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RSB Land Rights Guidelines

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1.1 SECTION A: PURPOSE OF THE GUIDELINES

These guidelines have been developed to enable understanding, identification and management of land rights and land use rights in sustainable biofuel production. The Land Rights study is a sub study within the larger ESIA process and should be conducted using the methods and participatory processes recommended in : *Guidelines for Environmental and Social Impact Assessment (ESIA)*.

These guidelines elaborate on RSB's principle 12 on land rights from Version 0.5 of the Principle & Criteria for Sustainable Biofuels and provide guidance on its implementation. Specifically these guidelines will:

- Provide practical guidance to ESIA professionals, biofuel operators and auditors to accurately determine formal, informal and traditional land rights and land use rights, establish the existence of disputes on the land, and analyze the legitimacy of disputes;
- Be relevant for use in any country, and apply both to farm and factory land; and
- Ensure that land owners and affected communities, including vulnerable groups are not negatively impacted or left worse off by land use by biofuel projects.

RSB Principle 12: Biofuel production shall respect land rights and land use rights.

- **Criterion 12.a** Existing land rights and land use rights, both formal and informal, shall be assessed, documented, and established. The right to use land for biofuel operations shall be established only when these rights are determined.
- **Criterion 12.b** Free, Prior, and Informed Consent shall form the basis for all negotiated agreements for any compensation, acquisition, or voluntary relinquishment of rights by land users or owners for biofuel operations.

The Guidelines are organized into the following sections:

- **Section A: Purpose of Guidelines**- explains the objectives and purpose
- **Section B: Introducing Key Concepts**- elaborates on essential concepts that one must understand when it comes to identifying and managing land rights e.g. stakeholder engagement, customary tenure, and/or variations in land rights.
- **Section C: Land Acquisition Mechanisms**- highlights the various ways through which land may be acquired for sustainable biofuels projects
- **Section D: Appraisal Considerations and Process to be followed in implementing these guidelines**- provides key decision criteria to be considered at the onset of a project as well as provides guidance on the process to be followed in managing land rights

1.2 SECTION B: INTRODUCING KEY CONCEPTS

Land rights are of key concern to developers for two aspects.

- The first involves the issues of human rights and sovereignty. In the context of the principles of human rights local people have internationally recognized rights to property, to food security and to established occupancy and resource access especially when it comes to indigenous people. It is thus important that Biofuels projects must, in no way, infringe on these basic rights;
- The second revolves around project risks. Project viability and returns within the investment horizon will depend on the extent to which local communities and broader civil society grant “social license to operate”. Communities have the power of voice and of action. Even if land is acquired through legal processes, if issues with the community remain, there is a serious risk to the overall success and failure of the project.

Case Study 1: Sugar Corporation of Uganda Limited (Scul)

The Sugar Corporation of Uganda Limited, with the support of Ugandan President Yoweri Museveni, had plans to utilize nearly one-third of the Mabira Forest for sugarcane plantations. Local, national and international stakeholders feared the project would lead to significant negative environmental and social impacts and organized a strong opposition movement, demonstrations, and boycotts. Public outrage and the lack of proper consultation and stakeholder engagement led to escalating sentiments, leading to violent protests. The project was eventually suspended by the Ugandan Environmental Minister, and the company was forced to relocate its planned project.

Therefore to understand land rights and all its related aspects certain key concepts or approaches must be understood.

1.3 UNDERSTANDING AND RECOGNITION OF STAKEHOLDER RIGHTS

Determining stakeholders in land transactions and land rights is a critical component. It is important to understand the range of stakeholders and the varying levels of interest and influence they may have when it comes to land based issues. Most land transactions not only involve land owners and the project developer but also those with current tenure of the land, whether formal or informal, government entities, and other local, national or international actors.

Various scenarios may occur and Project developers should anticipate contestation and complexity in local land tenure based on the number and complexity of stakeholders. Formal title owners may not be in possession of valid legal documents, perhaps because land codes have changed over time or the land registries have been lost during civil strife. In other instances, communities or individuals have had formal or informal land tenure forcibly removed, which may not have been restored due to ongoing contestation or the absence of the rule of law. In many cases renters, tenants, sharecroppers, workers, and agricultural wage labor may be impacted by land transaction. Such stakeholders may lose shelter, livelihoods and jobs when lands are sold.

Given the number and complexity of stakeholders in the land acquisition process, a purely cash based transaction with the land owner does not compensate the losses of the others dependant on the land. Where livelihoods are to be impacted, it is more equitable to consider the total value of the land over the lifetime of the user and consider how to compensate for this. Land based conflicts are often rooted in the fact that many of those affected are not compensated

because they are not considered stakeholders in land acquisition process. Thus, all groups or persons likely to be affected by the land acquisition process should be considered stakeholders, even if they do not possess legal title or land use rights. Often these people do not have access to other means of livelihood and are at significant risk of impoverishment.

Women in particular are a stakeholder category that is vulnerable to land acquisition for projects and often suffer disproportionate impacts. In traditional communities, women often do not hold informal title, as this is generally held by men. However, in such communities women often provide for the entire family; they grow the food, gather the wood, and collect the water. When compensation is provided to informal stakeholders, it is often given to the men, and it is unlikely that this compensation will be turned over for family support. This poses a high risk to the children, elderly and the ill in the community who are often in the care of women.

Free, Prior and Informed Consent

“Free, prior and informed consent recognizes indigenous peoples’ inherent and prior rights to their lands and resources and respects their legitimate authority to require that third parties enter into an equal and respectful relationship with them, based on the principle of informed consent”

UN International Fund for Agricultural Development (IFAD)

International standards such as the *IFC PS 5* and *World Bank OP4.12* considers the following types of land owners and users entitled to some form of compensation or resettlement measures in case where they are economically or physically displaced by land acquisitions or changes in land use:

- Those that have formal legal rights to the land they occupy;
- Those that do not have formal legal rights to land, but have a claim to land that is recognized or recognizable under the national laws (customary rights);
- Those who have no recognizable legal right or claim to the land they occupy (squatters or encroachers).

Overall land tenure and land use arrangements may pose some serious risk for project proponents. Understanding and identifying the stakeholder base is an important aspect. Even if land is acquired through legal processes, if issues with the stakeholders remain, there is a serious risk to the overall success and failure of the project (See Case study 1).

1.4 FREE, PRIOR AND INFORMED CONSENT AS BASIS OF ALL ACTIVITIES

RSB’s Guiding Principles states that Free, Prior, and Informed Consent (FPIC) shall form the basis for all negotiated agreements for any compensation, acquisition, or voluntary relinquishment of rights by land users or owners for biofuel production. The underlying principles as outlined by the UN International Fund for Agricultural Development (IFAD) on Free, Prior and Informed Consent should be applied in sustainable biofuels projects and can be summarized as follows: (i) information about and consultation on any proposed initiative and its likely impacts must be made available; (ii) meaningful participation of all communities especially indigenous peoples impacted by the project is required; and, (iii) the formation and strengthening of representative institutions is required for effective engagement.

Thus, Free, Prior and Informed Consent should form the basis for all activities in sustainable

biofuels projects. Each step in the land acquisition process must involve appropriate levels of consultation and stakeholder engagement and be performed in accordance with the above stated principles. All consultation and stakeholder engagement should seek to build consensus, which for the purposes of this guidance is understood as “the absence of sustained opposition.” Such consultation and stakeholder engagement not only ensures the rights of local stakeholders, but facilitates the attainment of a “social license to operate,” which is critical to the success and profitability of any project.

1.5 COMPLEXITIES OF LAND RIGHTS AND LAND USE

Land ownership and use is complex and the context varies from country to country. Several common factors, however, pose challenges to the land acquisition process in many countries (See Table 2). Even when national legal codes are clear, multiple and conflicting legal titles may exist for the same parcel of land. This can be due to historic changes in the legal code, loss of information in land registries due to conflict or natural disaster, or a variety of other site-specific factors. In other countries lacking clear rule of law, communities, and even individual property owners, have tenure on land that was forcibly removed from them. Such tenure may have stood legal contest in international or regional courts of law, but due to an absence of the rule of law in the country, or an ongoing legal contest, formal tenure is withheld.

When a new plantation for biofuels is to be established in an area already occupied and used for small-scale livelihoods, it is important to determine whether or not the area proposed is already cultivated or used. Land acquisition is simpler when the area to be acquired is not cultivated or is relatively unused. But there will likely still be people who depend on access to the resources (such as wood, medicines, fruit, nuts, building materials) whose rights must be taken into account. If the area is cultivated or used, the extent of local economic dislocation can be significant, the number of people the project developer will have to negotiate with may be high, and remedial economic measures will have to be put in place in order to ensure that these people are able to sustain their incomes and standards of living.

In order to understand the issues of land rights and land use, the concept of customary tenure must be also be analyzed. In many countries, formal legal tenure as defined in the law co-exists with local, customary tenure. Some national legal codes recognize customary tenure, others do not. But almost invariably, formal legal tenure has priority over customary tenure in national legal codes. The RSB will abide by International policy on land tenure (see World Bank Operational Policy 4.12 on Involuntary Resettlement), which accords customary tenure the same force as formal legal tenure. Parity of the two tenure systems means that the state cannot allocate lands held under customary tenure to a third party unless and until the community that holds those lands is in full agreement with their transfer. Thus the Project developer must also negotiate meaningfully and consult closely with the communities in order to facilitate the transaction.

By nature, customary tenure rules tend to be complex. Customary tenure rules vary widely from place to place, necessitating detailed study of their procedures. Customary rules also change over time. Traditionally, village chiefs have the local authority to allocate land to residents for their use during their lifetimes or in perpetuity. Village chiefs may also be able to allocate land

outsiders under stipulated conditions. Village chiefs may even have the authority to negotiate the sale or lease of significant parcels of communal lands to outsiders; but this can be the source of great local dissension. The RSB standard requires that the actual land users are meaningfully engaged in the process.

Situations could also arise when an existing plantation area is converted to biofuels, there is likely to be an existing land sale or agreement, thus facilitating the acquisition, or conversion, of the area to the new use. The existence of a plantation deed, however, does not automatically mean that the area is available free and clear. Historically, plantation owners have allocated plots to their workers for subsistence production as a means of reducing labor costs. Thus, workers and others may have legitimate rights to specified areas even though the plantation owner has the right to sell the property.

There could be a series of land conversion contexts as depicted in table 2 that may pose certain challenges to sustainable biofuels projects.

Table 2: Land Conversion Contexts and their Implications

STATUS OF LAND TENURE CONTEXT	HISTORY OF LAND USE PATTERNS	TYPICAL CONTEXT	OTHER OBSERVATIONS
UNCERTAIN OR INSECURE	Civil War	Land tenure rights can be very confused, with original owners displaced by more recent in-comers but still asserting their rights to the area.	Complexity of land tenure situation typically increases with duration of civil unrest.
STABLE	Existing Plantation Area	Conversion of existing plantation areas to biofuel production entails relatively little economic dislocation for local populations.	Workers granted the rights to plots within the plantation area for subsistence production must be recognized. In instances where the plantation area has gone out of production, people may have come in to make use of the land without permission
	Conversion of Cultivated or Occupied Areas to Biofuel Production	Conversion of areas already cultivated or otherwise occupied by biofuel crops necessarily entails economic dislocation of the current users.	The extent and severity of the economic dislocation will depend, among other factors, upon: (i) the nature of the occupancy sought by the firm (ownership outright vs. lease); (ii) the species of biofuel crop planted (annual vs. perennial); and (iii) the nature of the agreements with the local community.
	Conversion of New Areas to Biofuel Production	"New" areas are commonly thought to be unutilized or underutilized, and thus available for development.	The absence of cultivated plots does not mean that people are not using an area. Collection of wood and other products (e.g., honey, medicinal herbs, etc), hunting, fishing, and other activities may be important locally, especially for poorer segments of the communities who exploit common resources for survival in times of need.

1.6 SECTION C: UNDERSTANDING LAND ACQUISITION MECHANISMS

The means and mechanisms for land acquisition depend largely on the legal and social context of land use and ownership rights of the proposed project area, as mentioned above. This section describes the most common land acquisition scenarios. Land may be owned by state governments, communities, or individuals and may either be sold or leased to the project developer (see Table 1). It is important to present these common scenarios which would help project developers understand the context and complexities of acquiring lands for sustainable biofuels.

While a simple classification of the complexity of global land acquisition contexts cannot address every possible circumstance, the following scenarios represent the most common ownership and acquisition mechanism that may occur in biofuels projects, including:

1. Sale of state owned land;
2. Lease of state owned land;
3. Sale of private or communal land;
4. Lease of private or communal land.

The following matrix provides further details of each possible scenario.

	State Ownership	Private Ownership
Sale	<p>Scenario: State owned land which can be allocated to project use through outright sale of property if formal agreement is reached between those with current tenure (formal or informal) and state owner.*</p> <p>Key Issues:</p> <ul style="list-style-type: none"> • Acquisition through eminent domain is not permitted • Agreements must be reached with state owner as well as those with current tenure (formal or informal) <p><i>Example: Case study 2</i></p>	<p>Scenario: Privately or communally owned land which can be sold outright for project use by the community or individual owner to the project developer.</p> <p>Key Issues:</p> <ul style="list-style-type: none"> • All transaction processes must be free and voluntary • Project developer may acquire the land, or acquire access to the land • All agreements must be fully negotiated with stakeholders and include a “willing seller/willing buyer”
Lease	<p>Scenario: State owned land which can be leased to the project developer if an agreement is reached between those with current tenure (formal or informal) and state owner.*</p> <p>Key Issues:</p> <ul style="list-style-type: none"> • Acquisition through eminent domain is not permitted • Agreements must be reached with state owner as well as those with current tenure (formal or informal) 	<p>Scenario: Privately or communally owned land which can be leased for project use if negotiated agreement is reached</p> <p>Key Issues:</p> <ul style="list-style-type: none"> • If it is communal land, agreements must be reached with all community members • Lease agreements provide use of land for a stipulated period of time, not ownership of the land itself <p><i>Example: Case study 3</i></p>

- As involuntary acquisition of land is not allowed under the RSB standard, any scenario involving allocation of land under the laws of eminent domain and without the free prior and informed consent of the local community or users will not be discussed in this document.

1.6.1 State Lands

In every country, the state typically holds some rights over land. The strength of the state's rights over land is often codified in national legislation, which defines state, private and customary land. State land often includes built areas (i.e., state-owned buildings), critical national heritage areas, critical natural resource areas (e.g., shorelines, river banks, national parks) and classified forests. By law, certain state land such as critical heritage areas and national parks cannot be ceded to private parties (although they may be reclassified in order to be reallocated). Other state land, such as classified forest land may be reallocated as long as the legally prescribed procedures are followed. (Private land is defined as formally titled land in the national legislation, and customary land is defined in the law as those areas traditionally held by local communities).

In some countries like China and Mozambique the state owns all land, but has provided lease or tenure or rights of use to parties.

That the state has legal title to an area does not mean that the area is free and clear of all occupation or use. State lands are often encroached upon. That is, people may clear and cultivate plots in state land, herd animals through the area, hunt, fish, log and/or take out secondary forest products. All of these activities are legitimate, particularly as they usually support livelihoods. And, all of the activities may have been taking place over long periods of time. In fact, in the colonial era, state appropriation of the area may have taken place without the knowledge or agreement of the local population, who simply continued using the area even though the state claimed ownership.

The Project developer needs to determine whether state land is occupied or otherwise used because it will need to negotiate with the occupiers and users, even if the land legally belongs to the state.

1.6.2 Private Agreement with the Community or Individual Owners

Private agreement with the community or individual owners is another mechanism for acquiring land. Such land may be held under private title (e.g., existing plantations) or under customary law.

Case Study 2: Allocation of Public Land – Examples

Ethiopia - In Aug 2009, the Indian firm Emami Biotech announced it will invest \$80 million in Ethiopia to grow jatropha and other plants on 12,000 hectares of land and to build a factory that will extract oils to make biofuels. Ethiopia has allocated 1.6 million hectares of land for investors willing to develop commercial farms.

Sudan - A Special Agricultural Investment Agreement between the government of the Arab Republic of Syria and the government of the Republic of Sudan was signed in May 2002 stipulating the terms of the agreement for land use and acquisition between the two countries.

Zimbabwe - In 2009 the government of Zimbabwe announced plans to seek foreign investment in agriculture in Zimbabwe by facilitating land leases or acquisition.

Source: <http://farmlandgrab.org>

Government Sponsored Lease Leads to Coup, Project Termination

In 2008, Daewoo Logistics Corp., a South Korean firm, signed a 99 year lease to 1.3 million hectares of agricultural land in Madagascar. The total land secured, roughly half the country's total arable land, was to be used to produce corn and palm oil. The agreement, originally signed by then President Marc Ravalomanana, was widely criticized and led to violent public uprising and the eventual military coup ousting the democratically elected president. The deal failed to recognize customary land use by local people, and did not consider the impact on a population with an existing need for food aid. Project proponents claimed that the local population would benefit from increased employment opportunities. The deal, however, was immediately terminated by the transitional government following the coup. The following year Daewoo Logistics Corp. filed for bankruptcy.

Source: IFPRI *Land Grabbing by Foreign Investors in Developing Countries: Risks and Opportunities*, IFPRI Policy Brief 13, April 2009 and *Financial Times*, *Daewoo to cultivate Madagascar land for free*, by Song Jung-a and Christian Oliver in Seoul, and Tom Burgis in Johannesburg, Nov. 19, 2008.

Where land is held under private title, the Project developer needs to negotiate with the formal owner. If there are others who are using that land, with or without permission, the Project developer will also need to negotiate with these users, as described above.

Where land is held under customary tenure, the number of parties with whom the Project developer must negotiate will depend on the number of users. Despite the fact that traditional rules generally provide for the village chief to make a decision, permission from the chief will not suffice as agreement under the RSB standard. However, a first step is to engage with the chief and get her/his agreement to proceed on working with and negotiating with the land users. Plots allocated to individual families are considered their property, and these customary owners are also parties with whom the Project developer must negotiate.

The necessity of interacting with all relevant stakeholders also applies to the complicated issue of unallocated community lands. Traditionally, the village land chief may have the authority to allocate these areas, but this will not suffice for permission. There have been cases where chiefs have been known to allocate land for personal profit which can unleash risky community behavior and strife in the project area. Such behavior may even result in the eventual collapse of the project due to unresolved community issues.

Such situations commonly arise in peri-urban areas, where traditional land chiefs sell housing plots for their personal gain. But the situation is similar in rural areas where chiefs may sell community land to third parties for their personal gain. In such situations, it is imperative that the Project developer negotiate not only with the village land chief but also involves the community itself.

1.7 SECTION D: APPRAISAL CONSIDERATIONS

Having discussed key concerns in the land acquisition process, this section now describes several important appraisal considerations the project developer must address in relation to the specific context of the project area. Consultation, stakeholder engagement, land rights studies and field studies will be important tools throughout the process.

What Should Land Rights Studies Determine?

Key questions the Project developer must determine during the land transaction process include:

- Who has legitimate rights to the land in question (i.e., recognized legally or by customary rights)?
- Who is in legitimate possession of the land and therefore has the right to negotiate their sale or lease?
- How to determine land users that will be affected and ensure they are considered in the transactions?

Land-rights studies should aim to address these questions and should:

- capture all complexities of land ownership , land use, mechanisms of land acquisition and related risks;
- define the categories both of formal rights as defined by the law and of customary tenure as defined by local tradition;
- determine, through field studies, who actually has what rights to specific areas and who uses those areas; and

- assess, through broader socio-economic surveys, the impact of those losses on the families affected in order to define workable measures to restore people's income and standards of living.

1.8 KEY DECISION CRITERIA TO MEET THE INTENT OF RSB'S STANDARDS AT THE ONSET OF A PROJECT

The main intent of RSB's Principle 12 is to ensure that communities or individuals are not impoverished due to biofuels projects and are not left vulnerable to livelihood impacts, food insecurity or lack of sustainable livelihood options. It is therefore important at the onset of a project to review criteria that would reduce the risks defined here. Some key criteria to keep in mind which can be used to make decisions at the onset of the project are:

1. No involuntary acquisition of land will be allowable under the RSB standard;
2. Where state land is being negotiated, it is essential to get a full and clear understanding of who is using the land, formally, informally or even illegally. Free prior and informed consent is a requirement under the RSB standard and applies to all land users.
3. 'Willing seller, willing buyer' situations (private sale) are allowable. Where the principle of 'willing seller, willing buyer' is followed, the Project developer negotiates in good faith and the community or its members give free and informed consent to the sale;
4. Even when the sale or lease of land is done on willing-buyer and seller negotiations, it is nonetheless good practice for the Project developer to follow the principles and procedures that have been developed for involuntary land acquisition for the following reasons:
 - (i) **Even in a willing seller-buyer situation, communities are not necessarily empowered to understand the implications of selling lands, especially in rural agricultural based economies where incomes and livelihoods of the entire households are land dependent;**
 - (ii) Direct cash payments may not be enough as compensation in contexts where weak local land markets and banking services reduce people's capacity to manage money effectively, and;
 - (iii) Even when eminent domain options are not used, the project could cause loss of resources or access to resources and lead to the risk of impoverishing affected groups.

Thus, the use of international standards mitigates impoverishment risks, reduces land based conflicts and fosters good relations with communities.

5. Where land to be acquired is being cultivated, these guidelines should be used in conjunction with the RSB guidelines on food security. For instance, the project proponent should consider using innovative solutions like entering into agreements with individual land owners to grow the crops for them or including them in the project and thus obviating the need to acquire ownership or access (lease or rental rights) to the land

1.9 PROCESS OF APPRAISAL AND MANAGEMENT OF LAND RIGHTS ISSUES

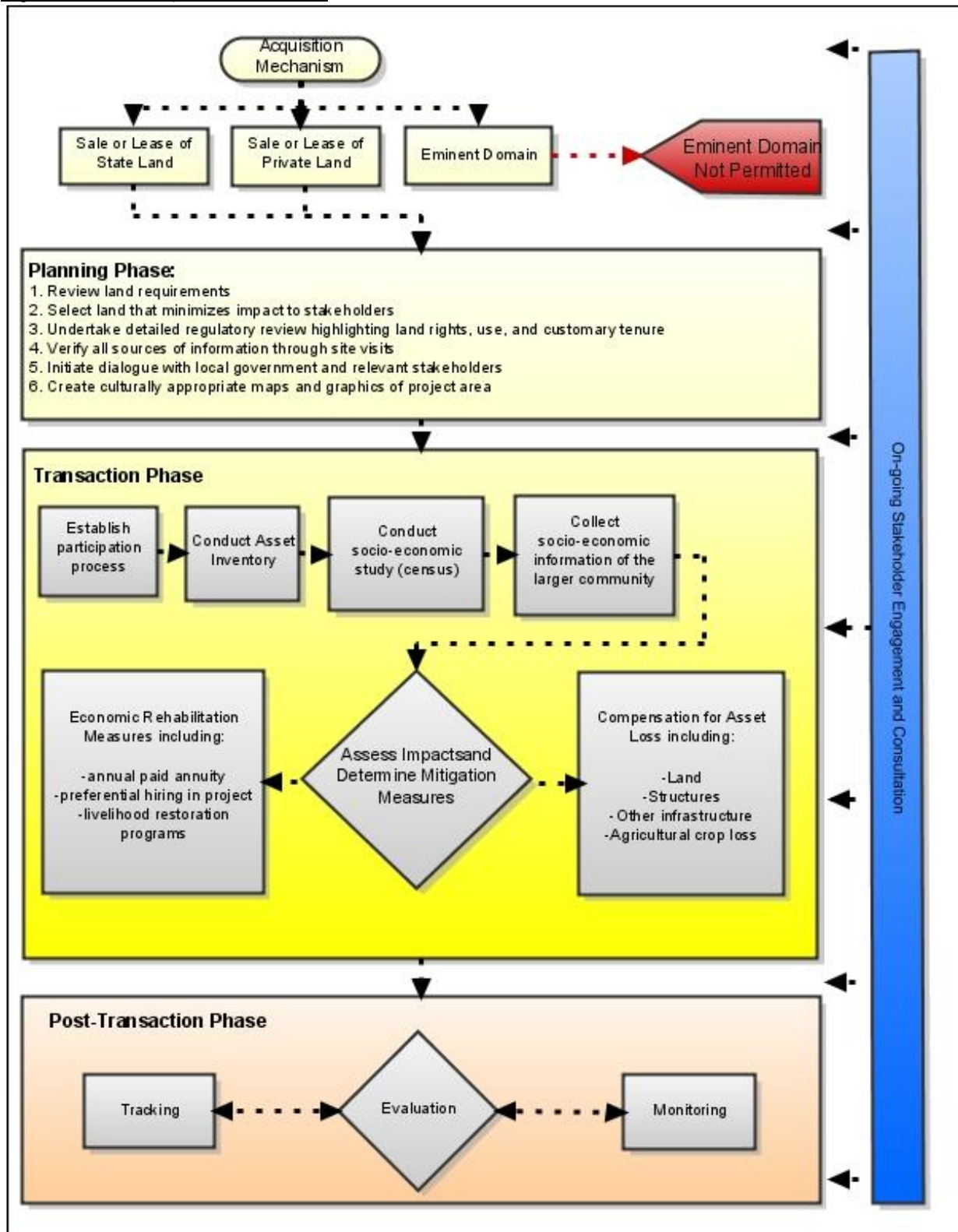
This section outlines the process and methods to be followed to determine and manage land rights and land acquisitions and how to conduct any applicable field studies (See Table 3). While many countries may have elaborated formal sets of procedures for land acquisitions, the following process and methodology is presented as a set of best practice guidelines to determine who has land rights, who to negotiate with and what affected households (categories) should be compensated and entitled to rehabilitation in the projects.

The process of determining and managing land rights and land based transactions should be divided into three phases:

1. Planning
2. Transaction Activities
3. Post Transaction activities

It should be noted that the tasks indicated in each phase are not strictly sequential and some tasks could be conducted simultaneously.

Figure 3: Land Acquisition Process



1.9.1 Planning Phase

1. Review land requirements of proposed project.
2. Where possible, select lands which minimize negative impact and enhance positive impacts. For example:
 - a. Avoid selecting lands where known conflicts or confusion in legality of ownership or use exists; and
 - b. Avoid selecting lands or plantations which are being sustainably and efficiently utilized by multiple users such as sharecroppers, wage labor and vulnerable families that are dependent on land
 - c. Conversely some plantations which are declining and have a large number of wage labour working on them can actually be selected and rejuvenated to be modern biofuels operations with benefits to workers
3. Undertake a detailed regulatory review on the following issues:
 - a. Types of formal land tenure and land occupancy, including
 - i. freehold tenure,
 - ii. long-term lease of various periods, and
 - iii. temporary land use rights granted by administrative officials in both the urban and the rural areas;
 - b. Land transfer process, which may include, for example,
 - i. requirements for the physical survey of the plot,
 - ii. determination of any aliens on the property,
 - iii. registration of the legal owner;
 - c. Land registry system for the completeness and accuracy of the land registry records, as well as for costs and processing time.
 - d. Legal recognition of customary tenure, which may include,
 - i. National free prior informed consent (FPIC) clause
 - ii. Comparison of customary tenure patterns between ethnic, religious, or ethnic groups.
4. Verify all information gathered in the review process through community consultations. Regardless of the source of information, it is critical to verify that all information gathered is consistent with customary systems and context of the project area.
5. Collect data and land related information from the local land registration office.
6. Initiate dialogue with local government especially land department to understand land related issues.
7. Create maps and graphical images that can be used while consulting with the affected land users/owners. The maps and visuals should be culturally appropriate and easily understandable (in terms of visuals/presentation) so that the affected users/owners can understand them easily.

1.9.2 Transaction Phase

Consulting with affected households and pre-land study activities

In order to determine land rights and conduct land acquisition a robust consultation procedure to involve the affected land owners and/or users is critical to the process. Consultation should be a continuing activity throughout the process. This ensures that in every phase, the affected people are involved and are made a part of the decision making process. This should consist of the following activities:

1. Enumerate and map the land owners and users in the land. Create a database to log details

such as ownership/registration status or the lack of legal titles and/or property rights.

2. Engage with chiefs and other formal and informal leaders especially in case of potential purchase/lease of community owned lands.
3. Establish a comprehensive and meaningful participation process with the affected communities or individuals, according to the RSB guidelines of stakeholder engagement and the RSB ESIA guidelines. These include gender sensitive approaches and focus group discussions as outlined.
4. Organize continuing and ongoing meetings with land owners and all affected land users like tenants, workers, labor etc. These meetings can be used as platforms to consult with the affected parties on land value, pricing, asset valuations and eligibility for compensation.
5. Ensure that the land negotiation and other processes do not discriminate against the smaller, poorer and informal land owners/ users.
6. If appropriate organize separate meetings with user groups (owners, tenants, squatters) so that issues are not confused or conflicts do not arise about entitlements and land valuation;.
7. In these meetings provide clear information to the attendees about the land requirements, the process to be followed and the timelines.
8. Use the meetings to identify vulnerable families (for example, indigenous peoples, women headed households, agricultural wage laborers etc.) who are land owners or users likely to be affected by the acquisition.
9. Maintain minutes of all meetings. Maintain records of verbal or written agreements made with the affected land owners/users regarding land rights, ownership, use, compensation/valuation methodologies or other related aspects.
10. Record details of owners of each plot and others dependent on the particular plot of land such as agricultural workers, tenants, ranchers and employees.
11. Initiate a Grievance Redressal and Conflict Resolution Mechanism using the guidance provided.

Key questions to be considered. Will the land transaction affect:

- low income households?
- large number of land users?
- other vulnerable households?
- large number of households on the land?
- agriculture/land based income households?
- those that have no legal rights to land?
- those that have traditional/customary recognition for use of land?
- indigenous people and women?

Surveys and Land Studies

The precise nature and extent of ownership and occupation in the project area¹ can only be determined through field surveys and land studies. These studies determine, among other matters:

- who has legal or customary rights to specific areas;
- whether there are competing claims to the areas, the nature of the use or occupation of the area;
- the property in addition to land that will be acquired;
- the unit values of each asset; and
- the livelihood household value of the land and its resources to the affected people

This baseline information is key to determining who has the right to negotiate the transfer of the land and for assessing the social and economic impacts of land acquisition or conversion. Importantly, use rights include not only those who live on or use the land permanently but also

¹ The project area includes not only the plantation area but also any ancillary works (e.g., roads, processing plants and their infrastructure).

those who exploit resources seasonally (such as secondary forest collectors, many of whom may be women who lack other resources) and those who may not reside permanently in the local area (such as pastoral nomads or migrant fishermen). Typically such surveys inform Resettlement Action Plans (RAPs). Even if a full fledged RAP is not needed, information from such surveys can be used to compile the socio-economic baseline of the affected households. Such baseline information can be used at a later stage to measure the efficacy of the land process/compensation and/or development benefits brought by the project developer to an area. ***Please note that IFC PS 5 and IFC Handbook for Preparing a Resettlement Action plan can also be used to determine scope and methodologies of these studies.***

Three types of studies are required:

1. **Asset Inventory.** The actual loss suffered by each family must be assessed. The property loss inventory should include all assets on land, e.g. houses, business and other structures (area, construction materials of roof, walls and floor; any improvements such as tiled interiors), agricultural crops; economic trees (fruit trees, lumber trees). The inventory provides a detailed description of each asset (often substantiated with a photograph), and includes all available documentation of ownership. The asset inventory can only be done in collaboration with the local population because government land registries, which record formal tenure only, may not be current and, in any case, do not record allocations under customary tenure, rental or lease agreements, or seasonal or temporary land uses. The land and asset inventory should record, for each plot or other asset, the precise geographic boundaries of the plot or asset (GPS coordinates), the formal owner or owners (including his or her contact information), any users who are not formal owners (e.g., renters, sharecroppers, pastoralists, secondary forest collectors). The asset inventory constitutes the basic database for land-rights analyses, for it defines how many people are affected, the nature of the impact (ownership or occupancy rights), and the number of assets that must be compensated. The surrounding population should be given the opportunity to verify whether or not their property has been included, whether the level of compensation is appropriate, and how to raise any concerns through an appropriate disclosure and grievance mechanism.
2. **Socio-economic Study of the Individual Affected Families (Census).** The asset loss information must be complemented with basic socio-economic information about each affected family (owners/users) because individual families not only will lose different amounts of land and other assets but also will have different resource bases and different levels of dependence on these resources. Therefore, the following information is usually included in the socio-economic survey:
 - Standard characteristics of affected households, including: household composition (number of members and their relationship); age, gender; ethnic identity; education; religion; occupations (primary and secondary) division of labor by gender and age, and household organization.
 - Detailed information on the affected people's livelihoods and standards of living in order to assess the actual impact of property loss on the families affected.
 - Information on the total amount of land owned or occupied by the family (in order to determine the extent of their land loss); and for each family member, his or primary and secondary occupation(s) such as agriculture, processing, craft production, marketing, salaried employment, seasonal labor migration; and the income earned from each;
 - Information on vulnerable groups or families for whom special provisions may have to be made. While it is impossible to accurately characterize families will be vulnerable due to a particular project (because each project has its own specifications), it is usually the case that women-headed households, households headed by minors (common in post-conflict states), the elderly and the ill (HIV AIDS, TB, arthritis, chronic respiratory illness etc), disabled or handicapped, specifically,

and families below the national poverty line more generally, require particular attention and special assistance.

3. **Collection of Socio-economic Information of the larger Communities.** Finally, a range of contextual information about the community or communities is necessary in order to have a baseline for assessing probable project impacts. These studies are more of a qualitative nature, and include:
- land tenure and transfer systems, including an inventory of common property natural resources from which people derive their livelihoods and sustenance, non-title-based usufruct systems (including fishing, grazing, or use of forest areas) governed by locally recognized land-allocation mechanisms, and any issues raised by different tenure systems in the project area;
 - patterns of social interaction in the affected communities, including social networks and social support systems, and how they will affect negotiations and be affected by the project;
 - the gender division of labor, in order to ensure that women, who are often the domestic providers for the family, are not further disadvantaged by the investment; and
 - social and cultural characteristics of communities, including a description of formal and informal institutions (e.g., community organizations, ritual groups, non-governmental organizations [NGOs]) that may be relevant to the consultation strategy, design and implementation of project activities.

Assessment of Impacts

After the conclusion of the field studies, an assessment of impacts should be done based on the findings. The assessment of impacts on land rights is made by summarizing category of loss (loss of home or business, loss of agricultural land, loss of crops and/or economic trees, loss of access to natural resources used year-round or seasonally), and the number of families affected by each project investment (e.g., plantation area, processing area).

While the derived population census and asset inventory provide precise counts of the number of people who will be affected and the aggregate loss in the community, it remains to assess the impact of each family's loss on their income and standard of living. The socio-economic information collected from each family is used for this purpose. For all those cases where land acquisition exceeds the international standard for minor land-take (conventionally set at less than 10% of the plot affected), the total family income is assessed in order to determine the extent of the economic impact of land-take and other asset loss on them. Families who lose a significant proportion of their assets and income must be afforded greater opportunity for restoring their livelihoods than those who lose an insignificant proportion of their income because of the asset loss.

Finally, specific analyses should be carried out to assess the likely impact of the investment on particular vulnerable groups, such as women-headed households and the extreme poor, in order to determine their particular needs.

In addition to the above, the impact assessment should also determine whether a full fledged ²Resettlement Action Plan (RAP) is required. If so then the provisions of IFC PS5, World Bank OP4.12 and Handbooks on preparing resettlement Action Plans should be used to prepare RAP.

Resettlement is only allowable under the RSB standard if Free Prior and informed consent has been acquired. No involuntary resettlement is allowable.

² Please see [World Bank OP4.12 and IFC PS5](#) to determine what conditions trigger the need for an RAP

Instituting Mitigation Measures

If it is determined that a detailed RAP is not required, the project developer should still follow international standards and ensure that the income and living standards of the people affected is restored to pre-project levels and, preferably improved. This policy is important for maintaining good community relations, whether land acquisition is involuntary or not.

The necessary mitigation measures in land-acquisition programs are typically of two sorts: (i) compensation for asset loss; and (ii) economic rehabilitation to the extent that people's income and standards of living can be restored.

(i) Compensation for Asset Loss. All assets to be taken for the investment should be compensated at undepreciated current rates and in a timely manner.

- Land should be replaced in cash or kind with preference to 'land for land' replacement.
- Structures (e.g., houses) should be replaced in kind or in cash.
- Other infrastructure (e.g., wells, latrines, fences) should be replaced in kind or cash.
- Agricultural crop loss is typically compensated in cash.
- Economic tree loss is compensated in cash for the value of the production lost while seedlings provided in replacement come into production.
- Natural resource losses and other "minor" forest products.
- Water resources – please see the RSB Guidelines on Water Rights.

In-kind replacement is recommended in international practice for rural areas unless the extent of the loss is minor (as a rule of thumb, less than 20 % of the family's total agricultural holding).

(ii) Economic Rehabilitation Measures. According to international policy, "Where people's incomes are affected and in-kind compensation is not possible, they are provided alternative livelihood opportunities in order to restore their incomes and living standards" (World Bank OP 4.12). That is, where there is insufficient suitable land available to be able to replace that lost by the families affected, the Project developer needs to undertake additional economic initiatives with the families in order to restore their income levels.

In the context of land acquisition for biofuels production, the restoration of affected peoples' incomes can be facilitated through several project actions. First, the Project developer can negotiate with the community to provide an annual annuity that will be paid to the community and either used for community development projects targeted to the affected families or divided among the affected community families in proportion to their loss.

Second, the Project developer can institute preferential hiring policies for affected families, that is, give preference to hiring members of affected families over other community members and community members generally over outsiders. The jobs preference policy should apply to the entire value-added chain -- plantation development and maintenance, processing the crops into biofuels, warehousing, marketing – with hiring of affected individuals and community members taking into account skills requirements for the positions. Where the local population lacks the required skills, the Project developer can provide training programs to assist the affected people to learn those skills. Provided that flexible scheduling and childcare are provided, these opportunities should also be offered to women, since they are traditionally responsible for providing livelihood support for their families.

If these two economic measures are inadequate to restore all affected families income and livelihood, it is incumbent on the Project developer to implement additional livelihoods restoration programs. The Project developer should partner with NGOs or other developmental agencies to be able to effectively implement these programs. The range of alternative

opportunities that might be reasonably undertaken is conditioned on several factors: (i) a gender sensitive approach to the implementation of alternatives; (ii) the abilities and interests of the affected people; (iii) the availability of necessary resources and materials in the local area; (iv) the accessibility of demand centers and market outlets for local production. Once these factors have been assessed in collaboration with the local population, the array of alternative may be defined, including agricultural options (e.g., specific new crops, more intensive production techniques), animal husbandry (poultry for eggs or meat; piggeries), agricultural processing (e.g., honey, jams and jellies), or craft production.

Where possible, such projects should be carried out in coordination with appropriate governmental or non-governmental agencies supporting the local development strategy (see RSB Principle 5).

1.9.3 Post Transaction Phase

Successful land acquisition processes in the development of sustainable biofuels projects must include monitoring and appropriate follow up. A comprehensive monitoring program ensures that land rights based conflicts are identified, pre-empted and solved. Monitoring also ensures a path of continuous improvement and provides inputs for improving efficacy of any land rehabilitation program.

On-going monitoring post land transactions for biofuels projects should track at least three activities: (i) the administrative process of land rights determination and acquisition; (ii) distribution of compensation; and (iii) the recovery process on affected people's livelihoods and standards of living.

Monitoring the process generally tracks progress along the following dimensions:

- Number of negotiated agreements underway;
- Number and type of grievances; period required for grievance resolution
- Number of agreements concluded;
- Number of payments made;
- Number of assets replaced;
- Affected people's satisfaction with the land acquisition and relocation process.

Monitoring economic recovery monitors the affected people's incomes over time compared to their income and standard of living before the project. The indicators here typically include land-based employment, project-related employment and new livelihood opportunities. Several factors contribute to each of these activities and are followed, as outlined immediately below.

Land replacement

- Amount and value of replacement land allocated with title to affected people, and the number of families benefiting;
- Ability of the affected families to bring the replacement land into production;
- Production, yields and income.

Project-related employment

- Number of families provided project-related jobs,
- Type of job, and duration (temporary, permanent)
- Salary for each.

Alternative livelihood opportunities

- Skills and aptitude assessment of affected people;

- Interests of the affected people in alternative livelihood opportunities;
- Vocational training attendance and effectiveness;
- Cooperative development and functioning;
- Timely supply of adequate quantities of needed inputs;
- Production levels;
- Marketing outlets, wholesale prices, sales and thus affected family income.

Tracking the success of each income-restoration initiative provides a reliable indicator of the income per family for each activity; the total income per family for new activities; and the total income per family for all activities. Successful programs restore people's incomes in as short a period of time as possible, ideally, within a year or two. If monitoring indicates difficulties or problems in any area, project management needs to act in a timely manner so that corrective actions can be put in place immediately.

SECTION E: REFERENCES

Cotula, Lorenzo, et al. Land Grab or Development Opportunity? Agricultural investment and international land deals in Africa. FAO, IIED, and IFAD, 2009.

Environmental Law Institute. Prior Informed Consent and Mining: Promoting the Sustainable Development of Local Communities. 2004.

International Finance Corporation. Stakeholder Engagement: A good Practice Handbook for Companies Doing Business in Emerging Markets. 2007. www.ifc.org/enviro

International Food Policy Research Institute. Land Grabbing by Foreign Investors in Developing Countries: Risks and Opportunities. Joachim von Braun and Ruth Meinzen-Dick. IFPRI Policy Brief 13. April 2009. <http://www.ifpri.org/sites/default/files/publications/bp013all.pdf>

International Finance Corporation

2006a Performance Standard 5, Land Acquisition and Involuntary Resettlement

2006b Performance Standard 7, Indigenous Peoples

Roundtable on Sustainable Biofuels. Toolkit for Establishing Water Rights. September 2009.

World Bank

2005 Operational Policy 4.10, Indigenous Peoples

2004a Operational Policy 4.12, Involuntary Resettlement

2004b Involuntary Resettlement Sourcebook: Planning and Implementation in Development Projects