



LAND POLICY INITIATIVE

GUIDING PRINCIPLES ON LARGE SCALE LAND BASED INVESTMENTS IN AFRICA

CONSOLIDATED DRAFT 2 (for E. consultation)

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List of abbreviations

AfDB	African Development Bank
AU	African Union
CAADP	Comprehensive Africa Agricultural Development Program
CEDAW	Convention on the Elimination of Discrimination against Women
CFS	Committee on Food Security
ECA	Economic Commission for Africa
F&G	Framework and Guidelines on Land Policy in Africa
FAO	Food and Agriculture Organisation
ICESCR	International Covenant on Economic, Social and Cultural Rights
IDPs	Internally-displaced people
LPI	Land Policy Initiative
LSLBI	Large scale land based investments
NAFSIP	National Agricultural and Food Security Investment Plans
NEPAD	New Partnership for Africa's Development
PAP	Pan-African Parliament
RAI	Principles for Responsible Agricultural Investment
RECS	Regional Economic Communities
VGs	Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security
WCFS	World Committee on Food Security

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Chapter 1. Introduction

1.1 Africa is committed to addressing its land and agricultural challenges

The African Union views the agricultural sector as a critical component of its agenda for a structural transformation of Africa's economies. In this regard, the African Union has demonstrated solidarity, leadership and commitment to the sector, developing the Comprehensive Africa Agricultural Development Program (CAADP) which recognizes the need to support Africa's smallholder farmers including women. Smallholder farmers contribute over 70% of agricultural output amid tremendous challenges including, in particular, limited access to productive resources, inputs and markets.

At country levels, CAADP Compacts and National Agricultural and Food Security Investment Plans (NAFSIPS) highlight the critical role of livestock and pastoralists to agriculture while also calling for increased investments by private sector, including smallholder producers, medium and large scale enterprises, to reverse the undercapitalization of agriculture. In their quest to promote such investments and technology, African governments have taken note of the demand for its agricultural land by domestic and international investors, facilitating the acquisition of large tracts of land by investors through land leases or sales.

In 2013 the LPI commissioned an assessment study on large scale land based investments involving over 200 ha (LSLBI). The study reviewed (LSLBI) from all five regions of Africa: Central Africa, Eastern Africa, Northern Africa, Southern Africa and West Africa during the period 2000 and 2013 incorporating over 16 million acres of agricultural land. These cases constitute 45% of all cases of LSLBI globally over the same period and 47% of targeted land for investments.¹ The findings of the study were validated by experts and stakeholders in October 2013 during a workshop co-organized by the LPI and Pan-African Parliament (PAP).

According to the assessment study LSLBI deals are not always successfully implemented. Land whose ownership is transferred to the investor upon signing of the deal is not always brought into full production. Only 42% of the 474 LSLBI deals reviewed under the assessment report were found to be operational, covering 29% of the total cases and only 19% of the land area under investment. Furthermore, only 8.6% of the land area under contract in Africa was productive (under cultivation). In other words, in spite of the interest in Africa's agriculture land and the efforts by governments to engage investors, the evidence indicates that little is achieved in reality.

Literature has also highlighted risks associated with LSLBI. These include the predominance of models involving alienation of land from local communities without adequate compensation, weak land governance and administration which fails to protect land rights of communities, poor land records and information systems which do not adequately document land, land rights and

¹Out of the 685 cases of LSLBI, 474 deals were signed with the remainder either yet to be signed (149 cases) or failed (62 cases).

claims, weak democratic governance and institutions which do not promote transparency and accountability, and marginalization of (family) smallholder producers in favor of large scale investors who received better protection in the context of fiscal and trade regimes that favor globalization/liberalization. From the perspective of investors, difficulty of doing business, volatile institutional arrangements, high transaction and settling costs, are some of the reasons that have led to failure of LSLBIs.

The LPI assessment report provides insights on how to establish LSLBIs that are more likely to succeed in terms of benefits for governments, local communities and investors, including: integrated investments along the entire agricultural product value chain (from farm to fork); policy changes in land governance to protect land rights of local populations; adopting inclusive development and investment models/processes that involve local communities meaningfully; preference for approaches which minimize land acquisition and its numerous impacts on communities; properly valuing land to discourage speculative acquisition of land in excess of investment needs; more equitable and favorable negotiations of investment contracts; enhanced guidance from the international and continental levels and accountability of all parties, including investors for adhering to contracts.

1.2 Rationale and process of developing the Guiding Principles

The Land Policy Initiative, F&G and AU Declaration on Land

The African Union (AU), the Economic Commission for Africa (ECA) and the African development Bank (AfDB) jointly established a Land Policy Initiative (LPI) in 2006 in response to the key land issues and challenges confronting the economic development of the African continent. The LPI was successful in developing a Framework and Guidelines on land Policy in Africa (F&G to facilitate national land policy development and implementation processes. The F&G highlights and provides direction for addressing key land issues on the continent, including emerging global and strategic issues such as the “new scramble for Africa’s land resources”. It calls for specific examination of whether demands on Africa’s land “...can be met while observing sustainability guidelines and without marginalizing the land rights of African Communitates.” The F&G was endorsed by African ministers responsible for agriculture and Land in March 2009, and subsequently by the AU summit of heads of state and government, through the adoption of a Declaration on land issues and Challenges in July 2009, which specifically urges member states to develop land policies that “take into account their peculiar needs” in accordance with the key principles outlined in F&G.

Following the endorsement of the F&G in 2009, LPI promoted dialogue, awareness raising and consensus building on LSLBI to allow African governments, stakeholders and partners to discuss how to States can derive benefits from LSLBI while minimizing the risks and threats posed. These culminated in the adoption of the Nairobi Action Plan at a high level meeting on LSLBI which was held alongside the AU conference of ministers responsible for agriculture in October 2010. The LPI was given the responsibility of developing a roadmap and business plan for the implementation of the Plan of Action.

The Nairobi Action Plan

The Nairobi Action Plan calls for urgent action to: develop land policies that reduce the underlying risks of LSLBI by enhancing the security of land rights, especially in customary land governance systems; build evidence drawing on best practices in LSLBI to promote profitable, equitable and sustainable LSLBIs; enhance capacity of governments, traditional leaders and other stakeholders to facilitate fair and transparent LSLBI deals; establish monitoring and evaluation frameworks to ensure LSLBIs are beneficial to the host country and its people while doing no harm to the environment and develop guiding principles on LSLBI as a tool to promote responsible LSLBI. The Nairobi Action Plan is being operational in synergy with the implementation of the Comprehensive African agricultural programme (CAADP).

Developing the Guiding Principles

In May 2011 African governments and stakeholders engaged on a global stage at the Annual Meetings of the AfDB and agreed on the need to develop appropriate African instruments to guide LSLBIs. The African Development Forum (ADF-VIII) held in October 2012 on governing and harnessing natural resources for Africa's development had governing the risks and opportunities of LSLBI as one of its sub-themes. A consensus statement was adopted, calling for the urgent implementation of the Nairobi Action Plan including the development of principles to strengthen the capacities of member states in the design and implementation of responsible LSLBIs.

The Guiding principles were drafted by a team of experts on land governance and agricultural investment in Africa before being reviewed by a team of expert with diverse competencies. The Guiding Principles were subsequently finalized based on the outcomes of a multipronged consultation exercise with a wide range of constituencies and stakeholders.

In as much as the Guiding Principles draw on the LPI assessment study on LSLBI and initiatives and instruments designed by the African Union to improve land governance to secure land rights and livelihoods, increase productivity and enhance environmental stewardship, they are also anchored in broader instruments of the African Union, including the Constitutive Act of the AU (especially Article 4-l, on the promotion of gender equality; and the AU Protocol on the Rights of Women in Africa (2003).

1.3 Related Continental and global instruments and initiatives

The Guiding Principles also draw lessons from global instruments and initiatives on land governance including the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security and the Principles for Responsible Agricultural Investments in the Context of Food Security and Nutrition - to improve the governance of land including in the context of large scale investments.

The World Committee on Food Security (CFS) with technical support of FAO developed the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VG). The VG provide guidelines at the global level on the improvement of land tenure, fisheries and forest, with a view to achieving food security for all.

In October 2012 the CFS launched a process to develop “Principles for Responsible Agricultural Investments in the Context of Food Security and Nutrition” (RAI), with a view to guiding investments in agriculture and food systems, including agricultural research, education, infrastructure and other relevant services.

Of equal importance in informing the Guiding Principles are other universal conventions including: the Universal Declaration of Human rights, the Convention on the Elimination of Discrimination against Women [CEDAW (1979)], the Convention on the Protection of World Cultural and Natural Heritage (UNESCO, 1972); the Right to Food (as recognized by Article 25 of the Universal Declaration of Human rights; the International Covenant on Economic, Social and Cultural Rights) and many others.

1.4 Purpose and objectives

These Guiding Principles on LSLBI serve to facilitate the implementation of the AU Declaration on Land Issues and Challenges in Africa and the Comprehensive Africa Development Program (CAADP) and the Nairobi Plan of Action by providing policy direction and guidance to inform LSLBI in African agriculture. As such, the Guiding Principles are a basis for commitment, solidarity and collective responsibility by governments, other stakeholders and investors to improve the governance of large scale land based agricultural investments in Africa.

Specifically, the objectives of the Guiding Principles on LSLBI are to: a) guide decision making on LSLBI in recognition of the fact that LSLBI may not always be the most appropriate form of investment; b) provide AU Member States and other stakeholders with direction on how to realize investments in land which are sustainable and profitable to African economies and people; c) create a basis for effective coordination, cooperation and collective responsibility amongst AU Member States and other stakeholders in response to the challenges of LSLBI; d) provide investors with a tool to inform their engagement with African governments, traditional authorities and other actors and; e) to provide a basis for developing a monitoring and evaluation framework to track LSLBI in Africa with a view to facilitating learning and review of LSLBI; f) provide a basis for review of existing LSLBI contracts.

While recognizing the possible importance of large scale land investments in other sectors, these Guiding Principles focuses on agricultural investments in line with the mandate given to the LPI.

Chapter 2. Fundamental Principles on LSLBI

The Africa region is home to the larger share of LSLBI. Decisions about LSLBI can have long-lasting implications for the economy, society and environment. It is therefore in the interest Member States to ensure investments that promote inclusive and sustainable development by through defining the appropriate terms and conditions under which they are conducted. Towards this end, in adopting the Nairobi Plan of Action on large Scale Land Based Investments Member States have expressed the aspiration to develop shared principles for guiding such decisions and addressing challenges relating to LSLBI.

The most desirable investments are those that are made in line with the national vision and strategy for agricultural development and socioeconomic transformation; that are based on transparency, informed participation and respect for human rights; that are based on inclusive models of agricultural investment. Achieving such investments requires Member States to take into consideration the full range of financial, economic, social and environmental factors relevant to investments when making decisions about LSLBI. This chapter outlines fundamental principles to enable Member States to derive the most benefit from investments through making well informed decisions on such investments. Under the terms of these Guiding Principles, fundamental principles are overarching principles, from which other principles are derived.

Fundamental Principle 1: In order to derive the most benefit from LSLBI, Member States need to make decisions being guided by a national strategy for sustainable agricultural development which recognizes the strategic importance of African agricultural lands and the role of small-scale producers in achieving food security, poverty reduction and economic growth .

Agricultural land is a strategic resource for food and livelihood security and economic growth. It is also an important part of Africa's cultural heritage. To ensure that investments help to fulfill the host country's development aspirations, it is essential for decisions on types of investments to be informed by a clear, long-term strategy for inclusive sustainable development, both in agriculture and in related sectors of the economy. Prospective investors should be required to demonstrate how their proposed investments further the realization of the host country's agricultural development strategy.

Furthermore, LSLBI are one, but not the only option for investment in support of agricultural development in Africa. These Guiding Principles can therefore be a useful tool for assessing the suitability of prospective LSLBI.

LSLBI may involve multiple combinations of different production systems, crops and target markets. Irrespective of this, small-holder farmers, pastoralists, forest people and fishing communities are the principal source of investment in Africa's agriculture. This fact compels Member States while facilitating LSLBI, to extend their efforts to support these groups,

including through enabling policies, infrastructure development, access to services and information, extension services and support to farmer organizations.

In view of the pressure on agricultural land from other uses including urban and peri-urban expansion, extractive industry operations and infrastructure development, there is an urgent need for Member States to promote inclusive land use planning at local and national levels to address these multiple demands for their land resources both equitably and sustainably.

Fundamental Principle 2: Sound decision making on the desirability and feasibility of LSLBI needs to be based on a holistic assessment of economic, financial, social and environmental costs and benefits associated with the proposed investment, throughout the lifetime of the investment.

A wide range of economic, financial, social and environmental considerations impinge on each LSLBI. For investments to promote inclusive sustainable development, decisions on LSLBI need to take account of all these considerations in an integrated manner. The aim should be to maximize returns for the host country, promote equitable distribution of costs and benefits within the country and respect biodiversity and ecological balance.

Fundamental Principle 3: Member States foster an enabling and peaceful environment for the implementation of LSLBI when decisions are based on transparency, subsidiary, inclusiveness, informed participation and social acceptance of affected communities.

In order that decisions on LSLBI respond to local and national development priorities, devolution of decision-making authority to appropriate levels, meaningful participation by those affected by the investments in decision-making are required along with transparency throughout the negotiation, approval, contracting and implementation process.

Fundamental Principle 4: Member States need to develop and operationalise policy and legal frameworks and institutions that ensure that LSLBI are made in compliance with the rule of law, in particular respect of human rights and protection of the legitimate rights in land and land-based resources for all actors, including women and smallholder farmers.

Constitutions and national laws in accordance with International human rights treaties require States to protect human rights including in the context of LSLBI. Human rights are interdependent and all human rights may be at stake in LSLBI, including the right to access land (irrespective of whether they have been formally registered), water and other natural resources, the right to food and to an adequate standard of living, as well as labor rights. Protecting the rights of women, pastoralist communities and indigenous peoples are particularly pertinent in the context of LSLBI. Where local communities lose their land rights as a result of LSLBI, they should receive fair compensation

Fundamental Principle 5: Member States need to commit to upholding high standards of cooperation, collaboration and mutual accountability with a view to redressing imbalance of power and promoting investments which are beneficial to African economies and people.

Experiences of African States to date point to poor performance by LSLBI and shortfalls in the benefits anticipated from LSLBI. This can, in part, be attributed to poor due diligence and a lack of collective vision and solidarity between key stakeholders. In order to improve the performance of these and of future investments, cooperation and mutually accountability is required between LSLBI, smallholders, host governments and investor governments.

Chapter 3. Assessing Risks and Maximizing Benefits of LSLBI

African States have welcomed LSLBI with the view to accelerating economic development, enhancing agricultural productivity and securing livelihoods. However, evidence indicates that a large majority of LSLBIs have, to date, failed to deliver the anticipated financial and economic benefits. If not well managed, LSLBIs can also have potential negative impacts on biodiversity, nature conservation and ecosystem services. Including worsening pressure on fragile ecosystems and aggravating competition for access to water. Benefits and costs relating to the environment, biodiversity and ecosystems have to be assessed for the entire life of the investment, also taking into consideration alternative investment models/pathways over the same period.

This chapter provides Member States with guidance for a holistic approach to assessing risks and to predicting in a realistic manner, benefits from prospective LSLBI. Considerations include appropriate design and assessment before, during and after investment and to maximize benefits and reduce negative impacts. Firstly, States need to ensure that LSLBIs are commercially viable, then at the same time negotiate and leverage greater value from LSLBI to the whole economy in the form of technology improvements, markets, infrastructure, and creation of decent jobs especially for youth.

In-depth analyses of profitability including for large and smallholder producers who are at the core of Africa's development are critical, especially where smallholder farmers and/or small-scale businesses are part of the LSLBI business model. Experience has shown that although LSLBI tend to focus on primary production, the many difficulties encountered push investors to vertically integrate into the entire chain of agriculture-related business, including seed supply, agrochemicals, processing, machinery, storage, transport, marketing, etc. This has led to fewer inclusive agricultural development models, surfacing new 'enclaves' and 'closed value-chains' which exclude smallholder producers and processors.

Potential economic returns from LSLBIs such as new decent jobs, contribution to value-added GDP, earning foreign currency, stimulating new businesses, providing infrastructure, and increasing tax-revenue from businesses and employees have to be assessed and estimated for the entire life of the investment. Costs associated with producing these benefits must not outweigh the benefits of the investment.

Moreover, social and environmental costs and benefits need to be accounted for since they have impacts on public expenditure and national income. Social impacts of LSLBI may include social capital, capacity building, education, health, crime, social misconduct and violence. Benefits improve society and reduce the burden on government. Addressing consequences of new or worsened social problems costs money and time for communities and governments. These social and environmental costs should also be understood and estimated, not just for the present, but for the entire life of the proposed investment.

Accounting for social benefits and costs is a major priority in those cases where the LSLBI displaces people, businesses and/or communities. States are encouraged to explore alternative

models which minimize such impacts while incorporating production systems, based on indigenous, community-based, people-empowering models.

Principle 1: Member States are urged to ensure that prospective LSLBI are commercially viable and profitable businesses, structured to provide maximum benefit to the national economy and improve the livelihoods of local communities. Assessment of anticipated benefits needs to be made on the basis of independent analysis of investments, including incentives awarded to the investor, length of land leases, land rentals to be levied, and access to water resources.

LSLBI projects have to be viable. Any incentives awarded to investors should make financial and economic sense and not marginalize domestic investors in relation to foreign investors. LSLBI should neither distort, monopolize local markets nor squeeze out local and smaller businesses.

It is anticipated that African economies will gradually change from being driven by agriculture and primary industries, to become manufacturing economies. It is therefore advisable for States to attract LSLBIs which promote linkages with the manufacturing sector so that agriculture does not continue to offer inferior jobs and income possibilities.

Principle 2: Member States need to promote investment models which do not necessarily require transfers of lands from local communities while leading to shared prosperity at local and national levels and taking issues of inter-generational equity into consideration.

There is a wide range of models for investments in agriculture, including multiple combinations of small, medium and large-scale farming and including models that equitably include local producers as suppliers, shareholders and business partners. It is important for Member States to promote more inclusive models, for example by providing necessary public investment, securing local land rights, addressing power and capacity imbalances in relations between investors and local communities and properly valuing land so as to discourage excessive land acquisition. Desirable LSLBI models are also those which accelerate the incorporation of smallholders into primary and processing production, rather than competing with and leave them in the same poverty. In addition, short to medium length leases are generally more advisable than acquisition in perpetuity.

Principle 3: Member States are urged to require rigorous, holistic and independent environmental and social prior impact assessments of LSLBI. Assessments should consider the investment throughout its entire life period, include plans to reduce, manage and mitigate envisaged risks and should be evaluated in relation to alternative development approaches.

Governments need to enforce environmental impact assessments before and during the life of LSLBI. Governments should provide capacity where this is lacking to protect biodiversity and

promote sustainable management of land and other resources including wildlife and wildlife migratory routes.

There has been a tendency to over-estimate returns to LSLBI due to inadequate integrated analyses and limited examination of at the whole duration of the project, taking into account alternative options and pathways of investments. Methodologies for assessing LSLBI therefore need to be holistic in terms of space and time.

Prior to approval of LSLBI, it is highly advisable for States to establish minimal social upheaval and conflict from LSLBI and that LSLBI will respect culture and take into consideration needs and aspirations of women, pastoralists and marginalized populations and contribute to improved quality of life of communities. Impact assessments should be based on prior, meaningful consultation of affected people. Draft impact assessments should be made widely available in appropriate language and format accessible to the people likely to be affected. Affected people and the public concerned should be given adequate notice to provide comments, and these comments should be duly taken into account before finalization of impact assessment studies. It is in the interests of States and their citizens to consider material breach of social and environmental management norms and plans as constituting grounds for termination or rejection of LSLBI.

Moreover, even without the LSLBI, some benefits would still accrue on the same land over the intended lease duration. The benefits of prospective LSLBI should be assessed in relation to those alternative benefits and associated risks.

Principle 4: Member states are urged to consider a gradual and phased approach to extending the amount of land allocated for an LSLBI project based on the demonstrated capacities of the investor.

Evidence to date indicates that most investors do not have the technical, financial and other capacities to develop most of the land allocated to them. The size of LSLBI should be based on analyses of the optimal land size for a particular investment, taking into consideration investor capacities. There is little or no value to States in bringing excessive tracts of land under an investor all at once as this fuels speculation in land and unwarranted displacement of communities.

Chapter 4. Rights and Obligations Relating to LSLBI

Many land laws in Africa fail to recognize, document and protect the land rights of local communities. The rights of local communities are based mainly on customary and non-written tenure regimes. Increasing demand for African agricultural land by domestic and foreign investors has increased the vulnerability of local people, particularly women, youth, internally-displaced people (IDPs), smallholder farmers, pastoralists and indigenous peoples whose livelihoods depend on access to land, water and forests resources.

The process through which LSLBI are designed and implemented has implications for economic, social and environmental outcomes resulting from investments. Getting the process right is therefore critical in ensuring that LSLBI promote inclusive and sustainable development. Host governments have the primary responsibility to protect the rights and dignity of their citizens. Investor governments also have a responsibility to support investment practices which are in line with the aspirations of host countries and respectful of human and other rights.

These Guiding Principles aim to promote LSLBI which are based on good governance, governed by properly enforced legislation and legally binding contracts in which rights and obligations of all parties are clearly articulated. In particular, these Guiding Principles encourage the recognition and protection of the legitimate customary based land rights of local communities whether registered or not.

Principle 5: LSLBI should respect the legitimate rights of local people and communities to land and land related resources. Where LSLBI entail loss of access to or ownership of land and land related resources and benefits, this should be lawful with fair and timely compensation awarded, in compliance with existing national laws and relevant international instruments.

It is essential that local authorities identify all bundles of land rights, whether registered or not, as a basis for informed decision making on LSLBI. Similarly, investors have the obligation to conduct due diligence exercises to identify all legitimate rights in land and other resources (whether written or unwritten) and record and respect these.

The instrument of compulsory acquisition of land should only be used strictly in line with prevailing legislation as LSLBI are more likely to enjoy perceived legitimacy at the local level if they are based on the consent of affected people.

Rights holders need to be appropriately compensated if their rights are to be affected or lost. It is important for compensation to go beyond compensation for land lost to encompass rights and benefits which would have accrued to rights holders by reason of their landholding. Communities often require support to empower them to negotiate these issues on an equitable footing with investors. Where relevant, these stakeholders must be considered equitably for gainful employment without discrimination on the basis of gender or any other consideration.

Principle 6: Member States need to establish the necessary legislative environment and institutional arrangements to ensure processes and decisions on LSLBIs are effective and accessible. They need to ensure compliance by all parties, including state officials and investors with national laws and regulations.

All stakeholders affected by LSLBI, in particular affected communities, have the right to access the services of land administration systems. Member States should therefore ensure that legal, judicial, and institutional arrangements relating to land and LSLBI are functional and accessible at local levels wherever LSLBI are considered. All this requires Government and local authorities to consider options for strengthening their own legal, technical and negotiating capacity before entering into contract negotiations.

Principle 7: Member States have the responsibility to promote transparency throughout the investment process, including through public disclosure of project information at an early stage; of social and environmental impact assessments and management plans; and of investment contracts. They also need to combat corrupt practices by all actors.

It is important that investors be required to disclose comprehensive project information in accessible form, including information about the identity of the parties involved, including the investor and its beneficial owners, financial intermediaries and backers; about the concession area and nature of rights; about investment plans and expected risks and opportunities, costs and benefits; about assessment and mitigation of potentially negative impacts; and about mechanisms to voice concerns and grievances. There should be a presumption by all parties that results of impact assessment studies and investment contracts should be disclosed. Member States have an important role to play in establishing effective institutions to handle public disclosure, and promote multi-stakeholder involvement in the running of these institutions.

Corrupt practices in the context of LSLBI contribute significantly to observed impacts of LSLBI, including unauthorized conversion of customary land to commercial land in the interests of LSLBI. Measures should be put in place and implemented to make corruption in the conduct of LSLBI a punishable offence. Corruption can further be avoided by ensuring that decisions on LSLBI follow prescribed process without pursuing parallel processes or appealing to executive decisions.

Contracts entered with investors should clearly identify the rights and obligations of the parties. These rights should be formulated in specific and enforceable terms and should provide effective arrangements for sanctioning non-compliance including contract termination in case of material non-compliance.

Chapter 5. Good land governance in the context of LSLBI

In adopting the F&G, the African Union and Member States acknowledged the need for improved governance of Africa's land resources in order for land to realize its potential to drive Africa's economic advancement. Improvements required include the need for States to establish land administration systems which are effective and accessible to the public, including the poor. Such land administration systems need to be operated in a transparent, accountable, inclusive and efficient manner. The mandate of the diverse land institutions also need to be harmonized and their respective mandates rationalized. The legal and policy frameworks need to provide equal recognition and protection of all categories of landholdings including customary based land rights. Accurate and up to date land information systems are indispensable for such progress.

In most countries urban expansion has placed severe pressure on agricultural lands. In the absence of effective and enforceable land use planning, or in the case of non-compliance with these, governments are faced with the challenge of minimizing loss of agricultural lands to non-agricultural uses so as to avoid losses with respect to food security and livelihood security.

Although the F&G espouses the principle of decentralization, evidence to date indicates that communities affected by LSLBI have not been involved in decisions and processes relating to LSLBI nor have they significantly been included in sharing benefits accruing from LSLBI.

These Guiding Principles reaffirm the need for good governance of land in the context of LSLBI, including through land adequate administration and information systems, and effective and participatory land use planning. Land availability, access, potential encumbrances, dispute resolution, acceptable land uses, land conversion, disclosure, corruption are all critical. Issues of transparency, inclusive stakeholder participation, accountability, equitable benefit sharing, and due process for land use conversion are also necessary to improve community acceptability of LSLBIs and reduce associated tensions.

Improve governance of LSLBI is predicated upon improved land governance and decentralized administrative and decision-making. This encompasses inclusive stakeholder consultation and participation, dialogue and accountability between leaders and citizens; robust land administration institutions to prevent corruption in land administration, prevent unlawful mutation and to ensure effective management, adjudication of disputes; transparency, and preventing corruption. Civil society and other groups also have an important role to play in advocating for the inclusion of communities in decision making on LSLBI which affect them. In response, these Guiding Principles seek to provide Member States guidance to ensure that decision-making on LSLBI are taken in accordance with all these considerations.

Principle 8: Member States are urged to establish effective and decentralized land administration systems as a prerequisite for good governance of LSLBI.

This facilitates prompt, accessible and non-discriminatory land administration services and makes it possible for accurate and up to date information to be generated at the local level,

promoting community access to information, transparency and participation in the LSLBI. Decentralizing land governance and facilitating the devolution of decision-making power and authority to local communities in this way ensures that land resources are likely to be used more productively and sustainably and that LSLBI on these lands are more responsive to the priorities of these communities.

Best practice points to the fact that devolution of power over land management and the decentralization of the delivery of land services to local land governance institutions contribute to the exposing and addressing of inefficiency and corruption are to be exposed and addressed.

Principle 9: Member states need to protect agricultural lands from unplanned and unregulated conversion to other uses.

Efforts by Member States to promote inclusive land use planning at local and national levels are critical in addressing the multiple demands for land both equitably and sustainably.

Principle 10: Member States need to ensure effective, transparent and well-resourced mechanisms prevention and settlement of land disputes and corruption.

The experience of States to date indicates that conflicts frequently occur in the context of LSLBI. Provisions for preventing and resolving such disputes include effective and accessible recourse for affected people (courts, ombudspersons, national human rights commissions, grievance mechanisms, alternative dispute resolution platforms) and mechanisms for investor-state dispute settlement that enable transparency and public input and oversight.

Principle 11: Member States need to develop the capacity of communities to negotiate benefits, compensation and other terms of agreements, with priority given to stakeholder groups with the most critical contribution to LSLBI as well as those to be impacted most significantly, in particular, women.

Support to communities is required in order to level the playing field somewhat through access to information, repackaging of certain information, capacity building on contract negotiation, appreciation of development trajectories, costs, benefits and implications associated with particular decisions and, where relevant, provisions of independent legal counsel.

In most States, the need for capacity is likely to be great. There is therefore a need for Member States to undertake a comprehensive assessment of in-country capacity assessment and develop capacity plans to address capacity gaps as the basis for enhancing required capacities for LSLBI among state and non-state sectors. Such plans enable States to identify and focus available resources on priority stakeholders. States can benefit from governments working in collaboration with institutions responsible for ensuring the proper governance of land resources, those engaged in decision making related to LSLBI and communities affected by LSLBI.

Capacity building efforts should pay particular attention to those sub-groups already marginalized with respect to access to information and capacity, including women and pastoralists. In many States there is an urgent need to deepen the capacity for research and analysis on LSLBI. These needs should also be prioritized, including those needs which may fall outside of the land / agricultural sectors but which may be relevant to LSLBI.

Chapter 6. Cooperation, Mutual Accountability M&E

LSLBI are both a national and regional phenomenon. This because while deals concerns specific countries, their impacts have a bearing on other countries in the region. This is the case with regards to issues such costs relating to land, labor and incentives. There is a real risk that in their efforts to compete with each other to attract investments, Member States offer reduced rates to investors, resulting in a ‘race to the bottom’ scenario. Solidarity between States is required for them to use their collective influence to establish acceptable rates and ceilings with respect to these issues. Cooperation is required within countries since LSLBI entail the engagement of other critical sectors beyond land, including finance, planning, forestry etc.

As highlighted in previous chapters, evidence to date also points to the potential adverse social and environmental effects of LSLBI. Efforts to monitor compliance and performance of LSLBI requires close collaboration between governments, parliaments, RECs, private sector, traditional authority, civil society, development partners and other stakeholders at various levels. In reviewing LSLBI, it is important to leverage African initiatives such as mainstreaming of the F&G and the implementation of CAADP. These efforts can also be implemented with the LPI framework for tracking progress on land policy. Support activities that would subsequently respond to findings of M&E include peer review, peer learning, policy reviews, and focused short term training.

In response, these Guiding Principles to assist States not only to establish but also to enforce and monitor processes, codes and standards necessary to reduce adverse effects of LSLBI and to maximize benefits to national economic development and local communities, including women.

Since evidence also points to the need to improve the implementation rates of signed LSLBI deals, it is advisable to give priority to applying these Guiding Principles on LSLBI awaiting implementation so as to advise governments, investors, investor governments and other stakeholders, on ways to improve performance and accountability.

Principle 12: All players in LSLBI at country, regional, continental and international levels need to demonstrate solidarity, cooperation, collective responsibility and mutual accountability in order to ensure the successful implementation of these Guiding Principles.

Solidarity and collaboration is required among Member States to strengthen capacity through pooling of information and expertise, exchange of experience and sharing of lessons learned in relation to LSLBI.

Collaboration and solidarity can help to reduce the imbalance which exists between the capacities for LSLBI available to individual Member States in relation to those of investors. Collaboration and exchange of information also protect Member states from engaging into unhealthy competition amongst each other for attracting investors. This may require the creation of strategic partnerships with sources of capacity support, institutionalized learning of lessons and establishment of a continental policy coordination facility to establish floor prices for different categories of land.

Cooperation on issues such as realistic incentives and appropriate land values would also mitigate against ‘race to the bottom’ scenarios.

Guiding Principle 13: The AU needs to develop an M&E framework and associated standardized indicators to serve as a tool for lesson learning and ultimately improvement of the effectiveness of LSLBI.

It is essential that contracts and/or legislation allow and regulate periodic review of investment terms and conditions. This allows Member States to use results of M&E to ensure rigorous monitoring of compliance by all parties and ensure mechanism for redress and sanctioning non-compliance (including through termination of contracts in case of material non-compliance) are operational. Periodic reviews also allow adjustments to be made as required in response to changing economic, social and environmental circumstances.

Investors are sometimes protected from accountability through agreements which are lacking in specificities. This points to the need for full participation all stakeholders (including communities), in identifying and agreeing on the major elements of LSLBI that should be tracked and the indicators and benchmarks to be used.

Guiding Principle 14: Member States can improve benefits and minimize impacts of LSLBI through peer learning across countries, regions and continents, networking and sharing lessons, inclusive policy dialogues, and focused trainings in the context of a visionary capacity development framework.

The AU provides Member States with the required platform to establish an information clearing facility on LSLBI providing member States with accurate, up to date and exhaustive data on LSLBI, based on research and scientific analysis. This highlights the role of research institutions, think tanks and community based knowledge institutions. It also highlights the need for States to cooperate with other stakeholders to enhance capacities at all levels to access and utilize the information on LSLBI.

These efforts and all other efforts relating to the implementation of the Guiding principles are dependent on a coordinated, regional framework for building capacities in relation to LSLBI.

Chapter 7. Operationalizing the Guiding Principles

By establishing the F&G and adopting the Declaration on land, African leaders and land community articulated the intention to be proactive in shaping land policy and in the use of their land resources. States recognize that LSLBI hold the promise of technology transfer, in employment, improved income levels and export revenue streams for African States. However, these investments can, and have been accompanied negative social, economic, political and environmental impacts. As a result, African State have sought to balance the pursuit of the financial proceeds deriving from LSLBI and safeguard broader developmental outcomes, including the rights of communities to food and livelihood security, to land and other livelihood sources, their rights to be heard and to determine their own development paths.

These Guiding Principles are the product of this aspiration by Member States. The Guiding Principles are the culmination of a series of processes and evidence from across the region focused on addressing the challenges faced by Member States in their efforts to ensure that LSLBI promote equitable economic growth, peace and prosperity for their people.

Guidelines only useful if operationalized

The Principles are articulated as a comprehensive, mutually reinforcing framework formed around what may be considered foundational principles. These include (i) the need for investments to be informed by and contribute to development strategies and priorities espoused by States; (ii) existence of land policies and other legal and institutional arrangements which engender good and accountable governance of land and related resources; (iii) an unwavering commitment to safeguarding the rights and interests of communities through equity and transparency in all processes and considerations and, (iv) a commitment to developing the required capacities at all levels for engagement in processes relating to the development, implementation and review of investments.

Inspired by the knowledge that these Guiding Principles are uniquely African, Member States must now embrace the significant but attainable task of operationalizing the Guiding Principles. Awareness and shared ownership of the Guiding Principles both nationally and regionally, is best achieved through a fully gendered, comprehensively inclusive dissemination of these Guidelines. The efforts of Member States will benefit from a coordinated, regional institutional framework for popularizing, operationalizing and monitoring the operationalization of these Guiding Principles. The F&G of the African Union provides a legitimate framework for establishing the required framework.

Considerations for operationalizing the Guiding Principles

The issue of LSLBI extends far beyond national borders, requiring collective action from states, non-state actors and the private sector. A solid evidence base, collective learning, solidarity in policy approaches are key enablers for States in their endeavors to derive the anticipated benefits from LSLBI. The AU supported by RECs and other stakeholders is well positioned to facilitate the required momentum by operationalizing a continental platform to pool experiences of Member States and to progressively enhance their experience with LSLBI based on shared learning.

LSLBI undertaken in the context of a clear national vision of agricultural development and their acceptability should be determined, in part, by the extent to which these LSLBI contribute to the national vision for agricultural development. In this respect, there is need for Member States to explore options to review LSLBI that have been designed, approved or implemented in breach of applicable law and or existing protocols and conventions with the view to bringing them into line with these Guiding Principles.

A wide range of state and non-state actors – both domestic and from investor countries - have an important contribution to make in ensuring implementation of the Guiding Principles to improve agricultural development, and, ultimately the deepening and consolidation of peace, security and democracy Member States have an important role to play in welcoming and facilitating continued engagement by these actors.

Investor government countries and their business enterprises have an important role to play in supporting and adhering to these Guiding Principles since the Guidelines complement global conventions and principles already agreed upon by the global community to guide investor activities in countries.