



SOCIALLY RESPONSIBLE LAND INVESTMENT IN GHANA

A Guidebook for Business Enterprises Considering Agricultural Investment in Ghana



Responsible Investments
in Property and Land



Department
for International
Development



Socially Responsible Land Investment in Ghana

A Guidebook for Business Enterprises

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

By Landesa, April 3, 2019

About this Guidance

Socially Responsible Land Investment in Ghana: Guidebook for Business Enterprises Considering Agricultural Investment

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

This document was produced with support from the Department for International Development (DFID) by Landesa and other contributing partners. Landesa is an international nonprofit organization working to develop sustainable and gender-sensitive laws, policies, and programs that strengthen land rights for millions of the world's poorest men and women. Landesa has a global presence, with offices in the United States, India, China, Myanmar, and Tanzania. Learn more about Landesa's work at www.landes.org.

Contributions were made by:

- Resource Equity, a nonprofit organization that advocates for legal, policy, and social change aiming to achieve secure land and resource rights for women.
- Community Land and Development Foundation (COLANDEF), a non-governmental organization working to improve land governance and land tenure security in Ghana.

Acknowledging that responsible land-based investments require significant engagement and collaboration with communities, civil society, governments, businesses, and experts in the field, a broad range of stakeholders were included in the design and development of the Guidebooks. In particular, during the development of the Ghana Guidebooks, extensive consultations with policymakers, experts, businesses, and communities were held. In addition, a 20-member project advisory group comprised of government, civil society, and private sector representatives was established that provided regular input into the process.

Acknowledgments

There are many to thank for their contributions to this Guidebook. First, funding from DFID, as part of their LEGEND Program, made this Guidebook possible. We extend our gratitude to the Ministry of Land, Housing, and Human Settlements Development for their endless support and contributions towards its development.

The completion of the Guidebook would not have been possible without the continued support of our co-implementing partner, Community Land and Development Foundation (COLANDEF), particularly Nana Ama Yirrah and the COLANDEF team who made invaluable contributions to the research, coordination, and development of it.

Similarly, many thanks to the members of the RIPL Project Advisory Group (PAG) who provided us with guidance, support, and encouragement throughout the different stages of development. Members of the PAG are from the following institutions and organizations: Alpha Property Services; Apex Law Consult; Centre for Gender Studies (CEGENSA); Environmental Protection Agency (EPA); Gbawe Customary Land Secretariat (CLS); Ghana Lands Commission; Ghana Investment Promotion Council (GIPC); Greater Accra Regional House of Chiefs; Kwame Nkrumah University of Science and Technology (KNUST); Land Administration Project (LAP); Land Registration Division (LRD); Institute of Statistical, Social, and Environmental Research (ISSER); Metasip Steering Committee/Federation of Association of Ghanaian Exporters; Ministry of Food and Agriculture (MoFA); Ministry of Gender, Children, and Social Protection (MoGCSP); Network on Women's Rights (NETRIGHT); Office of Administrator of Stool Lands (OASL); Private Enterprise Federation (PEF); and Town and Country Planning Department (TCPD).

Special thanks to David Bledsoe, Renee Giovarelli, and Leslie Hannay of Resource Equity; Scott Schang and Lukasz Czerwinski of Landesa; and Jolyne Sanjak who contributed their expertise and assistance. A big thank you to Harmonie Demos for many hours of reviewing, editing, formatting, and finalizing material.

Cover photo for Ghana Business Enterprise Guidebook by COLANDEF.

List of Abbreviations

CCSI	Columbia Center for Sustainable Investment
CFS	Committee on World Food Security
CLS	Customary Land Secretariat
CSO	Civil Society Organization
DFID	Department for International Development (UK)
EIA	Environmental Impact Assessment
EPA	Environmental Protection Agency
EPC	Environmental Protection Council
ESIA	Environmental and Social Impact Assessment
FAO	Food and Agriculture Organization of the United Nations
FPIC	Free, Prior, and Informed Consent
GADS	Gender and Agricultural Development Strategy
GCAP	Ghana Commercial Agriculture Project (of the Ministry of Food and Agriculture)
GIPC	Ghana Investment Promotion Centre
IISD	International Institute for Sustainable Development
LAP	Land Administration Project
LEGEND	Land Governance for Economic Development Programs
LSLA	Guidelines for Large Scale Land Acquisitions in Ghana
M&E	Monitoring and Evaluation
MOFA	Ministry of Food and Agriculture
OASL	The Office of Administrator of Stool Lands
RIPL	Responsible Investment in Property and Land
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
VGGT	Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food

Security (by the FAO)

Contents

1. Introduction and How to Use This Guidebook	1
Background for the RIPL Guidebooks	2
How to Use This Guidebook	4
2. International Standards and Best Practices	10
Best Practices Overview	11
Social License to Operate	15
Free, Prior, and Informed Consent (FPIC)	16
3. Themes for Socially Responsible Investment in Ghana.....	22
Land Governance in Ghana.....	23
Women’s Land Tenure Under Law and Custom	33
FPIC in Ghana.....	34
4. Step-By-Step Guidance	39
Quick Glance: Phases, Tasks, and Steps.....	40
Phase 1: Preparing for Investment.....	44
Task 1: Developing and Implementing Policies, Commitments, and Safeguard	45
Task 2: Conducting Due Diligence.....	51
Phase 2: Community Engagement, Consultation and Assessments	58
Introduction: The Importance of Working with Community Members	59
Task 1: Engaging and Consulting with Land Users and Rights Holders	60
Task 2: Conducting Community Assessments	68
Phase 3: Developing an Equitable Land Lease and Addendum	81
Introduction: Equitable Contracting in Ghana.....	82
Task 1: Negotiating and Drafting the Land Lease and Addendum	83
Task 2: Reviewing and Signing the Land Lease and Addendum	93
Phase 4: Implementing and Monitoring the Investment.....	96
Introduction: Project Implementation and Monitoring in Ghana	96

Task 1: Preventing and Addressing Land-Related Issues.....	99
Task 2: Developing and Implementing an Ongoing Monitoring and Evaluation Plan.....	105
5. Supplemental Resources	109
Supplemental Resource 1: Obligations Under International Treaties and Conventions	110
Supplemental Resource 2: Overview of Ghana's Legal Framework.....	115
Supplemental Resource 3: Sample Company Policies	117
Supplemental Resource 4: Why Land Matters: Communicating a New Land Commitment.....	122
Supplemental Resource 5: Community Consultation Checklist.....	122
Supplemental Resource 6: Community Capacity Assessment.....	127
Supplemental Resource 7: Land Rights Assessment Tool Kit	138
Supplemental Resource 8: Risk Mitigation Analysis.....	176
Supplemental Resource 9: Final Contract Checklist	185
Supplemental Resource 10: Designing a Stakeholder Engagement Plan	186
Supplemental Resource 11: Literature Review: Best Practices for Outgrower Arrangements	188
Supplemental Resource 12: Monitoring and Evaluation Indicators	193

1.

Introduction and How to Use This Guidebook

Introduction

This Guidebook will guide business enterprises through the steps needed to carry out inclusive and responsible land investments.

Our goal is to provide businesses with all the information necessary to adhere to international standards and best practices over the course of an investment in Ghana, from preparing for the agricultural investment all the way through ensuring the investment is implemented in accordance with best practices. This guidance supplements the legal protections provided for under Ghanaian law, including in the GIPC Act of 2013, Act 865.

This section discusses:

- ✓ [Where these Guidebooks came from.](#)
- ✓ [How to use this Guidebook.](#)
- ✓ [How this Guidebook is structured.](#)

Background for the RIPL Guidebooks

In established market economies, the policies, laws, regulations, and state administrative and judicial systems that govern land transactions are known as **land governance frameworks**. Ideally, these frameworks reflect the best practices listed in this Guidebook. In places where these frameworks function well, most land investments can be said to be **responsible investments**, typically the result of agreements between willing buyers and willing sellers. In many cases, however, a country's land governance framework may not adequately support responsible investment practices. For example, domestic laws may not meet best practices or may not be fully implemented.

This adds to the complexity of commercial agricultural investment and means that consultations on the land transactions and project implementation need to involve not only the customary land authorities, but also traditional authorities. They need to identify and involve all rights holders and users who would potentially be excluded from the consultation process. In some cases, this has resulted in communities learning that their land rights have been given away to an investor only after a lease has been signed, with

unfortunate results for both company and the community members. Aside from the potential negative effects this could have on the communities, such issues can negatively impact the investments themselves. Such situations can, and often do, result in conflict, delays, expensive and time-consuming disputes, and, in many cases, a failed deal.

Fortunately, situations like these can be avoided by looking to international standards and best practices for property and land investments. A great deal of global attention is now focused on implementing these standards through government and corporate commitments to improve land governance and investment practices. The consensus is clear: land deals should be done responsibly.

There is no such consensus, however, about **how** to invest responsibly. For example, it is not always clear how a company can meaningfully engage and consult with all community members and existing land rights holders and users. Nor is there clarity around how to ensure community practices include women in situations where local practices and norms tend to exclude them in decision-making processes on land. In many cases, government officials would require some capacity enhancement support to maintain and enforce equitable land practices in navigating these transactions.

The [Responsible Investments in Property and Land \(RIPL\) Project](#) addresses these issues by condensing international guidelines and best practices into Guidebooks. These Guidebooks offer country and audience specific instructions on how to implement these standards in a land investment, making it easier for businesses, governments, and communities to all do their part to create a responsible land investment.

Important Notes About Using RIPL Guidebooks

It is important to recognize that the context of an investment will shape how best practices can be implemented to bring about a responsible investment. Early due diligence, consultations, engagement, and assessment are the keys to understanding contextual variables, and will help to ensure a successful and sustainable investment process. A few examples of the contextual variables seen in Ghana include:

- **Location.** Region within the country, proximity to regional Lands Commission office, traditional area and nature of customary land governance, and the nature of the local land market are all location-related factors to be considered.

- **Sophistication and functionality of existing land governance** framework and extent to which it reflects international best practices.
- **Capacity of government and customary institutions** to implement effective enabling frameworks.
- **Agricultural commodities** that are part of the investment.
- **Modes of production**, such as irrigation, rain fed farming, small scale farming, and outgrower schemes.
- **Livelihood strategies of land users.**
- **Competition for land resources** and extent of land availability.
- **Legal and social status of women** within the investment area.
- **Opportunity of all land users**—including women, non-indigenes, and migrant farmers—to participate and be represented in the land development process, and also ensure that best practices are employed in an unfolding investment.

The RIPL Guidebooks are not about rectifying historic land grabs. Still, business enterprises (and governments) should always look very carefully at who currently uses and claims rights to the land, and then look at how they came to use or control the land.

These Guidebooks are not intended as legal advice, but rather as tools to aid stakeholders in navigating the process of creating a responsible investment. To the best of our knowledge the best practices described in this Guidebook do not contradict Ghanaian law but build upon it. They should be seen as the basic minimum standard for responsible land-based investment, which all stakeholders should strive to exceed.

How to Use This Guidebook

The Business Enterprise Guidebook is intended for use prior to and during the agricultural land investment process.

Guidebook Audience: Investment Stakeholders

There are three investment stakeholders in agricultural investment: the government, the business enterprise or investor, and the community of people who have rights to the land or resources. Each of these audiences has different needs, roles, and responsibilities in an agricultural investment transaction. Accordingly, the RIPL project has produced a different Guidebook for each stakeholder group, noting however, that the roles need to be handled complementary to each other to achieve responsible investment. Thus, while each Guidebook will focus on the detailed roles for the particular audience being addressed, this section of the Guidebook presents an overview of the roles to be played by each of the investment stakeholders.

The Role and Responsibility of Business Enterprises

Businesses play an important role in upholding best practices in a responsible investment: they must take the lead in helping to make sure community and individual rights are respected throughout the process of acquiring or investing in land. Even where government has a duty to provide the necessary conditions for responsible investment, it is ultimately up to businesses to do their due diligence to understand the risks, impacts, and processes necessary to ensure that investments are responsible and meet best practices.

With this in mind, business enterprises must simultaneously **take the lead on implementing international standards** and at the same time **treat communities with fairness and respect** throughout the investment process. Responsibilities go beyond initial due diligence; a business must act responsibly throughout the investment process, from negotiation to implementation.

The intended users of this Business Enterprise Guidebook are company representatives tasked with facilitating an investment. To help this individual have a complete understanding on how to facilitate a responsible investment in the Ghana context, this Guidebook includes information on international standards and best practices, Ghana's land governance and community landscape, and how to achieve a socially responsible agricultural investment.

The Role and Responsibility of Communities

Communities and their leaders need to be empowered to participate fully in any investments affecting them. Though they may benefit from a land-based investment, inhabitants of local communities are also the stakeholders that have the most to lose when land deals fail to take into consideration their needs. It is important to note that investments, even undertaken with best practices, cannot simply be imposed upon communities. Women, men, and land rights holders, as well as all inhabitants in communities, must have the capacity to be engaged in the land acquisition and investment processes, in order to have the opportunity to adequately articulate their issues and represent their respective interest. There must be community attention, consideration, and response from both male and female members of the land-owning group, land users, and all inhabitants. This means that communities and their leaders may need to:

- **Reconcile traditional practices with international standards.** For example, under the current customary arrangements, customary lands are held in trust for the larger community by male chiefs or family heads. This person(s) often serves as the representative, guardian, negotiator, and contracting party during the investment process. However, within the framework of a responsible investment, all land rights holders, including women and non-indigene land users, should also be involved in the decision-making process.
- **Learn about how agricultural investments work.** Community members may not have prior experience with commercial negotiations or lease arrangements. They will need to learn about the processes needed to come to a fair and equitable agreement, their rights during the transaction, what to expect from various stakeholders, and how the process should work. These are questions that a community, facing the decision for an investment, should get answers to. Both the business enterprise and the state agencies should play a role in answering.

- **Develop processes or structures to support community consultation and decision-making.** Establishing processes and platforms within the community for information sharing allows the voice of all inhabitants and different interest groups to be heard, and will make a community better prepared to engage with a business on a potential investment, work with traditional authorities in the decision-making process, and solicit support in weighing the options.

The intended users of the Community Guidebooks are representatives in the community who are engaging with government and businesses on behalf of all the different interest groups and inhabitants of the community. The Guidebook refers to inhabitants of communities as individuals who are members of the land-owning group by birth, and therefore, have inherent rights to the land, as well as individuals who have migrated from another part of the country. These individuals have been granted land by the land-owning group for farming or other activities. Even though they have integrated into the community and are all considered inhabitants, their land rights are considered different, and therefore, will require different types of engagements.

Civil Society Organizations can also assist communities during the planning, assessment, contracting, and implementation of an investment by serving as facilitators, technical advisors, interpreters, and collaborators. The involvement of such Civil Society Organizations in this way would help business enterprises in their efforts to reach out to, and engage with community members more effectively. Civil Society Organizations may, therefore, play the role of ensuring that all elements of a rigorous consultation and engagement effort or resettlement process are effectively implemented.

The Role and Responsibility of Government

Like businesses and communities, the government also plays an important role in responsible investment. At a high level, **the government's role is to regulate the investment sector and ensure that all actors in land-based investments adhere to pertinent local, national, and international laws.** The government holds a responsibility to: establish a framework that recognizes and respects the rights of all legitimate land right holders and users, including those under the customary land system; institute mechanisms to safeguard legitimate land rights against threats; make efforts to promote and facilitate the full realization of land rights (for example by clarifying and documenting land rights, and supporting processes whereby individuals can assert and have claims resolved); support accessible and equitable land transactions; respond to businesses and communities that are engaged in a land

matter; provide access to justice to deal with infringements of legitimate tenure rights; and take steps, including coordination or referral to customary land authorities, to prevent tenure disputes from arising and escalating into conflicts.

The intended users of the Government Guidebooks are all public-sector agencies who play a role in facilitating the state functions of regulating and monitoring agricultural investments. They could be officers at the national, regional, or district level. The

Government Guidebook, therefore, contains material about governance and investment processes in Ghana, as well as information on international best practices on how the state can play its role to guide and support a business enterprise in achieving a responsible investment.

Guidebook Structure

Each RIPL Guidebook follows a similar structure, providing:

- An **overview of international best practices** for responsible land investment.
- **Background information** outlining Ghana's context for land-based agricultural investments.
- **Step-by-step guidance** for each phase and sub-phase of the investment process, which includes detailed best practices and step-by-step instructions for how to carry them out:
 - [Phase 1: Preparing for an Investment](#)
 - [Phase 2: Community Engagement, Consultation, and Assessments](#)
 - [Phase 3: Developing an Equitable Land Lease and Addendum](#)
 - [Phase 4: Implementing and Monitoring the Investment](#)
- Supplemental Resources available [online](#).
 - [Sample Company Policies](#)
 - [Why Land Matters: Communicating a New Land Commitment](#)
 - [Community Consultation Checklist](#)
 - [Community Capacity Assessment](#)
 - [Land Rights Assessment Tool Kit](#)
 - [Risk Mitigation Analysis](#)

- [Final Contract Checklist](#)
- [Designing a Stakeholder Engagement Plan](#)
- [Literature Review: Best Practices in Outgrower Arrangements](#)
- [Monitoring and Evaluation Indicators in the M&E Primer](#)

An understanding of these topics will help to provide context and will support adoption of the best practices; although much of this information is well-known to the Ghanaian government, communities, CSOs, and international investors. Unfortunately, there is no set timeframe to complete the steps given the unique context and circumstances of each investment

2.

International Standards and Best Practices

International Standards and Best Practices

Achieving responsible agricultural investment in Ghana requires more than just following the letter of Ghanaian laws. It also means adhering to international standards and best practices.

These standards have resulted from years of interactions, global discussions, and sharing of experiences which pointed to the fact that **in many places the local laws simply do not do enough to protect communities** who occupy and use agricultural land targeted for commercial investment. Ghana has been involved in most of these global discussions and has even attempted to use the international principles to develop the Ghana version of the Guidelines on Large Scale Land Acquisition.

This section of the Guidebook will discuss:

- ✓ [Best Practices](#).
- ✓ [Social License to Operate](#) and how it can help a business create a sustainable investment.
- ✓ [Free, Prior, and Informed Consent \(FPIC\)](#) and how it plays into maintaining a business's social license.

Best Practices Overview

The RIPL Guidebooks draw on the principles from international standards and best practices for responsible investments in land to provide guidance for investors on how to manage each phase of the investment. The basis for these best practices comes from two key documents that embody all the agreed upon principles and best practices. The aim of the RIPL Guidebooks is to help operationalize these two recent well-known instruments:

- [Guiding Principles on Large Scale Land Investments in Africa](#) by the African Union, African Development Bank, and United Nations Economic Commissions for Africa. These are often referred to as AU Guiding Principles.

- [Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries, and Forests in the Context of National Food Security](#) by the Committee on World Food Security (CFS) and Food and Agriculture Organization of the United Nations (FAO). Sometimes this document is referred to as VGGT or the Voluntary Guidelines.

In summary, these standards call on business enterprises to work with communities and individuals with **legitimate land rights** in arriving at the investment decision and land acquisition process. The requirements under the international standards, which have received global attention, include, but are not limited to:

- Making a commitment to uphold both national law and international standards.
- Identifying all existing land rights and land rights holders, including access, use, secondary, and communal rights recognized under both formal and customary law.
- Providing notice to all identified land rights holders (including potentially excluded groups such as women, ethnic minorities, pastoralists, and migrant farmers) about the investment.
- Engaging and consulting with leaders of affected communities and individuals about how to design and implement the prospective investment.
- Recognizing and formalizing land rights of land holders and users.
- Facilitating processes to have actual consent from all existing land rights holders.
- Conducting a transparent impact assessment of the project on existing land users.
- Mitigating impacts (such as potential displacement) and social risks that may be caused by the project.
- Facilitating a process for fair negotiations and fair agreements with land rights holders.
- Ensuring investment benefits are distributed equitably among all individuals with land rights.
- Establishing and implementing grievance mechanisms.

Comparing Ghanaian Regulatory Requirements to Best Practices

The legal framework for Ghana outlines a process for implementing land-based investment. The content and implementation approach of the existing framework in Ghana, however, do not always mandate or support the application of best practices from the AU Guiding Principles and VGGT for achieving a responsible investment.

The following table briefly compares domestic regulatory requirements against best investment practices and briefly lists the supplemental activities that investors need to undertake to bring an investment closer to the best practices. Each section of this guide provides more detailed guidance

Investment best practice	Government regulatory requirement	Gap between best practices and government requirement	Recommended steps that investors can take to bring the investment closer to international best practice
<u>Developing Policies, Commitments, and Safeguards.</u>	Not mandatory.	Not required by law. Significant gap.	Create business policies that reflect and adhere to relevant Ghanaian laws and international standards for responsible investment.
<u>Conducting Due Diligence.</u>	Not mandatory.	Not required by law. Significant gap.	Understand the national and local context, identify issues and risks the project poses to communities and individuals, and identify mitigating responses and measures. Determine if the land investment can be done in a way that is fair and respects the rights of the community and affected stakeholders, decide how the project might be designed, and make a final go/no-go decision. Repeat due diligence regularly over the course of the investment lifecycle through audits and self-reporting.

Engaging and Consulting with Land Rights Holders and Users.	Constitution; EPA Act; Environmental Assessment Regulations; OASL Act; Lands Commission LSLA Guidelines	Land tenure impacts assessment insufficiently required by law. Significant gap.	Share assessment results and perform expanded consultation and engagement with community inhabitants, affected landholders, and traditional leaders. Consultation should reach all land users in an interactive and culturally and gender-sensitive way.
Conducting Community Assessments.	Environmental Assessment Regulations; Lands Commission LSLA Guidelines	Insufficiently required by law. Significant gap.	Assess and significantly improve community capacity to receive, use, and provide information, as well as capacity to make informed decisions about the investment project. Assess all investment impacts and create mitigating and accommodating measures and investment features.
Negotiating and Drafting a Land Lease and Addendum.	Conveyancing Act	Insufficiently required by law. Significant gap.	In cooperation with the community, create an equal footing between the parties and agree on equitable and understandable contract terms that describe obligations, rights, benefits, and remedies.
Reviewing and Signing the Land Lease and Addendum.	Not mandated.	Insufficiently required by law. Significant gap.	Supplement the standard lease provisions called for in Ghana with additional measures to support participation of community in lease and other agreements to protect the rights of communities.
Preventing and Addressing Land-Related Issues.	Not mandated.	Not required by law. Significant gap.	Sustain the application of the best practices over the full life of the investment. Create and maintain a grievance mechanism to better identify problems and sustain best practice responses.
Developing and Implementing an Ongoing Monitoring and Evaluation Plan.	Not mandated.	Not required by law. Significant gap.	Conduct regular and meaningful monitoring and evaluation to verify performance and to identify and remedy implementation challenges and unanticipated impacts.

Important Concept for Communities: Free, Prior, and Informed Consent (FPIC)

Underpinning these best practices are two key concepts for socially responsible investments:

1. Social License to Operate
2. Free, Prior, and Informed Consent (FPIC)

Both of these concepts, and particularly FPIC, are important for business enterprises to understand prior to engaging in a responsible property or land investment, as they are both critical for creating sustainable, healthy investments. Together, these concepts will help investors to prevent and overcome conflict and thrive.

Social License to Operate

For a business enterprise to be successful in a country like Ghana, it is important that it gains the trust and confidence of the communities that will be affected by the investment. This trust, which requires some effort to both secure and maintain, is known as **social license to operate**. Social license can be defined as the measure of trust and confidence society has in a business to behave in a legitimate, transparent, accountable, and socially acceptable way.¹

Social license is built upon or damaged by the way that people view the individuals, activities, statements, or policies of a business. In other words, it is based on the *perceptions* held by a number of stakeholders. Social license is not formally granted on the basis of legal or regulatory compliance, though its existence is often linked to such compliance and usually reflects perceptions of behavior in view of standards or norms.

Without this social license, business enterprises will likely face difficulties. This is true even if the business has a legal right to operate. In other words, it is in the best interest of the business to work with the community to ensure that the expectations, processes, and outcomes of an investment are clear and supported by an engaged and informed community. This idea is at the heart of much of the guidance presented in this Guidebook.

Social license is most evident when it is lacking. When social license erodes, a business begins to see the risks and damage that a loss of social license can cause. Risks and damages for businesses vary, but may include labor strikes, theft, vandalism,

encroachment, and general hostility towards the company and its staff. For example, a 2014 analysis found that “a major, world-class mining project with capital expenditure of between US \$3-5 billion USD will suffer roughly US \$20 million per week of delayed

production in Net Present Value terms due to land tenure issues.” In Chile, an investor abandoned a hydroelectric plant due to failure to address land rights of indigenous peoples. Losses exceeded US \$75 million and scrapped plans to invest more than US \$1 billion in the country.²

Mitigating these issues can be costly and time consuming. Such mitigation can be avoided by establishing and maintaining a relationship of fairness and trust with land holders and users from the outset of an agricultural investment project. Businesses that are able to create and maintain a social license to operate tend to:

- Act fairly and equitably.
- Operate transparently.
- Sustain strong communications, engagement, and consultation efforts.
- Comply with the requirements of governance frameworks.
- Operate according to best practices, such as those established by international standards and principles (for example, [FPIC](#)).
- Treat women equally and make special effort to promote and protect women’s rights and uses of assets (such as land).
- Provide for fair, accessible, and responsive grievance mechanisms.
- Have and observe internal policies related to social, economic, and environmental impacts and mitigation.
- Engage in corporate social responsibility initiatives (that could include many of the above items).
- Provide community services and development benefits.
- Require that their suppliers and associates embrace the behaviors described above.

The phases and tasks in this Guidebook are designed to help businesses ensure these actions are taken.

Free, Prior, and Informed Consent (FPIC)

Another necessary part of developing a high level of trust between an investor and communities is obtaining Free, Prior, and Informed Consent (FPIC). Meeting the FPIC standard is a necessary, but not sufficient, part of developing this level of trust. FPIC

carries with it the element of choice on the part of existing land rights holders to accept or reject the change in land use that accompanies the proposed investment.

Unlike social license to operate, which is a social construct, FPIC is a legal one. Under UN principles, FPIC is reserved for indigenous communities, and consultation and participation is seen as the minimum standard for interactions with non-indigenous communities.

Importantly, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) states that individuals and communities have the right to self-determine whether they are indigenous or not.

Businesses also understand that it is difficult to maintain a social license when surrounded by displaced land users who did not have a choice. Therefore, leading companies are treating all affected communities under the FPIC standard to protect investment interests, implement best practices, and ensure that legitimate rights are respected. Consult [supplemental resource](#) for examples of company policies seeking to address FPIC.

In Ghana, customary lands are held by various clans, families, stools, or skins. Each category is composed of a head, who is custodian of the allodial ownership of the land that belongs to the group, and all other members born to the members of the group are considered to be owners of the group land. Other Ghanaians who are inherently not members of the land-owning group could acquire some customary rights to use the part of the land for farming. Even though their customary rights are recognized under the laws in Ghana, they are, however, not perpetual owners of the land as is the case with those with the inherent right. Thus, applying FPIC in Ghana will require negotiating the land deal with the land owning group while obtaining consent with all identified land rights holders, irrespective of the nature of their rights.

Universally, under the legal principles of good contracting, no party ever parts with land without saying “yes.” And any party asked to enter into a contract has the right to say “no.” That is, fair business deals always have the element of choice.

Choice must be fully informed. For land-based agricultural investments, FPIC requires that affected communities:

1. Are provided with all information relevant to the investment and its potential impacts, in a language and format that they can understand.

2. Have as much time as needed to assess the information and investment opportunity.
3. Are able to make a decision as to whether or not to proceed with the investment without any undue influence or coercion from the government, business enterprise, or other outside source.

Best Practices for Holding Effective and Inclusive Community Meetings

Broad stakeholder participation is critical at every stage of community engagement. In order to make sure all community members, who may be affected by the investment, participate in the business's consultation efforts, the business should follow these best practices when holding community meetings:

Publicize meetings to achieve diverse representation. It is likely that the investment will impact people and groups differently so their participation is needed to contribute different perspectives and help anticipate and mitigate potential issues.

- Share information about the meeting place and time in places where participants frequent, such as messages on local radio and notices on message boards at schools, churches, and community gathering places.
- Community leaders should mobilize their constituents. This is especially important for the leaders of minority groups.
- Encourage all community members to spread the word. At the end of a community meeting, encourage attendees to bring a friend, neighbor, or family member along to the next meeting.
- Make meeting times and locations accessible. Meetings should be held at locations and times that are accessible to all community members.
- Present meetings in locally appropriate language(s), instead of only holding meetings in the official language, to allow for wider accessibility.
- Women, pastoralists, and others may have different schedules that must be accommodated.

Ensure broad representation. Reaching groups who are frequently underrepresented in decision-making forums, such as women, youth, and ethnic minorities (see **Vulnerable Groups Primer**), often requires more concentrated effort than just inviting

them to information meetings, so make specific efforts to include the following individuals:

- Married men
- Single men
- Married women
- Single women
- Widowed women
- Male youth
- Female youth
- Male pastoralists
- Female pastoralists
- Migrant farmers
- Indigenous farmers
- Queen Mothers
- Local Chiefs
- Others, i.e., widows, religious minorities, elderly, people with disabilities, etc.

Structure the meetings into different parts to ensure broad participation.

- Community members should convene as one large group for general information and instructions.
- To facilitate discussion that provides everyone an opportunity to express their views, community members should be separated into groups of 15 to 25 community members. The subgrouping of the community members should be based on what already exists. In the majority of contexts, women should be separated from men. Additionally, migrant farmers should be engaged separately from indigenous farmers. In some cases, farmers of different crop types may also have different land use arrangements and therefore, might be affected differently. Consult the [Gender Primer](#) for more guidance on meaningfully including and considering women throughout the investment process.
- Reconvene the community for further discussion and provide an opportunity for members to ask questions.

Develop a meeting agenda facilitation plan to ensure the following is achieved:

- The meeting is organized and runs smoothly. The meeting organizers come to the venue prepared with an agenda and additional materials, such as paper, pens, posters, copies of handouts, mobile phone, etc. The organizers keep track of the agenda and time.
- Meeting objectives are clear. Meeting participants have a shared understanding of the agenda and purpose of the meeting.
- Meetings are respectful. Participants establish and know the “meeting ground-rules.” These rules typically involve commitments to respect and listen to all perspectives, avoid usage of bad language or raised voices, etc., and should be established at the first community meeting and repeated at every meeting.
- Meetings are participatory. Participants receive clear information and have adequate time to discuss issues, share ideas, and ask questions. A number of voices are heard—one person does not dominate the conversation.
- Meetings are informative. Decision-makers receive the input (such as information, feedback, consent, or lack of consent) needed to make decisions.
- Meetings are action-oriented. The community understands what the next steps are and who is responsible for completing them. Plans for additional meetings are made and date and time agreed upon.

Document the meetings.

- Take meeting minutes and notes, including names and signatures of participants. Representatives from each major community group should also sign the document as witnesses.
- With prior consent from participants, consider video recording the meetings with a smartphone for additional documentation.
- Record of meetings should be kept by both the community and the company.

Schedule additional meetings.

- Meetings with the community should be held at all phases of the investment.
- Develop a schedule to hold multiple meetings with community members to inform, provide a space for dialogue, and ensure everyone participates.
- The time between meetings should be agreed on by community members.

Obtain consent from community members.

- After each meeting, community members should vote on whether or not to proceed or hold additional meetings.

Meeting minutes should be signed by those that gave and withheld their consent.

¹ Sustainable Business Council (2013) [New Zealand report] Social License to Operate Paper, available at https://www.sbc.org.nz/_data/assets/pdf_file/0005/99437/Social-Licence-to-Operate-Paper.pdf.

² See *The Financial Risks of Insecure Land Tenure: An Investment View*. 2012. The Munden Project. pg. 25-27.

3.

Context Analysis and Factors for Consideration in Achieving Responsible Investment in Ghana

Context Analysis and Factors for Consideration in Facilitating Responsible Investment in Ghana

In addition to understanding international standards and best practices, an understanding of the local legal and cultural context is a necessary part of responsible investment. Such an understanding will help the business enterprise evaluate the financial viability and social impacts of the project, and can in turn support the development of a strategy to meet responsible investment requirements and obligations, mitigate risks, and avoid negative impacts. This section aims to provide a brief overview of pertinent aspects of the Ghanaian context for commercial investment.

Note: While this background information can support the completion of due diligence, it is by no means a substitute. A thorough analysis of the social, economic, and tenure dynamics of the specific area of potential investment is essential. Further information and data on the soils and weather conditions, water, and irrigation development plans may be acquired from the Ministry of Food and Agriculture (MOFA).

Land Governance in Ghana

Ghana operates two broad land systems:

- **The state system** governed by written rules in the form of statutes, legislation, and regulations and operated by formal state institutions that provide formalized services.
- **The customary system** governed by unwritten rules informed by customs and traditions of particular areas and operated by traditional institutions that have authority to set the rules, serve as custodians of the rules, and also adjudicate on disputes arising out of the application of the rules.

About 80% of land in Ghana is under the customary land system, while 20% is under the state system.

The state land system refers to land that was acquired by state through compulsory acquisition, as permitted by law, for public interest, such as for the provision of public

infrastructure facilities and state-owned investments. Such lands acquired from customary authorities, through the state power of eminent domain, are administered by the state. The use of any portion of such land by any state institution or individual is administered by the state.

Customary lands, on the other hand, are owned communally by various customary groups. The ownership of customary lands is held collectively by all members of the group, and interest held in customary land, called the **allodial** interest, is vested in the head of a stool, skin, family, clan, or in some rare cases, an individual (Constitution Article 267). This allodial interest is the highest interest in land and is held in trust for members of a larger customary group. Members of the land-owning group obtain inherent occupation and use rights to portions of the communal land by virtue of their lineage, while those not having any lineage to the land-owning group can access land by permission of the head of the stool, skin, family, or clan or by other members from the lineage.

While leaders of the customary lands have the mandate to give out portions of the customary land under their jurisdiction, the system for land rights documentation, registration, and land use planning are all governed by state laws.

What this means is that:

- Most of the land available for investment is likely held under the customary system.
- Acquisition of such land held under custom will have to be managed with the involvement of relevant leadership of the land-owning group.
- While negotiation and contracting will involve the leadership of the land-owning group, it will be important to identify and involve all members of the land-owning group.
- Even though the laws allow for bilateral negotiation and contracting with the land-owning group, it is important to respect the state regulation on how the bilateral agreement will be documented and registered.

The [National Land Policy](#), developed in 1999 by the Ministry of Lands and Forestry in Ghana, provides additional information on this subject, and recognizes the challenges that come with navigating overlapping claims to land and the complex legal procedures that can come with it. It also recognizes the need for community participation in land management and development.³

Overview of National Policy, Legislative, and Institutional Framework in Ghana

The policy, legal, and institutional framework for land-based investment in Ghana is complex. There are some conflicting policies and insufficient clarity on the policy directions for land-based investment activities. As discussed in the previous section, the content and application of the legal framework for investment also fall short of mandating best practices and meeting international standards for responsible investment. While current laws and policies do establish some roles and responsibilities for government actors in the land acquisition process for land-based investments, the framework leaves gaps in administration and facilitation, and oversight of land-based investments do not cover the entire investment process.

The laws most relevant to agricultural investment in Ghana include:

- The 1992 Constitution of the Republic of Ghana
- The National Land Policy, 1999
- The Office of the Administrator of Stool Lands Act, 1994 (Act 481)
- The Land Registry Act, 1962 (Act 122)
- Land Title Registration Act, 1986, (Act 152)
- Lands Commission Act, 2008, (Act 767)
- Land Use and Spatial Planning Act, 2017 (Act 925)

Sections of other laws that are also relevant include the Ghana Investment Promotion Centre Act, 2013 (Act 865) and the Environmental Protection Agency Act, 1994 (Act 490).

In spite of the limitations in the provisions and their implementation, understanding these laws, in addition to the customary rules and practices, will help business enterprises to implement best practices and meaningfully facilitate investment in a socially responsible manner in Ghana.

Incidents of Large Scale Land Acquisition for Investments

Large-scale land acquisitions in Ghana have increased in recent times. As a result, the Lands Commission has begun establishing an institutional mechanism to manage such

transactions and mitigate potential impacts on local land holders and users. This includes establishing a support desk for Customary Land Authorities and community members to provide technical assistance and advice.

To this end, the Lands Commission has developed Guidelines for Large Scale Land Transactions in Ghana. These Guidelines set out the requirements for investors who seek to register the lease to the land acquired for investment. The requirements include the need for engagements and consultations with affected communities and individuals and evidence that the investor has the ability to implement the proposed investment. An investor who fails to meet the requirements under the Lands Commission guidelines will not receive the Lands Commission's approval for registration of the lease to the land. While fulfilling these requirements are relevant for facilitating responsible investment, they are verified only when the documents are submitted to the Lands Commission for approval. Ideally, the guidelines would have to be applied equally to the pre-registration, as well as the post-registration stage.⁴

Land Registration

Ghana operates two systems of land rights registration. There is the Deeds Registration governed by the Land Registry Act, 1962 (Act 122) and the Land Title Registration, governed by the Land Title Registration Act, 1986, PNDCL 152. Land Title Registration is practiced in the Greater Accra Region and in Kumasi. The rest of the country falls under the Deeds Registration. Even though the Lands Commission is responsible for overseeing the registration of titles under both Deeds and Title, the office works with other state agencies to confirm the validity of the land transaction and qualification for registration. These include compliance with land use planning regulations and Environmental Impact Assessment (EIA) requirements. The lease registration process can be complicated, but is currently under review to streamline the process.

Land Valuation and Compensation Requirements

Understanding the customary tenure arrangements of the area where the investment will take place is important for investors considering equitable compensation arrangements. Unfortunately, most individuals across Ghana farm undocumented land that is held under customary arrangements. Under the laws of Ghana, the payment for the land lease is to be made by the investor to the customary authorities who are custodians of the allodial interest. Other members of the landowning group may not benefit at all from this payment, since they also lose their customary right to the land for

the entire period of the investment. In accordance with a Constitutional formula, some portion of the lease payment will go to the Office of Administrator Stool Land, some customary authorities and the local government authority.⁵ However, there is no rule requiring that the custodian of the allodial interest must distribute the lease payment or other forms of compensation to community members.

Rather, under the law, affected farmers, both those belonging to the landowning group and tenant farmers, are entitled to be compensated only for the loss of their crops.⁶

At this time, the laws require formal land valuation (also known as an appraisal) to be done only for land acquisitions by the state. There are no such requirements for acquisitions by private investors because the transaction is considered to be private between the land-owning group and the investor, and so should be handled as agreed between the parties. However, land and livelihoods valuation are an important element of determining adequate compensation and meeting best practices. Under the State Lands Act of 1962 and the Constitution, where farmers are displaced when land changes hands, compensation must be paid for specific crops according to a schedule providing minimum payment amounts by crop. The National Land Policy also says that for all types of land acquisitions, “provisions should be made for persons displaced.” In other words, if people living on the land need to move, then the business enterprise will need to do a valuation to determine how much to compensate the displaced parties. The Lands Commission has a Land Valuation Division that can help with the assessment. Though not required under the law, they can also help to ascertain a fair value for the lease payment.

Amounts paid according to the required schedule are consistently reported to be insufficient to support livelihoods restoration or alternative land procurement. Further, because crops often traditionally grown by women are not considered for compensation, and because payments tend to be paid to the male head of household, women often receive no compensation at all for lost crops. Efforts to ensure that compensation and resettlement programs are equitable must, therefore, understand household norms and local livelihoods to ensure that investment processes do not inadvertently reinforce inequality or leave local populations worse off as a result of the investment. See online Supplemental Resource: [Land Rights Assessment Toolkit](#).

Environmental Impact Assessment (EIA)

If a project will impact more than 40 hectares (about 98.8 acres), then a business enterprise is legally required to conduct an EIA⁷. It is advisable to contract with a Civil

Society Organization (CSO) or private firm that has expertise and familiarity with local tenure issues and contexts to carry out the land-related provisions of the EIA. Note, however, that although the law does not require the EIA until after the land is acquired, conducting an assessment in advance of acquiring land is good practice and an important part of effective due diligence.

Relevant Government Institutions

Several Ghanaian state entities, and related projects, govern land and facilitate investments related to land and agriculture. These government bodies may be able to offer support in undertaking responsible investment in Ghana.

Institution	Role
Ministry of Lands and Natural Resources ⁸	The Ministry of Lands and Natural Resources has the overall responsibility for implementing long-term land sector reforms.
Lands Commission ⁹	The Lands Commission has four main divisions: 1. Public and Vested Land Management Division 2. Surveying and Mapping Division 3. Land Valuation Division 4. Land Registration Division The Commission's functions include: • Managing public lands, lands vested in the President by law, and lands vested in the Commission. • Advising the national government, local authorities, and traditional authorities on the policy framework for the development of particular areas of the country. • Advising on and assisting with registration of land title and deed registration throughout the country. • Facilitating the acquisition of land on behalf of the government. • Establishing surveying standards, regulating the surveying process, and providing surveying and mapping of the country.
Institution	Role
	• Providing land valuation services. • Supporting sustainable land use planning. • In collaboration with other bodies, working to limit land encroachment, unapproved development schemes, multiple or illegal land sales, land speculation, and other forms of land manipulation. Ghana's Lands Commission has the power to approve formal

	leasehold title and to ensure that the investment is consistent with existing district, regional, or national-level development plans. If it approves of the lease, the Lands Commission grants a <i>concurrence</i> for skin and stool land and approves registration for leases on family lands. It is important to note that the terms of these leases are left to the investors and customary authority. This means that there may be little or no input from the community or provisions related to benefit sharing in the agreement.
Office of the Administrator of Stool Lands (OASL) ¹⁰	OASL is responsible for collecting and managing stool land revenue, and traditional authorities play a key role in land management and land transactions as custodians of the land. ¹¹
Ghana Investment Promotion Centre (GIPC) ¹²	GIPC is a government agency responsible for encouraging and promoting investments in Ghana, including actively encouraging, promoting, and facilitating agricultural investments. It collects, analyzes, and disseminates information about agricultural investment opportunities. Registration with GIPC is required for all business enterprises in Ghana.
Customary Land Secretariat (CLS) ¹³	A Customary Land Secretariat (CLS) is a land administration office that supports traditional authorities in the management of customary lands. CLSs are established and supported by the local traditional authority and receive technical support from government through the Land Administration Project (LAP). Currently under the authority of the Office of the Administrator of Stool Lands.
Ghana Environmental Protection Agency (EPA) ¹⁴	The EPA is an agency within the Ministry of Environment, Science, Technology, and Innovation. The EPA is the leading public body for protecting and improving the environment in Ghana. The EPA administers the Environmental Impact Assessment (EIA) requirement.
Ghana Commercial Agriculture Project	A project of the Ministry of Food and Agriculture (MOFA), the Ghana Commercial Agriculture Project (GCAP) was established in 2012 to
Institution	Role
	promote commercial farming. GCAP has developed tools aimed to help investors. The GCAP Community/Investor Guidelines and accompanying Model Lease Agreement provide a framework for guiding investors and communities to develop land agreements that are inclusive, socially acceptable, and environmentally sustainable. To learn more, you can find the GCAP Community/Investor Guidelines,

	Model Lease Agreement, and project report at http://gcap.org.gh/ .
Registrar General's Department ¹⁵	Responsible for registering all business entities in Ghana before the business can register with GIPC and engage in business in Ghana.
Land Use and Spatial Planning Authority (LUSPA) ¹⁶	Grants authorization for spatial developments.

Customary Land Governance and Investment

The Constitution and the National Land Policy recognize the custodians of the allodial ownership of stool, skin, and family lands as fiduciaries with a responsibility for the greater good of the enfranchised community living on and using the land. Ghanaian law does not lay out in detail how this fiduciary role should be fulfilled, or what specific obligations are owed by the allodial holder to the community. However, Article 36 (8) of the Constitution specifies that managers of public, stool, skin, and family lands are fiduciaries, that they each have a social obligation to manage such lands to serve the larger community, and that they will be held accountable for their stewardship over such lands. In practice, allodial holders may not always uphold their responsibilities to the public and the community. As discussed in the previous section, this poses some particular challenges to fulfilling the FPIC standard.

Because customary land rules vary from one traditional area to the other, it can be challenging for investors to identify which customary institution to approach, and which set of rules are appropriate, relative to a particular land parcel. It can be difficult to find an authoritative source from which to learn the rules, which may be passed down orally, and may or may not align with formal law or international standards. State agencies may offer some guidance, though no institution has an official mandate to offer such help, and no single agency exists that would be the best contact for all potential investors seeking land.

In many cases, a Traditional Council, made up of the area's Paramount Chief and Local Elders or Family Heads and clan heads, holds authority over land. In general, community members access land through their lineage, and non-indigenes access land by permission from the relevant traditional leaders. Because customary laws may vary significantly between ethnic groups and communities, it is important to learn as much as possible about these customary structures early in the process.

Type of Customary Land	Ultimate Customary Authority Overseeing Allodial Interest	Stakeholders Within Customary Structure (Irrespective of entry point into the community, the following hierarchy should be kept in mind throughout the investment process)
Stool Lands	Paramount Chief	<i>Local Chiefs and Elders.</i> Responsible for parcel identification and boundary demarcation in communities. Work with these individuals to engage with community members, clearly identify the proposed investment area, and demarcate boundaries between neighbors in the community. <i>Divisional Chiefs.</i> Report to the Paramount Chief and have a supervisory role over specific portions of the stool lands. With the help of Local Chiefs and Elders, consult with the Divisional Chief for approval of the site selected and endorsement of the project. <i>Paramount Chief.</i> As the ultimate decision-making authority, they sign off on the proposed project and are the signatory on the land lease.
Skin Lands	Overlord	<i>Local Chiefs and Elders.</i> Responsible for parcel identification and boundary demarcation in communities. Work with them to engage with community members, clearly identify the proposed investment area, and demarcate boundaries between neighbors in the community. <i>Divisional Chiefs.</i> Report to the Paramount Chief and have a supervisory role over specific portions of the stool lands. With the help of Local Chiefs and Elders, consult with the Divisional Chief for approval of the site selected and endorsement of the project. <i>Paramount Chief.</i> Reports to the Overlord and is responsible for granting the land to investors. They are one of the two signatories on the land lease. <i>Overlord.</i> They confirm the granting of land to investors and are the second signatory on the land lease.
Clan Lands	Clan Head	<i>Local Elders.</i> Responsible for overseeing the use of land at the community level. Work with them to engage with individuals, clearly identify the proposed investment area, and demarcate boundaries between neighbors in the community.

		<i>Family Heads.</i> They have supervisory role over specific portions of Clan Lands and report to the Clan Head. With the help of the Local Elders, consult with the Family Head for approval of the site selected and endorsement of the project. <i>Clan Head.</i> With the help of Family Heads, consult with the Clan Head for final approval and sign off for the land lease.
Family Lands (Typically a number of “families” make up a clan.)	Family Head	<i>Local Elders.</i> Responsible for parcel identification and boundary demarcation on family land. Work with these individuals to engage with individuals, clearly identify the proposed investment area, and demarcate boundaries between neighbors in the community. <i>Family Head.</i> They sign off on the proposed project and are the signatory on the land lease.

Under the present system, customary land owners may go quite far down the road with an investor without involving, informing, or seeking the support of the formal state institutions for land administration. Under the law, the state land agencies come in only at the point of land registration. This creates a gap in coordination among government agencies, and means that transactions involving customary land can, and often do, take place without the participation of the many entities responsible for investment promotion and regulation and land administration.

This poses a challenge to the efficient administration of land and also presents challenges to investors, who may struggle to identify the correct customary land institution to work with. Because there are few formal records on the land ownership system, no registries or rosters for reputable consultants or databases with verified information on customary land authorities, and the rules and processes for land dealings vary from local area to local area, investors can be misled or waste time and resources dealing with the wrong individuals and institutions. These issues support an argument for investors to seek out the support of a local consultant or expert in social and land tenure issues to help orient the investor to the appropriate institutions and processes, and to support equitable and efficient land investment processes well before a land lease has been signed and is ready for registration.

Women's Land Tenure Under Law and Custom

Investors seeking to meet international standards for responsible land investments face a challenge in Ghana. Due to social and tenure dynamics in most customary systems, women's and men's experiences related to processes, risks, and benefits of investment are often vastly unequal. Women, in some cases, access customary land rights through their fathers, spouses, or male relatives. Traditionally, women do not have decision-making authority over the allodial interest held by the land-owning group. This is the case for all female members of the land-owning group, including the Queen Mothers, even where the group practices matrilineal system of inheritance. Individual women, who obtain customary rights over portions of the land by virtue of their being members of the land group, have rights over the portion they use but may not be consulted in the investment decision.

The situation is different when land is acquired under a lease. In such instances, women can acquire the land without going through any male member of her family, so long as they are able to afford the lease payments. However, due to strong cultural influences at the household level, some women who have the financial capacity to acquire leases still do so in the name of their husbands.

While the situation for women varies across the country, two things are generally true:

- Women have less access to land.
- The exercise of customary rights over the land they have accessed is, in most cases, subject to their husband's authority, if married, or to other male members of her family.

Additionally, women tend not to be part of consultative and decision-making processes related to land allocation and transactions. The Lands Commission's Guidelines acknowledge this issue and promote gender inclusion throughout the acquisition process through provisions aimed at ensuring women's full and equal participation.

Investors are likely to require assistance understanding how to identify and address gender issues and how they arise in the Ghanaian contexts so that they can uphold international standards in their investment processes. A minimum standard for responsible investment is to ensure that investments are structured so that women do not lose out when family farms are eliminated, relocated, or restructured. For example, oftentimes the use of family land is changed to benefit-sharing or outgrower schemes that turn household sustenance farming toward cash cropping.

Similarly, ensuring that women are consulted, are fairly compensated, and do not lose out when family farms are relocated will require targeted efforts that some Ghanaian traditional authorities may be unwilling to perform or support. Businesses should ensure that all elements of a rigorous consultation and engagement effort or resettlement plan actively work to include women and women's input.

FPIC in Ghana

Although Ghanaian law does not expressly adopt the FPIC standard for land investments, there are two formal documents that enforce concepts related to FPIC:

- **The National Lands Policy of 1999.** This policy states that “no interest in or right over any land ... can be disposed of ... without consultation of the owner or occupier” (article 4.3c).
- **Guidelines on Large Scale Land Acquisitions (LSLA Guidelines).** These guidelines, currently in draft form, incorporate the principles of FPIC to safeguard community land rights. For example, they require investors to conduct land tenure due diligence and environmental, social, and economic impacts. The LSLA Guidelines also prohibit violations of human rights, especially those of women and other vulnerable groups.

The new LSLA Guidelines will likely further strengthen FPIC provisions and provide more concrete guidance for implementation.

In the meantime, the lack of clear FPIC requirements under the formal legal framework presents a number of challenges to meeting the standard in Ghana, as discussed in the

next section. The section that follows will discuss some strategies for navigating these challenges over the course of an investment process.

Challenges in Applying FPIC in Ghana

At a high-level, there are three main challenges in applying FPIC and other responsible investment practices in Ghana:

- 1. Formal Ghanaian laws lack explicit reference to, or guidance on, FPIC or FPIC concepts.** As a result, it is up to the business enterprise to do the work needed to ensure compliance. This includes (but is not limited to) taking on the task of educating land users about their land rights and engaging with them at each phase of the investment process.
- 2. Variability in customary rights for women, non-indigenes, and small holder farmers.** Strongly hierarchical and male-dominated customary land tenure arrangements predominate in Ghana. At both the community and household level, women, non-indigenous, and small-holder farmers have limited voice in decision-making regarding the use and control of land. Therefore, for a land-related investment to meet international best practices, an investor will need to use targeted approaches to consult all potentially excluded groups and ensure that they are fairly accommodated and compensated for lost value in terms of livelihoods and land assets.
- 3. Conflicting mandate of the custodianship of the allodial interest.** Though this is not always the case, it is not uncommon for traditional leaders, who are custodians of the allodial interest, to see themselves as having the absolute right to make decisions about the land. Although this may not necessarily be in line with the constitutional provisions, there are no institutional mechanisms for ensuring compliance and redress in cases where the traditional leader acts against the will of members of the land-owning community. To meet international standards and best practice, an investor must consult with the community as well. A local CSO working on land rights issues would be an important source of support and information through this process and can introduce the investor to the full range of relevant stakeholders within the community.

Challenges with Information Dissemination

To meet the FPIC standard, **affected individuals and communities must have access to relevant, timely, and accurate information**. This information must be sufficient to support informed, locally legitimate dialogue, deliberation, and decision-making that respects the cultural norms of the community.

This can be challenging in Ghana for a number of reasons:

- **Information gaps.** Communities are not well organized, making it difficult for an investor to disseminate information. The level of education affects how much the local people are able to comprehend, and local governments may also lack capacity to support informed discussions within communities. Further, where the majority of land users are subsistence farmers, local community members may be unfamiliar with the processes, timelines, language, and expectations of commercial land-based investment projects.
- **Limited experience and differing views on the value of land-based assets.** Many community members in Ghana have reported that, though they agreed to a lease payment and other financial terms of a long-term land lease, they nonetheless felt cheated by the enterprise upon realizing the full impacts of losing the land, their primary asset for supporting their families. This is due in part to the reality that many communities have not alienated land for a commercial purpose, and have limited experience with long-term leases. As land is the primary means of production and sole asset for many smallholders, yet is not usually owned by a single individual, establishing a fair value can be challenging.
- **Information asymmetry.** While business enterprises often have access to high-quality satellite imagery, soil and water analysis, and other information sources that are material to an investment decision, land-owning communities and land users are unlikely to have access to the same data.

Challenges to Holding Inclusive Consultations

According to best FPIC practices, **consultation should happen at the community level**. This can be a challenge in Ghana for a few reasons:

- **Community leadership arrangements and social organization;**
leadership/allodial title holders may not advance the best interests of the

community and may see the land, or the benefit that may come from an investment, as belonging solely to themselves.

Under Ghana's Constitution and tradition, customary authorities hold land in trust for their people, establishing a fiduciary relationship with customary land users. In practice, however, custodians of the allodial interest in customary lands often consider themselves to be the sole owners of the land and, therefore, entitled to dispose of it as they wish. In some areas, this is supported in part under customary law, which holds that the allodial owner has the right to allocate land to users. Tenant farmers may be even more precariously situated because they usually assume that they lack any status or rights held by customary community members. Under custom, these tenant farmers usually cannot resist or reject a proposed land acquisition that threatens their use.

- **Customary law may not allow for certain people (such as women and non-indigenes) to be considered in community decision-making.**

In most regions in Ghana, there are customary land rights holders who migrated from their region of birth to settle in another region to undertake their farming activities. Regardless of how long they or their descendants have used the land, these individuals do not have the same status as the indigenes of the area and, therefore, are not allowed to be involved in decision-making on the customary land.

Because women are generally viewed as not having decision-making authority over customary land, they are likely to be left out of consultations, community forums, and other engagements and negotiations, unless a business enterprise makes a purposive choice to have women present.

One effective strategy to overcoming this issue is for a business enterprise to have a clear gender strategy informed by an understanding of the gender dynamics of the proposed project area.

Challenges to Obtaining Consent

Consent, as defined under FPIC, means **that the people involved can freely and without consequence agree or disagree with the land acquisition**. As seen with consultation, particularly for women and for non-indigenes, achieving this level of consent may be challenging. Under Ghana's customary land arrangements, the custodian of the allodial interest represents that entire land-owning group in all decision-making. Even when this is done without consultation with the group, it is difficult for the members of the group to bring any action against the leader of the group. Given the

customary land system and the absence of strong legal provisions on the need for consent by all members of the land-owning group, there is a substantial risk in Ghana that members of the land-owning group and land rights holders in the community will not be called upon for their consent.

Given these realities, investors will likely have to self-enforce the standard.

³ *National Land Policy*, (June 1999) at 4, Ministry of Lands and Forestry, hereinafter “NLP,” available at: <https://www.documents.clientearth.org/wp-content/uploads/library/1999-06-01-national-land-policy-1999-ext-en.pdf>.

⁴ The version available at the time of preparing the RIPL Guidebooks was a draft version, dated June 2016.

⁵ 1992 Constitution of Ghana & 1996 Amendments §20.1 -20.5.

⁶ *id*

⁷ Environmental Protection Agency Act, 1994, (Act 490) §1.1

⁸ The 1992 Constitution.

⁹ The Lands Commission Act, 2008 (Act 767).

¹⁰ Office of Administrator of Stool Lands Act 1994, (Act 481).

¹¹ Constitution of Ghana, 1992, Art. 36(8).

¹² Ghana Investment Promotion Center Act 2015, (Act 865).

¹³ Office of Administrator of Stool Lands Act 1994, (Act 481).

¹⁴ Environmental Protection Agency Act 1994, (Act 490).

¹⁵ The Companies Act 1963, (Act 179).

¹⁶ Land Use and Spatial Act 2016, (Act 925).

4.

Step-By-Step Guidance

Quick Glance: Phases of the Investment, Proposed Tasks, and Steps

Phase 1: Preparing for an Investment

This phase is about getting the company ready to take on a responsible investment and beginning to gather the information it needs to assess whether to move forward with an agricultural investment.

Task 1: Developing Policies, Commitments, and Safeguards

1. [Evaluate and develop improved internal company policies for responsible land-based investment.](#)
2. [Develop implementation strategy and operational plan.](#)
3. [Operationalize and promote responsible land-based investment policies.](#)

Task 2: Conducting Due Diligence

1. [Understand the country's development objectives and investment context.](#)
2. [Understand the legal and institutional framework for land-based investment and its implementation.](#)
3. [Compare international standards and best practices to domestic laws and policies.](#)
4. [Consult with key stakeholders.](#)
5. [Look at gaps between law and practice.](#)
6. [Based on analysis, develop a Risk Mitigation Strategy.](#)

Phase 2: Community Engagement, Consultation, and Assessments

This phase provides steps for understanding the local context of the project area, an assessment of the local environment, nature of engagements, and consultations required to establish conditions for responsible investments.

Task 1: Engaging and Consulting with Land Rights Holders and Users

1. In coordination with the Ghanaian government, provides initial notice of intent to invest.
2. Identifies and conducts background research on the potential investment site and the communities and individuals who use it.
3. Identifies a community entry point and facilitator.
4. Seeks an introduction to community leadership through an appropriate intermediary.
5. Identifies stakeholders holding interests in the land.
6. Assesses the community's capacity to engage in a commercial land transaction and FPIC process.
7. Creates and implements a capacity-building plan.
8. Conducts initial meeting(s) with affected communities and individuals.
9. Conducts additional meetings with communities.
10. Seeks, encourages, and respects a community's decision to halt or proceed with negotiations.

Task 2: Conducting Community Assessments

1. Formally registers to conduct business in Ghana.
2. Seeks support from a neutral third-party to assist in each community assessment.
3. Introduces assessment process and develops assessment engagement plan.
4. Business works with third-party to conduct the community capacity assessment.
5. Third-party conducts an Environmental and Social Impact Assessment (ESIA), including assessing impacts on land rights, land users, and livelihoods.
6. Holds a forum to present impact and validate assessment and mitigation measure findings.
7. Third-party conducts land valuation.
8. Develops compensation package.

Phase 3: Developing an Equitable Land Lease and Addendum

This phase is about the drafting of the land agreement, investment related commitments of both the company and the actors in customary land governance of the area, and the surveying of the project land for cadaster. The steps described will help ensure that the contract is fair and equitable to all parties, establishing clear rights, responsibilities, and processes to ensure the long-term sustainability and equity of the land transaction.

Task 1: Negotiating and Drafting the Land Lease and Addendum

1. [With land-owning group, prepare to develop and sign a Letter of Intent to negotiate the terms of the land lease and addendum in good faith.](#)
2. [Begin negotiation among contracting parties regarding the key terms of the land lease and an addendum to safeguard the rights of all community members.](#)
3. [Iteratively develop the proposed investment project.](#)
4. [Updates proposed investment project documents based on negotiations.](#)

Task 2: Reviewing and Signing the Land Lease and Addendum

1. [Determine the final investment configuration based on community responses and counter-offers to the proposed land lease and addendum.](#)
2. [Review the land lease and addendum for clarity and accessibility.](#)
3. [Ensure that the land lease and addendum is shared with all affected individuals and rights holders.](#)
4. [Solicit and obtain community consent to the land lease and addendum terms.](#)
5. [Convene a meeting for final signing of the land lease and addendum.](#)
6. [Submit the land lease document to the Lands Commission for concurrence and/or registration.](#)

Phase 4: Implementing and Monitoring the Investment

This phase applies to new investments as well as existing ones. It ensures that investments projects are implemented and monitored in a responsible manner.

Task 1: Preventing and Addressing Land-Related Issues

1. [Prevent disputes by maintaining on-going engagement and consultation with the community.](#)
2. [Establish a grievance mechanism for resolving land-related disputes.](#)
3. [Set-up an information system.](#)
4. [Test and review the system.](#)
5. [Communicate with communities about the grievance process.](#)
6. [Communicate with employees and contractors about the grievance process.](#)
7. [Train and support participants.](#)

Task 2: Developing and Implementing an Ongoing Monitoring and Evaluation Plan

1. [Make a commitment to Monitoring and Evaluation \(M&E\).](#)
2. [Create collaborative and consensual processes for developing the M&E plan.](#)
3. [Create a realistic and sustainable M&E approach and work plan.](#)
4. [Develop transparent and independent evaluation strategies.](#)
5. [Ensure that information about M&E is accessible to all stakeholders.](#)
6. [Ensure accountability by linking M&E to the grievance mechanism.](#)
7. [Use M&E as a source of continuous learning and improvement.](#)

Phase 1: Preparing for an Investment

This phase is about preparing the business, the community, and affected individuals for a project. The business should develop organizational policies that reflect best practices and standards for agricultural investment and conduct initial due diligence to understand the national context for land investments.

Task 1: Developing and Implementing Policies, Commitments, and Safeguards

1. [Evaluate and develop improved internal company policies for responsible land-based investment.](#)
2. [Develop implementation strategy and operational plan.](#)
3. [Operationalize and promote responsible land-based investment policies.](#)

Task 2: Conducting Due Diligence

1. [Understand the country's development objectives and investment context.](#)
2. [Understand the legal and institutional framework for land-based investment and its implementation.](#)
3. [Compare international standards and best practices to domestic laws and policies.](#)
4. [Consult with key stakeholders.](#)
5. [Look at gaps between law and practice.](#)
6. [Based on analysis, develop a Risk Mitigation Strategy.](#)

Task 1: Developing and Implementing Policies, Commitments, and Safeguards

Best Practice

To achieve socially responsible investments in land, a business enterprise needs strong systems and safeguards that start with clear and comprehensive land investment policies.¹⁷ These policies should:

- Clearly affirm the company's commitment to specific international standards (such as the VGGT or AU Guiding Principles) and the application of those standards to each land investment.
- Comply with national law but be shaped to meet international best practices, which may exceed the efforts called for by national law.
- Call for a business enterprise's suppliers (e.g. vendors, contract farmers, etc.) to adhere to similar standards.
- Explain how they relate to, and are supported by, other business enterprise rules and protocols, and how they will be institutionalized, implemented, and enforced.
- Outline specific mechanisms to achieve stated objectives, such as performing impact assessments and consultation activities.
- Establish internal standards for incorporating land tenure risks into decision-making.
- Be endorsed by the highest level of the enterprise, be known by all working within the enterprise, include clear lines of authority and mechanisms for implementation and enforcement, and be publicly available.

A number of business enterprises have made their land policies and associated implementation guidance available online. These policies can provide a useful starting point for developing a policy that suits the particular needs of the business. See online [Supplemental Resource: Sample Business Enterprise Policies](#) for examples of land policies and implementation guidance that companies have adopted and made public.

Step-By-Step Guidance

1. Evaluate and develop improved internal company policies for responsible land-based investment.

Best practices start at the company level. This is why the first step is to review the company's existing policies to see how they address land-based investments. Policies should address all types of land-based investments:

- **Fresh acquisition.** A company must have policies in place for the fresh acquisition of a parcel of land through a leasehold transaction with the original owner.
- **Acquiring land with legacy issues.** Policies should articulate how the business plans to address adverse impacts on communities and right holders that are inherited from a predecessor's past actions. While the company did not create the adverse impacts it may likely be, or be perceived as, a direct beneficiary of the actions.
- **Existing holdings.** In addition to providing guidance on the acquisition of new assets, policies should also include a periodic review of tenure issues on a company's existing holdings to ensure that they are compliant with any new regulations and requirements.
- **Existing holding with legacy issues.** Policies for the periodic review of tenure issues should include how the business plans to identify and address adverse impacts from legacy issues.
- **Joint ventures and mergers.** Joint ventures and mergers, that involve land holdings held by one or more of the merger parties, should trigger the same level of scrutiny as the acquisition of new land—either land acquired directly from communities or smallholders or land that had been previously acquired by an enterprise or the government.
- **Supply chain impacts (commodity procurement).** Obtaining agricultural commodities, whether an enterprise is buying crops from a national producer growing at scale or sourcing commodities through smallholder business models (such as outgrower arrangements, growing trusts, block farming, or cooperatives), can have land-related impacts that should be considered and addressed if the company is to comply with socially responsible investment

standards. Foreign and domestic commodity enterprises should extend their land policies to include growers/suppliers to address land rights impacts throughout the entire supply chain. Extending policies down through supply chains takes time, as growing suppliers will probably require education, support, tools, and monitoring.

Policies should reflect a commitment to respect land rights and interests by upholding international standards and best practices, like those outlined above and in the following sections of this Guidebook. If existing policies do not reflect these commitments, it is important to revise them so they do. Companies should consider the following when evaluating their policies:

- **Scope.** Do any of my company policies have an implication on specific types of investments or other company activities related to land-based investment?
- **Process.** Have I developed these policies in an inclusive way? Has my policy development process ensured buy-in from key company stakeholders? What about the departments responsible for implementing these policies?
- **Content.** Do my policies related to land-based investment reflect best practices? Is that commitment communicated in a clear, effective way?
- **Implementation:** Are the policies actionable with clear lines of authority and mechanisms for implementation and enforcement?

2. Develop implementation strategy and operational plan.

As part of developing or revising existing policies, the business must consider what is needed to operationalize its commitment to achieving responsible land investments. This will help it develop policies that are realistic and achievable. Ideally, the business should identify several immediate and long-term implementation steps and set realistic indicators and targets. These should be enumerated in an action plan to accompany the announcement of these new policies. The plan should be a “working document” that is revised regularly (such as annually or as otherwise determined by the planning team) as the business continues to learn and refine its approaches and tools. Investors should plan and budget for an iterative learning process.

As part of the implementation plan, consider the following targets:

- Update existing operational manuals and guidance for employees and suppliers.

- Deliver trainings for employees, suppliers, and other third-parties engaged in land and commodity acquisition, supply chain management, supply chain audits and assessments, and public relations.
- Deliver training for individuals engaging in the Ghana-based project, specifically covering Ghana's unique cultural context.
- Develop questionnaires, checklists, and other materials to help people get the information they need to do their jobs.
- Attend relevant international forums or join industry groups or certification networks.
- Assess compliance with policies on social, environmental, and human rights assessments for ongoing operations.
- Develop and maintain a map of agricultural commodity supply chains.
- Develop a strategy for resolving concerns identified in the assessments.

Implementation of policies may require support from third-party experts and auditors. Experts in land and resource tenure can help shape company policies and implementation plan from their inception, helping the business to identify potential tenure related risks and articulate best practices. Businesses may also seek specific guidance for implementing concepts identified in the remainder of this Guidebook to tailor implementation to their circumstances.

Consider joining an industry group or network as another path to finding support. A number of international and regional forums exist to promote the exchange of best practices. Multi-stakeholder networks—which include business enterprises, government, civil society, academics, and donors—and annual conferences will also provide the opportunity to learn from actors with different perspectives.

3. Operationalize and promote responsible land-based investment policies.

Once the business has created its policies and has an initial implementation plan, it must move its commitments into action. While the implementation plan will include many actions, one essential step is communicating and promoting the new policies.

The company's board of directors, shareholders, various committees, managers, employees, and suppliers will all need to know about the new policies and how the company will implement them. Consider promoting the policy publicly to customers,

industry group partners, and other interested parties. This can create reputational and accountability benefits.

Simply handing over a document describing the policies will likely not be enough, particularly for individuals who will be directly affected or will bear responsibility to implement the new policies. To communicate effectively, the business may need to develop training materials, operational guidance, questionnaires, checklists, and other materials identified in its implementation plan.

The need for training will vary based on the roles and responsibilities of different stakeholders. For instance, employees responsible for receiving and addressing land-related grievances in the course of an investment will need more detailed implementation support, such as checklists and human or financial resources. All stakeholders are likely to benefit from some information on the following:

- **The business case for responsible land-based investment.** To some, the benefit and importance of responsible land-based investment policies may not be apparent. Talk to company staff and suppliers about the potential financial harm to the business and suppliers that can result from land conflicts, and the potential gain in productivity, efficiency, and goodwill that could result from a policy's implementation. Supplier losses can accrue from community ill will and from the loss of customers who care about best practices. An additional resource with more information on tenure-related risks in investments is TMP Systems' [The Financial Risks of Insecure Land Tenure: An Investment View](#).
- **Basic land rights issues that arise in the course of land-based investment.** A basic understanding of the types of land-related issues that can arise in an investment can help all stakeholders better understand the rationale for the new investment policies. Where stakeholders share a common understanding of potential issues, they will be better able to support the implementation of the action plan and identify concerns from the perspective of their daily responsibilities. By making all actors partners in this endeavor, the business is more likely to gain buy-in and receive feedback on tools and resources to achieve its policy goals.
- **Specific tenets of the policy.** It will be important to communicate the company's specific policies and planned implementation steps. Clearly describe what the company believes and exactly what it will do. Consider providing staff with resources to learn more, such as this Guidebook and the documents it references.

For a sample training presentation covering these issues, see the online PowerPoint presentation, [Supplemental Resource: Communicating Your New Land Commitment](#). This resource is intended to serve as a template to support the communication of key principles of the policy and basic land concepts, but it will need to be tailored to each company's unique needs. Each slide contains speaker's notes to provide the presenter with detailed information to accompany each slide. It is divided into three modules: (1) the business case for company commitments to land rights protections; (2) overview of land rights, land-related issues, and best practices; and (3) introduction of the company policy and implementation plan.

Task 2: Conducting Due Diligence

Best Practice

At the outset of a potential investment process, it is imperative to learn as much as possible about the local context. Doing so will help identify and mitigate actual or potential issues and risks the project may pose to communities and individuals who rely on the property the company is looking to acquire or use.

This is called **acting with due diligence**. Acting with due diligence will help the business avoid infringing on legitimate tenure rights and land uses.¹⁸

Due diligence should:

- Inform the company about the local context and the actual or potential issues and risks the project poses to communities, women, men, and the company.
- Provide the information needed to determine if the land investment can be designed and implemented in keeping with best practices called for under international standards.
- Provide information that the company will use in making a final go/no-go decision on whether to proceed with the investment.

This evaluative process can be done through audits and self-reporting, though it should probably be carried with significant support from a third-party. Additionally, it should include input from government, civil society, individual land users, and communities from potentially affected areas, and other stakeholders.¹⁹

Though this section primarily covers due diligence activities to be completed at the beginning of a project, due diligence activities should continue at regular intervals over the course of the investment lifecycle. For example, any expansion or change to an investment or the addition of a new supplier to the company's supply chain is an opportunity to practice due diligence.

Step-By-Step Guidance

1. Understand the country's development objectives and investment context.²⁰

Responsible investments] should strive to contribute to policy objectives, such as poverty eradication; food security and sustainable use of land, fisheries and forests; support local communities; contribute to rural development; promote and secure local food production systems; enhance social and economic sustainable development; create employment; diversify livelihoods; provide benefits to the country and its people, including the poor and most vulnerable.

- Paraphrased from VGGT

The first stage of project due diligence should focus on understanding the context for agricultural investment, including the dynamics of the land and agrarian systems and agricultural operations in the country. This can be done through an on-site assessment or a review of existing literature. Learning about this will inform an assessment of how the project could impact existing livelihood strategies or present new opportunities or risks.

Additional government policy objectives include fostering job creation and income generation, and equitable resource distribution and development aligned with the National Development Planning Commission's 40-Year Development Plan.²¹

2. Understand the legal and institutional framework for land-based investment and its implementation.

After assessing the broader investment context, a responsible investor should investigate the legal framework pertaining to land and land-based investments. This will involve consideration of three primary areas:

- Formal policies, laws, and regulations governing land and investments;
- Customary practices related to land tenure and agricultural activity; and
- Any gaps between the law's intended enforcement and its actual implementation.

As discussed in the sections above, Ghana operates under a mix of customary and formal law. How this plays out specifically depends on the region in which the investment will take place.

Depending on the depth of experience and expertise within the company, engaging local counsel or other experts who are knowledgeable about the legal context in Ghana may be necessary.²² Additionally, it is important to consult with specialized tenure experts or NGOs with greater knowledge of customary practices to support this review. These experts can help the company navigate the complex legal landscape and local context.

Identifying International Legal Obligations

An assessment of the governance framework should include a review of international and regional agreements to which the government is a party. These agreements should be read closely to determine what obligations these instruments impose on the government. In reviewing, take care to note if there are any reservations or other limitations applied.

Identify Laws, Policies, and Regulations that Affect Investments, Land, and Property Rights

The legal review must also include a review of both formal and customary laws that apply in Ghana.

For example, this review should include:

- Laws that affect rights to land and natural resource access, ownership, control, and management; and
- Procedural rights and institutional responsibilities that enable the implementation and enforcement of land rights.²³

The legal analysis should identify ambiguities, inconsistencies, and areas of overlapping institutional mandates and gaps, and should look specifically at the land rights of women and youth. This will require assessing how land and property regimes apply in light of family and marital laws.²⁴

These laws should be analyzed by the business with support from legal counsel and provide answers to the following inquiries. This review should yield an analysis of how Ghanaian national law and policy requirements compare to international standards and best practices.

Questions to ask at this stage include:

- What are the main laws regulating acquisition, transfer, lease, and use of land? Consider subtopics such as documentation and registration of land rights,

valuation, compensation, resettlement, contracting, and dispute resolution mechanisms.

- Do laws differentiate between foreign and domestic investors? Differentiation standards may include thresholds for native ownership of joint ventures, for example, or reduced number of years for leaseholds.
- Do the laws and policies protect all land users, including women and men and communities with customary, secondary, seasonal, and other use rights?
- Do the laws and policies regarding negotiation, contracting, and enforcement establish a requirement to obtain Free, Prior, and Informed Consent (FPIC) when engaging and consulting individual land users (both women and men) and communities? See [FPIC in Ghana](#), above.
- Do laws and policies require a thorough assessment of human rights, social, and environmental impacts of a proposed project to be reviewed and approved by the appropriate government agency before a contract is registered and the investment activity commences?
- Do laws and policies support the establishment of dispute resolution mechanisms that are culturally appropriate, accessible, transparent, and accountable to all parties and provide appropriate protection mechanisms for individual land users (both women and men) and communities?²⁵
- Do laws and policies clearly state how to value land in a manner that will provide equitable compensation to individual land users and communities?
- Do laws and policies discourage or prohibit the resettlement of individual land users (both women and men) and communities, or do they encourage investors to explore alternative options to land acquisition such as contract farming, management contracts, and other inclusive business arrangements?
- Do laws and policies recognize the different needs and challenges facing individual land users (both women and men) in terms of accessing and exercising rights to land and natural resources and negotiating with investors and government?

These questions should serve as a starting point, and the list is not intended to be exhaustive. The following resources can be useful for answering these questions and mapping legal frameworks:

- [Resource Equity's LandWise Library](#)

- [USAID Country Profiles](#)
- [LANDac Factsheets](#)
- [Land Portal](#)
- [FAOLEX](#)
- [NYU's GlobalLex Database](#)
- [University of Ottawa's JuriGlobe Research Group](#)
- [World Legal Information Institute](#)
- Government agencies of target country
- Civil society organizations of target country

3. Compare international standards and best practices to domestic laws and policies.

The findings from desk research on the national framework should be compared with the best practices outlined in this Guidebook and the international standards it references. Next, identify gaps between the national framework and best practices and assess the risk such gaps pose to achieving a successful, responsible investment. Other phases and tasks in this Guidebook will help the business consider what actions need to take during the investment process to meet best practices.

As the business identifies potential investment sites within a target country, it will need to continue to update this due diligence to include gaps between on-the-ground realities and best practice.²⁶

4. Consult with key stakeholders.

As with any significant venture, responsible investments require interfacing with stakeholders at many different levels. As part of desk research, identify government agencies, community organizations, business entities, and other relevant stakeholders, such as donors and academic institutions. Consult identified key stakeholders to gauge whether domestic land laws and policies are clearly understood and are being implemented and enforced.

5. Look at gaps between law and practice.

Through consultations with key stakeholders, and a review of any existing studies, examine the Ghanaian government's actual practices and flag for additional attention any areas where enforcement is lacking or incomplete.²⁷ In this gap analysis, special care should be taken to understand how the resulting framework for land rights protects or leaves women or youth vulnerable. Finally, it is important to seek out information and learn from the experience of other investors in Ghana to validate and verify the conclusions of the due diligence review.²⁸

6. Based on analysis, develop a Risk Mitigation Strategy.

By identifying risks and developing mitigation measures, the company will have a broader and deeper understanding of what is required to have a socially responsible investment and the Ghanaian realities that may make that difficult. A Risk Mitigation Strategy can help to ensure that decisions are well-informed and avoid negative impacts, risks, inefficiencies, and unforeseen issues.

¹⁷ Some examples include Nestlé Commitment on Land and Land Rights in Agricultural Supply Chains, an appendix to The Nestlé Policy on Environmental Sustainability, https://www.nestle.com/asset-library/documents/library/documents/corporate_social_responsibility/nestle-commitment-land-rights-agriculture.pdf; Coca Cola Supplier Guiding Principles, which includes guidance on land in its supply chain, <http://www.coca-colacompany.com/our-company/supplier-guiding-principles>; and Illovo Group Guidelines on Land and Land Rights, <https://www.illovosugarafica.com/Group-Governance/Group-Guidelines-on-Land-and-Land-Rights>.

¹⁸ Voluntary Guidelines 3.2.

¹⁹ USAID (2015) Operational Guidelines for Responsible Land-Based Investment.

²⁰ AFD, Guide to due diligence of agribusiness projects that affect land and property rights: Operational Guide, at 17.

²¹ The NDPC plan and other development initiatives can be found on the NDPC website, <http://ndpc-cms.herokuapp.com/>.

²² LAP 2 Project.

²³ Janet Pritchard, Feja Lesniewska, Tom Lomax, Saskia Ozinga, and Cynthia Morel (2013). Securing community land and resource rights in Africa: A guide to legal reform and best practices, <http://www.forestpeoples.org/sites/fpp/files/publication/2014/01/securingcommunitylandresourcesguideenGLISHjan2014.pdf>.

²⁴ For detailed guidance on conducting research and analysis of women's land rights in a legal context, see *Women's Land Tenure Framework for Analysis: Land Rights*, <http://landwise.resourceequity.org/guides/3>.

²⁵ IFC Good Practice Note Addressing Grievances from Project-Affected Communities, <https://www.unglobalcompact.org/library/38>.

²⁶ Janet Pritchard, Feja Lesniewska, Tom Lomax, Saskia Ozinga and Cynthia Morel (2013). Securing community land and resource rights in Africa: A guide to legal reform and best practices, <http://www.forestpeoples.org/sites/fpp/files/publication/2014/01/securingcommunitylandresourcesguideenGLISHjan2014.pdf>.

²⁷ USAID 19; ADF 19.

²⁸ USAID 20.

Phase 2: Community Engagement, Consultation, and Assessments

This phase builds upon the Lands Commission Guidelines on LSLA and recommends additional engagement and consultation activities to ensure companies and communities are able to navigate complex tenure arrangements and social dynamics.

Task 1: Engaging and Consulting with Land Rights Holders and Users

1. In coordination with the Ghanaian government, provides initial notice of intent to invest.
2. Identifies and conducts background research on the potential investment site and the communities and individuals who use it.
3. Identifies a community entry point and facilitator.
4. Seeks an introduction to community leadership through an appropriate intermediary.
5. Identifies stakeholders holding interest in the land.
6. Assesses the community's capacity to engage in a commercial land transaction and FPIC process.
7. Creates and implements a capacity-building plan.
8. Conducts initial meeting(s) with affected communities and individuals.
9. Conducts additional meetings with communities.
10. Seeks, encourages, and respects a community's decision to halt or proceed with negotiations.

Task 2: Conducting Community Assessments

1. [Formally registers to conduct business in Ghana.](#)
2. [Seeks support from a neutral third-party to assist in each community assessment.](#)
3. [Introduces assessment process and develops assessment engagement plan.](#)
4. [Business works with third-party to conduct the community capacity assessment.](#)
5. [Third-party conducts an Environmental and Social Impact Assessment \(ESIA\), including assessing impacts on land rights, land users, and livelihoods.](#)
6. [Holds a forum to present impact and validate assessment and mitigation measure findings.](#)
7. [Third-party conducts land valuation.](#)
8. [Develops compensation package.](#)

Introduction: The Importance of Working with Community Members

Working with communities is a central component of FPIC. The 1999 Ghanaian National Lands Policy states that:

[No] interest in or right over any land ... can be disposed of ... without consultation of the owner or occupier (Article 4.3c).

The draft of the LSLA Guidelines also upholds this consultation standard. The draft Guidelines additionally outline a process that both domestic and foreign investors must follow to acquire large areas of land for investment purposes.

Task 1: Engaging and Consulting with Land Rights Holders and Users

Best Practice

The selection of the investment location is one of the most important steps to ensuring a successful venture in the long-term. By conducting due diligence up front, the business can identify potential risks and make an informed decision before investing additional resources. Try to understand as much as possible about the legal status of the land, the formal and customary rules and practices that govern it, the users of the land, past and present disputes surrounding the land and its resources, and the demographics of the surrounding communities. This understanding should be informed by conversations with multiple sources, including interviews, consultations, and group discussions with government, civil society, community leaders, and community members. The support of third-party experts from civil society or the private sector may be necessary.

For an investment to succeed over time, the business must foster strong interactive relationships with communities through regular community consultations. The business should therefore engage and consult meaningfully with communities, individual smallholders, and all other land users (both women and men) throughout the land investment project, starting at the beginning of the investment.

Hallmarks of good consultation include the following principles:

- Consultations should be **representative and inclusive**. To be effective, community consultations must seek to include the active participation of a broad cross-section of the affected community and must actively include groups that are frequently under-represented in decision-making forums (such as women, youth, and ethnic minorities).
- Consultations should consist of **multiple meetings**. Thorough consultations seldom occur at a single event because people need time to digest information, think about their situation, and formulate questions. The business will likewise need time to gather information in order to answer those questions. Approaching consultation as a process (series of engagements) ensures that community members have adequate information and opportunity to consider the merits and drawbacks of a proposed investment so they can make a truly informed decision. These upfront efforts will benefit the business in the long-run, as it will be able to

identify, address, and consider the diverse concerns of different stakeholders and establish open communication that can continue throughout the life of the investment project, should the company decide to move forward. This can help the business avoid disputes, grievances, and challenges over the long-term.

- Consultation should involve **two-way communication**. Not only is the business providing useful and transparent information to help the community decide whether it is interested in the investment, but it is also listening to and receiving valuable information from community leaders and community members to help it decide if this is the right place for investment.
- The engagement and consultation process should be **in accordance with FPIC**. FPIC is an important concept to guide the entire investment process, as the business moves from initial sensitization and consultation to negotiation and contract signature. For more information, see the **FPIC Primer**, as well as FAO's guide, [Respecting Free, Prior, and Informed Consent](#) (2014) and USAID's [Operational Guidelines for Responsible Land-Based Investment](#) (2012).

Step-By-Step Guidance

1. In coordination with the Ghanaian government, provides initial notice of intent to invest.

Giving notice to Traditional Authorities community leaders is both a best practice and an important step in effective and socially responsible engagement. The initial notice of intent should be shared with the broader community. Notice should be provided in a language, format, and location that are accessible to affected community members, including women and other vulnerable groups.

Though Ghanaian law does not require this step, the Lands Commission LSLA Guidelines do. Per the Guidelines, the business enterprise should provide relevant information to the Regional Lands Commission regarding its identity, investment purpose and funding sources, proposed business plan, and communications strategy.

2. Identifies and conducts background research on the potential investment site and the communities and individuals who use it.

The first step in consultation is to learn about all the communities and individuals who are using the site. The **Lands Commission** can provide support and information during this process, and should facilitate the engagement process with other government agencies like the District Assembly, Town and Country Planning Division, and the Ministry of Food and Agriculture. It will be critical to ensure the proposed investment conforms to the district level land use plans.

With the support of third-party experts from the private sector or civil society, this research will inform the business enterprise about the following:

- **Relevant customary and traditional practices, including how to approach the community in a culturally sensitive manner.** It is typically appropriate in Ghana to seek the permission of traditional authorities, Chiefs, and Elders before consulting members of any community.
- **The appropriate local language in which to communicate.** Although English is the official language of Ghana, over 80 other languages are spoken. It is also likely that many community members will speak little or no English. This is particularly true for women, who tend to have fewer opportunities to learn it. Most business enterprises will need to engage appropriate interpreters at this stage.
- **Past, current, or potential land and resource issues and conflicts in the area.** This may include issues related to intra-household land allocation, as well as conflicts with minority or vulnerable groups and with neighboring communities. Engage with other knowledgeable people, such as elected officials, small business owners, and CSOs, to obtain a clear picture of the local conditions, dynamics, and power structures.
- **Local land tenure system, uses, and livelihood activities.** Review available published information on local land uses and livelihood activities, as well as the existing customary land tenure system, and begin the process of identifying potential impacts, benefits, and losses to the community if the proposed investment project proceeds. Determine who stands to gain and who stands to lose.
- **Initial supply chain assessment.** This can be done by requesting information from local farming enterprises about the identity, location, methods, employees, and internal safeguards.²⁹

3. Identifies a community entry point and facilitator.

After the initial introduction, the business enterprise will need to:

- **Identify the appropriate entry point for engaging with the broader communities.** Each customary group is likely to have protocols for approaching community members for a consultation. Local CSOs may already have such contacts because of past experience working locally.
- **Engage a suitable facilitator to arrange and conduct the initial meeting.** This should be a neutral third-party who is familiar with the local community and its customs. Local CSOs can be appropriate facilitators. The facilitator should provide broad-based representation of different community perspectives, including those of women and other vulnerable groups. It may be necessary to engage more than one facilitator. If possible, civil society and government representatives should assist in this process and potentially act as facilitators.

4. Seeks an introduction to community leadership through an appropriate intermediary.

Here, the primary task is to **identify the appropriate intermediary to make an introduction between the company and the community leaders and/or land-owning authorities.** This may be a government agency, such as the Lands Commission, Ghana Investment Promotion Centre, or Ministry of Lands and Natural Resources. Alternatively, it may be a local CLS or another person or entity with knowledge of the local landscape and context.

Initially, meet with the relevant community leaders to determine whether there is an initial interest in the investment. Once permission is obtained, then seek to engage with leaders of minority groups, as well as women's groups.

5. Identifies stakeholders holding interest in the land.

The initial research on the communities who use the land will serve to identify individual stakeholders and their specific interests. The following steps will help in this process:

- **Research both registered and unregistered land users.** Conduct a search for registered interests at the Lands Commission. Then, check with the Minerals Commission to verify that no mineral prospecting or concessionary rights have been granted on the land.
- **Work with NGOs/CSOs.** Some stakeholders are identified as such based on their interest, which may be separate from those working near or on the investment site.³⁰ This means that NGOs/CSOs or local associations and organizations must be identified and engaged with even if they are outside the investment site.
- **Share and validate findings.** Present findings and validate stakeholder mapping with relevant government officials, traditional leaders, land users, and communities. If possible, include a representative of all identified stakeholder groups in this mapping validation meeting.
- **Include vulnerable stakeholders who are frequently overlooked, such as tenants or “strangers.”** This involves looking beyond the allodial rights holders and the heads of families to identify anyone who is using or has a right to use land, including women and younger men who are not yet household heads. Additionally, there may be seasonal land users, such as nomadic herders, who may not be present when the mapping occurs. Look outside the project area to identify those who have claims to resources on the land, especially water.³¹

In line with the LSLA Guidelines, the business enterprise should compile the above information in a dossier that contains the site plan, proposed development, investor profile, partners, communication strategy, stakeholder mapping, and ESIA. This dossier will be important when it is time to negotiate, draft, and review a land lease contract.

6. Assesses the community’s capacity to engage in a commercial land transaction and FPIC process.

It is not uncommon for communities and individual land users to lack experience with commercial land transactions. Prior to engaging in a meaningful dialogue, the business

enterprise will need to have a clear understanding of how familiar each community is with investment processes and how well-equipped they are to engage in a negotiation and transaction. It may be easiest to do this by engaging local CSOs to perform an assessment.

During this step, it is important to gauge any barriers or challenges that community members experience in:

- Articulating the impacts they may experience.
- Accurately and realistically evaluating the project and its potential impacts.
- Participating in negotiations over agreeable terms.
- Determining what sort of technical support they will need to engage in the investment process.

7. Creates and implements a capacity-building plan.

If the community capacity assessment reveals that the community does not have the information or capacity it needs to be able to participate in an impact assessment and other steps of the land lease negotiations, a plan to help the community build this capacity will be important. This will ensure that community members can participate in the impact assessment and represent themselves in any subsequent negotiations.

Community members will likely need assistance in determining how the investment will affect them. That is, they will need assistance in comprehending how their lives and livelihoods will change if they are no longer able to use the land in question. Because women's land uses within the household and community are often unrecognized, unacknowledged, unrecorded, and secondary, women will need particular assistance in articulating their uses, and in describing the likely impacts.

The plan should also describe needed educational materials and activities, including role-playing and explanations of how to ask questions, voice disagreement, and make complaints.

8. Conducts initial meeting(s) with affected communities and individuals.

With the support of a facilitator, hold an initial meeting with the community to introduce the business and the potential project. Provide details about the proposal itself, as well as the anticipated community engagement process.

In addition to sharing about the project, a key objective here is to receive initial feedback on the proposals. Solicit input on preferred means of communication with the community so communications efforts are more effective.

Importantly, ensure that women and non-indigenes are present at this meeting. Beginning inclusively will help to avoid duplicating efforts later.

For more information on women and consultation, see the [Gender Primer](#).

9. Conducts additional meetings with communities.

The Lands Commission Guidelines provide detailed guidance on a public forum in which community members may learn about, provide input into, and accept or decline a proposed investment. While the Guidelines present the forum as a single event, this Guidebook recommends undertaking this engagement through a *series* of meetings. This approach ensures that community members have adequate information and opportunity to consider the merits and drawbacks of a proposed investment so they can make a truly informed decision.

Ideally, these meetings will:

- **Include the assistance of the third-party facilitator.** If possible, include a government representative as well.
- **Both inform the community and provide a space for dialogue.** Taking questions, providing answers, gathering opinions, and responding to concerns are all key to holding a successful meeting.
- **Be inclusive of all groups, even if it means holding different meetings.** Different groups may require different types of meetings, and meetings should be held at locations and times that are accessible to the targeted community members. It is important to note that women, tenants, and other vulnerable groups may have different schedules that must be accommodated. In some cases, this may require holding separate meetings for women.
- **Be transparent about the proposed business dealings.** The business should provide complete information on:
 - The business and its history.
 - The project purpose and geographic scope.
 - The business model and proposed project timeline.
 - The specific land right being sought, including the term of the agreement.

- Potential benefits to the community.
- Potential risks, including social, environmental, and financial ones.³²

10. Seeks, encourages, and respects a community's decision to halt or proceed with negotiations.

Once all the information has been presented, and all members of the community have had the opportunity to engage with the business or its agent regarding any questions, concerns, and complaints, the community must decide whether to halt or proceed.

Some important notes about this step:

- **This is not an agreement to proceed with the project itself, but is an agreement to negotiate in good faith.** In other words, the community may have agreed to move forward, but there are still many steps (including contracting) to be taken before the transaction is complete.
- **In the Ghanaian context, posing this decision to the full community may not be culturally appropriate,** as traditional leaders may have the role for making this decision. In some cases, a Memorandum of Understanding (MOU) or Letter of Intent (LOI) can be a useful tool to support inclusive negotiations by laying out the terms, conditions, and stakeholder roles for the negotiations process.

Additional resources include:

- FAO, [Governance of Tenure Technical Guide Respecting Free, Prior, and Informed Consent](#) (2014).
- USAID, [Operational Guidelines for Responsible Land-Based Investment](#) (2015).

Task 2: Conducting Community Assessments

Best Practice

To inform whether both the business and the community/communities should proceed with the investment, the business is responsible for hiring neutral and experienced third parties to **conduct three community assessments** that examine community capacity, environmental and social impacts, and the value of land. The business should ensure that community members are informed about the assessments, can participate

meaningfully in them, and have assessment findings communicated to them in a form that they can understand. It is best practice to conduct, at minimum, the following assessments. Although there are overlapping aspects and steps to each assessment component, for the sake of clarity, this guide presents each component as a standalone assessment:

- **Community Capacity Assessment.** It is not uncommon for communities and individual land users to lack experience with commercial land transactions. This assessment looks at the capacity of community leaders and members to participate in the investment process, including environmental and social impact assessment, land valuation, and negotiation and contracting.³³
- **Environmental and Social Impact Assessment (ESIA).** This assessment identifies and gauges actual or potential impacts from the proposed investment project on the environment and community, including impacts affecting land users, land rights, and livelihoods.³⁴ Revisions to the investment design should incorporate mitigation measures from the assessment that will reduce or eliminate impacts and sustain or improve livelihoods.
- **Land Valuation.** A core element of determining impacts is assessing and establishing market and non-market value of interests and rights in the land, including interests and rights associated with livelihoods and social, cultural, religious, spiritual, and environmental values to ensure that compensation and benefits are equitable for women, men, and communities.³⁵

Step-By-Step Guidance

1. Formally registers to conduct business in Ghana.

Ghanaian law requires a business wishing to do business in Ghana to register with the Registrar General's Department (RGD) and with the Ghana Investment Promotion Centre (GIPC). The first step is to complete required application forms and submit them to the RGD along with payment of fees. Required forms are available on the [RGD website](#). The enterprise will then receive a Certificate of Incorporation and a Certificate to Commence Business.

The next step is to register with GIPC. See [Investor Registration Guidelines](#). GIPC is responsible for registering all enterprises in Ghana. The business should be prepared to provide the following:

- A copy of company operating rules and regulations.
- A copy of its Certificate of Incorporation (received from the RGD).
- A copy of its Certificate to Commence Business (received from the RGD).

The business will be formally registered within five (5) days of submitting a completed Investor Registration Form to GIPC.

2. Seeks support from a neutral third-party to assist in each community assessment.

Given the complexity of these assessments, and to promote objectivity and fairness, the business should hire one or more experienced third parties to design and conduct the capacity assessment, ESIA, and land valuation. Inadequate assessments often result from the failure to secure appropriately trained and credentialed technical professionals with experience working with communities. An expert third-party brings reliability and technical expertise.

A third-party also lends credibility and objectivity to the findings. It is important that each assessment team is trusted and respected, and that their relationship to the business enterprise is structured in a manner that supports their independence, as the experts will need to act on behalf of both communities and the business enterprise, and navigate real and perceived conflicts of interest. To promote objectivity, the selection of a third-party could be done through a tender process, based on qualifications and experience. The services, financial payments, and transaction could also be managed

by a party that does not have an interest in the investment project, such as an escrow company or a financial services provider. Seek input from community leaders on the candidates before hiring them to ensure the community is comfortable with the parties that will be conducting the assessment.

In addition to possessing the requisite technical experience and professionalism, the business should consider the following as they build the assessment teams:

- Experts should be generally familiar with customary and traditional practices. They will be able to engage with the community in a culturally sensitive manner and learn the local customs and practices related to land, natural resources, and livelihoods. Ghanaian experts, familiar with the project area, should be used wherever possible, but it may be necessary to bring in additional international experts if local experts are not available.
- The teams should include interpreters, if necessary, to ensure clear communication between the business enterprise and community participants.
- Ideally, one person from each team should be a woman who can engage and lead discussions with women in the community, who may be inhibited from participating fully if they are interviewed by men.

3. Introduces assessment process and develops assessment engagement plan.

The purpose of this step is to disclose information about the planned assessment, introduce the assessment teams, answer questions, and develop an assessment engagement plan with input from community members. Refer to [Best Practices for Holding Community Meetings](#), above.³⁶

4. Business works with third-party to conduct the community capacity assessment.

The community capacity assessment evaluates whether the community and its leaders are well-situated to actively engage in the consultation and decision-making processes leading up to a final lease agreement. The assessment will look at whether structures and processes exist and how well they ensure that community members and leaders can openly listen, comment, disagree, ask questions, and ultimately negotiate benefits, compensation, and other terms of a contract.

It is not uncommon for communities and individual land users to lack experience with commercial land transactions. This often results in an uneven bargaining position, whereby communities are not on an equal footing with business enterprises during negotiations. In the event the community capacity assessment identifies gaps in the community's ability to participate in the process, the business will need a plan to address those gaps, such as through trainings or technical support. Without such support, proceeding with the investment may fail to comply with international best practices such as FPIC and could produce unintended risks and consequences for the investment, the company, and the community.

Consult online [Supplemental Resource: Community Capacity Assessment](#) when planning and conducting the assessment.

5. Third-party conducts an Environmental and Social Impact Assessment (ESIA), including assessing impacts on land rights, land users, and livelihoods.

Ghanaian law calls for an Environmental Impact Assessment (EIA) if the potential investment is larger than 40 hectares and/or requires the relocation of 20 or more families. A participating CSO may also be well-positioned to lead or assist on this assessment, and some Ghanaian CSOs probably have experience in this capacity.

The EIA is also required for obtaining any necessary permits. The Environmental Assessment Regulations of 1999, LI 1652 (2002) outline the process for conducting EIAs. Section 30 specifies that the EIA includes the **project's impacts on the natural environment as well as the socio-economic, cultural, and health impacts**.

The [EIA regulations](#) outline the following steps:

- **Scoping.** Identify the extent of the review needed.
Draft the EIA. This draft should include:
 - Project Description.
 - Baseline survey of existing environmental and social conditions at the proposed site.
 - Impact Assessment of the potential environmental, social, health, economic, and cultural impacts of the project.
 - Impact mitigation and management plan.
- **Publication, Comment, and Public Hearing** as required by law.

- **Technical Review** of draft EIA and public comments by the EPA.
- **Environmental Management Plan (EMP) and annual Environmental Report.** Projects must submit an EMP within 18 months of beginning operations. Annual reports to the EPA are required for the duration of the project.

The Environmental Protection Agency (EPA) regulations outline impact assessment procedures and provide guidance for holding public forums and the EIA review, permitting, and post-certification monitoring processes.

Although the EPA requirements are triggered only when land is to be developed, best practices provide that these steps, culminating with an EMP, should be completed prior to entering into a lease agreement for the land in question.

To comply with widely-accepted human rights standards,³⁷ the EIA should be expanded to satisfy standards for Environmental and Social Impact Assessments (ESIA). Such an assessment also includes an assessment of impacts on land rights, land users, and livelihoods in the community. Below are the actions the business should take in planning and conducting the ESIA.

Develop a research methodology. Online [Supplemental Resource: Land Rights Assessment Tool Kit](#) contains resources and information to develop a customized assessment to identify potential issues and risks related to economic, environmental, social, and land rights issues. The research methodology should describe:

- Scope and duration of study.
- Location and boundary of the potential investment site, along with areas near the site that could be affected by the investment.
- Thematic areas and issues that will be assessed.
- The different types of land users potentially affected by the investment.
- Tailored questionnaire for each type of land user.
- Types of qualitative and quantitative research techniques that will be used.
- Links to the community engagement plan.

Identify land boundaries and map rights holders and users. Work with government officials, community leaders, and other parties as established in the assessment engagement plan to determine an appropriate mapping exercise to demarcate and map the boundaries of land parcels and the location and extent of various land uses.

Consider identifying a technology solution to help gather, analyze, and share information quickly using smartphones and other devices. The [Cadasta Platform](#) is one option that could help the assessment team design a fit-for-purpose collection tool, enable it to quickly collect satellite and drone imagery, and allow it to share the data with the government and community.

The team will need to:

- **Identify legitimate land rights holders and land users.** Work with government officials, community leaders, and other parties, as established in the assessment engagement plan, to identify individuals and groups that have legitimate interests or rights in the land and should participate in the decision-making process, regardless of whether their rights are registered by the government.
- **Identify existing and prospective land uses and boundaries.** This includes formally documented rights to the land or any other identified and documented boundaries or governance rules.
- **Conduct a search for registered land interests.** Check with the CLS and Lands Commission for registered land interests, including any associated parcel maps or descriptions. It is important to verify information across government departments since it sometimes happens that one ministry grants a permit for mining, for example, while another ministry identifies the same parcel for agricultural development.
- **Identify overlapping rights and uses.** Group and individual land users within the community may have overlapping rights and uses on the same parcels of land, including seasonal work or different crops grown by women and men. While assessing overlapping uses, any conflicts or disputes over land should be examined as well because they would have to be resolved in order to come to an agreement with community members.
- **Assess how the potential acquisition would affect the amount of land available for food crop and other livelihoods production.** The analysis must go beyond the obvious and include such things as gathered resources (including craft and production materials and medicinal and other uses), along with the economic benefits of naturally occurring and planted trees.
- **Evaluate the importance of agricultural use and infrastructure to local livelihoods and economies.** This could include: commodity crops; food crops; non-agricultural livelihood strategies; water sources; agricultural inputs like

seeds, fertilizers, and pesticides; market access; roads and transportation; and other infrastructure.

- **Evaluate the extent to which women and men have different perspectives on all issues discussed and examined during the assessment.**³⁸ For example, women may be more knowledgeable than men on different types of plants grown or gathered for food or medicinal purposes, and may be able to provide more detailed information on sources and uses of water.³⁹
- **Analyze findings and identify risks.** The framework in online [Supplemental Resource 8: Risk Mitigation Analysis](#) will help the business identify investment effects on different types of land uses and how they will impact the livelihoods of land users. As the impact assessment reveals possible or actual negative effects on land rights and uses, the project should be reconfigured, as feasible, to minimize breadth and depth of the impacts and eliminate them where possible.

Some options include:

- *Alternative investment models:* There are a variety of reconfiguration measures that may be suitable, depending on the circumstances, including:
 - Exploring alternative investment models that do not result in the large scale transfer of land rights to investors, including partnerships with local land rights holders and contracts with small-scale producers.
 - Using a different land acquisition structure, such as a short-term lease instead of a long-term lease or outright acquisition.
 - Avoiding the displacement of people by considering feasible alternatives.
 - Reducing the amount of land to be acquired for the project.
 - Staging land acquisition so that it is taken from existing users only as needed for the investment.
 - Allowing community members to continue to use at least a part of the land for subsistence farming.
- *Resolve existing disputes before acquisition.* This may require formalization of the rights of unrecorded land uses.

6. Holds a forum to present impact and validate assessment and mitigation measure findings.

Share and present findings to the community for comment, correction, and ratification. Seek input, questions, and opinions from community members. Listen for input that suggests something may have been missed during the assessment. Follow the assessment engagement plan and hold as many meetings as necessary to reach all impacted land rights holders and users. Refer to [Best Practices for Holding Community Meetings](#) for these meetings.

The forum purpose, financing, facilitation, participation, issues, and outcome are outlined in detail in the LSLA Guidelines. These Guidelines state that the forum should be carried out as a part of the ongoing consultation and engagement process. For example, ensure that all community members are invited, can be present, and are actively encouraged to participate.

While the LSLA Guidelines provide for a single event, it is likely that multiple presentations and consultations are necessary, particularly if women are to be reached and input solicited from them. It is also important that the information about the project and assessment results are reviewed and approved by the entire affected community and other external stakeholders, including technical experts and government.

Update proposed investment project documents based on assessment findings.

Update the design of the investment project to reflect assessment findings. Share the project document with government authorities, community leaders, and other parties per the agreed upon assessment engagement plan.

7. Third-party conducts land valuation.

The Royal Institute of Charter Surveyors (RICS), a professional body promoting and enforcing internationally recognized standards in valuation, provides useful guidance on best practices. The [RICS Valuation – Global Standards](#), commonly referred to as the RICS Red Book, is a comprehensive resource with practical implementation guidance.

The following are high-level principles that should be taken into account by the assessment team:

- Enumeration of assets, that could be affected, should be done before damage occurs.
- Enumeration of assets should be done together with the affected persons.

- Even when a private valuation firm is used to undertake the enumeration, the Land Valuation Division of the Regional Lands Commission should be involved to supervise and validate the enumeration.
- Indicate to affected farmers the option for them to also recruit their own Valuer
- Sensitize affected land rights holders on the modalities for assessment of compensation.
- Create opportunity for sharing, discussing, and agreeing on the compensation amounts.
- Make the compensation process known to the affected persons in advance.
- Ensure payment is made to the actual land rights holder.

8. Develops compensation package.

Engage with each community, land rights holders, and land users to determine who is entitled to compensation and then begin constructing the compensation package. The valuation calculations should serve as the basis for compensation.

Remember that national law usually provides a floor, rather than a ceiling, for compensation.⁴⁰ Look to supplement the base monetary value of the land with additional compensation and other ways of restoring and improving livelihoods. At a minimum, compensation should be such that livelihoods of affected community members, land rights holders, and land users are not diminished over the full-term of the investment, including project planning, implementation, and closeout and remediation (if any).

The business will need to:

- **Develop a compensation and benefits framework** that includes:⁴¹
 - Who should be compensated:
 - Women;
 - Men;
 - Community leaders;
 - Pastoralists; and
 - All other land users that will forego use of the land or begin to use it differently for the benefit of an investing business enterprise.

- What losses should be compensated:
 - Market and non-market value of land;
 - Tangible assets lost, such as marine and aquatic resources, timber and non-timber forest products, freshwater, medicinal plants, hunting and gathering,⁴² grounds and grazing, and cropping areas; and
 - Non-tangible values, including livelihoods, social, cultural, religious, spiritual, and environmental.⁴³
- Forms of compensation:
 - Cash;
 - Employment commitments;
 - Social and economic community improvements;
 - Equity in the investment;
 - Other benefit-sharing arrangements, including outgrower schemes;
 - Periodic rent such as annual rent; and
 - Replacement land or natural resource access.
- **Consult with land rights holders and users about preferred forms of compensation.** Communities and individuals entitled to compensation should be consulted on how they would prefer to be compensated.
 - Consult with all stakeholders, as different groups may favor different forms of compensation.
 - Rights holders and users should be offered multiple compensation options from which to choose.
 - Consider non-monetary forms of compensation. Cash compensation is rarely sufficient to restore livelihoods because it rarely covers the actual value of lost assets and typically is spent on items that do not support livelihoods. Furthermore, community members may not be able to purchase replacement land in or close to the community, so every effort should be made to provide or facilitate access to similar resources elsewhere.⁴⁴ If it's necessary to provide for full livelihoods compensation, the business enterprise should offer a combination of alternative land, employment opportunities, education and skills training, and infrastructure improvements as part of the compensation package.

- When offering land-based compensation, replacement land should be of equal productive use or potential and located in the vicinity of the acquired land. The business enterprise should also cover the cost of making the replacement land similar to or better than the acquired land, as well as transaction costs such as registration taxes and customary fees.⁴⁵
- Outgrower arrangements require thoughtful planning and execution, and investors should plan to dedicate extra time and resources to managing outgrower relationships. For best practices around outgrower arrangements, consult online Supplemental Resource: [Outgrower Best Practices Literature Review](#).
- **Structure payments in a sustainable and culturally acceptable manner.**
 - If the community or individuals prefer cash compensation to replacement land, the investor should still offer non-land-based options in addition to cash, such as employment opportunities or credit assistance for establishing businesses, to ensure livelihoods are maintained or enhanced.⁴⁶
 - Schedule payments to be broken up and made over time, rather than as a onetime lump sum. The overall compensation award will be easier to manage if it takes the form of a medium or long-term source of income, rather than an immediate, large award. Establish clear timelines and milestones associated with these payments.
 - Consider establishing a village trust to handle distribution of benefits. Local leaders cannot always be trusted to make distributions to women and other vulnerable groups, so payments should be made either into a trust or directly to individual beneficiaries.⁴⁷ Assist the community in creating and managing a village trust if it so desires. The trustee could be an independent third-party.
 - Payment of compensation must be made (or made available for future payment through an escrow account) before the investor takes possession of the land and related assets.⁴⁸ The ability to pay full and fair compensation should not be contingent upon future revenue streams produced by the investment.
 - Make payments to men and women individually and separately. Male heads of households may not adequately look after the needs of women and children when spending proceeds,⁴⁹ and may not equitably share the payment with their spouses. Individualized payments to women will ensure that they receive their fair portion of the overall compensation award.

- **Document all agreed upon compensation.** All agreed upon monetary and non-monetary compensation must be incorporated into the written contract. If those being compensated are not parties of the land sale or lease contract, a separate agreement or memorandum of understanding should be made between the business enterprise and those receiving compensation.
- **Incorporate an audit into the investment's M&E plan.** Plan to include an external audit of whether the community and individual land users (both women and men) have been adequately compensated and had their livelihoods restored.⁵⁰

²⁹ OECD 31.

³⁰ IFC 15.

³¹ USAID 17.

³² USAID at 25.

³³ See African Union (AU), *Guiding Principles on Large Scale Land Based Investments in Africa* 15-16 (2014) [hereinafter "AU Guiding Principles"], available at https://www.uneca.org/sites/default/files/PublicationFiles/guiding_principles_eng_rev_era_size.pdf.

³⁴ VGGT, *supra* note 8, at 4 ("Business enterprises should act with due diligence to avoid infringing on the human rights and legitimate tenure rights of others."). See also UN Office of the High Commissioner for Human Rights (OHCHR), *Guiding Principles on Business and Human Rights* 5 (UN Human Rights Council 2011) [hereinafter "UNGP"], available at: https://www.ohchr.org/documents/publications/GuidingprinciplesBusinesshr_eN.pdf ("In order to identify, prevent, mitigate, and account for how they address their adverse human rights impacts, business enterprises should carry out human rights due diligence. The process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed.").

³⁵ Nigel Edmead, Technical Workshop Presentation on "Gender Issues in Designing and Setting Up Land Information Systems and Databases: Experiences from Ghana, Zambia and Uganda" (May 2011).

³⁶ USAID at 25.

³⁷ See AU Guiding Principles, *supra* note 17, at 6 ("Decisions on the desirability and feasibility of LSLBI are made based on independent, holistic assessment of the economic, financial, social, and environmental costs and benefits associated with the proposed investment, throughout the lifetime of the investment."); see also note 18, *supra*; see generally World Bank Group, *Human Rights Impact Assessments: A Review of the Literature, Differences with Other Forms of Assessments and Relevance for Development* (2013), available at http://siteresources.worldbank.org/PROJECTS/Resources/40940-1331068268558/HRIA_Web.pdf.

³⁸ GCAP Guide at 18.

³⁹ Namati Facilitators Guide at 29.

⁴⁰ USAID, *supra* note 9, at 43.

⁴¹ See True Price, Towards a Better Protocol on Fair Compensation in Cases of Legitimate Tenure Changes: Input Document for a Participatory Process 5 (2016), available at <http://landportal.info/sites/landportal.info/files/TowardsFairCompensationProtocol-FinalDraft.pdf>.

⁴² IFC, *Performance Standard 5: Land Acquisition and Involuntary Resettlement* ¶ 5 (2012), available at http://www.ifc.org/wps/wcm/connect/3d82c70049a79073b82cfaa8c6a8312a/PS5_English_2012.pdf?MO=D=AJPERES.

⁴³ See Edmead, *supra* note 19.

⁴⁴ IFC, Guidance Note 5 ¶ GN22.

⁴⁵ *Id.*

⁴⁶ *Id.* at ¶ GN24.

⁴⁷ USAID, *supra* note 9, at 45.

⁴⁸ IFC, Performance Standard 5 ¶ 9.

⁴⁹ See FAO, *Compulsory Acquisition of Land and Compensation* 40 (Land Tenure Studies No. 10 2008), available at <http://www.fao.org/3/a-i0506e.pdf>.

⁵⁰ IFC, Performance Standard 5 ¶ 15.

Phase 3: Developing an Equitable Land Lease and Addendum

This phase will help ensure that the contract is fair and equitable to all parties and establishes clear rights, responsibilities, and processes to ensure the long-term sustainability and equity of the land transaction.

Task 1: Negotiating and Drafting the Land Lease and Addendum

1. [With land-owning group, prepare to develop and sign a Letter of Intent to negotiate the terms of the land lease and addendum in good faith.](#)
2. [Begin negotiation among contracting parties regarding the key terms of the land lease and an addendum to the safeguard the rights of all community members.](#)
3. [Iteratively develop the proposed investment project.](#)
4. [Update proposed investment project documents based on negotiations.](#)

Task 2: Reviewing and Signing the Land Lease and Addendum

1. [Determine the final investment configuration based on community responses and counter-offers to the proposed land lease and addendum.](#)
2. [Review the land lease and addendum for clarity and accessibility.](#)
3. [Ensure that the land lease and addendum is shared with all affected individuals and rights holders.](#)
4. [Solicit and obtain community consent to the land lease and addendum terms.](#)
5. [Convene a meeting for final signing of the land lease and addendum.](#)
6. [Submit the land lease document to the Lands Commission for concurrence and/or registration.](#)

Introduction: Equitable Land Leasing in Ghana

Agricultural investment contracts take many forms, cover a range of issues, and vary depending on the parties, type of investment, and other factors. This section deals with written land lease contracts for large scale agricultural investments.

- The land lease will, at minimum, identify the basic time and term-based elements of the agreement. If it is following best practices, the lease should also establish the principal elements pertinent to community rights and benefits, including economic, environmental, social, and human rights.
- Government may or may not be a party involved with such agreements. If the investment is a joint venture or if the land in question is government land, the government will be a party involved with the agreement. Land leases must be understood within the country's legal framework, providing specific terms with particular application to the parties involved.
- In Ghana, domestic laws governing land and investment are imperfect, offer limited social or environmental protections, and are implemented with limited oversight and enforcement. A land lease in Ghana thus plays an important role in memorializing best investment implementation practices and establishing clear rights, responsibilities, and processes to ensure the long-term sustainability and equity of the land transaction.
- In Ghana, the role of the land lease is critical, addressing a range of issues beyond the basic terms such as price, duration, and timing of a lease. These vary according to the type and size of an investment, and may include taxation and investment incentives, export rights and restrictions, rights to import equipment, infrastructure or logistics requirements, access to and use of water, and social benefit provisions.⁵¹

Task 1: Negotiating and Drafting the Land Lease and Addendum

Best Practice

The business has the obligation to ensure that all stakeholders are able to participate equally when negotiating. The process should be non-discriminatory, gender sensitive, and include the participation of all community members in the investment area.⁵² The business should provide comprehensive information to land users (both women and men) and communities to ensure all relevant people are engaged and informed.⁵³

Depending on the needs of the community, continued community engagement may require the business enterprise to inform community members of their rights and assist them (including by providing professional assistance if necessary)⁵⁴ in developing their capacity to negotiate full compensation, benefits, and other terms of the land lease.⁵⁵

A land lease and addendum play an important role in memorializing the clear rights, responsibilities, and processes that have been defined during engagement, consultation, and assessment. The lease should also include a variety of additional provisions to provide needed clarity about the terms of the agreement.

It is the business's job to make this happen. This means:

- **Taking into account local interests** identified through consultation, engagement, and impact assessment under Phase 2.
- **Actively engaging with communities and individuals who have legitimate land rights**, including all women and men that currently occupy and use the land.
- **Seeking FPIC from all affected right holders.** Beyond asking community members for a simple "yes" or "no" in response to a request that they approve a land lease agreement, consent in the context of FPIC entails an iterative process through which the business enterprise and community conduct a dialogue in which all stakeholders' concerns and input are considered and addressed in the proposed project and contract.

In many areas of Ghana, the only party whose consent is required by law is that of the allodial title holder, usually the traditional leader. However, best practices call for

broader community participation. This means that **the business enterprise must do more than is required under Ghanaian law to comply with best practices for FPIC.**

Step-By-Step Guidance

1. With land-owning group, prepare to develop and sign a Letter of Intent to negotiate the terms of the land lease and addendum in good faith.

A Letter of Intent (LOI) mapping out expectations for appropriate participation, consultation, and consent is an important starting point for the contracting process between the business and the community.⁵⁶ The LOI outlines the principles that will govern the rest of the contracting process.

In addition, the LOI should include:

- A detailed description and timeline of the proposed negotiation, consultation, and drafting process.
- A list of key stakeholders who will be included, along with their roles, rights, and responsibilities.
- A description of any professional or legal support that the business enterprise will provide to the community during the contracting process.
- Shared objectives between business enterprise and community.
- A description of the role of government authorities in the negotiation, consultation, and drafting process.
- A description of the engagement and consultation process that the business enterprise will undertake with the community and individual women and men land users.
- A clearly defined process for dispute resolution.
- An agreement to draft an addendum to the land lease to safeguard the rights of community members who are not part of the land-owning group.

2. Begin negotiation among contracting parties regarding the key terms of the land lease and an addendum to safeguard the rights of all community members.

In Ghana, as in many countries, the requirements of domestic law fall short of the requirements of international best practices. Therefore, the contracting process must go further than domestic law to comply with international best practices.

Because land lease only pertains to the land-owning group, the **investor will need to develop an addendum** to the lease that includes important clauses pertaining to all communities.

Use the information and reports gathered during due diligence to understand the legal requirements, including what responsibilities the business has to the community. This includes reviewing results of the stakeholder mapping, impact assessment, and the ongoing consultation and engagement efforts.

Host a series of negotiation meetings with all stakeholders to discuss the proposed land lease and addendum terms with all community members. This should be done with the assistance of a facilitator and, if possible, the government. Here, **share the dossier created in Phase 2**. As a reminder, this dossier should contain:

- Complete and accurate information about the enterprise's history.
- The project purpose and geographical scope.
- The business model and proposed project timeline.
- The specific land right being sought, including the term of the agreement.
- Potential benefits to the community and surrounding area.
- Potential risks, including social, environmental, and financial risks.⁵⁷

Work with facilitators to create meeting environments where women feel comfortable sharing their input. In some cases, this may require holding separate meetings for women. If women need to obtain permission from men to attend, the men should be sensitized as to why the business thinks it is important that women attend.

In coordination with the community, establish a negotiation schedule. This schedule should provide sufficient time and space for stakeholders to propose changes to the project and make an informed decision as to whether to proceed with the investment.

Ensure that the land lease and addendum:

- Uses language that is clear, coherent, and transparent in its language.
- Clearly defines the rights and duties of all parties.
- Clearly outlines any mutually agreed conditions that would prompt or permit renegotiation or cancellation.

Two important guides specific to agribusiness investment contracts provide guidance about the main provisions that should be included in land lease agreements:

- The International Institute for Sustainable Development's (IISD's) [Guide to Negotiating Investment](#).
- The Columbia Center for Sustainable Investment's (CCSI) [Guide to Land Contracts: Agricultural Projects](#).

The [Ghana Commercial Agriculture Project \(GCAP\)](#) also developed a Model Lease Agreement, along with Recommendations for Large Scale Land-Based Investment in Ghana, and Community/Investor Guidelines for Large Scale Land Transactions.

The GCAP Model Lease and related guidance were developed specifically for Ghana, offering a framework for addressing common contract issues in light of best practices and current practice in Ghana. Even so, the GCAP tools are careful to note the need for:

- Parties to adapt the GCAP tools to variations in tenure contexts across Ghana.
- Inputs and preferences of communities and all parties during a negotiation.
- Fair and equitable negotiation.

The guidance also points out that ongoing engagement and sustained efforts by all parties to implement and enforce the agreement are critical. The following material discusses key lease terms and considerations for the Ghanaian context.

Terms and condition that apply directly to the Land Lease

Parties to a Land Lease

The parties to a contract are the business and the land-owning group that have the legal right to the land. By signing the contract, they agree to assume certain rights and obligations as described under the contract. Neither individual community members nor “the community” will likely be parties to the lease. To address this fact, the community and its members can be designated as third-party beneficiaries to the land lease by way

of an addendum. They can also be included in community development or other agreements concluded separately from the land lease.

Parties to land transactions for family land may consider establishing a committee multi-family joint venture to negotiate and sign on behalf of multiple landholding families. Such a committee would help to establish consensus and agreement among the many landowning parties, so as to lend clarity and certainty to the ensuing negotiations and agreement with the business enterprise.

The Paramount Chiefs in family land areas have been the converging points for managing the transactions involving multiple families. Even though the Paramount Chiefs in family land areas are not custodians of the land, they have been involved as the main confirming party to the contract.

Tenure Rights

The tenure section sets out the date and duration of the land lease, and it defines the rights of the business to use, access, and exclude others from the project site. It states the total area of land given and should indicate the boundaries and location of the land with precision. Ideally, the land lease should include a map as an appendix, which outlines:

- Clear geographical boundaries for the project area.
- Bodies of water.
- Any features on the land that the parties have agreed are to be left intact (such as forests, wetlands, sacred areas, trees, etc.).

Lease Term

The term (or duration) of the land lease will likely depend on the requirements of the investment. The term should set the date on which the lease commences (often referred to as the Effective Date). In Ghana, the maximum lease term for commercial agricultural purposes is fifty (50) years, which may be renewed by mutual agreement of the parties.⁵⁸ The parties may agree to establish periodic reviews or may consider shorter terms with provisions for extension or renewal of the lease.

Financial

Annual lease payments of ground rent are a common feature of most agricultural land contracts in Ghana, the lessee must pay ground rent annually for the use and

occupation of a particular parcel of land. It is payable whether the land is developed or not. For stool, skin, and vested lands, the annual ground rent is payable to the Office of Administrator of Stool Lands (OASL).

In addition to lease payments, the business will usually be required by law to pay other taxes or fees, such as income and export taxes or customs duties. In some cases, where the government is a party to the contract, the enterprise may negotiate exemptions from these payments. Such exemptions may be established by the land lease. An agricultural investment contract thus may offer additional detail on payments owed by the investor or may describe tax or fee exemptions.

Terms and conditions that apply to Addendum

Current laws regulating land leases do not require an addendum. Given this, it will be important that the addendum be stamped by the Land Valuation Division and receive a unique number for official recognition. In addition, the land lease should reference the addendum in one of the provisions.

Impact Mitigation Clause (Impact Assessments and Mitigation Plans)

The results and mitigation plans of impact assessments should be incorporated as legally binding obligations in the addendum. Documents should also contain a requirement for annual reporting on the implementation of the impact mitigation plan, with the reports to be made public and accessible to local communities.

Economic and Social Development Obligations

Where a business has committed to such standards as the VGGT, the commitments should be included in the addendum as well.

In Ghana, where domestic requirements fall short of international best practice standards or binding international law, the addendum is an important instrument for elaborating the social obligations of the parties. For example, where resettlement is anticipated, the agreement documents should include a commitment to reduce or minimize displacement and resettlement, and should identify who will be responsible for carrying out the relocation. The specific conditions of the resettlement should be included as well.⁵⁹

Land leases between business enterprises and communities for long-term rights to use land and/or natural resources commonly include compensation commitments in addition to the lease payment of ground rent. These commitments often provide material or in-

kind support to the community's development, and they should absolutely be included in the agreement. The addendum can also outline the creation of a community development fund or other commitment to undertake development projects that benefit the community.

Grievance and Dispute Resolution Mechanisms

Investment-specific grievance mechanisms, created and administered by the business, allow communities to voice and seek to resolve concerns and grievances. Such mechanisms should be designed in consultation with the community, with CSO input, and should be understandable, accessible, transparent, and culturally appropriate. The business should also consider using a suitable CSO as support in administering a grievance mechanism over the life of the investment.

As part of the mechanism development and implementation process, the business should commit to ongoing and regular communication with community members, particularly women and youth. Such obligations to communicate can be included in the contract.

The addendum should have these grievance mechanisms clearly defined with periodic assessments to ensure they function effectively. They should be:

- Proportional to the size and potential impact of the project.
- Culturally appropriate.
- Accessible to all affected community members (including women and vulnerable groups).
- Transparent.⁶⁰

Though these mechanisms give parties access to an effective non-judicial means of dealing with grievances, they should not “prejudice or restrict access to State-based or other non-State based complaint mechanisms.”⁶¹ Clauses in the addendum, addressing grievance mechanisms, should stipulate that mechanisms should:

- Be in place from the beginning.
- Be “simple to understand, but not simplistic in its dealing with people and issues.”⁶²
- Include stakeholders from the community and the enterprise in the design of the grievance mechanism in order to ensure accessibility.
- Be able to deal with a wide range of concerns, including multi-party or multi-issue complaints.

- Include culturally appropriate ways to access them, including ways for women to access without the intercession of their husbands or other male family members; as well as ways for strangers to access them, despite otherwise lacking the status of enfranchised community members.
- Be responsive to the local culture, including a variety of approaches to cater to differences in personal preferences and in culture.
- Have a central point of coordination in order to facilitate the development and implementation of the mechanisms.
- Include reporting between the community and relevant stakeholders about how the mechanism is doing and on types of cases received.

Disclosure and Transparency

Transparency is critically important to ensure that laws are followed, benefits to communities and to the host country are maximized, and communities are reassured that the government is acting in the public interest. The addendum should expressly provide for sharing of the document and its terms, along with regular reporting to named individuals and groups. A CSO is well suited to serve as a means for distributing information about the contract.

Monitoring and Enforcement

Establishing clear reporting requirements within the addendum will aid the government in tracking adherence to environmental, fiscal, and social development obligations. The addendum should also establish requirements for an enterprise monitoring its own compliance through internal reviews and self-reporting to government or third-party compliance evaluations.

The addendum should clearly outline how a neutral third-party, such as a CSO, can work with the enterprise and the community to monitor whether the project complies with the terms of the contract and to ensure it is not causing adverse social impacts.⁶³

Equitable Compensation

The addendum should be specific about compensation by outlining mechanisms that ensure communities—including men, women strangers, and vulnerable populations—receive equitable compensation. Compensation provisions should address how ground rent payments could, in part, be directed back to the community, and compensation for livelihoods losses and the costs of other impacts should be clearly spelled out. If

community development improvements and projects are a part of the compensation paid by the business, these items should also be clearly described in the addendum. If they are not covered in the contract, compensation provisions should direct the parties and any third-party beneficiaries to other agreements or memorandums of understanding that fully describe these benefits.

The addendum should stipulate how the project will identify and address women's land rights issues, paying particular attention to women to ensure that they benefit equally and that they are not made worse off by the investment. A CSO with experience serving women beneficiaries around livelihoods issues would be well suited to provide input to the business on specific approaches to addressing gender.

See online [Supplemental Resource: Key Contract Elements](#) for a list of terms and elements that should be included in a responsible land investment contract.

3. Iteratively develop the proposed investment project.

Update the terms of the investment project to reflect the input of the community as it is received. Additionally, project development should reflect impact assessment results and ongoing consultation and engagement. They should also comply with regulations and limitations established in the Lands Commission LSLA Guidelines.

To best ensure a responsible contract and investment, make sure that anyone representing the business, who is directly engaged in the negotiation, is explicitly told to pursue a project agreement that will:

- Ensure that land use interest and tenure rights are recognized and upheld.
- Fully compensate land users for parting with these land assets.

It is imperative that the business addresses any social impacts and rights issues pertinent to the contract. Even in instances where a community might not fully understand land lease and addendum terms or might not fully be on equal footing with the investor, the business must ensure that land use interests and tenure rights are acknowledged and respected in the contracting documents. This may include offering other kinds of support, such as independent legal counsel or paralegal support that would be paid through a trust or escrow fund.⁶⁴ During this critical stage, the community can offer meaningful and socially binding consent only if:

- Community members view themselves as possessing sufficient status such that they would be expected to be consulted and to consent.
- The community understands the land lease and addendum terms.

- The community's capacity is free from language barriers, conceptual limitations, and limited or no access to legal counsel.
- No challenges impede the ability of community members to actively participate in negotiating lease terms.

By meeting these four elements, the company can rectify any shortcomings in representation of community interests by official community representatives or by other parties to the contract. The business should host a series of negotiation meetings with all stakeholders to explain the proposed project details and discuss the proposed contracting terms with all community members. This should be done with the assistance of a facilitator and, if possible, with the assistance of local or regional government.

The community meetings should be conducted according to the community consultation guidance described in the first part of this Guidebook; refer also to online [Supplemental Resource 5: Community Consultation Checklist](#) to help guide the consultations.

4. Update proposed investment project documents based on negotiations.

If negotiations have materially changed the project concept, the business should update the investment project document to reflect those changes. In addition, the business should share the information with government authorities and community leaders per the engagement and consultation plan.

After these revisions, the business enterprise should consult online [Supplemental Resource 9: Final Contract Checklist](#), as well as its own due diligence research, to ensure that the contract complies with relevant standards.

⁵¹ IISD (2014) The IISD Guide to Negotiating Investment Contracts for Farmland and Water, available at https://www.iisd.org/sites/default/files/publications/iisd-guide-negotiating-investment-contracts-farmland-water_1.pdf.

⁵² VGGT, *supra* note 8, at 23.

⁵³ *Id.*

⁵⁴ *Id.* at 22.

⁵⁵ AU Guiding Principles, *supra* note 17, at 15-16.

⁵⁶ While this model Guidebook recommends the use of an LOI, a Memorandum of Understanding (MOU) or a Terms Sheet may serve a similar function.

⁵⁷ USAID at 25

⁵⁸ Constitution Article 266 (4); Administration of Lands Act, 1962 (Act 123).

⁵⁹ CCSI (2016) Guide to Land Contracts: Agricultural Projects, at 19. Available at <http://ccsi.columbia.edu/files/2016/03/Ag-Guide-2016.pdf>.

⁶⁰ *Id.* at 52.

⁶¹ *Id.* at 20.

⁶² A Guide to Designing and Implementing Grievance Mechanisms for Development Projects. 2008. Washington, DC: Compliance Advisor/Ombudsman.

⁶³ USAID Operational Guidelines, 7.11 – 7.16.

⁶⁴ See AU Guiding Principles, *supra* note 17, at 15-16.

Task 2: Reviewing and Signing the Land Lease and Addendum

Best Practice

Good contracting practices require that the contracting process remain **transparent and participatory** and that all affected communities be brought to an equal footing with investing business enterprises and governments. This means that:

- A neutral third-party should review the contract to validate that it meets the needs of community members and does not cause adverse social impacts.⁶⁵
- The business should seek the final consent from the community before signing the contract.
- The business should make the contract publicly available.

The land lease and addendum should not be signed before support is obtained from all stakeholders.⁶⁶ **If affected communities do not support the project, it cannot legitimately proceed.**

Step-By-Step Guidance

1. Determine the final investment configuration based on community responses and counter-offers to the proposed land lease and addendum.

Here, make sure that anyone representing the business, who is directly engaged in the negotiation, is explicitly told to pursue a project agreement that will:

- Ensure that land use and tenure rights are upheld.
- Compensate land users for these assets.

It is imperative that the business addresses any social impacts and rights issues pertinent to the contract. Even in instances where a community might not fully understand contracting terms or be on equal footing with the investor, the investor must ensure these rights are respected and reflected. This may include offering other kinds of support, such as independent legal counsel or paralegal support.⁶⁷

2. Review the land lease for clarity and accessibility.

Ensure the land lease:

- Is clear, coherent, and transparent in its language.
- Clearly defines the rights and duties of all parties.
- Clearly outlines any mutually agreed conditions that would prompt or permit renegotiation or cancellation.

Investment in Ghana will often require extra measures to ensure that land investments benefit and respect the rights of all land users, in addition to the allodial rights holders.

3. Ensure that the land lease and addendum is shared with all affected individuals and rights holders.

Communities involved can use transparently disclosed information to understand when they may have a legitimate grievance and how to access any grievance mechanisms that are available.

If information on the land lease and project is made available to local government officials, they can then use the disclosed information to assist in the enforcement of the land lease.

4. Solicit and obtain community consent to the land lease and addendum terms.

Consent must be provided before project implementation occurs. It is vital that all community members agree with the proposed contract. If affected community members do not support the project, it should not proceed.⁶⁸

See [FPIC in Ghana](#) for more information.

5. Convene a meeting for final signing of the land lease and addendum.

The documents should be signed in the name of the stool, skin, or family, rather than in the name of a single individual.⁶⁹ This includes having the Customary Land Authorities initial each page of the land lease and addendum. To support transparency and clear communication among all stakeholders, the final signing of the lease should be witnessed by as many people as possible.

The Lands Commission LSLA Guidelines provides a list of participants to be present at the forum. At a minimum, these participants should include:

- One or more government representatives from the Lands Commission.
- The District Chief Executive. and
- Community members from within and outside the traditional leadership (both men and women).

Within three months, a copy of the land lease and addendum should be made available in all relevant language(s). Additionally, any copies of the contract distributed through the Lands Commission and Customary Land Authorities should also be made available to all community members.⁷⁰

6. Submit the land lease document to the Lands Commission for concurrence and/or registration.

Once the lease has been signed by the parties, it must be submitted to the Regional Lands Commission with an application for concurrence (for stool and skin lands) or registration (for family lands).

The Regional Lands Officer will review the application to:

- Confirm compliance with the LSLA guidelines.
- Undertake a land inspection.
- Confirm the submission and completeness of the EIA reports and receipt of the EPA permit.
- Make a recommendation to the Regional Lands Commission (for land parcels of 405 hectares or less) or National Lands Commission (for land parcels larger than 405 hectares).

⁶⁵ USAID, *supra* note 9, at 51.

⁶⁶ Agence Française de Développement (AFD), *Guide to Due Diligence of Agribusiness Projects that Affect Land and Property Rights* 24 (2014), available at <http://www.landcoalition.org/sites/default/files/documents/resources/Guide-to-due-diligence.pdf>.

⁶⁷ Principle 10, Guiding Principles on Large Scale Land Based Investments in Africa.

⁶⁸ French Cooperation Operational Guide. p. 24.

⁶⁹ GCAP (2014) Community/Investor Guidelines for Large Scale Land Transactions, 20.

⁷⁰ FAO Respecting FPIC.

Phase 4: Implementing and Monitoring the Investment

This section of the Guidebook discusses the importance of implementing the project in accordance to the agreement and monitoring and evaluating community impacts.

Task 1: Preventing and Addressing Land-Related Issues

1. [Prevent disputes by maintaining on-going engagement and consultation with the community.](#)
2. [Establish a grievance mechanism for resolving land-related disputes.](#)
3. [Set-up an information system.](#)
4. [Test and review the system.](#)
5. [Communicate with communities about the grievance process.](#)
6. [Communicate with employees and contractors about the grievance process.](#)
7. [Train and support participants.](#)

Task 2: Developing and Implementing an Ongoing Monitoring and Evaluation Plan

1. [Make a commitment to Monitoring and Evaluation \(M&E\).](#)
2. [Create collaborative and consensual processes for developing the M&E plan.](#)
3. [Create a realistic and sustainable M&E approach and work plan.](#)
4. [Develop transparent and independent evaluation strategies.](#)
5. [Ensure that information about M&E is accessible to all stakeholders.](#)
6. [Ensure accountability by linking M&E to the grievance mechanism.](#)
7. [Use M&E as a source of continuous learning and improvement.](#)

Introduction: Project Implementation and Monitoring in Ghana

In Ghana, communities often lack the capacity or status to raise concerns during the implementation of an investment. Some challenges include:

- **Community members may not be able to voice their grievances in their community.** This may be because of customary or status reasons grievances.
- **Grievances may be attributed to leadership.** Traditional leaders are often the primary contracting party on behalf of a community. Thus, they may have the responsibility for consultation and engagement, benefit sharing, and even resettlement. As a result, grievances may be attributable to the actions or non-actions of those leaders.
- **Misplaced expectation that the business enterprise is broadly responsible for community development.** This may be due to infrastructure and capacity deficiencies in both communities and government, along with contract terms that provide for community improvements.

These issues mean that a business may find itself in the position of soliciting and addressing grievances for which it is not directly responsible. Additionally, it may be doing so in a community who views the business as being responsible for *all* infrastructure improvements.

A further concern for enterprises operating in Ghana is that **cultural and household dynamics may prevent women from benefiting equally from the investment.** Even if women's land uses have been deemed worthy of compensation or mitigation in previous steps, women may be marginalized or forgotten when the investment is implemented.

Despite these challenges, community access to information, the ability to voice questions and complaints, and the power to police the bargain, into which they or their customary leaders have entered into, are all key to establishing and maintaining a social license to operate. Misplaced expectations and a broad misunderstanding of the extent of benefits can lead to social distrust, dissatisfaction, and dissent that can erode the longer-term viability of an investment.

For these reasons, developing and implementing protocols for monitoring and evaluation will be key to a successful investment process. Doing this well requires both

sound planning and specific steps and outcomes. The fundamental objective is to ensure that the project is implemented in accordance with the mutual promises, expectations, mitigation strategies, and conditions contained within the written and signed contract.

Work plans will always be needed for orderly and certain implementation, and they should cover:

- Planning for the mitigation of risks and impacts identified during assessments.
- The provision of contract benefits (compensation, employment, community development projects, support to women and households, and others).
- Ongoing communication and engagement.
- A grievance mechanism (covered in this section).
- A Monitoring and Evaluation plan (also covered in this section).

Note that Stage Three of the LSLA Guidelines mentions broad considerations for project implementation. The below steps incorporate these considerations and build on them.

Task 1: Preventing and Addressing Land-Related Issues

Best Practice

Land-related issues that escalate to a significant dispute between a community and business enterprise can create reputational and financial risk for the operation.

Managing this risk during project implementation is a large part of establishing and maintaining a company's social license to operate in the community.⁷¹ To best establish and maintain social license, commitments made to the community in a contract or other agreement must be strictly met, and unanticipated impacts and concerns must be identified and addressed as soon as possible.

To maintain the community's trust while resolving unanticipated challenges, the company should:

- **Ensure on-going engagement and consultation** with the community to prevent disputes from occurring.
- **Ensure access to remedy** by establishing a functioning, effective, and accessible grievance mechanism for handling land-related disputes.⁷²

Guidance in this section can be applied to:

- **New projects to implement the concrete terms and conditions** that are contained in a land contract and any agreement between the business enterprise and the community.
- **New projects to mitigate unforeseen challenges** because implementation will almost inevitably involve problems that were not anticipated during project planning, negotiation, and contracting.
- **More established investments and companies** that are trying to solve land-related issues in a socially responsible manner.

Although the challenges that arise for each endeavor are context-specific, there are some common themes that frequently appear as problems for land-based investments. A few of these themes are discussed below.

Land Scarcity

One common issue is the assumption of abundant available land for development. Land that may appear to be unused or underutilized is made available for investment, but is often, in fact, used for multiple non-agricultural purposes, such as transit or pastoral grazing. Additionally, communal land use practices may create situations where, despite a lack of clear ownership, the development of particular tracts would disrupt the livelihood of multiple families. Finally, environmental conditions such as erosion and drought can exacerbate scarcity and heighten tensions around land use. Land scarcity issues increase likelihood of land-related disputes and the weakening of all land rights, including those of women.

Encroachment

Allegations of encroachment arise where one user is accused of extending their land use into the neighboring user's claim. Encroachment typically occurs when the encroacher knows that they do not have a right to the land but feel historically disadvantaged by an investment, or they simply view idle land, not used by an investor, as an opportunity to meet their livelihood needs. It could also occur when an investor builds a structure beyond its property line and into a neighboring community or another individual's property.

Compensation

Issues around compensation create some of the most common obstacles to a successful responsible investment in land and property. Compensation issues can include receiving different amounts than were promised in the contract, delayed payments, or payments going to a head of household or community leader who does not distribute them appropriately. Other common problems, like encroachment or displacement, often develop after initial faults in compensation.

Step-By-Step Guidance

1. Prevent disputes by maintaining on-going engagement and consultation with the community.

Perhaps the biggest challenge with project implementation is that it will almost inevitably involve problems that were not anticipated during project planning, negotiation, and contracting. **Even the most diligent preparation and community engagement cannot account for all potential challenges and changing circumstances.**

Continued engagement with communities throughout project implementation is therefore essential to maintaining a productive relationship with the local community and identifying implementation challenges and unanticipated impacts as early as possible.⁷³ This is particularly important for longer-term projects, as there is a higher likelihood that activities will deviate from the initial plan as implementation proceeds and unanticipated challenges arise.

Multiple channels of two-way communication should be established to facilitate clear, well-planned, and frequent consultation and engagement with communities.⁷⁴

Approaches should address how women face particular barriers to accessing information and participating in consultations.⁷⁵ Communication should be structured to:

- **Reaffirm contract terms and performance with the community.**
 - Depending on the last interaction with the community, the business enterprise should meet with community members to ensure they have a complete understanding of the material terms of the agreement and that they perceive that the agreement is being implemented fully and fairly.
 - Educational activities should be designed to reach all villagers, which may require adjustments to both content and approach, to ensure that the material is received and understood by both women and men and by vulnerable groups.

- **Facilitate continued engagement with the community.**
 - The business enterprise should develop an ongoing Communication and Engagement Strategy to guide engagement throughout implementation and project close-out.⁷⁶ Guidance for developing a strategy can be found in online [Supplemental Resource: Designing a Stakeholder Engagement Plan](#). The strategy should take into account the entire community, with particular considerations for village leaders, women and women's groups, associations/groups for vulnerable populations, and outgrowers.
- Frequently **review and update** the strategy on a specific schedule that is agreed upon by stakeholders.

2. Establish a grievance mechanism for resolving land-related disputes.

Grievance mechanisms require clear roles and detailed steps for employees and contractors to follow when dealing with complaints. A well-functioning mechanism should have the following characteristics:

- Internal policies and procedures that provide managers and employees with explicit steps on how to process and resolve complaints.
- Internal procedures to ensure cooperation between the chief grievance manager and the employees or contractors with close knowledge of the subject of the grievance.
- Guidance on the types of performance data to be recorded and reviewed for Monitoring and Evaluation purposes.
- Periodic internal review to ensure the mechanism's functionality.
- Set time frames for responding to complaints to ensure consistency within the company and predictability for complainants.

In coordination with the community, select the grievance resolution method(s). There are many potential resolution methods, such as:

- **The business proposes a solution**, which is most appropriate when the complaint is straightforward and the solution is obvious.
- **The business and community resolve the dispute together**, which is often the most accessible, natural, and nonthreatening way to resolve disputes.

- **The business and community use a third-party**, which is appropriate when there are disputes of fact or other grievance approaches have failed.
- **The business and the community look to traditional practices and actors**, which essentially inventories local and customary approaches to dispute resolution and adapts them to the context of community-business grievances.

Regardless of the approach used, it is recommended **the vast majority of complaints are handled in face-to-face meetings**. The appropriate grievance resolution method may depend on the nature of the specific complaint, so the mechanism should offer a variety of resolution approaches rather than a single procedure.

3. Set-up an information system.

An information system—or a system for recording and processing information—is a vital part of the grievance mechanism. This is particularly true where the scope of the project is large and encompasses multiple sites.

Create a central registrar where those authorized to receive complaints can log them in the system, so that there is a single database where all complaints are recorded. Care should be taken to preserve complainants' confidentiality.

Receiving and Responding to Complaints

- Publicize clear and accessible procedures for **how to file complaints and how they will be processed**.
 - Create a central registrar where those authorized to receive complaints can log them in the system, so that there is a single database where all complaints are recorded. An information system is vital for recording and tracking grievances and should be an integral part of the mechanism, particularly where the scope of the project is large and encompasses multiple sites.
 - Take care to preserve complainants' confidentiality. Filing procedures should ensure all community members (both women and men) are able to file complaints easily and in confidence.
 - Provide prompt confirmation documenting that the business has received the complaint and will determine whether it represents a covered violation. This confirmation will provide the complainant with acknowledgement that the business is taking the complaint seriously and will be reviewing it. To promote

transparency, the procedures should indicate how long it will take the business to determine whether it will investigate the complaint.

- Publicize clear procedures for **resolving complaints**.
 - There is no one-size-fits-all process for resolving complaints; what is important is that the process is transparent and accepted by the community. The appropriate grievance resolution method may depend on the nature of the specific complaint, so the mechanism should offer a variety of resolution approaches rather than a single procedure. Possible methods include:
 - Business proposes a solution, which is most appropriate when the complaint is straightforward and the solution is obvious.
 - Business and community resolve the dispute together, which is often the most accessible, natural, and nonthreatening way to resolve disputes.
 - Business and community use a third-party, which is appropriate when there are disputes of fact or other grievance approaches have failed.
 - Business and the community look to traditional practices and actors, which essentially inventories local and customary approaches to dispute resolution and adapts them to the context of community-business grievances.
 - The complaint resolution process will enjoy more community support, smoother implementation, and greater stakeholder satisfaction if the community is involved in reaching final decisions.
 - Regardless of the approach used, the vast majority of complaints should be handled in face-to-face meetings.

4. Test and review the system.

Test the mechanism informally to resolve problems that will almost always arise. For example, there may be non-formalized complaints that may have arisen during engagement efforts. Use these as an opportunity to test and refine this process. Ideally, testing and review will ensure both internal and external buy-in before officially launching the mechanism.

5. Communicate with communities about the grievance process.

Just like ongoing consultation and engagement, introducing and raising awareness of the grievance mechanism should be an ongoing effort.⁷⁷ To achieve this, there will be need to develop simple, visually engaging marketing materials that describe the process and benefits of the grievance mechanism in an understandable format and language.

6. Communicate with employees and contractors about the grievance process.

The employees of the business should view complaints as a valuable source of information that can improve operations, reduce risk, and build a relationship with the community.⁷⁸

7. Train and support participants.

Personnel who will administer the system (including civil society and community members who are not employed by the company) should receive training. Their training should include the suggested areas below:

- Conducting receipt and registration.
- Referral processes.
- Service provision.
- Quality control.
- Monitoring and record keeping.
- Ethics.⁷⁹

Grievance reception and resolution staff may be made up of both men and women.

Task 2: Developing and Implementing an Ongoing Monitoring and Evaluation Plan

Best Practice

Monitoring and evaluation (M&E) is essential to earning and maintaining a social license to operate, as M&E can alert the enterprise to the loss of its social license and can provide the information needed to reestablish it. Plus, M&E is particularly useful for gauging the scope and nature of accomplishments that, because of customary and social realities, may be especially difficult to attain.

Thus, for the life of the project, the business must practice M&E for the investment and its impacts upon the communities and individual smallholders that have changed their relationship to the land for the benefit of the enterprise.

Step-By-Step Guidance

1. Make a commitment to Monitoring and Evaluation (M&E).

A commitment to effective M&E needs to be underpinned by a commitment to responsible land-based investment best practices. In fact, effective M&E is a best practice. By committing to best practices, the M&E effort will correspondingly link to and be built around them.

Just as a commitment to best practices will require sufficient resources, so will a commitment to undertaking and responding to the results yielded by M&E efforts. Effective M&E is correspondingly driven by another best practice—good mechanisms for corrective action and adjustments to project design and implementation. This includes providing sufficient resources to make corrections and, in turn, monitor their effectiveness.

The commitment to M&E also carries with it the expectation that M&E be planned and readied for implementation before the investment project begins.

Finally, given a commitment to best practices and to a linked M&E effort, gender sensitivity must also be a part of M&E. In Ghana, women's land uses can be difficult to see and value, and an M&E plan that includes express measures and safeguards to increase clarity is a necessity.⁸⁰

2. Create collaborative and consensual processes for developing the M&E plan.

For an M&E plan to be truly effective, involve relevant stakeholders in the development of indicators, benchmarks, assessment processes, and mechanisms for grievance, redress, and learning.⁸¹

Here, gender sensitivity must be a feature, with both women and men participating in the design, implementation, and assessment of M&E plans.⁸² Similarly, participation must be culturally appropriate and based on engagement and dialogue in the local context. There must also be a pattern of shared responsibility, commitment, and accountability among stakeholders.

3. Create a realistic and sustainable M&E approach and work plan.

M&E is often viewed as an option or an add-on to be performed if resources permit. This perspective is shortsighted and likely to lead to failure. M&E needs to be seen as an integral part of the implementation, lest it fall victim to competing needs and arising emergencies.⁸³

Realistic timelines, sufficient capacity (both skills and other resources), and a sustainable plan are key to M&E that can obtain the information needed to both confirm contract compliance and provide input needed to correct any deficiencies in the implementation of the investment.

4. Develop transparent and independent evaluation strategies.

There must be transparency throughout the process of developing and conducting M&E, as well as disseminating and using the findings to make corrections to design and implementation. The use of independent third parties (such as CSOs or local government) to perform activities can increase transparency and independence. Similarly, use of third parties can minimize real or perceived conflicts of interest.

5. Ensure that information about M&E is accessible to all stakeholders.

Linking to transparency, incorporating accessibility means taking positive steps to make information available to all stakeholders. This includes:

1. **Making M&E plans available** through all relevant mediums, including electronic and printed copies.
2. **Making M&E updates and inquiries available** during ongoing consultation and engagement. In many ways, M&E is linked to meaningful engagement that must be sustained during the life of the investment.

Accessibility of information also means that the content and means of distribution must match up with how women obtain information and how they voice their perspectives. Only through continuous and transparent exchange of information with communities will companies be able to track progress and identify gaps for remedial action.⁸⁴

6. Ensure accountability by linking M&E to the grievance mechanism.

M&E must link to, and depend upon, a strong, accessible, and enduring grievance mechanism. Stakeholders must have ways to request action or redress, and they must be relevant for both women and men. The contract provisions must provide for sanctioning of non-compliance. M&E must both rely upon and ensure accountability.⁸⁵

7. Use M&E as a source of continuous learning and improvement.

Hand-in-hand with ongoing consultation and engagement, effective M&E focuses upon assessments that provide information needed to make subsequent adjustments and improvements to processes, standards, project design, and project implementation, as necessary.

Lessons learned need to be shared within the business enterprise and externally, in keeping with the principles of accountability and transparency mentioned above. In environments where women's land uses often go unnoticed and unaccommodated, learning and improvement are often keys to refining gender approaches over time.

With these learnings and incremental improvements, the investor will be able to make the most out of the investment.

⁷¹ USAID, *supra* note 9, at 50.

⁷² See VGGT, *supra* note 8, at 4; New Alliance for Food Security and Nutrition, *Analytical Framework for Responsible Land-Based Agricultural Investment* (2015), available at https://docs.google.com/viewerng/viewer?url=https://new-alliance.org/sites/default/files/resources/Analytical-framework-for-land-based-investments-in-African-agriculture_0.pdf; UNGP, *supra* note 17, at 31-32.

⁷³ USAID, *supra* note 9, at 50.

⁷⁴ See Landesa, *Case Study: Kilombero Sugar Company Ltd. in Tanzania 4* (2017), available at <https://www.landesa.org/wp-content/uploads/KSCL-Tanzania-Case-Study-FINAL.pdf>.

⁷⁵ *Id.*

⁷⁶ *Id.* at 20.

⁷⁷ Taken from CAO, *A Guide to Designing and Implementing Grievance Mechanisms for Development Projects* 51-54.

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.* At Section 12.14.

⁸¹ A Guide for Monitoring and Evaluating Community-Based Projects (UNESCO 2009) <http://unesdoc.unesco.org/images/0018/001862/186231e.pdf>; Guiding Principles on LSLBI in Africa, Principle 18 Available at: <http://www.uneca.org/publications/guiding-principles-large-scale-land-based-investments-africa>.

⁸² VGGT at Section 13.6 and 15.9.

⁸³ VGGT at Section 26.2.

⁸⁴ VGGT Section 26.5.

⁸⁵ UNGP Principle 18.

5.

Supplemental Resources

Supplemental Resource 1

Obligations Under International Treaties and Conventions

How to Use This Resource

There is no established “right to land.”⁸⁶ However, many human rights instruments reference land, and there is growing consensus in human rights discourse that land is strongly linked to universally recognized human rights.⁸⁷ In the context of international investments, the host state has the primary duty to protect human rights,⁸⁸ meaning that the Government of Ghana must design and implement policies and laws to ensure that investments do not harm human rights and contribute to their progressive realization. This guidance is intended to provide companies with an overview of the links between land and human rights enshrined in these agreements and in official statements issued by treaty monitoring bodies. This guidance is not an exhaustive examination of Ghana’s human rights obligations, but is presented as an overview of the most significant agreements pertaining to land-based investments.

Binding International Agreements

The **Universal Declaration of Human Rights (UDHR)**⁸⁹ states that everyone has the right to life (Art. 3) and the right to own property alone, as well as in association with others (Art. 17(1)), and that no one should be deprived of property (Art. 17(2)). The rights to life and property have been extended through treaty bodies and international human rights court decisions to apply to the means of subsistence derived from land.⁹⁰

The **International Covenant on Civil and Political Rights (ICCPR)**⁹¹ guarantees the rights to life (Art. 6) and self-determination (Art. 1) and to cultural rights for minorities (Art. 27). These rights have been interpreted to mean that all people have the right to freely dispose of their land and natural resources, and that they should not be deprived of those resources.⁹²

The **International Covenant on Economic, Social, and Cultural Rights (ICESCR)**⁹³ includes the right to an adequate standard of living, including food and housing, and continuous improvement of living conditions (Art. 11). These rights have been

extensively linked to rights to land by the Committee for Economic, Social, and Cultural Rights (CESCR).⁹⁴ The CESCR has also extended states' responsibility to follow free, prior, and informed consent (FPIC) principles to communities whose cultural preservation may be threatened if their land rights are infringed.⁹⁵ The CESCR is currently in the process of developing and adopting a General Comment on States Obligations in the Context of Business Activities, the most recent draft of which made reference to land and land acquisition.⁹⁶

The **Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)**⁹⁷ obligates states to eliminate discrimination against rural women to ensure that they participate in benefit from development on an equal basis with men, and to provide equal treatment for rural women in the context of land and agrarian reforms and resettlement schemes, including access to agricultural credit and loans (Art. 14). The Committee for the Elimination of Discrimination Against Women (CEDAW), the treaty monitoring body for the CEDAW, recently issued General Recommendation No. 34, which states that the right to land and natural resources is a “fundamental human right” for rural women.⁹⁸ This is the most direct statement equating the right to land as a human right in current human rights discourse.⁹⁹ The same General Recommendation also acknowledges the severe discrimination and unequal outcomes experienced by women, especially with regard to land: “Globally, and with few exceptions, on every gender and development indicator for which data are available, rural women fare worse than rural men and urban women and men, and rural women disproportionately experience poverty and exclusion. They face systemic discrimination in access to land and natural resources.”¹⁰⁰

Other Relevant Human Rights Instruments

The following voluntary human rights instruments apply the requirements of human rights treaties to land and related topical and administrative arenas in the context of food security. The summaries of provisions that follow are instructive for companies conducting human rights due diligence, including designing a Human Rights Impact Assessment (HRIA).

Ghana is not a signatory to the **International Labor Organization Convention 169**, which is legally binding. However, Ghana is a signatory to the **United Nations Declaration on the Rights of Indigenous People (UNDRIP)**,¹⁰¹ which establishes the principle of FPIC (Art. 10) and to the **African Charter for Human and People's Rights (ACHPR)**.¹⁰² The ACHPR itself does not call for FPIC explicitly, but does refer to the right to self-determination (Art. 20), the right to freely alienate property as well as be

compensated (Art. 21), and the right to economic, social, and cultural development (Art. 22). In addition, the ACHPR's 2012 Resolution on "A Human Rights Based Approach to Natural Resource Governance" specifically calls on states to "ensure participation, including the free, prior, and informed consent of communities, in decision-making related to natural resources governance."¹⁰³

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, known as the **Maputo Protocol**,¹⁰⁴ specifically references women's access to land in the context of the rights to food security (Art. 15) and control over land and a guaranteed right to property in the context of the right to sustainable development (Art. 19).

The African Union recently endorsed the **Pan African Women's Charter on Land Rights**,¹⁰⁵ or the **Kilimanjaro Charter**,¹⁰⁶ the result of the "Women to Kilimanjaro" civil society initiative to advocate for women's rights to land across Africa. One of the demands included in the Charter is that investments in land are conducted in partnership with communities, guarantee a share of profits, and provide environmental protection.¹⁰⁷

The **Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries, and Forests in the Context of National Food Security**¹⁰⁸ are widely recognized by international and regional human rights bodies and are used as a reference by international donor institutions. They were developed through an inclusive consultative process. Provisions relevant to human rights and land include: Guiding Principle 3B and Guidelines 4.6, 5.3, 5.4, 6.1, 11.2, 15.3, 15.6, 17.3, 21.6, 25.3, 25.5, and 25.7.¹⁰⁹

The **Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security**¹¹⁰ include references relevant to land and human rights at: Guidelines 2.5, 3.5, 4.2, 4.7, 8, 9, 10.8, 13.2, and 14.3.¹¹¹

⁸⁶ United Nations Economic and Social Council, *Report of the High Commissioner for Human Rights on Land and Human Rights*, E/2014/86 at ¶ 12 (2014) [hereinafter "OHCHR Report"], available at <https://undocs.org/E/2014/86>.

⁸⁷ For an overview of key reports on land and human rights, see United Nations Office of the High Commissioner and Human Rights, “Land and Human Rights,” <http://www.ohchr.org/EN/Issues/LandAndHR/Pages/LandandHumanRightsIndex.aspx>.

⁸⁸ OHCHR Report, *supra* note 163, at ¶ 17.

⁸⁹ UN General Assembly, *Universal Declaration of Human Rights* 217 A (III) (1948), available at: <http://www.refworld.org/docid/3ae6b3712c.html>.

⁹⁰ OHCHR Report, *supra* note 163, at ¶ 28. See also Inter-American Court of Human Rights, *Case of the Yakye Axa Indigenous Community v. Paraguay*, Judgement of 17 June 2005. With regard to forced eviction, see Committee on Economic, Social, and Cultural Rights, *General Comment No. 7: The Right to Adequate Housing* ¶ 4 (1997), available at <http://www.refworld.org/docid/47a70799d.html>.

⁹¹ Acceded to by Ghana on September 7, 2000. UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>.

⁹² OHCHR Report, *supra* note 163, at ¶ 22.

⁹³ Acceded to by Ghana on September 7, 2000. UN General Assembly, *International Covenant on Economic, Social, and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3, available at <http://www.refworld.org/docid/3ae6b36c0.html>.

⁹⁴ Report of the Special Rapporteur on the Right to Food, UN doc. A/65/281, ¶ 4. See also Minority Rights Group International, *Moving Towards a Right to Land: The Committee on Economic, Social, and Cultural Rights' Treatment of Land Rights as Human Rights* 3-4 (2015), available at <http://minorityrights.org/publications/moving-towards-a-right-to-land-the-committee-on-economic-social-and-cultural-rights-treatment-of-land-rights-as-human-rights/>.

⁹⁵ Committee on Economic, Social, and Cultural Rights, *General Comment 21: Right of Everyone to Take Part in Cultural Life* (art. 15, ¶ 1(a), of the International Covenant on Economic, Social, and Cultural Rights), UN doc. E/C.12/GC/21/Rev.1 at ¶ 55a. For a fuller examination of the CESCR's statements and standards regarding land rights, see Minority Rights Group International, *supra* note 171.

⁹⁶ OHCHR, *Committee on Economic, Social and Cultural Rights Holds General Discussion on State Obligations in the Context of Business Activities* (Feb. 21, 2017), <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21210&LangID=E>. For Landesa's comments on the Draft General Comment, visit <http://www.ohchr.org/Documents/HRBodies/CESCR/Discussions/2017/Landesa.docx>.

⁹⁷ Signed by Ghana on July 17, 1980 and ratified on January 2, 1986. UN General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13, available at <http://www.refworld.org/docid/3ae6b3970.html>.

⁹⁸ Committee on the Elimination of Discrimination Against Women (CEDAW), *General Recommendation No. 34 on the Rights of Rural Women*, CEDAW/C/GC/34 (2016), at ¶ 56, available at http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/INT_CEDAW_GEC_7933_E.pdf.

⁹⁹ For an examination of human rights norms and women's rights to land and natural resources, see OHCHR, *Realizing Women's Rights to Land and Other Productive Resources*, HR/PUB/13/04 (2013), available at <http://www.ohchr.org/Documents/Publications/RealizingWomensRightstoLand.pdf>.

¹⁰⁰ CEDAW, *supra* note 175, at ¶ 5.

¹⁰¹ UN General Assembly, *United Nations Declaration on the Rights of Indigenous Peoples: resolution / adopted by the General Assembly*, A/RES/61/295 (Oct. 2, 2007), available at http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf.

¹⁰² Ratified by Ghana on January 24, 1989. Organization of African Unity (OAU), *African Charter on Human and Peoples' Rights* (“Banjul Charter”), CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (June 27, 1981), available at <http://www.achpr.org/instruments/achpr/>.

¹⁰³ African Commission on Human and People's Rights, 224: *Resolution on a Human Rights Based Approach to Natural Resource Governance* ¶ 4 (May 2, 2012), available at <http://www.achpr.org/sessions/51st/resolutions/224/>.

¹⁰⁴ See African Union, *Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa*, (July 11, 2003), available at http://www.achpr.org/files/instruments/women-protocol/achpr_instr_proto_women_eng.pdf.

¹⁰⁵ ILC, *One Giant Step Forward for Women's Land Rights: The African Union officially endorses Pan African Women's Charter on Land Rights* (April 10, 2017), <http://www.landcoalition.org/en/regions/africa/news/one-giant-step-forward-womens-land-rights-african-union-officially-endorses-pan-african-womens> (last visited Apr. 6, 2018).

¹⁰⁶ Women to Kilimanjaro, *Charter of Demands: Actualizing Women's Land Rights in Africa* (2016), available at http://www.landcoalition.org/sites/default/files/documents/news/charter_of_demands.pdf.

¹⁰⁷ *Id.* at 6.

¹⁰⁸ See VGGT, *supra* note 89.

¹⁰⁹ OHCHR, *Land and Human Rights: Standards and Applications*, (2015) HR/PUB/15/5/Add.1 at 15 [hereinafter "OHCHR Land"], available at <http://www.ohchr.org/EN/Issues/LandAndHR/Pages/LandandHumanRightsIndex.aspx>.

¹¹⁰ See FAO, *Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security* (2005), available at <http://www.fao.org/3/a-y7937e.pdf>.

¹¹¹ OHCHR Land, *supra* note 189, at 15.

Supplemental Resource 2

Overview of Ghana's Legal Framework

How to Use This Resource

This guidance is intended to provide an overview of Ghana's legal framework for land rights, with special attention paid to the land rights of women and vulnerable individuals.

Formal Legal Framework for Land Rights in Ghana

The Constitution, formal statutory law, and customary law govern land rights in Ghana. Key statutes and policies include the Constitution (1992), the National Land Policy (1999), Office of the Administrator of Stool Lands Act (1994), Land Title Registration Act (1986), Lands Commission Act (2008), and the Land Use and Spatial Planning Act (2017).

Constitution

The Constitution of 1992 recognizes all forms of landholding including customary land, and guarantees in the rights of every person to own property either alone or in association with others (Article 18(1)). The Constitution also explicitly prohibits sex-based discrimination (Article 13). The Constitution also allows foreigners to lease land for renewable terms of up to 50 years.

National Lands Policy, 1999

The National Land Policy aims to increase land tenure security through land registration and addressing and avoiding land boundary disputes. The National Lands Policy states that no interest in or rights to land can be disposed of "without consultation of the owner or occupier" (Article 4(3)(c)).

Office of the Administrator of Stool Lands Act, 1994

This law provides the framework for the management of stool and skin lands, principally through the collection and disbursement of stool and skin land revenues, and requires that the OASL coordinates with other land sector agencies and traditional authorities on stool and skin land administration and development.

Land Title Registration Act, 1986

The Land Title Registration Act, 1986 establishes the responsibilities and powers of land registries and the process for land title registration. This law also established the Land Title Registry, providing for registration of allodial title usufruct/customary freehold, freehold, leasehold, customary tenancies, and mineral licenses.

Lands Commission Act, 2008

The Lands Commission Act establishes a restructured Lands Commission as the overarching entity coordinating four divisions: the Public and Vested Lands Division, the Survey and Mapping Division, the Land Valuation Division, and Land Registration Division.

Land Use and Spatial Planning Act, 2017

The Land Use and Spatial Planning Act of 2017 aligns land use and spatial planning to the decentralized governance framework in Ghana and establishes a mechanism for vertical integration of local, regional, and national planning activities.

Head of Family Accountability Law

The Head of Family Accountability Law protects family property by requiring family heads to account for all financial dealings associated with family property and to file an inventory. The law provides for recourse to the High Court for family members against family heads who are mismanaging property.

Supplemental Resource 3

Sample Company Policies

How to Use This Resource

This resource provides examples of business enterprise policies that tend to promote socially responsible investing and work toward ensuring the equitable sharing of investment benefits by women and men in affected communities. At every level of the supply chain, and at every step of the investment process, responsible policies will reflect best practices and international standards discussed in the Guidebook.

The following company policies are intended to serve as illustrations, and are not intended to be comprehensive. Company policies that provide a broad statement about commitments to land best practices almost always are supplemented with more detailed descriptions of how the company will implement the commitments. Companies should continuously promote innovation in responsible investing throughout their supply chains and consistently examine all policies and processes for disparate impacts on women and other vulnerable stakeholders. The inclusion of a policy in this resource does not constitute an endorsement of the company or its policy, nor is each policy intended to be an example of best practices.

For a more comprehensive analysis of leading company policies from a gender perspective, see the Landesa/Resource Equity paper, “Realizing Socially-Responsible Investments in Land from a Gender Perspective: Unpacking ‘Zero-Tolerance’ to Identify Barriers and Practical Steps to Achieve Equitable and Sustainable Investments,” which was presented at the 2016 World Bank Conference on Land and Poverty, available online at <http://www.landes.org/wp-content/uploads/LandConference2016-WorldBank.pdf>. The general takeaway from this analysis is that the first generation of company policies are recognizing the importance of considering gender in agricultural investments, but are struggling to address the myriad issues associated with it. These policies address women’s land rights indirectly, but each requires more targeted measures to uphold women’s land rights thoroughly and fully.

Example Policies and Implementation Guidance



The Coca-Cola Company's Commitment to Land Rights and Sugar

[The Coca-Cola Company's Supplier Guiding Principles Implementation Guide](#)

[The Coca-Cola Company's Issue Guidance on Responsible Land Acquisition](#)



[Nestlé's Commitment on Land and Land Rights in Agricultural Supply Chains, an appendix to The Nestlé Policy on Environmental Sustainability](#)

[Nestlé's Responsible Sourcing Guideline](#)



[PepsiCo Land Policy](#)



[Unilever Responsible Sourcing Policy](#)



[Illovo Group Guidelines on Land and Land Rights](#)

[Illovo's Road Map on Land Rights](#)

Overview of Key Policy Themes

Zero Tolerance for Land Grabs

Although it is difficult to define “land grab,” many company policies include a provision committing to zero tolerance for land grabs in company activities throughout their supply chains.

Generally speaking, a zero tolerance for land grabs policy should mean that a company commits to best practices and international standards in all land acquisitions, at every level of the supply chain. This should include a mechanism for monitoring and enforcing the compliance of suppliers and subsidiaries.

In “Nestle Commitment on Land and Land Rights in Agricultural Supply Chains,” Nestle provides that high-risk commodity suppliers must commit to a policy of zero tolerance for land grabs. Although the commitment doesn’t define land grabs, it follows the zero-tolerance provision with a further requirement that:

[suppliers] engage with and seek the support of those who could be affected by investment decisions prior to decisions being taken and respond to their contributions. They take into account existing power imbalances and ensuring [sic] active, free, effective, meaningful, and informed participation of affected individuals and groups.

Unilever’s commitment to zero tolerance for land grabs is included in its “Responsible Sourcing Policy.” Its policy for suppliers includes a commitment to zero tolerance for land grabs within its interpretation of a provision requiring the protection and promotion of community land rights.

The Illovo Group’s “Guidelines on Land and Land Rights” constitute perhaps the most comprehensive and descriptive company land policy. It includes a detailed road map for implementation, and a definition of zero tolerance for land grabs that includes a commitment to the principles of FPIC throughout its supply chain for all communities (not only indigenous communities), and adherence to the UN Guiding Principles on Business and Human Rights. To ensure compliance with its zero-tolerance policy, Illovo requires its suppliers to use this more inclusive version of FPIC and reserves the right to use corrective action in the case of breach and, if necessary, terminate non-compliant suppliers.

Adopting International Standards

As part of achieving best practices, many companies have directly referenced international standards in their policies or expressly adopted these standards as their policies. Relevant policies often include a commitment to various definitions of FPIC, the [IFC Performance Standards](#), or the [VGGTs](#). They may be included as part of a broader definition, such as The Coca-Cola Company's use of these standards in their definition of zero tolerance for land grabs, or as stand-alone commitments, such as Nestle's commitment to the VGGTs.

In "Nestle Commitment on Land and Land Rights in Agricultural Supply Chains," Nestle expressly adopts the VGGTs, and commits to promoting their adoption by governments and industry partners, as do The Coca-Cola Company and PepsiCo. Unilever requires that suppliers publicly support the VGGTs.

Many companies refer to some form of FPIC in their various policies. However, there is a broad range of definitions of FPIC among companies; some policies limit FPIC to indigenous communities while others provide no definition at all.

- Kellogg's "Global Supplier Code of Conduct" mentions an adherence to FPIC in the context of land transfers and a rejection of expropriation for its benefit if the taking is an "illegitimate use of eminent domain."
- Although lacking a specific definition of FPIC, Nestle's "Responsible Sourcing Guidelines" include a requirement of FPIC for agricultural and forestry activities for all affected communities, not only indigenous communities.
- Associated British Foods (ABF) adheres to FPIC when acquiring land, and includes all communities, as does its subsidiary, Illovo Sugar, but the ABF policy does not clearly define FPIC.

Both The Coca-Cola Company and PepsiCo explicitly adopt the IFC Performance Standards definition of FPIC. PepsiCo does not mention whether it supports FPIC for all communities or only indigenous communities, but it provides a clear definition:

- Free: Consent to the sale of land is given voluntarily and absent of "coercion, intimidation, or manipulation."
- Prior: Consent is sought sufficiently in advance of any authorization or commencement of activities from an existing land owner.
- Informed: Ensures that information is provided prior to seeking consent to acquire and as the acquisition process proceeds.

- **Consent:** Refers to the collective decision made by the land rights-holders and reached through the customary decision-making processes of the affected peoples or communities.

PepsiCo's section on consent may be read to pertain to any community, but the section does not expressly say so. The Coca-Cola Company explicitly provides that not only will it implement FPIC in accordance with the IFC Performance Standards, it will apply the standard to all communities.

Gender and Women's Land Rights

Although some company policies have addressed the disparate and often harmful impact that investments can have on women, many policies are gender neutral and do not adequately protect women's land rights and interests in land. Although it adopts many useful standards, including standards such as the VGGTs that do address gender disparities, "The Coca-Cola Company Commitment: Land Rights and Sugar" is itself gender neutral, as is the "PepsiCo Land Policy." Kellogg's policy requires that suppliers respect the land rights of women, although some have expressed concern with the policy's lack of specificity on implementation or enforcement of its commitment to women's land rights. Unilever's "Responsible Sourcing Policy" mentions the recognition of women's right to own and access land as a "good practice," but does not include this recognition in its mandatory provisions.

Nestle's policies on women's land rights are perhaps the most comprehensive of the companies surveyed. "The Nestle Rural Development Framework" acknowledges that gender equality is "at the heart of human rights," includes women's empowerment as one of eight core themes of successful rural development, and adopts a strategy of gender integration into every part of its rural development framework. The "Nestle Cocoa Plan" includes an Action Plan on Women in the Cocoa Supply Chain that includes mechanisms for gathering data, reporting, and tackling inequalities within its cocoa supply chain. In the "Nestle Commitment on Land and Land Rights in Agricultural Supply Chains," Nestle acknowledges that "hundreds of millions of women" do not have security of tenure and commits to "promote the security of tenure for women whose rights under the law or in practice may not be equal to those of men in their household."

Supplemental Resource 4

Why Land Matters: Communicating a New Land Commitment

[\(PowerPoint will be available online\)](#)

Supplemental Resource 5

Community Consultation Checklist

How to Use this Resource

Use this checklist alongside the Guidebook to support productive, meaningful, and participatory consultations with community leaders and communities. This checklist is designed to support the initial introduction and consultation with a community and its leaders, although some meeting best practices can be adapted to other community meetings.

	CONSULTATION CHECKLIST	IF YES	IF NO	NOTES
	How Do I Initiate a Productive Engagement?			
☐	Do I know the customary, traditional, and/or religious practices of the community?	☐	Consult government, civil society, and/or experts for information and recommendation.	
☐	Have I inquired if there are certain cultural protocols for approaching the community?	☐		
☐	Do I know the appropriate local language in which to communicate?	☐		
☐	Have I contracted an interpreter and/or translator, if necessary?	☐		
☐	Have I contracted a facilitator to introduce me to community leadership? To coordinate a meeting with community members?	☐		
☐	Have I met with community leaders?	☐	Work with a facilitator to set-up an introductory meeting.	

☐	Have I met with leaders of minority groups, women's groups, and other leadership as recommended (e.g. farmers associations, cooperatives, religious leaders)?	☐	Request permission from community leaders and work with facilitator to coordinate.	
	How Do I Support Inclusive and Representative Consultations?			
☐	Do I know the demographic characteristics of the population?	☐	Consult government, civil society, experts, your facilitator, and/or community leaders for information.	
☐	Have I specifically invited representatives of each demographic group?	☐	If not, work with your facilitator to do so. Consider using leaders of minority groups to mobilize their constituents. Equip them to spread the message answer concerns, and encourage attendance.	
☐	Have I ensured my consultations are accessible?	☐	If not, see steps below.	
	How Can I Ensure My Consultations Are Accessible?			
☐	Do I know the ideal times and locations for meetings to support the participation of different stakeholders?	☐	Consult with leadership and facilitator for information. Ask women and members of under-represented groups directly, if necessary.	
☐	Did I post information about the meeting place and time in places where participants frequent (for instance, at event and gathering spaces such as churches or meeting halls)?	☐	If not, work with your facilitator to do so.	
☐	Have I held meetings at different locations and times?	☐	If not, work with your facilitator and community leaders to schedule additional meetings.	
☐	Have I conducted meetings and provided supporting documentation in languages and formats all stakeholders can understand?	☐	If not, work with a translator to translate written documents and schedule	

			additional meetings with an interpreter present. Use diverse media such as diagrams, photos, and media.	
☐	Have I held both a large group consultation and small, separate sessions for women, ethnic minorities, and other groups of interest?	☐	If not, work with your facilitator and leaders of these groups to schedule additional meetings.	
	How Complete and Transparent is My Information?			
☐	Did I provide information about our company?	☐	It is possible that you may not have all the information at this stage. Present what you have available and schedule follow-up meetings to present additional (or revised) information as it is available.	
☐	Did I provide information about our company's policies and commitments related to responsible investment?	☐		
☐	Did I provide contact information?	☐		
☐	Did I provide information about the intended project purpose?	☐		
☐	Did I provide information about the geographic scope?	☐		
☐	Did I provide information about the proposed business model?	☐		
☐	Did I provide information about the specific land right being sought (e.g. absolute ownership; ownership with grant to community of use rights such as for gathering wood or water; short-term lease; long-term lease)?	☐		
☐	Did I provide information about term of agreement?	☐		
☐	Did I provide information about potential benefits to the community?	☐		
☐	Did I provide information about potential risks, including social, environmental, and financial?	☐		
	How Informative is This Consultation for Me?			
☐	Did I (or a third-party expert) ask the community about their perspective on the status of the land in question, and did I get a clear and consistent explanation?	☐	If not, schedule a follow-up meeting during which you can request this	

☐	Did I ask about the history of the land or nearby land, including government expropriation or past private sector investment?	☐	information.	
☐	Did I ask about the current customary rights and uses of the land, including transfer and inheritance?	☐		
☐	Did I ask about the prominent livelihood activities of the community? What about the cultural or religious significance of the land?	☐		
☐	Did I ask about common land disputes and dispute resolution mechanisms?	☐		
☐	Did I ask about the concerns and expectations of the community pertaining to the investment?	☐		
☐	Did I ask other relevant questions to fill gaps in my understanding from my initial research and/or conversation with the government, civil society, and community leadership?	☐		
What Else Should I Consider When Conducting the Meeting?				
☐	Did I provide sufficient time and a safe environment for questions? Did I provide complete answers or explain that I will return with the necessary information?	☐	If not, schedule a follow-up conversation for Q&A.	
☐	Did I hear from a range of people or did a few voices dominate the conversation?	☐	If not, work with your facilitator and leaders of groups who did not vocalize opinions to schedule additional small group meetings.	
☐	Am I aware of cultural norms regarding meeting documentation/recording?	☐	If not, inquire with your facilitator and/or community leaders about cultural norms for meeting documentation.	

☐	Did I document the meeting through meeting minutes, notes, and/or video or voice recording as appropriate for the community in question?	☐	If not, document subsequent meetings in a culturally appropriate manner. Before starting, always inform the community that you are recording the meeting and why.	
☐	Did I inquire about other “dos” and “don’ts” specific to the community (such as cultural practices around provision of food and compensation for attendance)?	☐	If not, solicit feedback from community leaders and your facilitator on what to improve upon for subsequent meetings.	
	What Immediate Meeting Follow-Up Actions Should I Take?			
☐	Did I solicit input on preferred means of future communication with the community members and leaders?	☐	If not, do so.	
☐	Have I synthesized and analyzed the information received during the consultations?	☐		
☐	Have I researched information to answer questions raised by the community during initial consultations?	☐		
☐	Have I considered revisions to the planned investment structure (e.g. geographic scope, business model, land right being sought) based on the information received?	☐		
☐	Have I held follow-up consultations?	☐		
☐	Have I consulted with my team and management to determine if we want to continue this investment based on the available information?	☐		
☐	Based on the information, have I asked if the community wants to continue discussions about this prospective investment?	☐		

Supplemental Resource 6

Community Capacity Assessment

How to Use This Resource

This resource accompanies Phase 2, Task 2, Step 1. Responsible investments often require active efforts to develop strategies that can address individual and collective weaknesses and strengths across community groups. The first step towards devising such targeted plans should entail nuanced insights gathered through carefully designed research techniques. This resource describes and offers a template for one approach that can be used to gather such information: a Community Capacity Assessment (CCA) targeting characteristics and skills that are considered necessary for effective community involvement throughout the investment process.

The CCA approach and framework outlined in this document are intended to provide business enterprises with a guide for conducting a CCA of communities likely affected by a proposed investment. Importantly, the business should contract a neutral third-party to perform the assessment. Third-party providers, like civil society organizations, may also find this tool valuable. For business enterprise users, this framework can help you plan for the assessment, contract appropriately skilled experts, and collaborate with experts to design and implement action plans. Third-party providers may find this a useful starting point for designing assessments with the objective of helping business enterprises ensure that community members have sufficient capacity to effectively engage in a consultative process in alignment with internationally recognized standards of engagement, such as FPIC.

Background

Generally, a CCA is a research tool used to develop a nuanced view about skills, beliefs, or attitudes of community members relevant to a specific issue of interest. If conducted correctly, CCAs can be used to gain necessary information about the community and its members to further desired goals and achieve anticipated outcomes by (1) identifying relevant traits amongst the community that are already strong and (2) identify characteristics which are weaker and require strengthening. CCAs in this regard are usually conducted towards the *beginning* of the investment process in order ensure

that community members and groups possess the necessary traits and skills required to effectively engage throughout the process.

The CCA tool can also be applied throughout the investment process to track the effectiveness of community development initiatives over time, but often do not replace the need for independent evaluations of project specific goals and outcomes.

Components of the CCA Framework

The specific components of the framework are described below.

Capacities of Interest

The CCA framework is organized around a set of “capacity domains,” which are broad categories of characteristics that are thought to be essential for effective engagement in a consultative process. The list provided has been thematically organized into capacities relevant to the characteristics of: leadership, economic stability, knowledge and awareness, and participation ability. The capacities listed under each of these themes are thought to be minimally necessary to achieve the following goals related to ensuring an effective consultative process.

THEME	GOAL
Leadership	Ensure effective representation of interests across all community members in investment activities.
Economic Stability	Mitigate the possibility of decisions unduly influenced by short-term economic needs.
Knowledge and Awareness	Community members understand their rights, can participate meaningfully in assessment and negotiation activities, and are positioned to make informed decisions.
Participation Abilities	Investment activities will include the full participation of land holders and users.

Indicators

Each of the capacities has a corresponding indicator, meant to aid the process of measurement. The indicators provide a proxy or an indication to help determine whether the community individuals and groups have demonstrated sufficient levels of the capacities of interest. The included indicators have been designed to allow for only

binary (yes/no) determinations. Because capacities and cultural realities will vary based on the regional or local context, companies will have to determine how to meet each indicator depending on their specific situation.

Actions to Take

The business enterprise should also develop a set of proposed actions to take when it is determined that a desired capacity is not present or weak. These actions should be designed to help ensure that the capacity levels increase to the desired level before any further steps are taken along the investment process or that adequate measures are taken to compensate for any lasting weaknesses.

For example, if leadership is determined to be weak or non-existent for a sub-group of interest, the business enterprise might design an action around identifying individuals to train and become active representatives of that subgroup throughout the investment process to ensure that their interests are considered.

Similarly, if individuals within a sub-group are determined to lack sufficient literacy, the business enterprise may elect to present information in a format that is easily comprehensible, such as images and maps or convey the information orally, rather than through written text.

Community Groups

As discussed in the Guidebook, responsible investments must actively engage women and members of vulnerable sub-groups within each target community. For that reason, the framework provides space to name relevant sub-groups (such as women, ethnic/religious minorities, pastoralists) who might otherwise be left out of consultations with the business enterprise due to their perceived status and abilities.

Using the Framework

The following section provides a template for a CCA. Importantly, it is intended only to be a guide. It is recommended, and expected, that the user will customize it as needed to accommodate the specific culture and context of the relevant community, as well as the specifics of the intended investment. The themes, capacities, and indicators should be informed by the specific objective that the business enterprise hopes to achieve in preparation for, and during, the investment process.

Through an external service provider, these domains should be assessed using qualitative research techniques. Researchers should engage directly with members of each community and sub-community to gather self-reported perspectives, but can also use information gathered through key-informants such as village elders and officials. The determination of capacity level should be based on a combination of all evidence gathered using robust and objective research and analytical processes.

Furthermore, the assessment should involve a diverse representation of community members to ensure that a fair assessment is developed about the community as a whole. Specifically, sub-groups of likely vulnerable members should be targeted separately to ensure that required measures are taken to eventually increase their capacity and include them in the consultative process.

RIPL CCA Framework

LEADERSHIP						
GOAL: ENSURE EFFECTIVE REPRESENTATION OF INTERESTS ACROSS ALL COMMUNITY MEMBERS IN INVESTMENT ACTIVITIES						
Capacity Domain	Indicators	Community Elites	Women	Minority subgroup #1 (e.g. ethnic minority)	Minority subgroup #2 (e.g. pastoralists)	Actions to take if capacity is determined to be weak or non-existent.
Active leadership	Sub-groups are represented and meaningfully contribute within the formal leadership structure (e.g. community governance structures, forums, and other civic and/or political groups).		.			
Respect from community members	Formal leadership enjoys a strong participant base and is able to direct and structure the community.					

Transparent decision-making	Formal leadership actively communicates decisions that impact community members across gender and socio-economic groups, and the reasons behind those decisions.					
Represents interests across the community	Community members across gender and socio-economic groups are invited to provide inputs into decisions.					
Confidence to represent the community	Leaders, formal or informal, exhibit confidence during meetings and discussions with external parties to effectively push for outcomes in the communities' best interest.					
Equitable distribution of information and resources	Formal leaders actively facilitate sharing of information and resources across gender and socio-economic groups.					

ECONOMIC STABILITY						
GOAL: MITIGATE THE POSSIBILITY OF DECISIONS UNDULY INFLUENCED BY SHORT-TERM ECONOMIC NEEDS						
Capacity Domain	Indicators	Community elites	Women	Minority subgroup #1 (e.g. ethnic minority)	Minority subgroup #2 (e.g. pastoralists)	Actions to take if capacity is determined to be weak or non-existent.
Food Secure	Members of the community generally feel confident that their food supplies are secure and predictable					
KNOWLEDGE AND AWARENESS						
GOAL: COMMUNITY MEMBERS UNDERSTAND THEIR RIGHTS, CAN PARTICIPATE MEANINGFULLY IN ASSESSMENT AND NEGOTIATION ACTIVITIES, AND ARE POSITIONED TO MAKE INFORMED DECISIONS.						
Capacity Domain	Indicators	Community elites	Women	Minority subgroup #1 (e.g. ethnic minority)	Minority subgroup #2 (e.g. pastoralists)	Actions to take if capacity is determined to be weak or non-existent.
Literate	Members of the community are able to read and write a letter in [insert language].					
Educational achievement	Members of the community generally completed basic education.					

Aware of rights to the land in their possession	Members of the community are aware of legal frameworks and rights associated with land under their possession.					
Aware of conflict resolution mechanisms available in case of land-related disputes between the community and investor	Members of community know how to access and use the appropriate dispute resolution mechanisms.					
Acceptance of dispute resolution outcomes	Members of the community have trust in the dispute resolution process and respect outcomes.					
Awareness of social-security or publicly provided services available to them	Members of the community apply and receive services for which they are eligible.					

Awareness of and access to shared community resources	Members of the community leverage shared community resources to satisfy household or personal needs.					
PARTICIPATION						
GOAL: INVESTMENT ACTIVITIES WILL INCLUDE THE FULL PARTICIPATION OF LAND HOLDERS AND USER						
Capacity Domain	Indicators	Community elites	Women	Minority subgroup #1 (e.g. ethnic minority)	Minority subgroup #2 (e.g. pastoralists)	Actions to take if capacity is determined to be weak or non-existent.
Community group involvement and acceptance	Regularly attends community forums and other civic and/or political group meetings.					
Confidence and ability to provide input into community actions	Actively participates in community forums and other civic and/or political group meetings.					
Ability to create or resist change regarding community interests	Voices dissenting opinions during community forums and other civic and/or political group meetings.					

Supplemental Resource 7

Land Rights Assessment Tool Kit

How to Use This Resource

This tool kit provides guidance on supplementing an ESIA with a deeper assessment of impacts to land rights, uses, and livelihoods.

Scope of the ESIA

Any ESIA or Human Rights Impact Assessment (HRIA) that a company conducts to comply with widely-accepted human rights standards,¹¹² domestic laws, and policies should also assess investment impacts on land rights, uses, and livelihoods. The ESIA should be supplemented by analyses of the following:

- **How the potential acquisition would affect the amount of land available for food crop and other livelihoods production.** The analysis must go beyond the obvious agricultural and other land uses to include such things as gathered resources (including craft and production materials and medicinal and other resources obtained from the land), along with the economic benefits of naturally occurring and planted trees.
- **Identification and importance of agricultural use and infrastructure.** This could include commodity crops; food crops; non-agricultural livelihood strategies; water sources; agricultural inputs like seeds, fertilizers, and pesticides; market access; roads and transportation; and other infrastructure.
- **Existing and prospective spatial uses and boundaries.** This includes formally documented rights to the land or any other identified and documented boundaries or governance rules.
- **Overlapping rights and uses.** Groups and individual land holders and users within the community may have overlapping rights and uses on the same parcels of land, including seasonal work or different crops grown by women and men. While assessing overlapping uses, any conflicts or disputes over land should be examined as well because they will probably have to be resolved to come to an agreement with community members.

- **Extent to which women and men have different perspectives on all issues discussed and examined during the assessment.** For example, women's land uses may not be recognized by men and the broader community, and women may be more knowledgeable than men about plants grown or gathered for food or medicinal purposes, and may be able to provide more detailed information on sources and uses of water.¹¹³
- **The full market and non-market value of the land**, which would include assessing livelihoods as well as social, cultural, religious, spiritual, and environmental values. The goal is to ensure that all land holders and users receive full and equitable compensation for relinquishing their land rights.
- **The cost or value of any additional resources needed** to supplant or remedy the loss of livelihoods, including the reduction in food cropping. Resources could include new land, money, and alternative livelihoods opportunities (employment, household vocations, business enterprises, and other options).

Resources for HRIA and ESIA

HRIA Tools

BSR, (2013), *Conducting an Effective Human Rights Impact Assessment*, available at: https://www.bsr.org/reports/BSR_Human_Rights_Impact_Assessments.pdf.

Business and Human Rights Resource Centre, *Human Rights Impact Assessments*, <https://business-humanrights.org/en/un-guiding-principles/implementation-tools-examples/implementation-by-companies/type-of-step-taken/human-rights-impact-assessments>.

Columbia Center on Sustainable Investment, (2017), *A Collaborative Approach to Human Rights Impact Assessments*, available at: http://ccsi.columbia.edu/files/2014/05/A-Collaborative-Approach-to-HRIAs_Web.pdf.

Danish Institute for Human Rights, (2016), *Human Rights Impact Assessment Guidance and Toolbox*, available at: <https://business-humanrights.org/en/road-testing-toolbox-on-assessing-human-rights-impacts-of-business-projects-activities>.

Desiree Abrahams and Yann Wyss, United Nations Global Compact (2011), *Guide to Human Rights Impact Assessment and Management*, available at: https://www.unglobalcompact.org/docs/issues_doc/human_rights/GuidetoHRIAM.pdf.

Global Compact Network Netherlands, Oxfam, Shift, (2016), *Doing Business with Respect for Human Rights: Assessing impacts*, available at:

<https://www.businessrespecthumanrights.org/en/page/344/assessing-impacts>.

NomoGaia, (2012), *Human Rights Impact Assessment Toolkit*, available at:

<http://nomogaia.org/tools>.

World Bank Group, (2013), *Human Rights Impact Assessments: A Review of the Literature, Differences with Other Forms of Assessments and Relevance for Development*, available at:

http://siteresources.worldbank.org/PROJECTS/Resources/40940-1331068268558/HRIA_Web.pdf.

ESIA Tools

IFC, *The Social and Environmental Impact Assessment Process*, available at:

<http://www.ifc.org/wps/wcm/connect/296ae980488551f5aa0cfa6a6515bb18/ESIA.pdf?MOD=AJPERES>.

IFC, (2013), *Good Practice Handbook, Cumulative Impact Assessment and Management: Guidance for the Private Sector in Emerging Markets*, available at:

http://www.ifc.org/wps/wcm/connect/3aebf50041c11f8383ba8700caa2aa08/IFC_GoodPracticeHandbook_CumulativeImpactAssessment.pdf?MOD=AJPERES.

IFC, (2007), *Stakeholder Engagement: A Good Practice Handbook for Companies Doing Business in Emerging Markets*, available at:

http://www.ifc.org/wps/wcm/connect/938f1a0048855805beacfe6a6515bb18/IFC_StakeholderEngagement.pdf?MOD=AJPERES.

OECD, (2011), *OECD Guidelines for Multinational Enterprises*, available at:

<http://www.oecd.org/daf/inv/mne/48004323.pdf>.

Frank Vanclay, (June 2015), *Social Impact Assessment: Guidance for assessing and managing the social impacts of projects*, available at:

http://www.iaia.org/uploads/pdf/SIA_Guidance_Document_IAIA.pdf.

World Bank, (2017), *The Environmental and Social Framework*, available at:

<http://documents.worldbank.org/curated/en/383011492423734099/pdf/114278-REVISED-Environmental-and-Social-Framework-Web.pdf>.

Community Assessment Interview Guides

This resource provides a starting point to guide interviews undertaken as part of the community assessment. The questionnaire provided here is comprehensive and includes considerable overlap between sections, in order to encompass as many contexts as possible. Not every investment will require asking all of these questions; they should be tailored to the specific investment inquiry and local context.

District Agency: Key Informant Interview Guide

District governance structure:

1. Position? How long have they been in their position?
2. Roles and responsibilities? How are they involved in the investment? Process?
3. How are they involved in land decision-making?
4. District agency's interaction with community?
5. District agency's interaction with customary authority?
6. District agency's interaction with companies?
7. District agency's interaction with CSOs?

Nature of land rights granted and implications for investment activities and communal land rights:

1. What are the types of land rights granted for investments?
2. Who participates in decisions about the granting of the land rights? And how does that affect the investments and communal/customary rights?
3. Recommendations?

Documentation, recording, and registration of land rights:

1. Do you document or record land rights? How? When? Triggers for documentation?
2. Is any documentation required for land for investments purposes? What kind of documentation?

3. Who bears responsibility for documentation? (The business enterprise? The seller/landlord?)
4. What are the costs involved? Who bears the cost? Is there a schedule of fees?
5. Does the cost influence allocation of land for investment purposes? Does cost prompt people to avoid registration?
6. What capacity exists within the existing community structures for land documentation?
7. Have you seen any effects of land documentation on investments? On local communities and customary rights holders? Has it changed how much land people acquire? Anything else?
8. Are land documents, on lands you have allocated, registered?
9. Benefits of registration? Effects of non-registration?
10. Who registers the land documents?
11. What are the associated costs for land rights registration? Who bears the cost?
12. Does registration trigger taxation? Does this discourage registration?
13. How accessible is the Lands Commission in your area?
14. What kind of linkages exists between you and the Lands Commission? Any special arrangement for registration of land documents emanating from you?
15. What are the challenges?
16. Recommendations?

Land use planning:

1. What roles do you play in land use planning in jurisdiction?
2. How does your role in land use planning influence allocation of land for investments decisions?
3. To what extent does planning decisions by the district government influence granting of land rights for investments? How does the regulation on land use work in practice?
4. What are the challenges?
5. Recommendations?

Consultation and engagement practices:

1. Describe the consultation and engagement process used by business enterprises in your area.
 - Who should be consulted and how?
 - In practice, how are the above mentioned consulted?
2. Are any efforts made to engage women?
 - What types of efforts?
 - Is it important to engage women? Why or why not?
3. Are any efforts made to engage vulnerable groups such as pastoralists and youth?
 - What types of efforts?
 - Which groups? Why those groups and not others?
4. How is information about agricultural investments disseminated?
 - How do men access information?
 - Do women access information? If so, how do women access information?
 - Do you believe men and women have equal access to information regarding planned and ongoing land-related investments?
5. How can women's participation in land and investment deals be promoted? Any good practice examples from your experience?
6. Have you heard of the concept of Free, Prior, and Informed Consent (FPIC)?
 - How is this understood and practiced locally?

Stakeholder roles (in practice) in land and agricultural investments in your area:

1. When an investment in land or agriculture is being proposed, what are the steps to its approval?
 - What established customs underpin these steps?
 - Who is involved in the allocation and disposition of land? What informs their involvement?

- What are their roles and responsibilities?
 - Do laws and/or policies inform how customary land is allocated or documented? How?
 - Is this allocation process (that you have described) standard to all customary areas, or does it vary from place to place?
 - What are the challenges with the current mode of allocation from your perspective? From the perspective of land holders and users?
2. In practice, what role does the government play? (District? Regional? National?) Which offices or officers are engaged, and how?
 3. Do CSOs play a role? At what point in the investment process? What is their role?
 4. Are there women in leadership positions in CSOs? Are they involved in the investment process? Do any of those CSOs represent the interests of women? How?
 5. How do the different stakeholders, that have been identified, interact? How could these interactions be improved?
 6. Are women represented in traditional or customary leadership?
 - Do those women take part in meetings on land-related investments? If so, what role do they play? Should that role be strengthened? If not, how can women be engaged? Should they be?

Land acquisition and compensation practices:

1. How do business enterprises acquire land in your area? Does it depend on the amount of land acquired? Does acquisition vary in practice from the ways business enterprises should acquire land?
2. How do men in the community participate in land acquisition processes?
3. How do women in the community participate in land acquisition processes?
4. Do women participate in land acquisition decision-making processes to the same extent as men?
 - Should women's participation be increased?
 - How can women's participation be increased?

5. Is a business enterprise required to undertake an impact assessment? When?
6. In practice, do business enterprises undertake investment impact assessments? Which? Why?
7. Who participates in undertaking impact assessments?
8. How do land acquisitions for agricultural investments impact men in your area?
9. How do land acquisitions for agricultural investments impact women in your area?
10. Have villagers in your area received compensation for any loss of land?
 - In what form(s) was the compensation paid?
 - Who pays? Government? Business enterprise?
 - How was the level of compensation determined and by whom?
 - Who received compensation? Families? Individuals? Villages?
 - Who controls how to use compensation?
 - Are women ever compensated directly/in their own names?
11. Have business enterprises paid compensation to community land owners before land acquisitions?
 - Was that compensation adequate and fair? How is that determined?
12. Are villagers paid compensation for their land?
 - Is that compensation fair, adequate, and timely? How is that determined? Are women's land uses and rights (either or both formal and customary) recognized, valued, and compensated during the compensation process?
13. Do village men and women participate in the determination of compensation levels?
14. If village men and women are not satisfied with compensations, what do they do?
15. How would you rate the transparency and fairness of land acquisition deals in your area?
16. Do you believe there are opportunities for meaningful feedback on proposed land acquisition deals?
 - Are there any open dialogue forums between business enterprises and villagers?

- If so, do women attend these as well as men? Are they encouraged to attend? Are their opinions heard?

Community mobilization, engagement, and voice:

1. What customary arrangements exist for community organization? Who leads?
2. How does the community engage with new and existing business enterprises? Who initiates engagement process—community or business enterprise? What issues prompt community engagements?
 - Where there are existing business enterprises:
 - What are the challenges with community-initiated engagement with the company?
 - Is any priority given to community members by the company in terms of permanent jobs, seasonal jobs, etc.? What influence does the traditional authority have over this?
 - Is there any community development intervention by the existing companies? What role do you play?
3. How successful has community-initiated engagement been? How does this influence land allocation for investment?
4. What are the major environmental issues in the community?
5. Do you have any recommendations?

Pastoralists:

1. Are there pastoralists in the area?
2. What is the relationship between the fixed community and pastoralists?
3. What are the most common issues for pastoralists?
4. Any pastoralist leaders in the community in any capacity?
5. Do pastoralists attend village meetings? Actively engage? If not, why not?
6. Were there pastoralists using land being given to existing companies?
 - What were women using it for?
 - What were men using it for?
 - What time of the year were women using it?

- What time of the year were men using it?
- 7. Were pastoralist women and men consulted and engaged with during the process?
- 8. Were pastoralist women and men a part of the negotiations?
- 9. Did pastoralist women and men give their consent? What would happen if they said “no” to the investment?
- 10. How is pastoral land valued?
- 11. Was there compensation? Who determined the compensation?
- 12. Was the pastoral community involved in determining the compensation?
- 13. Where do pastoralists go if they need help resolving a land dispute about an investment?

Negotiation and contracting practices:

1. What is the current process for negotiating a land contract?
 - Who participates and how?
 - In what ways do men in the community participate in land-related investment negotiation and contracting?
 - In what ways do women in the community participate in land-related investment negotiation and contracting?
 - Are these negotiations sensitive to the different needs and desires of women and men? How can this sensitivity be improved?
 - Are there opportunities for men and women to give meaningful feedback on proposed contracts? What types? Do women participate as well as men?
2. How can community needs be incorporated into the contracts?
3. Have you seen a land-related investment contract? What was included in the contract?
4. Who are parties to the contracts?
5. Was the community satisfied with the contracting process?
6. How long does it take for the contract to be completed?
7. Do you have access to land contracts?

8. Are final contracts publicized? Who has access to the contracts?
9. Are there any investment oversight, liaison, or monitoring initiatives? What are they?
 - Who participates? Do women participate?
10. Have any interim agreements, such as Memoranda of Understanding (MOU) been made between business enterprises and local communities? District and business enterprises? Do any MOUs exist in this area currently?
11. How are investment contracts or any MOUs enforced and monitored? How could or should they be enforced or monitored?

Dispute resolution mechanisms:

1. Are there land-related disputes between business enterprises and villagers in your area? What types of disputes?
2. If there are disputes of this type, how are they resolved? Which mechanisms exist?
 - Do women ever access these dispute resolution mechanisms? Why or why not?
 - Are these mechanisms considered fair? Are they fair for both men and women?
 - Are these mechanisms accessible to all? What barriers are there? What do they cost to access?
 - Are these mechanisms considered effective? Are their resolutions appropriate? How long does it take?
 - Can decisions be appealed? To where and by who?
 - How can these mechanisms be improved?
 - Are there alternative dispute resolution mechanisms other than formal mechanisms?

Key challenges and opportunities:

1. How well is the overall land and agricultural investment process working? What are some successes? Challenges?

2. What are the main challenges faced by villagers in the vicinity of investment areas?
 - Are these challenges different for men and women? What are women's challenges? How can these challenges be addressed?
3. Are there any initiatives to build the capacity of villagers in the vicinity of investment areas to enhance their ability to engage agricultural business enterprises? In this area, has any village land reverted back to villagers after a business enterprise failed to meet development conditions or the land lease ended?
4. Are there any other challenges, successes, or ideas for improvement you would like to share?

Technology considerations for communication strategies:

1. What types of technology do you use? Computers (laptop, Desktop, tablet), mobiles, etc.?
 - How do you connect to the internet?
 - Do you use apps on your phone? How many?
 - Do you use social media? Which sites?
2. How do you get information on the law? On land laws? Do you ever use technology? Which websites?
3. Do you like to get information by SMS? By email? Which do you prefer?
4. How do you prefer to get information (radio, TV, online, word of mouth, etc.)?
5. What are your biggest barriers to accessing information online? What has been the biggest help?

Traditional Authorities: Key Informant Interview Guide

Customary governance setup:

1. Hierarchy of the chieftaincy/structure of family leadership
2. Roles and responsibilities
3. Land decision-making
4. Role of Queen mothers/family women
5. Do Queen mothers/family women have any role in land allocation or decisions?

6. Customary leadership's interaction with community
7. Customary leadership's interaction with government agencies: DAs, LSAs, etc.
8. Customary leadership's interaction with companies
9. Customary leadership's interaction with CSOs

Nature of land rights granted and implications for investment activities and communal land rights:

1. What are the types of land rights granted for investments?
2. Who participates in decisions about the granting of the land rights? And how does that affect the investments and communal/customary rights?
3. Recommendations?

Documentation, recording, and registration of land rights:

1. Do you document or record land rights? How?
2. If not documented, how do you remember who has what land?
3. Is your land documented? Whose name is on the documents?
4. Is any documentation required for land for investments purposes? What kind of documentation?
5. Who bears responsibility for initiating documentation? The business enterprise? The seller/landlord?
6. What are the cost elements involved? Who bears the cost?
7. Does the cost influence allocation of land for investment purposes?
8. What capacity exists within the customary system for land documentation?
9. What are the effects of land documentation on investments in general?
10. What are the effects on local communities and customary rights holders?
11. Are land documents, on lands you have allocated, registered?
12. Benefits of registration? Effects of non-registration?
13. Who registers the land documents?
14. What are the associated costs for land rights registration? Who bears the cost?
15. How accessible is the Lands Commission in your area?

16. What kind of linkages exists between you and the Lands Commission? Any special arrangement for registration of land document issued by you?
17. What are the challenges?
18. Recommendations?

Land use planning:

1. What roles do you play in land use planning?
2. How does your role in land use planning influence allocation of land for investments decisions?
3. To what extent does planning decisions by the district government influence granting of land rights for investments? How does the regulation on land use work in practice?
4. What are the challenges?
5. Recommendations?

Consultation and engagement practices:

1. Describe the consultation and engagement process used by business enterprises in your area.
 - Who should be consulted, and how?
 - In practice, how are these people/groups now consulted?
2. Are any efforts made to engage women?
 - What types of efforts? Is it important to engage women? Why or why not?
3. Are any efforts made to engage vulnerable groups such as pastoralists and youth?
 - What types of efforts? Which groups? Why those groups and not others?
4. How is information about agricultural investments disseminated?
 - How do men access information? How do women access information?
 - Do you believe men and women have equal access to information regarding planned and ongoing land-related investments?
5. How can women's participation in land and investment deals be promoted? Any good practice examples from your experience?

6. Have you heard of the concept of Free, Prior, and Informed Consent (FPIC)?

Stakeholder roles (in practice) in land and agricultural investments in your area:

1. When an investment in land or agriculture is being proposed, what are the steps to its review and approval?
 - Do established customs drive the different approaches?
 - Who is involved in the allocation and disposition of land? What informs their involvement?
 - What are their roles and responsibilities?
 - Do laws and/or policies inform how customary land is allocated or documented? How?
 - Is this allocation process (that you have described) standard to all customary areas, or does it vary from place to place?
 - What are the challenges with the current mode of allocation from your perspective? From the perspective of land holders and users?
2. In practice, what role does the government play? (Village? District? Regional? National?) Which offices or officers are engaged, and how?
3. Do CSOs play a role? At what point in the process? What is their role?
4. Are women in leadership positions in CSOs involved in the investment process? Do any of those CSOs represent the interests of women? How?
5. How do the different stakeholders, that have been identified, interact? How could these interactions be improved?
6. Are women represented in traditional or customary leadership?
 - Do those women take part in meetings on land-related investments? If so, what role do they play? Should that role be strengthened? If not, how can women be engaged? Should they be?

Land acquisition and compensation practices:

1. How do business enterprises acquire land in your area? Does this vary in practice from the ways business enterprises should acquire land?

2. How do men in the community participate in land acquisition processes?
3. How do women in the community participate in land acquisition processes?
 - Do women participate in land acquisition decision-making processes to the same extent as men?
 - How can women's participation in land-related investments be increased?
4. Is a business enterprise required to undertake an impact assessment? When?
5. In practice, do business enterprises undertake investment impact assessments? Which? Why?
6. Who participates in undertaking impact assessment?
7. How do land acquisitions for agricultural investments impact men in your area?
8. How do land acquisitions for agricultural investments impact women in your area?
9. Have villagers in your area received compensation for any loss of land?
 - In what form(s) was the compensation paid?
 - Who pays? Government? Business enterprise?
 - How was the level of compensation determined and by whom?
 - Who received compensation? Families? Individuals? Villages?
 - What compensation was paid? New land? New house? Money? Community projects? Jobs?
 - Who controls how to use compensation?
 - Are women ever compensated directly/in their own names?
10. Have business enterprises paid compensation to community land owners before land acquisitions?
 - Was that compensation adequate and fair? How is that determined?
11. Are villagers paid compensation when their land is transferred to general land?
 - Is that compensation fair, adequate, and timely? How is that determined?
12. Do village men and women participate in the determination of compensation levels?
13. If village men and women are not satisfied with compensations, what do they do?

14. How would you rate the transparency and fairness of land acquisition deals in your area?
15. Do you believe there are opportunities for meaningful feedback on proposed land acquisition deals?
 - Are there any open dialogue forums between business enterprises and government and community members?
 - If so, do women attend these as well as men?

Community mobilization, engagement, and voice:

1. What customary arrangements exist for community organization? Who leads?
2. How does the community engage with new and existing business enterprises? Who initiates engagement process—community or business enterprise? What issues prompt community engagements?
 - Where there are existing business enterprises:
 - What are the challenges with community-initiated engagement with the company?
 - Is any priority given to community members by the company in terms of permanent jobs, seasonal jobs, etc.? What influence does the traditional authority have over this?
 - Is there any community development intervention by the company? What role do you play?
3. How successful has community-initiated engagement been? How does this influence land allocation for investment?
4. What are the major environmental issues in the community?
5. Do you have any recommendations?

Pastoralists and Tenant Farmers:

1. Are there pastoralists or tenant farmers in the area?
2. What is the relationship between the fixed community and pastoralists/tenant farmers?
3. What are the most common issues for these individuals?

4. Any pastoralist or non-indigene leaders in the community, in any capacity?
5. Do pastoralists or tenant farmers attend community meetings? Actively engage? If not, why not?
6. Were there pastoralists or tenant farmers using land being given to existing companies?
 - What were women using it for?
 - What were men using it for?
 - What time of the year were women using it?
 - What time of the year were men using?
7. Were pastoralist/tenant farmer women and men consulted and engaged with during the process?
8. Were pastoralist/tenant farmer women and men a part of the negotiations?
9. Did pastoralist/tenant farmer women and men give their consent? What would happen if they said “no” to the investment?
10. How is pastoral land valued?
11. Was there compensation? Who determined the compensation?
12. Was the pastoral/tenant farmer community involved in determining the compensation?
13. Where do pastoralists or tenant farmers go if they need help resolving a land dispute about an investment?

Negotiation and contracting practices:

1. What is the current process for negotiating a land contract?
 - Who participates and how?
 - In what ways do men in the community participate in land-related investment negotiation and contracting?
 - In what ways do women in the community participate in land-related investment negotiation and contracting?
 - Are these negotiations sensitive to the different needs and desires of women and men? How can this sensitivity be improved?

- Are there opportunities for men and women to give meaningful feedback on proposed contracts? What types? Do women participate as well as men?
2. How can community needs be incorporated into the contracts?
 3. Have you seen a land-related investment contract? What was included in the contract?
 4. Who are parties to the contracts?
 5. Was the community satisfied with the contracting process?
 6. How long does it take for the contract to be completed?
 7. Do you have access to land contracts?
 8. Are final contracts publicized and who has access to the contracts?
 9. Are there any investment oversight, liaison, or monitoring initiatives? What are they?
 - Who participates? Do women participate?
 10. Have any interim agreements, such as Memoranda of Understanding (MOU) been made between business enterprises and local communities? District and business enterprises? Do any MOUs exist in this area currently?
 11. How are investment contracts or any MOUs enforced and monitored? How could or should they be enforced or monitored?

Dispute resolution mechanisms:

1. Are there land-related disputes between business enterprises and villagers in your area? What types of disputes?
2. If there are disputes of this type, how are they resolved? Which mechanisms exist?
 - Do women ever access these dispute resolution mechanisms? Why or why not?
 - Are these mechanisms considered fair? Are they fair for both men and women?
 - Are these mechanisms accessible to all? What barriers are there? What do they cost to access?

- Are these mechanisms considered effective? Are their resolutions appropriate? How long does it take?
- Can decisions be appealed? To where and by who?
- How can these mechanisms be improved?
- Are there alternative dispute resolution mechanisms other than formal mechanisms?

Key challenges and opportunities:

1. How well is the overall land and agricultural investment process working? What are some successes? Challenges?
2. What are the main challenges faced by villagers in the vicinity of investment areas?
 - Are these challenges different for men and women? What are women's challenges? How can these challenges be addressed?
3. Are there any initiatives to build the capacity of villagers in the vicinity of investment areas to enhance their ability to engage agricultural business enterprises? In this area, has any village land reverted back to villagers after a business enterprise failed to meet development conditions or the land lease ended?
4. Are there any other challenges, successes, or ideas for improvement you would like to share?

Technology considerations for communication strategies:

1. What types of technology do you use? Computers (laptop, desktop, tablet), mobiles, etc.?
 - How do you connect to the internet?
 - Do you use apps on your phone? How many?
 - Do you use social media? Which sites?
2. How do you get information on the law? On land laws? Do you ever use technology? Which websites?
3. Do you like to get information by SMS? By email? Which do you prefer?
4. How do you prefer to get information (radio, TV, online, word of mouth, etc.)?

5. What are your biggest barriers to accessing information online? What has been the biggest help?

Women and Men Smallholder and Community Members: Key Informant Interview and Focus Group Discussion Guide

In some cases, a focus group (group interview and discussion) can be the most effective means of understanding community dynamics and potential issues. In planning the discussion, it is important to carefully consider the participants' roles and relationships in order to ensure that the conversation is as open as possible and does not put participants at risk. Holding separate focus groups for men and women is a good practice that can help to generate more open and nuanced discussions.

Household decision-making:

1. Who makes decisions in your household about your livelihood—about how you will feed yourselves and buy what you need?
2. What do you grow? Who grows it? Do you sell it? Do you consume it?
3. What are your family needs? For food? For your home? For health? For education? Transportation?
4. Who in your household made the decision to grow [*your crop(s)*]?
5. Regarding [*your crop(s)*] production in this area, are there specific activities that are the husband's responsibility? The wife's responsibility?
6. Who within the family makes decisions about how to spend income from [*your crop(s)*] production?
7. When do you receive income from [*your crop(s)*] production? From whom?
8. What is the income from [*your crop(s)*] production used for?
9. How important to your family's livelihoods/survival is [*your crop(s)*] production? Does that income meet your families' needs?

Ownership of land and other assets:

1. Who owns your land?

2. How did you acquire the land you are farming (inherit, allocated, purchased, leased)? If inherited, who did it come to? Do you both own it? If the husband dies, can the wife keep it? Some of it? All of it?
3. Size of land?
4. Acquisition processes same for indigenes and strangers? Differences?
5. Do both women and men own land in your community?
6. Do both women and men lease in land? Lease out land? Who decides?
7. Any land disputes within community? How addressed? Same for men and women?
8. Any land disputes with neighboring communities (adjacent)? If so, how are they addressed?
9. What impact do land disputes have on acquiring land for investment by indigenes? Strangers? Companies?

Custom related to land:

1. Who inherits the farmland being used for the outgrower scheme when a husband passes before wife? Widow and/or son/daughter? Does it depend on whether the couple has children?

Documentation, recording, and registration of land rights:

1. Do you document or record land rights? How?
2. If not documented, how do you remember who has what land?
3. Is your land documented? Whose name is on the documents?
4. Is any documentation required for land for investments purposes? What kind of documentation?
5. Who bears responsibility for initiating documentation? The business enterprise? The seller/landlord?
6. What are the cost elements involved? Who bears the cost?
7. Does the cost influence allocation of land for investment purposes?
8. What capacity exists within the customary system for land documentation?
9. What are the effects of land documentation on investments in general?

10. What are the effects on local communities and customary rights holders?
11. Are land documents, on lands you have allocated, registered?
12. Benefits of registration? Effects of non-registration?
13. Who registers the land documents?
14. What are the associated costs for land rights registration? Who bears the cost?
15. How accessible is the Lands Commission in your area?
16. What kind of linkages exists between you and the Lands Commission? Any special arrangement for registration of land document issued by you?
17. What are the challenges?
18. Recommendations?

Land use planning:

1. What roles do you play in land use planning?
2. How does your role in land use planning influence allocation of land for investments decisions?
3. To what extent does planning decisions by the district government influence granting of land rights for investments? How does the regulation on land use work in practice?
4. What are the challenges?
5. Recommendations?

Consultation and engagement practices:

1. Describe the consultation and engagement process used by business enterprises in your area.
 - Who should be consulted and how?
 - In practice, how are these people/groups now consulted?
2. Are any efforts made to engage women?
 - What types of efforts? Is it important to engage women? Why or why not?
3. Are any efforts made to engage vulnerable groups such as pastoralists and youth?

- What types of efforts? Which groups? Why those groups and not others?
- 4. How is information about agricultural investments disseminated?
 - How do men access information? How do women access information?
 - Do you believe men and women have equal access to information regarding planned and ongoing land-related investments?
- 5. How can women's participation in land and investment deals be promoted? Any good practice examples from your experience?
- 6. Have you heard of the concept of Free, Prior, and Informed Consent (FPIC)?

Stakeholder roles (in practice) in land and agricultural investments in your area:

1. When an investment in land or agriculture is being proposed, what are the steps to its review and approval?
 - Do established customs drive the different approaches?
 - Who is involved in the allocation and disposition of land? What informs their involvement?
 - What are their roles and responsibilities?
 - Do laws and/or policies inform how customary land is allocated or documented? How?
 - Is this allocation process (that you have described) standard to all customary areas, or does it vary from place to place?
 - What are the challenges with the current mode of allocation from your perspective? From the perspective of land holders and users?
2. In practice, what role does the government play? (Local? Municipal? District? Regional? National?) Which offices or officers are engaged, and how?
3. Do CSOs play a role? At what point in the process? What is their role?
4. Are women in leadership positions in CSOs involved in the investment process? Do any of those CSOs represent the interests of women? How?
5. How do the different stakeholders, that have been identified, interact? How could these interactions be improved?
6. Are women represented in traditional or customary leadership?

- Do those women take part in meetings on land-related investments? If so, what role do they play? Should that role be strengthened? If not, how can women be engaged? Should they be?

Land acquisition and compensation practices:

1. How do business enterprises acquire land in your area? Does this vary in practice from the ways business enterprises should acquire land?
2. How do men in the community participate in land acquisition processes?
3. How do women in the community participate in land acquisition processes?
 - Do women participate in land acquisition decision-making processes to the same extent as men?
 - How can women's participation in land-related investments be increased?
4. Is a business enterprise required to undertake an impact assessment? When?
5. In practice, do business enterprises undertake investment impact assessments? Which? Why?
6. Who participates in undertaking impact assessment?
7. How do land acquisitions for agricultural investments impact men in your area?
8. How do land acquisitions for agricultural investments impact women in your area?
9. Have villagers in your area received compensation for any loss of land?
 - In what form(s) was the compensation paid?
 - Who pays? Government? Business enterprise?
 - How was the level of compensation determined and by whom?
 - Who received compensation? Families? Individuals? Villages?
 - What compensation was paid? New land? New house? Money? Community projects? Jobs?
 - Who controls how to use compensation?
 - Are women ever compensated directly/in their own names?
10. Have business enterprises paid compensation to community land owners before land acquisitions?

- Was that compensation adequate and fair? How is that determined?
11. How would you rate the transparency and fairness of land acquisition deals in your area?
 12. Do you believe there are opportunities for meaningful feedback on proposed land acquisition deals?
 - Are there any open dialogue forums between business enterprises and government and community members?
 - If so, do women attend these as well as men?

Community mobilization, engagement, and voice:

1. What customary arrangements exist for community organization? Who leads?
2. How does the community engage with new and existing business enterprises? Who initiates engagement process—community or business enterprise? What issues prompt community engagements?
 - Where there are existing business enterprises:
 - What are the challenges with community-initiated engagement with the company?
 - Is any priority given to community members by the company in terms of permanent jobs, seasonal jobs, etc.? What influence does the traditional authority have over this?
 - Is there any community development intervention by the company? What role do you play?
3. How successful has community-initiated engagement been? How does this influence land allocation for investment?
4. What are the major environmental issues in the community?
5. Do you have any recommendations?

Pastoralists:

1. Are there pastoralists or non-indigenes in the area?
2. What is the relationship between the customary community and pastoralists or non-indigenes?

3. What are the most common issues for these groups?
4. Are there any pastoralist or non-indigenous leaders in the community in any capacity?
5. Do pastoralists or non-indigenes attend community meetings? Actively engage? If not, why not?
6. Were there pastoralists or non-indigenes using land being given to existing companies?
 - What were women using it for?
 - What were men using it for?
 - What time of the year were women using it?
 - What time of the year were men using?
7. Were pastoralist or non-indigenous women and men consulted and engaged with during the process?
8. Were pastoralist or non-indigenous women and men a part of the negotiations?
9. Did pastoralist or non-indigenous women and men give their consent? What would happen if they said “no” to the investment?
10. Where do pastoralists or non-indigenes go if they need help resolving a land dispute about an investment?
11. Where do pastoralists or non-indigenes go if they need help resolving a land dispute about an investment?

Negotiation and contracting practices:

1. What is the current process for negotiating a land contract?
 - Who participates and how?
 - In what ways do men in the community participate in land-related investment negotiation and contracting?
 - In what ways do women in the community participate in land-related investment negotiation and contracting?
 - Are these negotiations sensitive to the different needs and desires of women and men? How can this sensitivity be improved?

- Are there opportunities for men and women to give meaningful feedback on proposed contracts? What types? Do women participate as well as men?
2. How can community needs be incorporated into the contracts?
 3. Have you seen a land-related investment contract? What was included in the contract?
 4. Who are parties to the contracts?
 5. Was the community satisfied with the contracting process?
 6. How long does it take for the contract to be completed?
 7. Do you have access to land contracts?
 8. Are final contracts publicized? If so, who has access to the contracts?
 9. Are there any investment oversight, liaison, or monitoring initiatives? What are they?
 - Who participates? Do women participate?
 10. Have any interim agreements, such as Memoranda of Understanding (MOU) been made between business enterprises and local communities? District and business enterprises? Do any MOUs exist in this area currently?
 11. How are investment contracts or any MOUs enforced and monitored? How could or should they be enforced or monitored?

Dispute resolution mechanisms:

1. Are there land-related disputes between business enterprises and villagers in your area? What types of disputes?
2. If there are disputes of this type, how are they resolved? Which mechanisms exist?
 - Do women ever access these dispute resolution mechanisms? Why or why not?
 - Are these mechanisms considered fair? Are they fair for both men and women?
 - Are these mechanisms accessible to all? What barriers are there? What do they cost to access?

- Are these mechanisms considered effective? Are their resolutions appropriate? How long does it take?
- Can decisions be appealed? To where and by who?
- How can these mechanisms be improved?
- Are there alternative dispute resolution mechanisms other than formal mechanisms?

Key challenges and opportunities:

1. How well is the overall land and agricultural investment process working? What are some successes? Challenges?
2. What are the main challenges faced by communities in the vicinity of investment areas?
 - Are these challenges different for men and women? What are women's challenges? How can these challenges be addressed?
3. Are there any initiatives to build the capacity of communities in the vicinity of investment areas to enhance their ability to engage agricultural business enterprises?
4. Are there any other challenges, successes, or ideas for improvement you would like to share?

Technology considerations for communication strategies:

1. What types of technology do you use? Computers (laptop, Desktop, tablet), mobiles, etc.?
 - How do you connect to the internet?
 - Do you use apps on your phone? How many?
 - Do you use social media? Which sites?
2. How do you get information on the law? On land laws? Do you ever use technology? Which websites?
3. Do you like to get information by SMS? By email? Which do you prefer?
4. How do you prefer to get information (radio, TV, online, word of mouth, etc.)?

5. What are your biggest barriers to accessing information online? What has been the biggest help?

Farmers Associations – Focus Group Discussion Guide

Background and history:

1. When was your association formed and why?
2. What are the objectives of the association?
3. What are the current activities of the association?
4. What benefits does the association provide?
5. How many members belong to the association?
6. How many of that number are women?
7. Women heads of household?

Functional and managerial structure:

1. What are the main functions of the association?
2. Does the association have a constitution and bylaws? Has the constitution ever been reviewed? If so, why and when?
3. What is the organizational and leadership structure of the organization?
4. Who created the organizational structure? How do the leaders get selected?
5. Are there any women leaders in the association? If so, how many and what type of leadership position(s) do they occupy?
6. How is the association financed to perform its functions? Fees? Percentage of crops? How is this collected? All at once?
7. What are the main strengths of the association?
8. What are the main challenges facing the association?
9. What steps are being taken to address the challenges?

Land use planning:

1. What roles do you play in land use planning?
2. How does your role in land use planning influence allocation of land for investments decisions?
3. To what extent do planning decisions by the district government influence granting of land rights for investments? How does the regulation on land use work in practice?
4. What are the challenges?
5. Recommendations?

Functional relationship with the company:

1. Describe the association's working relationship with the company?
2. Is the association's working relationship with the company governed by the constitution or other provisions?
3. In what ways does the association engage the company?
4. How does the association receive information from the company?
5. Do the association and/or its members receive any services from the company? What type of services?
6. Are the provided services adequate? Where are the gaps?
7. What are the main services that you currently need from the company? Are such services being provided?
8. What about the relationship with the company: is it going well?
9. What are the main challenges that the association has faced working with the company?
10. How does the association address any grievances with the company?
11. Do you work with other association or institutions other than the company? If so, in what areas do you engage other associations or institutions?

Functional relationship with association members:

1. What are the membership requirements?

2. What are the dues/fees and when are they due?
3. What services and/or support does the association provide to its members?
4. How does the association communicate with members? Frequency of communication?
5. About what issues does the association communicate?
6. What are the key challenges facing members of the association?
7. How is the association addressing these challenges?
8. What types of grievances do members have?
9. What types of disputes do members have?
10. How does the association address outgrower grievances and disputes?

Produce supply agreements:

1. Who are your main buyers?
2. Do you have any written contract with your buyers?
3. Who is involved in the contract negotiations?
4. What is the frequency of renegotiating the contract?
5. What are the main terms of the contract with the company [*insert company name*]?
6. How does the association address any contract challenges between association and members?
7. How does the association address any contract challenges between the association and the company [*insert company name*]?

Technology considerations for communication strategies:

1. What types of technology do you use? Computers (laptop, Desktop, tablet), mobiles, etc.?
 - How do you connect to the internet?
 - Do you use apps on your phone? How many?
 - Do you use social media? Which sites?

2. How do you get information on the law? On land laws? Do you ever use technology? Which websites?
3. Do you like to get information by SMS? By email? Which do you prefer?
4. How do you prefer to get information (radio, TV, online, word of mouth, etc.)?
5. What are your biggest barriers to accessing information online? What has been the biggest help?

Pastoralists

Customary governance setup:

1. Hierarchy of the leadership structure?
2. Roles and responsibilities?
3. How are they involved in land decision-making?
4. Leadership's interaction with farming communities?
5. Leadership's interaction with government agencies?
6. Leadership's interaction with companies?
7. Leadership's interaction with CSOs?

Nature of land rights granted and implications for investment activities and communal land rights:

1. What are the types of land rights granted for investments?
2. Who participates in decisions about the granting of the land rights? And how does that affect the investments and communal/customary rights?
3. Recommendations?

Documentation, recording, and registration of land rights:

1. Do you document or record land rights? How?
2. If not documented, how do you remember who has what land?
3. Is your land documented? Whose name is on the documents?

4. Is any documentation required for land for investments purposes? What kind of documentation?
5. Who bears responsibility for initiating documentation? The business enterprise? The seller/landlord?
6. What are the cost elements involved? Who bears the cost?
7. Does the cost influence allocation of land for investment purposes?
8. What capacity exists within the customary system for land documentation?
9. What are the effects of land documentation on investments in general?
10. What are the effects on local communities and customary rights holders?
11. Are land documents, on lands you have allocated, registered?
12. Benefits of registration? Effects of non-registration?
13. Who registers the land documents?
14. What are the associated costs for land rights registration? Who bears the cost?
15. How accessible is the Lands Commission in your area?
16. What kind of linkages exists between you and the Lands Commission? Any special arrangement for registration of land documents issued by you?
17. What are the challenges?
18. Recommendations?

Land use planning:

1. What roles do you play in land use planning?
2. How does your role in land use planning influence allocation of land for investments decisions?
3. To what extent does planning decisions by the district government influence granting of land rights for investments? How does the regulation on land use work in practice?
4. What are the challenges?
5. Recommendations?

Consultation and engagement practices:

1. Describe the consultation and engagement process used by business enterprises in your area.
 - Who should be consulted and how?
 - In practice, how are these people/groups now consulted?
2. Are any efforts made to engage women?
 - What types of efforts? Is it important to engage women? Why or why not?
3. Are any efforts made to engage vulnerable groups such as pastoralists and youth?
 - What types of efforts? Which groups? Why those groups and not others?
4. How is information about agricultural investments disseminated?
 - How do men access information? How do women access information?
 - Do you believe men and women have equal access to information regarding planned and ongoing land-related investments?
5. How can women's participation in land and investment deals be promoted? Any good practice examples from your experience?
6. Have you heard of the concept of Free, Prior, and Informed Consent (FPIC)?

Stakeholder roles (in practice) in land and agricultural investments in your area:

1. When an investment in land or agriculture is being proposed, what are the steps to its review and approval?
 - Do established customs drive the different approaches?
 - Who is involved in the allocation and disposition of land? What informs their involvement?
 - What are their roles and responsibilities?
 - Do laws and/or policies inform how customary land is allocated or documented? How?

- Is this allocation process (that you have described) standard to all customary areas, or does it vary from place to place?
 - What are the challenges with the current mode of allocation from your perspective? From the perspective of land holders and users?
2. In practice, what role does the government play? (Village? District? Regional? National?) Which offices or officers are engaged, and how?
 3. Do CSOs play a role? At what point in the process? What is their role?
 4. Are women in leadership positions in CSOs involved in the investment process? Do any of those CSOs represent the interests of women? How?
 5. How do the different stakeholders, that have been identified, interact? How could these interactions be improved?
 6. Are women represented in traditional or customary leadership?
 - Do those women take part in meetings on land-related investments? If so, what role do they play? Should that role be strengthened? If not, how can women be engaged? Should they be?

Land acquisition and compensation practices:

1. How do business enterprises acquire land in your area? Does this vary in practice from the ways business enterprises should acquire land?
2. How do men in the community participate in land acquisition processes?
3. How do women in the community participate in land acquisition processes?
 - Do women participate in land acquisition decision-making processes to the same extent as men?
 - How can women's participation in land-related investments be increased?
4. Is a business enterprise required to undertake an impact assessment? When?
5. In practice, do business enterprises undertake investment impact assessments? Which? Why?
6. Who participates in undertaking impact assessment?
7. How do land acquisitions for agricultural investments impact men in your area?
8. How do land acquisitions for agricultural investments impact women in your area?

9. Have community members in your area received compensation for any loss of land?
 - In what form(s) was the compensation paid?
 - Who pays? Government? Business enterprise?
 - How was the level of compensation determined and by whom?
 - Who received compensation? Families? Individuals? Villages?
 - What compensation was paid? New land? New house? Money? Community projects? Jobs?
 - Who controls how to use compensation?
 - Are women ever compensated directly/in their own names?
10. Have business enterprises paid compensation to community land owners before land acquisitions?
 - Was that compensation adequate and fair? How is that determined?
11. How would you rate the transparency and fairness of land acquisition deals in your area?
12. Do you believe there are opportunities for meaningful feedback on proposed land acquisition deals?
 - Are there any open dialogue forums between business enterprises and government and community members?
 - If so, do women attend these as well as men?

Community mobilization, engagement, and voice:

1. What customary arrangements exist for community organization? Who leads?
2. How does the community engage with new and existing business enterprises? Who initiates engagement process—community or business enterprise? What issues prompt community engagements?
 - Where there are existing business enterprises:
 - What are the challenges with community-initiated engagement with the company?

- Is any priority given to community members by the company in terms of permanent jobs, seasonal jobs, etc.? What influence does the traditional authority have over this?
 - Is there any community development intervention by the company? What role do you play?
3. How successful has community-initiated engagement been? How does this influence land allocation for investment?
 4. What are the major environmental issues in the community?
 5. Do you have any recommendations?

Negotiation and contracting practices:

1. What is the current process for negotiating a land contract?
 - Who participates and how?
 - In what ways do men in the community participate in land-related investment negotiation and contracting?
 - In what ways do women in the community participate in land-related investment negotiation and contracting?
 - Are these negotiations sensitive to the different needs and desires of women and men? How can this sensitivity be improved?
 - Are there opportunities for men and women to give meaningful feedback on proposed contracts? What types? Do women participate as well as men?
2. How can community needs be incorporated into the contracts?
3. Have you seen a land-related investment contract? What was included in the contract?
4. Who are parties to the contracts?
5. Was the community satisfied with the contracting process?
6. How long does it take for the contract to be completed?
7. Do you have access to land contracts?
8. Are final contracts publicized and who has access to the contracts?

9. Are there any investment oversight, liaison, or monitoring initiatives? What are they?
 - Who participates? Do women participate?
10. Have any interim agreements, such as Memoranda of Understanding (MOU) been made between business enterprises and local communities? District and business enterprises? Do any MOUs exist in this area currently?
11. How are investment contracts or any MOUs enforced and monitored? How could or should they be enforced or monitored?

Dispute resolution mechanisms:

1. Are there land-related disputes between business enterprises and villagers in your area? What types of disputes?
2. If there are disputes of this type, how are they resolved? Which mechanisms exist?
 - Do women ever access these dispute resolution mechanisms? Why or why not?
 - Are these mechanisms considered fair? Are they fair for both men and women?
 - Are these mechanisms accessible to all? What barriers are there? What do they cost to access?
 - Are these mechanisms considered effective? Are their resolutions appropriate? How long does it take?
 - Can decisions be appealed? To where and by who?
 - How can these mechanisms be improved?
 - Are there alternative dispute resolution mechanisms other than formal mechanisms?

Key challenges and opportunities:

1. How well is the overall land and agricultural investment process working? What are some successes? Challenges?

2. What are the main challenges faced by communities in the vicinity of investment areas?
 - Are these challenges different for men and women? What are women's challenges? How can these challenges be addressed?
3. Are there any initiatives to build the capacity of communities in the vicinity of investment areas to enhance their ability to engage agricultural business enterprises?
4. Are there any other challenges, successes, or ideas for improvement you would like to share?

Technology considerations for communication strategies:

1. What types of technology do you use? Computers (laptop, Desktop, tablet), mobiles, etc.?
 - How do you connect to the internet?
 - Do you use apps on your phone? How many?
 - Do you use social media? Which sites?
2. How do you get information on the law? On land laws? Do you ever use technology? Which websites?
3. Do you like to get information by SMS? By email? Which do you prefer?
4. How do you prefer to get information (radio, TV, online, word of mouth, etc.)?
5. What are your biggest barriers to accessing information online? What has been the biggest help?

¹¹² AU Guiding Principles, *supra* note 105, at 6 (“Decisions on the desirability and feasibility of LSLBI are made based on independent, holistic assessment of the economic, financial, social, and environmental costs and benefits associated with the proposed investment, throughout the lifetime of the investment.”); see also VGGT, *supra* note 89, at 4 (“Business enterprises should act with due diligence to avoid infringing on the human rights and legitimate tenure rights of others.”); UNGP, *supra* note 89, at 5 (“In order to identify, prevent, mitigate, and account for how they address their adverse human rights impacts, business enterprises should carry out human rights due diligence. The process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed.”); World Bank Group, *supra* note 107.

¹¹³ Namati, *Community Land Facilitators Guide* 29 (2016).

Supplemental Resource 8

Risk Mitigation Analysis

How to Use this Resource

This resource accompanies Phase 2, Task 2, Step 4 of the Ghana Guidebook for Business Enterprises. The results of the ESIA will likely reveal potential risks to the community that the business will have to address and mitigate before proceeding with the investment. When analyzing potential risks created by a prospective investment, begin by considering the categories of land uses included in the far-left column. Although some elements may not pertain to all investments, considering each will help the business identify a broad range of potential risks.¹¹⁴

Type of Land Use Element	What is the investment's effect on the land use element?	If the land use element is affected, what is the impact on community livelihoods?	How could we mitigate these potential impacts?
LAND TENURE Ownership and Use Ownership and use by who: women, men, pastoral communities? Type of ownership: formal owners (titles), jointly owned by both women and men, informal owners, renters, squatters, etc. Settlements Homesteads with and without title deeds Average size of homestead Individual farms with and			

without title deeds Average size of individual farms Access to land for new settlement development Types of houses Construction materials Toilet facilities Access to Land Who is able to access land? Allocation by community leaders, family members, etc. Inheritance Purchase			
COMMUNITY FACILITIES AND INFRASTRUCTURE Education Nursery, Primary, Secondary schools, etc. Location, acreage, and level of service Health Dispensary, clinics, health center Location, acreage, and level of service Major diseases, status of HIV/AIDS Communication and Transportation Type and condition (e.g. road, railway, water, etc.)			

Availability of telephone services and networks Location and level of service Energy Energy sources (e.g. wood, charcoal, gas, electricity, fuel, etc.) Accessibility and costs (affordability) Other Community Facilities Religious, play grounds, recreation, cemetery, commercial, industrial, judiciary, etc. Location, acreage, and level of service			
AGRICULTURE Main Agriculture Crops List main agriculture crops in the village (food and cash crops) Average farm size per household Agriculture Areas and Acreage Estimates Location, names, and areas for agriculture (under cultivation cycle) Farming System Mixed cropping Types of crops that are mixed and not mixed			

Technology used Agricultural Calendar Agriculture seasons and crops grown in each season Use of Agricultural Inputs Type of agricultural inputs (artificial fertilizers, farm yard manure, compost manures, crop seeds, and pesticides for controlling plant diseases and pest attack) Average rate used per acre (rates used) Price and availability for agricultural inputs Farm Implements and Technology Extent of use of hand hoe, draught animals, tractors, and other modern farm implements Use of big tractors and small tractors “power tillers” Rate/percentage of number of households that use farm implements Which farm activities are done using different types of farm implements (e.g. tractors used for tilling only, hand hoe used for all farm activities)? Price and accessibility of farm implements (hand hoes and modern farm implements) Farming (production) cost estimates per acre (major			
--	--	--	--

crops) Extension Services Availability of Extension Officers Establishment of demonstration farms Agriculture Crops Production Crops Storage Storage facilities for farm produce/type of storage facility Pest control for stored crops Market and crop prices Main buyers (for every crop) Internal market Market outside the village, region, and country side Establishment of Government Receipt Advance System			
LIVESTOCK KEEPING Types and Number of Livestock Types present in the village Indigenous breeds Exotic breeds			
Grazing Areas and Livestock Water Points Grazing areas during rainy and dry season Source of water for livestock and its areas in terms of acres/hectares			

Livestock Keeping Systems Zero grazing Extensive grazing Small ranching Type (breed) and total number for each for every system mentioned above Livestock diseases Common animal diseases Seasonal animal diseases Livestock Extension Services and Infrastructure Availability of veterinary shops and medicine prices Livestock extension workers/advisors Livestock routes Dipping troughs Livestock market/auction Availability of livestock treatments Livestock products and Markets Meat Milk and rate of production per animal Skin and hide Prices for animal products			
FORESTRY Types of Forests Natural forest and their acreage (species and names)			

Planted forests and their acreage (species and names) Reserved Forests (species and names) Ownership and Uses of Forests Who owns and uses the forests? Types of possible use: hunting, beekeeping, wood, lumbering firewood, charcoal, building materials, conservation, sacrifices Harvesting of Forest Products Harvesters from within (households) the village Harvesters from outside the village Rate of forest products (firewood, timber, charcoal etc.) harvested Forest production capacity (potentiality/survival/adaptation to climatic change) Market and prices for forest products			
Village Physiography and Drainage System Physiographic appearance (e.g. mountains/uplands, valleys, wetlands) Drainage Existing rivers (seasonal or annual) Where do they drain their			

water?			
WATER SOURCES AND SUPPLY Water sources and bore holes Rivers and other water bodies (permanent/seasonal) Location and acreage Use, capacities, and ownership Management measures of water sources Water supply and distribution			
FISHING Fishing and fish processing areas Location and acreage Type of fishing and fishing gear (e.g., fishing nets, fish hook—net size and type of fish hooks) Types and harvest size of fishes Number of households engaged in fishing Fish markets and prices			
MINING Mineral types and areas/sites (e.g. sands, stone quarries, pebbles/gravel, gold, etc.) Number of households engaged in mining activities Ownership and management of mining blocks			

Market and prices			
Use of minerals (within and outside the village)			
WILDLIFE			
Wild life areas			
Types and species			
Wildlife protected areas neighboring the village			
Use and management of wild life animals			
TOURISM			
Tourism sites within the village			
Business related to tourism			
Revenue from tourism activities			
Social and cultural effects due to tourism			

¹¹⁴ Information was adopted from: NLUPC, *supra* note 33.

Supplemental Resource 9

Final Contract Checklist

How to Use This Resource

This checklist accompanies Phase 3 of the Guidebook and should be used when preparing the final contract, before signing.

FINAL CONTRACT CHECKLIST	
☐	Does the contract clearly state the commitments and agreements that the company has made regarding its social and environmental obligations to address the ESIA results and subsequent engagement?
☐	Does the contract include a provision for annual reporting on the implementation of the impact mitigation plan?
☐	If so, are these reports made public and accessible to local communities?
☐	Do the final contract terms reflect consensus agreements reached through negotiations and consultations with rights holders?
☐	Does the contract include clauses ensuring an efficient and sustainable use of natural resources, in particular water?
☐	Did the company take reasonable steps to determine whether those representing the community in negotiations and consultations seek to protect the best interests of the whole community?
☐	Did the company hold negotiations with identified land rights holders and users before contracting?
☐	Did negotiations address the interests and rights of women and other vulnerable groups?
☐	Did such negotiations occur after the company shared all relevant information relating to the land transfer or land use change?
☐	Did the company help communities gain sufficient capacity to engage in fair negotiations?
☐	Did the company establish monitoring and evaluation procedures for identifying noncompliance with contract terms?
☐	Did the company provide communities with sufficient time and resources to review the contract before signing it? Sufficient time and resources would include time and means to consult third-party experts.
☐	Did identified land rights holders and users have the freedom to say that, "yes" they agreed to the terms of the land transfer or project, or that, "no" they did not agree to the terms of the land transfer or project?
☐	Did the business enterprise obtain the Free, Prior, and Informed Consent (FPIC) of affected indigenous peoples?
☐	Do affected communities have access to the final contract?
☐	Under law and customary rules, did the contract signatories have the authority to agree to the land transfer or land use change?

Supplemental Resource 10

Designing a Stakeholder Engagement Plan

How to Use This Resource

This resource provides (1) a template for designing a strategy for ongoing community engagement, and (2) checklists for evaluating the community engagement plan based on established standards for stakeholder communication.

Model Community Engagement Strategy Contents

1. Description of Investment Project

- Include a general background of the project, as well as reference to key documents and events in the development process.

2. Applicable Regulations and Requirements

- Document the regulations and requirements that apply to the investment and surrounding consultations.
- Include information both from initial desk research and from contract negotiations.

3. Prior Community Engagement Activities

- List engagement and consultation activities that occurred in the pre-negotiation and negotiation phases, as well as any meetings and events that have occurred so far in the investment implementation.

4. List of Stakeholders

- Ensure that the list covers groups representing the interests of the entire community; overlap is expected, and gaps are unacceptable.

5. Description of Stakeholder/Community Engagement Strategy

- This is the main substance of the strategy document and should include as exhaustive a list as possible of engagement activities to be undertaken.

- The strategy description should include the specific activities that will be taken for each stakeholder group in consideration of the particular needs of subgroups.

6. Timetable for Community Engagement Activities.

- This timetable should include meetings and consultations, as well as monitoring and reporting functions and regular reviews of the investment and its accompanying processes.

7. Resources and Responsibilities Involved in Ongoing Community Engagement

- This should include the resources that the investor will put towards ongoing community engagement, as well as any outside funding and/or activities from civil society partners, government agencies, and other groups.
- There should be clear integration of engagement responsibilities into the investor's ongoing operations.

ONGOING COMMUNITY ENGAGEMENT PLAN CHECKLIST	
☐	Does the plan describe the requirements and expectations for consultation and communication?
☐	Does the plan ensure that communication involves avenues for two-way dialogue, including adequate time for expression and listening on both sides?
☐	Does the plan identify and prioritize key stakeholder groups, with special focus on women and other vulnerable groups?
☐	Does the plan provide a strategy and timetable for meetings and information sharing with each identified stakeholder group?
☐	Does the plan describe the resources and responsibilities involved in implementing community engagement activities?
☐	Does the timetable include regular reviews of the lease by land holders and users in order to ensure that the project is implemented in accordance with the mutual promises, expectations, mitigation strategies, and conditions contained within the lease?
☐	Does the plan describe how community engagement activities will be incorporated into the investor's ongoing operations?
☐	Does the plan include a mechanism for incorporating community feedback about engagement and consultation processes?
☐	Does the plan include a process for reporting changes in engagement processes back to stakeholders?
ONGOING COMMUNITY ENGAGEMENT PRINCIPLES CHECKLIST	
☐	Is the investor providing meaningful information in appropriate formats and languages?
☐	Is the investor tailoring communication to the needs of key stakeholder groups?
☐	Is information disseminated in ways and locations that ensure access by the community?
☐	Does engagement respect local traditions, languages, timeframes, and decision-making processes?
☐	Are the processes for engagement and consultation free of coercion, intimidation or other unfair bargaining dynamics?

Supplemental Resource 11

Literature Review: Best Practices for Outgrower Arrangements

How to Use This Resource

The external resources summarized here provide guidance and discuss best practices for establishing outgrower arrangements as a method of compensation or alternative to outright land purchase or lease. Outgrower best practices are beyond the scope of this Guidebook, so companies will need to find other resources to help them navigate outgrower issues. Use the resources below as a starting point.

1. R. van Gent, *Outgrower Best Practices, Field Reporting, Appraisal and Monitoring, and Notes on Commercial and Social Dimensions of Outgrower Arrangements* (FAO 2010), available at www.fao.org/uploads/media/Outgrower%20Best%20Practices.pdf.

This report outlines a set of best practices for outgrower schemes. It lists recommendations for selecting outgrowers, registration practices, contracts, input supply and loan recovery, extension services, marketing arrangements, pricing mechanisms, and group development facilitation. It also sets out guidelines for field reporting, appraisal and monitoring techniques, and other notes on commercial and social dimensions of outgrower arrangements. The paper begins by mentioning the problem of side-selling and side-buying. Even if all of the best practices outlined in the report are addressed, an outgrower arrangement may still fail if side-selling isn't appropriately addressed. The report recommends addressing the issue from the buyer side; if there are no side-buyers, there will not be any side-selling.

The first set of recommendations develops selection criteria for outgrowers. To do so, the paper sets out a list of questions to inform the investor/company about the farmer as an outgrower. It asks a set of questions as to land availability, location, and conditions in order to understand whether the farmer and her land fit the minimum criteria of the particular crop to be grown. It then asks questions that will inform the company about the farmer's knowledge and experience, business awareness, motivation, and

commitment in order to determine whether she or the company should enter into an outgrower arrangement.

The paper then shifts to the management of basic data recording and monitoring. It recommends basic data capturing for the farmers (names, locations, credit provided, mobile telephone numbers, etc.) and computer monitoring that tracks the performance of the farmers along a number of criteria. Contracts in outgrower arrangements should be transparent and detailed. This often includes a translation to the local language, and training and capacity building to ensure the farmer can make an informed decision on the terms of the contract. The paper then recommends terms that should be included in the contract, subject to the particulars of the transaction. Among other recommendations, this paper suggests pricing mechanisms and payment modalities that account for the asymmetry of knowledge that often accompanies these transactions. For instance, it suggests a pre-planting price; farmer's lack of understanding how and why international market prices fluctuate, or an asymmetry of accessible information may lead to the farmer feeling exploited. It also suggests that payment to farmers be as prompt as possible, with a detailed record of the transaction. This paper presents a great overview of best practices for outgrower schemes, but misses an opportunity to discuss gender considerations in developing outgrower schemes.

2. International Finance Corporation, *Working with Smallholders: A Handbook for Firms Building Sustainable Supply Chains* Available (2013), available at <http://www.ifc.org/wps/wcm/connect/8dc5628042112fdbba2fff494779b2ad/Handbook+-+Working+with+Smallholders.pdf?MOD=AJPERES>.

This handbook discusses smallholder farmers and outgrower arrangements as potential opportunities for addressing greater demand for food, limited access and availability of arable land, and new food and water issues associated with climate change. It also identifies some of the issues associated with sourcing from smallholders, such as productivity, crop quality, scalability, and capacity issues. This incredibly detailed handbook includes guides on the business case for working with smallholders, program design, working with producer organizations, training and communication strategies, standards for smallholder supply chains, access to inputs, farm management skills, incorporating gender into interventions in supply chains, and measuring results of smallholder programs.

As the only outgrower manual to explicitly address gender, this handbook is very useful in discussing the benefits, strategies, and opportunities for integrating gender into outgrower practice considerations. It discusses the ways in which greater inclusion of

women can offset many of the issues with outgrower schemes; a strategy that prioritizes women's participation increases productivity, optimizes the use of inputs, and reduces management costs. The handbook also describes specific outgrower projects that increase women's inclusion, such as the FRICH Project's support of Finlay's Kenyan tea outgrowers' cooperatives, which includes quotas for women's participation in its management.

3. J. Bugri, et al., *Recommendations for Large Scale Land-Based Investment in Ghana: Model Lease Consultancy Project Report for the Ghana Commercial Agriculture Project* (Landesa/Ghana Commercial Agriculture Project 2014), available at: <https://gcap.org.gh/wp-content/uploads/2017/04/Lease-Consultancy-3.pdf>.

The purpose of this report is to make recommendations and provide tools for investors and communities in Ghana to improve investment outcomes in commercial agriculture. For the purposes of this literature review, the primary focus will be the “Innovative Models for Inclusive Commercial Agricultural Investments” section, beginning with investment structure and payment terms for land and then discussing innovations in outgrower models in Ghana.

This section outlines a number of different payment options for land. The traditional method of payments for leased land in Ghana is the fixed-sum payment. Although communities derive the benefit of assurance of payment up front in this arrangement, significant drawbacks exist for all parties involved. Firstly, up-front payments discount the expected rise in value of land over time in exchange for security of payment. This tradeoff is especially imbalanced in long-term leases. Secondly, these up-front payments rarely make it to most community members, far less equitably so, and divest future generations without payment for their loss of land. Replacing the up-front payment with a periodic fixed payment gives the community a greater sense of fairness while increasing investor stability. Advantages to the fixed-price method include greater transparency and financial security for communities. These transactions are easier to understand, monitor, and enforce.

A payment model with increased risk, but potentially increased benefit for communities, is the revenue sharing model. This model bases the returns to the communities on the success of the company, and on factors often outside of community control. It also requires a higher level of sophistication for community monitoring. Advantages of revenue sharing compared to equity or profit sharing models include a comparative ease of calculating and monitoring returns. Disadvantages compared to equity models

include an inability to access financial records, participate in management, or build up longer term value.

Equity share compensation models grant minority shares to the community in the company's equity, which provides a portion of profits, a voice in management decisions, and access to financial records. The risks however, include a trade of land for only potential profits that are difficult to determine, and may take years to produce. As a minority shareholder, the communities would have little say over many decisions, including decisions to reduce declared profits. Communities would also need the capacity to perform due diligence on the pertinent business plan. This report outlines a series of techniques to increase the viability of the equity share model, such as the establishment of a strong outgrower component, as opposed to a plantation style farm.

Hybrid schemes combine fixed-payment leases with revenue sharing or equity sharing models. Some examples of hybrid schemes are offered, including one that diminishes fixed-payments over time, and balances the risk-sharing components with stability of income for communities. It seems that hybrid schemes, depending on the circumstances of the transaction, are likely ideal, but require a level of business and financial sophistication that may not be currently available in many communities.

The section continues with a discussion of innovations in outgrower and contract farming models. After a brief introduction and definition of terms, it describes particular examples of outgrower schemes in Ghana, including the GADCO example, which is discussed extensively in the payment of land section as one of the most successful outgrower programs in Ghana. Based on these examples and experiences, the report provides a number of conclusions and recommendations for outgrower models. Importantly, this report notes that outgrower schemes reduce the need for land acquisitions, and increase tenure security for farmers, particularly in customary systems like Ghana's. It also notes risks inherent in these models, including a lack of farmer capacity, high interest rates for farmers, and unclear contract terms. Based on these conclusions, this report makes a series of recommendations for realizing a higher level of benefits from outgrower schemes, including conducting ESIs, making resources and materials available in the local language, and establishing procedures for addressing grievances.

4. H. Desmond et al., *Forestry Out-Grower Schemes: A Global View* (FAO 2001), available at <http://www.fao.org/3/a-ac131e.pdf>.

This working paper, although related to forestry outgrower schemes, provides useful information and issues that are useful to outgrower schemes beyond the forestry

context. It describes different types of outgrower schemes definitions of terms. It then discusses the benefits of outgrower schemes, including more secure land tenure for farmers and additional or cheaper raw materials for investors. This paper addresses some of the issues surrounding outgrower schemes. Some of these issues are particular to the forestry context, but many are widely applicable, such as the issue of access to financial loans. This paper's primary usefulness is a snapshot of the benefits and issues associated with outgrower schemes in general, and forestry

outgrower schemes particularly. It offers a few recommendations for successful schemes, such as accurately calculating and sharing risks and structuring the scheme so that the arrangements contribute to community well-being.

5. TechnoServe, *Technical Brief: Outgrower Schemes-Enhancing Profitability* (2011), available at: www.technoserve.org/files/downloads/outgrower-brief-september.pdf.

Responding to an increase in large scale investment in Africa, this technical brief attempts to identify replicable, scalable practices which tend to contribute to the success of outgrower schemes. It identifies a range of factors that success depends on, such as access to markets; transparent pricing mechanisms or attractive prices for farmers; avoiding overreliance on credit; and regular, direct interaction between the buyer and farmer. This brief includes a number of useful graphics, including one that demonstrates the benefits of outgrower schemes for buyers and outgrowers, a visual comparison of outgrower models and their characteristics, and a comparison of crop types with their suitability for outgrower schemes.

Supplemental Resource 12

Monitoring and Evaluation Indicators

Below are suggested indicators to be tracked and evaluated. These follow from best practices outlined in the Guidebook that lead to equitable, responsible investments and would include, for example, ensuring that women community members are consulted.

Company Policies and Procedures

The business has in place policies and procedures that adhere to relevant national laws and international standards for socially responsible investments, and demand adherence from all suppliers. Confirm that policies and procedures:

- Clearly affirm and comply with the business enterprise's commitment to specific international standards (such as the VGGT or AU Guiding Principles) and the application of those standards to each land investment.
- Comport with national law, but also meet international best practices, which often require efforts that go beyond what is called for by national law.
- Require the business enterprise's suppliers (e.g., vendors, contract farmers, etc.) to adhere to similar standards.
- Implement and enforce the policies and procedures throughout business operations.
- Outline or refer to specific mechanisms to achieve best practices, such as impact assessments and community consultation and engagement.
- Establish internal standards for incorporating land tenure risks into decision-making.
- Have endorsement at the highest level of the enterprise that is known by all working within the enterprise, include clear lines of authority for implementation and enforcement, and make publicly available.

Community Systems and Safeguards

The community has strong systems and safeguards in place that are rooted in good practices, indicators of which include:

- The establishment of a Land Investment Committee empowered to lead efforts in preparing the community for possible changes to the investment and represents the community in discussions with prospective investors.
- The incorporation of community rules or bylaws that specifically govern land investments, particularly how decisions will be made about company accessing and using land in the community.
- The delivery of effective awareness-raising and training activities to ensure community members are informed about their rights and understand benefits and risks associated with investments.

Ongoing Due Diligence

To avoid infringing on legitimate tenure rights and land uses:

- Business identifies actual or potential issues and risks that any changes to the project may pose to communities and individuals (both men and women).
- Business refrains from cooperating with any illegitimate use of eminent domain/expropriation by a host government to acquire land.
- Business discloses changes to the investment project publicly, including any contracts or permits for a concession that enable the company to buy, lease, hold, or develop new land.

Engagement and Consultation

The business's engagement and consultation process with the local community is in accordance with FPIC, including:

- Development of an engagement and consultation plan with the community that:
 - Consists of a series of engagements and multiple meetings.
 - Involves two-way communication between business and community.
 - Includes active participation from groups that are frequently under-represented in decision-making such as women, youth, and ethnic minorities.
- No use of coercion, force, intimidation or other types of pressure placed by any business representatives on communities and individual women and men to

change the use of, sell, lease, or otherwise dispose of their land and natural resources.

- Provision of all material information to communities and individual women and men necessary to make an informed decision prior to seeking and obtaining consent.
- Explicit consent from communities and individual women and men to any proposed project that involves transferring or changing the use of their land or natural resources before the business or government implements the project.
- Effective consent from communities and individual women and men to any material changes to the project prior to the implementation of those changes.

Impact Assessment

The business conducts an environmental and social impact assessment to identify and gauge actual or potential impacts from the project on the environment and community, including impacts affecting land users, land rights, and livelihoods.

- Business presents assessment findings and proposed mitigation measures to the community.
- Business presents assessment findings to government officials and external experts.
- Business incorporates assessments findings into the investment project.

Grievance Mechanism

The business establishes a well-functioning grievance mechanism that should have the following characteristics:

- Internal policies and procedures that provide managers and employees with explicit steps on how to process and resolve complaints.
- Internal procedures to ensure cooperation between the chief grievance manager and the employees or contractors with close knowledge of the subject of the grievance.
- Guidance on the types of performance data to be recorded and reviewed for monitoring and evaluation purposes.
- Periodic internal review to ensure the mechanism's functionality.

- Set timeframes for responding to complaints to ensure consistency within the company and predictability for complainants.
- Providing fair remediation in cases where the company caused land rights violations.

A GUIDEBOOK FOR BUSINESS ENTERPRISES CONSIDERING AGRICULTURAL INVESTMENT IN GHANA

What should companies do to improve their investment practices in Ghana, reduce risk and bring about more equitable investment projects? What can Ghanaian government officials do to facilitate better investment practices in their regions and districts? How can community members, Customary Land Authorities and community level actors, including traditional leaders, strengthen existing community group structures to prepare themselves to effectively engage with companies about a prospective investment? What role can civil society play to improve investment practices and ensure that communities are more equitable business partners and beneficiaries?

The Ghana Responsible Investment in Property and Land (RIPL) Guidebook series provides steps, tools and resources to help answer these questions. These Guidebooks are intended for use prior to and during the land investment process to support investments that adhere to national laws and policies, reflect international best practices and recognize and protect land rights. Each Guidebook includes an overview of international best practices for responsible land investment, background information outlining Ghana's historical and political context, and step-by-step guidance organized by investment phase.



SOCIALLY RESPONSIBLE LAND INVESTMENT IN GHANA

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