

# Africa Agriculture and Trade Investment Fund (AATIF, the Fund)

## Preface to the Social & Environmental Safeguard Guidelines



### **Background:**

The Social & Environmental Safeguard Guidelines of the Fund represent the essential basis for AATIF's mission. When seeking to combine economic viability with social and environmental success, following these Guidelines is one of the stipulations and pre-conditions to receiving AATIF funding for all Partner Institutions and always forms part of the legal documentation.

However, the Fund acknowledges that the establishment of a SEMS and the complete compliance with all seven specific subsets of the AATIF Social & Environmental Safeguard Guidelines may not be reasonably expected from Partner Institutions immediately upon entering into an AATIF transaction. It should therefore be considered an ambition that the Fund and its partners undertake to strive towards.

### **Application of the Guidelines Pre-Closing of Transactions:**

Irrespective of that ambition, the Board of Directors will ask the Compliance Advisor and the Investment Manager to undertake all reasonable efforts to identify material breaches (red flags) before AATIF enters into any legally binding agreement. The Board further expects that Partner Institutions will be required to adhere to a specific action plan that includes dates by which these clients undertake to bringing their operations in compliance with minimum criteria determined by the Investment Committee as part of approving the investment proposal. In order to make that decision, the Investment Committee will be supplied a list of social and environmental covenants that the Investment Manager and the Compliance Advisor consider necessary for such minimum compliance with the Guidelines.

### **Application of the Guidelines Post-Closing of Transactions:**

Following the closing of a transaction, similarly to a variety of other development finance actors, namely the International Finance Corporation, the AATIF Board of Directors and its Investment Committee, in applying the Guidelines, will consider a balanced and substance over form approach that is based on a variety of risk considerations. Therefore, when considering actions against Partner Institutions that are deemed to be in breach of the Guidelines by the Investment Manager and/or the Compliance Advisor, the Board of Directors expects the Investment Committee and the Investment Manager to consider the economic, environmental and social risks of staying in the transaction against the rewards of helping the affected Partner Institution to transform its operations into compliance with the Guidelines for the benefit of the affected communities.

# Africa Agriculture and Trade Investment Fund (AATIF, the Fund) Investment Guidelines



## Section 2 Part B Social & Environmental Safeguard Guidelines

### A. Purpose and Exposé

1. This document is consistent with section 4.2.10 of the Issue Document and represents Part B of the Fund's S&E Safeguard Guidelines, also referred to as the Partner Institution-level Social and Environmental Management System ("PI-SEMS"). A separate document focuses on the level of the Fund and is referred to as Part A ("Fund-SEMS").
2. Chapters 1–8 of Section 2 Part B establish standards that the PIs are to meet throughout the life of an investment supported by AATIF including:
  - Chapter 1: Social and Environmental Assessment and Management System (SEMS)
  - Chapter 2: Labor and Working Conditions
  - Chapter 3: Pollution Prevention and Abatement
  - Chapter 4: Community Health, Safety and Security
  - Chapter 5: Land Acquisition and Involuntary Resettlement
  - Chapter 6: Biodiversity Conservation and Sustainable Natural Resource Management
  - Chapter 7: Indigenous Peoples
  - Chapter 8: Cultural Heritage
3. Chapter 1 describes the Fund's classification matrix for the scope of a PIs social and environmental risk management, the different sets of requirements to be fulfilled by PIs according to such categorization and thereby establishes the importance of: (i) integrated assessments to identify social and environmental impacts, risks, and opportunities of investments; (ii) effective community engagement through public disclosure of investment-related information and consultation with local communities on matters that directly affect them; and the PI's management of social and environmental performance throughout the life of the investment. This engagement to be extended to the entire project area of influence so that all relevant stakeholders (including the Most Affected Persons, MAPs) are comprehensively consulted and their views taken into consideration when analyzing the impacts and possible mitigation measures. This will result in a well-informed Social and Environment Management and Monitoring Plan (SEMMP).
4. Chapters 2 through 8 establish requirements with regard to impacts on people and the environment, and to improve conditions where appropriate. They are derived from the Multilateral Investment Guarantee Agency's (MIGA) Policy on Social & Environmental Sustainability and have been enriched with input from ILO and UNEP. While all relevant social and environmental risks and potential impacts should be considered as part of the assessment, Chapters 2 through 8 also describe potential social and environmental impacts that require particular attention. Where social or environmental impacts are anticipated, the Fund will establish in its due diligence and monitoring of its investments that the PI has adequately assessed and managed related issues through its SEMS consistent with Chapter 1 of this document. In addition PIs must comply with applicable national laws, including those laws implementing host country obligations under international law. The requirement to comply with all applicable national laws is incorporated in the Fund's standard contracts.

## B. Definitions

As used herein, the following term shall have the meaning:

**Partner Institution:** An institution or a company to which the Fund is providing financing including:

- Financial Institutions (FIs) embracing local commercial banks, and other financial institutions that operate in any of the Target Countries and either finance or are committed to financing investments of the Final Beneficiaries
- Intermediary Investee Companies (IICs), which operate in any of the Target Countries and as the case may be, act as financial intermediary in their value chain, including but not limited to producing and processing agribusiness companies and agricultural off-takers that are on-lending to final beneficiaries,
- Direct Investee Companies (DICs) in the Target Countries, being natural or legal persons and notably comprising entrepreneurs, agribusiness companies, producer cooperatives, small, medium and large sized farmers and export-oriented producers in the agricultural, manufacturing and services sectors

## Chapter 1.

# Partner Institution Social and Environmental Assessment and Management System (PI-SEMS)

### Scope and Objectives

Each PI will be required to establish a SEMS appropriate to the nature and scale of the investment and commensurate with the level of social and environmental risks and impacts pursuing the following objectives:

- Identify and assess social and environment impacts, both adverse and beneficial, in the investment's area of influence
- Avoid, or where avoidance is not possible, minimize, mitigate, or compensate for adverse impacts on workers, affected communities, and the environment
- Ensure that affected communities are appropriately engaged on issues that could potentially affect them

### The Fund's classification matrix for the scope of the PIs SEMS

1. The Fund to comply with the Fund-SEMS will examine the type, location, sensitivity and scale of the proposed investment,<sup>1</sup> as well as the nature and magnitude of its potential impacts. Subsequently, the Fund will classify the proposed investment into one of the following categories determining the scope of each PI's SEMS:

Category	Description	Eligibility of investments and SEMS requirement
Category A	A Proposed Investment is classified as Category A if it is likely to have significant adverse social and environmental impacts that are sensitive, <sup>2</sup> diverse, or unprecedented. These impacts may affect an area broader than the sites or facilities subject to the investment.	<b>An investment classified Category A will not qualify for Fund financing.</b> Appropriate legal covenants will be included in the investment agreements to ensure that the PI is responsible to undertake all remedies in line with this guideline to address the adverse impacts reflected in a downgrading of an existing investment to category A.
Category B	A Proposed Investment is classified as Category B if its potential adverse social and environmental impacts on human populations or environmentally important areas including wetlands, forests, grasslands, and other natural habitats are less adverse than those of Category A investments. These impacts are site-specific; few if any of them are irreversible; and in most cases mitigation measures can be put in place more readily than for Category A investments.	<b>An investment classified Category B will require the PI to deliver a Social and Environmental Assessment including follow up actions as necessary</b> (see Chapter 1, Paragraph 2–22 below) examining the investment's potential negative and positive social and environmental impacts and recommending any measures needed to prevent, minimize, mitigate, or compensate for adverse impacts while improving social and environmental performance.
Category C	A Proposed Investment is classified as Category C if it is likely to have minimal or no adverse social and environmental impacts or to have the potential to enhance social and environmental management.	<b>Beyond screening the investment according to the AATIF S&amp;E Standards no further SEMS action is required for a Category C investment.</b> However, the IM will monitor the investment on an on-going basis for compliance with such standards.
Category F	A Proposed Investment is classified as Category F if it involves investments through Financial Institutions (FIs) and/or Intermediary Investee Companies (IICs), in sub-investments that may result in adverse environmental impacts. Sub-investments are made through debt, equity or guarantee instruments to eligible enterprises and individuals.	<b>An investment classified Category F will require the PI to establish its own in-house Social and Environmental Management System</b> at the minimum in relation to the Funds' investment. Such System shall include policies, and monitoring procedures, dedicated resources, reporting and record keeping requirements and adequately reflect the AATIF S&E Standards. The PI shall at least be able to comply with the requirements as set out in Chapter 1, Paragraph 23–24.

**Note: The Fund will not finance directly or indirectly any investment involving involuntary resettlement or legally protected areas.**

<sup>1</sup> "Location" refers to proximity to or encroachment on important areas, such as wetlands, forests, and other natural habitats. "Scale" is judged by the FM in a country context. "Sensitivity" refers to investments that may have irreversible impacts, affect vulnerable ethnic minorities, involve involuntary resettlement, or affect physical cultural resources.

<sup>2</sup> A potential impact is considered "sensitive" if it may be irreversible (e.g., lead to loss of a major natural habitat) or raise issues related to Natural Habitats; Indigenous Peoples; Physical Cultural Resources or Involuntary Resettlement.

## Requirements for Category B Investments

2. PIs whose activities have been categorized by the Fund as Category B investments and former Category F, B or C investments reclassified into Category A post investment implementation will be required to deliver and demonstrate:
  - Social and Environmental Assessment (SEA)
  - Social and Environmental Mitigation and Monitoring Plan (SEMMP)
  - Organization and Training;
  - Community Engagement;
  - Monitoring and Reporting.

## Social and Environmental Assessment (SEA)

3. The PI will conduct a SEA that will consider the potential social and environmental (including labor, health, and safety) risks and impacts of the investment for example on groups disproportionately affected by the investment because of their vulnerable status<sup>3</sup>. The SEA will thereby consider the issues identified in Chapters 2 through 8, and those who will be affected by such risks and impacts. The SEA shall incorporate environmental sustainability to ensure viability of the project and allow the PI to address long-term impacts and benefits. The SEA process will be based on current information, including an accurate investment description, and available relevant social and environmental baseline data. Inclusive stakeholder mapping and consultation shall ensure that all relevant views are obtained during the SEA. Applicable laws and regulations of the jurisdictions in which the investment operates that pertain to social and environmental matters, including those laws implementing host country obligations under international law, will be taken into account. The SEA report shall be submitted to AATIF together with approval certificates of National Environmental Management Authorities (NEMAs) or Environmental Protection Agencies (EPAs).
4. When the investment involves existing business activities, social and/or environmental audits may need to be performed to determine any areas of concern. The types of issues, risks and impacts to be assessed, and the scope of the community engagement can also vary considerably, depending on the nature of the investment, and its size, location, and stage of development.
5. Risks and impacts will be analyzed for the key stages of the investment cycle, including construction, operations, and decommissioning or closure. Where relevant, the SEA will also consider the role and capacity of third parties (such as local and national governments, contractors and suppliers), to the extent that they pose a risk to the investment, recognizing that the PI should address these risks and impacts commensurate to the PI's control and influence over the third party actions. The impacts associated with supply chains will be considered where the resource utilized by the investment is ecologically sensitive, or in cases where low labor cost is a factor in the competitiveness of the item supplied. The SEA will also consider potential transboundary effects, such as pollution of air, or use or pollution of international waterways, as well as global impacts, such as the emission of greenhouse gasses.
6. Risks and impacts will be analyzed in the context of the investment's area of influence. This area of influence encompasses, as appropriate: (i) the primary investment site(s) and related facilities that the PI (including its contractors) develops or controls (canals, tunnels, relocation and access roads, borrow and disposal areas, construction camps); (ii) associated facilities that are not funded as part of the investment (funding may be provided separately by the PI or by third parties including the government), and whose viability and existence depend exclusively on the investment, and whose goods or services are essential for the successful operation of the investment; and (iii) areas potentially impacted by cumulative impacts from further planned development of the investment, any existing investment or condition, and other investment-related developments that are realistically defined at the time the SEA is undertaken. The area of influence does not include potential impacts that would occur without the investment or independently of the investment.

<sup>3</sup> This status may stem from an individual's or group's race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. The Partner Institution should also consider factors such as gender, ethnicity, culture, sickness, physical or mental disability, poverty or economic disadvantage, and dependence on unique natural resources.

7. Depending on the type of investment and the nature and magnitude of its risks and impacts, the SEA may have to comprise a more extensive and full-scale social and environmental impact assessment conducted by a qualified and experienced external third party (for example in case a former Category F, B or C investment has been reclassified by the Fund into Category A post investment implementation). This assessment shall seek to include an examination of technically and financially feasible alternatives to the source of such impacts, and documentation of the rationale for selecting the particular course of action proposed. In exceptional circumstances, a regional, sectoral or strategic assessment may be required.
8. For the avoidance of doubt, such additional requirements may only be necessary for more complex Category B investments (or former Category F, B or C investments that have been reclassified by the Fund into Category A post investment implementation). The typical Category B investment featuring limited impacts that are few in number, generally site-specific, largely reversible, and readily addressed through mitigation measures will require a limited or focused environmental or social assessment, or straightforward application of environmental siting, pollution standards, design criteria, or construction standards.
9. The SEA will be an adequate, accurate, and objective evaluation and presentation of the issues, prepared by qualified and experienced persons. The AATIF's PIs may be required to retain external experts to assist in the SEA process or may voluntarily decide to engage a third party (e.g. consultation firm) to conduct a SEA on its behalf.

### Social and Environmental Mitigation and Monitoring Plan

10. Taking into account the relevant findings of the SEA and the result of consultation with affected communities, the PI will establish and manage a Social and Environmental Mitigation and Monitoring Plan of mitigation and performance improvement measures and actions that address the identified risks and impacts.
11. The Social and Environmental Mitigation and Monitoring Plan may apply broadly across the PI's organization, or to specific sites, facilities, or activities. The measures and actions to address identified impacts and risks will favor the avoidance and prevention of impacts over minimization, mitigation, or compensation, wherever technically and financially feasible. Where risks and impacts cannot be avoided or prevented, mitigation measures and actions will be identified so that the investment operates in compliance with applicable laws and regulations, and meets the requirements of these guidelines. The level of detail and complexity of this program and the priority of the identified measures and actions will be commensurate with the investment's risks and impacts.
12. The Social and Environmental Mitigation and Monitoring Plan will define desired outcomes as measurable events to the extent possible, with elements such as performance indicators, targets, or acceptance criteria that can be tracked over defined time periods, and with estimates of the resources and responsibilities for implementation. Recognizing the dynamic nature of the investment development and implementation process, the program will be responsive to changes in investment circumstances, unforeseen events, and the results of monitoring.
13. The Social and Environmental Mitigation and Monitoring Plan will reflect the outcomes of consultation on social and environmental risks and adverse impacts. The Plan may range from a brief description of routine mitigation measures to a series of specific plans.<sup>4</sup> The Plan will: (i) describe the actions necessary to implement the mitigation measures to be undertaken; (ii) prioritize these actions; (iii) include the time-line for their implementation; (iv) be disclosed to the affected communities; and (v) describe the schedule and mechanism for external reporting.

### Organization and Training

14. The PI will establish as necessary an organizational structure that defines roles, responsibilities, and authority to implement the Social and Environmental Mitigation and Monitoring Plan. The PI will train or arrange to train employees and contractors with direct responsibility for activities relevant to the investment's social and environmental performance so that they have the knowledge and skills necessary to perform their work, including current knowledge of the host country's regulatory requirements and the applicable requirements under these guidelines.

<sup>4</sup> For example, Resettlement Action Plans, Biodiversity Action Plans, Hazardous Materials Management Plans, Emergency Preparedness and Response Plans, Community Health and Safety Plans, and Indigenous Peoples Development Plans.

## Community Engagement

15. When local communities may be affected by risks or adverse impacts from an investment, the engagement process will include consultation with them. The nature and frequency of engagement will reflect the investment's risks to and adverse impacts on the affected communities.
16. Disclosure of relevant investment information helps affected communities understand the risks, impacts and opportunities of the investment. The PI will therefore publicly disclose the SEA document. If the PI objects to the Fund's releasing an SEA report, the investment proposal will generally be rejected. If communities may be affected by risks or adverse impacts from the project, the PI will provide such communities with access to information on the purpose, nature and scale of the project, the duration of proposed project activities, and any risks to and potential impacts on such communities.
17. If affected communities are subject to risks or adverse impacts from an investment, the PI will undertake consultation to provide the affected communities with opportunities to express their views on investment risks, impacts, and mitigation measures, and allows the PI to consider and respond to them. Effective consultation: (i) should be based on the prior disclosure of relevant and adequate information in a form and language that are understandable and accessible to the groups being consulted, (ii) will focus on the social and environmental risks and adverse impacts, and the proposed measures and actions to address these; and (iii) will be carried out on an ongoing basis as risks and impacts arise.
18. For investments with significant adverse impacts on affected communities, the consultation process will ensure their free consultation and facilitate participation. The PI will document the process, in particular the measures taken to avoid or minimize risks to and adverse impacts on the affected communities.
19. If the PI anticipates ongoing risks to or adverse impacts on affected communities, the PI will establish a grievance mechanism to receive and facilitate resolution of the affected communities' concerns and grievances about the PI's environmental and social performance.

## Monitoring and Reporting

20. The PI will establish procedures to monitor and measure the effectiveness of the Social and Environmental Mitigation and Monitoring Plan. In addition to recording information to track performance and establishing relevant operational controls, the PI should use inspections and audits, where relevant, and include dialogue with workers and their representatives on the findings of inspections and audits on progress towards the desired outcomes to verify compliance and progress toward the desired outcomes. The extent of monitoring should be commensurate with the investment's risks and impacts and with the investment's compliance requirements. The PI will document monitoring results, and identify and reflect the necessary corrective and preventive actions.
21. Senior management in the PI organization will undertake periodic assessments of the effectiveness of the Social and Environmental Mitigation and Monitoring Plan, based on systematic data collection and analysis, and report findings to AATIF. The scope and frequency of reporting will depend upon the nature and scope of the activities identified and undertaken in accordance with the PI's Social and Environmental Mitigation and Monitoring Plan.
22. The PI will disclose the Social and Environmental Mitigation and Monitoring Plan to the affected communities and provide periodic reports that describe progress with implementation of the Social and Environmental Mitigation and Monitoring Plan in a format accessible to the affected communities. The frequency of these reports will be proportionate to the concerns of affected communities but not less than annually.

### Requirements for Category F Investments

23. A Category F PI shall at least be able to demonstrate to the Fund:

- Proactive and communicative management regarding environmental and social issues – Communication of environmental and social guidelines within the organization (e.g. training, workshops).
- Sub-investments (Portfolio) analysis: Ability of a FI/IIC to conduct an analysis of social or environmental risks on lending operations related to the Fund's investment.
- Requirements for sub-investments: Social and environmental exclusion list, compliance with relevant laws and applicable guidelines, including for example the ability and willingness of the FI/IIC to request a social and environmental analysis from its own clients applying for funding of Category B projects.
- Organizational capacity within the FI/IIC: Staff responsible for the PI-SEMS management of subprojects related to the Fund's investment
- Reporting: Ability to comply with the Fund's S&E reporting requirements
- Stakeholder engagement: System of dealing with external communication on environmental and social matters
- Labour and working conditions: Respect for workers' rights, good worker-management relationship, fair treatment, non-discrimination and equal opportunity in a safe and healthy work environment.

24. The FI/IIC is responsible that no Category A sub-investments are made.

### Exclusion List applicable for all Investments

25. Any PI shall not finance directly or indirectly any of the following investments<sup>5</sup>:

- Production or trade in any product or activity deemed illegal under host country laws or regulations or international conventions and agreements, or subject to international bans, such as pharmaceuticals, pesticides/herbicides, ozone depleting substances, PCBs, wildlife or products regulated under CITES.\*
- Production or trade in weapons and munitions.\*
- Production or trade in alcoholic beverages (excluding beer and wine).\*
- Production or trade in tobacco.\*
- Gambling, casinos and equivalent enterprises.\*
- Production or trade in radioactive materials. This does not apply to the purchase of medical equipment, quality control (measurement) equipment and any equipment where AATIF considers the radioactive source to be trivial and/or adequately shielded.
- Production or trade in unbonded asbestos fibers. This does not apply to purchase and use of bonded asbestos cement sheeting where the asbestos content is less than 20%.
- Drift net fishing in the marine environment using nets in excess of 2.5 km. in length.

26. All PIs must apply the following exclusions, in addition:

- Production or activities involving forced labor\*\* or child labor (labor which is harmful to the child or interferes with his/her education as defined in chapter 2, paragraph 11).
- Commercial logging operations for use in primary tropical moist forest.
- Production or trade in wood or other forestry products other than from sustainably managed forests.
- Production or activities involving involuntary resettlement or legally protected areas

<sup>5</sup> \*This does not apply to PIs and final beneficiaries who are not substantially involved in these activities. "Not substantially involved" means that the activity is ancillary to a PI's or final beneficiary's primary operations.

\*\*Forced labor means all work or service, not voluntarily performed, that is extracted from an individual under threat of force or penalty.

## Chapter 2. Labor and Working Conditions

### Introduction

1. This Chapter recognizes that the pursuit of economic growth through employment creation and income generation should be balanced with protection for basic rights of workers. For any business, the workforce is a valuable asset, and a sound worker-management relationship is a key ingredient to the sustainability of the enterprise. Through a constructive worker-management relationship, and by treating the workers fairly and providing them with safe and healthy working conditions, PIs may create tangible benefits, such as enhancement of the efficiency and productivity of their operations. The requirements set out in this Chapter have been in part guided by a number of international conventions negotiated through the International Labor Organization (ILO) and the United Nations (UN).<sup>6</sup>

### Objectives

- To ensure respect for workers' rights
  - To establish, maintain and improve the worker-management relationship
  - To promote the fair treatment, non-discrimination and equal opportunity of workers, and compliance with national labor and employment laws
  - To ensure that there is no child labor and forced labor in the workforce
  - To promote safe and healthy working conditions, and to protect and promote the health of workers
2. Throughout this Chapter, the term “workers” is used to refer to employees of the PI, as well as to certain types of non-employee workers. The application of this Chapter will vary depending on the type of workers, as follows:
    - a. Employees: All the requirements of this Chapter, except for paragraphs 14, 15, and 16, apply
    - b. Non-Employee Workers: The requirements of paragraph 14 apply
    - c. Supply chain<sup>7</sup> issues are addressed in paragraph 15.

### Requirements

#### Working Conditions and Management of Worker Relationship

3. The PI will adopt a human resources policy appropriate to its size and workforce that sets out its approach to managing employees and provides employees with information regarding their rights under national labor and employment law, including their rights related to wages, benefits and conditions of work (hours of work, safety and health, etc.). This policy will be clear and understandable to employees and will be explained or made accessible to each employee.
4. The PI will communicate to all employees and workers directly contracted by the PI their working conditions and terms of employment, including hours of work and their entitlement to wages and any benefits.
5. Where the PI is a party to a collective bargaining agreement with a workers' organization, such agreement will be respected. Where such agreements do not exist, or do not address working conditions and terms of employment (such as wages and benefits, hours of work, overtime arrangements and overtime compensation, and leave for illness, maternity, vacation or holiday) the PI will provide reasonable working conditions and terms of employment that are not less favorable than those offered by comparable employers in the same country. If no comparable employer exists, the PI should provide the best possible wages, benefits and conditions of work within the framework of government policies. They should be related to the economic position of the PI but at least be adequate to satisfy basic needs of the workers and their families.

<sup>6</sup> These conventions (the 8 core labor standards) are:

ILO Convention 87 on Freedom of Association and Protection of the Right to Organize, 1948.

ILO Convention 98 on the Right to Organize and Collective Bargaining, 1949.

ILO Convention 29 on Forced Labor, 1930.

ILO Convention 105 on the Abolition of Forced Labor, 1957.

ILO Convention 138 on Minimum Age for Admission to Employment, 1973.

ILO Convention 182 on the Worst Forms of Child Labor, 1999.

ILO Convention 100 on Equal Remuneration, 1951.

ILO Convention 111 on Discrimination in Respect of Employment and Occupation, 1958.

United Nations Convention on the Rights of the Child, Article 32.1, 1989.

<sup>7</sup> Supply chain refers to both labor and material inputs for the life-cycle of a good or service.

6. In countries where national law recognizes workers' rights to form and to join workers' organizations of their choosing without interference and to bargain collectively, the PI will comply with national law.
7. The PI will not discourage workers from forming or joining workers' organizations of their choosing or from bargaining collectively. PIs will engage with worker representatives duly chosen by the workers.
8. The PI will not make employment decisions on the basis of personal characteristics unrelated to inherent job requirements. The PI will base the employment relationship on the principle of equal opportunity and fair treatment, and will not discriminate with respect to aspects of the employment relationship, including recruitment and hiring, compensation (including wages and benefits), working conditions and terms of employment, access to training, promotion, termination of employment or retirement, and discipline. In countries where national law provides for non-discrimination in employment, the PI will comply with national law. When national laws are silent on non-discrimination in employment, the PI will meet this Chapter. Special measures of protection or assistance to remedy past discrimination or selection for a particular job based on the inherent requirements of the job will not be deemed discrimination.
9. The PI will develop a plan to mitigate the adverse impacts of retrenchment on employees, if it anticipates the elimination of a significant number of jobs or a layoff of a significant number of employees. The plan will be based on the principle of non-discrimination and will reflect the PI's consultation with employees, their organizations and, where appropriate, the government.
10. The PI will provide a grievance mechanism for workers (and their organizations, where they exist) to raise reasonable workplace concerns. The mechanism should involve an appropriate level of management and address concerns promptly, using an understandable and transparent process that provides feedback to those concerned, without any retribution.

### Protecting the Work Force

11. The PI will not employ children below the minimum working age and will ensure that those above the minimum working age are not engaged in hazardous work<sup>8</sup>.
12. The PI will not employ forced labor, which consists of any work or service not voluntarily performed that is exacted from an individual under threat of force or penalty. This covers any kind of involuntary or compulsory labor, such as indentured labor, bonded labor or similar labor-contracting arrangements.

### Occupational Safety and Health

13. The PI will provide the workers with a safe and healthy work environment, taking into account inherent risks in its particular sector and specific classes of hazards in the PI's work areas, including physical, chemical, biological, and radiological hazards. The PI will take steps to prevent accidents, injury, and disease arising from, associated with, or occurring in the course of work by minimizing, so far as reasonably practicable, the causes of hazards. In a manner consistent with good international industry practice, the PI will address areas, including: the identification of potential hazards to workers, particularly those that may be life-threatening; provision of preventive and protective measures, including modification, substitution, or elimination of hazardous conditions or substances; training of workers; documentation and reporting of occupational accidents, diseases, and incidents; and emergency prevention, preparedness and response arrangements. The PI will do so through arrangements that promote, at the level of the undertaking, cooperation between management, workers and their representatives as an essential element of workplace-related prevention measures. The PI's overall management system covers Occupational Safety and Health elements including Occupational Safety and Health policy, workers' participation, organizing (e.g. responsibilities, training, documentation), planning and implementation, evaluation (e.g. performance monitoring and measurement), and action for improvement (e.g. preventive and corrective action, continued improvement). Personal protective equipment (PPE) will be provided to workers free of charge to them.

<sup>8</sup> Minimum working age and hazardous work are defined in the national labor legislation. In case no hazardous child labor list exists, ILO recommendation 190 art. 3 shall apply. If national legislation provides a minimum age for light work (which cannot be lower than 12 years) and defines what this light work is, the PI shall ensure that light work does not interfere with the child's education.

### Non-Employee Workers

14. The PI will endeavor to minimize the use of contract labor, to promote stability of employment for workers.
15. “Non-employee workers” refers to workers who are: (i) directly contracted by the PI, or contracted through contractors or other intermediaries; and (ii) performing work directly related to core functions essential to the PI’s products or services for a substantial duration. When the PI contracts non-employee workers directly, the PI will use commercially reasonable efforts to apply the requirements of this Chapter, except for paragraphs 3, 9, and 15. With respect to contractors or other intermediaries procuring non-employee workers, the PI will use commercially reasonable efforts to: (i) ascertain that these contractors or intermediaries are reputable and legitimate enterprises; and (ii) require that these contractors or intermediaries apply the requirements of this Chapter, except for paragraphs 3, 9, and 10.

### Supply Chain

16. The adverse impacts associated with supply chains will be considered where low labor cost is a factor in the competitiveness of the item supplied. The PI will inquire about and respect all four fundamental principles and rights at work including freedom of association and collective bargaining, the effective abolition of child labor, and the elimination of forced or compulsory labor and discrimination in respect to employment and occupation in its supply chain, consistent with paragraphs 11 and 12 above.

## Chapter 3

# Pollution Prevention and Abatement

### Introduction

1. Increased economic activity and urbanization often generate increased levels of pollution to air, water, and land that may threaten people and the environment at the local, regional, and global level<sup>9</sup>. This Chapter outlines an approach to pollution prevention and abatement in line with internationally disseminated technologies and practices. In addition, this Chapter promotes PIs ability to integrate such technologies and practices as far as their use is technically and financially feasible and cost-effective in the context of an investment.

### Objectives

- To avoid or minimize adverse impacts on human health and the environment by avoiding or minimizing pollution from investment activities
- To promote the reduction of emissions that contribute to climate change

### Requirements

#### General Requirements

2. During the design, construction, operation and decommissioning of the investment the PI will consider ambient conditions and apply pollution prevention and control technologies and practices (techniques) that are best suited to avoid or, where avoidance is not feasible, minimize or reduce adverse impacts on human health and the environment while remaining technically and financially feasible and cost-effective. The investment-specific pollution prevention and control techniques applied during the investment life-cycle will be tailored to the hazards and risks associated with investment emissions and consistent with good international industry practice, as reflected in various internationally recognized sources. The basic principles of resource efficient and cleaner production will be integrated in project design, implementation and operation through the project cycle.
3. **Pollution Prevention, Resource Conservation and Energy Efficiency.** The PI will avoid the release of pollutants or, when avoidance is not feasible, minimize or control the intensity or load of their release. This applies to the release of pollutants due to routine, non-routine or accidental circumstances with the potential for local, regional, and transboundary impacts.<sup>10</sup> In addition, the PI should examine and incorporate in its operations resource conservation and energy efficiency measures, consistent with the principles of cleaner production.
4. **Wastes.** The PI will avoid or minimize the generation of hazardous and non-hazardous waste materials as far as practicable. Where waste generation cannot be avoided but has been minimized, the PI will recover and reuse waste; where waste cannot be recovered or reused; the PI will treat, destroy, and dispose of it in an environmentally sound manner. If the generated waste is considered hazardous,<sup>11</sup> the PI will explore commercially reasonable alternatives for its environmentally sound disposal considering the limitations applicable to its transboundary movement.<sup>12</sup> When waste disposal is conducted by third parties, the PI will use contractors that are reputable and legitimate enterprises licensed by the relevant regulatory agencies.

<sup>9</sup> For the purposes of this Section, the term “pollution” is used to refer to both hazardous and non-hazardous pollutants in the solid, liquid, or gaseous forms, and is intended to include other forms such as nuisance odours, noise, vibration, radiation, electromagnetic energy, and the creation of potential visual impacts including light.

<sup>10</sup> In reference to transboundary pollutants, good industry practices shall serve as guidance (e.g. the Convention on Long-range Transboundary Air Pollution.)

<sup>11</sup> As defined by local legislation or international conventions.

<sup>12</sup> Good industry practices shall serve as guidance (e.g. the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes).

5. **Hazardous Materials.** The PI will avoid or, when avoidance is not feasible, minimize or control the release of hazardous materials resulting from their production, transportation, handling, storage and use for investment activities. The PI will avoid the manufacture, trade, and use of harmful substances (including chemicals) and hazardous materials subject to international bans or phase-outs due to their high toxicity to living organisms, environmental persistence, potential for bioaccumulation, or potential for depletion of the ozone layer, and consider the use of less hazardous substitutes for such chemicals and materials. The PI will comply with relevant Multilateral Environmental Agreements and their requirements and procedures.<sup>13</sup>
6. **Emergency Preparedness and Response.** The PI will be prepared to respond to process upset, accidental, and emergency situations in a manner appropriate to the operational risks and the need to prevent their potential negative consequences. This preparation will include a plan that addresses the training, resources, responsibilities, communication, procedures, and other aspects required to effectively respond to emergencies associated with investment hazards.

### Ambient Considerations

7. To address adverse investment impacts on existing ambient conditions,<sup>14</sup> the PI will: (i) consider a number of factors, including the finite assimilative capacity<sup>15</sup> of the environment, existing and future land use, existing ambient conditions, the investment's proximity to ecologically sensitive or protected areas, and the potential for cumulative impacts with uncertain and irreversible consequences; and (ii) promote strategies that avoid or, where avoidance is not feasible, minimize or reduce the release of pollutants, including strategies that contribute to the improvement of ambient conditions when the investment has the potential to constitute a significant source of emissions in an already degraded area.

### Greenhouse Gas Emissions

8. The PI will limit and possibly reduce investment-related greenhouse gas (GHG) emissions in a manner appropriate to the nature and scale of investment operations and impacts. During the development or operation of investments that are expected to or currently produce significant quantities of GHGs the PI will evaluate technically and financially feasible and cost-effective options (including use of cleaner technologies) to reduce or offset investment-related GHG emissions during the design and operation of the investment.

### Pesticide Use and Management

9. The PI will formulate and implement an integrated pest management (IPM) and/or integrated vector management (IVM) approach for pest management activities. The PI's IPM and IVM program will entail coordinated use of pest and environmental information along with available pest control methods to prevent unacceptable levels of pest damage.
10. When pest management activities include the use of pesticides, the PI will select pesticides that are low in human toxicity, known to be effective against the target species, and have minimal effects on non-target species and the environment. When the PI selects pesticides, the selection will be based on whether the pesticides are packaged in safe containers, are clearly labeled for safe and proper use, and have been manufactured in accordance with good industry practices (e.g. by an entity currently licensed by relevant regulatory agencies).
11. The PI will design its pesticide application regime to minimize damage to natural enemies and prevent the development of resistance in pests. In addition, pesticides will be handled, stored, applied, and disposed of in accordance with good industry practices (e.g. as set out by the Food and Agriculture Organization's International Code of Conduct on the Distribution and Use of Pesticides).
12. The PI will not use products that fall in World Health Organization Recommended Classification of Pesticides by Hazard Classes Ia (extremely hazardous) and Ib (highly hazardous); or Class II (moderately hazardous), if the investment host country lacks restrictions on distribution and use of these chemicals, or if they are likely to be accessible to personnel without proper training, equipment, and facilities to handle, store, apply, and dispose of these products properly.

<sup>13</sup> These agreements include the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, 1989, the Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals in International Trade, 1998, revision 2011, the Stockholm Convention on Persistent Organic Pollutants, 2001, amended 2009, and the Montreal Protocol on Substances that Deplete the Ozone Layer). Similar considerations will apply to certain World Health Organization (WHO) classes of pesticides. For reference please consult <http://synergies.pops.int>.

<sup>14</sup> Such as air, surface and groundwater, and soils.

<sup>15</sup> The capacity of the environment for absorbing an incremental load of pollutants while remaining below a threshold of unacceptable risk to human health and the environment.

## Chapter 4

# Community Health, Safety and Security

### Introduction

1. Investment activities, equipment, and infrastructure often bring benefits to communities including employment, services, and opportunities for economic development. However, investments can also increase the potential for community exposure to risks and impacts arising from equipment accidents, structural failures, and releases of hazardous materials. Communities may also be affected by impacts on their natural resources, exposure to diseases, and the use of security personnel. This Chapter addresses the PI's responsibility to avoid or minimize the risks and impacts to community health, safety and security that may arise from investment activities. The risks and impacts described in this Chapter may be greater in investments located in conflict and post-conflict areas.

### Objectives

- To avoid or minimize risks to and impacts on the health and safety of the local community during the investment life
- To ensure that the safeguarding of personnel and property is carried out in a legitimate manner that avoids or minimizes risks to community's safety and security

### Requirements

#### Community Health and Safety Requirements

2. The PI will evaluate the risks and impacts to the health and safety of the affected community during the design, construction, operation, and decommissioning of the investment and will establish preventive measures to address them in a manner commensurate with the identified risks and impacts. These measures will favor the prevention or avoidance of risks and impacts over minimization and reduction.
3. Where the investment poses risks to or adverse impacts on the health and safety of affected communities, the PI will hold public hearings to disclose the Social and Environmental Mitigation and Monitoring Plan and any other relevant investment-related information to enable the affected communities and relevant government agencies to understand these risks and impacts and to receive inputs from the affected communities. The PI will engage the affected communities and agencies on an ongoing basis consistent with the PI-SEMS.
4. Where applicable, the PI will establish a comprehensive siting policy arranging for the appropriate separation of proposed major hazard installations from working and residential areas and public facilities, and appropriate measures for existing installations.
5. **Infrastructure and Equipment Safety.** The PI will design, construct, and operate and decommission the structural elements or components of the investment in accordance with good international industry practice, and considering potential exposure to natural hazards, especially where the structural elements are accessible to members of the affected community or where their failure could result in injury to the community. Structural elements will be designed and constructed by qualified and experienced professionals, and certified or approved by competent authorities or professionals. When structural elements or components, such as dams, tailings dams, or ash ponds, are situated in high-risk locations, and their failure or malfunction may threaten the safety of communities, the PI will engage one or more qualified experts with relevant and recognized experience in similar investments, separate from those responsible for the design and construction, to conduct a review as early as possible in investment development and throughout the stages of investment design, construction, and commissioning. For investments that operate moving equipment on public roads and other forms of infrastructure, the PI will seek to prevent the occurrence of incidents and accidents associated with the operation of such equipment.

6. **Hazardous Materials Safety.** The PI will prevent or minimize the potential for community exposure to hazardous materials that may be released by the investment. Where there is a potential for the community (including workers and their families) to be exposed to hazards, particularly those that may be life-threatening, the PI will exercise special care to avoid or minimize their exposure by modifying, substituting or eliminating the condition or substance causing the hazards. Where hazardous materials are part of existing investment infrastructure or components, the PI will exercise special care when conducting decommissioning activities in order to prevent exposure to the community. In addition, the PI will exercise commercially reasonable efforts to control the safety of deliveries of raw materials and of transportation and disposal of wastes, and will implement measures to avoid or control community exposure to pesticides in accordance with the requirements outlined in paragraphs 5 and 10 through 13 of Chapter 3. The PI will ensure that all chemicals being used at the site have appropriate and comprehensive Material Safety Data Sheets and, where applicable, translated into local languages widely used with the area of influence of the project. A material safety data sheet (MSDS), safety data sheet (SDS), or product safety data sheet (PSDS) is intended to provide workers and emergency personnel with procedures for handling or working with that substance in a safe manner, and includes information such as physical data (melting point, boiling point, flash point, etc.), toxicity, health effects, first aid, reactivity, storage, disposal, protective equipment, and spill-handling procedures.
7. **Environmental and Natural Resource Issues.** The PI will seek to minimize the exacerbation of impacts caused by natural hazards, such as landslides or floods that could arise from land use changes due to investment activities. The PI will also aim to minimize adverse impacts due to investment activities on soil, water, air and other natural resources in use by the affected communities.
8. **Community Exposure to Disease.** The PI will prevent or minimize the potential for community exposure to water-borne, water-based, water-related, vector-borne disease, and other communicable diseases that could result from investment activities. Where specific diseases are endemic in communities in the investment area of influence, the PI is encouraged to explore opportunities during the investment life cycle to improve environmental conditions that could help reduce their incidence. The PI will adopt appropriate measures to prevent or minimize transmission of communicable diseases that may be associated with the influx of temporary or permanent labor through the investment.
9. **Emergency Preparedness and Response.** The PI will assess the potential risks and impacts from investment activities and inform affected communities of significant potential hazards in a culturally appropriate manner. The PI will also assist and collaborate with the community and the local government agencies in their preparations to respond effectively to emergency situations, especially when their participation and collaboration are necessary to respond to such emergency situations. If local government agencies have little or no capacity to respond effectively, the PI will play an active role in preparing for and responding to emergencies associated with the investment. The PI will document its emergency preparedness and response activities, resources, and responsibilities, and will disclose appropriate information in the Social and Environmental Mitigation and Monitoring Plan or other relevant document to affected communities and relevant government agencies.

### Security Personnel Requirements

10. When the PI directly retains employees or contractors to provide security to safeguard its personnel and property, it will assess risks to those within and outside the investment site posed by its security arrangements. In making such arrangements, the PI will be guided by the principles of proportionality, good international practices in terms of hiring, rules of conduct, training, equipping and monitoring of such personnel, and applicable law. The PI will make reasonable inquiries to satisfy itself that those providing security are not implicated in past abuses, will train them adequately in the use of force (and where applicable, firearms) and appropriate conduct toward workers and the local community, and require them to act within the applicable law. The PI will not sanction any use of force except when used for preventive and defensive purposes in proportion to the nature and extent of the threat. A grievance mechanism should allow the affected community to express concerns about the security arrangements and acts of security personnel.

## Chapter 5

# Land Acquisition and Involuntary Resettlement

### Introduction

1. Involuntary resettlement refers both to physical displacement (relocation or loss of shelter) and to economic displacement (loss of assets or access to assets that leads to loss of income sources or means of livelihood) as a result of investment-related land acquisition.<sup>16</sup> Resettlement is considered involuntary when affected individuals or communities do not have the right to refuse land acquisition that result in displacement. This occurs in cases of: (i) lawful expropriation or restrictions on land use based on eminent domain;<sup>17</sup> and (ii) negotiated settlements in which the buyer can resort to expropriation or impose legal restrictions on land use if negotiations with the seller fail.
2. Unless properly managed, involuntary resettlement may result in long-term hardship and impoverishment for affected persons and communities, as well as environmental damage and social stress in areas to which they have been displaced. For these reasons, investments involving involuntary resettlement will not be financed by the fund.
3. Negotiated settlements help avoid expropriation and eliminate the need to use governmental authority to remove people forcibly. Negotiated settlements can usually be achieved by providing fair and appropriate compensation and other incentives or benefits to affected persons or communities, and by mitigating the risks of asymmetry of information and bargaining power. PIs are encouraged to acquire land rights through negotiated settlements wherever possible, even if they have the legal means to gain access to the land without the seller's consent.

### Objectives

- To avoid involuntary resettlement by exploring alternative investment designs.
  - To mitigate adverse social and economic impacts from land acquisition or restrictions on affected persons' use of land by: (i) providing compensation for loss of assets at replacement cost; and (ii) ensuring that resettlement activities are implemented with appropriate disclosure of information, consultation, and the informed participation of those affected.
  - To at least restore the livelihoods and standards of living of displaced persons.
  - To improve living conditions among displaced persons through provision of adequate housing with security of tenure<sup>18</sup> at resettlement sites.
4. This Chapter applies to physical or economic displacement resulting from the following types of land transactions:
    - a) Type I: Land rights for investment acquired through expropriation or other compulsory procedures, disqualify for the Fund's direct or indirect Investments.
    - b) Type II: Land rights for an investment acquired through negotiated settlements with property owners or those with legal rights to land, including customary or traditional rights recognized or recognizable under the laws of the country, if expropriation or other compulsory process would have resulted upon the failure of negotiation.<sup>19</sup>
  5. Paragraph 17 and part of paragraph 19 below apply to displaced persons with no recognizable legal right or claim to the land they occupy.
  6. This Chapter does not apply to resettlement resulting from voluntary land transactions (i.e., market transactions in which the seller is not obliged to sell and the buyer cannot resort to expropriation or other compulsory procedures if negotiations fail). In the event of adverse economic, social, or environmental impacts from investment activities other than land acquisition (e.g., loss of access to assets or resources or restrictions on land use), such impacts will be avoided, minimized, mitigated or compensated for through the process of SEA. If these impacts become significantly adverse at any stage of the investment, the PI should consider applying the requirements of this Chapter, even where no initial land acquisition was involved.

<sup>16</sup> Land acquisition includes both outright purchases of property and purchases of access rights, such as rights-of-way.

<sup>17</sup> Such restriction may include restrictions of access to legally designated nature conservation areas.

<sup>18</sup> A resettlement site offers security of tenure if it protects the resettled persons from forced evictions.

<sup>19</sup> These negotiations can be carried out by the PI acquiring the land or by an agent of the company. In the case of PI investments in which land rights are acquired by the government, the negotiations may be carried out by the government or by the private company as an agent of the government.

## Requirements

### General

7. **Investment Design.** The PI will consider feasible alternative investment designs to avoid physical or economic displacement, while balancing environmental, social, and financial costs and benefits.
8. **Compensation and Benefits for Displaced Persons.** When displacement cannot be avoided, the PI will offer displaced persons and communities' compensation for loss of assets at full replacement cost and other assistance to help them improve or at least restore their standards of living or livelihoods, as provided in this Chapter. Standards for compensation will be transparent and consistent within the investment. Where livelihoods of displaced persons are land-based, or where land is collectively owned, the PI will offer land-based compensation, where feasible. The PI will provide opportunities to displaced persons and communities to derive appropriate development benefits from the investment.
9. **Consultation.** Following disclosure of all relevant information, the PI will consult with and facilitate the informed participation of affected persons and communities, including host communities, in decision-making processes related to resettlement. Consultation will continue during the implementation, monitoring, and evaluation of compensation payment and resettlement to achieve outcomes that are consistent with the objectives of this Chapter.
10. **Grievance Mechanism.** The PI will establish a grievance mechanism consistent with its PI-SEMS to receive and address specific concerns about compensation and relocation that are raised by displaced persons or members of host communities, including a recourse mechanism designed to resolve disputes in an impartial manner.

### Resettlement Planning and Implementation

11. In the case of Type II transactions (negotiated settlements) that involve the physical displacement of people, the PI will develop a resettlement action plan or a resettlement framework based on a SEA that covers, at a minimum, the applicable requirements of this Chapter regardless of the number of people affected. The plan or framework will be designed to mitigate the negative impacts of displacement, identify development opportunities, and establish the entitlements of all categories of affected persons (including host communities), with particular attention paid to the needs of the poor and the vulnerable. The PI will document all transactions to acquire land rights, as well as compensation measures and relocation activities. The PI will also establish procedures to monitor and evaluate the implementation of resettlement plans and take corrective action as necessary. A resettlement will be considered complete when the adverse impacts of resettlement have been addressed in a manner that is consistent with the objectives stated in the resettlement plan or framework as well as the objectives of this Chapter.
12. In the case of Type II transactions (negotiated settlements) involving economic (but not physical) displacement of people, the PI will develop procedures to offer to the affected persons and communities compensation and other assistance that meet the objectives of this Chapter. The procedures will establish the entitlements of affected persons or communities and will ensure that these are provided in a transparent, consistent, and equitable manner. The implementation of the procedures will be considered complete when affected persons or communities have received compensation and other assistance according to the requirements of this Chapter. In cases where affected persons reject compensation offers that meet the requirements of this Chapter and, as a result, expropriation or other legal procedures are initiated, the PI will explore opportunities to collaborate with the responsible government agency, and if permitted by the agency, play an active role in the resettlement planning, implementation, and monitoring.

### Displacement

13. Displaced persons may be classified as persons: (i) who have formal legal rights to the land they occupy; (ii) who do not have formal legal rights to land, but have a claim to land that is recognized or recognizable under the national laws<sup>20</sup>; or (iii) who have no recognizable legal right or claim to the land they occupy.<sup>21</sup> The census will establish the status of the displaced persons.

<sup>20</sup> Such claims could be derived from adverse possession or from customary or traditional law.

<sup>21</sup> Such as opportunistic squatters and recently arrived economic migrants who occupy land prior to the cut-off date.

14. Land acquisition for the investment may result in the physical displacement of people as well as their economic displacement. As a result, requirements for both physical displacement and economic displacement may apply.

### Physical Displacement

15. If people living in the investment area must move to another location, the PI will: (i) offer displaced persons choices among feasible resettlement options, including adequate replacement housing or cash compensation where appropriate; and (ii) provide relocation assistance suited to the needs of each group of displaced persons, with particular attention paid to the needs of the poor and the vulnerable. Alternative housing and/or cash compensation will be made available prior to relocation. New resettlement sites built for displaced persons will offer improved living conditions.
16. In the case of physically displaced persons under paragraph 13 (i) or (ii), the PI will offer the choice of replacement property of equal or higher value, equivalent or better characteristics and advantages of location, or cash compensation at full replacement value where appropriate.<sup>22</sup>
17. In the case of physically displaced persons under paragraph 13 (iii), the PI will offer them a choice of options for adequate housing with security of tenure so that they can resettle legally without having to face the risk of forced eviction. Where these displaced persons own and occupy structures, the PI will compensate them for the loss of assets other than land, such as dwellings and other improvements to the land, at full replacement cost, provided that these people occupy the investment area prior to the cut-off date for eligibility. Compensation in kind will be offered in lieu of cash compensation where feasible. Based on consultation with such displaced persons, the PI will provide relocation assistance sufficient for them to restore their standards of living at an adequate alternative site.<sup>23</sup> The PI is not required to compensate or assist those who encroach on the investment area after the cut-off date.
18. Where communities of Indigenous Peoples are to be physically displaced from their communally held traditional or customary lands under use, the PI will meet the applicable requirements of this Chapter, as well as those of Chapter 7.

### Economic Displacement

19. If land acquisition for the investment causes loss of income or livelihood, regardless of whether or not the affected people are physically displaced, the PI will meet the following requirements:
- Promptly compensate economically displaced persons for loss of assets or access to assets at full replacement cost.
  - In cases where land acquisition affects commercial structures, compensate the affected business owner for the cost of reestablishing commercial activities elsewhere, for lost net income during the period of transition, and for the costs of the transfer and reinstallation of the plant, machinery or other equipment.
  - Provide replacement property (e.g., agricultural or commercial sites) of equal or greater value, or cash compensation at full replacement cost where appropriate, to persons with legal rights or claims to land which are recognized or recognizable under the national laws (see paragraph 13 (i) and (ii)).
  - Compensate economically displaced persons who are without legally recognizable claims to land (see paragraph 13 (iii)) for lost assets (such as crops, irrigation infrastructure and other improvements made to the land) other than land, at full replacement cost. The PI is not required to compensate or assist opportunistic settlers who encroach on the investment area after the cut-off date.
  - Provide additional targeted assistance (e.g., credit facilities, training, or job opportunities) and opportunities to improve or at least restore their income-earning capacity, production levels, and standards of living to economically displaced persons whose livelihoods or income levels are adversely affected.
  - Provide transitional support to economically displaced persons, as necessary, based on a reasonable estimate of the time required to restore their income-earning capacity, production levels, and standards of living.

<sup>22</sup> Payment of cash compensation for lost assets may be appropriate where: (a) livelihoods are not land-based; (b) livelihoods are land-based but the land taken for the investment is a small fraction of the affected asset and the residual land is economically viable; or (c) active markets for land, housing, and labor exist, displaced persons use such markets, and there is sufficient supply of land and housing. Cash compensation levels should be sufficient to replace the lost land and other assets at full replacement cost in local markets.

<sup>23</sup> Relocation of informal settlers in urban areas often has trade-offs. For example, the relocated families may gain security of tenure, but they may lose advantages of location.

20. Where communities of Indigenous Peoples are economically displaced (but not relocated) as a result of investment-related land acquisition, the PI will meet the applicable requirements of this Chapter, as well as those of Chapter 7 (in particular paragraphs 9 and 10).

### **PI Responsibilities under Government-Managed Resettlement**

21. Where land acquisition and resettlement are the responsibility of the host government, the PI will collaborate with the responsible government agency, to the extent permitted by the agency, to achieve outcomes that are consistent with the objectives of this Chapter. In addition, where government capacity is limited, the PI will play an active role during resettlement planning, implementation and monitoring, as described below in paragraphs 22 through 24.
22. In the case of Type II transactions (negotiated settlements) involving physical displacement, the PI will prepare a plan (or a framework) that, together with the documents prepared by the responsible government agency, will address the relevant requirements of this Chapter (the General Requirements and requirements for Physical Displacement and Economic Displacement above). The PI may need to include in its plan: (i) a description of the entitlements of displaced persons provided under applicable laws and regulations; (ii) the measures proposed to bridge any gaps between such entitlements and the requirements of this Chapter; and (iii) the financial and implementation responsibilities of the government agency and/or the PI.
23. In the case of Type II transactions (negotiated settlements) involving economic (but not physical) displacement, the PI will identify and describe the procedures that the responsible government agency plans to use to compensate affected persons and communities. If these procedures do not meet the relevant requirements of this Chapter (the General Requirements and requirements for Economic Displacement above), the PI will develop its own procedures to supplement government action.
24. If permitted by the responsible government agency, the PI will, in collaboration with such agency: (i) implement its plan or procedures established in accordance with paragraph 22 or 23 above; and (ii) monitor resettlement activity that is undertaken by the government agency until such activity has been completed.

## Chapter 6

# Biodiversity Conservation and Sustainable Natural Resource Management

### Introduction

1. Protecting and conserving biodiversity – the variety of life in all its forms, including genetic, species and ecosystem diversity – and its ability to change and evolve, is fundamental to sustainable development. The components of biodiversity, as defined in the Convention on Biological Diversity, include ecosystems and habitats, species and communities, and genes and genomes, all of which have social, economic, cultural and scientific importance. This Chapter reflects the objectives of the Convention on Biological Diversity to conserve biological diversity and promote use of renewable natural resources in a sustainable manner. This Chapter addresses how PIs can avoid or mitigate threats to biodiversity arising from their operations as well as sustainably manage renewable natural resources.

### Objectives

- To protect and conserve biodiversity
- To promote the sustainable management and use of natural resources through the adoption of practices that integrate conservation needs and development priorities

### Requirements

#### Protection and Conservation of Biodiversity

2. In order to avoid or minimize adverse impacts to biodiversity in the investment's area of influence, the PI will assess the significance of investment impacts on all levels of biodiversity as an integral part of the SEA process. The SEA will take into account the differing values attached to biodiversity by specific stakeholders, as well as identify impacts on ecosystem services. The SEA will focus on the major threats to biodiversity, which include habitat destruction and invasive alien species. When requirements of paragraphs 7, 8, or 9 apply, the PI will retain qualified and experienced experts to assist in conducting the SEA.
3. **Habitat.** Habitat destruction is recognized as the major threat to the maintenance of biodiversity. Habitats can be divided into natural habitats (which are land and water areas where the biological communities are formed largely by native plant and animal species, and where human activity has not essentially modified the area's primary ecological functions) and modified habitats (where there has been apparent alteration of the natural habitat, often with the introduction of alien species of plants and animals, such as agricultural areas). Both types of habitat can support important biodiversity at all levels, including endemic or threatened species.
4. **Modified Habitat.** In areas of modified habitat, the PI will exercise care to minimize any conversion or degradation of such habitat, and will, depending on the nature and scale of the investment, identify opportunities to enhance habitat and protect and conserve biodiversity as part of their operations.
5. **Natural Habitat.** In areas of natural habitat, the PI will not significantly convert or degrade<sup>24</sup> such habitat, unless the following conditions are met:
  - There are no technically and financially feasible alternatives
  - The overall benefits of the investment outweigh the costs, including those to the environment and biodiversity
  - Any conversion or degradation is appropriately mitigated

<sup>24</sup> Significant conversion or degradation is: (i) the elimination or severe diminution of the integrity of a habitat caused by a major, long-term change in land or water use; or (ii) modification of a habitat that substantially reduces the habitat's ability to maintain viable population of its native species.

6. Mitigation measures will be designed to achieve no net loss of biodiversity where feasible, and may include a combination of actions, such as:
- Post-operation restoration of habitats
  - Offset of losses through the creation of ecologically comparable area(s) that is managed for biodiversity<sup>25</sup>
  - Compensation to direct users of biodiversity
7. **Critical Habitat.** Critical habitat is a subset of both natural and modified habitat that deserves particular attention. Critical habitat includes areas with high biodiversity value<sup>26</sup>, including habitat required for the survival of critically endangered or endangered species;<sup>27</sup> areas having special significance for endemic or restricted-range species; sites that are critical for the survival of migratory species; areas supporting globally significant concentrations or numbers of individuals of congregatory species; areas with unique assemblages of species or which are associated with key evolutionary processes or provide key ecosystem services; and areas having biodiversity of significant social, economic or cultural importance to local communities.
8. In areas of critical habitat, the PI will not implement any investment activities unless the following requirements are met:
- There are no measurable adverse impacts on the ability of the critical habitat to support the established population of species described in paragraph 7 or the functions of the critical habitat described in paragraph 7
  - There is no reduction in the population of any recognized critically endangered or endangered species<sup>28</sup>
  - Any lesser impacts are mitigated in accordance with paragraph 6
9. **Legally protected Areas.** As a matter of principle the Fund will not invest directly or indirectly through FIs and IICs in locations, which are legally protected areas<sup>29</sup>.
10. **Invasive Alien Species.** Intentional or accidental introduction of alien, or non-native, species of flora and fauna into areas where they are not normally found can be a significant threat to biodiversity, since some alien species can become invasive, spreading rapidly and out-competing native species.
11. The PI will not intentionally introduce any new alien species (not currently established in the country or region of the investment) unless this is carried out in accordance with the existing regulatory framework for such introduction, if such framework is present, or is subject to a risk assessment (as part of the PI's SEA) to determine the potential for invasive behavior. The PI will not deliberately introduce any alien species with a high risk of invasive behavior or any known invasive species, and will exercise diligence to prevent accidental or unintended introductions.

### Management and Use of Renewable Natural Resources

12. The PI will manage renewable natural resources in a sustainable manner.<sup>30</sup> Where possible, the PI will demonstrate the sustainable management of the resources through an appropriate system of independent certification.<sup>31</sup>
13. In particular, forests and aquatic systems are principal providers of natural resources, and need to be managed as specified below.

<sup>25</sup> Investees will respect the ongoing usage of such biodiversity by Indigenous Peoples or traditional communities.

<sup>26</sup> Such areas as meeting the criteria in accordance with good industry standards World Conservation Union (IUCN) classification).

<sup>27</sup> As defined in accordance with good industry standards World Conservation Union (IUCN Red List of Threatened Species) classification or any national legislation.)

<sup>28</sup> Footnote 26

<sup>29</sup> An area may be designated as legally protected for different purposes. This Section refers to areas legally designated for the protection or conservation of biodiversity, including areas proposed by governments for such designation.

<sup>30</sup> Sustainable resource management is the use of resources in a way, which enables people and communities, to provide for their social, economic and cultural well-being while sustaining the potential of those resources to meet the needs of future generations and safeguarding the life-supporting capacity of air, water and soil ecosystems.

<sup>31</sup> An appropriate certification system would be one which is independent, cost-effective, based on objective and measurable performance standards and developed through consultation with relevant stakeholders, such as local people and communities, indigenous peoples, civil society organizations representing consumer, producer, and conservation interests. Such a system has fair, transparent, independent decision-making procedures that avoid conflicts of interest.

14. **Natural and Plantation Forests.** PIs involved in natural forest harvesting or plantation development will not cause any conversion or degradation of critical habitat. Where feasible, the PI will locate plantation investments on unforested land or land already converted (excluding land that is converted in anticipation of the investment). In addition, the PI will ensure that all natural forests and plantations over which they have management control are independently certified as compatible with internationally accepted principles and criteria for sustainable forest management. Where a pre-assessment determines that the operation does not yet meet the requirements of such an independent forest certification system, the PI will develop and adhere to a time-bound, phased action plan for achieving such certification.
15. **Freshwater and Marine Systems.** PIs involved in the production and harvesting of fish populations or other aquatic species must demonstrate that their activities are being undertaken in a sustainable manner, through application of an internationally accepted system of independent certification, if available, or through appropriate studies carried out in conjunction with the SEA process.

## Chapter 7 Indigenous Peoples

### Introduction

1. Indigenous Peoples, as social groups with identities that are distinct from dominant groups in national societies, are often among the most marginalized and vulnerable segments of the population. They are particularly vulnerable if their lands and resources are transformed, encroached upon by outsiders, or significantly degraded. Their languages, cultures, religions, spiritual beliefs, and institutions may also be under threat. These characteristics expose Indigenous Peoples to different types of risks and severity of impacts, including loss of identity, culture, and natural resource-based livelihoods, as well as exposure to impoverishment and disease.
2. The African Commission on Human and Peoples' Rights has provided leadership in addressing the situation of indigenous peoples in Africa. It has conceptualised the issue on the continent through a 2005 Report, which underlines that indigenous peoples in Africa have "cultures and ways of life [that] differ considerably from the dominant society ... They are ... regarded as less developed and less advanced ... They often live in inaccessible regions, often geographically isolated and suffer from various forms of marginalisation"<sup>32</sup>.
3. AATIF recognises the United Nations Declaration on the Rights of Indigenous Peoples, the African Charter on Human and Peoples' Rights, the ILO Convention No. 169 on Indigenous and Tribal Peoples, which has recently been ratified by an African country, and other relevant international instruments. A number of African countries have either adopted specific programmes or passed laws on indigenous peoples
4. PI investments may create opportunities for Indigenous Peoples to participate in, and benefit from investment-related activities that may help them fulfill their aspiration for economic and social development. In addition, this Chapter recognizes that Indigenous Peoples may play a role in sustainable development by promoting and managing activities and enterprises as partners in development.

### Objectives

- To ensure that the process fosters full respect for the dignity, human rights, aspirations, cultures, land and natural resource-based livelihoods of Indigenous Peoples
  - To avoid adverse impacts of investments on communities of Indigenous Peoples, or minimize, mitigate, or compensate for such impacts, and to provide opportunities for benefits, in a culturally appropriate manner
  - To establish and maintain a relationship with the Indigenous Peoples affected by a investment throughout the life of the investment
  - To foster good faith negotiations with indigenous peoples through effective consultation, participation and free, prior and informed consent when investments are to be located on traditional or customary lands used, possessed, or owned by indigenous peoples
  - To respect and preserve the culture, knowledge and practices of Indigenous Peoples
5. There is no universally agreed upon definition of indigenous peoples and the principle of self-identification is considered as overriding criteria. In Africa, communities that identify themselves as indigenous peoples are often called by their traditional names that vary from country to country. In this Chapter, the term "Indigenous Peoples" refers to a distinct social and cultural group possessing the following characteristics in varying degrees:
    - Self-identification as members of a distinct indigenous cultural group and recognition of this identity by others
    - Collective cultural attachment to geographically distinct traditional lands or territories in the investment area and to the natural resources in these lands and territories
    - Customary cultural, economic, social, or political institutions that are separate from those of the dominant society or culture
    - An indigenous language, often different from the official language of the country

<sup>32</sup> African Commission on Human and Peoples' Rights, Report of the African Commission Working Group on indigenous populations/communities, Banjul, 2005, The Gambia, p. 89.

## Requirements

6. **Avoidance of Adverse Impacts.** The PI will identify through a participatory process of SEA all communities of Indigenous Peoples who may be affected by the investment within the investment's area of influence, as well as the nature and degree of the expected social, cultural (including cultural heritage<sup>33</sup>), and environmental impacts on them, and avoid adverse impacts.
7. When avoidance is not feasible, the PI will minimize, mitigate or compensate for these impacts in a culturally appropriate manner. The PI's proposed action will be developed with effective participation and consultation of affected Indigenous Peoples and contained in a time-bound plan, such as an Indigenous Peoples development plan, or a broader community development plan with separate components for Indigenous Peoples consistent with the requirements of paragraph 6.<sup>34</sup>
8. **Information Disclosure, Consultation and Informed Participation.** The PI will establish an ongoing relationship with the affected communities of Indigenous Peoples from as early as possible in the investment planning and throughout the life of the investment. The consultation process will ensure their free, prior, and informed consent and facilitate their informed participation on matters that affect them directly, such as proposed mitigation measures, the sharing of development benefits and opportunities, and implementation issues. The process of community engagement will be culturally appropriate and commensurate with the risks and potential impacts to the Indigenous Peoples. In particular, the process of consultation shall be undertaken in accordance with international standards, including the following steps:
  - Involve Indigenous Peoples' representative bodies (for example, councils of elders or village councils, among others)
  - Be inclusive of both women and men and of various age groups in a culturally appropriate manner
  - Provide sufficient time for Indigenous Peoples' collective decision-making processes
  - Facilitate the Indigenous Peoples' expression of their views, concerns, and proposals in the language of their choice, without external manipulation, interference, or coercion, and without intimidation
  - Ensure that the grievance mechanism established for the investment, as described in the PI-SEMS, is appropriate and accessible for Indigenous Peoples

## Development Benefits

9. The PI will seek to identify, through the process of free, prior, and informed consent with and the effective participation of the affected communities of Indigenous Peoples, opportunities for culturally appropriate development benefits. Such opportunities should be commensurate with the degree of investment impacts, with the aim of improving their standard of living and livelihoods in a culturally appropriate manner, and to fostering the long-term sustainability of the natural resource on which they depend. The PI will document identified development benefits consistent with the requirements of paragraphs 5 and 6 above, and provide them in a timely and equitable manner.

## Special Requirements

10. When any of the following Special Requirements apply, the PI will retain qualified and experienced external experts to assist in conducting the SEA.
11. **Impacts on Traditional or Customary Lands under Use.** Indigenous Peoples are often closely tied to their traditional or customary lands and natural resources on these lands. While these lands may not be under legal ownership pursuant to national law, use of these lands, including seasonal or cyclical use, by communities of Indigenous Peoples for their livelihoods, or cultural, ceremonial, or spiritual purposes that define their identity and community, can often be substantiated and documented.

<sup>33</sup> Additional Partner Institution requirements on protection of cultural heritage are set out in Section 8.

<sup>34</sup> The determination of the appropriate plan will require technical judgment. A community development plan may be appropriate when Indigenous Peoples are integrated into larger affected communities.

12. If the PI proposes an investment on, or develop natural resources located within, traditional or customary lands, and adverse impacts<sup>35</sup> can be expected on the livelihoods, cultural, ceremonial, spiritual use that define the identity and community of the Indigenous Peoples, the PI will respect their use by taking the following steps:
- The Indigenous Peoples' land use will be documented through full and effective consultation and participation of the affected Indigenous Peoples without prejudicing any of their land claims<sup>36</sup>
  - The affected communities of Indigenous People will be informed of their rights with respect to these lands under relevant international standards and national laws, including any national law recognizing customary rights or use
  - The PI will consider offering compensation and due process to affected indigenous peoples regardless of whether or not they hold a title over the concerned lands that they have occupied and used since time immemorial in the case of commercial development of their land under national laws, together with culturally appropriate development opportunities; land-based compensation or compensation-in-kind will be offered in lieu of cash compensation where feasible
  - The PI will undertake effective and in good faith consultation with the affected indigenous peoples, ensure their effective participation in the negotiations and document the whole process and the successful outcome of the negotiation
13. **Relocation of Indigenous Peoples from Traditional or Customary Lands.** The PI will consider feasible alternative investment designs to avoid the relocation of Indigenous Peoples from their communally held<sup>37</sup> traditional or customary lands under use. The Fund will not support investments involving involuntary relocation of indigenous people.
14. **Cultural Resources.** Where an investment proposes to use the cultural resources, knowledge, innovations, or practices of Indigenous Peoples for commercial purposes, the PI will fully disclose all information to the Indigenous Peoples of: (i) their rights under relevant international and national law; (ii) the scope and nature of the proposed commercial development; and (iii) the potential consequences of such development. The PI will not proceed with such commercialization unless the following conditions are cumulatively met: (i) Seek and obtain free, prior and informed consent of the concerned indigenous peoples through negotiation in good faith; (ii) document the process of consultation and the successful outcome of the negotiation; and (iii) provides for fair and equitable sharing of benefits from commercialization of such knowledge, innovation, or practice, consistent with their customs and traditions and relevant standards.

<sup>35</sup> Such adverse impacts may include impacts from loss of access to assets or resources, or restrictions on land use, resulting from investment activities.

<sup>36</sup> While this Section requires substantiation and documentation of the use of such land, Partner Institutions should also be aware that the land may already be under alternative use, as designated by the host government.

<sup>37</sup> Where members of the affected communities of Indigenous Peoples individually hold legal title, or where the relevant national law recognizes customary rights for individuals, the requirements of Section 5 will apply, rather than the requirements under this heading.

## Chapter 8

### Cultural Heritage

#### Introduction

1. Consistent with the Convention Concerning the Protection of the World Cultural and Natural Heritage, this Chapter aims to protect irreplaceable cultural heritage and to guide PIs on protecting cultural heritage in the course of their business operations.

#### Objectives

- To protect cultural heritage from the adverse impacts of investment activities and support its preservation
  - To promote the equitable sharing of benefits from the use of cultural heritage in business activities
2. Cultural heritage refers to tangible forms of cultural heritage, such as tangible property and sites having archaeological (prehistoric), paleontological, historical, cultural, artistic, and religious values, as well as unique natural environmental features that embody cultural values, such as sacred groves.

#### Requirements

##### Protection of Cultural Heritage in Investment Design and Execution

3. **Internationally Recognized Practices.** In addition to complying with relevant national law on the protection of cultural heritage, including national law implementing the host country's obligations under the Convention Concerning the Protection of the World Cultural and Natural Heritage and other relevant international law, the PI will protect and support cultural heritage by undertaking internationally recognized practices for the protection, field-based study, and documentation of cultural heritage. If the requirements of paragraphs 6,7, 8, 9, or 10 apply, the PI will retain qualified and experienced experts to assist in the SEA.
4. **Chance Find Procedures.** The PI is responsible for siting and designing an investment to avoid significant damage to cultural heritage. When the proposed location of an investment is in areas where cultural heritage is expected to be found, either during construction or operations, the PI will implement chance find procedures established through the SEA. The PI will not disturb any chance finds further until an SEA by a competent specialist is made and actions consistent with the requirements of this Chapter are identified.
5. **Consultation.** Where an investment may affect cultural heritage, the PI will consult with affected communities within the host country who use, or have used within living memory, the cultural heritage for long-standing cultural purposes to identify cultural heritage of importance, and to incorporate into the PI's decision-making process the views of the affected communities on such cultural heritage. Consultation will also involve the relevant national or local regulatory agencies that are entrusted with the protection of cultural heritage.
6. **Removal of Cultural Heritage.** Most cultural heritage is best protected by preservation in its place, since removal is likely to result in irreparable damage or destruction of the cultural heritage. The PI will not remove any cultural heritage, unless the following conditions are met:
  - There are no technically or financially feasible alternatives to removal
  - The overall benefits of the investment outweigh the anticipated cultural heritage loss from removal
  - Any removal of cultural heritage is conducted by the best available technique

### Critical Cultural Heritage

7. Critical cultural heritage consists of (i) the internationally recognized heritage of communities who use, or have used within living memory the cultural heritage for long-standing cultural purposes; and (ii) legally protected cultural heritage areas, including those proposed by host governments for such designation.
8. The PI will not significantly alter, damage, or remove any critical cultural heritage. In exceptional circumstances, where a investment may significantly damage critical cultural heritage, and its damage or loss may endanger the cultural or economic survival of communities within the host country who use the cultural heritage for long-standing cultural purposes, the PI will: (i) meet the requirements of Paragraph 5 above; and (ii) conduct a good faith negotiation with and document the informed participation of the affected communities and the successful outcome of the negotiation. In addition, any other impacts on critical cultural heritage must be appropriately mitigated with the informed participation of the affected communities.
9. Legally protected cultural heritage areas are important for the protection and conservation of cultural heritage, and additional measures are needed for any investments that would be permitted under the applicable national laws in these areas. In circumstances where a Proposed Investment is located within a legally protected area or a legally defined buffer zone, the PI, in addition to the requirements for critical cultural heritage cited above in Paragraph 8, will meet the following requirements:
  - Comply with defined national or local cultural heritage regulations or the protected area management plans
  - Consult the protected area sponsors and managers, local communities and other key stakeholders on the Proposed Investment
  - Implement additional programs, as appropriate, to promote and enhance the conservation aims of the protected area

### Investment's Use of Cultural Heritage

10. Where an investment proposes to use the cultural resources, knowledge, innovations, or practices of local communities embodying traditional lifestyles for commercial purposes, the PI will inform these communities of: (i) their rights under national law; (ii) the scope and nature of the proposed commercial development; and (iii) the potential consequences of such development. The PI will not proceed with such commercialization unless it: (i) enters into a good faith negotiation with the affected local communities embodying traditional lifestyles; (ii) documents their informed participation and the successful outcome of the negotiation; and (iii) provides for fair and equitable sharing of benefits from commercialization of such knowledge, innovation, or practice, consistent with their customs and traditions.