

GUIDEBOOKS BY COUNTRY



SOCIALLY RESPONSIBLE LAND INVESTMENT IN TANZANIA

A Guidebook for Business Enterprises Considering Agricultural Investment in Tanzania



Responsible Investments
in Property and Land



Department
for International
Development



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

About this Guidance

Socially Responsible Land Investment: Model Guidebook for Business Enterprises Considering Agricultural Investment

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

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

Contributions were made by:

- Tanzania National Resource Forum (TNRF), a civil society organization striving to improve natural resource management and conservation in Tanzania by addressing issues of governance;
- A 20-member project advisory group comprising of government, civil society and private sector representatives was established in each country to provide regular input into the process. Members of the PAG are from the following institutions and organizations; Ministry of Lands, Housing and Human Settlements Development; Ministry of Agriculture Livestock and Fisheries Development; Ministry of Health, Community Development, Gender, Elderly and Children; Ministry of Natural Resource and Tourism, the National Land Use Planning Commission; Tanzania Investment Center; University of Dar es Salaam; Ardhi University; Ujamaa Community Resource Team; Tanzania Women Lawyers Association; Hakiardhi; Tanzania Gender Networking Programme; Oxfam, and EKAMA Foundation; and
- Resource Equity, a nonprofit organization that advocates for legal, policy and social change aiming to achieve secure land and resource rights for women.

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 and Tanzania Country Guidebooks, extensive consultations with policymakers and communities were held.

Acknowledgments

The development of this Guidebook was made possible by funding from DFID as part of their LEGEND Program. We extend our gratitude to the Ministry of Land, Housing and Human Settlements Development for their endless support and contributions that have made it possible to develop this Guidebook.

This Guidebook wouldn't have been possible without the continued support of our co-implementing partner, Tanzania Natural Resource Forum (TNRF), particularly Godfrey Massay, Wilbard Mkama, Masalu Luhula, Digna Irafay and Amne Manangwa who made invaluable contributions to the research, coordination and development of this Guidebook.

Similarly, many thanks to the members of the RIPL Project Advisory Group that provided us with guidance, support and encouragement throughout the different stages of this Guidebook's development. Members of the PAG are from the following institutions and organizations; Ministry of Lands, Housing and Human Settlements Development; Ministry of Agriculture Livestock and Fisheries Development; Ministry of Health, Community Development, Gender, Elderly and Children; Ministry of Natural Resource and Tourism, the National Land Use Planning Commission; Tanzania Investment Center; University of Dar es Salaam; Ardhi University; Ujamaa Community Resource Team; Tanzania Women Lawyers Association; Hakiardhi; Tanzania Gender Networking Programme; Oxfam, and EKAMA Foundation.

We equally appreciate detailed feedback on this Guidebook provided by three expert reviewers; Dr. Ringo Tenga of the University of Dar es Salaam, Dr. Adam Nyaruhuma of the Ministry of Lands, Housing and Human Settlement Development, and Mr. Gerald Mwakipesile of the National Land Use Planning Commission.

Special thanks to David Bledsoe, Renee Giovarelli, Leslie Hannay and Amanda Richardson of Resource Equity and Lukasz Czerwinski, Jolyne Sanjak, Tizai Mauto, Monica Mhoja, and Chris Jochnick of Landesa who contributed their expertise and assistance. A big thank you to Michael Harvey, Zachary Hale and Megan Olson of Landesa for their many hours of reviewing, editing, formatting and finalizing material.

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List of Abbreviations

ACHPR	African Charter for Human and People's Rights
AU Guiding Principles	Guiding Principles on Large-Scale Land Investments in Africa
BRELA	Tanzania Licensing Authority
CAADP	Comprehensive Africa Agriculture Development Programme
CCRO	Certificate of Customary Right of Occupancy
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CFS	Committee on World Food Security
CI	Certificate of Incentive
CLDO	Customary Law Declaration Order
CSO	Civil Society Organization
DED	District Executive Director
DFID	Department for International Development (UK)
DLAC	District Land Allocation Committee
EIA	Environmental Impact Assessment
EMA	Environmental Management Act, 2004
EPZ	Export Processing Zone
EPZA	Export Processing Zone Authority
ESIA	Environmental and Social Impact Assessment
FAO	Food and Agriculture Organization of the United Nations
FPIC	Free, Prior and Informed Consent
GRO	Granted Right of Occupancy
HRIA	Human Rights Impact Assessment
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights

Tanzania RIPL Guidebook for Business Enterprises

LIU	Land Investment Unit
LEGEND	Land Governance for Economic Development Programs
M&E	Monitoring and Evaluation
MLHHSD	Ministry of Lands, Housing and Human Settlements Development
MOU	Memorandum of Understanding
NLUPC	National Land Use Planning Commission
PLUM	Participatory Land Use Management
PRA	Participatory Rural Appraisal
RIPL	Responsible Investment in Property and Land
SAGCOT	Southern Agricultural Growth Corridor of Tanzania
SEZ	Special Economic Zones
TIC	Tanzania Investment Center
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
UNGP	United Nations Guiding Principles on Business and Human Rights
UPR	Universal Periodic Reviews
VEO	Village Executive Officer
VLUMC	Village Land Use Management Committee
VLUP	Village Land Use Planning
VGGT	Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security

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1.

Introduction & How to Use this Guidebook

Introduction

This Responsible Investment in Property and Land (RIPL) Guidebook will take business enterprises through the steps needed to commit to and carry out responsible land investments in Tanzania.

Our goal is to provide businesses all the information they need to adhere to Tanzanian law and international standards and best practices as they go through the investment process in Tanzania, from researching the agricultural investment and conducting due diligence all the way through monitoring and evaluating an ongoing investment.

This section will discuss:

- ✓ Where these guidebooks came from,
- ✓ How to use this guidebook, and
- ✓ How this guidebook is structured.

Background for the RIPL Guidebooks

In established market economies, the policies, laws, regulations, and state administrative and judicial systems that govern land transactions are known as **land governance frameworks**. Ideally, these frameworks reflect the best practices listed in this guidebook. In places where this is true, most land investments can be said to be **responsible investments**, typically the result of agreements between willing buyers and willing sellers. In places where this is not true (i.e. where state laws do not follow best practices or the state lacks capacity to implement best practices), a legal investment may still be irresponsible.

In a well-functioning land governance framework, for example, no sale, lease or change in the use of a land asset occurs without notice, consultation, negotiation and consent. Equitable and beneficial deals are the rule, and if there is a dispute or breach of an agreement, judicial and administrative remedies are accessible, effective and just.

Unfortunately, however, many emerging economies lack governance frameworks embodying these best practices. Even if they are in place, the capacity of the

government and landholding communities is often insufficient to implement them. Complicating the situation, individuals possessing land rights – especially women – frequently hold their interests and rights informally or may be at risk of dispossession absent best practices. Even if their rights are formally documented, prevailing norms and traditions may mean that women may be excluded from consultation and decision-making processes. In Tanzania, laws are generally in place but government capacity to implement is often lacking (particularly at the district and village level), and the informal land situation is unique (refer to the [Themes for Responsible Investment section](#)), requiring that investors take special care to understand whether and in what way to proceed with an investment.

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 company and the community members. It is not hard to imagine how conflict can erupt from this kind of situation, resulting in 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 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 less 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 meaningfully include women in situations where they are not customarily included, such as community meetings and land transaction processes. Limited government capacity poses a further barrier to effective enabling frameworks: governments may need help to maintain and enforce equitable land practices. At the same time, companies looking to invest may need help navigating those institutional and governance shortcomings to uphold equitable land practices in their investments.

With support from the United Kingdom's Department for International Development (DFID) Land Governance for Economic Development (LEGEND) Programs, Landesa's [RIPL Project](#) is addressing these challenges by condensing international guidelines and best practices into guidebooks. These guidebooks offer country- and audience-specific step-by-step instructions for how to implement best practices and international standards, 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 Tanzania include:

- **Location:** the region and district within the country, nature of informal land governance, and nature of the land market;
- **Sophistication and functionality of existing land governance framework** and extent to which it reflects international best practices;
- **Capacity of government and institutions** to implement effective enabling frameworks;
- **Agricultural commodities** that are part of the investment;
- **Modes of production**, such as irrigation, rainfed farming, small scale farming and outgrower schemes;
- **Livelihood strategies** of land holders and users;
- **Competition for land resources** and extent of land availability;
- **Legal and social status of women** within the investment area; and
- **Opportunity of all land holders and users** – including women, pastoralists, and migrant farmers – to participate, be represented and ensure the use of best practices throughout the land development process.

It is also important to note that the RIPL Guidebooks are not about rectifying historic land grabs.¹ Still, business enterprises (and governments) should always look 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. Furthermore, the best practices described in this guidebook should be seen as the floor, not the ceiling, for responsible land-based investment.

How to Use This Guidebook

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

Guidebook Audiences: Investment Stakeholders

There are three broad investment stakeholders: business enterprise or investor; government and the community of people. 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 Businesses

Business enterprises must take the initiative in implementing best practices when governance frameworks are lacking or communities lack adequate resources or capacity. Even if the government is technically the lead party in certain situations, it is ultimately up to businesses to do their due diligence to understand the rights and risks that an investment may pose for the people affected by a potential land investment transaction. Responsibilities go beyond initial due diligence; a business must act responsibly throughout the investment process, from negotiation to implementation.

This 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 Tanzania, this guidebook includes information on international standards and best practices, Tanzania's governance and community landscape, and how to manage an agricultural investment responsibly.

The Role and Responsibilities of Government

The Tanzania government should support businesses and communities in implementing best practices to ensure responsible investment. The government has the responsibility to: recognize and respect all legitimate tenure right holders and their rights (treating women and men equally), safeguard legitimate tenure rights against threats, make efforts to promote and facilitate the full realization of tenure

rights, support equitable transactions, provide access to justice to deal with infringements of legitimate tenure rights, uphold laws promoting gender equity, take steps to prevent tenure disputes from arising and escalating into conflicts, protect businesses from extortion or graft, and respond to businesses and communities that are engaged in a land matter. These responsibilities also feed into the government's other general responsibilities with respect to environmental conservation, food security and domestic security, which all depend on an effective and equitable land tenure regime.

The Government Guidebook's intended user is a district level official who may not be familiar with best practices related to responsible agricultural investments or completely knowledgeable about Tanzania's investment process. Given this, the guidebook contains material about Tanzania governance and investment process as well as information on how to guide and support a business enterprise in achieving a responsible investment.

The Role and Responsibilities of Communities

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 opportunities 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 or informal practices with international standards,** which may be quite challenging. For example, in some communities customary leaders – usually a male elder or chief – hold 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, youth, elderly, ethnic and religious minorities, indigenous people, and pastoralists – should be involved in the negotiation process. After all, though these groups may not have rights within a customary setting, they are land users and may have rights from a national or international legal perspective. This means that some communities may need to alter practices to include these stakeholders in discussions where they may not normally be included.

- **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 assisting with or guiding land use planning will leave a community better prepared to weigh the options and engage with a business on a potential investment.
- **Learn about how agricultural investments work**, such as available national and international protections, the typical steps comprising a land transaction, and best practices and processes to achieve a fair, equitable and enforceable agreement.

Civil society can also assist communities during the planning, assessment, contracting and implementation of an investment by serving as facilitators, experts, interpreters and collaborators. This engagement may prove helpful to business enterprises as well, who will likely need help effectively reaching and engaging with community members. 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 Community Guidebook's intended users are representatives in the community engaging with government and business on behalf of the broader community. This guidebook refers to this group as a Land Committee with a sub-group of members called the Negotiation Team.

Guidebook Structure

Each RIPL Guidebook follows a similar structure, providing:

- An overview of international best practices for responsible land investment.
- Background information outlining Tanzania's context.
- Step-By-Step guidance for each phase of the investment process, which includes detailed best practices and step-by-step instructions for how to carry them out. **Phase 1, 2 and 3 are intended for a new investment. Phase 4 was designed for an existing investment.**
 - Phase 1: Preparing for Investment
 - Phase 2: Community Engagement and Assessments
 - Phase 3: Developing an Equitable and Inclusive Contract
 - Phase 4: Implementing and Monitoring the Investment
- Supplemental Resources at the end of this document:

- SR 1: Obligations Under International Treaties and Conventions
- SR 2: Overview of Tanzania Legal Framework
- SR 3: Sample Company Policies
- SR 4: Why Land Matters: Communicating Your New Land Commitment
- SR 5: Community Consultation Checklist
- SR 6: Community Capacity Assessment
- SR 7: Land Rights Assessment Tool Kit
- SR 8: Risk Mitigation Analysis
- SR 9: Final Contract Checklist
- SR 10: Designing a Stakeholder Engagement Plan
- SR 11: Best Practices in Outgrower Arrangements Literature Review
- SR 12: Monitoring & Evaluation Indicators

There is also information organized by thematic area in our primers. Primers are approximately 10-page briefs designed to complement the step-by-step guidance. They provide more detailed information on several key topics referenced throughout the guidebook. An understanding of these topics will be central to contextualizing and accomplishing the best practices. Some primers will be referenced throughout the guidebook where appropriate, and all primers are available online at <https://ripl.landesa.org/primers>.

¹ Although there is scant literature about the legacy issue, two recent publications present detailed analyses of the subject. See L. Cotula, T. Berger & P. Sutz, "Addressing Legacy Land Issues in Agribusiness Investments," LEGEND Analytical Paper 2 (2016), available at <https://landportal.info/library/resources/legend-analytical-paper-2/addressing-legacy-land-issues-agribusiness-investments>; N. Flanders & J. Jenks, *A Guidance Note on Managing Legacy Issues in Agribusiness* (2015), available at http://www.cdcgroup.com/Global/20879_CDC_LandLegacy_AW_160630_WEB%5B2%5D.pdf.

2.

International Standards & Best Practices

International Standards & Best Practices

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

These standards have been created, in fact, because **in many places the national laws simply do not do enough to protect communities** who have a right to use purchased agricultural land.

This section will discuss:

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

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, each produced in some part by the United Nations (UN), that embody all the agreed upon principles and best practices:

- *Guiding Principles on Large-Scale Land Investments in Africa (AU Guiding Principles)* by the African Union, African Development Bank and United Nations Economic Commissions for Africa; and
- *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT)* by the Committee on World Food Security (CFS) and Food and Agriculture Organization of the United Nations (FAO).

See Supplemental Resource 1 for the list of other international standards that apply. At a high level, these best practices call on business enterprises to work equitably with communities and individuals. This includes (but is not limited to):

- Making a commitment to uphold both national law and international standards;
- Providing notice to all land rights holders (including women, pastoralists and migrant farmers) about the investment;
- Engaging and consulting with Village Councils and Village Assemblies about how to design and implement an investment;
- Recognizing and formalizing the rights of land holders and users;
- Asking land rights holders to freely consent, with the option to decline;
- Assessing land impacts via an 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; and
- Establishing and implementing grievance mechanisms.

Comparing Tanzanian Regulatory Requirements against Best Practices

Tanzania's legal framework establishes an investment process, but the content and application of the framework does not always comport with best practices for achieving a responsible investment.

The following table briefly compares the Tanzanian 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. For a more detailed look at the relevant Tanzanian legal framework, consult [Supplemental Resource 2](#).

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>Develop and implement company policies, commitments and frameworks</u>	Not mandated	Not required by law. Significant gap	Create business policies that reflect and adhere to relevant Tanzania laws and international standards for responsible investment.
<u>Conduct due diligence</u>	Not mandated	Not required by law. Significant gap	Understand the Tanzania context, identify issues and risks the project poses to communities and individuals, and identify mitigating responses and measures. Determine if the land investment can be done in a way that is fair and respects the rights of the community and affected stakeholders, decide how the project might be designed, and make a final go/no-go decision. Repeat due diligence regularly over the course of the investment lifecycle through audits and self-reporting.
<u>Engage and consult with communities and individuals</u>	Investment Act; Land Use Act; Village Land Act; VLUP Guidebook	Insufficiently required by law. Significant gap.	Share assessment results and perform expanded consultation and engagement with village assembly. Consultation should reach all land holders and users in an interactive, culturally and gender-sensitive way.
<u>Conduct community capacity and impact assessments</u>	VLUP Guidebook	Insufficiently required by law. Significant gap.	Assess and significantly improve community capacity to receive, use and provide information, as well as capacity to make informed decisions about the investment project. Assess all investment impacts and create mitigating and accommodating measures and investment features.
<u>Negotiate inclusive contract with community</u>	Land Act	Insufficiently required by law. Significant gap.	In cooperation with the community, create an equal footing between the parties and agree on equitable and understandable contract terms that describe obligations, rights, benefits and remedies.
<u>Develop equitable contract</u>	Land Act	Insufficiently required by law. Significant gap.	Supplement the standard lease provisions called for in Tanzania with additional scope of contract participation and related clauses to include and protect the rights of communities.

<u>Sustain best practices and introduce new measures needed to sustain them over the investment's life</u>	Not mandated	Not required by law. Significant gap.	Sustain the application of the best practices over the full life of the investment. Create and maintain a grievance mechanism to better identify problems and sustain best practice responses.
<u>Monitor and evaluate</u>	Not mandated	Not required by law. Significant gap.	Conduct regular and meaningful monitoring and evaluation to verify performance and to identify and remedy implementation challenges and unanticipated impacts.

Important Concepts for Businesses: Social License to Operate & FPIC

There are two key standards for acceptable engagement with communities that underpin the aforementioned best practices for responsible investment in land:

1. Social license to operate, and
2. Free, prior and informed consent.

It is important for business enterprises to understand both of these interrelated concepts prior to engaging in a land investment, as they are both critical for creating sustainable, healthy investments. Together, these concepts will help investments to thrive.

Social License to Operate

For a business enterprise to be successful, it is important that it gains the trust and confidence of all affected communities, land holders and users. This trust, which takes work to both secure and maintain, is known as **social license to operate**. Social license can be defined as the measure of trust and confidence society has in a business to behave in a legitimate, transparent, accountable and socially acceptable way.²

Social license is built upon or damaged by the way that people view the individuals, activities, statements or policies of a business.³ In other words, it is based on *perceptions* by a number of stakeholders. Social license is not formally granted on the basis of legal or regulatory compliance; legal compliance on its own is not sufficient to ensure that a company has an enduring social license, though the

existence of social license usually is linked to legal compliance and reflects the perceptions of communities.

Without this social license, business enterprises risk conflict, delays, reputational damage and more.⁴ This is true even if the business has a legal right to operate. In other words, it is in the best interest of the business to work with relevant stakeholders and communities in a responsible manner designed to build trust and confidence. This idea is at the heart of matter of the guidance presented in this guidebook.

Public perception shapes social license, and negative perception erodes it.

Perceptions of behavior and performance stem from factors such as:

- Extent to which a business complies with legal and regulatory frameworks and international norms;
- Degree to which employees are satisfied and extent to which any issues are communicated to the public;
- Extent to which a business is seen to act contrary to the public good;
- Extent to which a business operation treats or impacts men and women differently;
- Extent to which a business appears to unfairly benefit from assets (like land) seen to have been acquired unfairly;
- Extent to which a business is seen as being responsible for complementing government efforts in delivering basic services and community development improvements and the business's performance relative to this expectation;
- Extent to which a business tends to prosper in the midst of communities or individuals that are not prospering; and
- Extent to which village leaders, community members or state authorities characterize a business as an abusive or bad neighbor or corporate citizen.

In this way, social license is most evident when it is lacking. When social license erodes, a business begins to see the risks and damages that a loss of social license can cause. Risks and damages for businesses vary, but may include labor strikes, theft, vandalism, encroachment and general hostility towards company staff.

Mitigating these issues can be costly and time consuming. Conflicts can be avoided by establishing and maintaining a relationship of fairness and trust with land holders and users from the outset of an agricultural investment project.

Businesses can also foster positive images and enhance their social license to operate by:

- Acting fairly and equitably;
- Operating transparently;
- Sustaining strong communications, engagement and consultation efforts;
- Complying with the requirements of governance frameworks;
- Operating according to best practices, such as those established by international standards and principles (such as FPIC);
- Treating women equally and make special effort to promote and protect women's rights and uses of assets (such as land);
- Providing for fair, accessible and responsive grievance mechanisms;
- Having and observing internal policies related to social, economic and environmental impacts and mitigation;
- Engaging in corporate social responsibility initiatives (that could include many of the above items);
- Providing community services and development benefits; and
- Requiring that their suppliers and associates embrace the behaviors described above.

The phases and steps in this guidebook are designed to help businesses ensure these actions are taken.

Free, Prior and Informed Consent

Another necessary part of developing a high level of trust between an investor and communities is obtaining FPIC. FPIC carries with it the element of choice to accept or reject the change in land use that accompanies the proposed investment.

Unlike social license to operate, which is a social construct, FPIC is a legal one. Under UN principles, FPIC (requiring “consent”) is required for indigenous communities; and robust “consultation” is required for non-indigenous communities.⁵ That being said, it is often broadly interpreted as best practice to obtain the FPIC of all communities that maintain customary rights to or uses of land and natural resources.⁶ Businesses also understand that it is difficult to maintain a social license when surrounded by displaced land holders and users who did not have a choice. Indeed the United Nations Guiding Principles on Business and Human Rights (UNGPs) call on businesses to adhere to FPIC, even where it is the government's responsibility. Therefore, leading companies are treating all affected communities under the higher standard afforded to indigenous communities.⁷ “Affected

communities” refers to all communities and individuals whose land rights, uses, and livelihoods may be impacted by an investment. Consult [Supplemental Resource 3](#) 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. FPIC is therefore central to land-based investment projects seeking to transact responsibly.

Choice must be fully informed. For land-based agricultural investments, FPIC requires that affected communities and individuals (both women and men):

1. Are provided with all information relevant to the investment and its potential impacts, in a language and format that they can understand;
2. Have as much time as needed to assess the information and investment opportunity; and
3. Are able to make a decision as to whether or not to proceed with the investment without any undue influence or coercion from the government, business enterprise or other outside source.

FPIC in Tanzania

Although Tanzanian law does not expressly call for informed consent prior to curtailing or transferring community or individual land rights or uses, it does contain several provisions relating to FPIC:

- Article 21 of the Constitution provides that “every citizen has the right and the freedom to participate fully in the process leading to the decision on matters affecting him or his well-being.” Arguably, this requires an opportunity to be consulted and heard during any process affecting land use. Article 9 also requires the government to treat men and women equally and prohibits any form of discrimination, supporting the FPIC principle that both women and men must give their consent.
- Article 146 of the Constitution embraces local self-determination when it says that “the purpose of having local government authorities is to transfer authority to the people.” Local government authorities are entrusted with the right and power to participate, along with the people they govern, in planning and implementing development programs.
- The Village Land Act further calls for enacting as a fundamental principle of national land policy enabling “all citizens to participate in decision making on matters connected with their occupation or use of land.”⁸

Business enterprises should acknowledge the right of citizens to participate as well as the responsibility placed on district government to ensure that communities are consulted and participate in investments that impact their lives or livelihoods.

To meet a best practice standard for consultation and engagement, affected individuals and communities must have access to relevant, timely and accurate information sufficient to support an informed dialogue. The process of deliberation and decision making must be locally legitimate and respectful of the cultural norms of the community. However, current laws and policies and their implementation fall short of best practices.

For example, law land transfers less than 250 hectares only require one meeting of the Village Assembly to inform itself about a land transfer and to approve or reject the transfer. The process should be a series of meetings over a long period of time, giving individual community members' sufficient time to consider potential implications on their land and livelihoods from the investment. Furthermore, although the Village Assembly ostensibly includes all village adults, no quorum is set for constituting a Village Assembly meeting. It has been assumed, in the absence of regulatory guidance, that a simple majority of those in attendance is required to signify an assembly action. However, findings from field work show that women, pastoralists and other marginalized community members are often either absent from Village Assembly meetings or are not allowed to participate or vote even though they have a legal right to do so.

- Although single women have a legal right to own and access land, they typically are not able to own land or have access rights and are usually excluded from assembly meetings that address land.
- Pastoralists are often limited to observer status at meetings rather than being afforded participation opportunities or voting rights, even though they have a legal right to vote and participate in making decisions. They often lack knowledge of village by-laws and village registration practices, which would otherwise allow them to participate in decisions affecting the community.
- Pastoralist women may be particularly isolated from vital information. Most pastoralist women lack an understanding of their individual rights to access and own land.
- Decisions over land are mainly carried out by men and are rarely shared with women.

Despite the role set out for district government, lack of government capacity limits meaningful consultation and engagement by communities. District governments often lack the capacity to oversee or enforce the legal requirements of participation, consultation and full, informed consent.

Furthermore, it may be difficult for business enterprises, communities and governments to parse out the distinctions between the legal requirements of consultation and participation in some projects and FPIC in others. Therefore, to mitigate legal risk to their investment and maintain the social license to operate, **business enterprises should obtain the free, prior and informed consent of all relevant stakeholders in all transactions.** This will necessitate working with and around the community to ensure all community members' interests are represented, including pastoralists, women and other vulnerable groups. To aid in the process, it will be important to:

- Conduct an impact assessment to understand how the project will adversely affect the community and relevant stakeholders within the community.
- Allow the community adequate time to obtain and digest material information that is presented in an accessible format. This often involves translating documents to local languages and utilizing preferred and accessible forms of communications, such as videos, oral presentations and graphics.
- Involve third parties, such as local CSOs, at the early stages of any project to ensure communities are fully informed and properly represented.

Best Practices for Holding Village Assembly 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 local schools, churches and community gathering places.
- The Village Council should mobilize its constituents. This is especially important for the leaders of minority groups.
- Encourage all Village Assembly members to spread the word. At the end of a Village Assembly meeting, encourage attendees to bring a friend, neighbor or family member along to the next meeting.
- Make meeting times and locations accessible to all Village Assembly members. Keep in mind that 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. 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, such as widows, religious minorities, elderly, people with disabilities, etc.

Structure the meetings into three parts to ensure broad participation.

- The Village Assembly should convene as one large group for general information and instructions.
- To facilitate discussion that provides everyone an opportunity to express their views, Village Assembly members should be separated into groups of 15 to 25 community members. Women should be separated from men.
- Reconvene the Village Assembly for further discussion and an opportunity for members to ask questions.

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

- *The meeting is organized and runs smoothly.* The meeting organizers should come to the venue prepared with an agenda and additional materials, such as paper, pens, posters, copies of handouts, mobile phone, etc. The organizers should keep track of the agenda and time.
- *Meeting objectives are clear.* Meeting participants should have a shared understanding of the agenda and purpose of the meeting.

- *Meetings are respectful.* Participants should establish and know the “meeting ground-rules.” These rules typically involve commitments to respect and listen to all perspectives and to avoid the use of bad language or raised voices. They should be established at the first community meeting and repeated at every meeting.
- *Meetings are participatory.* Participants should receive clear information and have adequate time to discuss, share ideas and ask questions. A number of voices should be heard so that one person does not dominate the conversation.
- *Meetings are informative.* Decision-makers should receive the input (such as information, feedback, consent or lack of consent) needed to make decisions.
- *Meetings are action-oriented.* The Village Assembly should understand what the next steps are and who is responsible for completing them. Plans for additional meetings should be 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.

- If required, develop a schedule to hold multiple meetings with the Village Assembly inform and to provide a space for dialogue.
- The time between meetings should be agreed on by Village Assembly members.

Obtain consent from the Village Assembly. After each meeting, the Village Assembly should vote on whether or not to proceed with the investment process.

- If at least 51% of participating assembly members vote in favor of the business proposal, the meeting minutes are drafted and signed by those that gave their consent.
- Signatures from those that abstained and vote against should also be collected.
- This is not an agreement to proceed with the project itself, but an agreement to move forward to the next activity.

At a bare minimum, the Village Council and Village Assembly must be consulted and participate at every stage of the project before any decisions are made.

² See Sustainable Business Council, *Social License to Operate Paper* (2013) [hereinafter “New Zealand Report”], available at https://www.sbc.org.nz/data/assets/pdf_file/0005/99437/Social-Licence-to-Operate-Paper.pdf.

³ See Douglas Taylor, “Earning the Social License to Operate – A Case Study about Culture,” Conference Paper: 5th International Conference on Management, Leadership, and Governance, at Johannesburg, South Africa (March 2017), available at https://www.researchgate.net/publication/315282855_Earning_the_Social_Licence_to_Operate_-_A_case_study_about_culture.

⁴ Business for Social Responsibility, “The Social License to Operate” 5 (2003), available at http://www.sdsg.org/wp-content/uploads/2013/04/file_BSR_Social_License_to_Operate.pdf.

⁵ See UN-REDD Programme, *Guidelines on Free, Prior and Informed Consent* (2013), available at <https://www.unclearn.org/sites/default/files/inventory/un-redd05.pdf>.

⁶ See FAO, *Free Prior and Informed Consent: An Indigenous Peoples’ Right a Good Practice for Local Communities* 12 (2016), available at <http://www.fao.org/3/a-i6190e.pdf> (stating it is good practice to extend FPIC to local communities, although it is a right of indigenous peoples).

⁷ For example, as part of its policy of “zero tolerance” for land grabs, Coca-Cola committed to adhering to FPIC with respect to *all* communities it works with. Tirit Amir, *Coca-Cola Leads the Way on Land Rights*, OXFAM (Nov. 8, 2013), <https://politicsofpoverty.oxfamamerica.org/2013/11/coca-cola-leads-the-way-on-land-rights/>.

⁸ Village Land Act No 5 of 1999, §3(1).

3.

Themes for Responsible Investment in Tanzania

Themes for Responsible Investment in Tanzania

In addition to understanding international standards and best practices, it is imperative that the business understand the cultural and legal context it enters.

Understanding this context will help the business to evaluate the financial viability and social impacts of the project. It can then use that information to develop a strategy to help it meet responsible investment requirements and obligations, mitigate risks, and avoid negative impacts. This section aims to provide a brief overview of some of the context surrounding these issues:

- ✓ Land Governance in Tanzania,
- ✓ Village Land Use Planning
- ✓ Customary Practices and Women
- ✓ Customary Law and Pastoralists
- ✓ Potential Avenues for Investment
- ✓ Land-Based Investment Experience to date

Note! While this background information can support the completion of due diligence, it is by no means a substitute. The business should conduct its own thorough analysis of the specific area where it is looking to invest.

Land Governance in Tanzania

Legal Framework

The primary laws governing the allocation of land and other land tenure issues in Tanzania are the:

- National Land Policy (1997),
- Land Act Cap 113 (1999),
- Village Land Act Cap 114 (1999),
- Courts (Land Disputes) Act Cap 216 (2002),

- Land Use Planning Act Cap 116 (2007), and
- Land Acquisition Act Cap 118 (1967).

Sections of other laws, such as the Tanzania Investment Act and the Environmental Management Act, additionally apply in the context of certain agricultural development projects.⁹

The Village Land Act affirms that woman and men have equal rights to acquire, hold, use and manage land without restriction. Women's land rights are also covered by "family law," including the Law of Marriage Act,¹⁰ which stipulates that a married woman has the same right as has a man to acquire, hold and dispose of land and other property, and the same right to contract.

All land in Tanzania is deemed "public land" administered by the President as a trustee through the Ministry of Lands, Housing and Human Settlements Development (MLHHSD). The Land Act and Village Land Act divide public land into general land, reserved land and village land.¹¹ Village land, comprising approximately 70% of all Tanzanian land, is managed by the district and village authorities of Tanzania's nearly 12,000 villages, while reserved land is managed by specific agencies overseeing the largely public purposes for which the land is reserved (e.g., wildlife conservation, forestry, etc.). General land, which makes up approximately 2% of Tanzanian land, is defined as the remaining land that is not categorized as village land or reserved land.¹² It includes most urban land.

Because only general land is available for agricultural development by non-villagers, the recategorization of village land as general land is an important prerequisite for large scale investments. This transfer of land is governed by the Village Land Act, which allows the President to unilaterally expropriate land for the "public interest." Although the law does require consent from community members, the process is typically one meeting. A single meeting is insufficient for consent to be meaningful, particularly where this transfer will permanently and irreversibly sever villagers' rights to the land. Villagers who attend the assembly must sign to signify consent to the transfer.

Instead, the preferred approach for reclassifying land requires working with villagers and district authorities using the processes outlined in this guidebook: a series of meetings over a longer period of time allowing individual women and men to consider the implications of an investment on their community. This "best practices" approach more closely aligns with international standards for responsible investment in land. This approach calls for meaningful consultation and engagement, followed by consent or refusal.

The Village Land Act also describes what land comprises village land and how it is to be managed. The law regulates inheritance and transfer of land, along with the

process for granting and certifying Customary Rights of Occupancy through a Certificate of Customary Right of Occupancy (CCRO). These CCROs represent the holders' lease or "occupancy" rights, which is the highest level of tenure security possible under Tanzanian law.¹³

The Land Use Planning Act further regulates the process of surveying and registering village land and establishes Village Land Use Planning (VLUP). This process helps communities identify specific land uses in their villages and properly manage their resources. In addition, it is required before village land can be recategorized as general land. In addition to laying out the VLUP process to be conducted at the village level, the Land Use Planning Act also defines the role of District Councils in preparing a broader district land use framework and ensuring intervillage and intersectoral coordination throughout the planning and management process.

For more information about Tanzania's legal framework and international obligations, see:

- [Supplemental Resource 1: Obligations Under International Treaties and Conventions](#)
- [Supplemental Resource 2: Overview of Tanzania Legal Framework](#)

Land Governance Administration Structure

It is important for businesses to understand the different government actors involved in the process. The following is an overview of Tanzania's land governance administration structure as it pertains to the investment process.

National Government Institutions

Functionally, matters relating to the administration of land are managed at the national level by MLHSD, supplemented by a parliamentary subcommittee dealing with land, natural resources and tourism regulation.¹⁴ MLHSD is headed by the Minister of Lands, whose responsibilities include formulating land policy; reporting to parliament on issues relating to land; consulting with other ministries and institutions on matters of land planning and land use; overseeing review of land rent issues; and processing appeals to land use planning determinations.¹⁵

- The **Commissioner of Lands** is the principal officer for national management of land matters.¹⁶ The Commissioner of Lands heads the Lands Development Division, which has jurisdiction over the district and municipal land offices of local government.¹⁷ The Commissioner's mandate covers many aspects of the land investment process, including approving and revoking rights of

occupancy to non-village organizations (i.e., investors) and preparing reports for transfer of land between categories.¹⁸

- The **National Land Use Planning Commission (NLUPC)** also operates within the MLHSD, with a mandate to coordinate, supervise, undertake, inspect and advise other governmental planning authorities (such as Regional Governments, District Councils and Villages) on proper planning and use of existing land in accordance to rules, regulations and guidelines.¹⁹ Nationwide land use planning and mapping is key for the implementation of the SAGCOT initiative, especially in light of the limited available land for investment. Most of the agricultural land in Tanzania is controlled by village authorities under the 1999 Village Land Act.²⁰
- The **Land Investment Unit (LIU)** aims to audit farms that have received Granted Rights of Occupancy (GRO) for agricultural investment. If the LIU concludes that the land is not being sufficiently developed for investment purposes, it recommends to the President of Tanzania that the GRO be revoked. Once the GRO is revoked, the LIU works with the NLUPC to determine whether the land should go into a national land bank or returned to previous land holders and users. As with other land designated for investment, parcels identified by the LIU for economic development purposes are allocated to the Tanzania Investment Centre (TIC), which can then grant derivative title to a foreign investor.²¹ The LIU is also collaborating with the TIC, the Export Processing Zones Authority (EPZA) and other government agencies to build a national land bank.
- **Tanzania Investment Centre:** The other major government actor that coordinates with potential investors at the national level is the TIC, a “one stop shop” investment facilitator established by the 1997 Tanzania Investment Act.²² The TIC’s mandate includes the coordination, encouragement, promotion and facilitation of investment in Tanzania, which it pursues by identifying investment sites, assisting investors to obtain necessary permits, and generally promoting a beneficial investment environment. The TIC offers guidance throughout the lifecycle of an investment for all foreign investors whose capital investment is at least US \$500,000, and all domestic investors whose capital investment is at least US \$100,000.²³ The TIC is a key institution for the implementation of Tanzania’s Kilimo Kwanza strategy and is the primary vehicle for much of the activity under the SAGCOT initiative.²⁴
- **Export Processing Zones Authority (EPZA).** To encourage rapid economic development and attract both foreign and domestic investment across various sectors, the Tanzanian government established Export Processing Zones (EPZs) and Special Economic Zones (SEZs) that are managed by the

EPZA.²⁵ The EPZA supports investors by facilitating investment, licensing, providing SEZ infrastructure and introducing other linkages related to investment opportunities.²⁶

- Though not a land governance agency per se, the **Ministry of Community Development, Gender, and Children (MCDGC)** is tasked with enhancing gender equality and promoting women's rights.²⁷ It supports capacity-building efforts aimed at skills training and economic development for women, as well as increasing national understanding of women's issues and rights.

Regional and District Authorities

Underneath the national government, Tanzania is administratively divided into regions, districts, wards and villages.²⁸ Each of these subdivisions has its own governing authorities, and the process of investing in agricultural land typically involves engagement with multiple levels of local government.

- **Regional Secretariat.** At the highest level of local government, the Regional Secretariat works to coordinate inter- and intra-district land use planning, including the establishment and coordination of necessary infrastructure and physical development.²⁹
- The **District Council** (made up of members elected from each ward in the district, ministerial appointees, and parliamentary appointees,³⁰ and led by the District Chairperson³¹) is the authority for land use planning at the district level.³² In this capacity, the District Council may establish a **District Land Use Planning Authority** and **District Participatory Land Use Management Team** to coordinate with Village Councils in conducting Participatory Land Use Planning (PLUP) within the district.³³
- The **District Land and Housing Tribunals** at the district level were established by the Land Act to determine disputes and proceedings related to land.³⁴ Among other specific powers outlined in the Land Disputes Courts Act, the District Land and Housing Tribunals have the power to decide disputes over land worth less than 50 million shillings and can overturn or modify Ward Tribunal decisions within their District.³⁵ Unlike Ward Tribunals and Village Land Councils, District Land and Housing Tribunals allow advocates to represent the disputing parties.³⁶
- The **Ward Committee** (each district contains several smaller administration units called wards) is responsible for implementing plans of the District Council and coordinating cooperative activities within the ward.³⁷ The Ward Committee, in turn, elects the members of the Ward Tribunal, a 4-8 member

dispute resolution body that must include at least three women.³⁸ Ward Tribunals can both mediate between parties and make determinations in cases involving property valued at less than 3 million shillings.³⁹

Village Authorities

Villages, the rural subdivisions of wards, are the location for much of the activity required for land-based investment in Tanzania. The village unit is both a geophysical area, with boundaries demarcated in the village registration process,⁴⁰ and a corporate entity, represented by the Village Council.⁴¹

- **Village Council** members, of which 25% need to be women per the Local Government (District Authorities) Act, are elected by the other major village authority, the Village Assembly.⁴² The Village Council proposes local legislation to the Village Assembly, which then discusses the proposal and suggests amendments. Village Council also serves as the executive power in all matters relating to a village, wielding broad authority to take actions it deems necessary for economic and social development.⁴³ In this capacity, the Village Council acts as the land use planning authority within the Village⁴⁴ and can create a Village Land Use Management Committee to manage the VLUP process.⁴⁵ As the corporate embodiment of villages, the Village Councils have chief executive officers—known as **Village Executive Officers**—who oversee daily operations and also act as the village’s representation to the Ward Committee.⁴⁶
- The **Village Assembly**, which is made up of all village residents over eighteen years of age,⁴⁷ is the authority for general policymaking within a village.⁴⁸ Its role in the legislative process, however, is primarily to advise the Village Council in the adoption of by-laws.⁴⁹ The Village Council then adopts the proposed by-laws, with or without the Village Assembly’s amendments, and submits the new by-laws to the relevant District Council for approval.⁵⁰
- The **Village Land Council**, established by the Village Council, is empowered to mediate disputes on any matter concerning land within its respective village.⁵¹ The seven-member Village Land Council must include at least three women⁵² and can use customary principles of mediation or natural justice when reaching a conclusion.⁵³ If disputing parties are not satisfied with the conclusion of a Village Land Council’s mediation, they can request that the dispute be heard by the local Ward Tribunal.⁵⁴ The national government’s Registrar of Villages, along with a team of Associate Registrars, manages the administrative functions (e.g., budgeting expenditures) of all Village Land Councils and Ward Tribunals.

Village Land Use Planning

To follow best practices for responsible investment, business enterprises **cannot rely solely on the VLUP** as a means to accomplish meaningful consultation and engagement or obtain informed consent.

According to the Land Use Planning Act of 2007, villages are supposed to engage in a participatory land use planning process called Village Land Use Planning (VLUP) to help communities administer and manage their land and natural resources in a more efficient and sustainable manner.⁵⁵ The NLUPC is responsible for ensuring that the process is carried out in a manner that results in communities developing land-use plans that reflect the present and future interest of all community members, including pastoralists, women and other vulnerable groups.⁵⁶ The VLUP guidelines require women's representation on the Village Council and Participatory Land Use Management (PLUM) committees, but villages often proceed with VLUP without the requisite number of women participants,⁵⁷ and there has been limited progress in building awareness of VLUP among women and pastoralists and actually eliciting their input during the planning process.⁵⁸

By law the VLUP process includes an overarching assessment (using a 10-year planning horizon) that is intended to serve as the basis for identifying existing land uses and determining future land uses that are compatible with community livelihood needs and future land-focused prosperity. However, there is a danger of using a 10-year planning horizon in the context of investments, as investors often receive 99-year leases from the government. Furthermore, the population is quickly growing, and because the community is not planning beyond 10 years, long term, large-scale agribusiness projects could have adverse implications on their land and livelihoods.

Most agricultural land in Tanzania is classified as village land and is controlled by village authorities pursuant to the Village Land Act.⁵⁹ Village land is not directly available for land investment; it must first be reclassified as general land (controlled by the national government) and allocated to the TIC to be made available for investment.⁶⁰ According to the Land Use Planning Act of 2007, the VLUP process must be completed prior to reclassification of village land, including a land use map and management plan identifying the land that may be reclassified.⁶¹

The government envisioned that all of the 12,000-plus villages across Tanzania would undertake the VLUP process. However, resource constraints have permitted less than 14% of the country's villages to complete VLUPs as of June 2017. An even smaller percentage have completed issuance and registration of CCROs, the individual or groups titles for village land that result from the VLUP process.⁶²

Given this shortcoming, the government has been encouraging the private sector to view VLUP “as a tool for determining availability of land in areas they want to invest.”⁶³ Importantly, no mention of using the VLUP for determining the availability of land was made in the first 1998 version of the VLUP manual. Not surprisingly, some CSOs advocate against use of the VLUP to determine availability of lands because they claim the VLUP is being used as a justification for outside investments rather than being used as a tool to assess community land needs. Indeed, although there have been cases where investors paid for VLUP but were ultimately not allocated land by the village, there are many examples where VLUP investment-focused outcomes were not favorable for communities.

Although government policymakers acknowledge that using VLUP to help businesses identify and acquire land is beyond the government’s mandate, businesses routinely sign contracts with the NLUPC and pay to have VLUP conducted for purposes of identifying and acquiring land. It is likely that this use of VLUP will continue despite the fact that the VLUP was not originally designed to support communities in making informed decisions around investment projects.

The VLUP process should not be used as merely an administrative step to formalize reclassification as a precursor to leasing land to investors. Given the reality that VLUP is likely to continue to be used to identify land for investments, best practices dictate that business enterprises take supplemental measures to ensure that land holders and users provide meaningful and informed consent to the investment. Key to this is conducting capacity and impact assessments to supplement VLUP.

Customary Practices and Women

Customary practices undermine gender equity in Tanzanian land tenure. In particular, patriarchal norms result in unequal household power relations, a gendered division of labor, women’s weak representation in leadership positions in growers’ associations, smaller landholdings and less control over income generated from agriculture.⁶⁴ Patriarchal attitudes also account for the continued marginalization of women in terms of access to land and productive resources. Women are still expected to assume the majority of reproductive and childcare responsibilities, and women’s participation in public meetings and decision-making remains limited. Gender-based violence remains a particular concern, with evidence that it is increasing.⁶⁵

Discriminatory customary practices are particularly visible in marriage and inheritance. Approximately 80% of Tanzanian communities practice patrilocal and patrilineal marriage customs,⁶⁶ meaning that women relocate to their husband’s family land and land is passed down through male family members. These practices

can make it especially challenging for a divorced woman or a widow to secure and retain land, especially where customary marriages are not subject to registration.⁶⁷

Although Tanzanian statutory law is gender neutral with respect to inheritance, national choice of law rules instead favor application of local customary law to matters of succession.⁶⁸ Typical patrilineal practices prevent women from inheriting land if there are male heirs in the family, and widowed women in patrilineal communities are generally prevented from maintaining rights to family land.⁶⁹ This means that a widow is likely to be evicted and dispossessed, unless she remains in the family by marrying one of her deceased husband's relatives.⁷⁰

Gender inequity that results from customary practices is also reflected in economic terms. Tanzanian women are more likely to be unemployed than men, and when they are employed, women earn less than men across all educational and occupational scales.⁷¹

Case studies on large scale land investment in Tanzania have provided further evidence of this economic disparity. In particular, a detailed gender case study on a sugarcane investment in Morogoro Region⁷² and a comparative gender analysis of three different agribusinesses in the Arusha Region⁷³ found that income generation opportunities that are not specifically targeted at women may increase their workloads while not providing them with the same benefits as men.⁷⁴

In contract farming contexts, female farmers face more barriers to entry. They are typically restricted to lower value commodities, encounter greater challenges to grow their businesses and have less discretion over earned income.⁷⁵ For waged income, women tend to be confined to gender-segregated roles- paid less than men in similar positions and are more vulnerable to sexual harassment by male colleagues and supervisors.⁷⁶

In sum, women in Tanzania are disadvantaged by customary law and practices, so companies seeking to invest in the country must be acutely aware of how their actions may exacerbate or ameliorate these conditions. Refer to the **Gender Primer** for more information about effectively engaging and considering women in investment activities.

Customary Practices and Pastoralists

One prominent challenge in Tanzania's agricultural sector, and across much of Eastern Africa, is the tension between pastoralists and farmers. Because mobile pastoralist communities use land differently than stationary farming communities, many pastoral uses do not align with government land classifications. There are often conflicts between pastoralist activity and village land use management and

planning.⁷⁷ In some cases, the tension between farming practices and grazing needs of pastoralists erupts into violent conflict.⁷⁸ With this in mind, it is particularly important for agricultural investment to take into account the needs and rights of pastoralist groups who may otherwise not be included in the land use planning process.

Pastoralist communities also face challenges related to the intersection of customary and formalized land tenure systems in Tanzania. VLUPs that show sedentary farming uses are unlikely to reflect traditional grazing patterns, and defined farm uses or other fixed uses often fail to reflect the more fluid and transitory lifestyle of pastoralist groups.⁷⁹ Similarly, pastoralists and hunter-gatherers often have difficulty proving customary title to communal land, even where land has long been used for grazing.⁸⁰ Due to these factors, the VLUP process can surface longstanding tensions—and even create new conflicts—between farmers and pastoralists.⁸¹

As with many potential conflicts related to land use, thorough and inclusive rural appraisals in the second stage of the VLUP process can help to diffuse tensions and increase the effectiveness of resulting maps and defined rights and uses.⁸² Even with extensive pre-planning before conducting VLUP, pastoralist communities require special consideration to ensure that CCRO titling schemes and VLUP by-laws take into account the traditional grazing patterns that are fundamental to pastoralist communities' way of life. For these reasons, stakeholders involved in facilitating VLUP must include pastoralists at every stage of the planning process.

Potential Avenues for Investment

In Tanzania, there are two routes through which a business enterprise may access land:

- Through the TIC - key government actor that coordinates with potential investors at the national level - the business enterprise may be granted access to a parcel catalogued in Tanzania's Land Bank for further consideration, or
- The business enterprise may identify land in coordination with national government agencies, regional and district-level government officials, and village offices.

Even though a land bank has been established by the government, a limited amount of land is available for economic development.⁸³ Through the VLUP process, the TIC is mandated to work with the NLUPC, district authorities and village leaders to identify village land that can be transferred to general land and recorded in the land bank data base. Coordination efforts have been disjointed because of insufficient

human capital and financial resources to support sound land use planning and management. The current process and systems are not in keeping with Tanzanian laws or international best practices.

As a result, parcels that are currently catalogued may reflect interests in land that were not identified using best practices, and investors that acquire such parcels may be taking on business risk. Whereas the government may consider the land to be “available for investment,” the village that previously controlled it may not consider it available. Sometimes, land that the government deems available remains under village uses, awaiting the interests of an investor. Depending on the context, companies that obtain land through the land bank while also seeking to embrace best practices might need to remedy any land rights violations that occurred during the identification and TIC acquisition process. Until the banking process is strengthened, a business enterprise may reduce its risk by identifying land with the assistance of a third-party expert who can guide it through a verifiably responsible investment process.

Land-Based Investment Experience to Date

In 2009, the Government of Tanzania adopted a strategy called “Kilimo Kwanza,” or “Agriculture First,” to focus on bringing private sector participation into Tanzanian agricultural production via provision of inputs, crop marketing and commercial value chains.⁸⁴ The centerpiece of the Kilimo Kwanza initiative is the Southern Agricultural Growth Corridor of Tanzania (SAGCOT), a public-private partnership aimed at improving agricultural productivity, food security, and livelihoods of Tanzanians. Emerging from the World Economic Forum in 2010, the SAGCOT initiative aims to catalyze over \$2 billion of private investment to connect tens of thousands of smallholder farmers with access to agribusiness value chains.

The initiative has already stimulated millions of dollars in investments, but concerns remain about its implications for rural communities. A 2012 SAGCOT Environmental and Social Assessment, for example, revealed community misgivings about the initiative’s impact on existing land use, water availability and wildlife.⁸⁵ There is also a notable lack of gender-related target outcomes for the SAGCOT initiative, which conflicts with Tanzania’s commitment to the African Union Declaration that supports gender equality in agricultural contexts. Additionally, the increase in land value driven by investment and population growth may exacerbate land conflicts, especially conflicts between farmers and pastoralists.⁸⁶

Perhaps the biggest challenge for the SAGCOT initiative is the shortage of land potentially available for large scale agricultural investment. While the government’s promotion of land-based investments implies an abundance of available land, the

bulk of land that might be made available for investment is currently classified for village use either as common land or land for future expansion. Making this village land available for agricultural investment requires a lengthy and complicated process discussed later in this guidebook. While the NLUPC has floated the idea of converting 19% of village land for use in potential investments through the VLUP process,⁸⁷ the lack of available land and the complexity of the VLUP process limits the likelihood that such conversions will take place.

This adds to the complexity of commercial agricultural investment and means that legitimate land rights holders and users 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 company and the community members. It is not hard to imagine how conflict can erupt from this kind of situation, resulting in wrongful displacement or a failed deal.

⁹ For a more comprehensive list, see International Land Coalition (ILC), *Village Land Use Planning in Rangelands in Tanzania: Good Practice and Lessons Learned* 21 (Sustainable Rangeland Management Project 2013), available at <http://www.landcoalition.org/sites/default/files/documents/resources/RangelandsVillageLandUsePlanning.pdf>.

¹⁰ No. 5 (1971).

¹¹ Land Act Cap 113 (1999); Village Land Act Cap 114 (1999).

¹² See Dr. R. Willy Tenga & Prof. J.M. Lusugga Kironde, *Study of Policy, Legal and Institutional Issues related to Land in the SAGCOT Project Area* (2012) [draft report, on file with Landesa].

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ Land Act (1999), at §20(2).

²² Tanzania Investment Centre (TIC), “About Us,” <http://www.tic.co.tz/>, last accessed April 3, 2018.

²³ TIC, “Business Environment,” <http://www.tic.co.tz/>, last accessed Apr. 3, 2018.

²⁴ See Tenga & Kironde, *supra* note 12.

²⁵ Export Processing Zones Authority (EPZA), “SEZ/EPZ Program,” <http://www.epza.go.tz/invest.php?p=232>, last accessed Apr. 3, 2018.

²⁶ EPZA, “Who We Are,” <http://www.epza.go.tz/about.php?p=253>, last accessed Apr. 3, 2018.

²⁷ Ministry of Community Development, Gender, and Children (MCDGC), “Gender Department,” <http://www.mcdgc.go.tz/index.php/departments/category/gender/>, last accessed Feb. 13, 2018.

²⁸ Villages are rural subdivisions of wards and may be further subdivided into hamlets. There are also urban subdivisions of wards, but they do not play a role in the agricultural investment process.

²⁹ Land Use Planning Act (2007), at §20.

³⁰ Local Government (District Authorities) Act (1982), at §35.

³¹ *Id.* at §36

³² Land Use Planning Act (2007), at §21.

³³ National Land Use Planning Commission (NLUPC), *Guidelines for Participatory Village Land Use Planning, Administration, and Management in Tanzania: Second Edition* (Ministry of Lands, Housing and Human Settlements Development 2013).

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- ³⁴ Land Act (1999), at §167(1)(c).
- ³⁵ Land Disputes Court Act (2002), at §§ 33-36.
- ³⁶ *Id.* at §§18, 30.
- ³⁷ Local Government (District Authorities) Act (1982), at §32(1).
- ³⁸ Land Disputes Court Act, at §11.
- ³⁹ *Id.* at §15.
- ⁴⁰ Local Government (District Authorities) Act, at §22
- ⁴¹ *Id.* at §26
- ⁴² *Id.* at §57(1).
- ⁴³ *Id.* at §142
- ⁴⁴ Land Use Planning Act (2007), at §18(1)(a).
- ⁴⁵ NLUPC, *supra* note 33.
- ⁴⁶ Local Government (District Authorities) Act (1982), at §31(2)(e)
- ⁴⁷ *Id.* at §55.
- ⁴⁸ *Id.* at §141
- ⁴⁹ *Id.* at §164.
- ⁵⁰ *Id.* at §164.
- ⁵¹ Land Disputes Court Act (2002), at §7.
- ⁵² *Id.* at §5(1). Any meeting of the Village Land Council must reach a quorum of 4, of which at least 2 must be women. Village Land Act (1999), §60(9).
- ⁵³ Village Land Act (1999), at §61.
- ⁵⁴ *Id.* at §62.
- ⁵⁵ Land Use Planning Act (2007), at §40(2).
- ⁵⁶ Ministry of Lands, Housing and Human Settlement Development (MLHHSD), *Guidelines for Participatory Village Land Use Planning, Administration and Management in Tanzania* 9 (2013).
- ⁵⁷ Abigail Hart, et al., “Participatory Land Use Planning to Support Tanzanian Farmer and Pastoralist Investment” 25 (International Land Coalition 2014), available at <http://www.landcoalition.org/sites/default/files/documents/resources/participatorylanduseplanning.pdf>.
- ⁵⁸ See Naseku Kisambu, et al., “Pastoral Women’s Land Rights and Village Land Use Planning in Tanzania: Experiences from the Sustainable Rangeland Management Project,” in *Responsible Land Governance: Towards an Evidence Based Approach* (World Bank Conference on Land and Poverty, March 2017), available at <https://www.oicrf.org/-/pastoral-women-s-land-rights-and-land-use-planning-in-tanzania-experiences-of-the-sustainable-rangeland-management-project>.
- ⁵⁹ See Tenga & Kironde, *supra* note 12.
- ⁶⁰ Land Act (1999), at §20(2).
- ⁶¹ Land Use Planning Act (2007), at §40(2).
- ⁶² Faustin Maganga, et al., Briefing at Royal Danish Embassy, Dar es Salaam: Transformations in Poverty and Property Rights (Sept. 30, 2016)
- ⁶³ MLHHSD, *supra* note 56, at 9.
- ⁶⁴ See Man-Kwun Chan et al., *Strengthening Women’s Voices in the Context of Agricultural Investments: Lessons from Tanzania* (IIED LAND, INVESTMENT AND RIGHTS SERIES 2016), available at <http://pubs.iied.org/pdfs/12593IIED.pdf>.
- ⁶⁵ See MCDGC, *A National Gender Diagnostic Study in Tanzania: Final Report* (2012).
- ⁶⁶ See Marjolein Benschop, RIGHTS AND REALITY: ARE WOMEN’S EQUAL RIGHTS TO LAND, HOUSING AND PROPERTY IMPLEMENTED IN EAST AFRICA? (UNHABITAT 2002), available at <https://unhabitat.org/books/rights-and-reality-are-womens-equal-rights-to-land-housing-and-property-implemented-in-east-africa/>.
- ⁶⁷ Yefred Myenzi, *Women Land Rights in Tanzania* (2009) (Paper prepared by HAKIARDHI for presentation at the workshop organized by Mzumbe University DSM Campus).
- ⁶⁸ Tamar Ezer, *Inheritance Law in Tanzania: The Impoverishment of Widows and Daughters*, VII THE GEORGETOWN JOURNAL OF GENDER AND THE LAW 599, 607 (Jan. 2006).
- ⁶⁹ See Marjorie J. Mbilinyi, *The State of Women in Tanzania*, 6 CAN. J. OF AFRICAN STUD. 371 (1972).
- ⁷⁰ *Id.*
- ⁷¹ See MCDGC, *supra* note 65.
- ⁷² Helen Dancer & Emmanuel Sulle, *Gender Implications of Agricultural Commercialisation: The Case of Sugarcane Production in Kilombero District, Tanzania*, (Future Agricultures 2015), available at http://www.plaas.org.za/sites/default/files/publications-pdf/FAC_Working_Paper_118.pdf.

⁷³ Elizabeth Daley & Clara Mi-young Park, *The Gender and Equity Implications of Land Related Investments on Land Access and Labour and Income Generating Opportunities: A Case Study of Selected Agricultural Investments in Northern Tanzania* (FAO 2012), available at <http://www.fao.org/docrep/016/ap433e/ap433e.pdf>.

⁷⁴ *Id.* at 36.

⁷⁵ See Dancer & Sulle, *supra* note 72; Daley & Park, *supra* note 73.

⁷⁶ See Dancer & Sulle, *supra* note 72, at 19; Daley & Park, *supra* note 73.

⁷⁷ See ILC, *supra* note 9, at 29.

⁷⁸ See Tenga & Kironde, *supra* note 12.

⁷⁹ See ILC, *supra* note 9.

⁸⁰ *Id.* at 11.

⁸¹ See *id.*

⁸² See *id.*

⁸³ See Organization for Economic Cooperation and Development (OECD), “Overview of Progress and Policy Challenges in Tanzania,” in *OECD Investment Policy Reviews: Tanzania* 41 (2013), available at <https://www.oecd.org/daf/inv/investment-policy/IPR-Tanzania-2013-Overview-Progress-Policy-Challenges.pdf>.

⁸⁴ Southern Agricultural Growth Corridor of Tanzania (SAGCOT), “Investment Blueprint” (January 2011), available at http://www.sagcot.com/uploads/media/Invest-Blueprint-SAGCOT_High_res.pdf.

⁸⁵ SAGCOT, “Strategic Regional Environmental and Social Assessment Interim Report” (July 2012), available at http://www.sagcot.com/uploads/media/Interim_Report_-_SAGCOT_SRESA_Final_12_02.pdf.

⁸⁶ See Tenga & Kironde, *supra* note 12.

⁸⁷ See *id.*

4.

Step-by-Step Guide to Agricultural Investment in Tanzania

Quick Glance: Phases, Tasks & Steps

Phase 1, 2 and 3 are intended for a new investment. Phase 4 was designed for an existing investment.

Phase 1: Preparing for Investment

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

Task 1: Develop and Implement Policies, Commitments and Frameworks

1. Business evaluates existing land-based investment laws and policies, identifies any gaps, and fills them with responsible investment practices.
2. Business communicates and promotes its responsible land-based investment policies.
3. Business trains staff, suppliers and auditors on its policies, values and expectations.

Task 2: Conduct Initial Due Diligence

1. Business conducts desk research to understand Tanzania's development objectives and context for investment.
2. Business consults with key stakeholders to obtain their perspectives on Tanzania land laws and policies.
3. Business develops a risk mitigation strategy for identified gaps.

Phase 2: Community Engagement and Assessments

This phase provides steps for engagement and consultation with land holders and users to learn how the investment may impact their livelihoods.

Task 1: Engage and Consult with Land Holders and Users

1. Business obtains a Certificate of Incentive and introduces investment to national and district government authorities.
2. Business meets with regional and district authorities about the potential investment project.
3. Business meets with the Village Council about the potential investment.
4. Business participates in a series of Village Assembly meetings for community members to consider whether to conduct VLUP.
5. Business provides notice of its intent to proceed with the investment, which is accessible to all community members.

Task 2: Conduct Community Assessments

1. Business identifies a CSO to assess and build the capacity of the Land Committee and Village Council to engage and negotiate during the investment process.
2. Business hires an experienced third party to conduct the ESIA.
3. Business finances VLUP activities conducted by national, district and village authorities.
4. National authorities conduct land valuation.
5. Business requests a Village Assembly meeting to review findings from all three assessments and decide whether to ratify or renew its consent.

Phase 3: Developing an Equitable and Inclusive Contract

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

Task 1: Negotiate and Draft the Contract

1. Business signs a binding MOU with Village Council and holds a series of Village Assembly meetings to agree on the terms.
2. Business waits for district and national government authorities to review village-to-general land transfer request and determine how to proceed.

3. Business waits for the Office of Commissioner for Land to provide notice to the community about the land transfer approval, allowing it a final opportunity to raise concerns.

Task 2: Review and Sign the Contract

1. Business receives Derivative Right of Occupancy and final lease terms from TIC.
2. Business incorporates principles and best practices for contracting into binding MOU and lease agreement.

Phase 4: Implementing and Monitoring the Investment

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

Task 1: Develop and Implement a Plan to Address Land-Related Issues

1. Business regularly engages and consults with the community.
2. Business coordinates with the community to establish a grievance mechanism.

Task 2: Develop and Implement an Ongoing Monitoring and Evaluation Plan

1. Business establishes monitoring and evaluation practices in support of land-related investments.
2. Business conducts follow on impact assessments to evaluate impacts on communities.

Phase 1: Preparing for Investment

The purpose of this phase is to prepare the company to take on a responsible investment and begin to gather the information it needs to assess whether to move forward with an agricultural investment.

Task 1: Develop and Implement Policies, Commitments and Frameworks

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Task 1: Develop and Implement Policies, Commitments and Frameworks

Best Practice

To achieve responsible investments in land, a business enterprise needs strong systems and safeguards that start with clear and comprehensive land investment policies.⁸⁸ These policies should:

- Clearly affirm the company's commitment to specific international standards (as described in this guidebook or the documents it references).
- State that they are intended to bring the business enterprise in line with international best practices for each land investment.
- Comport with national law but be shaped to meet international best practices, which will often times exceed requirements of national law.
- Call for a business enterprise's suppliers (e.g., vendors, contract farmers, etc.) to adhere to similar standards.
- Explain how the land investment policies relate to and are supported by other business enterprise rules, protocols and governance documents, and how they will be institutionalized, implemented and enforced.
- Where possible, outline specific mechanisms to achieve stated objectives, such as performing consultation and engagement with land holders and users and undertaking impact assessments.
- Establish internal standards for incorporating land tenure risks into its business decision making.
- Call for endorsement at the highest level of the enterprise, be known by all working within the enterprise, include clear lines of authority and mechanisms for implementation and enforcement, and be publicly available.

A number of companies have adopted and made their land policies public. See examples in [Supplemental Resource 3: Sample Company Policies](#). These can provide a useful starting point for developing a policy that suits the particular needs of the business. Also consult [Supplemental Resource 2: Overview of Tanzania Legal Framework](#) for more on what may be required in Tanzania.

Step-by-Step Guidance

Business land policies should address all types of land-based investments, including:

- New land acquisitions, including acquisition through purchase, lease, sublease or concession from individuals, communities or the government;
- Acquisition of an existing project or land investment, including those that may involve a historical land acquisition carried out by the national government or another business enterprise;
- Existing holdings, focusing on periodic reviews of land issues on current investments to ensure they remain compliant with agreements, contracts, and any new regulations or requirements;
- Joint ventures and mergers that bring land into the business's portfolio; and
- Supply chains (commodity or crop procurement), including buying crops or agricultural products from other producers.

1. Business evaluates existing land-based investment laws and policies, identifies any gaps, and fills them with responsible investment practices.

Government-Required Procedural Action

Tanzanian law does not require businesses making land-related investments to develop land policies prior to commencing an investment project.

Gap between Best Practice and Required Procedural Action

The lack of government policies governing land investments increases the likelihood that the investment will fail to recognize the rights of communities and individual land holders and users, resulting in tension or conflict between the investor and community members, and create significant risk for the investor.

Best Practice Supplemental Steps

Ideally, the company's policies should reflect a commitment to respect land rights and uphold international standards and best practices like those called for above. If they do not reflect these commitments, then take some time to revise them so they do.

Process: Effective Land Policy Development

- **Plan for an iterative development process**, as most enterprises will progressively update their policies as they gain experience with identifying and addressing land-related impacts and issues.
- **Assign senior management responsibility** and performance indicators to drive the process and to provide for indicators for success or failure.
- Mandatorily **involve personnel from across departments** in the process to build understanding, know-how and a sense of common purpose. Ensure that departments and employees understand that implementation is mandatory and that performance will be measured in light of implementation indicators.
- Identify and **draw on internal and/or external expertise** on land rights, and on women's land rights in particular.
- **Conduct a basic mapping** of the business's potential land rights impacts.
- **Clearly state responsibilities and expectations** of staff, partners, suppliers and other relevant parties.
- **Consult internal and external stakeholders** to identify and respond to their expectations. Inclusive development of these policies will help ensure stakeholder buy-in during their implementation.
- **Secure support and approval** for the policy at the most senior level within the business enterprise.

Content: What a Land Policy Should Cover

- **Commit to recognize and respect all legitimate land rights** and interests for all land holders and users, including women and those with customary, secondary, seasonal and other use rights and interests.
- **Affirm commitment to addressing gender issues** and safeguarding women's land rights across the business enterprise's operations and supply chain by creating specific guidance and instructions that clearly state how women's land rights and uses will be identified, considered and addressed.
- **Explicitly commit to the elements of FPIC** and transparent and fair contracting and business deals.
- **Establish or invoke existing dispute resolution mechanisms** to address grievances in a fair, reliable, gender sensitive, accessible and non-discriminatory way.

- **Require a capacity assessment** (usually conducted by a neutral third party) of a community's capacity to engage in an investment (whether that engagement will involve individuals or fairly selected representatives).
- **Require an environmental and social impact assessment (ESIA)** to be carried out early during the design stage of a potential investment. Identify any actual or potential social, economic, livelihoods, environmental or other impacts likely to result from the potential operation and take mitigating and remedial measures that rise to the level of best practices.⁸⁹
- **Require the implementation of land valuation methodologies** establishing the value of property, including market and non-market value. Non-market value should reflect livelihood, social, cultural, religious, spiritual and environmental value to ensure that compensation and benefits are fair, just and equitable for all land holders and users, including women.⁹⁰
- **Require compensation mechanisms** that ensure joint family decision-making⁹¹ regarding disposition of compensation funds, create long-term value and mitigate long-term risks⁹² for any rights or assets that are modified or lost by land holders and users (women, men and communities).
- **Include transparency standards** that balance protection of business enterprise information and privacy interests of community members.⁹³

2. Business communicates and promotes its responsible land-based investment policies.

Government-Required Procedural Action

Not applicable

Gap between Best Practice and Required Procedural Action

Not applicable.

Best Practice Supplemental Steps

Once the business has created its policies, it's time to communicate about them internally and externally. The board of directors, various committees, managers, employees, suppliers and other external stakeholders will all need to know about these new policies.

In a series of communications, emphasize the importance of land rights policies and practices that comply with non-discriminatory customary rights, national law, and international best practices and principles.

These communications may include presenting the business case for responsible land-based investment. Responsible land-based investment policies, to some, may seem like nothing more than costly extra steps. Talk to suppliers and staff about the potential financial harm to the business and suppliers that can follow from not taking the right steps. Supplier losses can accrue from community ill will and from a loss of customers that care about best practices. This is particularly true when the ill will or customer dissatisfaction stems from gender-related issues.

3. Business trains staff, suppliers and auditors on its policies, values and expectations.

Government-Required Procedural Action

Not applicable

Gap between Best Practice and Required Procedural Action

Not applicable.

Best Practice Supplemental Steps

Simply handing over a document will likely not be enough, particularly for individuals who will be directly affected. Depending on the company's needs, it may need to:

- **Develop checklists, questionnaires and other materials** designed to help people get the information they need to do their jobs.
- **Train individuals engaging in the Tanzania-based project**, specifically covering Tanzania's unique cultural context.
- **Train internal auditors and any support staff who will be evaluating the business.** It will be important for these professionals to know about the land rights related protocols referenced in the company's policies or program materials. Ideally this should be done regularly by internal staff and periodically by third-party auditors.
- **Educate suppliers and company management about the importance of land rights for all people.** Company staff should familiarize themselves with the relative strength of, and respect for, land rights of women and men as well as issues related to the status of women. See Supplemental Resource 4: Why Land Matters: Communicating Your New Land Commitment for a training presentation example of making the business case for protecting land rights and covering issues associated with implementing a new company policy for responsible land investment.

Task 2: Conduct Due Diligence

Best Practice

At the outset of a potential investment process, it's imperative that the business learn as much as it can about the Tanzania context it's entering. Through this process, it can identify and mitigate or eliminate actual or potential issues and risks the project may pose to communities and individuals who rely on the property it is looking to purchase.

This is called **acting with due diligence**. It will help the business avoid infringing on legitimate tenure rights and land uses.⁹⁴ Due diligence should:

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

This evaluative process can be done through audits and self-reporting, though it should probably be carried with significant support from a third party. Additionally, it should include input from government, civil society, communities and individual land holders and users (both women and men) potentially affected areas, and other stakeholders.⁹⁵

Though this section primarily covers due diligence activities to be completed at the beginning of a project, **due diligence activities should continue at regular intervals over the course of the investment lifecycle**. Any expansion or change to an investment or the addition of a new supplier to the company's supply chain is an opportunity to practice due diligence. Even in the absence of change to the project, new information may simply come to light.

Step-by-Step Guidance

Although this guide provides guidance for designing and implementing an investment, due diligence must reflect the actual details of the evolving investment. It is therefore important that the business enterprise carry out country-level due diligence specifically related to the actual investment that is being proposed. This is

of particular importance if the enterprise is applying the guidance to an already existing investment that involves complicated legacy issues.

1. Business conducts desk research to understand Tanzania's development objectives and context for investment.

Government-Required Procedural Action

Not applicable because Tanzanian law does not require enterprises making land-related investments to conduct a significant due diligence process prior to commencing an investment project.

Gap between Best Practice and Required Procedural Action

The lack of government requirements creates a significant gap, and a number of supplemental steps will be required.

Best Practice Supplemental Steps

The first step for due diligence is understanding the dynamics of the land systems and agricultural practices in the project area.⁹⁶ Review all available government strategies that relate to land-related investments in Tanzania, including websites of the following organizations:

- TIC: <http://www.tic.co.tz/>
- EPZA: <http://www.epza.go.tz/>
- SAGCOT: <http://www.sagcot.com/>
- CAADP: <http://www.un.org/en/africa/osaa/peace/caadp.shtml>

Using the Themes for Responsible Investment in Tanzania section and Supplemental Resource 2: Overview of Tanzania Legal Framework, understand and evaluate Tanzania's legal framework from these perspectives:

- **Rights and Interests of Land Holders and Users:** Do the laws and policies protect all land holders and users, including women, men, communities, pastoralists, businesses and other land users? Do laws and policies recognize the different needs and challenges facing individual land holders and users – women and men – in terms of accessing and exercising rights to land and natural resources and negotiating with investors and government? See Supplemental Resource 2: Overview of Tanzania's Legal Framework.
- **FPIC:** Do the laws and policies adhere to the principles enshrined in FPIC? See FPIC in Tanzania.

- **ESIA:** Do laws and policies require the investor to conduct a thorough assessment of the environmental and social impacts of a proposed project as a part of providing information to land holders and users, creating remedial measures and designing the investment? See Conduct Community Assessments.
- **Valuation and Compensation:** Do laws and policies clearly state how to value land in a manner that will provide equitable compensation to land holders and users? See Conduct Community Assessments.
- **Contracting:** Do laws support land holders and users in negotiating and entering into agreements with business enterprises and the government? See Developing an Equitable and Inclusive Contract.
- **Dispute Resolution:** Do laws and policies support the establishment of dispute resolution mechanisms that are culturally appropriate, accessible, transparent and accountable?⁹⁷ See Developing and Implementing a Plan to Address Land Related Issues.
- **Involuntary Resettlement:** Will the proposed investment project involuntary resettle communities? Involuntary resettlement is not in keeping with best practices for a responsible investment.⁹⁸

Compare international standards and best practices to Tanzania laws and policies to identify gaps and inconsistencies in existing laws that the enterprise should consider when designing and carrying out best practices investment activities. Table 1 summarizes this kind of comparison.⁹⁹

2. Business consults with key stakeholders to obtain their perspectives on Tanzania land laws and policies.

Government-Required Procedural Action

Not applicable

Gap between Best Practice and Required Procedural Action

Not applicable.

Best Practice Supplemental Steps

Consult with key government and CSO stakeholders to obtain their perspectives on whether Tanzanian land laws and policies are clearly understood, implemented and enforced. This will help the business understand Tanzania's governance gaps and implementation capacity.

3. Business develops a risk mitigation strategy for identified gaps.

Government-Required Procedural Action

Not applicable

Gap between Best Practice and Required Procedural Action

Not applicable

Best Practice Supplemental Steps

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

⁸⁸ Some examples include Nestlé Commitment on Land & Land Rights in Agricultural Supply Chains, an appendix to The Nestlé Policy on Environmental Sustainability, https://www.nestle.com/asset-library/documents/library/documents/corporate_social_responsibility/nestle-commitment-land-rights-agriculture.pdf; Coca Cola Supplier Guiding Principles, which includes guidance on land in its supply chain, <http://www.coca-colacompany.com/our-company/supplier-guiding-principles>; and Illovo Group Guidelines on Land and Land Rights, <https://www.illovosugar.co.za/Group-Governance/Group-Guidelines-on-Land-and-Land-Rights>.

⁸⁹ Food and Agricultural Organization (FAO), *Voluntary Guidelines on the Governance of Tenure, Fisheries, and Forests in the Context of Food Security* 4 (2012) [hereinafter “VGGT”], available at <http://www.fao.org/docrep/016/i2801e/i2801e.pdf> (“Business enterprises should act with due diligence to avoid infringing on the human rights and legitimate tenure rights of others.”). See also UN Office of the High Commissioner for Human Rights (OHCHR), *Guiding Principles on Business and Human Rights* 5 (UN Human Rights Council 2011) [hereinafter “UNGPs”], available at: <http://www.business-humanrights.org/Documents/UNGGuidingPrinciples> (“In order to identify, prevent, mitigate and account for how they address their adverse human rights impacts, business enterprises should carry out human rights due diligence. The process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed.”).

⁹⁰ Nigel Edmead, Technical Workshop Presentation on “Gender Issues in Designing and Setting Up Land Information Systems and Databases: Experiences from Ghana, Zambia and Uganda” (May 2011).

⁹¹ See FAO, *Compulsory Acquisition of Land and Compensation* (Land Tenure Studies No. 10 2008), available at <http://www.fao.org/3/a-i0506e.pdf>.

⁹² See Rugemeleza Nshala, Anna Locke, & Jennifer Duncan, “Discussion Paper: A Proposed Land for Equity Scheme in Tanzania” (2013).

⁹³ Business for Social Responsibility (BSR), *Engaging with Free, Prior, and Informed Consent* 15 (2012), available at https://www.bsr.org/reports/BSR_Engaging_With_FPIC.pdf.

⁹⁴ VGGT, *supra* note 89, at 4.

⁹⁵ See United States Agency for International Development (USAID), *Operational Guidelines for Responsible Land-Based Investment* (2015).

⁹⁶ Agence Française de Développement (AFD), *Guide to Due Diligence of Agribusiness Projects that Affect Land and Property Rights* 17 (2014), available at <http://www.landcoalition.org/sites/default/files/documents/resources/Guide-to-due-diligence.pdf>.

⁹⁷ See International Finance Corporation (IFC), *Good Practice Note: Addressing Grievances from Project-Affected Communities 3* (2009), available at <https://www.unglobalcompact.org/library/38>.

⁹⁸ For Tanzania's resettlement policy framework for the SAGCOT agricultural zone, see Ministry of Agriculture and Food Security, *Resettlement Policy Framework* (2003), available at http://www.kilimo.go.tz/uploads/Tanzania_PADEP_Resettlement_Policy_Framework.pdf.

⁹⁹ For further guidance on evaluating national laws and comparing them to international best practices, see Janet Pritchard et al., *Securing Community Land and Resource Rights in Africa: A Guide to Legal Reform and Best Practices* (2013), available at <http://www.forestpeoples.org/sites/fpp/files/publication/2014/01/securingcommunitylandresourcesguideenglishjan2014.pdf>.

Phase 2: Community Engagement and Assessments

This phase provides steps for engagement and consultation with land holders and users to learn how the investment may impact their livelihoods.

Task 1: Engage and Consult with Land Holders and Users

1. Business obtains a Certificate of Incentive and introduces investment to national and district government authorities.
2. Business meets with regional and district authorities about the potential investment project.
3. Business meets with the Village Council about the potential investment.
4. Business participates in a series of Village Assembly meetings for community members to consider whether to conduct VLUP.
5. Business provides notice of its intent to proceed with the investment, which is accessible to all community members.

Task 2: Conduct Community Assessments

1. Business identifies a CSO to assess and build the capacity of the Land Committee and Village Council to engage and negotiate during the investment process.
2. Business hires an experienced third party to conduct the ESIA.
3. Business finances VLUP activities conducted by national, district and village authorities.
4. National authorities conduct land valuation.
5. Business requests a Village Assembly meeting to review findings from all three assessments and decide whether to ratify or renew its consent.

Task 1: Engage and Consult with Land Holders and Users

Best Practice

Businesses should engage and consult meaningfully with communities, individual smallholders and all other land holders and users (both women and men) throughout the land investment project, starting at the beginning of the investment. The engagement and consultation process should be in accordance with FPIC:

- **Free:** Communities should not be coerced, forced, intimidated or otherwise pressured by business enterprises or governments to change the use of, sell, lease or otherwise dispose of their land and natural resources.
- **Prior:** Business enterprises and governments may only implement a project that involves transferring or changing the use of community land and natural resources *after* obtaining affected communities' explicit consent to the terms of the project.¹⁰⁰
- **Informed:** Business and governments must provide communities with all material information needed to make an informed decision about whether to consent to a project that affects their land rights and uses.¹⁰¹
- **Consent:** Communities must explicitly consent to any proposed project that involves transferring or changing the use of their land or natural resources before business enterprises or governments implement projects.

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

Step-by-Step Guidance

The application of Tanzania laws and policies is at times inadequate to ensure that businesses embrace best practices for effective consultation and engagement, so the business will need to undertake supplemental activities. In practice, the community engagement and consultation process that currently results from the application of the existing law – regardless of the size of the land acquisition – is just a single meeting of the Village Assembly. But one meeting clearly falls short of best practices, and fieldwork findings reveal a host of other issues:

- There is **limited opportunity for participants** to gain a full understanding about the investment proposal, pose questions and receive detailed answers, or express serious dissent or disagreement.
- Village Assembly members have **reported feeling coerced** by business, government officials and village leaders into giving their consent for the investment project in such meetings.
- Village Assembly members who attend are often **not a broad representation of the entire community**:
 - While women may be members of the Village Council, there is no guarantee of women's active participation in the decision-making process.
 - Single women and youth are usually excluded from discussions when they do not currently use land or have "rights" to land
 - Pastoralists are usually left out of the consultation process even if they lease land or water.
- Many Village Assembly members **regard these meetings as formalities** and do not believe that the consultation process to review an investment application represents or advances their interests.

The supplemental steps provided below will increase the business understanding of the current government requirements and practices and show how to include all relevant parties in the engagement and consultation through an iterative process that includes women, pastoralists and other vulnerable groups within communities.

1. Business obtains a Certificate of Incentive and introduces investment to national and district government authorities.

Government-Required Procedural Action

Before accessing land in Tanzania, a business is required to obtain a Certificate of Incentive (CI) from the TIC. The business must submit the following:

- Certificate of Incorporation
- Business Plan
- Memorandum of Articles of Association
- Evidence of Finance
- Evidence of previous land investments
- Letter from Board of Director to register the company with TIC

- Tanzania tax identification number
- TIC application form
- Letter from appropriate Tanzania commodity regulatory board

If TIC grants the CI, TIC also prepares letters of introduction for the business enterprise so that it may engage with the appropriate regional and district authorities.

Gap Between Best Practice and Required Procedural Action

Many businesses bypass this step. Instead they engage directly with some combination of district and village authorities in the belief that this will avoid coordination difficulties and capacity gaps to expedite the process of identifying land.

However, this approach can lead to confusion and misaligned expectations. District officials and village leaders, who are often eager to promote rural economic development, have been known to make unreasonable promises to communities regarding potential benefits from investments, which has led to mistrust between the community and the enterprise when the investment is ultimately introduced.

Best Practice Supplemental Steps

Although not required by law, after receiving the CI the business enterprise should ask the NLUPC to review the business proposal. This can help to reduce confusion and the potential for misaligned expectations within districts and villages.

The government has established special economic zones and carried out district land use planning intended to help investors identify areas where investments should take place. The NLUPC was involved in the planning process and worked closely with many district authorities. By reviewing the business proposal, the NLUPC can:

- Assess the suitability of the proposed investment for potential districts,
- Identify villages that could be affected,
- Identify existing boundary issues between villages,
- Confirm population in the area,
- Provide insight regarding the capacity of district authorities to support the enterprise in introducing a potential investment to a community, and
- Gather other useful information.

2. Business meets with regional and district authorities about the potential investment project.

Government-Required Procedural Action

With the CI in hand, the business has formal permission from TIC to meet with District Council officials and seek an introduction to the Village Councils representing the communities in the proposed investment area.

After formal introduction by the District Council to the Village Council, the business can meet with the Village Councils and submit the business plan to the potentially affected villages.

Gap Between Best Practice and Required Procedural Action

In the past government officials have approved a business proposal and allocated land before the business engaged and consulted affected land holders and users, which created a number of land and human right violations.

Best Practice Supplemental Steps

At this stage, **the business should not make any agreement with regional or district officials.** By law, the business plan must receive the approval of the Village Council and Village Assembly.¹⁰² Once a prospective investment site has been identified, the business, with the support of a third-party expert, should gather relevant information about the communities, including women and individual land holders and users, in preparation for meetings. Some suggestions are:

- Engage with other knowledgeable people, including CSOs and elected officials, to **obtain a clear picture of the rural conditions**, dynamics and power structures.
- **Seek out existing information to assess past, current, and potential land issues and conflicts** in the area related to:
 - Boundary issues between neighboring communities,
 - Conflicts between farmers and pastoralists,
 - Conflicts between households, and
 - Village conflicts with minority or vulnerable groups (i.e., widows, single women people with disabilities).
- **Update business plan and risk mitigation strategy** to reflect lessons learned.

3. Business meets with Village Council about the potential investment.

Government-Required Procedural Action

The business presents its investment plan to each Village Council in the investment area. Each Village Council reviews, provides input, and gives its approval. If approved by the Village Council(s), each council introduces the business plan to the corresponding Village Assembly for its consideration and approval.

Gap Between Best Practice and Required Procedural Action

Several factors make this process inadequate:

- The 25-member Village Council is not necessarily representative of the land holders and users who would be affected by the investment.
- Not all of the 25 members that comprise the Village Council are likely to have actively participated in the discussion about the proposed investment because council meetings are often uncoordinated and under-facilitated.
- The law calls for a minimum of seven council members to be women.¹⁰³ However, women's participation frequently falls short of this requirement, and even when women are in attendance, they may not speak in a mixed gender audience.

Best Practice Supplemental Steps

After an initial group meeting with the all Village Council members, the group should be divided into small groups of five to seven people to ensure all 25 members participate in the discussion. Women should be met with separately to provide a forum without men where they can feel more comfortable voicing their thoughts. The meeting should include:

- Background of business,
- Project purpose,
- Geographic scope,
- Business model,
- Proposed project timeline,
- Specific land right being sought,
- Potential term of the agreement,
- Potential benefits to the community, and

- Potential risks, including social, environmental and financial risks.¹⁰⁴

Reconvene the entire group for Village Council members to ask questions and share thoughts from each small group. In coordination with the Village Council, determine how to convene a Village Assembly meeting that is attended by all of the land holders and users who may be affected by the land investment. Consult [Supplemental Resource 5: Community Consultation Checklist](#) to prepare for these community meetings, both with the Village Council and the Village Assembly.

To the extent required, revise the business plan and risk mitigation strategy based upon information gathered during the consultations.

4. Business participates in a series of Village Assembly meetings for community members to consider whether to conduct VLUP.

Government-Required Procedural Action

The VLUP meeting is an important Village Assembly meeting called for by law.

- This meeting serves as the engagement and approval event that would carry the investment into the next phase of implementation.
- This meeting is held to consider and approve the business plan presented by the business and is intended to be a venue to discuss, negotiate and agree on terms related to compensation before the VLUP is conducted.
- At this meeting, 51% of the attending members are required to provide their consent. Meeting minutes are prepared by the Village Council and signed by participants to confirm approval.

Gap between Best Practice and Required Procedural Action

This meeting should be viewed as a starting point to engaging directly with the community because of the following gaps:

- As mentioned earlier, a single meeting cannot constitute meaningful engagement and consultation with community members, particularly when the VLUP process and other assessments have not yet been carried out.
- Attendance of community members directly affected by the investment is not required, and those affected may not appreciate the importance of the meeting.
- By law only 51% of attendees are needed to approve the investment, which is insufficient to obtain consent.

- At this point, the nature and extent of impacts are still undetermined and any negotiation is premature.

Best Practice Supplemental Steps

The purpose of this Village Assembly meeting should be seen as an opportunity to raise the awareness of community members to the importance of VLUP and receive their consent to conduct the VLUP as well as the capacity assessment, ESIA and land valuation.

More than one Village Assembly meeting may be required to ensure that substantially all affected land holders and users are present. The business enterprise may want to work with a third-party facilitator (and the government, if possible). See Best Practices for Holding Village Assembly Meetings located in the introduction.

5. Business provides notice of its intent to proceed with the investment, which is accessible to all community members.

Government-Required Procedural Action

This is not required by Tanzanian Law.

Gap between Best Practice and Required Procedural Action

This step is in keeping with remaining transparent by sharing information broadly with the community.

Best Practice Supplemental Steps

While many community members may know about the proposed investment through initial meetings and “word of mouth,” the business should take the initiative in providing formal public notice of its intent to carrying out the assessments in the following phase after they have obtained consent from the Village Assembly.

- The business should provide notice in languages, formats and locations that are accessible to community members, including women and other vulnerable groups. To reach illiterate members of the community, consider also providing non-written notice through radio announcements or other means.
- The notice should include key project details, such as the name of the investor, intended land use, a map of the affected area and contact information.

Task 2: Conduct Community Assessments

Best Practice

To inform whether both the business and the community should proceed with the investment, the business is responsible for hiring a neutral and experienced third party to **conduct three community assessments** that examine community capacity, environmental and social impacts, and the value of the land. The business should ensure that community members are informed about the assessments, can participate meaningfully in them and have assessment findings communicated to them in a form that they can understand. It is best practice to conduct, at minimum, the following assessments. Although there are overlapping aspects and steps to each assessment component, for the sake of clarity, this guide presents each component as a standalone assessment:

- **Community Capacity Assessment:** It is not uncommon for communities and individual land holders and users to lack experience with commercial land transactions. This assessment looks at the capacity of community leaders and members to participate in the investment process, including the ESIA, land valuation, and negotiation and contracting.¹⁰⁵
- **ESIA:** This assessment identifies and gauges actual or potential impacts from the proposed investment project on the environment and community, including impacts affecting land holders and users, land rights, and livelihoods.¹⁰⁶ Revisions to the investment design should incorporate mitigation measures from the assessment that will reduce or eliminate impacts and sustain or improve livelihoods.
- **Land Valuation:** A core element of determining impacts is assessing and establishing market and non-market value of interests and rights in the land, including interests and rights associated with livelihoods and social, cultural, religious, spiritual and environmental values to ensure that compensation and benefits are equitable for women, men and communities.

Step-by-Step Guidance

This section outlines the three assessments – capacity, ESIA and land valuation – that should supplement VLUP activities to address several gaps in the process:

- **Capacity:** The activities outlined in the VLUP manual do not consider what capacity exists and what capacity needs to be built within the community to

ensure villagers are able to engage with the business enterprise, understand the project, negotiate and give informed consent to a contract.

- **ESIA:** Stage 2 of the VLUP is the Participatory Rural Appraisal (PRA), which is used to determine and record the prospective social, economic, livelihoods and legal impacts related to land use and management, including potential investments. But the PRA doesn't adequately capture environmental impacts or reflect the land uses and livelihoods needs of women and pastoral communities, primarily because of prevailing cultural norms and the ongoing tension between pastoralists and farmers.

1. Business identifies a CSO to assess and build the capacity of the Land Committee and Village Council to engage and negotiate during the investment process.

Government-Required Procedural Action

Not applicable because Tanzanian law does not require assessing and improving community capacity prior to commencing an investment project.

Gap between Best Practice and Required Procedural Action

The lack of government requirements creates a significant gap, and the business will need to take steps to assess and improve community capacity.

Best Practice Supplemental Steps

In order to understand and reciprocally provide important information, the Village Council and Assembly require support, guidance and education on important procedural components such as impact assessment, valuation, compensation and contracting.

To avoid conflicts of interest and promote objectivity, engage local civil society to help identify a potential CSO to work with the community.

- Consider selecting the CSO through a tender process based on qualifications and experience.
- Consider having the services, financial payments and transaction be managed by a party that doesn't have an interest in the investment project, such as an escrow company or a financial services provider.
- Seek input from community leaders on the candidates before hiring them to ensure the community is comfortable with the parties that will be conducting the assessment.

To enlist a qualified CSO to assist the community, consider reaching out to:

- **Agricultural Non State Actors Forum (ANSAF)**: a member-led forum for non-state actors to discuss and work towards solutions to improve the agriculture sector in the interests of men and women currently living in poverty. ANSAF's mission is to orchestrate collaborative efforts to influence policy and practice change on crucial issues affecting marginal, smallholder farmers (men and women) and other stakeholders through learning, communication and advocacy.
- **Tanzania Women Lawyers Association (TAWLA)**: an organization of women lawyers that promotes equal rights and access to justice for all by focusing on vulnerable and marginalized groups, especially women and children. TAWLA seeks to enhance women's and children's rights through advocacy for civil rights, social justice, transparency, integrity, respect, gender equity, good governance and accountability.
- **Women in Law and Development in Africa (WILDAF)**: a Pan African women's rights network dedicated to promoting and strengthening strategies that link law and development to increase women's participation and influence at the community, national, regional and international level. Among other things, WILDAF Tanzania provides support for emergency response, legal aid, legal training and community mobilization.
- **Tanzania Land Alliance (TALA)**: a forum of CSOs which serves as a national network of small farmers groups in Tanzania. TALA focuses on joint advocacy activities to attain land rights for smallholder farmers in Tanzania.

The primary goal is to identify capacity gaps and determine what sort of training or technical support will be necessary to build community capacity. This should be done at a fairly high level and does not need to be a long exercise.

- At an initial Village Assembly meeting aimed at communicating with those whose land access will be curtailed, tell the community and individual land holders and users (both women and men) what to expect during the capacity assessment.
 - Explain the assessment goals.
 - Emphasize that anyone can approach the business enterprise and its implementing experts during the assessment.
 - Accommodate women, pastoralists, youth and others by acknowledging that social norms may dictate that someone must speak on their behalf.

- Perform a capacity assessment to understand the extent to which the capacity of the community will need to be improved so that it can participate in the VLUP and any subsequent negotiations. For further guidance see:
 - UNDP's Capacity Assessment Methodology User's Guide (2008) pp 12-15
 - The World Bank Participation Sourcebook, Appendix I Methods and Tools
 - Supplemental Resource 6: Community Capacity Assessment
- Present findings and proposed mitigation measures to the Village Assembly for comment, correction and ratification.
- Create and implement a capacity-building plan that will enable community members to participate in the impact assessment and represent themselves in any subsequent negotiations.

2. Business enterprise hires an experienced third party to conduct the ESIA.

Government-Required Procedural Action

According to the Environmental Management Act, 2004 (EMA) and its regulations, any agricultural project requires an in-depth study (an environmental impact assessment, or "EIA") to determine environmental impacts and appropriate mitigation strategies.

Gap between Best Practice and Required Procedural Action

The EIA doesn't address social, economic, livelihood and legal impacts related to the potential investment that is needed to meet international best practices.

Best Practice Supplemental Steps

The business will be responsible for hiring an independent and experienced third party to conduct an ESIA. This assessment offers a more thorough analysis of social, economic and environmental impacts, and should be expanded to include impacts on land uses, rights and livelihoods to comply with international best practices.

- Tanzania EIA regulations can be found on-line. The Netherlands Commission for Environmental Assessment provides an overview of the requirements, but additional measures should be taken.
- A land rights, use and livelihood component should be integrated into the ESIA to comply with widely-accepted human rights standards¹⁰⁷ and domestic laws and policies.

- Supplemental Resource 7: Land Rights Assessment Tool Kit contains resources and information to develop a customized assessment to identify potential issues and risks related to economic, environmental, social and land rights issues. The business will need to develop a plan to address and mitigate identified risks; see Supplemental Resource 8: Risk Mitigation Analysis.
- The research methodology should describe:
 - Scope and duration of study;
 - Location and boundary of the potential investment site, along with areas near the site that could be affected by the investment;
 - Thematic areas and issues that will be assessed;
 - The different types of land holders and users potentially affected by the investment;
 - Types of qualitative and quantitative research techniques that will be used;
 - Tailored questionnaires for each type of land holder and user; and
 - Links to the community engagement plan.

3. Business finances VLUP activities conducted by national, district and village authorities.

Government-Required Procedural Action

The VLUP process is organized into six broad steps. Each step has a number of subordinate steps and outputs that are required before the next step can be undertaken.

1. **District-Level Preparations.** This includes the establishment of a PLUM team and the completion of an operating plan for the Village or Villages within the District that will be the subject of VLUP.¹⁰⁸
2. **Village-Level Participatory Rural Appraisal (PRA).** The PRA begins with the Village Council installing a Village Land Use Management Committee (VLUMC) for the PLUM team to work with. Once the PLUM team has conducted introductory meetings with the Village Assembly, the Village Council and the VLUMC, it must work with these village authorities to complete a thorough PRA.
3. **Building on the PRA.** A more thorough mapping of existing land use in the village is performed. This step is often the stage where inter- and intra-village

conflicts emerge, as the PLUM team works to formally demarcate borders that may be subject to longstanding disputes.¹⁰⁹

4. **PLUM Team Completes Participatory VLUP.** The PLUM team works with the VLUMC and all village members on the VLUP. This requires formulating multiple drafts of land use by-laws and adopting the final version after consulting with the village authorities and other stakeholders. The completion of this fourth step is marked by the erection of VLUP Sign Boards that lay out planned uses. To complete this much of the process typically takes around 30 days.¹¹⁰
5. **Ongoing VLUP Implementation through Village Land Use Management (VLUM).** This is a detailed and particularly resource-heavy portion of the VLUP process, as it involves establishing functional Land Registries at both the district and village levels, adjudicating all land tenure and titling issues, and issuing CCROs.
6. **Completion of a VLUM Plan for Ongoing Management and Monitoring.** The PLUM team and the Village Council complete the VLUP management plan and monitoring framework. Village leaders carry out periodic VLUM appraisals to identify and address issues.

Gap between Best Practice and Required Procedural Action

There are a number of challenges to implementing the VLUP process.¹¹¹

- Resource constraints limit the involvement of NLUPC technical experts who should be overseeing the implementation of each stage.
- As a part of the first step, NLUPC typically organizes and trains PLUM teams over several days, which is an insufficient amount of time required given the complexity of land use planning, and then depends upon the PLUM team to train the VLUM and carry out the remaining activities.
- The existing methodology and framework for the Village-Level PRA (stage two) is inadequate to meet the requirements for an investment impact assessment.
- The VLUP process helps community members identify land uses and needs for a 10-year period, which does not adequately take into account future impacts from the proposed investment, which may last for a 99-year lease.
- The process is usually completed within 30 days, which does not provide for full engagement, consultation and participation of community members when determining their future livelihood needs in relation to allocating land for an investment project.

- The differences between formal law and customary practices in women's access to and control over land creates challenges in enforcing laws and policies, particularly during the implementation of VLUP.¹¹² To effectively address women's land uses and rights, the VLUP would ideally educate both women and men on the importance of recognizing those uses and rights and how that recognition can improve the quality of life within the community.

Best Practice Supplemental Steps

The following steps should supplement the existing VLUP process to ensure that ongoing consultation and engagement are maintained and sufficient, that impacts linked to the proposed investment are clearly identified and mitigated. Women, men, pastoralists and other vulnerable groups should be reached, considered and accommodated.

- **Negotiate a contract directly with NLUPC** (not through district officials or other government actors) to carry out VLUP in villages that will be impacted by the proposed investment. The contract should ensure that NLUPC technical experts are involved throughout each stage of the VLUP process. To address concerns related to business enterprises financing VLUP, the NLUPC takes extra measures when carrying out VLUP activities that are financed by companies:
 - When negotiating with a company, the NLUPC makes it clear that its role is not to help the private sector obtain land.
 - Staff at the NLUPC conduct additional due diligence on the proposed investment by reviewing the business plan and following up with other relevant government departments. They have examples of proposed projects that were rejected because they would adversely affect other existing land uses and the community members that engage in them.
 - The contract signed with the company includes a clause stating that land use planning does not guarantee the company being allocated land of any amount.
- **A third-party expert should support NLUPC to bolster the Village-Level PRA** to ensure requirements for an investment impact assessment are achieved. This third party should also have gender issue experience.
 - If NLUPC staff are unable to conduct the assessment, contract with third-party experts to supplement NLUPC staff. The **business should not be actively involved** in the VLUP process beyond financing, providing information and coordinating participation by third-party experts and CSOs.

- The business should provide all consultation and engagement information gathered to date and the full assessment results to NLUPC to use during VLUP. The business should also coordinate its ongoing consultation and engagement activities with the related efforts that will occur during VLUP.
- In most cases VLUP will need to be conducted in multiple villages. Fortunately, funding and time can be used more efficiently by conducting VLUP in two or more neighboring villages at the same time, with the added benefits of frontloading dispute resolution over shared resources, establishing consistent by-laws across a region, and better accounting for trans-village populations (e.g., pastoralists and hunter gatherers).¹¹³
- NLUPC has a budget template that outlines all costs for each activity, number of days required and number of people that need to be involved during the process. These are standard rates that are not negotiable. To this budget information, add costs for third-party experts and expect to coordinate the activities of these experts. Additional days to carry out the VLUP process should be included to:
 - Organize and train the PLUM teams;
 - Ensure women are meaningfully included throughout the process; and
 - Ensure community members have sufficient time to determine their future livelihood needs as they relate to a possible investment project.
- The final deliverable to the business enterprise is a copy of the VLUP report. Originals are the property of the NLUPC.
- **Identify one or more suitable CSOs** and request that they be integrated into the process. Ideally this will be the same CSO(s) that helped with the capacity building assessment discussed previously to ensure continuity and reduce the burden on the communities. If that CSO is unable to participate in VLUP, work through the NLUPC to engage with CSOs that participate in VLUP-related committees.
 - Provide the CSO with all relevant documents and information gathered and collected. Coordinate the CSO activities with those of the third-party experts. It may be possible to use CSO staff to perform activities that could be undertaken by those experts.
 - With the support of the NLUPC, introduce the CSO to district authorities.
- NLUPC staff, in coordination with district and village authorities, **carry out VLUP**. The business enterprise should not be involved in the process.

- After the VLUP process is completed, the **NLUPC reviews final documents against its policies and procedures to determine viability and sustainability of the VLUP**. Land use plans are also reviewed by the Attorney General. The NLUPC may benefit from the impact assessment results that are produced by third-party experts.
 - NLUPC staff examine whether the community allocated enough land for future use. Impact assessments yield some of the same information and conclusions, and this information should be shared transparently with NLUPC staff. Although the current VLUP guidelines require communities to project their land use needs up to 10 years, the NLUPC requests that communities assess their needs at a projection of 20 years after the investment would begin. An impact assessment will make related assumptions about livelihoods and time horizons.
 - Depending on the findings, the NLUPC may dispatch an independent fact-finding team to the district and village to confirm land use allocations. Appropriately, NLUPC has examples of companies who financed VLUP but were not allocated any land because land use allocations by the community were not compatible with the proposal. In essence, this was a conclusion that investment impacts were too severe and that they could not be suitably mitigated by the business enterprise.
 - Assuming that the proposed land investment is moving toward approval and that land use impacts can be suitably mitigated, the minister may convene a special committee to review the documents before they are approved and gazetted.

4. National authorities conduct land valuation.

Government-Required Procedural Action

The government requires that:

- A MLHSD-certified valuer conducts a valuation assessment of the land.
- Valuation of land must cover the value of the land and all its unexhausted improvements, defined under the Land Act as anything permanently attached to the land, directly resulting from the expenditure of capital or labor by the occupier or a person acting on the occupier's behalf, which increases the land's productive capacity, utility or sustainability.¹¹⁴ In other words, it captures anything built or financed by the land occupier that improves the land's productivity.

- Acceptable valuation methods include both the market comparative method and replacement cost method.¹¹⁵
- It is within the valuer's discretion to adopt a valuation method based on the unique conditions of the property and the strength of the local land market.¹¹⁶

Gap between Best Practice and Required Procedural Action

In 2016 the Tanzanian parliament enacted the Valuation and Valuers Registration Act¹¹⁷ to regulate the valuation profession. Gaps in the existing process include:

- The new Act provides little substantive guidance on valuation best practice as it should pertain to the acquisition of village land by investors.
- The Act generally prohibits from disclosure "any information relating to a valuation report in respect of a client acquired in the course of employment or the discharge of his duties," unless required by law or authorized by the Board or Chief Valuer.¹¹⁸ This could potentially prevent a community from validating a valuer's report to ensure all uses and values of the land are accounted for.
- The new valuation approach is inadequate because it fails to include the full livelihoods value of the land, particularly secondary uses. The Act does allow valuers to use other methods not enumerated in the Act, which potentially could capture those secondary use values, but there is no guidance on how to do so.

Best Practice Supplemental Steps

Given the need to promote transparency and accountability, the valuation for purposes of investment by business enterprises in village land should be done independently by a third party or, at a minimum, validated by a third party. In addition, all information on any valuation should be shared with the community.¹¹⁹ For additional detail see the **Valuation and Compensation Primer**. Best practices steps aimed at these ends should include:

1. Hire a third-party expert to validate the legally-required valuation.
2. All engaged valuers should collaborate in reconciling discrepancies between valuations.
3. Based on outcomes from the independent valuation and any valuation conducted as a part of the VLUP process, develop a compensation and benefits framework that should include:¹²⁰
 - **Who should be compensated:**
 - Women,

- Men,
- Village Council,
- Pastoralists, and
- All other land holders and users that will forego use of the land or begin to use it differently for the benefit of an investing business enterprise.
- **What losses should be compensated:**
 - Market and non-market value of land;
 - Tangible assets lost, marine and aquatic resources, timber and non-timber forest products, freshwater, medicinal plants, hunting and gathering grounds,¹²¹ and grazing and cropping areas; and
 - Non-tangible values, including livelihoods, social, cultural, religious, spiritual and environmental.¹²²
- **Forms of compensation:**
 - Cash
 - Employment commitments
 - Social and economic community improvements
 - Equity in the investment
 - Other benefit-sharing arrangements, including outgrower schemes
 - Periodic rent such as annual rent
 - Replacement land or natural resource access
- **Modes of Compensation:**
 - Individual payments to joint bank accounts for married couples.
 - Payments to the village's bank account that are accompanied by clear provisions for how funds will be further distributed (including all recipients, including women; frequency; amounts; and penalties for failure to perform).
- 4. Document how compensation was calculated and share with the community during the negotiation process.¹²³
- 5. Revise the business plan to reflect the proposed compensation scheme, including mitigation of all investment impacts, the elements of an ongoing consultation and engagement plan, the need for a project specific grievance mechanism, and ongoing monitoring and enforcement of the final agreement with the community and the government.

5. Business requests a Village Assembly meeting to review findings from all three assessments and decide whether to ratify or review its consent.

Government-Required Procedural Action

Beyond the initial Village Assembly meeting, there is no requirement called by law to seek consent from communities after VLUP is completed.

Gap between Best Practice and Required Procedural Action

As mentioned earlier, one meeting cannot constitute meaningful engagement and consultation with community members.

Best Practice Supplemental Steps

If land was allocated for an investment as an outcome of the VLUP, conduct additional consultation and engagement efforts to ensure community members are familiar with the findings of each assessment conducted in parallel with the VLUP process and to ensure agreement on next steps. This agreement on next steps essentially serves as the consent of the community and individual land holders and users to proceeding to create a contract that memorializes the land transaction. This consultation and engagement process largely mirrors the structure and requirements set out for the ongoing engagement effort.

- Continue working with the previously identified third-party expert.
- Findings from the assessments should be translated and shared widely with community members.
- Meet with the Village Council:
 - Divide the council into small groups of five to seven people to ensure all 25 participate in the discussion.
 - Women should be met with separately.
 - During the meeting, the representative role of the council members should be underscored so that each of them understands that they are serving as proxies for the broader community and individual land holders and users who will relinquish the rights to village land in exchange for benefits and compensation.
- In coordination with Village Council, provide initial notice to hold a series of Village Assembly meetings to determine whether the community will approve the business plan. See Best Practices for Holding Village Assembly Meetings.

- ¹⁰⁰ See FAO, *Respecting Free, Prior and Informed Consent* 16 (Governance of Tenure Technical Guide 3 2014), available at <http://www.fao.org/3/a-i3496e.pdf>.
- ¹⁰¹ See *id.* at 5.
- ¹⁰² See Village Land Act § 4 (read together with §§ 7(7), 8, and Part IV Subpart B of the same law); Local Government (District Authorities) Act § 114.
- ¹⁰³ Local Government (District Authorities) Act § 55.
- ¹⁰⁴ USAID, *supra* note 95, at 25.
- ¹⁰⁵ African Union (AU), *Guiding Principles on Large Scale Land Based Investments in Africa* (2014) [hereinafter “AU Guiding Principles”], available at https://www.uneca.org/sites/default/files/PublicationFiles/guiding_principles_eng_rev_era_size.pdf.
- ¹⁰⁶ See note 89, *supra*.
- ¹⁰⁷ See AU Guiding Principles, *supra* note 105, at 6 (“Decisions on the desirability and feasibility of LSLBI are made based on independent, holistic assessment of the economic, financial, social and environmental costs and benefits associated with the proposed investment, throughout the lifetime of the investment.”); see also note 89, *supra*; see generally World Bank Group, *Human Rights Impact Assessments: A Review of the Literature, Differences with Other Forms of Assessments and Relevance for Development* (2013), available at http://siteresources.worldbank.org/PROJECTS/Resources/40940-1331068268558/HRIA_Web.pdf.
- ¹⁰⁸ See NLUPC, *supra* note 33.
- ¹⁰⁹ See ILC, *supra* note 9.
- ¹¹⁰ See NLUPC, *supra* note 33.
- ¹¹¹ See Tanzania Forest Conservation Group (TFCG), *Securing Village Land Certificates and Acquisition of Certificates of Customary Right of Occupancy: A Case Study of 10 Villages in Kilosa, Mpwapwa, Lindi and Rufiji Districts* (TFCG Technical Report 50 2015), available at <http://www.tfcg.org/pdf/TFCG%20Village%20Land%20Tenure%20Report%202015%20FINAL.pdf>; ILC, *Village Land Use Planning in Rangelands in Tanzania: Good Practice and Lessons Learned* (2013), available at <http://www.landcoalition.org/sites/default/files/documents/resources/RangelandsVillageLandUsePlanning.pdf>; see Maganga et al., *supra* note 60; Anthony Z. Sangeda, et al., “Testing of Decision Making Tools for Village Land Use Planning and Natural Resource Management in Kilimanjaro Region,” 4 OPEN JOURNAL OF SOIL SCIENCE 446 (2014), available at http://file.scirp.org/pdf/OJSS_2014122212010118.pdf.
- ¹¹² See Jennifer Duncan, *Women’s Land Rights Guide for Tanzania* (Landesa 2014), available at <https://www.landesa.org/wp-content/uploads/LandWise-Guide-Women%E2%80%99s-land-rights-guide-for-Tanzania.pdf>.
- ¹¹³ See Maganga et al., *supra* note 60; ILC, *supra* note 111; Ujamaa Community Resource Team, *Participatory Land Use Planning as a Tool for Community Empowerment in Northern Tanzania* (IIED 2010), available at <http://pubs.iied.org/pdfs/14608IIED.pdf>.
- ¹¹⁴ Land Act § 2.
- ¹¹⁵ Valuation and Valuers Registration Act, No. 7 of 2016, § 51(1).
- ¹¹⁶ *Id.*
- ¹¹⁷ No. 7 of 2016.
- ¹¹⁸ Valuation and Valuers Registration Act § 18.
- ¹¹⁹ VGGT, *supra* note 89, at 31.
- ¹²⁰ See True Price, *Towards a Better Protocol on Fair Compensation in Cases of Legitimate Tenure Changes: Input Document for a Participatory Process* (2016), available at <http://landportal.info/sites/landportal.info/files/TowardsFairCompensationProtocol-FinalDraft.pdf>.
- ¹²¹ International Finance Corporation (IFC), *Performance Standard 5: Land Acquisition and Involuntary Resettlement*, para. 5 (2012), available at http://www.ifc.org/wps/wcm/connect/3d82c70049a79073b82cfaa8c6a8312a/PS5_English_2012.pdf?MOD=AJPERES.
- ¹²² See Edmead, *supra* note 90.
- ¹²³ IFC, *Guidance Note 5*, ¶ GN22.

Phase 3: Developing an Equitable and Inclusive Contract

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

Task 1: Negotiate and Draft the Contract

1. Business signs a binding MOU with Village Council and holds a series of Village Assembly meetings to agree on the terms.
2. Business waits for district and national government authorities to review village-to-general land transfer request and determine how to proceed.
3. Business waits for the Office of Commissioner for Land to provide notice to the community about the land transfer approval, allowing it a final opportunity to raise concerns.

Task 2: Review and Sign the Contract

1. Business receives Derivative Right of Occupancy and final lease terms from TIC.
2. Business incorporates principles and best practices for contracting into binding MOU and lease agreement.

Task 1: Negotiate and Draft the Contract

Best Practice

Equitable contracting requires that **communities be brought to an equal footing** with investing business enterprises and governments. It also requires that **the contracting process is transparent and participatory**. Some communities and/or individual land holders and users may not be able to participate as informed and empowered contracting parties. If the process omits or limits the involvement of the full community, the process contravenes principles of good contracting.

It is the business's job to make sure the contracting process is equitable. This means:

- The negotiation process is **non-discriminatory and gender sensitive and includes the opportunity for meaningful participation** of all community members in the investment area.¹²⁴
- The business **actively engages with communities and individuals who have legitimate land rights**, including all women and men who currently occupy and use the land.
- The business **provides comprehensive information** to the Negotiation Team that is shared with all communities and individual land holders and users (both women and men).¹²⁵
- The **contract document memorializes the clear rights, responsibilities and processes** that have been defined under Phase 2 and includes provisions that provide clarity to terms of the agreement.
- The business **considers all relevant information** by taking into account local interests identified through consultation and engagement and assessments under Phase 2.
- The business **seeks FPIC from all affected right holders**. Beyond asking community members for a simple "yes" or "no" in response to a request that they approve the contract, consent in the context of FPIC entails an iterative process through which the business and community conduct a dialogue in which all stakeholders' concerns and input are considered and addressed in the proposed project and contract.

Some capacity building for negotiation skills should have occurred in Phase 1, but more may be needed here to ensure the Negotiation Team is on equal footing with the business. The business should support the Negotiation Team's efforts to identify

and engage with CSO partners to build its capacity to negotiate. In particular the team should enlist a CSO with legal expertise to ensure any contract contains all necessary terms to protect the community's interests and advance its goals.

Step-by-Step Guidance

The business enterprise should create a binding Memorandum of Understanding (MOU) between it and the community that establishes clear rights, responsibilities and processes. The business should be aware of several existing issues:

- The current contracting process called for by law virtually prevents communities and individual land holders and users from participating equally as informed and empowered contracting parties with the business enterprise and the government.
- Because the government is the custodian of all general land, community members are not considered parties to the contract.
- Communities are not given the opportunity to revisit the business proposal or ratify their consent to the investment that was given prior to the VLUP process.

This current approach contravenes several of the principles of good contracting described above because it omits the involvement of community members. While not ideal, a binding MOU is a step in the right direction and will help establishing, performing, and policing agreements that have been made with communities.

1. Business signs a binding MOU with Village Council and holds a series of Village Assembly meetings to agree on the terms.

Government-Required Procedural Action

A binding MOU between the business and community is not required by law. The lease agreements described in the next section between the business enterprise and government memorialize the investment.

Gap between Best Practice and Required Procedural Action

Village Councils and Village Assemblies should have multiple opportunities to receive and process information and to present their compensation requests and other needs and requirements based upon the ongoing consultation and engagement, community assessments, findings from the VLUP, and final investment configuration.

Best Practice Supplemental Steps

The consultation and engagement process largely mirrors the steps in the previous sections of this guidebook.

- Ensure that representatives of the business directly engaged in the negotiation are explicitly told to pursue a project agreement that will ensure that retained and foregone land use and tenure rights, along with compensation for these assets, are respected throughout the investment's life-cycle.¹²⁶
- Ensure that all groups have been engaged and that other kinds of support, such as providing independent legal counsel or paralegal support,¹²⁷ have been provided.¹²⁸
- The business enterprise should work with the community to develop a binding MOU that is clear, coherent and transparent. Phase 3 of this guidebook contains the provisions that should be addressed in the MOU. The MOU must clearly define the rights and duties of all parties and any mutually agreed conditions that would prompt or permit renegotiation or cancellation.
- Translate MOU into Swahili and share widely with community members.
- In coordination with Village Council, provide initial notice to hold a series of Village Assembly meetings to discuss and negotiate the MOU.
- Hold a final Village Assembly meeting to ratify and memorialize the community's decision to halt or proceed. See Best Practices for Holding Village Assembly Meetings.
 - Consent must be provided before project implementation occurs.
 - If there are claims or evidence at the meeting that affected community members do not support the project, identify the dissenting members with specificity and renew the consultation and engagement process to determine if they can be brought into agreement.¹²⁹
 - If 51% of participating assembly members that are adults vote in favor of the application, the meeting minutes are drafted and signed by those that gave their consent. Full consent by the community has now been ratified and formalized.
 - Meeting minutes are not required to indicate how many members were absent from the meeting. Given the consultation and engagement record, along with evidence of consent on the part of individual community members obtained during that process, the business enterprise has

arguably used best practices to obtain a vote in the affirmative that is truly representative of the community's diverse interests.

- Village Council signs the MOU.

2. Business waits for district and national government authorities to review village-to-general land transfer request and determine how to proceed.

Government-Required Procedural Action

There are several steps to the review and documentation process that include review and approval of the project documentation by the following entities:

- District Council
- District Land Allocation Committee (DLAC)
- Assistant Commissioner, Rural at the MLHSD
- Commissioner for Land
- Minister for Land, then seeking approval from the President of Tanzania

The project documentation should include all materials that have been generated during supplemental best practices steps. Documents called for by the government's required procedural actions include:

- Letter of Consent from Village Council
- Signed meeting minutes from Village Assembly and VLUP documents
- Minutes from District Council meeting and letter of consent
- Minutes of the DLAC meeting and letter of consent
- Certificate of Incentives issued by TIC to the business enterprise, including:
 - Memorandum of Articles of Association for the business
 - Proof of citizenship (to confirm whether it is Tanzanian or foreign)
 - Consent from Administration General
 - Certificate of Registration by Minister of Home Affairs to show the business can legally operate and has been incorporated in Tanzania
 - Annual return from Tanzania Licensing Authority (BRELA) to confirm that the business is profitable
 - Business plan or project write-up about the proposed investment

- Report from Tanzania Revenue Authority authorizing the business enterprise to operate in Tanzania
- Evidence of investment capital
- Investment Action Plan
- Details about employment opportunities offered by the business enterprise and other benefits to affected communities.
- Cover letter written by the District Executive Director (DED) to the Office of the Commissioner for Land on behalf of the business enterprise requesting the transfer of village land to general land. The cover letter must include:
 - Names of villages
 - Geographic area of each village
 - Population of each village
 - Economic activities done in the village
 - Size of land allocated to the business and other businesses (if available).
- Originals or photocopies of all VLUP reports and maps. Photocopies must be attested to by village leaders.

As noted above, the following review actions merit further explanation:

- **District Level:** The District Council is the first to review the documentation. If approved, the material is submitted to the District Land Allocation Committee (DLAC), which provides final consent and recommends that the DED sends a formal letter of consent to the Office of the Commissioner of Lands requesting that village land be transferred to general land.
- **MLHHSD:** On behalf of the Office of the Commissioner of Land, the Assistant Commissioner, Rural reviews the documentation. If there are issues with the application or complaints from community members about the transfer request the Assistant Commissioner, Rural follows up with the District Office to clarify the issues, which might include a field visit. Assistant Commissioner, Rural also has the authority to require the District Office to redo the entire process.
- **Office of the President:** If all the documents are in order, the Assistant Commissioner, Rural recommends to the Commissioner of Land that the land identified during the VLUP process can be transferred from village to general. The Commissioner of Land on behalf of MLHHSD writes a formal letter to the President of Tanzania requesting his/her signature finalizing the transfer.

Gap between Best Practice and Required Procedural Action

MLHHSD doesn't always have the resources to carry out site visits if complaints arise. If complaints are brought forward from community members or other actors such as civil society, resolving them could take several years. This could force the business enterprise to again carry out any of the previous steps.

Best Practice Supplemental Steps

The ongoing consultation and engagement effort should share the news that the many required reviews and approvals have been obtained and that, following the final 90-day review period, the project can proceed toward implementation as a best-practice investment.

3. Business waits for the Office of Commissioner for Land to provide notice to the community about the land transfer approval, allowing it a final opportunity to raise concerns.

Government-Required Procedural Action

Providing notice to communities includes:

- The Assistant Commissioner, Rural prepares the 90-day notice of Intention to Transfer (Land Form #8).
- The DED posts the 90-day notice on the village notice board informing communities of the intention to transfer.
- Community members have 90 days to raise concerns to the District Office or the Office of Commissioner of Land.
- If there are no complaints made, the Village Council signs the notice, which the District Office returns to the Office of Commissioner of Land.
- Village Executive Officer (VEO) provides the DED with evidence that the notice was indeed posted and the 90 days to raise concerns was provided.
- Assistant Commissioner, Rural issues a 30-day notice that follows the same process.

Gap between Best Practice and Required Procedural Action

There is no significant gap, although some ongoing consultation and engagement should occur. Given the significant supplemental efforts made by the business enterprise, complaints and dissent during the 90-day period should be minimal or absent. One potential issue could be accessibility; consider supplementing the official written notice with other non-written forms, such as radio announcements.

Best Practice Supplemental Steps

To the extent desired by district officials, the business enterprise should stand ready during the 90-day and 30-day periods to consult and engage with community members. Additional cycles of sensitization, consultation and engagement should occur to the extent that public comment signifies demand or need.

At the most basic level, an oversight and consultation committee should be formed and comprised of representatives of the business enterprise, district officials, Village Council members, and the various categories of affected community members such as women and pastoralists.¹³⁰ This committee should make a minimum of one monitoring visit to each affected village during the 90-day notice period. It should also make one visit during the 30-day notice period to consult with Village Council and Village Assembly members, including:

- Married Men
- Single Men
- Married Women
- Single Women
- Widowed Women
- Male Youth
- Female Youth
- Male Pastoralists
- Female Pastoralists
- Others i.e. widows, people with disabilities, etc.

At these meetings review the proposed business plan, mitigation strategy and other relevant materials. Make the record of consultation and engagement and all other project documentation available as necessary and requested. If community members have concerns about the investment, it will not be permitted to proceed. Concerns should be raised to the Assistant Commissioner, Rural, and addressed by the business enterprise through the oversight committee (as appropriate and as requested by the Commissioner).

Task 2: Review and Sign the Contract

Best Practice

A land investment contract document plays an important role in memorializing the clear rights, responsibilities, and processes that have been defined during the earlier contract negotiation discussions. The contract document should also include a variety of additional provisions in order to provide needed clarity and erase doubts about the terms of the agreement.

While no contract can perfectly capture the full intent of the parties, attention to detail at this point in the process can make things clearer as memories fade and uncertainties turn into unanswered questions during the life of the investment.

Step-by-Step Guidance

After completion of the village-to-general land transfer process, land is leased to the business enterprise for a period. Generally there are three overarching issues to the existing process:

- As mentioned in the previous section, land lease agreements in Tanzania are between the business enterprise and the government. The community and the individual land holders and users that have given up village land to the business enterprise are not parties to the agreement. A supplemental binding MOU should be developed and signed between the Village Council and business enterprise and be used to inform the final lease agreement.
- Historically, the negotiation process between the government and business has lacked transparency, and the final lease agreements have not been shared with communities or made publicly available. For this reason, it is easy to see why there may be community skepticism and other challenges to the legitimacy of investment deals, and why greater transparency is needed in deals moving forward.¹³¹
- The standard government-business lease provisions include such basic terms as price and duration but omit important clauses related to elements pertaining to communities. As discussed below, additional contract provisions are needed to address the issues of interest to all parties – the business enterprise, the government, and the community.

1. Business receives Derivative Right of Occupancy and final lease terms from TIC.¹³²

Government-Required Procedural Action

The issuance of land title documents includes the following steps and events:

- After the 30-day notice, the Commissioner of Land informs the DED, who communicates with the Village Council that the transfer of village to general has been completed.
- Land is gazetted in Tanzanian publications by the Office of the Commissioner of Land.
- MLHSSD issues a Certificate of Occupancy.
 - For a domestic company or joint venture, the Certificate of Occupancy is issued directly in the name of the company.
 - For a foreign company, TIC is issued the Certificate of Occupancy.
- TIC's legal team finalizes the terms of the lease, which is based on the final business plan. The documents are reviewed by TIC's legal team.
- Final approval is provided by Director General of TIC.
- TIC issues a Directive Right of Occupancy to the business enterprise.

Gap between Best Practice and Required Procedural Action

The law effectively provides for the transfer of the land right from the community to the investing enterprise. There is no gap here. The gap, as mentioned above, occurs when communities are excluded from the contracting process and are not made a part of the resulting agreement.

Best Practice Supplemental Steps

The business enterprise has taken significant steps up to this point to include the community as a part of the land acquisition process. Commitments have been made to the community. The community has expectations and has been promised benefits. It expects to perform its obligations by relinquishing its rights to the land. It would be counterproductive and inappropriately opaque to exclude the community from knowing about the contract terms and conditions that will memorialize all that has occurred up to this point. Accordingly, the business should:

- Make the creation of the contract document a part of the still-ongoing consultation and engagement process, informing the community about the contract details and how they will affect the community.

- Seek community input and ratification. If the community is confused or concerned about the contract's content, those concerns should be addressed.
- Use the binding MOU the company signed with the community to inform negotiations between the company and government. Ideally, the terms of the MOU would be included in the lease agreement.

2. Business incorporates principles and best practices for contract into binding MOU and lease agreement.

This section provides guidance on the terms and elements that should be included in the binding MOU between the company and community as well as the lease agreement that memorializes the land investment. Consult [Supplemental Resource 9: Final Contract Checklist](#) to inform the structure and content of the final contract. For examples of model contracts and further guidance about the main provisions that should be included in land lease agreements for agribusiness projects, consult the following guides:

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

Parties

- The parties to the lease will be limited to the business enterprise and the government, since the land was transferred from village to general land.
- Communities whose rights are affected by an investment may not be included as parties to the lease, but they should be designated as third parties or beneficiaries to the contract, be included as a party to a memorandum of understanding between the enterprise the community, or both. Under any scenario, the community should receive legal representation.

Tenure Rights

- Define the rights of the business enterprise to use, access, and exclude others from the project site.
- Lease should include the total area of land given and should indicate the boundaries and location of the land with precision.

- Lease should include a map as an annex to the contract and should include clear geographical boundaries for the project area, bodies of water, and any features on the land that the parties have agreed are to be left intact (such as forests, wetlands, sacred areas, trees, etc.).
- Acquiring large expanses of land can give rise to resentment and encroachment and can erode a business enterprise's social license where community members give up their land and then watch it sit idle. Establish an option clause for phased acquisition of additional parcels to avoid encroachment issues that become complicated to resolve over time. Responsibilities for policing the boundaries of the leased land should be clearly assigned to the business enterprise.
- Business enterprises might also consider setting aside limited use rights to land that is not immediately used so that community members may continue to make productive use of any idle land. The enterprise should be aware, however, that beginning to use the land may be viewed as a hostile act by the community that could erode social license.
- Another option is to include a clause that establishes rights reserved by the community, such as harvesting tree nuts, gleaning crops after harvest, and using marginal or buffer lands. This approach can be especially important for women or of marginalized groups who use these lands in "secondary" ways.

Lease Term

- The term, or duration, of a lease will likely depend on the requirements of the investment. Some leases may endure for decades (and well beyond the 10- or 20-year planning horizon set out during the VLUP process).
- The term should set the date on which the lease commences (often referred to as the Effective Date).
- The parties may agree to establish periodic reviews or may consider shorter terms with provisions for extension or renewal of the lease.

Impact Mitigation Clause

- The results of impact assessments and their corresponding mitigation plans should be incorporated as legally binding obligations in the lease (or the MOU).
- The lease 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 rural communities.

Financial and Non-Financial Terms

- Annual rental payments are common in Tanzania and should be paid to both government and community members.
- In addition to rental fees, the business enterprise will usually be required by law to pay other taxes or fees, such as income and export taxes or customs duties.
- An agricultural investment contract thus may offer additional detail on payments owed by the business enterprise or may describe tax or fee exemptions.

Economic and Social Development Obligations

- Economic and social development promises should be seen as compensation paid in addition to ground rent. Leases for the long-term rights to use land and/or natural resources commonly include compensation commitments by the business enterprise to provide material or in-kind support to the community's development.
- Commitments to the VGGTs or other standards should be included in the lease if they can be directly related to the obligations and responsibilities anticipated under the lease.
- The lease (or memorandum of understanding) should elaborate the social obligations of the parties (including the government).
- Leases for the long-term rights to use land and/or natural resources often include compensation commitments by the business enterprise to provide material or in-kind support to the community's development. It should be made clear that these benefits are provided to the community by the business, even though district government may serve as a means of delivery.

Grievance and Dispute Resolution Mechanisms

- The lease should call for or include clearly defined grievance mechanisms, which give parties access to an effective non-judicial means of dealing with grievances and which are periodically assessed 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), and transparent.¹³³

- These mechanisms should not prejudice or restrict access to State-based or other non-State-based complaint mechanisms. Clauses 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.”¹³⁴
 - 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.
 - Be responsive to the local context, 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.
 - Report back to 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 lease should expressly provide for sharing of the contract and its terms, along with regular reporting to named individuals and groups.

Monitoring and Enforcement

- Establishing clear reporting requirements within the lease will aid the government in tracking adherence to environmental, fiscal, and social development obligations. In particular, reporting mechanisms that publicly track payments under the contract will help prevent graft.
- Terms should also establish requirements for an enterprise monitoring its own compliance through internal reviews and self-reporting to government or third-party compliance evaluations.

- Lease should clearly outline how a neutral third party will work with the enterprise and the community to monitor whether the project complies with the terms of the contract and that it is not causing adverse social impacts.¹³⁵

Equitable Compensation

- The lease should be specific about compensation by outlining mechanisms that ensure communities and land holders and users (both women and men), in particular vulnerable populations, receive the agreed-upon compensation.

Gender

- The lease should stipulate how the project will identify and address women's livelihoods and compensation issues, paying particular attention to ensuring that women benefit equally and are not made worse off by the investment.

¹²⁴ VGGT, *supra* note 89, at 23.

¹²⁵ *Id.*

¹²⁶ See generally OHCHR, *Principles for Responsible Contracts: Integrating the Management of Human Rights Risks into State-Investor Contract Negotiations* (2015), available at http://www.ohchr.org/Documents/Publications/Principles_ResponsibleContracts_HR_PUB_15_1_EN.pdf.

¹²⁷ A paralegal is a professional trained in some subsidiary legal matters but not fully qualified as a lawyer.

¹²⁸ AU Guiding Principles, *supra* note 105, at 15-16.

¹²⁹ AFD, *supra* note 96, at 24.

¹³⁰ See generally USAID, *supra* note 95.

¹³¹ See generally The Munden Project, *The Financial Risks of Insecure Land Tenure: An Investment View* (2012), available at http://rightsandresources.org/wp-content/uploads/2014/01/doc_5715.pdf.

¹³² Land Act § 19(2).

¹³³ See USAID, *supra* note 95, at 52.

¹³⁴ IFC Office of the Compliance Advisor/Ombudsman (CAO), *A Guide to Designing and Implementing Grievance Mechanisms for Development Projects 4* (2008), available at <http://www.cao-ombudsman.org/howwework/advisor/documents/implemgrieveng.pdf>.

¹³⁵ USAID, *supra* note 95, at 51.

Phase 4: Implementing and Monitoring the Investment

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

Task 1: Develop and Implement a Plan to Address Land-Related Issues

1. Business regularly engages and consults with the community.
2. Business coordinates with the community to establish a grievance mechanism.

Task 2: Develop and Implement an Ongoing Monitoring and Evaluation Plan

1. Business establishes monitoring and evaluation practices in support of land-related investments.
2. Business conducts follow on impact assessments to evaluate impacts on communities.

Task 1: Develop and Implement a Plan to Address Land-Related Issues

Best Practice

Project implementation should be carried out in accordance with the terms and conditions in the contract, which has international best practices built into it. As necessary, new practices should be introduced to accommodate unforeseen events and developments related to land and to making good on the contract promises. An equitable deal should be preserved. If equity begins to erode, changes should be made to restore it.

Step-by-Step Guidance

Because even the most diligent preparation and community engagement cannot account for all potential challenges when implementing an investment project, this section of the guidebook discusses the importance of “social license to operate” to ensure companies maintain productive relationships with communities.¹³⁶ Guidance in this section can be applied to:

- New projects to mitigate unforeseen challenges, because implementation will almost inevitably involve problems that were not anticipated during project planning, negotiation, and contracting.
- More established projects where companies are trying to solve land related issues in a responsible manner.

1. Business regularly engages and consults with the community.

Government-Required Procedural Action

No actions are mandated by Tanzanian government for the duration of the investment, other than those that may be called for under the contract.

Gap between Best Practice and Required Procedural Action

Although some business enterprises operating in Tanzania have legal legitimacy, they lack social legitimacy.

- Limited interaction and communication leads to strained relationship with neighboring communities.
- Oftentimes direct communication with community members is inadequate with few mechanisms to enable village leaders and community members to initiate dialogue with the company.¹³⁷

Best Practice Supplemental Steps

Establish multiple channels of two-way communication to facilitate clear, well-planned, and frequent consultation and engagement with communities.¹³⁸

Approaches should address the particular barriers that women face to accessing information and participating in consultations.¹³⁹ Consulting and referencing the village's Community Action Plan developed during VLUP can be useful for anticipating and addressing future project challenges related to land use.

- **Reaffirm contract terms and performance with the community.**
 - Depending on the last interaction with the community, the business enterprise should meet with community members to ensure they have a complete understanding of the material terms of the agreement.
 - Education activities should be designed to reach all villagers, which may require adjustments to both content and approach to ensure that the material is received and understood by both women and men and by vulnerable groups.
- **Facilitate continued engagement with the community** by developing an ongoing communication and engagement plan to guide engagement throughout implementation and project close-out.¹⁴⁰ See Supplemental Resource 10: Designing a Stakeholder Engagement Plan for more guidance. 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 standing 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 holders and users in order to ensure that the project is implemented in accordance with the mutual promises, expectations, mitigation strategies, and conditions contained within the lease 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. Alternative investment implementation schemes, such as outgrower arrangements, may be appropriate to confront these challenges. Consult Supplemental Resource 11: Best Practices for Outgrower Arrangements Literature Review for more guidance.
- **Frequently review and update the plan on a specific, agreed upon schedule.**

2. Business coordinates with the community to establish a grievance mechanism.

Government-Required Procedural Action

Below the national government, Tanzania is divided administratively into regions, districts, wards and villages.¹⁴¹ Of these subdivisions, districts, wards and villages all have land-specific dispute resolution mechanisms.

- At the district level are the District Land and Housing Tribunals, which were established by the Land Act to determine disputes and proceedings related to land.¹⁴² Among other specific powers outlined in the Land Disputes Courts Act, the District Land and Housing Tribunals have the power to decide disputes over land worth less than 50 million shillings and can overturn or modify Ward Tribunal decisions within their District.¹⁴³ Unlike Ward Tribunals and Village Land Councils, District Land and Housing Tribunals allow advocates to represent the disputing parties.¹⁴⁴
- Each district contains several wards, each of which has a Ward Committee that is responsible for implementing plans of the District Council and

coordinating cooperative activities within the ward.¹⁴⁵ The Ward Committee, in turn, elects the members of the Ward Tribunal, a 4-8-member dispute resolution body that must include at least three women.¹⁴⁶ Ward Tribunals can both mediate between parties and make determinations in cases involving property valued at less than 3 million shillings.¹⁴⁷

- Finally, at the village level are the Village Land Councils, which are empowered to mediate disputes on any matter concerning land within their respective villages.¹⁴⁸ The seven-member Village Land Council must include at least three women¹⁴⁹ and can use customary principles of mediation or natural justice when reaching a conclusion.¹⁵⁰ If disputing parties are not satisfied with the conclusion of a Village Land Council's mediation, they can request that the dispute be heard by the local Ward Tribunal.¹⁵¹

Gap between Best Practice and Required Procedural Action

The district government often lacks sufficient resources to resolve land disputes or to enforce decisions, and Village Land Councils are not always impartial.¹⁵² Plus, an investment-specific grievance mechanism is a worthy best practice to add to any ongoing investment project.

Best Practice Supplemental Steps

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 in Tanzania, it is doubly important that the business works with the community to establish a robust non-judicial grievance mechanism. Consult the **Grievance Mechanism Primer** for more guidance when carrying out this step. A well-functioning mechanism should have the following components:

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

The mechanism should also comply with the UNGP criteria for non-state dispute resolution processes:

- **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 providing assistance for those who may face particular barriers to access, such as women.
- **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.¹⁵³

Designing and Implementing the Mechanism

- **Dedicate sufficient personnel and resources** to designing, implementing and managing the grievance mechanism.
 - Personnel who will administer the system (including CSOs and community members who are not employed by the company) should receive training in complaint receipt and registration, referral processes, service provision, quality control, monitoring and record keeping, and ethics.¹⁵⁴
 - Grievance reception and resolution staff should be made up of both men and women.
- **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.
- **Sensitize staff regarding the importance of identifying and respecting both formal 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. They should view complaints as a valuable source of information that can improve operations, reduce risk and build a relationship with the community.¹⁵⁵
- Work with the Village Council and Land Committee to **determine the scope of the grievance mechanism by determining what types of land-related grievances it is likely to receive.**
 - The business is likely to receive complaints that relate to the enforcement of its land-related policies, as well as complaints that relate to the key elements of responsible land-based investment and the UNGP criteria for non-state dispute resolution processes.¹⁵⁶
 - 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.
- Before implementation, **test the mechanism informally** to resolve problems with the mechanism. For example, there may be non-formalized complaints that arose during engagement efforts that could be used to test whether the mechanism functions properly before implementing it.
- Work with the District Council and Land Committee to **inform community members of the grievance mechanism.** Do not think of this process as a onetime launch of the mechanism; just like ongoing consultation and engagement, introducing and raising awareness of the grievance mechanism should instead be an ongoing effort.¹⁵⁷ Develop simple, visually engaging marketing materials describing the process and benefits associated with the

grievance mechanism, 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 can be filed.
- A description of the procedures for receiving, processing and responding to complaints. These should detail the time period and manner in which the business will respond to complaints, the time period for investigating complaints, and the time period for filing an appeal.
- 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

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

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

Monitoring and Evaluating the Mechanism

- Publicize clear procedures for **monitoring and evaluating** the grievance mechanism. The business should be tracking 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, whether the parties are satisfied with the resolution.
 - If the business and complainant(s) failed to reach a resolution, why the parties did not reach a resolution.
- **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 any necessary changes.

- 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 monitor and evaluate results to adapt and improve the grievance mechanism.

Task 2: Develop and Implement an Ongoing Monitoring and Evaluation Plan

Best Practice

Monitoring and evaluation (M&E) is essential to successful implementation of a responsible investment. In addition to helping the business earn and maintain a social license to operate, M&E can alert the enterprise to the loss of its social license and can provide the information needed to reestablish it. There are two primary reasons for a company to dedicate time and resources to M&E:

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

Step-by-Step Guidance

The business must practice M&E for the life of the investment to track and address its impacts upon the communities and individual smallholders that have changed their relationship to the land for the benefit of the enterprise. For more information consult the **M&E Primer**.

1. Business establishes monitoring and evaluation practices in support of land-related investments.

Government-Required Procedural Action

M&E is part of the VLUP management and implementation process. The business should incorporate any M&E activities determined in VLUP into its M&E activities.

Gap between Best Practice and Required Procedural Action

M&E can help to identify and manage risks that could decrease the viability of and return on the investment. Examples of issues that might develop over time include:

- Changes to the investment may require increased or renewed community engagement to maintain a positive relationship with the community.
- Dispute resolution methods and the grievance mechanism might need to be updated based on changing needs of the community.
- Population growth may lead to land scarcity issues. Land scarcity in turn can intensify conflicts between pastoralists and farmers.

- Subsequent transactions and expansion of the investment may require renewed rights identification and formalization.
- Land holders and users may need capacity building to stay on equal footing with the business.
- Some community members may become dissatisfied with compensation and benefit-sharing schemes as the investment unfolds.

Best Practice Supplemental Steps

By conducting regular M&E activities, the business enterprise will be able to identify implementation challenges and unanticipated impacts earlier than it otherwise might.¹⁵⁸ This is particularly important for longer-term projects, as there is a higher likelihood that activities will deviate from the initial plan as implementation proceeds and unanticipated challenges and changes in circumstances arise. Guiding principles for effective monitoring and evaluation practices in support of land-related investments are described below.

- **Commitment:** Effective M&E must include strong commitments of financial and human resources and should be accompanied by strong mechanisms for corrective action and adjustments to project design and implementation. Provide sufficient resources to make corrections and, in turn, monitor their effectiveness. Plan and ready M&E for implementation before the project begins. M&E needs to be seen as an integral part of project implementation, to avoid falling victim to competing needs and arising emergencies.¹⁵⁹
- **Collaboration and Consent:** There must be inclusive participation and shared responsibility of relevant stakeholders in the development of indicators, benchmarks, assessment processes, and mechanisms for grievance, redress and learning.¹⁶⁰ Gender sensitivity is key; both women and men should participate in the design, implementation and assessment of M&E plans.¹⁶¹ Similarly, participation must be culturally appropriate and based on engagement and dialogue in the local context.
- **Practicability and Sustainability:** The M&E plan should have realistic timelines and targets. Also, the plan should provide for sufficient expertise and resources so that it is sustainable over the life of the investment.
- **Transparency and Independence:** There must be transparency throughout the process of developing and conducting M&E and in disseminating and using the findings to make corrections to design and implementation. The use of third parties to perform activities can increase independence and minimize real or perceived conflicts of interest.

- **Accessibility:** The business should make information available to all stakeholders. This includes making M&E plans available through all relevant mediums, including electronic or printed copies, along with making M&E updates and inquiries available during ongoing consultation and engagement.
- **Accountability:** M&E must link to and depend upon a strong, accessible and enduring grievance mechanism and the contract provisions must provide for sanctioning of non-compliance.¹⁶²
- **Source of Continuous Learning & Improvement:** Effective M&E requires assessments that provide information needed to make subsequent adjustments and improvements to project processes, standards, design and implementation. Because women's land uses often go unnoticed and unaccommodated, M&E is often key to refining gender approaches over time.

While each investment will have its unique needs for M&E based on contextual factors (e.g., the agricultural products involved, the region in which the investment occurs, the nature of any outgrower schemes or relocation programs), there are some broad standards that will be applicable to virtually any project. Supplemental Resource 12: Monitoring & Evaluation Indicators (still in production) provides a list of possible M&E indicators. These indicators are not exhaustive, but rather provide a starting point for a rigorous and diligent M&E protocol.

2. Business conducts follow on impact assessments to evaluate impacts on communities.

Government-Required Procedural Action

Monitoring and evaluation, outside of that called for by the lease contract, is not mandated by the Tanzanian government.

Gap between Best Practice and Required Procedural Action

Village Assembly members reported having a difficult time holding business accountable for adverse impacts related to the investment.

Best Practice Supplemental Steps

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

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

While each investment's particular assessment needs will depend on the investor, the community, and the investment environment, it is generally best to plan assessments for each level of the value chain. Sample questions for assessment of household farm owners, large farm owners, farmworkers, and manufacturing plant or mill owners are provided in Supplemental Resource 7: Land Rights Assessment Tool Kit. These questions provide a starting point for designing assessments and should be combined with suggestions and questionnaires designed by neutral third parties that are conducting periodic impact assessments.

¹³⁶ *Id.* at 50.

¹³⁷ See Landesa, *Case Study: Kilombero Sugar Company Ltd. in Tanzania* 15 (2017), available at <https://www.landesa.org/wp-content/uploads/KSCL-Tanzania-Case-Study-FINAL.pdf>.

¹³⁸ *Id.* at 4.

¹³⁹ *Id.*

¹⁴⁰ See *id.* at 20.

¹⁴¹¹⁴¹ Villages are rural subdivisions of Wards and may be further subdivided into hamlets. There are also urban subdivisions of Wards, but they do not play a role in the agricultural investment process.

¹⁴² Land Act §167(1)(c).

¹⁴³ Land Disputes Court Act (2002), at §§ 33-36.

¹⁴⁴ *Id.* at §§18, 30.

¹⁴⁵ Local Government (District Authorities) Act (1982), at §32(1).

¹⁴⁶ Land Disputes Court Act §11.

¹⁴⁷ *Id.* at §15.

¹⁴⁸ *Id.* at §7.

¹⁴⁹ *Id.* at §5(1)

¹⁵⁰ Village Land Act §61.

¹⁵¹ *Id.* at §62.

¹⁵² See Landesa, *supra* note 137, at 11-12.

¹⁵³ USAID, *supra* note 95, at 53.

¹⁵⁴ See CAO, *supra* note 134.

¹⁵⁵ See *id.*

¹⁵⁶ UNGP, *supra* note 89, at 33.

¹⁵⁷ See CAO, *supra* note 134, at 51-54.

¹⁵⁸ See USAID, *supra* note 95, at 50.

¹⁵⁹ VGGT, *supra* note 89, at 39.

¹⁶⁰ AU Guiding Principles, *supra* note 105, at 25 -26, available at:

<http://www.uneca.org/publications/guiding-principles-large-scale-land-based-investments-africa>. See also UNESCO, *A Guide for Monitoring and Evaluating Community-Based Projects* (2009), available at <http://unesdoc.unesco.org/images/0018/001862/186231e.pdf>.

¹⁶¹ VGGT, *supra* note 89, at 24, 27.

¹⁶² UNGP, *supra* note 89, at 19.

5.

Supplemental Resources

Supplemental Resource 1

Obligations Under International Treaties and Conventions

How to Use this Resource

There is no established “right to land.”¹⁶³ However, many human rights instruments reference land, and there is growing consensus in human rights discourse that land is strongly linked to universally recognized human rights.¹⁶⁴ In the context of international investments, the host state has the primary duty to protect human rights,¹⁶⁵ meaning that the Government of Tanzania must design and implement policies and laws to ensure that investments do not harm human rights and contribute to their progressive realization. This guidance is intended to provide companies with an overview of the links between land and human rights enshrined in these agreements and in official statements issued by treaty monitoring bodies. This guidance is not an exhaustive examination of Tanzania’s human rights obligations, but is presented as an overview of the most significant agreements pertaining to land-based investments.

Binding International Agreements

The **Universal Declaration of Human Rights (UDHR)**¹⁶⁶ states that everyone has the right to life (Art. 3) and the right to own property alone as well as in association with others (Art. 17(1)), and that no one should be deprived of property (Art. 17(2)). The rights to life and property have been extended through treaty bodies and international human rights court decisions to apply to the means of subsistence derived from land.¹⁶⁷

The **International Covenant on Civil and Political Rights (ICCPR)**¹⁶⁸ guarantees the rights to life (Art. 6) and self-determination (Art. 1) and to cultural rights for minorities (Art. 27). These rights have been interpreted to mean that all people have the right to freely dispose of their land and natural resources, and that they should not be deprived of those resources.¹⁶⁹

The **International Covenant on Economic, Social and Cultural Rights (ICESCR)**¹⁷⁰ includes the right to an adequate standard of living, including food and housing, and continuous improvement of living conditions (Art. 11). These rights have been extensively linked to rights to land by the Committee for Economic, Social

and Cultural Rights (CESCR).¹⁷¹ The CESCR has also extended states' responsibility to follow free, prior, and informed consent (FPIC) principles to communities whose cultural preservation may be threatened if their land rights are infringed.¹⁷² The CESCR is currently in the process of developing and adopting a General Comment on States Obligations in the Context of Business Activities, the most recent draft of which made reference to land and land acquisition.¹⁷³

The **Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)**¹⁷⁴ obligates States to eliminate discrimination against rural women to ensure that they participate in benefit from development on an equal basis with men, and to provide equal treatment for rural women in the context of land and agrarian reforms and resettlement schemes, including access to agricultural credit and loans (Art. 14). The Committee for the Elimination of Discrimination Against Women (CEDAW), the treaty monitoring body for the CEDAW, recently issued General Recommendation No. 34, which states that the right to land and natural resources is a "fundamental human right" for rural women.¹⁷⁵ This is the most direct statement equating the right to land as a human right in current human rights discourse.¹⁷⁶ The same General Recommendation also acknowledges the severe discrimination and unequal outcomes experienced by women, especially with regard to land: "Globally, and with few exceptions, on every gender and development indicator for which data are available, rural women fare worse than rural men and urban women and men, and rural women disproportionately experience poverty and exclusion. They face systemic discrimination in access to land and natural resources."¹⁷⁷

These obligations require Tanzania's government to demonstrate progress toward the guarantees of these agreements during universal periodic reviews (UPR) conducted by the UPR Working Group¹⁷⁸ and during treaty monitoring body reviews.¹⁷⁹ The Working Group report from the 2016 UPR of Tanzania recommended that the government take steps to clarify land rights, especially matters of inheritance and succession.¹⁸⁰

Other Relevant Human Rights Instruments

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

Tanzania is not a signatory to the **International Labor Organization Convention 169**, which is legally binding. However, Tanzania is a signatory to the **United**

Nations Declaration on the Rights of Indigenous People (UNDRIP),¹⁸¹ which establishes the principle of FPIC (Art. 10) and to the **African Charter for Human and People's Rights (ACHPR)**.¹⁸² The ACHPR itself does not call for FPIC explicitly, but does refer to the right to self-determination (Art. 20), the right to freely alienate property as well as be compensated (Art. 21), and the right to economic, social, and cultural development (Art. 22). In addition, the ACHPR's 2012 Resolution on "A Human Rights Based Approach to Natural Resource Governance" specifically calls on states to "ensure participation, including the free, prior and informed consent of communities, in decision-making related to natural resources governance."¹⁸³

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, known as the **Maputo Protocol**,¹⁸⁴ specifically references women's access to land in the context of the rights to food security (Art. 15) and control over land and a guaranteed right to property in the context of the right to sustainable development (Art. 19).

The African Union recently endorsed the **Pan African Women's Charter on Land Rights**,¹⁸⁵ or the Kilimanjaro Charter,¹⁸⁶ the result of the "Women to Kilimanjaro" civil society initiative to advocate for women's rights to land across Africa. One of the demands included in the Charter is that investments in land are conducted in partnership with communities, guarantee a share of profits, and provide environmental protection.¹⁸⁷

The **Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security**¹⁸⁸ are widely recognized by international and regional human rights bodies and are used as a reference by international donor institutions. They were developed through an inclusive consultative process. Provisions relevant to human rights and land include: Guiding Principle 3B and Guidelines 4.6, 5.3, 5.4, 6.1, 11.2, 15.3, 15.6, 17.3, 21.6, 25.3, 25.5, 25.7.¹⁸⁹

The **Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security**¹⁹⁰ include references relevant to land and human rights at: Guidelines 2.5, 3.5, 4.2, 4.7, 8, 9, 10.8, 13.2, 14.3.¹⁹¹

¹⁶³ United Nations Economic and Social Council, *Report of the High Commissioner for Human Rights on Land and Human Rights*, E/2014/86 at ¶ 12 (2014) [hereinafter "OHCHR Report"], available at <https://undocs.org/E/2014/86>.

¹⁶⁴ For an overview of key reports on land and human rights, see United Nations Office of the High Commissioner and Human Rights, "Land and Human Rights," <http://www.ohchr.org/EN/Issues/LandAndHR/Pages/LandandHumanRightsIndex.aspx>.

¹⁶⁵ OHCHR Report, *supra* note 163, at ¶ 17.

¹⁶⁶ UN General Assembly, *Universal Declaration of Human Rights* 217 A (III) (1948), available at: <http://www.refworld.org/docid/3ae6b3712c.html>.

¹⁶⁷ OHCHR Report, *supra* note 163, at ¶ 28. See also Inter-American Court of Human Rights, *Case of the Yakye Axa Indigenous Community v. Paraguay*, Judgement of 17 June 2005. With regard to forced eviction, see Committee on Economic, Social and Cultural Rights, *General Comment No. 7: The Right to Adequate Housing* ¶ 4 (1997), available at <http://www.refworld.org/docid/47a70799d.html>.

¹⁶⁸ Acceded to by Tanzania on June 11, 1976. UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>.

¹⁶⁹ OHCHR Report, *supra* note 163, at ¶ 22.

¹⁷⁰ Acceded to by Tanzania on June 11, 1976. UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3, available at <http://www.refworld.org/docid/3ae6b36c0.html>.

¹⁷¹ Report of the Special Rapporteur on the Right to Food, UN doc. A/65/281, ¶ 4. See also Minority Rights Group International, *Moving Towards a Right to Land: The Committee on Economic, Social and Cultural Rights' Treatment of Land Rights as Human Rights* 3-4 (2015), available at <http://minorityrights.org/publications/moving-towards-a-right-to-land-the-committee-on-economic-social-and-cultural-rights-treatment-of-land-rights-as-human-rights/>.

¹⁷² Committee on Economic, Social and Cultural Rights, *General Comment 21: Right of Everyone to Take Part in Cultural Life* (art. 15, ¶ 1(a), of the International Covenant on Economic, Social and Cultural Rights), UN doc. E/C.12/GC/21/Rev.1 at ¶ 55a. For a fuller examination of the CESCR's statements and standards regarding land rights, see Minority Rights Group International, *supra* note 171.

¹⁷³ OHCHR, *Committee on Economic, Social and Cultural Rights Holds General Discussion on State Obligations in the Context of Business Activities* (Feb. 21, 2017), <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21210&LangID=E>. For Landesa's comments on the Draft General Comment, visit <http://www.ohchr.org/Documents/HRBodies/CESCR/Discussions/2017/Landesa.docx>.

¹⁷⁴ Signed by Tanzania on July 17, 1980 and ratified on August 20, 1985. UN General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13, available at <http://www.refworld.org/docid/3ae6b3970.html>.

¹⁷⁵ Committee on the Elimination of Discrimination Against Women (CEDAW), *General Recommendation No. 34 on the Rights of Rural Women*, CEDAW/C/GC/34 (2016), at ¶ 56, available at http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/INT_CEDAW_GEC_7933_E.pdf.

¹⁷⁶ For an examination of human rights norms and women's rights to land and natural resources, see OHCHR, *Realizing Women's Rights to Land and Other Productive Resources*, HR/PUB/13/04 (2013), available at <http://www.ohchr.org/Documents/Publications/RealizingWomensRightstoLand.pdf>.

¹⁷⁷ CEDAW, *supra* note 175, at ¶ 5.

¹⁷⁸ OHCHR, *Basic Facts about the UPR*, <http://www.ohchr.org/EN/HRBodies/UPR/Pages/BasicFacts.aspx> (last visited Apr. 6, 2018).

¹⁷⁹ OHCHR, *Monitoring the Core International Human Rights Treaties*, <http://www.ohchr.org/EN/HRBodies/Pages/TreatyBodies.aspx> (last visited Apr. 6, 2018).

¹⁸⁰ See Human Rights Council, *Report of the Working Group on the Universal Periodic Review: United Republic of Tanzania*, A/HRC/33/12 (July 14, 2016), available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/152/67/PDF/G1615267.pdf?OpenElement>.

¹⁸¹ Adopted by Tanzania on September 13, 2007. UN General Assembly, *United Nations Declaration on the Rights of Indigenous Peoples: resolution / adopted by the General Assembly*, A/RES/61/295 (Oct. 2, 2007), available at http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf.

¹⁸² Ratified by Tanzania on February 18, 1984. Organization of African Unity (OAU), *African Charter on Human and Peoples' Rights ("Banjul Charter")*, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (June 27, 1981), available at <http://www.achpr.org/instruments/achpr/>.

¹⁸³ African Commission on Human and People's Rights, 224: *Resolution on a Human Rights Based Approach to Natural Resource Governance* ¶ 4 (May 2, 2012), available at <http://www.achpr.org/sessions/51st/resolutions/224/>.

¹⁸⁴ See African Union, *Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa*, (July 11, 2003), available at http://www.achpr.org/files/instruments/women-protocol/achpr_instr_proto_women_eng.pdf.

¹⁸⁵ ILC, *One Giant Step Forward for Women's Land Rights: The African Union officially endorses Pan African Women's Charter on Land Rights* (April 10, 2017), <http://www.landcoalition.org/en/regions/africa/news/one-giant-step-forward-womens-land-rights-african-union-officially-endorses-pan-african-womens> (last visited Apr. 6, 2018).

¹⁸⁶ Women to Kilimanjaro, *Charter of Demands: Actualizing Women's Land Rights in Africa* (2016), available at http://www.landcoalition.org/sites/default/files/documents/news/charter_of_demands.pdf.

¹⁸⁷ *Id.* at 6.

¹⁸⁸ See VGGT, *supra* note 89.

¹⁸⁹ OHCHR, *Land and Human Rights: Standards and Applications*, (2015) HR/PUB/15/5/Add.1 at 15 [hereinafter "OHCHR Land"], available at <http://www.ohchr.org/EN/Issues/LandAndHR/Pages/LandandHumanRightsIndex.aspx>.

¹⁹⁰ See FAO, *Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security* (2005), available at <http://www.fao.org/3/a-y7937e.pdf>.

¹⁹¹ OHCHR Land, *supra* note 189, at 15.

Supplemental Resource 2

Overview of Tanzania Legal Framework

How to Use this Resource

As part of their due diligence, companies seeking to invest in Tanzania must understand and evaluate Tanzania's legal framework for land rights. This guidance is intended to provide an overview of this framework, with special attention paid to the land rights of women and pastoralist communities.¹⁹²

Formal Legal Framework for Land Rights in Tanzania

The Constitution, formal statutory law, and customary law govern land rights in Tanzania. Key statutes and policies include the Land Act of 1999 (for general land, including urban land, and reserved land); the Village Land Act of 1999 (for village land); the Land Use Planning Act of 2007; the Land Acquisition Act of 1967;¹⁹³ the Law of Marriage Act of 1971; and Governmental Notices on Customary Land.¹⁹⁴

Constitution

The Constitution of 1977,¹⁹⁵ as amended, guarantees in Article 24 every person the equal right to own property and declares deprivation of property unlawful, unless it is authorized by law providing for fair and adequate compensation. The Constitution also explicitly prohibits sex-based discrimination in Article 13. The Constitution does not contain any direction related to customary laws inconsistent with women's equal rights to property (or right against discrimination).¹⁹⁶ However, the Village Land Act, as discussed below, covers in detail instances of conflict between customary and statutory law in regard to women's land rights.

Land Act of 1999

Under the Land Act of 1999, the State holds title to all land in Tanzania.¹⁹⁷ The President, through the Commissioner of Lands, has authority to grant a right of occupancy for up to 99 years.¹⁹⁸ Land is divided into three basic categories: general land (controlled directly by the state, and representing approximately 2% of the country's land); village land (mostly controlled by the villages, and representing approximately 70% of the country's land); and reserve land (designated by the state for national parks, game reserves, conservation areas, and public utilities),

comprising the remaining 28% of Tanzania's land.¹⁹⁹ General land includes most urban land.

The Land Act establishes a number of principles that help provide legal safeguards for women's land rights, including equitable distribution and access to land, participatory decision-making, and dissemination of information.²⁰⁰

The Land Act provides that, in the case of any inconsistency or conflict between the provisions of the Act and any other law relating to land, the Land Act prevails.²⁰¹ Therefore, it can be argued that any matter pertaining to land or inheritance of real property should fall under the purview of the Land Act when there is a conflict between statutes.

The Land Act provides the legal framework for shared tenure between spouses. The Act recognizes two forms of shared tenure: joint occupancy and occupancy in common.²⁰² Joint occupants cannot dispose of their share of the property without the approval of all other joint occupants, and upon their death their share transfers to the other joint occupants; occupants in common, on the other hand, upon their deaths may transfer their share as part of their estate, but during life generally cannot transfer their share without consent from each other occupant. The legal presumption is that spouses hold all land that is co-occupied and used by both (or all) as occupiers in common, and the presumption of co-occupancy for spouses applies to granted rights (certificate of occupancy) and customary rights (customary certificate of occupancy).²⁰³ Spouses can register either form of shared tenure and each occupier is entitled to receive a copy of the certificate of title of right of occupancy.²⁰⁴

Village Land Act of 1999

The Village Land Act of 1999 outlines what land is included in Village Land and how it is to be managed and administrated.²⁰⁵ It includes provisions regulating inheritance and transfer of land, along with the process for granting and certifying Customary Rights of Occupancy through a Certificate of Customary Right of Occupancy (CCRO).²⁰⁶ These CCROs represent the holders' lease or "occupancy" rights, which is the highest level of tenure security in light of the ultimate public ownership of all Tanzanian land.

For purposes of the statute, village lands include

- Communal village land, which cannot be used for individual occupation or use;
- Land occupied or used by an individual/family/group of persons under customary law;²⁰⁷ and

- Land that can be allocated by the Village Council for communal or individual occupation.²⁰⁸

Under the Act, the Village Council is legally responsible for the management of Village Land as a trustee managing property on behalf of the beneficiaries, the villagers. However, a Village Council is not allowed to allocate land or grant a customary right of occupancy without prior approval of the Village Assembly.²⁰⁹

The Village Land Act permits any individual, family unit, or group of persons recognized as such under customary law to apply to the Village Council for a customary right of occupancy.²¹⁰ The Act makes special provision for divorcees who have left their spouse at least two years prior, and who were villagers prior to the marriage.²¹¹ When family units apply, at least two persons from that unit must sign the application.²¹²

The law requires that the Village Council treat all applications equally, regardless of the gender of the applicant, and forbids the Council from adopting discriminatory practices or attitudes toward women applying for a CCR).²¹³ The law further provides that the Village Adjudication Committee or officer must treat the rights of women and the rights of pastoralists to occupy use or have interest in land equally to those of men or agriculturalists.²¹⁴ Moreover, the Act prohibits villagers from assigning their right of occupancy if it would interfere with the right of any woman to occupy land under a customary right of occupancy, a derivative right or as a successor in title to the assignor.²¹⁵ In determining whether to grant a derivative right to Village Land, a Village Council must also take into account “the need to ensure that the special needs of women for land within the village [are] and will continue to be adequately met.”²¹⁶

If someone who holds a right of occupancy breaches his or her duty to the land and the village, the Village Council may temporarily assign the right of the occupancy to the spouse(s) of the occupier who lives and works on the land.²¹⁷

Although the Village Land Act did not decentralize land ownership to the village level, the Act devolves substantial authority to communities to govern Village Lands. Rather than establishing new local governance institutions for this purpose, the government chose to vest authority in existing village governance bodies (Village Councils and Village Assemblies). The national-level Commissioner of Lands serves as the chief authority for governance of general and reserve Lands.²¹⁸

The Village Land Act upholds customary rules on land, but provides that the customary rule or any action dependent on the rules shall be void to the extent to which it denies women, children, or persons with disability lawful access to ownership, occupation, or use of any customary land.²¹⁹ Also, any attempt by a rights holder to surrender those rights must be consented to in writing by any person

who has an interest in the land.²²⁰ And after a customary right has been surrendered, the Village Council must offer it to the other spouse(s) before re-granting it.²²¹

The legal framework for women's land rights in Tanzania is relatively strong, but neither national nor international laws providing for women's equal property rights are often followed in practice. And for some issues, like inheritance, a body of conflicting and discriminatory law continues to exist and the lack of clarity is used to reinforce customary traditions that harm women.²²² These issues are further discussed in *Women's Land Rights Guide for Tanzania*, a Landesa report written by Jen Duncan.

Land Use Planning Act of 2007

The Land Use Planning Act of 2007 further regulates the process of surveying and registering Village Land, setting out the complicated Village Land Use Planning (VLUP) process that is required before Village Land can be recategorized as General Land.²²³ In addition to laying out the VLUP process to be conducted at the village level, the Land Use Planning Act also defines the role of District Councils in preparing a broader district land use framework and ensuring intervillage and intersectoral coordination throughout the planning and management process.²²⁴

Land Acquisition Act of 1967

The Constitution allows for the State to compulsorily acquire property for a list of broadly defined public purposes, including "enabling any other thing to be done which promotes, or preserves the national interest in general."²²⁵ The Land Acquisition Act of 1967 and the Land Act of 1999 govern compulsory acquisition. Both include "development of agricultural land" as valid public purposes for the State to acquire land compulsorily, leaving the door open for wide application of the state's acquisition authority in the face of increased commercial interest in land investment in Tanzania.²²⁶

To compulsorily acquire land, the State must compensate any landholder with a valid right to the land, defined broadly in the Land Act as "any person whose right of occupancy or recognized long-standing occupation or customary use of land is revoked or otherwise interfered with to their detriment by the State...."²²⁷ However the Land Acquisition Act of 1967 and the Land Act define compensation differently; the 1967 Act limits compensation to "unexhausted improvements" to the land, whereas the 1999 Act provides for a multi-faceted basis for compensation.²²⁸ It is not clear which definition of compensation currently governs, although recent litigation on this point affirmed (on technical grounds) the government's ability to pay the lesser amount required under the Land Acquisition Act.²²⁹ The Land Acquisition Act

does not provide any specific protection for women or spouses, however the broad definition of “valid right” could be helpful to women as it includes both a right of occupancy and also any recognized long-standing occupation or customary use. Under the Land Act as well, a spouse would have a presumed right of shared occupancy whether or not her name is recorded, and could also prove contribution to land clearly held as separate property by her husband. Monetary compensation, rather than land in-kind, is the norm, leaving open the possibility that families will be worse off than they were before, and in some cases landless.²³⁰

Law of Marriage Act of 1971

The Law of Marriage Act of 1971 provides that married women have the right to acquire, hold and dispose of property, movable or immovable, during the course of the marriage, and the right to distribution of property earned jointly when the relationship is dissolved.²³¹ Property and other matrimonial assets that a woman has acquired individually belong to her. When there are two or more wives, they have equal rights and liabilities as spouses.²³²

The Law of Marriage Act prohibits one spouse from alienating his or her interest in the matrimonial home (including associated agricultural land allocated by a husband or wife to his or her spouse for exclusive use)²³³ without the consent of the other spouse(s). The Law of Marriage Act further provides that if one spouse alienates his or her interest in the matrimonial home in contravention to the law, the interest will be subject to the right of the non-consenting spouse to reside in the matrimonial home until (a) the marriage is dissolved; or (b) the court orders otherwise. The only exception to this is if the transferee had no notice of the interest of the non-consenting spouse, and could not through reasonable due diligence have determined it.

Customary Law

Customary law is recognized by communities as “having the force of law,” and may be either written or unwritten. In Tanzania the law has consistently held that it governs all people of African origin, unless they can prove otherwise, regardless of their religious affiliation.²³⁴ However, customary rules are not legally valid if they violate the constitutional and legal mandates for gender equality. In practice, customary rules generally are applied whether or not they violate statutory norms.²³⁵

Customary Law Declaration Order

Governmental Notices NG 279 and GN 436 (Customary Law Declaration Order),²³⁶ which identify customary rules related to land, marriage, and inheritance for some patrilineal communities in Tanzania, occupy an important place in jurisprudence as quasi-formal legal instruments. These Customary Law Declaration Orders, or CLDOs, only apply to districts that have signed on to them and are adopted through district councils. Although the CLDOs are not statutory law because they have not been passed by Parliament, they have force of law (in relevant Districts) because they have not been repealed by an act of Parliament.²³⁷ The CLDOs are not applicable to matrilineal communities.²³⁸

¹⁹² Much of this Supplemental Resource is adapted from Jen Duncan, *Women's Land Rights Guide for Tanzania*, (LANDESA 2014), available at <https://www.landesa.org/wp-content/uploads/LandWise-Guide-Women%E2%80%99s-land-rights-guide-for-Tanzania.pdf>.

¹⁹³ Land Acquisition Act (1967).

¹⁹⁴ Local Customary Law (Declaration) (No. 4) Order, GN 436/1963.

¹⁹⁵ Constitution of the United Republic of Tanzania (1977). The Constitution is under review in Tanzania; a national referendum to adopt a new constitution was planned for 2014. *Tanzania to Have New Constitution in 2014: Kikwete*, NEWS OF THE SOUTH (Jan. 14, 2014), <http://newsofthesouth.com/tanzania-to-have-new-constitution-in-2014-kikwete>. That referendum has been postponed due to delays in registering voters, according to the government. Tanzania Delays Referendum on Constitution, VOICE OF AMERICA (Apr. 2, 2015), <https://www.voanews.com/a/tanzania-delays-constitution-referendum/2705034.html>. As of September 2017, the status of the referendum is unclear.

¹⁹⁶ Redress to a violation of equal rights or protection lies with the High Court, which is not accessible by most people, and particularly not to most rural women. And when the High Court does determine that rights have been violated, the specified remedy is not individual damages, but rather to give the state (or agency against which the charge is rendered) the opportunity to rectify the offending law or action. Until this happens (or a period of time stated given by the Court expires) the discriminatory law remains on the books. Benschop, *supra* note 66, at 104.

¹⁹⁷ Land Act §4(1).

¹⁹⁸ *Id.* at §32(1).

¹⁹⁹ *Id.*

²⁰⁰ *Id.* at §31.

²⁰¹ *Id.* at §181.

²⁰² *Id.* at §159(1).

²⁰³ *Id.* at §161(1), (2).

²⁰⁴ *Id.* at §160(1).

²⁰⁵ Village Land Act §159(1).

²⁰⁶ See ILC, *supra* note 9.

²⁰⁷ Both customary and granted rights of occupancy have equal status and effect under the law. Village Land Act §18. There is no specified maximum term for customary rights of occupancy. Benschop, *supra* note 66, at 110.

²⁰⁸ Benschop, *supra* note 66, at 115 (citing Village Land Act §12(1)).

²⁰⁹ *Id.* at 105 (referring to the Village Land Act).

²¹⁰ Village Land Act §22.

²¹¹ *Id.* at §22(1), (2).

²¹² *Id.* at §22(3)(ii)(b).

²¹³ *Id.* at §23(2)(c).

²¹⁴ *Id.* at §57(3).

²¹⁵ *Id.* at §30(4)(b).

²¹⁶ *Id.* at §33(1)(d).

²¹⁷ *Id.* at §43 (9).

²¹⁸ See Benschop, *supra* note 66, at 109; USAID, *Country Profile: Tanzania, Property Rights and Resource Governance* 1-2 (2011).

²¹⁹ Village Land Act §20(2).

²²⁰ *Id.* at §35(7)(c)(i).

²²¹ *Id.* at §36.

²²² Tamar Ezer, *Inheritance Law in Tanzania: The Impoverishment of Widows and Daughters*, 7 GEO. J. GENDER & L. 599, 604 (2006); Ingunn Ikdaahl et al., *Human Rights, Formalisation and Women's Land Rights in Southern and Eastern Africa*, 57 STUD. IN WOMEN'S L. 1, 39–40 (2005).

²²³ See Tenga & Kironde, *supra* note 12.

²²⁴ See *id.*

²²⁵ Constitution of the United Republic of Tanzania, Art. 32(2).

²²⁶ Land Acquisition Act §4(1)(a); Land Act §4(1).

²²⁷ Land Act §3.

²²⁸ Tenga & Kironde, *supra* note 12, at 57, 59. Under the Land Act § 3, the state must pay: (1) the market value of real property; (2) transport allowance; (3) loss of profits or accommodations; (4) cost of acquiring or getting subject land; (5) disturbance allowance; (6) any other cost, loss or capital expenditure incurred in development of land; (7) interest at market rate in the case of delays (defined as failure to pay within 6 months of valuation). See *id.* at 59.

²²⁹ Abdon Rwegasira, LAND AS A HUMAN RIGHT: A HISTORY OF LAND LAW AND PRACTICE IN TANZANIA 208 (2012).

²³⁰ J.M. Lusugga Kironde, *Improving Land Sector Governance in Africa: The Case of Tanzania*, Paper prepared for the Workshop on Land Governance in Support of the MDGs: Responding to New Challenges, Washington D.C. (Mar. 9-10, 2009).

²³¹ Law of Marriage Act §56–58.

²³² *Id.* at §56–63.

²³³ *Id.* at Part I (a).

²³⁴ Benschop, *supra* note 66, at 128 (citing Interpretation of Laws and General Clauses Act, 1972 (Cap. 1), §2(1)).

²³⁵ *Id.*; Hutton & Williams. *Customary and Islamic Law and its Future Development in Tanzania*, 108 LEGALBRIEF AFRICA (2004), available at <http://www.legalbrief.co.za/article.php?story=20041128143334824>; F. Carpano, *Strengthening Women's Access to Land: The Tanzanian Experience of the Sustainable Rangeland Management Project* 8 (IFAD 2010).

²³⁶ Local Customary Law (Declaration) (No. 4) Order, GN 436/1963.

²³⁷ Some specific parts of the CLDO have been superseded by statutory law, however. For example, section 9(3A) of the Law of Marriage Act of 1971 referring to the Judicature and Application of Laws Act excludes CLDO applicability to Islamic and Customary Law on issues provided for in the Law of Marriage Act. Naseku Kisambu, Head-Research and Policy Department, Tanzanian Women Lawyers Association, E-mail Correspondence on July 11, 2014, Head- Research and Publicity Department, TANZANIAN WOMEN LAWYERS ASSOCIATION (on file with Landesa). It can also be argued that both the Constitution (provisions on gender equality) and Land Act *implicitly* supersede the Government Notices (and Islamic Law) on matters regarding inheritance (as noted above, section 192 of the Land Act provides that, in the case of any inconsistency or conflict between the provisions of the Act and any or other law on the matter of land law, the Land Act prevails). As a practical matter the courts continue to apply both the Government Notices and Islamic Law to inheritance cases. Naseku Kisambu, *Written comments to draft guide report* on April 14, 2014 (on file with Landesa).

²³⁸ Approximately 80 percent of Tanzania communities are considered patrilineal, though traditional matrilineal communities have increasingly transitioned to patrilineal custom as ethnic intermarriage, migration, urbanization and other demographic changes become more prevalent. Matrilineal customs are less well known and rules are not codified in a similar way to the rules of patrilineal customs.

Supplemental Resource 3

Sample Company Policies

How to Use this Resource

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

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

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

Example Policies and Implementation Guidance



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

The Coca-Cola Company's Supplier Guiding Principles Implementation Guide

The Coca-Cola Company's Issue Guidance on Responsible Land Acquisition



Nestlé's Commitment on Land & Land Rights in Agricultural Supply Chains, an appendix to The Nestlé Policy on Environmental Sustainability

Nestlé's Responsible Sourcing Guideline



PepsiCo Land Policy



Unilever Responsible Sourcing Policy



Illovo Group Guidelines on Land and Land Rights

Illovo's Road Map on Land Rights

Overview of Key Policy Themes

Zero Tolerance for Land Grabs

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

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

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

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

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

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

Adopting International Standards

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

In “Nestle Commitment on Land & Land Rights in Agricultural Supply Chains,” Nestle expressly adopts the VGGTs, and commits to promoting their adoption by

governments and industry partners, as do The Coca-Cola Company and PepsiCo. Unilever requires that suppliers publicly support the VGGTs.

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

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

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

- Free: Consent to the sale of land is given voluntarily and absent of "coercion, intimidation or manipulation."
- Prior: Consent is sought sufficiently in advance of any authorization or commencement of activities from an existing land owner.
- Informed: Ensures that information is provided prior to seeking consent to acquire and that information is provided as the acquisition process proceeds.
- Consent: Refers to the collective decision made by the land rights-holders and reached through the customary decision-making processes of the affected peoples or communities.

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

Gender and Women's Land Rights

Although some company policies have addressed the disparate and often harmful impact that investments can have on women, many policies are gender neutral and do not adequately protect women's land rights and interests in land. "The Coca-Cola Company Commitment: Land Rights and Sugar" policy and the "PepsiCo Land

Policy” is gender neutral, even though both policies adopt many useful standards, such as the VGGTs that do address gender disparities. Kellogg’s policy requires that suppliers respect the land rights of women, although some have expressed concern with the policy’s lack of specificity on implementation or enforcement of its commitment to women’s land rights. Unilever’s “Responsible Sourcing Policy” mentions the recognition of women’s right to own and access land as a “good practice,” but does not include this recognition in its mandatory provisions.

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

Supplemental Resource 4

Why Land Matters: Communicating Your New Land Commitment

PowerPoint is available online at <https://ripl.landesia.org/support/1>

Supplemental Resource 5

Community Consultation Checklist

How to Use this Resource

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

	CONSULTATION CHECKLIST	IF YES	IF NO	NOTES
	How Do I Initiate A Productive Engagement?			
☐	Do I know the customary, traditional, and/or religious practices of the community?	☐	Consult government, civil society and/or experts for information and recommendation.	
☐	Have I inquired if there are certain cultural protocols for approaching the community?	☐		
☐	Do I know the appropriate local language in which to communicate?	☐		
☐	Have I contracted an interpreter and/or translator if necessary?	☐		
☐	Have I contracted a facilitator to introduce me to community leadership? To coordinate a meeting with community members?	☐		
☐	Have I met with community leaders?	☐	Work with a facilitator to set-up an introductory meeting.	
☐	Have I met with leaders of minority groups, women's groups, and other leadership as recommended (e.g. farmers associations, cooperatives, religious leaders)?	☐	Request permission from community leaders and work with facilitator to coordinate.	
	How Do I Support Inclusive & Representative Consultations?			
☐	Do I know the demographic characteristics of the population?	☐	Consult government, civil society, experts, your facilitator and/or community leaders for information.	
☐	Have I specifically invited representatives of each demographic group?	☐	If not, work with your facilitator to do so. Consider using	

			leaders of minority groups to mobilize their constituents. Equip them to spread the message answer concerns, and encourage attendance.	
☐	Have I ensured my consultations are accessible?	☐	If not, see steps below	
	How Can I Ensure My Consultations Are Accessible?			
☐	Do I know the ideal times & locations for meetings to support the participation of different stakeholders?	☐	Consult with leadership and facilitator for information. Ask women and members of under-represented groups directly if necessary.	
☐	Did I post information about the meeting place & time in places where participants frequent (for instance, at event & gathering spaces such as churches or meeting halls)?	☐	If not, work with your facilitator to do so.	
☐	Have I held meetings at different locations and times?	☐	If not, work with your facilitator and community leaders to schedule additional meetings.	
☐	Have I conducted meetings and provided supporting documentation in languages and formats all stakeholders can understand?	☐	If not, work with a translator to translate written documents and schedule additional meetings with an interpreter present. Use diverse media such as diagrams, photos, and media.	
☐	Have I held both a large group consultation and small, separate sessions for women, ethnic minorities, and other groups of interest?	☐	If not, work with your facilitator and leaders of these groups to schedule additional meetings.	
	How Complete & Transparent is My Information?			
☐	Did I provide information about our company?	☐	It is possible you may not have all information at this stage. Present what you have available	
☐	Did I provide information about our company's policies and commitments related to responsible investment?	☐		

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☐	Did I provide contact information?	☐	and schedule follow-up meetings to present additional (or revised) information as it is available.	
☐	Did I provide information about the intended project purpose?	☐		
☐	Did I provide information about the geographic scope?	☐		
☐	Did I provide information about the proposed business model?	☐		
☐	Did I provide information about the specific land right being sought (e.g. absolute ownership; ownership with grant to community of use rights such as for gathering wood or water; short-term lease; long-term lease)	☐		
☐	Did I provide information about term of agreement?	☐		
☐	Did I provide information about potential benefits to the community?	☐		
☐	Did I provide information about potential risks, including social, environmental, and financial?	☐		
How Informative is this Consultation for Me?				
☐	Did I (or a third-party expert) ask the community about their perspective on the status of the land in question, and did I get a clear and consistent explanation?	☐	If not, schedule a follow-up meeting during which you can request this information or	
☐	Did I ask about the history of the land or nearby land, including government expropriation or past private sector investment?	☐		
☐	Did I ask about the current customary rights and uses of the land, including transfer and inheritance?	☐		
☐	Did I ask about the prominent livelihood activities of the community? What about the cultural or religious significance of the land?	☐		
☐	Did I ask about common land disputes and dispute resolution mechanisms?	☐		
☐	Did I ask about the concerns and expectations of the community pertaining to the investment?	☐		
☐	Did I ask other relevant questions to fill gaps in my understanding from my initial research and/or conversation with the government, civil society and community leadership?	☐		
What Else Should I Consider When Conducting the Meeting?				

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☐	Did I provide sufficient time and a safe environment for questions? Did I provide complete answers or explain that I will return with the necessary information?	☐	If not, schedule a follow-up conversation for Q&A.	
☐	Did I hear from a range of people or did a few voices dominate the conversation?	☐	If not, work with your facilitator and leaders of groups who did not vocalize opinions to schedule additional small group meetings.	
☐	Am I aware of cultural norms regarding meeting documentation/recording?	☐	If not, inquire with your facilitator and/or community leaders about cultural norms for meeting documentation.	
☐	Did I document the meeting, through meeting minutes, notes, and/or video or voice recording as appropriate for the community in question?	☐	If not, document subsequent meetings in a culturally appropriate manner. Always inform the community that you are recording the meeting and why before starting.	
☐	Did I inquire about other “dos” and “don’ts” specific to the community (such as cultural practices around provision of food and compensation for attendance)?	☐	If not, solicit feedback from community leaders and your facilitator on what to improve upon for subsequent meetings.	
	What Immediate Meeting Follow-Up Actions Should I Take?			
☐	Did I solicit input on preferred means of future communication with the community members and leaders?	☐	If not, do so.	
☐	Have I synthesized and analyzed the information received during the consultations?	☐		
☐	Have I researched information to answer questions raised by the community during initial consultations?	☐		
☐	Have I considered revisions to the planned investment structure (e.g. geographic scope, business model, land right being sought) based on the information received?	☐		
☐	Have I held follow-up consultations?	☐		

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☐	Have I consulted with my team and management to determine if we want to continue this investment based on the available information?	☐		
☐	Based on the information, have I asked if the community wants to continue discussions about this prospective investment?	☐		

Supplemental Resource 6

Community Capacity Assessment

How to Use this Resource

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

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

Background

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

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

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

Components of the CCA Framework

The specific components of the framework are described below.

Capacities of Interest

The CCA framework is organized around a set of “capacity domains”, which are broad categories of characteristics that are thought to be essential for effective engagement in a consultative process. The list provided has been thematically organized into capacities relevant to the characteristics of: Leadership, Economic Stability, Knowledge and Awareness, and Participation Ability. The capacities listed under each of these themes are thought to be minimally necessary to achieve the following goals related to ensuring an effective consultative process.

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

Indicators

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

capacities of interest. The included indicators have been designed to allow for only binary (yes/no) determinations. Because capacities and cultural realities will vary based on the regional or local context, companies will have to determine how to meet each indicator depending on their specific situation.

Actions to Take

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

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

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

Community Groups

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

Using the Framework

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

Through an external service provider, these domains should be assessed using qualitative research techniques. Researchers should engage directly with members of each community and sub-community to gather self-reported perspectives. Researchers can also use information gathered through key-informants such as village elders and officials. The determination of capacity level should be based on a combination of all evidence gathered using robust and objective research and analytical processes. Furthermore, the assessment should involve a diverse representation of community members to ensure that a fair assessment is developed about the community as a whole. Specifically, sub-groups of likely vulnerable members should be targeted separately to ensure that required measures are taken to eventually increase their capacity and include them in the consultative process.

RIPL CCA Framework

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

Transparent decision-making	Formal leadership actively communicates out decisions that impact community members across gender and socio-economic groups, and the reasons behind those decisions					
Represents interests across the community	Community members across gender and socio-economic groups are invited to provide inputs into decisions.					

Confidence to represent the community	Leaders, formal or informal, exhibit confidence during meetings and discussions with external parties to effectively push for outcomes in the communities' best interest.					
Equitable distribution of information and resources	Formal leaders actively facilitate sharing of information and resources across gender and socio-economic groups					

ECONOMIC STABILITY GOAL: MITIGATE THE POSSIBILITY OF DECISIONS UNDULY INFLUENCED BY SHORT-TERM ECONOMIC NEEDS						
Capacity Domain	Indicators	Community elites	Women	Minority subgroup #1 (e.g. ethnic minority)	Minority subgroup #2 (e.g. pastoralists)	Actions to take if capacity is determined to be weak or non-existent.
Food Secure	Members of the community generally feel confident that their food supplies are secure and predictable					

KNOWLEDGE AND AWARENESS GOAL: COMMUNITY MEMBERS UNDERSTAND THEIR RIGHTS, CAN PARTICIPATE MEANINGFULLY IN ASSESSMENT AND NEGOTIATION ACTIVITIES, AND ARE POSITIONED TO MAKE INFORMED DECISIONS.						
Capacity Domain	Indicators	Community elites	Women	Minority subgroup #1 (e.g. ethnic minority)	Minority subgroup #2 (e.g. pastoralists)	Actions to take if capacity is determined to be weak or non-existent.
Literate	Members of the community are able to read and write a letter in [insert language].					
Educational achievement	Members of the community generally completed basic education.					
Awareness of rights to the land in their possession	Members of the community are aware of legal frameworks and rights associated with land under their possession					

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Awareness of conflict resolution mechanisms available in case of land-related disputes between the community and investor	Members of community know how to access and use the appropriate dispute resolution mechanisms					
Acceptance of dispute resolution outcomes	Members of the community have trust in the dispute resolution process and respect outcomes.					
Awareness of social-security or publicly provided services available to them	Members of the community apply and receive services for which they are eligible					
Awareness of and access to shared community resources	Members of the community leverage shared community resources to satisfy household or personal needs					

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

Supplemental Resource 7

Land Rights Assessment Tool Kit

How to Use this Resource

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

Scope of the ESIA

Any ESIA or human rights impact assessment (HRIA) that a company conducts to comply with widely-accepted human rights standards²³⁹ and domestic laws and policies should also assess investment impacts on land rights, uses and livelihoods. The ESIA should be supplemented by analyses of the following:

- **How the potential acquisition would affect the amount of land available for food crop and other livelihoods production.** The analysis must go beyond the obvious agricultural and other land uses to include such things as gathered resources (including craft and production materials and medicinal and other resources obtained from the land), along with the economic benefits of naturally occurring and planted trees.
- **Identification and importance of agricultural use and infrastructure.** This could include commodity crops; food crops; non-agricultural livelihood strategies; water sources; agricultural inputs like seeds, fertilizers, and pesticides; market access; roads and transportation; and other infrastructure.
- **Existing and prospective spatial uses and boundaries.** This includes formally documented rights to the land, or any other identified and documented boundaries or governance rules.
- **Overlapping rights and uses.** Groups, individual land holders and users within the community may have overlapping rights and uses on the same parcels of land, including seasonal work or different crops grown by women and men. While assessing overlapping uses, any conflicts or disputes over land should be examined as well because they will probably have to be resolved to come to an agreement with community members.
- **Extent to which women and men have different perspectives on all issues discussed and examined during the assessment.** For example, women's land uses may not be recognized by men and the broader

community. Women may be more knowledgeable than men about plants grown or gathered for food or medicinal purposes, and may be able to provide more detailed information on sources, such as uses of water.²⁴⁰

- **The full market and non-market value of the land**, which would include assessing livelihoods as well as social, cultural, religious, spiritual, and environmental values. The goal is to ensure that all land holders and users receive full and equitable compensation for relinquishing their land rights.
- **The cost or value of any additional resources needed** to supplant or remedy the loss of livelihoods, including the reduction in food cropping. Resources could include new land, money, and alternative livelihoods opportunities (employment, household vocations, business enterprises, and other options).

Resources for HRIA and ESIA

HRIA Tools

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

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

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

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

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

Global Compact Network Netherlands, Oxfam, Shift, (2016), *Doing Business with Respect for Human Rights: Assessing impacts*, available at: <https://www.businessrespecthumanrights.org/en/page/344/assessing-impacts>

NomoGaia, (2012), *Human Rights Impact Assessment Toolkit*, available at: <http://nomogaia.org/tools>

Rights & Democracy, *Getting it Right: Human Rights Impact Assessment Guide*, available at: <http://hria.equalit.ie/en/index.html>

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

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

ESIA Tools

IFC, *The Social and Environmental Impact Assessment Process*, <http://www.ifc.org/wps/wcm/connect/296ae980488551f5aa0cfa6a6515bb18/ESIA.pdf?MOD=AJPERES>

IFC, (2013), *Good Practice Handbook, Cumulative Impact Assessment and Management: Guidance for the Private Sector in Emerging Markets*, available at: http://www.ifc.org/wps/wcm/connect/3aebf50041c11f8383ba8700caa2aa08/IFC_GoodPracticeHandbook_CumulativeImpactAssessment.pdf?MOD=AJPERES

IFC, (2007), *Stakeholder Engagement: A Good Practice Handbook for Companies Doing Business in Emerging Markets*, available at: http://www.ifc.org/wps/wcm/connect/938f1a0048855805beacfe6a6515bb18/IFC_StakeholderEngagement.pdf?MOD=AJPERES

OECD, (2011), *OECD Guidelines for Multinational Enterprises*, available at: <http://www.oecd.org/daf/inv/mne/48004323.pdf>

Frank Vanclay, (June 2015), *Social Impact Assessment: Guidance for assessing and managing the social impacts of projects*, available at: http://www.iaia.org/uploads/pdf/SIA_Guidance_Document_IAIA.pdf

World Bank, (2017), *The Environmental and Social Framework*, available at: <http://documents.worldbank.org/curated/en/383011492423734099/pdf/114278-REVISED-Environmental-and-Social-Framework-Web.pdf>

Community Assessment Interview Guides

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

District Agency: Key Informant Interview Guide

District governance structure

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

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

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

Documentation, recording and registration of land rights

1. Do you document or record land rights? How? When? Triggers for documentation?
2. Is any documentation required for land for investments purposes? What kind of documentation?
3. Who bears responsibility for documentation? (the business enterprise? The seller/landlord?)
4. What are the costs involved? Who bears the cost? Is there a schedule of fees?
5. Does the cost influence allocation of land for investment purposes? Do cost prompt people to avoid registration?
6. What capacity exists within the existing community structures for land documentation?

7. Have you seen any effects of land documentation on investments? On local communities and customary rights holders? Has it changed how much land people acquire? Anything else?
8. Are land documents on lands you have allocated registered?
9. Benefits of registration? Effects of non-registration?
10. Who registers the land documents?
11. What are the associated costs for land rights registration? Who bears the cost?
12. Does registration trigger taxation? Does this discourage registration?
13. How accessible is the Lands Commission in your area?
14. What kind of linkages exists between you and the Lands Commission? Any special arrangement for registration of land document emanating from you?
15. What are the challenges?
16. Recommendations?

Land use planning

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

Consultation and engagement practices

1. Describe the consultation and engagement process used by business enterprises in your area
 - Who should be consulted and how?
 - In practice, how are the above mentioned consulted?
2. Are any efforts made to engage women?
 - What types of efforts? Is it important to engage women? Why or why not?

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

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

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

5. How do the different stakeholders that have been identified interact? How could these interactions be improved?
6. Are women represented in traditional or customary leadership?
 - Do those women take part in meetings on land-related investments? If so, what role do they play? Should that role be strengthened? If not, how can women be engaged? Should they be?

Land acquisition and compensation practices

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

11. Have business enterprises paid compensation to community land owners before land acquisitions?
 - Was that compensation adequate and fair? How is that determined?
12. Are villagers paid compensation for their land?
 - Is that compensation fair, adequate, and timely? How is that determined? Are women's land uses and rights (either or both formal and customary) recognized, valued, and compensated during the compensation process?
13. Do village men and women participate in the determination of compensation levels?
14. If village men and women are not satisfied with compensations, what do they do?
15. How would you rate the transparency and fairness of land acquisition deals in your area?
16. Do you believe there are opportunities for meaningful feedback on proposed land acquisition deals?
 - Are there any open dialogue forums between business enterprises and villagers?
 - If so, do women attend these as well as men? Are they encouraged to attend? Are their opinions heard?

Community mobilization, engagement and voice

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

3. How successful has community-initiated engagement been? How does this influence land allocation for investment?
4. What are the major environmental issues in the community?
5. Do you have any recommendations?

Pastoralists

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

Negotiation and contracting practices

1. What is the current process for negotiating a land contract?
 - Who participates and how?

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

Dispute resolution mechanisms

1. Are there land-related disputes between business enterprises and villagers in your area? What types of disputes?
2. If there are disputes of this type, how are they resolved? Which mechanisms exist?
 - Do women ever access these dispute resolution mechanisms? Why or why not?

- Are these mechanisms considered fair? Are they fair for both men and women?
- Are these mechanisms accessible to all? What barriers are there? What do they cost to access?
- Are these mechanisms considered effective? Are their resolutions appropriate? How long does it take?
- Can decisions be appealed? To where and by who?
- How can these mechanisms be improved?
- Are there alternative dispute resolution mechanisms other than formal mechanisms?

Key challenges and opportunities

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

Technology considerations for communication strategies

1. What types of technology do you use (computers (laptop? desktop? tablet?), mobiles, etc.)
 - How do you connect to the internet?
 - Do you use apps on your phone? How many?
 - Do you use social media? Which sites?
2. How do you get information on the law? On land laws? Do you ever use technology? Which websites?

3. Do you like to get information by SMS? By email? Which do you prefer?
4. How do you prefer to get information (radio, TV, online, word of mouth, etc.)?
5. What are your biggest barriers to accessing information online? What has been the biggest help?

Village Leaders and Traditional Authorities: Key Informant Interview Guide

Customary governance setup

1. Hierarchy of the village leaders / chieftaincy structure
2. Roles and responsibilities
3. Land decision-making
4. Role of queen mothers/family women
5. Do queen mothers/family women have any role in land allocation or decisions?
6. Village / customary leadership's interaction with community
7. Village / customary leadership's interaction with government agencies
8. Village / customary leadership's interaction with companies
9. Village / customary leadership's interaction with CSOs

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

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

Documentation, recording and registration of land rights

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

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

Land use planning

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

Consultation and engagement practices

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

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

1. When an investment in land or agriculture is being proposed, what are the steps to its review and approval?
 - Do established customs drive the different approaches?
 - Who are involved in the allocation and disposition of land? What informs their involvement?
 - What are their roles and responsibilities?
 - Do laws and/or policies inform how customary land is allocated or documented? How?
 - Is this allocation process (that you have described) standard to all customary areas, or does it vary from place to place?
 - What are the challenges with the current mode of allocation from your perspective? From the perspective of land holders and users?

2. In practice, what role does the government play? (Village? District? Regional? National?) Which offices or officers are engaged, and how?
3. Do CSOs play a role? At what point in the process? What is it?
4. Are women in leadership positions in CSOs involved in the investment process? Do any of those CSOs represent the interests of women? How?
5. How do the different stakeholders that have been identified interact? How could these interactions be improved?
6. Are women represented in traditional or customary leadership?
 - Do those women take part in meetings on land-related investments? If so, what role do they play? Should that role be strengthened? If not, how can women be engaged? Should they be?

Land acquisition and compensation practices

1. How do business enterprises acquire land in your area? Does this vary in practice from the ways business enterprises should acquire land?
2. How do men in the community participate in land acquisition processes?
3. How do women in the community participate in land acquisition processes?
 - Do women participate in land acquisition decision making processes to the same extent as men?
 - How can women's participation in land-related investments be increased?
4. Is a business enterprise required to undertake an impact assessment? When?
5. In practice, do business enterprises undertake investment impact assessments? Which? Why?
6. Who participates in undertaking impact assessment?
7. How do land acquisitions for agricultural investments impact men in your area?
8. How do land acquisitions for agricultural investments impact women in your area?
9. Have villagers in your area received compensation for any loss of land?
 - In what form(s) was the compensation paid?
 - Who pays? Government? Business enterprise?
 - How was the level of compensation determined and by whom?

- Who received compensation? Families? Individuals? Villages?
 - What compensation was paid? New land? New house? Money? Community projects? Jobs?
 - Who controls how to use compensation?
 - Are women ever compensated directly/in their own names?
10. Have business enterprises paid compensation to community land owners before land acquisitions?
- Was that compensation adequate and fair? How is that determined?
11. Are villagers paid compensation when their land is transferred to general land?
- Is that compensation fair, adequate, and timely? How is that determined?
12. Do village men and women participate in the determination of compensation levels?
13. If village men and women are not satisfied with compensations, what do they do?
14. How would you rate the transparency and fairness of land acquisition deals in your area?
15. Do you believe there are opportunities for meaningful feedback on proposed land acquisition deals?
- Are there any open dialogue forums between business enterprises and government and community members?
 - If so, do women attend these as well as men?

Community mobilization, engagement and voice

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

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

Pastoralists

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

14. Where do pastoralists go if they need help resolving a land dispute about an investment?

Negotiation and contracting practices

1. What is the current process for negotiating a land contract?
 - Who participates and how?
 - In what ways do men in community participate in land-related investment negotiation and contracting?
 - In what ways do women in community participate in land-related investment negotiation and contracting?
 - Are these negotiations sensitive to the different needs and desires of women and men? How can this sensitivity be improved?
 - Are there opportunities for men and women to give meaningful feedback on proposed contracts? What types? Do women participate as well as men?
2. How can community needs be incorporated into the contracts?
3. Have you seen a land-related investment contract? What was included in the contract?
4. Who are parties to the contracts?
5. Was the community satisfied with the contracting process?
6. How long does it take for the contract to be completed?
7. Do you have access to land contracts?
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9. Are there any investment oversight, liaison, or monitoring initiatives? What are they?
 - Who participates? Do women participate?
10. Have any interim agreements, such as memoranda of understanding (MOU) been made between business enterprises and local communities? District and business enterprises? Do any MOUs exist in this area currently?
11. How are investment contracts or any MOUs enforced and monitored? How could or should they be enforced or monitored?

Dispute resolution mechanisms

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

Key challenges and opportunities

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

Technology considerations for communication strategies

1. What types of technology do you use (computers (laptop? desktop? tablet?), mobiles, etc.)
 - How do you connect to the internet?
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5. What are your biggest barriers to accessing information online? What has been the biggest help?

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

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

Household decision making

1. Who makes decisions in your household about your livelihood – about how you will feed yourselves and buy what you need?
2. What do you grow? Who grows it? Do you sell it? Do you consume it?
3. What are your family needs? For food? For your home? For health? For education? Transportation?
4. Who in your household made the decision to grow [*your crop(s)*]?
5. Regarding [*your crop(s)*] production in this area, are there specific activities that are the husband's responsibility? The wife's responsibility?

6. Who within the family makes decisions about how to spend income from [*your crop(s)*] production?
7. When do you receive income from [*your crop(s)*] production? From whom?
8. What is the income from [*your crop(s)*] production used for?
9. How important to your families' livelihoods/survival is [*your crop(s)*] production? Does that income meet your families' needs?

Ownership of land and other assets

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

Custom related to land

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

Documentation, recording and registration of land rights

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

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

Land use planning

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

Consultation and engagement practices

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

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

1. When an investment in land or agriculture is being proposed, what are the steps to its review and approval?
 - Do established customs drive the different approaches?
 - Who are involved in the allocation and disposition of land? What informs their involvement?
 - What are their roles and responsibilities?
 - Do laws and/or policies inform how customary land is allocated or documented? How?
 - Is this allocation process (that you have described) standard to all customary areas, or does it vary from place to place?
 - What are the challenges with the current mode of allocation from your perspective? From the perspective of land holders and users?

2. In practice, what role does the government play? (Village? District? Regional? National?) Which offices or officers are engaged, and how?
3. Do CSOs play a role? At what point in the process? What is it?
4. Are women in leadership positions in CSOs involved in the investment process? Do any of those CSOs represent the interests of women? How?
5. How do the different stakeholders that have been identified interact? How could these interactions be improved?
6. Are women represented in traditional or customary leadership?
 - Do those women take part in meetings on land-related investments? If so, what role do they play? Should that role be strengthened? If not, how can women be engaged? Should they be?

Land acquisition and compensation practices

1. How do business enterprises acquire land in your area? Does this vary in practice from the ways business enterprises should acquire land?
2. How do men in the community participate in land acquisition processes?
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 - Do women participate in land acquisition decision making processes to the same extent as men?
 - How can women's participation in land-related investments be increased?
4. Is a business enterprise required to undertake an impact assessment? When?
5. In practice, do business enterprises undertake investment impact assessments? Which? Why?
6. Who participates in undertaking impact assessment?
7. How do land acquisitions for agricultural investments impact men in your area?
8. How do land acquisitions for agricultural investments impact women in your area?
9. Have villagers in your area received compensation for any loss of land?
 - In what form(s) was the compensation paid?
 - Who pays? Government? Business enterprise?
 - How was the level of compensation determined and by whom?

- Who received compensation? Families? Individuals? Villages?
 - What compensation was paid? New land? New house? Money? Community projects? Jobs?
 - Who controls how to use compensation?
 - Are women ever compensated directly/in their own names?
10. Have business enterprises paid compensation to community land owners before land acquisitions?
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Key challenges and opportunities

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

Technology considerations for communication strategies

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

Farmers Associations – Focus Group Discussion Guide

Background and history

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

Functional and managerial structure

1. What are the main functions of the association?
2. Does the association have a constitution and bylaws? Has the constitution ever been reviewed? If so, why and when?
3. What is the organizational and leadership structure of the organization?
4. Who created the organizational structure? How do the leaders get selected?

5. Are there any women leaders in the association? If so, how many and what type of leadership position(s) do they occupy?
6. How is the association financed to perform its functions? Fees? Percentage of crops? How is this collected? All at once?
7. What are the main strengths of the association?
8. What are the main challenges facing the association?
9. What steps are being taken to address the challenges?

Land use planning

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

Functional relationship with the company

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

11. Do you work with other association or institutions other than the company? If so, in what areas do you engage other associations or institutions?

Functional relationship with association members

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

Produce supply agreements

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

Technology considerations for communication strategies

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

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

Pastoralists

Customary governance setup

1. Hierarchy of the leadership structure
2. Roles and Responsibilities
3. Land decision-making
4. Leadership's interaction with farming communities
5. Leadership's interaction with government agencies
6. Leadership's interaction with companies
7. Leadership's interaction with CSOs

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

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

Documentation, recording and registration of land rights

1. Do you document or record land rights? How?
2. If not documented, how do you remember who has what land?
3. Is your land documented? Whose name is on the documents?
4. Is any documentation required for land for investments purposes? What kind of documentation?

5. Who bears responsibility for initiating documentation? (the business enterprise? The seller/landlord?)
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 - What types of efforts? Which groups? Why those groups and not others?
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 - How do men access information? How do women access information?
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- 6. Have you heard of the concept of Free, Prior, Informed Consent (FPIC)?

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2. In practice, what role does the government play? (Village? District? Regional? National?) Which offices or officers are engaged, and how?
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 - Is there any community development intervention by the company? What role do you play?

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- In what ways do men in community participate in land-related investment negotiation and contracting?
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1. Are there land-related disputes between business enterprises and villagers in your area? What types of disputes?
2. If there are disputes of this type, how are they resolved? Which mechanisms exist?
 - Do women ever access these dispute resolution mechanisms? Why or why not?

- Are these mechanisms considered fair? Are they fair for both men and women?
- Are these mechanisms accessible to all? What barriers are there? What do they cost to access?
- Are these mechanisms considered effective? Are their resolutions appropriate? How long does it take?
- Can decisions be appealed? To where and by who?
- How can these mechanisms be improved?
- Are there alternative dispute resolution mechanisms other than formal mechanisms?

Key challenges and opportunities

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

Technology considerations for communication strategies

1. What types of technology do you use (computers (laptop? desktop? tablet?), mobiles, etc.)
 - How do you connect to the internet?
 - Do you use apps on your phone? How many?
 - Do you use social media? Which sites?
2. How do you get information on the law? On land laws? Do you ever use technology? Which websites?

3. Do you like to get information by SMS? By email? Which do you prefer?
4. How do you prefer to get information (radio, TV, online, word of mouth, etc.)?
5. What are your biggest barriers to accessing information online? What has been the biggest help?

²³⁹ AU Guiding Principles, *supra* note 105, at 6 (“Decisions on the desirability and feasibility of LSLBI are made based on independent, holistic assessment of the economic, financial, social and environmental costs and benefits associated with the proposed investment, throughout the lifetime of the investment.”); see also VGGT, *supra* note 89, at 4 (“Business enterprises should act with due diligence to avoid infringing on the human rights and legitimate tenure rights of others.”); UNGP, *supra* note 89, at 5 (“In order to identify, prevent, mitigate and account for how they address their adverse human rights impacts, business enterprises should carry out human rights due diligence. The process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed.”); World Bank Group, *supra* note 107.

²⁴⁰ Namati, *Community Land Facilitators Guide* 29 (2016).

Supplemental Resource 8

Risk Mitigation Analysis

How to Use this Resource

This resource accompanies Phase 2, Task 2, Step 4 of the Model Guidebook for Business Enterprises. The results of the ESIA will likely reveal potential risks to the community that the business will have to address and mitigate before proceeding with the investment. When analyzing potential risks created by a prospective investment, begin by considering the categories of land uses included in the far-left column. Although some elements may not pertain to all investments, considering each will help the business identify a broad range of potential risks.²⁴¹

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

Access to land for new settlement development Types of houses Construction materials Toilet facilities Access to Land Who is able to access land? Allocation by community leaders, family members, etc. Inheritance Purchase			
COMMUNITY FACILITIES AND INFRASTRUCTURE Education Nursery, Primary, Secondary schools etc. Location, acreage and level of service Health Dispensary, Clinics, Health center Location, acreage and level of service Major diseases, Status of HIV/AIDS Communication and Transportation Type and condition e.g. road, railway, water etc. Availability of telephone services and networks Location and level of service Energy Energy sources e.g. wood, charcoal, gas, electricity, fuel			

etc. Accessibility and costs (affordability) Other Community Facilities Religious, Play grounds, Recreation, Cemetery, Commercial, Industrial, Judiciary etc. Location, acreage and level of service			
AGRICULTURE Main Agriculture Crops List main agriculture crops in the village (food and cash crops) + average farm size per household Agriculture Areas and Acreage Estimates Location, names and areas for agriculture (under cultivation cycle) Farming System Mixed cropping (e.g maize/mtama) Types of crops that are mixed and not mixed Technology used Agricultural Calendar Agriculture seasons and crops grown in each season Use of Agricultural Inputs Type of agricultural inputs (artificial fertilizers, farm yard manure, compost manures, crop seeds, pesticides for controlling plant diseases and			

pest attack) Average rate used per acre (rates used) Price and availability for agricultural inputs Farm Implements and Technology Extent of use of hand hoe, draught animals, tractors, and other modern farm implements Use of big tractors and small tractors “power tillers” Rate/percentage of number of households that use farm implements Which farm activities are done using different types of farm implements? (e.g tractors used for tilling only, hand hoe used for all farm activities) Price and accessibility of farm implements (hand hoes and modern farm implements) Farming (production) cost estimates per acre (major crops) Extension Services Availability of Extension Officers Establishment of Farmers Field School – Class Farms (Mashamba Darasa) Agriculture Crops Production Crops Storage Storage facilities for farm produce/ type of storage facility			
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Pest control for stored crops Market and crop prices Main buyers (for every crop) Internal market Market outside the village, region and country side Establishment of Government Receipt Advance System			
LIVESTOCK KEEPING Types and Number of Livestock Types present in the village Indigenous breeds Exotic breeds			
Grazing Areas and Livestock Water Points Grazing areas during rainy and dry season Source of water for livestock and its areas in terms of acres/hactors Livestock Keeping Systems Zero grazing Extensive grazing Small ranching Type (breed) and total number for each for every system mentioned above Livestock diseases Common animal diseases Seasonal animal diseases Livestock Extension Services and Infrastructure Availability of Veterinary shops			

and medicine prices Livestock extension workers/advisors Livestock routes Dipping troughs Livestock market/auction Availability of livestock treatments Livestock products and Markets Meat Milk and rate of production per animal Skin and hide Prices for animal products			
FORESTRY Types of Forests Natural forest and their acreage (Species and names) Planted forests and their acreage (Species and names) Reserved Forests (Species and names) Ownership and Uses of Forests Who owns and use the forests? Types of possible use: Hunting, Beekeeping, Wood, lumbering Firewood, Charcoal, Building materials, Conservation, Sacrifices Harvesting of Forest Products Harvesters from within (households) the village Harvesters from outside the			

village Rate of forest products (firewood, timber, charcoal etc.) harvested Forest production capacity (potentiality/survival/adaptation to climatic change) Market and prices for forest products			
Village Physiography and Drainage System Physiographic appearance e.g. mountains/uplands, valleys, wetlands Drainage Existing rivers (seasonal or annual) Where do they drain their water			
WATER SOURCES AND SUPPLY Water sources and bore holes Rivers and other water bodies (permanent/seasonal) Location and acreage Use, capacities and ownership Management measures of water sources Water supply and distribution			
FISHING Fishing and fish processing areas Location and acreage Type of fishing (fishing gear) e.g., fishing nets, fish hook (net size and type of fish			

hooks) Types and harvest size of fishes Number of households engaged in fishing Fish markets and prices			
MINING Mineral types and areas/sites e.g. Sands, stone quarries, pebbles/gravel, gold, etc. Number of households engaged in mining activities Ownership and management of mining blocks Market and prices Use of minerals (within and outside the village)			
WILDLIFE Wild life areas Types and species Wildlife protected areas neighboring the village Use and management of wild life animals			
TOURISM Tourism sites within the village Business related to tourism Revenue from tourism activities Social and cultural effects due to tourism			

²⁴¹ Information was adopted from: NLUPC, *supra* note 33.

Supplemental Resource 9

Final Contract Checklist

How to Use this Resource

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

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

Supplemental Resource 10

Designing a Stakeholder Engagement Plan

How to Use this Resource

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

Model Community Engagement Strategy Contents

1. Description of Investment Project

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

2. Applicable Regulations and Requirements

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

3. Prior Community Engagement Activities

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

4. List of Stakeholders

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

5. Description of Stakeholder/Community Engagement Strategy

- This is the main substance of the strategy document and should include as exhaustive a list as possible of engagement activities to be undertaken.
- The strategy description should include the specific activities that will be taken for each stakeholder group in consideration of the particular needs of subgroups.

6. Timetable for Community Engagement Activities.

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

7. Resources and Responsibilities Involved in Ongoing Community Engagement

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

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

Supplemental Resource 11

Best Practices for Outgrower Arrangements Literature Review

How to Use this Resource

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

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

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

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

The paper then shifts to the management of basic data recording and monitoring. It recommends basic data capturing for the farmers (names, locations, credit provided,

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

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

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

As the only outgrower manual to explicitly address gender, this handbook is very useful in discussing the benefits, strategies and opportunities for integrating gender into outgrower practice considerations. It discusses the ways in which greater inclusion of women can offset many of the issues with outgrower schemes; a strategy that prioritizes women's participation increases productivity, optimizes the use of inputs and reduces management costs. The handbook also describes specific outgrower projects that increase women's inclusion, such as the FRICH Project's support of Finlay's Kenyan tea outgrowers' cooperatives, which includes quotas for women's participation in its management.

3. J. Bugri, et al., *Recommendations for Large Scale Land-Based Investment in Ghana: Model Lease Consultancy Project Report for the Ghana Commercial Agriculture Project* (Landesa/Ghana Commercial Agriculture Project 2014), available at: <http://gcap.org.gh/wp-content/uploads/2017/04/Lease-Consultancy-3.pdf>.

The purpose of this report is to make recommendations and provide tools for investors and communities in Ghana to improve investment outcomes in commercial agriculture. For the purposes of this literature review, the primary focus will be the “Innovative Models for Inclusive Commercial Agricultural Investments” section, beginning with investment structure and payment terms for land and then discussing innovations in outgrower models in Ghana.

This section outlines a number of different payment options for land. The traditional method of payments for leased land in Ghana is the fixed-sum payment. Although communities derive the benefit of assurance of payment up front in this arrangement, significant drawbacks exist for all parties involved. Firstly, up-front payments discount the expected rise in value of land over time in exchange for security of payment. This tradeoff is especially imbalanced in long-term leases. Secondly, these up-front payments rarely make it to most community members, far less equitably so, and divest future generations without payment for their loss of land. Replacing the up-front payment with a periodic fixed payment gives the community a greater sense of fairness while increasing investor stability. Advantages to the fixed-price method include greater transparency and financial security for communities. These transactions are easier to understand, monitor, and enforce.

A payment model with increased risk, but potentially increased benefit for communities, is the revenue sharing model. This model bases the returns to the communities on the success of the company, and on factors often outside of community control. It also requires a higher level of sophistication for community monitoring. Advantages of revenue sharing compared to equity or profit sharing models include a comparative ease of calculating and monitoring returns. Disadvantages compared to equity models include an inability to access financial records, participate in management or build up longer term value.

Equity share compensation models grant minority shares to the community in the company’s equity, which provides a portion of profits, a voice in management decisions and access to financial records. The risks however, include a trade of land for only potential profits that are difficult to determine, and may take years to produce. As a minority shareholder, the communities would have little say over many decisions, including decisions to reduce declared profits. Communities would also need the capacity to perform due diligence on the pertinent business plan. This

report outlines a series of techniques to increase the viability of the equity share model, such as the establishment of a strong outgrower component, as opposed to a plantation style farm.

Hybrid schemes combine fixed-payment leases with revenue sharing or equity sharing models. Some examples of hybrid schemes are offered, including one that diminishes fixed-payments over time, and balances the risk-sharing components with stability of income for communities. It seems that hybrid schemes, depending on the circumstances of the transaction, are likely ideal, but require a level of business and financial sophistication that may not be currently available in many communities.

The section continues with a discussion of innovations in outgrower and contract farming models. After a brief introduction and definition of terms, it describes particular examples of outgrower schemes in Ghana, including the GADCO example, which is discussed extensively in the payment of land section as one of the most successful outgrower programs in Ghana. Based on these examples and experiences, the report provides a number of conclusions and recommendations for outgrower models. Importantly, this report notes that outgrower schemes reduce the need for land acquisitions, and increase tenure security for farmers, particularly in customary systems like Ghana's. It also notes risks inherent in these models, including a lack of farmer capacity, high interest rates for farmers, and unclear contract terms. Based on these conclusions, this report makes a series of recommendations for realizing a higher level of benefits from outgrower schemes, including conducting ESIA's, making resources and materials available in the local language, and establishing procedures for addressing grievances.

4. H. Desmond et al., *Forestry Out-Grower Schemes: A Global View* (FAO 2001), available at <ftp://ftp.fao.org/docrep/fao/006/ac131e/ac131e00.pdf>.

This working paper, although related to forestry outgrower schemes, provides useful information and issues that are useful to outgrower schemes beyond the forestry context. It describes different types of outgrower schemes definitions of terms. It then discusses the benefits of outgrower schemes, including more secure land tenure for farmers and additional or cheaper raw materials for investors. This paper addresses some of the issues surrounding outgrower schemes. Some of these issues are particular to the forestry context, but many are widely applicable, such as the issue of access to financial loans. This paper's primary usefulness is a snapshot of the benefits and issues associated with outgrower schemes in general, and forestry outgrower schemes particularly. It offers a few recommendations for successful schemes, such as accurately calculating and sharing risks and structuring the scheme so that the arrangements contribute to community well-being.

5. TechnoServe, *Technical Brief: Outgrower Schemes-Enhancing Profitability* (2011), available at: www.technoserve.org/files/downloads/outgrower-brief-september.pdf.

Responding to an increase in large-scale investment in Africa, this technical brief attempts to identify replicable, scalable practices which tend to contribute to the success of outgrower schemes. It identifies a range of factors that success depends on, such as access to markets, transparent pricing mechanisms or attractive prices for farmers, avoiding overreliance on credit, and regular, direct interaction between the buyer and farmer. This brief includes a number of useful graphics, including one that demonstrates the benefits of outgrower schemes for buyers and outgrowers, a visual comparison of outgrower models and their characteristics, and a comparison of crop types with their suitability for outgrower schemes.

Supplemental Resource 12

Monitoring & Evaluation Indicators

Below are suggested indicators to be tracked and evaluated. These follow from best practices outlined in the guidebooks that lead to equitable, responsible investments and would include, for example, ensuring that women community members are consulted.

Company Policies and Procedures

The business has in place policies and procedures that adhere to relevant national laws and international standards for socially responsible investments, and demand adherence from all suppliers. Confirm that policies and procedures:

- Clearly affirm and comply with the business enterprise's commitment to specific international standards (such as the VGGT or AU Guiding Principles) and the application of those standards to each land investment.
- Comport with national law, but also meet international best practices, which often require efforts that go beyond what is called for by national law.
- Require the business enterprise's suppliers (e.g., vendors, contract farmers, etc.) to adhere to similar standards.
- Implement and enforce the policies and procedures throughout business operations.
- Outline or refer to specific mechanisms to achieve best practices, such as impact assessments and community consultation and engagement.
- Establish internal standards for incorporating land tenure risks into decision making.
- Have endorsement at the highest level of the enterprise, are known by all working within the enterprise, include clear lines of authority for implementation and enforcement, and are publicly available.

Community Systems and Safeguards

The community has strong systems and safeguards in place that are rooted in good practices, indicators of which include:

- The establishment of a Land Investment Committee empowered to lead efforts in preparing the community for possible changes to the investment and represents the community in discussions with prospective investors.
- The incorporation of community rules or by-laws that specifically govern land investments, particularly how decisions will be made about company accessing and using land in the community.
- The delivery of effective awareness-raising and training activities to ensure community members are informed about their rights and understand benefits and risks associated with investments.

Ongoing Due Diligence

To avoid infringing on legitimate tenure rights and land uses:

- Business identifies actual or potential issues and risks that any changes to the project may pose to communities and individuals (both men and women).
- Business refrains from cooperating with any illegitimate use of eminent domain/expropriation by a host government to acquire land.
- Business discloses changes to the investment project publicly, including any contracts or permits for a concession, that enable the company to buy, lease, hold or develop new land

Engagement and Consultation

The business's engagement and consultation process with the local community is in accordance with FPIC, including:

- Development of an engagement and consultation plan with the community that:
 - a. Consists of a series of engagements and multiple meetings,
 - b. Involves two-way communication between business and community, and
 - c. Includes active participation from groups that are frequently under-represented in decision making such as women, youth and ethnic minorities.
- No use of coercion, force, intimidation or other types of pressure placed by any business representatives on communities and individual women and men to change the use of, sell, lease or otherwise dispose of their land and natural resources.

- Provision of all material information to communities and individual women and men necessary to make an informed decision prior to seeking and obtaining consent.
- Explicit consent from communities and individual women and men to any proposed project that involves transferring or changing the use of their land or natural resources before the business or government implements the project.
- Effective consent from communities and individual women and men to any material changes to the project prior to the implementation of those changes.

Impact Assessment

The business conducts an environmental and social impact assessment to identify and gauge actual or potential impacts from the project on the environment and community, including impacts affecting land users, land rights and livelihoods.

- Business presents assessment findings and proposed mitigation measures to the community.
- Business presents assessment findings to government officials and external experts.
- Business incorporates assessments findings into the investment project.

Grievance Mechanism

The business establishes a well-functioning grievance mechanism that should have the following characteristics:

- Internal policies and procedures that provide managers and employees with explicit steps on how to process and resolve complaints;
- Internal procedures to ensure cooperation between the chief grievance manager and the employees or contractors with close knowledge of the subject of the grievance;
- Guidance on the types of performance data to be recorded and reviewed for monitoring and evaluation purposes;
- Periodic internal review to ensure the mechanism's functionality;
- Set timeframes for responding to complaints to ensure consistency within the company and predictability for complainants.
- Providing fair remediation in cases where the company caused land rights violations.

A GUIDEBOOK FOR BUSINESS ENTERPRISES CONSIDERING AGRICULTURAL INVESTMENT IN TANZANIA

What should companies do to improve their investment practices in Tanzania, reduce risk and bring about more equitable investment projects? What can Tanzanian government officials do to facilitate better investment practices in their districts? How can village councils and village assemblies strengthen their existing structures and processes to prepare themselves to understand and more 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 Tanzania 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 Tanzania's historical and political context, and step-by-step guidance organized by investment phase.

SOCIALLY RESPONSIBLE LAND INVESTMENT IN TANZANIA Part of the Responsible Investment in Property and Land (RIPL) Guidebook Series by Landesa