

Gender Primer

Part of the Responsible Investment in Property and Land (RIPL) Guidebook Series

Prepared by Renee Giovarelli of Resource Equity, September 2018

Introduction

Why isn't it enough for companies seeking to conduct responsible land transactions to work with community leaders? Why do the Voluntary Guidelines (VGGT) set two standards for acceptable engagement with communities: (1) Consultation and Participation, and (2) Free, Prior, and Informed Consent (FPIC) of community members?¹

Because different individuals and types of community members have differing access, participation, and roles in land matters, leaders do not always represent the interests of all land right holders and users – thus, efforts to ensure that all rights are respected must go beyond engagement with leaders.² The same is true for working with the heads of households or with men only. Both in the household and in the community, men have far more agency and voice than women do. Women rarely even have rights to the household land they use, *but their livelihoods and the livelihoods of their families depend on their use of the land.*

Interventions that focus on land typically take the household or the community as the target unit. This tends to exclude women, who have historically been excluded from owning land, and allocation of rights to land is often directed towards men as the head of the household. Women's rights to land are usually gained through a relationship with a man (father, husband) rather than directly, and land transfers within families (inheritance, gifts at marriage) are typically done between male family members.³

When acquiring the use or ownership rights to land, the question to be asked is not, “who has rights to this land?” but rather, “who uses this land and gains value from it?” Asking this question will make women's work on the land and their use of the land more visible. At the very least, women will be affected by the decisions made regarding the investor's use of the land, and women should therefore have a voice in decision making.

Steps to Implement a Gender Responsive Approach

For each of the phases in the Guidebooks, this primer will walk through, step by step, what is required to ensure that women as well as men are aware of and benefit from a proposed land transaction. For each step, the primer includes a checklist of questions to help guide the work and a list of resources where more detailed information can be found.

Phase 1: Preparing for Investment

Ideally, land investments will "do no harm" to the members of the community, which is providing land for the investment. The key to understanding why and how gender matters when attempting to "do no harm" is this: it matters who *within a household* has rights to use, control, and benefit from land.⁴ If both women and men have all three of those rights, and these rights are recognized both legally and socially, then it will be much easier to invest in land without harming women. But this scenario is highly unusual. Women rarely have rights to land, even though women's livelihoods and the livelihoods of their families will depend on women's ability to use the land. Men usually control the household's land uses and benefits. This is true in most rural areas in most countries in the world, regardless whether national laws or policies affirm equality between women and men. Commercial land based investments (including acquiring land through purchase or lease as well as purchasing commodities from smallholders) monetize a critical resource that men generally own or control, even if women use that resource for the benefit of their family to grow food, earn money or both.

To cause no harm, the investor must identify women's uses of the land (as separate from men's uses) and fairly compensate women for the loss of the ability to use the land (separate from men's compensation).⁵ The first step is to undertake a legal assessment.

Task 1: Develop and Implement Policies, Commitments and Frameworks

Understanding the context and complexities of the legal framework in the country is a critically important first step in planning an investment. Business must know what the law says about rights to land. In addition, laws related to co-ownership and to family property must be examined to understand women's legal rights within the system and to understand whether any laws make women's land tenure insecure.

Legal pluralism, which describes the situation when different types of legal regimes apply to the same territory, is common throughout the world. Very often, a key difference between one legal system and another relates to family law and what rights women have in their marital household.⁶ In some countries, public institutions give equal weight to formal (statutory) law and customary law, while other countries give preference to formal law. In some cases, each religion has a separate family law that governs members of that religion, and public institutions regard each family law as valid.

The business representatives must become acquainted with the laws – formal, customary and religious – that govern rights to land and natural resources.

Checklist

- Do the Constitution or other laws state that men and women have equal rights or equal rights to land?
- Do the Constitution or other laws state that custom supersedes the Constitution in relation to family law? If yes, women and men do not have equal rights to land. (This scenario is not common, but it exists).
- What does the Family Law, Personal Law, or Civil Code say about:
 - Marital property (community property, separate property, or mixed)?
 - If community property is allowed, what is required to evidence it (marriage certificate, witness for religious marriage, etc.)?
 - Are there rules about sale of property by one spouse? (e.g., written permission is required to sell house and household property even if not co-owner.)
 - Are there rules requiring written permission for leasing out property?

- Can married women have their own checking account?
- What social restrictions are placed on married women or women generally?

Task 2: Conduct Initial Due Diligence

Consult key stakeholders – including government officials at the district, regional, and national level (both land-related government organizations and government organizations that deal with gender issues), customary authorities, civil society organizations focused on women’s land rights or women’s rights, and legal authorities – to gauge whether domestic land laws and policies are clearly understood and are being properly implemented and enforced. Review any existing studies that discuss the differences between statutes and local practice regarding women’s land rights.

Flag for additional attention any areas with poor rule of law or where enforcement capabilities are lacking or absent. Assess the discrepancies between legislation, international standards, and customary law.

Checklist

- Develop understanding of the local tenure system and the provisions it makes for women. Be aware that most of this information will not be recorded in writing and will need to be gained through interviews.
- Conduct an assessment to answer the above questions related to implementation of the law. Talk to women who use land, local community organizations, and male and female leaders in the community.
- Hire a gender consultant to gather information and help make recommendations for how to fully include women.

Phase 2: Community Engagement and Assessments

Once the business has a general understanding of how women’s rights to land are treated in the law and in practice, the business is more likely to consider the investment’s impact on women while preparing the investment. But the business will need to take certain steps to include women in the decision making process and ensure that women share in benefits of the project.

Men are the public face of the family, and the family's representative, in practically every society. Reaching women, who often have little knowledge of or experience with community governance, usually requires more concentrated effort than just inviting women to join men in information meetings.⁷ The business must also undertake ongoing assessments of their knowledge, modes of accessing and participating in discussions and decisions, and must make proactive adjustments to accommodate differential access and participation.

Task 1: Engage and Consult with Community Members

The Voluntary Guidelines (VGGT) set two standards for acceptable engagement with communities: (1) Consultation and Participation, and (2) Free, Prior, and Informed Consent (FPIC). At the very least, the community of people with legitimate tenure rights and interests who may be affected by the investment decisions should be engaged in decision making and should agree to the project before it proceeds.

Because the community (both women and men) may not identify women as having legitimate land tenure rights, it may not be easy for the business to adequately consult with and include women in decision making. The basis for who should be consulted needs to be those *who use or benefit from the use of land* that is the subject of consideration and *not who has the rights to the land*.

Depending on local practices, determining which land is available for investment may involve consultations or discussions with government, or may proceed without any input or interaction from government. Before approaching the community, it is essential for the business to collect information about norms of the community, which may differ from the norms of other communities in the country. The business must also determine the most appropriate language to use in communicating with the community. If possible, the business representatives should identify women leaders and their positions (formal or informal) in the community and address women leaders before organizing larger meetings of women.

The keys to ensuring that women are notified on the business's intention and are able to participate in the consultation processes are:

- Identifying how and from whom women receive information. Post or circulate material in places where women go regularly and are likely to see the information.
- Ensuring that the communication is in the language women use and is relatively easy to understand. Women are often less educated than men.
- Identifying where women gather, for what purpose, and at what times of day and times of year.

- Using the above information to plan meetings and notify women in advance of the meeting. It may be necessary to meet with women separately from men, but usually it is best first to meet with women and men together, and then separate women from men. In this way, men understand why women are being called to meet.

Checklist

- Ensure that the community facilitator understands that business representatives need to speak to women as well as men—both women leaders and women users of land, even if they are not owners or right holders.
- Provide information in the language women understand and post or circulate material in places where women go regularly and are likely to see the information.
- Identify women in the community who can gather and involve other women in information meetings and work with them.

Task 2: Conduct Community Assessments

Once the community is part of the conversation about the investment, the business must answer two main questions: (1) how will the investment impact the community?, and (2) can the community, or representatives of the community, engage in a meaningful negotiation with the business given the possible power differences? Keeping in mind that the community includes men and women, the third and fourth questions are: (3) how will the investment impact women in the community?, and (4) what must be done to ensure that women's interests can be meaningfully represented during negotiations? While questions (1) and (2) use the term "community," there is a risk that the community representatives will present the views of men only, because they do not even understand women's interests well enough to represent them, and the business may therefore need to take extra steps to understand the impact on women.

Identifying risks to women and men, assessing the capacity of both women and men, and engaging women and men in the process of land acquisition may meet with resistance from community men, community leaders, or government officials at all levels. The norm, as stated above, is for men to engage publically and to speak for their entire family. Including women broadens the scope of due diligence for the business and for the government, and requires additional effort, time, and costs. Almost all of the risk of not including women in the process or decision making will be borne by women. If women's interests are not considered in the negotiations,

women will lose their livelihood, women will have to travel further for household needs, and women will have to find other land to grow food for their families.⁸ There is little political or social risk in causing harm to women. However, not addressing women's issues causes avoidable harm and fails to honor the international agreements and commitments that business have signed onto.

To understand what is required to ensure women participate in decision-making, it is necessary to talk to women in the community. Business representatives can reach women through women's organizations--either non-profit organizations or government services for women. Women in the community will best know how to mitigate women's risks given social norms.

Checklist

- Recognize that gendered roles will mean that women and men will experience the impact of loss of land differently and that men may not be able to represent women's interests.
- Identify women or men who can represent women's interests. This can be done by calling a meeting and asking women to elect a representative, asking community leaders or government officials to identify a woman leader in the community, or asking local NGOs that serve women to advise on how best to identify a representative.
- Because many women have far less experience in the public sphere than men, women leaders may require additional capacity building to be a respected party in the negotiation.
- What are the risks to women's livelihoods and ability to care for their families inherent in this land acquisition?
- What are possible ways to mitigate those risks?
- Is there a socially acceptable way to proceed to protect both women and men in this negotiation?

Phase 3: Developing an Equitable and Inclusive Contract

Negotiation and contract preparation are unlikely to be skills that women possess since few women represent themselves or their families in transactions, especially in rural areas. Women within male-headed households will face different barriers than

women who are heads of households. Thinking of women in these two separate contexts will be important to ensuring their rights and interests are protected.

Task 1: Negotiate and Draft the Contract

While few women are likely to have negotiation skills, it may be more acceptable for women heads of households to engage in negotiation than for women from male-headed households. Thus, the business may need to hold separate negotiation trainings for married women and women heads of household, and adjust the content of the training. For example, some laws or norms may forbid married women from entering into contracts, or may require written permission from husbands.

Whereas there is likely to be a power differential between male community members and the business, or government, or local leaders, this differential will be even more pronounced with female community members. Add to that the lack of social acceptance of women negotiating contracts and the lack of education and experience women are likely to have, and it is doubtful that women will be on an equal footing in negotiations.

Women are more likely to have a confident voice in the negotiation if they are part of a group, and that group is educated and trained about the process and content of negotiation and contracts.⁹ Women's groups can empower women to ask for what they want and to make changes in their communities. Identify local women's groups, and if none exist, identify a local Community Based Organization (CBO) that works with women in the community.

Checklist

- Understand whether or not restrictions are placed on married women or women generally in terms of contract negotiation or contracting. Are the restrictions legal or social or both?
- Understand how social norms may differ depending on women's marital status.
- Look for existing women's groups, and work with them where possible.
- If women's groups have to be formed because they do not already exist, identify a CBO that has experience working with women in the community.

Task 2: Review and Sign the Contract

The three issues related to contracting that are critical particularly to women are:

- Specificity in the terms (that they include women and how they include women)
- Representation of women's interests
- Grievance mechanisms

Specificity is important to women's interests because naming women as beneficiaries of land agreements is uncommon and requires a social shift.¹⁰ Without specificity, the assumption, by both women and men, will be that the head of the household (who is usually a male) is the responsible party and will receive the benefits. To better understand how best to compensate women, the business needs to know whether married women can have their own checking account (legally and socially acceptable) and whether there are risks to women if they receive their own funds. In some contexts, business compensation goes to women's groups to bypass husband involvement if necessary.

Contracts need to clearly state what women's interests are, how compensation will be calculated and paid, and any special accommodations made to ensure women do not lose their ability to provide for their families (water, food, firewood, etc.).

Social norms may affect where and how women can have their grievances heard. Grievance mechanisms need to be spelled out in the contract, and any accommodations for women need to be made clear. For example, women may have a right to representation or may have a right to a hearing in the village where they live.

Checklist

- Determine what is legal and what is socially acceptable in terms of money women may receive. Can married women have their own checking account? Can women pool their money in a group account? What risks do women face when they are entitled to money?
- Determine what is required so that women do not lose access to water, food, firewood or other necessities. Ensure that these needs are addressed in the contract.

- Learn about how social norms affect how women bring a grievance against an business, the government, or another community member. Set up a grievance mechanism that accommodates what is allowed or possible for women.

Phase 4: Implementing and Monitoring the Investment

Task 1: Develop and Implement a Plan to Address Land-Related Issues

The keys to implementation and enforcement of agreements are communication, education, and engagement. Each of these requires focused attention on both women and men if women are to benefit. The final steps of the investment process are to ensure that women understand the contract, understand their rights and responsibilities, are able to carry out those rights and responsibilities, and are able to have their grievances heard.¹¹

Business must pay attention to the differences between the laws and social norms for men and women. Business must also consider languages used, meeting times and places, and levels of ability and experience of both men and women. Maps and other visual aids may help women understand the process of investment and the agreement reached. Just as a community meeting would be unsuccessful if no one showed up, a community meeting is unsuccessful if only men show up. Neither the community nor the household is homogenous, and international standards require the business to take into account the interests of all stakeholders, especially stakeholders making up half of the population. If women are not attending meetings or participating fully, the business should ask trusted women in the community about how to better include women.

Checklist

- Ensure all written material is in languages understood by women and men.
- As much as possible, use maps and other visual documentation to communicate.
- Post notices in places where both men and women will see them. This may require posting or distributing material in more than one place.
- Hold meetings at times and in places where both men and women can attend.

- Monitor whether both women and men are included in the trainings and are part of the implementation. If women are not included, ask them directly what the barrier to their involvement is.

Task 2: Develop and Implement an Ongoing Monitoring and Evaluation Plan

To confirm that both men and women are included in the project and benefit from the project, the project must be monitored on a regular schedule for whether or not women are fully included in the process and decision-making.¹² Most often, some adjustments need to occur to improve the situation for women because there are few models of excellence and great variety from country to country, and sometimes community to community. All data collected should be disaggregated by sex. That is rather than only looking at the head of household (male and female) also understand what is happening within the household for both men and women. This may require interviewing both husbands and wives.

Evaluation of the data is equally important. What is working, what is not working, and why? To capture the experience of women, these questions must be asked at the individual level, not the household or community level.

Checklist

- Decide what data to collect and make sure to collect it for both men and women.
- Ensure that the data collected captures the impact of the project on both men and women.
- Analyze the data and make changes as necessary to ensure men and women are compensated for their losses and benefit from the investment.

Resources

- Agnes R. Quisumbing, Deborah Rubin, Cristina Manfre, Elizabeth Waithanji, Mara van den Bold, Deanna Olney, Nancy Johnson, Ruth Meinzen-Dick, *Gender, assets, and market-oriented agriculture: learning from high-value crop and livestock projects in Africa and Asia* (2015), available at <https://link.springer.com/article/10.1007/s10460-015-9587-x>
- FAO, *Gender and Land Rights Database for an overview of individual countries' marital property law* (2018), available at <http://www.fao.org/gender-landrights-database/en/>
- FAO, *Governing Land for Women and Men, Technical Guide to the Voluntary Guidelines* (2013), available at <http://www.fao.org/docrep/017/i3114e/i3114e.pdf>
- Landesa and Resource Equity, *Gender & Collectively Held Land Good Practices & Lessons Learned From Six Global Case Studies* (2016) available at <https://www.landesia.org/resources/synthesis-report-gender-collectively-held-land/>
- Landesa, *Realizing Socially-responsible Investments In Land From A Gender Perspective: Unpacking "Zero Tolerance" To Identify Barriers And Practical Steps To Achieve Equitable And Sustainable Investments* (2016), available at <https://www.landesia.org/wp-content/uploads/Tools-to-Enable-Socially-Responsible-Land-Related-Investment.pdf>
- Transparency International, *Gender-Responsive Work On Land And Corruption: A Practical Guide* (2017), available at https://www.transparency.org/whatwedo/publication/gender_responsive_work_on_land_and_corruption_a_practical_guide
- World Bank, *Women, Business, and the Law Website for the specific investment country being considered* (2018), available at <http://wbi.worldbank.org/~media/WBG/WBL/Documents/Reports/2016/Women-Business-and-the-Law-2016.pdf>
- United States Agency for International Development, *Operational Guidelines for Responsible Land-Based Investment* (2015), available at: https://www.land-links.org/wp-content/uploads/2016/09/USAID_Operational_Guidelines_updated.pdf

¹ FAO, *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security* ¶3.B(6) at 1 (2012) [hereinafter “VGGT”], available at <http://www.fao.org/docrep/016/i2801e/i2801e.pdf>

² Landesa and Resource Equity, *Gender & Collectively Held Land Good Practices & Lessons Learned From Six Global Case Studies* at 19 (2016), available at <https://www.landesa.org/resources/synthesis-report-gender-collectively-held-land/>

³ See Agnes R. Quisumbing, Deborah Rubin, Cristina Manfre, Elizabeth Waithanji, Mara van den Bold, Deanna Olney, Nancy Johnson, Ruth Meinzen-Dick, *Gender, assets, and market-oriented agriculture: learning from high-value crop and livestock projects in Africa and Asia* (2015), available at <https://link.springer.com/article/10.1007/s10460-015-9587-x>

⁴ Landesa and Resource Equity, E., *supra* note 2

⁵ See United States Agency for International Development [hereinafter “USAID”], *Operational Guidelines for Responsible Land-Based Investment* at 43 (2015), available at https://www.land-links.org/wp-content/uploads/2016/09/USAID_Operational_Guidelines_updated-1.pdf

⁶ See FAO, *Module 2 and 3 of Governing Land for Women and Men, Technical Guide to the Voluntary Guidelines* (2013), available at <http://www.fao.org/docrep/017/i3114e/i3114e.pdf>

⁷ *Id* Module 5

⁸ USAID, *supra* note 5, at 4

⁹ *Id* at 6

¹⁰ See Landesa and Resource Equity, *supra* note 4, at 13-14

¹¹ See FAO, *supra* note 7, Module 5

¹² See Landesa, *Realizing Socially-responsible Investments In Land From A Gender Perspective: Unpacking "Zero Tolerance" To Identify Barriers And Practical Steps To Achieve Equitable And Sustainable Investments* (2016), available at <https://www.landesa.org/wp-content/uploads/Tools-to-Enable-Socially-Responsible-Land-Related-Investment.pdf>