



# SOCIALLY RESPONSIBLE LAND INVESTMENT IN GHANA

A Guidebook for Communities Considering Agricultural Investment in Ghana



Responsible Investments  
in Property and Land



Department  
for International  
Development





# **Socially Responsible Land Investment in Ghana**

## **A Guidebook for Communities**

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 Communities 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.landesa.org](http://www.landesa.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 comprising government, civil society, and private sector representatives was established that provided regular input into the process.

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# 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)

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**1.**

# **Introduction and How to Use This Guidebook**

# Introduction

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

The goal of this Guidebook is to give communities all the information needed to ensure that they are equipped and prepared to consider; determine whether to accept; and be informed about and participate in the design, implementation, and oversight of any proposed land-based investment. Our aim is for agricultural investments to support the social and economic development of communities in Ghana, and for decision-making and investment implementation to be carried out in line with international standards and best practices.

The audience for this guide is communities—individuals, Customary Land Authorities<sup>1</sup> (CLA), and others—that are facing the challenges and opportunities of a new or existing land investment. The individuals or groups of people involved in the process will vary from place to place, and may depend on the type of investment project involved. Civil Society Organizations (CSOs) may also find this guide useful as they work to assist communities.

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.

Complicating the situation, even when responsible investment practices do align with the land governance framework, some individuals may possess land rights formally, but not customarily. In Ghana, and elsewhere, this is often true for women, who may hold tenure rights under Ghanaian law, but may not be allowed to own property for customary or traditional reasons. This means they may be excluded from consultation and decision-making processes, even when their interests are clear and formal law is on their side.

This adds to the complexity of commercial agricultural investment and means that legitimate land rights holders can be left out of consultation and decision-making around land transactions. 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 the company and the community members. Such situations can, and often do, result in conflict that leads to wrongful displacement or 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. Nor is there clarity around how to alter community practices to include women in situations where local practices and norms tend to exclude them, such as community meetings and land surveying processes. Governments that lack capacity to maintain and enforce equitable land practices need help 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 for 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.**<sup>2</sup> 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 to navigate 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 Community Guidebook is intended for use prior to and during the agricultural land investment process.

## Guidebook Audiences: Investment Stakeholders

There are three broad investment stakeholders: business or investor, government, and the community of people affected by an investment. Each of these audiences has different needs, roles, and responsibilities in an agricultural investment transaction. The RIPL project has, accordingly, produced a different Guidebook for each stakeholder group and identified a specific user for each Guidebook.

## The Role and Responsibilities of Communities

Traditional Authorities, communities and their leaders must be empowered to participate fully in any investments affecting them. Though they may benefit from a land-based investment, rural communities and smallholders are also the stakeholders who have the most to lose when land deals take place. It is important to note that investments, even undertaken with best practices, cannot simply be imposed upon communities. Women and men in communities must have the capacity to be a part of fair land deals and have an opportunity to participate. There must be community attention, consideration, and response from both women and men. This means that communities and their leaders may need to:

- **Reconcile traditional practices with international standards**, which may be quite challenging. For example, a customary or traditional authority, usually a male elder or chief, holds the power to manage the community land. This person 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 strangers, should be involved in the negotiation process. After all, though women and strangers may not have rights within a customary setting, they may have rights from a national or international legal perspective.

- **Develop processes or structures to support community consultation and decision-making.** Establishing or improving processes to share information, support community input into the project or other considerations, and assist with or guide land use planning will leave a community better prepared to weigh the options and engage with an investor on a potential investment.
- **Learn about how agricultural investments work.** What usually happens during a land transaction? What processes need to happen to come to a fair and equitable agreement? What rights do community members have during the transaction? These are questions you'll want to answer, so you know what to expect.

In some communities in Ghana, traditional structures, such as Traditional Councils, establish a structure and process that supports consultation, information sharing, and inclusive community governance. In many areas, community associations, such as youth associations or women's groups, have effectively engaged on investment issues. This Guidebook uses the term Customary Land Stakeholders (CLS) to refer to this broader, representative group composed of chiefs or family heads, elders, family or clan members, and representatives from the community's women's and youth groups. Where these institutions do not exist, or are not playing their role effectively, community committees can be formed to guide planning and decision-making before and throughout an investment process.

Civil society can also assist communities during the planning, assessment, contracting, and implementation of an investment by serving as facilitators, experts, interpreters, and collaborators. This engagement may prove helpful to business enterprises as well, who will likely need help effectively reaching and engaging with community members. CSOs 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 Responsibilities 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.

The Business Enterprise Guidebook's intended user is a company representative tasked with facilitating an investment. Because this individual may not completely understand how to facilitate a responsible investment in Ghana, this Guidebook includes information on international standards and best practices, Ghana's governance and community landscape, and how to manage an agricultural investment responsibly.

## The Role and Responsibilities of Government

The Ghanaian government plays an important role in supporting businesses and communities in implementing best practices to ensure responsible investment. At a high level, **the government's role is to make sure that all parties are adhering to pertinent local, national, and international laws.** As such, government actors at the local, regional, or national level may need to act as facilitators or guides during the investment process.

The government holds a responsibility to:

- Recognize and respect all legitimate tenure rights holders and their rights.
- Safeguard legitimate tenure rights against threats.
- Make efforts to promote and facilitate the full realization of tenure rights, for example, by clarifying and documenting land rights, and supporting processes whereby individuals can assert and have claims resolved.
- Support accessible and equitable transactions.
- Provide access to justice to deal with infringements of legitimate tenure rights.
- Take steps to prevent tenure disputes from arising and escalating into conflicts.
- Respond, for example, by providing information, facilitation, and links to resources to businesses and communities that are engaged in a land matter.

## 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 on-line:
  - Obligations Under International Treaties and Conventions
  - [Community Governance Assessment](#)
  - [Leveraging Land Investment Committees](#)
  - [Land Rights Awareness Training Curriculum](#)
  - [Developing Community By-Laws for Responsible Investment](#)
  - [Holding a By-Law Adoption Ceremony](#)
  - [Gender Sensitive Community Mapping](#)
  - [Boundary Harmonization](#)
  - [Documenting Boundaries](#)
  - [Developing a Land Use Plan](#)
  - [Land Valuation](#)
  - [Consultation Meeting Notes Checklist](#)
  - [Community Consultation Meeting Checklist](#)
  - [Outgrower Best Practice Literature Review](#)
  - [Template for LOI/MOU](#)
  - [Final Contract Checklist](#)
  - [Designing a Stakeholder Engagement Plan](#)
  - [Land Rights Assessment Tool Kit](#)

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.

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<sup>1</sup> This guide is directed at Customary Land Authorities, which is meant to include allodial title holders (for example, stools led by chiefs or families or clans led by heads and elders, including Queen Mothers), tendanas and representatives of community groups (such as youth groups, women's groups, and others). Together, these individuals are custodians of customary lands and members of communities. It is our assumption that these structures exist within communities, though the particular arrangement of these structures vary from area to area. In some places they are functioning well, while in other places they need to be revitalized and supported so that they can effectively ensure consultative and socially responsible land investment processes.

<sup>2</sup> For recent detailed analyses of legacy issues, see L. Cotula, T. Berger, and P. Sutz, *Addressing Legacy Land Issues in Agribusiness Investments*, LEGEND Analytical Paper 2 (2016), available at: <https://landportal.info/library/resources/legend-analytical-paper-2/addressing-legacy-land-issues-agribusiness-investments>; N. Flanders and J. Jenks, *A Guidance Note on Managing Legacy Issues in Agribusiness* (2015), available at: [https://www.deginvest.de/DEG-Documents-in-English/Download-Center/DEG\\_CDC\\_Guidance-Note-on-Managing-Legacy-Land-Issues-in-Agribusiness-Investments-2016\\_en.pdf](https://www.deginvest.de/DEG-Documents-in-English/Download-Center/DEG_CDC_Guidance-Note-on-Managing-Legacy-Land-Issues-in-Agribusiness-Investments-2016_en.pdf)

**2.**

## **International Standards and Best Practices**

# International Standards and Best Practices

Responsible agricultural investment includes more than just following the letter of Ghanaian law. It also means adhering to international standards and best practices.

In fact, these standards have been created because in many places the national laws simply do not do enough to protect communities who have a right to use land that is targeted for commercial use.

This section will discuss:

- ✓ [Best Practices Overview](#)
- ✓ [Free, Prior, and Informed Consent and how it applies in Ghana.](#)

## Best Practices Overview

The RIPL Guidebooks reflect the international standards and best practices for responsible investments in land that are explained in each phase. 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 Commission for Africa.
- [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).

At a high level, these standards call on governments to establish and enforce enabling frameworks for socially responsible land investment, and for governments and business enterprises to work equitably with communities and individuals with legitimate land rights. The steps and practices contained in this Guidebook are those that would help a

community prepare for, and participate in, a socially responsible land investment. During the investment process, a business is expected to:

- Make a commitment to uphold both national law and international standards.
- Identify all land rights, including access, use, secondary, and communal rights recognized under both formal and customary law.
- Provide notice to all land rights holders (including traditionally vulnerable groups such as women, ethnic minorities, pastoralists, and migrant farmers) about the investment.
- Engage and consult with leaders of affected communities and individuals about how to design and implement the prospective investment.
- Recognize and formal land rights.
- Ask land rights holders to consent freely, with the option to decline.
- Assess land impacts via an impact assessment.
- Mitigate impacts (such as potential displacement) and social risks that may be caused by the project.
- Invite land rights holders to negotiate a fair agreement.
- Ensure investment benefits are distributed equitably among all individuals with land rights.
- Establish and implement grievance mechanisms.

A great deal of global attention is now focused on supporting the implementation of these practices to achieve fair, informed, inclusive, and choice-driven processes that respects the land rights of all.

# Comparing Ghanaian Regulatory Requirements to Best Practices

Ghana's legal framework outlines a process for land-based investment, but the content and application of the framework does not always mandate or support the application of best practices 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 should undertake to bring an investment closer to these 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 communities can take to bring the investment closer to international best practice                                                                                                                                                                                             |
|----------------------------------------------------------------------------|------------------------------------------------------------------------|----------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <a href="#">Developing Policies, Commitments, and Safeguards.</a>          | Not mandated.                                                          | Not required by law. Significant gap.                          | A community is best positioned to benefit from a prospective investment if it strengthens its governance structure, increases awareness of their rights, documents their land and resource rights, and engages in land planning exercises, well before a prospective investor approaches a community. |
| <a href="#">Conducting Due Diligence.</a>                                  | Not mandated.                                                          | Not required by law. Significant gap.                          | Prior to a potential investment process, a community should identify and document land uses and rights and carry out a community land use planning process.                                                                                                                                           |
| <a href="#">Engaging and Consulting with Land Right Holders and Users.</a> | Constitution; EPA Act; Environmental Assessment Regulations; OASL Act; | Land tenure impacts assessment insufficiently required by law. | Businesses should engage and consult meaningfully with communities, individual smallholders, and all other land users throughout the land investment project, starting at the beginning of the investment.                                                                                            |

|                                                                                        |                                                                        |                                                  |                                                                                                                                                                                                                                                   |
|----------------------------------------------------------------------------------------|------------------------------------------------------------------------|--------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                                                        | Lands Commission LSLA Guidelines                                       | Significant gap.                                 |                                                                                                                                                                                                                                                   |
| <a href="#">Conducting Community Assessment.</a>                                       | Environmental Assessment Regulations; Lands Commission LSLA Guidelines | Insufficiently required by law. Significant gap. | Business must conduct a community impact assessment that rises to the level of best practices.                                                                                                                                                    |
| <a href="#">Negotiating and Drafting a Land Lease and Addendum.</a>                    | Conveyancing Act                                                       | Insufficiently required by law. Significant gap. | Equitable contracting requires that communities be brought to an equal footing with investing business enterprises and governments. It also requires that the process for negotiating a land lease and addendum is transparent and participatory. |
| <a href="#">Reviewing and Signing the Land Lease and Addendum.</a>                     | Not mandated.                                                          | Insufficiently required by law. Significant gap. | Customary Land Authorities should communicate the terms of a negotiated deal in a way that all stakeholders in the community can understand.                                                                                                      |
| <a href="#">Preventing and Addressing Land-Related Issues.</a>                         | Not mandated.                                                          | Not required by law. Significant gap.            | Customary Land Authorities should work with the business to establish mechanisms that ensure on-going engagement, consultation, and access to remedy.                                                                                             |
| <a href="#">Developing and Implementing an Ongoing Monitoring and Evaluation Plan.</a> | Not mandated.                                                          | Not required by law. Significant gap.            | M&E is essential to ensuring that the agreement terms are fulfilled, and can also provide information needed to identify and correct communication issues.                                                                                        |

# Important Concept for Communities:

## Free, Prior, and Informed Consent (FPIC)

Meeting the Free, Prior, and Informed Consent (FPIC) standard is a foundational element of meeting international standards and best practices of agricultural investment. FPIC establishes a standard and structure by which communities can accept or reject the change in land use that accompanies the proposed investment.

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 positive and stable relations with local communities 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.

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 land lease 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
- Others, i.e., widows, religious minorities, elderly, people with disabilities, etc.

**Structure the meetings into three 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. In the majority of contexts, women should be separated from men. Consult the [Gender Primer](#) for more guidance on meaningfully including and considering women throughout the investment process.
- Reconvene the community for further discussion and 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.

#### **Schedule additional meetings.**

- Develop a schedule to hold multiple meetings with community members to inform, provide a space for dialogue, ensure everyone participates (particularly widows, minorities, pastoralists etc.).
- 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.

**3.**

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

# Land Governance in Ghana

Ghana operates two broad land systems:

- **The state system:** governed by written rules in the form of statutes, legislations, 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 in the sense that 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 some rare cases, by 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.<sup>3</sup>

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

The legal framework for land investment in Ghana is complex, contains a number of contradictions, and provides general guidance for land-based investment. As currently implemented, the content and application of the legal framework for investment falls short of mandating best practices and meeting international standards for responsible investment, and does not yet provide detailed guidance to investors. While current laws and policies do establish roles and responsibilities for government actors in the land-based investment acquisition process, because such laws do not provide a framework to address the entire investment process, the framework leaves gaps in the administration, facilitation, and oversight of land-based investments.

The National Land Policy (1999) provides the overall framework for land governance in Ghana. The legislative reforms currently under review, including the draft Lands Bill, will help to streamline and clarify the land governance framework, and aim to improve the efficiency and effectiveness of Ghana's enabling framework for land-based investment. The laws most relevant to agricultural land 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 to agricultural investments, as well as laws governing inheritance and property among spouses, include the Ghana Investment Promotion Centre Act, 2013 (Act 865) and the Environmental Protection Agency Act, 1994 (Act 490).

The complexity of requirements under the present regulatory framework presents a challenge. At a minimum, land transactions must comply with a series of requirements:<sup>4</sup>

| Requirement(s)                                                                                                                                                                                          | Instrument/Source of Rule           |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------|
| Transactions on customary land for periods of three years or more must be documented.                                                                                                                   | Conveyancing Decree of 1973         |
| Even though the Conveyancing Decree recognizes oral grants, transactions that are registered (under the Lands Registry Act of 1962 or the Land Title Registration Act of 1986) are legally enforceable. | Conveyancing Decree of 1973         |
| Chiefs have capacity to grant title.                                                                                                                                                                    | Chieftaincy Act                     |
| Local governments must verify conformity with planning and other regulations.                                                                                                                           | Local Government Act                |
| Investors must conduct EIA and minimize or mitigate negative impacts.                                                                                                                                   | Environmental Protection Agency Act |
| Investors must determine whether any mineral concessions apply to land in question.                                                                                                                     | Mining and Minerals Act             |
| Investors must determine whether land is subject to past acquisitions by the state.                                                                                                                     | State Lands Act                     |

Yet there is no clear method of meeting these requirements, nor is there a single agency charged with lending support and clarity to investors and customary landholders navigating a land transaction. Businesses need help, and they will likely look to the government and CSOs to understand how to meet the requirements set out in the law.

# 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 sets out the requirements for investors who seek to register the acquired land for an investments. The requirements include the need for extensive engagement and consultation 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. 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 be applied equally to the pre-registration stage.<sup>5</sup>

## 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 EIA.<sup>6</sup> It is advisable to contract with a 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.

## Customary Land Governance and Investment

The Constitution and National Land Policy regard the allodial owners 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 next section, this poses some particular challenges to fulfilling the FPIC standard.

Because customary land rules vary by chieftaincy, kingdom, and/or geography, 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 which 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 in customary land areas, is made up of the area's Overlord, Paramount Chief, Divisional Chiefs, Sub Chiefs, and Local Elders. In family or clan land areas, the Family Heads and Clan Heads are also part of the Traditional Council, together with the Paramount Chief and Divisional Chiefs. They represent the customary land authorities who oversee the administration of the land. In general, community members access land through their lineage, and non-indigenes access land by permission directly from the customary land authority of the area or from a member of the community who has obtained access to a portion of the customary land by permission from the customary land authority. Because customary laws may vary significantly from one traditional area to another, and even among communities in the same traditional area, it is important for investors to learn, early in the process, as much as possible about these customary structures, the decision-making process in the traditional area, and the dynamics between the customary land authorities and the members of the land-owning group.

## **Challenges for Investors in the Ghanaian Context**

Ghana's formal and customary tenure framework presents potential difficulties for investors attempting to comply with international standards for socially responsible investments. Some of these challenges are discussed below.

## Coordination and Communications Among Land Administration and Investment Bodies

Under the present system, customary land owners may negotiate and sign a lease with an investor without involving, informing, or seeking the support of the formal land administration institutions. Under the law, while GIPC and the Registrar General's Department interface with investors, and may play a role at the initial stages of a prospective investment, the state land agencies come in only at the point of land registration. Consistent and structured communication and coordination points for agencies to share information and collaborate in fulfilling their respective regulatory and oversight functions are also lacking. This gap in coordination among government agencies 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 to investors, who may struggle to identify the correct customary land institution to work with. 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, so investors can be misled or waste time and resources dealing with the wrong individuals and institutions.

Complexities, contradictions, and gaps in the law present a barrier to such institutional coordination and the establishment of transparent procedures for investors to obtain rights to land. The legal and regulatory mandate for state agencies relevant to LSLBI does not create clear lines of authority and responsibility among government actors, hampering the effectiveness and efficiency of state administration, facilitation, and regulation of investments. There is no single overarching set of legal and regulatory instructions to guide LSLBI, nor is there a single agency in charge. Such support and clarity is needed given the difficulty that both investors and customary landholders face in understanding and negotiating Ghana's complex legal and regulatory framework governing land acquisition and investment.

## Land Valuation and Compensation Challenges

Understanding customary tenure arrangements is important for investors considering equitable compensation arrangements. Across Ghana, because most individuals who

are farming land held under custom are not the allodial land holders, they are not compensated for the loss of land when customary land changes use—as when an investor leases the land.<sup>7</sup> Rather, under the law, affected farmers, both community members and tenant farmers, are compensated only for the crops they were growing on the land in question.<sup>8</sup> Compensation for the land itself is paid in the form of lease payments made to the allodial holder, usually the customary authorities. There is no rule requiring the allodial holder to distribute the lease payment or other compensation.

At this time, formal land valuation (also known as an appraisal) is only required for land acquisitions by the state. However, land and livelihoods valuation is an important element of determining adequate compensation and meeting best practices. Under the State Lands Act of 1962 in 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 investor may require assistance from the Lands Commission Land Valuation Division to complete this assessment.

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.

## Women’s Land Tenure Under Law and Custom

Investors seeking to meet international standards for responsible land investments face a challenge in Ghana. These standards uphold principles of gender equality and equity, yet overwhelmingly, women’s and men’s experience of the processes, risks, and benefits of investment are often vastly unequal. This has its roots in social and tenure dynamics in most customary systems—women generally access land through their

fathers, spouses, or male relatives. These traditions are generally interpreted to mean that women do not “own” or have decision-making authority over land, despite their right to do so under formal Ghanaian law.

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

- Women have less access to land.
- The land they do access is of poorer quality than men's.

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 inclusivity 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 (i.e. when family land is repurposed toward benefit-sharing or outgrower schemes that turn household sustenance farming toward cash cropping).

Similarly, ensuring that women are consulted, 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. Business enterprises bear a responsibility to ensure that all elements of a rigorous consultation and engagement effort or resettlement plan actively work to include women and their input.

## FPIC in Ghana

Although Ghanaian law does not expressly adopt the FPIC standard for land investments, there are two legal 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 assess 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 how to navigate these challenges over the course of an investment process.

## Challenges to Applying FPIC in Ghana

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

- 1. Formal Ghanaian law lacks 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 migrant farmers.** Strongly hierarchical and male-dominated customary land tenure arrangements predominate in Ghana. Women have a limited voice in 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 women and ensure that they are fairly accommodated and compensated for lost value in terms of livelihoods and land assets.

Similarly, non-indigenes and migrant farmers may lack customary status or rights. Although they may have a legal right and customary permission to use the land, they may not have rights in the eyes of customary leaders. An investor will likely need to make extra effort to consult with them during the engagement process. Here again, a CSO or local expert may be particularly well placed to assist with these efforts.

- 3. Conflicting interests of the allodial holder.** Though this is not always the case, it is not uncommon for allodial holders to see themselves as having the sole right to make decisions about the land. Although this may satisfy Ghanaian formal law, to meet international standards and best practice, an investor must consult with

the community as well. A local CSO or expert 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.

## Information Challenges

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.** Information about land ownership and rules is not easily accessible to most rural Ghanaians. Local governments may also lack capacity to fill information gaps or 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 FPIC best practices, **consultation should happen at the community level**. This can be a challenge in Ghana for a few reasons:

- **Customary 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, chiefs or other leaders and their communities often consider customary authorities 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 the Northern Region, many land users are, or are descended from, migrants or tenants. Regardless of how long they or their families have used the land, these individuals are considered **aliens** or strangers who lack the status that accrues to community members with links to the ruling chiefs.

These background realities mean that a business enterprise will have to take special steps to ensure that women's rights to participate and be consulted are respected and realized. Because they are generally not viewed as having decision-making authority over customary land, women are likely to be left out of consultations, community forums, other engagement meetings, and negotiations unless a business enterprise insists that women be present.

One effective strategy to overcoming this issue is for a business enterprise to specify in meeting notices and invitations that women should be part of community meetings and public forums. While this invitation may successfully ensure that women are present for such meetings, it may not guarantee that they actively participate or speak up. Ensuring that women meaningfully participate in meetings requires further proactive steps. CSOs, especially those whose mission includes gender, are well placed to assist with this.

## 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 non-indigenes, achieving this level of consent may be challenging. Because Ghanaian law only requires that consent be obtained from the allodial title holder, there is a substantial risk in Ghana that members of the community will not, without more consultation and engagement, be called upon for their consent.

These realities create a number of significant challenges for a business enterprise attempting to meet the FPIC standard and international best practices generally. Without a legal or regulatory framework calling compliance, investors will likely have to self-enforce the standard

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<sup>3</sup> *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>.

<sup>4</sup> Adapted from GCAP (2015) Recommendations

<sup>5</sup> The version available at the time of preparing the RIPL Guidebooks, was a draft version, dated June 2016.

<sup>6</sup> Environmental Protection Agency Act, 1994, (Act 490) §1.1

<sup>7</sup> 1992 Constitution of Ghana & 1996 Amendments §20.1 -20.5.

<sup>8</sup> *id*

**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 preparing the community and land rights holders for a potential land investment.

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

1. Identify the appropriate structure and representatives to participate in systems and safeguards to support responsible land investment.
2. Clarify and record community land governance rules, if written rules are not available.
3. Customary Land Authorities build awareness of rights and best practices among community members and individuals.

#### Task 2: Conducting Due Diligence

1. Customary Land Authorities consult with local government to ensure that no other efforts are underway.
2. Customary Land Authorities carry out participatory land use planning to identify community development priorities and land areas that might be suitable and available for investment.
3. Customary Land Authorities should ensure that the government is informed about the process

## **Phase 2: Community Engagement, Consultation, and Assessments**

This phase prepares the community for engagement and consultation with the business, and includes guidance on community capacity assessment, Environmental and Social Impact Assessment (ESIA), and land valuation.

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

1. [Community leaders select a community liaison to engage with the investor and liaise with community members.](#)
2. [Customary Land Authorities receive detailed information on the potential investment site.](#)
3. [Customary Land Authorities validate whose rights will be affected by the proposed investment.](#)
4. [Customary Land Authorities and members participate in a community capacity assessment.](#)
5. [Customary Land Authorities work with business enterprise to create and implement a capacity building plan.](#)
6. [Customary Land Authorities organize initial meeting\(s\) with the potential investor.](#)
7. [Customary Land Authorities facilitate additional meetings with business enterprise.](#)
8. [Customary Land Authorities carry out a decision-making process to obtain the community's decision to halt or proceed with negotiations.](#)

### **Task 2: Conducting Community Assessments**

1. [Customary Land Authorities engage with business enterprise to learn of its engagement plan.](#)
2. [Customary Land Authorities monitor the community's participation in the Environmental and Social Impact Assessment \(ESIA\).](#)
3. [Customary Land Authorities help facilitate a forum to ensure that assessment and mitigation measure findings are shared and understood by the community.](#)

## **Phase 3: Developing an Equitable Land Lease and Addendum**

This phase is about developing an equitable and inclusive contract that is informed by the preparation conducted by the community in Phase 1, ongoing engagement with business, and findings from the assessments conducted in Phase 2.

### **Task 1: Negotiating and Drafting the Land Lease and Addendum**

1. With the support of a CSO, Customary Land Authorities begin to negotiate key terms of the lease agreement.
2. The Customary Land Authorities, business enterprise, and community iteratively develop the proposed investment project.
3. CSO and Customary Land Authorities confirm that all important parts of the land lease are present.

### **Task 2: Reviewing and Signing the Land Lease and Addendum**

1. Customary Land Authorities work with business enterprise to determine final investment configuration based on community responses and counter-offers to the proposed land lease.
2. Customary Land Authorities review land lease and addendum for clarity and accessibility.
3. Customary Land Authorities share the land lease and addendum with all affected individuals and rights holders.
4. Customary Land Authorities facilitate a process for obtaining community and individual consent to the investment terms.
5. Community members participate in a meeting for final signing of the land lease.

## **Phase 4: Implementing and Monitoring the Investment**

This phase provides steps that help to ensure new projects, as well as existing projects, are implemented and monitored in a responsible manner.

### **Task 1: Preventing and Addressing Land-Related Issues**

1. [Customary Land Authorities assist in developing a grievance mechanism.](#)
2. [Customary Land Authorities assist with the selection of grievance resolution method\(s\).](#)
3. [Customary Land Authorities facilitate communication between community members and business enterprise.](#)
4. [Community learns how the monitoring system will be implemented, and what role the Customary Land Authorities and CSOs should play.](#)

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

1. [Community supports the business in establishing Monitoring and Evaluation practices for land-related investments.](#)
2. [The business works with a third-party to conduct follow-up assessments to evaluate impacts on communities.](#)

# Phase 1

## Preparing for an Investment

This phase is about preparing a community and affected individuals for a land investment.

This phase describes steps a community should take before an investment proposal ever comes to an area. In this phase, the community is building its processes to support community discussions and decision-making, improving practices for effective land governance and planning, and clarifying existing land uses and rights. These are important steps to ensure that the community will be well equipped to make informed decisions and participate in a land-based investment process.

### **Task 1: Strengthening Community Systems and Safeguards for Land Investments**

1. [Identify the appropriate structure and representatives to participate in systems and safeguards to support responsible land investment.](#)
2. [Clarify and record community land governance rules, if written rules are not available.](#)
3. [Customary Land Authorities build awareness of rights and best practices among community members and individuals.](#)

### **Task: 2 Conducting Community Level Land Use Planning and Due Diligence on Prospective Investor**

1. [Customary Land Authorities consult with local government to ensure that no other efforts are underway.](#)
2. [Customary Land Authorities carry out participatory land use planning to identify community development priorities and land areas that might be suitable and available for investment.](#)
3. [Customary Land Authorities should ensure that the government is informed about the process.](#)

# Task 1: Developing Policies, Commitments, and Safeguards

## Best Practice

A community is best positioned to benefit from a prospective investment if community members take measures to strengthen the community's governance structure, increase awareness of their rights, document their land and resource rights, and engage in land planning exercises well before a prospective investor approaches a community. This will ensure community members are well equipped to make informed decisions and meaningfully participate in the investment process. Before engaging with a company, community leaders should identify a CSO to help members ask themselves:

- What are our community short-, medium- and long-term goals? How do these relate to our interest in the prospective investment?
- Are we willing to sell or lease community-held land to an investor? If so, what land?
- If land is held privately in the community, are there any requirements private land owners have to consult the community if they would like to sell or lease land (as the sale of private land may impact surrounding community members)?
- Who will represent the community in transactions and negotiations with an investor?
- How will information be disseminated to the broader community?
- Do we understand our rights in an investment deal? Or, do we have access to people or resources who can help us understand our rights and all agreement terms and conditions?
- Are there certain conditions that must be met in all agreements (or we won't move forward), such as the maximum number of years we will lease land to a single investor or compensation requirements?
- In cases of sale or lease of community-held land, how will we manage financial compensation received in exchange? Who will manage it? How will management be made transparent to community members?

To ensure that land investments in the community are responsible, sustainable, and beneficial for the community, the community needs strong systems and safeguards in place that are rooted in good practices and centered on:

- Establishing a Land Investment Committee that leads efforts in preparing the community for a possible investment and representing the community in negotiations with prospective investors.
- Drafting and adopting community rules or bylaws that specifically govern land investments, particularly how decisions will be made about investors accessing and using land in the community.
- Conducting awareness-raising and training activities to ensure community members are informed about their rights and understand benefits and risks associated with investments.

The establishment or strengthening of new systems and safeguards should include the entire community and be done in coordination with the Customary Land Authority. The process will also likely generate debate and challenging discussions that will require time to resolve. [Best practices for holding community meetings](#), located in the introduction, will promote the interests of all community members and result in:

- Community-driven planning processes that provide both women and men space and time to openly discuss concerns.
- Transparent and timely communication that reaches all community members.
- Obtaining consent from community members in an inclusive and participatory manner.
- Broad awareness of legal rights and duties related to land and investment within the community.
- Bylaws for responsible investment that are clear and well-understood by the whole community, reflect the input of all community members, and are sensible and compatible with the local governance institutions and processes.

## Step-By-Step Guidance

### 1. Identify the appropriate structure and representatives to participate in systems and safeguards to support responsible land investment.

Many communities already have strong and effective structures in place that support discussion, consultation, and information sharing among the people who use or hold rights to land in an area. These structures are often responsible for top-down decision-making (e.g. by a Chief and elders); such structures should be expanded to include the Customary Land Authorities to ensure that the entire community is involved in exchanging information, through representatives who will participate in discussions, help to determine community priorities, communicate out to the rest of the community, and make decisions about land investment.

The community should decide upon the processes and roles that this body will undertake. Some key roles could include facilitating communication, soliciting information, and input from community members and affected individuals during a negotiation, or serving as a liaison to support communication between a community and prospective investors. This [supplemental resource](#) outlines steps that will help communities successfully:

- Build on existing structures and processes, including traditional hierarchies, community groups, or associations, etc.
- Include individuals from all sectors of the community, representing the spectrum of social and economic strata, as well as strangers, women, and youth.
- Effectively share information within the community and allow for participation in dialogues and engagement by the full community.

In developing this body, and activating it as the community's representative in land investment decision-making processes, the community should consider:<sup>9</sup>

- ✓ What will be the role and responsibilities of this group?
- ✓ Who will participate? How will the community ensure that women, youth, and minority groups will be included?
- ✓ What will the process be for determining who is a part of this body?
- ✓ Will this group meet regularly? How often and where will it meet?

- ✓ How will the group make decisions about proposed investments? What process must it go through if an investor approaches the group to make a proposal?
- ✓ What kinds of issues would trigger a call for the entire community to meet?
- ✓ How will government officials and other outside actors, including investors, engage with this group?
- ✓ How will this group communicate with the rest of the community?

## 2. Clarify and record community land governance rules, if written rules are not available.

One challenge, in many communities, is that the rules and processes for land allocation are not written down, leading to discrepancies about the rules and confusion among community members, as well as ambiguity and miscommunication with outsiders about the required processes. **Customary Land Authorities could help the community become better prepared for land investments by facilitating a process of agreeing upon and recording the community's land governance rules or bylaws.**

Whether drafting and adopting new bylaws, or simply updating rules to ensure they address investment issues, the community should draft bylaws through a participatory process that provides both women and men space and time to openly and meaningfully discuss and agree upon how to govern their lands and natural resources.<sup>10</sup>

This process will take time, and will likely generate debate and challenging discussions that will require time to resolve. It is important that the resulting bylaws are clear, reflect the input of all community members, are sensible and compatible with the local governance institutions and processes, and that the whole community understands them.

The process for drafting the bylaws should be inclusive. Meetings should be held at locations and times that are accessible to the targeted community members, noting that women, migrants, and other vulnerable groups often have different schedules that must be accommodated. See the [Gender Primer](#) for more information.

This [supplemental resource](#) provides detailed steps on how Customary Land Authorities and community leaders can work with a local CSO to assess the community's existing community governance structures and land governance rules. The purpose of this assessment is to evaluate the strengths of current systems and safeguards in place to support responsible investment. The process should include the following steps:

- In an initial meeting, the community should brainstorm the content of the first draft of the bylaws. If there are existing bylaws in the community, these should provide the starting point for the new draft. The first draft of the bylaws should include rules about:
  - Leadership, authority, and land governance.
  - The use and management of land and natural resources.
  - Cultural and social rules, such as women's rights and children's rights.<sup>11</sup>
- The community reviews and alters the initial draft of the bylaws. This can involve creating new rules, changing or updating existing rules, and removing those that are no longer seen as valuable. This new document will constitute the second draft.
- Legal experts from a CSO should review the second draft to check for compliance with the national constitution and other relevant laws.
- The community then decides how best to change the existing rules and penalties to ensure they comply with national law. This will constitute the third draft.
- Once a final draft is agreed upon, the community holds a large ceremony where they will adopt the bylaws. Important stakeholders should be invited to the event. After reviewing the final draft of the bylaws, the community should vote on their adoption.

### 3. Customary Land Authorities and local government authorities build awareness of rights and best practices among community members and individuals

An important part of establishing a foundation for responsible investment in land is ensuring that individuals and communities who hold tenure rights should know about their rights and how to ensure that their rights are respected.

The following resources can be used to design strategies and methods to raise awareness. A local CSO partner may be helpful in assisting the Customary Land Authorities to develop the appropriate approach.<sup>12</sup>

- **Legal-literacy training** focused on civic education and rights and responsibilities related to land-based investments. There should be special emphasis on rights of women, youth, and land users with temporary or secondary rights. Separate

training sessions for men and women may be needed to ensure that trainings are accessible and participatory. This [supplemental resource](#) provides an example framework of some of the topics and sessions that could help promote land rights awareness within a community.

- **Facilitated dialogues** in safe spaces, with target groups, to build local ownership of the laws and best practices, and to consider the relevance of key principles to their own lives and community.
- **Peer training** of targeted groups to share information about laws, policies, and good practice with others in the community, increasing the reach of the trainings.
- **Public information and educational activities** about laws and best practices.

# Task 2: Conducting Due Diligence

## Best Practice

Prior to a potential investment process, a community should identify and document land uses and rights and carry out a community land use planning process. Community mapping of rights holders should be a long-term, repetitive, participatory process wherein the community determines its own preferences and priorities.<sup>13</sup> CSOs and government should play only limited, clearly defined supportive roles.<sup>14</sup>

As land becomes more valuable or attracts commercial interest, more powerful members of the community may begin to assert claims over the land of the less powerful, such as female heads of household. A transition from subsistence to commercial agricultural land use could also further hinder the inclusion of women and others in community decision-making. To help communities prepare for such changes, gender-sensitive land use planning and rights formalization can clarify land rights and, thereby, reduce the risk of disputes and conflict if, and when, a potential investment presents itself in an area.

A community should also link up with the District Assembly and the Regional Lands Commission support desk to assist in conducting due diligence on the prospective investor to determine if it's a legally recognized entity and has the capability to undertake the investment proposed.

## Step-By-Step Guidance

1. Customary Land Authorities consult with local government to ensure that no other efforts are underway.

Before conducting any community land use planning activities, the Customary Land Authorities should contact the Customary Land Secretariat (if operational) and Land Use and Spatial Planning Division to identify any efforts already in progress. The Metropolitan/Municipal/District Authority may also have information about current or future activities. This will help you reduce the risk of duplicating work that is underway, and can help to identify potential partners and resources.

With assistance from the District Assembly and the Lands Commission support desk, the Customary Land Authorities should also ascertain the legal identity of the investment company and their experience in similar investments.

## 2. Customary Land Authorities carry out participatory land use planning to identify community development priorities and land areas that might be suitable and available for investment.

To prepare for potential investments and other land-related changes, a community can create a plan in which it identifies its future development priorities and designates areas that might be suitable for investment. This should be a participatory process that includes the input of a wide range of stakeholders within the community. This can be a complex process, and it's highly encouraged that a qualified CSO be identified that can play a role as a facilitator to encourage open dialogue and transparency in the decision-making process.

### Community Land Use Planning Steps

*Source: Namati's Community Land Protection Facilitators Guide (2016)*

- ✓ Identify land rights users, including women, men, strangers, and other groups. This [supplemental resource](#) outlines how a community can identify and map land users, rights and livelihoods in the community.
- ✓ Hold a community meeting to discuss land use planning and agree on what should be mapped. For example: physical features; infrastructure; and places of social, religious, and cultural significance.
- ✓ Community members sketch and draw a village map.
- ✓ Community harmonizes boundaries and resolves any conflicts with neighbors. This [supplemental resource](#) outlines how a community can harmonize boundaries during community mapping processes.
- ✓ Community leaders document boundaries by signing MOUs as a way to create proof. This [supplemental resource](#) outlines how a community can document the results of the community's mapping and boundary harmonization efforts.
- ✓ A final village map is prepared.
- ✓ A community action plan is prepared that includes identifying long-term, interim, and short-term goals.<sup>15</sup> This [supplemental resource](#) explains how a community

can assess current uses of land and natural resources, and evaluate alternative options to select and adopt the best land use options within a community, including planning for potential investment. In addition, this [supplemental resource](#) explains an activity a community can perform to better understand how much value community lands bring to the community.

### 3. Customary Land Authorities should ensure that the government is informed about the process.

The process should be supported by the Special Development Unit of the Land Use and Spatial Planning Authority office in the District. Importantly, the results of the planning process should be shared with all community members and be publicly available.

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<sup>9</sup> The guidance in this section is adapted from the Namati *Community Land Protection Facilitators Guide*, 2016. The full content of that guide is available on the Namati website at <https://namati.org/resources/community-land-protection-facilitators-guide>.

<sup>10</sup> This section is adapted, in part, from Namati's [Community Land Protection Facilitators Guide](#), which is a useful resource that provides detailed guidance on how bylaws should be drafted and adopted. Namati (2015). *Community Land Protection Facilitators Guide*, available at <https://namati.org/resources/community-land-protection-facilitators-guide/>.

<sup>11</sup> Namati (2016). *Community Land Protection Facilitators Guide*, available at: <https://namati.org/resources/community-land-protection-facilitators-guide/>, at 90.

<sup>12</sup> This section adapted from USAID (2015). *Kenya Justice Project Implementation Guide*. Prepared by Reem Gaafar of Landesa and Deborah Espinosa of Same Skye Consulting and Photography. Available at: [http://www.usaidlandtenure.net/sites/default/files/USAID\\_Land\\_Tenure\\_Justice\\_Implementation\\_Guide.pdf](http://www.usaidlandtenure.net/sites/default/files/USAID_Land_Tenure_Justice_Implementation_Guide.pdf).

<sup>13</sup> International Fund for Agricultural Development (2009). *Good Practices in Participatory Mapping* at 25.

<sup>14</sup> *Id.* at 27.

<sup>15</sup> VGGT 17.2.

## Phase 2

# Community Engagement, Consultation, and Assessments

Once the community is prepared for an investment, this phase provides steps for engagement and consultation with the business, including the necessary assessments.

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

1. Community leaders select a community liaison to engage with the investor and liaise with community members.
2. Customary Land Authorities receive detailed information on the potential investment site.
3. Customary Land Authorities validate whose rights will be affected by the proposed investment.
4. Customary Land Authorities and members participate in a community capacity assessment.
5. Customary Land Authorities work with business enterprise to create and implement a capacity building plan.
6. Customary Land Authorities organize initial meeting(s) with the potential investor.
7. Customary Land Authorities facilitate additional meetings with business enterprise.
8. Customary Land Authorities carry out a decision-making process to obtain the community's decision to halt or proceed with negotiations.

### Task 2: Conducting Community Assessments

1. [Customary Land Authorities engage with business enterprise to learn of its engagement plan.](#)
2. [Customary Land Authorities monitor the community's participation in the Environmental and Social Impact Assessment \(ESIA\).](#)
3. [Customary Land Authorities help facilitate a forum to ensure that impact assessment and mitigation measure findings are shared and understood by the community.](#)

## Communities' Rights of Participation and Consultation

In addition to this idea being upheld by international FPIC standards, 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 LSLA Guidelines also uphold this consultation standard. The Guidelines also outline a process that both domestic and foreign investors must follow to acquire large areas of land for investment purposes.

LSLA Guidelines lay out the requirements for community engagement, stating that an investor, in consultation with the Lands Commission support desk, should initiate contact with land-owning and interest groups in the community to negotiate a date, time, and venue for holding an initial consultative forum. The Guidelines further state that the investor should seek professional guidance on due diligence and prepare a dossier containing a site plan, proposed development, information on investor profile, partners, communication strategy, and affected communities, as well as conduct a preliminary Environmental, Social, and Economic Impact Assessment of the proposed project to aid the negotiation process.

In calling for the investor to seek relevant advice, the Guidelines open the door to CSO participation because many CSOs have strong experience in conducting grassroots consultations and ensuring community involvement.

This phase builds on these LSLA requirements by recommending additional steps and considerations to ensure communities and individuals are adequately consulted.<sup>16</sup>

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

## Best Practice

Businesses should engage and consult meaningfully with communities, individual smallholders, and all other land users throughout the land investment project, starting at the beginning of the investment. It's critical that community members have systems that record and keep track of all engagements with the company.

The steps described below are intended to help communities understand the business enterprise's obligations. The more knowledgeable the community is about the investment process and community rights, the better able it will be to defend these rights and ensure that the business enterprise conforms to best practices. Some of the steps reflect actions set out in the Lands Commission LSLA Guidelines. Where appropriate, this section supplements and adds detail to the Guidelines. A participating CSO could perform many of these steps and tasks in collaboration with a business enterprise, or could advise the enterprise as it performs tasks on its own.

The Guidebook for Business Enterprises recommends that investors enlist the support of third-party experts from civil society or the private sector. If not approached, CSOs should be prepared to take the first step in offering their services as a neutral intermediary and credible service provider to both the business and the community. To avoid a conflict of interest, CSOs and experts should inform all parties involved in the investment who the CSO is representing or working for.

CSOs should be prepared to demonstrate their qualifications and legitimacy to lead or assist with consultation and engagement. Qualification statements and letters of reference would be useful tools to have at the ready. CSOs could inform the Lands Commission support desk and GIPC about their expertise and availability so that referrals can be made to businesses on behalf of CSOs.

## Step-By-Step Guidance

1. Community leaders select a community liaison to engage with the investor and liaise with community members.

**Identify the appropriate entry point for engaging with the broader communities.**

Initially, the investor should meet with the community leaders to determine whether there is an initial interest in the investment. Each customary group is likely to have protocols for approaching community members for a consultation.

- This [supplemental resource](#) can help in preparing for community engagement meetings conducted by the Land Investment Committee, either within the community or between the community and a business.
- This [supplemental resource](#) can be used to document conversations with stakeholder groups.

Once permission is obtained, then the investor should seek to engage with the community liaison to ensure that all community members and affected individuals are included. Ideally, this would be the Customary Land Authorities, who could receive support from a CSO, the local CLS (if one exists), an elected official, or another person with knowledge of the local landscape and context. It may also be a government agency, such as the Lands Commission, Ghana Investment Promotion Centre, and Ministry of Lands and Natural Resources.

**Agree upon a suitable facilitator to arrange and conduct the initial meeting.** The investor may seek out a CSO or other neutral third-party who is familiar with the local community and its customs to serve as a facilitator. The facilitator should provide broad-based representation of different community perspectives, including those of women and other vulnerable groups.

2. Customary Land Authorities receive detailed information on the potential investment site.

The first step for a company will be to learn about all the communities and individuals who are using the site. To do this, the company should reach out to the Lands Commission support desk, which can provide support and information to the business and facilitate the engagement process with other government agencies like the District

Assembly, Town and Country Planning Division, and the Ministry of Food and Agriculture.

The business enterprise will also need to become familiar with relevant customary and traditional practices, so that it can approach the community and initiate an engagement and negotiation process.

**It will be important for you to have gathered up to date information about the specific area of interest** so that you can communicate expectations and requirements to the business enterprise. These details include:

- The appropriate language in which to communicate.
- Information about past, current, or potential land and resource issues and conflicts in the area.
- Information about the local land tenure system, uses, and livelihood activities.

### 3. Customary Land Authorities validate whose rights will be affected by the proposed investment.

The business enterprise must create a dossier that contains the site plan, proposed development, investor profile, partners, communication strategy, stakeholder mapping, and results of later impact assessments. The community with the assistance of a CSO can assist the enterprise in creating the dossier, or can play a watchdog role to ensure that the dossier is complete and accurate. This dossier will be valuable when it is time to negotiate, draft, and review the land lease.

As you learn more about the details of the proposed investment, you'll likely begin to validate the business enterprise findings, identify specific individual stakeholders whose rights will be affected, and learn about their specific interests. The Customary Land Authorities or CSO can hold discussions with the broader community to anticipate and understand the potential issues, questions, and concerns that a proposed investment will raise.

Your local knowledge can help to ensure that the identification of rights, interests, and concerns extends beyond allodial owners, other primary 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, or 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 and water.<sup>17</sup>

#### 4. Customary Land Authorities and members participate in a community capacity assessment.

It is not uncommon for communities and individual land users to lack experience with commercial land transactions. In order to be prepared to engage in discussions about complex land transactions, the community members will need to have a clear understanding of the investment negotiation and design process. Your community group or CSO may have a partial understanding of this already.

The goal in this step is for the business to gauge the capacity of community members and leaders to listen, comment, disagree, ask questions, and ultimately negotiate benefits, compensation, and other terms of a land lease on behalf of the community.

#### 5. Customary Land Authorities work with business enterprise to create and implement a capacity building plan.

A plan will likely be needed to describe the capacity building activities that will enable community members, including women and others that are not always seen, to articulate livelihoods and land uses and enable leaders to negotiate with the business enterprise on an equal footing.

The Customary Land Authorities or CSO are probably best suited to help create and implement the plan. The plan could include activities that help community members understand how their lives and livelihoods will change if they are no longer able to use the land that the enterprise is considering purchasing. It should describe needed educational materials and activities, including role-playing and explanations of how to ask questions, voice disagreement, and make complaints.

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 capacity building done at this point in the assessment process will also position the community to participate in a later ESIA assessment, when the community members describe how the proposed investment will impact almost every aspect of their lives.

## 6. Customary Land Authorities organize initial meeting(s) with the potential investor.

Once community stakeholders have been identified, and all parties have sufficient capacity to participate in the consultations, the investor should call an initial meeting. During this meeting, the investor or its CSO partner will introduce the potential project, providing details about the proposal itself, as well as the anticipated community engagement process.

In addition to sharing about the enterprise's project, a key objective here is for the community to share initial feedback on the proposal with the investor. The community should arrive at this meeting prepared to provide input on how it would like to communicate with, and receive updates from, the investor over the course of the engagement, consultation, and negotiation process.

Importantly, the Customary Land Authorities should work to ensure that women and strangers are present at this meeting. Being inclusive from the start will help to support an equitable and participatory investment negotiation process.

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

## 7. Customary Land Authorities facilitate additional meetings with business enterprise.

It is important 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.

The LSLA Guidelines require that the investor holds a public forum, in which community members may learn about, provide input, and accept or decline a proposed investment. While the LSLA Guidelines present the Forum as a single event, **this Guidebook recommends that investors engage with community members through a series of meetings**. This is to allow people time to digest information, think about their situation, and formulate questions; for their part, investors need to gather information to answer questions that may arise during the community engagement meetings.

The Customary Land Authorities are the appropriate actors to convene and facilitate a series of meetings. Ideally, the meetings will:

- **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. In this, 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 business enterprise** and have a representative from the enterprise available to discuss:
  - The business, 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.<sup>18</sup>

## 8. Customary Land Authorities carry out a decision-making process to obtain the community's decision to halt or proceed with negotiations.

Once all the information has been presented, and all community members have had the opportunity raise any questions, concerns, and complaints, it's time for them to decide whether to halt or proceed.

Some important notes about this step:

- **This is not an agreement to proceed with the project itself, but an agreement to continue discussions and 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.** The Customary Land Authorities or CSO may be aware that some traditional leaders may have the authority to make this decision on their own. In some cases, an MOU between the leaders, community, and

business can be a useful tool to support inclusive negotiations by laying out the terms, conditions, and stakeholder roles for the negotiations process.

# Task 2: Conducting Community Assessments

## Best Practice

To inform whether both the business enterprise and the community should proceed with the investment, the business enterprise must conduct a community impact assessment that rises to the level of best practices. It's important for the community to know that this Environmental and Social Impact Assessment (ESIA), called for in the LSLA Guidelines, has two parts:

- **Environmental Impact Assessment (EIA):** required by the EPA, and involves an analysis of potential positive and negative environmental, social, economic, and cultural impacts.
- **Social Impact Assessment:** refers to how the land uses, land rights, power dynamics, and livelihoods of people who use the land might change as a result of the land transaction.

**The full assessment should identify actual or potential impacts** of the proposed investment project on the community and its land users. The assessment should include a valuation assessment that establishes the market and non-market value of the land. This includes assessing livelihoods, as well as social, cultural, religious, spiritual, and environmental values. The goal is to ensure that the full impact of an investment, and particularly the livelihood impacts of relinquishing rights to land, is taken into consideration.

**In addition, it is best practice to conduct two additional assessments:**

- **Community Capacity Assessment.** It's 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.<sup>19</sup>
- **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.<sup>20</sup>

**CSOs are often well-suited to lead, conduct, or support impact assessments as community leaders, facilitators, and assessors.** The steps and activities described below assume that a CSO will lead and largely conduct the impact assessment. The Business Enterprise Guidebook recommends that the enterprise contract with a CSO or other third-party expert to lead and conduct the impact assessment.

## Step-By-Step Guidance

### 1. Customary Land Authorities engage with business enterprise to learn of its engagement plan.

In this step, land rights holders will discuss, and agree upon, a meaningful engagement plan that the investor will use during the assessment process. The CSO facilitator, conducting the assessment, should talk to the community about what to expect during the impact assessment and explain the assessment goals, emphasizing that anyone can approach the business enterprise and the CSO during the assessment.

### 2. Customary Land Authorities ensure the community's participation in the Environmental and Social Impact Assessment (ESIA).

Ghanaian law specifies that if the potential investment is larger than 40 hectares and/or requires the relocation of 20 or more families, then the investor must complete **an Environmental Impact Assessment (EIA)**. The investor may hire a CSO 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 inquiry includes the **project's impacts on the natural environment, as well as the socio-economic, cultural, and health impacts**.

The Customary Land Authorities should be aware of the steps required by the regulations so that they can insist upon and be prepared to actively engage in the process.

The EIA regulations (available online) outline the following steps:

- **Scoping.** Identify the extent of the review that the investor plans to carry out.

- **Draft the EIA.** The investor or consultant must draft the EIA, which 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. Community leaders should require that the investor undertake the EIA process before any land lease can be negotiated or signed.

**In addition to the steps required in the EIA,** community leaders should require a supplemental assessment that examines:

- **How the potential acquisition would affect the amount of land available for food crop and other livelihood 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.
- **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 and customary land that may not have documented boundaries or governance rules.
- **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.
- **Extent to which women and men have different perspectives on all issues discussed and examined during the assessment.**<sup>21</sup> 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.<sup>22</sup>
- **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 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 livelihood opportunities (employment, household vocations, business enterprises, and other options).

For additional information, this [supplemental resource](#) summarizes some of the available external resources that provide guidance and discuss best practices for establishing outgrower arrangements as a method of compensation or alternative to outright land purchase or lease.

### 3. Customary Land Authorities help facilitate a forum to ensure that assessment and mitigation measure findings are shared and understood by the community.

Once the business enterprise has completed the impact assessment and findings, they should be shared and reviewed with the community and individual land users in a public hearing or forum. This important step ensures inclusive and consultative land

transactions, providing land users with an opportunity for comment, correction, and ratification.

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 will be 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.

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<sup>16</sup> For more information, see [FAO \(2014\) Respecting Free, Prior, and Informed Consent](#), and [USAID \(2012\) Operational Guidelines for Responsible Land-Based Investment](#).

<sup>17</sup> USAID at 17.

<sup>18</sup> USAID at 25.

<sup>19</sup> 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](https://www.uneca.org/sites/default/files/PublicationFiles/guiding_principles_eng_rev_era_size.pdf).

<sup>20</sup> Nigel Edmead, *Presentation on Gender Issues in Designing and Setting Up Land Information Systems and Databases: Experiences from Ghana, Zambia and Uganda* (May 2011).

<sup>21</sup> Ghana Commercial Agriculture Project (GCAP), *GCAP Community/Investor Guidelines for Large Scale Land Transactions*, available at: <https://gcap.org.gh/> at 18.

<sup>22</sup> Namati Facilitators Guide at 29.

## Phase 3

# Developing an Equitable Land Lease and Addendum

An equitable and inclusive land lease is informed by activities conducted in Phase 1, and through ongoing engagement with business and the findings from the community assessments conducted in Phase 2.

### **Task 1: Negotiate and Drafting a Land Lease and Addendum**

1. [With the support of a CSO, Customary Land Authorities begin to negotiate key terms of the lease agreement.](#)
2. [The Customary Land Authorities, business enterprise, and community iteratively develop the proposed investment project.](#)
3. [CSO and Customary Land Authorities confirm that all important parts of the land lease are present.](#)

### **Task 2: Reviewing and Signing the Land Lease and Addendum**

1. [Customary Land Authorities work with business enterprise to determine final investment configuration based on community responses and counter-offers to the proposed land lease.](#)
2. [Customary Land Authorities review land lease and addendum for clarity and accessibility.](#)
3. [Customary Land Authorities share the land lease and addendum with all affected individuals and rights holders.](#)
4. [Customary Land Authorities facilitate a process for obtaining community and individual consent to the investment terms.](#)
5. [Community members participate in a meeting for final signing of the land lease.](#)

# Introduction: Equitable Contracting 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 leases for large scale agricultural investments.

The investment lease will, at minimum, identify the basic time- and term-based elements of the agreement. If it's following best practices, it 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 to such agreements. It definitely will be if the investment is a joint venture or if the land in question is government land. Land leases must be understood within the country's legal framework, providing specific terms with particular application to the parties involved.

In Ghana, reforms are underway to improve domestic laws governing land and investment. At present, these laws offer limited social or environmental protections, and are implemented with limited oversight and enforcement. The land lease, therefore, can play an important role in memorializing specific terms and best investment implementation practices, and establishing clear rights, responsibilities, and processes to ensure the long-term sustainability and equity of the land transaction.

In addition to establishing the basic terms such as price, duration, and timing of a lease, a contract in Ghana can help to clarify and fill the gap in the current governance framework to support a more equitable investment. These terms will 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.<sup>23</sup>

A participating CSO is a good candidate to assist the community and business enterprise in negotiating and enforcing a fair agreement.

# Task 1: Negotiating and Drafting the Land Lease and Addendum

## Best Practice

Equitable contracting requires that communities be brought to an equal footing with investing business enterprises and governments. It also requires that the contracting process is transparent and participatory.

In many areas of Ghana, rural communities have never interacted with a business on a land transaction and will not understand all terms of a land lease. In addition, 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, and the Customary Land Authority should support and encourage those efforts.**

Communities will likely require capacity development and support so they can participate in negotiation and contracting processes, and ensure that the terms are clear and that a mutual understanding can be reached. The capacity development done during the ongoing consultation and engagement, and in preparation for the ESIA assessment, may need to be supplemented at this point. The participating CSO would be responsible for making a recommendation to the enterprise, if this is the case.

Obtaining consent during the negotiation process from the community effectively is possible if Customary Land Authorities:

- Serve as a resource to both the community and the business enterprise to navigate local legal and traditional dynamics.
- Seek the support of a local CSO to lead or provide significant assistance. Many CSOs are already familiar with local communities and ways that they earn their livelihoods.
- Respect the opinions of community members so they view themselves as possessing sufficient status, such that they would be expected to be consulted and to give consent.
- Are sensitive to issues of sacred sites, as well as traditional concepts and beliefs that may arise and could potentially become contentious.

- Ensure information is communicated in local language(s) and technical terms are adequately explained in those languages throughout the life of the project.<sup>24</sup>
- Work with the business enterprise to ensure that women are equipped to engage, and that they are engaged, throughout the contracting process. Special care must, therefore, be taken to target women, including holding meetings for women only at a time and place that is culturally acceptable and convenient.
- Allow for sufficient time for this part of the process.

**Importantly Customary Land Authorities should encourage phased acquisition of additional parcels as one solution to this issue.** A number of cases in Ghana (and elsewhere) have shown that acquiring large parcels at the outset of an investment project often creates risks for an enterprise.<sup>25</sup> Enterprises, acquiring more land than they can immediately use, often face encroachment on unused land that becomes complicated to resolve over time. Acquiring large expanses of land can also give rise to resentment and can erode a business enterprise's social license where community members give up their land and then watch it sit idle.

If the enterprise won't immediately be using the land, it could consider setting aside limited use rights to sections of the land that it acquires. That way, community members may continue to make productive use of it. Another option is to use the land lease to reserve rights to the community, such as harvesting tree nuts, gleaning crops after harvest, and using marginal or buffer lands, which can be especially important for women and others.

## Step-By-Step Guidance

1. With the support of a CSO, Customary Land Authorities begin to negotiate key terms of the agreement.

- Using the information gathered and reports prepared by the business enterprise (and participating CSO, perhaps) thus far, **help the enterprise understand what responsibilities it will have to the community.** This includes reviewing results of the stakeholder mapping, impact assessment, and the ongoing consultation and engagement efforts.
- **Define the rights and obligations between the business and the community, while also stating or reviewing the applicable domestic law.**<sup>26</sup> The business enterprise should have this information in hand, and should be able to share it

with a participating CSO. In Ghana, it is important to remember that contracting must go further than domestic law requirements in order to comply with international best practices.

- **Lead or assist the business enterprise in hosting a series of negotiation meetings with all stakeholders** to explain the proposed project details and discuss the proposed land lease terms with all community members. It is important that the CSO establish the fact that it is not representing the enterprise, but rather serving in support of the community as a trusted, but neutral, third-party. Whether the participating CSO is leading or facilitating the meetings, a representative from the business should also attend. If possible, representatives from the district government should join.
- At the meetings, the investor should **share the dossier created in Phase 2.**<sup>27</sup>
- **Facilitators from the CSO should ensure that the environment for meetings is one in which women feel comfortable sharing their input.** Women facilitators would serve best in this role. 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 and the business enterprise, **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.

This [supplemental resource](#) provides a sample LOI/MOU between a community and an investor that could be used during the negotiation and contracting process.

## 2. The Customary Land Authorities, business enterprise, and community iteratively develop the proposed investment project.

Information that you obtain from the community about preferences and requirements should be incorporated into updated terms of the investment project. Additionally, the project design should reflect impact assessment results and ongoing consultation and engagement.

The CSO can monitor and assist the enterprise in complying with regulations and limitations established in the Lands Commission LSLA Guidelines.

### 3. CSO and Customary Land Authorities confirm all important parts of the land lease are present.

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:
  - [Model Commercial Agricultural Lease Agreement](#)
  - [Recommendations for Large Scale Land-Based Investment in Ghana](#)
  - [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 land lease 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; and
- 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.

## 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.<sup>28</sup> 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.<sup>29</sup>

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.<sup>30</sup>

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.”<sup>31</sup> 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.”<sup>32</sup>
- 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.<sup>33</sup>

## 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](#) on key contract elements for a list of terms and elements that should be included in a responsible land investment contract.

# 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 community members be brought to an equal footing with the investing business and governments. This means that:

- A neutral third-party reviews the land lease and addendum to validate that it meets the needs of community members and does not cause adverse social impacts.<sup>34</sup>
- The business, in coordination with the Customary Land Authorities, seeks the final consent from the community before signing the land lease and addendum.
- The business provides copies of the land lease and addendum to the community and makes the contract publicly available.
- 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.

The land lease and addendum should not be signed before support is obtained from all stakeholders within the community.<sup>35</sup> **If communities do not support the project, it cannot legitimately proceed.**

## Step-By-Step Guidance

1. Customary Land Authorities work with business enterprise to determine final investment configuration based on community responses and counter-offers to proposed land lease.

At this point, the community's input should be incorporated into the investment terms, and at a minimum the business, enterprise, and land lease and addendum should:

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

- 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.

The business must address any social impacts and rights issues pertinent to the land lease and addendum. Even in instances in which a community might not fully understand terms or be on equal footing with the investor, the community group or CSO can work to ensure these rights are respected and reflected. This may include requesting other kinds of support from the investor, such as independent legal counsel or para-legal support.<sup>36</sup>

## 2. Customary Land Authorities review land lease and addendum for clarity and accessibility.

Ensure the lease and addendum:

- 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.

This [supplemental resource](#) is a checklist designed for communities to use when preparing a contract for a land investment.

## 3. Customary Land Authorities share the land lease and addendum 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 addendum and project is made available to local government officials, they can then use the disclosed information to assist in enforcement.

#### 4. Customary Land Authorities facilitate a process for obtaining community and individual consent to the investment terms.

Consent must be provided before project implementation occurs. It is vital that all community members agree with the proposed lease. If affected community members do not support the project, it should not proceed.<sup>37</sup>

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

The Lands Commission LSLA Guidelines provide a list of participants to be present at the Forum, including:

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

#### 5. Community members participate in a meeting for final signing of the land lease.

The lease documents should be signed in the name of the stool, skin, or family, rather than in the name of a single individual.<sup>38</sup> 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 land lease and addendum should be witnessed by as many people as possible, ideally at a community meeting that includes all stakeholders affected by the lease.

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 lease, distributed through the Lands Commission and Customary Land Authorities, should also be made available to all community members.<sup>39</sup>

Once the lease has been signed by the parties, LSLA Guidelines require that the investor submits it to the Regional Lands Commission with an application for concurrence (for stool and skin lands) or registration (for family lands).

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- <sup>23</sup> 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](https://www.iisd.org/sites/default/files/publications/iisd-guide-negotiating-investment-contracts-farmland-water_1.pdf).
- <sup>24</sup> Principle 2, *Principles for responsible contracts: integrating the management of human rights risks into state-investor contract negotiations: guidance for negotiators*.
- <sup>25</sup> Schoneveld et al (2010). *Impacts of Large Scale Foreign Land Acquisitions in Ghana*; Tsikata, D. and J. Yaro (2011). *Land Market Liberalization and Trans-National Commercial Land Deals in Ghana since the 1990s*, paper presented at the International Conference on Global Land Grabbing, Sussex, Brighton, UK 6-8 April 2011.
- <sup>26</sup> Smaller, C., and W. Speller, with H. Mirza, N. Bernasconi-Osterwalder, and G. Dixie. 2015. *Investment Contracts for Agriculture: Maximizing Gains and Minimizing Risks*. Washington, D.C.: World Bank Group; New York: United Nations; and Winnipeg: International Institute for Sustainable Development (IISD).
- <sup>27</sup> USAID at 25.
- <sup>28</sup> Constitution Article 266 (4); Administration of Lands Act, 1962 (Act 123).
- <sup>29</sup> CCSI (2016) Guide to Land Contracts: Agricultural Projects, at 19. Available at <http://ccsi.columbia.edu/files/2016/03/Ag-Guide-2016.pdf>.
- <sup>30</sup> *Id.* at 52.
- <sup>31</sup> *Id.* at 20.
- <sup>32</sup> A Guide to Designing and Implementing Grievance Mechanisms for Development Projects. 2008. Washington, DC: Compliance Advisor/Ombudsman.
- <sup>33</sup> USAID Operational Guidelines, 7.11 – 7.16.
- <sup>34</sup> USAID, *supra* note 28, at 51.
- <sup>35</sup> 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>.
- <sup>36</sup> Principle 10, *Guiding Principles on Large Scale Land-based Investments in Africa*.
- <sup>37</sup> French Cooperation Operational Guide. p. 24.
- <sup>38</sup> GCAP (2014). *Community/Investor Guidelines for Large scale Land Transactions*, 20.
- <sup>39</sup> FAO Respecting FPIC.

## Phase 4: Implementing and Monitoring the Investment

This phase provides steps that help to ensure new projects, as well as existing ones, are implemented and monitored in a responsible manner.

### Task 1: Preventing and Addressing Land-Related Issues

1. [Customary Land Authorities assist in developing a grievance mechanism.](#)
2. [Customary Land Authorities assist with the selection of grievance resolution method\(s\).](#)
3. [Customary Land Authorities facilitate communication between community members and business enterprise.](#)
4. [Community learns how the monitoring system will be implemented, and what role the Customary Land Authorities and CSOs should play.](#)

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

1. [Community supports the business in establishing Monitoring and Evaluation practices for land-related investments.](#)
2. [The business works with a third-party to conduct follow-up assessments to evaluate impacts on communities.](#)

## Project Implementation and Monitoring in Ghana

In Ghana, communities often lack the capacity or status to play their role in investment implementation. For example, they usually cannot effectively monitor and evaluate project implementation. For this reason, the Customary Land Authorities will need to ensure that the business enterprise is fulfilling promises in the land lease and addendum and fill the gaps where the business enterprise and government are not providing support.

An important part of this for community members is **accessing grievance structures and processes**. Without help, this can be challenging:

- **Community members may not be able to voice their grievances in their community.** This may be because customary norms may restrict individuals from speaking up or because they lack status as enfranchised community members (strangers).
- **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. It may be difficult to speak out against the actions or inaction of leaders.
- **Misplaced expectation that the business enterprise is broadly responsible for community development, rather than the local government.** This may be due to infrastructure and capacity deficiencies in both communities and government, along with lease terms that provide for some community improvements.

These issues mean that Customary Land Authorities might need the support of a CSO to help community members find their voices, helping them to understand their rights and how to use the grievance mechanism. The business enterprise may find itself in the position of soliciting and addressing grievances for which it is not directly responsible, and may need assistance with these cases as well.

Additionally, the community may expect more from the business than was promised. Clarifying exactly what the business enterprise is responsible for will help to identify gaps between expectations and reality that can then be filled through community-based capacity development or other assistance that the business enterprise is not delivering.

A further concern 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. Community organizations may be able to advocate for these women, and help ensure they are not forgotten.

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 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.

For these reasons, the business enterprise should develop and implement protocols for Monitoring and Evaluation. Community groups can provide assistance with this, either under contract to the business or as an independent monitor. 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.

Note that the LSLA Guidelines mention 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 can reduce the investment benefits that the community deserves.

To maintain the broader community's trust, while resolving unanticipated challenges that will certainly arise as activities deviate from the initial plan, the Land Investment Committee and community leaders should work with the business to establish mechanisms that:

- **Ensure on-going engagement and consultation** with the community and the business to prevent disputes from occurring.
- **Ensure access to remedy** by working with the business to establish a functioning, effective, and accessible grievance mechanism for handling land-related disputes.<sup>40</sup>
- **Monitor and evaluate** the investment's implementation to track its progress, results, and effects on the community.

## Step-By-Step Guidance

1. Customary Land Authorities assist the business enterprise in developing a grievance mechanism.

**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 the best 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.
- Information system to record and track grievances.
- Set time frames for responding to complaints to ensure consistency within the company and predictability for complainants.

CSOs can provide assistance with ensuring the grievance mechanism is sensitive to cultural and community needs. Specific CSOs can represent specific interests; for instance, it is important that women's needs are particularly taken into account.

In addition, this [supplemental resource](#) provides a template for designing a strategy for ongoing community engagement during the implementation of an investment, and two checklists for evaluating the community engagement plan based on established standards for stakeholder communication.

## 2. Customary Land Authorities assist with the selection of grievance resolution method(s).

There are many potential resolution methods that can be tried, such as mechanisms where:

- **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, **the vast majority of complaints should be 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. Customary Land Authorities facilitate communication between community members and business enterprise.

Just like ongoing consultation and engagement, introducing and raising awareness of the grievance mechanism should be an ongoing effort.<sup>41</sup> CSOs can therefore engage by helping business enterprises to liaise with the community, while simultaneously helping the community to understand the mechanism.

CSOs may be contracted by the enterprise to develop simple, visually engaging informational materials describing the process and benefits associated with the grievance mechanism in an understandable format and language. They may also work with the community to help them understand what has been communicated by the business.

### 4. Community learns how the monitoring system will be implemented, and what role the Customary Land Authorities and CSOs should play.

The business enterprise will likely rely on civil society and community members to play roles in grievance resolution, either as employees or unofficially. CSOs should, therefore, ensure they receive training in conducting receipt and registration, referral processes, service provision, quality control, monitoring and record keeping, and ethics.<sup>42</sup>

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

### Best Practice

**Monitoring and Evaluation (M&E)** is essential to ensuring that the agreement terms are fulfilled, and can also provide the investor with information needed to identify and correct issues or lapses in communication. There are two primary reasons for the community to ensure the company dedicates time and resources to M&E:

1. To **ensure the company's compliance with lease terms and conditions.**
2. To **assess the unfolding investment project and restructure as necessary.**

The Customary Land Authorities, with the support of a CSO and government authorities, can play a vital monitoring role, as implementation challenges are likely to arise that impact all or part of a community. They may be able to provide official Monitoring and Evaluation services (as a contractor to the business enterprise), or may work independently, in a watchdog role, to ensure contracts are being fulfilled. This includes ensuring that the project work plan and progress in implementation align with the mutual promises, expectations, mitigation strategies, and conditions contained within the written and signed contract.

### Step-By-Step Guidance

#### 1. Community supports the business in establishing Monitoring and Evaluation practices for land-related investments.

By conducting regular M&E activities, the business will be able to identify implementation challenges and unanticipated impacts earlier than it otherwise might.<sup>43</sup> 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.

Familiarity with this M&E guidance, and the accompanying resources, will empower the community to hold the business accountable to its obligations under principles of responsible investment. Below are principles for M&E that the business should be adhering to throughout the life cycle of the investment:

- **Commitment.** The business needs to make M&E an integral part of the implementation, particularly by providing strong commitments of financial and human resources coupled with strong mechanisms for corrective actions as needed.<sup>44</sup>
- **Collaboration and consent.** The business must provide for inclusive participation from relevant stakeholders in the development of indicators, benchmarks, assessment processes, and mechanisms for grievance, redress, and learning.<sup>45</sup> Participation should be both culturally appropriate and gender sensitive, allowing for meaningful participation from both women and men.
- **Practicability and sustainability.** The M&E plan should have realistic timelines and targets and provide for sufficient expertise and resources so that it is sustainable over the life of the investment.
- **Transparency and independence.** The business must be transparent when developing and conducting M&E, and in disseminating and using the findings to make corrections to design and implementation. The community should advocate the use of third-parties to perform M&E activities.
- **Accessibility.** The business should make M&E plans, updates, inquiries, and findings available to all stakeholders.
- **Accountability.** M&E must link to, and depend upon, a strong, accessible, and enduring grievance mechanism that provides for sanctioning of, or remedies for, non-compliance.<sup>46</sup>
- **Source of continuous learning and improvement.** Effective M&E requires assessments that provide information needed to make subsequent adjustments and improvements to processes, standards, project design, and project implementation.

While each investment will have its unique needs for M&E based on contextual factors (e.g., the agricultural products involved, the region in which the investment occurs, the nature of any outgrower schemes, or relocation programs, etc.), there are some broad standards that will be applicable to virtually any project.

[Monitoring and Evaluation Primer](#) provides a list of indicators for M&E based on international standards for reporting on responsible investments. These indicators are not exhaustive, but are intended to provide a starting point for a rigorous and diligent M&E protocol. The community can compare the M&E tools used by the company with the resources provided in this Guidebook to evaluate the company's M&E process.

## 2. The business works with a third-party to conduct follow-up assessments to evaluate impacts on communities.

Throughout the lifecycle of the investment, the company should commission and publish reports that assess the impact of investment activities on the community, particularly with respect to vulnerable populations such as women, indigenous peoples, and ethnic or religious minorities.

In accordance with its M&E plan, the company should assess ongoing environmental and social impacts (including impacts on land rights, uses, and livelihoods) to monitor the effects of the project on the surrounding community. To ensure accountability and transparency, these assessments should be conducted by reputable third parties and based on international standards for human rights and responsible investments. More frequent assessments create more opportunities for adaptation and mitigation, but this benefit should be balanced against the feasibility of thorough assessment on a compressed timeline.

While each investment's particular assessment needs will depend on the investor, the community, and the investment environment, it is generally best for the company to conduct assessments at each level of the value chain.

The community should verify that ongoing assessments are measuring aspects of the investment's impact that are important to community members. This [supplemental resource](#) provides sample questions for assessment of household farm owners, large farm owners, farmworkers, and manufacturing plant and mill owners. These questions should be combined with suggestions and questionnaires designed by neutral third-parties that are conducting periodic impact assessments. Community members can use this resource as a basis for evaluating the company's assessment protocol.

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<sup>40</sup> See VGGT, *supra* note 18, 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](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 18, at 31-32.

<sup>41</sup> Taken from CAO, *A Guide to Designing and Implementing Grievance Mechanisms for Development Projects* 51-54.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.* at 50.

<sup>44</sup> VGGT, *supra* note 18, at 39.

<sup>45</sup> AU Guiding Principles, *supra* note 17, at 25 -26; see also UNESCO, *A Guide for Monitoring and Evaluating Community-Based Projects* (2009), available at: <http://unesdoc.unesco.org/images/0018/001862/186231e.pdf>.

<sup>46</sup> UNGP, *supra* note 18, at 19.

# A GUIDEBOOK FOR COMMUNITIES 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



Responsible Investments  
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