Co-funded by the European Union

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RESPECTING FREE, PRIOR, AND INFORMED CONSENT IN ACQUISITION OF LAND FOR INVESTMENTS IN UGANDA

Background and Objective

This Fact Sheet aims to provide guidance on Free, Prior and Informed Consent (FPIC) and its application in Uganda in the context of the Responsible Governance of Investments in Land (RGIL) Project. The specific objective of the RGIL project is to foster investments in land that are productive, contribute to sustainable land management and respect the rights and needs of the local population, including vulnerable groups and women. In this context, the concept of FPIC is important in protecting the rights of women, men and vulnerable groups and to ensure that investments are carried out after meaningful consultations with communities that may be affected by the investments.

Land Acquisition in Uganda

Land acquisitions in Uganda have increased substantially over the years largely driven by government and private investments in infrastructure development projects and agriculture, respectively. Land acquisitions are either carried out compulsorily by the government and its agencies or voluntarily by individuals. Compulsory land acquisitions are governed by the 1995 Constitution of Uganda, the Land Acquisition Act (Cap. 226) and the Land Act (Cap 227) while voluntary land acquisitions are carried out by individuals on a willing seller-willing buyer basis. For such acquisitions, the Draft Land Acquisition, Resettlement and Rehabilitation Policy (2018) calls for responsible land investment which does not threaten agricultural livelihoods; can offer sustainable livelihood opportunities to the rural population; recognizes and respects customary land rights, including community land rights; and respects human rights, especially the right to food, housing and water. This calls for the incorporation of the FPIC principles before, during and after an investment to ensure meaningful community participation.

National Land Policy in Uganda

The 2013 National Land Policy provides the framework for articulating the role of land in national development, land ownership, distribution, utilization, alienability, management and control of land in Uganda. The National Land Policy recognizes that growth in foreign direct investment can lead to alienation of land from small holder farmers and result in tenure insecurity, food insecurity, land conflict and poverty. It calls for mechanisms that can deliver the right balance between improving livelihoods, protecting vulnerable groups and raising opportunities for investments and development. As a way of protecting the land rights of citizens especially in the face of large-scale investments, the government undertook to establish clear procedures and standards for wide community consultation before an investment, provide avenues for alternative dispute resolution and facilitate access to land by vulnerable groups including women, orphans and small-scale farmers that in many cases are disenfranchised by large scale investments.

In terms of FPIC, the 1995 Constitution protects the citizens' rights to own property and provides grounds upon which government can compulsorily take possession of privately owned land. The Constitution makes it clear that deprivation

of private property can only happen after prior, prompt, fair and adequate compensation has been paid and a citizen has a right to access a court of law in case he/she is not satisfied with the compensation or the manner of dispossession.

Understanding the concept of FPIC

FPIC is a principle protected by international human rights standards that state that, "all peoples have the right to self-determination" and – linked to the right to self-determination – "all peoples have the right to freely pursue their economic, social and cultural development". FPIC is a mechanism and a process in which indigenous people and other community members, women, men, youth, disadvantaged persons etc. are engaged in decision making processes on matters that affect them and particularly in utilization of their land and natural resources (FAO, 2014). The key elements of FPIC are described in Figure 1.

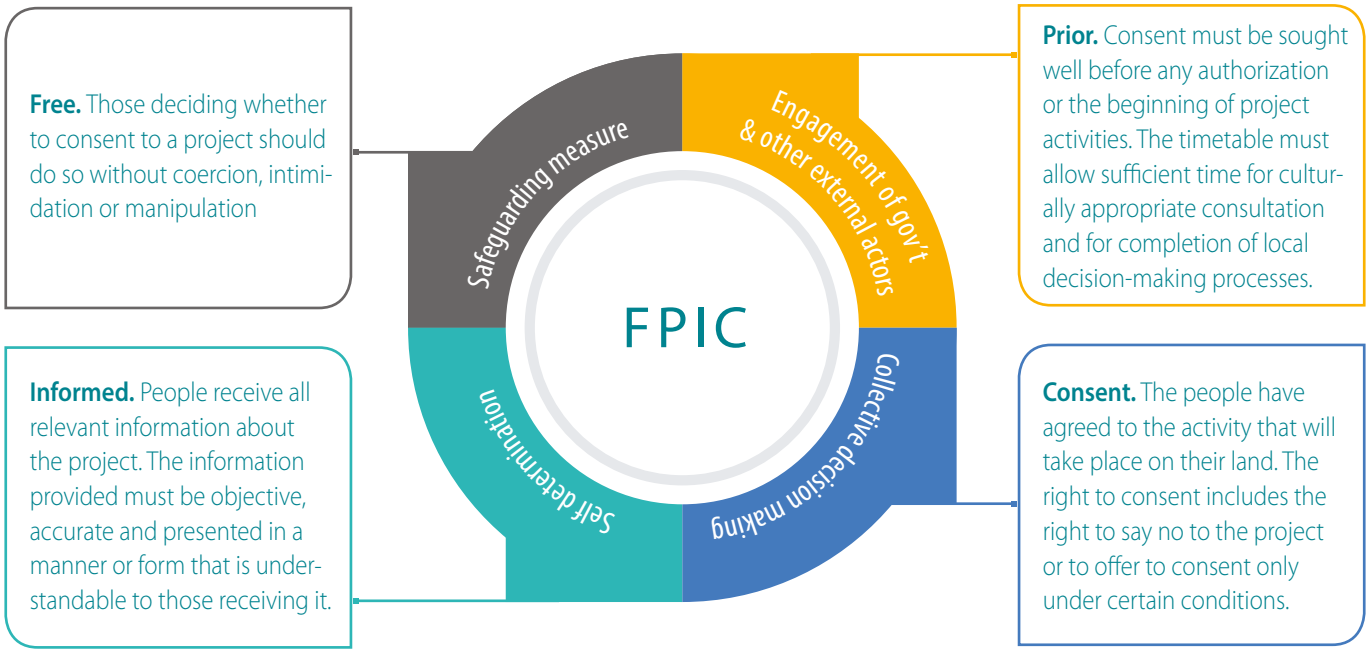

Figure 1: FPIC Key Principles and Elements. Adopted and modified from FAO, 2014.

The FPIC principle aligns with the Voluntary Guidelines on the Responsible Governance of Tenure (VGGT), which state that a responsible investment is one that provides benefits to the country and its people and recommend that, where a project may affect resources for which indigenous communities hold rights, it "should be based on an effective and meaningful consultation with indigenous peoples, through their own representative institutions in order to obtain their free, prior and informed consent"(FAO, 2012).

Integrating FPIC principles in land investment acquisition processes in Uganda

FPIC is driven by the broader objective of consensus building. Consent in this process is always geared towards empowering communities including women and disadvantaged groups to negotiate and decide on their social, economic and cultural development and facilitating inclusive decision making.

FPIC involves building the capacity of target communities, strengthening traditional institutions to make them more representative and inclusive, raising awareness of their rights and how to defend them for meaningful consent and overall observance of rights to self-determination, rights to lands and resources as well as the cross-cutting right to participation.



Benefits of integrating FPIC include among the following:

- Ensures local communities' expression of their rights at every level of planning and implementation for the investments
- Conditions community perceptions towards the benefits and risks that may come with any investment
- Promotes protection of the livelihoods of local communities ensuring that there is an opportunity to prepare for alternative livelihood strategies
- Offers a prospect for a community to make decisions about issues that concern them.

Conclusion

For responsible investments in land, FPIC has become a standard that ensures that local communities are adequately consulted thus providing an opportunity for the community to understand the benefits and potential harm of the investment to their well-being. For investors and governments, FPIC has emerged as a best practice that provides the most prudent risk management approach. Therefore, the Government of Uganda should ensure that FPIC is applied and respected as a standard for engaging in consultation with local communities before and during the course of the investment.

References and further reading

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