

# MARS

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## **Guidance for Suppliers on Land Rights:**

How to Respect Land Rights in Own  
Operations & Extended Supply Chains

October 2022

Prepared for Mars by



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# Introduction

## Respect for land rights is a key foundation across global supply chains.

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Respect for land rights creates more stable, more secure land tenure systems. Individuals, families and communities that enjoy secure land rights often cite:

- Increased investments to improve land, leading to higher productivity and incomes and greater resilience to climate change;
- Improved nutrition, health, and education;
- Increased agency and empowerment of women; and
- Reduced conflict and instability.<sup>1</sup>

Businesses that successfully incorporate land rights often cite benefits such as:

- Better relationships with the communities around them;
- A more stable operating environment due to lower risks of conflict with or among communities;
- Reduced risk of costly operating delays or security force intervention; and
- Lower risk of lawsuits or other complaints related to land tenure.<sup>2</sup>

## Mars is committed to advancing respect for human rights and ending deforestation in its value chain.

Mars expects suppliers to support its human rights commitments and apply its [Supplier Code of Conduct](#) and related guidance, including:

- respect for land rights;
- free, prior, and informed consent (FPIC) for Indigenous Peoples and local communities who hold or use land under customary tenure systems; and
- the respect for rights of Indigenous and forest-dependent peoples.<sup>3</sup>



# Scope

Mars commissioned Landesa to draft guidance for suppliers acquiring or leasing land or engaging with upstream suppliers who do. Mars recognizes that this is an evolving field that will require our ongoing attention and further refinements to our approach.

This guide is intended to support suppliers to develop policies and procedures that advance respect for land rights across their own operations and supply chains, particularly when they seek to acquire land under communal ownership or management, or from vulnerable groups.

## This guide is divided into two main parts:

**Recommendations**  
for incorporating  
land rights into  
management systems.

A **good practice guide** for the  
steps to employ when land is  
being purchased, leased, or  
subject to a land use change.





## Scope (continued)

In both circumstances (building management systems as well as following best practices in purchasing, leasing or changing the use of land), there should be consideration of how land is held. As a first step, in all circumstances, suppliers should determine how land is held: through formal title; informally or traditionally by individuals or community members; or a mix of systems. This requires conducting additional due diligence, beyond checking formal land title, if the land belongs to Indigenous Peoples or is in a place with traditional and informal tenure.

Where land is held, used, or managed communally, suppliers should apply the following guidance, which draws heavily on international guidance and commodity-specific certification standards. These are summarized for the relevant production standards for sugar (Bonsucro), cocoa (Cocoa & Forest Initiative), beef (Global Roundtable for Sustainable Beef), soy (Round Table on Responsible Soy) and palm oil (Roundtable on Sustainable Palm Oil) in Appendix 2.

Many aspects of the guidance are also pertinent when suppliers are acquiring land held traditionally or informally by individual landowners, particularly when those landowners are vulnerable or not accustomed to negotiating transactions.

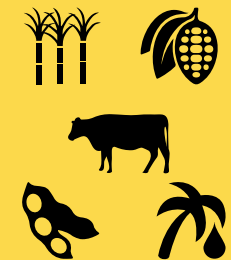
# Recommendations on incorporating land rights into management systems

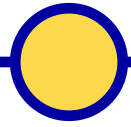
The following chart provides guidance on incorporating land rights expectations into a company's management systems for operations and supply chain, building upon existing guidance provided in the [Mars Supplier Code of Conduct Guidebook](#).

## Incorporating land rights into management systems and practices is an ongoing process of continuous improvement.

Mars expects that suppliers meet Basic Good Practice as a minimum standard in respecting land rights and set targets and timelines to move into Advanced Good Practice and Robust Systems.

Note that many of these practices are incorporated in commodity-specific certification standards. These are summarized for the relevant production standards for sugar (Bonsucro), cocoa (Cocoa & Forest Initiative), beef (Global Roundtable for Sustainable Beef), soy (Round Table on Responsible Soy) and palm oil (Roundtable on Sustainable Palm Oil) in Appendix 2.





## Policy & Implementation Plans

|                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|-------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Basic Good Practice</b>    | Adopt and communicate (both publicly and specifically to suppliers and potentially affected communities) a clear and detailed land rights policy and approach, that includes not only compliance with relevant laws, but also commits to respecting land and natural resource rights, and respects FPIC in cases involving Indigenous Peoples or Local Communities who hold land under customary tenure systems. This policy should adhere to international human rights norms and good practices, many of which are included in the following section, Steps to invest responsibly in land. |
| <b>Advanced Good Practice</b> | Establish a formal plan to implement the land rights policy. This may take the form of a roadmap or action plan for implementation. The plan should detail timelines for establishment of systems, staffing and requisite resources to reasonably achieve the plan set forth.                                                                                                                                                                                                                                                                                                                |
| <b>Robust System</b>          | Establish a routine to review progress on implementation and update the policy and implementation plan periodically, reflecting developments and feedback from communities.                                                                                                                                                                                                                                                                                                                                                                                                                  |





## Establish Systems & Standard Operating Procedures

|                               |                                                                                                                                                                                                                                                                                                                                                                                                     |
|-------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Basic Good Practice</b>    | Establish a structure to implement the land rights policy. This includes development of documents detailing standard operating procedures (SOPs) in accordance with international human rights norms and best practices. Such SOPs should include processes and responsible personnel for acquiring land, conducting risk assessments, monitoring compliance, and handling land-related grievances. |
| <b>Advanced Good Practice</b> | Establish internal due diligence systems to ensure all SOPs are implemented by staff at the level of the production unit in its own operations and extended supply chains.                                                                                                                                                                                                                          |
| <b>Robust System</b>          | Ensure that land rights due diligence is incorporated into robust Human Rights Due Diligence systems that are aligned with international best practices, such as those detailed in the UN Guiding Principles on Business and Human Rights (s. 17).                                                                                                                                                  |





## Assess Risks & Monitor Compliance

|                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|---------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Basic<br/>Good<br/>Practice</b>    | Conduct initial assessment of land-related risks and/or compliance with land policy to help focus due diligence efforts. An initial assessment should focus on identifying land risks across own operations as well as identifying high risk suppliers, to enable prioritizing engagement as per the UN Guiding Principles (more on this in Engaging and Monitoring Suppliers below). Tools such as <a href="#">LandAssess</a> and <a href="#">Landscape</a> may be useful in this process. |
| <b>Advanced<br/>Good<br/>Practice</b> | Plan approach to ongoing risk assessment and compliance monitoring, through a mix of desk-based monitoring of documentation as well as independent field verification that involves input from communities. Regularly publish results from internal due diligence systems, land-related risk assessments and monitoring.                                                                                                                                                                    |
| <b>Robust<br/>System</b>              | Regular routine in place to assess understanding of land-related risks and monitor compliance with best practices through a system of independent verification for which the methodology and results are regularly published.                                                                                                                                                                                                                                                               |



## Address Land-Related Risks & Noncompliance

### Basic Good Practice

Establish method to prioritize and address high-priority risks identified through risk assessment, monitoring and grievance processes.

### Advanced Good Practice

Improve method of prioritization and addressing priority issues based on experience and demonstrate improved conditions.

### Robust System

Robust approach in place to address land-related issues and root-cause drivers of risk. Improved system and conditions can be verified by an independent third party and evaluated by stakeholders in response to adequate reporting.



## Develop Capacity

### Basic Good Practice

Identify gaps in staff capacity on land-related issues and develop plan to grow that capability through hiring new staff, training existing staff, or engaging external experts when needed.

### Advanced Good Practice

Relevant staff has skill, time, resources, relevant authority and institutional support to engage with key stakeholders around land rights.

### Robust System

Ongoing training, tracking and measuring results.



## Engage with Affected Communities

### Basic Good Practice

Establish two-way communication channels with communities whose land-related rights may be affected by company projects. Share all material information about potential impacts of company action. Establish and communicate information about how community members can lodge land-related grievances. Keep records of community grievance reports, including their investigation, resolution and where provided, remediation.

In case of a land transfer or land use change, follow key steps to ensure transparent and meaningful engagement with Local Communities as per best practices. Plans involving lands of Indigenous Peoples or other traditional communities that withhold FPIC are not moved forward. Company has a zero-tolerance policy and procedures to ensure communities withholding consent are not subject to intimidation, coercion, violence or criminalization.

### Advanced Good Practice

Publish basic list of land-related grievances with status and actions.

Keep minutes of meetings and other outreach sessions with individuals, communities and Indigenous Peoples. Minutes should document any concerns or dissenting views expressed in meetings or outreach sessions. Also keep record of other meeting documents, such as attendance lists, invitation, meeting materials, and photos.

Document key procedures for consistency, including for land rights procedures, including but not limited to environmental and human rights impact assessment, FPIC, community engagement and grievance processes.

Regularly evaluate and address grievances received from community members about environmental or land use issues. Reporting for grievance mechanisms is aligned with the [UN Guiding Principles on Business and Human Rights](#) effectiveness criteria for non-judicial grievance mechanisms.

### Robust System

Offer training for community members on their land rights (e.g., FPIC).

Existing operations that were developed without FPIC, or via inadequate FPIC processes, are subject to mutually agreed conflict resolution processes. Where affected rightsholders request it as remediation, the outcomes from these negotiations should include excision of contested lands from operations.





## Engage & Monitor Suppliers

### Basic Good Practice

Communicate expectations to suppliers, including providing land rights policy, minimum requirements for SOPs for land acquisition and land rights due diligence,, noncompliance protocol and other key documents during supplier contracting and renewal processes, or when there are updates.

Incorporate land rights policies and good practices into supply chain due diligence and monitoring processes and ensure suppliers incorporate these into their processes as well.

Develop, publish and implement a policy and protocol around supplier noncompliance, including triggers for suspension or termination.

Develop a methodology for identifying supply chains or supply geographies with heightened land rights risks and conduct initial assessment to identify high risk suppliers. Factors that contribute to high risk may include where the risk of adverse impacts is most significant (i.e., place where violence against land rights defenders or forced displacement occurs); certain characteristics of a suppliers' operating context (i.e., weak land governance or land disputes are common in the area); the particular operations (i.e., a high concentration of land under company operation or the supplier has been accused of not respecting land rights in the past); products or services involved (i.e., a particular commodity production requires a large amount of land or has many land-related complaints generally); or other relevant considerations. High risk suppliers should be prioritized for thorough human rights due diligence.

### Advanced Good Practice

Assess high risk suppliers' land use processes and procedures on a regular basis.

Work with high risk suppliers to support development and implementation of action plans to address land-related risks and noncompliance.

### Robust System

Implement periodic independent verification of supplier compliance, such as regularly surveying community members to obtain their feedback on the supplier's land rights, use and acquisition policies and practices.

# **Steps to invest responsibly in land that is communally owned, used, or managed**

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**Putting robust management systems into place helps a business have the tools to conduct itself responsibly and minimize land-related risks.**

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**Basic good practice**  
includes the following steps (each  
of which is discussed in more detail  
and suggestions for robust best  
practice in the following sections):

- **Inform the community about the project as early as possible** to establish effective communication, transparency, and trust and to share information that can help stakeholders avoid common pitfalls. Shared information should include any known potential negative impacts and the company's plans to mitigate it.
- Consult government officials and official land records, conduct site visits, and consult with local communities and institutions to **identify all persons whose land rights and uses will be affected** by the transfer or change. This may include formal landowners, those with informal or customary rights, and those using the land seasonally. Where land records are unclear or inaccurate, a participatory mapping process with the community may be needed.
- Whenever engaging with community representatives rather than a full community, at each stage of the process (i.e., consultation, negotiation, contracting), **confirm the legitimacy of community representatives**. They should represent the different perspectives of people within the communities. They should not engage in self-dealing or have interests contrary to those of communities.
- **Assess the environmental, social, and gender impacts** of the transfer or land use change in a way that is in keeping with the scale of the project. This may be part of a legally required environmental and social impact assessment, but should also include land rights and human rights impacts, specifically. Impact assessment results (and other material information) should be shared (in an accessible and understandable format and language) with all affected land rights holders and users before holding consultations.
- **Hold consultations before engaging in negotiations** or contracting with land rights holders and users. Consultations should be held in a manner that encourages two-way communication and participation, including those at risk of exclusion.

*continues on next page*



## Basic good practice

(continued)

- **Hold negotiations *after* consultations and *before* formal contracting begins.** Ensure that contract terms reflect agreements reached during negotiations and give land rights holders and users sufficient time to review the proposed terms of the contract, which will likely involve consulting and benefiting from the expertise of third-party experts.
- **Where the land and natural resource rights of Indigenous Peoples or other Local Communities are affected, employ** the collective engagement process of **Free, Prior, and Informed Consent** (including documentation of the process) in transactions in which the company is directly involved. Where the company is indirectly involved, conduct due diligence to understand whether communities were coerced, forced, intimidated, or pressured to transfer their land.
- Determine compensation in consultation with those receiving it, and **ensure compensation is provided** to all who are physically or economically displaced. Compensation should be based on accurate valuation, taking into consideration both land rights and land uses, as well as market and non-market values and comply with national and local requirements.
- **Develop clear procedures and indicators for monitoring compliance and disseminate information** about them in an accessible and understandable manner. If monitoring reveals that the company is not in compliance with contract terms, prompt action is taken to come into compliance. Share monitoring system with communities, so that they know how to address observed noncompliance.
- **Establish clear procedures, scope and resources for a company-based grievance mechanism** and disseminate information about it to potentially affected communities.



## STEPS TO INVEST RESPONSIBLY IN LAND

Identify land rights holders and users

Assess impacts

Determine what process is required

Consult stakeholders

Negotiate and contract with affected persons and communities

Provide compensation

Monitor and enforce contract terms

Ensure access to remedy

### **This section elaborates the essential steps to promote responsible investment in land.**

A company's involvement in each of these steps may vary depending on the structure of and stakeholders involved in a particular transaction. For instance, in some cases, a company will negotiate a deal directly with landowners; in others, government may play the role of intermediary between the company and affected communities. However, where the government acts as an intermediary, it is often the company that bears risks when community rights are violated. In such cases, the company should work with the government, to the extent possible, to follow the essential components of these steps during the process.

## Identify land rights holders and users

Assess impacts

Determine what process is required

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Ensure access to remedy

Once you determine there will be a land transfer or land use change, identify all land rights holders and users of the land. This includes individuals and communities holding statutory, customary, overlapping, and seasonal rights.

The means for identifying land rights holders and users to vary by geography. Where land rights are formalized and land records are reliable, review the existing registry and other relevant government records. Where land rights are not formalized or records are unreliable, consult with communities on land identification and mapping efforts to ensure accuracy.

This process may not identify all land rights holders and users; however, other activities, such as impact assessments may identify anyone missed in this initial assessment.

### *Informing and engaging communities:*

Oftentimes, a company wants to avoid raising expectations or other unintended consequences and so it avoids engaging with affected stakeholders until they have more information or have fleshed out a project plan. However, establishing effective communication, transparency, and trust early in the process is critical to a successful relationship between the company and affected stakeholders. Initial planning processes such as identifying land users and assessing impacts often require some interaction with community members, raising the possibility of rumors spreading or questions and concerns being

raised without a clear way for the company to respond. Care should be taken to plan when to engage with communities and what information can be shared at different stages to avoid the spreading of misinformation and to avoid common pitfalls, such as community members being subject to land speculation by outsiders. Partnering with credible local nongovernmental organizations can be helpful in developing and executing these communications strategies. For more information on community engagement strategies, see The World Bank & UNCTAD's [Responsible Agricultural Investment Knowledge Into Action Note 15](#) (2018).

## **Strategies to Identify Land Rights Holders and Users**

- ✓ **Understand the land laws and regulations of the country where the land is located**
- ✓ **Consult government officials and official land records, conduct site visits, and consult with local communities and local institutions to identify the following:**
  - The owner(s) of the land (formal or informal);
  - All individuals and/or communities with statutorily recognized rights to own or use the affected land, both legally documented and undocumented;
  - All individuals and/or communities with other legitimate rights to the land, including customary, secondary, overlapping, and seasonal rights; and
  - All individuals and/or communities using the land.
- ✓ **Where laws and regulations do not recognize or are not implemented so that they protect use rights, customary rights, rights of women, and informal tenure, conduct (ideally with support from expert third parties) an independent analysis of land rights and uses in the affected area. Participatory mapping with the involvement of communities or representatives from the community can be an effective way of determining land rights and use where official documentation is lacking. For additional guidance see [Namati Community Land Facilitators Guide](#).**
- ✓ **Determine if there are administrative, legal, or customary authorities who act as fiduciaries and guarantors of community members' land rights, and if so, what their role and scope of authority is. Determine whether they are effective in representing and securing community members' rights. Assuring you are engaging with the right representatives of the community will be an ongoing process.**

Identify land rights holders and users

## Assess impacts

Determine what process is required

Consult stakeholders

Negotiate and contract with affected persons and communities

Provide compensation

Monitor and enforce contract terms

Ensure access to remedy

It is critical for land rights holders and users to be informed of all potential impacts before agreeing to a land transfer or use change. Impact assessments will assist in informing better strategies and courses of action to eliminate or mitigate adverse impacts.

Before obtaining land or changing its use, it is good practice to carry out an assessment covering the environmental, social, and gender impacts of a project. In many cases, local law requires some sort of impact assessment; some are purely environmental while others also include social impacts. Ideally, an impact assessment should:

- Fulfill domestic laws and requirements;
- Comply with widely accepted human rights standards;<sup>4</sup>
- Assess potential issues and risks related to economic, environmental, social and land rights impacts, including those on human rights, food security and livelihoods of affected communities;
- Include an assessment of the gendered dimensions of these impacts; and
- Be conducted by an independent technical expert.

For additional guidance on incorporating land rights into impact assessments, see Landesa's [Land Rights Assessment Toolkit](#) (2018). In the case of tropical regions, see the High Carbon Stock Approach [Implementation Guidance for Social Requirements](#) (2020) and [accompanying materials](#).



## **Strategies to ASSESS IMPACTS**

- ✓ **Understand the national and local requirements for environmental and social impact assessments (ESIAs), which will vary depending on scale of the project and may require consulting third party experts**
- ✓ **Conduct an impact assessment in keeping with the scale of the project and using an acceptable framework based on good practices. To meet best practice, the assessment should:**
  - Be conducted prior to holding consultations or engaging in negotiations (although it should come after informing the community about the potential project).
  - Be conducted in a transparent manner and include consultations with communities.
  - Include all potential direct and indirect impacts on the following: existing land uses, legitimate land tenure rights, food security, livelihoods, cultural rights, gender relations, water, infrastructure, biodiversity and high conservation value areas, greenhouse gas emissions, and other related issues.
  - Identify potential mitigation and management measures to avoid, minimize, and offset adverse impacts, including measures to ensure that disadvantaged or vulnerable groups are not disproportionately impacted.
  - Be conducted at a point in the project that still allows for changes to the land transfer or use change approach or project design to eliminate or mitigate adverse direct and indirect impacts. This includes the option of cancelling the land transfer or use change if adverse impacts cannot be avoided or mitigated.
- ✓ **Share all assessment results with affected land rights holders and users before holding consultations and engaging in negotiations. Assessment results should be shared in accessible and understandable format(s) and language(s).**
- ✓ **Use information collected during the assessment to develop better strategies and courses of action to avoid, mitigate, or offset adverse impacts.**

Identify land rights holders and users

Assess impacts

## Determine what process is required

Consult stakeholders

Negotiate and contract with affected persons and communities

Provide compensation

Monitor and enforce contract terms

Ensure access to remedy

All land transactions should be conducted through fair, free, and informed negotiation and contracting practices. Where community members hold individual- or household-level rights to land, those consultation, negotiation, and contracting processes will occur with those individuals or households.

Where Indigenous Peoples or other traditional Local Communities are affected, the company should employ the more rigorous collective engagement process of Free, Prior, and Informed Consent (FPIC). FPIC is the right of Indigenous Peoples to give or withhold their consent to projects that affect their land.<sup>5</sup> Although FPIC is a right of Indigenous Peoples in particular, it is best practice to obtain the FPIC of all Local Communities who maintain communal rights to or uses of land and natural resources.

The primary requirements of FPIC are the following:

**Free:** Communities cannot be coerced, forced, intimidated, or pressured to lease or sell their land, or otherwise consent to a project that affects their interests in land.

**Prior:** Communities should be given sufficient time to consider all material information relating to a proposed land transfer or use change prior to agreeing to lease or sell their land, or otherwise consent to a project that affects their interests in land. A business cannot meet this requirement after it has acquired land or implemented a project.

**Informed:** Communities should be provided all material information needed to make an informed decision about whether to consent to a land transfer or use change. Information should be provided in an accessible and understandable manner, taking into consideration language(s), literacy rates, and preferred modes of communication. Communities will also likely need to acquire material information from third party experts.

**Consent:** Communities should explicitly consent to the transfer or use change of their land. This means the freedom to state that, “yes” they agree or that, “no” they do not agree to the terms of the land transfer or use change. Communities also have the power to decide how consent will be given (e.g., through customary processes or certain representative(s)). The interests of people affected, including women and other vulnerable groups, should be represented in those processes, and the company should negotiate to gain confidence that their consent is provided.

For additional resources on responsible land investments, see Landesa’s [Responsible Investments in Property and Land Business Enterprise Guidebook](#) (2018) or Interlaken Group’s [Respecting Land and Forest Rights: A Guide for Companies](#) (2019).

For additional resources on FPIC, please consult the Food and Agriculture Organization’s [Technical Guide for Respecting Free, Prior, and Informed Consent](#) (2014); Accountability Framework Initiative’s [Operational Guidance on FPIC](#) (2020); RESOLVE’s [The Practice of FPIC: Insights from the FPIC Solutions Dialogue](#) (2021); the High Carbon Stock Approach [Module 3: Integration of High Conservation Values, High Carbon Stock Forest and Free, Prior and Informed Consent](#) (2018) or Forest Stewardship Council’s [Guidelines for the Implementation of the Right to FPIC](#) (2021).

## **Strategies to GAIN FREE, PRIOR AND INFORMED CONSENT (FPIC)**

- ✓ **Where a company is directly involved, verify that communities were not coerced, forced, intimidated, or pressured to transfer or change the use of their land.**
- ✓ **Where a company is indirectly involved, conduct due diligence to understand whether communities were coerced, forced, intimidated, or pressured to transfer their land. Such a process may involve talking to community members to ask about the process (i.e., adequate time for decision-making, information shared, an explicit indication to the community that they could say “no”) and check for indicators of coercion or pressure (i.e., an influx of security forces or actions taken to exclude community members who may be concerned about the sale/lease from the process)**
- ✓ **Confirm the legitimacy of representative decision makers. They should represent the different perspectives of people within the communities. They should not engage in self-dealing or have interests contrary to those of communities.**
- ✓ **Provide affected communities all material information (including anticipated positive and negative impacts) relating to a proposed land acquisition or project prior to: consulting third parties; engaging in consultations and negotiations; and agreeing to transfer or change the use of their land.**
- ✓ **Verify that the material information relating to the proposed land transfer or use change was disseminated in an accessible, culturally appropriate, and understandable manner to the broader community, not just leaders.**
- ✓ **Provide affected communities with enough time -- and the means if necessary -- to consult expert third parties. For example, in particularly sensitive transactions, a best practice might be placing money in an escrow account so community members can seek expert support. Their ability to do so often enhances their confidence in impact assessments and other project documents that the company provides to them.**

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### ***Strategies to GAIN FPIC (continued)***

- ✓ **Engage affected communities in consultation and negotiations (as detailed in sections 4 and 5)**
- ✓ **Document and confirm communities' explicit consent to the transfer or use change of their land. Explicit consent requires that:**
  - Communities have the freedom to explicitly state that, “yes” they agree or, “no” to the terms of the land transfer or use change.
  - Consent is provided after material information regarding the land transfer or use change is disseminated, adequate time to consult third party experts is given, and consultations and negotiations are held.
  - Communities provide their consent in a manner agreed upon with their decision makers or other representatives.
  - The scope of consent is clear, based on consensuses reached during negotiations. Make clear that if the land transfer or use change is carried out in a manner contrary to material information shared, discussions during consultations, or consensuses reach during negotiations, then communities' FPIC to the changes should be given.
  - Confirm that no information or allegations were received that would indicate communities were coerced, forced, intimidated, or pressured to provide their consent.
  - Confirm that women and other vulnerable populations were able to participate in consultation, negotiation, and consent processes.

Identify land rights holders and users

Assess impacts

Determine what process is required

## Consult stakeholders

Negotiate and contract with affected persons and communities

Provide compensation

Monitor and enforce contract terms

Ensure access to remedy

Before a company obtains land, changes its use, or implements a project that affects interests in land, consultations should be held with all identified land rights holders and users, or their representatives. Consultations are critical because they provide an opportunity for all parties to ask clarifying questions, request additional information, and express concerns and expectations. Consultations are also a valuable means to build and strengthen relations with communities, and thus, are a preventative measure for minimizing land-related disputes.

Although holding consultations is necessary there is no mandatory number of consultations that a company should hold and the scale and number will vary based on the size of the project, number of stakeholders involved, and the clarity of the land rights affected. A company should hold as many consultations as needed to adhere to the below procedures.

Efforts to include the participation of women and other groups at risk of exclusion in consultations should be made. Although women's land uses are often secondary or unnoticed, they are critical because they are in fact central to household livelihoods and will be directly impacted by any land transfer or use change. Other groups at risk of exclusion will vary across communities, but commonly include youth; the elderly; the disabled or chronically ill; religious, ethnic, and linguistic minorities; Indigenous communities; pastoralists or nomadic herders; economically disadvantaged persons; and migrants or "strangers."

## **Strategies to CONDUCT PROPER CONSULTATIONS**

- ✓ **Hold consultations before engaging in negotiations or contracting with land rights holders and users**
- ✓ **Confirm land rights holders and users' representatives.**
- ✓ **Disseminate all material information regarding the land transfer or use change in an accessible manner and before consultations are held.**
- ✓ **Select accessible locations and convenient times for consultations.**
- ✓ **Ensure all land rights holders and users, including women and men, feel comfortable attending and participating in consultations. Extra care should be taken to ensure that groups at risk of exclusion are encouraged to participate.**
- ✓ **Hold consultations in a manner that encourages “two-way” communication.**



Identify land rights holders and users

Assess impacts

Determine what process is required

Consult stakeholders

## **Negotiate and contract with affected persons and communities**

Provide compensation

Monitor and enforce contract terms

Ensure access to remedy

All land holders and users, including women and other vulnerable groups, should be invited to participate or be represented in negotiations to transfer their land, or otherwise consent to a project that affects their interests in land. Negotiations should occur only after all consultations are held, and before official contracting activities begin.

As with other steps, the length and depth of the negotiations will depend on number of parties involved. Negotiations should end only when all parties reach a consensus regarding final contract terms. Contract terms should accurately reflect consensus reached during negotiations.

For additional guidance on negotiations with communities, see the High Carbon Stock Approach [training materials](#) on Stage 3: Negotiation (2022).

## **Strategies for FAIR AND EQUITABLE NEGOTIATIONS AND CONTRACTING**

- ✓ **Hold negotiations after consultations were held and before formal contracting begins**
- ✓ **Confirm land rights holders and users' representatives before holding negotiations**
- ✓ **Select accessible locations and convenient times for negotiations.**
- ✓ **Ensure all land rights holders and users, including women and men, feel comfortable attending and participating in negotiations. Extra care should be taken to ensure that groups at risk of exclusion are encouraged to participate.**
- ✓ **Encourage “two-way” communication, as opposed to simply telling land rights holders and users what the contract terms should be. For example, land rights holders and users should be permitted to propose counteroffers.**
- ✓ **Give land rights holders and users sufficient time to review the proposed terms of the contract, which will likely involve consulting and benefiting from the expertise of third-party experts. Confirm the following:**
  - All parties are informed of their right to consult third-party experts.
  - All parties are provided adequate time to consult third-party experts.
  - Where parties are unable to afford the services of third-party experts, the expense of securing the services of such experts may be covered by the business.
- ✓ **Ensure contract terms reflect agreements reached during negotiations.**
- ✓ **Ensure contract terms capture evidence to support the company's compliance with the requirements for responsible land-based investment.**
- ✓ **In cases involving Indigenous Peoples or other Local Communities holding land communally, ensure that consultations and negotiations complied with FPIC requirements (see section 3 above).**

Identify land rights holders and users

Assess impacts

Determine what process is required

Consult stakeholders

Negotiate and contract with affected persons and communities

## **Provide compensation**

Monitor and enforce contract terms

Ensure access to remedy

Legitimate land rights holders and users who are physically and economically displaced must be fairly compensated to ensure their livelihoods and other social, economic, and cultural rights are sustained or improved. Compensation should include full replacement cost and other assistance to restore or improve their standard of living. All identified land rights holders and users should receive fair, adequate, and prompt compensation for the transfer or use change of their land.

## **Strategies to ENSURE APPROPRIATE AND ACCURATE COMPENSATION**

- ✓ **Ensure compensation is provided to all land rights holders and users who are physically or economically displaced (wholly or partially) by the land transfer or use change.**
- ✓ **Determine compensation in consultation with those receiving it. Compensation should be based on accurate valuation, taking into consideration both land rights and land uses, as well as market and non-market values.**
- ✓ **Determine the most appropriate and equitable form of compensation in consultation with those receiving compensation. Cash compensation alone is frequently insufficient. The most appropriate and equitable form of compensation could be one or more of the following: money; alternative land holdings; benefit sharing; and/or skills training. If livelihoods or income are adversely affected, compensation should provide opportunities to at minimum restore means of income-earning capacity, production levels, and standards of living.**
- ✓ **Ensure there is evidence to support that the amount and type of compensation is appropriate and fair.**
- ✓ **Ensure compensation complies with national and local requirements.**
- ✓ **Ensure compensation takes into consideration women and other vulnerable groups' different rights to and uses of land.**
- ✓ **Include the agreed upon compensation in the final land transfer or use change contract. Document the amount and type of compensation as well as the recipients.**
- ✓ **Do not obtain land or change its use before providing compensation. A cut-off date for eligibility for compensation may be set to ensure that potential encroachers on land after the cut-off date are not eligible for compensation.**
- ✓ **Ensure all identified land rights holders and users, including women and other vulnerable groups, actually received compensation if they were among the physically or economically displaced.**

Identify land rights holders and users

Assess impacts

Determine what process is required

Consult stakeholders

Negotiate and contract with affected persons and communities

Provide compensation

## **Monitor and enforce contract terms**

Ensure access to remedy

Despite best efforts, it is impossible to account for all possible circumstances and impacts at the beginning of a project. Thus, two key ongoing elements are essential to the success of a project and maintaining good relationships with surrounding communities: (1) monitoring and enforcing contract terms; and (2) ensuring access to remedy.

Procedures should be implemented for monitoring compliance with the terms of the land transfer, use change, and project implementation. Monitoring requires regular communication between parties; furthermore, monitoring has the potential to identify issues between parties before they escalate to a point where relationships between business enterprises and communities are irreparably damaged.

For more guidance on monitoring and enforcing contract terms, see [USAID's Guidance on Monitoring Free Prior and Informed Consent \(2021\)](#), the High Carbon Stock Approach [training materials](#) on Management & Monitoring Agreements (2022), or Equitable Origin's [FPIC 360° Tool](#) (2022).



## **Strategies for MONITORING AND ENFORCING CONTRACT TERMS**

- ✓ **Develop clear procedures for monitoring compliance with contract terms. Monitoring procedures should clearly indicate when and how monitoring will take place (e.g., annually or semi-annually), as well as in what form (e.g., survey, interviews, questionnaires, etc.).**
- ✓ **Develop indicators in line with contract terms. Examples of such indicators include but are not limited to the following:**
  - ✓ **Whether compensation was delivered on schedule and in the agreed upon form(s).**
  - ✓ **Whether communities are experiencing adverse environmental, social, or gender impacts that were not identified during the ESIA.**
  - ✓ **Whether communities feel comfortable and are able to access the company-based grievance mechanism.**
  - ✓ **Disseminate information regarding monitoring procedures and indicators in an accessible and understandable manner.**
  - ✓ **Share monitoring results on a regular and predictable basis. Sharing monitoring results can be a means for maintaining strong relationships with communities, as it allows a company to communicate to communities that it takes compliance with the terms of the contract seriously.**
  - ✓ **If monitoring reveals that the company is not in compliance with contract terms, prompt action is taken to come into compliance. It is critical for a company to take prompt action in order to demonstrate to communities that it respects the terms of the contract and values their relationship.**

Identify land rights holders and users

Assess impacts

Determine what process is required

Consult stakeholders

Negotiate and contract with affected persons and communities

Provide compensation

Monitor and enforce contract terms

**Ensure access to remedy**

While compensation for displacement is one form of remedy, it is possible that additional impacts or objections to contract terms or compliance may arise later, and the company needs to be prepared to identify and remedy those impacts in order to track its risks and maintain solid relationships with surrounding communities.

Several guides exist to help guide the creation of a company-based grievance mechanism and to ensure it is equipped to address land-related issues. These include Grow Africa and Landesa's [\*Guide for Company-Based Grievance Mechanisms for Land-Related Disputes\*](#). Please see the Guide for a suggested design as well as illustrative case studies that highlight how companies have successfully designed, implemented, and managed grievance mechanisms.

## **Strategies to ENSURE ACCESS TO REMEDY**

- ✓ **Dedicate sufficient personnel and resources to designing, implementing, and managing its grievance mechanism**
- ✓ **Sensitize relevant employees regarding the goals of the grievance mechanism as it relates to ensuring adherence to the requirements of responsible land-based investments and contract terms**
- ✓ **Inform communities about the grievance mechanism, including how to file complaints; the types of complaints it will receive; what the procedures are for receiving, processing, and responding to complaints; and what the procedures are for monitoring and evaluating the effectiveness of the grievance mechanism**
- ✓ **Put into place clear procedures for how the company will receive, process, and make final decisions regarding complaints**
- ✓ **Develop clear procedures for how the company will monitor and evaluate the effectiveness of the grievance mechanism, as well as the type and number of complaints it receives**
- ✓ **Share monitoring and evaluation results with communities and use the results to improve the functioning of the grievance mechanism, as well as the company's overall respect for land rights**

# Annex 1

## Glossary

**Customary land rights:** Rights to occupy, use, access, control, and transfer land that are derived from and sustained by the customary norms and practices specific to a community, family, tribe, clan, or other social collective. Although these customary norms and practices are often unwritten, they may have social legitimacy, widespread social sanction, and be generally adhered to by members of a local population.

**Formal land rights:** Rights to occupy, use, access, control, and transfer land that are derived from, sustained by, and given documented status under constitutional and statutory law.

**Free, Prior and Informed Consent (FPIC):** A human rights standard derived from the right of Indigenous Peoples to give or withhold their consent to projects that affect their land and property. The primary requirements of FPIC are Free, Prior, and Informed Consent. In the context of an agricultural land investment, a basic FPIC requirement would call for all land rights holders to give their consent before changing or giving up their land use.

**Grievance Mechanism:** A grievance mechanism, generally, is a process by which an individual or group may raise a real or perceived wrong, complaint, or protest. Within this guidance, the authors use this term to refer specifically to non-judicial, company-based processes established to receive and facilitate the resolution of land-related grievances experienced by project-affected parties arising in connection with a land investment project. Such grievances may include failure to follow a required process, claims for damages, or breach of contract.

*Continued on next page*



**Indigenous Peoples:** There is no widely accepted definition of Indigenous Peoples. However, the following characteristics are often used to describe Indigenous Peoples: (1) they self-identify as Indigenous and in some cases are recognized by other groups, or by State authorities, as having a distinct collective identity; (2) they have historical ties with respect to living in and using a specific territory; (3) their cultural distinctiveness is voluntary and handed down through generations. This may include aspects of language, social organization, religion and spiritual values, modes of production, laws and institutions; and (4) they have experienced or are experiencing subjugation, marginalization, dispossession, exclusion or discrimination.<sup>6</sup>

**Local Communities:** A group of interacting people living in and sharing a specific environment and place, and sharing common concern around local facilities, services, and environment and which may at times depart from traditional or State definitions. Such communities may attach particular meaning to land and natural resources as sources of culture, customs, history, and identity, and/or depend on them to sustain their livelihoods, social organization, culture, traditions, and beliefs. Local communities may be legally or customarily known or designated using various terms, such as “traditional communities.” Like Indigenous Peoples, they may use and manage land in accordance with customary tenure systems and associated rights and may depend on their land for cultural and physical survival.<sup>7</sup>

**Overlapping land rights:** Refers to situations in which multiple individuals, communities or other entities hold particular rights to the same piece of land. For example, a particular forest plot may have some people living there, others with rights to forage nontimber forest products, while the State holds rights to subsurface minerals under that land.

**Secondary land rights:** Rights that are secured from a primary rights holder. They are typically limited in their term or scope of use.

**Seasonal land rights:** A limited form of land rights that are valid only during particular times of year. Pastoralists often hold such rights to lands used for grazing during certain seasons.



# Annex 2

## Land Rights in Commodity Certifications

|                                                                                                      | Bonsucro <sup>8</sup><br>(Sugar) | CFI <sup>9</sup><br>(Cocoa) | GRSB <sup>10</sup><br>(Beef) | RTRS <sup>11</sup><br>(Soy) | RSPO <sup>12</sup><br>(Palm Oil) |
|------------------------------------------------------------------------------------------------------|----------------------------------|-----------------------------|------------------------------|-----------------------------|----------------------------------|
| <b>Policies &amp; Procedures</b>                                                                     |                                  |                             |                              |                             |                                  |
| Companies and suppliers have appropriate policies to protect land rights.                            |                                  |                             | ✓                            |                             | ✓                                |
| Companies and suppliers have appropriate systems and procedures to comply with policies.             |                                  |                             | ✓                            |                             | ✓                                |
| <b>Assess Risks &amp; Monitor Compliance</b>                                                         |                                  |                             |                              |                             |                                  |
| Company and supplier operations are monitored and audited; supply chains are assessed.               | ✓                                | ✓                           |                              | ✓                           | ✓                                |
| Actions comply with applicable national legal requirement / no illegal activities.                   | ✓                                | ✓                           | ✓                            | ✓                           | ✓                                |
| Maps showing the extent of recognized LR via participatory mapping.                                  |                                  | ✓                           |                              | ✓                           | ✓                                |
| In cases of land transfer or land use change, environmental and social impact assessments conducted. | ✓                                | ✓                           |                              | ✓                           | ✓                                |
| Measure of the quality of ESIA's (e.g. timing, scope, stakeholders, independence).                   | ✓                                | ✓                           |                              | ✓                           | ✓                                |
| <b>Address land-related risks &amp; Noncompliance</b>                                                |                                  |                             |                              |                             |                                  |
| Land rights are documented (legitimate right to use land can be demonstrated).                       | ✓                                |                             |                              | ✓                           | ✓                                |



|                                                                                                                                                                     | Bonsucro<br>(Sugar) | CFI<br>(Cocoa) | GRSB<br>(Beef) | RTRS<br>(Soy) | RSPO<br>(Palm Oil) |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------|----------------|----------------|---------------|--------------------|
| Land rights of legitimate tenure holders are recognized and protected throughout the value chain.                                                                   |                     | ✓              | ✓              |               | ✓                  |
| Mitigation strategies to address negative impacts established.                                                                                                      | ✓                   | ✓              |                | ✓             | ✓                  |
| Grievance mechanism is established and functioning / address sources of conflict.                                                                                   | ✓                   | ✓              |                | ✓             | ✓                  |
| No land-related conflicts; monitoring of contested land.                                                                                                            | ✓                   | ✓              |                | ✓             | ✓                  |
| <b>Engage with Affected Communities</b>                                                                                                                             |                     |                |                |               |                    |
| FPIC is followed for new land acquisitions, including land lease and land utilization.                                                                              | ✓                   | ✓              |                | ✓             | ✓                  |
| Consultations/ engagements with all of the relevant stakeholders.                                                                                                   | ✓                   | ✓              |                | ✓             | ✓                  |
| Relevant stakeholders have relevant information /communication channels are transparent.                                                                            | ✓                   | ✓              |                | ✓             | ✓                  |
| Affected communities understand environmental, social and legal implications.                                                                                       |                     | ✓              |                | ✓             | ✓                  |
| Compensation provided.                                                                                                                                              |                     | ✓              |                | ✓             | ✓                  |
| Special consideration is given to accommodate the needs and interests of often excluded groups, such as women, migrants, and ethnic minorities, during engagements. |                     |                |                | ✓             | ✓                  |



# Endnotes

- 1 See USAID. 2016. Fact Sheet: Land Tenure and Women's Empowerment. [https://www.land-links.org/wp-content/uploads/2016/11/USAID\\_Land\\_Tenure\\_Women\\_Land\\_Rights\\_Fact\\_Sheet.pdf](https://www.land-links.org/wp-content/uploads/2016/11/USAID_Land_Tenure_Women_Land_Rights_Fact_Sheet.pdf); Patrick Kelley & Michael Graglia. 2017. Why Property Rights Matter. New America. <https://www.newamerica.org/future-land-housing/blog/why-property-rights-matter/>; Landesa. 2015. Sowing Seeds for Post-2015 Success. <https://www.landesa.org/resources/sowing-seeds-post-2015-success/>; Landesa. 2015. Why Land Rights Matter. <https://www.landesa.org/resources/land-rights-matter/>; Landesa. 2018. Secure Land Rights: A Tool for Strengthening Food Security and Climate Resilience in the Global South. <https://www.landesa.org/resources/food-security-climate-resilience/>.
- 2 See Joseph Feyertag & Ben Bowie. 2021. The Financial Costs of Mitigating Social Risks. ODI & TMP Systems. <https://landportal.org/fr/file/58990/download>.
- 3 Mars. Human Rights Policy. <https://www.mars.com/about/policies-and-practices/human-rights-policy>; Mars Deforestation and Land Use Change Position. <https://www.mars.com/about/policies-and-practices/deforestation-policy>; Mars. Land Use Position Statement. <https://www.mars.com/about/policies-and-practices/land-use>.
- 4 See African Union (AU). 2014. Guiding Principles on Large Scale Land Based Investments in Africa ("Decisions on the desirability and feasibility of LSLBI are made based on independent, holistic assessment of the economic, financial, social and environmental costs and benefits associated with the proposed investment, throughout the lifetime of the investment."); FAO. 2012. Voluntary Guidelines on the Governance of Tenure, Fisheries, and Forests in the Context of Food Security ("Business enterprises should act with due diligence to avoid infringing on the human rights and legitimate tenure rights of others."); UN Office of the High Commissioner for Human Rights. 2011. Guiding Principles on Business and Human Rights ("In order to identify, prevent, mitigate and account for how they address their adverse human rights impacts, business enterprises should carry out human rights due diligence. The process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed."); World Bank Group. 2013. Human Rights Impact Assessments: A Review of the Literature, Differences with Other Forms of Assessments and Relevance for Development, [http://siteresources.worldbank.org/PROJECTS/Resources/40940-1331068268558/HRIA\\_Web.pdf](http://siteresources.worldbank.org/PROJECTS/Resources/40940-1331068268558/HRIA_Web.pdf).





- 5 As enshrined in the UN Declaration on the Rights of Indigenous Peoples (2007) and articulated in the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries, and Forests in the Context of National Food Security (2012) and the Analytical Framework for Land-Based Investments in African Agriculture (2015).
- 6 FAO. 2016. Free Prior and Informed Consent: An Indigenous Peoples' Right a Good Practice for Local Communities. <http://www.fao.org/3/a-i6190e.pdf>.
- 7 Accountability Framework. 2019. Terms and Definitions. <https://accountability-framework.org/the-framework/contents/definitions/>.
- 8 Bonsucro. 2016. Bonsucro Production Standard v4.2. <https://d24000000cewpeai.my.salesforce.com/sfc/p/#24000000ceWp/a/4H000001JS02/tcirFsLFONrqsS8ODFvt4AY0caQJ9TKzgQxt2MoaAXo>.
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