



## 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 above. In places where this is true, most land investments can be said to be responsible investments, typically the result of agreements between informed, willing buyers and informed, willing sellers. In places where this is not true (i.e. where state laws do not follow best practices or the state lacks capacity to implement best practices), a legal investment may still be carried out in an irresponsible manner

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

Unfortunately, many emerging economies lack governance frameworks embodying these best practices. If they are in place, the capacity of the government and landholding communities is often insufficient 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.

Understanding tenure-related risk in the context of land-based agricultural investments in emerging markets can be complex. Land records – if they exist – often do not reflect ground-level realities as understood by the communities and individuals owning or using the land. Land rights are likely to be unclear and poorly documented; they may even be disputed or overlapping.

The existence of underlying disputes or undocumented land rights and uses may come as a surprise to a company accustomed to operating in established markets, particularly if it learns about these communities and disputes after a land purchase or lease is made. This kind of situation can lead to conflict, resulting in wrongful displacement of a community, uncompensated loss of livelihoods, community protests and unexpected operational delays, or even a failed investment.

Fortunately, situations like these can be mitigated by looking to international standards and best practices for responsible 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.

However, knowing what steps to take to implement standards and best practices across diverse local contexts and investment models can be a challenge. 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. 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) Program, Landesa's RIPL Project is addressing these challenges by making international guidelines and best practices into guidebooks. These guidebooks offer country- and audience-specific step-by-step instructions for how to implement best practices and international standards. The goal of these guidebooks is to make 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 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<sup>[i]</sup>** 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.

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[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](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) and/or procuring agricultural commodities directly from smallholder farmers.

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

## AUDIENCE

### Guidebook Audiences

The guidebooks assume three broad investment stakeholders: the business or investors; government; and CSOs and community (including individuals within the community) and its representatives. 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 BUSINESSES

This 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 government, they must take the lead in helping to 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, businesses should be responsible for implementing international standards to ensure communities are treated with fairness and respect throughout the investment process. This means businesses upholding 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 it 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

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.
- **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.
- **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, land uses, livelihoods and food security, as well as 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 (LRP), structured sustainably and be informed by dialogue with the communities and the land rights holders entitled to compensation.
- **Coordinate grievance mechanisms.** In accordance with UNGP #31, the community leaders and Land Investment Committee should develop grievance mechanisms that meet the criteria for non-state, non-judicial dispute resolution processes. Business should pursue these mechanisms with the consultation of community members.
- **Negotiate a transparent and inclusive agreement.** Land rights holders and users must consent and say “yes” to the transaction. A formal agreement plays an important role in memorializing the negotiation and establishing clear rights, responsibilities, and processes to ensure the long-term sustainability and equity of the land transaction.
- **Monitor and enforce agreements.** Regular monitoring and evaluation (M&E) of the agreement 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, particularly if state-based mechanisms are not accessible, efficient and just.

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

## THE ROLE AND RESPONSIBILITIES OF GOVERNMENT

Government also plays an important role in responsible investment. At a high level, the government’s role is to ensure that all parties are adhering to pertinent local, national and international laws and to provide an enabling and receptive environment for a business that embraces best practices. As such, it may need to act as a facilitator or guide during the 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.
- 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 COMMUNITIES

The Guidebook for Communities is intended to be used by CSOs supporting representatives in communities engaging with government or business about a potential investment or attempting to address issues related to an ongoing investment project. This guidebook refers to the group of people representing the community 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 processes to achieve a fair, equitable and enforceable agreement.

# HOW TO USE THIS GUIDE

This Model Guidebook for Business Enterprises includes instructions and tailorable tools and resources that businesses can modify as they design and implement an agricultural investment in a responsible manner.

## GUIDEBOOK STRUCTURE

The material is organized by four phases of an investment process, 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 and Implement Policies, Commitments and Frameworks
  - Task 2: Conduct Initial Due Diligence
- **Phase 2: Community Engagement and Assessments**
  - Task 1: Engage and Consult with Land Users and Rights Holders
  - 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: Develop and Implement an Ongoing Monitoring and Evaluation Plan

## BEST PRACTICE STATEMENTS

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. The Guidebooks will help to identify and contextualize variables that are unique to the investment context. Examples of the contextual variables include:

- Sophistication and functionality of the national land governance framework and extent to which it reflects international best practices.
- Capacity of government and institutions to implement effective enabling frameworks.
- Ability and resources for business to implement international standards and best practices



- Local land governance practices.
- Agricultural commodities that are part of the investment.
- Modes of production, such as irrigation, rain fed farming, small scale farming and outgrower schemes.
- Importance of land-based livelihoods, meaning the extent to which 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, be represented and ensure the use of best practices throughout the land investment process.

## SUPPORTING MATERIALS

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

- **Phase 1: Preparing for Investment Supplemental Resources**
  - Sample Business Enterprise Policies
  - Why Land Matters: Communicating Your New Land Commitment
  - Stakeholder Mapping Template
- **Phase 2: Community Engagement and Assessments Supplemental Resources**
  - Site Specific Questionnaire
  - Community Consultation Checklist
  - Community Capacity Assessment
  - Land Rights Assessment Tool Kit
  - Risk Mitigation Analysis
  - Outgrower Best Practices Literature Review
- **Phase 3: Developing an Equitable and Inclusive Contract Supplemental Resources**
  - Template for LOI/MOU
  - Key Contract Elements
  - Final Contract Checklist
- **Phase 4: Implementing and Monitoring the Investment Supplemental Resources**
  - Designing a Stakeholder Engagement Plan
  - Monitoring and Evaluation Indicators

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](#).

# 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 four recent well-known instruments:

- [Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security](#) by the Committee on World Food Security (CFS) and Food and Agriculture Organization of the United Nations (FAO). Sometimes this document is referred to as the **VGGT** or **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**.
- [The International Finance Corporation \(IFC\) Environmental and Social Performance Standards](#), often called **IFC's Performance Standard**.

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

- Making a commitment to uphold both national law and international standards, especially where the international standards exceed the national law requirements;
- Identifying all land rights, including access, use, secondary and communal rights recognized under both formal and customary law;
- Providing notice to all land rights holders (including traditionally vulnerable groups such as women, ethnic minorities, pastoralists and migrant farmers) about the investment;
- Engaging and consulting with leaders of affected communities and individuals about how to design and implement the prospective investment;
- Recognizing and formalizing land rights;
- Asking land rights holders to 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 Concepts for Business

Underpinning and stemming from the best practices listed above are two key concepts for acceptable engagement with communities:

- Social license to operate
- Free, prior, and informed consent (FPIC)

Both of these concepts, particularly FPIC, are important for business enterprises to understand prior to engaging in a land investment.

## SOCIAL LICENSE TO OPERATE

For business enterprises to be successful, it is important that they gain the trust and confidence of the communities and all land holders and users that they will be interacting with. This trust, which takes work to both secure and maintain, is known as **social license to operate**. Social license can be defined as the measure of trust and confidence society has in a business to behave in a legitimate, transparent, accountable and socially acceptable way.<sup>[i]</sup>

Social license is built upon or damaged by the way that people view the individuals, activities, statements or policies of a business. In other words, it is based on perceptions by a number of stakeholders. Social license is not formally granted on the basis of legal or regulatory compliance: legal compliance on its own is not sufficient to ensure that a company has an enduring social license, though the existence of social license is often linked to such compliance and usually reflects perceptions of behavior in light of standards or norms.

Without this social license, business enterprises will likely face difficulty. This is true even if that very same business has a legal right to operate. In other words, it is in the best interest of the business to work with the community in a socially responsible land investment, generating an enduring social license to operate. This idea is at the heart of much of the guidance presented in this guidebook.

**Social license is most evident when it is lacking.** When social license erodes, a business begins to see the risks and damage that a loss of social license can cause. Risks and damages for businesses vary, but may include labor strikes, theft, vandalism, encroachment and general hostility towards the company and its staff. For example, a 2014 analysis found that “a major, world-class mining project with capital expenditure of between US\$3-5 billion will suffer roughly US\$20 million per week of delayed production in Net Present Value terms due to land tenure issues.” In Chile, an investor abandoned a hydro electric plant due to failure to address land rights of indigenous peoples. Losses exceeded US\$75 million and scrapped plans to invest more than US\$1 billion in the country.<sup>[ii]</sup>

Mitigating these issues can be costly and time consuming. Such mitigation can be avoided by establishing and maintaining a relationship of fairness and trust with land holders and users from the outset of an agricultural investment project. Businesses that are able to create and maintain a social license to operate tend to:

- Act fairly and equitably;
- Operate transparently;
- Sustain strong communications, engagement and consultation efforts;
- Comply with the requirements of governance frameworks;
- Operate according to best practices, such as those established by international standards and principles (for example, FPIC);
- Treat women equally and make special effort to promote and protect women's rights and uses of assets (such as land);
- Provide for fair, accessible and responsive grievance mechanisms;
- Have and observe internal policies related to social, economic and environmental impacts and mitigation;
- Engage in corporate social responsibility initiatives (that could include many of the above items);
- Provide community services and development benefits; and
- Require that their suppliers and associates embrace the behaviors described above.

The phases and tasks in this guidebook are designed to help businesses ensure these actions are taken.

## FREE, PRIOR AND INFORMED CONSENT

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

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

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.<sup>[vi]</sup> 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.<sup>[vii]</sup>

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.<sup>[viii]</sup> 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, as some businesses have learned, it is difficult to maintain a social license when surrounded by displaced land holders and users who did not have a choice. The legacy of an irresponsible land investment can beset a company and community for generations. Therefore, leading companies are treating all affected communities under the higher standard afforded to indigenous communities.<sup>[iv]</sup> “Affected communities” refers to all communities and individuals whose land rights, uses, and livelihoods may be impacted by an investment.

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 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.

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

## Best Practices for Holding Community Meetings

Broad stakeholder participation is critical at every stage of community engagement. In order to make sure all community members who may be affected by the investment participate in the business's consultation efforts, the business should follow these best practices when 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. Women should be separated from men. 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 issues, share ideas and ask questions. A number of voices are heard; one person does not dominate the conversation.
- *Meetings are informative.* Decision-makers receive the input (such as information, feedback, consent or lack of consent) needed to make decisions.
- *Meetings are action-oriented.* The community understands what the next steps are and who is responsible for completing them. Plans for additional meetings are made and date and time agreed upon.

**Document the meetings.**

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

**Schedule additional meetings.**

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

## Obtain consent from community members.

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

[i] See Sustainable Business Council, *Social License to Operate Paper* (2013) [hereinafter “New Zealand Report”], available at [https://www.sbc.org.nz/\\_data/assets/pdf\\_file/0005/99437/Social-Licence-to-Operate-Paper.pdf](https://www.sbc.org.nz/_data/assets/pdf_file/0005/99437/Social-Licence-to-Operate-Paper.pdf).

[ii] See The Financial Risks of Insecure Land Tenure: An Investment View. 2012. The Munden Project. pg. 25-27.

[iii] 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](http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf).

[iv] See e.g., UN 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).

[v] 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](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](https://www.pepsico.com/Assets/Download/PepsiCo_Land_Policy.pdf); Unilever, “Responsible Sourcing Policy,” [https://www.unilever.com/Images/responsible-sourcing-policy-interactive-final\\_tcm244-504736\\_en.pdf/](https://www.unilever.com/Images/responsible-sourcing-policy-interactive-final_tcm244-504736_en.pdf/) (last visited July 30, 2018); 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).

[vi] 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>.

[vii] FAO, *Free Prior and Informed Consent: An Indigenous Peoples’ Right a Good Practice for Local Communities*<sup>12</sup> (2016), available at <http://www.fao.org/3/a-i6190e.pdf>.

[viii] See *id.* (stating it is good practice to extend FPIC to local communities, although it is a right of indigenous peoples).

[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/>.



# PHASE 1: PREPARING FOR INVESTMENT

## PHASE ROADMAP

This phase is about getting the company ready to take on a responsible land investment by gathering the information it needs to assess whether to move forward with the investment.

### TASK 1: DEVELOP POLICIES, COMMITMENTS AND FRAMEWORKS

1. Business drafts or revises existing company land-based investment policies.
2. Business develops an implementation plan.
3. Business operationalizes and promotes responsible land-based investment policies.

### TASK 2: CONDUCT INITIAL DUE DILIGENCE

1. Business conducts initial research on the national investment context.
2. Business researches the national legal framework.
3. Business compares national framework to international standards.
4. Business maps investment stakeholders.

### TASK 1: DEVELOP POLICIES, COMMITMENTS AND FRAMEWORKS

## BEST PRACTICES

To achieve socially responsible investments in land, a business enterprise needs strong systems and safeguards that start with clear and comprehensive land investment policies. These policies should:

- Clearly affirm the business's commitment to specific international standards (such as the VGGT or AU Guiding Principles) and the application of those standards to each land investment.
- Comport with national law, but be shaped to meet international best practices, which often require efforts that go beyond what is called for by national law.
- Require the business's suppliers (e.g., vendors, contract farmers, etc.) to adhere to similar standards, and to monitoring, reporting, and verifying these standards.
- Explain how the policies relate to and are supported by other business enterprise rules, protocols and governance documents, and how the company will institutionalize, implement and enforce the policies.

- Outline or refer to specific mechanisms to achieve best practices, such as impact assessments and community consultation and engagement.
- Establish internal standards for incorporating land tenure risks into decision making.
- Be endorsed at the highest level of the enterprise, be known by relevant people working within the enterprise, include clear lines of authority for implementation and enforcement, and be publicly available.

A number of business enterprises have made their land policies and associated implementation guidance available online. These policies can provide a useful starting point for developing a policy that suits the particular needs of the business. See [Supplemental Resource: Sample Business Enterprise Policies](#) for examples of land policies and implementation guidance that companies have adopted and made public.

## STEP-BY-STEP GUIDANCE

### 1. Business drafts or revises existing company land-based investment policies.

Adopting best practices start at the company level. This is why the first step is to review the company's existing policies to see how they address land-based investments. Policies should address all types of land-based investments:

- **Acquiring new land.** A company must have policies in place for the acquisition of new land through purchase or lease.
- **Acquiring land with legacy issues.** Policies should articulate how the business plans to address adverse impacts on communities and right holders that are inherited from a predecessor's past actions. While the company did not create the adverse impacts it may likely be, or be perceived as, a direct beneficiary of the actions.
- **Existing holdings.** In addition to providing guidance on the acquisition of new assets, policies should also include a periodic review of tenure issues on a company's existing holdings to ensure that they are compliant with any new regulations and requirements.
- **Existing holding with legacy issues.** Policies for the periodic review of tenure issues should include how the business plans to identify and address adverse impacts from legacy issues.
- **Joint ventures and mergers.** Joint ventures and mergers that involve land holdings held by one or more of the merger parties should trigger the same level of scrutiny as the acquisition of new land, either land acquired directly from communities or smallholders or land that had been previously acquired by an enterprise or the government.
- **Supply chain impacts (commodity procurement).** Obtaining agricultural commodities, whether an enterprise is buying crops from a national producer growing at scale or sourcing commodities through smallholder business models (such as outgrower arrangements, growing trusts, block farming or cooperatives), can have land-related impacts that should be considered and addressed if the company is to comply with socially responsible investment standards. Foreign and domestic commodity enterprises should extend their land policies to include growers/suppliers to address land rights impacts throughout the entire supply chain. Extending policies down through supply chains takes time, as growing suppliers will probably require education, support, tools and monitoring.

Company policies should reflect a commitment to respect the rights and interests of land holders by upholding international standards and best practices, like those called for above and explained in the following sections of this guidebook. If existing policies do not reflect these commitments, then take time to revise them so they do. Companies should consider the following when evaluating their policies:

- **Scope:** Do any company policies relate to specific types of land investments or existing company activities related to land-based investments? Do these policies adequately cover all the types of land-based investment the company is engaged in? Are there gaps that need to be filled?
- **Process:** Did the company develop these policies in a way that ensured buy-in from key company stakeholders, including the departments responsible for implementing the policies?
- **Content:** Do company policies for land-based investment reflect best practices? Is the commitment to best practices communicated in a clear, effective way?
- **Implementation:** Are the policies actionable with clear lines of authority and mechanisms for implementation and enforcement?

Setting a realistic timeline is important for the implementing new policies. Companies will likely come across many hurdles to make the process fully fair and inclusive of all stakeholders, which might lengthen the timeline. The company should first address and understand the impact of implementing the RIPL process in new acquisitions, but also look to apply it to existing holdings, those with legacy issues, and finally bring these processes to suppliers.

To see example policies developed and made public by business enterprises, see [Supplemental Resource: Sample Business Enterprise Policies](#).

## 2. Business develops an implementation plan.

As part of developing or revising existing policies, the business must consider what it will take to operationalize its commitment to achieving responsible land investments. Ideally, the business should create an action plan that includes realistic indicators.. The plan should be a “working document” that is revised regularly (such as annually or as otherwise determined by the planning team) as the business continues to learn and refine its approaches and tools.

As part of the implementation plan, consider the following targets:

- Update existing operational manuals and guidance for employees and suppliers.
- Deliver trainings for employees, suppliers and other third-parties engaged in land and commodity acquisition, supply chain management, supply chain audits and assessments, and public relations.
- Develop questionnaires, checklists and other materials to help people get the information they need to do their jobs.
- Attend relevant international forums or join industry groups or certification networks.
- Assess compliance with policies on social, environmental and human rights assessments for ongoing operations.
- Develop and maintain a map of agricultural commodity supply chains.
- Develop a strategy for resolving concerns identified in the assessments.
- Plan and budget for an iterative learning process

Implementation of policies will require support from third-party experts and auditors. Experts in land and resource tenure can help shape company policies and implementation plan from their inception, helping the business to identify potential tenure related risks and articulate best practices. Businesses may also seek specific guidance for implementing concepts identified in the remainder of this guidebook to tailor implementation to their circumstances.

Consider joining an industry group or network as another path to finding support. A number of international and regional forums, such as the Interlaken Group, exist to promote the exchange of best practices. Businesses can use the opportunity to position themselves as an industry leader and build brand reputation. Multi-stakeholder networks—which include business enterprises, government, civil society, academics and donors—will also provide the opportunity to learn from actors with different perspectives. Annual conferences, such as the United Nations Forum on Business and Human Rights and the World Bank Conference on Land and Poverty, can be another venue for information exchange.

### 3. Business operationalizes and promotes responsible land-based investment policies.

Once the business has created its policies and has an initial implementation plan, it must move its commitments into action. While the implementation plan will include many actions, one essential step is communicating and promoting the new policies.

The company's board of directors, shareholders, various committees, managers, employees and suppliers will all need to know about the new policies and how the company will implement them. Consider promoting the policy publicly to customers, industry group partners and other interested parties. This can create reputational and accountability benefits.

Simply handing over a document describing the policies will likely not be enough, particularly for individuals who will be directly affected. To communicate effectively, the business may need to develop training materials, operational guidance, questionnaires, checklists and other materials identified in its implementation plan.

The need for training will vary based on the roles and responsibilities of different stakeholders. For instance, employees responsible for receiving and addressing land-related grievances in the course of an investment will need more detailed checklists and resources than an executive. That said, all stakeholders are likely to benefit from some information on the following:

- **The business case for responsible land-based investment.** To some, responsible land-based investment policies may seem like nothing more than costly extra steps. Talk to company staff and suppliers about the potential financial harm to the business and suppliers that can result from not taking the right steps. Supplier losses can accrue from community ill will and from the loss of customers who care about best practices. Delays, disruptions, and forced withdrawals are very expensive for businesses, and can even harm credit ratings. For example, a European biofuel company lost \$20 million after attempting to purchase land for sugarcane production without conducting a proper impact assessment. An additional resource with more information on tenure-related risks in investments is TMP Systems' [The Financial Risks of Insecure Land Tenure: An Investment View](#), as well as their [Tenure and Investments In...](#) series.
- **Basic land rights issues that arise in the course of land-based investment.** A basic understanding of the types of land-related issues that can arise in an investment can help all stakeholders better understand the rationale for the new investment policies. Where stakeholders share a common understanding of potential issues, they will be better able to support the implementation of the action plan and identify concerns from the perspective of their daily responsibilities. By making all actors partners in this endeavor, the business is more likely to gain buy-in and receive feedback on tools and resources to achieve its policy goals.
- **Specific tenets of the policy.** It will be important to communicate the company's specific policies and planned implementation steps. Clearly describe what the company believes and exactly what it will do. Consider providing staff with resources to learn more, such as this guidebook and the documents it references.

For an example training presentation covering these issues, see [Supplemental Resource: Why Land Matters: Communicating Your New Land Commitment](#). This resource is intended to serve as a template to support the communication of key principles of the policy and basic

land concepts, but it will need to be tailored to each company's unique needs. Each slide contains speaker's notes to provide the presenter with detailed information to accompany each slide. It is divided into three modules: (1) the business case for company commitments to land rights protections; (2) overview of land rights, land-related issues and best practices; and (3) introduction of the company policy and implementation plan.

## TASK 2: CONDUCT INITIAL DUE DILIGENCE

### BEST PRACTICES

At the outset of a potential investment process, it is imperative to learn as much as possible about the context the company is entering. Doing so will help identify and mitigate or eliminate issues and risks the project may pose to the business, communities, and individuals who rely on the land that might be acquired and used for an investment.

This is called **acting with due diligence**. Acting with due diligence will help the business avoid infringing on the legitimate interests and rights of land holders.<sup>[i]</sup>

Due diligence should:

- Inform the company about the local context and the actual or potential issues and risks the project poses to communities, women, men and the company.
- Provide the information the company needs to determine whether the land investment can be designed and implemented in keeping with best practices called for under international standards.
- Provide information that the company will use in making a final go/no-go decision on whether to proceed with the investment.

This section primarily covers due diligence activities that the company should complete prior to the design and planning of a project. Research conducted prior to on-the-ground engagement will rely primarily on secondary sources and is often referred to as “desk research.” This is the starting point for the due diligence process.

In subsequent investment phases, the business will continue to revise its initial research and analysis as it learns more about the specific land investment site within the country and holds consultations with stakeholders, including government, civil society, academics, and community leaders and members. This can set a framework that will lead to a clear management plan after community members and leaders.

Even after a signed agreement is in place and the project is mid-implementation, due diligence activities should continue. For example, any expansion or change to an investment or the addition of a new supplier to the company's supply chain is an opportunity for the company to practice due diligence.

The business can conduct due diligence through audits and self-reporting, but it should also consider engaging the services of a third party that is experienced in identifying land-related risks and familiar with the local context. Additionally, the evaluation should include input from government, CSOs, individual land holders and users (both women and men) and communities in potentially affected areas, and other stakeholders.<sup>[ii]</sup>

## STEP-BY-STEP GUIDANCE

### 1. Business conducts initial research on the national investment context.

When exploring an investment opportunity in a particular country, it is important to first build an understanding of that country's investment context. This includes gathering both general and sector-specific economic information, along with any relevant policy statements, growth targets, incentives or investment objectives that the national or local governments have produced. Questions to ask at this stage include:

- What explicit government strategies and targets for investment and growth exist at the national and local levels? Relevant policy statements may include legislation, political platforms, and five- or ten-year plans.
- Does the government have the capacity (at all levels, including local) to promote or implement its investment governance framework?
- What investment and development initiatives are currently promoted by public or private sector actors? Learn about public private partnerships aimed at developing particular sectors of the economy.
- What social and environmental considerations exist for investment in this context? Learn about issues faced by both the government (e.g., the government's relationship with indigenous peoples) and other business enterprises (e.g., previous problems with environmental and social impacts).
- What impact are investment initiatives likely to have on women and other land users who may have insecure or undefined land rights? Learn about the kinds of socially legitimate interests that women and other land users have, and the extent to which such interests are catalogued.

These questions should serve as a jumping-off point; the list is not intended to be exhaustive.

Both international and domestic agencies conduct primary research on the economic, social and political environment of countries around the world. Examples of organizations that can provide key data for this stage of due diligence include:

- [The World Bank](#)
- [International Finance Corporation](#)
- [UN Development Programme](#)
- [Food and Agriculture Organization of the UN](#)
- [UN COMTRADE Data](#)
- [International Monetary Fund Trade Statistics](#)
- [Organization for Economic Cooperation and Development \(OECD\)](#)
- [United States Agency for International Development \(USAID\)](#)
- [UK Department for International Development](#)
- [Harvard's Atlas of Economic Complexity](#)
- Government agencies of target country
- Civil society organizations of target country

## 2. Business researches the national legal framework.

After scoping out the broader investment context, a responsible investor should investigate the host country's legal framework pertaining to land and land-based investments. This will involve consideration of three primary areas:

- Formal policies, laws and regulations governing land and investments;
- Customary practices related to land tenure and agricultural activity; and
- Any gaps between the law's intended enforcement and its actual implementation.

As an example of legislative instruments that should be reviewed, the table below provides a list of Tanzanian laws that have direct bearing on land tenure security.

### Tanzanian Laws and Policies

- Agricultural and Livestock Policy, 1997
  - Basic Rights and Duties Enforcement Act, 1995
  - Commission for Human Rights and Good Governance Act, 2001
  - Constitution of the United Republic of Tanzania
  - Courts (Land Disputes) Act, 2002
  - Environmental Management Act, 2004
  - Land Acquisition Act, 1967
  - Land Act, 1999
  - Land (Compensation Claims) Regulations, 2001
  - Land Use Planning Act, 2007
  - Land (Amendments) Act, 2004
  - Local Government (District) Authorities Act, 1982
  - Public Land (Preserved Areas) Act, 1966
  - Public Private Partnership Act, 2010
  - SAGCOT Investment Project Resettlement Policy Framework, 2013
  - Tanzania Investment Act, 1997
  - Treaty Establishing the East Africa Community, 1999
  - Village Land Act, 1999
  - Ward Tribunal Act, 1985
-

The ultimate product is a memo outlining the relevant laws and policies alongside gaps and obstacles for implementation.

Questions to ask at this stage include:

- What are the main laws regulating purchase, transfer, lease and use of land? Consider subtopics such as titling, valuation, compensation, resettlement, contracting and dispute resolution mechanisms.
- Do laws differentiate between foreign and domestic investors? Differentiation standards may include thresholds for native ownership of joint ventures, for example, or reduced rights.
- Does the formal legal framework protect the rights of women, pastoralists, indigenous groups, and other vulnerable people? Consider subtopics such as inheritance, marriage and divorce, communal rights, and requirements for community consultation and engagement.
- What is the process for government expropriation of land, what standards are applied to justify expropriation, how do expropriation laws and policies related to best practices, and how often does the government expropriate land?
- What are the most common customary norms governing land use, transfer, and conflict adjudication, and what customary institutions implement those norms? What are the customary norms of the investment area?
- What gaps exist between formal statements of law and their implementation? What is the likelihood of laws being amended or changed? Common issues hampering implementation include weak infrastructure, rigid local customs, corruption, and lack of government capacity.

Again, these questions should serve as a jumping-off point, and the list is not intended to be exhaustive. The following resources can be useful for answering these questions and mapping legal frameworks:

- [LandWise](#)
- [USAID Country Profiles](#)
- [LANDac FactSheets](#)
- [LandPortal](#)
- [FAOLEX](#)
- [NYU's GlobaLex Database](#)
- [University of Ottawa's JuriGlobe Research Group](#)
- [World Legal Information Institute](#)
- Government agencies of target country
- Civil society organizations of target country

### 3. Business compares national framework to international standards.

This Guidebook will help business identify gaps between the national framework and best practices and assess the risk such gaps pose to achieving a successful, responsible investment. Other phases and tasks in this guidebook will help the business consider what actions need to take during the investment process to meet best practices.



As the business identifies potential investment sites within a target country, it will need to continue to update this due diligence to include gaps between on-the-ground realities and best practice. Phase 2 of this guidebook discusses this in further detail.

In addition to the VGGTs, companies may want to consider other relevant treaties and protocols, such as:

- [The Universal Declaration of Human Rights](#) (UDHR)
- [The International Covenant on Civil and Political Rights](#) (ICCPR)
- [The International Covenant on Economic, Social and Cultural Rights](#) (ICESCR)
- [The Convention on the Elimination of All Forms of Discrimination Against Women](#) (CEDAW)
- [United Nations Declaration on the Rights of Indigenous Peoples](#)
- [International Labor Organization Convention 169](#)
- [Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security](#)
- Other regional human rights agreements

## 4. Business maps investment stakeholders.

As with any significant venture, responsible investments require interfacing with stakeholders at many different levels. As part of desk research, identify government agencies, community organizations, business entities and other relevant stakeholders, such as donors and academic institutions. The business will use this map in the next phase to support initial consultation and validation of its desk research. [Supplemental Resource: Stakeholder Mapping Template](#) provides a template for identifying common stakeholders in the context of land-based investments.

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[i] FAO, *Voluntary Guidelines on the Governance of Tenure, Fisheries, and Forests in the Context of Food Security* 7-9 (2012), available at <http://www.fao.org/docrep/016/i2801e/i2801e.pdf>.

[ii] See United States Agency for International Development, *Operational Guidelines for Responsible Land-Based Investment* 16 (2015).

# PHASE 2: COMMUNITY ENGAGEMENT AND ASSESSMENTS

## PHASE ROADMAP

This phase provides steps for engagement and consultation with land holders and users to learn how the investment may impact their livelihoods.

## TASK 1: ENGAGE AND CONSULT WITH LAND USERS AND RIGHTS HOLDERS

1. Business registers in the target country.
2. Business identifies potential investment locations within target country.
3. Business investigates the potential investment site and begins to understand the communities and individuals who use it.
4. Business identifies a community entry point and facilitator.
5. Business holds initial meetings with community leadership.
6. Business conducts initial meetings with community members.
7. Business provides initial notice of intent to invest.
8. Business encourages and respects each community's decision to halt or proceed.

## TASK 2: CONDUCT COMMUNITY ASSESSMENTS

1. Business seeks support from a neutral third party to assist in each community assessment.
2. Business introduces assessment process and develop assessment engagement plan.
3. Business works with third party to conduct the community capacity assessment.
4. Third party conducts the ESIA, including assessing impacts on land rights, users and livelihoods.
5. Business develops a LRP or RAP, if necessary
6. Third party conducts land valuation.
7. Business develops compensation package.

## TASK 1: IDENTIFYING INVESTMENT SITE AND ENGAGING WITH LAND HOLDERS AND USERS

## BEST PRACTICES

For an investment to succeed over time, the business must foster strong interactive relationships with communities through regular community consultations. This should be done in accordance with FPIC.

The engagement and consultation process should be **in accordance with FPIC**, which is a legal principle originating from the United Nations Declaration of the Rights of Indigenous Peoples (UNDRIP). It 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 USAID’s [Operational Guidelines for Responsible Land-Based Investment](#) (2012).

## STEP-BY-STEP GUIDANCE

### 1. Business registers in the target country.

Before consulting with stakeholders about a possible investment, the law may require the business to file an application to register as a company in the country. Most countries have an investment promotion center that will help with processing applications. Typically there is a website that contains the relevant information that will help the government respond to due diligence inquiries from the government.

### 2. Business identifies potential investment locations within target country.

After the business completes the initial due diligence on the national investment context under Phase 1, it should identify specific locations available for investment.

To do this, reach out to the ministry or government entity responsible for land governance based on the research conducted in Phase 1. A department within the government is often able to provide support and information during this process. Some countries have specific offices dedicated to investment promotion; others have “land banks” that catalogue available land for investment.

This government entity should also facilitate engagement with other government agencies.

### 3. Business investigates the potential investment site and begins to understand the communities and individuals who use it.

After identifying potential investment locations, the business needs to learn about the institutional, environmental and social situation at each potential investment site. It is important to gather 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 can be challenging to find locally-specific information through desk research, so it will likely be necessary to consult with the government, civil society and other experts with experience on legal and social issues related to land tenure and land-based investment.

Use the stakeholder map developed in Phase 1 to identify appropriate national, regional and local civil society organizations or local associations with whom to consult. This research will prepare the business for subsequent steps to engage directly with community leaders and members. See [Supplemental Resource: Stakeholder Mapping Template](#) for a sample mapping framework.

Consultations with government, civil society and experts should build on the initial desk research conducted in Phase 1. Pay particular attention to how the local context at the investment site may differ from findings from desk research on the national context. Given governance gaps in many emerging market countries, local practices often develop without reference to laws and regulations. In settings where customary land governance systems are prominent, local customs may generate completely different land practices from one region to another. Government land administration and registration practices may also vastly differ region to region.

Refer to [Supplemental Resource: Site-Specific Questionnaire](#) to guide conversations with community members. Site-specific background research should be guided by the following objectives:

- **Identify site's land status, land users and right holders.** It is important 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 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 be accustomed 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 ask whether anyone is gathering resources such as fruits, nuts, wood or medicinal herbs.
- **Understand the local land tenure system.** 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 to 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).
- **Understand past, current and potential land and resource issues and conflicts in the area.** Finding information on historic, active, or anticipated land-related conflicts can help the business assess the potential risk to the 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 an investment.
- **Determine site-specific social demographics.** It is important to approach communities in a culturally appropriate manner. Attempt to 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. Having a perspective on vulnerable segments of the population will help enable the business to predict which community members may require extra help from a facilitator to voice their interests and concerns.

These considerations should accompany other background research the business typically conducts as part of its investment preparation, such as research into the local supply chain, existing infrastructure for commodity transport, and potential environmental impacts related, for example, to protected habitats or conservation and protection of water, soil and forests.

The business will verify and revise this background information in subsequent consultations and assessments as it engages directly with communities.

#### 4. Business identifies a community entry point and facilitator.

Now that the business has initial information to structure a productive and culturally appropriate interaction, it is time to approach community leaders and community members in each prospective investment site. While it is important to begin by engaging with the government (supported by consultations with other experts), it is imperative to also speak with local leaders and community members to validate the availability and status of the land and understand how the investment will impact each community.

In preparation for engaging with community leaders and members, the business will need to identify an appropriate entry point. Each community is likely to have customary 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. In its [Community Land Protection Facilitators Guide](#), Namati outlines the hallmarks of good facilitation and outlines important traits in an effective facilitator.

#### 5. Business holds initial meetings with community leadership.

With the support of a facilitator, hold an initial meeting with community leadership to:

- Invite the community leaders to validate 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. Use [Supplemental Resource: Site-Specific Questionnaire](#) to guide this part of the meeting.
- Provide complete information to leadership about the prospective investment.
- Understand leadership dynamics and determine whether community leadership has an initial interest in the investment.
- Ask them 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 that they are representatives and wider consultation is not required.

## 6. Business conducts initial meetings with community members.

Work with community leadership and the facilitator to coordinate an initial meeting with each affected community group to introduce the business and the potential project. Equipped with the site-specific background research, invite as many local rights holders and land users as possible to the initial consultation.

### Case Example: Stakeholder Participation

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

Use [Supplemental Resource: Community Consultation Checklist](#) as a resource to help guide these consultations, and refer to Best Practices for Holding Community Meetings earlier in this guidebook.

Following initial consultation, synthesize and analyze the information. Seek to answer questions raised by community leaders and members during the consultation and hold follow-up consultations as agreed with community leaders and members.

## 7. Business provides initial notice of intent to invest.

If after initial due diligence on the investment site and consultation with communities and leaders the business decides to move forward with the investment in this location, it next needs to provide initial notice of intent to invest to the broader community. Giving initial notice is both a best practice and an important step in effective and socially responsible engagement.

Look to national laws and policies to identify specific notice requirements that apply to the investment. Generally, the business should provide notice in a language, format and location that is accessible to community members, including women and other vulnerable groups. The notice should include key project details, such as the name of the investor, intended land use, a map of the affected area and contact information. Widespread public postings are one way to distribute the notice.

## 8. Business encourages and respects each community's decision to halt or proceed.

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, the business and community may decide to use a letter of intent (LOI) or memorandum of understanding (MOU) as a resource to support inclusive negotiations by laying out the terms, conditions and stakeholder roles for the negotiations process. Refer to [Supplemental Resource: Template for LOI/MOU](#) for an example of an MOU. Additional resources include:

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

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

[ii] See *id.* at 33.

## TASK 2: CONDUCT COMMUNITY ASSESSMENTS

### BEST PRACTICES

To inform whether both the business and the community/communities should proceed with the investment, the business is responsible for hiring neutral and experienced third parties to **conduct three community assessments** that examine community capacity, environmental and social impacts, and the value of land.

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:

- **Community Capacity Assessment.** It is not uncommon for communities and individual land users to lack experience with commercial land transactions. This assessment looks at the capacity of community leaders and members to participate in the investment process, including environmental and social impact assessment, land valuation, and negotiation and contracting.[i]
- **Environmental and Social Impact Assessment (ESIA).** This assessment identifies and gauges actual or potential 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.

## STEP-BY-STEP GUIDANCE

### 1. Business seeks support from a neutral third party to assist in each community assessment.

Given the complexity of these assessments, and to promote objectivity and fairness, the business should hire one or more experienced third parties to design and conduct the capacity assessment, ESIA and land valuation. 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 each assessment team is trusted and respected and that their relationship to the business enterprise is structured in a manner that supports their 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. Seek input from community leaders on the candidates before hiring them to ensure the community is comfortable with the parties that will be conducting the assessment.

In addition to possessing the requisite technical experience and professionalism, in building the assessment teams the business should consider the following:

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

### 2. Business introduces assessment process and develops 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, the business should hold a meeting explicitly to inform them of the desire to perform an assessment and ask for their informed consent (either orally or in writing) before activities begin. Use this meeting to introduce the planned assessment teams, answer questions, develop an assessment engagement plan and confirm the community is comfortable moving forward. Refer to Best Practices for Holding Community Meetings to conduct this step.

### 3. Business works with third party to conduct 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 those gaps, such as through trainings or technical support. Without such support, if proceeding with the investment would fail to comply with international best practices such as FPIC and could produce unintended risks and consequences for the investment, the company and the community.

Consult [Supplemental Resource: Community Capacity Assessment](#) when planning and conducting the assessment. The assessment team will need to:

- **Decide the “who:”** The team first needs to determine its assessment population of interest, which is to say, *whose* capacity it is assessing. Depending on the size of each community, it may be too time consuming to assess the capacity of every land user. The team may therefore elect to focus 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). The team may also apply a sampling methodology to assess the capacity of individuals it randomly selects 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:”** The team next needs to determine what capacities it will assess. 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 about 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?
  - *Committee structure:* If a committee was established to represent a community's interests, does it operate under agreed upon rules?
- **Decide the “how:”** The team must then determine how to assess the capacity of leaders and community members. Consider whether to use quantitative and/or qualitative methods. If the team uses quantitative methods, it 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 in a community meeting. Share the findings at a series of community meetings that brings together all relevant stakeholders and is 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. 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 team could undertake, or that the business could consider engaging other local civil society organizations or experts to 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 livelihoods assessment and the valuation assessment to help community members understand how their lives and livelihoods will change if they are no longer able to use the land that the business considering purchasing.
- 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 opportunity, 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 appointed assessment 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 appropriately engage with the business enterprise, evaluate impacts of proposed project, negotiate fair contract terms, and evaluate the contract. If the business takes steps to ensure that the experts provide independent advice to the community, the community is more likely to trust that advice and have confidence in the contracting process.
- Consult the following [Supplemental Resources from the Model RIPL Guidebook for Communities](#) to guide capacity-building efforts:
  - Community Governance Assessment
  - Leveraging Land Investment Committees
  - Land Rights Awareness Training Curriculum
  - Developing Community By-Laws for Responsible Investment
  - Gender Sensitive Community Mapping
  - Boundary Harmonization
  - Documenting Boundaries
  - Developing a Land Use Plan
  - Land Valuation

#### 4. Third party conducts the ESIA, including assessing impacts on land rights, users and livelihoods.

The ESIA that the company conducts to comply with widely-accepted human rights standards<sup>[iv]</sup> and domestic laws and policies should

include an assessment of impacts on land rights, users and livelihoods in the community. Below are the actions the business should take in planning and conducting the ESIA.

**Develop research methodology.** [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
- Tailored questionnaire for each type of land user
- Types of qualitative and quantitative research techniques that will be used
- Links to the community engagement plan.

**Identify land boundaries and map rights holders and users.** Work with government officials, community leaders, and other parties as established in the assessment engagement plan to determine an appropriate mapping exercise to demarcate and map the boundaries of land parcels and the location and extent of various land uses.

Consider identifying a technology solution to help gather, analyze and share information quickly using smartphones and other devices. The [Cadasta Platform](#) is one option that could help the assessment team design a fit-for-purpose collection tool, enable it to quickly collect satellite and drone imagery, and allow it to share the data with the government and community.

The team will need to:

- **Identify land holders and users.** Work with government officials, community leaders and other parties as established in the assessment engagement plan to identify individuals and groups that have legitimate interests or rights in the land should participate in the decision-making process, regardless of whether their rights are registered by the government. Land holders and users may include:
  - Individual land users
  - Married women and men
  - Single women and men
  - Smallholders
  - Tenants
  - Seasonal users
  - Indigenous peoples
  - Migratory groups
  - Pastoralists
  - Youth

- Elderly
- **Hold a community wide meeting** to agree on what should be mapped.[v]
  - Physical features
    - Boundaries of community
    - Boundaries of communal land areas
    - Boundaries of households
    - Rivers, lakes, streams, ponds, wells/boreholes
    - Wetlands, swamps, bogs
    - Pasture/grazing areas (used in different seasons), livestock rest areas
    - Planted crops and garden areas
    - Dry areas and wet areas
    - Seasonal use areas
    - Forests
    - Places to gather food, medicinal herbs, building materials, etc.
    - Areas where wildlife gather or migrate
  - Infrastructure
    - Settlement areas
    - Shops and markets
    - Roads/paths/trails
    - Schools
    - Churches
    - Clinics or other facilities
    - Farm/livestock infrastructure
    - Offices of governments, NGOs or other institutions areas given to companies or outsiders for any purpose (such as mining, tourism or logging)
  - Social factors
    - Neighboring communities
    - Sacred/religious, cultural, and historical sites
    - Places that are fenced or private land
    - Conflicts: Places and resources in dispute (mark in red)
    - Access routes (including ones used by pastoralists or other migratory groups)
    - Places where outsiders enter

- Places where villagers go outside the boundaries to access land or natural resource.
- **Identify land boundaries and primary and secondary land rights.** Identify and map the parcel boundaries of land in the investment area that is used by individuals and groups, including by individuals and groups that claim rights under law or custom. Individuals and groups that have legitimate interests or rights in the land should participate in the decision-making process, regardless whether their rights are registered by the government. Apply a technology solution [MH3] [MH4] to this component to help identify trends and issues more quickly. Consult [Supplemental Resource: Gender Sensitive Community Mapping](#) from the Model Guidebook for Communities for guidance on using technology to facilitate community mapping.
- **Conduct a search for registered land interests.** Check with the relevant government bodies for registered land interests, including any associated parcel maps or descriptions. It is important to verify information across government departments since it sometimes happens that one ministry grants a permit for mining, for example, while another ministry identifies the same parcel for agricultural development.
- **Share and validate information.** Present and validate the findings with relevant government officials, community leaders, and community members in accordance with the assessment engagement plan. It will be important that the community resolve boundary issues with neighbors.[vi]
- **Prepare final village map.** Once boundaries have been validated and confirmed, a final village map or maps (community may live in more than one location) should be prepared and presented to the community. Community leaders should sign an MOU confirming their approval.

**Conduct the assessment.** Implementation should be in accordance with the research methodology.

**Analyze findings and identify risk.** The framework in [Supplemental Resource: Risk Mitigation Analysis](#) will help the business identify investment effects on different types of land uses and how they will impact the livelihoods of land holders and users. As the impact assessment reveals possible or actual negative effects on land rights and uses, the project should be reconfigured as feasible to minimize breadth and depth of the impacts and eliminate them where possible. Some options include:

- **Alternative investment models:** There are a variety of reconfiguration measures that may be suitable, depending on the circumstances, including:
  - Exploring alternative investment models that do not result in the large-scale transfer of land rights to investors, including partnerships with local land-rights holders and contracts with small-scale producers. One option is following an outgrower model. Outgrower arrangements require thoughtful planning and execution, and investors should plan to dedicate extra time and resources to managing outgrower relationships. For best practices around outgrower arrangements, consult [Supplemental Resource: Outgrower Best Practices Literature Review](#).
  - Using a different land acquisition structure, such as a short term lease instead of a long term lease or outright acquisition.
  - Avoiding the displacement of people by considering feasible alternatives.
  - Reducing the amount of land to be acquired for the project.
  - Staging land acquisition so that it is taken from existing users only as needed for the investment.
  - Allowing community members to continue to use at least a part of the land for subsistence farming.
- **Resolve existing disputes before acquisition:** This may require formalization of the rights of unrecorded land uses.

**Present findings and proposed mitigation measures.** Share and present findings to the community for comment, correction and ratification. Seek input, questions and opinions from community members. Listen for input that suggests something may have been missed

during the assessment. Follow the assessment engagement plan and hold as many meetings as necessary to reach all impacted land rights holders and users. Refer to Best Practices for Holding Community Meetings for these meetings.

**Present revised findings to government officials and external experts.** After validating the findings with the community and making any necessary revisions based on their feedback, have the assessment results reviewed and approved by external experts and government.

**Update proposed investment project documents based on assessment findings.** Update the design of the investment project to reflect assessment findings. Share the project document with government authorities, community leaders and other parties per the agreed upon assessment engagement plan.

## 5. Business develops a LRP or RAP, if necessary

Displacement is rarely acceptable and will lead to international scrutiny and condemnation, so it only should be used as a last resort. USAID Land Tenure Guidelines calls for limiting displacement, but if unavoidable, to the minimum program requirements for specific programs and a specific length of time, using the minimum land necessary. A Resettlement Action Plan or a Livelihood Restoration Plan is necessary to serve impacted land holders and users.

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.[vii]

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.[viii]

## 6. Third party conducts land valuation.

The Royal Institute of Charter Surveyors (RICS), a professional body promoting and enforcing internationally recognized standards in valuation, provides useful guidance on best practices. The [RICS Valuation – Global Standards](#), commonly referred to as the RICS Red Book, is a comprehensive resource with practical implementation guidance.

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

- **National and international regulations.** The valuation should conform to the methods and procedures agreed upon between the government, business enterprise and the community. Keep in mind that national law may restrict the ability of business enterprises and communities to influence the valuation process.[ix] Nevertheless, the business enterprise should strive to provide communities compensation that accuracy reflects the true and longer-term livelihoods value of their assets. For projects with IFC funding where the government is undertaking the valuation (for example, in the event of compulsory acquisition), the assessment team must verify the government's calculations and confirm that they align with IFC Performance Standard 5 and accurately reflect the replacement value of the property in question.[x] Indeed business enterprises – through the third party support of their assessment team – should review and validate any government valuation approach in any context, regardless of IFC involvement.
- **Valuation methodology.** Some countries lack adequate laws and policies regarding valuation. Others are insufficient because they often fail to evaluate the full livelihoods value of land. Given this, the best practice assumption should be that the land value is determined from a combination of perspectives, including an analysis of the livelihoods impacts and costs created by relinquishing long-term livelihoods access to the land asset. Valuation calculations should account for both economic and non-economic values (such as social, cultural, religious, spiritual values) of the land and include the cost of replacing natural resource access and non-economic, land-based livelihood sources (such as forest or grazing access).[xi] It is important for the assessment team to take the requisite time and care to assess the broad spectrum of rights and assets in the community, along with reasonable assumptions about livelihoods valuation time horizons to arrive at a proper valuation.
- **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.[xii]
- **Promote transparency.** To the extent possible, work with all the stakeholders to make valuation information and analysis publicly available.[xiii]

For additional detail see the [Valuation and Compensation Primer](#).

## 6. Business develops compensation package.

Engage with each community and the 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, 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.

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

The business will need to:

- **Develop a compensation and benefits framework** that includes:[xv]
  - 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 for the benefit of an investing business enterprise.
  - What losses should be compensated:
    - Market and non-market value of land;
    - Tangible assets lost, such as marine and aquatic resources, timber and non-timber forest products, freshwater, medicinal plants, hunting and gathering,[xvi] grounds and grazing and cropping areas; and
    - Non-tangible values, including livelihoods, social, cultural, religious, spiritual and environmental.[xvii]
  - 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
- **Consult 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.
  - Consult 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.
  - Consider non-monetary forms of compensation. Cash compensation is rarely sufficient to restore livelihoods because it rarely covers the actual value of lost assets and typically is spent on items that do not support livelihoods. Furthermore, community members may not be able to purchase replacement land in or close to the community, so every effort should be made to provide



or facilitate access to similar resources elsewhere.[xviii] If necessary to provide for full livelihoods compensation, the business enterprise 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.[xix]

- **Structure payments in a sustainable and culturally acceptable manner.**

- If the community or individuals prefer cash compensation to replacement land, the investor 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.[xx]
- Cash compensation should be accompanied by comprehensive financial awareness training for the community
- Schedule payments to 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.
- 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.[xxi] 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.[xxii] Inflation should be included. The ability to pay full and fair compensation should not be contingent upon future revenue streams produced by the investment.
- Make payments 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,[xxiii] 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.

- **Document all agreed upon compensation.** All agreed upon monetary and non-monetary compensation must be incorporated into the written contract. The value needs to be agreed upon and fully transparent to all from the inception of the contract. If those being compensated are not parties to the land sale or lease contract, a separate agreement or memorandum of understanding should be made between the business enterprise and those receiving compensation.

- **Incorporate an audit into the investment's M&E plan.** Plan to include an external audit of whether the community and individual land holders and users (both women and men) have been adequately compensated and had their livelihoods restored.[xxiv]

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

[ii] 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."). 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: <https://www.ohchr.org/EN/Issues/Business/Pages/BusinessIndex.aspx> ("In order to identify, prevent, mitigate and account for how they address their adverse human rights impacts, business enterprises should carry out human rights due diligence. The process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking

responses, and communicating how impacts are addressed.”).

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

[iv] See African Union (AU), *Guiding Principles on Large Scale Land Based Investments in Africa*<sup>6</sup> (2014) (“Decisions on the desirability and feasibility of LSLBI are made based on independent, holistic assessment of the economic, financial, social and environmental costs and benefits associated with the proposed investment, throughout the lifetime of the investment.”); FAO, *Voluntary Guidelines on the Governance of Tenure, Fisheries, and Forests in the Context of Food Security*<sup>4</sup> (“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 (OHCHR), *Guiding Principles on Business and Human Rights*<sup>5</sup> (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.”); World Bank Group, *Human Rights Impact Assessments: A Review of the Literature, Differences with Other Forms of Assessments and Relevance for Development* (2013), available at [http://siteresources.worldbank.org/PROJECTS/Resources/40940-1331068268558/HRIA\\_Web.pdf](http://siteresources.worldbank.org/PROJECTS/Resources/40940-1331068268558/HRIA_Web.pdf).

[v] All elements were sourced from Namati, *Community Land Protection Facilitators Guide* 148 (2015), available at <https://namati.org/resources/community-land-protection-facilitators-guide/>.

[vi] See *id.* at 141, 168.

[vii] 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](https://www.land-links.org/wp-content/uploads/2016/09/USAID_Land_Tenure_Guidelines_CDR.pdf)

[viii] 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](https://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/sustainability-at-ifc/policies-standards/performance-standards/ps5)

[vix] See *e.g.* United Republic of Tanzania, Valuation and Valuers Registration Act §38(1) (prohibiting any person from assisting a valuer in carrying out a valuation without certification).

[x] International Finance Corporation (IFC), Guidance Note 5 ¶ GN34 (2012).

[xi] For guidance on methods to capture the value of community lands and natural resources, see Namati, *supra* note ii, at 73-78.

[xii] IFC, Guidance Note 5 ¶ GN22.

[xiii] See Royal Institution of Chartered Surveyors (RICS), *Valuation – Professional Standards: Incorporating the IVSC International Valuation Standards* 20 (2015); International Valuation Standards Council (IVSC), *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>.

[xiv] USAID, *Operational Guidelines for Responsible Land-Based Investment*<sup>43</sup> (2015).

[xv] 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>.

[xvi] IFC, Performance Standard 5: Land Acquisition and Involuntary Resettlement ¶ 5 (2012), available at [http://www.ifc.org/wps/wcm/connect/3d82c70049a79073b82cfaa8c6a8312a/PS5\\_English\\_2012.pdf?MOD=AJPERES](http://www.ifc.org/wps/wcm/connect/3d82c70049a79073b82cfaa8c6a8312a/PS5_English_2012.pdf?MOD=AJPERES).

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

[xviii] IFC, Guidance Note 5 ¶ GN22.

[xix] *Id.*

[xx] *Id.* at ¶ GN24.

[xxi] USAID, *supra* note 11, at 45.

[xxii] IFC, Performance Standard 5 ¶ 9.

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

[xxiv] IFC, Performance Standard 5 ¶ 15.

# PHASE 3: DEVELOPING AN EQUITABLE AND INCLUSIVE CONTRACT

## PHASE ROADMAP

This phase will help ensure that the contract is fair and equitable to all parties and establishes clear rights, responsibilities, and processes to ensure the long-term sustainability and equity of the land transaction.

### TASK 1: NEGOTIATE AND DRAFT THE CONTRACT

1. Business and community prepare to develop and sign a Letter of Intent to negotiate the terms of the contract in good faith.
2. Business and community negotiate and agree to the terms in the LOI.
3. Business and community develop a contract and ensure it embodies internationally recognized principles and best practices.
4. Parties begin negotiation of the terms of the agreement.
5. Business updates proposed investment project documents based on contract negotiations.

### TASK 2: REVIEW AND SIGN THE CONTRACT

1. Business submits lease document to the appropriate government agency for its concurrence.
2. Business solicits and obtains final community consent to the investment terms.
3. Community receives notice of intent to transfer of land, and the business enterprise obtains formal lease.
4. Business convenes meeting for final contract signing.
5. Business shares contract with the community.

### TASK 1: NEGOTIATE AND DRAFT THE CONTRACT

## BEST PRACTICES

The business has the obligation to ensure that all stakeholders are able to participate equally when negotiating. The process should be non-discriminatory, gender sensitive and include the participation of all community members in the investment area.[i] The business enterprise should provide comprehensive information to land holders and users (both women and men) and communities to ensure all relevant people are engaged and informed.[ii]

Depending on the needs of the community, continued community engagement may require the business enterprise to inform community members of their rights and assist them (including by providing professional assistance, which most likely will be required)[iii] in developing their capacity to negotiate full compensation, benefits and other terms of agreements.[iv]

A land investment contract document plays an important role in memorializing the clear rights, responsibilities and processes that have been defined during engagement, consultation and assessment. The contract document should also include a variety of additional provisions to provide needed clarity about the terms of the agreement.

It is the business's job to make this happen. This means:

- **Taking into account local interests** identified through consultation, engagement and impact assessment under Phase 2.
- **Actively engaging with communities and individuals who have legitimate land rights**, including all women and men that currently occupy and use the land.
- **Seeking 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 enterprise and community conduct a dialogue in which all stakeholders' concerns and input are considered and addressed in the proposed project and contract.

## STEP-BY-STEP GUIDANCE

### 1. Business and community prepare to develop and sign a Letter of Intent to negotiate the terms of the contract in good faith.

Laws, policies and practices in some countries prevent communities and/or individual land holders and users from participating as informed and empowered contracting parties. By omitting or limiting the involvement of the full community, the process contravenes principles of good contracting.

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.[v] The LOI outlines the principles that will govern the rest of the contracting process.

A sample LOI can be found in [Supplemental Resource: Template for LOI/MOU](#). Important elements to consider when drafting an LOI and the resulting contract are listed in [Supplemental Resource: Key Contract Elements](#). In addition, the LOI should include:

- A detailed description and timeline of the proposed negotiation, consultation and drafting process;
- A list of key stakeholders who will be included, along with their roles, rights and responsibilities;
- A description of any professional 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 or copy of the LRP or RAP, if relevant; and
- A clearly defined process for dispute resolution, which will most likely require a third party.

## 2. Business and community negotiate and agree to an LOI.

The business enterprise should work with the community to develop an LOI. The consultation and engagement process largely mirrors the steps in the previous sections of this guidebook. The key component of this step is that the business should organize and conduct a series of meetings with the community to discuss the project and the intent to negotiate a full contract.

[Supplemental Resource: Community Consultation Checklist](#) can guide the business in preparing for and conducting community consultations. While the resource is designed as a guide for the initial consultation with a community described in Phase 2, many aspects of the checklist will be relevant to conducting consultations for developing a LOI. Any consultation with communities should follow best practices for holding community meetings.

## 3. Business and community develop a contract and ensure it embodies internationally recognized principles and best practices.

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

Two important guides specific to agribusiness investment contracts provide guidance about the main provisions that should be included in land lease agreements:

- The International Institute for Sustainable Development's (IISD's) [Guide to Negotiating Investment](#), and
- The Columbia Center for Sustainable Investment's (CCSI) [Guide to Land Contracts: Agricultural Projects](#).

**Before drafting a contract**, use the information gathered during due diligence to understand the legal requirements including what responsibilities the business owes to the community. Additionally, review the results from the ESIA and land valuation to identify information that will likely be useful to inform the contracting process.

Ensure that the contract:

- Uses language that is clear, coherent, and transparent in its language,
- Clearly defines the rights and duties of all parties, and
- Clearly outlines any mutually agreed conditions that would prompt or permit renegotiation or cancellation.

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

#### 4. Parties begin negotiation of the terms of the agreement.

Depending on the laws, policies, and practices, the community might not be a direct party to the contract and could be left out of the negotiation and contracting process. A lack of community engagement combined with a lack of transparency could jeopardize the legitimacy of the investment deal.<sup>[vi]</sup> The business enterprise and government could be labeled as land grabbers and the business's social license with the community could be jeopardized.

There are few publicly available examples of responsible investment contracts that have been developed and executed according to international standards. Because transparency is key to a responsible investment, the lack of published examples is an indication of the shortage of ideal investment contracts. This makes it all the more important that, going forward, business enterprises adhere as closely as possible to best practices and ethical standards.

To best ensure a responsible contract and investment, make sure that anyone representing the business who is directly engaged in the negotiation is explicitly told to pursue a project agreement that will:

- Ensure that land use interest and tenure rights are recognized and upheld, and
- Fully compensate land holders and users for parting with these land assets.

It is imperative that the business address any social impacts and rights issues pertinent to the contract. Even in instances where a community might not fully understand contract terms or might not fully be on equal footing with the investor, the business must ensure that land use interests and tenure rights are acknowledged and respected in the contract. This may include offering other kinds of support, such as independent legal counsel or paralegal support that would be paid through a trust or escrow fund.<sup>[vii]</sup> During this critical stage, the community can offer meaningful and socially binding consent only if:

- Community members view themselves as possessing sufficient status such that they would be expected to be consulted and to consent;
- The community understands the contract terms;
- The community's capacity is free from language barriers, conceptual limitations, and limited or no access to legal counsel; and
- No challenges impede the ability of community members to actively participate in negotiating lease terms.

By meeting these four elements, the company can rectify any shortcomings in representation of community interests by official community representatives or by other parties to the contract. The business enterprise should host a series of negotiation meetings with all stakeholders to explain the proposed project details and discuss the proposed contract terms with all community members. This should be done with the assistance of a facilitator and, if possible, with the assistance of local or regional government. The community meetings should be conducted according to the community consultation guidance described in Phase 2; refer also to [Supplemental Resource: Community Consultation Checklist](#) to help guide the consultations.

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

## 5. Business updates proposed investment project documents based on contract negotiations.

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

After these revisions, the business enterprise should consult [Supplemental Resource: Final Contract Checklist](#), as well as its due diligence research, to ensure that the contract complies with relevant standards.

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[i] FAO, *Voluntary Guidelines on the Governance of Tenure, Fisheries, and Forests in the Context of Food Security* 23 (2012).

[ii] *Id.*

[iii] *Id.* at 22.

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

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

[vi] See generally TMP Systems, *The Financial Risks of Insecure Land Tenure: An Investment View* (2012), available at [http://rightsandresources.org/wp-content/uploads/2014/01/doc\\_5715.pdf](http://rightsandresources.org/wp-content/uploads/2014/01/doc_5715.pdf).

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

## TASK 2: REVIEW AND SIGN THE CONTRACT

### BEST PRACTICES

Good contracting practices require that the contracting process remain **transparent and participatory** and that all affected communities be brought to an equal footing with investing business enterprises 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.<sup>[i]</sup>
- 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.<sup>[ii]</sup> **If affected communities do not support the project, it cannot legitimately proceed.**



## STEP-BY-STEP GUIDANCE

### 1. Business submits lease document to the appropriate government agency for its concurrence.

The domestic laws and policies identified in [Phase 1](#) play a key role in the development and implementation of a contract. The enforcement of these laws occurs through the national and district level authorities identified in during stakeholder mapping. Use the results of these Phase 1 processes to navigate the domestic legal and institutional environment.

Some jurisdictions require that the final lease agreement be presented to appropriate government agencies for review and approval. In such cases, it is important to include all potentially relevant information. The project documentation should ideally include:

- 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
  - Size of land allocated to the business and other businesses (if available)
- Findings from impact assessment.

### 2. Business solicits and obtains final community consent to the investment terms.

**Consent must be provided before project implementation begins.** The business enterprise 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 consent does not require 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.
- 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]
  - If after repeated attempts at consultation and engagement, dissenting members seem to have taken a position that cannot be reasonably reconciled with the broader community's consent, then the company should document the dissent and why it is deciding to move forward despite the dissent.
- 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. The community retains the right to withdraw consent "if the proposed activities change or if new information relevant to the proposed activities emerges." [v]
- Determine final investment configuration based on community responses and counter-offers to proposed contract.

### **3. Community receives notice of intent to transfer of land, and the business enterprise obtains formal lease.**

The government should provide the community with final notice of intent to transfer land over to the business enterprise.

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

### **4. Business convenes meeting for final contract signing.**

The final contract should be signed by the parties that 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 one common way 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 an MOU is signed with the community as discussed in the previous task.

### **5. Business shares contract with the community.**

Once the investment contract has been finalized and signed, the company must make copies available to affected community members for review and validation.[vii] If contracts are between individuals, the company needs to have a contract document for each individual instead of a single community document. 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.

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[i] USAID, *Operational Guidelines for Responsible Land-Based Investment*<sup>51</sup> (2015).

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

[iii] 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*<sup>24</sup> (2014).

[v] UN-REDD, *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).

# PHASE 4: IMPLEMENTING AND MONITORING THE INVESTMENT

## PHASE ROADMAP

Because even the most diligent preparation and community engagement cannot account for all potential challenges when implementing an investment project, this section of the guidebook discusses the importance of implementing the project in accordance to the agreement and monitoring and evaluating community impacts.

## TASK 1: PREVENT AND ADDRESS LAND-RELATED ISSUES

1. Business prevents disputes by maintaining on-going engagement and consultation with the community.
2. Business establishes a grievance mechanism for resolving land-related disputes.

## TASK 2: DEVELOP AND IMPLEMENT AN ONGOING MONITORING AND EVALUATION PLAN

1. Business designs and implements an M&E plan in support of land related investments.
2. 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 enterprise can create reputational and financial risk for the operation. **Managing this risk during project implementation is a large part of establishing and maintaining a company's social license to operate in the community.**<sup>[i]</sup> To best establish and maintain social license, 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. To maintain the community's trust while resolving unanticipated challenges, the company should:

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

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.

## STEP-BY-STEP GUIDANCE

Although the challenges that arise for each endeavor are context-specific, conflict can arise if the livelihoods are not reasonable and quickly restored or improved. There are some common themes and challenges that frequently appear as problems for land-based investments. A few of these themes are discussed below.

## LAND SCARCITY

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

### Case Example: Land Scarcity

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

## ENCROACHMENT

Allegations of encroachment arise where one user is accused of extending their land use into the neighboring user's claim. Encroachment typically occurs when the encroacher knows that they do not have a right to the land but feel historically disadvantaged by an investment, or they simply 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.

### Case Example: Encroachment

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

# COMPENSATION

Issues around compensation create some of the most common obstacles to a successful responsible investment in land and property. Compensation issues can include receiving different amounts than were promised in the contract, delayed payments, or payments going to a head of household or community leader who does not distribute them appropriately. Other common problems, like encroachment or displacement, often develop after initial faults in compensation.

## Case Example: Compensation

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

## 1. Business prevents disputes by maintaining on-going engagement and consultation with the community.

Perhaps the biggest challenge with project 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 and changing circumstances.**

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.<sup>[iii]</sup> 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.

Multiple channels of two-way communication should be established to facilitate clear, well-planned, and frequent consultation and engagement with communities.<sup>[iv]</sup> Approaches should address how women face particular barriers to accessing information and participating in consultations.<sup>[v]</sup> Communication should be structured to:

- Reaffirm contract terms and performance with the community.
  - Depending on the last interaction with the community, the business enterprise 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 enterprise should develop an ongoing Communication and Engagement Strategy to guide engagement throughout implementation and project close-out.[vi] 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, associations/groups for vulnerable populations, and outgrowers.
- Frequently review and update the strategy action plan on a specific schedule that is agreed upon by stakeholders.

## 2. Business establishes a grievance mechanism for resolving land-related disputes.

A factor central to responsible business investment in land and an enduring social license is whether a company ensures access to remedy by establishing a functioning, effective and accessible grievance mechanism for handling land-related disputes.[vii] Consult the [Grievance Mechanism Primer](#) for more guidance when carrying out this step.

Guidance relating to responsible land-based investment emphasizes the need for business-based, non-judicial grievance mechanisms to complement any existing state-based, judicial grievance mechanisms. A well-functioning mechanism should have the following components:

- Internal policies and procedures that provide managers and employees with explicit steps on how to process and resolve complaints;
- Internal procedures to ensure cooperation between the chief grievance manager and the employees or contractors with close knowledge of the subject of the grievance;
- Guidance on the types of performance data to be recorded and reviewed for monitoring and evaluation purposes;
- Periodic internal review to ensure the mechanism's functionality; and
- Set time frames for responding to complaints to ensure consistency within the company and predictability for complainants.

The mechanism should also comply with the [UNGP](#) criteria for non-state dispute resolution processes:

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

## DESIGNING AND IMPLEMENTING THE MECHANISM

- Dedicate sufficient personnel and resources to designing, implementing and managing the grievance mechanism.
  - Personnel who will administer the system (including CSOs and community members who are not employed by the company) should receive training in complaint receipt and registration, referral processes, service provision, quality control, monitoring and record keeping, and ethics.[vix]
  - Grievance reception and resolution staff should be made up of both men and women.
- Consult with community members potentially affected by the investment to incorporate their input into the mechanism's design.
  - All categories of community members and relevant external stakeholders should be consulted regarding the grievance mechanism, including women, indigenous peoples and other vulnerable groups; civil society organizations; local government officials; and community leaders.
  - Feedback obtained during consultations with external stakeholders should be incorporated into the design, implementation, management and monitoring of the grievance mechanism. The mechanism should reflect and be compatible with customary dispute resolution mechanisms and should be accessible to and trusted by all relevant stakeholders, including women, indigenous peoples and other vulnerable groups.
- Sensitize staff regarding the importance of identifying and respecting both 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. They should view complaints as a valuable source of information that can improve operations, reduce risk and build a relationship with the community.[x]
- Work with the community to determine the scope of the grievance mechanism by determining what types of land-related grievances it is likely to receive.
  - The business is likely to receive complaints that relate to the enforcement of its land-related policies, as well as complaints that relate to the key elements of responsible land-based investment and the [UNGP](#) criteria for non-state dispute resolution processes.[xi]
  - 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.
- Before implementation, test the mechanism informally to resolve problems with the mechanism. For example, there may be non-formalized complaints that arose during engagement efforts that could be used to test whether the mechanism functions properly before implementing it.
- Work with community leaders and local government officials to inform community members of the grievance mechanism. Do not think of this process as a onetime launch of the mechanism; just like ongoing consultation and engagement, introducing and raising awareness of the grievance mechanism should instead be an ongoing effort.[xii] Develop simple, visually engaging marketing materials describing the process and benefits associated with the grievance mechanism, in a manner in line with the communities' preferred modes of communication (e.g., radio, local newspaper, flyers, bulletins, consultations, etc.) to share the following information:
  - Information on how individuals and communities (including both women and men) can *file complaints* with the grievance mechanism (e.g., in person at the business's office, via mail or drop box, with a community representative, with a community leader, during the business's routine visits to communities, etc.).
  - Information on *what types of complaints* can be filed.



- A description of the procedures for *receiving, processing and responding* to complaints. These should detail the time period and manner in which the business will respond to complaints, the time period for investigating complaints, and the time period for filing an appeal.
- A description of the procedures for *monitoring and evaluating* the effectiveness of the grievance mechanism to ensure it is serving communities as intended.

## RECEIVING AND RESPONDING TO COMPLAINTS

- Publicize clear and accessible procedures for how to file complaints and how they will be processed.
  - Create a central registrar where those authorized to receive complaints can log them in the system, so that there is a single database where all complaints are recorded. An information system is vital for recording and tracking grievances and should be an integral part of the mechanism, particularly where the scope of the project is large and encompasses multiple sites.
  - Take care to preserve complainants' confidentiality. Filing procedures should ensure all community members (both women and men) are able to file complaints easily and in confidence.
  - Provide prompt confirmation documenting that the business has received the complaint and will determine whether it represents a covered violation. This confirmation will provide the complainant with acknowledgement that the business is taking the complaint seriously and will be reviewing it. To promote transparency, the procedures should indicate how long it will take the business to determine whether it will investigate the complaint.
- Publicize clear procedures for resolving 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 appropriate grievance resolution method may depend on the nature of the specific complaint, so the mechanism should offer a variety of resolution approaches rather than a single procedure. Possible methods include:
    - Business proposes a solution, which is most appropriate when the complaint is straightforward and the solution is obvious.
    - Business and community resolve the dispute together, which is often the most accessible, natural and nonthreatening way to resolve disputes.
    - Business and community use a third-party, which is appropriate when there are disputes of fact or other grievance approaches have failed.
    - Business and the community look to traditional practices and actors, which essentially inventories local and customary approaches to dispute resolution and adapts them to the context of community-business grievances.
  - The complaint resolution process will enjoy more community support, smoother implementation and greater stakeholder satisfaction if the community is involved in reaching final decisions.
  - Regardless of the approach used, the vast majority of complaints should be handled in face-to-face meetings.

## MONITORING AND EVALUATING THE MECHANISM

- Publicize clear procedures for monitoring and evaluating the grievance mechanism. The business should be tracking the following:
  - The number of land-related complaints it receives.
  - The average time the business takes to respond to complaints, determine whether the complaint 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.
- 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.
  - For example, although a high rate of complaints could indicate poor relations between the business enterprise and local communities, it could also indicate that the grievance mechanism is functioning as intended and is helping to improve relations between the business enterprise and communities. Regardless, the business should use monitoring and evaluation results to adapt and improve the grievance mechanism.

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[i] USAID, *Operational Guidelines for Responsible Land-Based Investment*<sup>50</sup> (2015).

[ii] See FAO, *Voluntary Guidelines on the Governance of Tenure, Fisheries, and Forests in the Context of Food Security*<sup>4</sup> (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](https://docs.google.com/viewerng/viewer?url=https://new-alliance.org/sites/default/files/resources/Analytical-framework-for-land-based-investments-in-African-agriculture_0.pdf); UN Office of the High Commissioner for Human Rights (OHCHR), *Guiding Principles on Business and Human Rights* 31-32 (UN Human Rights Council 2011).

[iii] USAID, *Operational Guidelines for Responsible Land-Based Investment*<sup>50</sup> (2015).

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

[v] *Id.*

[vi] *Id.* at 20.

[vii] FAO, *Voluntary Guidelines on the Governance of Tenure, Fisheries, and Forests in the Context of Food Security*<sup>4</sup> (2012) (“Business enterprises should act with due diligence to avoid infringing on the human rights and legitimate tenure rights of others.”). See also UN OHCHR, *Guiding Principles on Business and Human Rights*<sup>5</sup> (UN Human Rights Council 2011) [hereinafter “UNGP”] (“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.”).

[viii] USAID, *supra* note i, at 53.

[vix] See IFC Office of the Compliance Advisor/Ombudsman (CAO), *A Guide to Designing and Implementing Grievance Mechanisms for Development Projects* (2008), available at <http://www.cao-ombudsman.org/howwework/advisor/documents/implemgrieveng.pdf>.

[x] See *id.*

[xi] UNGP, *supra* note v, at 33.

## TASK 2: DEVELOP AND IMPLEMENT 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 enterprise to the loss of its social license, can provide the information needed to reestablish it, and 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 enterprise's compliance with lease terms and conditions.
2. To assess the unfolding investment project and restructure as necessary.
3. To determine how land-related M&E requirements can be integrated into other M&E activities so they remain part of the core business consideration.

Thus, for the life of the project, and potentially for a period of time after, the business must conduct M&E for the investment and its impacts upon the communities and individual smallholders that have changed their relationship to the land for the benefit of the enterprise. This will involve designing and implementing a thorough and robust M&E plan (see [M&E Primer](#)).

### STEP-BY-STEP GUIDANCE

#### 1. Business designs and implements an M&E plan 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 it otherwise might.<sup>[i]</sup> 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. Additionally, if displacement occurred and a LRP or RAP was implemented, M&E ensures that the lives of the affected people are adapting and adjusting to their new land, and M&E can also identify any needs for the company to further invest in compensation. Below are principles for M&E that the business should be adhering to when designing and implementing its M&E plan:

- **Commitment.** No project can succeed without sufficient resources devoted to the effort. Effective M&E must include strong commitments of financial and human resources and should be accompanied by strong mechanisms for corrective action and adjustments to project design and implementation. Provide sufficient resources to make corrections and, in turn, monitor their effectiveness. Plan and ready M&E for implementation before the investment project begins. M&E needs to be seen as an integral part of project implementation, to avoid falling victim to competing needs and arising emergencies.<sup>[ii]</sup>
- **Collaboration and Consent.** There must be inclusive participation of relevant stakeholders in data collection and the development of indicators, benchmarks, assessment processes, and mechanisms for grievance, redress, and learning.<sup>[iii]</sup> Gender sensitivity is key;

both women and men should participate in the design, implementation, and assessment of M&E plans.[iv] Similarly, participation must be culturally appropriate and based on engagement and dialogue in the local context. It is critical that M&E practices involve shared responsibility, commitment, and accountability amongst stakeholders.

- **Practicability and Sustainability.** Realistic timelines, translating results into action, sufficient capacity (both skills and other resources), and a sustainable plan are key to M&E that can focus on and obtain the information needed to confirm contract compliance and provide input to correct deficiencies in overall implementation of the investment.
- **Transparency and Independence.** There must be transparency throughout the process of developing and conducting M&E and in disseminating and using the findings to make corrections to design and implementation. The use of third parties to perform activities can increase independence and minimize real or perceived conflicts of interest.
- **Accessibility.** The business enterprise should take positive steps to make information available to all stakeholders. This includes making M&E plans available through all relevant mediums, including electronic or printed copies, along with making M&E updates and inquiries available during ongoing consultation and engagement.
- **Accountability.** M&E must link to and depend upon a strong, accessible, and enduring grievance mechanism and the contract provisions must provide for sanctioning of non-compliance.[v]
- **Source of Continuous Learning & Improvement.** Effective M&E is dependent upon assessments that provide information needed to make subsequent adjustments and improvements to processes, standards, project design, and project implementation, as necessary. In environments where women's land uses often go unnoticed and unaccommodated, learning and improvement are often keys to refining gender approaches over time.

While each investment will have its unique needs for M&E based on contextual factors (e.g., the agricultural products involved, the region in which the investment occurs, the nature of any outgrower schemes or relocation programs), there are some broad standards that will be applicable to virtually any project. Supplemental Resource: Monitoring and Evaluation Indicators provides a list of possible M&E indicators. These indicators are not exhaustive, but are intended to provide a starting point for a rigorous and diligent M&E protocol.

## 2. Business conducts follow on impact assessments to evaluate impacts on communities.

Throughout the lifecycle of the investment, the business 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 investor 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.

While each investment's particular assessment needs will depend on the investor, the community and the investment environment, it is generally best to plan assessments for each level of the value chain. Sample questions for assessment of household farm owners, large farm owners, farmworkers, and manufacturing plant and mill owners are provided in [Supplemental Resource: Land Rights Assessment Tool Kit](#). These questions provide a starting point for designing assessments and should be combined with suggestions and questionnaires designed by neutral third parties that are conducting periodic impact assessments.

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[i] 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) [hereinafter "VGGT"].

[iii] African Union, Guiding Principles on Large Scale Land Based Investments in Africa 25 -26. 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] VGGT, supra note ii, at 24, 27.

[v] UN Office of the High Commissioner for Human Rights, *Guiding Principles on Business and Human Rights* 19 (2011).

# 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

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### PHASE 1

#### LANDASSESS TOOL

The LandAssess Tool was created as part of Landesa's C2P Land Project in partnership with Illovo Sugar Africa, and funded by DFID's LEGEND Challenge Fund. The LandAssess Tool is a series of checklists that allow companies to manage efforts to comply with international standards and best practices. This includes measuring progress made against each international standard and best practice, assigning risk according to progress, detailing work plans and timelines the company will follow to reach compliance, and designating responsibilities to both internal and external actors by task.

You can download the English version of the tool below. You can also navigate to the tool's resource page, where you can download the tool in Kiswahili and Portuguese and access a user guide and training video.

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

[http://ripl.stage.s3.amazonaws.com/uploads/support\\_link/file/46/LandAssess\\_Tool\\_\\_English\\_.xlsx](http://ripl.stage.s3.amazonaws.com/uploads/support_link/file/46/LandAssess_Tool__English_.xlsx)

[LandAssess Resource Page \(https://www.landesa.org/what-we-do/landassess-tool/\)](https://www.landesa.org/what-we-do/landassess-tool/)

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#### SAMPLE BUSINESS ENTERPRISE POLICIES

This resource provides examples of business enterprise policies that tend to promote socially responsible investing and work toward ensuring the equitable sharing of investment benefits by women and men in affected communities.

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

[http://ripl.stage.s3.amazonaws.com/uploads/support\\_link/file/1/IGB\\_SR\\_1\\_-\\_Sample\\_Business\\_Enterprise\\_Policies.pdf](http://ripl.stage.s3.amazonaws.com/uploads/support_link/file/1/IGB_SR_1_-_Sample_Business_Enterprise_Policies.pdf)

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#### WHY LAND MATTERS: COMMUNICATING YOUR NEW LAND COMMITMENT

The purpose of this slide deck is to enable business leaders who have recently implemented a new corporate commitment on land rights to communicate the new policy, its rationale, and subsequent implementation steps.

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

[http://ripl.stage.s3.amazonaws.com/uploads/support\\_link/file/2/IGB\\_SR\\_2\\_-\\_Why\\_Land\\_Matters\\_-\\_Communicating\\_Your\\_New\\_Land\\_Commitment.pptx](http://ripl.stage.s3.amazonaws.com/uploads/support_link/file/2/IGB_SR_2_-_Why_Land_Matters_-_Communicating_Your_New_Land_Commitment.pptx)

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#### STAKEHOLDER MAPPING TEMPLATE

This resource can be used to map the various stakeholders that will be involved in or affected by a land-based investment.

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

[http://ripl.stage.s3.amazonaws.com/uploads/support\\_link/file/3/IGB\\_SR\\_3\\_-\\_Stakeholder\\_Mapping\\_Template.docx](http://ripl.stage.s3.amazonaws.com/uploads/support_link/file/3/IGB_SR_3_-_Stakeholder_Mapping_Template.docx)

## PHASE 2

### SITE-SPECIFIC QUESTIONNAIRE

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

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

[http://ripl.stage.s3.amazonaws.com/uploads/support\\_link/file/4/IGB\\_SR\\_4\\_-\\_Site-Specific\\_Questionnaire.docx](http://ripl.stage.s3.amazonaws.com/uploads/support_link/file/4/IGB_SR_4_-_Site-Specific_Questionnaire.docx)

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### COMMUNITY CONSULTATION CHECKLIST

Use this checklist alongside the guidebook to support productive, meaningful and participatory consultations with community leaders and communities.

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

[http://ripl.stage.s3.amazonaws.com/uploads/support\\_link/file/6/Supplemental\\_Resource\\_VI\\_Community\\_Consultation\\_Checklist.docx](http://ripl.stage.s3.amazonaws.com/uploads/support_link/file/6/Supplemental_Resource_VI_Community_Consultation_Checklist.docx)

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### COMMUNITY CAPACITY ASSESSMENT

This resource provides a template for gathering information on individual and collective weaknesses and strengths across community groups: a community capacity assessment targeting characteristics and skills that are considered necessary for effective community involvement throughout the investment process.

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

[http://ripl.stage.s3.amazonaws.com/uploads/support\\_link/file/7/IGB\\_SR\\_6\\_-\\_Community\\_Capacity\\_Assessment.docx](http://ripl.stage.s3.amazonaws.com/uploads/support_link/file/7/IGB_SR_6_-_Community_Capacity_Assessment.docx)

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### LAND RIGHTS ASSESSMENT TOOL KIT

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

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

[http://ripl.stage.s3.amazonaws.com/uploads/support\\_link/file/8/IGB\\_SR\\_7\\_-\\_Land\\_Rights\\_Assessment\\_Tool\\_Kit.docx](http://ripl.stage.s3.amazonaws.com/uploads/support_link/file/8/IGB_SR_7_-_Land_Rights_Assessment_Tool_Kit.docx)

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### RISK MITIGATION ANALYSIS

Use this resource to analyze and mitigate potential risks created by a prospective investment.

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

[http://ripl.stage.s3.amazonaws.com/uploads/support\\_link/file/9/IGB\\_SR\\_8\\_-\\_Risk\\_Mitigation\\_Analysis.docx](http://ripl.stage.s3.amazonaws.com/uploads/support_link/file/9/IGB_SR_8_-_Risk_Mitigation_Analysis.docx)

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### OUTGROWER BEST PRACTICES 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 \(PDF\)](#)

[http://ripl.stage.s3.amazonaws.com/uploads/support\\_link/file/14/IGB\\_SR\\_9\\_-\\_Outgrower\\_Best\\_Practices.docx](http://ripl.stage.s3.amazonaws.com/uploads/support_link/file/14/IGB_SR_9_-_Outgrower_Best_Practices.docx)

## PHASE 3

### TEMPLATE FOR LOI/MOU

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

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

[http://ripl.stage.s3.amazonaws.com/uploads/support\\_link/file/11/IGB\\_SR\\_10\\_-\\_Template\\_for\\_MOU.docx](http://ripl.stage.s3.amazonaws.com/uploads/support_link/file/11/IGB_SR_10_-_Template_for_MOU.docx)

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### KEY CONTRACT ELEMENTS

This resource provides guidance on the terms and elements that should be contained within the Letter of Intent or Memorandum of Understanding and final contract between the company and community, as well as within any lease agreement between the business enterprise and the government.

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

[http://ripl.stage.s3.amazonaws.com/uploads/support\\_link/file/10/IGB\\_SR\\_11\\_-\\_Key\\_Contract\\_Elements.pdf](http://ripl.stage.s3.amazonaws.com/uploads/support_link/file/10/IGB_SR_11_-_Key_Contract_Elements.pdf)

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### FINAL CONTRACT CHECKLIST

This checklist should be used when preparing the final contract.

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

[http://ripl.stage.s3.amazonaws.com/uploads/support\\_link/file/12/IGB\\_SR\\_12\\_-\\_Final\\_Contract\\_Checklist.docx](http://ripl.stage.s3.amazonaws.com/uploads/support_link/file/12/IGB_SR_12_-_Final_Contract_Checklist.docx)

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## PHASE 4

### 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 \(Word Document\)](#)

[http://ripl.stage.s3.amazonaws.com/uploads/support\\_link/file/13/IGB\\_SR\\_13\\_-\\_Designing\\_a\\_Stakeholder\\_Engagement\\_Plan.docx](http://ripl.stage.s3.amazonaws.com/uploads/support_link/file/13/IGB_SR_13_-_Designing_a_Stakeholder_Engagement_Plan.docx)