
06 Guidance for addressing land rights grievances

This document was commissioned by Cargill and written by Proforest and Landesa as part of work with Cargill on grievances and how to address grievances with its suppliers. It was designed to guide internal processes, but Cargill decided to make the short guidance public to demonstrate how it approaches these issues. The long form of this guidance will not be published – but is referenced in places throughout this document, and these references have been left in to demonstrate where more information is available. If you are interested please send a request to receive the more detailed information to info@proforest.net

Introduction

Many companies all along the palm oil supply chain have made commitments to no Exploitation as part of their responsible palm production and sourcing commitments and policies.

Under No Exploitation, land rights is a key issue as, if not done correctly, the development of oil palm can infringe on the legal and customary land rights of surrounding Indigenous Peoples and Local Communities. This can cause disputes or conflicts around land with widespread effects on the livelihoods of these communities as well as the viability of oil palm production. Therefore, a key requirement for companies in meeting land rights commitments as well as respecting human rights more broadly, is adequately monitoring, remediating and resolving land rights grievances (see definition below) in their operations and supply chain.

This document provides practical and action-oriented guidance on how to manage and address land rights grievances in the palm oil sector. The guidance provides information about how to verify and identify causes of grievances, develop action plans for remediation and resolution, and minimise chances of future non-compliances and conflict.



This guidance is primarily developed for growers or mills as a first point of contact, but corrective actions ultimately need to be carried out wherever a land rights grievance has been raised, whether in mills, plantations they own and/or plantations of outgrowers or smallholder farms they source from.

What is meant by a grievance?

A grievance, in the context of the palm oil sector, may be defined as a complaint or allegation of a practice that may go against international standards, company policies or industry best-practices. It usually relates to a company's responsibilities to respect the rights of their employees and neighbouring communities as well as protect the surrounding environment. When individuals, communities, civil society organisations, media and even government agencies identify specific harms that they wish a company to address, they may be termed 'concerns', 'complaints' or 'grievances' or given a different name. They may be raised directly with the company through a formal communication that enters directly into a company's grievance mechanism, or they may arise through informal communication and/or be put forward by proxy through a third party (e.g. by an NGO in a public report).

In the palm oil sector, grievances are usually raised around the production practices of oil palm and therefore fall under the responsibility of the grower or mill. However, grievances at production level may also be raised to downstream companies who source palm oil, in which case they may raise these grievances to those suppliers concerned and routinely follow up to check on progress in resolving them. This also applies to grievances raised against mills concerning the practices of their third-party suppliers (e.g. traders/collectors, outgrowers and independent smallholders).

If left unresolved, grievances can antagonise stakeholders, attract widespread attention, cause damage to a company's reputation as well as that of their buyers, and, in some cases, result in business losses or failure.

What are land rights?

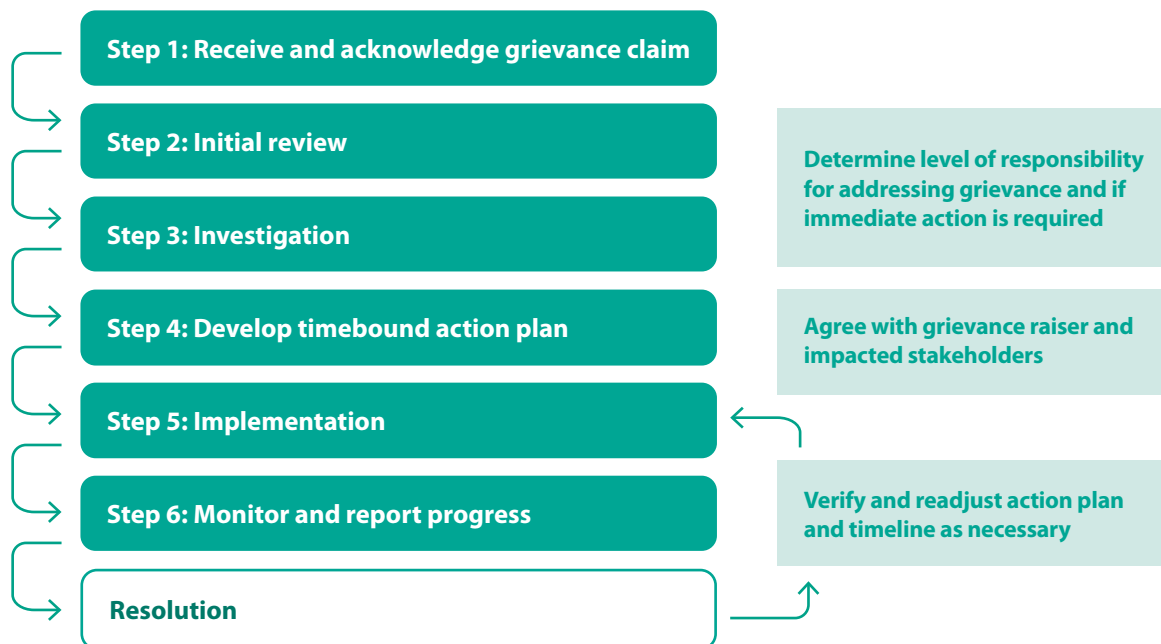
Land rights can be defined as the rights of people (as individuals and groups) to occupy, use, access, control, and transfer land. In this guidance document, the term "land" covers both physical plots (or areas) of land as well as natural resources. These rights can overlap and be acquired in different ways and be held by different people or groups for the same piece of land or resource. The distinction is also usually made between formal/legal rights and informal/customary rights to land.

- 1. Customary land rights:** Rights to occupy, use, access, control, and transfer land that are derived from and sustained by the customary norms and practices specific to a community, family, tribe, clan, or other social collective. Although these customary norms and practices are often unwritten, they may have social legitimacy, widespread social sanction, and be generally adhered to by members of a local population. In some jurisdictions customary rights may be registered with the government, but in many jurisdictions they are not, and so the boundaries of customary land holdings may not be demarcated.
- 2. Formal land rights:** Rights to occupy, use, access, control, and transfer land that are derived from, sustained by, and given documented status under constitutional and statutory law. Formal documents will often include a map of parcel boundaries. It is important to understand whether registered land rights are up to date.

Companies need to consider and respect both these types of rights to land and resources when addressing a land rights grievance. This is also key for companies investing in existing and new operations (e.g. development of a new oil palm plantation).

Addressing land rights grievances

A mill or grower that is subject to a grievance must follow a series of steps to address the grievance. The steps below outline a generic grievance process that can be followed. These should be followed systematically and agreed with relevant stakeholders, in a **transparent, consultative and appropriate** manner.



For further details, please refer to the grievance series [Introduction document](#).

Step 1: Receive and acknowledge grievance claim

On receipt of a potential land rights grievance claim, the first step is to assign a member of staff to be responsible for investigating the grievance claim, who will acknowledge receipt of the grievance to the grievance raiser and inform them of an initial timeline. The communication methods should be in a format that all parties can understand, taking into account the local and cultural norms and acknowledging that some stakeholders may be illiterate.

Confidentiality: At this stage the company/grievance holder must confirm whether the grievance raiser and/or affected parties wish to keep their identity confidential. This is crucial in respecting the rights of these stakeholders and ensuring their security and wellbeing.

Step 2: Initial review

The company/grievance holder must open a “case file” of information that will be added to and updated throughout the process. The aim at this early stage is for the company to verify rapidly whether the grievance claim against them is valid and applicable. However, depending on the level of information provided and available, this may not be possible without a more in-depth investigation. If there is insufficient evidence to rapidly determine whether the grievance claim is valid or not and the responsibility of the company, then the process should proceed to Step 3.

Examples of land rights grievances and associated responsibility and next step for a mill

Confirmed grievance claim	Responsibility and next step
<p>Land rights grievance claim confirmed on land where the mill is located, or land owned or rented by the mill <i>Grievance dates are within time period mill has acquired and operated on the land.</i></p>	<p>Responsibility of mill and parent company - move to Step 3 (full investigation).</p>
<p>Land rights grievance claim confirmed on land rented or owned by the mill, but which has not yet been developed.</p>	<p>Responsibility of the mill and parent company – consult with affected parties and consider impacts of developing the land (may be possible to prevent full grievance process by ensuring Free, Prior, Informed Consent before developing the land).</p>
<p>Land rights grievance claim confirmed on land managed and/or owned by smallholders under the mill’s smallholder scheme.</p>	<p>Responsibility of the mill and parent company as well as the smallholder(s) - move to Step 3 (full investigation).</p>
<p>Land rights grievance claim confirmed on land or resources affected by the mill’s operations or those of its rented/owned plantations and schemed smallholders (e.g. pollution of water sources).</p>	<p>Responsibility of the mill and parent company as well as other stakeholders contributing to the effect - move to Step 3 (full investigation).</p>
<p>Land rights grievance claim confirmed on land owned by external, entirely independent palm oil supplier to the mill (plantation or smallholder).</p>	<p>Responsibility of the supplier with support of the mill and parent company – facilitate dialogue between the supplier and grievance raiser and encourage and support supplier to resolve the grievance (especially if the supplier is a smallholder with limited capacity). Consider possibility of removing supplier from supply chain if no actions are taken by them.</p>
<p>Land rights grievance claim confirmed on land owned by external stakeholder not linked to the mill.</p>	<p>Responsibility of the external stakeholder – reject claim (providing there is sufficient evidence), refer grievance raiser to the external stakeholder and any other relevant stakeholders (e.g. organisations which could support them). The mill may also want to offer support to the grievance raiser and affected parties as part of a wider community engagement strategy in the area.</p>

The company should ascertain:

Who are the affected parties?

A land rights grievance may be raised by a number of different stakeholders. It is important to identify who the grievance raiser is, who the parties actually affected by the grievance are, and if these two parties are different. For example, a grievance may be raised by an NGO (the grievance raiser) on behalf of a local community (the affected parties).

What is the grievance claim and how does it violate applicable requirements?

The company must understand what exactly the grievance raiser is claiming in order to properly assess their responsibility. Land rights grievances can broadly fall under the following four scenarios:

- Grievance raised over the illegal and/or improper acquisition of land and/or resources (e.g. forced eviction or lack of proper consultation, including Free, Prior, and Informed Consent).
- Grievance raised over effects on the lands, livelihoods and/or resources of neighbouring communities (e.g. polluting the water of communities living downstream).
- Grievance raised over legacy land issues (e.g. historic land dispossession).
- Grievance raised over land encroachment (e.g. smallholder farmers encroaching on local community land without permission).

The company should then determine how the claim constitutes a violation of its applicable requirements (e.g. national laws, company policies, etc.).



High risk situations with immediate action required

At any point during the grievance process, if the grievance holder discovers that ongoing activities causing the grievance or any other related activities are creating considerable health and safety risks to people, it should take every immediate action within its power to stop these activities and mitigate the risk.

Examples of high-risk situations surrounding a land rights grievance include:

- Operations are causing immediate harm to people's health and/or food security (e.g. pollution from a palm oil mill is contaminating the air and/or water of a community causing health problems and endangering their access to food and water).
- It is found that conflict over the land is resulting in the use of violence or threat of violence against people (e.g. human rights defenders, community members, company staff, local rights defenders).

Examples of actions the grievance holder can take include:

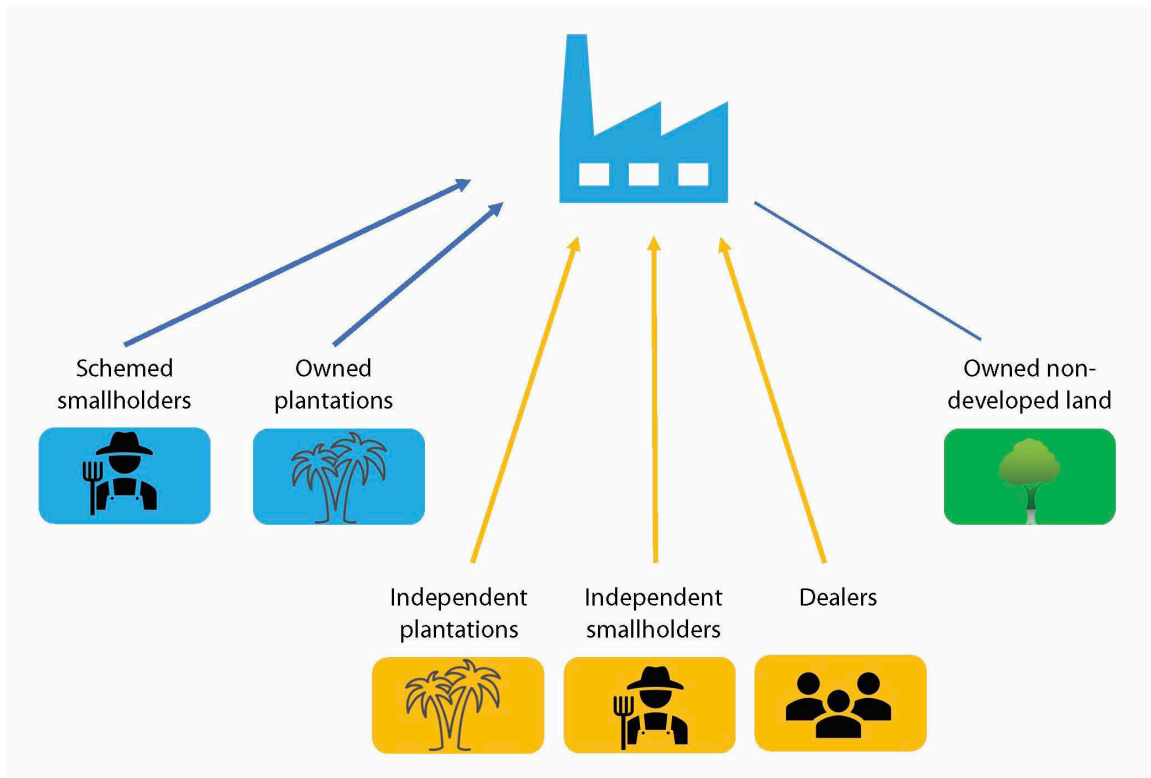
- Halt operations causing the danger immediately.
- Take immediate corrective action to change activity causing the danger.
- Take immediate action to provide redress for harms caused.

Where did the grievance happen and when?

The company should gather as much information about the location of the land where the lands rights violation is claimed to have happened and the time period when this happened. This will allow it to determine how it is linked to the grievance and if other stakeholders are involved.

How is the grievance linked to operations?

Having gathered the information outlined above, it should be possible to determine how the company is linked to the grievance claim and therefore their level of responsibility in resolving the grievance. Crucially, the information should show if the grievance is against the company's own operations (e.g. own plantations) or the operations of its business relations or suppliers (e.g. third-party estates). The table above outlines examples of how a company may be linked to a land rights grievance and its responsibility.



Palm oil mill supply chain links to potential land rights grievance sites.

Accepting or rejecting the grievance claim

The company should only reject a claim if it certain that there is sufficient, clear evidence showing:

1. The claim is unfounded or spurious.
2. The claim does not breach any of its land rights requirements and standards.
3. The claim is not linked to the company's operations or supply base.
4. The claim is in violation of applicable laws, policies or regulations and should be referred to the appropriate government authority.
5. The claim falls under the jurisdiction of local authorities (e.g. village leaders) and should be referred to this authority's processes.

If this is not the case or it was not possible to gather all the information required to show this, the process should proceed to Step 3 (full investigation). Whether accepting or rejecting a grievance claim, it is crucial that the decision is properly communicated to the grievance raiser and/or the affected parties, and should include a full justification for the decision, substantiated by evidence gathered during the preliminary investigation. The grievance raiser and affected parties also have the option of appealing the decision if they are not satisfied by the outcome.

Step 3: Investigation

Having either validated the grievance claim or concluded that there is insufficient evidence to make an immediate decision, the next step is to build on the information gathered in Step 2 and conduct a full investigation. The objectives of the investigation are:

- To verify and build on the key information gathered in Step 2.
- To determine the causes of the grievance and build a comprehensive picture of the issues and context.
- To identify the key issues that need to be redressed or remediated through an action plan in Step 4.

This investigation needs to be done with the agreement of, and in consultation with, the grievance raiser and affected parties, and all the information gathered needs to be validated and agreed on by all stakeholders involved.



Black box funding for ensuring an impartial investigation and remediation process

Black box funding (or Basket funding) collects money from multiple sources in an independently managed fund to be used for financing agreed activities. In the context of land rights processes (e.g. Free, Prior, Informed Consent), this can be a useful way for companies to support communities they are engaging with (e.g. by funding community advisors and capacity building activities), whilst minimising their actual or perceived influence over communities and support providers. For addressing a land rights grievance, black box funding can help ensure an impartial investigation and remediation process. In these cases, the grievance holder would transfer funds to an independent third party to manage and allocate as necessary for supporting community participation and consultation and driving the remediation process forward.

Source: Columbia Center on Sustainable Investment (2019), Innovative financing solutions for community support in the context of land investments, <http://ccsi.columbia.edu/2019/03/22/innovative-financing-solutions-for-community-support-in-the-context-of-land-investments/>.

The full investigation should include the following activities:

Plan the investigation

In the context of land rights grievances, affected communities must be regularly consulted throughout the process, including about how and when the investigation will take place, and how they will participate. The company will therefore have to undertake certain preparations, including:

- Appoint experienced staff or consultants (if not already done in Step 1).
- Identify and engage the affected parties and their legitimate representatives – this will usually consist of community heads but should also include representatives of vulnerable groups (e.g. women).
- Identify and engage a mediator to facilitate the regular communication and consultation required between the company and the grievance raiser and/or affected parties – this is crucial in situations where there are pre-existing conflicts between parties or if the parties speak different languages.
- Identify and engage experts to provide key insights and advice on the local context and how to ensure people's rights are respected – affected parties should also have access to support from external experts (e.g. lawyers, land rights organisations).
- Engage relevant government officials (administrative authority and relevant technical agencies) as well as the local customary/traditional authorities to ensure that all activities are in line with national and local laws and practices.



Criteria to consider for appointing a mediator for company-community engagement

When selecting a mediator, the company should consider whether the mediator is:

- Trusted by all parties.
- Independent and impartial.
- Committed to ensuring a transparent process while maintaining confidentiality as necessary.
- Able to communicate with all parties in local languages and using preferred means of communication.
- Familiar with local customs and traditions.
- Aware of and able to address power imbalances, as well as cultural and gender dynamics.
- Able to identify and help parties explain their respective interests and expectations.
- Able to help parties understand the pros and cons of different outcomes.
- Able to help parties reach an agreement that addresses both parties' concerns and meets both parties' interests.

A mediator could be a lawyer, representative of government, a CSO staff member, a religious leader, community member or leader, or even a team of qualified people.

Source: Namati (2017), *Community Land Protection Facilitator's Guide*, https://namati.org/wp-content/uploads/2016/02/Namati-Community-Land-Protection-Facilitators-Guide_Ed.2-2017-LR.pdf

Investigate the causes of a land rights grievance

Having done all the proper planning, the company can move ahead with gathering all the necessary information of the grievance. This should build on the activities and information gathered during the initial review and it is crucial that both direct and root causes are considered. Direct causes are clear actions the company has taken which led to the grievance, whereas root causes are contextual factors which contributed or enabled the grievance to take place.

Methods for gathering required information:

- **Contextual review:** Use of historical documentation and interviews to gain an understanding of historical relations between stakeholders and current and past land ownership and acquisition in the area, including both formal and customary laws and land rights.
- **Participatory land mapping:** Conduct field visits to the land to identify rights holders and create a map of the holding patterns, if this has not previously been done. Affected parties, through their representatives, should play a central role in mapping activities, and maps must be made with the full awareness, engagement and agreement of all stakeholders involved. Other stakeholders, such as neighbouring communities and concession owners, should also be consulted in order to validate results and avoid exacerbating or triggering further land disputes. This will require prior consultation with affected parties to ensure they are aware and approve of how and when this process will take place. For guidance on how to conduct participatory mapping see Landesa's RIPL resource on [Gender sensitive community mapping and boundary harmonization](#).
- **Environmental and social impact assessment (ESIA):** Conduct impact assessments to determine both the causes and the effects of the grievance. This describes how the company's activities have impacted the affected parties' livelihoods, wellbeing and access to resources. This should be done with the full participation and agreement of all stakeholders involved.
For guidance on how to conduct an ESIA see [The World Bank Environmental and Social Framework](#).
- **Consultations and interviews:** Use a range of methods, such as community-wide consultations, focus group discussions or one-on-one interviews, to consult with the affected parties to gain a full understanding of the issue. These consultations should be done with the full cooperation of the affected parties and arranged and conducted in a manner that is socially and culturally appropriate for them and in line with their customs and routines. It is also important to understand that communities are not homogenous groups, and the grievance holder should also ensure it is consulting representatives of groups of stakeholders including women, youth, elders, migrants and others as appropriate in the local context. Considerations should also be taken in terms of the security and confidentiality of the people consulted, with clear agreement and consent on how, where and when consultations will take place, and how the information gathered will be communicated and used.
See Landesa's [Community consultation checklist](#) for guidance on what to consider during these consultations.



Examples of root causes of land conflicts and disputes

Internal factors within the grievance holder operations

- Current expansion and planting procedures do not consider effects on land rights.
- Lack of awareness by management, staff and/or schemed smallholders of applicable requirements (e.g. laws and policies).
- Lack of knowledge and training on land rights and lack of awareness on the risks and cost of not respecting land rights.
- Lack of experience and training on how to properly consult and communicate with communities on land rights and other issues.
- Lack of funding and resources for implementing proper land acquisition and management procedures as well as community engagement.
- Corrupt or illegal activities being undertaken by staff and/or schemed smallholders.

External factors depending on the local and national context

- Lack of clear tenure rights.
- Lack of recognition of customary land rights.
- Overlapping land rights and uses.
- Weak law enforcement/governance and/or corruption.
- Elite capture/inequitable distribution of land.
- Poverty and low literacy levels.
- High investment into the area.
- High level of in-migration by settlers.
- Competition over resources.
- History of conflict in the area.
- Inter-cultural conflicts.
- Intra-family conflicts.
- Changes in climate and landscape leading to people having to move or change their land use practices.

Presenting and agreeing on findings

Having carried out an in-depth investigation into the grievance, all findings and results must be presented to all stakeholders involved and validated. Once findings are validated, the company can then re-assess how it is linked to the grievance and what responsibilities it bears, if any. If the company decides to reject the grievance, full justification must be provided, and the grievance raiser and affected parties must be allowed to appeal this decision.

Step 4: Develop a timebound action plan

If the company takes responsibility for the grievance based on the previous steps, it must begin developing an action plan for resolving and remediating the grievance. This should build on the information gathered during the investigation. The process should be adapted to the needs of the affected parties and other stakeholders involved, but in general should include the activities below:

- **Identify decision makers and agree on the decision-making or consensus building process:** The company should confirm with the affected parties who will be representing them in negotiations and who will have the power to make decisions and enter agreements on their behalf. This should allow for multiple and differing representation in order to ensure that views of all community members are considered. It is also crucial to set the parameters of how decisions will be made, agreed on and officialised. This could be in the form of attaining unanimous agreement between all stakeholders and making decisions binding through written contracts and/or through ritual ceremonies. The process may also require an independent party to witness and validate decision agreements.
- **Conduct a valuation of the harms caused by the grievance:** Building on the EISA, the grievance holder, in consultation with the affected parties and experts, should assess the value of the harm caused by its activities. This should consider not only financial value but also non-market values, such as: livelihoods value; social value; environmental value; and cultural, religious, and spiritual value. Wherever possible, valuation should be conducted by a professional licensed valuer who is trained to meet both national and international standards on valuing both economic and noneconomic values and engaging with the community as a whole. See Landesa's RIPL [Land Valuation and Compensation Primer](#) for more information.
- **Agree on what constitutes adequate remedy:** Remedy means putting the affected parties back in the position they were in before the harm occurred, or as close to it as possible. For example:
 - Restitution – in cases where land was acquired illegally or without proper consultation, if possible and desired by the affected parties, the land in question should be returned to the affected parties who have formal and/or customary land rights.
 - Compensation – could include financial compensation, an official apology, sanctions against responsible actors, benefit sharing schemes, employment, provision and/or financing of local services or projects.



Key elements of grievance resolution action plan

- Activities to be implemented.
- Roles and responsibilities of stakeholders, including grievance holder staff and/or third-party stakeholders (e.g. community members, experts, etc.).
- Timeline for implementation of activities.
- Budget and resourcing needs.
- Outcomes and progress indicators.
- Procedures and repercussions for breaches of the action plan.
- Monitoring and review procedures.
- Proof of agreement by all involved stakeholders, especially affected parties (e.g. signatures).

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- **Agree to activities to achieve remedy, responsibilities and timelines:** Agree on what activities are required for achieving remedy and who is responsible for financing and implementing these activities. The company should take on most of the responsibility for financing and organising the implementation of remediation activities, however, this may be done in conjunction with others if there is more than one responsible stakeholder. Clear timelines and budgets should be set and communicated with all stakeholders to ensure a transparent process.
- **Agree on procedures and repercussions for breaches of the action plan:** In order to ensure activities are effectively implemented and to minimise the risk of future conflicts, the stakeholders should agree on procedures and repercussions in case of breaches of the action plan, for example, failure to deliver agreed activities or resources by a certain date. This should also cover cases where the affected parties withdraw their consent or there is suspension of a specific activity.

Step 5: Implementation

Having finalised the action plan and incorporated stakeholder feedback, the plan needs to be implemented and an overall responsible/lead manager should be appointed to ensure implementation. Because this is still part of the grievance resolution process, the responsible persons will need to continue communicating progress with the grievance raiser, the affected party, those working on the grievance internally and other stakeholders on a regular basis. To ensure continuity it is recommended that, if possible, this is someone who has been involved throughout the process.

Depending on the activities, implementation may be carried out by a number of different stakeholders. For example:

- The company.
- Additional stakeholders identified as responsible for the grievance.
- Government representatives, agencies and extension workers.
- Local NGOs and civil society organisations.
- Contracted experts and technicians.
- The affected parties themselves (possibly funded by the company).

Step 6: Monitor and report progress

During action plan implementation progress against agreed milestones, outcomes and indicators should be monitored. Progress should also be reported to the grievance raiser on a regular basis and where appropriate, it is recommended to invite the grievance raiser or a third party to visit at intervals as part of the monitoring and verifying progress.

Once a plan for remediation has been successfully executed the grievance may be considered closed. However, this does not mean that activities and monitoring stops. Effective monitoring systems and procedures should be part of all companies' procedures and need to cover everything from operations to conservation areas and any community use areas.

Avoiding repetition of land rights grievances: In order to prevent future land rights grievances, the company should review its policies and procedures based on the learnings from the grievance process. Key elements for ensuring land rights are respected include:

- Having sound policies in place to cover all ways land can be impacted by the company's operations and business: acquiring new land, acquiring land with legacy issues, existing holdings, existing holdings with legacy issues, joint ventures and mergers and supply chain linkages through dealers, smallholders, plantations and independent suppliers.
- Having an implementation plan for ensuring commitments to responsible land use and investment are met and have operational manuals and procedures for staff to follow.
- Ensuring staff are trained to understand the policies in place, as well as basic land rights issues including the business case for responsible land-based investment.
- Ensure all new land-based investment and use follows the proper due diligence and land mapping processes to identify key issues and risks, as well as the local and national context.
- Have procedures in place for community consultation and engagement (including procedures for respecting Free, Prior, Informed Consent where required), as well as the necessary resources and capacity when required for new land-based investment or use.
- Having community engagement and outreach programmes in place to ensure good long-term relations with surrounding communities.
- Developing collaborative partnerships with key stakeholders – including community leaders, government, CSOs, and others – who play critical roles in helping to ensure investments in and use of land are responsible and sustainable.
- Having a land rights and community engagement grievance mechanisms for each area of operation and supply chain to allow people to raise concerns and have a process for addressing issues before potential escalation in conflicts.

See Landesa's ***Model Guidebook for Business Enterprises Considering Agricultural Investment*** and AFI guidance on ***Respecting the Rights of Indigenous Peoples and Local Communities*** for detailed guidance on how to responsibly invest in and use land.

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