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GUIDING PRINCIPLES ON LARGE SCALE LAND BASED INVESTMENTS IN AFRICA



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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
SDGs	Sustainable Development Goals
VGs	Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security
WFS	World Committee on Food Security

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The Guiding Principles on Large Scale Land Based Investments (LSLBI) are the outcome of the desire by African Union Member States to ensure that investments in land benefit Member States and key stakeholders. The Guiding Principles were prepared through a collaborative and participatory process and was made possible by the engagement and support provided by the heads of the three institutions of the LPI consortium: Dr. Nkosazana Dlamini Zuma, Chair person of the AUC; Dr. Carlos Lopes, Executive Secretary of ECA; Dr. Donald Kaberuka, President of the AfDB group.

Overall supervision and strategic guidance for the development process of the principles were provided by the LPI Steering committee led by Directors from the three continental organizations: Dr. Abebe Haile Gabriel, Director of the Department of Rural Economy and Agriculture; Dr Stephen Karingi, Director of the Regional Integration and Trade Division; Mr Ken Johm, Manager, African Development Bank We are grateful to Dr Joan Kagwanja, Chief of the LPI, for providing the overall leadership to the process of developing the Guiding Principles.

The process began with a high level meeting in October 2011 in Nairobi, Kenya. The meeting was chaired by His Excellency Festus Mogae, former President of Botswana. It gathered a diversity of key stakeholders including high level representatives of the AU- ECA and AfDB consortium on land policy, senior representatives of governments, traditional leaders, civil society organisations, academia and representatives of the African private sector. The meeting discussed emerging concerns surrounding the potential impacts of large scale land based investments on local food security, tenure rights and livelihoods. It also provided an opportunity to promote dialogue, and build consensus on the way forward for the continent regarding LSLBI. The meeting culminated in the adoption of the Nairobi Action Plan whose implementation was to be spearheaded by the LPI. Key among the recommenda-

tions of the Nairobi Action Plan were to build evidence on LSLBI drawing on best practices and to develop guiding principles on LSLBI.

In 2013 the LPI commissioned an Africa-wide assessment study to determine the extent of LSLBI, their impacts and policy options in relation to LSLBI. The study focused on investments involving land allocations of over 200 ha. The study was coordinated by Dr. Ward Anseeuw from the University of Pretoria and supervised by Dr. Hubert Ouedraogo from the LPI Secretariat. Regional assessment studies were undertaken by a team of consultants including Dr. Cheikh Omar Ba (West Africa); Dr. Olivier Iyebi-Mandjeck (Central Africa); Ms. Susan Mbaya (Eastern Africa); Dr Ward Anseeuw (Southern Africa and North Africa). The Land Policy Initiative expresses its appreciation to all consultants for their expertise and to LPI focal persons of the Regional Economic Communities and at country level for their support in gathering relevant information in their respective regions and countries.

In January 2014 the LPI initiated the drafting of the Guiding Principles. A Technical committee comprised by Prof. Mandi Rukuni, Dr. Joan Kagwanja, Dr. Hubert Ouedraogo and Ms. Susan Mbaya prepared a working document on the guiding principles to facilitate the drafting process. The drafting process involved the deliberations of two teams under the overall leadership of the LPI. The drafting team comprised Prof. Mandivamba Rukuni, Ms. Catherine Gatundu, Mr. Robert Kafakoma, Dr W. Odame Larbi, Dr. Lorenzo Cotula, Mr. Stephen Muchiri, Mr. Paul Jere, Dr. Hubert Ouedraogo, Dr. Joan Kagwanja and Ms. Susan Mbaya.

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In February 2014 the LPI launched a stakeholder e-consultation on the draft Guiding Principles. The consultation which was moderated by Ms. Susan Mbaya received the support and contributions of a range of stakeholders from across the Africa region. Useful comments were made which led to further revisions of the draft. At the same time, consecutive drafts of the Guiding Principles were shared with key LPI partners including women and farmer groups, the CSO platform on land policy in Africa, and development partners for review and feedback. Based on feedback received the emerging document was finalized by Ms. Susan

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In March 2014 the tripartite consortium reviewed the final draft of the guidelines and recommended it for approval by the Joint Conference of Ministers of Agriculture, Rural Development, Fisheries and Aquaculture which met on 28 April- 2 May 2014. The Guiding Principles were endorsed by the Joint Conference of Ministers. Many thanks to the African Ministers for their engagement in the review and for the endorsement of the Principles. These processes reflect the fact that the Guiding Principles are African owned; this constitutes an important basis for the future implementation of these Principles to ensure sound LSLBI that benefit all stakeholders, particularly smallholders farmers and women.

The LPI Secretariat staff deserve commendation for their role; Dr Joan Kagwanja and Dr Hubert Ouedraogo, together with LPI support staff including Ms. Bier Lulseged, Ms. Meskerem Melaku and Mr Daniel Kefale who contributed during the various stages of the process including preparations for and servicing the LPI meetings, the drafting retreat and managing the platform for the e-consultations.

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Chapter 1: Introduction



1.1 Africa is Committed to Addressing its Land and Agricultural Challenges

The African Union (AU) 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) implemented by the NEPAD Planning and Coordinating Agency. CAADP 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. Under the context of CAADP, African States committed to increasing their agricultural growth rates per 6% per by simultaneously increasing levels of domestic spending on agriculture while also fostering increased private investment.

In 2006 the Land Policy Initiative (LPI) of the African Union, the Economic Commission for Africa (ECA) and the African development Bank (AfDB) concluded the development of 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" which is taking place as Member States seek to increase investment in agriculture (also known as large scale, land based investments). 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 Communities."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.

The Declaration 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.

In October 2010, as part of its activities to promote dialogue, awareness and consensus on large scale land based investments (LSLBI) the LPI convened a high level meeting on alongside the AU conference of ministers responsible for agriculture. The meeting and preceding engagement culminated in the adoption of the Nairobi Action Plan whose implementation was to be spearheaded by the LPI.

The Nairobi Action Plan calls for urgent action to: develop land policies that reduce the underlying risks of LSLBI through a variety of approaches, including enhancing the security of land rights, building evidence on LSLBI drawing on best practices, enhancing capacities and facilitating fair and transparent LSLBI deals. Another important intervention envisaged under the Nairobi Action Plan was the development of guiding principles on LSLBI. The guiding principles would be a tool to promote responsible LSLBI.

1.2 Process Towards 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 urgency of the task of developing appropriate African instruments to guide LSLBI. At the subsequent African Development Forum (ADF-VIII) held in October 2012 on governing and harnessing natural resources for Africa’s development, 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 LSLBI.

In 2013 the LPI commissioned an Africa-wide 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. 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.

Literature has also highlighted risks associated with LSLBI. These include widespread alienation of land from local communities without adequate compensation, marginalization of (family) smallholder producers in favor of large scale investors who received better protection and accentuation of gender based inequalities. Underlying factors include weak land governance and administration systems which fail to protect land rights of communities, poor land records and information systems which do not adequately document land, land rights and claims, weak democratic governance and institutions which do not promote transparency and accountability and unequal power relations and resourcing of investors and governments or communities during contract negotiation 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, and failure to observe the provisions of investment treaties and contracts are some of the reasons that have led to failure of LSLBI.

It is in response to these challenges and towards the implementation of the Nairobi Action Plan, that the LPI has developed Guiding Principles on LSLBI so as to provide AU Member States and other actors how to establish LSLBI that are more likely to succeed in terms of benefits for governments, local communities and investors.

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, these Guiding Principles are also anchored in broader instruments of the African Union, including the Constitutive Act of the AU (especially Article 4-I, on the promotion of gender equality; and the AU Protocol on the Rights of Women in Africa (2003).

These Guiding Principles are African-owned. They were drafted and reviewed by teams of experts on land governance and agricultural investment in Africa before being finalised based on the outcomes of a multi-pronged consultation exercise with a wide range of constituencies and stakeholders involved with land governance in the Africa region.

1.3 Related Continental and Global Instruments and Initiatives

The Guiding Principles seek to ensure the observance of international human rights declarations and conventions as well as regional declarations in the manner in which LSLBI are conducted. Key among these are the Universal Declaration of Human rights, the Conven-

tion 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 the United Nations Declaration on the Rights of Indigenous Peoples and the African Charter on Human and Peoples' Rights.

The Guiding Principles also draw lessons from related global instruments and initiatives on land governance including, seeking to build on and complement such initiatives. These include 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. Also relevant are the Principles for Responsible Agricultural Investments in the Context of Food Security and Nutrition (RAI), currently being developed by the World Committee on Food Security (CFS) with a view to guiding investments in agriculture and food systems, including agricultural research, education, infrastructure and other relevant services. The LPI Guiding Principles seek to complement the guidance provided by these global processes and instruments.

Beyond the development of the Guiding Principles, the LPI proposes to facilitate development of technical guidelines to facilitate the implementation of the Guiding Principles by Member States and AU Regional Economic Communities (RECs).

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 beneficial to African economies and people; c) create a basis for effective coordination, cooperation and collective re-

sponsibility amongst AU Member States and other stakeholders to ensure improved land governance in the context of LSLBI; d) provide investors with a tool to inform their engagement with African governments, bodies responsible for decentralized decision making on land governance (such as municipalities), traditional authorities and other actors to ensure responsible land investments 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 such as tourism, mining and forestry, these Guiding Principles focuses on agricultural investments in line with the mandate given to the LPI.

It is in the interest of Member States to ensure that investments promote inclusive and sustainable development by defining the appropriate terms and conditions under which investments 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.

1.5 Structure of the Guiding Principles

The LPI process of developing the Guiding Principles identified a small number of fundamental principles to enable Member States to derive the most benefit from investments through making well informed decisions on such investments. These Fundamental Principles are overarching principles, from which other principles are subsequently derived.

The Fundamental Principles are as follows:

Fundamental Principle 1: LSLBI respect human rights of communities, contribute to the responsible governance of land and land-based resources, including respecting customary land rights and are conducted in compliance with the rule of law.

Fundamental Principle 2: Decisions on LSLBI are guided by a national strategy for sustainable agricultural development which recognizes the strategic importance of African agricultural land and the role of smallholder farmers in achieving food security, poverty reduction and economic growth.

Fundamental Principle 3: Decisions on LSLBI and their implementation are based on good governance, including transparency, subsidiarity, inclusiveness, prior informed participation and social acceptance of affected communities.

Fundamental Principle 4: LSLBI respect the land rights of women, recognize their voice, generate meaningful opportunities for women alongside men, and do not exacerbate the marginalization of women.

Fundamental Principle 5: Decisions on the desirability and feasibility of LSLBI are made based on independent, holistic assessment of the economic, financial, social and environmental costs and benefits associated with the proposed investment, throughout the lifetime of the investment.

Fundamental Principle 6: Member States uphold high standards of cooperation, collaboration and mutual accountability to ensure that LSLBI are beneficial to African economies and their people.

Chapter 2: **LSLBI Respect the Human Rights of Communities**

2

Human rights are interdependent and all human rights may be at stake in LSLBI. The context of Rights includes the right to access land, water and other natural resources, the right to food and to an adequate standard of living, as well as labor rights. International human rights treaties, constitutions and national laws require States to protect human rights. These requirements apply in the context of LSLBI.

In many countries in Africa, the majority of rural lands are governed by customary tenure regimes. This means that rights to these lands and the resources in them are based mainly on customary tenure regimes and may not be documented. Land laws developed in these countries frequently fail to recognize, document and protect these customary rights. Increasing demand for African agricultural land by domestic and foreign investors as in the case of LSLBI has increased the vulnerability of local people, particularly women, smallholder farmers and pastoralists whose livelihoods depend on access to land, water and forests resources.

The manner in which LSLBI are negotiated and implemented can have implications for the human rights of adjacent communities including rights to land and other resources (such as water and forests), right to food, right to self determination (through lack of prior consultation) and right to development (through loss of livelihood resources). The rights of women, smallholders and subsistence farmers, indigenous peoples, former internally-displaced people and communities dependent on forests, pastoralists and other natural resources are particularly at risk.

The process through which LSLBI are designed and implemented also has implications for the economic, social and environmental outcomes of these investments for surrounding communities. Inclusive, transparent and informed processes are therefore critical in ensuring that LSLBI promote inclusive and sustainable development which is inclusive.

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 customary land rights whether registered or not. All actors have their roles in contributing to the this outcome.

The following principles support the realization of the fundamental principle on respect for human rights.

Principle 1: LSLBI respect the existing, customarily-defined rights of local people and communities to land and land related resources.

This means recognizing the legitimacy of these rights irrespective of whether those rights have been formally registered or not. 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. Investors have the obligation of abiding by local, national and international laws and guidelines to ensure that activities related to their enterprises do not cause harm to communities in any way. On their part, local communities must take the responsibility to seek information and participate in negotiations and decision making regarding LSLBI.

Principle 2: Persons who lose access to or ownership of land and land related resources and benefits due to LSLBI are awarded compensation which is fair and timely in compliance with existing national laws and relevant international instruments.

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 or customary use, whether individual or collective. Where relevant, these stakeholders must be considered equitably for gainful employment without discrimination on the basis of gender or any other consideration. Communities often require support to empower them to negotiate these issues on an equal footing with investors.

Principle 3: Member States establish and maintain a legislative environment and institutional arrangements to govern LSLBI and to protect the rights of relevant stakeholders.

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. This includes legislation and institutions beyond land, such as those related to foreign investment, financial and tax incentives, environmental issues and labor laws, among others.

In addition to instituting such laws, there should also be a mechanism for monitoring and evaluation of enforcements and periodic reporting on effectiveness. Provisions for monitoring evaluation and providing redress are an integral part of the legislative environment. States should ensure that the necessary regulations and institutional arrangements are operationalized. There is also need for States to ensure compliance with such laws and regulations by all parties, including state officials and investors. Parliaments, researchers and civil society have an important contribution to make in identifying and highlighting cases of non-compliance and advocating for redress.

Principle 4: Member States have the responsibility to promote transparency of all parties throughout the investment process.

States should require investors to disclose comprehensive project information in accessible form to parties affected by the LSLBI. This includes information about the identity of the parties involved, including the investor and its 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. There should be a presumption by all parties that results of impact assessment studies and investment contracts should be disclosed. States have a key role in establishing effective institutions to handle such public disclosure and to promote multi-stakeholder involvement in the processes of these institutions.

State agencies and investors should also be required to seek the prior, informed participation of affected communities with respect to all decisions which have consequences for communities.

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 inter-

ests 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.

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

Chapter 3: **LSLBI Contribute to National Plan for Sustainable Agricultural Development**

3

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 LSLBI help to fulfill the host country's development aspirations, it is essential for decisions on types of LSLBI 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.

LSLBI are one, but not the only option for investment in support of agricultural development in Africa. In addition, there are different approaches to designing and implementing LSLBI. Member States have the opportunity to select which LSLBI are best suited to furthering national agricultural strategies. These Guiding Principles can therefore be a useful tool for Member States in assessing the suitability of prospective LSLBI.

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.

The following principles support the realization of the fundamental principle on the importance of LSLBI contributing to the national plan for sustainable agricultural development.

Principle 5: Preferred LSLBI are those which lead to shared prosperity at local and national levels, take issues of inter-generational equity into consideration and do not necessarily require transfers of lands from local communities.

There is a wide range of models for LSLBI 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 leaving them in the same poverty. In addition, shorter to medium length leases are generally more advisable than acquisition in perpetuity.

Smallholder farmers 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. States should prioritize such support to smallholder farmers, pastoralists, forest people and fishing communities even in the context of LSLBI which may involve combinations of different production systems, crops and target markets.

Chapter 4: **Decisions on LSLBI are Based on Good Governance Principles**

4

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.

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. The mandate of the diverse land institutions also need to be harmonized and their respective mandates rationalized.

Although the F&G espouses the principle of decentralisation, 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 highlight the importance of States agencies and investors securing the prior and informed participation and consent of communities in all aspects of LSLBI which can impact the rights and livelihood of communities.

Another priority relates to dualism in land governance systems – statutory and customary. States need to ensure that legal and policy frameworks 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. Similarly, LSLBI can result in conversion of customary lands to commercial lands.

These Guiding Principles also reaffirm the need for good land governance in the context of LSLBI, including through effective land information systems, and participatory land use planning. Land availability, access, dispute resolution, acceptable land uses and disclosure as well as managing potential encumbrances, and 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 acceptability of LSLBI among communities and reduce associated tensions.

The following principles support the realization of the fundamental principle on the importance of good governance in the implementation of LSLBI.

Principle 6: Effective and decentralized land administration systems are a prerequisite for good governance of LSLBI.

Members States can promote good governance of LSLBI by establishing effective and decentralized land administration systems. Such systems facilitate prompt, accessible and non-discriminatory land administration services. Decentralisation also 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 more likely to be used more productively and sustainably and that LSLBI on these lands are more responsive to the priorities of 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. At the same time, there is also need for representative decision-making at community level, to avoid elite capture of decision-making and benefits.

Principle 7: LSLBI do not contribute to unplanned and unregulated conversion of agricultural lands to different 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. In particular, Member States should also ensure that land governance mechanism prevent the unplanned conversion of smallholder customary land to commercial land in order to facilitate LSLBI.

Principle 8: Effective, transparent and well-resourced mechanisms for prevention and settlement of land disputes and corruption contribute to improved governance of LSLBI.

Conflicts frequently occur in the context of LSLBI. States need to ensure provisions for preventing and resolving such disputes. These 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. Domestic dispute resolution mechanisms would be the first forums of choice for before disputes are referred to international arbitration.

Principle 9: Stakeholders affected by LSLBI, communities in particular, are provided sufficient information, consulted on their views prior to finalizing LSLBI agreements and these views taken into consideration.

Improved governance of LSLBI is predicated upon improved land governance. Inclusive stakeholder consultation, participation, and accountability between leaders and citizens. are central to good governance. Good land governance also requires robust land administration institutions to ensure effective adjudication of disputes and transparency. 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 and giving voice to their concerns.

Principle 10: Developing the capacity of communities, in particular, women, to negotiate benefits, compensation and other terms of agreements, with state agencies and investors is a prerequisite for good governance of LSLBI.

Support to communities is required in order to level the playing field and support representative decision-making at community level on the terms of land-based investment, benefits distribution and governance of negative impacts. Support may include capacity building on contract negotiation and contract literacy, including specification of terms and the need for contract formalization. Support may also encompass capacity building on alternative business models and their implications for customary uses, local livelihoods and food security and the scope of possible benefits that might be negotiated. In addition, support may also include facilitation of independent legal counsel for communities.

In most Member States, the need for capacity among state and non-state sectors is likely to be great and varied. There is therefore a need for Member States to undertake a comprehensive assessment of in-country capacity and develop capacity plans to address capacity gaps as the basis for enhancing required capacities for LSLBI. Such plans enable States to identify and focus available resources on priority areas. 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. Capacity building may also be needed for other stakeholders other than communities; government officials involved in negotiating contracts with investors, stakeholders responsible for overseeing the environmental and social impact assessments, and those responsible for monitoring and evaluating investments.

These needs should also be prioritized by governments, including those needs which may fall outside of the land / agricultural sectors but which may be relevant to LSLBI. It is the responsibility of governments to coordinate the efforts of donors, CSOs and other actors to ensure availability of human and financial resources required for capacity building.

Chapter 5: **LSLBI Respect and the Rights of and Benefit Women**

5

Most of the land in Africa is governed by tenure regimes which do not explicitly protect the rights of those who depend on the land, such as women, youth, smallholders and subsistence farmers, indigenous peoples, and communities dependent on forests, grasslands and other natural resources. This makes them vulnerable to dispossession through LSLBI. The situation is particularly deplorable for women who constitute the majority of smallholder farmers in Africa. Gender discrimination in land prevents women from realizing the full benefit from their hard work and it is a constraint on Africa's development in particular the achievement the right to food for all and equitable progress.

LSLBI that do not specifically set out to recognize and improve women's rights to land will inevitably exacerbate gender inequalities thereby compromising progress towards the gender equality aspirations of Member States as detailed under various global, regional and national initiatives. This is because LSLBI lead to competition for land and to commercialization of land. Commercialisation concentrates land in the hands of those who can successfully assert ownership, such as community leaders and male household heads, often to the detriment of poor rural women's access and use rights. Under these conditions women are subjected to exclusionary pressure from male relatives or community members. Decisions over land pass swiftly from women into the hands of men without the participation of women. In cases where compensation is awarded to communities for lost resources, women are less likely to be direct recipients of such awards.

These Guiding Principles seek to promote gender equity in land governance as espoused under the African Union F&G. The following principles support the realization of the fundamental principle on respect for the rights of women and ensuring that LSLBI benefit women.

Principle 11: Promoting gender equality in land governance in national laws is a prerequisite to ensuring that LSLBI promote sustainable development.

Gender equity is established as fundamental to the achievement of sustainable development. Governments will need to recognize the skewed nature of control over resources and access to opportunities against women, and ensure the equal right of women and men to the enjoyment of all human rights, while acknowledging differences between women and men and taking specific measures aimed at accelerating de facto equality when necessary.

Accordingly, Member States should ensure that women and girls' equal tenure rights and access to land, fisheries and forests are clearly protected in national laws independent of the individual's civil and marital status. In the absence of such provisions LSLBI, will almost invariably result in the further marginalisation of women and girls. Such marginalisation would negatively impact aspirations of Member States with respect to sustainable development.

Principle 12: LSLBI observe and respect women's equal rights to own, access, control, and use land as the case may be under different tenure regimes.

Prior to the approval of LSLBI existing rights holders to land and other resources should be identified and these rights respected by officials and investors. Particular attention should be given to rights held by women in the context of prevailing tenure systems, regardless of whether these rights are recognised under statutory laws.

States should also ensure that where LSLBIs are considered, women and girls enjoy equal benefits, including right to gainful employment and enjoyment of labour rights. LSLBI should also not exacerbate women's burden of care, including childcare and family support.

Measures should be taken to facilitate women and girls' informed participation in decision making as regards LSLBI regardless of literacy levels, mobility or other potential barriers.

Principle 13: LSLBI contribute to sustainable development through gender sensitive employment creation and broad-based wealth creation which benefits women.

In most situations, when conditions are suboptimal and opportunities or resources limited, the situation of women is more precarious than that of their male counterparts. This means that as investors in LSLBI need to take the necessary measures to ensure the gender equity

of labor opportunities and working conditions in order to contribute to sustainable development. Measures include awarding opportunities and promotion to male and female employees alike based on abilities and performance rather than stereotypes about “male” and “female” jobs. This could also involve promoting equal opportunities for women to participate in emerging jobs by providing facilities to ensure that female workers’ health, childcare and safety needs are met.

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Chapter 6: **Minimising Risks and Maximizing Benefits of LSLBI**

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.

African States have welcomed LSLBI with the view to accelerating economic development, enhancing agricultural productivity and securing livelihoods. While there is some emerging evidence of communities deriving financial benefits from their involvement in LSLBI, the greater body of evidence points to the fact that LSLBIs have, to date, failed to deliver the anticipated financial and economic benefits. In fact if not well managed, LSLBIs can have negative impacts on livelihoods, biodiversity, nature conservation and ecosystem services including worsening pressure on fragile ecosystems and aggravating competition for access to water. This means that assessing the risks and benefits of prospective LSLBI 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.

African States have used fiscal and non-fiscal incentives to create attractive environments for would-be investors. Fiscal incentives offered to encourage LSLBI include duty exemptions, full or partial tax holidays, or tax rate reductions for specific types of activities. Non-fiscal incentives include allowing of expatriate employment and remittance of profits and other benefits to foreign personnel, access to land at sub-market rates, and a relatively simplified investment processes. Questions have been raised about the appropriateness and sustainability of the nature and extent of incentives offered to investors.

The proliferation of large acquisitions of agricultural lands by investors emanates from the assumption that African countries have abundant, unutilized land. However, research findings indicate that in some African countries showing far more land has been acquired for LSLBI and medium-scale farming enterprises than remains available for investment. This requires States to become increasingly selective in the investments which they approve and to review the sizes of these investments.

Experience has shown investors in LSLBI involved in primary production tend to vertically integrate into the entire chain of agriculture-related business, including seed supply, agro-chemicals, processing, machinery, storage, transport, marketing, etc. This has led to fewer inclusive agricultural development models for local farmers, and, simultaneously, new 'enclaves' and 'closed value-chains' which exclude smallholder producers and processors.

This chapter provides Member States with guidance for a holistic approach to assessing and minimizing risks and to predicting in a realistic manner, benefits from prospective LSLBI. Considerations include appropriate design and assessment before, during and after investment to maximize benefits and reduce negative impacts.

Principle 14: LSLBI are commercially viable and profitable businesses, structured to provide maximum benefit to the national economy and improve the livelihoods of local communities.

Firstly, States need to ensure that LSLBIs are financially and economically 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 must include opportunities for smallholder producers who are at the core of Africa's development, especially where smallholder farmers and/or small-scale businesses are part of the LSLBI business model. LSLBI should neither distort, monopolise local markets nor squeeze out local and smaller businesses.

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, education, health, crime, social misconduct and violence. 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. Member States and investors are encouraged to explore LSLBI models which minimize such impacts while incorporating approaches based on indigenous, community-based, people-empowering models.

Member States should also develop and facilitate the implementation of simple methods for screening investors for the alignment of investment plans with host country policy aspirations. Investors may be evaluated based on attributes such as corporate reputation and experience, inclusiveness of the proposed business model and certification or evidence of compliance with industry standards.

Decisions to offer incentives to investors should be made after careful consideration. Any incentives awarded to investors should make financial and economic sense and not marginalize domestic investors in relation to foreign investors.

In order to maximize benefit the national economy and improve the livelihoods of local communities, investors should contribute to creating employment, training the local workforce, establishing processing industries, transferring appropriate technology and purchasing local goods and services.

Principle 15: Results of rigorous, holistic and independent environmental and social impact assessments of LSLBI are utilized to confirm the desirability of LSLBI prior to their approval.

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

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. The views of affected people and the general public concerned should be given adequate notice to provide comments, and these comments should be duly taken into account before finalization of impact assess-

ment studies. It is in the interests of Member 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. This can be done, for instance, by monitoring of investments throughout their life cycle, but particularly early on, to ensure compliance with the conditions specified within investment documentation and commitments made during community-investor negotiations.

Governments need to enforce the outcomes of environmental impact assessments by investors before and during the life of LSLBI. Assessments should be accompanied by detailed plans to mitigate the identified risks and should consider the investment throughout its entire life period, and should be evaluated in relation to alternative development approaches. Governments should take the necessary steps to ensure capacities to evaluate and enforce the requirements of impact assessments.

Principle 16: The amount of land allocated for an LSLBI project is increased gradually based on the demonstrated capacities of the investor to effectively utilize more land.

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.

Member States and their authorities should ensure that agreements with investors allow for redress in the case of investors who fail to utilize land after it is awarded to them for LSLBI. Member states should also make provisions for facilitating the entry of new investors to LSLBI in the event of original investors failing to fulfil their obligations.

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Chapter 7: **Cooperation, Mutual Accountability M&E**

The poor performance by LSLBI and shortfalls in the benefits anticipated from LSLBI 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 future investments, cooperation and mutually accountability is required between LSLBI, smallholders, host governments and investor governments.

LSLBI are both a national and regional phenomenon. This because while deals concern 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, labour and incentives. There is a real risk that in their efforts to compete with each other to attract investments, Member States can offer increasingly reduced rates to investors, resulting in a 'race to the bottom' scenario. Solidarity between Member States is required for them to use their collective influence to establish acceptable rates and ceilings with respect to these issues to maximize the prospects of acceptance of conditions by investors. Cooperation is also required within countries since LSLBI entail the engagement of other critical sectors beyond land, including finance, planning, forestry etc.

Efforts to review LSLBI to bring them into conformity with the Guiding Principles can also be implemented within the LPI framework for tracking progress on land policy development and implementation. 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 aim to assist Member 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, in particular, women, smallholder farmers and youth.

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 in the context of LSLBI awaiting implementation so as to advise governments, investors, investor governments and other stakeholders, on ways to improve performance and accountability.

Principle 17: Stakeholders in LSLBI at country, regional, continental and international levels demonstrate solidarity, cooperation, collective responsibility and mutual accountability towards the successful implementation of these Guiding Principles.

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.

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 capacity 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.

Principle 18: The AU develops and implements an M&E framework and associated standardized indicators as a tool for lesson learning and ultimately for the improvement of the effectiveness of LSLBI.

It is essential that contracts and/or legislation require 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). 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 for inaction or lack of compliance by 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.

Principle 19: Member States improve benefits and minimize impacts of LSLBI through sharing of experiences across countries, regions and continents.

There is urgent need for peer learning, networking, sharing of lessons relating to LSLBI across countries. This can be achieved through inclusive policy dialogues, and focused trainings across countries guided by a visionary capacity development framework. The AU has the mandate to provide Member States with the required platform to establish an information clearing facility on LSLBI as the basis for such cross country learning. Such a platform would provide 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 Member States to cooperate with other stakeholders, civil society in particular, 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. Again, the AU has the mandate to ensure the emergence and implementation of such a framework.

Chapter 8: **Operationalizing the Guiding Principles**

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By establishing the F&G and adopting the Declaration on Land Issues and Challenges, African leaders and the 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 States have sought to balance the pursuit of the financial proceeds deriving from LSLBI with the need to 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.

8.1 Guiding Principles Only Useful if Operationalized

The Guiding Principles are articulated as a comprehensive, mutually reinforcing framework of principles formed around fundamental principles. These include (i) the need for investments to be informed by and contribute to development strategies and priorities espoused by AU Member 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 (with an emphasis on women) 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, monitoring and review of investments.

Inspired by the knowledge that these Guiding Principles are uniquely African, Member States must now embrace the challenging 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 Guiding Principles. The efforts of Member States in this regard will benefit from a coordinated, regional institutional framework for popularizing, operationalizing and monitoring these Guiding Principles. The F&G of the African Union provides a legitimate platform for establishing the required framework.

8.2 Considerations for Operationalizing the Guiding Principles

The issue of LSLBI extends beyond national borders, requiring collective action from states, non-state actors and the private sector. A solid evidence base, collective learning and solidarity in policy approaches are key enablers for States in their endeavours 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.

The acceptability of LSLBI should be determined, in part, by the extent to which these LSLBI contribute to the national vision for inclusive agricultural growth and development which prioritises the role of smallholder farmers. In this respect, there is need for Member States to review LSLBI 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 governments 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.

8.3 Coherence at Country Level will be Key

Finally, there are several new development frameworks and sources of guidance to Member States which are likely to play a key role in influencing land governance and agricultural development over the coming decade. These include the Sustainable Development Goals (SDGs), the VG and the RAI. Solidarity between Member States will play a critical role in ensuring coherence at country level in the implementation of the Guiding Principles alongside all these other frameworks and sources of guidance.

