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INCORPORATING RESPONSIBLE LAND-BASED INVESTMENT PRINCIPLES INTO INVESTOR POLICIES AND PRACTICES:

A MANUAL FOR INVESTORS

Implemented by

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MINISTRY OF AGRICULTURE

People Democratic Republic, Ministry of Planning and Investment

THE REPUBLIC OF UGANDA
MINISTRY OF LANDS, HOUSING AND URBAN DEVELOPMENT

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List of abbreviations

CDA	Community Development Agreement
CFS	Committee on World Food Security
CFS-RAI	Principles for Responsible Investment in Agriculture and Food Systems
CSO	Civil Society Organization
ESIA	Environmental and Social Impact Assessment
ESMP	Environmental and Social Management Plan
FAO	Food and Agriculture Organization of the United Nations
FPIC	Free, Prior and Informed Consent
GAP	Good Agricultural Practices
GIZ	Deutsche Gesellschaft für Internationale Zusammenarbeit GmbH
IFC	International Finance Corporation
IPA	Investment promotion agency
MOU	Memorandum of Understanding
MSP	Multi-stakeholder Platform
NGO	Non-governmental Organization
NPV	Net present value
OECD	Organisation for Economic Cooperation and Development
USAID	United States Agency for International Development
VGGT	Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security
WB	World Bank

Preface

Access to and secured long-term use rights of land are essential conditions for rural development, food production and security as well as social peace. The distribution and use of land is connected to other thematic areas targeted in the Sustainable Development Goals like the achievement of SDG 5 gender equality and the implementation of human rights. As land is a limited resource, its distribution is often disputed between a variety of actors. The competition for land may further be aggravated by commercial agriculture and forestry investments. Such investments are often intended to generate value, providing positive impacts for the overall economy via land revenues and taxes, but also for the local communities in terms of livelihood improvement, job opportunities and transfer of know-how. However, if investments do not follow internationally agreed principles and guidelines, they run a high risk of having negative consequences on communities and the environment. Investments may lead to land-use disputes, expropriation, and displacement as well as environmental degradation, worsening the socio-economic situation of already disadvantaged groups.

Population growth, climate change as well as global supply chain disruptions for agricultural inputs and staples caused by the war in Ukraine are some of the drivers of the current downward spiral for food insecurity, poverty and hunger. Investments in land, when committed in a sustainable manner – considering ecological responsibility, social equity, and economic performance – contribute to tackling these challenges. To ensure that investments in land not only generate profit for the investors, but also for other actors, certain aspects must be considered when designing sustainable and profitable investments in land.

This is where the project *Promoting Responsible Governance of Investments in Land* (RGIL), commissioned by the European Union and German Federal Ministry for Economic Cooperation and Development (BMZ) comes in. Implemented by GIZ in Ethiopia, Laos and Uganda, the project aims to ensure that investments in land are productive, contribute to sustainable land management and respect the rights and needs of local populations, in particular vulnerable groups and women. RGIL works together with target communities, political partners and investors as well asCivil Society Organisations, academia and investor associations on the implementation of good land governance based on international principles such as the VGGTsand the CFS' Principles on Responsible Agricultural Investment (RAI).

In this series of guides and manuals, specific information relevant for the different stakeholder groups has been collected to make them accessible und useable to improve the practices in commercial agricultural and forestry investments on a large scale.

The guides and manuals were developed and validated in a participatory and iterative process with the stakeholders, after assessing the actual needs regarding capacity development and analysing existing international and national guidelines, regulations and training material. They combine important elements from existing products and trainings, and apply them specifically to the process of large-scale land based investments and in relation to identified problems in the three countries. The various guides and manuals complement each other thematically and can be used both as individual products and as a complete toolkit in the respective country-specific context.

This manual aims to provide practical guidance for investors in incorporating responsible land-based investment principles into investor policies and practices and is meant to be used along with the *Introductory Guide for Communities, Governments and Investors*. It has been written for all three RGIL countries, hoping that it will also be useful for other countries.

Dr Oliver Schönweger
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Responsible Governance of Investments in Land (RGIL)

I. Introduction

Over the past decade some investors have been able to achieve significant returns on land-based investments in agriculture and forestry in developing countries. In some cases, those investments also benefit the countries and communities where those investments are made. However, not all land-based investments are equally beneficial, and those that harm communities, workers and the environment create great risk to the success of the investment. Research shows that investors that fail to utilize responsible investment practices incur much higher costs and thus a reduced likelihood of receiving a reasonable risk-based return on the investment (ODI 2021) (see Part III). Therefore, it is essential that investors and other stakeholders join the ever-increasing roster of responsible businesses by adopting and implementing policies and practices to ensure that investments are responsible. This manual seeks to help investors do just that.

"Investors" can include a range of private sector entities, including:

- Direct investors in land, such as large and medium-sized farmers.
- Other businesses in the supply chain that do not invest directly in land or operate land-based investments.
- Financial institutions that provide debt or equity financing to direct investors in land or supply chain businesses.

This manual is written primarily for medium and large national and regional companies in the first category: i.e., those making direct investments in land — through concessions, leases, outgrower schemes, etc. — for purposes of engaging in agricultural or forestry operations in developing countries.[1] It does not address investments in infrastructure, mining or energy which tend to raise some unique issues that are beyond the scope of this manual. It also does not cover investments by small farmers who, while investors, are considered to be part of the affected community in this manual.

While the laws of some countries require investors to conform with some of the practices set forth in this manual, it rarely will be sufficient for companies simply to comply with the law. Indeed, as larger, often foreign investors sometimes have more capacity and resources than government, they may have to play a leading role in helping to ensure that their project does not cause harm to local communities. That is, investors remain responsible for implementing responsible practices throughout the investment cycle, even when not required by law or government policy (Landesa 2021).

This manual is meant to be used along with "Responsible Investments in Land: An Overview" (the "Overview")[2]. That guide contains a detailed description of the potential benefits and harm from land-based investments, the basic principles of responsible investments and a discussion of the roles and responsibilities of other stakeholders — communities and governments. Part II of this manual provides a brief summary of the basic principles described in greater detail in the Overview. It is followed by Part III which sets forth the "business case" for investing responsibly—why it makes financial sense to do so. In Part IV, the manual covers the internal policies and practices investors should adopt to guide their land-based investments. Finally, Part V provides detailed guidance on how to responsibly evaluate, negotiate and implement a responsible investment.

[1] It also may be useful to multinational firms and financial investors (who tend to be more knowledgeable on this subject).

[2] Also, this manual is a companion to "Achieving Responsible Land-Based Investments: A Guide for Communities" and ""Promoting, Facilitating and Regulating Responsible Land-Based Investment: A Manual for Government."

Figure 1

RESPONSIBLE INVESTMENTS IN LAND: **AN OVERVIEW**

- **part I** — A detailed description of the potential benefits and harm from land-based investments, the basic principles of responsible investments and a discussion of the roles and responsibilities of other stakeholders — communities and governments
- **part II** — Provides a brief summary of the basic principles described in greater detail in the Overview
- **part III** — Sets forth the "business case" for investing responsibly—why it makes financial sense to do so
- **part IV** — Covers the internal policies and practices investors should adopt to guide their land-based investments
- **part V** — Provides detailed guidance on how to responsibly evaluate, negotiate and implement a responsible investment



II. What Is Responsible Investment? A Brief Summary

As explained in the Overview, there is no single universally accepted definition of "responsible investment." The principles underlying a responsible land-based investment in agriculture and forestry are derived primarily from two international instruments: (1) the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT); and (2) the Principles for Responsible Investment in Agriculture and Food Systems (CFS-RAI).

Recognizing that responsible investment is essential for enhancing food security and nutrition, the CFS-RAI Principles provide a useful definition of a "responsible investment":

> Responsible investment…requires respecting, protecting and promoting human rights, including the progressive realization of the right to adequate food in the context of national food security in line with… relevant international human rights instruments" (CFS-RAI, para 3).

The VGGT add the following directions for investors:

- "Responsible investment should do no harm, safeguard against dispossession of legitimate tenure rights holders and environmental damage, and should respect human rights." (Paragraph 12.4)
- Investors "have the responsibility to respect national law and legislation and recognize and respect tenure rights of others and the rule of law." (Paragraph 12.12)

Through 10 broad principles, the CFS-RAI encompass the entire range of activities involved in the production, processing, marketing, retail, consumption, and disposal of agricultural and food products. (See Figure 1). Together the two instruments (VGGT and CFS-RAI) serve as a framework to guide the actions of all stakeholders engaged in agriculture and food systems by promoting principles and practices that can promote much needed responsible investment, enhance livelihoods, and guard against and mitigate risks to food security and nutrition.

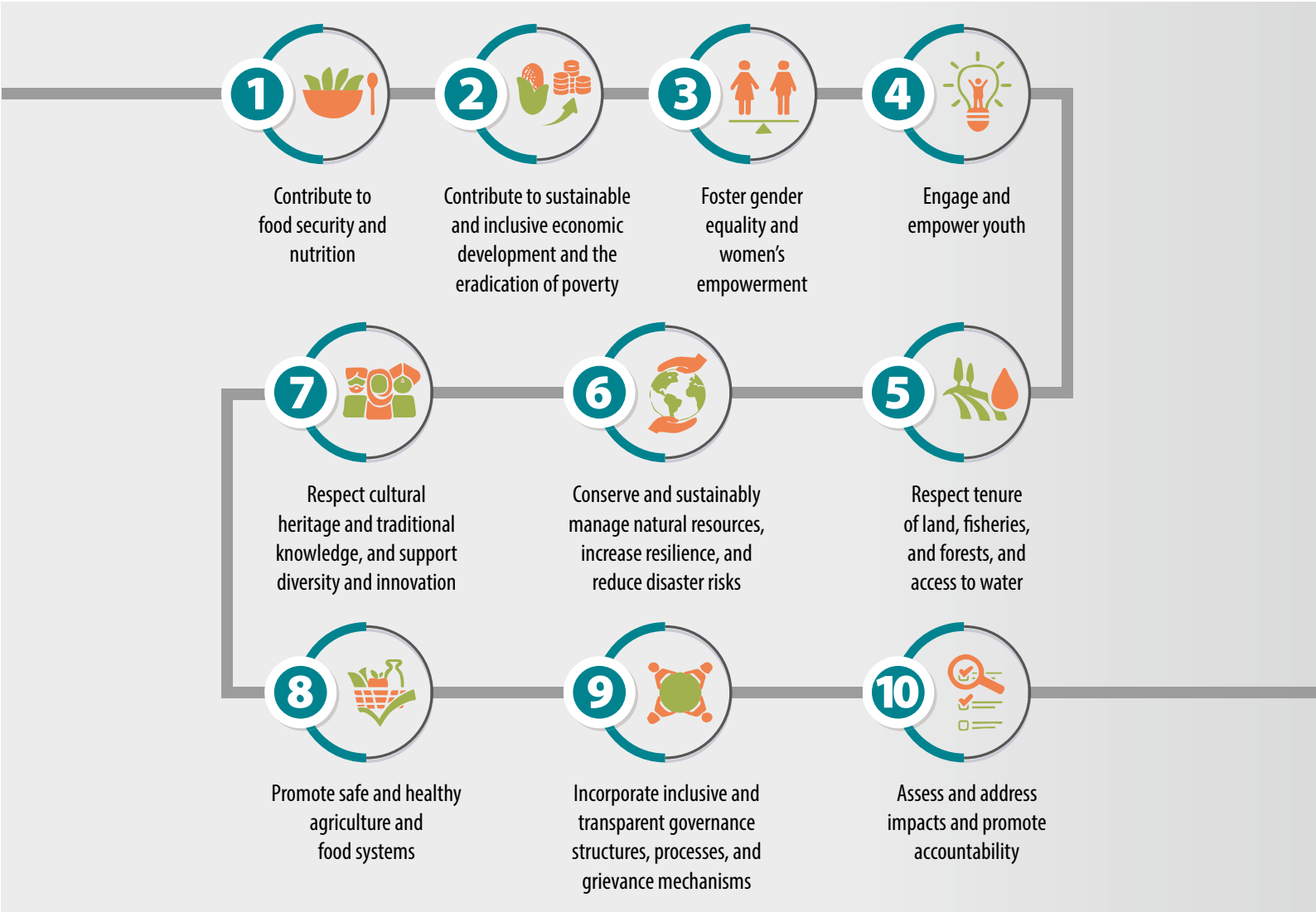

Figure 2: The CFS-RAI Principles[3]

[3] Source: FAO 2020.

The VGGT and CFS-RAI, together with other guidance and experience to date have generated an understanding of the essential elements of a responsible land-based investment. Refer to the Overview and Box 1 for more about these elements.

Box 1: Essential Elements of a Responsible Land-based Investment

- Respect Legitimate Tenure Rights
- Equitable Benefit-sharing
- No Harm to Food Security
- Impact Assessments
- Grievance Mechanisms
- Environmental Sustainability
- Effective Consultation and Participation
- Minimal Large-scale Transfers of Tenure rights
- Respect Human Rights
- Empowerment of Women and Youth
- Transparency and No Corruption
- Monitoring

III. The Business Case for Responsible Investment

Investing responsibly can help investors to better manage the substantial financial, legal, operational and reputational risks inherent in investing in land-based assets in many developing countries. Investment practices that lead to delays, conflicts, violate the law or anger consumers can be very costly and threaten the financial success of the project. This section provides an overview of the benefits of responsible investment and the risks of investing irresponsibly.

Investing in land in developing countries can be challenging. This is especially so in environments where land governance is weak and capacity within government and communities is low. These challenges pose substantial risks for investors. To address these risks and enhance the likelihood of a reasonable return on investment, it is in the best interests of investors to adopt the policies and practices set forth in this manual which are based on international guidelines and best practices.

It is important to acknowledge that investing responsibly carries significant costs. It is certainly true that mapping stakeholders, consulting effectively with local communities, conducting inclusive environmental and social impact assessments – all of which are essential practices — can be costly. But the costs of getting it wrong can be even higher (see Box 2.). Communities displaced and impoverished by an investment are likely to find a way to undermine it through protests or other tactics (USAID 2015). Furthermore, local communities often react negatively to investments on what they consider to be their land. For example, one study of 39 large agricultural investments concluded that the most commonly cited negative impact of the projects involved land-related issues (Mirza 2014).

Box 2: The High Cost of Investing Irresponsibly

While utilizing responsible investment practices can be expensive, the costs of failing to do so are likely to be even higher. Recent research has begun to document more extensively just how expensive it can be if land rights-related conflicts arise in an investment compared to the costs of avoiding those conflicts. One study of 137 investments in Africa and Asia found that mitigation expenses averaged 2% of overall project expenditure compared to potential financial losses of 24-37%, an estimated range of losses of US$25-40 million. Previous studies have shown that costs can run into the millions of dollars in some of the more extreme cases.

Sources: ODI 2021; Munden Project 2012.

Recent research shows the high potential costs that can result if land rights-related conflicts arise in an investment. As described in Box 2, one study revealed potential financial losses in the range of US$25-40 million (ODI 2021). An earlier study found land tenure-related costs in a similar range. (Munden Project 2012). A recent review of 90 land-based investments in Africa revealed losses ranging from US$10 million to US$100 million related to failure to adequately address risks related to land tenure (ODI & TMP Systems 2019). (Box 3 contains detail on the magnitude of average financial losses arising in some of the investments contained in the study.)

Box 3: Average Financial Losses Due to Tenure-Related Delays on Projects in Each Country in Terms of US Dollars

Crop	Location	Best case US$	Median Case US$	Worst Case US$
Oil palm	• Cote d'Ivoire • Liberia • Uganda	• 9,766,450 • 9,841,372 • 8,251,147	• 16,091,647 • 16,351,502 • 13,340,337	• 21,806,680 • 22,133,101 • 18,770,602
Sugar cane	• Kenya • Malawi • Tanzania	• 31,221,160 • 35,082,495 • 29,373,008	• 68,328,748 • 77,429,863 • 63,018,219	• 91,919,143 • 100,862,290 • 86,363,927
Rice	• Ethiopia	• 2,481,356	• 6,621,927	• 8,570,430
Coffee	• Ghana	• 283,908	• 479,987	• 762,148

Source: ODI & TMP Systems 2019 at 14.

Multinationals, such as Nestle, Coca Cola, PepsiCo, Illovo, Cargill, and others have explicitly adopted responsible investment principles and practices for themselves and their suppliers as they have come to understand the financial and reputational risks of irresponsible investment practices in their supply chains and the potential rewards from acting responsibly. There are also specific standards and certification processes that apply to commodities such as biomaterials (Roundtable on Sustainable Biomaterials), palm oil (Roundtable on Sustainable Palm Oil) and others (FAO 2016; RSB, 2016; RSPO, 2013). All of this means that even smaller companies should invest and operate responsibly, too, at the insistence of the larger firms to whom they sell their products.

Many large institutional financial investors require those to whom they provide debt or equity financing to operate responsibly and sustainably. For example, the International Finance Corporation (IFC) Performance Standards recognize in Standard 5 that project-related land acquisition and restrictions on land use can have adverse impacts on communities and persons that use the land. Accordingly, the IFC requires investees to utilize a variety of responsible investment practices, depending on the nature and size of the project. Many large banks and institutional lenders apply the IFC performance standards (sometimes via the Equator Principles for private lenders) to larger projects (IFC 2021; Equator Principles Association 2020).

At the end of the day, it simply makes financial sense to invest responsibly. When a project fails to take the land and resource rights of local people into account, it can face costly delays, work stoppages, protests, consumer boycotts, shareholder opposition and, in some cases, violence. This may lead to legal actions and ultimately to financial, brand, or reputational harm (FAO 2016; USAID 2015).

IV. Policies and Practices for Responsible Investment

Investment projects are more likely to align with responsible investment principles if the investor has developed suitable policies, principles, guidance and practices for management and staff to use when evaluating a proposed investment or implementing one that has been approved. They should be endorsed and required by management at the highest levels and incorporate the following (OECD/FAO 2016; Landesa 2021):

- The business's overall commitment to applying the VGGT, CFS-RAI and other relevant international standards and best practices to each land-based investment even when doing so is not required by national law. (See the Illovo Sugar Guidelines in Box 4.) Thus, in addition to complying with national law, the investor should commit to:
    - Respecting human rights
    - Respecting labor rights
    - Contributing to food security
    - Empowering women and youth as doing so will lead to a healthier local community and possibly more productive employees and tend to reduce conflicts that can harm the investment
    - Respecting tenure rights and access to natural resources
    - Equitable benefit-sharing and a preference for inclusive business models
    - Promoting public health and safety to avoid conflict and possibly legal action against the company
    - Protecting the environment and sustainably using natural resources
    - Community consultation and engagement and FPIC
    - Develop and utilize grievance mechanisms
- A requirement that suppliers to the investor must adhere to the same standards and agree to report and verify their compliance.
- A commitment to allocating sufficient resources to enable compliance with international



standards and best practices.

- An explanation of how the company will institutionalize, implement and enforce these policies in the context of existing rules and protocols, including clear lines of authority for implementation and enforcement. This should include plans for training and evaluating company personnel.
- A commitment to transparency and publicly reporting on company policies and activities related land-based investments.
- Zero tolerance of corruption.

The first step in developing this internal guidance is to assess existing guidance and practices to determine the extent to which they are consistent with the foregoing principles. Management should appoint a team to conduct this exercise and strongly consider involving an outside expert, such as an international or national lawyer or responsible investment consultant, who brings not only expertise but an independent perspective. This activity should reveal gaps that can be corrected in the next step.

Box 4: Illovo Group Guidelines on Land and Land Rights

Illovo Sugar Africa has adopted an extensive set of guidelines on land. Highlights include:

1. The Illovo Group adopts a zero tolerance approach to land grabs and requires that all its suppliers do likewise.
2. Recognising that there is growing pressure on land, leaving local communities vulnerable, we acknowledge our responsibility to take action and to use our influence to protect the land rights of the communities in the areas in which we operate.
3. We endeavour to ensure that impacts on the land and livelihood of local communities resulting from our activities, and those of our Suppliers, are minimised and that any unavoidable impacts are managed for the mutual benefit of all stakeholders in an effective and timely manner.
4. Mechanisms to achieve this objective include:
    1. assessing the social, economic and environmental impact of our activities to ensure that our projects and other business activities are in line with, and are assessed according to, accepted international standards;
    2. stakeholder engagement with local communities and public authorities on matters affecting their land ownership and land use rights;
    3. implementing and providing technical and facilitating financial support to local communities, farmers and small grower schemes, in collaboration with reputable non-governmental organisations, development organisations and banks; and
    4. initiating and actively participating in programmes for the redistribution of land to previously disadvantaged communities.
5. We have implemented a process to identify, and on an on-going basis we will continue to assess, through stakeholder engagement and other mechanisms, any negative impacts on land and land rights in the areas in which we operate.

6. Where appropriate, we will endeavour to mediate or otherwise attempt to assist in the resolution of disputes involving competing land rights claims between the local communities and/or between local communities and local government.
7. In relation to small grower development and other projects involving the development of local farmland, we will carry out a due diligence investigation in relation to land rights in order to identify any competing land claims, or other land rights issues, and will seek to address these insofar as possible.
8. Since the bulk of our raw material (sugar cane) comes from the land surrounding our factories, we are mindful of the need to implement sustainable farming practices, both in relation to our own operations and those of the growers who supply sugar cane to our factories.
9. Our business practices seek to avoid the transfer of land rights away from local communities and national governments and we prioritise alternative models of investment, such as the development of small grower farming operations in the areas in which we operate, rather than acquiring their land for our own development.
10. [B]efore buying, renting, acquiring or otherwise accessing land or property, it is necessary to ensure that all affected owners and users of the relevant land or property have been adequately consulted and compensated.
11. In line with our Code of Conduct, Illovo adheres to the principles of Free, Prior and Informed Consent (FPIC) in relation to our dealings with our local communities. This requirement extends to our Suppliers, who are also required to adopt a similar approach throughout their supply chains.

Source: Illovo undated.

The internal assessment and subsequent implementation should cover three investment scenarios: (1) new land-based investments by the company; (2) issues related to existing holdings that may be plagued by land conflicts the company may have inherited at the time of the investment (see Box 5.); and (3) requiring suppliers to comply with responsible investment principles (Landesa 2021).



Figure 3

Box 5: Legacy Land Issues

Investors sometimes engage in land-based investments through acquiring rights to land that currently or previously hosted another investment. This is sometimes referred to as a "brownfield" investment, to be contrasted with a "greenfield" investment that is on land not previously in use for investment. Brownfield investments may pose difficult challenges related to dispute resolution as the investor essentially inherits pre-existing disputes. Investors should seek information about such issues during the participatory mapping process and, where possible, include former land users in consultations (see Part V below).

Legacy land issues tied to an investment frequently result from:

1. Historically unresolved claims to land.
2. The type and level of community consultation and consent process used for a prior land acquisition.
3. Unfair terms and processes for land acquisition and compensation.
4. Poorly applied resettlement procedures.
5. Restricted access to land by communities, including seasonal users like pastoralists or community members with overlooked land rights.
6. The extent of land use by the project operator.

Source: Interlaken Group 2017 at 3-4.

The second step is to draft revised company policies. Here, too, the internal team is likely to benefit from access to expertise from outside the company. It is important to get the perspectives of all internal stakeholders whose work relates to land-based investments and potentially external stakeholders such as shareholders, suppliers, NGOs and CSOs. This level of engagement may lengthen the timeline, but it should lead to a better result.

It likely will be productive to develop an implementation plan to guide the revision process. The specific content of such a plan will vary from company to company and by the particular geographical, legal and operational setting. Like any business plan, it should specify the particular activities to be carried out, the persons responsible for each, a timeline, the stakeholders from whom input will be obtained and how that will occur and be supported by sufficient resources to complete the plan. See Box 6 for a more specific list of actions that could be included in an implementation plan.

Box 6: Actions to Include in a Responsible Investment Implementation Plan

- Update existing operational manuals and guidance for employees and suppliers based on assessment of responsible investment principles alignment.
- Deliver trainings for employees, suppliers and other third-parties engaged in activities related to land and commodity acquisition.
- 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.
- Develop a plan for assessing compliance with revised operational manuals and guidance in ongoing and future operations.
- Assess whether management systems are in place to ensure compliance.
- Develop and maintain a map of agricultural commodity supply chains.

Source: Landesa 2021 at 19.

It is important to stress that senior management must wholeheartedly support the company's commitment to responsible investment. They should be visibly and actively involved in ensuring that this commitment is carried out. A key reflection of senior management support is how well employees and business partners are trained and incentivized to comply with it (OECD/FAO 2016).

Examples of policies adopted by multinationals are available and can serve as guidance for investors.[4] And FAO and the OECD have developed model enterprise policies that are available to investors (OECD/FAO 2016).

V. Responsibly Evaluating, Negotiating and Implementing Land-Based Investments

Having established a foundation for responsible investment at the company level through the appropriate internal guidance, we now consider several phases of activities involved in assessing, developing, negotiating and proceeding with a potential investment. These phases are: (1) screening and due diligence; (2) community engagement; (3) impact assessments; (4) developing an equitable contract; (5) implementing and monitoring the project; and (6) closing out the project (Figure 4). It is important to stress that not all of these phases proceed in a linear fashion. For example, the investor should engage with the affected community throughout the entire project cycle.

Before delving into each phase, it is important to note that there are many settings where the government will provide land to an investor. A responsible investor should resist the temptation to assume that in identifying and offering the land the government obtained the consent of the affected community, provided adequate compensation and otherwise itself abided by responsible investment principles. The investor should conduct due diligence, obtain FPIC and otherwise comply with all relevant guidance presented below.

A. Screening and Due Diligence

Before deciding to invest, companies must conduct research on the uncertainties and risks associated with the proposed project. From the standpoint of responsible investments, the overriding issue is

[4] See, e.g., Landesa 2021b. Sample Business Enterprise Policies (http://ripl.stage.s3.amazonaws.com/uploads/ckeditor/attachments/38/IGB_SR_1_-_Sample_Business_Enterprise_Policies.pdf).

whether the investment is likely to result in a reasonable financial return while also being designed and implemented in a manner consistent with international best practice standards. The cost of failing to conduct effective due diligence can be substantial, as in the case set forth in Box 7.)

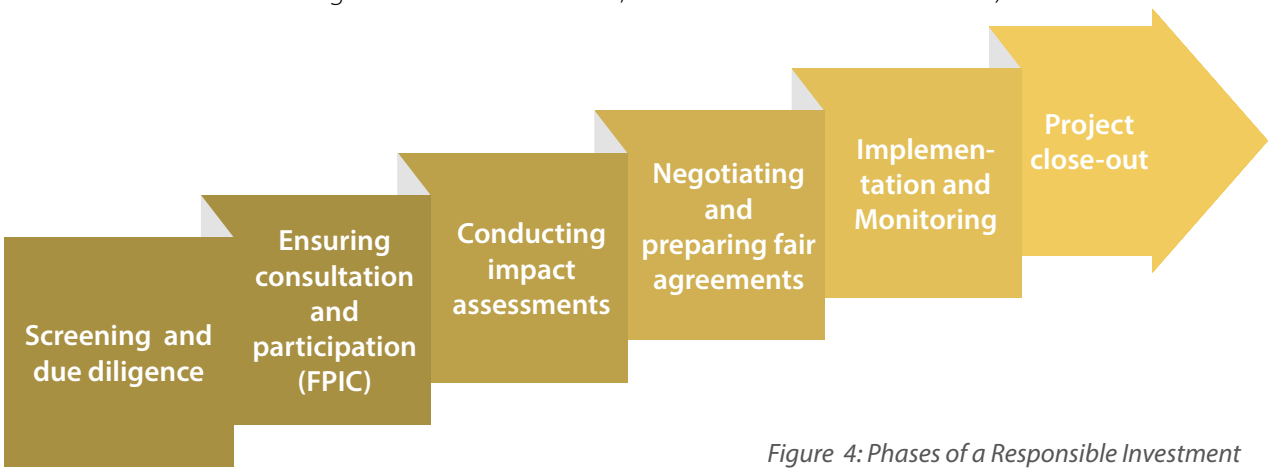

Figure 4: Phases of a Responsible Investment

In many cases the investor will conduct a preliminary risk assessment followed by a more comprehensive due diligence process if the results of the preliminary assessment are sufficiently positive. But due diligence activities should not end there. They should continue in subsequent investment phases up until a final go/no go decision is made as the investor learns more about the proposed investment site and consults with stakeholders (Smaller, et al., 2014; FAO 2016; Landesa 2021).

Box 7: Costly Failure to Conduct Effective Due Diligence

"The consequences of not adopting in-depth due diligence approaches in advance are illustrated by the Portucel plantation forestry investment in Mozambique. The company went ahead with their investment in populated areas, following government approval of concessions totalling 356,000 ha in two populated central provinces, without making a practical assessment of the constraints in land access imposed by existing land rights and patterns of occupation. Land issues received closer attention when IFC committed additional finance to the project, insisting on the introduction of a range of safeguards to address risks identified by an environmental and social impact assessment (ESIA). Owing to growing difficulties in land acquisition and increasing community dissatisfaction, Portucel suspended further land acquisition for over two years until community and household land rights could be defined and introduced new land access protocols requiring direct participation in negotiations and consent of those holding rights to identified land parcels. As a result of delays to an ambitious plan to develop at least 250,000 ha of eucalyptus to feed a proposed pulp mill, compounded by delays in funding for the necessary transport infrastructure including new port facilities, the company had to adjust its business plans and target markets, underwriting the costs of delays, and commit additional funds to a community development support scheme."

Source: Quan and Seigneret 2019 at 6-7.

At a minimum the preliminary due diligence activity will involve desk research and advice from experts to gain an understanding of the national legal and institutional framework and at least an initial assessment of whether it is sufficiently supportive of responsible investment. In this preliminary phase, the due

diligence team should also ask: (1) Does a preliminary impact assessment reveal high risk factors that may make the project too risky? (See Box 8 for examples of high risk factors.) (2) Who are the key stakeholders with whom the investor should engage? (3) Does the proposed project pose any other important risks to the affected community or potential success of the investment (FAO 2016)? (4) Based on the answers to these and other questions, is there a reasonable probability that the project could be both responsible and financially successful?

Box 8: Examples of High-Risk Factors

- There is an active, ongoing conflict in the area or there are a significant number of existing or recent disputes or claims involving the land that cannot be resolved.
- The government originally acquired the land by expropriation, or the project requires expropriation to make it available for development, in either case causing local people to be evicted. Land obtained by or requiring expropriation should be avoided.
- The project design requires the large-scale transfer of land rights from local people, possibly resulting in many people being resettled.
- The country or locality where the project may be situated has significant corruption problems and corrupt activities have been observed in relation to the proposed project that cannot be effectively mitigated.
- The site is in an area of high conservation value that is likely to be destroyed or harmed by the project.
- There have been violations of human rights or labour rights in the area.
- There is a significant chance that the project may harm local food security.

Sources: FAO 2016; OECD/FAO 2016; WB 2017 Note 12

In some countries, either before or just after conducting preliminary due diligence, the investor may interact with a national or regional investment promotion agency (IPA). (Whether this is necessary should have been determined during the key stakeholder mapping exercise referenced above.) This will almost always be the case if the company intends to seek investment incentives, such as duty-free imports of equipment or tax breaks. In addition to offering incentives, IPAs can be helpful in other ways, such as making the investor aware of areas of the country that may be well-suited to their proposed investment or connecting the company to service providers. Under no circumstances, however, should the investor rely solely on advice or oversight from IPAs or other agencies to determine whether the investor is in compliance with best practices of responsible investment.

If the preliminary due diligence results are sufficiently positive, the investor may move on to identifying one or more potentially suitable sites for the project (if that has not already occurred). This will entail further due diligence focused on the designated area, including stakeholder mapping to facilitate the beginning of what should be a continuous process of consultations with the community. The list of stakeholders in a land-based investment could be long and possibly include tenure rights holders, government at all levels, business partners, vulnerable groups such as women and youth, traditional authorities and religious leaders and NGOs and CSOs. And this will be the time to gather as much information as possible about the site that has been preliminarily designated for the investment. See Box 9 for some suggested best practices related to land site due diligence.

Box 9: Best Practices for Land Site Due Diligence

- Conduct site visits to proposed project sites and prepare an initial inventory of man-made and natural assets on site, recognizing that local people may depend upon water sources, forests, pastures, and other natural resources to support their livelihoods. Loss of resources without adequate compensation may lead to future conflict or other problems.
- Request meetings with traditional authorities to discuss which lands, if any, local people feel may be most suitable for investment. Many local communities will welcome a well-crafted investment that provides meaningful benefits.
- Identify any overlapping claims to proposed land — mineral concessions, forest concessions, customary claims, and resolve — or consider an alternate site.

Source: USAID 2015 at 15.

At this point the investor also might proceed with creating a detailed business plan and feasibility study. At some point in the due diligence phase and depending on the nature of the investment, the investor should consider whether it might employ a business model that does not require the company to acquire a large tract of land. This might include a joint venture between the company and local tenure rights holders or an outgrower farming arrangement (see Box 10.). In each case, the investor essentially becomes a partner with members of the community in a way that tends to align the incentives so that the parties work together to achieve mutual success (New Alliance 2015; USAID 2015).

Box 10: Outgrower Schemes

A viable alternative to acquiring large areas of land is an outgrower scheme, sometimes referred to as contract farming, through which a contractual partnership is established between a company and local growers or landholders for the production of a commodity. This approach allows for vertical integration of the production process and enhanced quality control. It reduces the need to acquire rights over large tracts of land. The arrangement usually consists of a small "nucleus" farm owned by the company surrounded by a network of land parcels owned by local smallholders. The smallholders contract to sell their yields to the company, often at discounted prices, in exchange for training, equipment, input supplements, business development services, and assistance with credit and/or financing.

One example of such a scheme has been implemented by Outspan Bolovens Limited, a subsidiary of Olam International, in Laos. The scheme has the following objectives:

"1. Supporting professionalization of business-oriented cooperatives and farmer groups, through capacity building and the development and implementation of business plans.
2. Development of an extension and capacity building system.
3. Improvement of quality and productivity through Good Agricultural Practices (GAP) training.
4. Improvement of access to finance for farmers, via cooperatives and farmer groups
5. Commercialization of the Service Supply of cooperatives, farmer groups and Outspan.
6. Communication of project results to national and international stakeholders.

The program aims to increase household income from coffee by 25 percent, and increase OBL's 'community livelihood indicator" by 15 percent over its baseline."

Source: USAID 2015 at 39; MRLG 2016 at 12.

Note that the process of gathering and analysing relevant information does not end here; it should continue throughout the entire investment cycle. The company should continue to learn about the site selected for the investment and the communities that live there as it engages in consultations and conducts additional research. And due diligence activities should continue after the project has begun if, for example, the company makes significant changes to the project (Landesa 2021).

B. Ensuring Consultation and Participation (FPIC)

Effective consultation arguably is the single most important requirement for achieving a responsible land-based investment. As a practical matter, failure to communicate effectively on an ongoing basis prevents an investor from gathering the information required to make a fully informed decision whether and how to invest. And good communication can develop and sustain strong working relationships between the investor and the community. On the other hand, ineffective consultations can build local resentment that prompts communities to oppose an investment and may lead to conflict between the community and the investor that can be very costly (Deng 2012; FAO 2016; Landesa 2021a).

As explained in the Overview, the VGGT stipulate free, effective, meaningful and informed participation and consultation. This requires, among many other things, mapping stakeholders — including legitimate tenure rights holders and how land is used — very early in the investment process and ultimately obtaining FPIC from the affected community (see Box 11.) (FAO 2016; Landesa 2021). Although international law requires FPIC only for "indigenous peoples", the most prudent risk management approach is to proceed with any land-based investment only where the investor has obtained FPIC from the local population.

Box 11: Free, Prior and Informed Consent

Derived from international law, this principle states that any investment affecting the land or resources of indigenous peoples should not proceed without the free, prior and informed consent (FPIC) of those affected by the proposed project or investment. It gives indigenous communities a veto – the right to say no – to a project being implemented in their territory. This power may extend over the lifetime of the project if the nature or scope of the investment changes over time. The four elements can be summarized as follows:

Free. Those deciding whether to consent to a project should do so without coercion, intimidation or manipulation.

Prior. Consent must be sought well before any authorization or the beginning of project activities. The timetable must allow sufficient time for culturally appropriate consultation and for completion of local decision-making processes.

Informed. People receive all relevant information about the project. The information provided must be objective, accurate and presented in a manner or form that is understandable to those receiving it.

Consent. The people have agreed to the activity that will take place on their land. The right to consent includes the right to say no to the project or to offer to consent only under certain conditions.



While international law and the VGGT explicitly call for FPIC only where indigenous peoples are involved, many argue that the most prudent risk management approach for investors is to insist on FPIC in all cases. There is a strong case for using it in any situation where an investor requires land where there is a local population living and working.

Source: FAO 2014; Quan and Seigneret 2019).

Consultations between investors and communities should begin in the very earliest stages of the investment process—beginning with initial project planning—and continue throughout the project lifecycle. Seeking FPIC is an ongoing process. While a detailed discussion of how to consult is beyond the scope of this manual,[5] the investor usually should act in accordance with the following best practices:

- Agree with the community on a consultation process for working towards seeking FPIC. This should identify the specific current and future activities where consent should be sought. The process should always be based on good faith negotiation free of coercion, intimidation or manipulation and provide the community with sufficient time to reach a decision.
- Develop and implement a stakeholder consultation plan tailored to the risks, impacts and development stage of the operations and to the characteristics and interests of affected communities. The plan should incorporate the consultation process referenced above. (See Box 12 for tips on the content of stakeholder consultation plans.)

Box 12: Content of Stakeholder Consultation Plan

- Purpose of the consultation – Present the strategic reasons for consulting with affected communities at the particular phase of the project.
- Requirements for the consultation – List the requirements that the consultations are seeking to satisfy. Discuss the terms of community protocols, if they exist.
- Communities who will be affected – Identify the affected communities and discuss their interests.
- Priority issues – Discuss special measures that need to be adopted with respect to high-risk groups.
- Techniques to be used – Discuss the forms of participation that are best suited to the various groups. Consider use of customary communication methods.
- Roles and responsibilities – List who within the company is responsible for what activities.
- Approach to documentation – Describe how will the results be documented.

Source: Deng 2021 at 29.

- Begin consultations as early as possible during project planning, before activities for which consent should be sought are commenced or are authorized.
- Consult and agree on what constitutes appropriate consent for each stakeholder group in accordance with their governance institutions, customary laws and practices with each group participating through their own freely chosen representatives and institutions.

[5] Consult FAO 2014 ("Respecting, Free, Prior and Informed Consent") for comprehensive guidance on FPIC.

- Include appropriate measures to allow effective participation of disadvantaged and marginalized groups (e.g., women, youth, and those who are landless, disabled or elderly). Such measures may include separate meetings for each group.
- Recognize the process of seeking FPIC as ongoing rather than a one-off discussion. This means that there should be continuous dialogue throughout the investment and implementation cycle.
- The investor must provide all information relating to the activity to the community in a manner that is timely, objective, accurate and understandable to them. Consultations should be conducted in the local language and in keeping with the cultural norms of the community.
- Investors should support communities to document in writing or by audio or video recording the substance of all interactions with the investor.
- The parties should document in writing all commitments and agreements that have been reached and share them with the affected community in a form and language they can understand and in a timely manner.
- Where possible, involve local organizations that are trusted by the community (see Box 13).

Box 13: Effective Investor/NGO Collaboration on Consultations

"In Sierra Leone, for an oil palm development, Solidaridad established rules for in-depth consultation processes, combining meetings at village level, with meetings with the elders of land-holding families, with extended family members, and specifically with women and youth. In collaboration with business partner NHSL, Solidaridad also established a multi-stakeholder platform (MSP) to bring together all affected communities, chieftaincy authorities, landowners organisations – for and against the project, women's, youth and religious organisations, local government and other stakeholders.... The MSP proved to be effective as a mechanism for consultation, enabling negotiation of a new lease agreement with the company for an area considerably smaller than the original huge Chieftaincy-wide concessions that the Chieftaincy Council had previously agreed to. The platform also made women's rights and interests in land publicly visible, and enabled women to pay an active role in brokering agreements within and between land-holding families about how to proceed."

Source: Quan and Seigneret 2019 at

An important activity that will often occur in conjunction with consultations is participatory mapping of tenure rights. This combines modern mapping methods with participation of local inhabitants who possess expert knowledge of their own environment. This map should show who currently occupies, owns, and uses the land, as well as boundaries, sources of water and other natural resources, burial sites and other locations important to the community (USAID 2015). (See Box 14.). The results of the participatory mapping activity can be compared with existing official land data to present an accurate and comprehensive picture of all land rights in the area.

Box 14: Important Content for a Participatory Land Map

- The outside boundaries of each village or community;
- Any overlapping claims including protected areas or wildlife/conservation zones, watersheds, government forests, forest or mining concessions;

- The proposed project boundary;
- Current ownership of the land (including common areas);
- Current occupancy and/or use of the land (this is often different from ownership);
- Whether land is being leased or otherwise allocated to third parties;
- Natural boundaries, such as rivers;
- Location of common natural resources (e.g., hunting areas, forests, rivers, pastures);
- What uses the land is most suitable for (this may require more sophisticated equipment and the use of experts);
- Current land-related disputes (both between and within communities);
- Man-made improvements (e.g., roads, bridges, irrigation systems);
- Sacred, historic, or spiritual sites;
- Livestock corridors or other areas used by transhumant groups; and
- Any other private sector operations in the area or areas directly contiguous, including activities upstream that may affect water availability in the project site.

Source: USAID 2015 at 33-34

Mapping is essential for several reasons: (1) it helps to determine who should be involved in consultations, negotiations and decision-making regarding the project; (2) it will help to ensure that all legitimate tenure rights are recognized and respected, including the tenure rights of women; (3) it provides critical information for the assessment of potential impacts of the investment on tenure rights, food security and the environment; and (4) the map will help inform design of the project (USAID 2015; New Alliance 2015).

Box 15: Strengthening Women's Land Rights in Uganda

CFS-RAI Principle 3 provides that a responsible investment should foster gender equality and the empowerment of women and the VGGT advises parties to investment contracts to ensure that the "negotiation process should be non-discriminatory and gender-sensitive. In Uganda, Bukonzo Joint Cooperative Union (BJCU), a microfinance and coffee cooperative union in the Western region, has been working to secure joint land rights for its mainly female membership. BJCU helps its members to legally register landownership in the name of husband and wife. It provides assistance during the lengthy and intricate process of registering joint ownership, involving: payments to the sub-county office (for application forms); having at least four neighbours verify the land boundaries; obtaining the signature of traditional chiefs; and having the sub-county land committee inspect the plot of land. The application is then forwarded to the district land office, where additional payment is needed in order to expedite issuance of a certificate. BJCU has succeeded in creating a climate of respect for women's land rights among its membership and their families.

Sources: FAO 2022 and Twin 2016.

Note also that the participatory mapping exercise can help the project actually lead to a strengthening of land rights in the affected community, including women and members of marginalized groups (see Box 15)[6]. Investors can work with communities and/or local NGOs to help tenure rights holders prepare the necessary documentation and then register in compliance with land administration requirements (WB 2017 Note 11). (See Box 16.)

Box 16:

With support from USAID, Illovo Sugar Africa Ltd., implemented a project to develop and test new approaches to improve local tenure security in areas surrounding their Maragra Sugar Estate in Mozambique. There were conflicts over land at the site because farmers lacked land documentation. This limited Illovo's ability to effectively engage with local growers. To address the problem, the project:

- Mapped 1,849 parcels for growers and local landholders in the area through a participatory approach;
- Delivered certificates of documented land rights to 558 men and 1,084 women by facilitating the formal registration process for these landholders; and
- Developed a new grievance mechanism for Illovo to address land-related and other concerns among local community members and growers.

Source: USAID undated (a).

C. Impact assessments.

Land-based investments undoubtedly will have an impact on large segments of the community, both positive and negative. Inadequate assessment of and response to potential risks is one of the primary causes of failure of land-based investments. Therefore, responsible investors should conduct ESIAs as a way to avoid negative impacts on human rights, legitimate tenure rights, food security, livelihoods, human rights, the local culture and the environment, all on a gender-disaggregated basis. The results of an independent ESIA, conducted by a neutral and well-qualified outside expert, help the investor, the government and the community assess the project design and identify needed changes, especially ways to mitigate potential harm. They are essential for managing risk.

There are four steps in preparing an ESIA: (1) measuring existing social and environmental conditions using both quantitative and qualitative methods to create a baseline picture of local conditions that will later be used in monitoring the investment if it proceeds; (2) identification of potential negative impacts on the factors listed above, together with an assessment of the severity of the impact; (3) recommendations for how to avoid or minimize the negative impacts; and (4) preparation of an environmental and social management plan (ESMP) describing what the investor must to do avoid or mitigate the negative impacts (CCSI/Namati 2; OECD/FAO 2016; Landesa 2021). See Figure 5.

6 See FAO 2013 for extensive guidance on women and land.



Figure 5: Steps in an ESIA

It is important that the impact assessment process not be rushed even if the company is eager to proceed with the investment. It should be completed well in advance of a final decision whether to proceed. As is true of consultations, it may be more time-consuming and costly to carry out a high quality ESIA but failing to do so may lead to far more costly delays and community opposition later if unexpected impacts occur (Deng 2012; WB 2017 Note 14).

The local community should play a role in gathering information for the ESIA on impacts and should have the opportunity to provide input into the final report. This, too, is in the interests of investors as it allows them to take advantage of local knowledge. The findings of the ESIA should be incorporated into the design of the project. The government is likely to make compliance with the assessment's recommendations on how to prevent and mitigate risks and improve the overall impacts of the investment a condition for approval of the project. The ESMP is likely to be incorporated into the investment agreement (Deng 2012; FAO 2016; WB 2017 Note 14)[7].

Note that, while ESIAs are usually required in most countries, in many cases they do not effectively consider non-environmental issues, such as tenure rights, food security, etc. This is a significant shortcoming and investors should take action to ensure that all important potential impacts are assessed.

D. Negotiating and Developing an Equitable Agreement.

Negotiations. If the investor, the community and other stakeholders (in many cases, the government) reach general agreement through the consultations process that a project may be acceptable, the parties can enter into negotiations that, if successful, will lead to a final written agreement. The goal of the negotiations should be to reach an agreement on the various rights and obligations of the parties, how they will communicate and give notice to each other, mechanisms for monitoring compliance and how to handle complaints and resolve disputes (UNIDROIT/IFAD 2021).

It will often be advisable for the investor and the community (and possibly the government) to enter into a memorandum of understanding (MOU) to guide the negotiations. The MOU should state, among other things, that: the parties intend to negotiate in good faith in an attempt to reach an agreement; how the parties will consult, be inclusive and determine whether consent has been given; and other terms that will govern the negotiations (Landesa 2021). See Box 17 for other content that could be found in an MOU.

[7] For more on the government's roles and responsibilities in relation to responsible land-based investments, see "Promoting, Facilitating and Regulating Responsible Land-Based Investment: a Manual for Government", a companion to this manual.

Box 17: Content of a Memorandum of Understanding

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

Source: Landesa 2021a at 44

In some countries, especially those where the government is the legal owner of the land, the community may lack the legal authority to sell or lease their land to an investor. One such country is Ethiopia, where the Ethiopian Constitution[8] states that land is owned by the state and farmers and citizens have the right to use but cannot transfer their land. In such cases, the land lease may be between the government and the investor but the community, especially legitimate tenure rights holders whose land will be affected, must be included in negotiations. That is, while the government, entity or person with formal rights to the land may sign the agreement to transfer land rights, negotiations related to the development of the project should include a range of people in the affected community, such as traditional leaders, a representative group of all land users in the village, and vulnerable groups, such as women, youth, elderly, indigenous people, ethnic minorities, and pastoralists.[9] Where the government has the legal authority to transfer rights to land, the MOU between the community and the investor can require the investor to obtain FPIC from the community related to any transfer of land. Of course, the MOU must be written in a language understood by community members and a signed copy provided to the community.

The investor has a responsibility to ensure that negotiations are transparent and consistent with the principles of effective consultation and FPIC. The community and the investor should generally agree on the location, language, and timing for meetings. The overall timeframe must be guided by respect for the community's decision-making practices — once again, it is important not to rush! The investor should negotiate with whomever the community designates to represent it; this could be an investment committee, or another team formed specifically to negotiate with the investor. All participants should have legal representation (UNIDROIT/IFAD 2021; Landesa 2021; Landesa 2021a).

Investors must ensure that the parties with whom they negotiate have the legal authority and social legitimacy to discuss and sign the agreement. Ultimately, the investor must take the necessary steps to confirm that the terms of the final agreement are truly acceptable to the affected community, including women, youth and other sub-groups within the community (New Alliance 2015; USAID 2015).

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[8] Ethiopian Constitution, Proclamation No. 456/2005 and Proclamation No. 1161/2019.

[9] The community can be an actual party to other agreements, such as a Community Development Agreement or a stakeholder consultation plan.



It often may benefit all parties if the community has legal and technical support in its dealing with the investor and/or the government. Both the VGGT and CFS-RAI Principles urge investors and governments to help build capacity in local communities to manage and optimize the impact of investments in land where they live. In many settings, community members are not fully aware of the laws and policies related to land, land use or environmental degradation. Thus, they may not understand the full extent of their rights (NIRAS 2021b). One strategy investors can use to build capacity is to help those communities obtain technical and legal support during the process leading up to the agreement. Many communities need assistance in some or all of the following areas: (1) engaging in community development planning and activities; (2) understanding and protecting their tenure rights; and (3) dealing effectively with the investor and the investment process.[10] Helping communities improve their ability to engage more effectively in the investment process benefits investors in the long run as it is less likely that there will be conflict if the community believes the agreement was fair to both sides (FAO 2016).

Investors can help communities obtain the support they need in a variety of ways. Broadly speaking, they can ensure that the community has sufficient time and privacy to determine its position in negotiations and other interactions with the investor. They can encourage the community to seek out local civil society organizations to provide this assistance. These may include organizations that can make paralegals available (NIRAS 2021). Investors can support national efforts to establish a legal aid program. Another option is to provide funding to an independent third party that can assist communities in arriving at an agreed negotiating position and in the actual negotiations themselves. However, the best practice is for the company to have no involvement in choosing the third party and refrain from communicating with the advisor (AFD, 2014; New Alliance 2015; FAO 2016; CCSI/Namati 1; CCSI 2016).

Content of the final agreement. The final agreement may be contained in a single comprehensive government approval or agreement document or, in some settings it may consist of many individual contracts or other documents.[11] Whatever documentary form the final agreement takes, a number of important topics should be covered by one or more contracts, including (FAO 2015; FAO 2016):

- Land lease or sale
- Payment for transfer of tenure rights (if not covered by the lease or sale document)
- Community Development Agreement describing benefits the investor will provide to the community (see Box 18.)
- Stakeholder consultation plan
- Partnerships with local suppliers
- Monitoring plan
- Dispute resolution and grievance mechanisms

Box 18: Community Development Agreements

A community development agreement (CDA), sometimes referred to as a "community benefit and impact agreement," is an agreement typically among an investor, the affected community

[10] For more information on communities and responsible land-based investments, see "Achieving Responsible Land-based Investments: A Guide for Communities", a companion to this manual.

[11] Investors also are likely to be required to obtain or produce various other documents, licenses and permits to operate legally in the country.

and sometimes the government aimed at ensuring that communities share in the value added created by a large-scale investment and are not harmed by it. A CDA should facilitate the delivery of tangible benefits to affected communities and individuals by detailing how the benefits of an investment project are intended to be shared with local communities and how negative impacts will be avoided. While CDAs are becoming more common, it is rare for CDAs to be legally required in the context of a large-scale agricultural investment. But many countries require them for investments in mining and sometimes forestry.

Even when often not required, responsible investors are increasingly entering into CDAs on a regular basis. Companies see them as important tools for building trust, enhancing community relations, and reducing tensions while contributing to socioeconomic development through shared value.

Investors should take care not to over-promise; only commit to providing benefits that the company can reasonably provide. These may not include extensive infrastructure such as roads or schools. And in order to further manage community expectations, the investor's promises to provide benefits should be clearly stated in writing and, of course, the investor must follow through on those promises. Government can encourage investors and communities to enter into and comply with these agreements.

Sources: WB 2017 Note 18; CCSI 2016)

An important element for negotiation and the agreement is equitable compensation for land rights that are transferred to the investor. When an investor acquires rights to land owned by the government it still may have to provide fair and adequate compensation to the affected community. National law may establish a compensation amount, but responsible investors must pay an amount commensurate with international standards, even if that amount exceeds the national standard. Valuations of land should be fair, and compensation paid promptly.

Determining an accurate valuation of land to be used in large-scale agricultural investments is critically important in achieving equitable compensation to the land right holder. Internationally, the prevailing approach is to set compensation based on the "fair market value" or "market value" for the land. Fair market value is often defined as the price at which a willing seller would sell, and a willing buyer would buy but this approach cannot be used in all settings.[12]

Frequently, compensation paid only in the form of cash will be inadequate. In such cases investors should be prepared to provide alternative land and other non-cash compensation. Compensation also should include payments for resettlement and new housing (if necessary) environmental and social harm and other losses. While there is no "one size fits all" formula for compensation, in all cases those being compensated should be better off or at least no worse off than they were before the investment (USAID 2015; FAO 2016). Box 19 presents the key compensation and valuation principles in the VGGT.

[12] There are several approaches for determining fair market value, a detailed discussion of which is beyond the scope of this manual. It is important to note, however, that in countries with less developed land markets a lack of price transparency may require a wider variety of land valuation methods. These other methods include auctions, valuation based on the cost of replacing a comparable plot of land or the improvements upon such land, valuation based on the present or expected tax revenue generated from the land and value based on set levels that are prescribed by statute or regulation (Vhugen, et al, 2014). See BVVG publication "Initial Valuation Concept for Compensation Purpose" for a discussion of valuation approach options in the Ethiopian context.



Box 19: VGGT Principles for Land Rights Compensation by Governments and Investors

The VGGT (section 18) advise governments and companies to abide by the following principles in providing compensation for land rights acquired for investment:

- Ensure appropriate systems are used for the fair and timely valuation of tenure rights and that these systems promote social, economic, environmental and sustainable development objectives.
- As well as economic value, valuation systems take into account social, cultural, religious, spiritual and environmental values where applicable.
- Valuation standards are developed that are consistent with international standards and that are publicized so valuers and other stakeholders are aware of them.
- Valuations of tenure rights and valuation information and methods are transparent, publicized and accessible.

Source: FAO 2017.

As explained in Part III of the Overview, a responsible investment is one that provides benefits to the country and its people (VGGT paragraph 12.4) as well as resulting in a reasonable return on investment. In addition to direct sharing of benefits through a community development agreement, investors also can apply this principle by engaging with communities through collaborative business models that create partnerships with communities. These can benefit the company and community alike. See the discussion of outgrower schemes in Box 19 above and Box 20 for a specific example of another collaborative approach[13].

Box 20: An Inclusive Nucleus Farm Arrangement in Ethiopia

Koga Veg is an initiative of Durabilis NV, a Belgian impact investing company with activities in Africa and in Latin America. The company was established near Bahir Dar, Ethiopia to boost rural economic development in Mecha district by supplying a wide range of exotic vegetables for the European market. It operates its own 50-hectare nucleus farm and engages in contract farming with farmer groups in the area with a production potential of 7,000 hectares of arable and irrigated land. The company introduced the farmers to peas and other export crops and provides seeds/seedlings, technical and ongoing farm management training as a means of increasing farmer income and ultimately improving livelihoods. The company has added sugar snap, snow pea, avocado and other vegetables to its capabilities. The farm has created jobs for male and female workers (the majority of employees appear to be women) on different farm activities.

Avocado producers have established a cooperative, enabling the company to communicate efficiently with the farmers via executive body of the cooperative. Koga Veg helped farmers to employ intercropping farming practices with cereal or vegetable crops with young avocado trees that lack a fully closed canopy. Once the tree canopy closes the intercropping activity will cease and the farms will fully transform to perennial avocado fruit production.

Source: Interview with farm and outgrower scheme managers and NIRAS-IP national team field observation, February 2022.

13 See BVVG Model Contract on Outgrower Schemes for an example of a contract developed for use in Ethiopia.

As noted above, the investment agreement should contain provisions for timely, affordable and effective means of resolving disputes. In many cases such disputes can be dealt with through a variety of dispute-resolution channels at the village, municipal, provincial and national level (FAO 2015; CFS-RAI Principle 9; WB 2017 Note 19).

In addition, investors may establish grievance mechanisms that entail a set of procedures for resolving grievances related to the project that may not require a lengthier dispute resolution process. Through such mechanisms communities and investors can resolve complaints before they escalate into serious conflict. Such grievances might arise from inadequate consultation, problems with the land acquisition process, failure to provide agreed upon community benefits, or complaints by employees. As with all other terms, a grievance mechanism must be freely agreed to by the affected community and jointly managed by the community and the investor. Any mechanism should be culturally appropriate, accessible (community members must know how to access the mechanism and it should be easy to do so) and lead to equitable decisions (Deng 2012). See Box 21 for an example of one company's grievance mechanism experience.

E. Implementing and Monitoring the Project.

As is true of the entire project cycle, it is critically important for investors to continue to communicate regularly and effectively with the community during project implementation. As noted above, best practice is for the investor and the community to work together early in the project lifecycle to develop a stakeholder consultation plan that guides consultations before and during project operations. Even companies with existing investments of longstanding where there has been little or no ongoing communication can take steps to engage with the community and adopt and follow a consultation plan for the remaining life of the project.

Box 21: Government-Investor Collaboration on a Grievance Mechanism in Laos

"In Laos, the government is responsible for the settlement of land-related grievances that cannot be resolved at village administrative level. In addressing its land dispute, OBL [the investor] worked with the provincial government to establish a new "Provincial Compensation Evaluation Committee" (Provincial decree No. 1089/ 2012). This Committee was a redesign of the Provincial Grievance Committee, to address challenges identified during its operation. The Committee was established as part of OBL implementing a new approach to grievance resolution, allowing the company to play a greater role in resolving the dispute, gaining direct community-company contact, and thereby ensuring the grievance resolution process continued moving forward, as it had become protracted. The Committee comprised provincial and district officials and Outspan representatives whose duties were to work with village authorities to collect detailed data on the areas of land impacted by the investment, evaluate the amount of compensation due and explain to affected families the compensation process."

…

OBL's new grievance mechanism provides training for its staff and village representatives on lodging, registering and resolving complaints. OBL aims to solve grievances as quickly as possible, and to do so at the local level directly with the complainant. If the issue cannot be resolved, the complaint is escalated to the CR&S Manager. Communities had a direct contact number for this manager; complaints could also be raised anonymously and in writing. If the issue remains unresolved, the complaint is directed to the formal government processes."

Source: MRLG 2016 at 16.

Monitoring. To avoid costly conflicts and otherwise facilitate smooth operation of the project, the investor and the community (and, in many cases, the government) should include a monitoring plan as part of the final agreement. As explained in the Overview, monitoring is a way to determine whether parties to land-based investment contracts are complying with their obligations. It also enables parties to assess the impacts, both positive and negative, of these investments on national development priorities, affected communities and individuals. Overall, monitoring is another effective risk management tool for investors. It is essential to monitor and review investments throughout their lifecycle (USAID 2015; FAO 2016; Landesa 2021). See Box 22 for a list of what should be monitored, depending on the particular circumstances.[14]

Monitoring should be carried out in a participatory manner and monitoring methods and indicators should be meaningful to the community. This means, for example, that those who gather information for the monitoring program have affected individuals present so that they can provide useful information and also so that the community can better understand the activities of the business. It also means that the investor, the community and the government should form and utilize a monitoring committee to provide data and keep the community all stakeholders informed of the impacts of the investment (Deng 2012; Landesa 2021a).

Box 22: What Should Be Monitored?

- Compliance with the contractual obligations of all parties, such as:
  - Payments made to the community, individuals or the government pursuant to a land lease.
  - Infrastructure, jobs and other benefits provided to the community based on a CDA.
  - Compliance with a stakeholder consultation plan.
- Impacts on the community, both positive and negative.
- Operational safety and health of the project.
- The extent to which the project leads to disputes and grievances.
- The investor's adherence to investment incentive performance requirements.

The monitoring plan should describe what will be monitored, and the methods that will be used to collect data, how often data will be collected and by whom, including the specific responsibilities of the government and the investor. It should set forth mechanisms for community participation, as well as the agreed upon institutional and funding arrangements. The plan should incorporate obligations set forth in the various contracts that govern the investment, such as leases, CDAs and ESMPs (Deng 2012).

[14] See, also BVVG Monitoring Manual.



F. Project Closure.

It is important not to ignore what happens at the end of the project. Investments may last 5 years or 50 years or more. They might start small and expand over time. Moreover, as land-based investments are risky and do not always succeed the project may terminate before the time specified in the agreement.

For these and other reasons, the investment agreement should contain several important terms applicable to the end of the project. These include: (1) Who has ownership or use rights to the land at the end of the project? Does it revert back to the original tenure rights holder, which could be an individual, family, community or the government? (2) Is the investor required to repair or otherwise restore the land to its original condition so that the community can resume use of it? and (3) Who becomes the owner of buildings and other infrastructure established by the investor? Is it the community or the government? These and other questions should be addressed in the investment agreement and addressed when the project ends (UNIDROIT/IFAD 2021; CSI/Namati 2).

VI. Conclusion

It is possible or even likely that investment in land in developing countries may increase based on world events such as climate change or the war in Ukraine which has resulted in another spike in world prices for grains and other staple foods. This may mean new opportunities for investors but the importance of investing responsibly will remain. Responsible land-based investments in agriculture and forestry can continue to provide many benefits for the countries and communities where the investments are made and generate a reasonable risk-based return. Investors can make this "win-win" outcome more likely by adopting and implementing the policies and practices set forth in this manual (see the Key Points in Box 23).

Box 23: SUMMARY OF KEY POINTS

- Investing responsibly can help investors to better manage the substantial financial, legal, operational and reputational risks inherent in investing in land-based assets in many developing countries.
- Investment projects are more likely to align with responsible investment principles if the investor has developed suitable policies, principles, guidance and practices for management and staff to use when evaluating a proposed investment or implementing one that has been approved.
    1. The first step in developing this internal guidance is to assess existing guidance and practices to determine the extent to which they are consistent with the foregoing principles.
    2. The second step is to draft revised company policies.
- The investment phase involves 6 steps:
    1. **Screening and due diligence.** Before deciding to invest, companies must conduct research on the uncertainties and risks associated with the proposed project. From the standpoint of responsible investments, the overriding issue is whether the investment is likely to result in a reasonable financial return while also being designed and implemented in a manner consistent with international best practice standards.
    2. **Ensuring Consultation and Participation (FPIC).** The investment should not proceed without the free, prior and informed consent (FPIC) of the community.
    3. **Impact assessments.** Responsible investors should conduct ESIAs as a way to avoid negative impacts on human rights, legitimate tenure rights, food security, livelihoods, the local culture and the environment, all on a gender-disaggregated basis.
    4. **Negotiating an agreement.** If the investor, the community and other stakeholders (in many cases, the government) reach general agreement through the consultations process that a project may be acceptable, the parties can enter into negotiations that, if successful, will lead to a final written agreement.
    5. **Project implementation and monitoring.** Consultations should continue during project implementation. And, to avoid costly conflicts and otherwise facilitate smooth operation of the project, the community and the investor should also abide by a monitoring plan in which each plays a role.
    6. **Project closeout.** The investor should comply with all contractual and legal commitments applicable to the end of the project, such as whether the land must be restored and to whom the land rights revert.



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