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AN INTRODUCTORY GUIDE TO RESPONSIBLE LAND-BASED INVESTMENT FOR COMMUNITIES, GOVERNMENT AND INVESTORS

Implemented by

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RGIL is implemented under three country projects (S2RAI in Ethiopia, ELTeS in Laos, RELAPU in Uganda) within the Global Programme Responsible Land Policy as part of the German Special Initiative "One World – No Hunger" of the German Federal Ministry for Economic Cooperation and Development (BMZ).

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.

GIZ is responsible for the content of this publication

Bonn, November 2022

Contents

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
FAO	Food and Agriculture Organization of the United Nations
FPIC	Free, Prior and Informed Consent
GIZ	Deutsche Gesellschaft für Internationale Zusammenarbeit GmbH
IFC	International Finance Corporation
ILO	International Labour Organization
MSP	Multi-stakeholder Platform
NGO	Non-governmental Organization
OECD	Organisation for Economic Cooperation and Development
SDGs	Sustainable Development Goals
UN	United Nations
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 as Civil Society Organisations, academia and investor associations on the implementation of good land governance based on international principles such as the VGGTs and the Principles for Responsible Investment in Agriculture and Food Systems (CFS-RAI).

In this series of guides and manuals, specific information relevant for the different stakeholder groups has been collected to make them accessible and 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 *Introductory Guide for Communities, Governments and Investors* seeks to provide an overview of required steps and actions for responsible land-based investments for all three RGIL countries, hoping that it will also be useful for other countries.

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

I. Introduction

Significant land-based investments in agriculture and forestry are essential to meet growing global demand for food and to help counteract the likely impacts of climate change. Such investments can have a number of beneficial impacts, such as enhancing food security, generating foreign currency, improving natural resource management, creating employment, sharing technology and contributing to overall sustainable development. Investment that supports small-scale producers, including efforts to increase their own capacity to invest, is particularly important (FAO 2015; WB 2017 Note 1).

However, not all land-based investments are equally beneficial, and some may have significant negative impacts on communities, workers and the environment. Thus, the stakes are high for all three primary actor groups — communities, governments and investors — in determining whether to support, approve or proceed with such investments. Deciding whether to support an investment on or near their land is one of the most important decisions a community can make. Government decisions on whether to facilitate and approve land-based investments have important implications for achieving sustainable development and fiscal objectives. And research shows that investors that fail to utilize responsible investment practices and thus harm communities incur much higher costs and a reduced likelihood of achieving a reasonable return on their investment (ODI 2021).

This guide is meant to be used in conjunction with more detailed manuals created for each of the 3 actor groups:

Guide

AN INTRODUCTORY GUIDE TO RESPONSIBLE LAND-BASED INVESTMENT FOR COMMUNITIES, GOVERNMENT AND INVESTORS

The community Manual

Responsible Land-Based Investment: How Communities Can Prepare for and Decide Whether to Support Investments.

The Investors Manual

Incorporating Responsible Land-Based Investment Principles into Investor Policies and Practices.

The Government Manual

Promoting, Facilitating and Regulating Responsible Land-Based Investment: A Manual for Governments[1]

[1] These manuals are referred to in this guide as the "Communities Manual", the "Government Manual" and the "Investor Manual."

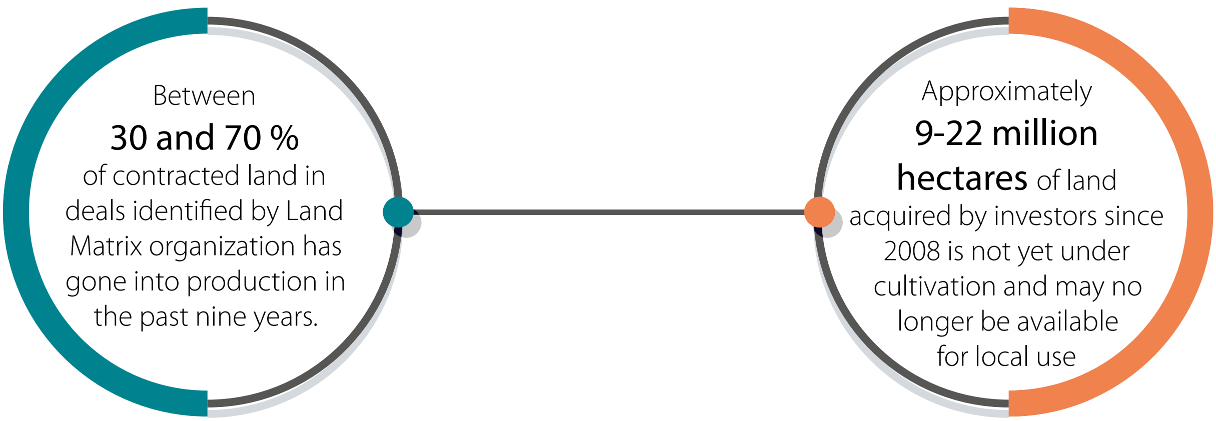
Those manuals present practical guidance to help each group prepare for, evaluate, negotiate, implement and/or monitor investments that affect them. Together, these resources aim to help agricultural and forestry businesses, financial institutions, governments, affected communities and other stakeholders (e.g., civil society organisations) understand, adopt and implement policies and practices to ensure that investments are responsible.

A. Recent Trends in Land-Based Investments

In 2008 there was a surge in land-based investment deals in developing countries in the wake of a large increase in agricultural commodity prices. This surge peaked in 2010 and remained relatively steady until about 2013. While this trend varies considerably by country, the overall pace of new investments has declined since that year (WB 2017 Note 1; Land Matrix 2021). However, this is not a static situation as demand for land can change based on world events such as the war in Ukraine which has resulted in another spike in world prices for grains and other staple foods.

Many of the early investments involved very large tracts of land. The extent to which this land has actually been put into production has varied widely from country to country. According to the Land Matrix, between 30 and 70 percent of contracted land in deals identified by that organization has gone into production in the past nine years. This means that 9-22 million hectares of land acquired by investors since 2008 is not yet under cultivation but may no longer be available for local use (Land Matrix 2021).

In addition, a significant number of projects failed outright. This has been due to a variety of reasons, such as hasty or poor acquisitions, poor management, inadequate financing and, importantly, displacement of and other negative impacts on local farmers or pastoralists. About half of all failed projects have been in sub-Saharan Africa (Land Matrix 2021).



B. Target Audience and Scope of the Guide

This guide is written for all three actor groups and seeks to provide an overview of responsible land-based investments. More specifically, it addresses the following subjects:

A. What is meant by "responsible investment in land", and what legal and other instruments underly that concept (section II).

B. The importance of responsible investment in land, including the benefits and risks to all affected stakeholders (section III).

C. The roles and responsibilities of the key actors — investors, government and affected communities — in the context of responsible investment in land. This section IV includes an overview of:

   1. The actions that communities should undertake in preparing for land-based investments generally as well as in responding to a specific proposed investment.

   2. The actions that investors should undertake in preparing for land-based investments generally and in screening, developing and implementing an investment.

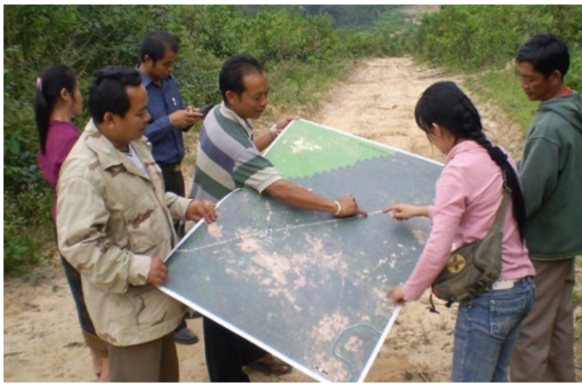
   3. What is required for a government to create an enabling environment for responsible land-based investment and how to implement that environment through a responsible investment assessment process.

Note that the actor-specific actions in "C" (immediately above) are addressed in greater depth in the Community, Investor and Government manuals.

The guide covers investments in land by both foreign and domestic investors and includes those involved in agriculture, forestry and raising livestock. It does not directly address investments in infrastructure, mining or energy which tend to raise some unique issues that are beyond the scope of this guide. The guide considers investments in land to include purchases, leaseholds, concessions and those employing business models that do not involve large-scale transfers of tenure rights such as contract farming or outgrower schemes.

II. What Is Responsible Investment?

What do we mean by "responsible investment"? While there is no single universally accepted definition of the concept, it has been defined by the UN Principles for Responsible Investment as "an approach to investing that aims to incorporate environmental, social and governance (ESG) factors into investment decisions, to better manage risk and generate sustainable, long-term returns"[2]. It is generally accepted that the common features of a responsible investment in land is one that respects and does not infringe human rights and avoids or mitigates harm to the livelihoods, environment, tenure rights, and food security of affected communities.



A. The VGGT and CFS-RAI Principles

In this guide, we look primarily to two important international instruments for the essential elements of a "responsible investment." These instruments are (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).

The VGGT were developed and unanimously endorsed by the UN Committee on World Food Security (CFS) in May 2012. The primary objective of these guidelines is to:

> *Improve governance of tenure of land, fisheries and forests. They seek to do so for the benefit of all, with an emphasis on vulnerable and marginalized people, with the goals of food security and progressive realization of the right to adequate food, poverty eradication, sustainable livelihoods, social stability, housing security, rural development, environmental protection and sustainable social and economic development*[3].

The VGGT are considered to be a "soft law" instrument as they are voluntary and without force of law. They are to be interpreted in light of national and international law. While voluntary, they have been endorsed by more than 100 countries and thus have great influence on land governance legal frameworks.

Although primarily for governments, certain key provisions of the VGGT are addressed to non-governmental actors, including businesses and 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).

2 Principles for Responsible Investment, "What is responsible investment?" https://www.unpri.org/introductory-guides-to-responsible-investment/what-is-responsible-investment/4780.article.

3 VGGT paragraph 1.1.

The CFS-RAI Principles were approved by the Committee on World Food Security in 2014. Like the VGGT, they are voluntary and non-binding, but represent the first time that governments, the private sector, civil society organizations, UN agencies, development banks, foundations, research institutions and academia have agreed on what constitutes responsible investment in agriculture and food systems.

The CFS-RAI Principles address all types of investment in agriculture and food systems and recognize that responsible investment is essential for enhancing food security and nutrition and supporting the realization of the right to adequate food. They define "responsible investment" as follows:

Responsible investment "refers to the creation of productive assets and capital formation, which may comprise physical, human or intangible capital, oriented to support the realization of food security, nutrition, and sustainable development, including increased production and productivity….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" (RAI, paragraph 3).

The CFS-RAI encompass the entire range of activities involved in the production, processing, marketing, retail, consumption, and disposal of goods that originate from agriculture, including food and non-food products, livestock, pastoralism, fisheries (including aquaculture) and forestry. They also cover activities related to the inputs needed and the outputs generated at each of these steps. They do so through 10 broad principles (see Figure 1).

Principle 5 explicitly incorporates the VGGT. Thus, together the two instruments 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.

Of course, there are many other useful instruments and sources of guidance on responsible land-based investments. Among the more prominent are:

- The United Nations Guiding Principles on Business and Human Rights
- Guiding Principles on Land-based Investments in Africa
- ASEAN Guidelines for Responsible Investment in Food, Agriculture and Forestry
- International Finance Corporation (IFC) Performance Standards
- OECD-FAO Guidance for Responsible Agricultural Supply Chains

Many more, including several technical guides published by UN FAO, are listed at the end of this guide.

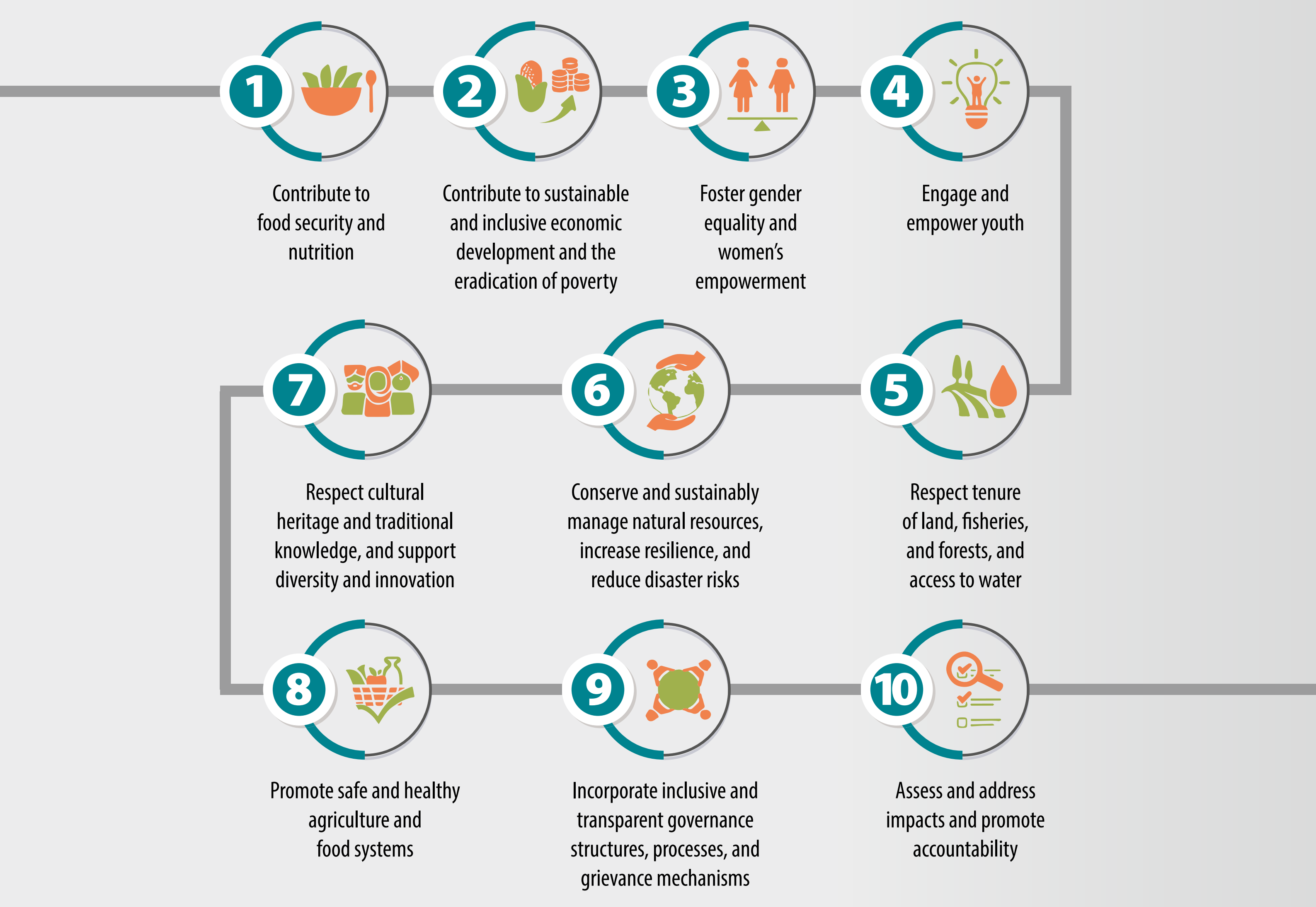


Figure 1: The CFS-RAI Principles[4]

B. Essential Elements of a Responsible Investment

The VGGT and CFS-RAI, together with other guidance and experience to date have generated an understanding of the essential elements that make up a responsible land-based investment. Unsurprisingly, many directly address or seek to avoid the potential harm (described below in Section III) that can be caused by such investments. These elements are:

- **Respect Human Rights.** Both instruments stress that investors have a duty to respect and avoid infringing upon human rights and to identify, assess and remedy any negative impacts they have on such rights (VGGT paragraph 3.2; CFS-RAI Principle 9). There are no circumstances in which an investment that violates human rights could be deemed responsible.
- **Respecting Legitimate Tenure Rights.** Investors (including governments when they acquire land) have a responsibility to respect legitimate tenure rights and engage in due

4 Source: FAO 2020.

diligence in order to do so. In this context, "*legitimate*" refers not only to tenure rights formally recognized by national law, but also those rights that, while not explicitly recognized by law, are considered to be socially legitimate (see VGGT paragraphs 4.4, 5.3, and 7.1). We sometimes refer to the latter set of rights—which predominate in developing countries—as "customary" or "informal." They may include seasonal rights held by pastoralists. Conducting the necessary due diligence requires investors to identify and recognize all land tenure rights and "identify and assess any actual or potential impacts on […] legitimate tenure rights in which they may be involved" (VGGT paragraph 3.2; FAO 2016).

Box 1: Free, Prior and Informed Consent

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. The right to FPIC is derived from the International Labour Organization (ILO) Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries and the United Nations Declaration on the Rights of Indigenous Peoples. FPIC 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 described 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, emerging best practices provide that the most prudent risk management approach for investors (and governments) 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

- **Consultation and Participation.** A responsible investment should entail effective consultation with and participation by all those affected by a proposed investment (VGGT paragraph 3B6; CFS-RAI Principle 9). Investors and governments should consult effectively with all stakeholders, including "indigenous peoples and other communities with customary tenure systems, smallholders, youth and marginalized women in particular […]"

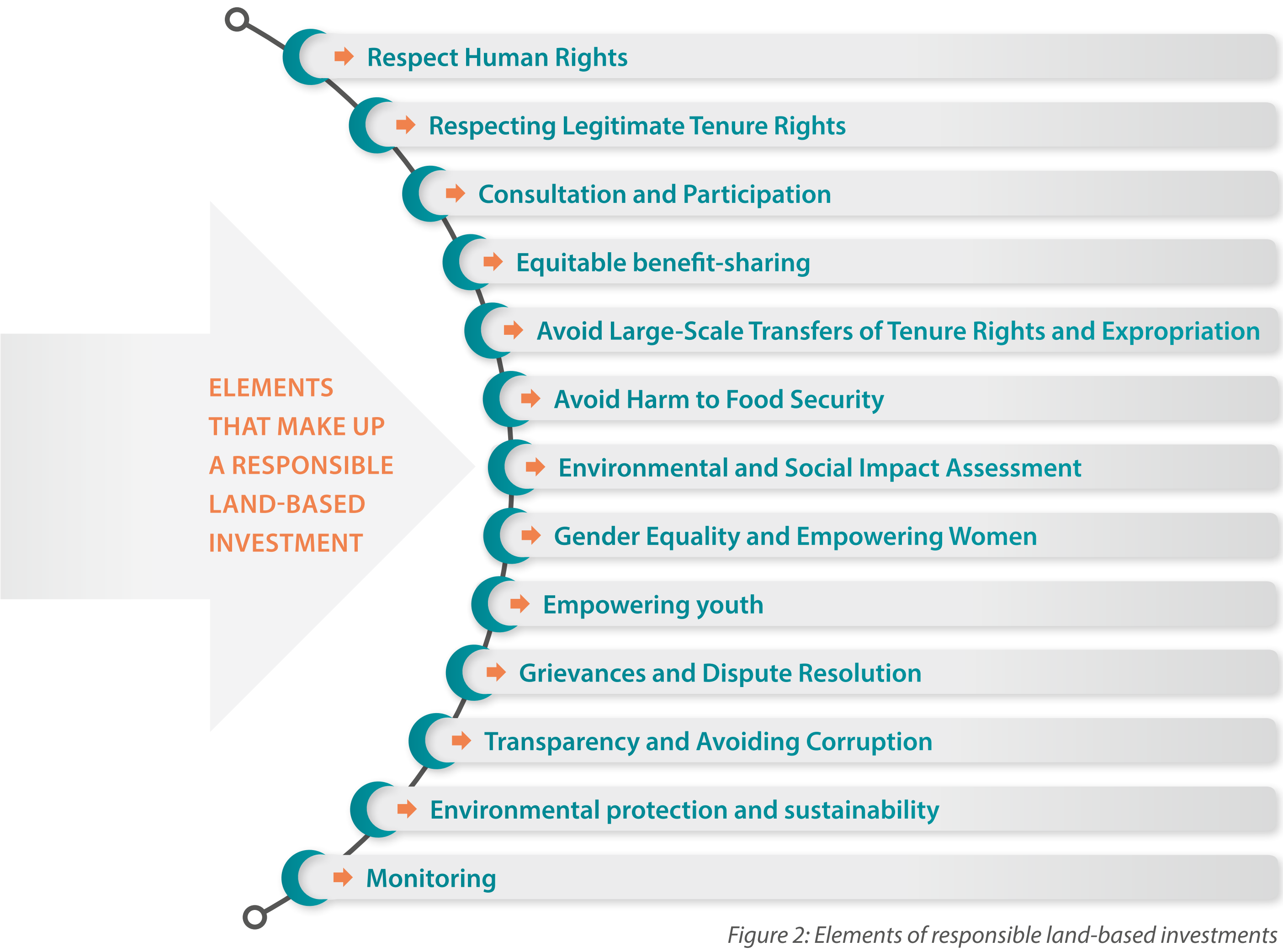


Figure 2: Elements of responsible land-based investments based on CFS-RAI principles and VGGT guidelines

(VGGT paragraph 7.3; CFS-RAI Principle 9)[5]. Indigenous peoples are afforded particular attention as investment projects affecting their land tenure rights require their free, prior and informed consent (FPIC) before they may proceed (VGGT paragraph 9.9; CFS-RAI Principle 9). (See Box 1). Other communities are entitled to consultation and participation (VGGT paragraph 12.7; CFS-RAI Principle 9).

- **Equitable benefit-sharing.** The VGGT provide that a responsible investment is one that provides benefits to the country and its people (VGGT paragraph 12.4). CFS-RAI Principle 2(v) states that responsible investment supports sustainable development by "contributing to rural development, improving social protection coverage and the provision of public goods and services, such as research, health, education, capacity development, finance, infrastructure, market functioning, and fostering rural institutions." Benefit-sharing also can take the form of utilizing inclusive business models where the investor and members of the community work together, such as joint ventures or outgrower schemes in which the investor purchases products from local farmers. Investors and communities often enter into community development agreements (see Box 2) that lay out the benefits the investor will provide to the community beyond simply paying for use of the land. Such benefits can be very important to communities (WB 2017 Note 20; NIRAS 2021b).

5 Moreover, VGGT paragraph 8.6 calls for consultation with "anyone who could be affected" by policies affecting tenure rights, and paragraph 9.9 provides for consultation with indigenous communities and other communities with customary tenure rights.

Box 2: 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 and sometimes the government aimed at ensuring that communities share in some way 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. 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 though 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. Successfully implemented CDAs can strengthen the investor's social license to operate in the affected community.

Sources: WB 2017 Note 18; CCSI 2016)

- **Avoid Large-Scale Transfers of Tenure Rights and Expropriation.** One way to respect tenure rights and to work effectively with affected communities is to minimize the use of investment models that require the large-scale transfer of tenure rights of smallholders and other local people. As referenced above, inclusive investment models where the investor works in partnership with the community—for example, in contract farming or joint venture arrangements—rather than simply buying or leasing their

land often will lead to more responsible and financially successful outcomes. Projects that require expropriation and eviction are rarely, if ever, to be seen as responsible (FAO 2015; FAO 2016; WB 2017 Note 12).

- **Avoid Harm to Food Security.** Ensuring food security for all is at the heart of the VGGT and CFS-RAI. The VGGT note that "responsible public and private investments are essential to improve food security" (VGGT paragraph 21.1), that responsible investments should actively strive to improve food security (VGGT paragraph 12.4) and that investments "should not contribute to food insecurity" (VGGT paragraph 12.12). Notably, the very first Principle in the CFS-RAI tells responsible investors to contribute to food security and nutrition. Both instruments place particular emphasis on the importance of supporting smallholder farmers because of the important role they play in ensuring food security in much of the world (VGGT paragraph 12.2; CFS-RAI Principle 2; WB 2017 Note 22).
- **Impact Assessments.** A responsible land-based investment requires an independent environmental and social impact assessment (ESIA) to identify potential impacts the project may have on tenure rights, human rights (including food security), livelihoods, employment, the local culture and the environment. The potential impacts should be disaggregated by gender and age. Conducting an ESIA is usually required by law and can inform changes to a proposed project to avoid negative impacts and the content of an environmental and social management plan. The indicators in the ESIA also establish the foundation for monitoring during project implementation (CFS-RAI Principle 10; FAO 2016; WB 2017 Note 14).
- **Gender Equality and Empowering Women.** CFS-RAI Principle 3 provides that a responsible investment should foster gender equality and the empowerment of women. This is also an essential goal of the VGGT which instruct parties to investment contracts to ensure that the "negotiation process should be non-discriminatory and gender-sensitive." Agricultural investments often have a substantially different and greater impact on women. This objective can be furthered by several different strategies, including ensuring that; (1) women's tenure rights are identified in any land mapping process; (2) women can meaningfully participate in investment consultations; and (3) contracting with local producers does not disproportionately benefit men or lead to women being forced off their land (VGGT paragraph 12.11; FAO 2016; FAO 2013; WB 2017 Note 20). See Box 3 for an example of a project in Uganda aimed at strengthening women's tenure rights.

Box 3: Strengthening Women's Land Rights in Uganda

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

- **Empowering youth.** According to CFS-RAI Principle 4, a responsible investment should engage and empower youth. This can occur in many ways, such as ensuring that: (1) employment opportunities are not only available for skilled and experienced workers, but also for the younger, less experienced members of the workforce; (2) youth have access to land, credit, markets and training so that they can more readily and successfully participate in investments; and (3) including them in consultations related to investments (CFS-RAI Principle 4; WB 2017 Note 21).

- **Grievances and Dispute Resolution.** Responsible investments should offer timely, affordable and effective mechanisms to resolve disputes arising from the investment. In some cases, investors also might seek to help settle pre-existing disputes. While governments have the primary responsibility for developing and implementing mechanisms to resolve disputes, investors can and often should utilize transparent and effective mechanisms of their own to supplement government-run processes. These mechanisms should be accessible to women and men and be speedy, low-cost and culturally appropriate (VGGT paragraphs 3.1 and 21.1; CFS-RAI Principle 9; FAO 2015; FAO 2016; WB 2017 Note 19).

- **Transparency and Avoiding Corruption.** The VGGT and CFS-RAI emphasize the importance of transparency and avoiding corruption on the part of all parties involved in or affected by investments in land (VGGT paragraphs 10.5, 11.4, 11.7, 12.3, 12.11; CFS-RAI Principle 9). A responsible investor should ensure that the investment is as transparent as possible and under no circumstances should any stakeholder—including investors, government officials and traditional leaders—engage in corrupt practices.

- **Environment and Sustainability.** Another of the characteristics of a responsible investment is that it does no harm to the environment (VGGT paragraphs 12.4 and 12.12). CFS-RAI Principle 6 states that a responsible investment "sustainably manages natural resources, increases resilience, and reduces disaster risks" in a variety of ways that protect our air, water, land and other resources. Importantly, this includes reducing or removing greenhouse gas emissions.

- **Monitoring.** A responsible investment also is one in which its impacts are monitored during project operations. The VGGT stress the importance of monitoring the overall impact of investments in their countries. CFS-RAI Principle 10 states that monitoring impacts using baseline date and indicators is essential for identifying and addressing impacts (VGGT paragraph 12.14; CFS-RAI Principle 10).

III. The Importance of Responsible Investment: Benefits and Risks

As noted in the introduction, land-based investments can be beneficial, or they can cause great harm. Increasing such investments[6] in agriculture is critical for reducing hunger and poverty, contributing to reducing the effects of climate change and for realizing the Sustainable Development Goals (SDGs). And 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. But land-based investments can harm affected communities and the environment if not done responsibly (FAO 2015; FAO 2016; WB 2017 Note 1). This section provides an overview of the benefits of responsible investment and the risks of investing irresponsibly.

A. Benefits of Responsible Land-Based Investments

Responsible investments in land can lead to a wide range of beneficial outcomes, including:

- **Enhanced food security and nutrition.** Land-based investments in agriculture can increase agricultural yields and food production, and thus local food availability. Nutrition can be improved if the investment makes more nutritious crops available than before the investment. And, if the project provides jobs that increase earnings, employees and their families may be able to purchase more and healthier food (CFS-RAI Principle 1; WB 2017 Note 22).
- **More sustainable livelihoods and decent work; poverty reduction; transfer of technology; economic growth.** Responsible investment can enhance sustainable livelihoods in other ways as well, such as when investors purchase goods and services locally. Investment can create employment with good and safe working conditions and opportunities for training and advancement. And investors can share technology (improved seeds, irrigation methods, etc.) with local farmers and others to help them become more productive. These outcomes can help to reduce poverty and increase economic growth locally and at the national level (WB 2017 Note 3; WB 2017 Note 4; WB 2017 Note 17; CFS-RAI Principle 2; World Bank 2017a).
- **Strengthened land rights.** Responsible land-based investments can actually lead to a strengthening of land rights in the affected community. Investors and government officials 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 4.)

6 As described in the introduction, this guide covers investments in land by both foreign and domestic investors and includes those involved in agriculture, forestry and raising livestock. It does not directly address investments in infrastructure, mining or energy. And it considers investments in land to include purchases, leaseholds, concessions and those employing business models that do not involve large-scale transfers of tenure rights.

Box 4:

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

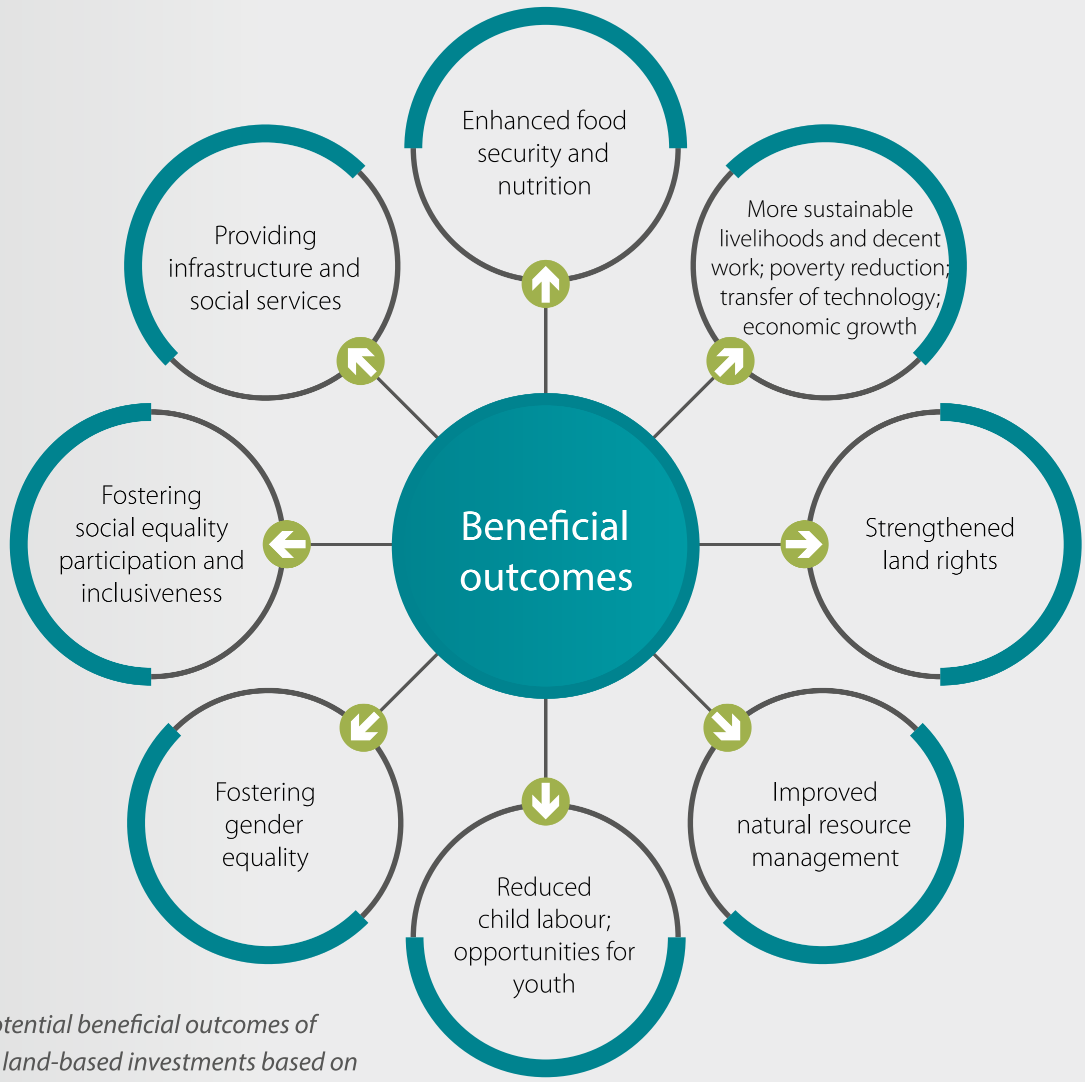


Figure 3: Potential beneficial outcomes of responsible land-based investments based on CFS RAI principles and VGGT guidelines

- **Improved natural resource management.** Responsible land-based investment also should lead to improved natural resource management or, at a minimum, avoid harming the environment. Governments can require and investors can adopt measures that will enhance productivity, reduce greenhouse gas emissions and support adaptation measures, and reduce waste and losses. Ideally, the project will have a more regenerative affect by improving soil health, increasing biodiversity or restoring water cycles (CFS-RAI Principle 6; WB 2017 Note 13; FAO 2016).

- **Reduced child labour; opportunities for youth.** Agriculture (both subsistence and commercial) is the primary driver of child labour throughout the world. Moreover, hazardous child labour is most prevalent amongst teenagers between 15 and 17 years old[7]. Responsible investment can help to eliminate child labour if investors refuse to employ children under a certain age. Child labour also may be reduced if parents receive sufficient wages so that their children do not have to work. This is also beneficial if children are able to stay in school rather than going to work. And, when investors employ youth (defined by the United Nations as "persons between the ages of 15 and 24 years[8]), they can ensure that they do not face hazardous working conditions. Similarly, responsible investment can provide important opportunities for rural youth, by providing them with decent work and advancing their access to resources and inputs that will allow them to thrive (CFS-RAI Principles 2 and 4; WB 2017 Note 21).

- **Fostering gender equality.** Responsible investments in land can help to foster gender equality in a variety of ways. Investors can: hire women to do well-paying jobs; avoid gender discrimination in hiring and promotion; ensure respect for women's land rights in relation to acquiring rights to land; and help to advance women's access to productive resources, inputs, and services. Moreover, investments that reduce urban migration among men have the potential to reduce the care-giving responsibilities that fall on women (FAO 2013; CFS-RAI Principle 3; WB 2017 Note 20).

- **Fostering social equality, participation and inclusiveness.** More generally, responsible investments can help to foster social equality, participation and inclusiveness. They

7 "Child Labour," International Labour Organization, http://www.ilo.org/global/topics/child-labour/lang--en/index.htm.

8 United Nations Department of Economic and Social Affairs (UNDESA), "Definition of Youth," http://www.un.org/esa/socdev/documents/youth/fact-sheets/youth-definition.pdf.

can do so by supporting participatory consultation and decision-making processes so that women, youth, indigenous peoples and other traditionally marginalized groups in the affected community have a meaningful say in decisions that will affect them and are able to benefit from the opportunities offered by their investments (CFS-RAI Principles 3, 4 and 9; WB 2017 Note 18; FAO 2014).

- **Providing infrastructure and social services.** Investors sometimes provide or promise to provide affected communities with infrastructure—roads, schools, clinics, electric power, wells, etc.—or support for provision of social goods such as scholarships, jobs and training (see above). It is important to note in this context that investors should not be expected to replace the government in this regard as that is not sustainable over the long term and not all investor promises are kept (CFS-RAI Principle 2; WB 2017 Note 18).

B. Harm from Land-Based Investments that Are Not Responsible

The harm that can result from investments that are not carried out responsibly are, for the most part, the opposite of the benefits. They include:

- **Greater food insecurity and poor nutritional outcomes.** Food security and nutrition can be undermined in many ways. For example, an investment could replace production of nutritious crops that are consumed locally with cash crops for export. Or the investor could acquire a large tract of land and thereby displace individuals from their farms or from common property grazing or forest land or sources of traditional or wild food, thus reducing subsistence food production or limiting livelihood opportunities. Yet another impact of some irresponsible investments is the distribution of unsafe food which sickens millions of people each year. (CFS-RAI Principle 2; WB 2017 Note 22; WHO 2020).

- **Dispossession of land.** Acquisitions of land for investments in agriculture and other sectors have caused individual families and sometimes entire communities to be displaced from their land, sometimes without compensation, alternative land or livelihood opportunities. Forced evictions and even voluntary displacement in the context of what is sometimes labelled "land grabbing"[9]

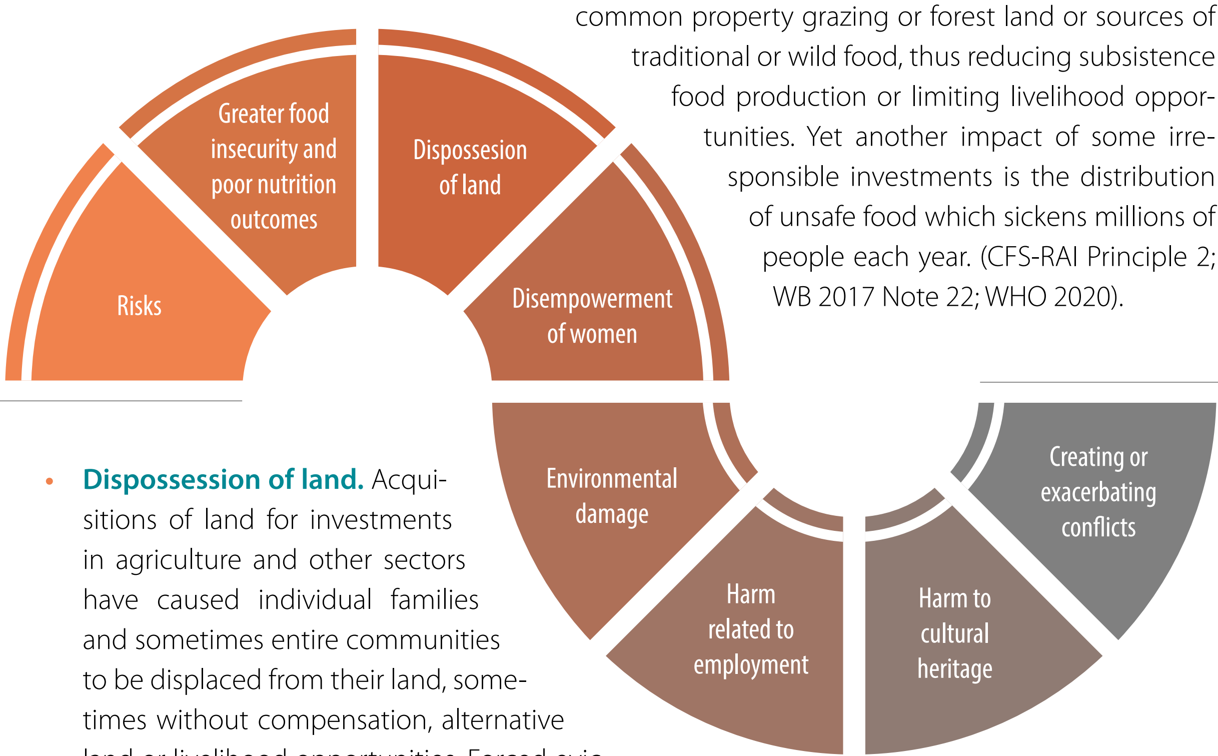


Figure 4: Harm from not responsible land-based investments

9 See the Tirana Declaration for one definition of "land grabbing" (https://d3o3cb4w253x5q.cloudfront.net/media/documents/Tirana_Declaration_2011_EN.pdf).

often lead to a number of negative impacts apart from food insecurity. These include human rights violations, increased poverty due to loss of livelihoods and the loss of educational opportunities for children. It is important to note that dispossession of land can affect women differently from men, and in some cases might increase burdens on women. This can happen if women lose access to productive resources that they relied on for family nutrition or income-generation, or by requiring them to go farther and spend more time in gathering water, wood, or other resources for the family. As noted above, investments that do not literally displace people but limit their access to land for grazing, seasonal farming or non-timber forest products also can have severe negative consequences for the affected households (FAO 2015; FAO 2016; WB 2017 Note 11).

- **Disempowerment of women.** Despite laws requiring equal treatment of women, including laws governing land rights and employment, cultural practices and other factors often make it difficult for women to assert their rights. Land-based investments that ignore these impediments can worsen the plight of women in the affected community. In addition to increasing burdens on women through land dispossession, irresponsible investments can further marginalize women by denying them access to compensation related to land leases, failing to hire them or assigning them only to low-paying marginal positions and excluding them from training and promotion programs (FAO 2013; WB 2017 Note 20).
- **Environmental damage.** Irresponsible investments can also lead to serious environmental damage or degradation. The project may pollute local water sources, divert water from local use or otherwise disrupt the natural hydrological cycle. It could destroy high-conservation value forest areas (Box 5). Or it could significantly increase greenhouse gas emissions (World Bank 2017a; FAO 2016).

Box 5: Environmental Harm in Ethiopia

As one example, a recent assessment of land-based investments in Ethiopia revealed serious environmental harm where a large tract of forest land was allocated for agricultural investment. The investor burned the forest and deprived the local community of an area that had been the source of valuable non-timber forest activities and products, such as hunting, honey and collecting medicinal plants.

Source: NIRAS 2021

- **Harm related to employment.** Investments that are not responsible can utilize poor labour practices that create unsafe working conditions, pay subpar wages, employ child labour or disempower women and youth. Such practices can undermine efforts aimed at reducing poverty and encouraging economic development in affected areas (WB 2017 Note 16; WB 2017 Note 17).
- **Harm to cultural heritage.** In some cases, land-based investments can also result in harm to cultural heritage where the land acquired for the project formed an important part of such heritage and local people are prevented from accessing it. Loss of cultural heritage can occur in other ways as well, such as through investment that restricts use of traditional knowledge or genetic resources, or that unduly pressures farmers to give up use of traditional seeds and seed-saving practices.
- **Creating or exacerbating conflicts.** Investments that displace or harm local people can create a wide variety of conflicts. These include conflicts between the community and the investor, often where the government transfers to investors land that has been occupied and used by indigenous or other people without formally recognized land rights. There may be conflicts when workers

from outside the area are brought in to work on the project and local workers object. Investments can also exacerbate pre-existing conflicts. Local land conflicts are common in countries where land governance is weak, but they can be hard for investors to spot. Yet failure to identify and address these conflicts in a timely manner can result in disputes escalating into wider conflicts that are harmful to the community and investor alike and may require government intervention (WB 2017 Note 11; Boudreaux, et al 2017).

It is important to note that few investments are entirely beneficial or entirely harmful. In almost all cases the impact will be mixed. Some people will benefit, some will be unaffected, and others may experience harm. Each case is different and must be evaluated as such.

IV. An Overview of the Actors Involved in Land-Based Investments and their Roles and Responsibilities

As mentioned, for purposes of this guide the actor groups involved in land-based investments can be grouped into three categories: (1) affected communities; (2) investors and other private sector actors and (3) government authorities[10]. Each group and their respective roles and responsibilities related to responsible investment are described in this section.

A. Affected Communities

This category includes people living in and around areas where land-based investments are made. They have a huge stake in whether such investments are made responsibly. The affected community consists of many groups, not all of which have similar interests, experience significant impacts or play similar roles. For purposes of this guide, these groups may include:

- Households and individuals living in the area.
- Civil society organizations, including legal advocacy organizations, that support communities. Note, however, that CSOs are not considered to be a part of affected communities in all countries, such as Laos.
- Small-scale producer's organizations and other rural organizations that work with farmers (see Box 6).

10 Of course, there are other actor groups that play some role in such investments. These range from civil society organizations, businesses that supply fertilizer and seeds to transportation companies, retailers and consumers. Those groups are not the focus of this guide.

Box 6: The important role of small-scale producers

Most farms in the developing world, other than in Latin America and the Caribbean, are smaller than 2 hectares. These small-scale producers (sometimes referred to as "smallholders") are essential to the global food system. They supply about 35% of global food produced and are especially important fo the food supply in Sub-Saharan Africa and Asia. They also contribute to more diverse and sustainable food systems. Many are operated by families or individuals. Indeed, family farms (many of which are larger than 2 hectares, produce approximately 80% of the world's food.

Thus, farmers are especially important actors in agricultural investment. In low and middle-income countries private domestic investment by farmers, much of it by small farmers, is the largest source of agricultural investment. (Such investment includes developing or significantly improving land; acquiring livestock, machines, or equipment; and planting permanent crops that yield repeated products.) The next biggest source of such investment in those countries is domestic governments. Foreign investors (whether public entities such as development partners or private entities such as corporations) are much smaller sources of agricultural investment in those countries.

Sources: CFS 2015; IFAD 2013; CFS-RAI, para. 47; FAO 2014a; Lowder, et al 2012; Lowder, et al 2021

- Indigenous peoples and marginalized or vulnerable groups such as women, youth, pastoralists and the elderly and any organizations that may represent them
- Worker's organizations
- Traditional leaders
- Religious leaders

Roles and responsibilities of communities.

Communities play an important role in connection with proposed and actual investments. It is important to note at the outset that economic and political factors often may mean that communities are in a less powerful position than an investor or the government. Accordingly, communities likely will need support from NGOs or other service providers to level the playing field. That said, in this guide we divide their activities into three phases (see Box 7).

Box 7: Roles and Responsibilities of Communities

1. Preparing for Investment

- Developing relationships with CSOs and others that can provide legal and technical support.
- Establishing structures and processes for how the community will make decisions related to investment.
- Mapping land rights and land uses.

2. Project Development

- Screening and due diligence
- Consultations with investors
- Impact assessments
- Developing an equitable agreement

3. Monitoring

1. The first is **preparing for investment**. Communities are more likely to benefit from investments if they have adopted governance and decision-making structures to help them make informed decisions that are supported by the entire community. It is best if such structures are in place well before it becomes necessary to deal with a proposed investment. The community also should take steps to build awareness of the rights of the community, map its land rights and land uses and, overall, ensure that the community is as well-prepared as possible when approached by a prospective investor. CSOs and public extension service providers can help to achieve these objectives (Landesa 2021a) (see Box 8)[11].

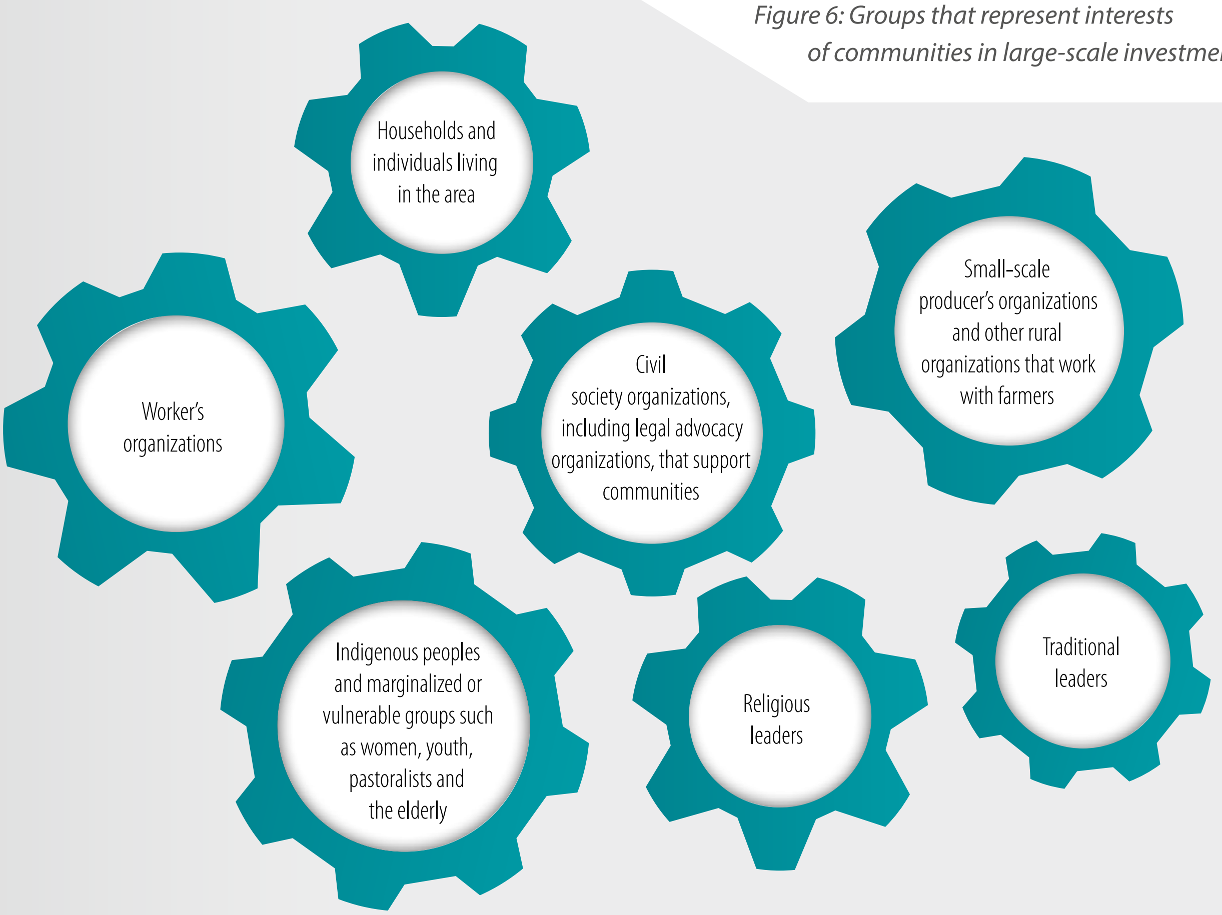
Box 8: Legal Support for Communities in Sierra Leone

In Sierra Leone, Namati, a legal support organisation works on behalf of local communities and land-owning families. Their work includes "raising legal awareness, targeting groups at risk of exclusion such as women and youth, supporting stakeholder negotiations through a multi-stakeholder platform, drawing up a new lease contract for a much-reduced oil palm concession and new leasehold contracts with land-holding families on improved terms which reflect community rights and interests, providing legal opinion to stakeholders, and identifying points on which national legislation and regulations require amendment."

Source: Quan and Seigneret 2019 at 10

[11] How communities can prepare for investment is discussed in detail in Section III of the Communities Manual.

Figure 6: Groups that represent interests of communities in large-scale investments



2. The **second phase**[12] **includes strategies and activities that communities can use in reacting to a proposed land-based investment**. Communities that developed their community governance and decision-making processes, mapped their land rights and developed a land use plan should be reasonably well-prepared to respond to a proposed investment. The investment process involves assessing, developing and negotiating and, if there is an agreement, implementing the investment. If a community is going to effectively protect its interests, it must be prepared to engage in the following broad activities (often with the assistance of an NGO or other advisor):

    a. **Screening and due diligence.** Once the community becomes aware that an investor is interested in its land, the community should seek to learn as much as possible about the investor and the proposed project (FAO 2015; CCSI/Namati 1; Landesa 2021a).

    b. **Consultations with investors.** As discussed above, investors and communities communicate with each other through a process of consultations. Effective consultations throughout the investment cycle can develop and sustain strong working relationships between the two. 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 (Deng 2012). In this context, it is important to note once again that power dynamics may make engaging in consultations especially difficult for communities so having outside support can be crucial. Box 9 describes one approach to consultations in Sierra Leone.

12 See Section III of the Communities Manual for detailed guidance on the project development phase.

Box 9: Consultations in Sierra Leone

"In Sierra Leone, for an oil palm development, Solidaridad [an NGO] 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 8-9

c. **Impact assessments.** Communities should insist on being actively involved in environmental and social impact assessments (ESIA) conducted by the investor. The results of an independent ESIA help the community assess the project proposals and identify needed changes, especially ways to mitigate potential harm. To ensure that the impact assessment fulfils its purpose of identifying potential negative and positive impacts of an investment

and helps to inform the community's decision whether to agree to the project, it must be conducted before any final decisions are made and before any agreement is signed (Landesa 2021a; Deng 2012; FAO 2016; WB 2017 Note 14).

d. **Negotiating with the investor and developing an equitable agreement.** If the investor, the community and other stakeholders (in many cases, the government) reach general agreement that a project may be acceptable, the parties should enter into negotiations that, if successful, will lead to a written agreement. The community should insist that negotiations be consistent with the principles of effective consultation and FPIC and that all agreements are understood and written in a language the community understands. Ultimately, the investor and whoever represents the community must take the necessary steps to confirm that the terms of the final agreement, if any, are truly acceptable to the affected community, including women, youth and other groups (New Alliance 2015; USAID 2015; Landesa 2021a).

3. The third phase is **monitoring the project during implementation**[13]. To avoid costly conflicts and otherwise facilitate smooth operation of the project, the community and the investor should agree to a monitoring plan as part of the final agreement. Monitoring is a way to determine whether parties to agricultural 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. It is essential to monitor and review investments throughout their lifecycle to avoid negative impacts and ensure that all parties are

[13] See section IV of the Communities Manual.

complying with permits and the applicable law and, overall, honouring their commitments set forth in the investment agreement (FAO 2015; FAO 2016; Landesa 2021).

Note, however, that not all of the activities in phases 2 and 3 proceed in a linear fashion. For example, the investor should engage with the affected community throughout the entire project cycle, including implementation and monitoring. (CFS-RAI; Landesa 2021a).

B. Investors and other Private Sector Entities

This category includes 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 those who are direct investors in land or supply chain businesses.

Figure 7: Private sector entities

Box 10: The "Business Case" for Investing Responsibly

Investing in land in the Global South 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 guide and in the Investor Manual which are based on international guidelines and best practices.

It is important to recognize 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. Communities displaced and impoverished by an investment are likely to find a way to undermine it through protests or other tactics (USAID 2015).

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 (ODI 2021). And, 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).

Multinationals, such as Nestle, Coca Cola, PepsiCo, Illovo, Cargill, and others have explicitly adopted responsible investment principles and practices 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).

The primary objective of most investors, of course, is to profit from their activities. While investing responsibly involves additional investment of time and money, especially prior to project implementation, it is in their long-term financial interest to do so because the costs accruing from conflicts with communities, workers and others will exceed the initial investment. (See Box 10).

How can investors and other private sector institutions play an essential role in achieving responsible land-based investments? With respect to the national policy, legal and institutional environment related to such investments, they can participate in multi-stakeholder platforms and consultations to communicate their perspectives to government and advocate for policies and practices that facilitate responsible investment. Importantly, this can include assuring government that they will not consider adoption of such policies and practices to be "anti-business" or "anti-investment." Rather, they can affirmatively support a coherent, consistent, and predictable legal and policy framework for investment (Konig, et al, 2013).

Investors' other broad area of responsibility, of course, is to adopt and implement responsible investment policies and practices as set forth in this guide, the Investor Manual and other resources such as CFS-RAI and VGGT. As 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. Thus, even when not required by government, investors remain responsible for implementing responsible practices throughout the investment cycle (Landesa 2021).

It is important to note that, in a sense, small-scale farmers are investors, too, as they are operators of small businesses. However, as explained above, in this guide we consider them to be members of the affected community.

Roles and responsibilities of investors.

The key roles and responsibilities of investors in seeking to invest responsibly essentially mirror those of affected communities. Here too, it is useful to divide the activities into three phases: (1) preparing for investment; (2) project development; and (3) implementation (including monitoring) (see Box 11).

Box 11: Roles and Responsibilities of Investors

1. Preparing for Investment

- Developing suitable internal policies, principles and guidance for management and staff to use when evaluating a proposed investment or implementing one that has been approved.

2. Project Development

- Screening and due diligence
- Consultations with communities
- Impact assessments
- Developing an equitable agreement

3. Implementation

- Monitoring the project
- Project closure

1. Phase 1 - Preparing for Investment - involves developing suitable internal policies, principles and guidance for management and staff to use when evaluating a proposed investment or implementing one that has been approved. A business is more likely to engage in responsible investment practices if its activities are based on clear and comprehensive principles, commitments, policies and processes that are endorsed and

required by management at the highest levels. For land-based investments, they should include at least 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 as well as a commitment to allocating sufficient resources for doing so (OECD/FAO 2016; Landesa 2021)[14].

Examples of policies adopted by multinationals are available and can serve as guidance for investors[15]. And FAO and the OECD have developed model enterprise policies that are available to investors (OECD/FAO 2016). See Box 12 for an example of one company's policy[16].

Box 12: Olam's Plantations Code

In 2015 the agribusiness company Olam adopted a Plantations, Concessions and Farm Code to guide acquisition and management of its plantations, concessions and farms. The code "requires comprehensive legal, environmental and social scoping and assessment to ensure compliance with Olam's policies and objectives, relevant national and international laws and charters, and the company's public commitments to good practice." It involves activities in three phases:

1. Initiation phase which requires "comprehensive legal, social and environmental due diligence before any acquisition or new land development."
2. Planning phase, which entails a "comprehensive Environmental and Social Impact Assessments before any acquisition is completed or land development or operations commence." The ESIA should include FPIC "where applicable."
3. Implementation phase in which managers must "develop and implement their Environmental and Social Management Plan incorporating a continual improvement loop."

Source: Olam 2015

14 See Section IV of the Investor Manual.

15 Landesa undated (https://landportal.org/library/resources/supplemental-resource-sample-business-enterprise-policies)

16 The Olam policy is cited as one example of a real-world policy adopted by a large food and beverage company. It is not ideal—for example it does not require FPIC in all cases—but it does reflect one company's policy choice.

2. The development phase[17] involves the same set of issues as are relevant to communities:

Screening and due diligence. Before deciding to invest, companies must conduct research on the uncertainties and risks associated with the proposed project. The investor must learn as much as possible about the national or regional context. The process should seek to answer a wide range of questions all aimed essentially at determining whether the investment can be designed and implemented in a manner consistent with international best practices standards. Due diligence activities 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).

Consulting with communities. Effective consultation requires, among many other things, mapping stakeholders—including legitimate tenure rights holders and how land is used—very early in the investment process. While this can require significant resources, 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. In addition, effective consultation is an essential strategy for avoiding conflicts with the community during project implementation. Thus, obtaining FPIC or at a minimum utilizing a process of deliberative public engagement with the local community arguably is the single most important strategy for achieving a responsible investment. For all of these reasons, investors should engage with communities from the very earliest stages of the investment process and continue to do so throughout the project lifecycle (FAO 2016; OECD/FAO 2016). Box 13 describes one company's experience with consultations in Laos.

Box 13: Consulting with Communities in Laos

Stora Enso Laos (SEL)[18] has a large agro-forestry operation in Laos. Its Land Teams facilitate community consultations during land acquisition processes. When this information was gathered, SEL had four Lands Teams, comprising three staff in each district who usually come from the local ethnic community and can speak the local dialect. They use videos, maps, pictograms and other communication tools during the consultation process.

SEL has developed communications products in collaboration with NGOs, designed to help Land Teams deliver information in a culturally appropriate way, and ensure communities more fully understand the long-term implications of a proposed investment.

SEL regularly consults with local communities for all projects that involve the community or activities proposed for their traditional lands. The company provides information to village leaders so they can make an informed decision on whether to consent to the planned activity. When SEL plans business operations on village lands, they will meet with village leaders and explain what the company is planning and when.

Source: MRLG 2016 at 14

17 See Section V of the Investor Manual.

18 Since September 2021 the Laos operation is owned by SilviCarbon.

Impact assessments. Responsible investors understand that adequate feasibility studies and impact assessments help define the potential success of an investment. Research indicates that inadequate assessment of and response to potential risks is one of the primary causes of failure of agricultural investments. Thus, investors should commission independent ESIAs as part of their own due diligence process, as a tool for the government and other stakeholders to assess project proposals and as a way to identify needed changes in proposals, including the development of strategies to mitigate potential harm and the possible relocation of the project. Impacts should be determined on a gender-disaggregated basis. To ensure that the impact assessment fulfills its purpose of identifying potential negative and positive impacts of an investment so as to inform the decision whether to proceed, it must be conducted before any final decisions are made and before any agreement is signed. The local community should play a role in gathering information on impacts and should have the opportunity to provide input into the final report. Recommendations in the final ESIA should be reflected in an environmental and social management plan (ESMP) that will guide operations. ESIAs also provide the data required to monitor impacts of the project (Deng 2012; FAO 2016; WB 2017 Note 14; OECD/FAO 2016; Landesa 2021).

Negotiating and developing an equitable agreement. As discussed above, negotiations between the investor and the community should be consistent with the principles of effective consultation and FPIC[19]. In some settings the overall agreement consists of many individual contracts or other documents rather than having a single comprehensive government approval or agreement document (see Box 14). (Investors also must obtain or produce various other documents, licenses and permits to operate legally in the country.) In all cases, the documents should be written in clear language that can be understood by members of the community (New Alliance 2015; USAID 2015).

Box 14: Contents of the Final Agreement

Whatever documentary form the final agreement takes, a number of important topics should be covered by one or more contracts. Depending on the circumstances, the final agreement or collection of agreements may cover (FAO 2015; FAO 2016):

- Land lease or sale (including detail based on a participatory land mapping process)
- Payment for transfer of tenure rights (if not covered by the lease or sale document)
- Community Development Agreement
- Stakeholder consultation plan
- Partnerships with local suppliers
- Monitoring plan

The investment agreement documents should contain provisions for timely, affordable and effective means of resolving disputes.

19 See, e.g., FAO 2014.

An important element for negotiation and the agreement is equitable compensation for any land rights of the community that are transferred to the investor. Valuations of land should be fair and transparent, and compensation—whether in the form of cash, alternative land or other non-cash compensation--paid promptly. Environmental and social harm and other losses should also be recompensed. While investments requiring resettlement of community members should be avoided, if it does happen compensation also should include payments for resettlement and new housing (if necessary). 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 (FAO 2016).

3. In the implementing phase of the project cycle, it is critically important for investors to continue to consult regularly and effectively with the community. A best practice is to work with the community very early in the process to develop a stakeholder engagement plan that guides consultations before and during project operations[20].

Monitoring. To avoid costly conflicts and otherwise facilitate smooth operation of the project, investors should be guided by a monitoring plan agreed upon with the community as part of the final agreement. As discussed above, it is essential to monitor and review investments throughout their lifecycle to avoid negative impacts and ensure that all parties are complying with permits and the applicable law and, overall, honouring their commitments set forth in the investment agreement (FAO 2015; FAO 2016; Landesa 2021).

Project Closure. Investors should not ignore what happens at the end of the project. The investment agreement should spell out what happens if the investor wishes to transfer rights to another investor and what happens to the land at the end of the project. Does the land revert back to the original tenure rights holder or the government? Is the investor required to restore the land to its original condition? What happens to buildings and other infrastructure established by the investor? These and other questions should be addressed in the investment agreement and dealt with when the project ends, perhaps pursuant to the company's sustainability plan.

20 See Section V of the Investor Manual for detailed guidance.

C. Government Authorities

In this guide, "government authorities" include (1) government at all levels in the country where investments are made (host governments); and (2) the governments of investor's home countries (in the case of foreign investment), including bilateral donors (home governments). Each has unique roles to play in achieving responsible investments in land, but this guide focuses on host governments[21].

In most settings, host governments have four primary roles to play in relation to land-based investments (see Box 15). Each is discussed below.

Box 15: Roles and Responsibilities of Host Governments

- Creating and implementing the enabling environment for responsible investments
- Attracting and facilitating responsible investments
- Regulating and monitoring investments
- In some cases, acquiring land for itself either for public use or to transfer the land to a private investor.

1. Creating and implementing an enabling environment that fosters responsible land-based investments.

Governments have the leading role in creating a legal and policy environment that is more likely to lead to responsible land-based investments. The enabling environment for responsible land-based investments in agriculture consists of coherent policies, laws, incentives and the institutional and administrative framework. It may also include adopting policies that boost the domestic capacity for land administration, including surveying and land information management systems. The aim is to create a policy, legal, regulatory and institutional environment, including appropriate safeguards, that attracts and fosters responsible investment, discourages and penalizes irresponsible investment, treats all investors fairly and equitably and takes into consideration the specific needs and interests of members of local communities (CFS-RAI paragraph 36).

The entire process of reviewing, revising and ultimately implementing the enabling environment should entail inclusive, multi-stakeholder engagement and transparency. The CFS-RAI advise governments to promote "the meaningful participation of relevant stakeholders in agricultural and food system policies and/or policy-making, including by establishing inclusive and equitable multi-stakeholder and multi-sec-

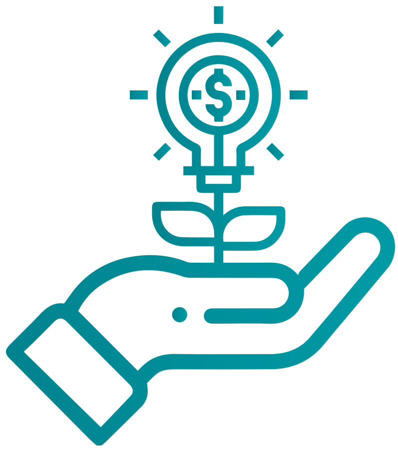
[21] Investor home governments have two primary roles to play. First, in various ways they regulate or seek to influence investors from their nations to invest responsibly when operating abroad. For example, the government of South Africa developed the *Guidelines for Good Business Practice by South African Companies Operating in the Rest of Africa* as a guiding framework for South African countries to investment responsibly elsewhere in Africa (DTI 2015). And in 2021 the German Federal Parliament adopted the Supply Chain Due Diligence Act which aims to improve the protection of international human rights and the environment by setting binding standards for large companies and their value chains (SEDEX 2021). The second main role for home governments is to support host governments, civil society, affected communities or investors to build capacity, develop systems and processes and take other actions that can lead to more responsible land-based investments. There are many examples, including the Responsible Governance in Land program co-financed by the European Union and the German Ministry on Economic Development (BMZ) and implemented by GIZ through which this guide has been created.

toral platforms" (CFS-RAI 36(ii)). Stakeholders outside of government can participate by communicating their priorities and concerns through advocacy, lobbying, or participation in multi-stakeholder or other consultation processes[22].

Box 16: Regulation of Domestic Investors

While more attention has been paid to foreign investment, in many countries the majority of agricultural investment comes from domestic sources. It is equally important to have a process that applies to national investors. These national companies range from large to small and may include small or medium sized firms that used to be subsistence farming operations. Many countries have investment approval processes that apply only to foreigners and possibly larger domestic companies. In addition, domestic investors are often not registered and do not face the same due diligence process requirements as foreigners face, making it much more difficult to safeguard tenure rights, monitor investments and direct them towards development objectives. While it is important for each government to determine the criteria and thresholds for requiring registration of foreign and domestic investors, national investors certainly should not be ignored. In particular, government should seek ways to help smaller firms comply with responsible investment principles.

2. Attract and facilitate responsible investors and investments.



The enabling environment includes both investment promotion and facilitation. Investment promotion involves a variety of activities through which the government seeks to attract investment to the country. Investment facilitation includes actions involving the establishment, operation and closure of investments, many of which may have been the result of investment promotion. In an effective enabling environment for responsible investment, investment promotion and facilitation activities must be aligned with each other and, importantly, should reflect the provisions of the VGGT and CFS-RAI (UNCTAD 2016).

At the heart of investment promotion and facilitation is creating and implementing an investment assessment process. It is through such a process that government exercises its responsibilities in relation to individual investments. The objective is to create and implement a process that is clear and transparent to all parties in a way that promotes increased volumes of investment and adherence to environmental and social governance standards (FAO 2015). The process should apply to both foreign and domestic investors. (See Box 16.)

Investment assessment processes and procedures vary widely by country and type of investment. In all cases the process and related requirements should be clear to potential investors and other stakeholders and the responsible government institutions must effectively coordinate their activities (WB 2017 Note 5). A responsible investment process should include five essential stages which, unsurprisingly track the key roles and responsibilities of investors and communities:

22 Section III of the Government Manual contains detailed guidance on creating the enabling environment.

1. Screening prospective investors and proposed projects through due diligence practices.
2. Ensuring investors consult with all potentially affected stakeholders
3. Requiring investors to conduct impact assessments with acceptable results prior to deciding whether to approve the project
4. Reviewing and, if appropriate, approving agreements related to the investment
5. Monitoring project operations

Box 17: Sierra Leone's Proposed Agribusiness Investment Approval Process

Key Elements:

- Investment authority is one-stop shop for investors
- Investor must conduct ongoing consultations with affected community
- Includes a preliminary point where all parties state whether the project could be acceptable
- An independent ESIA is required
- Investor must obtain FPIC from affected community

A notable example of an investment assessment process aimed at facilitating responsible investments is the one developed in Sierra Leone. See Box 17[23].

23 For additional guidance on the investment assessment process and the government's role in attracting and facilitating responsible investment, see Section IV of the Government Manual.

3. Regulate and monitor investments

The government's role is to regulate investors to ensure compliance with applicable laws and regulations and otherwise complying with their legal obligations set forth in the investment agreement(s). As discussed above, it is essential to monitor and review investments throughout their lifecycle. While government officials may do little or no actual monitoring activities, they should at a minimum require the investor to comply with legal monitoring requirements and the monitoring plan (FAO 2015; FAO 2016; Landesa 2021)[24].

4. As an acquirer of land

In some cases, government provides state-owned land to investors. In others, government directly acquires rights to land or seeks to identify non-state land that may be available for investment. In the latter cases, the government essentially acts in the role of an investor with respect to land acquisition (see Box 18).

Box 18: Government Acquisition of Land in Uganda

In Uganda, the Uganda Investment Authority acquires land for investment so that it can be offered to interested investors, sometimes in industrial parks. It does so in collaboration with the Ministry of Lands, Housing and Urban Development, the Ministry of Agriculture and the Ministry of Finance and Planning to attract, facilitate and monitor investments.

24 See part VI of the government manual for additional guidance on regulation and monitoring.

Virtually all governments have the power to compulsorily acquire land for public use. This means that governments can obtain the land without the consent of the people, community or company who have rights to the land, upon payment of fair compensation. The VGGT state that governments should only use this power when it is for a "public purpose" that is clearly defined in law. In so doing, the government should ensure that it respects the rights of all legitimate tenure rights holders by acquiring only the minimum amount of land required for the project. It should make prompt payment of fair compensation, utilize a transparent and inclusive expropriation process and ensure that those who are resettled do not experience a decline in their standard of living (VGGT paragraph 16). In other words, when acquiring rights to land the government should act in accordance with responsible investment principles just as it would require an investor to do so.

Evidence gathered over many years indicates that it is best to avoid expropriation as involuntarily displacing communities usually has significant negative impacts on affected people and leads to long-running conflicts. Done poorly, it can leave people homeless and destroy the social fabric of communities. Thus, governments should use this power only as a very last resort (FAO 2015)[25].

V. How to Use this Guide and the Stakeholder-specific Manuals

As noted in the introduction, this guide presents a general introduction to the benefits, risks, key elements and actor group roles and responsibilities related to responsible land-based investments. It is meant only to provide an overview. As such, it is intended for use with the three more comprehensive Community, Government and Investor manuals aimed at each actor group. We recommend that all interested users read this guide and then move on to the manual most relevant to their needs to most fully benefit from these resources.

Ultimately, it is in the interest of all actors that land-based investments be developed and implemented in a manner that is consistent with the responsible investment principles introduced in this guide and detailed in the manuals. Doing so makes it more likely that investments will be both financially successful and socially sustainable—a "win-win" outcome that all can support.

25 Additional guidance on government acquisition of land can be found in Section V of he Government Manual.

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