



# **Responsible Land Acquisition (and *Free, Prior, and Informed Consent*) Guidance**

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## Introduction

Land rights can be a complex and challenging issue that takes time to understand and fully address. This guide, which builds upon [TCCC's Issue Guidance](#), is intended to be a resource to help TCCC business partners constructively engage communities when acquiring land and, when necessary, adhere to the principles of Free, Prior, and Informed Consent (FPIC). TCCC commits to zero tolerance for land grabs and adherence to Free, Prior and Informed Consent in Affected Communities of Indigenous Peoples.

This guide includes an introductory overview of FPIC as well as practical strategies to implement FPIC and we intend to update it with examples and best practices over time. This guidance was developed in partnership with Landesa and draws on existing FPIC guidance documents, including:

[FAO Governance of Tenure Technical Guide: FPIC](#)

[International Labor Convention 169 – Indigenous and Tribal Peoples](#)

[IFC Performance Standard 5 on Land Acquisition](#)

[Oxfam Guide to FPIC](#)

## Why Secure Land Rights is Important to The Coca-Cola Company

If land rights are inadequate, unclear, and poorly governed, or if local communities do not collaborate in deals involving land acquisition, communities may feel aggrieved. As a result, the human rights of local people could be adversely impacted and this could pose a risk for investors. Protecting and respecting land rights helps manage such potential human rights, financial and reputational risks and ensure there is a social license to operate.

At a broader level, when people control their own land, there is increased economic growth, investment and trade, and social development. In particular, benefits include improved access to credit and family finances which can lead to improved nutrition and health and higher school attendance.

Land rights are secure when a person is confident that he/she has the rights to a plot of land on a long-term basis, is protected from someone taking the land, and has the ability to reap the benefits of the time and money invested in the land.

Consultation with landholders and obtaining Free, Prior, and Informed Consent (FPIC) when required are important principles to uphold during land acquisitions to avoid grievances during and after expansion.

| Understanding FPIC     |   |
|------------------------|---|
| <b><u>Free</u></b>     | Ensure that communities and individuals are not coerced, forced, intimidated, or pressured to transfer land.  |
| <b><u>Prior</u></b>    | Provide all available and necessary information to affected communities and individuals as early as possible before asking a community or individual to consent to the transfer of land.  |
| <b><u>Informed</u></b> | Ensure all material information is accessible to the community by taking into consideration local language(s), literacy rates, and traditional means for disseminating information. Communities and individuals should be provided adequate time to review all information. |
| <b><u>Consent</u></b>  | Seek the informed consent of communities or individuals before each major phase of a project and/or if a project undergoes material changes.  |

## Defining FPIC

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### *What is the purpose of FPIC?*

The purpose of FPIC is to ensure that indigenous populations and communities are adequately informed, properly consulted, and given the opportunity to fully participate in negotiations with companies before they consent to the lease or purchase of their land, and to the implementation of a project. FPIC is intended to level the playing field between contracting parties, as well as safeguard against communities or individuals being coerced, forced, intimidated, or pressured to sign agreements with companies or the government that unfairly and unjustly disadvantage them.

### *What is the basis for FPIC?*

Various international instruments reference FPIC as an important principle in respecting indigenous peoples' rights. ILO Convention 169 and the United Nations Declaration on the Rights of Indigenous Peoples require FPIC. While these documents outline the responsibilities of states, stakeholders expect that private sector companies conduct similar due diligence and uphold these rights. TCCC referenced the World Bank standards when developing FPIC requirements.

### *What is The Coca-Cola Company's expectations of suppliers on FPIC?*

The Coca-Cola Company expects that we, our bottling partners and suppliers ensure all land acquisitions and leases are made respecting the rights of individuals and communities impacted. TCCC expects active, effective, meaningful and informed consultation and participation with all communities impacted by land acquisition. In addition, TCCC requires respect for FPIC with regards to indigenous peoples. FPIC should be established through good faith negotiation with the affected communities. Suppliers, bottlers, and their supply chains should be able to demonstrate adherence to FPIC with documentations such as: (i) mutually accepted process with affected communities, and (ii) agreement between parties as to the outcome of negotiations.

## Glossary

### **Consent:**

To give or deny your agreement for a project to proceed to the entity acquiring land.

### **Consult:**

When the entities acquiring land and the community share information and talk about the planned project.

### **Decision-making process:**

The way in which a community chooses to decide whether to give or deny its consent for stages of a project.

### **Displacement:**

People's loss of access to their homes and lands.

### **Economic displacement:**

Loss of access to an income or livelihood resulting from a loss of access to land.

### **Landholder:**

A person who has title or traditional or customary rights to a piece of land.

### **Land user:**

A person who has traditional or customary rights to a piece of land through his/her use of it.

### **Resettlement:**

Being moved to a new place to live and make a livelihood to make way for a large development project.

# Strategies to Implement Responsible Land Acquisition

Each section below includes strategies and tactics to fulfill each of these steps. The emphasis here is not on remedying past wrongs. Rather, it is to prevent future harms.

National laws may include specific requirements concerning the application of FPIC principles. Where domestic laws exist, an entity should determine whether they include any additional requirements in addition to this guidance and, if so, they must ensure compliance with any additional or different national laws.

- I. Identify Stakeholders
- II. Inform and Consult Stakeholders
- III. Obtain Consent
- IV. Monitor, Evaluate, and Remediate

## 1 Strategies to Identify Stakeholders

Entities acquiring land should consult landholders and users who may be affected by the project. Enabling communities and individuals to freely choose their representative(s) is critical to ensuring their active participation. Particular attention is placed on the inclusion of women in the process. Answering the following questions will be helpful to ensure that landholders' and users' opinions are accounted for.

| Tactical Questions to Consider  | Notes/Check if Complete |
|---|-------------------------|
| <b>Identify rights holders and land users who will be affected by the acquisition</b>   |                         |
| <ul style="list-style-type: none"><li>• Who occupies the land?</li><li>• Do you know who currently possesses a legal right (e.g. title, lease, etc.) to the land?</li><li>• How do women and men use the land and does it differ by gender?</li><li>• Do other, non-occupational claims to the land exist?</li><li>• Are there claims to natural resources on the affected land?</li><li>• Consider creating a community map of the women and men who live in the targeted project area</li></ul> |                         |
|   |                         |

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| <b>Consult community rights holders and land users</b>   |  |
| <ul style="list-style-type: none"> <li>• What customary rights exist?</li> <li>• What community traditions and customs relate to the transfer of land?</li> <li>• Are women’s land rights viewed differently from men’s land rights?</li> <li>• Are you able to identify the community borders?</li> </ul>   |  |
| <b>Identify community decision-makers to be representative throughout consultations and negotiations</b>   |  |
| <ul style="list-style-type: none"> <li>• Do the representatives holistically represent the community’s broad views and groups?</li> <li>• Are women and other vulnerable groups’ views represented by the community decision-maker(s)?</li> <li>• Are multiple representatives needed to reflect all groups?</li> <li>• Did the entity acquiring the land and the community decide on a decision-maker(s) in a manner that ensures adequate community representation?</li> </ul> |  |

**TIP: SELECTION OF FACILITATORS**

When conducting consultations, it is important to select facilitators who represent all individuals who will be affected by the acquisition of land. In particular, entities acquiring land should ensure that facilitators are independent and are not politically influenced. Efforts must be made in conjunction with sharing information so communities can better understand the information. Such efforts may include: giving communities adequate time to digest the information and consult facilitators. There is also a need for qualified facilitators who are familiar with the topic of issue and cultural values.<sup>i</sup>

Entities acquiring land should inform landholders and users in an open and accessible manner. Providing information and consultation with the landholders and users is crucial to determining where human rights risks exist, so that they may be addressed prior to engaging in any projects. The following questions can be useful to ensure that landholders and users are informed and their opinions are heard.

| Tactical Questions to Consider   | Notes/Check if Complete |
|--|-------------------------|
| <b>Provide material project information to the community</b>   |                         |
| <ul style="list-style-type: none"> <li>• Is project information properly disseminated to all sectors of the community, including women?</li> <li>• Is project information accessible to all community members (e.g. was consideration given to literacy rates)?</li> <li>• Have the following been included:               <ul style="list-style-type: none"> <li>• Material facts regarding the project and the entity acquiring land?</li> <li>• Project financing?</li> <li>• Project supporters and associates?</li> <li>• Whether the entity acquiring land has operations elsewhere in the country, and where?</li> <li>• What area of land and what natural resources will be affected?</li> <li>• Environmental and social impact assessments that clearly detail risks?</li> <li>• Anticipated project benefits?</li> <li>• Proposed compensation for the leasing or purchasing of lands?</li> <li>• Company policies and commitments, including FPIC?</li> <li>• Whether the entity acquiring land will establish a non-judicial grievance mechanism?</li> </ul> </li> </ul> |                         |
| <b>Provide adequate time for the community to consult with third parties</b>   |                         |
| <ul style="list-style-type: none"> <li>• Is the community aware of their right to seek independent legal and technical advice from third parties before agreeing to project terms?</li> <li>• Has the community consulted independent legal and technical experts?</li> <li>• Has the community had sufficient time to consult legal and technical experts?</li> </ul>   |                         |
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|---|--|
| <p><b>Ensure iterative consultations with the community</b></p>   |  |
| <ul style="list-style-type: none"> <li>• Have there been consultations with the community before, during, and after the information sharing process?</li> <li>• Have women and other vulnerable groups been consulted?</li> <li>• Are the consultations held at convenient times and locations for both women and men?</li> <li>• Did the consultations discuss: <ul style="list-style-type: none"> <li>• The rights holders and land users affected by the project, including women and men?</li> <li>• The community’s use of the land, including women and men?</li> <li>• How the community attaches market and non-market value to its land and natural resources?</li> <li>• The community’s demographic?</li> <li>• The community’s customs and traditions?</li> <li>• The community’s organization and decision-making processes?</li> <li>• How the community prefers to receive information?</li> <li>• Whether the community has ever negotiated or contracted with a private company before, and past experiences?</li> <li>• Whether the community is engaged in any ongoing intra or inter-land or natural resources disputes?</li> <li>• How the community prefers to resolve grievances, including any notable differences between the preferences of women and men?</li> </ul> </li> </ul> |  |
| <p><b>Negotiate project terms with the community</b></p>  |  |
| <ul style="list-style-type: none"> <li>• Did the community inform the entity acquiring land that it is ready to initiate negotiations?</li> <li>• Is the community free to express its interests and make counteroffers to the proposed plan?</li> <li>• Does the community representative(s) holistically represent the community’s interests?</li> </ul>  |  |
| <p><b>Create a written agreement of terms</b></p>   |  |
| <ul style="list-style-type: none"> <li>• Do the agreement’s terms reflect all parties’ interests?</li> <li>• Are the agreement’s terms detailed, accessible and clear?</li> </ul>   |  |

**TIP: INCLUSION OF WOMEN**

FPIC requires the full and effective participation of women who are affected by the project. While there may be cultural challenges to overcome, some simple steps can have a dramatic impact on whether women are involved. For instance, offer women-only meetings and, if applicable, ensure the interpreter is a female to foster more insightful and effective consultations. Additionally, ensure there are not barriers to participation – such as holding the consultation on a market day when women may not be able to attend.<sup>ii</sup>



### **TIP: INFORMING COMMUNITIES**

There are various different methods for informing communities on project details. Meetings held indoors using more conventional means—such as PowerPoints and handouts—are less successful than meetings using communications that reflect the values of the community—such as role-playing, land-use simulations, etc.<sup>iii</sup>

### **EXAMPLE: IDENTIFYING COMMUNITY CUSTOMS**

To effectively consult and negotiate with a community, an entity acquiring land should understand the traditional decision-making processes and customary land processes. For example, in Suriname, Lokono communities’ traditional governments reach a community consensus when the common interest is at stake.<sup>iv</sup> The Saramaka people in Suriname own land collectively. Twelve clans are the land owning units, and use, occupancy, and boundaries are governed by oral history and tradition—meaning, it is not written. As such, an entity acquiring land must ask permission from the clan, and not the government, before using the land or natural resources. In this instance following Suriname’s administrative procedures would not suffice, as they do not require an entity to directly seek consent from clans<sup>v</sup> and thus understanding community customs is critical.

## **3 Strategies to Obtain Consent**

The strategies below, along with those in the previous steps, help the entity acquiring land avoid pressuring landholders and users into lease, purchase, or projects with which they are uncomfortable. All decisions should be fully documented so as to form a record of the decision-making process. The following questions will help obtain consent.

| <b>Tactical Questions to Consider</b>   | <b>Notes/Check if Complete</b> |
|---|--------------------------------|
| <b>Obtain the community’s informed consent</b>  |                                |
| <ul style="list-style-type: none"><li>• Did the entity acquiring land engage in any coercion, force, intimidation, or pressure in obtaining consent?</li><li>• Was consent given in the manner agreed upon during consultations?</li><li>• Did community decision-makers provide consent in a manner that represented the will of the community, including women and men?</li></ul> |                                |
| <b>Ensure that the consent is ongoing</b>   |                                |
| <ul style="list-style-type: none"><li>• Was consent obtained at each major phase of the project?</li><li>• If the project was materially altered, was additional consent obtained?</li></ul>  |                                |

Monitoring projects involving land rights is critical to ensure that consent remains as project implementation evolves. Results of the monitoring should be evaluated and made publicly available to the affected communities or individuals. If there is an issue at any level, an accessible and effective grievance mechanism should be available for landholders and users to bring complaints and receive remediation, if warranted. The following questions help to ascertain whether monitoring, evaluation, and remediation are adequate.

| Tactical Questions to Consider  | Notes/Check if Complete |
|---|-------------------------|
| <b>Establish a monitoring process</b>   |                         |
| <ul style="list-style-type: none"> <li>• Is the project implemented according to the terms of the agreement?</li> <li>• Does the monitoring mechanism account for all community members?</li> <li>• Are the monitoring results shared with the community?</li> </ul>  |                         |
| <b>Establish an evaluation process</b>  |                         |
| <ul style="list-style-type: none"> <li>• Are the evaluations shared with the community?</li> </ul>  |                         |
| <b>Establish a grievance mechanism</b>  |                         |
| <ul style="list-style-type: none"> <li>• Did the entity acquiring land establish a grievance mechanism?</li> <li>• Is the grievance mechanism functioning, neutral, and easily accessible to women and men?</li> <li>• Are community members aware of the grievance mechanism?</li> <li>• Are results and outcomes shared with the community?</li> </ul>  |                         |
| <b>Provide remedies</b>   |                         |
| <ul style="list-style-type: none"> <li>• Did the project agreement specify remedies?</li> <li>• Are remedies made available in the event of breach or other failure to deliver agreed upon benefits or to avoid unmitigated harm?</li> <li>• What remedies are provided? (e.g. rescission of the contract, a stop-use requirement by the buyer or lessee, money damages that have been set in advance of the breach, etc.)</li> </ul> |                         |

# List of Resources

## TCCC Resources

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- [The Coca-Cola Company Human and Workplace Rights](#)
- [TCCC's Issue Guidance](#)
- [Land Rights Sugar Studies](#)

## External Resources

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- [FAO](#)
  - [OXFAM](#)
  - [ILO Convention 169](#)
  - [Voluntary Guidelines on the Responsible Governance of Tenure \(VGGT\)](#)
  - [USAID Land Links](#)
  - [IFC Performance Standards](#)
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<sup>i</sup> See Eric J. Jokela, *Adapting FPIC to Local Contexts in REDD+: Lessons From Three Experiments in Vietnam*, July 15, 2015, at 2412-19.

<sup>ii</sup> Theresa Buppert and Adrienne McKeegan, *Guidelines for Applying Free, Prior and Informed Consent: A Manual for Conservation International*, Arlington, VA: Conservation International, 2013, at 22, [http://www.conservation.org/SiteCollectionDocuments/CI\\_FPIC-Guidelines-English.pdf](http://www.conservation.org/SiteCollectionDocuments/CI_FPIC-Guidelines-English.pdf).

<sup>iii</sup> See Jokela, at 2412-16.

<sup>iv</sup> See Forest Peoples Programme, at 12.

<sup>v</sup> See Forest Peoples Programme, at 10-11.