



RESPONSIBLE INVESTMENTS IN PROPERTY AND LAND

Government Guidebook

Practical guidance and adaptable tools for national, regional, and local officials seeking to enable responsible land-based investment and protect community land rights.

DESIGNED FOR Policy makers, investment agencies, and local officials



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 the use of a land asset occurs without notice, consultation, negotiation and consent. Inequitable and non-beneficial rules are less frequent, and if there is a dispute or breach of an agreement, judicial and administrative remedies are available and accessible.

Unfortunately, however, many emerging economies lack governance frameworks embodying these best practices. 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. In many places laws are imperfect, government capacity to implement is lacking (particularly at the local level), and the informal land situation is unique, requiring that business enterprises take special care to understand whether and in what way to proceed with an investment.

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 invest responsibly. For example, it is not always clear how a company can meaningfully engage and consult with all community members. Nor is there clarity around how to meaningfully include women in situations where they are not customarily included, such as community meetings and land transaction processes. Limited government capacity poses a further barrier to effective enabling frameworks: governments may need help to maintain and enforce equitable land practices. At the same time, companies looking to invest may need help navigating those institutional and governance shortcomings to uphold equitable land practices in their investments. This guidebook will help investment stakeholders understand the challenges and determine what is required to create fit for purpose solutions that address localized issues.

With support from the United Kingdom's Department for International Development (DFID) Land Governance for Economic Development (LEGEND) Programs, Landesa's [RIPL Project](#) is addressing these challenges by making international standards and guidelines 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.

The guidebooks support the application of existing, internationally recognized standards by providing concrete steps and tools to support their implementation. The guidebooks build on existing guidance with the objective of synthesizing best practices, contributing concrete examples to address existing gaps, and leveling the playing field by developing guidance tailored to multiple investment stakeholders.

The guidance is grounded in field research on current investments in sub-Saharan Africa, as well as Landesa's experiences directly supporting companies in the Global South, including in Asia and South America, to develop land rights policies and implementation guidance. Landesa brings over 50 years of experience working with governments to support the development of pro-poor and gender-equitable land policy and legislation and with local civil society to support the implementation of those policies on the ground.

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 at <https://landportal.info/library/resources/legend-analytical-paper-2/addressing-legacy-land-issues-agribusiness-investments>; N. Flanders & J. Jenks, A Guidance Note on Managing Legacy Issues in Agribusiness (2015), available at https://toolkit.cdcgroup.com/assets/uploads/CDC_Land_Legacy.pdf

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 from government, a community or an individual) and/or procuring agricultural commodities directly from smallholders 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.

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 Government

This Model RIPL Guidebook for Government is directed to a national or local government official who may not be familiar with best practices related to responsible agricultural investments or completely knowledgeable about their country's investment process. This guidebook envisions three general government stakeholders for land-based investment:

- National government policy makers
- Governmental Investment Agency
- Local officials

The government, in particular local officials, should support businesses and communities in implementing best practices to ensure responsible investment. Importantly, their level of involvement will depend on the type of investment. The role of local officials is to engage directly with business and community representatives in achieving the following objectives:

- Support the communities in strengthening systems and safeguards related to responsible investments before the investment process takes place.
- Ensure that the business and community leaders are engaging and consulting with the broader community through regular meetings that are used to inform the investment process. These efforts must reach all land rights holders and users, including women, men and pastoralists in an interactive and gender-sensitive way.
- Hold the business accountable for assessing and mitigating adverse impacts related to the project. If an investment does take place, it will be critical for local officials to continue engaging with the business and community leaders to ensure that grievances are prevented and addressed in a manner that includes the participation of the entire community in the decision-making process.

The national government also plays an important role in responsible investment. At a high level, the national 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, it may need to act as a facilitator or guide during the investment process. This is the primary responsibility of the Governmental Investment Agency: to link prospective investors to communities while promoting and ensuring responsible investment.

The government is also responsible for:

- Recognizing and respecting all legitimate tenure right holders and their rights.
- Safeguarding legitimate tenure rights against threats.
- Protecting businesses from extortion, graft, or property damage.
- Making efforts to promote and facilitate the full realization of tenure rights in the context of facilitating responsible investment.

- Supporting accessible and equitable transactions.
- Providing access to justice to deal with infringements of legitimate tenure rights.
- Taking steps to prevent tenure disputes from arising and escalating into conflicts.

These responsibilities also feed into the government's other general responsibilities with respect to environmental conservation, food security and domestic security, which all depend on an effective and equitable land tenure regime.

The Role and Responsibilities of Businesses

The Model RIPL Guidebook for Business Enterprise is intended for a company representative tasked with evaluating and facilitating a prospective investment or managing an ongoing investment.

Businesses play an important role in upholding best practices in a responsible investment: as the entity with potentially more resources and capacity than the 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 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. Businesses 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.

The Role and Responsibilities of Communities

The Model RIPL Guidebook for Communities is intended to be used by representatives in the community engaging with government and business on behalf of the broader community. This guidebook refers to this group as a Land Investment Committee with a sub-group of members called the Negotiation Team.

Communities and their leaders must be empowered to participate fully in any investments affecting them to help shape the terms of the investment and decide whether the investment should proceed. 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 in the final decision. 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, 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.

GUIDEBOOK SECTION

How to Use this Guide

This Model Guidebook for Government includes instructions and tailorable tools and resources that a government can modify as it prepares for an agricultural investment in a socially responsible manner. Instructions and tools should be applied to all investment types, regardless of whether they are on private, communal or public land.

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: Develop Policies, Commitments and Frameworks
- Task 2: Conduct 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 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.

- **Phase 1 Preparing for an Investment Supplemental Resources**
 - Best Practices for Responsible Investment
- **Phase 2 Community Engagement and Assessments Supplemental Resources**
 - Leveraging Land Investment Committees
 - Site-Specific Questionnaire
 - Community Consultation Checklist
 - Template for LOI/MOU
 - Land Rights Assessment Tool Kit
 - Best Practices for Outgrower Arrangements Literature Review
- **Phase 3 Developing an Equitable and Inclusive Contract Supplemental Resources**
 - Key Contract Elements
 - Final Contract Checklist
- **Phase 4 Implementing and Monitoring the Investment Supplemental Resources**
 - Designing a Stakeholder Engagement Plan
 - Grievance Mechanism Checklist

There is also information organized by thematic area in our 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. While the local government and communities may not be bound by these international standards, the investing company and their funders will be. As such, the investing company may need to insist on standards over and above or different to local or national policies.

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 three 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 the **AU Guiding Principles**.
- The [Principles for Responsible Investment](#) by the United Nations, often called the **UN PRI**.

At a high level, these standards call on businesses 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 when the international standards exceed 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 consent freely, 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

Important Concept: 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. Unlike in a normal buyer/seller relationship, corporations have an unfair advantage in the relationship with local communities which must be balanced for achieving truly informed consent. 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.

Achieving unanimous consent from a community will be difficult. Given this, defining consent will need to be determined on a case-by-case basis and in consultation with the community. But to mitigate risk potential risks and ensure buy-in from community members, consent should be obtained from as many people as possible. See the [FPIC Solutions Dialogue from Solutions Network](#) for further guidance.

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 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.
- Present meetings in locally appropriate language(s), instead of only holding meetings in the official language, to allow for wider accessibility
- Women, pastoralists and others may have different schedules that must be accommodated.

Ensure broad representation. Reaching 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 i.e. 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 insure 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 both 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/journey/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), <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 creating policies and frameworks to support responsible land investment.

Task 1: Develop Policies, Commitments and Frameworks

- 1 National government identifies a central governmental investment agency to facilitate the investment process from start to finish.
- 2 National government strengthens national laws and policies to facilitate responsible investments in land.
- 3 National government publicizes guidelines for responsible investments and trains other government employees, particularly local officials.

Task 2: Conduct Due Diligence

- 1 Governmental Investment Agency evaluates projects to assess alignment with national investment strategy.
- 2 Governmental Investment Agency links business with appropriate local governmental authorities and communities.

Task 1: Develop Policies, Commitments, and Frameworks

Best Practices

It is important for countries seeking agricultural investments to create a legal, administrative and investment environment that supports best practices for responsible investment.[i] Regardless of the size of the investment or whether it will be on private, communal or public land, policies should support approaches that enable communities to directly engage with business regarding the design, negotiation and implementation of an investment.

Legal Best Practices

- The VGGTs call on countries to enact laws and policies that protect and respect the legitimate tenure rights of land owners and users (both women and men) and communities. Laws and policies should be non-discriminatory and gender sensitive and provide legal recognition for legitimate tenure rights not currently protected by law, such as customary or secondary rights.[ii]
- Government authorities engaged in investment promotion, approval and monitoring should advocate for policies that both safeguard and respect tenure rights and contribute to overall national development.[iii]
- National laws and policies should be compared to international standards and practices, and gaps and inconsistencies should be addressed.[iv]

Administrative Best Practices

- Governments should provide and maintain systems that promote responsible governance of tenure of land, fisheries and forests. These should include systems for recording individual and collective tenure rights, fair and timely valuation of tenure rights, and resolving disputes over tenure rights.[v]
- National institutions for tenure governance should recognize, respect and promote the exercise of legitimate tenure rights in line with social, cultural, economic and environmental significance of land, fisheries and forests.[vi] According to the VGGTs, governments should:

- Identify, record and respect legitimate land rights holders and their rights, whether formally recorded or not.
- Safeguard legitimate tenure rights against threats and infringements, including forced evictions.
- Promote and facilitate the enjoyment and full realization of legitimate tenure rights.
- Provide effective and accessible means to resolve disputes over tenure rights and affordable and prompt enforcement of outcomes, including just compensation where tenure rights are taken for public purposes.
- Prevent tenure disputes, violent conflict and corruption.[vii]

Investment Best Practices

- The government should encourage companies to work with smallholders in different ways and establish business models that can offer better opportunities for women, men and communities.[viii]
- Government laws, policies and practices should enable investors to acquire rights to land that are less prone to disputes, conflict and other issues that may harm communities.
- The investment framework should provide the opportunity and support for women to be equal beneficiaries of investments in land and are not left worse off as a result of such investments.[ix]

Step-by-Step Guidance

1. National government identifies a central governmental investment agency to facilitate the investment process from start to finish.

Roles and responsibilities for facilitating an investment are often distributed among various line ministries at different steps in the investment process. Also common among government ministries and departments are conflicting and overlapping institutional mandates that can hinder effective implementation and enforcement of the investment process.[x] A central agency can improve coordination and effective communication among responsible agencies to support effective and consistent implementation of laws and policies.[xi]

The government should identify one institution that helps companies and communities coordinate, facilitate and monitor responsible investments in land from start to finish. For the purposes of this guidebook, this agency will be referred to as the “Governmental Investment Agency.”

Responsibilities might include:

- Conducting due diligence on businesses to understand their core policies, activities, reputation, and involvement in land-related investments.
- Providing businesses with a package of information to facilitate their completion of the legal and social requirements of investing in land.
- Establishing frameworks that require investors’ policies, proposed projects and suppliers to comply with national laws and international best practices and align with national development priorities.
- Be available to help communities review investment proposals involving community or customary land, particularly where land is held by communities that have limited experience and understanding of the law and their rights, and which are in a weak position to negotiate fair transfers of tenure rights.
- Publicizing guidelines for responsible investments by training and educating other governmental employees.

To generate investment opportunities, governments will often establish a national land bank authority that is responsible for identifying suitable land for future investments and acquiring it from rural communities.[xii] Typically, a national land bank authority manages a centralized database called a “land bank” that should be able to provide prompt information to prospective investors about the nature, size

and location of available land.[xiii] **Governments should avoid relying on land banks**, as these institutions often lack the capacity to coordinate with other government departments to:

- Properly identify available land;
- Evaluate rights of land holders and users;
- Determine social and environmental impacts;
- Take necessary mitigation measures;
- Carry out a valuation process that ensures market price for government land; and
- Compensate right holders equitably.

The Governmental Investment Agency should allow and encourage the business with the support of civil society to directly engage with local authorities and communities to design, negotiate and implement an investment.

2. National government strengthens national laws and policies to facilitate responsible investments in land.

The government should have laws and policies in place that protect communities and land holders and users when facilitating land-based investments, particularly when they will involve a long-term government lease, and local farmers, herders and gatherers do not have documented land rights.[xiv] Yet in many countries, laws affecting investments are extremely weak. For example, national land laws may not adequately protect the land rights of communities and land holders and users (including women, indigenous people, pastoralists and other vulnerable groups), provide effective opportunities for transparency, local consultation and accountability, or even provide a framework for dealing with large scale land-based investment generally.[xv]

Principles that are essential for sound national policy for responsible investment include:

- **Limit or avoid resettlement of local people.** Instead explore alternative options to land acquisition such as contract farming, management contracts and other inclusive business arrangements. Resettlement should be a last resort.
- **Investors should assess any actual or potential impacts** on human rights and land tenure rights implicated by the potential investment.[xvi]
- **Investors should assess communities' capacity** to determine whether, and what sort of, trainings or technical support will be necessary to ensure that communities and individual land holders and users (both women and men) are able to appropriately engage with the company, evaluate impacts of the proposed project and contract, and negotiate for terms that are agreeable to all parties. Where necessary, communities should be assisted to increase the capacity of their members to participate fully in decision-making and governance of their tenure systems.[xvii]
- **Establish land valuation methodologies** that establish the price/value of property using market and non-market values such as social, cultural, religious, spiritual and environmental values[xviii] to ensure that compensation and benefits are fair, just and equitable for land holders and users (both women and men) and communities.[xviii] These methods should also capture the unique ways women use the land, as well as secondary uses of the land such as those of pastoralists.
- **Investors should establish compensation mechanisms** that encourage joint family decision-making[xix] about the use of compensation funds, create long term value and mitigate long term risks[xx] for any individual or community rights or resources that are modified or lost.
- **Recognize and respect all legitimate land rights for individual land holders and users** (both women and men) and communities, including those with customary, secondary, seasonal and other use rights.

- **Recognize the different needs and challenges facing women and men** in terms of accessing and exercising rights to land and natural resources and aim to close gender gaps through specific provisions aimed at improving gender equity.
- **Adhere to FPIC principles** when engaging with land holders and users and communities, particularly during the negotiation, contracting and enforcement stages of the investment process.
- **Investors should establish non-judicial dispute resolution mechanisms** that are culturally appropriate, accessible, transparent and accountable to all parties and that provide appropriate protection mechanisms for communities and land holders and users.[xxi]
- **Monitor and evaluate** the implementation of land laws and regulations related to investment in a gender-equitable manner.

3. National government publicizes guidelines for responsible investments and trains other government employees, particularly local officials.

Making policies and guidelines for responsible investment available and clear to investors is a necessary first step in ensuring that investors follow the correct procedures. These policies should be freely accessible and easy for other government employees, businesses, civil society organizations and community members to find and understand.

The government may want to consider the following actions as part of its implementation plan:

- Update existing operational manuals and guidance for government employees and potential investors.
- Deliver trainings for government employees involved in agricultural investments in land.
- Develop questionnaires, checklists and other materials to help people get the information they need to do their jobs.

Training will vary based on the roles and responsibilities of different government stakeholders. For instance, government employees responsible for receiving and addressing land-related grievances in the course of an investment will need more detailed checklists and resources than a policy maker. That said, all government actors will likely benefit from trainings. For an example presentation covering issues and principles relating to responsible agricultural investment, see [Supplemental Resource: Best Practices for Responsible Investment](#). The purpose of this presentation is for government officials to learn about best practices for responsible investments and the responsibilities of businesses under international standards for respecting land rights.

In addition to best practices, appropriate government officials should be aware of the issues that can inhibit responsible investment. Although the challenges that arise for each endeavor are context-specific, there are some common themes that frequently prove problematic 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 livelihoods 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.

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 they do not have a right to the land but feel historically disadvantaged by an investment, or simply they view idle land not used by an investor as an opportunity to meet their 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.

Compensation

Issues around compensation create some of the most common obstacles to a successful responsible investment in land and property. Other common problems, like protests, violence, encroachment or displacement, often develop after initial faults in compensation.

References

- [i] For a comprehensive treatment of how to use law to make foreign investment work for sustainable development, see Lorenzo Cotula, *Foreign Investment, Law, and Sustainable Development: A Handbook on Agriculture and Extractive Industries* (2014), available at <http://pubs.iied.org/12587IIED/>.
- [ii] FAO, *Voluntary Guidelines on the Governance of Tenure, Fisheries, and Forests in the Context of Food Security* 6 (2012) ["VGGT"], available at <http://www.fao.org/docrep/016/i2801e/i2801e.pdf>.
- [iii] See FAO, *Safeguarding Land Tenure Rights in the Context of Agricultural Investment* (Governance of Tenure Technical Guide No. 4 2015), available at <http://www.fao.org/3/a-i4998e.pdf>.
- [iv] For further guidance on evaluating national laws and comparing them to international best practices, see Janet Pritchard et al., *Securing Community Land and Resource Rights in Africa: A Guide to Legal Reform and Best Practices* (2013), available at <http://www.forestpeoples.org/sites/fpp/files/publication/2014/01/securingcommunitylandresourcesguideenglishian2014.pdf>.
- [v] VGGT, *supra* note ii, at 29-33.
- [vi] *Id.* at 7-9.
- [vii] *Id.* at 3-4.
- [viii] See Lorenzo Cotula, *Land Tenure Issues in Agricultural Investment* (2011), available at http://www.fao.org/fileadmin/templates/solaw/files/thematic_reports/TR_05B_web.pdf.
- [ix] See Leslie Hannay, David Bledsoe, & Mina Manuchehri, "Realizing Socially-Responsible Investments in Land from a Gender Perspective: Unpacking 'Zero Tolerance' to Identify Barriers and Practical Steps to Achieve Positive Long-term Change," Paper prepared for presentation at the World Bank Conference on Land and Poverty, The World Bank - Washington DC, March 14-18, 2016; VGGT, *supra* note ii, at 5.
- [x] See Lorenzo Cotula, *Land rights and Investment Treaties: Exploring the Interface* 41 (2015), available at <http://pubs.iied.org/pdfs/12578IIED.pdf>; FAO, *Governing Land for Women and Men: A Technical Guide to Support the Achievement of Responsible Gender-Equitable Governance of Land Tenure* (2013), available at <http://www.fao.org/docrep/017/i3114e/i3114e.pdf>.
- [xi] See FAO, *Safeguarding Land Tenure Rights in the Context of Agricultural Investment* 26, (Governance of Tenure Technical Guide No. 4 2015).
- [xii] See Cotula, *Land Tenure Issues in Agricultural Investment* 22 (2011).
- [xiii] See Celia Ortega & Carlos Griffin, *Investment Promotion Essentials: What Sets the World's Best Investment Facilitators Apart from the Rest* 7 (World Bank 2009), available at <http://documents.worldbank.org/curated/en/558121468331827295/pdf/503560BRI0Box31actice1GIPB01PUBLIC1.pdf>.
- [xiv] See Cotula, *supra* note i, at 10.
- [xv] See Cotula, *supra* note iii, at 33.
- [xvi] FAO, *Voluntary Guidelines on the Governance of Tenure, Fisheries, and Forests in the Context of Food Security* 4 (2012) ["VGGT"] ("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.business-humanrights.org/Documents/UNGGuidingPrinciples> ("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.").
- [xvii] See VGGT, *supra* note vii, at 14.
- [xviii] *Id.* at 30.
- [xix] Nigel Edmead, *Technical Workshop Presentation on "Gender Issues in Designing and Setting Up Land Information Systems and Databases: Experiences from Ghana, Zambia and Uganda"* (May 2011).
- [xx] See FAO, *Compulsory Acquisition of Land and Compensation* 33-34 (Land Tenure Studies No. 10 2008), available at <http://www.fao.org/3/a-i0506e.pdf>.

[xxi] See Rugemeleza Nshala, Anna Locke, & Jennifer Duncan, “Discussion Paper: A Proposed Land for Equity Scheme in Tanzania” (2013).

[xxii] See International Finance Corporation (IFC), Good Practice Note: Addressing Grievances from Project-Affected Communities 3 (2009), available at <https://www.unglobalcompact.org/library/38>.

Task 2: Conduct Due Diligence

Best Practices

The Governmental Investment Agency should serve as the only touch point for business and be responsible for:

- Conducting its due diligence on the business to better understand the company’s core policies, activities, reputation and involvement in land related investments;
- Providing the business with a package of information to facilitate its completion of the legal and social requirements for investing in land; and
- Ensuring that an investor’s policies, proposed projects and suppliers comply with national laws and international best practices and align with national development priorities.

Importantly, the Governmental Investment Agency should carefully review investment proposals involving community or customary land, particularly where land is held by communities with limited experience and understanding of the law and their rights and who are in a weak position for negotiating fair transfers of tenure rights.

Step-by-Step Guidance

1. Governmental Investment Agency evaluates projects to assess alignment with national investment strategy.

When a business registers its intent to invest, the Governmental Investment Agency should require a due diligence review:

- Certified copies of memoranda of articles of association.
- Location of the registered office in the country of domicile.
- List of directors of the company and local representatives (if company is foreign owned).
- Type of agricultural production - crop, livestock, processing, etc. - proposed.
- Previous experience of this type of investment.
- Overview of business plan - production model and alternatives, number of hectares, export versus domestic sales, timeline, etc.
- Ongoing/past agricultural activities.
- Involvement in any tenure rights disputes/violations and/or other environmental or social disputes/violations.
- Copy of most recent financial statements or, if company is new, copy of bank statement showing capital for investment.[i]
- Copy of company’s commitment to responsibly sustainable investments in land.

For commodity procurement, the Agency should require additional information:

- Analysis of risks in the supply chain.[ii]
- Copy of strategy to respond to identified risks in the supply chain.[iii] This should begin with an initial risk assessment that may be expected to trigger enhanced, issue-specific assessments that may include stakeholder consultations, monitoring and civil society engagement.[iv]
- Copy of report on supply chain due diligence.[v]

Once this initial information is provided, the due diligence review should then focus on investigating the investor and its practices. This includes:

- Gauging the reputation of the business enterprise, both internationally and regionally.[vi]
- Reviewing enterprise's sophistication and transparency and assessing if it has the means to operate as proposed, including a review of its financial capabilities.[vii]
- Identifying any past projects the business has conducted and how it performed in terms of economic production, respect for human rights, and community interaction.[viii] Any information about the enterprise violating tenure rights in previous contexts should trigger a complete and detailed explanation from the investor.[ix]

2. Governmental Investment Agency links business with appropriate local government authorities and communities.

Linking business with landowners supports company due diligence and clarifies land availability and the appropriate procedures for land transfer. This can support land rights protections and enable social safeguards. To do so, the Governmental Investment Agency should:

- Work with other government agencies to canvas the country to determine which communities are interested in engaging with investors by visiting villages and/or making public announcements via media (e.g., television, radio, newspapers, etc.). This may require some training and capacity-building for local-level officials to facilitate these and future consultations with communities that go beyond relying on the review of existing maps of public land.
- Conduct a preliminary review of information pertaining to potential sites and become familiar with relevant customary and traditional practices.
- Seek out information about pending, previous or potential land and resource conflicts in the area, including issues related to intra-household land allocation issues and conflicts with minority or vulnerable groups.
- Review available information on local land uses and livelihood activities, as well as the existing customary land tenure system, and begin the process of identifying potential impacts, benefits and risks to the community if the proposed project were to be approved.

References

[i] See FAO, Safeguarding Land Tenure Rights in the Context of Agricultural Investment 50 (Governance of Tenure Technical Guide No. 4 2015).

[ii] See OECD and FAO, OECD-FAO Guidance for Responsible Agricultural Supply Chains 33-36 (2016), available at <http://mneguidelines.oecd.org/OECD-FAO-Guidance.pdf>.

[iii] See id. at 36-37.

[iv] See id. at 34.

[v] See id. at 38-39.

[vi] FAO, *supra* note i, at 51.

[vii] Id.

[viii] See International Institute for Sustainable Development, The IISD Guide to Negotiating Investment Contracts for Farmland and Water (2014), available at http://www.iisd.org/sites/default/files/publications/iisd-guide-negotiating-investment-contracts-farmland-water_1.pdf.

[ix] See FAO, *supra* note i, at 50-51.

GUIDEBOOK SECTION

Phase 2: Community Engagement and Assessments

Phase Roadmap

During this phase, the government's role is to facilitate consultations between the investor and land rights holders and to ensure assessments of community capacity, environmental and social impacts, and land value are conducted in accordance with national law.

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

- 1 Governmental Investment Agency screens the business to ensure it complies with national laws and policies for land-based investment.
- 2 Governmental Investment Agency helps the business identify potential investment locations.
- 3 For selected communities, local officials ensure community leaders and members have strong systems and safeguards to engage with a business regarding a potential investment.
- 4 Local officials help the business investigate the potential investment site and begin to understand the communities and individuals who use it.
- 5 Local officials introduce the business to the community.
- 6 Local officials ensure the business holds initial meetings with community leadership.
- 7 Local officials ensure the business and community leaders inform all community members through a series of meetings.
- 8 Local officials provide official notice of intent to invest.
- 9 Local officials ensure the business encourages and respects each community's decision to halt or proceed with the investment.

Task 2: Conduct Community Assessments

- 1 Local officials support the creation of impartial assessment teams.
- 2 Local officials ensure the business introduces the assessment process to the community and develops an assessment engagement plan.
- 3 Local officials ensure the business conducts the community capacity assessment.
- 4 Local officials ensure the business conducts an ESIA.
- 5 Local officials inform and approve LRP or RAP developed by business, if necessary
- 6 National government facilitates land valuation and shares the results with the business and community.
- 7 Local officials support the business and community in developing a compensation package.

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

Best Practices

More often than not, governments lack the resources to identify suitable land for investment that is in keeping with international standards. Government should establish policies that allow businesses with the support of civil society to engage directly with local authorities and community members around a possible investment, regardless of whether the investment is taking place on private, communal or public land. Government officials at the local, regional and national level should support and monitor the process as businesses engages with the community and conduct their impact assessments. This means ensuring the business:

- Conducts due diligence up front, to identify potential risks and make an informed decision before investing additional resources.
- Understands as much as possible about the legal status of the land, the formal and customary rules and practices that govern it, the users of the land, past and present disputes surrounding the land and its resources, and the demographics of the surrounding communities.
- Is informed by conversations with multiple sources, including interviews, consultations and group discussions with government, civil society, community leaders and community members.

For an investment to succeed over time, the business and community must foster strong interactive relationships through regular community engagement and consultations. Good consultation should:

- **Be representative and inclusive.** To be effective, consultations between the business and communities must include the active participation of a broad cross-section of the affected community and must actively include groups that are frequently under-represented in decision-making forums (such as women, youth and ethnic minorities).
- **Consist of multiple meetings.** Thorough consultations seldom occur at a single event, because people need to digest information, think about their situation and formulate questions. Approaching consultation as a process - as a series of engagements - ensures that community members have adequate information and opportunity to consider the merits and drawbacks of a proposed investment so they can make a truly informed decision. Upfront efforts will help to identify, address and consider the diverse concerns of different stakeholders and establish open communication that can continue throughout the life of the investment project. This can help avoid disputes, grievances and challenges over the long-term.
- **Involve two-way communication.** The community should be provided useful and transparent information to help community members decide whether they are interested in the investment. It is important that the business listens to and receives valuable information from community leaders and community members to determine whether this is the right place for investment.

The engagement and consultation process should be in accordance with FPIC. FPIC 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 enterprises 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 enterprises 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.

For more information, see the [FPIC Primer](#), as well as FAO's guide [Respecting Free, Prior, and Informed Consent](#) (2014) and Oxfam's [FPIC Flashcards](#) (2015).

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] Id. at 33.

Step-by-Step Guidance

1. Governmental Investment Agency screens the business to ensure it complies with national laws and policies for land-based investment.

Before the business begins searching for potential land or engaging with communities, Agency officials should provide the business with a package of information to facilitate the completion of the legal and social requirements related to investments in land. By doing so, the government will be able to:

- Conduct due diligence on the business to understand its core policies, activities, reputation and involvement in land-related investments.
- Ensure that the investor's policies, proposed projects and suppliers comply with national laws and international best practices and align with national development priorities.
- Review investment proposals, particularly where land is held by communities that have limited experience and understanding of the law and their rights, and who are in a weak position for negotiating fair transfers of tenure rights.

2. Governmental Investment Agency helps the business identify potential investment locations.

The Governmental Investment Agency should coordinate with other governmental institutions to help the investor identify areas where investment should take place. Ideally the government would be able to help the business:

- Assess the environmental, economic, and social suitability of the proposed investment for potential areas,
- Identify communities that might be affected,
- Identify existing conflicts or boundary issues between neighboring communities,
- Determine the population in the proposed area, and
- Provide insight regarding the capacity of local authorities to support the business in introducing a potential investment to a community.

3. For selected communities, local officials ensure community leaders and members have strong systems and safeguards to engage with a business regarding a potential investment.

To ensure that land investments are responsible, sustainable, and will benefit the community, appropriate local officials should ensure the community has strong systems and safeguards in place that are rooted in good practices and accomplishes the following:

- Community leaders delegate authority to a community Land Investment Committee, which will lead efforts in preparing the community for a possible investment and represent the community in negotiations with prospective investors.
- Land Investment Committee drafts and adopts community rules - called community **by-laws for responsible investment** - that specifically govern land investments, particularly how decisions will be made about investors accessing and using land in the community.
- Land Investment Committee, in accordance with the process laid out in the by-laws, creates a Negotiation Team to represent the community in negotiating with the business.
- All community members are informed about their rights and understand benefits and risk associated with investments.
- Community members develop land use plans that identify development priorities and designate areas that might be suitable for investment, if appropriate.
- Community members understand the monetary value of land and natural resources, particularly the area designated for investment.[i]

If a community is not prepared to engage with an investor, local officials should identify a qualified CSO to work with the community build its capacity to engage and negotiate with the business.

4. Local officials help the business investigate the potential investment site and begin to understand the communities and individuals who use it.

After identifying potential investment locations, the business will need to learn about the institutional, environmental and social situation at each potential investment site. The business should be gathering as much background research as possible on the local land context, as different regions of a country may have entirely different land governance practices and customs.

It will be important for the government to provide the business with the following:

- **Information about the site's land status, land users and right holders.** The business will need to understand who currently is using the land and who claims ownership or other rights to the land, as well as who has used or claimed the land in the past. For instance, has the government expropriated the land or does it plan to expropriate the land to pave the way for investments? It is important for the business to look broadly to identify right holders and land users, as even neighboring communities may have claims to land or may be impacted by changes to the land use (for instance, they may have locally recognized rights to gathering wood from the land or accessing water on the land). Some uses may not be immediately evident, and it is therefore important to proactively inform the business whether anyone is gathering or using resources, such as fruits, nuts, wood or medicinal herbs.
- **Information about the local land tenure system.** The business should learn how the land is governed (for instance under formal law, customary law or both), whether and how land rights and uses are documented (for instance, are they registered and, if so, where one can find that information), and what institutions are responsible for land governance matters (which bodies are responsible for land allocation, regulation of land use, land mapping, land rights formalization and dispute resolution).
- **Information about past, current and potential land and resource issues and conflicts in the area.** Equipping the business with information on historic, active or anticipated land-related conflicts can help it assess the potential risk to its investment. A new investment may exacerbate latent tensions or cause new issues to arise. If institutional mechanisms for resolving conflict are weak, latent conflicts can pose a serious risk to the investment.
- **Information about site-specific social demographics.** It is important for the investor to approach communities in a culturally appropriate manner. The business should learn as much as possible about the

demographic profile (e.g., education levels, economic status, modes of communication, etc.) of the communities and identify key stakeholders. Understanding what language is spoken and becoming familiar with the community profile and community practices will help the business select an appropriate facilitator and interpreter. If the business is aware of vulnerable segments of the population it will be better able to predict which community members may require extra help from a facilitator to voice their interests and concerns.

5. Local officials introduce the business to the community.

When the business has initial information to structure a productive and culturally appropriate interaction, government officials can introduce community leaders and members to the business in each prospective investment site. The purpose of this interaction is for the business to engage local leaders and community members to validate the availability and status of the land and understand how the investment will impact each community. Local CSOs should also be included at this stage to facilitate engagement and dialogue between the community and the business.

In preparation for engaging with community leaders and members, the government may need to help community leaders and members identify an appropriate entry point to engage with the investor. Consult [Supplemental Resource: Leveraging Land Investment Committees](#) if the community needs assistance creating this entry point. Each community is likely to have protocols for approaching community members for a consultation.

The business will also need to engage a qualified facilitator. This should be a neutral third-party who is familiar with the customs of the local community. It may be a government agency, a district official or another person or entity (such as a local CSO) with knowledge of the local landscape and context.[ii]

6. Local officials ensure the business holds initial meetings with community leadership.

The business, with the support of its facilitator and/or local CSOs, should meet with community leaders to:

- Validate the site-specific background research and address outstanding information gaps. As a reminder, these topics (discussed in more detail above) include the land status, ownership and uses; local land tenure system; land and resources conflicts; and social demographics of the community. The government can use [Supplemental Resource: Site-Specific Questionnaire](#) to guide this part of the meeting.
- Provide complete information about the prospective investment.
- Understanding leadership dynamics and determine whether community leadership has an initial interest in the investment.
- Ask leadership to identify other community leaders the business should meet, such as leaders of minority groups, women's groups and religious groups.
- Secure permission from community leadership to consult with community members, even if leaders say they are representatives and wider consultation is not necessary.

7. Local officials ensure the business and community leaders inform all community members through a series of meetings.

Local officials should ensure that the business works with community leaders to coordinate a series of meetings with each affected community to introduce the business and the potential project and continue addressing questions. Equipped with the site-specific background research, invite as many local right holders and land users as possible to initial consultations, referring to best practices for holding community meetings in the introduction section. [Supplemental Resource: Community Consultation Checklist](#) can also help guide consultations.

8. Local officials provide initial notice of intent to invest.

If the community provides its consent to move forward, the government should provide initial notice to the broader community of the business's intent to invest giving initial notice is both a best practice and an important step in effective and socially responsible engagement.

Notice should be provided 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 appropriate contact information. Widespread public postings are one way to distribute the notice.

9. Local officials ensure the business encourages and respects each community's decision to halt or proceed with the investment.

Once the business has presented all of the information to the community, and once all community members have had the opportunity to raise questions, concerns and complaints, it is time for the existing land users and right holders to decide whether to halt or proceed with exploring the investment further.

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, a community may have agreed to move forward, but there are still many steps remaining (including assessment, negotiation and contracting) before the transaction is complete.

In some cases, it might be wise to use a memorandum of understanding (MOU) between the business and the community as a resource to support inclusive negotiations by laying out the terms, conditions and stakeholder roles for the negotiations process. [Supplemental Resource: Template for LOI/MOU](#) provides a sample MOU for reference. Additional resources include:

- FAO, [Respecting Free, Prior and Informed Consent](#) (2014).
- USAID, [Operational Guidelines for Responsible Land-Based Investment](#) (2015).

References

[i] See Namati, Community Land Facilitators Guide 73 (2016).

[ii] For a discussion of the hallmarks of good facilitation and the important traits of an effective facilitator, see id. at 21-24.

Task 2: Conduct Community Assessments

Best Practices

This section provides guidance on the type of information that the business must gather, assess and incorporate in the final configuration for the investment to be considered socially responsible. The government must ensure that the business hires a neutral third party (or government official, depending on national law) to:

- Examine the capacity of each community to participate in an assessment;
- Assess any actual or potential environmental or social impacts, including impacts on land uses, land rights and livelihoods from an investment; and
- Value the land to determine full and fair compensation.

To inform whether both the business and the community should proceed with the investment, three assessments should be conducted. Although there are overlapping aspects and steps to each assessment component, for the sake of clarity this guide presents each component as a standalone assessment. Results should be reflected in the ongoing consultation and engagement.

- **Community Capacity Assessment:** It is 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 (ESIA), land valuation and negotiation and contracting.[i]
- **ESIA:** This assessment identifies and gauges actual or potential impacts from the proposed investment project on the environment and 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]

These assessments will also be utilized in the case that alternatives are exhausted and displacement is unavoidable, leading to building of LRP and RAP. The business should 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.

References

[i] See African Union, Guiding Principles on Large Scale Land Based Investments in Africa 15-16 (2014), available at <https://hdl.handle.net/10855/22829>.

[ii] See FAO, Voluntary Guidelines on the Governance of Tenure, Fisheries, and Forests in the Context of Food Security 4 (2012) (“Business enterprises should act with due diligence to avoid infringing on the human rights and legitimate tenure rights of others.”); UN Office of the High Commissioner for Human Rights, Guiding Principles on Business and Human Rights 5 (UN Human Rights Council 2011) (“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] See Nigel Edmead, Technical Workshop Presentation on “Gender Issues in Designing and Setting Up Land Information Systems and Databases: Experiences from Ghana, Zambia and Uganda” (May 2011).

Step-by-Step Guidance

1. Local officials support the creation of impartial assessment teams.

Given the complexity of the assessments, the business should finance one or more experienced third parties to design and conduct the capacity assessment, ESIA and land valuation. The government's role is to participate in the process and support the hiring of third-party experts. Inadequate assessments often result from the failure to secure appropriately trained and credentialed technical professionals with experience working with communities. An expert third party brings reliability and technical expertise.

A third party also lends credibility and objectivity to the findings. It is important that the assessment teams are trusted and respected and that their relationship to the business enterprise is structured in a manner that supports that independence, as the experts will need to act on behalf of both communities and the business enterprise and navigate real and perceived conflicts of interest. To promote objectivity, the selection of a third party could be done through a tender process based on qualifications and experience. The services, financial payments and transaction could also be managed by a party that does not have an interest in the investment project, such as an escrow company or a financial services provider. Appropriate local officials should ensure input from community leaders on the candidates informs the hiring process. This will ensure the community is comfortable with the parties who will be conducting the assessment.

In addition to possessing the requisite expertise and professionalism, the assessment teams should have the following traits:

- 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 where 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, at least one person on 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. Local officials ensure the business introduces the assessment process to the community and develops an assessment engagement plan.

By now, consultations with community members should have made the community and its leaders aware that an assessment could be conducted during the investment feasibility determination. Now, they should be explicitly informed of the desire to perform an assessment and should be asked for their informed consent (either orally or in writing) before activities begin. The business should use this meeting to introduce the planned assessment teams, answer questions, develop an assessment engagement plan and confirm the community is comfortable moving forward.

During this time the business and assessment teams should also develop and be prepared to discuss the research methodology for the assessments. [Supplemental Resource: Land Rights Assessment Tool Kit](#) contains resources and information to develop a customized assessment to identify potential issues and risks related to economic, environmental, social and land rights issues. The research methodology should describe:

- Scope and duration of study;
- Location and boundary of the potential investment site, along with areas near the site that could be affected by the investment;
- Thematic areas and issues that will be assessed;
- The different types of land holders and users potentially affected by the investment;
- Types of qualitative and quantitative research techniques that will be used;
- Tailored questionnaires for each type of land holder and user; and
- Links to the community engagement plan.

Refer to the introduction for best practices for holding community meetings.

3. Local officials ensure the business conducts the community capacity assessment.

The community capacity assessment looks at 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. This will lead to designing and implementing robust, locally adaptable projects.

It is not uncommon for communities and individual land holders and users to lack experience with commercial land transactions. In the event the community capacity assessment identifies gaps in the community's ability to meaningfully participate in the process, the business will need a plan to address these gaps, such as through trainings or technical support. Without such support, if the business were to proceed with the investment, the outcome would fail to comply with international best practices such as FPIC and could produce unintended risks and consequences for the investment and the community.

To conduct a community capacity assessment, the assessment team will need to:

- **Decide the “who:”** Determine assessment population of interest, which is to say, whose capacity needs to be assessed. Depending on the size of each community, it may be too time consuming to assess the capacity of every land holder and user. Focus should be on community leaders and anyone chosen by a community group to represent their interests (as decided by each group as part of the assessment engagement plan). Apply a sampling methodology to assess the capacity of individuals who were randomly selected from among the different groups, taking care to include vulnerable groups such as women, youth, elderly, ethnic or religious minorities, indigenous people, and pastoralists.
- **Decide the “what:”** Determine what capacities need to be assessed. Sample categories could include:
 - Land rights awareness: Is the individual aware of his or her rights under national law and local custom or able to describe his or her interests in the land?
 - Communication and negotiation: Is the individual able and confident to voice questions in group discussions, voice disagreement and propose alternatives?
 - Land valuation and compensation: Is the individual able to assess the value of his or her interests or rights to the land? Is the individual aware of different compensation options that he or she can request?
 - Contract terms and conditions: Is the individual literate? Does the individual understand how contracts work? Is he or she able to understand basic contract terms? Does he or she understand what is going to be agreed on?
 - Leadership: Is this individual able to represent the interests of other community members? Are there evident power struggles between leaders that could undermine the process? Are there conflicts of interest that undermine the individual’s ability to represent the community fairly?
 - Committee structure: If a committee was established to represent a community’s interests, does it operate under agreed upon rules?
- **Decide the “how:”** Determine how to assess the capacity of leaders and community members. Consider whether to use quantitative and/or qualitative methods. If quantitative methods are chosen, the team will need to develop a scale (such as a 1 to 4 scale for low, basic, moderate and high capacity). For both methods it will need to determine the method of data collection: will the team hold semi-structured interviews with each participant, ask participants to fill out a written self-assessment survey, or hold focus-group discussions?
- **Perform the assessment and validate findings.** After designing the assessment, the team must conduct the assessment and validate findings at a series of community meetings. They should share findings in a meeting that brings together all relevant stakeholders and held in accordance with the agreed upon assessment engagement plan. During this meeting, all stakeholders should be able to ask questions and express their opinions on the findings. The team should consider the reactions of the community and document them in the final version of the assessment. The team should then outline next steps.
- **Develop and implement a plan to build community capacity.** In most cases, the assessment will determine that a community does not have the needed skills or information to participate in subsequent assessments and contract negotiations, so the assessment team will need to create a plan to build that capacity. The following are suggested activities that the assessment team (or other experts or CSOs) could undertake:
 - Provide training on basic land and natural resource rights, as established in international standards and best practices, 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 considered 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 Land Investment Committee to develop rules to ensure it is accountable and that expectations and roles are clear.
- Consider providing financial support to the community so it can retain independent technical experts and advocates to assist the community throughout the process. The experts can help the community to engage appropriately with the business enterprise, evaluate impacts of the proposed project, negotiate fair contract terms and evaluate the contract. Taking steps to ensure that the experts provide independent advice to the community will give the community more trust in that advice and confidence in the contracting process.

4. Local officials ensure 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. It is the government's responsibility to enforce this obligation and ensure the business hires neutral third-party experts to conduct the assessment. Appropriate local officials should also support robust community participation in the assessment's implementation.

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. Appropriate local officials should support the business in exploring alternative investment models that mitigate the identified impacts and resolving existing disputes before the acquisition moves forward. As part of this process the government should also play a role in reviewing and validating the findings of the assessment. The community and the business should use the assessment findings to update the investment framework.

5. Local officials inform and approve LRP or RAP developed by the business, if necessary.

Displacement is rarely acceptable and will lead to a business suffering international scrutiny and condemnation, so it only should be used as a last resort. Governments should dissuade displacement even at the cost of impacting the investment's scope. [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.

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.[i]

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.[ii] Government's role should be to approve any LRP or RAP and periodically monitor and regulate the LRP and RAP to ensure the company indeed works to restore the livelihoods of displaced people.

6. National government facilitates land valuation and shares the results with the business and community.

Valuation of land must typically be done by professional valuers licensed by the government. The Royal Institute of Charter Surveyors (RICS), a professional body promoting and enforcing internationally recognized standards in valuation, provides useful guidance on best practices for land valuation. The [RICS Valuation - Global Standards](#), commonly referred to as the RICS Red Book, is a comprehensive resource with practical implementation guidance. Refer also to the [Valuation and Compensation Primer](#) for more guidance.

The following are high level principles that should be taken into account by the government:

- **Follow national and international standards.** The valuation should conform to the methods and procedures agreed upon between the government, business and the community, in accordance with international best practices such as those followed by RICS. The government's valuation should reflect the true and longer-term livelihoods value of the community's assets. For projects with IFC funding where the government is undertaking the valuation (for example in the event of compulsory acquisition), the government should have a third party verify its calculations and confirm that they align with IFC Performance Standard 5 and accurately reflect the replacement value of the property in question.[iii] Indeed businesses -through the third party support of their assessment team - are encouraged to review and validate any government valuation approach in any context, regardless of IFC involvement.
- **Account for both economic and non-economic values of the land.** Valuation calculations should include the cost of replacing natural resource access and non-economic, land-based livelihood sources (such as forest or grazing access).
- **Incorporate into LRP or RAP, if relevant.** If an investment cannot avoid displacement, as described previously in Step 5, then land valuation will be essential in developing a comprehensive and fair LRP or RAP.
- **Document and share findings.** Share the findings and discuss the adequacy of the valuation with each community, as established in the community's assessment engagement plan. The calculation of values should be transparent and easily comprehensible to all individuals whose land rights and uses were the subject of valuation.[iv]
- **Promote transparency.** To the extent possible, work with all the stakeholders to make valuation information and analysis publicly available.[v]

7. Local officials support the business and community in developing a compensation package.

The business should engage with each community and affected land rights holders and users to determine who is entitled to compensation and then begin constructing the compensation package. The valuation calculations should serve as the basis for compensation, but should also be supplemented by efforts to replace or augment land-based livelihoods, as well as local people's perception of value and their requirements for the compensation value.

Compensation for displacement as part of a LRP or RAP should also be based on the value determined and generally exceed the determined land valuation to enhance the livelihoods of affected populations.

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.

Local officials should ensure that the business:

■ **Develops a compensation and benefits framework** that includes:[vi]

- Who should be compensated:
 - Women
 - Men
 - Community leaders
 - Pastoralists
 - All other land holders and users that will forego use of the land or begin to use it differently because 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,[vii] and grazing and cropping areas
 - Non-tangible values, including livelihoods, social, cultural, religious, spiritual and environmental.[viii]
- 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 resource 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

■ **Consults with land rights holders and users about preferred forms of compensation.**

Communities and individuals entitled to compensation should be consulted on how they would prefer to be compensated.

- Ensure the business consults with all stakeholders, as different groups may favor different forms of compensation.
- Rights holders and users should be offered multiple compensation options from which to choose.

- The business should consider non-monetary forms of compensation. Cash compensation is rarely sufficient to restore livelihoods because it typically is spent on items that do not support livelihoods or fails to capture the land's full livelihoods value, so every effort should be made to provide or facilitate access to similar resources elsewhere.[ix] If necessary to provide for full livelihoods compensation, the business should offer a combination of alternative land, employment opportunities, education and skills training, and infrastructure improvements as part of the compensation package.
- When offering land-based compensation, replacement land should be of equal productive use or potential and located in the vicinity of the acquired land. The business enterprise should also 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.[x]
- Outgrower arrangements require thoughtful planning and execution, and investors should plan to dedicate extra time and resources to managing outgrower relationships. Consult [Supplemental Resource: Best Practices for Outgrower Arrangements Literature Review](#).

■ Structures payments in a sustainable and culturally acceptable manner.

- If the community or individuals prefer cash compensation to replacement land, the business should still offer non-land-based options in addition to cash, such as employment opportunities or credit assistance for establishing businesses, to ensure livelihoods are maintained or enhanced.[xi]
- Cash compensation should be accompanied by comprehensive financial awareness training for the community
- Scheduled payments should be broken up and made over time, rather than as a onetime lump sum. 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, large award. Establish clear timelines and milestones associated with these payments.
- The business should consider establishing a village trust to handle distribution of benefits. Local leaders cannot always be trusted to make distributions to women and other vulnerable groups, so payments should be made either into a trust or directly to individual beneficiaries.[xii] Assist the community in creating and managing a village trust if it so desires. The trustee could be an independent third party.
- Payment of compensation must be made (or made available for future payment through an escrow account) before the investor takes possession of the land and related assets.[xiii] Inflation should be considered. The ability to pay full and fair compensation should not be contingent upon future revenue streams produced by the investment.
- Payments should be made to men and women individually and separately. Male heads of households may not adequately look after the needs of women and children when spending proceeds[xiv] and may not equitably share the payment with their spouses. Individualized payments to women will ensure that they receive their fair portion of the overall compensation award.

- **Documents 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 and community.

References

[i] 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

[ii] 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

[iii] IFC, Guidance Note 5 ¶ GN34 (2012).

[iv] Id. at ¶ GN 22.

[v] See Royal Institution of Chartered Surveyors, Valuation - Professional Standards: Incorporating the IVSC International Valuation Standards 20 (2015); International Valuation Standards Council, Code of Ethical Principles for Professional Valuers 9-10 (2011), available at <https://www.ivsc.org/standards/international-professional-standards/consultation/code-of-ethical-principles#tab-documents>.

[vi] 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 <http://landportal.info/sites/landportal.info/files/TowardsFairCompensationProtocol-FinalDraft.pdf>.

[vii] IFC, Performance Standard 5: Land Acquisition and Involuntary Resettlement ¶ 5 (2012).

[viii] See Nigel Edmead, Technical Workshop Presentation on “Gender Issues in Designing and Setting Up Land Information Systems and Databases: Experiences from Ghana, Zambia and Uganda” (May 2011).

[ix] IFC, Guidance Note 5 ¶ GN22.

[x] Id.

[xi] Id. at ¶ GN24.

[xii] USAID, Operational Guidelines for Responsible Land-Based Investment 45 (2015).

[xiii] IFC, Performance Standard 5 ¶ 9.

[xiv] FAO, Compulsory Acquisition of Land and Compensation 40 (Land Tenure Studies No. 10 2008), available at <http://www.fao.org/3/a-i0506e.pdf>.

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 legal support and counsel, and the community. This process should be informed by due diligence findings from Phase 1, ongoing community engagement, and results from community assessments conducted in Phase 2.

Task 1: Negotiate and Draft the Contract

- 1 Local officials ensure that the community has the ability to negotiate a Letter of Intent that protects the community's interests.
- 2 Governmental Investment Agency incorporates results of LOI negotiation and other responsible investment principles into investment agreements.

Task 2: Review and Sign the Contract

- 1 Governmental Investment Agency reviews documentation of LOI and other consultations.
- 2 Local officials work with the business to solicit and obtain final community consent to the investment terms.
- 3 Local officials provide the community with notice of intent to transfer the land, and the business obtains a formal lease.
- 4 Local officials and business convene meeting with community for final contract signing.

Task 1: Negotiate and Draft the Contract

Best Practices

A land investment contract plays an important role in memorializing the clear rights, responsibilities and processes that have been defined under Phase 2. The government is responsible for representing and protecting the interests of the communities living in and around the investment site particularly because the bargaining power between the business and the community is inherently unequal. The government should ensure the community receives appropriate legal support and may want to review drafted contracts. Importantly while some official lease agreements are often negotiated between the business and a government agency at the national level, government officials should ensure that the interests of the community are represented during all stages of the negotiation. This requires the government to:

- Take into account local interests identified through consultation and engagement and impact assessment under Phase 2.
- Inform community members of their rights and assist them (including by providing professional assistance if necessary)[i] in developing their capacity to negotiate full compensation, benefits, and other terms of agreements.[ii]
- Ensure the community receives all comprehensive information, the negotiation process is non-discriminatory and gender sensitive, and all relevant people are informed and engaged in the decision-making process.[iii]
- Ensure the business (or appropriate local officials if the government owns the land) seeks FPIC from all affected right holders. Beyond asking community members for a simple "yes" or "no" in response to the 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.

- Include responsible investment contracting clauses in all documents related to the investment land.

When overseeing the initial stages of contract negotiation between the community and the investing business, the government should adhere to best practices for responsible contracting. Although this guidebook provides a general overview of the process, other experts in this field have compiled more robust resources to facilitate capacity building and understanding around key principles for responsible contracting. Two of the best sources for this information are:

- [Investment guidance from the Columbia Center on Sustainable Investment](#) (CCSI) - These guidance materials were developed by the CCSI, which is a joint project of the Columbia Law School and the Earth Institute at Columbia University. CCSI is both an engine of academic research and a forum for stakeholder discussion, with the ultimate goal of promoting foreign direct investment that comports with the UN's Sustainable Development Goals.
- The [IISD Guide to Negotiating Investment Contracts for Farmland and Water](#) - This guide is produced by the International Institute for Sustainable Development (IISD) with the purpose of promoting investment agreements that are socially, ecologically, and economically sustainable. The IISD is funded by multiple governments and international agencies, which rely on IISD expertise to guide sustainable development policy in key areas like international investment and climate change.

Step-by-Step Guidance

1. Local officials ensure that the community has the ability to negotiate a Letter of Intent that protects the community's interests.

A Letter of Intent (LOI) mapping out expectations for appropriate inclusivity, consultation and consent is an important starting point for the contracting process between the business and the community.[iv] The LOI outlines the principles that will govern the rest of the contracting process.

Several factors could inhibit communities and/or individual land holders and users from participating as informed and empowered contracting parties. Omitting or limiting the involvement of the full community contravenes principles of good contracting. Given this, the government should:

- Provide oversight during the early stages of a business's interaction with the community to ensure that the community is given the opportunity to voice its concerns and say "no" at any point in the process. This will ensure that the investment is built on sound principles of informed consent, improving the ultimate outcomes for all parties.
- Throughout the process of negotiating and drafting the LOI, the government should ensure that the business upholds the obligations of responsible community consultation. [Supplemental Resource: Community Consultation Checklist](#) provides guidance for the processes that the business should undertake when consulting with the community.

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 that will be included, along with their roles, rights and responsibilities;
- A description of any professional or legal support that the business enterprise will provide to the community during the contracting process;
- Shared objectives between business enterprise 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 business enterprise will undertake with the community and individual women and men land holders and users;
- A description 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](#).

2. Governmental Investment Agency incorporates results of LOI negotiation and other responsible investment principles into investment agreements.

If contract negotiations have materially changed the project concept, the government and business should update investment agreements to reflect those changes.

After these revisions, the government should consult [Supplemental Resource: Final Contract Checklist](#), as well as due diligence research and international best practices guidance, 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 22 (2012) ["VGGT"].

[ii] African Union, Guiding Principles on Large Scale Land Based Investments in Africa 15-16 (2014).

[iii] VGGT, supra note i, at 23.

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

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 companies and governments.

This means that:

- A neutral third party should review the contract to validate that it meets the needs of community members and does not cause adverse social impacts.[i]
- The business enterprise should seek the final consent from the community before signing the contract.
- The business enterprise should make the contract publicly available.

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

Step-by-Step Guidance

1. Governmental Investment Agency reviews documentation of LOI and other consultations.

The business should be required to submit documents related to any investment to the appropriate government authority. Because domestic laws and policies will play a key role in the development and implementation of a contract, the legitimization and enforcement of the LOI will occur with and through national and local government authorities.

The project documentation should ideally include all potentially relevant information around the investment. The Governmental Investment Agency, along with other appropriate institutions, should review:

- Letter of Consent from community leaders
- Signed meeting minutes from community member meetings
- Minutes from district level meetings that might have taken place
- Documentation related to the incorporation of the business enterprise, including:
 - Memorandum of Articles of Association for the business
 - Proof of citizenship (to confirm whether investor is a host country national or foreign)
 - Business's annual returns to confirm profitability
 - Final business plan
 - Evidence of investment capital
 - Details about employment opportunities offered by the business enterprise investment and other benefits to affected communities
- Information about communities
 - Names of villages
 - Geographic area of each village
 - Population of each village
 - Economic activities done in the village
 - Forms of tenure present
 - Size of land allocated to the business and other businesses (if available)
- Findings from ESIA.

2. Local officials work with the business to solicit and obtain final community consent to the investment terms.

Consent must be provided before project implementation begins. The government and the business should hold a final community meeting to ratify and memorialize the community's decision to halt or proceed.

- Consent should reflect the collective will of the community, although this may not mean consent requires the unanimous agreement of all individuals within the community.[iii] As previously mentioned, consent will be dependent on context and the decision of the company, third party arbitrator, and community.
- However, if there is evidence or there are claims at the meeting that affected community members do not support the project, the business enterprise should identify the dissenting members with specificity and renew the consultation and engagement process to determine if they can be persuaded to agree.[iv]
- In addition, community members should retain the right to withdraw consent at any time "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, the business enterprise should draft meeting minutes reflecting the community's consent and invite community members to sign the minutes.
- Determine final investment configuration based on community responses and counter-offers to proposed contract.

3. Local officials provide the community with notice of intent to transfer the land, and the business obtains a formal lease.

When the land is government-owned, the government should provide the community with final notice of intent to transfer it over to the business enterprise.

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 business, appropriate local officials and community leaders to monitor the process.[vi]

4. Local officials and business convene meeting with community for final contract signing.

The final contract should be signed by the parties who were identified in the LOI and contract negotiation process, or by those who have replaced them in the case of death, illness, or migration. 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 identified from the community in consultation process in Phase 2 of this guidebook should also sign the contract as witnesses. Photographs and video are common ways of documenting final contract signing events.

If the community is not an actual party to the agreement - which could be the case in some countries - it is critical that the business sign an LOI or MOU with the community as discussed in the previous task. Additionally, as is true throughout this process, the government should make all possible efforts to include the community and ensure that its interests are represented.

5. Local officials share all contract details with the community.

Once the investment contract has been finalized and signed, the appropriate local officials should assist the business to make copies available to affected community members for review and validation.[vii] Copies should be distributed and/or publicly posted in local languages, taking care to ensure that copies are accessible to affected women, migrants and other vulnerable groups.

References

[i] See USAID, Operational Guidelines for Responsible Land-Based Investment 51 (2015).

[ii] Agence Française de Développement, Guide to Due Diligence of Agribusiness Projects that Affect Land and Property Rights 24 (2014), available at <https://www.landportal.org/library/resources/mokoro6042/guide-due-diligence-agribusiness-projects-affect-land-and-property>.

[iii] See UN-REDD Programme, Guidelines on Free, Prior and Informed Consent 20 (2013).

[iv] Agence Française de Développement, Guide to Due Diligence of Agribusiness Projects that Affect Land and Property Rights 24 (2014)..

[v] UN-REDD Programme, *supra* note i, at 20.

[vi] See USAID, Operational Guidelines for Responsible Land-Based Investment (2015).

[vii] See FAO, Respecting Free, Prior and Informed Consent 43 (Governance of Tenure Technical Guide 3 2014).

GUIDEBOOK SECTION

Phase 4: Implementing and Monitoring the Investment

Phase Roadmap

This section of the guidebook discusses the importance of implementing the project in accordance with the agreement and monitoring and evaluating impacts in the community.

Task 1: Prevent and Address Land-Related Issues

- 1 Local officials help the business defuse potential disputes by maintaining ongoing engagement and consultation with the community.
- 2 Local officials ensure that the business develops a grievance mechanism for resolving land-related disputes.

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

- 1 Local officials ensure that the business establishes and follows M&E practices in support of land related investments.
- 2 Local officials ensure that the business conducts follow on impact 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 create reputational and financial risk for the operation. The government can help to mitigate this risk by taking a proactive role in preventing and deescalating potential disputes. Appropriate local officials should support open and frequent communication and engagement with both the business and the community to ensure that the investment is monitored and implemented responsibly. This will help the business maintain a productive relationship with community members and local officials which in turn will strengthen the company's "social license to operate" within communities.[i]

Guidance in this section can be applied to:

- New projects to implement the concrete terms and conditions that are contained in a land contract and any agreement between the business enterprise and the community.
- New projects to mitigate unforeseen challenges because implementation will almost inevitably involve problems that were not anticipated during project planning, negotiation, and contracting.
- More established investments and companies that are trying to solve land related issues in a socially responsible manner.

While the government maintains its role as the guarantor of the community's rights, it is important that the business take responsibility for resolving disputes that arise in the course of the investment. In order to maintain the community's trust the government should ensure the business:

- Maintains **on-going engagement and consultation** with the community to prevent disputes from occurring; and
- Provides **access to remedy** by establishing a functioning, effective and accessible grievance mechanism for handling land-related disputes.[ii]

Commitments made to the community in a contract or other agreement must be strictly met, and unanticipated impacts and concerns must be identified and addressed as soon as possible. The government should help to ensure that the business adheres to the best practices for land related grievance resolution as described in this task.

References

[i] See USAID, Operational Guidelines for Responsible Land-Based Investment 50 (2015).

[ii] See FAO, Voluntary Guidelines on the Governance of Tenure, Fisheries, and Forests in the Context of Food Security 4 (2012); 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, Guiding Principles on Business and Human Rights 31-32 (UN Human Rights Council 2011).

Step-by-Step Guidance

1. Local officials help the business to defuse potential disputes by maintaining on-going engagement and consultation with the community.

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 communities throughout project implementation is therefore essential to maintaining a productive relationship with the local community and identifying implementation challenges and unanticipated impacts as early as possible.[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.

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

- Reaffirm contract terms and performance with the community.
 - Depending on the last interaction with the community, the business should meet with community members to ensure they have a complete understanding of the material terms of the agreement and that they perceive that the agreement is being implemented fully and fairly.
 - The company should spend time reviewing and reaffirming the terms of the LRP and RAP to make sure that the livelihoods of displaced people are being restored and enhanced.
 - Education activities should be designed to reach all villagers, 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 community to mitigate potential risks.
 - The business should develop an ongoing communication and engagement strategy action plan 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 village 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.

Government agencies dealing with land investment should review the business's communication practices to ensure that they meet these standards. The government can also assist by providing technical support in translating and distributing communication materials, and by helping to promote educational initiatives.

2. Local officials ensure that the business develops a grievance mechanism for resolving land-related disputes.

A factor central to responsible investment in land is whether a company ensures access to remedy by establishing a functioning, effective and accessible grievance mechanism for handling land-related disputes.[v] Guidance relating to responsible land-based investment emphasizes the need for company-based, non-judicial grievance mechanisms to complement any existing state-based, judicial grievance mechanisms, particularly where governance gaps are significant. Consult the [Grievance Mechanism Primer](#) for more guidance when carrying out this step.

Appropriate local officials should support the community in determining how the grievance mechanism should be coordinated through the business and holding the business accountable for dispute resolution where appropriate. The mechanism should comply with the [UNGP](#) criteria for non-state dispute resolution processes. Consult [Supplemental Resource: Grievance Mechanism Checklist](#) for guidance on whether the business is complying with the following criteria:

- **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, pastoralists and other vulnerable groups.
- **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.[vi]

Designing and Implementing the Mechanism

- Local officials should encourage the business to dedicate sufficient personnel and resources to designing, implementing and managing its grievance mechanism.
- Local officials should encourage the business to consult with community members to incorporate their input into the mechanism's design.
 - All categories of community members and relevant external stakeholders should be consulted, including women, indigenous peoples and other vulnerable groups, CSOs, and local government officials.
 - 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.

- Local officials should encourage the business to sensitize staff regarding the importance of identifying and respecting formal and customary land rights. The more employees are aware of the business's reasons for committing to conduct socially responsible investments, the better able they will be to manage and enforce the grievance mechanism to deal with land-related disputes seriously and effectively.
- The community 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 identify which 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.
- Local officials should work with the business and community leaders to inform community members of the grievance mechanism. Communicate in a manner in line with the communities' preferred modes of communication to share the following information:
 - Information on how individuals and communities (including both women and men) can file complaints (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.), including information on what types of complaints the business 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.

Receiving and Responding to Complaints

- Local officials should confirm 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 provide prompt confirmation documenting that it has received the complaint and will determine whether it represents a covered violation. This will provide the complainant with acknowledgement that the business is taking the complaint seriously and will be reviewing it.
- Local officials should confirm 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.
- Local officials should confirm that the business has clear procedures in place for how it will resolve complaints. 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. The complaint resolution process will go more smoothly and enjoy more community support if it incorporates some form of community involvement in reaching final decisions, as this will help to build community trust in the mechanism and make implementation of and satisfaction with the final decision more likely.

Monitoring and Evaluating the Mechanism

- Local officials should confirm that the business has a plan for monitoring and evaluating the grievance mechanism. The business should monitor and evaluate the following:

- The number of land-related complaints it receives.
 - How long it takes to respond to complaints, determine whether the complaint alleges a covered violation, 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.
- Local officials, the community and the business should share monitoring and evaluation results with interested parties and use the results to improve the grievance mechanism. It is important for the business to evaluate and demonstrate whether the grievance mechanism is functioning, accessible and effective, and make changes where necessary.

References

[i] See USAID, Operational Guidelines for Responsible Land-Based Investment 50 (2015).

[ii] See Landesa, Case Study: Kilombero Sugar Company Ltd. in Tanzania 4 (2017), available at <https://www.landesa.org/wp-content/uploads/KSCL-Tanzania-Case-Study-FINAL.pdf>.

[iii] Id.

[iv] Id. at 20.

[v] See FAO, Voluntary Guidelines on the Governance of Tenure, Fisheries, and Forests in the Context of Food Security 4 (2012) (“Business enterprises should act with due diligence to avoid infringing on the human rights and legitimate tenure rights of others.”); UN Office of the High Commissioner for Human Rights, Guiding Principles on Business and Human Rights 5 (UN Human Rights Council 2011) (“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.”).

[vi] USAID, *supra* note i, 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. In addition to helping the business earn and maintain a social license to operate, M&E can alert the business to the loss of its social license and can provide the information needed to reestablish it, and it can also provide ways of managing core business risks. There are three primary reasons for a company to dedicate time and resources to M&E:

- 1 To ensure the business’s compliance with lease terms and conditions, and
- 2 To assess the unfolding investment 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.

In short, the business must practice M&E for the life of the investment to track and address its impacts upon the communities and individual smallholders that have changed their relationship to the land for the benefit of the enterprise. The government should ensure that the business designs and implements a thorough and robust M&E plan (see [M&E Primer](#)).

Step-by-Step Guidance

1. Local officials ensure that the business establishes M&E practices in support of land related investments.

By conducting regular M&E activities, the business will be able to identify implementation challenges and unanticipated impacts earlier than they 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. For more information on the standards that the business should be pursuing, review the [Model RIPL Guidebook for Business Enterprises](#). 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 implementation 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.

2. Local officials ensure that the business conducts follow on impact assessments to evaluate impacts on communities.

Throughout the lifecycle of the investment, the business entity 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 business should assess social and environmental impact 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. This process of ensuring responsible investment may seem time consuming or costly in the short term, but it has the potential to pay important dividends of sustainable growth, increased investment, and protection of rights in the long term.

References

[i] See 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).

[iii] African Union, Guiding Principles on Large Scale Land Based Investments in Africa 25 -26 (2014). 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, Guiding Principles on Business and Human Rights 19 (UN Human Rights Council 2011).

GUIDEBOOK SECTION

Supporting Materials

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

All Supporting Materials

Phase 1 resources

Best Practices for Responsible Investment

The purpose of this slide deck is to communicate to government officials best practices for responsible investments, the responsibilities of businesses under international standards, and how governments can support businesses to meet those standards. This presentation is intended to serve as a template to support the communication of key principles for respecting land rights that companies should adhere to beyond domestic laws and policies.

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

Phase 2 resources

Leveraging Land Investment Committees

This resource is primarily intended for use by communities looking to enhance their governance structures to support responsible investment; government officials may also use it to help communities identify a focal point for engagement with investors.

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

Site-Specific Questionnaire

Use this questionnaire alongside the guidebook to support due diligence on potential investment sites.

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

Community Consultation Checklist

Use this checklist alongside the guidebook to support productive, meaningful and participatory consultations with community leaders and communities. This checklist is designed to support the initial introduction and consultation with a community and its leaders, although some meeting best practices can be adapted to other community meetings.

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

Land Rights Assessment Tool Kit

This tool kit provides guidance on supplementing an environmental and social impact assessment (ESIA) with a deeper assessment of impacts to land rights, uses and livelihoods.

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

Best Practices for Outgrower Arrangements Literature Review

The external resources summarized here 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 Letter of Intent (LOI) and final contract between the company and community, as well as within any lease agreement between the business enterprise and the government.

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

Template for LOI/MOU

This is a template for creating a letter of intent or memorandum of understanding between the business and the community or the government.

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

Final Contract Checklist

This checklist should be used when preparing and reviewing the final contract

[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 and two checklists for evaluating the community engagement plan based on established standards for stakeholder communication.

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

Grievance Mechanism Checklist

This resource provides a high-level checklist for evaluating the company-based grievance mechanism developed by the business in the course of a responsible land investment.

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