

GUIDEBOOKS BY COUNTRY



SOCIALLY RESPONSIBLE LAND INVESTMENT IN GHANA

A Guidebook for Government Officials Supporting Agricultural Investment in Ghana



Responsible Investments
in Property and Land



Department
for International
Development



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

Socially Responsible Land Investment in Ghana

Guidebook for Government Agencies

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 Government Agencies

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.

Contributions were made by:

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

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

Acknowledgments

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

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

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

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

Cover photo for Ghana Government Enterprise Guidebook by IanCamp [[CC BY-SA 4.0](#)], from Wikimedia Commons.

List of Abbreviations

CCSI	Columbia Center for Sustainable Investment
CFS	Committee on World Food Security
CLS	Customary Land Secretariat
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 Transactions in Ghana
M&E	Monitoring and Evaluation
MOFA	Ministry of Food and Agriculture
OASL	The Office of Administrator of Stool Lands
RIPL	Responsible Investment in Property and Land
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
VGGT	Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries, and Forests in the Context of National Food Security (by the FAO)

Contents

1. Introduction and How to Use this Guidebook.....	1
Background for the RIPL Guidebooks	3
How to Use This Guidebook	5
2. International Standards and Best Practices	10
Important Concept for Government: Free, Prior, and Informed Consent (FPIC)	15
3. Context Analysis and Factors for Consideration in Achieving Responsible Investment in Ghana.....	19
Land Governance in Ghana.....	20
Challenges for Investors in the Ghanaian Context	24
FPIC in Ghana.....	27
4. Step-by-Step Guide to Agricultural Investments in Ghana	32
Phase 1: Preparing for an Investment	36
Task 1: Developing Policies, Commitments, and Safeguards	38
Task 2: Conducting Due Diligence.....	47
Phase 2: Community Engagement, Consultation and Assessments	54
Task 1: Engaging and Consulting with Land Users and Rights Holders.....	56
Task 2: Conducting Community Assessments	60
Phase 3: Developing an Equitable Land Lease and Addendum	63
Task 1: Negotiating and Drafting the Land Lease and Addendum	64
Task 2: Reviewing and Signing the Land Lease and Addendum	69
Phase 4: Implementing and Monitoring the Investment	71
Task 1: Preventing and Addressing Land-Related Issues.....	72
Task 2: Developing and Implementing an Ongoing Monitoring and Evaluation Plan	80

1.

Introduction and How to Use This Guidebook

Introduction

This Guidebook is intended to guide government actors at the national, regional, and local level through the steps needed to support inclusive and socially responsible land investments in Ghana.

The primary audience for this guide is local government officials who are faced with the challenges and opportunities of a new land investment in their region. The goal is to provide all the information needed to ensure that government agencies are equipped and prepared to manage the land acquisition for any proposed land-based investment. Importantly, such investments should adhere to international standards and best practices, from preparing for the agricultural investment, supporting a community's decision to proceed with or decline an investment, and all the way through to ensuring the investment is implemented in accordance with best practices.

This section discusses:

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

Background for the RIPL Guidebook

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 bring about a responsible investment. Early due diligence, consultation, engagement, and assessment are the keys to understanding contextual variables, which will only help 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.¹ 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.

It should also be noted that the RIPL Guidebooks are not intended as legal advice, but rather as tools to aid stakeholders in navigating the process of creating a responsible investment. To the best of 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 Government Guidebook is intended for use prior to and during the agricultural land investment process.

Guidebook Audience: 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 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 right 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 to businesses and communities that are engaged in a land matter by, for example, providing information, facilitation, and links to resources.

The Role and Responsibility 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 that 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 migrant land users, should be involved in the negotiation process. After all, though women and migrant land users may not have rights within a customary setting, they may have rights from a national or international legal perspective.
- **Learn about how agricultural investments work.** Community members may not have prior experience with commercial negotiations or lease arrangements. They will need to learn about the processes needed to come to a fair and equitable agreement, their rights during the transaction, what to expect from various stakeholders, and how the process should work. These are questions a business enterprise might expect, and should play a role in answering.
- **Develop processes or structures to support community consultation and decision-making.** Establishing processes or groups within the community that share information, support community input or other considerations, and assist with or guide land use planning will leave a community better prepared to weigh the options and engage with a business on a potential investment.

The Community Guidebook's intended users are representatives in the community engaging with government and business on behalf of the broader community. 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 help business enterprises in their efforts to reach and engage with community members. Civil society 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.

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

The 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.

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 Investment](#)
 - [Phase 2: Community Engagement, Consultation and Assessments](#)
 - [Phase 3: Developing an Equitable Land Lease and Addendum](#)
 - [Phase 4: Implementing and Monitoring the Investment](#)
 - [Supplemental Resources](#) available online:
 - [Best Practices for Responsible investment](#)
 - [Sample Business Enterprise Policies](#)
 - [Site-Specific Questionnaire](#)
 - [Community Consultation Checklist](#)
 - [Best Practices for Outgrower Arrangements](#)
 - [Community Capacity Assessment](#)
 - [Land Rights Assessment Toolkit](#)
 - [Key Contract Elements](#)
 - [Final Contract Checklist](#)
 - [Designing a Stakeholder Engagement Plan](#)
 - [Grievance Mechanism Checklist](#)

Where applicable, this Guidebook references the Ghanaian Lands Commission's Guidelines for Large Scale Land Transactions (also referred to as the LSLA Guidelines).

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

¹ For more detailed analyses of the legacy land issue, see L. Cotula, T. Berger, and P. Sutz (2016). *Addressing Legacy Land Issues in Agribusiness Investments*, LEGEND Analytical Paper 2, available at: <https://landportal.info/library/resources/legend-analytical-paper-2/addressing-legacy-land-issues-agribusiness-investments>; N. Flanders and J. Jenks (2015). *A Guidance Note on Managing Legacy Issues in Agribusiness*, 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.

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 best practices and standards.

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 targeted for agricultural investment.

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

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**. This includes (but is not limited to):

- Making a commitment to uphold both national law and international standards.
- Identifying all land rights, including access, use, and secondary and communal rights recognized under both formal and customary law.
- Providing notice to all land rights holders (including traditionally vulnerable groups such as women, ethnic minorities, pastoralists, and migrant farmers) about the investment.
- Engaging and consulting with leaders of affected communities and individuals about how to design and implement the prospective investment.
- Recognizing and formalizing land rights.
- Asking land rights holders to consent freely, with the option to decline.
- Assessing land impacts via an impact assessment.
- Mitigating impacts (such as potential displacement) and social risks that may be caused by the project.
- Inviting land rights holders to negotiate a fair agreement.
- Ensuring investment benefits are distributed equitably among all individuals with land rights.
- Establishing and implementing 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 investors can take to bring the investment closer to international best practice
<u>Developing Policies, Commitments, and Safeguards.</u>	Not mandated.	Not required by law. Significant gap.	It is important for countries engaging in responsible agricultural investments to create a legal, administrative, and investment environment that supports best practices.
<u>Conducting Due Diligence.</u>	Not mandated.	Not required by law. Significant gap.	Before investing in land, potential investors should conduct due diligence on the potential investment area, the customary laws that apply there, and the people who hold a right to use the land. At the same time, government also needs to do its own due diligence on the potential investor.
<u>Engaging and Consulting with Land Rights Holders and Users</u>	Constitution; EPA Act; Environmental Assessment Regulations; OASL Act; Lands Commission LSLA Guidelines	Land tenure impacts assessment insufficiently required by law. Significant gap.	Government at the local, regional, and national level should support and monitor investors as they engage with the community.
<u>Conducting Community Assessments.</u>	Environmental Assessment Regulations; Lands Commission LSLA Guidelines	Insufficiently required by law. Significant gap.	To inform whether both the business and the community should proceed with the investment, and to be in compliance with the LSLA Guidelines, business enterprises must conduct an Environmental and Social Impact Assessment (ESIA).

Negotiating and Drafting a Land Lease and Addendum.	Conveyancing Act	Insufficiently required by law. Significant gap.	The government should facilitate an equitable and participatory negotiation process, supporting both business enterprises and communities by providing information and capacity development support.
Reviewing and Signing the Land Lease and Addendum.	Not mandated.	Insufficiently required by law. Significant gap.	Good contracting practices require that the lease agreement process remain transparent and participatory and that all community members be brought to an equal footing with investing companies and governments.
Preventing and Addressing Land-related Issues.	Not mandated.	Not required by law. Significant gap.	To best establish and maintain social license, commitments made to the community in a contract or other agreement must be strictly met, and unanticipated impacts and concerns must be identified and addressed as soon as possible.
Developing and Implementing an Ongoing Monitoring and Evaluation Plan.	Not mandated.	Not required by law. Significant gap.	For the life of the project, the business must practice M&E for the investment and its impacts upon the communities and individual smallholders that have changed their relationship to the land for the benefit of the enterprise.

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

Meeting the Free, Prior, and Informed Consent (FPIC) standard is a foundational element of meeting international standards and good practices of agricultural investment. FPIC establishes a standard and a 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. Consult the on-line [Supplemental Resource Sample Business Enterprise Policies](#) for examples of company policies seeking to address FPIC.

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

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

1. Be provided with all the 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. Be 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, and to 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, 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 involvements 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.²

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 laws most relevant to agricultural land investment in Ghana include:

- 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:³

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 acquire land for an investment. 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.⁴

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.⁵ 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, made up of the area's Paramount Chief and village elders, or Family Heads and clan heads, holds authority over land. In general, community members access land through their lineage, and non-indigenes access land by permission from the community land holder. Because customary laws may vary significantly between ethnic groups and communities, it is important for investors to learn as much as possible about these customary structures early in the process.

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 communications 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 presents challenges to investors, who may struggle to identify the correct customary land institution to work with. Because there are few formal records on the land ownership system, no registries or rosters for reputable consultants or databases with verified information on customary land authorities, and the rules and processes for land dealings vary from local area to local area, investors can be misled or waste time and resources dealing with the wrong individuals and institutions.

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. 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; compensation for the land itself is paid in the form of lease payments made to the allodial holder, usually the customary authorities.⁶ 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.”⁷ 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 livelihood restoration or alternative land procurement. Further, because crops often traditionally grown by women are not considered for compensation, and because payments tend to be paid to the male head of household, women often receive no compensation at all for lost crops. Efforts to ensure that compensation and resettlement programs are equitable must, therefore, understand household norms and local livelihoods to ensure that investment processes do not inadvertently reinforce inequality or leave local populations worse off as a result of the investment.

(See online [Supplemental Resource Land Rights Assessment Toolkit](#))

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, are fairly compensated, and do not lose out when family farms are relocated will require targeted efforts that some Ghanaian traditional authorities may be unwilling to perform or support. 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 women's 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 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 livelihood 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 for 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 consent will not be obtained from members of the community.

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

² Ministry of Lands and Forestry (June 1999) at 4. *National Land Policy*, hereinafter “NLP,” available at: <https://www.documents.clientearth.org/wp-content/uploads/library/1999-06-01-national-land-policy-1999-ext-en.pdf>.

³ Adapted from GCAP (2015) Recommendations.

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

⁵ Environmental Protection Agency Act, 1994, (Act 490) §1.1

⁶ 1992 Constitution of Ghana & 1996 Amendments §20.1 -20.5.

⁷ Ministry of Lands and Forestry (June 1999) at 4. *National Land Policy*, hereinafter “NLP,” available at: <https://www.documents.clientearth.org/wp-content/uploads/library/1999-06-01-national-land-policy-1999-ext-en.pdf>.

4.

Step-by-Step Guidance

Quick Glance: Phases, Tasks, and Steps

Phase 1: Preparing for an Investment

This phase is about the government being prepared to support communities and investors throughout the investment process.

Task 1: Developing Policies, Commitments, and Safeguards

1. [Identify and if need establish roles and responsibilities of responsible agencies to ensure effective coordination in regulating land-based investment.](#)
2. [Facilitate the promulgation and implementation of laws on responsible land-based investment.](#)
3. [Ensure that gender is accounted for in land acquisition processes and policies.](#)
4. [Undertake comprehensive land use and spatial planning.](#)
5. [Establish a system that identifies land subject to multiple or historical claims and regulates acquisition of rights by companies.](#)
6. [Document and register all customary interests in land lesser than the allodial title.](#)
7. [Address legacy land issues.](#)
8. [Mandate investment-specific grievance mechanisms.](#)
9. [Act as a neutral third-party facilitator or arbiter of claims among parties.](#)
10. [Support transparency and ensure multi-stakeholder engagement.](#)

Task 2: Conducting Due Diligence

1. [Document and publicize guidelines for land acquisition.](#)
2. [Review potential investors to assess suitability and legitimacy.](#)
3. [Evaluate projects to assess alignment with national investment strategy.](#)
4. [Review investment proposal to assess whether it matches land use and development plans for the proposed area.](#)
5. [Evaluate investment models and make information and analysis available to all stakeholders.](#)

6. [Link business enterprises with landowners.](#)
7. [Publicize information about land contracts, including community benefit measures.](#)
8. [Provide oversight of contract implementation and benefit sharing agreements.](#)

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, and includes the community capacity assessment, the Environmental and Social Impact Assessment (ESIA), and the land valuation that need to be conducted.

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

1. [Assist communities to assess capacity to engage in land transactions.](#)
2. [Provide information and facilitate informed decision-making.](#)
3. [Play an oversight role in enforcing FPIC standard.](#)

Task 2: Conducting Community Assessments

1. [Provide information and expert guidance.](#)
2. [Provide oversight, monitoring, and enforcement.](#)

Phase 3: Developing an Equitable Land Lease and Addendum

An equitable and inclusive contract is a collaborative product of the business, appropriate government authorities, and the community. This process should be

informed by due diligence findings from Phase 1, ongoing community engagement, and results from community assessments conducted in Phase 2.

Task 1: Negotiating and Drafting the Land Lease and Addendum

1. [Support land owners and land rights holders signing a LOI with the investor that protects their interest.](#)
2. [Support participatory consultations with land owners and land right users.](#)

Task 2: Reviewing and Signing the Land Lease and Addendum

1. [Review lease agreement for compliance with legal agreements](#)
2. [Solicit and obtain final community consent to the investment terms](#)
3. [Convene meeting with community for final contract signing.](#)

Phase 4: Implementing and Monitoring the Investment

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

Task 1: Preventing and Addressing Land-Related Disputes

1. [District Chief Executive and CLS support landowning community in taking steps to strengthen community governance systems and ensure preparedness for ongoing investment accountability.](#)
2. [District Chief Executive regularly engages and consults with the business and community authorities to ensure they are mitigating and preventing disputes from occurring.](#)
3. [District Chief Executive and/or CLS ensures that the business and community leadership coordinate to establish a grievance mechanism.](#)

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

1. [Establish roles and frequency of monitoring and reporting.](#)

2. [Establish indicators for monitoring tenure impacts and agreed terms.](#)
3. [Monitor the grievance redress mechanism.](#)

Phase 1: Preparing for an Investment

This phase is about creating policies and frameworks to support responsible land investment.

Task 1: Developing Policies, Commitments, and Safeguards

1. [Identify and if needed establish roles and responsibilities of responsible agencies to ensure effective coordination in regulating land-based investment.](#)
2. [Facilitate the promulgation and implementation of laws on responsible land-based investment.](#)
3. [Ensure that gender is accounted for in land acquisition processes and policies.](#)
4. [Undertake comprehensive land use and spatial planning.](#)
5. [Establish a system that identifies land subject to multiple or historical claims and regulates acquisition of rights by companies.](#)
6. [Document and register all customary interests in land lesser than the allodial title.](#)
7. [Address legacy land issues.](#)
8. [Mandate investment-specific grievance mechanisms.](#)
9. [Act as a neutral third-party facilitator or arbiter of claims among parties.](#)
10. [Support transparency and ensure multi-stakeholder engagement.](#)

Task 2: Conducting Due Diligence

1. [Document and publicize guidelines for land acquisition.](#)
2. [Review potential investors to assess suitability and legitimacy.](#)
3. [Evaluate projects to assess alignment with national investment strategy.](#)
4. [Review investment proposal to assess whether it matches land use and development plans for the proposed area.](#)
5. [Evaluate investment models and make information and analysis available to all stakeholders.](#)

6. [Link business enterprises with landowners.](#)
7. [Publicize information about land contracts, including community benefit measures.](#)
8. [Provide oversight of contract implementation and benefit sharing agreements.](#)

Task 1: Developing Policies, Commitments, and Safeguards

Best Practice

In general, it is important for countries engaging in responsible agricultural investments to create a legal, administrative, and investment environment that supports best practices. The on-line [Supplemental Resources Best Practices for Responsible investment](#) is a slide deck for government officials on best practices for responsible investments, and how governments can support businesses to meet those standards.

Legal Best Practices

The country should have in place laws and policies that protect the legitimate tenure rights of land users (both women and men) and communities. Government authorities engaged in investment promotion, approval, and monitoring should advocate for policies that both safeguard tenure rights and contribute to overall national development.⁸ National laws and policies should be compared to international standards and practices, and gaps and inconsistencies should be addressed.⁹

Administrative Best Practices

Through its administrative frameworks, states should provide and maintain systems that promote responsible governance of tenure of land, fisheries, and forests. National organizational frameworks for tenure governance should recognize, respect, and promote the exercise of legitimate tenure rights in line with social, cultural, economic, and environmental significance of land, fisheries, and forests.¹⁰

Investment Best Practices

A national investment strategy should address agricultural investment priorities to ensure that such investments contribute to achieving overall development objectives while safeguarding tenure rights.¹¹ It can encourage companies to work with smallholders in different ways and establish business models that can offer better opportunities for women, men, and communities;¹² enable investors to acquire rights to land that are less prone to disputes, conflict, and other issues that may harm

communities; and provide the opportunity to ensure women are equal beneficiaries of investments in land and are not left worse off as a result of such investments.¹³

Governments should develop a national investment strategy, which should include decisions about which lands to retain in the public sector, and which to allocate for other uses such as commercial agriculture. These decisions should take into account the long-term investment priorities, food security interests, and the tenure rights of people who are already using the land. These strategies should be developed in consultation with the local communities that will be affected, in keeping with national law as well as the best practices and principles outlined in this Guidebook.

For a comprehensive treatment of how to use law to make foreign investment work for sustainable development, **see *Cotula 2014 Foreign Investment, Law, and Sustainable Development: A handbook on agriculture and extractive industries***, available at <http://pubs.iied.org/12587IIED/>.

Step-By-Step Guidance

1. Identify and if needed establish roles and responsibilities of responsible agencies to ensure effective coordination in regulating land-based investment.

Government authorities need clear and specific roles and responsibilities. They also need sufficient resources to carry them out. Roles and responsibilities are often mandated through legislation, and are distributed among various line ministries at different steps in investment promotion and approval processes.

Coordination and effective communication among responsible agencies is important to support effective and consistent implementation of investment safeguards.¹⁴ A breakdown in communication is a serious impediment to effective land governance in Ghana. As shown in the table below, the Lands Commission, OASL, Metropolitan/ Municipal and District Assemblies, the Land Use and Spatial Planning Authority, GIPC, and SADA need to be involved in sharing information and collaborating, especially at the regional level.¹⁵ Particular attention is needed to strengthen coordination efforts between the Lands Commission and District Assemblies.

For their part, investors need a clear process to follow so that they can comply with local requirements, as well as with domestic and international standards. An inter-ministerial working group of government authorities, engaged in investment-related processes,

could help coordinate roles and responsibilities while providing a forum for discussing policy priorities and objectives, thereby enhancing consistency.

Potential Institutional Roles in Land Governance and Investment

Shaded boxes denote roles (shown on the top row) that each government authority (shown on the left column) could play to facilitate responsible investment.	Land Use Mapping	Valuation of Land and Crops	Identifying Priority Crops and Regions for Investment	Establishing Criteria for Consultation	Registering Land Tenure Rights	Establishing Criteria and Baseline Data for Impact Assessment	Granting Natural Resource Development Permits	Determining and Granting Tax Incentives	Signing/Approving Overall Investment Agreements
Ministry of Food and Agriculture									
Ministry of Land and Natural Resources									
Lands Commission as a whole									
Survey and Mapping Division									
Land Title Registration Division									
Public and Vested Lands Management Division									
Ministry of Environment, Science, Technology, and Innovation									
Environmental Protection Agency									
Land Use and Spatial Planning Authority									
Ministry of Trade and Industry									
Ghana Investment Promotion Centre (GIPC)									
Ministry of Policy and Economic Planning									
Ministry of Finance									
Ministry of Local Government and Rural Development									

2. Facilitate the promulgation and implementation of laws on responsible land-based investment.

Developing a legal framework that supports responsible investments must clarify the roles and responsibilities of government agencies and outline the minimum standards that investors must meet. Such a framework should ensure that transactions respect human rights and incorporate the principles of Free, Prior, and Informed Consent (FPIC) to safeguard community land rights.

Mandating investor compliance with such standards, and requiring that investors take active measures to transact land in a socially responsible manner, will support better outcomes for communities and for the country as a whole. The state, through appropriate legislation, can ensure that these obligations are carried out in a manner that will meet international standards and best practices, while conforming to and complementing the existing legal and regulatory framework.

3. Ensure that gender is accounted for in land acquisition processes and policies.

Men and women access and use land in different ways. Land investment processes in Ghana tend to take the household or the community as the target unit. In general, this means that women, who have historically been excluded from owning land, are excluded as land investment processes are often directed towards the head of the household (usually male). To address barriers and differential impacts on men and women, land and investment policies and laws must recognize and account for gender differences.

In Ghana, 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. However, the current legal and policy framework does not safeguard the rights of women in a detailed way, and does not require assessments that account for gender differences.

The laws related to investment, land acquisition, co-ownership, and family property must be examined to understand women's legal rights within the system and whether any laws make women's land tenure insecure.

Checklist:

- ✓ Does the Constitution or other laws state that men and women have equal rights or equal rights to land?
- ✓ Does the Constitution or other laws state that custom supersedes the Constitution in relation to family law? If yes, women and men do not have equal rights to land. (This scenario is not common, but it exists.)
- ✓ What does the Family Law, Personal Law, or Civil Code say about:
 - Marital property (community property, separate property, or mixed).
 - If community property is allowed, what is required to provide evidence of it (marriage certificate, witness for religious marriage, etc.)?
 - Are there rules about sale of property by one spouse (e.g., written permission is required to sell house and household property even if not co-owner)?
 - Are there rules requiring written permission for leasing out property?
 - What social restrictions are placed on married women or women in general?

4. Undertake comprehensive land use and spatial planning.

Participatory mapping and land use planning, undertaken in coordination with communities, can help to clarify land areas with potential for commercial land investment. Participatory mapping and planning means that the relevant stakeholders are involved in, and can readily understand, the process and can see the outcome (in the form of a map or physical markers on the ground).

The process should include the following steps.

- ✓ Ensuring land rights users are identified, 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.
- ✓ Ensuring community meeting are held 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.
- ✓ In coordination with the community, sketch and draw a village map.
- ✓ Support the harmonization of boundaries and resolve any conflicts between villages. This [supplemental resource](#) outlines how a community can harmonize boundaries during community mapping processes.

- ✓ Ensure 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.
- ✓ Support the community in preparing a final village map.
- ✓ Support the community in developing an action plan that includes identifying long-term, interim, and short-term goals.¹⁶ 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.

5. Establish a system that identifies land subject to multiple or historical claims and regulates acquisition of rights by companies.

This system should build into any agreement, clear responsibility to develop community benefit agreements, compensation packages, or other measures. Such an approach would establish definable costs that companies could then factor into their overall projections for land acquisition and operations, while providing a way for government to perform an oversight function to ensure that lingering disputes are laid to rest and community benefit agreements are implemented.

6. Document and register all customary interests in land lesser than the allodial title.

Under current practice, only the allodial and leasehold interests are registered by the state. To clarify rights and support socially responsible investment processes, all customary interests in land should be registered. The registration system must accommodate the various types of interests in land held by community members without subsuming them under the allodial interest. All such interests, including customary freehold (usufructuary rights) of the indigene, customary tenancy of the settler, or tenant farmer, etc., must be registered so that they can be adequately considered and compensated as appropriate during a land transaction.

7. Address legacy land issues.¹⁷

In addition to moral reasons for dealing with perceptions of injustice, and the ongoing socioeconomic impacts of dispossession, there is a strong business case for addressing legacy issues, which can pose substantial legal, operational, and reputational risks to companies.

Companies should assess situations in which legitimate tenure rights have been violated before they became involved to ascertain whether, and in what manner, these issues might be resolved in advance of land acquisition.¹⁸ The financial and reputational risks to companies are high. International human rights jurisprudence has found that where indigenous communities have unwillingly lost land, their collective rights to property may persist and entitle them to land restitution.¹⁹

Because legacy land issues often originate with state land expropriation and assignment of concessions, governments have a key role in addressing past injustices of legacy land issues. Addressing these issues may include the administrative, legislative, and judicial branches.²⁰

8. Mandate investment-specific grievance mechanisms.

An investment-specific grievance mechanism may be a necessary addition to government judicial and administrative remedies. In Ghana, and elsewhere, while the key legal and institutional elements for dispute resolution are in place, land rights holders and local officials often lack the capacity or resources necessary to enforce and monitor land transactions and implementation of investment contracts. These gaps can create major barriers to ensuring that land transactions comply with the key elements of responsible land-based investment. For this reason, it is accepted good practice for business enterprises to establish a project-specific grievance mechanism to ensure that local communities and individuals can give voice to their concerns and have them resolved in a fair and timely manner.

While it is important for business enterprises to help fill gaps, the ultimate goal is for governments to play the leading role in ensuring responsible land-based investment occurs. As a result, the importance of a company-based grievance mechanism should decline as the land governance framework is fully implemented and enforced.

9. Act as a neutral third-party facilitator or arbiter of claims among parties.

Multiple agencies of government could be involved in this. In Ghana, this could be the government surveyor, the local district chief executive, or the traditional authorities (including the National or Regional House of Chiefs). The government could consider requesting support from civil society, or a land expert. To be successful, such processes should include extensive engagement and participation by men and women land users, elders, and communities at large, as explained in Phase 2 of this Guidebook.²¹

10. Support transparency and ensure multi-stakeholder engagement.

Require comprehensive stakeholder engagement to ensure that transactions affecting customary land areas include the active and informed participation and consent of individuals and communities.

Laws, policies, and regulations should require companies to conduct an assessment that focuses not just on environmental impacts, but on social and livelihood impacts of a proposed investment. Such impact assessments should be mandatory before a land transaction, so that Customary Land Authorities and communities can evaluate the relative risks and benefits of a proposed transaction.

The laws, policies, and regulations should also require companies to submit a notice of intent to contract. This should include that notice should be provided in a language, format, and location that are accessible to affected community members, including women and other vulnerable groups. It should also include key project details, such as the name of the investor, intended land use, and a map of the affected area, as well as contact information for the investor or a representative.

Bringing more stakeholders to the table can ensure that policies serve all stakeholders and support improved implementation and compliance. Transparent processes (e.g. holding public forums to discuss policy changes and publishing drafts of policies for public review) can create an environment where stakeholders can make their voices heard.

In addition, and perhaps most importantly, transparency and multi-stakeholder engagement are at the heart of FPIC, which should be applied throughout government engagements with the public in general.

The Lands Commission draft LSLA Guidelines, if adopted, would meet this standard.

⁸ FAO (2015) Governance of Tenure Technical Guide No. 4 – Safeguarding land tenure rights in the context of agricultural investment, available at <http://www.fao.org/3/a-i4998e.pdf>.

⁹ Janet Pritchard, Feja Lesniewska, Tom Lomax, Saskia Ozinga and Cynthia Morel (2013). Securing community land and resource rights in Africa: A guide to legal reform and best practices, available at: <https://europa.eu/capacity4dev/file/17334/download?token=6Wgt6tQ9>.

¹⁰ VGGT section 5.

¹¹ FAO (2015) Governance of Tenure Technical Guide No. 4 – Safeguarding land tenure rights in the context of agricultural investment, available at: <http://www.fao.org/3/a-i4998e.pdf>.

¹² L. Cotula. (2011). Land tenure issues in agricultural investment, available at: http://www.fao.org/fileadmin/templates/solaw/files/thematic_reports/TR_05B_web.pdf.

¹³ Hannay, Bledsoe, and Manuchehri. (2016). Realizing Socially-Responsible Investments in Land from a Gender Perspective: Unpacking “Zero Tolerance” to identify barriers and practical steps to achieve positive long-term change. Paper prepared for presentation at the World Bank Conference on Land and Poverty, The World Bank - Washington DC, March 14-18, 2016.

¹⁴ FAO (2015) Governance of Tenure Technical Guide No. 4 – Safeguarding land tenure rights in the context of agricultural investment, at 26. Available at: <http://www.fao.org/3/a-i4998e.pdf>.

¹⁵ GCAP (2015) Recommendations for Large Scale Land-Based Investment in Ghana, at 19.

¹⁶ VGGT 17.2.

¹⁷ As mentioned above, legacy is beyond the scope of this Guidebook, and should be handled through a transparent and systematic process on a case-by-case basis. Because legacy land issues often originate with state land expropriation and assignment of concessions, governments have a key role in addressing past injustices of legacy land issues. Addressing these issues, though complicated, should include both the administrative and judicial branches, who would play an active and direct role in addressing past injustices.

¹⁸ For a detailed analysis of legacy land issues, see Cotula, L., T. Berger, and P. Sutz (2016). Addressing legacy land issues in agribusiness investments, LEGEND Analytical Paper 2, available at: <https://landportal.info/library/resources/legend-analytical-paper-2/addressing-legacy-land-issues-agribusiness-investments>.

¹⁹ Centre for Minority Rights Development and Minority Rights Group International v. Kenya, paragraph 209, cited in Cotula et al (2016).

²⁰ Flanders, N. and J. Jenks (2015). Legacy Land Challenges and Opportunities in the Agribusiness Sector.

²¹ Cotula, L., T. Berger, and P. Sutz (2016). Addressing legacy land issues in agribusiness investments, LEGEND Analytical Paper 2, available at: <https://landportal.info/library/resources/legend-analytical-paper-2/addressing-legacy-land-issues-agribusiness-investments>.

Task 2: Conducting Due Diligence

Before investing in land, potential investors should conduct due diligence on the potential investment area, the customary laws that apply there, and the people who hold a right to use the land. Since required steps are not clearly outlined, and information is not readily available about what rights communities have and what options are available to them, the government should be available to assist with this due diligence. The Ghana Investment Promotion Centre (GIPC) aims to provide comprehensive services to investors, and with more support, could fulfill such a role.

Especially important is finalizing the centralized repository of information about what land is available, who owns it, and what the required steps are to acquire the land for a business purpose. This database is currently under development.

At the same time, government also needs to do its own due diligence on the potential investor. How well does the potential investment align with the national investment strategy? Does the investor have policies and protocols in place to ensure that it can comply with standards for socially responsible investment? What does the investor's history and track record from previous investments in Ghana or elsewhere indicate about its potential success in the proposed project?

Ghana Investment Approval Process

Phase	Output	Approval Authority	Consultative Body
Registration of business	Certificate of Incorporation; Certificate to Commence Business	Registrar General's Department	
Registration with GIPC	Registration Number; Registration Certificate	GIPC	
Partnerships with local suppliers (e.g. smallholders)	Contracts or joint venture agreements	Parties to the agreement	CLS Traditional authority

			GIPC
Tenure, social, and environmental impact assessments	EPA Permit	EPA	CLS Traditional authority Affected individuals CSO
Negotiation of land lease, including valuation and payments	Land lease agreement	MLNR Lands Commission OASL	CLS Traditional authorities NHoC Affected individuals
Negotiation of impacts and benefits, including valuation and payments	Community benefit agreement	Affected communities	
Government final review	Memorandum of Understanding; Investment Agreement	Parliament President Ministry of Trade	NHoC

Best Practice

A single government agency should serve as the touch point for investors to provide them with the information they need to complete the legal and social requirements for investing in land. In addition to providing information, the government agency should also conduct its own due diligence to better understand the investor's core business policies, activities, reputation, and involvement in land-related investments, and to ensure that the proposed project aligns with national development priorities. This should begin with a review to ensure that an investor's policies, proposed projects, and suppliers comply with national laws and international best practices.

The government through a single entity should carefully review investment proposals involving community or customary land, particularly where land is held by communities

having limited experience and understanding of the law and their rights, who may be at a disadvantage in negotiating fair transfers of tenure rights.

Use the on-line [Supplemental Resources Site-Specific Questionnaire](#) to support due diligence on potential investment sites.

Step-By-Step Guidance

1. Document and publicize guidelines for land acquisition.

Making policies and guidelines for land acquisition available and clear to investors is a necessary first step in ensuring that investors follow the correct procedures. These policies should be freely accessible and easy for a business enterprise, civil society organization, or community member to find and understand.

2. Review potential investors to assess suitability and legitimacy.

While attracting investment is an important aim to support economic development, it is important to screen investors and their partners to ensure that they have the financial capacity and experience to carry out the planned project and meet legal requirements and international standards. A standard due diligence screening of potential large scale investors can help to minimize risks that a prospective investor might fail to meet best practices and standards for socially responsible land investment.

Such a pre-screening could be integrated into the GIPC company registration process, and should include an evaluation of the investor's:

- Financial stability, including the nature and source of funding.
- Reputation demonstrating ability to commit and adhere to socially responsible best practices.
- Technical experience and capacity implementing socially responsible best practices, particularly regarding community engagement and consultation.

3. Evaluate projects to assess alignment with national investment strategy.

When a business enterprise registers its intent to invest in Ghana, a due diligence review should be required that at a minimum includes:

- Certified copies of memoranda and articles of association.

- Location of the registered office in the country of domicile.
- List of directors of the company and local representatives (if company is foreign owned).
- Type of agricultural production (crop, livestock, processing, etc.) proposed.
- Previous experience of this type of investment.
- Overview of business plan—production model and alternatives, number of hectares, export versus domestic sales, timeline, etc.
- Ongoing/past agricultural activities.
- Involvement in any tenure rights disputes/violations and/or other environmental or social disputes/violations.
- Copy of most recent financial statements or, if company is new, copy of bank statement showing capital for investment.²²
- Copy of company's commitment to responsibly sustainable investments in land.
- Comprehensive plans for social inclusion and community participation.

Once the investor provides this initial information, the due diligence review should then focus on investigating the investor and its practices. This includes:

- Gauging the reputation of the business enterprise, both internationally and regionally.²³
- Reviewing enterprise's sophistication and transparency, and assessing if it has the means to operate as proposed, including a review of its financial capabilities.²⁴
- Identifying any past projects the enterprise has conducted, and how it performed in terms of economic production, respect for human rights, and community interaction.²⁵ Any information about the enterprise violating tenure rights in previous contexts should trigger a complete and detailed explanation from the investor.²⁶

4. Review investment proposal to assess whether it matches land use and development plans for the proposed area.

As the first point of entry, and liaison between investors and landowners, GIPC could analyze a proposed investment with respect to the potential financial returns, reputation of the prospective investor, and details of the proposed project. In this way, the government could play a role as a neutral third-party with an interest in ensuring that the investment is positive for all parties, and results in sustainable and equitable gains for Ghanaian communities and investors alike.

5. Evaluate investment models and make information and analysis available to all stakeholders.

There are a number of investment models that can be used to shape a land-based investment. In Ghana, innovative approaches have been used to minimize or spread risk, limit the large scale transfer of land, and ensure that local communities and farmers share in the benefits of the investment. These models include trading land for equity, outgrower models (also known as contract farming), and public-private partnerships. There is also a range of options for structuring payments and contractual terms.²⁷

Evaluating these different models of agricultural investment, and assessing which ones best align with national and regional development priorities and potential, can help to support more effective and appropriate investments. These insights can, in turn, inform improved legislative and policy choices and incentives that can strengthen local land rights or encourage small-scale and local enterprises.

The on-line [Supplemental Resource Best Practices for Outgrower Arrangements](#) Literature Review provides guidance and discuss best practices for establishing outgrower arrangements as a method of compensation or alternative to outright land purchase or lease.

6. Link business enterprises with landowners.

Linking business enterprises with landowners will support company due diligence and help to clarify the availability of land and the appropriate procedures for land transfer.

Use the [Supplemental Resource Community Consultation Checklist](#) to support productive, meaningful and participatory consultations with community leaders and communities. This checklist is designed to support the initial introduction and consultation with a community and its leaders, although some meeting best practices can be adapted to other community meetings.

7. Publicize information about land contracts, including community benefit measures.

In order to monitor a land agreement to ensure that investors are fulfilling their commitments, particularly commitments related to any community benefit measures agreed upon as part of a contract negotiation, the agreement itself should be made available to all interested stakeholders. Many investors, however, are unwilling to disclose

such agreements, partially out of a concern that doing so will weaken their competitive position by sharing trade secrets. A policy requiring disclosure will help to overcome this challenge, and will help to ensure that terms are clear and understood by all parties.

8. Provide oversight of contract implementation and benefit sharing agreements.

Require leases to include ideal terms and provide support for benefit sharing among investors, customary authorities, and usufruct community members. In Ghana, the Lands Commission should not just approve and allocate formal leasehold title, but have some oversight the terms of the lease.

In Ghana, the government can use the potential GIPC database both to enable access to land and to ensure safeguards. Because rules for accessing land varies significantly among customary groups, investors are likely to need guidance as they try to understand the rules, procedures, requirements, and relevant parties for engagement for a potential parcel.²⁸ To support compliance with these local norms, GIPC could develop and maintain a map and directory of existing Customary Land Secretariats so as to facilitate connections between prospective investors and existing CLSs. Where CLSs are not present, local government could serve as a liaison between investors and landowners and local communities.

Customary Land Secretariats could also document and publicize guidelines for land acquisition in their areas, and OASL could act as a repository for these for ease of reference by investors at the national level, creating a national directory of local land acquisition procedures and practices.²⁹

²² *Safeguarding Land Tenure Rights in the Context of Agricultural Investment*, FAO. (2015). Available at: <http://www.fao.org/3/a-i4998e.pdf>.

²³ *Safeguarding Land Tenure Rights in the Context of Agricultural Investment*, FAO. (2015) <http://www.fao.org/3/a-i4998e.pdf>.

²⁴ *Safeguarding Land Tenure Rights in the Context of Agricultural Investment*, FAO. (2015). Available at: <http://www.fao.org/3/a-i4998e.pdf>.

²⁵ *The IISD Guide to Negotiating Investment Contracts for Farmland and Water*, The International Institute for Sustainable Development. (2014). Available at: http://www.iisd.org/sites/default/files/publications/iisd-guide-negotiating-investment-contracts-farmland-water_1.pdf.

²⁶ *Safeguarding Land Tenure Rights in the Context of Agricultural Investment*, FAO. (2015). Available at: <http://www.fao.org/3/a-i4998e.pdf>.

²⁷ For a detailed analysis of investment models relevant to Ghana, see the GCAP Recommendations for Large Scale Land-Based Investment in Ghana, Model Lease Consultancy Report (July 2015) at 55. Available at: <https://gcap.org.gh/wp-content/uploads/2017/04/Lease-Consultancy-3.pdf>.

²⁸ See generally, GCAP (2015) Recommendations for Large Scale Land-Based Investment in Ghana, available at: <https://gcap.org.gh/wp-content/uploads/2017/04/Lease-Consultancy-3.pdf>.

²⁹ GCAP (2015) Recommendations for Large Scale Land-Based Investment in Ghana, at 24.

Phase 2

Community Engagement, Consultation and Assessments

During this phase, the government's role is to help land rights holders and investors work together, and to make sure community and environmental social impact assessments happen.

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

1. [Assist communities to assess capacity to engage in land transactions.](#)
2. [Provide information and facilitate informed decision-making.](#)
3. [Play an oversight role in enforcing FPIC standard.](#)

Task 2: Conducting Community Assessments

1. [Provide information and expert guidance.](#)
2. [Provide oversight, monitoring, and enforcement.](#)

The Importance of Working with Community Members

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).

For more information, see the FAO guide, Respecting Free, Prior, and Informed Consent (2014), and USAID's Operational Guidelines for Responsible Land-Based Investment, (2012).

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

Best Practice

Government at the local, regional, and national level should support and monitor investors as they engage with the community and conduct their ESIA assessments.

Ideally, meaningful engagement with the community should involve all community members, individual smallholders, and all other affected land rights holders. The government can play a key role in ensuring this happens through monitoring and enforcement, if needed.

Step-By-Step Guidance

1. Assist communities to assess capacity to engage in land transactions.

The country as a whole should benefit from land-based investments, starting with members of the community. For community members to benefit, they need to be included in the investment process in a meaningful way.

Thus, before an investment is undertaken, it's important to assess the capacity of potential parties and participants to determine their ability to engage in negotiating a land lease.

The government should work with the business enterprise to carry out these assessments and remediate deficiencies where they are found to occur.

The on-line [Supplemental Resources Community Capacity Assessment](#) provides a template for gathering information on individual and collective weaknesses and strengths across community groups. This allows creation of a community capacity assessment targeting characteristics and skills that are considered necessary for effective community involvement throughout the investment process.

2. Provide information and facilitate informed decision-making.

The government should provide investors with information on potential available land and potential available partners. The Ghana Investment Promotion Center (GIPC) should assist the business enterprise to select a prospective investment site.

Once a company has identified a potential site for investment, GIPC, along with the CLS (if present) and Lands Commission, should assist the business enterprise with its due diligence. This should include helping to identify relevant information about land users and communities, including information from any previous assessments of the area and on the status and characteristics of local communities. It will also be critical to ensure the proposed investment conforms to the district level land use plans

The government should assist with identifying and setting up initial meetings with traditional authorities, chiefs, and elders who can then help to consult members of the community. Lands Commission and the local CLS should all be available to the business enterprise to assist with these introductions and introductions to other relevant community leaders, such as leaders of minority groups or women's groups.

The Lands Commission should ensure that the business enterprise provides adequate information to community members in advance of community engagement meetings. This information should include:

- The potential investors and their history.
- The project purpose and geographical scope.
- The business model and proposed project timeline.
- The size of land that will be used.
- The term of the proposed land lease agreement.
- The potential benefits to the community.

- The potential risks, including social, environmental, and financial.

GIPC should provide information on whether a prospective investment involves land previously acquired by another enterprise or the government. If acquired by the government, GIPC should provide information on:

- The details of the expropriation, including the public purpose used to justify the taking.
- The extent of due process (and whether an FPIC standard was applied).
- The extent and timeliness of the compensation paid.
- The extent and quality of local consultations that took place.
- The mechanisms put in place to facilitate communication with community members and leaders.
- Any subsequent grievances or disputes related to the expropriation.

Local government should be aware of and available to facilitate:

- Introductions to community leaders.
- Introductions to relevant local CSOs and local experts.
- Capacity development to support meaningful engagement and decision-making by land users and affected community members.
- Support to conduct an ESIA.
- Implementation of the company's engagement plan.
- Initial meetings with land owners.
- Dissemination of the investor's notice of intent.
- Validation meetings.

3. Play an oversight role in enforcing the FPIC standard.

Even where it is not required under domestic laws and policies, FPIC provides a standard for effective public engagement and decision-making.

To be effective, engagement must take place before and during the negotiations of the land lease, and throughout the life of the investment project. Government authorities have a dual role in this process: government must ensure that investors respect local norms,

while also providing guidance to investors through the complex process of understanding and respecting those norms. As part of this dual role, government should:

- Clearly **define** how consultations should take place.
- **Clarify** the processes and information required of companies.
- **Facilitate** the fulfillment of these requirements.

To assess and support a company's engagement and consultation efforts, the Lands Commission should request a **consultation plan** from the business enterprise. An effective consultation plan can help to ensure that all stakeholders, especially the most vulnerable or marginalized people, are able to participate in consultations and decision-making. An effective consultation plan should:

- **Be prepared with inputs from local experts**, government and non-government, on cultural norms, including whether these norms are discriminatory or exclusionary. National House of Chiefs, OASL, and CLS can provide investors with information about these norms, and can suggest local experts from whom an investor could seek guidance.
- **Be facilitated jointly by the private investor and the Lands Commission** to ensure that:
 - The government authorities are well informed of stakeholders' views on the investment.
 - The investor is able to navigate cultural and legal norms governing consultation.
- **Include a proposed schedule** for continuous stakeholder engagement and consultation.
- **Be discussed and validated with community members** to ensure that they are adequate, and that they reflect the interest and availability of community stakeholders.

Note that local government employees may be asked to act as facilitators as the business enterprise begins to engage the community, or to identify facilitators. A facilitator should be capable of providing broad-based representation of different perspectives, including those of women and other vulnerable groups.

Local government should also participate in subsequent engagement meetings held by the business enterprise. They may need to act as a watchdog to ensure that investors fully

consult and engage community members and stakeholders before and during the negotiation process. The government's presence provides legitimacy to the consultation and engagement process.

Task 2: Conducting Community Assessments

Best Practice

To inform whether both the business and the community should proceed with the investment, and to be in compliance with the LSLA Guidelines, business enterprises must conduct an **Environmental and Social Impact Assessment (ESIA)**. This is comprised of an Environmental Impact Assessment (EIA) and a Social Impact Assessment (SIA). The EIA is required by the Ghanaian Environmental Protection Agency (EPA) as part of the land transaction.

A community assessment will gather information about risks and potential issues that could impede equitable negotiations, fair and mutually beneficial project design, and project implementation that brings about a net positive benefit for communities.

In this context, note that impact 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 land users. Revisions to the investment design should incorporate mitigation measures that will reduce or eliminate impacts and sustain or improve livelihoods. The impact 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 all land users receive equitable compensation and benefits and that the full impact of parting with their land is taken into consideration.

Assessment results should be reflected in ongoing consultation and engagement. It should additionally reflect investment design to reflect and accommodate the impacts and to incorporate mitigating measures.

Step-By-Step Guidance

1. Provide information and expert guidance.

Provide maps, data, and information needed to assess impacts of a prospective investment. Spatial, economic, and demographic information should be made publicly available to support more accurate assessments of risks.

2. Provide oversight, monitoring, and enforcement.

In general, business enterprises will bear responsibility for conducting assessments. However, government can play an important facilitative and oversight role. In Ghana, the EPA should provide oversight for the implementation of the EIA, and should ensure that the process is consultative and accurately records and evaluates tenure and social risks. The EPA should use its regulatory oversight role to require that a public hearing be held to discuss and validate EIAs for large scale land transactions.

GIPC, Lands Commission, and the EPA, as entities charged with investment promotion, approval, and monitoring authority, should be equipped to review assessments and monitor impacts and mitigation measures. Policies and regulations for impact assessment should stipulate the penalties for non-compliance with requirements, such as withdrawal or suspension of permits.

GIPC and Lands Commission should use the information from ESIAs to determine whether a proposed project should be approved, and to guide investors on using the assessment results to improve the design of a project.

Establishing clear lines of authority and clear roles and responsibilities of each stakeholder is an important part of ensuring that regulations are implemented to support responsible investment.

For additional guidance on impact assessments, see [The IISD Guide to Negotiating Investment Contracts for Farmland and Water](#).³⁰

Checklist: Effective ESIAs³¹

To be effective and meet standards of international best practice, impact assessments must be:

- ✓ Designed and developed with the involvement of impacted communities, including marginal groups (migrants), women, and youth.
- ✓ Completed prior to entering into the lease agreement.

- ✓ Shared broadly with the affected communities, ensuring that men and women in communities can access information about assessments.

See [Supplemental Resource Land Rights Assessment Toolkit](#) for more information. This tool kit provides guidance on supplementing an ESIA with a deeper assessment of impacts to land rights, uses, and livelihoods.

³⁰ 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.

³¹ Ghana Commercial Agriculture Project (GCAP) 2015, Recommendations for Large Scale land-Based Investment in Ghana, at 35.

Phase 3

Developing an Equitable Land Lease and Addendum

This phase is about ensuring that the land lease is fair and equitable to all parties, and establishing clear rights, responsibilities, and processes to ensure the long-term sustainability and equity of the land transaction.

Task 1: Negotiating and Drafting the Land Lease and Addendum

1. [Support land owners and land rights holders signing a LOI with the investor that protects their interest.](#)
2. [Support participatory consultations with land owners and land right users.](#)

Task 2: Reviewing and Signing the Land Lease and Addendum

1. [Review lease agreement for compliance with legal agreements](#)
2. [Solicit and obtain final community consent to the investment terms](#)
3. [Convene meeting with community for final contract signing.](#)

Task 1: Negotiating and Drafting the Land Lease and Addendum

Best Practice

The government should work with the business enterprise and all land rights holders to design a socially responsible project that is informed by due diligence process and community level assessments. During the process, comprehensive information should be provided to all land rights holders to ensure all relevant people are engaged and informed.³² The government should facilitate an equitable and participatory negotiation process, supporting both business enterprises and communities by providing information and capacity development support.

This requires the government to:

- Take into account local interests identified through consultation and engagement and impact assessment under Phase 2.
- Inform land owners and land rights holders of their rights and assist them (including by providing professional assistance if necessary)³³ in developing their capacity to negotiate full compensation, benefits, and other terms of agreements.³⁴
- Ensure land owners and land rights holders receives all comprehensive information, the negotiation process is non-discriminatory and gender sensitive, and all relevant people are informed and engaged in the decision-making process.³⁵
- Ensure the business (or appropriate local officials if the government owns the land) seeks FPIC from all affected right holders. Beyond asking land owners and land rights holders for a simple "yes" or "no" in response to the request that they approve the land lease, consent in the context of FPIC entails an iterative process through which the business and land owners and land rights holders conduct a dialogue in which all stakeholders' concerns and input are considered and addressed in the proposed project and land lease.
- Include responsible investment contracting clauses in all documents related to the investment land.

When overseeing the initial stages of negotiation between the land owners and land rights holders and the investing business, the government should adhere to best practices for responsible contracting. Although this guidebook provides a general overview of the process, other experts in this field have compiled more robust resources to facilitate capacity building and understanding around key principles for responsible contracting. Two of the best sources for this information are:

- [Investment guidance from the Columbia Center on Sustainable Investment](#) – These guidance materials were developed by the CCSI, which is a joint project of the Columbia Law School and the Earth Institute at Columbia University. CCSI is both an engine of academic research and a forum for stakeholder discussion, with the ultimate goal of promoting foreign direct investment that comports with the UN's Sustainable Development Goals.
- [The IISD Guide to Negotiating Investment Contracts for Farmland and Water](#) – This guide is produced by the International Institute for Sustainable Development (IISD) with the purpose of promoting investment agreements that are socially, ecologically, and economically sustainable. The IISD is funded by multiple governments and international agencies, which rely on IISD expertise to guide sustainable development policy in key areas like international investment and climate change.

Step-By-Step Guidance

1. Support land owners and land rights holders signing a LOI with the investor that protects their interest.

Currently, investors encounter land owners and land rights holders through a range of channels, including GIPC, the Ministry of Food and Agriculture, independent land experts and brokers, and through their own research and investigations.

GIPC could also play a role in improving cooperation and information sharing among government actors, conducting pre-screening of investors, and supporting capacity development of local community members and leaders so that they are able to participate meaningfully in negotiation, consultation, and contracting processes.

Given this, a Letter of Intent (LOI) mapping out expectations for appropriate inclusivity, consultation, and consent is an important starting point for the lease agreement process

between the business and the community. The LOI outlines the principles that will govern the rest of the negotiation process.

Important elements to consider when drafting an LOI and the resulting lease agreement are listed in the on-line [Supplemental Resource Key Contract Elements](#). In addition, the LOI should include:

- A detailed description and timeline of the proposed negotiation, consultation and drafting process;
- A list of key stakeholders that will be included, along with their roles, rights and responsibilities;
- A description of any professional or legal support that the business enterprise will provide to the community during the lease agreement process;
- Shared objectives between business enterprise and community;
- A description of the role of government authorities in the negotiation, consultation and drafting process;
- A description of the engagement and consultation process that the business enterprise will undertake with the community and individual women and men land holders and users;
- A description or copy of the LRP or RAP, if relevant; and
- A clearly defined process for dispute resolution, which will most likely require a third party.

2. Support participatory consultations with land owners and land right users.

Government should play a facilitation role as a neutral party to consultations, for example, through participatory forums in which community members and investors can exchange information and pose questions about a prospective investment.

The Lands Commission should play a monitoring role to ensure adherence to the LSLA Guidelines and to best practice standards of inclusiveness and transparency.

The on-line [Supplemental Resource Key Contract Elements](#) provides guidance on the terms and elements that should be contained within the Letter of Intent (LOI) and final land lease between the company and community, as well as within any lease agreement between the business enterprise and the government.

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.

If negotiations have materially changed the project concept, the government and business should update investment agreements to reflect those changes.

After these revisions, the government should consult on-line [Supplemental Resource Final Lease Agreement Checklist](#), as well as due diligence research and international best practices guidance, to ensure that the land lease complies with relevant standards.

Task 2: Reviewing and Signing the Land Lease and Addendum

Best Practice

Good contracting practices require that the process to finalize the lease agreement and addendum remain transparent and participatory and that all community members be brought to an equal footing with investing companies and governments.

This means that:

- A neutral third party should review the lease agreement and addendum to validate that it meets the needs of community members and does not cause adverse social impacts.³⁶
- The business enterprise should seek the final consent from land owners and land right users before signing the lease agreement and addendum.
- The business enterprise should make the lease agreement publicly available.

The lease agreement and addendum should not be signed before support is obtained from all stakeholders.³⁷ **If communities do not support the project, it cannot legitimately proceed.**

Step-By-Step Guidance

1. Review lease agreement for compliance with legal agreements.

In accordance with the Lands Commission LSLA Guidelines, at this stage the lease agreement and addendum should be reviewed for compliance with legal requirements and corporate social responsibility commitments, identified risk mitigation strategies, and the duties of the community.

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.³⁸ 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.³⁹

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.⁴⁰

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.”⁴¹ 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.”⁴²
- 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.⁴³

Equitable Compensation

The addendum should be specific about compensation by outlining mechanisms that ensure communities—including men, women strangers, and vulnerable populations—receive equitable compensation. Compensation provisions should address how ground rent payments could, in part, be directed back to the community, and compensation for livelihoods losses and the costs of other impacts should be clearly spelled out. If community development improvements and projects are a part of the compensation paid by the business, these items should also be clearly described in the addendum. If they are not covered in the contract, compensation provisions should direct the parties and any third-party beneficiaries to other agreements or memorandums of understanding that fully describe these benefits.

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

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

2. Solicit and obtain final community consent to the investment terms.

Consent must be provided before project implementation begins. The Lands Commission should hold a final community meeting to ratify and memorialize the community's decision to halt or proceed.

- Consent should reflect the collective will of the land owners and land right holders, although this may not mean consent requires the unanimous agreement of all individuals within the community.⁴⁴ As previously mentioned, consent will be dependent on context and the decision of the company, third party arbitrator, and community.
- However, if there is evidence or there are claims at the meeting that affected land owners and land right holders do not support the project, the business enterprise should identify the dissenting members with specificity and renew the

consultation and engagement process to determine if they can be persuaded to agree.⁴⁵

- In addition, land owners and land right holders should retain the right to withdraw consent at any time “if the proposed activities change or if new information relevant to the proposed activities emerges.”⁴⁶
- If there is no evidence of dissent of participating land owners and land right holders the business enterprise should draft meeting minutes reflecting the community's consent and invite community members to sign the minutes.
- Determine final investment configuration based on land owners and land right holders responses and counter-offers to proposed land lease and addendum.

3. Convene meeting with community for final signing of land lease and addendum.

The final land lease and addendum should be signed by the parties who were identified in the LOI and negotiation process, or by those who have replaced them in the case of death, illness, or migration. This includes having the Customary Land Authorities initial each page of the land lease and addendum.

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.⁴⁷

In addition to the above, the relevant state agencies should require from the investor evidence of the public forum and resulting agreement between the parties; ensure that lease payments are distributed according to the agreement and in accordance with the Constitution and other legal requirements; and review the project plan to ensure that the project implementation conforms to the approved land use for the area.

³² VGGT 12.11.

³³ VGGT, *supra* note 10, at 22.

³⁴ AU Guiding Principles, *supra* note 44, at 15-16.

³⁵ VGGT, *supra* note 10, at 23.

³⁶ See USAID, *supra* note 56, at 51.

³⁷ 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>.

³⁸ Constitution Article 266 (4); Administration of Lands Act, 1962 (Act 123).

³⁹ CCSI (2016) Guide to Land Contracts: Agricultural Projects, at 19. Available at <http://ccsi.columbia.edu/files/2016/03/Ag-Guide-2016.pdf>.

⁴⁰ *Id.* at 52.

⁴¹ *Id.* at 20.

⁴² A Guide to Designing and Implementing Grievance Mechanisms for Development Projects. 2008. Washington, DC: Compliance Advisor/Ombudsman.

⁴³ USAID Operational Guidelines, 7.11 – 7.16.

⁴⁴ See UN-REDD Programme, *supra* note 6, at 20.

⁴⁵ AFD, *supra* note 64, at 24.

⁴⁶ UN-REDD Programme, *supra* note 6, at 20.

⁴⁷ FAO *Respecting FPIC*.

Phase 4

Implementing and Monitoring the Investment

This phase applies to both new and existing investments and ensures that projects are implemented in a responsible manner.

Task 1: Preventing and Addressing Land-Related Disputes

1. [District Chief Executive and CLS support landowning community in taking steps to strengthen community governance systems and ensure preparedness for ongoing investment accountability.](#)
2. [District Chief Executive regularly engages and consults with the business and community authorities to ensure they are mitigating and preventing disputes from occurring.](#)
3. [District Chief Executive and/or CLS ensures that the business and community leadership coordinate to establish a grievance mechanism.](#)

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

1. [Establish roles and frequency of monitoring and reporting.](#)
2. [Establish indicators for monitoring tenure impacts and agreed terms.](#)
3. [Monitor the grievance redress mechanism.](#)

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 community's trust, while resolving unanticipated challenges that will certainly arise as activities deviate from the initial plan, local government should work with the landowning community and the business to establish mechanisms that:

- Ensure on-going engagement and consultation between the community and the business to prevent disputes from occurring. The online [Supplemental Resource Designing a Stakeholder Engagement Plan](#) provides a template for designing a strategy for ongoing community engagement and two checklists for evaluating the community engagement plan based on established standards for stakeholder communication.
- **Ensure access to a remedy** by working with the business to establish a functioning, effective, and accessible grievance mechanism for handling land-related disputes.⁴⁸ The online [Supplemental Resource Grievance Mechanism Checklist](#) provides a high-level checklist for evaluating the company-based grievance mechanism developed by the business in the course of a responsible land investment.

Step-By-Step Guidance

1. District Chief Executive and CLS support landowning community in taking steps to strengthen community governance systems and ensure preparedness for ongoing investment accountability.

Even where investments have already begun implementation, the District Chief Executive and CLS should work to help communities prepare so that the future of the

investment will unfold in a way that respects the rights and needs of community members.

The DCE might consider helping the community identify a CSO to assess and strengthen village governance structures regarding investment.

2. District Chief Executive regularly engages and consults with the business and community authorities to ensure they are mitigating and preventing disputes from occurring.

Some businesses operating in Ghana may have legal legitimacy but lack social legitimacy.

- Limited interaction and communication lead to strained relationships with neighboring communities. Direct communication with community members is often inadequate because there are few mechanisms that enable community leaders and community members to initiate dialogue with the company.

The DCE and CLS should ensure that the business and community establish multiple channels of two-way communication to facilitate clear, well-planned, and frequent consultation and engagement with communities. Approaches should address the particular barriers that women face in accessing information and participating in consultations.

- **Reaffirm terms of the land lease and performance with the community.**
 - Depending on the last interaction with the community, the business enterprise should meet with community members to ensure they have a complete understanding of the material terms of the agreement.
 - Educational activities should be designed to reach all villagers, which may require adjustments to both content and approach to ensure that the material is received and understood by women, men, and vulnerable groups.
- In order to **facilitate continued engagement with the community**, the business should develop an ongoing communication and engagement plan to guide engagement throughout implementation and project close-out. The plan should:
 - Describe the purpose of ongoing engagement with the community.

- Detail plans for engagement with the community, both as a whole and as smaller subsets (community leaders, women's groups, etc.), including specifying the frequency and modes of engagement.
- Identify specific avenues for two-way communication outside of regular meetings.
- Take into account the different legal and social standings and life experience of men and women, and develop specific strategies to support women's inclusion in community engagement and decision-making processes.
- Examine the content of messaging and the format of engagement (including timing and location) and make adjustments as needed to encourage women's participation. For example, it may become apparent that women are uncomfortable speaking in front of groups of men, and as a result, the investor may need to host separate meetings where women feel more comfortable expressing their opinions.
- Include activities that require regular reviews of the lease by land users in order to ensure that the project is implemented in accordance with the mutual promises, expectations, mitigation strategies, and conditions contained within the lease, such as compensation.
- Where challenges are identified, stakeholders should work together to identify appropriate approaches to overcome them, which may include making changes to the project.
- **Frequently review and update the strategy on a specific, agreed upon schedule.**

3. District Chief Executive and/or CLS ensures that the business and community leadership coordinate to establish a grievance mechanism.

The local government often lacks sufficient resources to resolve land disputes or to enforce decisions, and CLS are not always present where a land investment occurs. Moreover, developing an investment-specific grievance mechanism is an important best practice to ensure that any ongoing investment project fulfills best practices and standards for responsible investment.

Guidance relating to responsible land-based investment emphasizes the need for business-based, non-judicial grievance mechanisms to complement any existing state-based, judicial grievance mechanisms. Due to the numerous governance gaps surrounding land-based investment and dispute resolution in Ghana, it is doubly important that the community works with the business to establish a robust non-judicial grievance mechanism.

The District Chief Executive and CLS should support the community leadership to develop a process for holding the business accountable for dispute resolution where appropriate. The mechanism should comply with the [UN Guiding Principles on Business and Human Rights](#) (UNGPR) criteria for non-state dispute resolution processes. Consult [Supplemental Resource Grievance Mechanism Checklist](#) online for guidance on whether the business is complying with the following criteria:

- **Legitimate:** Enable trust from the mechanism's users and ensure accountability for the fairness of the grievance resolution process.
- **Accessible:** Be known to all potential users and provide assistance for those who may face particular barriers to access, such as women, pastoralists, and other vulnerable groups.
- **Predictable:** Be clear on the types of processes and outcomes available and means of monitoring implementation.
- **Equitable:** Provide users reasonable access to the information, advice, and expertise necessary to engage on fair, informed, and respectful terms.
- **Transparent:** Keep parties to a grievance informed about its progress and provide sufficient information about the mechanism's performance to build confidence in its effectiveness.
- **Rights-compatible:** Ensure outcomes and remedies comply with internationally-recognized human rights standards.
- **Source of continuous learning:** Identify lessons for improving the mechanism and preventing further grievances and harms.
- **Based on dialogue and engagement:** Consult users on the mechanism's design and performance and focus on dialogue as the means to address and resolve grievances.⁴⁹

Designing and Implementing the Mechanism

- The DCE should encourage the business to **dedicate sufficient personnel and resources** to designing, implementing, and managing its grievance mechanism.
- The DCE should encourage the business to **consult with community members potentially affected by the investment** to incorporate their input into the mechanism's design.
 - All categories of community members and relevant external stakeholders should be consulted regarding the grievance mechanism, including women, indigenous peoples, and other vulnerable groups; civil society organizations; local government officials; and community leaders.
 - Feedback obtained during consultations with external stakeholders should be incorporated into the design, implementation, management, and monitoring of the grievance mechanism. The mechanism should reflect and be compatible with customary dispute resolution mechanisms and should be accessible to and trusted by all relevant stakeholders, including women, indigenous peoples, and other vulnerable groups.
- The DCE should encourage the business to **sensitize staff regarding the importance of identifying and respecting formal and customary land rights**. The more employees are aware of the business's reasons for committing to conduct socially responsible investments, the better able they will be to manage and enforce the grievance mechanism to deal with land-related disputes seriously and effectively.
- The community leaders, CLS, and the business should work together to **determine the scope of the grievance mechanism by determining what types of land-related grievances it is likely to receive**.
 - ESIA results should help identify which complaints are most likely to arise. For example, if the ESIA indicates that the proposed land acquisition and project (e.g., a new sugarcane plantation) will use significant amounts of water, then it is possible that individuals or communities may have complaints alleging that the business enterprise is using too much water and contributing to water shortages.
- The DCE and CLS should work with the business and community leadership to **inform communities of the grievance mechanism**. Communicate in a manner in line with the communities' preferred modes of communication (e.g., radio, local

newspaper, flyers, bulletins, consultations, etc.) to share the following information:

- Information on how individuals and communities (including both women and men) can file complaints with the grievance mechanism (e.g., in person at the business's office, via mail or drop box, with a community representative, with a community leader, during the business's routine visits to communities, etc.).
- Information on what types of complaints the grievance mechanism will receive.
- A description of the procedures for receiving, processing, and responding to complaints (e.g. the time period for responding to complaints, the manner in which the business will respond to complaints, the time period for investigating complaints, the time period for filing an appeal, etc.).
- A description of the procedures for monitoring and evaluating the effectiveness of the grievance mechanism to ensure it is serving communities as intended.

Receiving and Responding to Complaints

- The DCE should make sure that the business has **clear procedures in place for how it will *receive* complaints.**
 - The procedures should be developed in a manner that ensures all Village Assembly members (including both women and men) are able to file complaints easily and in confidence.
 - To help build trust between communities and the business, the business should provide prompt confirmation documenting that it has received the complaint and will determine whether it represents a covered violation. The confirmation will provide the complainant with acknowledgement that the business is taking the complaint seriously and will be reviewing it.
- The DCE should ensure that the business has **clear procedures in place for how it will *process* complaints.**
 - The procedures should detail what types of grievances will be covered by the mechanism and how the business will determine whether the complaint alleges a covered violation that will trigger an investigation.

- To promote transparency, the procedures should indicate how long it will take the business to determine whether it will investigate the complaint.
- The DCE should make sure that the business has **clear procedures in place for how it will resolve complaints**. There is no one-size-fits-all process for resolving complaints. What is important is that the process is transparent and accepted by the community. The complaint resolution process will go more smoothly and enjoy more community support if it builds on existing customary dispute resolution structures in reaching final decisions, as this will help to build community trust in the business's grievance mechanism, as well as make implementation, and stakeholder satisfaction with the final decision, more likely.

Monitoring and Evaluating the Mechanism

- The DCE should make sure that the business has **clear procedures in place for monitoring and evaluating the grievance mechanism**. The business should monitor and evaluate the following:
 - The number of land-related complaints it receives.
 - The average time the business takes to respond to complaints, determine whether the complaint alleges a covered violation, investigate the complaint, and reach a final decision regarding the complaint.
 - If the business and complainant(s) reached a resolution, and whether the parties are satisfied with the resolution.
 - If the business and complainant(s) failed to reach a resolution, and why the parties did not reach a resolution.
- The DCE, CLS, and the business should **share Monitoring and Evaluation results with interested parties and use the results to improve the grievance mechanism**. It is important for the business to evaluate and demonstrate whether the grievance mechanism is functioning, accessible, and effective and make changes where necessary.
 - For example, although a high rate of complaints could indicate poor relations between the business enterprise and local communities, it could also indicate that the grievance mechanism is functioning as intended and is helping to improve relations between the business enterprise and communities. Regardless, the business should use Monitoring and Evaluation results to adapt and improve the grievance mechanism.

⁴⁸ See VGGT, *supra* note 44, at 4; New Alliance for Food Security and Nutrition, *Analytical Framework for Responsible Land-Based Agricultural Investment* (2015), available at: https://docs.google.com/viewerng/viewer?url=https://new-alliance.org/sites/default/files/resources/Analytical-framework-for-land-based-investments-in-African-agriculture_0.pdf; UNGP, *supra* note 50, at 31-32.

⁴⁹ USAID, *supra* note 69, at 53.

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

In Ghana, communities often lack the capacity or status to play their role in investment implementation. Thus, **the government provides a key role in ensuring that investment promotion measures and tenure safeguards are implemented** to support local and national development goals. This is also a chance for the government to evaluate the effectiveness of policies and procedures, and to revise or remediate regulatory processes as needed.

Some recommended potential roles for government agencies are:

Potential Roles	Government Authorities
Compliance with the land lease	CLS, Judiciary
Payments to the state	Ghana Revenue Authority
Payment of ground rent to landowners	OASL
Payment of lease to landowners	Contracting parties
Payments of other fees	OASL
Payments to communities (e.g. benefit sharing agreement)	District Assembly
Investments in infrastructure	District Assembly
Employment terms/job creation	District Assembly
Impacts on tenure rights and rights holders	Traditional Authorities
Impacts on human rights	CLS
Impacts on livelihoods	District Assembly Chief Executive Judiciary Commission on Human Rights and Administrative Justice
Environmental impacts	Environmental Protection Agency
Conflicts and disputes and their resolution	Judiciary

Best Practices

Throughout the lifecycle of the project, the business should be monitoring and evaluating its performance under the terms of the land lease and addendum and applicable laws and standards. After the agreement is in place, the government – particularly the Lands Commission support desk and District Assembly – should monitor impacts on tenure rights, and should take corrective action where necessary to enforce agreements and protect tenure and other rights.

Step-By-Step Guidance

1. Establish roles and frequency of monitoring and reporting.⁵⁰

Clearly establish who will be responsible and how often monitoring and reporting will occur. This ensures that monitoring efforts are effective and well-coordinated.

While the land lease and addendum should establish self-reporting by the company, a lead government authority should be responsible for coordinating monitoring activities, information flows, and reporting. In Ghana, that could be GIPC, the CLSSs, or the Lands Commission.

The timing of monitoring activities will depend on the type and source of the information. Minimal reporting requirements under Ghanaian law mean that most monitoring will be based on self-reporting by the company. These reports could be complemented by reporting by EPA and other agencies, which could conduct annual compliance auditing to monitor risk areas identified in the ESIA process.

Sample roles and frequency of monitoring and reporting:

Timeframe	Type of Monitoring/Reporting	Monitor/Reporter
Bi-annually	Self-reporting	Investor
Bi-annually	Third-party reporting	Civil society organizations and human rights institutions
Annually	Physical audit/visit	EPA Lands Commission

2. Establish indicators for monitoring tenure impacts and agreed terms.

These provide the framework by which to evaluate the investment. Potential indicators include:

Impact	Metric
Perceived level of tenure security and threats	Increase/Decrease/No Change
Increased land disputes in the project area	Number of land disputes per year
Increased intra-household conflict in the project area	Number of disputes per year
Increase in evictions in the project area	Number of evictions per year
Increase in land prices and speculation	Price per acre on open market
Access to water and other resources	Number of households reporting decreased access
Increase in landlessness in the project area	Number of households without land

3. Monitor the grievance redress mechanism.

Investment-specific grievance redress mechanisms are necessary to support socially responsible investments.⁵¹ The business enterprise should ensure that these are available, accessible, and functional.

Government agencies should ensure that the project has set-up grievance mechanisms and that they feed into the country's established justice system. The grievance mechanisms should comply with the UNGPs criteria for non-state dispute resolution processes:

1. Legitimacy
2. Accessibility
3. Predictability
4. Equity
5. Transparency
6. Rights-compatibility
7. Source of continuous learning
8. Based on dialogue and engagement

For more detailed guidance on company-based grievance mechanisms, see the on-line [RIPL Primer on Grievance Mechanism](#).

⁵⁰ This section is adapted from FAO (2015). Governance of Tenure Technical Guide No. 4 – Safeguarding land tenure rights in the context of agricultural investment, available at: <http://www.fao.org/3/a-i4998e.pdf>.

⁵¹ USAID (2016) Operational Guidelines for Responsible Agricultural Investment, available at: https://www.land-links.org/wp-content/uploads/2016/09/USAID_Operational_Guidelines_updated-1.pdf
Investors subject to the IFC Performance Standards are required to establish project-specific grievance processes; the VGGT and UNGP also confirm company-based grievance processes as a best practice for land-based investment.

A GUIDEBOOK FOR GOVERNMENT OFFICIALS SUPPORTING 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