The background image shows a vast, sprawling tea plantation from an aerial perspective. The fields are organized into numerous long, narrow, and slightly curved plots, all oriented in different directions across a hilly terrain. A single, winding dirt road cuts through the middle of the plantation, connecting various parts of the different fields.

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**A guidance note on  
managing legacy land  
issues in agribusiness  
investments**

# Foreword

CDC and DEG recognise that the acquisition of land in emerging markets can have effects on local communities that need to be managed to reduce a range of social impacts. These risks are more complex to understand and manage when companies and investors encounter legacy land (LL) challenges. For the purposes of this report, legacy land includes agricultural concessions and plantations (i) that are long established (a minimum of five years), (ii) where the details of acquisition/lease arrangements and baseline socio-economic conditions are uncertain, (iii) where the ownership or lease has changed hands (so that the current owners/lessees were not involved in the original contracts), and (iv) where compensation arrangements for individuals and/or communities whose livelihoods were affected are uncertain or contested. These circumstances are not uncommon across emerging markets, yet there is limited guidance available on how best to manage them.

This good practice guidance aims to provide support to agribusiness companies (as well as investors) who find themselves in situations where LL issues are evident. The guidance also aims to help local communities define their rights and identify community development and business opportunities. It does not constitute a new standard but is based on experiences of companies that have actively managed LL challenges and so represents practical guidance for companies, investors, communities and others.

CDC and DEG are part of the European development finance community and we hope that this guidance will prove useful to our peers as well as a broader constituency of investors and agribusiness companies active in emerging markets.

➔ *This document functions online with hyperlinked content. In the event you are reading the print version, links can be accessed via page drivers to the corresponding references on page 20.*

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## Disclaimer

*The guidance, interpretations, views and conclusions in this document reflect those of the authors and do not necessarily reflect the views of the directors or management of contributing institutions. Contributing organisations do not provide personal investment advice and investors should seek independent advice as to whether a particular transaction is suitable for them having regard to their own financial circumstances and investment strategies.*

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# 1. Context and objectives

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Legacy land<sup>1</sup> (LL) issues create significant business and investment risks to agribusiness companies (from a combination of reputational risks inherited by the current owner/operator, which can also impact investors and lenders) and can result in diminished livelihood and economic opportunity for local communities. Effective management of LL issues can however generate long-term community benefits (specifically, livelihood security, economic and community development) as well as company benefits (including a stronger social licence to operate and potentially increased product from out-grower and related programmes). CDC and DEG recognise the risks and opportunities that arise from LL and commissioned an independent consultant to review five LL cases associated with agribusiness investments, interview companies and NGOs and provide an overview of current practices and impacts. This good practice guidance is based on that review and aims to provide support to agribusiness companies (as well as investors) who find themselves in situations where LL issues are evident. The guidance also aims to help local communities define their rights, and identify community development and business opportunities.

This is particularly important since existing environmental and social (ES) and human rights standards and guidance (e.g. the International Finance Corporation (IFC) Performance Standards (PS) and the UN Guiding Principles on Business and Human Rights) do not effectively address LL issues and the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests (VGGT) does not provide specific guidance on LL issues.

The overall objective of this guidance note is to help agribusiness operations in emerging markets identify existing and potential LL issues and provide those operations with tools to address those legacy issues.

LL issues may not be the only driver of community–company conflict. For example, TMP (2014) also notes that a shortage of resources can be a prominent secondary driver behind displacement in operation-phase conflicts. Interestingly, compensation, which would be the driver directly addressed where documentation exists to review gaps in the original land acquisition, only plays a role in about 9 per cent of cases, and apparently primarily as a secondary driver of conflict. Other drivers may include

existing inter- or intra-community disputes over land rights, population pressures, and conflicts between people who consider themselves local and people who may have been brought to the area at the encouragement of the relevant government.

Where there may be enough documentation to determine what gaps, if any, existed in the original land acquisition between what was required under the then-existing legal regime and how local communities were actually treated, the objective would be to look at how those gaps can be compensated. These instances are rare, particularly if the land acquisition was some years in the past.

Where the documentation is lacking (and even as a supplement to where it is not), the tools presented in this report are intended, on the one hand, to support communities/sub-groups that may have been affected by past land acquisition to create a better life for themselves (and their children) by benefiting from opportunities from economic developments and, on the other hand, to ensure the financial sustainability of the agribusiness enterprise through risk reduction.

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<sup>1</sup> For the purposes of this guidance, legacy land includes agricultural concessions and plantations (i) that are long established (a minimum of five years), (ii) where the details of acquisition/lease arrangements and baseline socio-economic conditions may be uncertain, (iii) where the ownership or lease has changed hands (so that the current owners/lessees were not involved in the original contracts), and (iv) where compensation arrangements for individuals and/or communities whose livelihoods were affected are uncertain or contested.

*The guidance also aims to help local communities define their rights and identify community development and business opportunities.*



## 2. The scope of Performance Standards requirements and coverage of legacy land issues

IFC's Performance Standard 5 Land Acquisition and Involuntary Resettlement (PS5) requires that people affected by involuntary land acquisition should:

1. Receive replacement value<sup>2</sup> for their assets.
2. Be presented with alternatives.
3. Have their livelihood restored or improved.
4. Have access to a grievance mechanism.

Given the nature of LL issues, meeting the first requirement would be a very rare circumstance. PS 5 would not actually have required compensation for land where the users did not hold legal title or a customary title recognised under national law. What this guidance seeks to achieve is meeting the second to fourth requirements, with the modification that livelihood should be improved, not just restored. Achieving improvement is both the risk mitigation measure for the company and the desired outcome for the community. The second principle should be met through the stakeholder engagement process that could result in a multi-year community development programme. Finally, in putting in place an effective grievance mechanism, the project may also meet the [UN Guiding Principles on Business and Human Rights](#).

*Achieving improvement is both the risk mitigation measure for the company and the desired outcome for the community.*

→ See our references list on page 20 for the full URL to the UN Guiding Principles on Business and Human Rights

<sup>2</sup> Replacement value equals market value plus the transaction costs of acquiring an equivalent asset, e.g. land.

## 2.1 Scope of application

With the exception of the Guidance Tool on the VGGT that the Interlaken Group prepared (Interlaken Group 2015), virtually all standards on land tenure focus on new land acquisition resulting from an investment and do not address LL issues. For example, IFC PS 5 covers land acquisition that is part of the project being financed.

For the purposes of this guidance, legacy land includes agricultural concessions and plantations (i) that are long established (a minimum of five years), (ii) where the details of acquisition/lease arrangements and baseline socio-economic conditions may be uncertain, (iii) where the ownership or lease has changed hands (so that the current owners/lessees were not involved in the original contracts), and (iv) where compensation arrangements for individuals and/or communities whose livelihoods were affected are uncertain or contested.

This situation is different from greenfield land acquisition and the acquisition of brownfield assets. In both of these instances, a company can weigh the potential risks and issues against existing standards, undertake effective ES due diligence (ESDD), and develop acceptable mitigation measures that are based on precedent. In both cases, the investor can and should evaluate the risks of acquiring the land and the measures that will reduce those risks,

including – ultimately – not making the investment. This guidance note may, however, be relevant to a company evaluating the risks of purchasing a long-standing brownfield operation and considering mitigation measures that may reduce those risks if the company acquires the land.

LL situations are typically brownfield, although fallow or long fallow land that is part of the company's concession may figure in conflicts over LL issues (see Table 1). Because these are existing, developed assets, the option of walking away from the investment is not easy for the company, the workers or the local communities. The limitation on the walk-away option is what differentiates LLs from the greenfield and brownfield acquisition situations discussed above. Often the LL assets have changed hands and the actual acquisition from local communities may have been several decades in the past. LL challenges can also include situations where the same company has been operating on the land for a number of years, but changes in the demographics, e.g. natural population growth and in-migration, in local communities over time has led to tensions with the way that the land was originally acquired. Typically, the original circumstance under which the land was acquired is uncertain and the available documentation does not allow for the reconstruction of how the land was originally acquired.

**Often the LL assets have changed hands and the actual acquisition from local communities may have been several decades in the past.**

**Table 1**  
Standards and/or good practice to be applied based on stage in land acquisition and land use status

Acquisition Stage/Land Use Status	Greenfield	Brownfield
<b>To be acquired</b> <i>LL issues not associated with investment, but could present future risk if not resolved as part of land acquisition. ESDD to identify those issues.</i>	PS 5 Option to not make investment.	Several international standards can be applied, e.g., Analytical Framework for Land-Based Investments in African Agriculture, New Alliance and Grow Africa, August 2015. Red flags to indicate situations where company should not make investment.
<b>Acquired (0–5 years)</b> <i>LL issues can be associated with investment, but can be addressed retroactively due to the recency of land acquisition.</i>	PS 5 applied retroactively to land acquisition made in anticipation of the investment.	PS 5 applied retroactively to land acquisition made in anticipation of the investment.
<b>Acquired (5+ years)</b> <i>Highest risk of LL issues accumulated through time. In brownfield situations, this is extremely difficult to address retroactively.</i>	PS 5 applied when changing land use, i.e. expansion on existing concession/leased land. (See PS 5, para 6).	The LL good practices applied. PS 5 may be fully applied only under extraordinary circumstances.

## 2.2 Two approaches

*In seeking to resolve LL issues, two possible approaches can be considered that are not exclusive.*

*The first approach is to determine the circumstances under which the land was originally acquired and address any gaps between what was done at the time and what should have been done, using standards contemporary with the original land acquisition.*

*The second approach considers current land conflicts, including those based on LL issues, and seeks to understand the underlying, contemporary cause.*

→ See our references list on page 20 for the full URL to further reading on 'good faith' negotiations.

### **First approach**

The first approach focuses on past injustices and is more rights-based. The difficulties with this approach are that records may not exist and in some situations no one living may remember the original events. Righting an historical wrong, for example through a cash payment, does not always lead to creating new and sustainable livelihood opportunities. Returning to a past status quo may not fit with current norms of land tenure: for example, women's land tenure rights in many areas of the world were less strong 20 or 50 years ago than they may be now, and certainly much more restricted than what would be considered good practice today. Correcting an historical injustice does not automatically lead to improved contemporary standards of living for those whose predecessors were affected by that injustice.

All the same, where sufficient documentation and reliable 'community memory' exist to determine what the circumstances of a land acquisition were and whether it met then-existing laws, norms and commitments, the company should review that material and determine what gaps may exist between what was done and what should have been done. In all circumstances and at a minimum, companies should identify and maintain copies of all available documentation with respect to the

original acquisition of their land assets and determine if they are sufficient to carry out the above-mentioned exercise. As will be noted later in the report, companies should have a grievance mechanism in place. The grievance mechanism should be open to possible claims that could be resolved through existing documentation. The international norm developed under, for example, the Interlaken Group requires community access to independent legal advice with respect to their rights. This requirement could be considered a part of '**good faith' negotiations.**

### **Second approach**

The second approach seeks to address current circumstances that may lead to land conflict. The approach focuses on addressing current disparities and avoiding future injustices. It also focuses on risk reduction for the company. Addressing current disparities may include creating opportunities for securing land tenure, or some access to land, but may include several other measures that offer livelihood security and broaden economic opportunities beyond those that are purely land-based. The drawback of this approach is that it may not completely eliminate the sense of injustice that comes from the original loss of land; although, it may help to differentiate the current owner from the past owner(s) in terms of the reputational risk from any past injustices.

**Table 2**  
Comparison of the two approaches

	First approach	Second approach
<b>What is it?</b>	Reviewing data and perspectives of affected groups to assess whether adequate compensation was provided, and if not, implementing additional measures.	Acknowledgement with communities that addressing historical injustices is complex and may not result in fair or effective compensation.  Agreement that the company and community will work together on community development plans.
<b>Benefits</b>	If the company is able to determine the deficit between what was done and what should have been done, they can then effect fair 'retrospective' compensation as needed.	Inclusive for all community members, including those that arrived after original land acquisition.  Application of latest approaches to development in mutually agreed community development plans.  Plans are monitored jointly to maximise credibility and trust.
<b>Limitations</b>	Data dependent and in the absence of a good social baseline, difficult to determine retrospective compensation needs.  Intervening events create uncertainty over who should receive compensation.  Not all current community members benefit so removal of grievances may be difficult.	May not remove feelings of injustice from the past.

The guidance that is provided in this document focuses on the second approach. This approach fits with the objectives of providing economic development and livelihood opportunities to the communities and financial sustainability to the company, to the mutual benefit of all parties. The second approach is particularly appropriate where what has happened in the past cannot be determined with certainty. Focusing on the second approach relies on two strategies.

#### **First-level strategy**

The first-level strategy (**Figure 1**) includes the essential elements of stakeholder mapping, stakeholder engagement, collecting socio-economic baseline data, assessing social risks and opportunities, and monitoring and evaluation. These activities are considered essential because they ensure that the mitigation measures in the second-level strategy are both efficient and effective as well as reflecting established norms (e.g. **IFC Performance Standards and the UN Guiding Principles for Business and Human Rights**).

#### **Second-level strategy**

The actions in the second-level strategy (**Figure 2**) are a menu of possible measures that the company could deploy, in agreement with the community, to achieve the objectives of increasing

economic and livelihood opportunities, reducing conflict and fortifying the company's social licence to operate.

The choice of activities out of this menu would vary from investment to investment depending on specific circumstances. The principles that should be employed in identifying these activities are that they:

- +
- Are strategically important to both the community and the company.
- +
- Fit with local cultural and institutions and recognise ecological constraints/limits.
- +
- Ensure equal access to vulnerable and disadvantaged groups, e.g. women, youth and the elderly.<sup>3</sup>

They should be documented in multi-year agreements that are periodically revised, referred to here as Community Benefits Agreements (CBAs).<sup>4</sup> Furthermore, these activities may actually be sequenced rather than implemented all at once based on the economic success of the investment, the capacities of the communities, and the priorities set out in agreements with the company and the communities.

→ See our references list on page 20 for the full URL to the IFC Performance Standards

→ See our references list on page 20 for the full URL to the UN Guiding Principles for Business and Human Rights

3 The use of a materiality matrix may help in identifying and communicating how the strategic interests of the community and the company can intersect.

4 These types of CBAs are now standard in the Canadian mining industry, particularly where mining investments affect First Nations communities. They are referred to as Impacts and Benefit Agreements.

**Figure 1**  
First-level strategy

The first-level strategy is made up of three essential elements. Stakeholder analysis and engagement are undertaken and remain essential through the life of the project. A social baseline and a risk analysis that includes an assessment of LL issues would follow. Periodic updates to the risk analysis would be expected through the life of the project as part of the ES management system of the company. Monitoring and evaluation, also part of the ES management system, provide ongoing feedback on the effectiveness of the measures put in place by the second-level strategy.

#### Life of the project

##### **Stakeholder analysis and engagement**

Stakeholder analysis and engagement would be ongoing through the life of the investment. They would include stakeholder mapping and the implementation of a grievance mechanism.

##### **Socio-economic baseline and risk analysis**

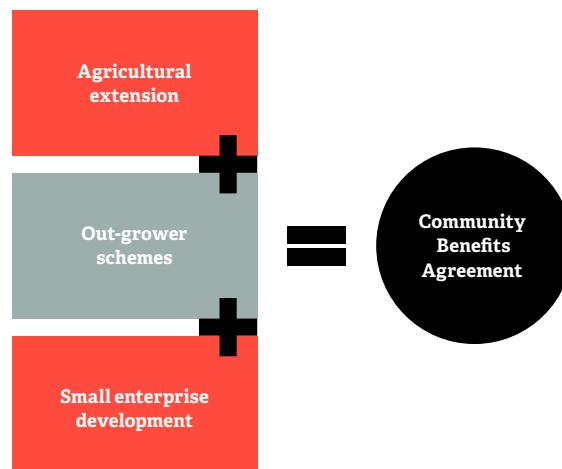
The socio-economic baseline helps to identify community needs and allows monitoring of the effectiveness of subsequent development programmes.

##### **Monitoring and evaluation**

Monitoring helps to determine the effectiveness of measures put in place as part of the second-level strategy.

**Figure 2**  
Second-level strategy

The second-level strategy involves negotiating and agreeing possible programmes that would target development in local communities. The criteria for selecting the programmes would include realistic local development opportunities, the strategic interests of the community and company, local culture and institutions, ecological constraints and climate risks, and effective voice for vulnerable and disadvantaged groups. The result would be a CBA with clear responsibility and ownership from the local community for choices made.



A fundamental point in providing this guidance is that all of the measures described in Section 3 are based on considerable global experience and review in a number of sectors – not just agribusiness. The items described in the next section are based on case studies assembled for this guidance note,<sup>5</sup> as well as by other **organisations such as IFC, the World Bank Group and partners**. Whereas many of these measures have been implemented in the past as voluntary, ‘beyond compliance’ measures, viewed through the lens of this guidance they would become part of a risk management strategy that optimises social licence to operate and livelihood prospects. From a community’s perspective, once they have been put into a multi-year agreement, they become firm commitments whether the agreement is legally binding or not.

One concern companies may have is when they already have existing philanthropic corporate social responsibility programmes: what happens to the beneficiaries of those programmes when more strategic benefit agreements are put into place?

No one answer exists to the question. This issue is one that will have to be determined during stakeholder engagement and may require a period of transition between the two types of programmes. But it should be noted that many corporate philanthropic programmes lack the rigour, legitimacy and strategy of CBAs.

Finally, the measures in the second-level strategy cannot simply be taken from one investment to the next. Companies may believe that they can take programmes successful under one context, whether from their own operations or from the operations of others, and apply them in another place. This move may or may not be possible, but it requires the steps given under ‘Essential tools’ (Section 3) to tell whether the same measures will work in a different context. A supply chain development investment may work in one place because of pre-existing, well-developed business skills, but fail in another because the business skills have traditionally been limited to opportunistic trading.

→ See our references list on page 20 for full URL addresses to read more about other organisations

*From a community’s perspective, once they have been put into a multi-year agreement, they become firm commitments whether the agreement is legally binding or not.*

<sup>5</sup> A series of five case studies commissioned by CDC and DEG to more fully understand the context of LL dilemmas and ways in which companies and communities have sought to find solutions.

# 3. Essential tools

## 3.1 First-level strategy

### **Stakeholder analysis**

A common theme in land conflict is that companies do not know who all the stakeholders are, how different stakeholders could affect the investment, and how the interests in the investment differ from one stakeholder group to another. A common example of this problem can be seen where companies deal only with traditional authorities without recognising that the interests of those authorities can differ from other community members. Stakeholder analysis is essential both to stakeholder engagement and to the design and implementation of community development projects. The analysis should clearly identify the project-affected communities, to later inform who the beneficiaries should be of programmes in the CBA, including preference in employment. To avoid stepping into old conflicts and creating new ones, the fundamental principle is 'know who you are dealing with'.

Existing good practice **guides**, such as IFC's Stakeholder Engagement and Analysis, provide a range of techniques for carrying out stakeholder engagement. Basic methods, such as stakeholder mapping, are useful for an initial stakeholder engagement and understanding the possible origins of any land conflict. The stakeholder analysis should be updated and elaborated on as more information about stakeholders is received. In post-conflict and post-autocratic situations, the stakeholders may be unused to engagement by companies, which may in turn lead to either under-involvement (passivity may cover deep-rooted grievances) or overly demanding consultations. One approach is to provide the community with a partner NGO that can help people understand how to participate effectively in stakeholder engagements with the company (recognising that the community needs to take ownership of analysis and solutions).

« *To avoid stepping into old conflicts and creating new ones, the fundamental principle is 'know who you are dealing with'.* »

→ *See our references list on page 20 for the full URL to further examples of good practice guides*

### **Socio-economic baseline**

A second essential element in developing appropriate mitigation measures is the completion of a socio-economic baseline study which should provide a fair and complete picture of socio-economic conditions (including specifically vulnerable and disadvantaged groups).

The purpose of this study is to:

- + **Assess socio-economic conditions and establish a baseline:** Fix a socio-economic baseline against which the impacts of the company's future activities, including the projects carried out under the CBA, can be measured. This baseline should be based on the preliminary stakeholder engagement discussed above. Understand the existing social, ecological, economic and cultural conditions that may be contributing to any existing land conflict, or which could be predicted based on prior experience of industry sectors and geographies.

- + **Identify and assess risks to local communities:** Fully identify the potential risks and impacts on local communities that may result from the ongoing operations of the company. These risks and impacts should be addressed in the economic and social action plan for the project.

- + **Assess biodiversity and ecosystem service issues (including climate change risks):** Ensure that solutions recognise the potential impacts on biodiversity/High Conservation Values and incorporate climate change risks and adaptation/resilience needs – including positive impacts. This can be achieved, for example, by taking pressure off ecosystem services through improved livelihoods by other means.
- + **Assess indirect issues and risks that may lie outside the company's control:** Determine if there are any potential issues that have not yet come to the attention of the company, but which should be addressed as part of the CBA.

In the words of one company, 'nothing is clean' – there are always issues to be addressed.

- + **Assess likely and/or predictable future issues:** As a final exercise, the company should look at emerging trends in its area of influence, such as population growth and demographics, food security, rural–urban migration, impacts of climate change or ethnic tensions, and think through potential scenarios of what might happen to the company based on those trends. The company should look at longer-term projects for the CBA that would help to mitigate possible future negative impacts on both its own and surrounding land tenure. An iterative social risk assessment should be part of the company's ES management system.

International best practice may be found, for example, in [IFC's Good Practice](#)

**Note: Addressing the Social Dimensions of Private Sector Projects.** Information from the socio-economic baseline should be used as part of the discussions leading to a CBA.

→ See our references list on page 20 for full URL address to the International Finance Corporation's website



### **Stakeholder engagement**

Any process to address LL issues needs to involve robust stakeholder engagement. This engagement should be based on a stakeholder engagement plan that should be periodically updated. Keeping in mind that the basic approach is to develop a long-term agreement with the community to provide strategically important benefits, the level of consultation should reach the equivalent of free, prior and informed consent ('FPIC'), as set out in IFC's PS 7 Indigenous Peoples, with respect to this agreement.<sup>6</sup> FPIC as a general concept is applied to indigenous peoples who are being significantly affected by an investment. In this case, however, FPIC refers both to the process of consultation leading to an agreement and to the community's consent with respect to the measures contained in that agreement. It does not necessarily mean consent with respect to the company continuing its operations on the LL, although that would be an ideal outcome.

As part of the consultations, the company should help the local communities to understand the needs and benefits of the company itself, particularly the

general contribution that it may make to the local economy, its investment and employment needs, and the timing of new plantings and infrastructure development, either for refurbishment or expansion. The company will also need to be clear about the resources it can commit, as well as what is expected of the community and other parties (government, NGO partners, etc.). This clarity helps manage expectations. Finally, the company should agree with the communities on both a definition of who is local, and therefore a potential beneficiary, and how to ensure that locals are indeed the ones benefiting.

- See our references list on page 20 for full URL address to read more about the FPIC
- See our references list on page 20 for full URL address to read more about grievance mechanisms

### **Grievance mechanism**

The company should have a grievance mechanism.<sup>7</sup> The mechanism should have a clear procedure for resolving community grievances in a free and fair manner. It should have time-bound targets for the stages of resolving a grievance. It should ensure that there is no retaliation, either from the company or from others, against those who lodge grievances and should not foreclose the possibility of the claimants pursuing other avenues for grievance resolution including legal redress.

*As part of the consultations, the company should help the local communities to understand the needs and benefits of the company itself, particularly the general contribution that it may make to the local economy.*

<sup>6</sup> For further guidance see IFC Guidance Note of PS 7. One clear point is that FPIC does not require unanimity.

<sup>7</sup> Further guidance on grievance mechanisms relating to the UN Secretary General's Special Representative's mandate is available from the Business & Human Rights Resource Centre.

### 3.2 Prospective measures – second-level strategy

#### Resurveying concession boundaries

Resurveying concession boundaries has often proved to be a flash point in LL situations. The need for resurveying boundaries may occur:

- + In post-conflict situations where the boundaries may have been lost or forgotten during a period when the company could not maintain them.
- + As a result of privatisation, when the government may not have maintained the boundaries for political reasons.
- + When a change in government laws and regulations requires it.

Ideally, any resurvey of the boundaries would be part of a CBA so that the communities would clearly know that resetting the boundaries is part of the overall settlement. The timing may lead to an apparent dilemma: the company may not know it has an LL issue until it resurveys the boundaries, but it cannot do that survey until it has an agreement with the community. One way to avoid this is to carry out an indirect assessment of the boundary as part of assembling documents on the original land acquisition to determine if there might be an issue and potential conflict. If present, the company would then proceed with the stakeholder engagement leading to a CBA. It is not generally recommended that a company carries out stakeholder engagement on the single issue of a boundary survey, that is, in the absence of a broader discussion on community benefits.

#### Securing land tenure/access to land

Turning over land from the concession or lease holding to the community – either land that they are already on or land that may be available – is one outcome advocated by a number of commentators. While this could be a desirable approach where there is unused land, a number of problems arise with it. In the first case, the government may not be just unsupportive, but actively against handing concession land back to communities. In some cases, the government does not want to set a precedent, particularly where people have moved onto the land. From its perspective, the people on the land are illegal encroachers and giving them the land would only encourage others to move onto other unused – and even already planted – land. The government may also want full commercial development of the plantation land with the higher yields – and greater government income – from private sector investment and management.

A number of companies have taken the approach of allowing access to land under their concessions. A clear understanding of the legal status and longevity of the arrangement needs to be part of the CBA and ongoing consultation. To ensure that this arrangement does not create a precedent, the agreement should include provisions encouraging the community to inform the company of new encroachers and to discourage new encroachment by third parties and providing strong disincentives to supporting already present encroachers.

One concern with providing access to concession land is that areas of **High Conservation Value** (HCV) would then be transformed into agricultural land, with possible impacts also coming from road construction, better access for hunting, and logging. The development of a structured approach toward supporting community land access, as proposed here, should incorporate the findings of biodiversity studies. Furthermore, efforts to use techniques of farming that encourage greater biodiversity should also be part of the out-grower schemes and the advice given under the agricultural extension services proposed below. Certification under an international certification scheme would, in any case, require attention to impacts on HCV areas by smallholders in the company's supply chain.

#### Out-grower schemes

Out-grower schemes, in addition to being a possible corollary of access to land, have one of the greatest possible overlaps between the strategic interests of the company and those of the local communities. Local growers can become part of the supply chain for the company and benefit from the company's access to global markets. Developing out-grower schemes can require training (improved agricultural techniques, capacity development for smallholder cooperatives), financial commitments from the company for things such as capital expenditures (for land clearing, seeds, nursery stock), financing of working capital (for fertiliser and other inputs) and potentially certification of the supply

*Turning over land from the concession or lease holding to the community – either land that they are already on or land that may be available – is one outcome advocated by a number of commentators.*

→ See our references list on page 20 for full URL address to further reading on High Conservation Value (HCV)

→ See our references list on page 20 for full URL address to further reading on Fairtrade and RSPO

chain (for example, by [Fairtrade or the Roundtable on Sustainable Palm Oil \(RSPO\)](#)). These costs have to be weighed against both the direct benefits of the out-grower schemes to the company's supply chains and the indirect benefits of the out-growers' support for the company. The lack of an out-grower scheme may be risky. As one company put it, there is a 'huge correlation' between the land conflicts with local communities and the company's inability to develop a smallholder scheme due to a lack of enough water for wide-spread irrigation. The conflicts do not exist where this company has been able to develop smallholder schemes. Where land or water is in short supply, out-grower schemes may not be possible and other measures, such as alternative enterprises, may be more effective.

#### **Agricultural extension services**

A strong agricultural extension programme should be part of any out-grower scheme, such as training on good practice and improved choice of inputs such as seeds, fertilisers and pesticides. The provision of such services does not, however, need to be limited to support for an out-grower scheme. Extension services should be provided for other agricultural commodities that supply national and local markets, such as plantains, fruits and grains (rice and maize). The underlying objective of agricultural extension is to increase yields on existing pieces of land. Targeting women with these services may be particularly important, as they are often the major labour force in cultivating local crops and in providing food to families.

#### **Improved marketing/product quality**

Access to markets is a frequent bottleneck in improving local livelihoods in emerging economies. Improved marketing can be as simple as improving access, e.g. mobile technologies providing access and aggregation of markets, to price information in regional market towns, building new markets along roads and training on product handling. More complicated and capital intensive schemes may include construction of storage facilities, developing marketing cooperatives, assisting in certification of a commodity and developing better transportation to major markets. It may also include local, value-added processing. The objective here is to reduce market variability and increase prices for existing production. Again, women play a major role in marketing and should be a primary target for making improvements.

**« The underlying objective of agricultural extension is to increase yields on existing pieces of land. Targeting women with these services may be particularly important, as they are often the major labour force in cultivating local crops and in providing food to families. »**



#### **Alternative enterprises and local sourcing**

Where land, or access to land, is limited, local development efforts will need to consider enterprises other than growing crops. The objective is to look beyond local employment in primary agriculture. This objective may be worthwhile even where there are substantial gains to be made in agricultural activities as it will address longer-term trends in pressure on agricultural land and benefits from improved education that would allow people to work outside of agriculture. These may include a range of things from local value-added processing of agricultural products to development of new, non-agricultural products for the regional and national markets. Developing alternative enterprises is often difficult because the market for them may be small or unknown. Even with a small market, it may not be possible to increase the number of people participating in it without running into the fallacy of aggregation: what may be good for a small number of people may not work out well when more people are involved. Only so many motorcycle taxis may be needed in a small community. Alternative enterprises need a greater involvement from external experts who have experience in developing them.

One possible market for alternative enterprises is the company itself. Examples (based on the case studies commissioned to support this guidance) might be the sewing of employee uniforms, growing jute and turning it into bags, or providing food for the company's workers. The one caution is that companies usually need a reliable supplier, and capacity building for local entrepreneurs needs to be built into any supplier development programme.

#### **Ecosystem services**

One innovative community project put forward by a tea plantation in East Africa resulted from changes in the microclimate arising from local deforestation. This change affected the production of tea, as well as local food production. The company developed programmes with the local communities to plant new trees, reduce the use of firewood in local households, and police the forests to prevent illegal harvesting by others. Companies should look at opportunities to improve ecosystem services both for their own operations and for local communities.

#### **Improve educational opportunities**

A longer-term strategy includes improving educational activities. Low education levels limit many of the activities suggested above. Lack of access to education can result in children working on out-grower programmes with attendant adverse risk to the company (principally supply chain risks) as well as individuals and communities (health and safety and diminished livelihood opportunities as well as broader community development constraints). Improved education may allow a company to hire more members of the local community, and for people from the local community to seek alternative (better) employment elsewhere. Building new schools is not the same as improving educational opportunities, though it may be a necessary step. Improving educational opportunities typically involves local and national educational authorities to provide resources, and even capacity building for teachers.

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# 4. Organisational arrangements

## **Third-party support**

The company should review whether it will need third-party support at two main points: when it initiates stakeholder engagement and when it begins implementation of a CBA.

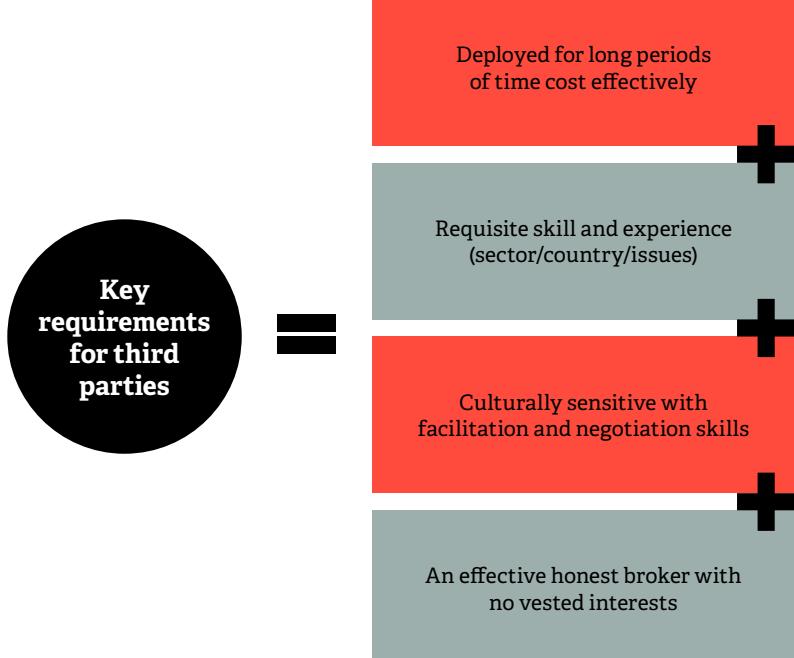
## **Stakeholder engagement**

Third-party support can be important during stakeholder engagement in building trust with communities through the mediation of an independent entity. The company may also benefit by getting honest feedback about the impact of its activities.

Third parties need not be international consultancies, but they should have the necessary skills and experience relevant to the region and sector and be able to facilitate and negotiate in a way that is culturally sensitive and represent an 'honest broker' function. Consideration of third-party support is also important because it leverages resources and skills that may not be represented (or not adequately represented) within the company.

On the other hand, many communities prefer to deal directly with the company, and the company should be careful about separating itself too much from any community engagement.

**Figure 3**  
Key requirements for third parties



Third parties can also be NGOs or other entities with good mediation and dispute resolution skills. With the right skills and experience, local third parties can stay on the ground more frequently and for longer periods of time. While government entities may need to be involved, experience suggests that the government is a major stakeholder with its own interests and these interests may be at odds with the interests of communities.

#### **Implementation**

Third-party support during implementation involves a different set of skills from those used during stakeholder engagement. Therefore, it may need to come from a different entity. The essential skill is in working with communities to create mutual responsibilities and in effectively implementing programmes, and doing it in such a way that it does not alienate some segments, particularly vulnerable groups, or push the local community into a dependent, passive attitude that only looks at the company to resolve problems.

The company needs to maintain the ultimate governance of the programmes to ensure that their objectives are met. While it can outsource monitoring and evaluation of the programmes to third parties, senior management has to be responsible for review of the results.

#### **Foundation for local development**

One possible organisational innovation may be the creation of a foundation that accepts funds from the company and uses them to benefit the local community. Examples of this may be found in both **agribusiness** and **mining**. The company maintains a material presence on the foundation's board of directors to ensure fiduciary responsibility and may bring in independent directors with special skills to help the decision-maker on projects. The foundation's board also includes community representatives who ensure the representation of different community interests. The foundation would be responsible for oversight of the CBA. The virtues of this arrangement are that it can free up management time within the company and create stable and sustainable financing for community projects. A further possible advantage is that the foundation can partner with other development organisations, including parts of the government, to leverage additional funds.

→ See our references list on page 20 for full URL address to read more about agribusiness and mining

*The company needs to maintain the ultimate governance of the programmes to ensure that their objectives are met. While it can outsource monitoring and evaluation of the programmes to third parties, senior management has to be responsible for review of the results.*

## 5. Moratorium

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A question arises over whether a company should voluntarily place a moratorium on further planting until a land dispute is resolved. This moratorium would include continuing to pay the salaries of workers involved in the planting that were curtailed as a result of the moratorium. The moratorium would be lifted once the CBA was signed. This approach would generally apply to greenfield investments and brownfield expansions. The equivalent in LL situations would be to stop the refurbishment of any areas that are part of its existing operations, and

which are subject to any sort of land dispute with the local community. It should be noted that one principle of good faith negotiations is that they will not bankrupt either party. A moratorium has the potential of bankrupting the company, particularly where its financial situation is such that the timing of planting is crucial to meet its financial obligations in both the short and long term. A moratorium on planting while still paying workers is a strong indication of good faith and should at least be considered.

*A moratorium on planting while still paying workers is a strong indication of good faith and should at least be considered.*

# 6. Monitoring and evaluation

The company should have a monitoring and evaluation (M&E) programme to ensure that the objectives for the programme set out in the agreement with the community are being met. It is important that the evaluation considers not just whether all of the inputs have been provided, but also whether the expected **outputs and outcomes** have resulted. Companies often make the mistake of equating their expenditures (which are inputs) with the impact of their projects. Management may then be taken aback when communities do not see that the funded projects have benefited them. A strong M&E programme also makes the expenditures more internally defensible to senior management in the corporation, and to investors. The M&E programme

should be designed at the beginning of the development of the CBA, should be backed up by the socio-economic baseline study, and should be periodically evaluated itself to ensure that it is measuring what is important. To the extent feasible, the M&E programme should involve local communities, both in its design and execution. Ideally, the M&E programme should be carried out on a continuing basis by the company, but with the periodic review of an independent expert.<sup>8</sup> Typically this mechanism is to satisfy external stakeholders, but it can reassure senior management that the expenditures are worthwhile and the monitoring programme accurately captures the project's effectiveness.

→ See our references list on page 20 for full URL address to further reading on outputs and outcomes

*The company should have a monitoring and evaluation programme to ensure that the objectives for the programme set out in the agreement with the community are being met.*

<sup>8</sup> This is a requirement under IFC's PS 1 where investments have significant impacts on affected communities.

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## 7. Closure

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At some point, a company may feel that its programmes have been successful and wants to consider changing the nature of its relationship to something more voluntary or redirecting its funding to other areas. This step should only be done in consultation with the beneficiary communities. The company may also want to enlist an independent reviewer to consider the impacts of the CBA, ensure that all committed measures have been implemented, and review whether there were any systematic issues with the CBA that should have been addressed. If a company chooses to exit the operation, consideration should be given to controls and other measures that should be put in place to reduce any post-exit reputational risks.



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## → *Link References*

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### About CDC

CDC is the UK government-owned development finance institution. CDC's mission is to support the building of businesses throughout Africa and South Asia, to create jobs and making a lasting difference to people's lives in some of the world's poorest places. We provide investment capital in all its forms, including equity, debt, mezzanine and guarantees, and this capital is typically used to fund growth. This capital is provided directly and through fund managers that are aligned with our aims. CDC uses its own balance sheet to invest and has net assets of £3.4bn.



### About DEG

DEG – Deutsche Investitions- und Entwicklungsgesellschaft mbH is a subsidiary of KfW. The mission of DEG is to promote business initiative in developing and emerging market countries as a contribution to sustainable development that creates jobs, better living conditions and new prospects. Sustainable commitment also means acting in environmentally and socially acceptable ways, applying international standards, and ensuring the wide usage of those standards. We stand for humane working conditions and the protection of natural resources.





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