

**RESPONSIBLE INVESTMENT IN LAND:
GUIDELINES AND PRINCIPLES**

Africa



➔ Best practices for responsible investments recognize the land and natural resource rights of local people. *Photo: Oxfam*

By Darryl Vhugen


INTRODUCTION

Large-scale land-based investments by the food and agriculture, forestry, and extractive industries can have profound impacts on local communities in Africa and around the world. They can affect the quality of the environment; rights to land and other natural resources; and the livelihoods of all those who live in the area. Demand for land in low- and middle-income countries, where land rights tend to be the least secure, has increased substantially in recent years. In Africa, well in excess of 20 million hectares of land have been transferred to investors since 2000.¹

Because of this situation, governments, international organizations, business, and civil society have developed guidelines that lay the groundwork for large land-based investments to respect the rights and improve the livelihoods of local people.



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Governments, the private sector, and others have developed multiple guidelines for best practices to protect the rights of local people affected by land-based investments.

➔ The vast grasslands of East Africa provide for the livelihoods of millions of pastoralists. New discoveries point to huge oil fields below ground. Local people hope to prosper from their development. *Photo: SIS Sahel UK*

Land acquisitions have often led to displacement, increased poverty, and heightened food and nutritional insecurity. Investors and governments have ignored land rights—especially informal rights established by custom. The land rights of women, which typically depend on their relationship to a male relative, are especially vulnerable. Even when local people have formal rights, governments may resort to expropriating their land without proper process or compensation. Consultations in which communities have access to the information they need to accurately assess risks and benefits are rare.² The new guidelines aim to ensure that land-based investment benefit—rather than harm—local people.

RISE OF GUIDELINES

These guidelines have come about in a variety of ways: some have been negotiated and endorsed by governments (e.g., Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security³); others were developed by international experts (e.g., Principles for Responsible Agricultural Investment that Respects Rights, Livelihoods and Resources⁴);

and still others have been produced by the private sector itself as part of a self-regulatory mechanism (e.g., Principles for Responsible Investment in Farmland⁵). Existing land tenure guidelines⁶ are voluntary; companies that adhere to them do so because it is sound business practice and good corporate citizenship.

The international norms embodied in the guidelines encourage companies to give greater attention to the social and environmental consequences of their investments. Some, such as those discussed below, highlight the importance of respecting land rights; not only as a main source of sustenance and wealth, but, in many cases, also as intrinsic to identity, culture, and way of life. Thus, failing to address land rights adequately both harms communities and also exposes the investor in land to substantial risk—legal, financial, and reputational.

Of the multiple existing guidelines, four that stand to be particularly influential in guiding the implementation of land-based investments, based either on their scope or the scale of investments they represent, are noted here. (Find links to the full documents on FOLA's Resources page.)

- **Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security:** In May 2012, the UN Committee on World Food Security (CFS), which included the United States, unanimously endorsed the Voluntary Guidelines, the development of which was led by the UN FAO.⁷ These guidelines are important in part because they have the official imprimatur of governments, making them an international soft law instrument—influential albeit not legally binding. Their prescriptions are oriented more towards governments than the private sector.
- **International Finance Corporation (IFC) Performance Standards on Social and Environmental Sustainability:** Since January 1, 2012, the International Finance Corporation (the private lending arm of the World Bank) has required its clients, including those seeking loans for projects through financial intermediaries, to apply detailed Performance Standards to manage environmental and social risks and impacts. Performance Standards 1, (on assessment of impacts), 5 (on Land Acquisition and Involuntary



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Whether for agriculture, infrastructure development or other purposes, large land-based investments in Africa are increasingly common.
Photo: David Brossard

Resettlement) and 7 (concerning indigenous peoples) are especially relevant to land rights. Together they establish detailed requirements on project assessment, design, community engagement, negotiation with land-rights holders, compensation for displaced persons, a grievance mechanism, etc. The Performance Standards include the requirement that those seeking to acquire land obtain free, prior and informed consent (FPIC) from land rights holders in indigenous communities.⁸ Many large multinational banks, including Bank of America, Barclays, Citigroup, Crédit Suisse, JP Morgan, Société Générale and Wells Fargo, now apply the IFC's sustainability framework (or the parallel Equator Principles for private banks) to their own loan portfolios.

- **Roundtable on Sustainable Biomaterials (RSB) Guidelines for Land Rights:** Respecting Rights, Identifying Risks, Avoiding Disputes and Resolving Existing Ones and Acquiring Lands through Free, Prior and Informed Consent, May 2012,⁹ combined with the Food Security Guidelines, April 2012.¹⁰ Of the many private-sector guidelines that create either a self-regulatory mechanism or a third-party certification framework, the RSBs are the most detailed and expertly crafted with respect to the land rights

of rural people. Though designed for the biofuels industry, the principles can be applied to other large-scale agricultural investments.

- **Bonsucro Production Standard:** Bonsucro is a collaboration of sugar retailers, end-users (companies that purchase sugar and derived products), investors, traders, producers and NGOs who are committed to sustainable sugar production by establishing principles and criteria that are applied in the sugar cane growing regions of the world. The Bonsucro standard addresses the five biggest social and environmental impacts from sugar cane. It includes as an indicator the demonstration of "clear title to land in accordance with national practice and law."¹¹ Unlike other criteria for agricultural feedstock, the Bonsucro standard has a set of measurable targets to enable sugar cane

producers, processors and suppliers to improve their social and environmental operations over time. Coca-Cola, Pepsi, Nestlé, Cargill, and Syngenta are amongst Bonsucro's 189 members.

In addition to the above guidelines, the United Nation's Committee on World Food Security (CFS) has been developing the Responsible Agricultural Investments (RAI) Principles, to be adopted by the CFS General Assembly in October 2014. It includes a principle that calls for respecting tenure of land, fisheries, forests and water.

PUBLIC PRESSURE

In recent years, international pressure groups have launched programs to encourage companies to include environmental, social and governance criteria in their decision-making processes and operations. Campaigns

+ FACT

The Voluntary Guidelines on the Responsible Governance of Tenure have the official imprimatur of governments. They are an international soft law instrument that can be leveraged for a real impact.

such as Oxfam’s “Behind the Brands” have contributed to a growing trend in which companies view environmental and social sustainability as a sound business strategy for achieving long-term corporate growth and profitability. An increasing number of companies have come to recognize that unstable land rights may derail an investment, and are taking steps to ensure that their corporate behavior reflects best practices around the issue of land tenure.

Socially responsible and financially sustainable investments are those that respect, protect, and strengthen land rights of women and men; respect community land such as areas used by pastoralists; improve local livelihoods and agricultural productivity; and achieve reasonable long-term investment returns.

BEST PRACTICES

How can companies and communities achieve this outcome? Few have the know-how and tools to address land issues responsibly, and existing guidelines cannot fill this technical gap.

However, there is an emerging consensus (arising largely from the development of

the various guidelines referred to above) on what companies should do—and thus what communities should insist upon—to be responsible investors in land.

While no two investment contexts are alike—and thus the precise approach to each investment will vary—responsible investments are likely to result if companies do the following:

- 1. Recognize Rights.** Ensure that all holders of legally and/or socially legitimate land rights (including use rights) are identified and documented. Identify and document the nature and extent of those rights, distinguishing, for example, ownership from use rights and documentation of the area covered. This should include special attention to women and traditionally marginalized groups.
- 2. Assess Impacts and Do No Harm.** It is important to assess the impact of the proposed transaction to ensure that it does no harm to rights holders. Such assessments generally should be done by third party experts. If the impact is likely to have significant social or environmental impacts, either cancel the project or reconfigure it to avoid all or most negative impacts while

fairly compensating affected people for their losses. Such reconfiguration should include exploring alternative investment models that do not result in the large-scale transfer of land rights to investors, including partnerships with local land-rights holders and contracts with small-scale producers. In particular, it is important to safeguard against the displacement of people and consider feasible alternatives. In case displacement does occur, ensure that those displaced are promptly and adequately compensated, have continued access to resources, or to alternative livelihoods, and are not rendered homeless.

- 3. Settle Land Disputes.** Before completing a land transaction, ensure that legitimate disputes over the land have been identified and resolved through a locally acceptable dispute resolution process.
- 4. Consult to Ensure Participation.** Ensure the participation of community members, specifically including women and all others that may lack the capacity, opportunity, or forum to otherwise articulate their



Sugar retailers, investors, purchasers and producers developed the Bonsucro Production Standard to establish principles for sustainable sugar production. (Below) Sugar cane field, South Africa. Photo: Gavin Fordham



claims, opinions, and concerns. This consultation should take into account the local community's usual methods of communication, needs for technical and legal assistance, and traditional decision-making processes.

5. **Obtain Consent.** Ensure that free, prior, and informed consent (FPIC) is obtained from rights holders—women and men, households, and communities—for negotiated purchase or lease agreements, or for any other compensation, acquisition, or voluntary relinquishment of rights.
6. **Establish Grievance Mechanisms.** Provide an accessible, transparent, impartial and well-defined process for addressing grievances related to the land transaction. In many cases, such mechanisms should incorporate customary methods of dispute resolution already used by the affected community.
7. **Establish Accountability Structures.** Develop and apply appropriate internal controls and accountability and governance systems that will ensure present and future compliance with these principles and with the requirements for implementing them. This may include institutionalizing internal and external monitoring programs to ensure compliance.



The Roundtable on Sustainable Biomaterials Guidelines for Land Rights was crafted with respect to the land rights of rural people. Though designed for the biofuels industry, they can be applied to other large-scale agricultural investments. (Above) Oil palm. Photo: Bill Zimmerman

CONCLUSION

Any company contemplating a large-scale land-based investment in Africa should undertake a rigorous process of due diligence, including risk analysis and impact assessment. If the result of the due diligence process indicates that the project is financially, socially and environmentally viable, and the affected population and company decide to proceed, the company should carry out

the transaction fairly and transparently, addressing the steps listed above.

When rights to land—the main source of sustenance and wealth of rural families in Africa and throughout the developing world—are respected and protected, the interaction between investor and community is more likely to result in benefits for both sides.

The views presented in this brief do not necessarily represent those of any FOLA partners, but rather reflect the views of individual authors.

SOURCES

¹ This figure is derived from data compiled by the Land Matrix. <http://landmatrix.org/en/>

² Examples of land-based investments having negative impacts on communities are not hard to find in relation to any number of commodities. Such commodities include sugar (<http://policy-practice.oxfam.org.uk/publications/sugar-rush-land-rights-and-the-supply-chains-of-the-biggest-food-and-beverage-c-302505>); palm oil (<http://www.forestpeoples.org/sites/fpp/files/publication/2013/11/conflict-or-consentenglishlowres.pdf>); and biofuels (Sulle, E. and Nelson, F., 2009, BIOFUELS, LAND ACCESS AND RURAL LIVELIHOODS IN TANZANIA, IIED, London <http://pubs.iied.org/pdfs/12560IIED.pdf>), among others.

³ <http://www.fao.org/docrep/016/i2801e/i2801e.pdf>

⁴ http://siteresources.worldbank.org/INTARD/214574-1111138388661/22453321/Principles_Extended.pdf

⁵ <http://www.unpri.org/areas-of-work/implementation-support/the-principles-for-responsible-investment-in-farmland/>

⁶ There appear to be at least 16 guidelines that address land issues. These and other instruments seeking to promote responsible investment are set forth in an analysis prepared for the Committee on World Food Security entitled “Comparative Analysis of Selected Instruments on Responsible Investment: Similarities, Differences and Gaps.” http://www.fao.org/fileadmin/templates/cfs/Docs1314/rai/CFS_RAI_Comp_Anal_Sel_Instruments_EN.pdf

⁷ Supra note 1.

⁸ http://www.ifc.org/wps/wcm/connect/115482804a0255db96fbffd1a5d13d27/PS_English_2012_Full-Documents.pdf?MOD=AJPERES

⁹ <http://rsb.org/pdfs/guidelines/12-05-02-RSB-GUI-01-012-01-RSB-Guidelines-for-Land-Rights.pdf>

¹⁰ <http://rsb.org/pdfs/guidelines/12-30-04-RSB-GUI-01-006-01-RSB-Food-SecurityGuidelines.pdf>

¹¹ http://bonsucro.com/site/wp-content/uploads/2013/03/Bonsucro_Production_Standard_March-2012__c.pdf