices for Holding Community Meetings in the introduction section when moving through this process.

Regardless of the specific process, a new structure should be:

- Incorporated into existing structures and processes, including traditional hierarchies, community groups or associations, local (statutory) government institutions, etc.;
- Inclusive of individuals from ALL sectors of the community - representing all social and economic statuses, to include women, youth, elderly, ethnic and religious minorities, indigenous people, and pastoralists;
- Equipped to effectively share information within the community and allow for participation in dialogues and engagement by the full community;
- Vested with the appropriate authority and necessary resources to carry-out its duties; and
- Accountable to community members.

Committee members are responsible for implementing the phases of these guidebooks:

- Phase 1: Strengthening community systems and safeguards for land investments.
- Phase 2: Engaging with the business on behalf of the community about a potential investment project and supporting the implementation of community assessments to determine potential impacts on the community.
- Phase 3: Negotiating a contract with the business on behalf of the community.
- Phase 4: Representing the community as the investment project is being implemented and establishing systems that facilitate a responsible investment.

4. Land Investment Committee, with the support of a CSO, builds awareness of rights and best practices among community members.

An important part of establishing a foundation for responsible investment in land is ensuring that individuals and communities are well informed about their rights and the potential benefits and risks that investments in land may bring.

Before training the broader community, it will be important for the CSO to first train members of the Land Investment Committee. A local CSO partner may be helpful in assisting the Committee to develop the appropriate approach, which may include:

- **Legal-literacy training** conducted by an expert trainer, focused on civic education, land rights awareness and rights and responsibilities related to land-based investments. There should be special emphasis in the training on rights of women, youth and land users with temporary or secondary rights.

Separate training sessions for men and women may be needed to ensure that trainings are accessible and participatory. Basic legal literacy can help:

- Individuals and communities understand their land rights and how to ensure that their rights are respected;
 - The community develop informed, meaningful and practical community investment by-laws consistent with national laws and informed by international best practices; and
 - Build skills to enable the Land Investment Committee to support the community in developing strong systems and safeguards.
- **Facilitated dialogues** in safe spaces with target groups to build local understanding of laws and best practices and to consider the relevance of key principles to their own lives and community.
 - **Peer training** of targeted groups to share information about laws, policies and good practice with others in the community, increasing the reach of the trainings.
 - **Public information and educational activities** about laws and best practices.

For an example training curriculum on legal-literacy, see [Supplemental Resource: Land Rights Awareness Training Curriculum](#). This resource is intended to serve as a guide for a trainer to adapt for community trainings. It includes modules on civic awareness, land and property rights, land governance, women's land rights and land rights in the context of a potential investment. Refer to Best Practices for Holding Community Meetings when planning and conducting these trainings.

5. Land Investment Committee leads efforts to draft and adopt by-laws for responsible investment.

Drafting community by-laws for responsible investment should be a participatory process that involves rounds of consultation, discussion and drafting. It is important that all community members are given the opportunity to participate and shape the content of these rules to avoid formalizing rules that hurt vulnerable members of the community or unfairly benefit certain community members. As discussed in Step 1, enlisting the support of a third-party expert, like an experienced CSO, can help empower communities to establish systems and rules that support good governance for all.

[Supplemental Resource: Developing Community By-laws for Responsible Investment](#) outlines specific considerations and recommendations for the community in establishing these rules. The drafting process will include:

- Land Investment Committee holds initial community meeting.
- Land Investment Committee holds follow-up small group meetings and content-specific meetings.
- Land Investment Committee develops first draft.
- First draft presented at a community-wide meeting. Community discusses revisions to first draft.
- Land Investment Committee incorporates revisions to develop second draft.
- Second draft is reviewed by outside legal expert, local government and customary leaders.
- Land Investment Committee holds community meeting to share comments of legal expert. Community decides what to revise.
- Land Investment Committee incorporates community revisions into third draft.
- Land Investment Committee hosts a community investment by-laws adoption ceremony. At this meeting, the final draft (usually this is the third draft) is presented to community for final review. The community votes to adopt the by-laws.

The by-laws for responsible investment should include the following categories:[i]

- Rules for the composition, authority and governance of the permanent Land Investment Committee.
- Rules for communication channels and protocols with the community members, leaders and groups; local government; potential investors; and other stakeholders such as CSOs.

- Rules for establishing community objectives and engaging and negotiating with the investors.
- Rules for compensation received from the investor on how it will be collected, stored, managed and documented.

Refer to Best Practices for Holding Community Meetings in the introduction section for best practices on preparing, organizing, conducting and documenting these community meetings.

6. Community ratifies by-laws for responsible investment and elects permanent Land Investment Committee members.[ii]

Once a final draft is agreed upon, the Land Investment Committee should host a community-wide ceremony to adopt the community investment by-laws. Refer to Best Practices for Holding Community Meetings when preparing, organizing, conducting and documenting the ceremony. [Supplemental Resource Holding a By-Law Adoption Ceremony](#) provides additional guidance.

Listed below are the main features of the adoption ceremony:

- **Attendance:** The ceremony should be attended by at least the male and female heads of every household in the community, all community leaders, trusted government officials, and relevant cultural and customary leaders.
- **Review of the by-laws:** At the by-laws adoption ceremony, the complete list of by-laws should be read aloud. Community members should be given the opportunity to make any final objections. If a community member raises an objection, the issue should be addressed and a solution found. After all final objections have been resolved, the community should prepare to vote to adopt their by-laws.
- **Voting:** The next step is for the community to vote on the by-laws. At the first meeting to launch the by-laws development process, the community decided how many votes it would take to approve the by-laws. Community members should be reminded of the number required for approval before the vote is held.
- **Documenting:** Members of the Land Investment Committee should take good notes of the ceremony, discussion and votes, including taking photos and videos. It is recommended that all voting community members sign the by-laws. This will help make the document more legitimate in the eyes of community members, both immediately and over time.

Assuming the by-laws are adopted, elections for the Land Investment Committee should then be held as required based on the newly adopted by-laws.

References

[i] For a template of what types of rules could be included in the by-laws, see Namati, Community Land Protection Facilitators Guide 107-112 (2017), available at <https://namati.org/resources/community-land-protection-facilitators-guide/>

[ii] The process for drafting community by-laws is adapted from Namati's experience working with communities in community land governance protection efforts. See id. at 95-112.

Task 2: Conduct Initial Due Diligence

Best Practices

At the outset of a potential investment process, it is imperative for a community to act with due diligence to avoid harm to the community and individual land holders and users from the impacts of a potential investment. It will be important for community members to continue learning about their rights, document their land and natural resources, and understand the value of their land. By doing so, a community will be better positioned to engage with a business by identifying and mitigating or eliminating issues and risks a potential investment project may pose.

For a community, acting with due diligence includes:

- Ensuring that individuals and groups are informed about their rights and the potential benefits and risks that a land investment may bring.
- Conducting gender sensitive and participatory rights identification and mapping.
- Developing land use plans that identify development priorities and designate areas that might be suitable for investment if appropriate.
- Understanding the monetary value of land and natural resources, particularly the area designated for investment.

Each of these activities - training, rights identification and mapping, land use planning, and land valuation - should be designed and conducted with the following principles in mind:

- **Participatory:** All community members are invited to shape and participate in these activities. At a minimum, all socio-economic groups within the community are represented in the process.
- **Gender sensitive:** It is particularly important to ensure processes recognize the different needs, experiences and land uses of women.
- **Equitable:** Processes should result in outcomes that benefit all socio-economic groups within the community
- **Systematic:** Processes should take particular care to map and value informal uses.
- **Sustainable:** These activities will shape the way land is used and accessed by future generations. Land use planning in particular should take care to consider the impact of decisions made today on future generations and seek to find solutions that maximize long-term sustainability.

Although this section primarily covers due diligence activities that the community should complete prior to engaging with a business about a potential investment, **due diligence is an ongoing process.** In subsequent investment phases, including after an agreement is signed with a business, the community should continue acting with due diligence to be prepared for changing circumstances. For example, land in the area could become more valuable or attract other commercial interest. The community could also experience a transition from subsistence to commercial agricultural land use that could lead to powerful members of the community asserting claims over land of less powerful members, such as female heads of households.

To help the community prepare for such changes, it will be important for community members to continue learning about their rights and using the maps they create as part of this process to make better decisions about how to manage their lands and natural resources equitably and sustainably.

Step-by-Step Guidance

1. Land Investment Committee continues to build awareness of rights and best practices among community members.

If required, the Land Investment Committee should continue ensuring that individuals and communities are well informed about their rights and the potential benefits and risks that investments in land may bring. Individuals and communities who hold tenure rights should know about their rights and how to ensure that their rights are respected. Refer to [Supplemental Resource: Land Rights Awareness Training Curriculum](#).

2. Land Investment Committee prepares for rights identification and mapping process by consulting local government.

Before conducting any community land use planning activities, the Land Investment Committee should contact local government about current or future rights identification and mapping activities, as well as a CSO partner with expertise in gender sensitive community mapping to facilitate the process.

This will help the community:

- Reduce the risk of duplicating work that might be underway by government;
- Identify potential partners and resources and foster institutional buy-in from local government; and
- Ensure land mapping activities are conducted in a manner consistent with national law and can be integrated into future local or national rights identification and formalization efforts and systems (such as added to national registries).

3. Land Investment Committee establishes trust by organizing a community meeting to discuss gender sensitive land rights identification and mapping.

Maps that identify the land rights of the community and individuals are important tools for communities to use throughout the investment process and in their discussions about land and resources.[i] Maps will help the Land Investment Committee:

- Inform discussions with community members about land and natural resources;
- Show connections between agricultural lands and other ecosystems such as forests or wetlands;
- Clarify boundaries between individual community members and their neighbors;
- Document natural resources located within common areas;
- Clarify the location of historical and cultural sites (traditional authorities or spiritual leaders may choose to map sacred sites to protect them);
- Reduce land and natural resource conflict;
- Support clear use agreements between individual community members as well as neighboring communities; and
- Promote collaborative land natural resources management within and between communities.[ii]

But maps can also provide sensitive information to people outside the community.[iii] The Land Investment Committee should work with community leadership and the CSO to coordinate an initial meeting with community members to discuss land use planning. Refer to Best Practices for Holding Community Meetings.

4. Land Investment Committee, with the support of a CSO, facilitates gender sensitive land rights identification and mapping for all community members, including women, pastoralists and other groups.

The Land Investment Committee should work with community leaders and its CSO partner to:

- **Identify a mapping methodology and prepare a schedule.** There are a number of different ways a community can map land rights. [Supplemental Resource: Gender Sensitive Community Mapping](#) describes two different methodologies: sketch mapping and satellite imagery mapping. The Land Investment Committee should develop a schedule for conducting the selected approach and present a plan to the community for input.
- **Conduct the mapping exercise.** [Supplemental Resource: Gender Sensitive Community Mapping](#) describes the best practices and steps necessary to identify and map individual and community land rights, including those of individuals and groups that claim rights under both formal law and custom.
- **Harmonize boundaries and resolve disputes.** [Supplemental Resource: Boundary Harmonization](#) describes the best practices and steps necessary to harmonize boundaries and resolve disputes with participation from community members. The community will typically address three categories of conflict at this stage: intra-community conflicts, inter-community conflicts, and conflicts between a community and outside actors.
- **Document agreed boundaries and land rights.** After boundaries are harmonized and conflicts resolved, the community should document proof of the land claims. [Supplemental Resource:](#)

[Documenting Boundaries](#) provides some options for the community to consider, including memoranda of understanding (MOUs), physical land markers and technical measurements. The Land Investment Committee should work with the local government to identify the best option.

■ **Prepare a community map and present to the community.**

The community mapping process will involve many community meetings. Refer to Best Practices for Holding Community Meetings in the introduction section for best practices on preparing, organizing, conducting and documenting all of the community meetings that are critical to successful rights identification and mapping processes.

5. Land Investment Committee prepares for land use planning process by consulting local government.

Equipped with the community map (with boundaries marking settlement areas, private land, pasture lands, forest land, etc.) the community has a better understanding of existing land uses and rights claims; through the boundary harmonization process, the community has also addressed existing boundary conflicts. The community now has the opportunity to reevaluate and shape the future uses of this land through a process called **land use planning**.

Before conducting any land use planning activities, the Land Investment Committee should contact community leadership and local government to see if there are related ongoing or planned activities. This will help the community:

- Reduce the risk of duplicating work that might be underway by the government. Additionally, many national and regional governments have developed existing land use plans that can provide starting points for a community's processes.
- Identify potential partners, information and resources. Government officials may have useful technical information about the community's land or have other resources to support the community in implementation.
- Foster institutional buy-in from local government. Government officials can help support the formal integration of the community's land use plan into their plans.

6. Land Investment Committee supports a participatory community land use planning process, including identifying suitable land available for investment.

Land use planning is the systematic assessment of the current uses of land and natural resources and evaluation of alternative options to select and adopt the best land use options within a community.[iv] Given competing demands on arable land - such as for agriculture, animal grazing, forestry and residential development - the community should think carefully about the best use of limited resources now and for future generations.

Through this process, a community will be able to determine if there is land suitable available for prospective investment and, if so, what land. The community should think about how land planned for investment would fit within the broader picture of community land use and consider what the community would be like if it implemented alternative land uses for the area. It is ideal that a community think about this before a business even approaches the community, and that gender-sensitive land rights identification and mapping is completed prior to land use planning.

The Land Investment Committee should:

- **Develop a land use planning schedule** and present it to the community for input.
- **Develop land use plan with community.** Through a series of community meetings, the Land Investment Committee should lead a collaborative land use plan development, working with its CSO

partner. Refer to Best Practices for Holding Community Meetings when conducting these meetings.

[Supplemental Resource: Developing a Land Use Plan](#) provides guidance on how to create a land use plan.

- **Finalize and share land use plan.** The land use plan should be shared with local and regional government and be added as an attachment to the community by-laws for responsible investment.
- **Land registry.** Maintain up-to-date records with updates of future changes in land use and rights

7. Land Investment Committee facilitates meetings with community members to value land designated for investment.

Communities that know the value of their land have more bargaining power with business and are better prepared to negotiate more effectively for a fair deal. But community members do not always know the value of their land and natural resources in a monetary sense or how much it is worth on the open market. Furthermore, the open market value of land may be less than the value of the land to the community because of the many ways in which the community might use the land that markets do not consider. As a result, land is often sold or rented for much less than the value it provides to communities. If a bad contract happens to be signed with a business, community members may become poorer over time.

[Supplemental Resource: Land Valuation](#) provides guidance on how to value the land designated for the investment. Community land valuation is a participatory exercise; refer to Best Practices for Holding Community Meetings throughout the process.

References

[i] Namati, Community Land Protection Facilitators Guide 143 (2017), available at <https://namati.org/resources/community-land-protection-facilitators-guide>.

[ii] Id.

[iii] Id. at 144.

[iv] See Food and Agricultural Organization (FAO), Guidelines for Land Use Planning, FAO Development Series 1 (1993), available at <http://www.fao.org/docrep/t0715e/t0715e00.htm>.

GUIDEBOOK SECTION

Phase 2: Community Engagement and Assessments

Phase Roadmap

Once the community is prepared for an investment, this phase provides steps for engagement and consultation with the business, including the necessary assessments.

Task 1: Identify Investment Site and Engage and Consult with Land Holders and Users

- 1 Land Investment Committee identifies a community Negotiation Team as the community focal point and liaison to engage with the business.
- 2 Negotiation Team and community leaders meet with the potential investor to receive detailed information about the business and the potential investment.
- 3 Negotiation Team validates information received from the business and engages with the broader community.
- 4 Negotiation Team coordinates initial meeting between business and community members.
- 5 Land Investment Committee carries out process to obtain community's decision to halt or proceed with investment negotiations.
- 6 Negotiation Team ensures that the business provides notice of its intent to proceed with the investment that is accessible to all community members.

Task 2: Conduct Community Assessments

- 1 Land Investment Committee provides feedback to business on selection of assessment teams.
- 2 Land Investment Committee provides feedback on assessment process and engagement plan.
- 3 Land Investment Committee supports the business to introduce the assessment teams, process and engagement plan to the community.
- 4 Land Investment Committee facilitates community participation in the community capacity assessment.
- 5 Land Investment Committee ensures the business conducts an ESIA.
- 6 Land Investment Committee works with business to develop a LRP or RAP, if necessary.
- 7 Land Investment Committee ensures the business and/or government conducts land valuation.

Task 1: Identifying Investment Site and Engaging with Land Holders and Users

Best Practices

To attract sustainable investments that maximize benefits to the whole community, leaders must foster strong relationships with prospective investors through regular consultations with a wide range of community members. The process should be in accordance with FPIC, which recognizes the right of land holders and users to say “yes” or “no” to proposed changes in their land use. It is also understood to be a legal principle of good contracting - the party being asked to enter into the contract has the right to say “no.” FPIC stands for Free, Prior and Informed Consent:

- **Free:** Communities should not be coerced, forced, intimidated or otherwise pressured by business enterprises or governments to change the use of, sell, lease or otherwise dispose of their land and natural resources.

- **Prior:** Business and governments may only implement a project that involves transferring or changing the use of community land and natural resources after obtaining affected communities' explicit consent to the terms of the project.[i]
- **Informed:** Business and governments must provide communities with all material information needed to make an informed decision about whether to consent to a project that affects their land rights and uses.[ii]
- **Consent:** Communities must explicitly consent to any proposed project that involves transferring or changing the use of their land or natural resources before business enterprises or governments implement projects.

FPIC is an important concept to guide the entire investment process, as the community moves from initial notice of investor interest and subsequent consultations to negotiation and contract signature. Even after contract signature, the principle of FPIC should apply if the company proposes a change to the original investment plan that impacts land use within the community. For more information, see the [FPIC Primer](#). Other good resources include a guide developed by FAO: [Respecting Free, Prior, and Informed Consent](#) (2014), as well as with Oxfam's [FPIC Flashcards](#) (2015).

In addition to meeting FPIC standards, meaningful consultation and engagement should feature:

- **An organized community.** Phase 1 of this guidebook outlines steps for the community to strengthen its governing systems to prepare for prospective investment. One step of this process is identifying a body to support the community to engage with prospective investors, including setting up communication protocols and identifying community members who will represent the community in consulting and negotiating with prospective investors (called the Negotiation Team). An organized community:
 - Understands what kinds of questions should be asked in initial meetings with an investor, what information it should provide to an investor, the rights of community members (under national and international law), and how to seek outside advice from a trusted CSO;
 - Has considered what benefits it can gain from a new investment and knows how to ask about risks to the community; and
 - Knows how to incorporate voices and perspectives from both powerful and marginalized groups within the community.
- **Diverse representation.** Groups that are frequently under-represented in decision-making forums (such as women, youth and ethnic minorities) actively participate in the processes.
- **Multiple meetings.** People will need adequate time to digest information, consider the risk and benefits to their livelihoods, and formulate questions so they can truly make an informed decision. The Negotiation Team will also need time to gather information, consider diverse concerns of different stakeholders, and establish open communication that can continue throughout the life of the investment project, should the community decide to move forward.
- **Two-way communication.** While the business is providing useful information to help the community decide whether it is interested in the investment, the community should also be prepared to share information to help the company decide if this is the right place for them to invest. A sustainable investment should be a good fit for both parties and built on trust.

Step-by-Step Guidance

1. Land Investment Committee identifies a community Negotiation Team as the community focal point and liaison to engage with the business.

A community Negotiation Team should facilitate community engagement with the prospective investor. This can help keep the community organized to achieve a fair deal that provides meaningful benefits to all community members. We recommend the Team be comprised of three individuals from the community's Land Investment Committee. If the community is facing an immediate investment proposal and has not

yet set up a Land Investment Committee, refer back to Phase 1 of this guidebook to complete that process.

Having a smaller group directly engage with business will increase coordination, ensure all community members are participating in the decision-making process, and show the business that the community is unified. Given the overlap between those two bodies, their respective roles may be a little blurred. Basically, the Negotiation Team is responsible for representing the community in negotiations with the business, while the Land Investment Committee is responsible for community engagement and mobilization. The community will have to work out the proper roles for each as the investment moves forward, according to what makes the most sense for the community.

Negotiation Team Responsibilities

Because the community deserves a fair deal that provides meaningful benefits to all members, the Negotiation Team should be responsible for:

- Representing the community by providing perspective from different community members, including those of pastoralists, single women, youth and other vulnerable groups.
- Acting as a zealous advocate for the rights and needs of the community at all stages of the investment process.
- Providing the business with guidance on how to engage with the community.
- Maintaining strong relationships with key stakeholders such as local government officials, different groups within the community and neighboring communities.
- Documenting decisions and remaining transparent by communicating information to the community.
- Developing a positive working relationship with the business by being prepared and presenting accurate information.
- Demonstrating good faith in all engagement activities.

Negotiation Team Selection

When drafting the community by-laws for responsible investment, the community may have already drafted rules about the selection of a Negotiation Team; if so, the community should follow those rules. If the community did not, consider the following tips:

- **Determine how to select the Negotiation Team.** Will the Land Investment Committee make an internal appointment? Does the broader community have to approve the appointments?
- **Select the Negotiation Team soon after assembling the Land Investment Committee.** This will allow those in charge of negotiations to focus on their work from the outset of the process and receive specialized training if possible
- **Aim for a diverse team composition.** The team will necessarily be made up of individuals with experience and skill in negotiation, but it should not be made exclusively of business leaders, lawyers or politicians. Because such a small team cannot include representatives from every community subgroup, it is important that members are selected in a way that considers diversity in terms of background, points of view and negotiation style. If the members chosen for the Negotiation Team are religious or political leaders, it is important that they are seen to represent the entire community and not only a faction or subgroup. Negotiation Team members should be selected for their ability to meet the needs of the negotiation process, rather than for popularity or position in the community.
- **Build a team with distinct positions.** The Negotiation Team will function best if each member has clear roles. A team should have a lead negotiator, secondary negotiator and a secretary.

Negotiation Team Structure[iii]

There are three main roles that members will need to fulfill in order to conduct effective negotiations:

- **Lead Negotiator**, who will be in charge of speaking in negotiation sessions and reporting at community meetings. He or she will be responsible for ensuring that the Negotiation Team speaks with a unified voice by providing the main channel of communication for negotiation sessions and for reporting at community meetings. This will require thorough communication within the negotiation team and broader community, as well as consistent messaging when speaking with the business.
 - The Lead Negotiator should be a strong and respected presence in the community, while also being confident in dealing with outside groups. He or she should be skilled at bringing different parties into meaningful discussion and negotiation, including both listening to existing concerns and communicating new ideas.
- **Secondary Negotiator**, who will support the Lead Negotiator and serve as the Team's liaison with the Land Committee. In particular, he or she should coordinate with the Committee's budget manager to monitor the use of funds related to the negotiation process, including the costs associated with facilitating the community and business consultation meetings, as well as coordinate any funding requests or expenditures related to coordinating with third-party consultants and CSOs.
 - Like the Lead Negotiator, the Secondary Negotiator should be skilled at bringing different parties into meaningful discussion and negotiation, including both listening to existing concerns and communicating new ideas.
- **Secretary**, who will keep records of all negotiation meetings and will facilitate communication between the business, the government and civil society actors. He or she can be the Negotiation Team's point of contact for the other stakeholders during the negotiation process.
 - The Secretary should have strong communication and organizational skills. Relevant work experience may include positions as an administrative assistant or an executive assistant, or as an outreach or communications coordinator.

While it may be tempting to assume that Negotiation Team members will fall into these functions naturally, it is very important that these roles are specifically assigned and that Negotiation Team members are held accountable for upholding their responsibilities.

2. Negotiation Team and community leaders meet with the business to receive detailed information about the business and the potential investment.

The business will initiate a meeting with community leaders to determine whether there is initial interest in the investment. The meeting might be requested through a third-party, such as a CSO who is providing the business with technical support because they are familiar with the customs of the local community.

Since this is the beginning of the engagement process with the business, it will be important for the Negotiation Team to set the tone for any long-term relationship by:

- Providing guidance for this engagement based on the community's customary norms and traditions;
- Developing a positive working relationship with the business by being prepared and presenting accurate information and fair treatment regarding the proposed investment; and
- Advocating for the interests of the community over those of the business.

The purpose of the meeting is to exchange of information about the potential investment:

- 1 **Information the community needs from the business** to better understand the business as well as the risks, impacts and benefits of the proposed investment. At this point, the business should have already conducted some of its due diligence and be able to provide useful information about the proposed project. The Negotiation Team should request:
 - Background of business (including operational track record; location(s) of headquarters and operations; annual profits and expected revenue to be generated by investment; and main investors in the company and the proposed project)
 - Project purpose and business plan (in writing)

- Geographic scope (how much land the company desires)
- Business model
- Proposed project timeline
- Points of contact and how to reach them
- Specific land right being sought
- List of government approvals already obtained, being sought, or necessary for project approval
- Potential term of the agreement (start and end dates)
- Potential benefits to the community
- Potential risks, including social, environmental, and financial risks
- If the business will be working with a CSO or another third party

2 Information the community should have prepared to help answer questions from the business about the community and individuals using land in and around the potential investment area. The business will also need to become familiar with relevant customary and traditional practices and better understand the proposed investment site, including the institutional, environmental, and social dynamics. The community should have information on:

- Community by-laws for responsible investment,
- Community land use plans, particularly involving sites determined to be potentially available for investment,
- Mapping of existing land rights (both primary and secondary),
- Community goals for investment, and
- Contact information for Land Investment Committee and Negotiation Team.

3. Negotiation Team validates information received from the business and engages with the broader community.

The negotiation team should consolidate information gathered from meetings with the business and prepare for a new round of meetings with groups of community members as well as leaders and representatives from neighboring communities. [Supplemental Resource: Consultation Meeting Notes Template](#) will help with documenting conversations.

This process should consist of the following steps:

Review and consolidate information from the initial meeting.

- The Negotiation Team and community leaders should meet to combine notes from the initial meetings with the business.
- This is also the time to address questions and issues related to the proposed investment, as well as do a preliminary check to see if the information provided by the business complies with the community's investment priorities, by-laws for responsible investment and land use plans.

Consult with third-party CSO to review information.

- If it has not already, the Land Investment Committee should identify a trusted CSO to support the community throughout the investment process.
- This CSO should have an opportunity to review the compiled notes assembled by the Negotiation Team and community leaders from their meeting with the business.
- The CSO should help to validate the business's site-specific background research and address outstanding information gaps. Topics to discuss include the land status, ownership, and uses; local land tenure system; land and resources conflicts; and social demographics of the community.
- The Land Investment Committee should coordinate with the CSO to determine additional needs related to the negotiation process.

Meet with community members to review process and gauge community interest.

- Now that the Negotiation Team is equipped with information from the business, community leaders, the CSO and neighboring communities, it will be important to share that information with the broader community to identify and agree on priorities, concerns and common goals. This is critically important because internal conflict or disagreements can prevent communities from negotiating a good deal.[iv] The best way reduce conflict is keeping community members informed and facilitating opportunities for additional discussions.[v]
- The Land Investment Committee should organize a series of planning and preparation meetings to unify the community and place it in a better position to negotiate a more favorable outcome.
- These meetings should be held without the participation of the business, though the community may want to include local government authorities.
- Keep in mind that more than one meeting may be required to unify the community before meeting with the business.
- Take into consideration the specialized needs of vulnerable groups by organizing separate meetings with smaller groups within the community to assess their specific initial attitudes towards the investment (for example, a meeting for women, a meeting for ethnic or religious minorities, etc.)
- It is important that all of these meetings adhere to best practices for community consultation. Refer to Best Practices for Holding Community Meetings in the introduction section. Supplemental Resource: Community Consultation Meetings Checklist might also be helpful here.

Research conducted on a land concession in Ghana shows the importance of ensuring both women and men are included in the investment process. In the proposed investment area, women generally grew groundnuts, pineapple, moringa, cashew, okra, and pepper within and around the yams and cassava being grown by men. Community members were told that they would be compensated for all crops being grown. However, farmers reported compensation for crops predominantly grown by men. Crops traditionally grown by women were not considered for compensation according to focus group respondents. The exclusion was not due to the company's decision to exclude women from the process. Rather, the third-party firm who was hired to value community assets did not account for women's crops because they were not being farmed at the time of the survey.

Compare information with neighboring communities.

- The Land Investment Committee should consult with similar groups in neighboring communities that are impacted by the investment.
- Where neighboring communities have undergone the same process in meeting with the business, committees should compare notes from those meetings.
- Similarly, if neighboring communities are working with a different CSO, the Land Investment Committee should seek to compare information with them as well.

Meet with community leaders to determine how to proceed.

- Once the above steps are complete, the Land Investment Committee should compile reports from all of these meetings and reconvene with the community leaders to make a final determination on how to proceed.

4. Negotiation Team coordinates initial meeting between business and community members.

The first meetings between the investor and the community will introduce new dynamics into the engagement process. Importantly, more than one meeting may be needed with the business for the community to understand the investment proposal. Community members may use these meetings as an opportunity to learn more about the business and its proposed investment. As the liaison between the community members and the business, the Negotiation Team bears the responsibility for ensuring that

potential benefits and community concerns are communicated clearly and effectively. The business should provide the same information to the whole community that it did to the Negotiation Team.

As mentioned previously, it is important that meetings adhere to best practices for community consultation. Refer to Best Practices for Holding Community Meetings and [Supplemental Resource: Community Consultation Meetings Checklist](#) to ensure this is accomplished.

5. Land Investment Committee carries out process to obtain community's decision to halt or proceed with investment negotiations.

At the end of each meeting, after all the information has been presented and all members of the community have had the opportunity to engage with the business, the community should have an opportunity to decide whether or not to proceed in the investment process.

- The Land Investment Committee should follow the rules established in the community by-laws for responsible investment. If the community does not have rules established, the community should develop a mechanism for decision-making that ensures equal and meaningful participation from all affected groups. Refer back to Phase 1 in this guidebook for advice on establishing these rules.
- This is not an agreement to proceed with the project itself, but rather an agreement to continue discussions and to negotiate in good faith. In other words, the community may have agreed to move forward, but there are still many steps (including conducting community assessments, negotiation and contracting) to be taken before the transaction is complete.
- Throughout this initial engagement process, the business should be mindful of the relevant standards for consultation and consent. It should consistently engage with the Negotiation Team and all segments of the impacted community, including women and other vulnerable groups.
- If the community decides that it does not want to go forward with the investment, the business must respect that decision. The Negotiation Team should make sure that the business does not attempt to circumvent the will of the community.

As in all of the steps described here, the Negotiation Team must advocate for the interests of the community. If the Land Investment Committee believes that the consultation has been insufficient or that the consent of the community does not live up to FPIC standards, it must voice those concerns and work to fix any deficiencies.

6. Negotiation Team ensures that the business provides notice of its intent to proceed with the investment that is accessible to all community members.

While many community members may know about the proposed investment through initial meetings and “word of mouth,” the business should take the initiative in providing formal public notice of its intent to invest. The Negotiation Team should ensure that the investor’s notice of intent is accessible to all impacted community members. This may require the Team to assist the investor in distributing the notice and advising on the appropriate languages and formats for publication.

- The business should provide notice in a language, format and location that is accessible to community members, including women and other vulnerable groups.
- The notice should include key project details, such as the name of the investor, intended land use, a map of the affected area and contact information.

References

[i] See FAO, Respecting Free, Prior and Informed Consent 23 (Governance of Tenure Technical Guide 3 2014), available at <http://www.fao.org/3/a-i3496e.pdf>.

[ii] See id. at 33.

[iii] See Ginger Gibson & Ciaran O’Faircheallaigh, IBA Community Toolkit: Negotiation and Implementation of Impact and Benefit Agreements 68 (Gordon Foundation 2015), available at <https://gordonfoundation.ca/resource/iba-community-toolkit/>

[iv] Id. at 54.

[v] Id. at 55.

Task 2: Conduct Community Assessments

Best Practices

To inform whether both the business and the community/communities should proceed with the investment, the business is responsible for hiring a neutral and experienced third party to conduct three community assessments that examine community capacity, environmental and social impacts, and the value of land. The Land Investment Committee should further ensure that community members are informed about the assessments, can participate meaningfully in them, and have assessment findings communicated to them in a form that they can understand. It is best practice to conduct, at minimum, the following assessments:

- **Community Capacity Assessment.** It’s not uncommon for communities and individual land holders and users to lack experience with commercial land transactions. This assessment looks at the capacity of community leaders and members to participate in the investment process, including environmental and social impact assessment, land valuation, and negotiation and contracting.[i]
- **Environmental and Social Impact Assessment (ESIA).** This assessment identifies and gauges actual or potential environmental, social and human rights impacts from the proposed investment project on the community, including impacts affecting land rights, uses and livelihoods.[ii] Revisions to the investment design should incorporate mitigation measures from the assessment that will reduce or eliminate impacts and sustain or improve livelihoods.
- **Land Valuation.** A core element of determining impacts is assessing and establishing market and non-market value of interests and rights in the land, including interests and rights associated with livelihoods and social, cultural, religious, spiritual and environmental values to ensure that compensation and benefits are equitable for women, men and communities.[iii]

The Land Investment Committee is responsible for ensuring the business conducts the appropriate assessments through neutral and experienced third-party experts. The Land Investment Committee should be prepared to support the experts by responding to information requests, encouraging community participation and helping organize community meetings. The Committee is not responsible for designing or conducting the assessments; that is the purpose of selecting a neutral, third-party team, so that both the community and business have confidence in the findings.

CSOs could play a role during the assessment process by connecting the business with reliable local experts or the appropriate government authorities for ESIA and land valuation. CSOs may also offer general support for the Land Investment Committee in ensuring the assessments are inclusive, transparent and well-publicized.

Step-by-Step Guidance

1. Land Investment Committee provides feedback to business on selection of assessment teams.

The business should hire neutral and experienced third parties to design and conduct the capacity assessment, ESIA and land valuation. The goal of these assessments is to provide factual information to help both the business and community decide if they should proceed with the investment. A biased assessment team may produce findings that preference one party over the other. The Land Investment

Committee should request the opportunity to provide feedback on the criteria for selecting the teams and the business's final selection.

If the business does not plan to hire neutral and experienced third-parties, the Land Investment Committee should demand that the business do so. If the business refuses, the Committee should refuse to proceed with investment negotiations. Proper assessments are an essential component of a socially responsible investment. It is a community's right to know the full risks of an investment before signing an agreement.

In addition to possessing the requisite expertise and professionalism, the Land Investment Committee should consider the following objectives when providing feedback to the business on the assessment teams:

- Experts should be generally familiar with customary and traditional practices. They should be able to engage with the community in a culturally sensitive manner and learn the local customs and practices related to land, natural resources and livelihoods. In-country experts familiar with the project area should be used wherever possible, but it may be necessary to bring in additional international experts if local professionals lack the appropriate expertise.
- The teams should include interpreters if necessary to ensure clear communication between the business enterprise and community participants.
- Ideally, one person from each team should be a woman who can engage and lead discussions with community women since local cultural norms and individual preferences may inhibit the candor and participation of women if they are interviewed by men.

2. Land Investment Committee provides feedback on assessment process and engagement plan.

Each assessment team should develop an assessment process, including a timeline and engagement plan in coordination with the business and community. The Land Investment Committee should be prepared to provide feedback into the planning process.

An assessment engagement plan outlines how the community will be represented in assessment activities and will receive information about findings. As part of developing the community by-laws for responsible investment, explained in Phase 1 of this guidebook, the community discussed communication expectations and channels throughout the investment process. The Land Investment Committee should share the by-laws related to communication channels with the assessment teams and use them to inform a draft assessment engagement plan. (In the next step, this draft assessment engagement plan will be presented to the broader community for feedback).

When providing feedback into assessment planning, the Land Investment Committee is responsible for advocating for community interests and relaying any relevant community rules. The Land Investment Committee should remember that community members have the right to choose how they will be represented in the assessment activities.[iv]

3. Land Investment Committee supports the business to introduce the assessment teams, process and draft engagement plan to the community.

The Land Investment Committee should organize a community meeting for the business to introduce the assessment team and draft engagement plan, receive feedback, answer questions, and confirm the community is comfortable moving forward. The meeting should follow the principles outlined in Best Practices for Holding Community Meetings in the introduction section.

4. Land Investment Committee facilitates community participation in the community capacity assessment.

The purpose of the community capacity assessment is to evaluate the capacity of community leaders and community members who use land to listen, comment, disagree, ask questions, and ultimately negotiate benefits, compensation and other terms of a contract.

If the community conducted the community governance assessment explained in Phase 1 of this guidebook, it should already have a good idea of the strengths and weaknesses in community systems and safeguards. Some of those issues overlap with what will be covered in a community capacity assessment, although there are some differences (principally, the community governance assessment is more focused on the institutions and the community capacity assessment on the people). The Land Investment Committee should share the community governance assessment findings and recommendations with the assessment team, as this can inform the team's approach to the community capacity assessment.

Many communities and individual land holders and users lack experience with commercial land transactions and may need the assistance of experts in order to understand and assess the potential risks and benefits from an investment. The Land Investment Committee should work with community leaders and members to foster a positive outlook of the assessment as an opportunity to learn new things and get support if needed. Leaders and community members should be as honest as possible about what they know and do not know, so that the community can get the support it needs to make an informed decision. This could be a good opportunity to receive financial assistance from the business to address gaps through trainings or technical support. In particular, the community may need legal advice, representation from a CSO, agricultural expertise or other skills to assess the potential social, economic and environmental benefits and risks of the project. Without such support, proceeding with the investment would very likely fail to comply with international best practices such as FPIC and could produce unintended risks and consequences for the investment and the community. Therefore, the community should consider seeking such assistance, including seeking funds from government and business for communities to hire the needed experts.

The Land Investment Committee is not responsible for designing or implementing the assessment, but it is responsible for ensuring the assessment involves community participation, is performed by a qualified team and is conducted ethically. Below are some ways the Land Investment Committee may be involved:

- Providing input as requested by the assessment team. For example, the team may ask the Land Investment Committee to share information about the community demographics to help design the assessment. The Land Investment Committee should also share relevant by-laws and findings of the community governance assessment if available.
- Explaining the purpose of the assessment to community leaders and members, answering any questions, and encouraging their participation.
- Facilitating larger community meetings, such as a community meeting for the assessment team to present and discuss findings.
- Supporting the assessment team to identify a plan to address any gaps identified in the assessment.

Some options to consider in developing the capacity building plan based on findings could include:

- Provide training on basic land and natural resource rights, as established in international standards the country has signed onto, the Constitution, national land policy, national land laws and local customary laws.
- Conduct a workshop to develop public speaking and negotiation skills.
- Hold a workshop centered on topics that will come up in the ESIA and land valuation to help community members understand how their lives and livelihoods will change if they are no longer able to use the land being made available for investment.

- Hold a workshop on compensation options that incorporates case studies and examples of the types of compensation communities can request (such as land-based compensation, productive goods, rental fees, infrastructure development projects, employment opportunities and shares in the venture). The workshop should cover best practices such as ensuring compensation is specific, documented in the agreement, and tied to timelines and milestones.
- Assist the assessment team to develop rules to ensure it is accountable and that expectations and roles are clear.
- Consider having the business provide financial support to the community so it can retain independent technical experts and advocates to assist it throughout the process. The experts can help the community to appropriately engage with the business enterprise, evaluate impacts of proposed project, negotiate fair contract terms and evaluate the contract. Taking steps to ensure that the experts provide independent advice to the community will make the community more likely to trust that advice and have confidence in the contracting process.

5. Land Investment Committee ensures the business conducts an ESIA.

The business will be responsible for conducting an ESIA, which includes examining the impacts on the community's land rights, uses and livelihoods. As described in Step 1 of this task, the Land Investment Committee should help the business identify independent local experts to conduct the ESIA, supplemented by international experts if local expertise is lacking. The ESIA should proceed in the following order:

- 1 Conduct gender sensitive land rights identification and mapping for all community members.** The community should have carried out land rights identification and mapping for all community members in Phase 1. If it did not, the Land Investment Committee should work with the business and a CSO partner to do so before conducting an ESIA, as it is critical that the assessment capture all of the land rights, uses and livelihoods sources that may be impacted by the investment.
- 2 The assessment team conducts the ESIA.** Implementation should be in accordance with the research methodology created by the assessment team in Step 2 of this Task. The Land Investment Committee should support the assessment team's independence by not interfering with the assessment, but should still work to ensure robust community participation in its implementation.
- 3 Analyze findings and identify risk.** The assessment team should identify investment effects on different types of land uses and how those will impact the livelihoods of land holders and users. As the ESIA reveals possible or actual negative effects on land rights and uses, the business and Land Investment Committee should work together to reconfigure the project as feasible to minimize breadth and depth of the impacts and eliminate them where possible. Some options include:
 - Alternative Investment Models: There are a variety of reconfiguration measures that may be suitable, depending on the circumstances, including:
 - Exploring alternative investment models that do not result in the large-scale transfer of land rights to investors, including partnerships with local land-rights holders and contracts with small-scale producers.
 - Using a different land acquisition structure, such as a lease instead of an outright acquisition. One option to consider is an outgrower arrangement where community members participate more directly in the investment. Outgrower arrangements require thoughtful planning and execution, and investors should plan to dedicate extra time and resources to managing outgrower relationships. For best practices around outgrower arrangements, look at [Supplemental Resource: Outgrower Best Practices Literature Review](#).
 - Avoiding the displacement of people by considering feasible alternatives.
 - Reducing the amount of land to be acquired for the project.
 - Staging land acquisition so that it is taken from existing users only as needed for the investment.

- Allowing community members to continue to use at least a part of the land for subsistence farming.
- Resolve Existing Disputes before acquisition: This may require formalization of the rights of unrecorded land uses.

- 4 Land Investment Committee organizes a community meeting for the business to present findings and proposed mitigation measures.** The business should share and present findings to the community for comment, correction and ratification. Seek input, questions and opinions from community members. Listen for input that suggests something may have been missed during the assessment. Ensure the business follows its assessment engagement plan and holds as many meetings as necessary to reach all impacted land rights holders and users. Consult Best Practices for Holding Community Meetings located in the Introduction for best practices to guide these meetings.
- 5 Present revised findings to government officials and external experts.** After validating the findings with the community and making any necessary revisions based on its feedback, the Land Investment Committee should ensure the business has the assessment results reviewed and approved by external experts and relevant government authorities.
- 6 Update proposed investment project documents based on assessment findings.** Ensure the business updates the design of the investment project to reflect assessment findings and shares the project document with government authorities, community leaders and other parties per the agreed upon assessment engagement plan.

6. Land Investment Committee works with business to develop a LRP or RAP, if necessary

Displacement is rarely acceptable and will lead to international scrutiny and condemnation, so it only should be used as a last resort. [USAID Land Tenure Guidelines](#) calls for limiting displacement, but if unavoidable, to the minimum program requirements for specific programs and a specific length of time, using the minimum land necessary. A Resettlement Action Plan or a Livelihood Restoration Plan is necessary to serve impacted land holders and users. The Land Investment Committee should work with the business to ensure this is completed and that the plan for resettlement is sufficient for community needs.

According to USAID, a Resettlement Action Plan will address the impacts of displacement with a resettlement plan compliant with international standards. This RAP may include:

- Description of the program or investment
- Alternatives considered and efforts to mitigate the impact on the community
- Analysis of the legal and institutional context
- Land assessment, if applicable
- Strategy to engage the community in meetings, discussions, and decisions
- Timeline for resettlement
- Criteria for resettlement eligibility
- Explanation of plan to improve livelihoods in the resettlement to mitigate adverse impacts on affected land holders and users
- Valuation method used to develop the RAP
- Specific plans for transportation and transfer of people and their assets
- Identification of any vulnerable groups that may be affected by different laws or standards
- Costs of the program, including potential staffing needs.[v]

IFC Performance Standard 5 also highlights the importance of minimizing the impact on displaced land holders and users if displacement is unavoidable, and developing an effective Livelihood Restoration Plan for affected communities. Companies may use other community assessments to gauge the number of

individuals and households impacted to judge who would be eligible for compensation as part of a holistic, sustainable restoration of their livelihoods following displacement. The company needs to acknowledge the basic cost of the LRP and additional costs that might arise to ensure compensation is sufficient, such as the cost to develop land adequately for the community's uses. Procedures should also be in place to continuously monitor and evaluate the implementation of the LRP or RAP.[vi]

7. Land Investment Committee ensures the business and/or government conducts land valuation.

The business and/or government will conduct a valuation assessment to determine the value of the land being considered for the investment project, depending on national valuation law. As valuation efforts are being carried out, the Land Investment Committee should facilitate its own valuation process. Although the community valuation likely will not be recognized by the government, communities that know the value of their land have more bargaining power with business and are better prepared to negotiate effectively for a fair deal. This type of effort should have been carried out in Phase 1, but if not, consult [Supplemental Resource: Land Valuation](#) for guidance on how to value the land designated for the investment.

The Land Investment Committee should receive final valuation amounts from the business, and then share the findings and discuss the adequacy of the valuation with the entire community. The calculation of values should be transparent and easily comprehensible to all individuals whose land rights and uses were the subject of valuation.[vii] If not, seek support from a CSO. Based on the valuation results together with the valuation conducted by the community in Phase 1, develop a **compensation and benefits framework**. Consult the [Valuation and Compensation Primer](#) to ensure the compensation framework includes the following:[viii]

- Who should be compensated:
 - Women
 - Men
 - Community governing body
 - Pastoralists
 - All other land rights holders and users that will forego use of the land or begin to use it differently for the benefit of an investing business enterprise
- What losses should be compensated:
 - Market and non-market value of land;
 - Tangible assets lost, including marine and aquatic resources, timber and non-timber forest products, freshwater, medicinal plants, hunting and gathering grounds,[ix] and grazing and cropping areas; and
 - Non-tangible values, including livelihoods, social, cultural, religious, spiritual and environmental.[x]
- Compensation needs to be focused on the quickest way to long term livelihood restoration. Cash is a short term and non-sustainable solution that can often be quickly wasted and leave an individual much worse off or in actual debt. Some forms of compensation:
 - Replacement land or natural resources access
 - Other benefit-sharing arrangements, including outgrower schemes
 - Periodic rent such as annual rent
 - Equity in the investment
 - Employment commitments
 - Social and economic community improvements
 - Cash
- Modes of Compensation:

- Individual payments to joint bank accounts for married couples
- Payments to the community that are accompanied by clear provisions for how funds will be further distributed (to all recipients, including women), frequency amounts, and penalties for failure to perform.

References

- [i] See African Union (AU), Guiding Principles on Large Scale Land Based Investments in Africa 15-16 (2014), available at <https://www.uneca.org/publications/guiding-principles-large-scale-land-based-investments-africa>
- [ii] FAO, Voluntary Guidelines on the Governance of Tenure, Fisheries, and Forests in the Context of Food Security 4 (2012), available at <http://www.fao.org/docrep/016/i2801e/i2801e.pdf> (“Business enterprises should act with due diligence to avoid infringing on the human rights and legitimate tenure rights of others.”). See also UN Office of the High Commissioner for Human Rights (OHCHR), Guiding Principles on Business and Human Rights 5 (UN Human Rights Council 2011), available at: http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf (“In order to identify, prevent, mitigate and account for how they address their adverse human rights impacts, business enterprises should carry out human rights due diligence. The process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed.”).
- [iii] Nigel Edmead, Presentation on “Gender Issues in Designing and Setting Up Land Information Systems and Databases: Experiences from Ghana, Zambia and Uganda” (May 2011).
- [iv] See FAO, Respecting Free, Prior and Informed Consent 23 (Governance of Tenure Technical Guide 3 2014), available at <http://www.fao.org/3/a-i3496e.pdf>.
- [v] See Guidelines on Compulsory Displacement and Resettlement in USAID Programming, USAID May 2016. Available at https://www.land-links.org/wp-content/uploads/2016/09/USAID_Land_Tenure_Guidelines_CDR.pdf
- [vi] See International Finance Corporation Performance Standard 5: Land Acquisition and Involuntary Resettlement, January 1, 2012. Available at https://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/sustainability-at-ifc/policies-standards/performance-standards/ps5
- [vii] International Finance Corporation (IFC), Guidance Note 5 ¶ GN22 (2012).
- [viii] See True Price, Towards a Better Protocol on Fair Compensation in Cases of Legitimate Tenure Changes: Input Document for a Participatory Process 5 (2016), available at <https://landportal.org/debates/2017/debate-land-valuation-and-fair-compensation>
- [ix] IFC, Performance Standard 5: Land Acquisition and Involuntary Resettlement ¶ 5 (2012), available at https://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/sustainability-at-ifc/policies-standards/performance-standards/ps5
- [x] See Edmead, *supra* note iii.

GUIDEBOOK SECTION

Phase 3: Developing an Equitable and Inclusive Contract

Phase Roadmap

An equitable and inclusive contract is a collaborative product of the business, appropriate government authorities and the community. This process will be informed by the preparation conducted by the community in Phase 1, ongoing engagement with business and findings from the community assessments conducted in Phase 2.

Task 1: Negotiate and Draft the Contract

- 1 Negotiation Team identifies a CSO to help with the negotiation and contracting process.
- 2 Negotiation Team works with the business to prepare to develop and sign a Letter of Intent to negotiate the terms of the contract in good faith.
- 3 Negotiation Team validates the LOI with community members and finalizes the document.
- 4 Negotiation Team negotiates a compensation package with the business.
- 5 With the support of a CSO, the Negotiation Team and the business develop the contract and ensure that it embodies internationally recognized principles and best practices.
- 6 Negotiation Team validates the contract with the community and finalizes the document.
- 7 Negotiation Team ensures the business updates proposed investment project documents based on contract negotiations.

Task 2: Review and Sign the Contract

- 1 The business, in coordination with the Negotiation Team, solicits and obtains final community consent to the investment terms.
- 2 Negotiation Team ensures that the government provides the community notice of intent to transfer the land before the business obtains the formal lease.
- 3 Negotiation Team facilitates final convening of the community to sign the final contract.
- 4 Negotiation Team receives the final version of the contract and shares it with the community.

Task 1: Negotiate and Draft the Contract

Best Practices

The Negotiation Team is responsible for representing the entire community throughout the negotiation process. Laws, policies and practices in some countries prevent communities and/or individual land holders and users from participating as informed and empowered contracting parties. If the process omits or limits the involvement of the full community, it contravenes principles of good contracting. In such instances, the business, government and community must devise methods to ensure full participation in accordance with best practices as described below.

The Negotiation Team should ensure:

- The negotiation process is non-discriminatory, gender sensitive and includes the participation of all community members in the investment area.[i]
- The business actively engages with communities and individuals who have legitimate land rights, including all women and men that currently occupy and use the land.

- The business provides comprehensive information to the Negotiation Team that is shared with all land holders and users (both women and men) and communities.[ii]
- The contract document memorializes the clear rights, responsibilities and processes that have been defined under Phase 2 and includes provisions that provide clarity to terms of the agreement.
- The business considers all relevant information by taking into account local interests identified through consultation, engagement and assessments under Phase 2.
- The business seeks FPIC from all affected right holders. Beyond asking community members for a simple "yes" or "no" in response to a request that they approve the contract, consent in the context of FPIC entails an iterative process through which the business and community conduct a dialogue in which all stakeholders' concerns and input are considered and addressed in the proposed project and contract.

Given the complexity of contracting it is highly advisable that the Negotiation Team seek support from lawyers or CSOs with legal expertise. Some capacity building for negotiation skills should have occurred in Phase 1, but more may be needed here to ensure the Negotiation Team is on equal footing with the business.

In some countries, communities may not be legally permitted to contract with investors to sell or lease their land on their own (e.g., if the government is the legal owner of the land), and national law may require the business to contract instead with the government to purchase the land. If this is the case, it is imperative that the community nonetheless follow these steps to obtain a binding MOU with the business that enshrines the community's terms for parting with the land and obligates the business to incorporate those terms into its contract with the government.

Step-by-Step Guidance

1. Negotiation Team identifies a CSO to help with the negotiation and contracting process.

In most countries, the requirements of domestic law fall short of the requirements of international best practices. Therefore, the contracting process must go further than domestic law to comply with international best practices. Standard government-business contract provisions often fail to include important clauses pertaining to communities.

Due to the importance of the contracting process and its complexity, the Negotiation Team should seek support from a CSO, particularly if:

- Community members do not view themselves as possessing sufficient status such that they would be expected to be consulted and to consent;
- The community does not understand contract terms;
- The community's capacity is burdened by language barriers, conceptual limitations, and limited or lack of access to legal counsel; or
- Other challenges impede the ability of community members to actively participate in negotiating lease terms.

2. Negotiation Team works with the business to prepare to develop and sign a Letter of Intent to negotiate the terms of the contract in good faith.

The Negotiation Team should work with the company to develop a Letter of Intent (LOI). An LOI is an important starting point for the contracting process between the company and the community because[iii]:

- It indicates the business's intent to negotiate a full contract with the community.
- It sets out expectations for appropriate inclusivity, consultation, and consent throughout the contracting process.

- It outlines the principles that will govern the rest of the contracting process.

Important elements to consider when drafting an LOI and the resulting contract are listed in [Supplemental Resource: Key Contract Elements](#). In addition, the LOI should include:

- A detailed description and timeline of the proposed negotiation, consultation and drafting process,
- A list of key stakeholders who will be included, along with their roles, rights and responsibilities,
- A description of any professional, financial or legal support that the company will provide to the community during the contracting process,
- Shared objectives between the company and community,
- A description of the role of government authorities in the negotiation, consultation and drafting process,
- A description of the engagement and consultation process that the company will undertake with the community and individual women and men land holders and users,
- A description or copy of the LRP or RAP, if relevant, and
- A clearly defined process for dispute resolution, which most likely will require a third party.

A sample Letter of Intent can be found in [Supplemental Resource: Template for LOI/MOU](#).

3. Negotiation Team validates the LOI with community members and finalizes the document.

- The Negotiation Team should follow up with the community about the LOI for its input and validation.
- The initial meeting should follow Best Practices for Holding Community Meetings (located in the introduction). During the meeting, the community reviews the first draft of the LOI and makes suggestions.
- The Negotiation Team then incorporates the community's revisions into a second draft of the LOI.
- As part of conducting a "legal check," the Negotiation Team should solicit input from legal experts as well as local or regional government officials to ensure compliance with national law.
- If there are existing issues, the Negotiation Team should hold an additional community meeting to share comments from the legal check. This meeting should follow community meeting best practices, as the community decides what to revise based on the legal check.
- The Negotiation Team then incorporates community revisions into a third draft of the LOI.
- If there is still significant discussion to be had or strong disagreement on certain issues within the community, the Negotiation Team should continue with additional rounds of drafting and community meetings.
- Once the community is in agreement, in accordance with its by-laws for responsible investment, the final draft of the LOI should be shared with business.
- Depending on the business's responses, some or all of the above steps might need to be repeated.

4. Negotiation Team negotiates a compensation package with the business.

With the assessments having identified who should be compensated and determined land values, the Negotiation Team should engage the business to begin constructing the compensation package.

The valuation calculations should serve as the basis for compensation. Remember that national law usually provides a floor, rather than a ceiling, for compensation;^[iv] look to supplement the base monetary value of the land with additional compensation and other ways of restoring and improving livelihoods. At a minimum, compensation should be such that livelihoods are made no worse off over the full term that the land is not available for use by current users.

If the community agreed upon by-laws pertaining to compensation (see [Supplemental Resource: Developing Community By-Laws for Responsible Investment](#)), the Negotiation Team should follow the community rules. Otherwise, the Team will need to:

- **Consult with land rights holders and users in the community about preferred forms of compensation.** These discussions will form the basis of the proposed compensation package the Negotiation Team will present to the business.
 - Include all stakeholders, as different groups may favor different forms of compensation.
 - Develop multiple compensation options for rights holders and users to choose from.
 - Consider establishing a community trust to handle distribution of benefits. Payments should be made to individual beneficiaries, rather than to heads of household or community leaders, to ensure all land rights holders and users entitled to compensation receive it, including women and other vulnerable groups. Discuss the merits of breaking up payments over time; the overall compensation award will be easier to manage if it takes the form of a medium- or long-term source of income, rather than an immediate, one-time, large payment.
 - Consider non-monetary forms of compensation. Cash compensation is rarely sufficient to restore livelihoods because it is typically spent on items that don't support livelihoods, so every effort should be made to provide or facilitate access to similar resources elsewhere.[v] Full livelihoods compensation may require such non-monetary benefits as alternative land, employment opportunities, education and skills training, and infrastructure improvements as part of the compensation package. Make sure those entitled to compensation are aware of these alternative benefits so they can make a fully informed decision about their preferred form of compensation.
 - When negotiating for land-based compensation, remember that replacement land should be of equal productive use or potential and located in the vicinity of the acquired land. The business should cover the cost of making the replacement land similar to or better than the acquired land, as well as transaction costs such as registration taxes and customary fees.[vi]
- **Document all agreed upon compensation.**
 - All agreed upon monetary and non-monetary compensation must be incorporated into the written contract. The value needs to be agreed upon and fully transparent to all from the inception of the contract.
 - If those being compensated are not parties to the land sale or lease contract, a separate agreement or memorandum of understanding should be made between the business enterprise and those receiving compensation.
- **Incorporate an audit into the investment's M&E plan.**
 - Plan to include an external audit of whether the community and individual land rights holders and users (both women and men) have been adequately compensated and had their livelihoods restored.[vii]

5. With the support of a CSO, the Negotiation Team and the business develop the contract and ensure that it embodies internationally recognized principles and best practices.

A CSO can provide useful guidance and advice about contract provisions that should be included in the document. The following are two important guides specific to agribusiness investment contracts that could be useful:

- The International Institute for Sustainable Development's (IISD's) [Guide to Negotiating Investment](#), and
- The Namati and Columbia Center for Sustainable Investment's (CCSI) [Guidance for Communities Interacting with Investors](#).

Before drafting a contract, review the results from Phase 2 assessments to identify information that will likely be useful to inform the contracting process. It is imperative that the company address any social impacts and rights issues pertinent to the contract.

Ensure that the contract:

- Uses language that is clear, coherent and transparent,
- Clearly defines the rights and duties of all parties,
- Clearly outlines any mutually agreed conditions that would prompt or permit renegotiation or cancellation,
- Recognizes and upholds all land use interest and tenure rights, and
- Fully compensates land holders and users for parting with these land assets.

See [Supplemental Resource: Key Contract Elements](#) for a list of terms and elements that should be included in a responsible land investment contract.

6. Negotiation Team validates the contract with the community and finalizes the document.

The Negotiation Team, and the Land Investment Committee more broadly, should be actively consulting with the community throughout this process. A lack of community engagement combined with a lack of transparency could jeopardize the legitimacy of the investment deal.[viii]

Similar to the LOI process, the Negotiation Team should host a series of consultation meetings with all stakeholders to explain the proposed contract and discuss the proposed terms with all community members. This should be done with assistance from identified CSOs and, if possible, local or regional government.

- The initial meeting should follow best practices for holding community meetings. During the meeting, community members should review the first draft of the contract and make suggestions.
- The Negotiation Team should incorporate the community's revisions into a second draft of the contract.
- As part of conducting a "legal check," the Negotiation Team should solicit input from legal experts as well as local or regional government officials to ensure compliance with national law.
- If legal issues are identified, the Negotiation Team should hold an additional community meeting to share comments from the legal check. This meeting should follow community meeting best practices, as the community decides what to revise based on the legal check.
- The Negotiation Team then incorporates community revisions into a third draft of the contract.
- If there is still significant discussion to be had or strong disagreement on certain issues within the community, the Negotiation Team should continue with additional rounds of drafting and community meetings.
- Once the community is in agreement, in accordance with its by-laws for responsible investment, the Negotiation Team should share the final draft of the contract with the business.
- Depending on the business's responses, some or all of the above steps might need to be repeated.

The community meetings should be conducted according to the community consultation guidance described in Phase 2.

The contract should not be signed until all documents are reviewed by the appropriate government authorities and final consent is obtained from the community, all of which is covered in Task 2 of this Phase.

7. Negotiation Team ensures the business updates proposed investment project documents based on contract negotiations.

If contract negotiations have materially changed the project concept, the business should update the investment project document to reflect those changes. In addition, the company should share the information with government authorities and community leaders per the engagement and consultation plan.

After these revisions, the Negotiation Team should consult [Supplemental Resource: Final Contract Checklist](#) to ensure that the contract complies with relevant standards.

References

[i] FAO, Voluntary Guidelines on the Governance of Tenure, Fisheries, and Forests in the Context of Food Security 23 (2012), available at <http://www.fao.org/docrep/016/i2801e/i2801e.pdf>

[ii] Id.

[iii] While this model guidebook recommends the use of an LOI, a Memorandum of Understanding (MOU) or a Terms Sheet may serve a similar function.

[iv] United States Agency for International Development (USAID), Operational Guidelines for Responsible Land-Based Investment 43 (2015).

[v] IFC, Guidance Note 5, ¶ GN22.

[vi] Id.

[vii] IFC, Performance Standard 5, at ¶ 15.

[viii] See generally TMP Systems, The Financial Risks of Insecure Land Tenure: An Investment View (2012), available at http://rightsandresources.org/wp-content/uploads/2014/01/doc_5715.pdf.

Task 2: Review and Sign the Contract

Best Practices

Good contracting practices require that the contracting process remain transparent and participatory and that all community members be brought to an equal footing with investing business and governments. This means that:

- A neutral third party reviews the contract to validate that it meets the needs of community members and does not cause adverse social impacts.[i]
- The business in coordination with the Negotiation Team seeks the final consent from the community before signing the contract.
- The business provides copies of the contract to the community and makes the contract publicly available.

The contract should not be signed before support is obtained from all stakeholders within the community.[ii] **If communities do not support the project, it cannot legitimately proceed.**

Step-by-Step Guidance

1. The business, in coordination with the Negotiation Team, solicits and obtains final community consent to the investment terms.

After the business submits the document to the appropriate government agencies, the Negotiation Team must reconvene community consultation groups to review the latest versions of the investment contract.

Consent must be provided before project implementation begins.

The Negotiation Team should hold a final community meeting to ratify and memorialize the community's decision to halt or proceed. Refer to Best Practices for Holding Community Meetings to guide this meeting and ensure community consent is present before signing the contract.

- Consent should reflect the collective will of the community, although this does not mean consent requires the unanimous agreement of all individuals within the community.[iii]

- However, if there is evidence or there are claims at the meeting that affected community members do not support the project, the company should identify the dissenting members with specificity and try to persuade them to agree.[iv] If unanimity cannot be obtained but the community decides to proceed in accordance with the process established in its by-laws, then the dissent should be documented after meaningful attempts to accommodate dissenting voices.
- In addition, the community should retain the right to withdraw consent “if the proposed activities change or if new information relevant to the proposed activities emerges.”[v]
- If there is no evidence of dissent of participating community members or the community decides to proceed despite the presence of dissent, the company should draft meeting minutes reflecting the community's consent and invite community members to sign the minutes.
- The Negotiation Team and the business should determine the final investment configuration based on community responses and counter-offers to proposed contract.

Any consultation with communities should follow best practices, as described in Best Practices for Holding Community Meetings located in the introduction.

2. Negotiation Team ensures that the government provides the community with notice of intent to transfer of land before the business obtains formal lease.

If the land is formally government-owned, the government should provide the community with final notice of intent to transfer land over to the company.

Additional cycles of sensitization, consultation and engagement might need to occur to the extent that public comment signifies demand. At the most basic level, an oversight and consultation committee should be formed and comprised of representatives of the company, local officials and community leaders to monitor the process.[vi]

3. Negotiation Team facilitates final convening of the community to sign the final contract.

The final contract should be signed by the parties that were identified in the LOI and contract negotiation process.

- To support transparency and clear communication among all stakeholders, the final signing of the contract should be well-documented and witnessed by as many people as possible. Representatives from each major community group should also sign the contract as witnesses.
- Photographs and video are one common way of documenting final contract signing events.
- A lawyer should review the final contract before it is signed, and any legal infirmities should be corrected with the agreement of all parties.

If the community is not an actual party to the agreement - which could be the case in some countries - it is critical that an MOU is signed with the community as discussed in the previous task.

4. Negotiation Team receives the final version of the contract and shares it with the community.

Once the investment contract has been finalized and signed, the business must make copies available to community members.[vii] The contract should also be made publicly available.

References

- [i] United States Agency for International Development (USAID), Operational Guidelines for Responsible Land-Based Investment 51 (2015).
 [ii] Agence Française de Développement (AFD), Guide to Due Diligence of Agribusiness Projects that Affect Land and Property Rights 24 (2014), available at <http://www.landcoalition.org/sites/default/files/documents/resources/Guide-to-due-diligence.pdf>.

[iii] See UN-REDD Programme, Guidelines on Free, Prior and Informed Consent 20 (2013), available at <https://www.uncclearn.org/sites/default/files/inventory/un-redd05.pdf>

[iv] AFD, *supra* note ii, at 24.

[v] See UN-REDD Programme, Guidelines on Free, Prior and Informed Consent 20 (2013), available at <https://www.uncclearn.org/sites/default/files/inventory/un-redd05.pdf>

[vi] See generally USAID, *supra* note i.

[vii] See FAO Respecting Free, Prior and Informed Consent 43 (Governance of Tenure Technical Guide 3 2014), available at <http://www.fao.org/3/a-i3496e.pdf>.

GUIDEBOOK SECTION

Phase 4: Implementing and Monitoring the Investment

Phase Roadmap

This phase provides steps that help to ensure new projects as well as existing ones are implemented and monitored in a responsible manner.

Task 1: Prevent and Address Land-Related Issues

- 1 Community leaders take steps to strengthen community governance systems and ensure preparedness for ongoing investment accountability.
- 2 Land Investment Committee helps to prevent disputes by maintaining ongoing engagement and consultation with the business and community members.
- 3 Land Investment Committee works with business to establish a grievance mechanism for resolving land-related disputes.

Task 2: Confirm the Business Has an Ongoing Monitoring and Evaluation Plan

- 1 Land Investment Committee supports the business in establishing monitoring and evaluation practices for land-related investments.
- 2 The business works with a third party to conduct follow-on impacts assessments to evaluate impacts on communities.

Task 1: Prevent and Address Land-Related Issues

Best Practices

Land-related issues that escalate to a significant dispute between a community and business can reduce the investment benefits that the community deserves.

To maintain the broader community's trust while resolving unanticipated challenges that will certainly arise as activities deviate from the initial plan, the Land Investment Committee and community leaders should work with the business to establish mechanisms that:

- **Ensure on-going engagement and consultation** with the community and the business to prevent disputes from occurring;
- **Ensure access to remedy** by working with the business to establish a functioning, effective and accessible grievance mechanism for handling land-related disputes;^[i] and
- **Monitor and evaluate** the investment's implementation to track its progress, results, and effects on the community.

Step-by-Step Guidance

1. Community leaders take steps to strengthen community systems and ensure preparedness for ongoing investment accountability.

Before an investment can be responsibly implemented and effectively monitored, the community must take certain steps to ensure its capacity for holding the business accountable throughout the life cycle of the investment. Ideally these efforts would have occurred at the beginning of the investment process well

before signing a contract. Even where investments have already begun implementation, the community should work to strengthen its governance structures to ensure the investment will unfold in a way that respects the rights and needs of community members.

Community leaders and the investing business should work together to equip the community for the steps that follow. Look to Phase 1 of this guidebook and its associated resources for guidance in developing robust community structures that will help ensure that the investment project is implemented responsibly. Necessary steps will include:

- Identifying a CSO to assess and strengthen community governance structures regarding investment,
- Conducting a community governance assessment,
- Creating a Land Investment Committee,
- Holding land rights awareness trainings, and
- Developing by-laws for responsible investment.

Conducting these steps will promote the interests of all community members and result in:

- Community-driven planning processes that provide both women and men space and time to openly discuss concerns;
- Transparent and timely communication that reaches all community members;
- Obtaining consent from community members in an inclusive and participatory manner around decision making;
- Broad awareness of legal rights and duties related to land and investment within the community; and
- By-laws for responsible investment that are clear and well-understood by the whole community, reflect the input of all community members, and are sensible and compatible with the local governance institutions and processes.

2. Land Investment Committee helps to prevent disputes by maintaining ongoing engagement and consultation with the business and community members.

Perhaps the biggest challenge with implementation is that it will almost inevitably involve problems that were not anticipated during project planning, negotiation, and contracting. **Even the most diligent preparation and community engagement cannot account for all potential challenges.**

Continued engagement with the business and with individuals and groups in the community throughout project implementation is essential to maintaining a productive relationship and identifying implementation challenges and unanticipated impacts as early as possible.[ii]

This is particularly important for longer-term projects, as there is a higher likelihood that activities will deviate from the initial plan as implementation proceeds and unanticipated challenges arise. Although the challenges that arise for each endeavor are context-specific, there are some common themes that frequently appear as problems for land-based investments. A few of these themes are discussed below.

Land Scarcity

One common issue resulting from poor investment planning is the assumption of abundant available land for development. Land that may appear to be unused or underutilized is made available for investment but is often in fact used for multiple non-agricultural purposes, such as transit or pastoral grazing. Additionally, communal land use practices may create situations where, despite a lack of clear ownership, the development of particular tracts would disrupt the livelihood of multiple families. Finally, environmental conditions such as erosion and drought can exacerbate scarcity and heighten tensions around land use. Land scarcity issues increase likelihood of land-related disputes and the weakening of all land rights, including those of women.

An investment region that is being used for sugarcane production in Tanzania is experiencing land scarcity issues. Profitable production of cane increased the demand for land with nearly all available land being converted to cultivating sugarcane. The lack of available land has increased disputes in the region between farming communities as well as between farmers and pastoral societies that are competing for land and other natural resources.

Encroachment

Allegations of encroachment arise where one user is accused of extending their land use into the neighboring user's claim. Encroachment typically occurs when the encroacher knows that he or she doesn't have a right to the land but feels historically disadvantaged by an investment or simply views idle land not used by a business as an opportunity to meet his or her livelihood needs. It could also occur when an investor builds a structure beyond its property line and into a neighboring community or another individual's property.

A sugarcane investor has quality land in the area that is experiencing land scarcity issues due to a population boom. Because cane is profitable, the opportunity to grow sugarcane is leading to encroachment issues between individuals and communities and creating land conflicts.

Compensation

Issues around compensation create some of the most common obstacles to a successful responsible investment in land. Other common problems, like encroachment or displacement, often develop after initial faults in compensation. The Negotiation Team should have ensured fair compensation during the negotiation process. The Land Investment Committee and community leaders should work to ensure that fair compensation terms are met and that any ongoing agreements for community benefits are respected by the business and the government.

Fair and adequate compensation requires consideration of many factors. In one Ghanaian investment, community members raised complaints after initial compensation did not account for crops traditionally grown and sold by women. This illustrates the importance of inclusive community engagement at the start of and then throughout the life cycle of an investment.

In addition to considering these common issues that arise during the implementation of an investment, it is important to maintain consistent communication between the community, the business and other stakeholders. Multiple channels of two-way communication should be established to facilitate clear, well-planned and frequent consultation and engagement with communities.[iii] Approaches should address how women face particular barriers to accessing information and participating in consultations.[iv] Communication should be structured to:

■ Reaffirm contract terms and performance with the business

- Depending on the last interaction with the business, the Land Investment Committee and community leaders should meet with the business and community to ensure that community members have a complete understanding of the material terms of the agreement and that they perceive that the agreement is being implemented fully and fairly.
- Education activities should be designed to reach all community members, which may require adjustments to both content and approach, to ensure that the material is received and understood by both women and men and by vulnerable groups.

■ Facilitate continued engagement with the business

- The business and community should develop an ongoing communication and engagement strategy to guide engagement throughout implementation and project close-out.[iv] Guidance for developing a strategy can be found in [Supplemental Resource: Designing a Stakeholder Engagement Plan](#). The strategy should take into account the entire community, with particular considerations for community leaders, women and women's groups, and associations/groups for vulnerable populations and outgrowers.

- **Frequently review and update the strategy on a specific schedule that is agreed upon by stakeholders**

3. Land Investment Committee works with business to establish a grievance mechanism for resolving land-related disputes.

A factor central to responsible business investment in land and an enduring social license is whether a business ensures access to remedy by establishing a functioning, effective and accessible grievance mechanism for handling land-related disputes.[vi]

Guidance relating to responsible land-based investment emphasizes the need for business-based, non-judicial grievance mechanisms to complement any existing state-based, judicial grievance mechanisms. The extent to which there is a need for a business-based grievance mechanism will thus depend on the governance gaps of the country where the community is located. The need for business-based grievance mechanisms is particularly acute in most low-income and middle-income countries, where governance gaps can be significant. For more guidance see the [Grievance Mechanism Primer](#).

The Land Investment Committee and community leaders should work together to determine how grievance mechanisms should be coordinated through the business and hold the business accountable for dispute resolution where appropriate. The mechanism should comply with the [UNGP criteria](#) for non-state dispute resolution processes:

- **Legitimate:** Enable trust from the mechanism's users and ensure accountability for the fairness of the grievance resolution process.
- **Accessible:** Be known to all potential users and providing assistance for those who may face particular barriers to access, such as women.
- **Predictable:** Be clear on the types of processes and outcomes available and means of monitoring implementation.
- **Equitable:** Provide users reasonable access to the information, advice and expertise necessary to engage on fair, informed and respectful terms.
- **Transparent:** Keep parties to a grievance informed about its progress and provide sufficient information about the mechanism's performance to build confidence in its effectiveness.
- **Rights-compatible:** Ensure outcomes and remedies comply with internationally-recognized human rights standards.
- **Source of continuous learning:** Identify lessons for improving the mechanism and preventing further grievances and harms.
- **Based on dialogue and engagement:** Consult users on the mechanism's design and performance and focus on dialogue as the means to address and resolve grievances.[vii]

Designing and Implementing the Mechanism

- The Land Investment Committee should ensure that the business **dedicates sufficient personnel and resources** to designing, implementing and managing its grievance mechanism.
- The Land Investment Committee should ensure that the business **consults with community members potentially affected by the investment** to incorporate their input into the mechanism's design.

- All categories of community members and relevant external stakeholders should be consulted regarding the grievance mechanism, including women, indigenous peoples and other vulnerable groups; civil society organizations; local government officials; and community leaders.
- Feedback obtained during consultations with external stakeholders should be incorporated into the design, implementation, management and monitoring of the grievance mechanism. The mechanism should reflect and be compatible with customary dispute resolution mechanisms and should be accessible to and trusted by all relevant stakeholders.
- The Land Investment Committee should ensure that the business **sensitizes staff regarding the importance of identifying and respecting formal and customary land rights**. The more its employees are aware of the business's reasons for committing to conduct socially responsible investments, the better able the business will be to manage and enforce the grievance mechanism for dealing with land-related disputes seriously and effectively.
- The Land Investment Committee, community leaders and the business should work together to **determine the scope of the grievance mechanism** by determining what types of land-related grievances it is likely to receive.
 - ESIA results should help to inform the business of what complaints are most likely to arise. For example, if the ESIA indicates that the proposed land acquisition and project (e.g., a new sugarcane plantation) will use significant amounts of water, then it is possible that individuals or communities may have complaints alleging that the business enterprise is using too much water and contributing to water shortages.
- The Land Investment Committee should work with the business to **inform communities of the grievance mechanism**. Communicate in a manner in line with communities' preferred modes of communication (e.g., radio, local newspaper, flyers, bulletins, consultations, etc.). The Committee and the business should share the following information:
 - How individuals and communities (including both women and men) can file complaints with the grievance mechanism (e.g., in person at the business's office, via mail or drop box, with a community representative, with a community leader, during the business's routine visits to communities, etc.).
 - What types of complaints the grievance mechanism will receive.
 - A description of the procedures for receiving, processing, and responding to complaints (e.g., the time period for responding to complaints, the manner in which the business will respond to complaints, the time period for investigating complaints, the time period for filing an appeal, etc.).
 - A description of the procedures for monitoring and evaluating the effectiveness of the grievance mechanism to ensure it is serving communities as intended.

Receiving and Responding to Complaints

- The Land Investment Committee should make sure that the business has clear procedures in place for how it will **receive complaints**.
 - The procedures should be developed in a manner that ensures all community members (including both women and men) are able to file complaints easily and in confidence.
 - The business should also provide prompt confirmation documenting that it has received the complaint and will determine whether it is a violation of the business's land-related policies, the key elements of responsible land-based investment, or the UNGP criteria for non-state dispute resolution processes. The confirmation will provide the complainant with acknowledgement that the business is taking the complaint seriously and will be reviewing it.
- The Land Investment Committee should ensure that the business has clear procedures in place for how it will **process complaints**.

- The procedures should detail what types of grievances will be covered by the mechanism and how the business will determine whether the complaint alleges a covered violation that will trigger an investigation.
- To promote transparency, the procedures should indicate how long it will take the business to determine whether it will investigate the complaint.
- The Land Investment Committee should make sure that the business has clear procedures in place for how it will **resolve complaints**.
 - Procedures could be the same for all complaints or could vary depending on the nature of the allegation. The business's procedures could authorize the business to make the final decision by itself, authorize the community to make the final decision, or authorize the enterprise and the community to jointly make the final decision.
 - There is no one-size-fits-all process for resolving complaints; what is important is that the process is transparent and accepted by the community. That being said, the more the community is involved in resolving complaints, the more trust it will have in the mechanism and the easier it will be for it to hold the business accountable through implementation of the project.

Monitoring and Evaluating the Mechanism

- The Land Investment Committee should make sure that the business has clear procedures in place for **monitoring and evaluating the grievance mechanism**. The business should be tracking the following:
 - The number of land-related complaints it receives.
 - The average time the business takes to respond to complaints, determine whether the complaint merits an investigation, investigate the complaint, and reach a final decision regarding the complaint.
 - If the business and complainant(s) reached a resolution, whether the parties are satisfied with the resolution.
 - If the business and complainant(s) failed to reach a resolution, why the parties did not reach a resolution.
- The Land Investment Committee and the business should **share monitoring and evaluation results and use findings to improve the mechanism**.
 - It is important for the business to evaluate what the results may indicate regarding the mechanism's effectiveness and accessibility. The business should use these results to adapt and improve the grievance mechanism. The Land Investment Committee can facilitate this process by maintaining ongoing engagement with community members to gauge whether they trust and use the mechanism.
 - It is important to keep an open mind when making conclusions based on monitoring and evaluation results. For example, although a high rate of complaints could indicate poor relations between the business and local communities, it could also indicate that the grievance mechanism is functioning as intended and is helping to improve relations between the business and communities.

References

- [i] See FAO, Voluntary Guidelines on the Governance of Tenure, Fisheries, and Forests in the Context of Food Security 4 (2012), available at <http://www.fao.org/docrep/016/i2801e/i2801e.pdf>; New Alliance for Food Security and Nutrition, Analytical Framework for Responsible Land-Based Agricultural Investment (2015), available at https://docs.google.com/viewerng/viewer?url=https://new-alliance.org/sites/default/files/resources/Analytical-framework-for-land-based-investments-in-African-agriculture_0.pdf; UN Office of the High Commissioner for Human Rights (OHCHR), Guiding Principles on Business and Human Rights 31-32 (UN Human Rights Council 2011), available at: <http://www.business-humanrights.org/Documents/UNGuidingPrinciples>.
- [ii] United States Agency for International Development (USAID), Operational Guidelines for Responsible Land-Based Investment 50 (2015).
- [iii] See Landesa, Case Study: Kilombero Sugar Company Ltd. in Tanzania 15 (2017), available at <https://www.landesa.org/wp-content/uploads/KSCL-Tanzania-Case-Study-FINAL.pdf>.
- [iv] Id. at 4.

[v] Id.

[vi] See note i, supra.

[vii] USAID, supra note ii, at 53.

Task 2: Confirm the Business Has an Ongoing Monitoring and Evaluation Plan

Best Practices

Monitoring and evaluation (M&E) is essential to successful implementation of a responsible investment. The community, primarily through the Land Investment Committee, must ensure that the business conducts M&E throughout the investment. There are three primary reasons for the community to ensure the company dedicates time and resources to M&E:

- 1 To ensure the company's compliance with lease terms and conditions.
- 2 To assess the unfolding investment project and restructure as necessary.
- 3 To determine how land-related M&E requirements can be integrated into other M&E activities so they remain part of the core business consideration.

The community should also help the company in monitoring its impacts on the communities and individual smallholders that have changed their relationship to the land for the benefit of the investment. A thorough and robust M&E plan should include continuous monitoring, regular evaluation and periodic impact assessments conducted by third parties. For more information see the [M&E Primer](#).

Step-by-Step Guidance

1. Land Investment Committee supports the business in establishing monitoring and evaluation practices for land-related investments.

By conducting regular M&E activities, the business will be able to identify implementation challenges and unanticipated impacts earlier than it otherwise might.^[i] This is particularly important for longer-term projects, as there is a higher likelihood that activities will deviate from the initial plan as implementation proceeds and unanticipated challenges arise.

Familiarity with this M&E guidance and the accompanying resources will empower the community to hold the business accountable to its obligations under principles of responsible investment. Below are principles for M&E that the business should be adhering to throughout the life cycle of the investment.

- **Commitment.** The business needs to make M&E an integral part of the implementation, particularly by providing strong commitments of financial and human resources coupled with strong mechanisms for corrective actions as needed.^[ii]
- **Collaboration and Consent.** The business must provide for inclusive participation from relevant stakeholders in data collection and the development of indicators, benchmarks, assessment processes, and mechanisms for grievance, redress and learning.^[iii] Participation should be both culturally appropriate and gender sensitive, allowing for meaningful participation from both women and men.
- **Practicability and Sustainability.** The M&E plan should have realistic timelines, translating results into action, and targets and provide for sufficient expertise and resources so that it is sustainable over the life of the investment.
- **Transparency and Independence.** The business must be transparent when developing and conducting M&E and in disseminating and using the findings to make corrections to design and implementation. The community should advocate the use of third parties to perform M&E activities.

- **Accessibility.** The business should make M&E plans, updates, inquiries and findings available to all stakeholders.
- **Accountability.** M&E must link to and depend upon a strong, accessible and enduring grievance mechanism that provides for sanctioning of or remedies for non-compliance.[iv]
- **Source of Continuous Learning & Improvement.** Effective M&E requires assessments that provide information needed to make subsequent adjustments and improvements to processes, standards, project design and project implementation.

While each investment will have its unique needs for M&E based on contextual factors (e.g., the agricultural products involved, the region in which the investment occurs, the nature of any outgrower schemes or relocation programs, etc.), there are some broad standards that will be applicable to virtually any project. The [M&E Primer](#) provides a list of indicators for M&E based on international standards for reporting on responsible investments. These indicators are not exhaustive, but are intended to provide a starting point for a rigorous and diligent M&E protocol. The community can compare the M&E tools used by the company with the resources provided in this guidebook to evaluate the company's M&E process.

2. The business works with a third party to conduct follow-on impact assessments to evaluate impacts on communities.

Throughout the lifecycle of the investment, the company should commission and publish reports that assess the impact of investment activities on the community, particularly with respect to vulnerable populations such as women, indigenous peoples, and ethnic or religious minorities.

In accordance with its M&E Plan, the company should assess ongoing environmental and social impacts (including impacts on land rights, uses and livelihoods) to monitor the effects of the project on the surrounding community. To ensure accountability and transparency, these assessments should be conducted by reputable third parties and based on international standards for human rights and responsible investments. More frequent assessments create more opportunities for adaptation and mitigation, but this benefit should be balanced against the feasibility of thorough assessment on a compressed timeline.

While each investment's particular assessment needs will depend on the investor, the community, and the investment environment, it is generally best for the company to conduct assessments at each level of the value chain.

The Land Investment Committee should verify that ongoing assessments are measuring aspects of the investment's impact that are important to community members. [Supplemental Resource: Land Rights Assessment Tool Kit](#) from the Model Guidebook for Businesses provides sample questions for assessment of household farm owners, large farm owners, farmworkers, and manufacturing plant and mill owners. These questions should be combined with suggestions and questionnaires designed by neutral third parties that are conducting periodic impact assessments. Community members can use this resource as a basis for evaluating the company's assessment protocol, both during M&E and when conducting the ESIA in Phase 2.

References

- [i] United States Agency for International Development (USAID), Operational Guidelines for Responsible Land-Based Investment 50 (2015).
- [ii] FAO, Voluntary Guidelines on the Governance of Tenure, Fisheries, and Forests in the Context of Food Security 39 (2012), available at <http://www.fao.org/docrep/016/i2801e/i2801e.pdf>
- [iii] African Union (AU), Guiding Principles on Large Scale Land Based Investments in Africa 25-26 (2014), available at <https://hdl.handle.net/10855/22829>; see also UNESCO, A Guide for Monitoring and Evaluating Community-Based Projects (2009), available at <http://unesdoc.unesco.org/images/0018/001862/186231e.pdf>.
- [iv] UN Office of the High Commissioner for Human Rights (OHCHR), Guiding Principles on Business and Human Rights 19 (UN Human Rights Council 2011), available at: http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

GUIDEBOOK SECTION

Supporting Materials

All of the guidebook phases have resources and tools to help the community translate best practices to the specific needs, risks and opportunities of the agricultural investment project.

All Supporting Materials

Phase 1 resources

Community Governance Assessment

This resource provides detailed steps on how community leaders can work with a local CSO to assess the community's existing community governance structures and land governance rules. The purpose of this assessment is to evaluate the strengths of current systems and safeguards in place to support responsible investment.

[Download File \(PDF\)](#)

Leveraging Land Investment Committees

This resource outlines steps for establishing the roles and responsibilities of the Land Investment Committee and electing/selecting its members. In the RIPL Model Guidebook for Communities, it's recommended that the community designate an existing body or establish a new body (the Land Investment Committee) to be in charge of helping the community prepare for prospective investment and engage with companies when the community receives an investment proposal.

[Download File \(PDF\)](#)

Land Rights Awareness Training Curriculum

Rights awareness is an important starting point for communities to position themselves for more beneficial investment deals. This supplemental resource provides an example framework of some of the topics and sessions that could help promote land rights awareness within a community. Topics covered include: civic awareness; land and property rights basics; land governance; women's land rights; and land rights in the context of prospective investment.

[Download File \(Word Document\)](#)

Developing Community By-Laws for Responsible Investment

This resource accompanies the RIPL Model Guidebook for Communities, providing detail on how a community can develop local rules governing land investment that support responsible, sustainable, and equitable investments. These rules, or by-laws, will establish how the community will make decisions about its land, who will represent the community in negotiations with prospective investors, and how compensation will be shared and used.

[Download File \(PDF\)](#)

Holding a By-Law Adoption Ceremony

This resource explains how a community can coordinate and hold a ceremony to adopt local by-laws governing land investment. These by-laws will establish how the community will make decisions about its land, who will represent the community in negotiations with prospective investors, and how compensation will be shared and used.

[Download File \(PDF\)](#)

Gender Sensitive Community Mapping

This resource outlines how a community can identify and map land users, rights and livelihoods in the community. The resource outlines different mapping methodologies, including best practices for each approach.

[Download File \(Word Document\)](#)

Boundary Harmonization

This resource outlines how a community can harmonize boundaries during community mapping processes. Boundary harmonization is the process through which people agree on the land boundaries between neighboring individuals and communities.

[Download File \(PDF\)](#)

Documenting Boundaries

This resource outlines how a community can document the results of the community's mapping and boundary harmonization efforts.

[Download File \(Word Document\)](#)

Developing a Land Use Plan

This resource explains how a community can assess current uses of land and natural resources, and evaluate alternative options to select and adopt the best land use options within a community, including planning for potential investment.

[Download File \(PDF\)](#)

Land Valuation

This resource explains an activity a community can perform to better understand how much value community lands bring to the community.

[Download File \(Word Document\)](#)

Phase 2 resources**Consultation Meeting Notes Template**

This resource can be used to document conversations with stakeholder groups. It accompanies Phase 2, Task 1, Step 3 of the RIPL Model Guidebook for Communities.

[Download File \(Word Document\)](#)

Community Consultation Meetings Checklist

This resource can help in preparing for community engagement meetings conducted by the Land Investment Committee, either within the community or between the community and a business. It is intended to accompany the RIPL Model Guidebook for Communities Phase 2, Task 1, Step 3

[Download File \(Word Document\)](#)

Outgrower Best Practices Literature Review

This document summarizes some of the available external resources that provide guidance and discuss best practices for establishing outgrower arrangements as a method of compensation or alternative to outright land purchase or lease.

[Download File \(PDF\)](#)

Phase 3 resources

Key Contract Elements

This resource provides guidance on the terms and elements that should be contained within the MOU and final contract between the business and community, as well as the lease agreements that memorialize land investments.

[Download File \(PDF\)](#)

Template for LOI/MOU

This resource provides a sample LOI/MOU between a community and an investor that could be used during the negotiation and contracting process.

[Download File \(Word Document\)](#)

Final Contract Checklist

This checklist is designed for communities to use when preparing a contract for a land investment. This checklist accompanies Phase 3, Task 1, Step 7 of the Model Guidebook for Communities.

[Download File \(Word Document\)](#)

Phase 4 resources

Designing a Stakeholder Engagement Plan

This resource provides a template for designing a strategy for ongoing community engagement during the implementation of an investment, and two checklists for evaluating the community engagement plan based on established standards for stakeholder communication.

[Download File \(Word Document\)](#)