



inclusive development international

A Proposal for New World Bank Safeguards on Tenure of Land, Housing and Natural Resources April 2013

Rationale

To communities and societies across the world, land is regarded as an economic, environmental, social, cultural and spiritual resource. The way land - as well as housing and natural resources on the land - is used, controlled, managed and protected affects societies and people's lives in profound and multifaceted ways. For the purposes of this submission, tenure refers to the relationship amongst people and groups with respect to rights and interests in land, housing and natural resources. Tenure systems in a given society govern how these rights are created or determined, allocated and enjoyed, and conversely, the way they are constrained and extinguished.

Forms of tenure and the systems that govern them vary from one society to another since they reflect the particular relationships and rules that have emerged due to specific demographics, geography, cultures and socio-economic systems. Land tenure is deeply influenced by power dynamics within and between households and communities, and between the citizen and the state and global economic forces. People with a weak tenure status are thus often the most vulnerable and marginalized in society; and their vulnerability is exacerbated and reinforced by the lack of recognition, respect and protection of their tenure rights, and their associated inability to access productive resources. Women, in particular, commonly face this cycle of marginalization due to entrenched discrimination in land governance systems.

It is well established that security of tenure for all is a crucial foundation for poverty reduction and the enjoyment of human rights, particularly the right to an adequate standard of living, including the right to adequate housing and the right to food.¹ Security of tenure that confers in land users a degree of confidence that they will not be deprived of their current arrangements without adequate legal safeguards enables families to invest in their homes and livelihoods, and thereby actively contribute to economic development and enjoy its benefits. Equitable tenure systems, that enable all people to have access to and control over an adequate supply of land for their homes, livelihoods and other basic needs, provide another essential underpinning for poverty reduction and inclusive and sustainable

¹ See, Committee on Economic, Social and Cultural Rights, General Comments 4 (1991) and 12 (1999); and "Access to Land and the Right to Food", Report presented to the 65th General Assembly of the United Nations by the Special Rapporteur on the Right to Food (A/65/281), 21 October 2010.

development. Yet without concerted measures to strengthen the tenure rights of poor and marginalized groups and promote equitable tenure systems, development projects can have profoundly detrimental impacts on people's access to land, housing and natural resources, exacerbating inequality and harming the most vulnerable.

As the UN Special Rapporteur on the Right to Adequate Housing has reported to the Human Rights Council, "We are in the grip of a "global tenure insecurity crisis."² The rural poor are increasingly facing contestation over rights to land and natural resources by powerful economic and business interests, and are being dispossessed of their rights to productive land and natural resources at an alarming scale. Meanwhile, as the number of urban inhabitants surpasses the global rural population, the scarcity of affordable city housing and real estate is creating a highly insecure urban underclass facing a constant threat of forced eviction. The pervasive lack of tenure security and increasing inequality in access to and control over land, which manifests most visibly in forced displacement, homelessness and landlessness, ranks among the most serious hurdles to global poverty reduction efforts. These phenomena deepen impoverishment and thwart self-development for hundreds of millions of people.

In recognition of these fundamental truths and challenges, World Bank operations should actively seek to strengthen tenure security for those who experience vulnerability and work to improve access to productive land and other resources for land-poor and landless groups. In doing so, the Bank should recognize that "secure tenure is not a one-size-fits-all concept."³ A variety of tenure forms have the potential to ensure secure, efficient and sustainable access to land, housing and natural resources in different contexts. Thus, while in mainstream development discourse "security of tenure" has become essentially synonymous with registered private ownership, this is in reality only one form of tenure, which may or may not be best suited to securing the rights of a particular group in a given context. The UN Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security call on States to "recognize and respect all legitimate tenure right holders and their rights" whether formally recorded or not.⁴ The Committee on Economic, Social and Cultural Rights affirms that "notwithstanding the form of tenure," the international law obligation with respect to the right to adequate housing is to confer a sufficient degree of tenure security to legally protect people against forced eviction.⁵

The recognition and protection of a "continuum of tenure types"⁶ and the imperative to prioritize the

² Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Raquel Rolnick, A/HRC/22/46, December 2012, page 1.

³ Remy Sietchiping, et al. Monitoring tenure security within the continuum of land rights: Methods and practices, (UN-Habitat), paper prepared for presentation at the Annual World Bank conference on land and poverty, April 2012, page 1.

⁴ The Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, FAO, 2012, 3.1 and 4.4.

⁵ CESCR, General Comment 4, *op. cit.*, para 8.

⁶ Coined by UN Habitat to refer to the range of possible forms of tenure, including formal, religious, customary and non-formal tenure categories. (See UN Habitat, *Secure Land Rights for All*, 2008, pages 7 and 8).

protection of vulnerable groups with tenuous rights under less secure tenure arrangements should be incorporated into the Bank's safeguard policy framework, given the significant impacts of its operations on tenure. Underlying the safeguard measures should be a presumption that people using land and natural resources for their basic housing, subsistence and livelihood needs have valid and justiciable tenure rights, whether or not they formally own these resources.

The Operational Policies on Involuntary Resettlement (OP/BP 4.12), Indigenous Peoples (OP/BP 4.10) and Forests (OP/BP 4.36) cover aspects of land tenure for particular groups that fall within their respective scopes. In addition to the need to strengthen these policies to bring them into accordance with international human rights standards (which is not analyzed in this submission), there are significant gaps in the scope of the current suite of Bank policies in ensuring that Bank operations do not have harmful impacts on tenure rights, arrangements and systems. For example, land administration, zoning and spatial planning projects can jeopardize or weaken the pre-existing range of un-codified tenure rights, diminishing tenure security for affected groups. In particular, land-titling projects can strengthen ownership rights of those that receive title, while weakening the tenure status of those who are denied. Zoning and spatial planning projects can change the tenure status underlying entire areas. Coastal management projects can undermine the tenure rights of fishers. Linear infrastructure projects such as railways or roads that establish rights of way, in some cases only require resettlement of people living in a narrower corridor of impact, but the tenure rights of all households within the newly established right of way are affected. Programs that promote or foster industrial agriculture, including large-scale mono-crop plantations and contract farming, can change the way land and natural resources are used and controlled. In the long-term, this model of agricultural development can transform entire tenure systems, often to the detriment of vulnerable groups and local food security. Current Bank safeguard policies do not sufficiently address these effects on tenure and their economic, social and human rights implications.

Despite the fact that tenure rights and systems are affected in a multitude of ways by Bank operations, current operational policies do not:

- (i) safeguard against the weakening of or interference with a range of tenure rights and arrangements;
- (ii) safeguard against an exacerbation of inequality in access to land, housing and natural resources; and
- (iii) ensure that every effort is made to avoid and address land and natural resource conflict caused or exacerbated by Bank-financed projects.

The Bank should use the opportunity presented by its review and restructuring of its safeguard policy framework to address these significant lacunae. The adoption of new safeguards on tenure that protect and promote the rights to land, housing and natural resources of the most vulnerable will have direct and immediate positive impacts for Bank-financed projects and the potential for catalytic effects on the governance of tenure globally.

Our proposal for new World Bank safeguards on tenure of land, housing and natural resources draws from the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and

Forests, endorsed by the Committee on World Food Security in May 2012, and supported by the Bank⁷ as well as other relevant international law instruments. It is also based on a review of the findings of the Inspection Panel and lessons learned from a number of Bank projects, including the Cambodia: Land Management and Administration Project (2011); the Albania: Integrated Coastal Zone Management and Clean-Up Project (2008); the Honduras: Land Administration Project (2007); and the Papua New Guinea: Smallholder Agriculture Development Project (2011).

Caveat

The proposed safeguard measures on tenure set out below are not comprehensive or exhaustive. We have not set out to write a model policy on tenure, or to make recommendations for strengthening existing policies on *inter alia* Involuntary Resettlement, Indigenous Peoples and Forests, but merely to outline the contours of some new key measures with respect to tenure that should be included in the updated safeguard policy framework. This submission also does not seek to address the significant shortcomings in the implementation of Bank safeguard policies, which are being addressed through recommendations in other civil society submissions. We encourage the Bank to explore and actively seek additional ideas, particularly from community-based organisations, about new Bank policy measures that are needed with respect to tenure and how existing policies and their implementation need to be improved.

Proposed Elements of New Safeguards on Tenure

Objectives

The objectives of the proposed safeguard measures should be to ensure that Bank operations that impact on tenure:

- (i) do not weaken, impede or restrict tenure rights⁸ to land, housing and natural resources in a manner that violates human rights, including the right to adequate housing, the right to food, the right to non-discrimination and the right to equal protection of the law;
- (ii) avoid and minimize the risk of conflict over land and natural resources, and make every effort to address any conflicts that arise from Bank operations;
- (iii) strengthen, secure and prioritize the tenure rights of vulnerable and marginalized people so that they enjoy, at minimum, legal protection against forced eviction and illegitimate use by others of their land and natural resources; and
- (iv) promote more equitable use of, access to and control over land, housing and natural resources, with particular attention to the rights of women.

Scope

⁷ The World Bank Land & Food Security website, <http://go.worldbank.org/S0D96SZZT0>, accessed November 2012.

⁸ We refer here to rights deriving from customary, formal, informal, and extra-legal systems.

The proposed safeguard measures should be applied to any Bank-financed operation that is likely to impact upon the tenure of land, housing and natural resources, including rights and arrangements that derive from customary, formal, informal, and extra-legal systems. The proposed safeguards are closely linked to the Policy on Involuntary Resettlement, which protects project-affected persons who are directly physically or economically displaced as a result of Bank-financed projects. Some of proposed safeguards set out below could be integrated into an updated Policy on Involuntary Resettlement, while others may be integrated into other updated existing policies. Alternatively, some or all of the proposed measures may be better suited to a new standalone policy.

For the purposes of the proposed safeguards “affected persons” include individuals, households, groups and communities whose tenure of land, housing and natural resources is impacted by the Bank-financed project.

Proposed Safeguard Measures

In order to achieve the objectives set out above, any Bank operation that has the potential to impact upon tenure rights, arrangements or systems should trigger the following safeguards:

1. **An assessment and political economy analysis of:**

- a) **The borrower country’s legal, policy and institutional framework governing tenure (including customary and traditional law), gaps and weaknesses, if any, between them and these safeguard measures and international obligations, and the mechanisms required to bridge such gaps to give effect to the objectives of these safeguard measures.** If affected persons include communities whose tenure is governed by customary systems, the customary laws, clan structures, lineage systems, and decision-making processes need to be understood, recorded and recognized in the design of the project and project-specific safeguard measures.⁹
- b) **The ability of potentially affected persons to access the court system or alternative dispute resolution mechanisms and use them effectively to defend their tenure rights and interests, including against the State.**
- c) **Whether tenure systems and laws discriminate against women or other marginalized groups, and measures needed to reverse this discrimination, which should be explored in cooperation with the community, and particularly the marginalized group.**
- d) **Any other contextual information needed to inform the project design in order to meet the objectives of these safeguard measures.**

Within this context, the assessment should then examine:

- a) **How the proposed operation could impact on existing tenure systems, rights and arrangements, and particularly less secure forms of tenure not fully recognized or protected by law or in practice.**

⁹ Noting that if the affected persons are indigenous peoples, OP 4.10 applies.

- b) **How the proposed operation could impact on people's access to, use of and control over land, housing and natural resources.**
- c) **The potential for the instigation or exacerbation of conflict over land or natural resources due to the proposed operation.**
- d) **The implications of these impacts for the enjoyment of human rights, including the rights to housing, food, non-discrimination and equal protection of the law.** This will require an examination of current land use patterns in the project area and how they support livelihoods, housing, food security and other aspects of household and community life. It will also require a **screening for vulnerable and marginalized groups** whose existing tenure systems, rights or arrangements could be weakened, infringed or restricted by the proposed operation. The particular impacts on women's tenure rights and arrangements should be assessed, including through an identification of obstacles faced by women and girls in claiming secure tenure rights to land, housing and natural resources.
- e) **Alternative project designs and options, including a "no project option", to ensure that potential adverse impacts on tenure of housing, land and natural resources are avoided and minimized to the fullest extent possible. The exploration of alternative project designs should also seek to strengthen the tenure security of vulnerable and marginalized groups and promote more equitable use of, access to and control over land, housing and natural resources.** The "no project option" should be given serious consideration where there is a high-risk of conflict over land and natural resources or that the objectives of these safeguard measures will otherwise not be met. The assessment should be based on the views of a variety of stakeholders, with meaningful opportunities provided to expected affected persons to propose alternatives.

The decision to proceed with the project and the design of the proposed project should reflect the findings of these assessments in order to meet the objectives of these safeguard measures. The findings of the assessments and analysis should be made public.

2. **Meaningful consultation and active participation of affected persons about the proposed operation; its design and its implementation strategy; potential adverse impacts on tenure; and proposed safeguards to protect against adverse impacts, strengthen tenure rights and improve equitable access to land, housing and natural resources.** Affected people should have opportunities to actively participate from the earliest stages of the project so that they can set priorities, contribute ideas, express concerns and influence decision-making from the outset. The findings of the assessments undertaken should be made available in a form accessible to affected persons to inform their active participation. In line with the Voluntary Guidelines on the Responsible Governance of Tenure, the process of consultation should be understood as "engaging with and seeking the support of those who [...] could be affected by decisions, prior to decisions being taken, and responding to their contributions; taking into consideration existing power imbalances between different parties and ensuring active, free, effective, meaningful and informed

participation of individuals and groups in associated decision-making processes.”¹⁰ Particular efforts should be made to ensure that women are able to actively participate in and contribute to consultation processes and that their views are taken into account. Any proposed operation that affects the tenure of indigenous peoples¹¹ must, in addition to the full range of other safeguard measures, respect their right to give or withhold their free, prior and informed consent.¹²

3. **Participatory and transparent identification and recording of all existing forms of tenure, including tenancy and subsidiary use and access rights, within the project’s area of influence. This measure is necessary where, during the tenure assessment and screening, groups are identified whose existing tenure rights or arrangements could potentially be weakened, infringed or restricted by the proposed operation.** Particular care should be taken to record the tenure forms of vulnerable groups in the area whose tenure situations are not recognized or protected by law or in practice. For some operations it will be necessary to undertake a full surveying, mapping and recording process of the tenure rights of individual affected persons, households and groups (rather than just the various forms of tenure) in order to meet the objectives of these safeguard measures. The recording and mapping process should be gender-sensitive and special care should be taken to record the tenure arrangements enjoyed by women, including subsidiary access and use rights. The recording system should be simple, clear, accessible and non-discriminatory, and the map and/or record produced should be made publicly available in a manner suitable to interested parties, including in appropriate languages. People should have a reasonable opportunity and sufficient time to contest, clarify or query recorded tenure rights and arrangements through an appropriate adjudication and review process.
4. **An action plan for the conferral of legal security for the range of existing forms of tenure and, in cases in which it is necessary to meet the objectives of these safeguard measures, the legal recognition of the tenure rights of each affected person, household or community.**¹³ The process should be transparent, participatory, gender-sensitive and confer on a non-discriminatory basis a sufficient degree of tenure security to provide legal protection against forced eviction and

¹⁰ The Voluntary Guidelines, op. cit., 5.

¹¹ The identification of indigenous peoples should reflect OP 4.10, which states: “Because of the varied and changing contexts in which Indigenous Peoples live and because there is no universally accepted definition of “Indigenous Peoples,” this policy does not define the term. Indigenous Peoples may be referred to in different countries by such terms as “indigenous ethnic minorities,” “aboriginals,” “hill tribes,” “minority nationalities,” “scheduled tribes,” or “tribal groups. For purposes of this policy, the term “Indigenous Peoples” is used in a generic sense to refer to a distinct, vulnerable, social and cultural group possessing” a number of “characteristics in varying degrees.” One of these characteristics is a “collective attachment to geographically distinct habitats or ancestral territories in the project area and to the natural resources in these habitats and territories” (paras. 3 and 4).

¹² United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), article 32. The Indigenous Peoples Policy also applies but should be strengthened to reflect rights recognized under UNDRIP. (On FPIC, see Report of the Special Rapporteur on the Rights of Indigenous Peoples, James Anaya, A/HRC/21/47, July 2012.)

¹³ Note that OP 4.10 similarly requires the Indigenous Peoples Plan to set forth an action plan for the legal recognition of ownership, occupation and usage of their traditional lands and territories for certain projects.

arbitrary and unlawful interference with tenure rights.¹⁴ Depending on the circumstances, an enforceable moratorium on eviction of affected persons may be sufficient. For example, during the implementation of a nation-wide systematic land administration project, a moratorium on eviction of any household or community until their tenure rights are adjudicated would be an appropriate safeguard measure.¹⁵ In other situations, in which a limited group is affected in a particular way, such as a project that establishes a right of way but only removes people in a narrower corridor of impact, the tenure rights of each affected household or community remaining may need to be legally recognized and secured. This can occur through a variety of possible means, such as enforceable contracts including leases or usufruct agreements, the conferral of titles,¹⁶ occupancy, access or use licenses or certificates, establishing community land trusts or cooperatives, or any other contextually appropriate means that provides security of tenure. In some cases, it will be necessary to update, clarify and affirm tenure rights, rather than recognize or grant them. **The conferral of tenure security should only be denied in lawful and non-arbitrary circumstances after the consideration of all feasible alternatives and solely for the purpose of promoting the general welfare consistent with international human rights obligations.**¹⁷

- 5. The means used to confer legal tenure security should, to the fullest extent possible, be based on tenure systems that are familiar to affected persons and locally legitimate as well as legally valid.** In the case of indigenous peoples' land tenure, legal recognition and protection of their lands, territories and resources should be conferred in a manner that gives due respect to the customs, traditions and land tenure systems of the peoples concerned (subject to the rights of women and other marginalized groups to non-discrimination and equal treatment under the law) and respects their right to give or withhold their free, prior and informed consent.¹⁸ Under no circumstances should a tenure system, such as a system of individual ownership, be directly or indirectly imposed on communities who oppose it and whose customary or pre-existing tenure rules, rights and arrangements are inconsistent with it. "Opt out" options may not be enough to

¹⁴ See International Covenant on Civil and Political Rights (1966), Article 17(1); CESCR, General Comment 4, *op. cit.*, para 9; and Report of the Special Rapporteur on adequate housing, Miloon Kothari, A/HRC/4/18, February 2007, Annex 1: UN Basic Principles and Guidelines on Development-based Evictions and Displacement, para 13.

¹⁵ Noting that the land administration project would be designed to provide security of tenure across the continuum of tenure rights and arrangements, prioritizing vulnerable persons, households and communities, as required by the policy objectives and safeguard 1. A human rights-compliant resettlement policy also needs to be in place and triggered whenever tenure rights are denied, revoked or restricted through the adjudication process (see safeguard 8).

¹⁶ The Bank should be mindful however that titling on a small scale can be open to abuse by power-holders and can distort land and housing markets through sudden hikes in land values, indirectly resulting in displacement and landlessness.

¹⁷ International Covenant on Economic, Social and Cultural Rights (1966), Article 4. See also Report of the Special Rapporteur on Adequate Housing, Miloon Kothari, *op. cit.*, para 21(c).

¹⁸ UNDRIP, *op. cit.*, article 26(3) and 32. The Indigenous Peoples Policy paragraphs 16 and 17 also apply but should be strengthened to reflect rights recognized under UNDRIP.

avoid an indirect imposition of a tenure system.¹⁹ Full legal protection of the existing tenure right and/or system should be conferred in such cases;

6. **Measures to promote and secure women’s tenure rights regardless of their marital, civil or social status with the aim of achieving non-discrimination and gender equality in land tenure systems.** The tenure forms enjoyed by women, including subsidiary access and use rights, should be included in the tenure mapping process. Measures should be taken to elevate the tenure rights of female household and community members during processes to confer legal security of tenure. Legislative or policy reform initiatives should incorporate a prohibition of discrimination against women and girls and aim to ensure that women and men enjoy equal tenure rights.
7. **The application of the Involuntary Resettlement Policy to protect persons whose tenure rights or arrangements are denied, revoked or restricted as a result of the Bank-assisted project and are thus subject to displacement.**²⁰ This should be understood as broadening the scope of the Involuntary Resettlement Policy to the extent necessary to give effect to the proposed land tenure policy. In the case of affected persons whose access, use or passage rights to land or other resources that they rely upon are restricted, the Involuntary Resettlement Policy provisions on involuntary restriction of access should apply, noting, however, that the Involuntary Resettlement Policy scope should be expanded to include restrictions on access to any project-affected areas upon which people depend (not just “legally designated parks and protected areas”).²¹ The current Involuntary Resettlement Policy, however, needs to be significantly strengthened in accordance with international human rights standards.²² In cases in which tenure rights are weakened or temporally limited, for example, because of the creation of rights of way and planned future expansions of the project, anticipated displacement should be safeguarded through the development of a Resettlement Policy Framework or a Process Framework. The obligation to apply the framework(s), consistent with the Involuntary Resettlement Policy, should be included as a term in the credit agreement between the Bank and the borrower government. This should apply regardless of the source of financing for future activities that result in displacement, as long as it is directly and significantly related to the Bank-assisted project.
8. **The establishment, where one does not already exist, of a local rule-bound, impartial, fair and competent land dispute resolution mechanism, which is socially and culturally**

¹⁹ For example, the right to opt-out of a individualized titling system without other measures in place to protect the tenure security of people and communities living under other types of tenure arrangements may have the unintended affect of weakening their tenure security, and may indirectly compel them to adapt their tenure systems to conform with the dominant imposed one.

²⁰ Noting that OP 4.12, footnote 8 states that the Involuntary Resettlement Policy does not apply to disputes between private parties in land titling projects.

²¹ OP 4.12, paragraphs 3 (b); 7; 17(c); and 31.

²² Inclusive Development International (IDI) and other groups are submitting a separate set of comments and recommendations to bring OP/BP 4.12 into line with international human rights standards and best practice.

appropriate,²³ for any project that involves the adjudication and determination of tenure rights or may otherwise cause or exacerbate conflict over land and natural resources. The dispute resolution mechanism should be legitimate, accessible, predictable, equitable, transparent, human rights-compatible,²⁴ and operate on the basis of non-discrimination, including against women. If necessary to meet the objectives of these safeguard measures, the project should ensure that affected poor and vulnerable groups have access to legal assistance. Other possible strategies to mitigate potential conflicts over land in the particular circumstances should be explored in consultation with affected persons and other stakeholders. Strategies that are identified as feasible and likely to be effective, taking into account power imbalances between various parties, should be put in place;

- 9. Measures to ensure that tenure rights of poor and vulnerable groups are not weakened or jeopardized due to the introduction or enforcement of administrative or legal rules that are overly complex, onerous or expensive to fulfill, including with respect to land registration and transfer fees, and land use and development restrictions, standards or requirements;**

- 10. Other measures required to ensure that agricultural and other development operations, including those that support the development of laws and policies, do not infringe the tenure rights and arrangements of people and communities with land and natural resource-based livelihoods, including smallholder food producers, fisher folk, herders and forest dwellers.** These land and natural resource users should be the primary beneficiaries of any such project, including through the strengthening of their tenure security and increasing their access to productive resources. Under no circumstances should the Bank support land investments or acquisitions that do not comply with these safeguards²⁵ or which reduce the availability of productive land, water or other natural resources for smallholder food producers and pastoralists to the detriment of their welfare and national food security. Specific safeguard measures will need to be designed and established as part of the Bank-financed project on the basis of the impact assessments and consultations. However, they should include the following:
 - a) For projects that encourage external private investments that do not have a public purpose,²⁶ such measures should include the development of regulations that require

²³ For example, customary elders and traditional or locally recognized dispute mediators should be called upon to give local legitimacy to the dispute resolution process.

²⁴ Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, A/HRC/17/31, March 2011, Annex: Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework, para 31.

²⁵ The Bank has made a commitment to refrain from supporting “speculative land investments or acquisitions which take advantage of weak institutions in developing countries or which disregard principles of responsible agricultural investment” and recognizes the need for “appropriate safeguards and inclusion of small holders and communities as beneficiaries.” (The World Bank, Land & Food Security, available at <<http://go.worldbank.org/S0D96SZT0>>). This commitment and recognition needs to be reflected in binding operational policy.

²⁶ For any project provisionally determined to have a public purpose, its public value should be affirmed through a democratic process, including through consultations with expected beneficiaries, expected affected persons and other stakeholders about the development priorities, with an emphasis on poor and marginalized groups.

potential investors to demonstrate, through a publicly disclosed account of their due diligence,²⁷ how their project will respect the pre-existing tenure rights, including subsidiary use and access rights, of land users in the vicinity of the area, as a condition for approval of the investment. Regulated processes for full information disclosure and the transparent negotiation of agreements regarding any interference with or transfers of existing rights should be established. The aim of these safeguards should be to create a balanced playing field between investors and affected people, with fair conditions for free and informed negotiations, including the right of affected people to give or withhold consent to any transfer or interference with their tenure rights.²⁸

- b) For projects that incentivize cash crop farming, including contract farming or out-grower schemes, safeguard measures should include a requirement for full disclosure in accessible language(s) of information and explanations about the process, benefits and possible short and long term risks involved in farming the crop and the terms of any contracts that smallholders would be required to sign with companies. The contract terms should be clear and equitable, especially in relation to land transfers and debt terms. Safeguard measures should also include support to smallholder farmers in negotiating the terms of the contracts and processes for monitoring compliance by companies with contract terms. There should also be complementary incentives and support to diversify crops and livelihoods, including, for example, by maintaining a proportion of land sufficient for a subsistence food garden. Measures must also be taken to safeguard against the loss of land used as collateral for loans or the upfront supply of seeds, fertilizers and other inputs on credit in connection with contract farming or other incentivized agricultural practices.

²⁷ For an explanation of human rights due diligence obligations of businesses, see, UN Guiding Principles on Business and Human Rights, *op. cit.*, paragraph 17.

²⁸ Any development project, whether or not it has a public purpose, that affects the tenure of indigenous peoples must respect their right to give or withhold their free, prior and informed consent (as stated in safeguard 2).